

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 February 1994

relating to a proceeding under Article 85 of the EC Treaty (IV/30.525 —
International Energy Agency)

(Only the Spanish, German, English, French, Italian and Portuguese texts are authentic)

(94/153/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Article 85 (3) for those concerted practices, for a period
ending on 31 December 1993,Having regard to the Treaty establishing the European
Community,Having consulted the Advisory Committee on Restrictive
Practices and Dominant Positions pursuant to Article 10
(3) of Regulation No 17,Having regard to Council Regulation No 17 of 6 February
1962, First Regulation implementing Articles 85 and 86
of the Treaty ⁽¹⁾, as last amended by the Act of Accession
of Spain and Portugal, and in particular Articles 6 and 8
thereof,

Whereas :

Having regard to the application submitted to the
Commission on 12 October 1993 by the Chairman of the
Industry Advisory Board of the International Energy
Agency (hereinafter : 'the IEA') for the benefit of all the
IEA Reporting companies, pursuant to Article 8 (2) of
Regulation No 17, requesting renewal of the exemption
under Article 85 (3) by Commission Decision
83/671/EEC ⁽²⁾,

I. THE FACTS

- (1) The IEP results from an agreement signed on 18
November 1974. 23 countries, members of the
OECD, now participate in the IEP. The objectives
of the IEP are set out in Commission Decision
83/671/EEC. The IEP aims at responding to oil
supply disruptions by ensuring the availability of
oil stocks for use in emergencies, and by restrain-
ing demand and allocating available supplies
among the participating countries on a equitable
basis according to an allocation process.

Having regard to the publication ⁽³⁾ pursuant to Article 19
(3) of Regulation No 17 of a summary of the concerted
practices between oil companies which are needed to
carry out the emergency oil allocation system of the Inter-
national Energy Program ('IEP') and relevant changes
which have occurred since Decision 83/671/EEC, in
which the Commission granted an exemption pursuant toThe implementation of the IEP is described in the
Notice ⁽⁴⁾ pursuant to Article 19 (3) of Regulation
No 17 and in Decision 83/671/EEC.

- (2) Since Decision 83/671/EEC, the following changes
have occurred :

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.⁽²⁾ OJ No L 376, 31. 12. 1983, p. 30.⁽³⁾ OJ No C 300, 6. 11. 1993, p. 8.⁽⁴⁾ OJ No C 199, 26. 7. 1983, p. 2.

- (a) At present 18 oil companies and one association of oil companies (compared to 16 oil companies and two associations in December 1983) are members of the Industry Advisory Board (IAB). The IAB assists the IEA in ensuring the effective operation of emergency measures.

The oil companies and the association are all members of the group of 'reporting companies' of which there are at present 41.

- (b) Some changes have occurred in the allocation process. There have been two amendments to the IEA's Emergency Management Manual, which was last published in December 1982. One of the two amendments clarified the intention that, in oil transactions which might occur as part of the activation and operation of the IEA's Emergency Sharing System, prices should be based on conditions prevailing for comparable commercial transactions. The other amendment sets out procedures for resolving, during an emergency, any large discrepancies in the oil supply data submitted by different member countries.
- (c) Another important new contingency arrangement, which does not affect directly the Emergency Sharing System, is the Agency's co-called 'Coordinated Emergency Response Measures' (CERM) mechanism. Under the CERM, IEA member governments have agreed to give early consideration, during an energy crisis, to the coordinated use of their oil stocks and to additional demand-restraint measures.
- (d) Concerning the types of activities which constitute part of the allocation process (Types 1, 2, 3), there have been changes related to Type 1 and Type 2 activities. In order to take into

account the changes in the structure of the oil market, as well as technical improvements in the computer capabilities available to the Secretariat for crisis-management purposes, the Emergency Sharing System was improved in 1986. It was decided to extend the prescribed period for the solicitation, processing and implementation of 'closed-loop voluntary offers' by reporting companies and non-reporting companies for the re-arrangement of oil supplies in response to an emergency and to accelerate the process for the approval of those offers by the Allocation Coordinator. Thus, under the 'Wider Window' proposal 'closed-loop voluntary offers' can be submitted to the ISAG (Industry Supply Advisory Group) or the IEA Secretariat at nearly any time during an allocation cycle, not just at specified times.

