

### **Pleas in law and main arguments**

The Commission claims that the Republic of Poland has infringed Articles 2(1) and 4(2) and (3) of Directive 2011/92, read in conjunction with Annexes II and III to that directive.

Article 2(1) of Directive 2011/92 requires the Member States to ensure that *'before development consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment'*.

Under Article 4(2) of Directive 2011/92 the Member States are required to determine, by means of a case-by-case examination or by means of thresholds or criteria which they set (that is to say, within the framework of a 'screening'), whether projects covered by Annex II to that directive must be made subject to an environmental impact assessment.

Under Article 4(3) of Directive 2011/92, in the determination of the criteria or thresholds for the 'screening', *'the relevant selection criteria set out in Annex III shall be taken into account'*.

Drilling activity designed to locate and search for mineral deposits come under Annex II to Directive 2011/92, as these relate to 'deep drillings' within the meaning of point 2(d) of that annex.

These are projects in respect of which it cannot, on the basis of an overall assessment, be said that they do not have significant effects on the environment.

The Member States are, in the Commission's view, under an obligation, through application of the essential criteria set out in Annex III to Directive 2011/92, to subject such projects to a 'screening'.

However, the measures of national law by which Directive 2011/92 has been transposed in the Polish legal order exclude from the 'screening' procedure projects to locate and search for mineral deposits by means of drilling activity to a depth of 5 000 metres (with the exception of drilling in so-called 'sensitive areas', that is to say, in areas intended for water extraction, areas containing protected inland waters and nature protection areas in the form of national parks, nature reserves, landscape parks and 'Natura 2000' protection areas and the contiguous protection zones, in which drilling to a depth of more than 1 000 metres is subject to the 'screening' procedure).

This essentially has the result that the vast majority of drilling activities designed to locate and search for mineral deposits situated outside the 'sensitive areas' are excluded from the 'screening' procedure.

Such an exclusion in disregard of all of the essential criteria set out in Annex III to Directive 2011/92 is, in the Commission's view, at variance with Articles 2(1) and 4(2) and (3) of Directive 2011/92, read in conjunction with Annexes II and III to that directive.

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<sup>(1)</sup> OJ 2012 L 26, p. 1.

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**Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 14 October 2016 — Salzburger Gebietskrankenkasse, Bundesminister für Arbeit, Soziales und Konsumentenschutz**

(Case C-527/16)

(2017/C 014/28)

Language of the case: German

### **Referring court**

Verwaltungsgerichtshof

**Parties to the main proceedings**

*Applicants:* Salzburger Gebietskrankenkasse and Bundesminister für Arbeit, Soziales und Konsumentenschutz

*Interveners:* Alpenrind GmbH, Martin-Meat Szolgáltató és Kereskedelmi Kft, Martimpex-Meat Kft, Pensionsversicherungsanstalt and Allgemeine Unfallversicherungsanstalt

**Questions referred**

1. Does Article 5 of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, <sup>(1)</sup> which establishes the binding effect of documents within the meaning of Article 19(2) of Regulation (EC) No 987/2009, also apply in proceedings before a court within the meaning of Article 267 TFEU?
2. If Question 1 is answered in the affirmative:
  - a) Does the aforementioned binding effect also apply where proceedings had previously taken place before the Administrative Commission for the Coordination of Social Security Systems and such proceedings did not result either in agreement or in a withdrawal of the contested documents?
  - b) Does the aforementioned binding effect also apply where an 'A 1' document is not issued until after the receiving Member State has formally determined that insurance is compulsory under its legislation? Does the binding effect also apply retroactively in such cases?
3. In the event that, under certain conditions, the binding effect of documents within the meaning of Article 19(2) of Regulation (EC) No 987/2009 is limited:

Does it contravene the prohibition on replacement set forth in Article 12(1) of Regulation (EC) No 883/2004 if the replacement occurs not in the form of a posting by the same employer but instead by another employer? Does it matter whether

- a) the second employer has its registered office in the same Member State as the first employer, and
- b) the first and the second posting employer share staffing and/or organisational resources?

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<sup>(1)</sup> OJ 2004 L 284, p. 1.

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**Request for a preliminary ruling from the Conseil d'État (France) lodged on 17 October 2016 —  
Confédération paysanne, Réseau Semences Paysannes, Les Amis de la Terre France, Collectif vigilance  
OGM et Pesticides 16, Vigilance OG2M, CSFV 49, OGM: dangers, Vigilance OGM 33, Fédération  
Nature et Progrès v Premier ministre, Ministre de l'agriculture, de l'agroalimentaire et de la forêt**

**(Case C-528/16)**

(2017/C 014/29)

*Language of the case: French*

**Referring court**

Conseil d'État

**Parties to the main proceedings**

*Applicants:* Confédération paysanne, Réseau Semences Paysannes, Les Amis de la Terre France, Collectif vigilance OGM et Pesticides 16, Vigilance OG2M, CSFV 49, OGM: dangers, Vigilance OGM 33, Fédération Nature et Progrès

*Defendants:* Premier ministre, Ministre de l'agriculture, de l'agroalimentaire et de la forêt