

**Proposal for a Directive of the European Parliament and of the Council concerning the alignment of measures with regard to security of supply for petroleum products**

(2002/C 331 E/40)

(Text with EEA relevance)

COM(2002) 488 final — 2002/0219(COD)

(Submitted by the Commission on 11 September 2002)

**EXPLANATORY MEMORANDUM**

**1. Completion of the internal market in energy**

**1.1. Internal market in petroleum products**

The market in petroleum products in the Community is more competitive than the market in other energy products. Nonetheless, a major effort still needs to be made to achieve a market in petroleum products which is genuinely open and integrated at EU level. The European Community therefore has to take the measures needed for this sector to participate effectively, together with other energy sources and more especially natural gas, in a genuine internal market in energy.

In its Communication of 4 October 2000 on oil supply and the Green Paper Towards a European strategy for the security of energy supply adopted in November 2000 <sup>(1)</sup>, the Commission noted that the consumer prices of petroleum products before duties and taxes vary considerably from one Member State to another. It suggested the lack of competition in the downstream oil sector <sup>(2)</sup> in some Member States was one of the main factors which could explain such price differences. The Commission therefore indicated that it was essential to encourage a more open and competitive downstream oil structure. It noted that for this purpose it was necessary to ensure the development of a genuine internal market for refined products (in the wholesale market) to make for ready, competitive supplies to all distributors, including from refineries in other Member States.

Greater opening up of the distribution sector for petroleum products, in particular to include new operators, and the existence of a genuine internal market in refined products should help to guarantee the conditions for healthy competition. This would enable the various kinds of consumers to be supplied on the most economic terms, even if the market remained exposed to risks due to the EU's high level of external dependence.

The European Union is making steady progress towards the completion of the internal market for gas and electricity and is in the process of creating the largest integrated and most open regional market in the world. The construction of the internal market in energy cannot however be conceived without integration between all energy sources. In particular, oil and gas are two products which are part of the same market: these products can be substituted for each other and compete with each other for some uses. Gas prices are also largely indexed to oil prices. These two energy sources are closely interlinked, in particular through non-essential gas supply contracts.

**1.2. The EU's external energy dependence and its consequences**

As stated in the Green Paper on security of energy supply, dependence on external supplies of oil, currently 75 %, is likely to exceed 85 % by 2020. The risks related to EU energy supply are increased by the fact that oil production is geographically concentrated in the Persian Gulf region, and that this concentration is likely to increase significantly over the next few decades <sup>(3)</sup>.

<sup>(1)</sup> COM(2000) 769.

<sup>(2)</sup> The refining and distribution of petroleum products.

<sup>(3)</sup> Currently 30 %, the share of world oil production from countries in the Persian Gulf region could rise to 40 % by 2020. 65 % of proven world reserves are situated in this region and 30 % of the oil currently consumed in the Community comes from there (while the USA is only 14 % dependent on the Gulf states).

The oil market is also highly inflexible in the short term, as regards both supply <sup>(1)</sup> and demand <sup>(2)</sup>. This structural character of the oil market explains the high volatility of oil prices. The slightest imbalance between supply and demand, or the expectation of such an imbalance, has a very profound impact on prices. This could be seen during the last oil crisis in 1999-2000, when marginal restrictions on supply caused crude oil prices to triple.

Any event which leads to a breakdown in supply, or which simply creates a risk of such a breakdown, is therefore likely to cause serious disruption to the European economy and to society. Even if the importance of oil to the economy has shrunk since the 1970s <sup>(3)</sup>, any increase in oil prices always has a marked effect on the EU economy. A rise of USD 10 dollars in the price per barrel increases the EU's oil bill for external supplies by about EUR 40 billion a year. Rises in oil prices affect consumers' purchasing power and add to business costs.

It can be estimated that an increase of USD 10 in the price per barrel leads to a loss of half a percentage point in terms of economic growth. However, this impact cannot be considered to be linear: sudden, unexpected and large-scale price changes are likely to damage the economy far more than this estimation would suggest. This impact also depends on the oil intensity of the economy, which varies from one Member State to another.

More generally, the predominant position of energy products, especially oil, in society means that energy dependence is a question of social equilibrium. The first two oil crises led to a sharp rise in unemployment. Upsetting the balance is therefore likely to produce a social backlash and a reaction from the business world.

### **1.3. *Insufficient harmonisation of the mechanisms to guarantee security of supply***

Current national laws with regard to the security of oil supplies are insufficiently harmonised and coordinated at EU level and can lead — and indeed have led — to distortions in the internal market in petroleum products.