- (e) As to the situation in the oil market, there have been significant developments over the past ten years. During the 1970s, the OECD countries were able to reduce their energy dependence through the reduction of consumption, the exploitation of new areas (Alaska, North Sea) and the development of other sources of energy (nuclear, renewable energy). But since 1985 there has been a trend towards increased oil imports. This is likely to continue, with the IEA forecasting that coverage of OECD demand by net imports will rise from 60 per cent or so at present to possibly 70 per cent during the first decade of the next century. Most of the increase in oil imports will come from the major producing regions, which are subject to an endemic political uncertainty, thus increasing OECD countries' vulnerability to oil supply disruptions. The IEA will, therefore, need to maintain, update and periodically test its emergency response capabilities.

Crude Oil and NGL (Natural Gas Liquids) Production

	1980	1988	1990	1992 ^(*)
	<i>(million tonne)</i>			
EC ⁽¹⁾	93	142	116	135
OECD countries ⁽²⁾	702	780	740	761
World total ⁽²⁾	2 924	3 090	3 189	3 180
	<i>(million barrels/day)</i>			
EC ⁽¹⁾	2	3	2,5	2,9
OECD countries ⁽²⁾	15	16,6	15,9	16,4
World total ⁽²⁾	63	63,3	65,6	65,4

(*) Provisional

(Sources: ⁽¹⁾ Eurostat.

⁽²⁾ IEA Statistics)

Imports and exports of crude oil and NGL

	(million tons)			
	1978	1988	1990	1992 (*)
<i>EG countries</i> (1)				
Imports	527	450	471	502
Exports	44	80	67	71
<i>OECD countries</i> (2)				
Imports	1 251	934	1 040	1 104
Exports	63	171	174	211

(*) Provisional
 (Sources : (1) Eurostat.
 (2) IEA Statistics)

- (3) The application for an extension of the exemption, for a further period of no less than the years from 1 January 1994 onwards, is motivated by the need to allow oil companies to cooperate in carrying out the Emergency Sharing System. Indeed the Emergency Sharing System relies heavily upon the oil industry to coordinate any necessary redistribution of the available oil supplies, in accordance with the sharing formula set out in the IEP Agreement.

II. COMMENTS FROM THIRD PARTIES

- (4) Following the publication of the notice pursuant to Article 19 (3) of Regulation No 17, no comments were received from third parties.

III. LEGAL ASSESSMENT

A. Article 85 (1)

- (5) For the same reasons as those previously outlined in Decision 83/671/EEC, to which reference should be made, the consent of the oil companies to cooperate with one another and the IFA in the framework of the IEP and in the operation of the IEA emergency oil allocation system is a concerted practice which falls within the scope of Article 85 (1), notably because :

- (a) The concertation between the oil companies has the object and effect of taking into account and balancing allocation rights and obligations. This means in some cases directing oil to destinations where it would not have gone had the IEA system not been activated.

- (b) The oil companies' behaviour when exchanging information within the framework of the IEA may alter the market conditions from what they would be without such exchanges of information.

- (c) The possible effects of these restrictions on competition may be appreciable. The undertakings start to concert on allocation actions when a 7 % shortfall in oil supplies available to all IEA countries or to one of them has occurred or may reasonably be expected to occur. In the event of activation, several million tonnes of oil may have to be redistributed each month.

- (d) The joint effort of the oil companies to redistribute available oil may have an appreciable effect on trade between Member States. The usual flow of oil supplies may be modified in order to meet allocation rights and obligations according to the situation of each participating country.

B. Article 85 (3)

- (6) On the basis of the information at its disposal, the Commission has come to the conclusion that the advantages of the concerted practice of the oil companies continue to constitute a sufficient basis for the application of Article 85 (3). The changes which have occurred since 1983 do not affect the validity of the exemption. They aim at improving the reallocation process and take into account the changes in the structure of the oil market and the technical improvements.

