



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.1.2004
COM(2004) 35 final

2004/0004 (CNS)

Proposal for a

COUNCIL DIRECTIVE

**imposing an obligation on Member States to maintain minimum stocks of crude oil
and/or petroleum products**

(Codified version)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided¹ to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Directive 68/414/EEC of 20 December 1968 imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products³. The new Directive will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bringing them together with only such formal amendments as are required by the codification exercise itself.
5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Directive 68/414/EEC and the instruments amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

⁴ Annex I, Part A of this proposal.

numbers, the correlation between the old and the new numbers is shown in a table contained in Annex II to the codified Directive.

Proposal for a



↓ 68/414/EEC (adapted)

COUNCIL DIRECTIVE

imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products

(Text with EEA relevance)

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 Parliament⁵,

Having regard to the opinion of the European Economic and Social Committee⁶,

Whereas:



- (1) Council Directive 68/414/EEC of 20 December 1968 imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products⁷ has been substantially amended⁸. In the interests of clarity and rationality the said Directive should be codified.
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↓ 68/414/EEC Recital 1

- (2) Imported crude oil and petroleum products are of importance in providing the Community with supplies of energy. Any difficulty, even temporary, having the effect of reducing supplies of such products imported from third States could cause serious disturbances in the economic activity of the Community. The Community must

⁵ OJ C

⁶ OJ C

⁷ OJ L 308, 23.12.1968, p. 14. Directive as last amended by Directive 98/93/EC (OJ L 358, 31.12.1998, p. 100).

⁸ See Annex I, Part A.

therefore be in a position to offset or at least to diminish any harmful effects in such a case.

↓ 68/414/EEC Recital 2

- (3) A crisis in obtaining supplies could occur unexpectedly and it is therefore essential to establish forthwith the necessary means to make good a possible shortage.

↓ 68/414/EEC Recital 3

- (4) To this end, it is necessary to increase the security of supply for crude oil and petroleum products in Member States by establishing and maintaining minimum stocks of the most important petroleum products.

↓ 98/93/EC Recital 8

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

↓ 98/93/EC Recital 9

- (6) Organisational arrangements for the maintenance of stocks should ensure the stocks' availability and their accessibility to the consumer.

↓ 98/93/EC Recital 10 (adapted)

- (7) It is appropriate that organisational arrangements for the maintenance of stocks are transparent, ensuring a fair and non-discriminatory sharing of the burden of the stock-holding obligation. Therefore, information relating to the cost of holding oil stocks must be capable of being made available by Member States to interested parties.

↓ 98/93/EC Recital 11

- (8) In order to organise the maintenance of stocks, Member States may have recourse to a system based on a stockholding body or entity which will hold all, or part, of the stocks making up their stockholding obligation. The balance, if any, should be maintained by refiners and other market operators. Partnership between the Government and the industry is essential to operate efficient and reliable stockholding mechanisms.

↓ 98/93/EC Recital 12 (adapted)

- (9) Indigenous production contributes in itself to security of supply. The oil market evolution can justify an appropriate derogation from the obligation to maintain oil stocks for Member States with indigenous oil production. Member States should be able to exempt undertakings from the obligation to maintain stocks in respect of an amount not exceeding the quantity of products which those undertakings manufacture from indigenously produced crude oil.

↓ 98/93/EC Recital 13

- (10) It is appropriate to adopt approaches which are already followed by the Community and the Member States within their international obligations and agreements. Owing to changes in the pattern of oil consumption, international aviation bunkers have become an important component of this consumption.

↓ 98/93/EC Recital 14 (adapted)

- (11) There is a need to organise the Community statistical reporting mechanism concerning oil stocks.

↓ 98/93/EC Recital 15

- (12) Oil stocks can, in principle, be held anywhere in the Community and, therefore, it is appropriate to facilitate the establishment of stocks outside national territory. It is necessary that decisions for holding stocks outside national territory are taken by the Government of the Member State concerned according to its needs and supply security considerations. In the case of stocks held at the disposal of another undertaking, or body/entity, more detailed rules are needed to guarantee their availability and accessibility in the event of oil supply difficulties.

↓ 98/93/EC Recital 16

- (13) It is desirable, in order to ensure the smooth running of the internal market, to promote the use of agreements between Member States concerning minimum stockholding in order to further the use of storage facilities in other Member States. It is for the Member States concerned to take the decision to conclude such agreements.


↓ 98/93/EC Recital 17 (adapted)

- (14) It is appropriate to perform the administrative supervision of stocks and establish efficient mechanisms for the control and verification of stocks. A regime of sanctions is necessary to impose such a control.