Measures were introduced a long time ago by the Member States to mitigate the effects of any oil supply difficulties. They are to some extent backed up by Community legislation, which supports the building up of 'security stocks' by the Member States which can be put on the market in the event of a supply crisis. Directive 68/414/EEC <sup>(4)</sup>, as amended by Directive 98/93/EC <sup>(5)</sup>, requires Member States to keep stocks corresponding to a minimum of 90 days' consumption for three categories of petroleum products <sup>(6)</sup>. Moreover, Directive 73/238/EEC <sup>(7)</sup> requires the Member States to take all measures to provide the competent authorities with the powers to adopt crisis measures in the event of supply difficulties, i.e. to draw on security stocks and to restrict consumption.

<sup>(1)</sup> The only significant amount of flexibility as regards supply is due to unused production capacity, most of which is situated in the Persian Gulf region.

<sup>(2)</sup> Changes in the structure of demand (the continuing growth in the proportion accounted for by transport in oil consumption, the reduction in the proportion of oil used by industry, and the virtual disappearance of oil as a means of generating electricity) and the simultaneous reductions in the scope for substituting another fuel for oil in the short term make oil demand which is already very inelastic even more so.

<sup>(3)</sup> The oil intensity in the EU economy, i.e. the ratio between the volume of oil consumption and Gross Domestic Product, has been halved since 1973.

<sup>(4)</sup> OJ L 308, 23.12.1968, p. 14.

<sup>(5)</sup> OJ L 358, 31.12.1998, p. 100.

<sup>(6)</sup> A similar obligation but one calculated on the basis of States' imports exists in the framework of the Treaty establishing the International Energy Agency (minimum stocks of 90 days' imports).

<sup>(7)</sup> OJ L 228, 16.8.1973, p. 1.

It nevertheless has to be acknowledged that these directives are no longer suitable for the present internal market in energy. They were put in place at a time when the internal market in energy was in its infancy. The Community provisions in force do not guarantee sufficient harmonisation and coordination of the national measures which they back up, harmonisation and coordination nevertheless being necessary for the internal market to function properly: it is essential that the internal market should be based on sufficiently harmonised and coordinated rules regarding security of supply.

Two specific types of problem arise:

- those posed by the lack of harmonisation in the organisation of security stocks (see Section 2),
- those posed by the lack of harmonisation of the national laws on crisis measures and the lack of coordinated action between the Member States in event of a crisis (see Section 3).

## 2. Stockholding systems

### 2.1. *Fragmentation of the EU security stocks system*

The Member States currently have maximum freedom as regards the organisation of their security stock system. As a result, the EU security stocks system is divided into fifteen different national systems which differ considerably:

- Some Member States have set up ad hoc bodies responsible for holding all or part of the security stocks; other have not. In Member States which do not have such a body, the stockholding arrangements are entrusted entirely to industry in the framework of State-imposed obligations: industrial operators in that case keep the security stocks together with their own operational stocks <sup>(1)</sup>.
- The rules regarding the possibility for operators to fulfil their stockholding obligations by holding stocks in another Member State differ, with some Member States prohibiting this completely.

Against this background, the national provisions for the organisation of security stocks may in some cases have the effect of partitioning the markets in refined products at the national level and disadvantaging operators who are not national refiners <sup>(2)</sup>. It must be borne in mind that the independent distributors or importers of refined products need only limited operational stocks, whereas the refining companies would, in any event, hold significant stocks for operational purposes, even where there is no requirement to hold security stocks.

The fact that the national provisions on the organisation of security stocks may in some cases lead to national partitioning of the markets in refined products was demonstrated in the judgement of the Court of Justice of 25 October 2001 (Case C-398/98), which condemned the Greek security stocks system. According to the Court, the way in which the stockholding obligations were organised in Greece limited the ability of Greek distributors of petroleum products to obtain supplies from refineries situated in another Member State, which the Court found to be contrary to the principle of the free movement of goods.

This proposal for a Directive is not aimed at total harmonisation of the organisation of security stocks systems, but rather at aligning them by defining certain minimum requirements which must be complied with in view of the objectives of opening up the distribution sector for petroleum products and creating a genuine internal market in petroleum products.

<sup>(1)</sup> In a system based partially or fully on stocks held by industry, there is always confusion between operational stocks and security stocks: it is not possible to determine what level of stocks a particular operator would hold if there were no stockholding obligation.

<sup>(2)</sup> 'National refiner' means an operator with a refinery in the State concerned.

To this end, the proposal for a Directive contains two reforms:

- an obligation on the Member States to set up a national stockholding agency,
- reform of the provisions governing the holding of security stocks in another Member State.

## **2.2. Creation by all Member States of a national stockholding agency**

For non-refiners, the stockholding obligation is a particularly burdensome constraint and, in some cases, a barrier to entry. In many cases, the only economic solution at their disposal is to join forces with national refiners through the system of stocks 'held at disposal' (the system whereby refiners accept responsibility for the stockholding obligations of other operators). The creation of a central body for strategic stockholding purposes, associated with the right for non-refiners to fulfil their stockholding obligation via this body by making a fair payment, would therefore provide a way of improving the competitive functioning of the markets in refined products by making non-refiners less dependent on arrangements with national refiners.

