



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.07.1998
COM(1998) 447 final

**Report from the Commission to the Council on Directive 94/22/EC
on the conditions for granting and using authorizations for the
prospection, exploration and production of hydrocarbons**

1. INTRODUCTION

On 30 May 1994 the European Parliament and the Council adopted Directive 94/22/EC, the main objective of which was to ensure non-discriminatory access for all companies (or other entities), regardless of their nationality or whether they are public or private, to the activities of prospecting, exploring for and producing hydrocarbons. This report has a dual purpose. It gives a general review of the implementation of the Directive by the Member States (chapter 2) and specifically fulfils the obligation, laid down in Article 8 of the Directive, to present a report to the Council on the access of Community entities to the activities of prospecting, exploring for and producing hydrocarbons in third countries (chapter 3).

2. IMPLEMENTATION OF THE DIRECTIVE

(a) Transposition into national law

- All the Member States, except Luxembourg and Finland, have transposed the Directive into national law. The references of the main texts are given in Annex I.
- Luxembourg and Finland, which have no potential hydrocarbon resources, do not have to transpose the Directive.
- It should also be noted that, by its decision no 19 of 5 April 1995, the E.E.E. joint Committee decided to include Directive 94/22/EC in Annex IV to the E.E.E. Agreement. Norway has transposed the Directive into national law.

(b) Systems for granting authorizations

As laid down in Article 3 of the Directive, Member States can choose between 2 methods of granting authorizations to prospect, explore for and produce hydrocarbons: either a "licensing round" system (see Article 3(2)) or an "open door" system (see Article 3(3)). The two systems may be combined if need be.

"Open door" areas are available on a permanent basis; they may be the subject of a request for or grant of authorization at any time. Member States must indicate which areas within their territory are "open door" via a notice published in the Official Journal of the European Communities.

Under the "licensing round" system interested entities are invited to apply for a particular area within a given time limit. To this end, a notice is published in the Official Journal of the European Communities. This procedure may be initiated either at the initiative of the competent authorities or at the request of an entity.

Eight Member States have had notices published under Article 3(3), establishing territories as "open door". They are Denmark (Official Journal C 49, 19.2.97), Germany (O.J. C 294, 22.10.94), Spain (O.J. C 283, 27.10.95), France (O.J. C 374, 30.12.94), Ireland (O.J. C 299, 27.10.94, O.J. C 346, 16.11.96 and O.J. C 356, 22.11.97), Austria (O.J. C 237, 12.9.95), Portugal (O.J. S 151, 09.08.94) and the United Kingdom (O.J. C 221, 26.8.95).

Five Member States have published "licensing round" notices. They are Greece, the Netherlands, Denmark, the United Kingdom and France. Norway has also published a "licensing round" notice. On 1 January 1998, 43 such notices had been published in the Official Journal of the European Communities. The number of notices published each year by each country is given in Annex II.

As at 1 January 1998, Belgium, Italy and Sweden had not had any notices published, nor of course had Finland or Luxembourg.

(c) Direct link with Directive 93/38/EEC

Article 12 of Directive 94/22/EC establishes a link with European public procurement legislation, in particular Directive 93/38/EEC, which replaced Directive 90/531/EEC. This Directive concerns the purchases of entities operating in the water, energy, transport and telecommunications sectors and regulates them following the principles of transparency and non-discrimination between potential suppliers. Supplies, services and contracts above a certain value are the subject of detailed procedures designed to ensure equal treatment of potential suppliers.

Article 2 of Directive 93/38/CEE provides that the exploitation of a geographical area for the purpose of exploring for or extracting oil is an activity covered by the Directive: a priori, entities active in this sector must therefore apply the procedures laid down therein. However, Article 3 allows Member States to request derogations for this sector of activity, provided certain conditions are satisfied (where a derogation is granted, the only obligation companies must fulfil is to supply information relating to the award of contracts, which is much less onerous). The conditions concern the grant of authorizations and the contracts awarded by these entities.

Insofar as implementing Directive 94/22/EC is in fact equivalent to satisfying the conditions concerning the grant of authorizations, it follows that it should be possible to obtain a derogation if the conditions concerning the markets are also satisfied. The idea underlying the principle of derogation is that, once conditions are satisfied (therefore, once the Directive is implemented) entities in the sector will no longer be exposed to possible pressure from the Member States and the "full" regime of Directive 93/38/EEC will no longer be appropriate.

At present, the United Kingdom is the only country to have obtained a derogation on the basis of the implementation of Directive 94/22/EC.¹ The Netherlands had already obtained a permanent derogation before Directive 94/22/EC was adopted.²

3. RECIPROCITY ON THE PART OF THIRD COUNTRIES

Given that the Directive aims to ensure non-discriminatory access to the activities of exploring for and producing hydrocarbons within the Union not only for Community entities but also entities from third countries, it follows that third countries be expected to reciprocate. This is the purpose of the arrangements set out in Article 8 of Directive 94/22/EC.

To recap, this Article provides that, on the basis of information received from the Member States, the Commission draft a report to the Council on any difficulties encountered by European entities, *de jure* or *de facto*, in gaining access to or exercising the activities of prospecting, exploring for or producing hydrocarbons in third countries. Where necessary, the Commission may present proposals to the Council for the appropriate mandate for negotiation with a view to obtaining competitive opportunities comparable to those which entities from third countries enjoy within the European Union. In addition, the Commission can, if need be, propose that the Council authorize one or more Member States to refuse an authorization to an entity controlled by one of the third countries concerned or by nationals of that country.

In order to draw up the present report in accordance with Article 8(2), the Commission consulted the Member States, and industry via E & P Forum, the association of Community companies active in this sector.

