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Accompanying document to the

Proposal for a

DIRECTIVE OF THE COUNCIL

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

SUMMARY OF THE IMPACT ASSESSMENT

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The Impact Assessment for which this Summary is presented relates to item 2008/TREN/001 of the Commission Work Programme. It was prepared in the context of the preparation of a legislative proposal on the revision of the EU emergency oil stock legislation.

The Impact Assessment builds on analysis undertaken within the Commission, supported by several structured (Oil Supply Group, Berlin Fossil Fuels Forum) and informal consultations with stakeholders and a formal public consultation.

Background

The March 2007 European Council underlined the need to enhance the security of supply for the EU as a whole and for each Member State, inter alia by developing more effective crisis response mechanisms. It highlighted in this context the need to review EU oil stocks mechanisms, with special reference to the availability of oil in the event of a crisis, stressing complementarity with the crisis mechanism of the International Energy Agency (IEA).

Problem analysis

The legal framework for establishing and using emergency oil stocks in the EU is based on rules established in the late 1960s and early 1970s. In recent years the risk of oil supply disruptions has grown for a number of reasons, including the increasing global demand coupled with limited spare production capacity, the concentration of supply in a handful of (often politically unstable) countries, the proliferation of geopolitical conflicts and the growing number of natural disasters. Current global trends, coupled with the EU's internal development (such as successive enlargements, completion of the internal market, decreasing indigenous production) are all factors calling for reviewing of the existing EU stock legislation.

In addition, analysis of the current system reveals weaknesses which might prevent it from functioning suitably in case of an actual supply disruption.

At present Member States are free to choose their stockholding arrangements. This has resulted in a diversity of systems and practices across the EU. There are doubts whether all national systems could guarantee that the stocks held for emergencies would be fully available and could be effectively mobilised as needed. For example, in some Member States the current practice seems to allow that operational stocks of commercial operators are counted as emergency stocks. The extensive use of "tickets" by several Member States might also cast doubt on the availability of stocks.

The International Energy Agency, established in 1974, operates a parallel system. Although, in general, the same stocks can be used for complying with the EU and IEA stockholding obligations, the differences in calculation methodology and reporting impose substantial administrative burden on Member States which are also members of the IEA.

The EU lacks coordinated intervention procedures, rendering prompt decision making and effective actions, which are crucial in a crisis, very difficult in practice. The role of the EU system vis-à-vis the IEA and its procedures is not clarified in the current legislation.

Although the current legislation calls for "fair and non-discriminatory" stockholding arrangements, it contains little concrete provisions, potentially allowing distortion of competition between different categories of market operators.

Finally, the composition of the stocks may not reflect what is really needed in a crisis.

As a result of these flaws, the system may not deliver the desired results in a crisis, running the risk of exposing the economy to substantial damage.

The current system is also prone to free riding: Member States with possibly less reliable systems can count on countries with sound arrangements. This however compromises the emergency preparedness of the EU as a whole.

Objectives

The overall policy objective of the revision is to further strengthen the system while optimising the administrative obligations on Member States.

The emergency response system needs to be brought more into line with the European Union's needs concerning its capacity and readiness to react to oil supply disruptions, should they occur, efficiently and in a fully coordinated manner. Thereby the system has to minimise or at least mitigate the negative impacts of a disruption on the EU economy and society.

At the same time and to the extent possible, the objective is to simplify the regulatory environment and the compliance burden for Member States and the industry.

Policy options

Four policy options are considered in the impact assessment. These options basically address the problem of stock availability:

- Policy Option 0 envisages no policy change.
- Policy Option 1 would not entail a change to current stockholding arrangements but envisages the introduction of reinforced public control of the availability of emergency stocks and of emergency mechanisms. This would entail audits and inspections of emergency stocks, to be carried out by or on behalf of the Commission and the regular review of Member States' emergency procedures.
- Policy Option 2 would require that all 90 days of emergency stocks are state-owned and managed by an agency, possibly controlled at EU level. Stocks should be held separately from commercial stocks and at least part of the stocks should be in the form of products.
- Policy Option 3 envisages that Member States hold an obligatory portion (30 days) of emergency stocks in the form of dedicated government- or agency-owned stocks. Such stocks should be held in the form of products, reflecting the country's consumption patterns. If an industry obligation is retained, companies would be given the right to delegate their obligation to the government or the agency.
- In addition, Option 2 and 3 would introduce some restrictions on the use of "tickets".