- (15) Since the objectives of the action to be taken, namely the maintenance of a high level of security in the supply of crude oil within the Community, by means of reliable and transparent arrangements based on solidarity between Member States, cannot be sufficiently achieved by the Member States by reason of the consistency and solidarity required by the internal market, and can therefore 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 those objectives.



- (16) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B,

 68/414/EEC



HAS ADOPTED THIS DIRECTIVE:

 98/93/EC Art. 1, pt. 1 (adapted)

Article 1

1. Member States shall adopt such laws, regulations or administrative provisions as may be appropriate in order to maintain within the European Community at all times, subject to the provisions of Article ~~10~~, their stocks of petroleum products at a level corresponding, for each of the categories of petroleum products listed in Article 2, to at least 90 days' average daily internal consumption in the preceding calendar year referred to in Article 4 ~~(2)~~.
2. That part of internal consumption met by derivatives of petroleum produced indigenously by the Member State concerned may be deducted up to a maximum of 25% of the said consumption. The ~~domestic~~ distribution of the result of such a deduction shall be decided by the Member State concerned.

 68/414/EEC (adapted)
 ₁ 98/93/EC Art. 1, pt. 3

Article  2 

The following categories of product shall be taken into account in calculating internal consumption:

- ~~(a)~~ motor spirit and aviation fuel (aviation spirit and jet-fuel of the gasoline type);

☒ (b) ☒ gas oil, diesel oil, kerosine and jet-fuel of the kerosine type;

☒ (c) ☒ fuel oils.

↓ 98/93/EC Art. 1, pt. 3

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

↓ 98/93/EC Art. 1, pt. 4

Article 3

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

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

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

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

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

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

↓ 98/93/EC Art. 1, pt. 5 (adapted)

Article 4

- ☒ 1. ☒ Member States shall submit to the Commission a statistical summary showing stocks existing at the end of each month, drawn up in accordance with Article 5 ☒ (2) ☒ and ☒ Article ☒ 6 and specifying the number of days of average consumption in the preceding calendar year which those stocks represent.

This summary must be submitted at the latest by the 25th day of the second month after the month to be reported.

2. A Member State's stockholding obligation shall be based on the previous calendar year's internal consumption. At the beginning of each calendar year, Member States must re-calculate their stockholding obligation at the latest by 31 March in each year and ensure that they comply with their new obligations as soon as possible and, in any event, at the latest by 31 July in each year.
3. In the statistical summary, stocks of jet fuel of the kerosine type shall be reported separately under the category referred to in point (b) of Article 2 .

↓ 98/93/EC Art. 1, pt. 6 (adapted)

Article 5

1. Stocks required to be maintained by Article 1 may be maintained in the form of crude oil and intermediate products, as well as in the form of finished products.
2. In the statistical summary of stocks existing at the end of each month , finished products shall be accounted for according to their actual tonnage.

Crude oil and intermediate products shall be accounted for:

- (a) in the proportions of the quantities for each category of product obtained during the preceding calendar year from the refineries of the Member State concerned ; or
- (b) on the basis of the production programmes of the refineries of the Member State concerned for the current year ; or
- (c) on the basis of the ratio between the total quantity manufactured during the preceding calendar year in the Member State concerned of products covered by the obligation to maintain stocks and the total amount of crude oil used during that year, up to a maximum of 40% of the total obligation for the first and second categories (petrol and gas oils), and up to a maximum of 50% for the third category (fuel oils).
3. Blending components, when intended for processing into the finished products listed in Article 2, may be substituted for the products for which they are intended.

↓ 68/414/EEC

Article 6

↓ 98/93/EC Art. 1, pt. 7(a)
(adapted)

1. When calculating the level of minimum stocks provided for in Article 1, only those quantities which would be held in accordance with Article 3(1) shall be included in the statistical summary.
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↓ 68/414/EEC (adapted)

2. Subject to the provisions of paragraph 1, the following may be included in the stocks:
- (a) supplies on board oil tankers in port for the purpose of discharging, once the port formalities have been completed;
 - (b) supplies held in ports of discharge;
 - (c) supplies held in tanks at the entry to oil pipelines;
 - (d) supplies held in refinery tanks, excluding those supplies in pipes and refining plant;
 - (e) supplies held in storage by refineries and by importing, storage or wholesale distribution firms;
 - (f) supplies held in storage by large-scale consumers in compliance with the provisions of national law concerning the obligation to maintain permanent stocks;
 - (g) supplies held in barges and coasting-vessels engaging in transport within national frontiers, on condition that it is possible for the competent authorities to keep a check on such supplies and provided that the supplies can be made available immediately.
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↓ 98/93/EC Art. 1, pt. 7(c)
(adapted)

3. The following shall, in particular, be excluded from the statistical summary: indigenous crude oil not yet extracted; supplies intended for the bunkers of sea-going vessels; supplies in direct transit apart from the stocks referred to in Article 7(1); supplies in pipelines, in road tankers and rail tank-wagons, in the storage tanks of retail outlets, and those held by small consumers.

