

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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of 14 September 2009

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

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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:

#### *Article 1*

##### **Objective**

This Directive lays down rules aimed at ensuring a high level of security of oil supply in the Community through reliable and transparent mechanisms based on solidarity amongst Member States, maintaining minimum stocks of crude oil and/or petroleum products and putting in place the necessary procedural means to deal with a serious shortage.

#### *Article 2*

##### **Definitions**

For the purposes of this Directive:

- (a) ‘reference year’ means the calendar year of the consumption or of the net import data used to calculate either the stocks to be held or the stocks actually held at a given time;
- (b) ‘additives’ means non-hydrocarbon compounds added to or blended with a product to modify its properties;
- (c) ‘biofuel’ means liquid or gaseous fuel for transport produced from biomass, ‘biomass’ being the biodegradable fraction of products, waste and residues from agriculture (including vegetable and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste;
- (d) ‘inland consumption’ means the total quantities, calculated according to Annex II, delivered within a country for both energy and non-energy use; this aggregate includes deliveries to the transformation sector and deliveries to industry, transport, households

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- and other sectors for ‘final’ consumption; it also includes the own consumption of the energy sector (except refinery fuel);
- (e) ‘effective international decision to release stocks’ means any decision in force taken by the Governing Board of the International Energy Agency to make crude oil or petroleum products available to the market by a release of its members ‘stocks and/or additional measures’;
  - (f) ‘central stockholding entity’ (CSE) means the body or service upon which powers may be conferred to act to acquire, maintain or sell oil stocks, including emergency stocks and specific stocks;
  - (g) ‘major supply disruption’ means a substantial and sudden drop in the supply of crude oil or petroleum products to the Community or to a Member State, irrespective of whether or not it has led to an effective international decision to release stocks;
  - (h) ‘international marine bunkers’ has the meaning given in Section 2.1 of Annex A to Regulation (EC) No 1099/2008;
  - (i) ‘oil stocks’ means stocks of the energy products listed in the first paragraph of Section 3.1 of Annex C to Regulation (EC) No 1099/2008;
  - (j) ‘emergency stocks’ means the oil stocks that each Member State is required to maintain pursuant to Article 3;
  - (k) ‘commercial stocks’ means those oil stocks held by economic operators which are not a requirement under this Directive;
  - (l) ‘specific stocks’ means oil stocks that meet the criteria set out in Article 9;
  - (m) ‘physical accessibility’ means arrangements for locating and transporting stocks to ensure their release or effective delivery to end users and markets within time frames and conditions conducive to alleviating the supply problems which may have arisen.

The definitions set out in this Article may be clarified or amended in accordance with the regulatory procedure referred to in Article 23(2).

### *Article 3*

#### **Emergency stocks — Calculating stockholding obligations**

1 Member States shall adopt such laws, regulations or administrative provisions as may be appropriate in order to ensure, by 31 December 2012, that the total oil stocks maintained at all times within the Community for their benefit correspond, at the very least, to 90 days of average daily net imports or 61 days of average daily inland consumption, whichever of the two quantities is greater.

2 The average daily net imports to be taken into account shall be calculated on the basis of the crude oil equivalent of imports during the previous calendar year, determined in accordance with the method and procedures set out in Annex I.

The average daily inland consumption to be taken into account shall be calculated on the basis of the crude oil equivalent of inland consumption during the previous calendar year, established and calculated in accordance with the method and procedures set out in Annex II.

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3 However, notwithstanding paragraph 2, the daily averages of net imports and inland consumption, as referred to in that paragraph, shall be determined, as regards the period from 1 January to 31 March of each calendar year, on the basis of the quantities imported or consumed during the last year but one before the calendar year in question.

4 The methods and procedures for calculating stockholding obligations, as referred to in this Article, may be amended in accordance with the regulatory procedure referred to in Article 23(2).

