

Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products

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imposing an obligation on Member States 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 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>(2)</sup>,

After consulting the European Data Protection Supervisor<sup>(3)</sup>,

Whereas:

- (1) The supply of crude oil and petroleum products to the Community remains very important, particularly for the transport sector and the chemicals industry.
- (2) The increasing concentration of production, dwindling oil reserves and growing worldwide consumption of petroleum products are all contributing to an increased risk of supply difficulties.
- (3) The European Council, in its Action Plan (2007 to 2009), entitled 'Energy Policy for Europe', underlined the need to enhance security of supply for the European Union (EU) as a whole and for each Member State, *inter alia*, by reviewing the Union's oil stocks mechanisms, with special reference to the availability of oil in the event of a crisis.
- (4) That objective requires, among other things, greater convergence between the Community system and the system provided for by the International Energy Agency (hereinafter 'the IEA').
- (5) Under Council Directive 2006/67/EC of 24 July 2006 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products<sup>(4)</sup>, stocks are calculated on the basis of average daily inland consumption during the previous calendar year. However, stockholding obligations under the Agreement on an International Energy Programme of 18 November 1974 (hereinafter 'the IEA Agreement') are calculated on the basis of net imports of oil and petroleum products. For that reason, and owing to other differences in methodology, the way in which stockholding obligations and Community emergency stocks are calculated should be brought more into line with the calculation methods used under the IEA Agreement, notwithstanding the facts that the IEA calculation methods may have to be evaluated

in light of technological improvements during the last decades, and that non-IEA members that are fully dependent on imports may require a longer period for adapting their stockholding obligations. Further amendments to the methods and procedures for calculating stock levels may prove necessary and beneficial in order to further increase coherence with IEA practice, including, for example, changes that lead to a lowering for certain Member States of the reduction percentage of 10 % applied in the calculation of stocks, that would allow a different treatment of naphtha stocks, or that would allow the stocks held in tankers in territorial waters of a Member State to be counted.

- (6) Indigenous production of oil can in itself contribute to security of supply and might therefore provide justification for oil-producing Member States to hold lower stocks than other Member States. A derogation of that kind should not, however, result in stockholding obligations that differ substantially from those that apply under Directive 2006/67/EC. It therefore follows that the stockholding obligation for certain Member States should be set on the basis of inland oil consumption and not on the basis of imports.
- (7) The Presidency Conclusions of the Brussels European Council of 8 and 9 March 2007 show that it is becoming increasingly vital and pressing for the Community to put in place an integrated energy policy, combining action at European and Member State level. It is therefore essential to ensure greater convergence in the standards secured by the stockholding mechanisms in place in the various Member States.
- (8) The availability of oil stocks and the safeguarding of energy supply are essential elements of public security for Member States and for the Community. The existence of central stockholding entities (CSEs) in the Community brings those goals closer. In order to allow the Member States concerned to make optimal use of national law to define the terms of reference for their CSEs while easing the financial burden placed on final consumers as a result of such stockholding activities, it is sufficient to prohibit the use of stocks for commercial purposes, while allowing stocks to be held in any location across the Community and by any CSE set up for that purpose.
- (9) Given the objectives of the Community legislation on oil stocks, possible security concerns which may be expressed by some Member States and the desire to make mechanisms for solidarity amongst Member States more rigorous and more transparent, it is necessary to focus as much as possible the operation of CSEs to their national territories.
- (10) It should be possible for oil stocks to be held at any location across the Community, provided that due account is taken of their physical accessibility. Consequently, economic operators on which such stockholding obligations fall should be able to discharge their obligations by delegation to other economic operators or any one of the CSEs. Furthermore, provided those obligations can be delegated to a freely chosen CSE located within the Community on payment of an amount limited to the cost of the services provided, the risk of discriminatory practices at national level will be reduced. The right of an economic operator to delegate should not imply an obligation on the part of any actor to accept the delegation, unless this Directive requires otherwise. When Member States decide to limit operators' delegation rights, they should ensure

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that operators are guaranteed the right to delegate a certain minimum percentage of their obligation; those Member States should therefore ensure that their CSE will accept the delegation of the stockholding obligation in respect of the amount needed to guarantee that minimum percentage.