Quantities held by the armed forces and those held for them by the oil companies shall also be excluded from the statistical summary.

↓ 98/93/EC Art. 1, pt. 7(b)
(adapted)

⊠ Article 7 ⊠

- ⊠ 1. ⊠ For the purposes of implementing this Directive, stocks may be established, under agreements between Governments, within the territory of a Member State for the account of undertakings, or bodies/entities, established in another Member State. It is for the Government of the Member State concerned to decide whether to hold a part of its stocks outside its national territory.

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

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

- ⊠ 2. ⊠ Drafts of the agreements mentioned in ⊠ paragraph 1 ⊠ shall be sent to the Commission, which may make its comments known to the Governments concerned. The agreements, once concluded, shall be notified to the Commission, which shall make them known to the other Member States.

Agreements shall satisfy the following conditions:

- ⊠ (a) ⊠ they must relate to crude oil and to all petroleum products ⊠ listed in Article 2; ⊠
- ⊠ (b) ⊠ they must lay down conditions and arrangements for the maintenance of stocks with the aim of safeguarding control and availability of these stocks ⊠ ; ⊠
- ⊠ (c) ⊠ they must specify the procedures for checking and identifying the stocks provided for, *inter alia*, the methods for carrying out and cooperating on inspections ⊠ ; ⊠
- ⊠ (d) ⊠ they must as a general rule be concluded for an unlimited period ⊠ ; ⊠

☒ (e) ☒ they must state that, where provision is made for unilateral termination, the latter shall not operate in the event of a supply crisis and that, in any event, the Commission shall receive prior information of any termination.

☒ 3. ☒ When stocks established under agreements ☒ between Governments ☒ are not owned by the undertaking, or body/entity, which has ☒ responsibility for holding ☒ stocks, but are held at the disposal of this undertaking, or body/entity, by another undertaking, or body/entity, the following conditions shall be met:

☒ (a) ☒ the beneficiary undertaking, or body/entity, must have the contractual right to acquire these stocks throughout the period of the contract; the methodology for establishing the price of such acquisition must be agreed between the parties concerned ☒ ; ☒

☒ (b) ☒ the minimum period of such a contract must be 90 days ☒ ; ☒

☒ (c) ☒ storage location and/or companies holding the stocks at the disposal of the beneficiary undertaking, or body/entity, as well as quantity and category of product, or crude oil, stored in that location must be specified ☒ ; ☒

☒ (d) ☒ the actual availability of the stocks for the beneficiary undertaking, or body/entity, must be guaranteed, at all times throughout the period of the contract, by the undertaking or body/entity holding the stocks at the disposal of the beneficiary undertaking, or body/entity ☒ ; ☒

☒ (e) ☒ the undertaking, or body/entity, holding the stocks at the disposal of the beneficiary undertaking, or body/entity, must be one which is subject to the jurisdiction of the Member State on whose territory the stocks are situated insofar as ☒ the ☒ control and ☒ verification of ☒ the existence of the stocks are concerned.

↓ 98/93/EC Art. 1, pt. 8

Article 8

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

↓ 98/93/EC Art. 1, pt. 9 (adapted)

Article 9

Member States shall determine the ☒ rules on ☒ penalties applicable to breaches of the national provisions adopted pursuant to this Directive and shall take ☒ all ☒ measure ☒ s ☒ necessary to ensure ☒ that these are implemented ☒ . The penalties ☒ provided for ☒ shall be effective, proportionate and dissuasive. ☒ The Member States shall notify those rules to the Commission. ☒

Article 10

- ⊗ 1. ⊗ If difficulties arise with regard to Community oil supplies, the Commission shall, at the request of any Member State or on its own initiative, arrange a consultation between the Member States.
- ⊗ 2. ⊗ Save in cases of particular urgency or in order to meet minor local needs, Member States shall refrain, prior to the consultation provided for ⊗ in paragraph 1 ⊗, from drawing on their stocks to any extent which would reduce those stocks to below the compulsory minimum level.
- ⊗ 3. ⊗ Member States shall inform the Commission of any withdrawals from their reserve stocks and shall communicate as soon as possible:
- ⊗ (a) ⊗ the date upon which stocks fell below the compulsory minimum;
 - ⊗ (b) ⊗ the reasons for such withdrawals;
 - ⊗ (c) ⊗ the measures, if any, taken to replenish stocks;
 - ⊗ (d) ⊗ an appraisal, if possible, of the probable development of the situation with regard to the stocks while they remain below the compulsory minimum.