#### *Article 4*

### **Calculating stock levels**

1 The levels of stocks held shall be calculated using the methods set out in Annex III. When calculating stock levels for each category held pursuant to Article 9, those methods shall apply only to the products in the category in question.

2 The levels of stocks held at a given time shall be calculated using data from the reference year determined in accordance with the rules set out in Article 3.

3 Any oil stocks may be included simultaneously in both the calculation of a Member State's emergency stocks and the calculation of its specific stocks provided that those oil stocks satisfy all the conditions laid down in this Directive for both types of stocks.

4 The methods and procedures for calculating stock levels, as referred to in paragraphs 1 and 2, may be amended in accordance with the regulatory procedure referred to in Article 23(2). In particular, it may prove necessary and beneficial to amend those methods and procedures, including the application of the reduction provided for in Annex III, in order to ensure coherence with IEA practice.

#### *Article 5*

### **Availability of stocks**

1 At all times, Member States shall ensure that emergency stocks and specific stocks are available and physically accessible for the purposes of this Directive. They shall establish arrangements for the identification, accounting and control of those stocks so as to allow them to be verified at any time. This requirement also applies to any emergency stocks and specific stocks that are commingled with other stocks held by economic operators.

Member States shall take all necessary measures to prevent all obstacles and encumbrances that could hamper the availability of emergency stocks and specific stocks. Each Member State may set limits or additional conditions on the possibility of its emergency stocks and specific stocks being held outside its territory.

2 Where there is reason to implement the emergency procedures provided for in Article 20, Member States shall prohibit, and refrain from taking, any measure hindering the transfer, use or release of emergency stocks or specific stocks held within their territory on behalf of another Member State.



## Article 6

### Register of emergency stocks — Annual report

1 Each Member State shall keep a continually updated and detailed register of all emergency stocks held for its benefit which do not constitute specific stocks. That register shall contain, in particular, information needed to pinpoint the depot, refinery or storage facility where the stocks in question are located, as well as the quantities involved, the owner of the stocks and their nature, with reference to the categories identified in the first paragraph of Section 3.1 of Annex C to Regulation (EC) No 1099/2008.

2 By the 25th February each year, each Member State shall send the Commission a summary copy of the stock register referred to in paragraph 1 showing at least the quantities and nature of the emergency stocks included in the register on the last day of the preceding calendar year.

3 Member States shall also send the Commission a full copy of the register within 15 days of a request by the Commission; in this copy sensitive data relating to the location of stocks may be withheld. Such requests may be made no later than 5 years after the date to which the requested data relate, and may not bear upon data relating to any period preceding 1 January 2013.

## Article 7

### Central stockholding entities

1 Member States may set up CSEs.

No Member State may set up more than one CSE or any other similar body. A Member State may set up its CSE at any location within the Community.

Where a Member State sets up a CSE, it shall take the form of a body or service without profit objective and acting in the general interest and shall not be considered to be an economic operator within the meaning of this Directive.

2 The main purpose of the CSE shall be to acquire, maintain and sell oil stocks for the purposes of this Directive or for the purpose of complying with international agreements concerning the maintenance of oil stocks. It is the only body or service upon which powers may be conferred to acquire or sell specific stocks.

3 CSEs or Member States may, for a specified period, delegate tasks relating to the management of emergency stocks and, with the exception of sale and acquisition, of specific stocks, but only to:

- a another Member State within whose territory such stocks are located or the CSE set up by that Member State. Tasks thus delegated may not be subdelegated to other Member States or to CSEs set up by them. The Member State that set up the CSE, as well as each Member State within whose territory the stocks will be held, has the right to make the delegation conditional upon its authorisation;
- b economic operators. Tasks thus delegated may not be subdelegated. Where such a delegation, or any change or extension to that delegation, involves tasks relating to the management of emergency and specific stocks held in another Member State, it must

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be authorised in advance both by the Member State on whose account the stocks are held and by all Member States within whose territories the stocks will be held.