- (a) The concerted practice does contribute to improving the distribution of the relevant goods and to promoting economic progress by reducing the inconvenience and sharing the difficulties in case of supply disruptions.
- (b) The concerted practice allows the consumer a fair share of the resulting benefit, as the concerted practice is experted to minimize the impact of the shortage of the general economy of the participating countries, with an immediate benefit to consumers.
- (c) The concertation between companies to achieve the allocation needed does not go beyond what is necessary for the fulfilment of the objectives of the IEP.
- (d) The concerted practice does not afford the undertakings the possibility of eliminating competition in respect of a substantial part of the products in question. Competition between the oil companies will continue in all other respects apart from their obligation to observe allocation rights and to fulfil allocation obligations.

IV. ARTICLES 6 AND 8 OF REGULATION No 17

- (7) The application for renewal of the exemption granted by Decision 83/671/EEC was submitted by the Chariman of the IAB before 31 December 1993, the date the Decision expires. Pursuant to Article 6 (1) of Regulation No 17, this Decision should take effect from 1 January 1994.
- (8) Article 3 of Decision 83/671/EEC obliged the oil companies to inform the Commission at the earliest possible moment of :
 1. any change adopted by the Governing Board or National Emergency Sharing Organizations to the rules governing the emergency oil allocation system and the participation of oil companies therein ;
 2. any consultations with oil companies provided for in Article 19 (6) and (7) or Article 55 (3) of the International Energy Program or submission by the companies to the Interantional Energy Agency or national governments pursuant to the foregoing rules of data such as that on imports, exports, indigenou production and investories ;
 3. the declaration of the beginning of any emergency ;

- 4. any proposals or arrangements for a test run of the emergency oil allocation system or of the data system.

The exemption was granted subject to the obligation that the Commission should have access for its representatives to any consultations with oil companies provided for in Article 19 (6) and (7) or Article 55 (3) of the International Energy Program which may take place, and to any meeting of the Industry Supply Advisory Group or its subgroups or of the Industry Advisory Board or its subcommittees which might take place when the emergency oil allocation system was being implemented or when test runs were being carried out. The Commission's representatives were to have made available to them upon request all documents and other information in connection with such consultations, meetings and test runs in the possession or under the control of any company to which the Decision applied, and all documents and other information in such possession or control in connection with Type 2 and Type 3 activities and with Type 1 activities that were reported to the Commission.

The reporting requirements have been fulfilled throughout the period of exemption and should be imposed again for the extended duration of the exemption pursuant to Article 8 (2) of Regulation No. 17.

- (9) Pursuant to Article 8 (1) of Regulation No 17, a Commission decision in application of Article 85 (3) of the Treaty must be issued for a specified period. In the present case an extension of the Decision for a period of ten years appears appropriate.

HAS ADOPTED THIS DECISION :

Article 1

The exemption granted by Decision 83/671/EEC is hereby until 31 December 2003.

Article 2

Exemption is granted subjected to the same reporting requirements as are specified in Article 3 of Decision 83/671/EEC.

Article 3

This Decision shall apply from 1 January 1994.

Article 4

This Decision is addressed to :