Article 11

Directive 68/414/EEC, as amended by the Directive listed in Annex I, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 12

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

Article 13

This Directive is addressed to the Member States.

Done at Brussels, [...]

*For the Council
The President
[...]*



ANNEX I

Part A

Repealed Directive with its amending act
(referred to in Article 11)

Council Directive 68/414/EEC (OJ L 308, 23.12.1968, p. 14)

Council Directive 98/93/EC (OJ L 358, 31.12.1998, p. 100)

Part B

List of time-limits for transposition into national law
(referred to in Article 11)

Directives	Time-limit for transposition
68/414/EEC	1 January 1971
98/93/EC	1 January 2000

ANNEX II

CORRELATION TABLE

Directive 68/414/EEC	This Directive
Article 1	Article 1
Article 2, first paragraph, introductory wording	Article 2, first subparagraph, introductory wording
Article 2, first paragraph, first indent	Article 2, first subparagraph, point (a)
Article 2, first paragraph, second indent	Article 2, first subparagraph, point (b)
Article 2, first paragraph, third indent	Article 2, first subparagraph, point (c)
Article 2, second paragraph	Article 2, second subparagraph
Article 3	Article 3
Article 4, first paragraph	Article 4(1)
Article 4, second paragraph	Article 4(2)
Article 4, third paragraph	Article 4(3)
Article 5, first paragraph	Article 5(1)
Article 5, second paragraph, introductory wording	Article 5(2), introductory wording
Article 5, second paragraph, first indent	Article 5(2)(a)
Article 5, second paragraph, second indent	Article 5(2)(b)
Article 5, second paragraph, third indent	Article 5(2)(c)
Article 5, third paragraph	Article 5(3)
Article 6(1)	Article 6(1)
Article 6(2), first subparagraph	Article 7(1), first subparagraph
Article 6(2), second subparagraph	Article 7(1), second subparagraph
Article 6(2), third subparagraph	Article 7(1), third subparagraph
Article 6(2), fourth subparagraph	Article 7(2), first subparagraph
Article 6(2), fifth subparagraph, introductory wording	Article 7(2), second subparagraph, introductory wording

Article 6(2), fifth subparagraph, first indent	Article 7(2), second subparagraph, point (a)
Article 6(2), fifth subparagraph, second indent	Article 7(2), second subparagraph, point (b)
Article 6(2), fifth subparagraph, third indent	Article 7(2), second subparagraph, point (c)
Article 6(2), fifth subparagraph, fourth indent	Article 7(2), second subparagraph, point (d)
Article 6(2), fifth subparagraph, fifth indent	Article 7(2), second subparagraph, point (e)
Article 6(2), sixth subparagraph, introductory wording	Article 7(3), introductory wording
Article 6(2), sixth subparagraph, first indent	Article 7(3)(a)
Article 6(2), sixth subparagraph, second indent	Article 7(3)(b)
Article 6(2), sixth subparagraph, third indent	Article 7(3)(c)
Article 6(2), sixth subparagraph, fourth indent	Article 7(3)(d)
Article 6(2), sixth subparagraph, fifth indent	Article 7(3)(e)
Article 6(3), first subparagraph, introductory wording	Article 6(2), introductory wording
Article 6(3), first subparagraph, first indent	Article 6(2)(a)
Article 6(3), first subparagraph, second indent	Article 6(2)(b)
Article 6(3), first subparagraph, third indent	Article 6(2)(c)
Article 6(3), first subparagraph, fourth indent	Article 6(2)(d)
Article 6(3), first subparagraph, fifth indent	Article 6(2)(e)
Article 6(3), first subparagraph, sixth indent	Article 6(2)(f)
Article 6(3), first subparagraph, seventh indent	Article 6(2)(g)
Article 6(3), second subparagraph, first sentence	Article 6(3), first subparagraph
Article 6(3), second subparagraph, second sentence	Article 6(3), second subparagraph
Article 6a	Article 8

Article 6b	Article 9
Article 7, first paragraph	Article 10(1)
Article 7, second paragraph	Article 10(2)
Article 7, third paragraph, introductory wording	Article 10(3), introductory wording
Article 7, third paragraph, first indent	Article 10(3)(a)
Article 7, third paragraph, second indent	Article 10(3)(b)
Article 7, third paragraph, third indent	Article 10(3)(c)
Article 8	_____
_____	Article 11
_____	Article 12
Article 9	Article 13
_____	Annex I
_____	Annex II