

## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## 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**

**(Only the English text is authentic)**

**(Text with EEA relevance)**

(97/367/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors <sup>(1)</sup>, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Articles 3 (4) and (5) and 40 (5) to (8) thereof,

Having regard to Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons <sup>(2)</sup>, and in particular Article 12 thereof,

Whereas, pursuant to Article 3 of Directive 93/38/EEC, a Member State may request the Commission to provide that exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels is not to be considered to be an activity defined in Article 2 (2) (b) (i) of the Directive and that entities are not to be considered as operating under special or exclusive rights within the meaning of Article 2 (3) (b) by virtue of

carrying on one or more of those activities, provided that a number of precise conditions laid down in its paragraphs 1 and 3 are satisfied with respect to the relevant national provisions concerning such activities and that, pursuant to its paragraph 2, any Member State requesting such a decision ensures that entities observe the principles of non-discrimination and competitive procurement in awarding contracts and communicate to the Commission information relating to the award of such contracts;

Whereas Member States, which have complied with the provisions of Directive 94/22/EC, shall be considered to satisfy the conditions laid down in Article 3 (1) of Directive 93/38/EEC;

Whereas, by letter dated 3 February 1997, the Office of the United Kingdom Permanent Representative to the European Communities requested the Commission to provide that exploitation of geographical areas for the purpose of exploring for or extracting oil or gas should not be considered in the United Kingdom to be an activity defined in Article 2 (2) (b) (i) of Directive 93/38/EEC and the 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; whereas that request did not cover the exploitation of geographical areas for the purpose of exploring for or extracting coal or other solid fuels;

<sup>(1)</sup> OJ No L 199, 9. 8. 1993, p. 84.

<sup>(2)</sup> OJ No L 164, 30. 6. 1994, p. 3.

Whereas, by adopting the Hydrocarbons Licensing Regulations 1995, the Petroleum (Production) (Seaward Areas) (Amendment) Regulations 1995 and the Petroleum (Production) (Landward Areas) Regulations 1995, the United Kingdom has complied with Directive 94/22/EC;

Whereas compliance with the conditions pursuant to Article 3(3) of Directive 93/38/EEC in the United Kingdom was examined in connection with the adoption of Commission Decision 93/425/EEC of 14 July 1993 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 90/531/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<sup>(1)</sup>;

Whereas 'the Utilities Supply and Works Contracts Regulations 1992', adopted on 23 December 1992, implemented Council Directive 90/531/EEC<sup>(2)</sup> into United Kingdom law; whereas Regulation 8 was made up of a series of implementing provisions conforming to Article 3(2); whereas these provisions were examined in connection with the adoption of Decision 93/425/EEC and found to constitute a satisfactory implementation of Article 3(2) of Directive 90/531/EEC as far as works and supplies contracts are concerned; whereas it was necessary to provide for an implementation of Article 3(2) in respect of service contracts;

Whereas 'The Utilities Contracts Regulations 1996' implement Directive 93/38/EEC into United Kingdom law; whereas Regulation 9 reproduces the previous provisions extending their applicability to service contracts; whereas these provisions entered into force on 12 December 1996; whereas these Regulations guarantee compliance with the principles of non-discrimination and competitive procurement by entities carrying out exploration or extraction, in particular as regards the information they make available to enterprises concerning their intentions with respect to the award of contracts, and with the obligation to transmit to the Commission information of the award of such contracts;

Whereas, in accordance with Article 40(5) to (8) of Directive 93/38/EEC, the Advisory Committee for Public Contracts has delivered its opinion on this Decision,

HAS ADOPTED THIS DECISION:

#### *Article 1*

From 30 May 1997 the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas shall not be considered in the United Kingdom as an activity defined in Article 2(2)(b)(i) of Directive 93/38/EEC, and entities carrying on such an activity shall not be considered in the United Kingdom as operating under special or exclusive rights within the meaning of Article 2(3)(b) of the Directive.

#### *Article 2*

1. This Decision is taken on the basis of the provisions adopted by the United Kingdom as of 30 May 1997 in order to implement Directive 94/22/EC and Article 3(2) of Directive 93/38/EEC and communicated to the Commission.

2. Any laws, regulations or administrative provisions amending the rules mentioned under paragraph 1 shall be communicated to the Commission as soon as they are adopted.

3. The information referred to in paragraph 2 is notified to the Commission in order to enable it to assess if it is appropriate to amend, withdraw or maintain this Decision.

#### *Article 3*

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 30 May 1997.

*For the Commission*

Mario MONTI

*Member of the Commission*

<sup>(1)</sup> OJ No L 196, 5. 8. 1993, p. 55.

<sup>(2)</sup> OJ No L 297, 29. 10. 1990, p. 1.