

COMMISSION IMPLEMENTING DECISION (EU) 2015/1120**of 8 July 2015****exempting exploration for oil and gas in Greece from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors***(notified under document C(2015) 4512)***(Only the Greek text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ⁽¹⁾, and in particular Article 30(4),

Having regard to the request submitted by Hellenic Petroleum S.A. by e-mail of 2 February 2015,

Whereas:

I. FACTS

- (1) On 2 February 2015, Hellenic Petroleum S.A. (hereinafter 'the applicant') submitted a request to the Commission pursuant to Article 35(1) of Directive 2014/25/EU of the European Parliament and of the Council ⁽²⁾, transmitted to the Commission by e-mail. Pursuant to that request, the Commission was asked to establish that the provisions of Directive 2004/17/EC, and the procurement procedures provided for in that Directive, did not apply to exploration for oil and gas in Greece.
- (2) On 23 December 2014 the same applicant submitted a request pursuant to Article 35(1) of Directive 2014/25/EU concerning exploration for oil and gas, production of oil and production of gas in Greece. The Commission replied on 8 January 2015 indicating that the request was incomplete and consequently, in accordance with the provisions of the third subparagraph of point 1 of Annex IV to Directive 2014/25/EU, the deadline for adoption of the relevant implementing decision was set to commence on the first working day following the receipt of the complete information. The applicant resubmitted a complete request on 2 February 2015. However, that request did not cover production of oil and production of gas, but only the activity of exploration of oil and gas.
- (3) By letter dated 5 March 2015, the Commission informed Greece of the request submitted in accordance with the first subparagraph of Article 30(5) of Directive 2004/17/EC, and requested additional information from that Member State.

II. LEGAL FRAMEWORK

- (4) Until repealed, Directive 2004/17/EC applies to the award of contracts for the pursuit of exploration for oil and gas, unless this activity is exempted pursuant to Article 30 of that Directive. From a procedural point of view, however, the provisions of Directive 2014/25/EU apply to requests for exemption, as the material conditions for granting an exemption remain unchanged as to substance.

⁽¹⁾ OJ L 134, 30.4.2004, p. 1.

⁽²⁾ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

- (5) According to Article 30 of Directive 2004/17/EC, contracts intended to enable one of the activities referred to in Articles 3 to 7 of that Directive are not subject to that Directive if, in the Member State in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted. Direct exposure to competition is assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. Access to a given market is deemed to be unrestricted if the Member State has implemented and applied Union legislation relating to the opening of the relevant market as set out in Annex XI to Directive 2004/17/EC. Pursuant to Point G of that Annex XI, Directive 94/22/EC of the European Parliament and of the Council ⁽¹⁾ constitutes relevant Union legislation relating to the opening of the market for the exploration for and extraction of oil or gas.
- (6) Greece has transposed ⁽²⁾ and applied Directive 94/22/EC. Therefore, access to the market for the exploration for and extraction of oil or gas is deemed not to be restricted in accordance with the first subparagraph of Article 30(3) of Directive 2004/17/EC.
- (7) For the purposes of assessing whether the relevant activity is subject to direct competition in the markets concerned by this Decision, the market share of the main players and the degree of concentration of those markets is to be taken into account.
- (8) This Decision is without prejudice to the application of the rules on competition.

III. ASSESSMENT

- (9) The applicant is a Greek public undertaking active in the oil and gas market.
- (10) The request is limited to the exploration for oil and gas. The applicant, together with Edison International SpA and Petroceltic Resources Plc with whom it forms a consortium (each company holds a participation interest of 33,3 %), received exploitation rights from the Greek State for the offshore field of the Western Patraikos Gulf. In this consortium, the applicant is the project operator and is in charge of exploration, appraisal, development, production and decommissioning operations. The applicant is responsible for all procurement required for the development of the exploration for and production activities.
- (11) Greece recently organised a number of open procedures in two licencing rounds in which all undertakings fulfilling the standard criteria in line with the relevant EU rules had the opportunity to participate. In the first licencing round, besides the above mentioned consortia, licences for exploration have also been granted to Energean Oil and Gas — Energeiaki Aigaiou Anonimi Etaireia Erevnas kai Paragogis Ydrogonanthrakon and Petra Petroleum (with a participation of 80 % – 20 %) for the Ioannina block and to Energean Oil and Gas — Energeiaki Aigaiou Anonimi Etaireia Erevnas kai Paragogis Ydrogonanthrakon and Trajan Oil & Gas Limited (with a participation of 60 % – 40 %) for the Katakolon block. A second licencing round was announced in November 2014, and all interested parties were invited to participate in the procedure for award of exploration and exploitation licences for 20 offshore blocks in western Greece.
- (12) According to established Commission practice ⁽³⁾, exploration for oil and natural gas should be regarded as constituting one relevant product market, since it is not possible from the outset to determine whether the exploration will result in finding oil or natural gas. Moreover, in accordance with such practice, the geographical scope of that market should be considered to be worldwide. Given that there is no indication that the definition of the geographical scope of the market would be different in this case, it should be maintained for the purposes of this Decision.
- (13) The market shares of operators active in exploration can be measured by reference to three variables: capital expenditure, proven reserves and expected production.