Since some of the problems identified are independent of the choice from the above options, they are tackled separately:

- Emergency procedures are to be clarified: in an IEA action, IEA member countries should be able to participate without explicit Commission approval while the Commission should co-ordinate the contribution of non-IEA Member States.
- It is proposed to align the stockholding obligation to that of the IEA (based on net imports), while retaining an obligation for significant oil producing Member States.
- After doing some adjustments, the Monthly Oil and Gas (MOS) questionnaire already used by the IEA and Eurostat could replace the special questionnaire used for reporting emergency stocks.

Impact analysis

A detailed analysis of the impacts of the four policy options has been performed, systematically checking the effects on:

- emergency preparedness, i.e. the capacity of the EU to cope with a possible oil supply disruption,
- financial and administrative burden faced by Member States, the industry and the Commission.

Other (environmental, social and economic) impacts were also investigated.

The impact analysis of the individual options was complicated by the substantial differences between the Member States' stockholding systems. The impacts will be inevitably different across Member States, primarily depending on whether stocks are currently maintained predominantly by public agencies/governments or by the industry. The way of implementing the possible options is also likely to affect the impacts, especially with respect to the size and focus of the financial burden.

The results of the impact assessment can be summarized as follows:

Policy Option 0 (no policy change) would obviously not entail additional financial or administrative burden but cannot guarantee an effective EU-wide emergency preparedness. All weaknesses of the current system would remain in place, putting at risk the EU's ability to react to oil supply disruptions. This gives a cause for concern since disruptions might become more frequent and significant in the future. In view of EU's dependency on continuous supply of oil and petroleum products, impacts of such disruptions would be heavy.

Policy Option 1 (reinforcing control and coordination mechanisms within the existing system) would not allow the full range of current shortcomings to be tackled, making it impossible to create a consistently robust system across the EU.

Audits, inspections and reviews would have moderate budgetary implications. Country reviews could help to disseminate best practices, reinforced controls would certainly help to unveil cases of non-compliance but the underlying causes of insufficient stock availability would not be addressed directly. In case of a significant disruption, major impact similar to that with Option 0 would be still likely.

Policy Option 2 (establishing a centralised EU system with mandatory state/public ownership of emergency stocks) would ensure that all 90 days of dedicated emergency stocks are state-owned, managed by an agency, possibly controlled at EU level, and held separately from commercial stocks. Such stocks would be unquestionably available for emergency purposes but some of the benefits associated with commingling (automatic turnover of stocks, stocks closer to consumers) would be inevitably lost.

The current diversity of national systems would disappear, thereby removing potential free riding. Furthermore, this option would facilitate the monitoring of the stocks held and released.

Today only two Member States have all their emergency stocks in government ownership. Therefore, this option would represent a significant change to the current stockholding system of most Member States, requiring substantial public expenditure in the order of €5 billion (at market prices in the second half of October 2008). This may not be justified by the experience of past disruptions and may be questioned from the point of view of proportionality and subsidiarity.

Policy Option 3 (creating some dedicated EU emergency stocks within a revised version of the existing system) would result in dedicated stocks unquestionably available as supplementary volumes in case of a disruption; the proposed 30-day level would be sufficient to cope with disruptions experienced in the past. Member States would have considerable flexibility in choosing how to satisfy the rest of the stockholding obligation, with due regard to their geographical situation, refining capacities and other specific factors.

Most Member States are reasonably close to complying with this option. However, the five Member States completely relying on mandatory industry stocks today would need to make substantial efforts: they would need to establish 12.5 million tons of government/agency stocks. Buying these stocks would cost about €5 billion (at market prices in the second half of October 2008). Nevertheless, they would not necessarily have to purchase the stocks; the extent of the financial burden would depend on the practical arrangements chosen. As regards the running costs of the stockholding, a survey of storage costs in Member States found that government/agency stockholding can be considered cheaper than industry stockholding.

This option provides reasonable protection against supply disruptions but its implementation costs would fall primarily on a few Member States.

As far as the possible distortion of competition is concerned, under Option 0 and 1 the existing distortions would not be addressed. By completely removing mandatory industry stocks, Option 2 would help to remove possible competitive distortions between different categories of market operators. According to Option 3, the companies would have a right to delegate their obligation to the government or the agency. As a result, the potential discrimination between market operators would be significantly reduced. In particular, smaller companies with no access to sufficient storage capacity could comply with their obligation in an easy and cost-efficient way.

