

**PROPOSAL FOR A
GENERAL POLICY GUIDELINE ROADMAP
ON IMPLEMENTATION OF THE CERTAIN DEADLINES
OF COUNCIL DIRECTIVE 2009/119/EC IN THE ENERGY COMMUNITY**

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

Having regard to Article 47 of the Treaty establishing the Energy Community ("the Treaty") and item VI of the Procedural Act 2006/01/MC-EnC on the Adoption of Internal of the Rules of Procedure of the Ministerial Council of the Energy Community;

Having regard to Ministerial Council Decision No. 2008/03/MC-EnC of 11 December 2008 concerning the implementation to the oil sector of certain provisions of the Treaty;

Having regard to Ministerial Council Decision 2012/03/MC-EnC of 19 October 2012 on the implementation of Council Directive 2009/119/EC in the Energy Community;

Whereas Article 1 of Ministerial Council Decision 2012/03/MC-EnC obliges the Contracting Parties to implement Council Directive 2009/119/EC of 14 September 2009 by 1 January 2023;

Whereas the implementation of Council Directive 2009/119/EC of 14 September 2009 is a process that will require designing and establishing the legislative basis, creating the necessary data reporting system and making operational a system for maintaining ready, and releasing when necessary, emergency oil stocks;

Whereas after the adoption of Directive 2009/119/EC, the Contracting Parties were expected to bring into force the laws, regulations and administrative provisions necessary for compliance;

Whereas the progress in transposing the Directive varies substantially across the Contracting Parties;

Whereas the investment and coordination needed to ensure that Contracting Parties can comply with the overall deadline by 1st January 2023 require a structure for a gradual implementation as it is envisaged in Article 2 of Ministerial Council Decision 2012/03/MC-EnC;

Taking note of the proposals of the Secretariat as endorsed by the Permanent High Level Group of the Energy Community on 22th of June 2016;

THE MINISTERIAL COUNCIL ADOPTS

this General Policy Guideline which represent the political consensus reached in the Ministerial Council concerning a Roadmap on Implementation of the Certain Deadlines of the Council Directive 2009/119/EC in the Energy Community:

1. The Contracting Parties are invited to communicate to the Secretariat by 31 March 2017 the text of the main provisions of the draft national law which they intend to adopt to transpose Directive 2009/119/EC and the Action Plan on the Establishment of Oil Stocks.
2. All Contracting Parties are invited bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2017.
3. For the purpose of fulfilling the data reporting requirements under Annex I – IV of the Directive, all Contracting Parties are invited:
 - Begin regular monthly participation in the submissions of the JODI Oil Questionnaire before 1 January 2018.
 - Communicate to the Secretariat by 31 March 2018 the proposed legal basis and Action Plan for collecting all oil data necessary to submit the Monthly Oil Statistics (MOS) Questionnaire.

Done in Sarajevo, on 14 October 2016

For the Ministerial Council

.....
Presidency

EXPLANATORY NOTE

1. Background information

In October 2012, the 10th Ministerial Council of the Energy Community adopted the Council Directive 2009/119/EC (Decision D/2012/03/MC-EnC) on imposing an obligation to maintain minimum stocks of crude oil and/or petroleum products by 1 January 2023.

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

After the adoption of Directive 2009/119/EC, the Contracting Parties were expected to bring into force the laws, regulations and administrative provisions necessary for compliance.

2. Directive 2009/119/EC – approach and key provisions to be transposed

1.1 Approach:

Council Directive 2009/119/EC of 14 September 2009 imposes an obligation on Member States to maintain at least a minimum level of emergency stocks of crude oil and/or petroleum products and to put in place the necessary procedural means to deal with a serious shortage in oil supply.

Emergency oil stocks are to be released on the market only in the case of disruption to ordinary oil supply due to extraordinary circumstances.

The Directive defines the main principles to be respected by Member States when adopting national legislation relevant for emergency oil stockholding and oil supply security, however it is left up to each Member State to decide how these principles are to be transposed given their particular national circumstances.