It should also be noted that the European security stocks are also severely lacking in visibility, this being particularly striking compared with the USA's Strategic Petroleum Reserve <sup>(1)</sup>. It can even be said that the EU's security stocks are lacking in credibility in as much as stocks which are held in addition to operational stocks for specific security of supply purposes are very hard to identify and therefore cannot be measured. Moreover, some of the Member States have large-scale oil industry activities directed towards meeting non-national demand which could lead to the presence of particularly high operational stocks compared with domestic consumption. In this situation, the obligation to keep a volume of oil and petroleum products corresponding to 90 days' national consumption is not so relevant.

Consequently, the proposal for a Directive provides that, in each of the Member States, the ad hoc stockholding body will be responsible for covering at least one third of the security stock obligation. These bodies should themselves own the stocks and should not use systems which would allow them to resort to the industry's operational stocks. Their effective availability would then not be in any doubt and they would benefit from optimum credibility and visibility.

## **2.3. Holding of stocks in another Member State**

Current EU legislation recognises the right of Member States to prevent security stocks from being held in other Member States. Under current EU legislation, it is also necessary for there to be intergovernmental agreements for stocks to be able to be built up in the territory of a Member State on behalf of businesses, organisations or agencies established in another Member State. In view of this, the absence of an intergovernmental agreement may constitute a *de facto* prohibition for an operator to hold stock outside the national territory. Given that there is normally a large concentration of stocks at the refinery in any petroleum products supply chain, these restrictions may disadvantage a cross-border downstream supply chain as compared with a purely national chain.

In order to guarantee the proper functioning of the internal market, the new provisions must expressly provide that the Member States must take care to ensure that the measures they put into place with regard to security of stocks do not have the effect of disadvantaging supply from refineries situated in the other Member States as compared with supply from refineries in their own territory. In practical terms, the proposal for a Directive provides that the Member States must authorise operators to fulfil their stockholding obligations using stocks held in the Member States which are their sources of supply of refined products.

<sup>(1)</sup> The USA does not impose any stockholding obligation on its industry, but has separately set up state-owned stocks known as the 'Strategic Petroleum Reserve' (SPR). This currently consists of 545 million barrels which are kept in underground repositories (salt caverns) and which may be sold by decision of the US President. The volume of stocks held by the SPR is to be increased to 700 million barrels by 2004.

Furthermore, the conclusion of intergovernmental agreements as a prerequisite to stockholding for the purposes of security of supply in another Member State is no longer acceptable in the new internal market in energy. This mechanism must be replaced by a system of surveillance in order to ensure the identification, registration and monitoring of the stocks held in the territory of a Member State on behalf of companies, organisations or agencies established in another Member State.

### 3. Harmonisation and coordination of crisis measure arrangements

Current EU legislation does not guarantee unified, consolidated and coherent action between the Member States of the European Union in the event of a crisis in the oil markets. Such unity and coherence of action is however necessary to make sure that the internal market continues to operate properly in this type of situation.

Specifically, two types of problem arise:

- the existence in some Member States of legal obstacles to releasing stocks because their laws lay down excessively strict preconditions for triggering such action (point 3.1),
- the lack of an EU decision-making mechanism for deciding on unified, coherent and coordinated action at EU level (point 3.2).

#### 3.1. *Criteria for the use of security stocks*

Initially, security stocks were intended to enable Member States to cope for a certain period during an oil shortage due to disruptions to supply from producer countries. They were therefore a means of last resort. The use of security stocks was also supposed to be in addition to proactive, relatively drastic reductions in consumption (e.g. 'car-free Sundays').

In some Member States, the national legislation on security stocks lays down very strict conditions which must be met for the use of security stocks and which still reflect the original thinking about the use of stocks (as a means of last resort to deal with a physical shortage).

However, in view of the changes which have taken place in the oil markets <sup>(1)</sup>, it may be relevant to release security stocks in other circumstances. The perception by operators that there is a risk of a future possible physical disruption of supply, without it actually needing to happen, may lead to sudden price rises on the spot markets which are extremely harmful to the economy. This type of incident was seen during the Gulf War, during which, although there was no production shortage as compared with consumption <sup>(2)</sup>, prices shot up on the spot markets in view of the threat to production in Saudi Arabia. The release of oil stocks in this kind of situation would help to offset panic buying, re-establish smoother operation of the market and hence limit price volatility and its disastrous effects on the economy.