⁽¹⁾ Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons (OJ L 164, 30.6.1994, p. 3).

⁽²⁾ Law No 2289/1995 on exploration for, exploitation of hydrocarbons and Law No 4001/2011.

⁽³⁾ See in particular the Commission Decision of 19 November 2007 declaring a concentration to be compatible with the common market (Case No COMP/M.4934 — KazMunaiGaz/Romp petrol) according to Council Regulation (EC) No 139/2004 (OJ C 31, 5.2.2008, p. 2).

- (14) The use of capital expenditure to measure the market shares of operators on the exploration market has, however, been considered unsuitable because of the extent of the differences between the required levels of investment that may be necessary in different geographic areas. The two other parameters, namely proven reserves and expected production, have typically been applied to assess the market shares of economic operators within this sector ⁽¹⁾.
- (15) As of 31 December 2013, the global, proven oil and gas reserves amounted to a total of 469,7 billion standard cubic metres oil equivalent (hereafter 'Sm³ o. e.') worldwide, according to the available information ⁽²⁾. As of 31 December 2013, Greece had a less than 0,03 % share of proven oil reserves and a 0 % share of proven natural gas reserves. According to the request, preliminary estimates/predictions suggest that the blocks for which concessions have already been awarded could potentially lead to the discovery of 253-283 million barrels of crude oil. Even if these estimates are confirmed and become proven reserves ⁽³⁾, then the relevant share of Greece in the worldwide market would still remain negligibly minimal (less than 0,05 %).
- (16) The individual share of the undertakings operating or of those that will operate in Greece in the foreseeable future will be even smaller. The applicant has not produced any oil or natural gas in Greece or any other country in the past three financial years.
- (17) The exploration market is not highly concentrated. Apart from state-owned companies, the market is characterised by the presence of three international vertically integrated private players named the super majors (BP, ExxonMobil and Shell) as well as a certain number of so-called 'majors'. These elements are an indication of direct exposure to competition.

IV. CONCLUSION

- (18) On the basis of the considerations set out in recitals 1 to 17, the condition of direct exposure to competition laid down in Article 30(1) of Directive 2004/17/EC should be considered to be met in Greece.
- (19) Since the condition of unrestricted access to the market is deemed to be met, Directive 2004/17/EC should not apply when contracting entities award contracts intended to enable the exploration for oil and natural gas to be carried out in Greece, nor when design contests are organised for the pursuit of such an activity in that geographic area.
- (20) This Decision is based on the legal and factual situation as of January 2015 to May 2015 as it appears from the information submitted by the applicant. It may be revised, should significant changes in the legal or factual situation mean that the conditions for the applicability of Article 30(1) of Directive 2004/17/EC are no longer met.
- (21) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee for Public Contracts,

HAS ADOPTED THIS DECISION:

Article 1

Directive 2004/17/EC shall not apply to contracts awarded by contracting entities and intended to enable the exploration for oil and natural gas to be carried out in Greece.

⁽¹⁾ See in particular points 25 and 27 of Commission Decision 2004/284/EC of 29 September 1999 declaring a concentration compatible with the common market and the EEA Agreement (Case No IV/M.1383 — Exxon/Mobil) (OJ L 103, 7.4.2004, p. 1), and subsequent decisions, inter alia, Commission Decision of 3 May 2007 declaring a concentration to be compatible with the common market (Case No COMP/M.4545 — Statoil/Hydro) according to Council Regulation (EC) No 139/2004 (OJ C 130, 12.6.2007, p. 8).

⁽²⁾ See point 5.2.1 of the request and the sources quoted therein, in particular the *British Petroleum Statistical Review of World Energy*, June 2014.

⁽³⁾ 283 million barrels of crude oil which is equal to approx. 0,045 billion cubic meters of crude oil.

Article 2

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 8 July 2015.

For the Commission
Elżbieta BIEŃKOWSKA
Member of the Commission