4 Each Member State having a CSE shall require it, for the purposes of Article 8(1) and (2), to publish:

- a on an ongoing basis, full information, broken down by product category, on the stock volumes that it can undertake to maintain for economic operators, or, where appropriate, interested CSEs;
- b at least 7 months in advance, the conditions subject to which it is willing to provide services related to maintaining the stocks for economic operators. The conditions under which services may be provided, including conditions relating to scheduling, may also be determined by competent national authorities or following a competitive procedure intended to determine the best bid among operators or, where appropriate, interested CSEs.

CSEs shall accept such delegations under objective, transparent and non-discriminatory conditions. Payments by the operators for the services of the CSE shall not exceed the full costs of the services rendered and may not be required until the stocks are constituted. The CSE may make its acceptance of a delegation conditional upon the operator's provision of a guarantee or some other form of security.

#### *Article 8*

#### **Economic operators**

1 Each Member State shall ensure that any economic operator on which it imposes stockholding obligations in order to fulfil its obligations under Article 3 is given the right to delegate those obligations at least in part and at the choice of the economic operator, but only to:

- a the CSE of the Member State on whose account such stocks are held;
- b one or more other CSEs which have in advance declared themselves willing to hold such stocks, provided that such delegations have been authorised in advance both by the Member State on whose account such stocks are held and by all Member States within whose territories the stocks will be held;
- c other economic operators which have surplus stocks or available stockholding capacity outside of the territory of the Member State on whose account the stocks are held within the Community, provided that such delegation has been authorised in advance both by the Member State on whose account such stocks are held and by all Member States within whose territories the stocks will be held; and/or
- d other economic operators which have surplus stocks or available stockholding capacity within the territory of the Member State on whose account the stocks are held, provided that such delegation has been communicated in advance to the Member State. Member States may impose limits or conditions on such delegations.

Obligations delegated in accordance with points (c) and (d) may not be subdelegated. Any change to or extension of a delegation referred to in points (b) and (c) shall only take effect if authorised in advance by all Member States which authorised the delegation. Any change to or extension of a delegation referred to in point (d) shall be treated as a new delegation.

2 Each Member State may restrict the delegation rights of the economic operators on which it imposes or has imposed stockholding obligations.

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However, where such restrictions limit the delegation rights of an economic operator to amounts corresponding to less than 10 % of the stockholding obligation imposed on it, the Member State shall ensure that it has set up a CSE that is required to accept delegations in respect of the amount needed to safeguard the right of an economic operator to delegate at least 10 % of the stockholding obligation imposed on it.

The minimum percentage referred to in this paragraph shall be increased from 10 % to 30 % by 31 December 2017.

3 Notwithstanding the provisions of paragraphs 1 and 2, a Member State may impose an obligation on an economic operator to delegate at least part of its stockholding obligation to the CSE of the Member State.

4 Member States shall take the necessary measures to inform economic operators of the modalities to be used to calculate the stockholding obligations imposed on them no later than 200 days prior to the start of the period to which the obligation in question relates. Economic operators shall exercise their right to delegate stockholding obligations to CSEs no later than 170 days prior to the start of the period to which the obligation in question relates.

Where economic operators are informed less than 200 days before the start of the period to which the stockholding obligation relates, they may exercise their right to delegate that obligation at any time.

#### *Article 9*

#### **Specific stocks**

1 Each Member State may undertake to maintain a minimum level of oil stocks, calculated in terms of number of days of consumption, in accordance with the conditions set out in this Article.

Specific stocks shall be owned by the Member State or the CSE set up by it and shall be maintained on the territory of the Community.