- Amerada Hess Corporation,
1185, Avenue of the Americas,
New York, NY-10036,
USA ;
- Amoco Corporation,
200, East Randolph Drive,
Chicago, IL-60601,
USA ;
- Anonima Petroli Italiana (API),
Corso d'Italia, 6,
00198 Rome,
Italy ;
- Ashland Oil, Inc.,
2000, Ashland Drive,
Russell, KY-41169,
USA ;
- Atlantic Richfield Company,
1601, Bryant Street,
Dallas, TX-75228,
USA ;
- BP Oil International Limited,
Britannic House,
1, Finsbury House,
London, EC2M 7BA,
United Kingdom ;
- Caltex Petroleum Corporation,
125, E. John Carpenter Freeway,
Irving, TX-75062-2794,
USA ;
- Chevron Corporation,
225, Bush Street,
San Francisco, CA-94104-4289,
USA ;
- Compañía Española de Petróleos, SA (Cepsa),
Apartado 671,
Avenida de América, 32,
Madrid 2,
Spain ;
- Conoco Inc.,
600 N. Dairy Ashfort Road,
Houston, TX-77079,
USA ;
- Cosmo Oil Co. Ltd,
Toshiba Building,
1-1, Shibaura, 1-Chome,
Minato-ku,
Tokyo, 105,
Japan ;
- DEA Mineralöl AG,
Überseering 40,
22297 Hamburg,
Germany ;
- Ente Nazionale Idrocarburi (ENI) Agip Petroli SpA,
Via Laurentina, 449,
00142 Rome,
Italy ;
- Exxon Corporation,
200, Park Avenue,
Florham Park,
NJ-07932,
USA ;
- Idemitsu Kosan Co., Ltd,
1-1, 3-Chome, Marunouchi,
Chiyoda-ku,
Tokyo 100,
Japan ;
- Japan Energy Corporation,
10-1, Toranomom 2-Chome,
Minato-Ku,
Tokyo 105,
Japan ;
- Mabanft GmbH,
Admiralitätsstr. 55,
20459 Hamburg,
Germany ;
- Mitsubishi Oil Co., Ltd,
2-4, Toranomom, 1-Chome,
Minato-ku,
Tokyo 105,
Japan ;
- Mobil Oil Corporation,
3225, Gallows Road,
Fairfax, VA-22037,
USA ;
- Neste Oy,
POB 20,
FIN-02151 Espoo,
Finland ;
- Norsk Hydro as,
PO Box 220,
N-1321, Stabekk,
Norway ;
- OK Petroleum AB,
S-11590 Stockholm,
Sweden ;
- ÖMV AG,
Otto-Wagner-Platz 5,
A-1090 Vienna,
Austria ;
- Petro-Canada Products Ltd,
PO Box 2844,
150 6th Avenue S.W.,
Calgary,
Alberta, T2P 3E3,
Canada ;

- Petrofina SA,
rue de l'Industrie, 52,
1040 Brussels,
Belgium ;
- Petrogal, SA,
R. Mouzinho da Silveira, 26-7,
1200 Lisbon,
Portugal ;
- Petróleos del Norte, SA (Petronor),
Paseo de la Castellana, 280,
28046 Madrid,
Spain ;
- Petroleum Association of Japan (PAJ),
Keidanren Building,
1-9-4, Ohtemachi,
Chiyoda-Ku,
Tokyo 100,
Japan ;
- Praoil,
Strada 2, Pal. F7,
20090 Assago,
Milan,
Italy ;
- Phillips Petroleum Company,
17 D3 Phillips Building,
Bartlesville, OK 74004,
USA ;
- Repsol, SA,
Paseo de la Castellana, 278,
28046 Madrid,
Spain ;
- Shell International Petroleum Co., Ltd,
Shell Centre,
London, SE1 7NA,
United Kingdom ;
- Shell Oil Company,
901 Louisiana,
Houston, TX 77002,
USA ;
- Société nationale Elf Aquitaine,
Tour Elf,
Cedex 45,
92078 Paris-La Défense,
France ;
- Statoil,
Postbox 300,
4001 Stavanger,
Norway ;
- Sun Oil Company, Inc.,
1801, Market Street,
Philadelphia, PA-19103-1699,
USA ;
- Texaco Inc.,
2000 Westchester Avenue,
White Plains, NY-10650,
USA ;
- Total SA,
Tour Total,
24, Cours Michelet,
Cedex 47,
92069 Paris-La Défense,
France ;
- Türkiye Petrol Rafinerili AS (TÜPRAS),
41002 Izmit,
Turkey ;
- VEBA Öl AG,
Alexander-von-Humboldt-Straße,
45876 Gelsenkirchen,
Germany ;
- Wintershall AG,
Friedrich-Ebert-Straße 160,
34119 Kassel,
Germany.

Done at Brussels, 21 February 1994.

For the Commission

Karel VAN MIERT

Member of the Commission