3. Key provisions

Key provisions of the Directive to be transposed into national legislation include the following:

Stockholding obligation (amount):

- 90 days of net imports or 61 days of consumption – whichever is greater in any given reference year (thus both methodologies must be calculated each calendar year)

Calculations needed:

- Obligation based on previous year's data (net imports/consumption) as set out in Annex I (import) and Annex II (consumption) of the Directive
- Monthly compliance with obligation (stock levels) as set out in Annex III of the Directive

Availability of stocks:

- Availability and physical accessibility guaranteed at all times
- Arrangements for the identification, accounting and control of the stocks should be established (reporting, physical inspections, audits, keeping the documents)
- Prohibition of taking any measure hindering the transfer, use or release of emergency stocks held within national territory on behalf of another state

Reporting requirements:

- Monthly statistics on oil supply/demand and emergency and commercial oil stocks as set out in Annex IV of the Directive
- Register of emergency stocks
- Annual report on availability and physical accessibility of stocks

Stockholding model – CSE and/or Economic operators:

- CSE (Central Stockholding Entity) (if set up) should take the form of a body or service without a profit objective and which acts in the general interest
- The CSE is the only body or service allowed to acquire or sell specific stocks
- Delegation of CSE's tasks is allowed only to another CSE/Member State or economic operators ("industry")

Stocks composition:

- Petroleum products must cover at least 1/3 of the national stockholding obligation (unless Member State maintains at minimum 30 days of specific stocks)

Ability to respond in crisis:

- Emergency response procedures are to be established which allow for the release of emergency stocks quickly, effectively and transparently
- Contingency plans and organizational measures are to be put in place to cope with major supply disruption

4. The present situation in the Contracting Parties:

The progress in transposing the Directive varies substantially across the Contracting Parties, ranging from being still in the early stages of considering possible options for a stockholding system like in Bosnia and Herzegovina, Moldova, Ukraine, to being in a more advanced stage of considering the most appropriate stockholding system - Albania, Montenegro, Kosovo¹, to having formally adopted main legislation and partly the relevant secondary legislation - the former Yugoslav Republic of Macedonia and having fully transposed primary and secondary legislation (apart from Intervention Plan) - Serbia.

¹ * This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

Albania:

Background and current status

Albania's current emergency oil stockholding system is based on legislation from 1999 (amended in 2004) and governmental decrees from 2004 and 2007, where the entire emergency stockholding obligation is assigned to the oil industry. Monitoring and control mechanisms for assuring that the industry meets emergency stockholding requirements are formally in place, and efforts have been made to strengthen their enforcement. However, the current system is not compliant with Directive 2009/119/EC.

Albania has recently prepared a draft Law relevant to emergency oil stockholding and the draft Law foresees that a Central Stockholding Entity, which will be fully responsible for Albania's stockholding obligation under the Directive as of 1 January 2023, will be created. The intention of the Ministry of Energy and Industry (MEI) is to change the obligation on industry, starting in 2017, to 30 days, and begin progressively building emergency stocks of the CSE. However, definitive decision on the oil stocks stockholding model has not been taken.

Priorities

- **Draft Action Plan for building up emergency oil stocks to 90/61 days.**
- **Draft emergency oil stockholding law, relevant secondary legislation.**
- **Establish and begin operation of monthly data collection process necessary for operating emergency oil stockholding system and meeting reporting requirements under Directive.**

Bosnia and Herzegovina:

Background and current status

Bosnia and Herzegovina currently has no legislation on compulsory stocks of oil and petroleum products on the state level and there is no national policy to meet the Directive's obligations. Both entities have adopted their respective laws which are not in compliance with Directive 2009/119/EC. A working group with representatives from both entities and the Ministry of Foreign Trade and Economic Relations has been established for developing a national policy for meeting the Directive. Given the dynamics and particular interests of the two entities, it will be important to explore various options, including industry based models, in order to design a system which is best able to adapt to Bosnia and Herzegovina's circumstances.

Priorities

- Establish a working group at a technical level
- Once formed, this group would begin considering the potential stockholding models which could be adopted by Bosnia and Herzegovina, taking into account the two entities and the roles of their corresponding designated stockholding bodies
- **Draft Action Plan for building up emergency oil stocks to 90/61 days**
- **Draft emergency oil stockholding law, relevant secondary legislation**
- Establish a monthly oil data reporting system, which is entirely lacking at the moment and which will require substantial effort to put into place

Former Yugoslav Republic of Macedonia:

Background and current status

Former Yugoslav Republic of Macedonia is the second Contracting Party that has transposed the most relevant provisions of Directive 2009/119/EC on maintaining minimum stocks of crude oil and/or petroleum products. The Law on Compulsory Oil Reserves, which transposes Directive 2009/119/EC, entered into force in October 2014.

