5. Must the phrase *thereby placing them at a competitive disadvantage* in subparagraph (c) of [the second paragraph of] Article 102 TFEU be interpreted as corresponding to the requirement that the advantage arising from the discrimination must in turn correspond to a minimum difference between the average costs incurred by the competitor undertakings in the wholesale service in question?

6. May the phrase *thereby placing them at a competitive disadvantage* in subparagraph (c) of [the second paragraph of] Article 102 TFEU be interpreted as corresponding to the requirement that the advantage arising from the discrimination must, in the context of the market and service in question, correspond to values higher than the differences indicated in […] Tables 5, 6 and 7, for the purposes of characterising the conduct as a prohibited practice?

7. If the answer to any of questions (iv) to (vi) is in the affirmative, how must such a minimum threshold of significance for the disadvantage in relation to the costs structure or the average costs incurred by the competitor undertakings in the retail service in question be defined?

8. If such a minimum threshold has been defined, does the failure to meet it in each year enable the presumption in the *Clearstream* judgment, according to which it must be considered that '*the application to a trading partner of different prices for equivalent services continuously over a period of five years and by an undertaking having a de facto monopoly on the upstream market could not fail to cause that partner a competitive disadvantage*', ([3]) to be rebutted?

([1]) C-95/04 P, EU:C:2007:166.
([2]) T-301/04, EU:T:2009:317.
([3]) Paragraphs 194 and 195.

Action brought on 12 October 2016 — European Commission v Republic of Poland

(Case C-526/16)

(2017/C 014/27)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: M. Owsiany-Hornung and C. Zadra, acting as Agents)

Defendant: Republic of Poland

Form of order sought

The Commission claims that the Court should:

— declare that, by excluding projects to locate and search for mineral deposits by means of drilling to a depth of 5 000 metres — with the exception of drilling 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 procedure for determining whether an environmental impact assessment is necessary — from the procedure for determining whether an environmental impact assessment is necessary, by setting, for drilling outside areas intended for water extraction, areas containing protected inland waters and the various nature protection areas indicated and their contiguous protection zones, a threshold value triggering that procedure which fails to take account of all of the essential selection criteria set out in Annex III to Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment, ([1]), the Republic of Poland has failed to comply with its obligations under Articles 2(1) and 4(2) and (3) of that directive, read in conjunction with Annexes II and III thereto;

— order the Republic of Poland to pay the costs.

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.

([1]) OJ 2012 L 26, p. 1.

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