

COUNCIL DIRECTIVE 98/93/EC

of 14 December 1998

amending Directive 68/414/EEC imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 103a(1) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

- (1) Whereas the Council adopted Directive 68/414/EEC of 20 December 1968 imposing an obligation on Member States of the European Economic Community to maintain minimum stocks of crude oil and/or petroleum products ⁽⁴⁾;
- (2) Whereas imported crude oil and petroleum products continue to play an important role in the Community's energy supplies; whereas any difficulty, even temporary, having the effect of reducing supplies of such products, or significantly increasing the price thereof on international markets, could cause serious disturbances in the economic activity of the Community; whereas the Community must be in a position to offset or at least to diminish any harmful effects in such a case; whereas it is necessary to update Directive 68/414/EEC adapting it to the reality of the internal market of the Community and the evolution of the oil markets;
- (3) Whereas in Directive 73/238/EEC ⁽⁵⁾ the Council decided upon appropriate measures — including drawing on oil stocks — to be taken in the event of difficulties in the supply of crude oil and petroleum products to the Community; whereas Member States have undertaken similar obligations in the Agreement on an 'International Energy Programme';

(4) Whereas it is important that the security of oil supply is enhanced;

(5) Whereas it is necessary that the organisational arrangements for oil stocks do not prejudice the smooth running of the internal market;

(6) Whereas the provisions of this Directive do not affect the full application of the Treaty, in particular the provisions concerning the internal market and competition;

(7) Whereas, in accordance with the principle of subsidiarity and in accordance with the principle of proportionality as stipulated in Article 3b of the Treaty, the objective of maintaining a high level of security of oil supply in the Community through reliable and transparent mechanisms based on solidarity amongst Member States and, at the same time, complying with the rules of the internal market and competition, can be carried out more adequately at the level of the Community; whereas this Directive does not exceed what is necessary to achieve this objective;

(8) Whereas it is necessary that stocks are at the disposal of Member States should difficulties in oil supply arise; whereas Member States should possess the powers and the capacity to control the use of stocks so that they can be made available promptly for the benefit of the areas which most need oil supplies;

(9) Whereas organisational arrangements for the maintenance of stocks should ensure the stocks' availability and their accessibility to the consumer;

(10) Whereas it is appropriate that organisational arrangements for the maintenance of stocks are transparent, ensuring a fair and non-discriminatory sharing of the burden of the stock-holding obligation; whereas, therefore, information relating to the cost of holding oil stocks may be made available by Member States to interested parties;

⁽¹⁾ OJ C 160, 27. 5. 1998, p. 18.

⁽²⁾ OJ C 359, 23. 11. 1998.

⁽³⁾ Opinion delivered on 10-11 September 1998 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 308, 23.12.1968, p. 14. Directive as amended by Directive 72/425/EEC (OJ L 291, 28.12.1972, p. 154).

⁽⁵⁾ OJ L 228, 16. 8. 1973, p. 1.

- (11) Whereas, in order to organise the maintenance of stocks, Member States may have recourse to a system based on a stockholding body or entity which will hold all, or part, of the stocks making up their stockholding obligation; whereas the balance, if any, should be maintained by refiners and other market operators; whereas partnership between the Government and the industry is essential to operate efficient and reliable stockholding mechanisms;
- (12) Whereas indigenous production contributes in itself to security of supply; whereas the oil market evolution can justify an appropriate derogation from the obligation to maintain oil stocks for Member States with indigenous oil production; whereas, in accordance with the principle of subsidiarity, Member States may exempt undertakings from the obligation to maintain stocks in respect of an amount not exceeding the quantity of products which those undertakings manufacture from indigenously produced crude oil;
- (13) Whereas it is appropriate to adopt approaches which are already followed by the Community and the Member States within their international obligations and agreements; whereas, owing to changes in the pattern of oil consumption, international aviation bunkers have become an important component of this consumption;
- (14) Whereas there is a need to adapt and simplify the Community statistical reporting mechanism concerning oil stocks;
- (15) Whereas oil stocks can, in principle, be held anywhere in the Community and, therefore, it is appropriate to facilitate the establishment of stocks outside national territory; whereas it is necessary that decisions for holding stocks outside national territory are taken by the Government of the Member State concerned according to its needs and supply security considerations; whereas in the case of stocks held at the disposal of another undertaking, or body/entity, more detailed rules are needed to guarantee their availability and accessibility in the event of oil supply difficulties;
- (16) Whereas it is desirable, in order to ensure the smooth running of the internal market, to promote the use of agreements between Member States concerning minimum stockholding in order to further the use of storage facilities in other Member States; whereas it is for the Member States concerned to take the decision to conclude such agreements;
- (17) Whereas it is appropriate to strengthen the administrative supervision of stocks and establish efficient mechanisms for the control and verification of stocks; whereas a regime of sanctions is necessary to impose such a control;
- (18) Whereas Directive 72/425/EEC raised from 65 to 90 days the reference period appearing in the first paragraph of Article 1 of Directive 68/414/EEC and laid down the conditions to implement this increase; whereas that Directive has been rendered obsolete by this Directive; whereas Directive 72/425/EEC should therefore be repealed;
- (19) Whereas it is appropriate to inform the Council on a regular basis on the situation concerning security stocks in the Community,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 68/414/EEC is hereby amended as follows:

1. Article 1 shall be replaced by the following:

Article 1

1. Member States shall adopt such laws, regulations or administrative provisions as may be appropriate in order to maintain within the European Community at all times, subject to the provisions of Article 7, their stocks of petroleum products at a level corresponding, for each of the categories of petroleum products listed in Article 2, to at least 90 days' average daily internal consumption in the preceding calendar year referred to in Article 4.

2. That part of internal consumption met by derivatives of petroleum produced indigenously by the Member State concerned may be deducted up to a maximum of 25 % of the said consumption. The distribution within the Member States of the result of such a deduction shall be decided by the Member State concerned.;

2. Article 2 shall be deleted;

3. the existing Article 3 shall become Article 2 and shall be supplemented by the following paragraph:

'Bunker supplies for sea-going vessels shall not be included in the calculation of internal consumption.;

4. the following Article shall be inserted:

Article 3

1. Stocks maintained in accordance with Article 1 shall be fully at the disposal of Member States should difficulties arise in obtaining oil supplies. Member States shall ensure that they have the legal powers to control the use of stocks in such circumstances.

At all other times, Member States shall ensure the availability and accessibility of these stocks; they shall establish arrangements allowing for the identification, accounting and control of the stocks.

2. Member States shall ensure that fair and non-discriminatory conditions apply in their stockholding arrangements.

The cost burden resulting from the maintenance of stocks in accordance with Article 1 shall be identified by transparent arrangements. In this context, Member States may adopt measures to obtain appropriate information regarding the cost burden of stockholding in accordance with Article 1 and to make such information available to interested parties.

3. To fulfil the requirements of paragraphs 1 and 2, Member States may decide to have recourse to a stockholding body or entity which will be responsible for holding all or part of the stocks.

Two or more Member States may decide to have recourse to a joint stockholding body or entity. In that case they shall be jointly responsible for the obligations deriving from this Directive.;

5. Article 4 shall be replaced by the following:

Article 4

Member States shall submit to the Commission a statistical summary showing stocks existing at the end of each month, drawn up in accordance with Articles 5 and 6 and specifying the number of days of average consumption in the preceding calendar year which those stocks represent. This summary must be submitted at the latest by the 25th day of the second month after the month to be reported.

A Member State's stockholding obligation shall be based on the previous calendar year's internal consumption. At the beginning of each calendar year, Member States must re-calculate their stockholding obligation at the latest by 31 March in each year and

ensure that they comply with their new obligations as soon as possible and, in any event, at the latest by 31 July in each year.

In the statistical summary, stocks of jet fuel of the kerosene type shall be reported separately under category II.;

6. Article 5 shall be replaced by the following:

Article 5

Stocks required to be maintained by Article 1 may be maintained in the form of crude oil and intermediate products, as well as in the form of finished products.

In the statistical summary of stocks provided for in Article 4, finished products shall be accounted for according to their actual tonnage; crude oil and intermediate products shall be accounted for:

- in the proportions of the quantities for each category of product obtained during the preceding calendar year from the refineries of the State concerned, or
- on the basis of the production programmes of the refineries of the State concerned for the current year, or
- on the basis of the ratio between the total quantity manufactured during the preceding calendar year in the State concerned of products covered by the obligation to maintain stocks and the total amount of crude oil used during that year; the foregoing shall apply to not more than 40 % of the total obligation for the first and second categories (petrol and gas oils), and to not more than 50 % for the third category (fuel oils).

Blending components, when intended for processing into the finished products listed in Article 2, may be substituted for the products for which they are intended.;

7. Article 6 shall be amended as follows:

(a) Paragraph 1 shall be replaced by the following:

'1. When calculating the level of minimum stocks provided for in Article 1, only those quantities which would be held in accordance with Article 3(1) shall be included in the statistical summary.;

(b) Paragraph 2 shall be replaced by the following:

'2. For the purposes of implementing this Directive, stocks may be established, under agreements between Governments, within the territory of a Member State for the account of undertakings, or bodies/entities, established in another Member State. It is for the Government of the Member State concerned to decide whether to hold a part of its stocks outside its national territory.