This Law establishes the obligation to provide a high level of security of supply of crude oil and oil derivatives by building and maintaining minimum stocks of crude oil and/or oil derivatives in the form of compulsory oil reserves. It determines the manner and conditions for the creation, storage and maintenance of the compulsory reserves. The Law also introduces the necessary procedures for responding to a severe shortage of oil derivatives in the market.

The Law was supposed to be applicable as of 1 January 2015. However, on 2 December 2014, the Parliament adopted the Law Amending the Law on Compulsory Oil Reserves, which postponed the application of the Law for one year. On November 13, 2015, the Parliament adopted the Law Amending the Law on Compulsory Oil Reserves, which postponed the application of the Law for two more years ("Official Gazette of the Republic of Macedonia" No. 199/2015 dated 13.11.2015). Accordingly, this Law is envisaged to begin to apply as of 01 January 2018.

This is a typical case that due to non-intermediate deadlines the Parliament postponed twice the application of this Law.

Priorities

The main priority during 2016 should be:

- Action Plan for the Establishment of Compulsory Reserves
- The final preparation of the secondary legislation related to the transposition of the Annexes to Directive 2009/119/EC
- Decision on the Quantity and Structure of the Compulsory Oil Reserves for the current year
- Decree prescribing the manner of determining and calculating the amount and reimbursement of expenses for maintaining compulsory reserves
- Decree prescribing the manner of determining and calculating the amount of the fee for oil reserves, as well as the content, manner and submission deadlines for data on the placement of oil derivatives in the country
- Intervention Plan (Decree) in the event of an emergency disruption to the supply of the market with crude oil and petroleum products

Kosovo*:

Background and current status

The main law governing the oil sector in Kosovo* is the Oil Market Law of 2005, as amended in 2009. A revised Oil Market Law, which meant to transpose Directive 2009/119/EC, was drafted and discussed, but ultimately rejected by Parliament in mid-2013.

The Ministry of Trade and Industry (responsible for oil and petroleum products) drafted a new Law on Compulsory Oil Stockholding in March 2014, with the assistance of the Energy Community Secretariat. A final version of the draft was ready to be sent by the Ministry of Trade and Industry to the Government and subsequently to the Parliament for adoption, provided the Ministry of Finance issues a financial declaration approval. The Law was expected to be adopted within the fourth quarter of 2015, but even today it is not adopted.

Priorities

- **Draft Action Plan for building up emergency oil stocks to 90/61 days**
- Prioritize the adoption of the new draft Law on Compulsory Oil Stocks
- Draft subsequent secondary legislation throughout 2016/2017
- Improve data collection

Montenegro:

Background and current status

The Energy Law of 2010 in Montenegro required that strategic reserves of oil and petroleum products are equal to 90 days of average domestic consumption in the previous year and places the responsibility of emergency stockholding fully on the industry. However, the provisions of the Law related to oil stocks have not been implemented to date.

A decision has been made to regulate this area by a new law which would focus exclusively on strategic stocks of oil and oil products. The newly adopted Energy Development Strategy by 2030 foresees the establishment of a stockholding agency, a detailed plan for ensuring stocks of oil products and secondary legislation.

In late April 2015, the Montenegro Government adopted the Action Plan for the implementation of the Oil Stocks Directive 2009/119/EC which is revised in September 2015 reflecting all components of the emergency oil stockholding system. Based on this revised action plan, Montenegro decided to establish an independent, dedicated entity - CSE (Central Stockholding Entity) to manage a public oil stockholding scheme. **This oil stockholding model will allow Montenegro to be straight forward in its overall structure, more effective, and easier to control and supervise by attaching all responsibilities clearly to a single entity.** Draft Law on Compulsory Oil Stocks is prepared and in the final internal reviewing process. It is planned to be adopted by the Government and put into the parliament procedure by the end of June/July 2016.

Priorities

Montenegro should focus in 2016 on:

- Adopting the new draft Law on Compulsory Oil Stocks
- Subsequent secondary legislation in line with Directive 2009/119/EC
- Improving data collection.

Moldova:

Background and current status

Moldova currently has no legislation on emergency oil stockholding. Until now the issue has not been given high priority. The industry has no legal obligation to hold oil stocks. The Material Reserves Agency is the only state administration which has some institutional capacities and which partially operates on the oil market. The State Material Reserves' oil stocks may be used not only in situations of natural disasters and wars, but also in cases of market disruptions. The Commodity Reserves Law includes procedures to release and report on such stocks which are, however, not in compliance with Directive 2009/119/EC.

