

EXPLANATORY NOTE Secretariat's Proposal

on the implementation of the Oil Stocks Directive in the Energy Community

1. Background

Oil is one of the most important energy sources globally. Its demand continues to rise also in all Contracting Parties of the Energy Community. While oil consumption is increasing, the security of oil supply is of general concern to the region due to the combination of high import dependency, a limited number of domestic producers, a lack of interconnections that would facilitate oil flows as well as insufficient storage capacities. In order to cope with an unexpected market oil disruption, the Energy Community must have a robust and reliable system in place which is able to react immediately and credibly in the event of a supply crisis.

2. Steps so far in the Energy Community context

At several previous occasions, the Contracting Parties and Participants have expressed political support to the development of an oil dimension within the Energy Community in general, and to adopting acquis on emergency oil stocks in particular. The possible extension of the Treaty to the oil sector was first discussed at the PHLG in March 2008¹ on the basis of a concept paper and a preliminary discussion that took place at the 4th Ministerial Council in June 2008².

The Decision for the expansion of the scope of the Treaty to oil was taken by the 5th Ministerial Council in December 2008³. Based on this Decision (No. 2008/03/MC – EnC), the notion of “network energy” as defined in Article 2 of the Treaty is to be understood so as to include the oil sector. This comprises supply, trade, processing and transmission of crude oil and petroleum products falling within the scope of Council Directive 2006/67/EC and the related pipe-lines, storage, refineries and import export facilities.

Subsequently to the decision taken within the Energy Community, the European Council saw the need to review EU oil stocks mechanism, with special reference to the availability of oil in the event of a crisis, stressing complementarities with the crisis mechanism of the International Energy Agency (IEA). The European Union adopted the new Council Directive 2009/119/EC in September 2009. That Directive replaced and completed the existing legislation in the field of emergency stocks of oil.

¹ [8th PHLG Conclusions - Item 22](#)

² [4th MC - Working Paper](#)

³ [Decision No. 2008/03/MC - EnC](#)

A study on the “Emergency Oil Stocks in the Energy Community Level”⁴ (Study) commissioned by the Secretariat in September 2010 and finalized in April 2011 found that all Contracting Parties need to enhance their crude oil and petroleum product stockholding systems in order to be in compliance with Council Directive 2009/119/EC. They will also have to adjust their legal and regulatory framework to comply with the Directive. The study recommended that most of the Contracting Parties should be able to become compliant with Directive 2009/119/EC by 2020 through the adoption of a phased programme of changes and investment.

The PHLG in June 2010⁵ decided that following the conclusions and recommendations of the Study, it is necessary to propose to the Ministerial Council on incorporating Directive 2009/119/EC in the Energy Community acquis in 2011⁶.

The oil stocks workshops organised in 2010⁷ and 2011⁸ have confirmed the Contracting Parties’ position that the oil security as part of security of supply is the main priority in the oil sector. Moreover, considerations how to develop a concrete approach for meeting the requirements of the relevant acquis once adopted by Ministerial Council have been discussed in details at these events.

Several Oil Fora^{9,10,11} have reinforced the Contracting Parties’ willingness to gradually start transposing Directive 2009/119/EC. Furthermore, the Fora supported a regional perspective on the security of oil supply in terms of building significant new joint storage capacities.

At the 19th PHLG meeting¹² in March 2011, the European Commission presented its views on the planned implementation of Directive 2009/119/EC and suggested to postpone a binding decision. The 9th Ministerial Council Meeting¹³ held in October 2011 in Moldova indicated explicitly as a priority the inclusion of the oil stocks Directive in the Energy Community in 2012.

3. Secretariat's proposal

By Decision No. 2008/03/MC–EnC concerning the implementation to the oil sector of certain provisions of the Treaty and the creation of an Energy Community Oil Forum, the Ministerial Council, based on Article 100(iii) of the Treaty, extended the scope of the Treaty and the notion of “Network Energy” to oil, as further defined in said Decision. Article 1(3) of the Decision reads “*For the implementation of Title II of the Treaty in relation with the oil sector, the relevant elements of the acquis communautaire and their timetable for implementation shall be defined pursuant Article 100 (ii) of the Treaty by 30 June 2010*”. As a consequence, the proposed Decision on incorporating the Oil Stocks Directive in the Energy Community may be based on Articles 100(ii) EnC read in conjunction with Article 1(3) of Decision No. 2008/03/MC–EnC, as well as Article 24 EnC for the necessary adaptations.

The Secretariat, taking note of the necessity for adequate adaptation of Directive 2009/119/EC to the needs of the Energy Community and to its institutional framework, considers appropriate that the draft decision envisages such a possibility within certain time frame upon adequate analysis.

⁴ [Study - Emergency Oil Stocks in the EnC Level](#)

⁵ [17th PHLG Conclusions - Item 13](#)

⁶ [Council Directive 2009/119/EC](#)

⁷ [Oil Stocks Workshop - 27/28 May 2010](#)

⁸ [Oil Stocks Workshop - 1 March 2011](#)

⁹ [1st Oil Forum - 24/25 September 2009](#)

¹⁰ [2nd Oil Forum - 8/9 November 2010](#)

¹¹ [3rd Oil Forum - 27/28 October 2011](#)

¹² [19th PHLG Conclusions - Item 19](#)

¹³ [9th MC Conclusions - Item 22](#)

Based on this, the Secretariat proposes that the incorporation of Directive 2009/119/EC into the Energy Community acquis could be in line with the Annex to this Explanatory Note.

DECISION N° 2012/.../MC-EnC

of 18 October 2012

on the implementation of Council Directive 2009/119/EC in the Energy Community

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Articles 100 (ii) thereof,

Having regard to Ministerial Council Decision No. 2008/03/MC-EnC concerning the implementation to the oil sector of certain provisions of the Treaty and the creation of an Energy Community Oil Forum ("the Decision"), and in particular Article 1(3) thereof,

Whereas the Ministerial Council, at its meeting of 11 December 2008, took the principle Decision to extend the scope of the Treaty to the oil sector, and to include the oil sector in the notion of "Network Energy" under Article 2 of the Treaty,

Whereas a continuous and undisrupted supply of crude oil and petroleum products is of highest importance for the societies and economies in the Contracting Parties,

Whereas the enhancement of security of supply through oil stocks availability will enable continuous provision of crucial supplies and promote solidarity between the Contracting Parties,

Whereas the changing global energy situation and new challenges in oil market require the strengthening and streamlining of the emergency response system by providing for suitable mechanisms to deal with physical oil disruption,

Whereas the legal framework in the EU in this area consists of 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 ("the Directive"),

Whereas the Ministerial Council, at its meeting of 6 October 2011, targeted incorporation of the Directive in 2012,

Taking into account the discussions at the meetings of the Permanent High Level Group of 23 March 2012 and 21 June 2012,

HAS ADOPTED THIS DECISION:

Article 1

Each Contracting Party shall implement 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 not later than 01.01.2020.

Article 2

The European Commission is invited to propose in due time relevant measures, adapting the Directive in line with the objective needs of the implementation process and the institutional framework of the Energy Community.

Article 3

The Secretariat shall monitor and review the preparation of the implementation of Directive 2009/119/EC in the Contracting Parties and shall submit an annual progress report to the Ministerial Council, the first of which shall be submitted in 2013.

Article 4

This Decision enters into force upon its adoption and is addressed to the Contracting Parties.

For the Ministerial Council:

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Presidency

Podgorica, 18 October 2012