The unity and coherence of EU action in such circumstances are absolutely essential to keep the internal market functioning properly. It is therefore necessary to ensure that, in a situation in which there is no physical shortage but sharp price rises are being generated by the expectation of a risk of a physical disruption, all the Member States are able gradually to release their security stocks. This is not the case at the moment since some national arrangements are designed to operate only if there is a physical shortage and therefore lay down restrictive conditions for the release of stocks. EU legislation must therefore ensure that national arrangements are designed in such a way that stocks can be released if there is a general perception of a risk of a physical disruption which is causing a large degree of volatility. This is an essential precondition to allow for the unity and coherence of EU action and thus to keep the internal market operating smoothly.

<sup>(1)</sup> In particular, the central role of the spot markets in price formation: on these markets, the price of oil varies from hour to hour depending on operators' perceptions and expectations.

<sup>(2)</sup> The loss of volumes from Iraq and Kuwait was made up for by using production capacity not used before, mainly in Saudi Arabia.

Oil stocks will be released in two different ways if there is a perception of a risk of disruption depending on whether they are held by ad hoc stockholding bodies or by downstream oil operators in the framework of stockholding obligations.

- Releasing stocks held by an ad hoc stockholding body would mean making them available to downstream oil operators, at the market price and at a specific rate (x million barrels per day);
- Releasing stocks held by downstream oil operators as part of stockholding obligations would involve gradually reducing stockholding obligations.

The effect of releasing stocks will be similar in both cases. Downstream oil operators will be able to meet their need for 'discretionary stocks', i.e. stocks which are freely available to them (the need for such discretionary stocks would be generated by the perception that there is a risk of physical disruption to supply). They will be able either to buy stocks held by the agency or keep their own security stocks which until then were 'frozen' under the stockholding obligation but will then have been 'released'. The tendency for operators to buy oil on the spot markets at any price will be curbed, and speculation about the risk of disruption to supply will be dampen. The release of stocks in anticipation of the possibility of physical disruption makes sense given that the oil market operates on the basis of expectations.

Releasing stocks obviously only makes sense if it does not alter the production policy of the producer countries in a way which would detract from the benefit of using the stocks. This is why security of stocks can never be regarded as a way of standing up to the producer countries. On the contrary, stocks should be used in a coordinated manner with the producer countries. The European Community must therefore develop, institutionalise and give substance to the energy dialogue between producer and consumer countries.

This concept for the use of stocks takes account of the changes which have taken place in the oil markets during the last 30 years. To this end, the proposal for a Directive provides that the Member States must have powers to use security stocks in two types of situation:

- a physical disruption of oil supply: this is the intervention criterion behind the original idea for the use of security stocks;
- a general perception of a risk of physical disruption. This concerns situations where operators' perception of the risk of a potential future disruption is causing unacceptable price volatility on the spot markets.

Aligning the national provisions on the basis of these principles will, in the event of a crisis, help to ensure the solidarity and unity of action needed for the proper functioning of the internal market by making sure that some Member States are not prevented from releasing stocks because of a legislative and administrative system which does not allow for it.

In this situation, with stocks being required to play a fundamental part in guaranteeing a regular oil supply at reasonable prices, the present minimum level of security stocks corresponding to 90 days' internal consumption should be gradually increased to 120 days' internal consumption. The average level of Community stocks is currently about 114 days' internal consumption. It varies from country to country between the Community minimum of 90 days' consumption and 214 days' consumption.

In this respect, account will have to be taken of the situation in the candidate countries for EU membership. Under the accession negotiations, transitional periods have already been agreed with most of these countries until 31 December 2009, to enable them to gradually build up security stocks equivalent to 90 days' consumption. The Commission expects the new Member States to adhere to the principle of building up security stocks of a volume equivalent to 120 days' consumption. It nevertheless recognises that, in duly justified cases, it will be necessary to allow the gradual introduction of new provisions aimed at boosting oil stocks beyond the transitional periods already agreed upon.

### 3.2. A Community intervention mechanism

No mechanism exists at the moment to enable the European Community to decide how to use the security stocks held by the Member States and to coordinate their use. Current Community legislation, which provides only for a simple procedure of mutual consultation between experts from the Member States, under the direction of the Commission, therefore does not guarantee the unity of action and solidarity between the Member States necessary for the proper functioning of the internal market in oil. Measures taken individually by each of the Member States are likely to upset the internal market.

#### 3.2.1. *Inadequacy of the International Energy Agency framework*

Since the oil market operates worldwide, the European Union will always have to ensure that it works together with the other major consumer countries. The International Energy Agency (IEA), to which all Member States of the European Union and the other major consumer countries (in particular the USA, Japan, and Korea) belong, could serve as a framework for this necessary coordination. However, the existence of the IEA does not in any way obviate the need for an EU decision-making process: the specific character of the European Union and the development of the internal market make it essential to put an EU decision-making process into place.