Priorities

- **Draft Action Plan for building up emergency oil stocks to 90/61 days**
- Prioritize the adoption of the new draft Law on Compulsory Oil Stocks
- Draft subsequent secondary legislation throughout 2016/2017
- Improve data collection

Serbia:

Background and current status

In Serbia, emergency oil stocks are regulated by the Commodity Reserves Law adopted in December 2013. With this Law, Serbia has transposed the most relevant provisions of Directive 2009/119/EC on Emergency Oil Stocks. The new Energy Law covering the oil sector was adopted in December 2014.

In 2014 and 2015 most of the work to establish the full legal framework necessary for implementing the Directive has been completed and a dedicated body responsible for the establishment of emergency oil stocks – the Energy Reserves Administration (ERA) - was created within the Ministry of Mining and Energy (MME) in February 2015.

During the first half of 2015, based on proposals made by the ERA, the Government has adopted the Long-term (10 years) and Mid-term (3 years) plans on emergency oil stockholding and the Ministry has adopted the year's business plan on the establishment of emergency oil stocks.

After one year operation, it is obvious that the work on emergency oil stockpiling is progressing well. ERA has been able to establish 14.4 days of average consumption.

Priorities

- Approval of the Intervention Plan - the only remaining secondary legislation not yet transposed
- Building stocks up in compliance with long-term, mid-term and annual programs

Ukraine:

Background and current status

Currently, Ukraine has no legal framework in place for the establishment of emergency oil stocks. In April 2015, the Cabinet of Ministers adopted an Action Plan which foresees that till December 2015 a legal act on a model for oil stocks will be developed and its approval shall proceed in a close cooperation with the Secretariat.

The Government of Ukraine has tasked the State Reserves Agency (Agency) to lead a Working Group to develop the long term Action Plan (2016 – 2022) for creating an emergency oil stockholding system to meet the Directive and present it to the Government of Ukraine and a Governmental decision to be taken by June 2016.

Assistance provided during 2015 clarified a number of key issues related to possible stockholding models in-line with the Directive. The Secretariat's suggestions for an optimal system were considered at length by the Agency, which then proposed a model based on these suggestions to the Working Group and obtained full consensus to proceed with an Action Plan based on the model.

Priorities

- **Oil Stockholding model approval** - expected to be taken by end-June 2016
- **Approval of the Action Plan for building up emergency oil stocks to 90/61 days.**
- **Draft emergency oil stockholding law, relevant secondary legislation**
- **Establish and begin operation of monthly data collection process necessary for operating emergency oil stockholding system and meeting reporting requirements under Directive**

5. Next steps:

The abovementioned information clearly indicates that there is a substantial amount of work to be done by the majority of the Contracting Parties, for a period of roughly 6-7 years, to achieve full implementation of the Directive.

The majority of the Contracting Parties should draft a model for their respective stockholding system, which includes the composition of emergency stocks and the method of financing. Furthermore, an Action Plan should be drafted concerning the build up of emergency oil stocks to the 61/90 day obligation as well as the available storage capacities. Based on this draft proposal, a decision should be taken by the Government for the oil stocks model.

The Action Plan is to serve as: a) a strategic cornerstone for the establishment of an effective emergency oil stockholding system; and b) a solid foundation for drafting all relevant legislation.

Such an Action Plan serves also to guide the creation of an effective emergency response system able to cope with an oil supply disruption.

A critical next step that needs to be taken in all of the Contracting Parties is the establishment of a monthly data reporting framework, which should include quality verifications. Such data collection is fundamental for meeting the obligations under the Directive. The Secretariat has provided each Contracting Party with technical support, to clarify and improve the latter's understanding of the reporting details and methodologies related to the stockholding calculations. So far, the Former Yugoslav Republic of Macedonia and Serbia have taken concrete steps to begin collecting monthly oil data based on the Monthly Oil Statistics questionnaire.

Another concern is related to the belief in many Contracting Parties that the 2023 deadline for full implementation is still far away. The opposite is however true, considering all the necessary steps which must be taken to successfully establish a workable emergency stockholding system. Hence, a concrete deadline for the transposition of primary and secondary registration should be introduced.

To overcome this situation, the Commission and the Energy Community Secretariat hereby invites the PHLG to consider the Proposal for a General Policy Guideline concerning a Roadmap on Implementation of the Certain Deadlines of the Council Directive 2009/119/EC in the Energy Community which represents a political consensus reached in the Ministerial Council.