2 Specific stocks can only be composed of one or more of the following product categories, as defined in Section 4 of Annex B to Regulation (EC) No 1099/2008:

- Ethane
- LPG
- Motor gasoline
- Aviation gasoline
- Gasoline-type jet fuel (naphtha-type jet fuel or JP4)
- Kerosene-type jet fuel
- Other kerosene
- Gas/diesel oil (distillate fuel oil)
- Fuel oil (high sulphur content and low sulphur content)
- White spirit and SBP
- Lubricants
- Bitumen
- Paraffin waxes
- Petroleum coke

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3 Petroleum products constituting specific stocks shall be identified by each Member State on the basis of the categories listed in paragraph 2. Member States shall ensure that, for the reference year determined in accordance with the rules set out in Article 3 and concerning the products included in the categories used, the crude oil equivalent of quantities consumed in the Member State is at least equal to 75 % of inland consumption calculated using the method set out in Annex II.

For each of the categories chosen by the Member State, the specific stocks it undertakes to maintain shall correspond to a given number of days of average daily consumption measured on the basis of their crude oil equivalent during the reference year determined in accordance with the rules set out in Article 3.

The crude oil equivalents referred to in the first and second subparagraphs are calculated by multiplying by a factor of 1,2 the sum of the aggregate 'observed gross inland deliveries', as defined in Section 3.2.1 of Annex C to Regulation (EC) No 1099/2008, for the products included in the categories used or concerned. International marine bunkers are not included in the calculation.

4 Each Member State that has decided to maintain specific stocks shall send the Commission a notice to be published in the *Official Journal of the European Union*, specifying the level of such stocks that it has undertaken to maintain and the duration of such undertaking which shall be at least 1 year. The notified minimum level shall apply equally to all categories of specific stocks used by the Member State.

The Member State shall ensure that such stocks are held the full length of the notified period without prejudice to the right of the Member State to undergo temporary reductions due solely to individual stock replacement operations.

The list of categories used by a Member State shall remain in effect for at least 1 year and may be amended only with effect on the first day of a calendar month.

5 Each Member State that has not made a commitment for the full length of a given calendar year to maintain at least 30 days of specific stocks shall ensure that at least one-third of their stockholding obligation is held in the form of products composed in accordance with paragraphs 2 and 3.

A Member State for which less than 30 days of specific stocks are held shall draw up an annual report analysing the measures taken by its national authorities to ensure and verify the availability and physical accessibility of its emergency stocks as referred to in Article 5 and shall document in the same report arrangements made to allow the Member State to control the use of these stocks in case of oil supply disruptions. That report shall be sent to the Commission by the end of the first month of the calendar year to which it relates.

#### *Article 10*

#### **Managing specific stocks**

1 Each Member State shall keep a continually updated and detailed register of all specific stocks held within its territory. That register shall contain, in particular, all information needed to pinpoint the exact location of the stocks in question.

Member States shall also send the Commission a copy of the register within 15 days of a request by the Commission. In this copy, sensitive data relating to the location of

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stocks may be withheld. Such requests may be made no later than 5 years after the date to which the requested data relate.

2 Where specific stocks are commingled with other oil stocks, Member States or their CSEs shall make the necessary arrangements to prevent those commingled products from being moved, to the extent of the proportion constituting specific stocks, without prior written authorisation by the owner of the specific stocks and by the authorities of, or the CSE established by, the Member State in whose territory the stocks are located.

3 Member States shall take the necessary measures to confer unconditional immunity from enforcement action on all specific stocks maintained or transported within their territory, irrespective of whether those stocks are owned by them or by other Member States.

#### *Article 11*

### **The effect of delegations**

The delegations referred to in Articles 7 and 8 shall in no way alter the obligations incumbent upon each Member State pursuant to this Directive.

#### *Article 12*

### **Statistical summaries of stocks covered by Article 3**

1 With regard to the levels of stocks to be held pursuant to Article 3, each Member State shall draw up statistical summaries and submit them to the Commission in accordance with the rules set out in Annex IV.

2 The rules for drawing up the summaries referred to in paragraph 1, their scope, content and frequency and the deadlines for their submission may be amended in accordance with the regulatory procedure referred to in Article 23(2). The rules for submitting those summaries to the Commission may also be amended in accordance with the regulatory procedure referred to in Article 23(2).