The occurrence of social impacts depends on the individual options' ability to react to disruptions. If the emergency oil stock system fails to mitigate the negative economic consequences (e.g. high energy prices), this is likely to hurt particularly the most vulnerable parts of the society.

An impact on environment might occur if a policy option requires the construction of new storage facilities. As the total obligation would not substantially change under any of the options, in principle no additional storage capacities would be required. However, if the practice of commingling emergency and commercial stocks would be ceased, as proposed by Option 2 and (for the dedicated stocks) Option 3, this may require the construction of new facilities in some Member States.

The proposed changes in crisis management, calculation and reporting are independent of the four options and therefore their impacts were assessed separately.

The proposed crisis management rules and procedures will allow the EU to be able to contribute better to an IEA action, by avoiding delays and confusions experienced in the past and by being able to coordinate and channel the actions of non-IEA Member States.

A better alignment with the internationally accepted rules of the IEA would not only decrease administrative burden (at least for IEA member countries) but would also allow the use of EU stocks to have a better impact in an IEA action.

A switch to the MOS questionnaire as the main reporting tool would reduce administrative burden and provide a common basis with the IEA for evaluating emergency preparedness. However, this questionnaire will probably need some fine-tuning so that it is fully in line with the updated EU rules and in order for the data to be valid in possible infringement procedures. It is also to be investigated whether the reporting lag could be shortened in order to have more timely data on emergency stocks (e.g. by using the JODI questionnaire).

The impacts of a possible introduction of weekly reporting of commercial stocks were not addressed by the impact assessment. These will be addressed by a separate analysis when detailed implementing provisions for such reporting are drafted.

Conclusion

Since Option 1 would not directly tackle the shortcomings of the current system, it is not expected to significantly improve the availability of emergency stocks. Option 2 would bring about a significant improvement of emergency preparedness, but at a cost which is difficult to justify. Considering the balance of benefits and costs, Option 3 appears to be the most suitable choice, especially if complemented by practical provisions for verifications (audits, reviews). Consideration however needs to be given to the disproportionate impact of the implementation costs which may make this option politically less acceptable to the few Member States most heavily impacted.

	Option 0: No policy change	Option 1: Reinforcing control	Option 2: Centralised system	Option 3: 30 days of dedicated stocks	
Total obligation	90 days	90 days	90 days	90 days	
				min. 30 days	the rest
Calculation basis	consumption	net imports			
Ownership of stocks	no specific rule	no specific rule	government	government/agency	no specific rule
Management of stockholding	no specific rule	no specific rule	government or agency	agency or specific government control	no specific rule
Commingling with commercial stocks	Not explicitly prohibited	allowed	not allowed	not allowed	allowed
"Tickets"	no restriction	no restriction	limited	limited	"intermediated" (through agency)
Minimum product share	no	no	yes	yes	no
Regular audits and reviews	no	yes	no	no	no
Reporting	monthly, based on special questionnaire	Monthly, based on MOS/JODI			
Crisis management	Consultation in the Oil Supply Group	Complementarity to the IEA emergency policies and measures, clear stock release mechanisms, increasing role of the Oil Supply Group for crisis management			

Table 1: Summary of the policy options

Criteria	Option 0: No policy change	Option 1: Reinforcing control	Option 2: Centralized system	Option 3: 30 days of dedicated stocks
Impact on emergency preparedness and stock availability	Doubts about the availability of stocks in certain stockholding systems	Stock availability is expected to improve after conducting infringement procedures but other problems would remain	Full availability of emergency stocks as “fresh oil” in an emergency in all MS	Sufficient dedicated emergency stock to address disruptions experienced in the past
Financial burden	No change	Some additional cost for the Commission (for MS only if inspections/audits unveil non-compliance)	Immense additional costs for most governments, while burden on industry ceases	Additional cost for government/agency in about half of MS, while lower burden on industry
Administrative burden	No change	Commission’s administrative burden increases (reviews, inspections/audits)	Increasing burden on most governments, while the burden on industry ceases	Increasing burden on some governments (establishing stockholding agencies)
Economic impact	Possible competitive distortions	Possible competitive distortions	Discrimination between market players is fully eliminated	Mitigation of competitive distortions
Social impacts	Increasing risk of social tensions	Reduced risk of social tensions	Reduced risk of social tensions	Reduced risk of social tensions
Environmental impacts	No impact	No impact	Additional storage capacities might be necessary	Additional storage capacities might be necessary

Table 2: Comparison of the options' impact