The existing framework of the IEA also has a number of major weaknesses. Since the early 1980s, the IEA has taken the view that the crisis mechanism provided for in its 1974 founding Treaty was not properly suited to take account of changes in the oil market. The IEA Governing Board introduced another crisis mechanism, CERM (Coordinated Emergency Response Measures), to enable security stocks to be used more easily. However, unanimity of the Governing Board, made up of representatives of the 26 participating States, is needed for a CERM to be triggered, so the lack of any clear criterion for this mechanism to be deployed and the different approaches of the participating States to intervention mean there are obvious risks of blockages occurring. Furthermore, even if a CERM is triggered, the broad discretion left to the States as to how they can make a contribution to the measure means there is a flagrant lack of unity of action.

In view of the political nature of any oil crisis, it is important to point out that the IEA is a technical organisation and has only limited authority. The adoption of an EU decision is clearly an act whose political and legal implications go far beyond those of an IEA decision.

Nevertheless, in the event of a crisis or threat of a crisis likely to influence economic growth, priority should be given to common action involving the greatest possible number of consumer countries, including in the framework of the IEA. This will help to maximise the positive effects of Community action.

While Community action needs to be coordinated with that of the other major consumer countries, a Community decision-making process is therefore necessary to guarantee unified, coordinated and coherent action throughout the whole of the European Union so that it acts in a unified and credible manner. Both the use of security stocks and measures to reduce consumption require a Community decision-making mechanism to coordinate them. These measures cannot, in an internal market, be taken by each Member State acting independently of each other.

#### 3.2.2. *The Community mechanism proposed*

The proposal for a Directive sets up a genuine decision-making mechanism under which the European Union will be able to define the action, in particular as regard the use of stocks, which it plans to take in the event of a crisis. Specifically, if the need urgently arises due to changes in the oil market, the European Commission will therefore have powers to take the emergency measures required, taking account of the general aims of the mechanisms for the use of security stocks. It will be assisted by a Committee made up of representatives of the Member States and chaired by a Commission representative.

The mechanism will be of the 'regulatory procedure' type, as laid down in Article 5 of Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission. The Commission representative will submit to the Committee a draft of the measures to be taken. The Committee will express its opinion on the draft within a period laid down by the Chairman according to the urgency of the particular situation. If the measures proposed do not reflect the Committee's opinion, or if the Committee has not expressed an opinion, the Commission will immediately submit a proposal on the measures to be taken to the Council.

This mechanism for coordinated action will contribute to the smooth operation of the internal market in oil and will also help to make the crisis measures more effective.

### 3.2.3. *Potential activation threshold for the mechanism*

The Commission will be able to adopt the appropriate measures in the event of a general perception that supply is likely to be disrupted or if there is an actual disruption to supply.

The proposal for a Directive provides for a potential activation threshold in the event of physical disruption. Measures may be taken to draw on stocks or restrict consumption.

In the event of a general perception of a risk of disruption of supply, notably as a result of an external shock, in view of the aim of protecting economic growth, employment and the most vulnerable social and professional groups from high levels of fluctuation in oil prices, the 'price' factor will be essential for defining an alert threshold which, if exceeded, will entail Community action.

This alert threshold is attained when the price of crude oil reached on the spot markets is such that, if the price stayed at that level for a period of twelve months, the European Union's external oil bill during the next twelve months would rise by the equivalent of more than half a percentage point of EU GDP for the preceding year. The reference point for calculating the scale of the increase is the average external oil bill over the last five years. By way of example, in the present situation (2002), the price of a barrel of Brent would have to exceed USD 30 <sup>(1)</sup> for the threshold to be attained.

Exceeding this alert threshold is therefore a prerequisite for releasing stocks, but it is not sufficient in itself for taking that decision, in the event of a general perception of a risk of disruption of supply exceeding the threshold initiates a phase in which the Commission examines all the factors contributing to the crisis. Any decision about the advisability of, or need for, action will have to be taken in the light of all these factors.

## **4. Technical expertise for implementation of the measures**

The creation of the internal energy market is a gradual and very complex process as it involves very technical rules. It is therefore important to ensure that the new legislative framework is applied effectively, efficiently and uniformly by all market players under conditions which will guarantee competitiveness.

The various phases of the development of the internal market for gas and electricity were therefore accompanied by measures which enabled national regulatory authorities, Member States, market operators and the Commission to be called together in the context of technical working groups. These working meetings consider what are the most appropriate measures to take to open up the gas and electricity markets and regularly submit very technical recommendations to the Commission.

Similarly, the new EU arrangements to be put in place to harmonise the measures to safeguard oil supplies, in the context of the internal market in energy, will involve complex, technical tasks. These will in particular concern monitoring the development of international markets and assessing their impact on the safety and security of supplies. There will have to be continuous assessment of the effectiveness of the measures taken. In this context, it will be necessary to monitor the level of oil stocks held by the Member States. For these tasks to be carried out, objective, reliable and comparable data will have to be available.