3 Member States may not include quantities of crude oil or petroleum products which are subject to a seizure order or enforcement action in their statistical summaries of emergency stocks. This also applies to stocks owned by companies that are bankrupt or have entered into an arrangement with creditors.

#### *Article 13*

### **Statistical summaries of specific stocks**

1 Each Member State concerned shall draw up and submit to the Commission a statistical summary, for each product category, showing the specific stocks existing on the last day of each calendar month and specifying the quantities and the number of days of average consumption in the reference year which those stocks represent. If some of those specific stocks are held outside a Member State's territory, it shall provide details of the stocks maintained in or by the various Member States and CSEs concerned. It shall also provide a detailed indication of whether it owns all of those stocks or whether they are owned, in whole or in part, by its CSE.

2 Each Member State concerned shall also draw up and submit to the Commission a summary of the specific stocks located within its territory and owned by other Member States

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or CSEs, showing the stocks existing on the last day of each calendar month and broken down into the product categories identified pursuant to Article 9(4). In that summary, the Member State shall also indicate, in each case, the Member State or CSE concerned and the quantities involved.

3 The statistical summaries referred to in paragraphs 1 and 2 shall be submitted during the calendar month following that to which they relate.

4 Copies of the statistical summaries shall also be sent immediately upon request by the Commission. Such requests may be made no later than 5 years after the date to which the data in question relate.

5 The scope, content and frequency of the statistical summaries and the deadlines for their submission may be amended in accordance with the regulatory procedure referred to in Article 23(2). The rules for submitting those summaries to the Commission may also be amended in accordance with the regulatory procedure referred to in Article 23(2).

#### *Article 14*

### **Summaries of commercial stocks**

1 Member States shall send the Commission a monthly statistical summary of the levels of commercial stocks held within their national territory. When doing so, they shall ensure that sensitive data are protected and shall abstain from mentioning the names of the owners of the stocks concerned.

2 Using aggregate levels, the Commission shall publish a monthly statistical summary of the commercial stocks in the Community on the basis of the summaries submitted by the Member States.

3 The rules for submitting and publishing the statistical summaries, as well as for their frequency, may be amended in accordance with the regulatory procedure referred to in Article 23(2).

#### *Article 15*

### **Data processing**

The Commission shall be responsible for developing, hosting, managing and maintaining the IT resources needed to receive, store and carry out any processing of the data provided in the statistical summaries, all other information submitted by Member States or gathered by the Commission pursuant to this Directive and any data on oil stocks gathered pursuant to Regulation (EC) No 1099/2008 and needed for the purpose of drawing up the summaries required by this Directive.

#### *Article 16*

### **Biofuels and additives**

1 When calculating stockholding obligations under Articles 3 and 9 biofuels and additives shall be taken into account only where they have been blended with the petroleum products concerned.

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2 When calculating the stock levels actually maintained, biofuels and additives shall be taken into account when:

- a they have been blended with petroleum products concerned; or
- b they are stored on the territory of the Member State concerned, provided that the Member State has adopted rules ensuring that they are to be blended with petroleum products held pursuant to stockholding requirements set out in this Directive and that they are to be used in transportation.

3 The rules for taking biofuels and additives into account when calculating stockholding obligations and stock levels, as laid down in paragraph 1 and 2, may be amended in accordance with the regulatory procedure referred to in Article 23(2).

#### *Article 17*

### **Coordination Group for oil and petroleum products**

1 A Coordination Group for oil and petroleum products is hereby set up (hereinafter the 'Coordination Group'). The Coordination Group is a consultative Group that shall contribute to analysing the situation within the Community with regard to security of supply for oil and petroleum products and facilitate the coordination and implementation of measures in that field.

2 The Coordination Group shall be made up of representatives of the Member States. It shall be chaired by the Commission. Representative bodies from the sector concerned may take part in the work of the Coordination Group at the invitation of the Commission.