In such cases, the Member State on whose territory the stocks are held under the framework of such an agreement shall not oppose the transfer of these stocks to the other Member States for the account of which stocks are held under that agreement; it shall keep a check on such stocks in accordance with the procedures specified in that agreement but shall not include them in its statistical summary. The Member State on whose behalf the stocks are held may include them in its statistical summary.

In such cases, together with the statistical summary provided for by Article 4, each Member State shall send a report to the Commission concerning the stocks maintained within its own territory for the benefit of another Member State, as well as the stocks held in other Member States for its own benefit. In both cases, the storage locations and/or companies holding the stocks, quantities and product category — or crude oil — stored will be indicated in the report.

Drafts of the agreements mentioned in the first subparagraph shall be sent to the Commission, which may make its comments known to the Governments concerned. The agreements, once concluded, shall be notified to the Commission, which shall make them known to the other Member States.

Agreements shall satisfy the following conditions:

- they must relate to crude oil and to all petroleum products covered by this Directive,
- they must lay down conditions and arrangements for the maintenance of stocks with the aim of safeguarding control and availability of these stocks,
- they must specify the procedures for checking and identifying the stocks provided for, *inter alia*, the methods for carrying out and cooperating on inspections,

- they must as a general rule be concluded for an unlimited period,
- they must state that, where provision is made for unilateral termination, the latter shall not operate in the event of a supply crisis and that, in any event, the Commission shall receive prior information of any termination.

When stocks established under such agreements are not owned by the undertaking, or body/entity, which has an obligation to hold stocks, but are held at the disposal of this undertaking, or body/entity, by another undertaking, or body/entity, the following conditions shall be met:

- the beneficiary undertaking, or body/entity, must have the contractual right to acquire these stocks throughout the period of the contract; the methodology for establishing the price of such acquisition must be agreed between the parties concerned,
- the minimum period of such a contract must be 90 days,
- storage location and/or companies holding the stocks at the disposal of the beneficiary undertaking, or body/entity, as well as quantity and category of product, or crude oil, stored in that location must be specified,
- the actual availability of the stocks for the beneficiary undertaking, or body/entity, must be guaranteed, at all times throughout the period of the contract, by the undertaking or body/entity holding the stocks at the disposal of the beneficiary undertaking, or body/entity,
- the undertaking, or body/entity, holding the stocks at the disposal of the beneficiary undertaking, or body/entity, must be one which is subject to the jurisdiction of the Member State on whose territory the stocks are situated insofar as the legal powers of that Member State to control and verify the existence of the stocks are concerned.;

(c) Paragraph 3, second subparagraph, shall be replaced by the following:

'Consequently the following shall, in particular, be excluded from the statistical summary: indigenous crude oil not yet extracted; supplies intended for the bunkers of sea-going vessels; supplies in direct

transit apart from the stocks referred to in paragraph 2; supplies in pipelines, in road tankers and rail tank-wagons, in the storage tanks of retail outlets, and those held by small consumers. Quantities held by the armed forces and those held for them by the oil companies shall also be excluded from the statistical summary.';

8. the following Article shall be inserted:

Article 6a

Member States shall adopt all the necessary provisions and take all the necessary measures to ensure control and supervision of stocks. They shall put in place mechanisms to verify the stocks according to the provisions of this Directive.'

9. the following Article shall be inserted:

Article 6b

Member States shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive and shall take any measure necessary to ensure the implementation of these provisions. The penalties shall be effective, proportionate and dissuasive.'

Article 2

Directive 72/425/EEC shall be repealed with effect from 31 December 1999.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 2000. They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their

official publication. The methods of making such reference shall be laid down by the Member States.

Article 4

Owing to its specific characteristics, the Hellenic Republic shall be granted a non-renewable additional period of three years to apply the obligations of this Directive in relation to the inclusion of bunker supplies for international aviation in the calculation of internal consumption.

Article 5

The Commission shall submit regularly to the Council a report on the situation concerning stocks in the Community, including if appropriate on the need for harmonisation in order to ensure effective control and supervision of stocks. The first report shall be submitted to the Council during the second year following the date stipulated in Article 3(1).

Article 6

This Directive shall enter into force on the date of its publication in the *Official Journal of the European Communities*.

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 14 December 1998.

For the Council

The President

W. MOLTERER