No Member State has reported that an entity has suffered discriminatory treatment. E & P Forum told the Commission that none of its members had reported any problems, and no entity had complained directly to the Commission.

¹ Commission Decision of 30 May 1997 establishing that the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas does not constitute in the United Kingdom an activity defined in Article 2 (2) (b) (i) of Council Directive 93/38/EEC and that entities carrying on such an activity are not to be considered in the United Kingdom as operating under special or exclusive rights within the meaning of Article 2 (3) (b) of the Directive.

² Commission Decision of 10 December 1993 establishing that the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas does not constitute in the Netherlands an activity defined in Article 2 (2) (b) (i) of Council Directive 90/531/EEC and that entities carrying on such an activity are not to be considered in the Netherlands as operating under special or exclusive rights within the meaning of Article 2 (3) (b) of the Directive.

The fact that no problems have been reported by the Member States or by industry does not necessarily mean that there are no disagreements. It cannot be ruled out that problems exist, but entities consider it strategically wiser not to publicize them.

Whatever the case, it is clear that the progressive opening up of exploration and production at world level is an established fact.

4. CONCLUSION

To conclude, the Commission finds that:

- (i) the Directive has been correctly implemented and is operating correctly,
- (ii) no reciprocity problem has been detected, in a general context of progressive opening up of exploration and production at world level.

The Commission invites the Council to take note of this report.

ANNEX I

TRANSPOSITION INTO NATIONAL LAW

a) Member States

Belgium

Arrêté royal du 30/10/97 relatif à l'octroi de permis exclusif de recherche et d'exploitation d'hydrocarbures sur le plateau continental et dans la mer territoriale

Denmark

Lov nr. 310 af 17/05/1995

Germany

Bundesberggesetz vom 13. August 1980

Greece

Law number 2289 du 04/02/1995, FEK A number 27 du 08/02/1995 Page 2037

Spain

- Ley número 21/74 de 27/06/1974, sobre Investigación y Explotación de Hidrocarburos
- Real Decreto número 2362/76 de 30/07/1976, por el que se aprueba el Reglamento de la Ley sobre Investigación de Hidrocarburos de 27 de junio de 1974
- Ley número 21/92 de 16/07/1992 de Industria, Boletín Oficial del Estado número 176 de 23/07/1992 Página 25498

France

- Décret numéro 95/427 du 19/04/1995, Journal Officiel du 22/04/1995 Page 6272

Ireland

- Statutory Instrument n° 77 of 1998

Italy

- Decreto legislativo del 25/11/1996 n. 625, Supplemento ordinario n. 219 alla Gazzetta Ufficiale - Serie generale - del 14/12/1996 n. 293 pag. 57

Netherlands

- Ministeriele regeling vergunningen koolwaterstoffen continentaal plat 1996, Staatscourant nummer 93 van 1996
- Ministeriele regeling vergunningen en concessies delstoffen Nederlands territor 1996, Staatscourant nummer 93 van 1996
- Wet van 18/03/1996, Staatsblad nummer 199 van 1996
- Besluit concessies koolwaterstoffen continentaal plat van 26/03/1996, Staatsblad nummer 213 van 1996

- Besluit vergunningen koolwaterstoffen continentaal plat van 26/03/1996, Staatsblad nummer 212 van 1996

Austria

- Kundmachung des Bundeskanzlers über die Aufhebung von Wörtern in § 132 Abs. 1 und Abs. 2 des Berggesetzes 1975 durch den Verfassungsgerichtshof, Bundesgesetzblatt für die Republik Österreich, Nr. 193/1993 ausgegeben am - 16/03/1993
- Bundesgesetz, mit dem das Bundesvergabegesetz und das Ausländerbeschäftigungsgesetzes 1975 geändert werden, Bundesgesetzblatt für die Republik Österreich, Nr. 776/1996 Ausgegeben am 30/12/1996
- Kundmachung des Bundeskanzlers, mit der das Bundesvergabegesetz wiederverlautbar wird, Bundesgesetzblatt für die Republik Österreich, Nr. 56/1997 ausgegeben am 27/05/1997

Portugal

- Decreto-lei numero 109/94, Diário da Republica I aviso numero 96 de 26/04/1994 Pagina 1987
- Portaria numero 790/94 de 05/09/1994, Diário da Republica I numero 205 Série B de 05/09/1994 Pagina 5229

Sweden

- Minerallag, Svensk författningssamling (SFS) 1991:45
- Lag om kontinentalsockeln, Svensk författningssamling (SFS) 1996:314

United Kingdom

- Hydrocarbons Licensing Directive Regulations 1995 (S.I. 1995 n° 1434)
- Petroleum (production) (seaward areas) (amendment) Regulations 1995 (S.I. 1995 n° 1435)
- Petroleum (production) (landward areas) Regulations 1995 (S.I. 1995 n° 1436)

b) Norway

- Lov av 29. November 1996 nr. 72 om petroleumsvirksomhet Forskrift til lov om petroleumsvirksomhet. Fastsatt ved kongelig resolusjon 27. Juni 1997

ANNEX II

Number of "licensing round" notices published in the O.J.E.C.

	1995	1996	1997	TOTAL
Denmark	0	0	1	1
Greece	0	1	0	1
France	1	3	4	8
Netherlands	9	8	11	28
United Kingdom	1	1	2	4
Norway	0	1	0	1
Total	11	14	18	43

In order that this table may be correctly understood, it should be pointed out that a notice may concern one very small area or, conversely, several very large areas.

ISSN 0254-1475

COM(98) 447 final

DOCUMENTS

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12 06 11 14

Catalogue number : CB-CO-98-455-EN-C

ISBN 92-78-38133-0

Office for Official Publications of the European Communities

L-2985 Luxembourg