#### *Article 18*

### **Reviews of emergency preparedness and stockholding**

1 The Commission may, in coordination with Member States, carry out reviews to verify their emergency preparedness and, if considered appropriate by the Commission, related stockholding. When preparing for such reviews, the Commission shall take into account efforts undertaken by other institutions and international organisations and consult the Coordination Group.

2 The Coordination Group may agree on the participation of authorised agents and representatives of other Member States in the reviews. Designated national officials of the reviewed Member State may accompany the persons performing the review. Within 1 week following the announcement of a review referred to in paragraph 1, any Member State concerned that has not provided the Commission with sensitive data relating to the location of stocks pursuant Articles 6 and 9 shall place this information at the disposal of the Commission's employees or authorised agents.

3 Member States shall ensure that their authorities and those responsible for maintaining and managing emergency and specific stocks agree to inspections and provide assistance to the persons authorised by the Commission to perform those reviews. Member States shall in particular ensure that these persons are granted the right to consult all documents and registers relating to the stocks and have right of access to all sites on which stocks are held and to all related documents.

4 The outcome of reviews carried out pursuant to this Article shall be notified to the Member State reviewed and may be forwarded to the Coordination Group.

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5 Member States and the Commission shall ensure that officials, agents and other persons working under Commission supervision and members of the Coordination Group may not disclose any information which has been gathered or exchanged pursuant to this Article and which, by its nature, is covered by professional secrecy, such as the identity of the owners of stocks.

6 The objectives of the reviews referred to in paragraph 1 may not include the processing of personal data. Any personal data found or uncovered during those reviews may not be gathered or taken into consideration and, if gathered accidentally, shall be destroyed immediately.

7 Member States shall take the necessary measures to ensure that all data, records, summaries and documents relating to emergency stocks and specific stocks are kept for a period of at least 5 years.

#### *Article 19*

### **Protection of individuals with regard to the processing of data**

This Directive is without prejudice to, and in no way affects, the level of protection of individuals with regard to the processing of personal data under the provisions of Community and national law and, in particular, does not alter Member States' obligations with regard to the processing of personal data, as laid down by Directive 95/46/EC, or the obligations incumbent upon Community institutions and bodies under Regulation (EC) No 45/2001 with regard to the processing of personal data by them in the course of their duties.

#### *Article 20*

### **Emergency procedures**

1 Member States shall ensure that they have procedures in place and take such measures as may be necessary, in order to enable their competent authorities to release quickly, effectively and transparently some or all of their emergency stocks and specific stocks in the event of a major supply disruption, and to impose general or specific restrictions on consumption in line with the estimated shortages, *inter alia*, by allocating petroleum products to certain groups of users on a priority basis.

2 Member States shall at all times have contingency plans to be implemented in the event of a major supply disruption and shall provide for organisational measures to be taken to allow those plans to be implemented. Upon request, Member States shall inform the Commission of their contingency plans and the corresponding organisational arrangements.

3 In the event of an effective international decision to release stocks affecting one or more Member States:

- a the Member States concerned may use their emergency stocks and specific stocks to fulfil their international obligations under that decision. Any Member State so doing shall notify the Commission immediately, so that the Commission can call a meeting of the Coordination Group or consult its members by electronic means to assess, in particular, the impact of that release;
- b the Commission should recommend to Member States to release some or all of their emergency stocks and specific stocks or to take other measures of equivalent



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effect as considered appropriate. The Commission may act only after consulting the Coordination Group.

4 In the absence of an effective international decision to release stocks but when difficulties arise in the supply of crude oil or petroleum products to the Community or to a Member State, the Commission shall inform the IEA where applicable, and coordinate with it as appropriate, and arrange a consultation of the Coordination Group as soon as possible, either at the request of a Member State or on its own initiative. When a consultation of the Coordination Group is requested by a Member State, it shall be arranged within 4 days of the request at most, unless the Member State agrees to a longer period. On the basis of the results of the examination of the situation by the Coordination Group, the Commission shall determine whether a major supply disruption has occurred.