Should an energy crisis occur and the European Commission takes and coordinates measures to release oil stocks, the effects of this action on the energy market and the economy as a whole will have to be considered.

---

<sup>(1)</sup> Corresponding to an OPEC basket price of between USD 28 and USD 29 a barrel.

It is therefore essential to create, within the Commission, a European observation system for oil and gas supply which will gather the necessary expertise in order to respond to the highly technical issues involved in these tasks. Under the Commission's direction, it will provide technical and scientific assistance and a high level of expertise to assist in the proper application of EU legislation in the field of oil and gas supply.

This European observation system will be managed by the Commission, which should invite representatives of the Member States to the meetings as well as representatives of the sectors concerned.

## 5. Conclusion

The aim of this proposal for a Directive is to encourage greater harmonisation and coordination of national measures regarding security of oil supplies, thereby helping to ensure that the internal market functions properly. It aims to provide the European Union with the means to act in a unified, credible manner when oil supply difficulties are disrupting, or threaten to disrupt, the functioning of the economy and society.

These measures will, in the event of a crisis, provide the solidarity and the joint Community action necessary in order to respond effectively to uncertainties in the energy market and to promote in this context the proper functioning of the internal market. They are necessary to ensure the opening up of the market in petroleum products to non-refiners, to avoid cross-border downstream supply chains from being disadvantaged as compared with purely national chains, and thus to create a genuine internal market in refined products. Article 95 of the Treaty therefore represents the appropriate legal basis for the proposal for a Directive.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF  
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European  
Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social  
Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article  
251 of the Treaty,

Whereas:

- (1) The completion of the internal energy market must be accompanied by the necessary coordination of measures to guarantee the security of the Community's external oil supplies. The internal market is based on the need for solidarity between the Member States, which can be seen more particularly in the essential energy supply sectors of oil and gas.
- (2) Crude oil and petroleum products occupy a central position in the Community's supply of energy products and play an essential part in the functioning of the

economy and society, in particular in view of their role in the field of transport. Oil prices are also used as a reference for the establishment of natural gas prices.

- (3) Current national laws with regard to the security of oil supplies are insufficiently harmonised and coordinated at Community level can lead — and indeed have led — to distortions in the internal market in petroleum products. Greater harmonisation and coordination of the national measures relating to the security of oil supplies are therefore necessary to ensure the proper functioning of the internal market.
- (4) In order to ensure supply on the most economic terms for consumers, it is necessary to promote a more open and competitive structure in the petroleum product markets. This involves developing a genuine internal market in petroleum products which enables all distributors to be supplied on a straightforward and competitive basis, including those which are not national refiners.
- (5) The security stocks systems differ considerably from one Member State to another. The national provisions may have the effect of partitioning the petroleum products markets nationally and disadvantaging operators which are not national refiners. It is therefore necessary to take measures to align, at least partially, the stocks systems and to ensure that the organisation of these stocks does not adversely affect the proper functioning of the internal market.

- (6) For non-refiners, a stockholding obligation is a particularly burdensome constraint and, in some cases, a barrier to entry. It is therefore necessary, to ensure the opening up of the markets in petroleum products, to guarantee these operators the possibility of complying with their obligations otherwise than by themselves holding the security stocks or concluding agreements with the national refiners.
- (7) To this end also, it is appropriate to harmonise the national provisions relating to the management of stocks by setting up a public body, as exists in certain Member States, responsible for managing at least one-third of the stockholding obligations in accordance with the principles relating to the opening-up of the national market.
- (8) Since restricting provisions concerning the holding of security stocks outside of the national territory may disadvantage a cross-border petroleum products supply chain as compared with a purely national chain, it is necessary, to ensure the proper functioning of the internal market, to allow and provide a basis for stocks to be built up outside of the national territory.
- (9) As stated in the Green Paper Towards a European strategy for security of energy supply <sup>(1)</sup>, the Community's external oil dependence and the geographical concentration of production capacities are substantial and are likely to increase. This situation creates major risks for the security of oil supplies.
- (10) Any difficulty which substantially reduces supplies of petroleum products or substantially increases their price is likely to cause serious damage to the Community economy. It is therefore essential to be able to make good, or at least mitigate, the damage caused by any such difficulties. To this end, it is necessary to build up security stocks which can be used in a coordinated manner in such circumstances at Community level.
- (11) Apart from the release onto the market of security stocks built up to deal with a crisis situation, the measures intended to mitigate the effects of difficulties related to the supply of crude oil and petroleum products also include measures to curb consumption. It is essential to provide for appropriate procedures and instruments to ensure the rapid, coordinated and unified implementation of these two types of measures.
- (12) To this end, all the Member States must have the necessary powers to take the relevant measures, where appropriate and without delay, including in situations in which there is not an actual physical shortage, but sharp price rises have come about as a result of the expectation of the risk of a physical disruption.
- (13) In the event of difficulties relating to oil supply, it is necessary, in order to ensure the proper functioning of the internal market, to make sure that there is solidarity and uniformity of action in the Community, taking account of the need to coordinate such action with that of other major consumer countries.
- (14) A European observation system for oil and gas supplies should be set up within the Commission in order to assist in designing and properly applying Community legislation regarding oil supplies, monitoring the application of this legislation and helping to evaluate the effectiveness of the measures in force, as well as monitoring more closely the changes with regard to the security of oil supplies in the framework of the internal market.
- (15) The measures required for the implementation of this Directive need to be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of the implementing powers conferred on the Commission <sup>(2)</sup>.
- (16) In accordance with the principles of subsidiarity and proportionality, as referred to in Article 5 of the Treaty, the aims of the proposed action, namely the creation of a fully operational internal market in petroleum products based on free competition and security of supply for petroleum products, cannot be achieved by the Member States acting independently of each other and therefore can best be achieved at the Community level. This Directive does not go beyond what is necessary for that purpose,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