- (11) Member States should ensure full availability of all stocks held pursuant to Community legislation. In order to guarantee that availability, there should be no restrictions or limitations on the right of ownership of those stocks that could hamper their use in case of oil supply disruption. Petroleum products owned by companies facing a significant risk of enforcement proceedings against their assets should not be taken into account. Where a stockholding obligation has been imposed on operators, initiation of bankruptcy or settlement proceedings could be considered to demonstrate the existence of such a risk.
- (12) In order to allow Member States to react quickly to cases of particular urgency or to local crises it might be appropriate to allow them to use a part of their stocks for such situations. Such urgent cases or local crises would not include situations caused by price developments of crude oil or petroleum products, but could include disruptions in the supply of natural gas which require fuel switching, i.e. using crude oil or petroleum products as fuel for energy production.
- (13) In view of what is required in connection with setting up emergency policies, bringing about convergence in the standards secured by national stockholding mechanisms and ensuring a better overview of stock levels, particularly in the event of a crisis, Member States and the Community should have the means for reinforced control of those stocks. Stocks held under bilateral agreements, or contractual rights to purchase certain volumes of stocks (tickets) that fulfil all obligations set by the current Directive, should form useful instruments compatible with this aim of greater convergence.
- (14) Ownership of a substantial part of those stocks by the Member States or the CSEs set up by the various national authorities should make it possible to increase the level of control and transparency, at least for that part of the stocks.
- (15) To help enhance security of supply in the Community, the stocks, known as ‘specific stocks’, purchased by the Member States or the CSEs and constituted on the basis of decisions taken by the Member States should correspond to actual needs in the event of a crisis. They should also have separate legal status to ensure full availability should such a crisis occur. To that end, the Member States concerned should ensure that appropriate steps are taken to protect those stocks unconditionally against all enforcement measures.
- (16) At this stage, the volumes to be owned by the CSEs or the Member States should be set at a level determined independently and voluntarily by each of the Member States concerned.
- (17) Given the need to increase the level of control and transparency, emergency stocks that are not specific stocks should be subject to increased monitoring requirements and, in certain cases, Member States should be required to notify measures governing the availability of emergency stocks and any changes in the arrangements for maintaining them.

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- (18) Fluctuations in the volume of specific stocks due to individual stock replacement operations could be permissible in order to allow necessary operations such as those required for ensuring freshness of the stocks, for ensuring compliance with changed product specifications, or for issuing new tenders for storage.
- (19) Where emergency stocks and specific stocks are commingled with other stocks held by economic operators, transparency of emergency stock levels should be emphasised.
- (20) The frequency with which stock summaries are drawn up and the deadline for their submission, as laid down by Directive 2006/67/EC, seem to be out of step with various oil stockholding systems that have been set up in other parts of the world. In a resolution on the macroeconomic impact of the increase in the price of energy, the European Parliament voiced its support for more frequent reporting.
- (21) In order to prevent double reporting with regard to the information to be provided by Member States on the different product categories, Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics<sup>(5)</sup> should serve as a point of reference for the different categories of petroleum products referred to in this Directive.
- (22) In order to enhance security of supply, provide the markets with fuller information, reassure consumers about the state of oil stocks and optimise the way in which information is transmitted, provision should be made for possible subsequent amendment or clarification of the rules for the preparation and submission of statistical summaries.
- (23) With the same objectives in mind, the preparation and submission of statistical summaries should also be extended to stocks other than emergency stocks and specific stocks, with those summaries to be submitted on a monthly basis.
- (24) As there may be errors or discrepancies in the summaries submitted to the Commission, the Commission's employees or authorised agents should be able to review the emergency preparedness and stockholding of Member States. Member States' national regimes should be relied upon to secure that such reviews can be conducted effectively in accordance with national procedures.
- (25) Complex electronic and statistical data processing should be carried out for the data received or collected. This requires the use of integrated tools and procedures. The Commission should therefore be able to take all appropriate measures to that effect, in particular developing new computer systems.
- (26) The protection of individuals with regard to the processing of personal data by the Member States is governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>(6)</sup>, while the protection of individuals with regard to the processing of personal data by the Commission is governed by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the