If a major supply disruption is deemed to have occurred, the Commission shall authorise the release of some or all of the quantities of emergency stocks and specific stocks that have been put forward for that purpose by the Member States concerned.

5 Member States may release emergency and specific stocks below the compulsory minimum level set by this Directive in amounts immediately necessary for an initial response in cases of particular urgency or in order to meet local crises. In the event of such release, Member States shall inform the Commission immediately of the amount released. The Commission shall transmit this information to the members of the Coordination Group.

6 Where paragraphs 3, 4 or 5 are applied, Member States may temporarily hold stocks at levels lower than those stipulated in this Directive. In that case, the Commission shall determine, on the basis of the results of the consultation of the Coordination Group and, where applicable, in coordination with the IEA, and notably by taking into account the situation on the international oil and petroleum products markets, a reasonable time frame within which Member States must bring their stocks back up to the minimum required levels.

7 Decisions taken by the Commission by virtue of this Article shall be without prejudice to any other international obligations on the Member States concerned.

#### *Article 21*

#### **Penalties**

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take such measures as may be necessary to ensure that they are applied. Such penalties shall be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 31 December 2012 and shall notify it without delay of any subsequent amendment affecting them.

#### *Article 22*

#### **Review**

By 31 December 2015, the Commission shall review the functioning and implementation of this Directive.

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### Article 23

#### **Committee procedure**

- 1 The Commission shall be assisted by a Committee.
- 2 Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

### Article 24

#### **Repeal**

Directive 73/238/EEC, Directive 2006/67/EC and Decision 68/416/EEC are hereby repealed with effect from 31 December 2012.

References to the repealed Directives and to the repealed Decision shall be construed as references to this Directive.

### Article 25

#### **Transposition**

- 1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2012.

By derogation from the first subparagraph, Member States that are not members of the IEA by 31 December 2012 and cover their inland consumption of petroleum products fully by imports shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 3(1) of this Directive by 31 December 2014. Until those Member States have brought into force such measures, they shall maintain oil stocks corresponding to 81 days of average daily net imports.

When Member States adopt measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

- 2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

### Article 26

#### **Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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*Article 27*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 14 September 2009.

*For the Council*

*The President*

C. MALMSTRÖM

## ANNEX I

### **METHOD FOR CALCULATING THE CRUDE OIL EQUIVALENT OF IMPORTS OF PETROLEUM PRODUCTS**

The crude oil equivalent of imports of petroleum products, as referred to in Article 3, must be calculated using the following method:

The crude oil equivalent of imports of petroleum products is obtained by calculating the sum of the net imports of crude oil, NGL, refinery feedstocks and other hydrocarbons as defined in Section 4 of Annex B to Regulation (EC) No 1099/2008, adjusting the result to take account of any stock changes, deducting 4 % for naphtha yield (or, if the average naphtha yield within the national territory is greater than 7 %, deducting the net actual consumption of naphtha or the average naphtha yield) and adding this to the net imports of all other petroleum products excluding naphtha, also adjusted to take account of stock changes and multiplied by a factor of 1,065.

International marine bunkers are not included in the calculation.

## ANNEX II

### **METHOD FOR CALCULATING THE CRUDE OIL EQUIVALENT OF INLAND CONSUMPTION**

For the purpose of Article 3, the crude oil equivalent of inland consumption must be calculated using the following method:

Inland consumption is the sum of the aggregate 'observed gross inland deliveries', as defined in Section 3.2.1 of Annex C to Regulation (EC) No 1099/2008, of the following products only: motor gasoline, aviation gasoline, gasoline-type jet fuel (naphtha-type jet fuel or JP4), kerosene-type jet fuel, other kerosene, gas/diesel oil (distillate fuel oil) and fuel oil (high sulphur content and low sulphur content) as defined in Section 4 of Annex B to Regulation (EC) No 1099/2008.