The aim of this Directive is to ensure the proper functioning of the internal market in petroleum products. For this purpose, it provides for the alignment of the provisions of the Member States with regard to oil stocks and crisis measures and coordinated action between the Member States in the event of a supply crisis.

#### *Article 2*

1. Member States shall take all necessary measures to maintain at all times, subject to the provisions of Article 6, a level of stocks of petroleum products equivalent, for each of the categories of petroleum products, to at least 90 days' average daily internal consumption in the preceding calendar year.

<sup>(1)</sup> COM(2000) 769.

<sup>(2)</sup> OJ L 184, 17.7.1999, p. 23.

2. The level of minimum stocks referred to in paragraph 1 shall be increased to 120 days as soon as possible following the publication of this Directive and no later than 1 January 2007.

3. Member States shall ensure the availability and accessibility of the stocks held in accordance with paragraphs 1 and 2, in order to be able to take, without delay, appropriate measures for their use in accordance with Article 6.

4. Member States shall send the Commission, no later than one year following the entry into force of this Directive and then every six months until the level of stocks defined in paragraph 2 has been achieved, a detailed report on the measures taken or to be taken to achieve this level of stocks.

5. The stocks referred to in paragraphs 1 and 2 shall be built up and maintained by Member States within their territory or in the territory of another Member State

#### Article 3

1. The Member States shall set up a public oil stockholding body. They shall take all necessary measures to ensure that, as soon as possible following the entry into force of this Directive and no later than 1 January 2007, the stockholding body owns, for each of the categories of product, stocks representing at least one third of the obligations set out in Article 2(1) and (2).

2. Where a Member State imposes stockholding obligations on operators in the market, the public stockholding body shall assume the stockholding obligations of non-refiners which so wish, subject to a payment which shall not exceed the costs of the services rendered.

3. Two or more Member States may decide to use the same stockholding body or agency. In such a case, they are jointly responsible for complying with the requirements of this Directive.

#### Article 4

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

2. Member States shall ensure that their arrangements do not disadvantage supplies from refineries located in other Member States as compared with supplies from refineries located in their own territory. They shall in particular authorise any undertaking which has a stockholding obligation and which obtains its supplies of refined products from one or more other Member States to fulfil this obligation through stocks held in the Member States concerned.

#### Article 5

1. In the event of stocks being built up, for the purposes of the application of this Directive, in the territory of a Member State on behalf of undertakings, organisations or agencies established in another Member State, the Member State in the territory of which such stocks are stored may not in any circumstances object to their being transferred to the other Member States on behalf of which the stocks are held.

2. Member States shall put in place a system of verification to ensure the identification, registration and monitoring of the stocks held in their territory on behalf of undertakings, organisations or agencies established in another Member State.

#### Article 6

1. Member States shall provide their competent authorities with powers to enable them to use the stocks maintained under the obligation referred to in Article 2(1) and (2) in the event of difficulties relating to the functioning of the internal market in petroleum products due to supply problems, in accordance with Articles 7 and 8.

2. Apart from the cases referred to in Articles 7 and 8, Member States shall refrain from drawing on stocks where this would have the effect of reducing them to below the minimum compulsory level, except in cases of local supply difficulties, after having informed the Commission, or to comply with their international obligations.

#### Article 7

1. In the event of a disruption of oil supply which may seriously disrupt the functioning of the economy and the internal market in petroleum products, the Commission may, by taking a decision in accordance with the procedure provided for in Article 9(2), require the Member States to:

- (a) make the security stocks referred to in Article 2(1) and (2) gradually available,
- (b) restrict consumption in a specific or overall manner.