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- free movement of such data<sup>(7)</sup>. In particular, those acts require the processing of personal data to be justified by a legitimate purpose and stipulate that any personal data gathered accidentally must be deleted immediately.
- (27) Biofuels and certain additives are often blended with petroleum products. When blended or intended to be blended with those products, it should be possible to take them into account both when calculating the stockholding obligation and when calculating the stocks held.
- (28) The Member States concerned should be allowed to fulfil any obligations they may be subject to as a result of a decision to release stocks taken pursuant to the IEA Agreement or its implementing measures. A proper and timely execution of IEA decisions is a key factor for efficient response to cases of supply difficulties. In order to ensure this, Member States should release part of their emergency stocks to the extent provided for in the IEA decision in question. The Commission should cooperate closely with IEA and base action at Community level on the IEA methodology. In particular, the Commission should be in a position to recommend stock releases by all Member States, as appropriate to complement, and facilitate the implementation of, the IEA decision inviting its members to release stocks. It is appropriate for Member States to respond positively to such Commission recommendations in the interest of a strong Community-wide solidarity and cohesion, between those Member States that are members of the IEA and those that are not, in response to a supply disruption.
- (29) Council Directive 73/238/EEC of 24 July 1973 on measures to mitigate the effects of difficulties in the supply of crude oil and petroleum products<sup>(8)</sup> is intended, in particular, to offset, or at least to diminish, the adverse effects of any difficulties, even temporary, having the effect of considerably reducing supplies of crude oil or petroleum products, including the serious disruption to the economic activity of the Community that such a reduction could cause. This Directive should include similar measures.
- (30) Directive 73/238/EEC also aims to set up a consultative body to facilitate the coordination of practical measures taken or proposed by the Member States in this field. Such a body should be provided for in this Directive. It remains necessary for each Member State to draw up a plan that could be used in the event of difficulties arising in the supply of crude oil and petroleum products. Each Member State should also make arrangements with regard to the organisational measures to be taken in the event of a crisis.
- (31) Given that this Directive introduces a number of new mechanisms, its implementation and functioning should be reviewed.
- (32) This Directive replaces or covers all of the aspects dealt with in Council Decision 68/416/EEC of 20 December 1968 on the conclusion and implementation of individual agreements between Governments relating to the obligation of Member States to maintain minimum stocks of crude oil and/or petroleum products<sup>(9)</sup>. That Decision therefore no longer serves any purpose.
- (33) Since the objective of this Directive, namely to maintain a high level of security of oil supply in the Community through reliable and transparent mechanisms based

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on solidarity amongst Member States while complying with the internal market and competition rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

- (34) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(10)</sup>.
- (35) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (36) Directives 73/238/EEC and 2006/67/EC and Decision 68/416/EEC should therefore be repealed,

HAS ADOPTED THIS DIRECTIVE:

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- (1) Opinion of 22.4.2009 (not yet published in the Official Journal).
- (2) Opinion of 13.5.2009 (not yet published in the Official Journal).
- (3) OJ C 128, 6.6.2009, p. 42.
- (4) OJ L 217, 8.8.2006, p. 8.
- (5) OJ L 304, 14.11.2008, p. 1.
- (6) OJ L 281, 23.11.1995, p. 31.
- (7) OJ L 8, 12.1.2001, p. 1.
- (8) OJ L 228, 16.8.1973, p. 1.
- (9) OJ L 308, 23.12.1968, p. 19.
- (10) OJ L 184, 17.7.1999, p. 23.