International marine bunkers are not included in the calculation.

The crude oil equivalent of inland consumption is calculated by multiplying by a factor of 1,2.

## ANNEX III

### **METHODS FOR CALCULATING THE LEVEL OF STOCKS HELD**

The following methods must be used to calculate stock levels:

Without prejudice to the case addressed in Article 4(3), no quantity may be counted as stock more than once.

Crude oil stocks are reduced by 4 %, which corresponds to the average naphtha yield. Stocks of naphtha and petroleum products for international marine bunkers are not included.

Other petroleum products are included in the stock count using one of the two methods set out below. Member States must continue to use the method they have chosen throughout the whole calendar year in question.

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Member States may:

- (a) include all other stocks of the petroleum products identified in the first paragraph of Section 3.1 of Annex C to Regulation (EC) No 1099/2008 and calculate the crude oil equivalent by multiplying the quantities by a factor of 1,065; or
- (b) include stocks of only the following products: motor gasoline, aviation gasoline, gasoline-type jet fuel (naphtha-type jet fuel or JP4), kerosene-type jet fuel, other kerosene, gas/diesel oil (distillate fuel oil) and fuel oil (high sulphur content and low sulphur content) and calculate the crude oil equivalent by multiplying the quantities by a factor of 1,2.

The calculation may include quantities held:

- in refinery tanks,
- in bulk terminals,
- in pipeline tankage,
- in barges,
- in intercoastal tankers,
- in oil tankers in port,
- in inland ship bunkers,
- in storage tank bottoms,
- as working stocks,
- by large consumers as required by law or otherwise controlled by governments.

However, those quantities except for any held in refinery tanks, in pipeline tankage or in bulk terminals, may not be included when calculating levels of specific stocks where such stocks are calculated separately from emergency stocks.

The calculation may never include:

- (a) crude oil not yet produced;
- (b) quantities held:
  - in pipelines,
  - in rail tank cars,
  - in seagoing ships' bunkers,
  - in service stations and retail stores,
  - by other consumers,
  - in tankers at sea,
  - as military stocks.

When calculating their stocks, Member States must reduce the quantities of stocks calculated as set out above by 10 %. That reduction applies to all quantities included in a given calculation.

However, no 10 % reduction is to be applied when calculating the level of specific stocks or the levels of the different categories of specific stocks where those stocks or categories are considered separately from the emergency stocks, particularly with a view to verifying compliance with the minimum levels laid down by Article 9.

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## ANNEX IV

### **Rules for the preparation and submission to the Commission of statistical summaries of stocks to be held pursuant to Article 3**

Each Member State must draw up and submit to the Commission, on a monthly basis, a definitive statistical summary of the level of stocks actually held on the last day of the calendar month, calculated either on the basis of the number of days of net oil imports or on the basis of the number of days of inland oil consumption, in accordance with Article 3. The statistical summary must provide precise details of why the calculation is based on the number of days of imports or, conversely, on the number of days of consumption and must specify which of the calculation methods set out in Annex III was used.

If some of the stocks included when calculating the level of stocks held pursuant to Article 3 are held outside national territory, each summary shall give details of the stocks held by the various Member States and CSEs concerned on the last day of the period to which it relates. In its summary, each Member State must also indicate, in each case, whether the stocks are being held pursuant to a delegation request made by one or more economic operators or whether they are being held at its request or at the request of its CSE.

For any stocks held by a Member State within its territory on behalf of other Member States or CSEs, that Member State must draw up and submit to the Commission a summary showing the stocks existing on the last day of each calendar month, broken down by product category. In that summary, the Member State must also indicate, in particular, the Member State or CSE concerned and the quantities involved in each case.

The statistical summaries referred to in this Annex must be submitted to the Commission within 55 days of the end of the month to which they relate. Those same summaries must also be submitted within 2 months of a request by the Commission. Such requests may be made no later than 5 years after the date to which the data relate.

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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.