The measures to be taken by the Member States must restrict competition as little as possible. The Commission shall ensure that this principle is complied with throughout the period of application of the measures.

2. The Commission may take measures of the type referred to in paragraph 1 when there is a 7 % disruption of the normal level of crude oil supply at world level.

3. The Commission decision may lay down specific arrangements and conditions for the implementation of the measures to be taken by the Member States.

#### Article 8

1. In the event of a general perception of a risk of disruption of oil supply, notably in the context of an external shock, giving rise to a high level of volatility in the oil markets which may seriously disrupt the functioning of the economy and the internal market in petroleum products, the Commission may, by taking a decision in accordance with the procedure provided for in Article 9(2), require the Member States to make the security stocks referred to in Article 2(1) and (2) gradually available taking into account international agreements concluded by the Member States and decisions taken in the context of such agreements.

The measures to be taken by the Member States must restrict competition as little as possible. The Commission shall ensure that this principle is complied with throughout the period of application of the measures.

2. The Commission may examine the need for measures of the type referred to in paragraph 1 when the price of crude oil on the spot markets is such that, were the price maintained at that level for 12 months, the Community's external oil bill during the next 12 months would be increased by the equivalent of more than 0,5 % of the European Union's gross domestic product as compared with the average external oil bill during the previous five years.

3. In the context of the examination provided for in paragraph 2, the Commission shall take account of all the elements necessary for an evaluation of the Member States' supply conditions. It shall take into consideration in particular the nature, duration and scale of the elements giving rise to the situation referred to in paragraph 1.

4. The Commission decision may lay down specific arrangements and conditions for the implementation of the measures to be taken by the Member States.

#### Article 9

1. The Commission shall be assisted by a Committee made up of representatives of the Member States and chaired by the Commission representative.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, in accordance with the provisions of Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be one week.

3. The Committee shall adopt its internal rules of procedure.

#### Article 10

1. Member States shall adopt all the provisions and put in place all the mechanisms necessary to ensure the identification and supervision of stocks.

They shall determine a system of penalties applicable in case of infringements of the national provisions adopted pursuant to this Directive and shall take all necessary measures to ensure the implementation of those provisions. The penalties provided for must be effective, proportionate and dissuasive.

2. Member States shall have intervention plans which can be applied in the event of a disruption of oil supply or the general perception of a risk of disruption of oil supply which is giving rise to a high level of volatility in the oil markets. They shall designate the bodies responsible for implementing the measures to be taken pursuant to this Directive.

#### Article 11

1. The Commission shall take all the measures necessary for the application of this Directive. It shall in particular lay down:

- (a) a definition of the categories of products referred to in Articles 2 and 3,
- (b) the arrangements for calculating internal consumption and the stockholding obligations referred to in Article 2, including taking indigenous oil production in the Member States into account in these calculations,
- (c) the arrangements for the transmission to the Commission of statistical summaries for surveillance of the Member States' implementation of the obligations under this Directive.

2. The Commission shall adopt the measures referred to in paragraph 1 in accordance with the procedure laid down in Article 9(2).

#### Article 12

1. Not later than 1 January 2004, the Commission shall adopt the necessary measures for setting up a European observation system for oil and gas supply to assist in preparing and ensuring the proper implementation of Community legislation in the field of oil supply, to monitor its application and to assist in evaluating the effectiveness of the measures in force and their effects on the functioning of the internal market in petroleum products. The Commission shall ensure that adequate resources are made available to permit effective monitoring of the arrangements provided for in this Directive.

2. The European observation system for oil and gas supply shall be managed by the Commission, which will invite representatives of the Member States and the sectors concerned to meetings. It shall provide the Commission with the technical assistance necessary for the formulation and evaluation of measures taken pursuant to this Directive, and shall contribute to a better understanding of the development of the internal market and the international oil markets and the factors driving these markets.

3. The European observation system for oil and gas supply shall carry out the following tasks with regard to oil:

- (a) Monitor the functioning of the internal market and the international oil markets;
- (b) Contribute to the setting up of a system for the physical monitoring of the infrastructures inside and outside of the Community which contribute to the security of oil supply;
- (c) Monitor the security of oil supply and the procedures intended to guarantee security of oil supplies in crisis situations;
- (d) Study the development of effective security measures in the oil sector;
- (e) Monitor the level of security stocks of oil and petroleum products and the procedures for their use, and the implementation of measures to reduce consumption;
- (f) Create objective, reliable and comparable databases to fulfil its tasks.

#### *Article 13*

Member States shall adopt the laws, regulations and administrative provisions necessary to conform with this Directive no later than 1 January 2004 and, as regards Article 2(2) and Article 3, no later than 1 January 2007. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

#### *Article 14*

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

#### *Article 15*

This Directive is addressed to the Member States.

---