

Public consultation on the Directive imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products (2009/119/EC)

As provided for in the Better Regulation guidelines, a public consultation was launched on 10.08.2016 regarding the Oil Stocks Directive as part of its mid-term evaluation. It remained open until 26.11.2016. The consultation aimed at collecting feedback from stakeholders and general public. Questions in the questionnaire addressed all five evaluation criteria: effectiveness, efficiency, coherence, EU added value and relevance.

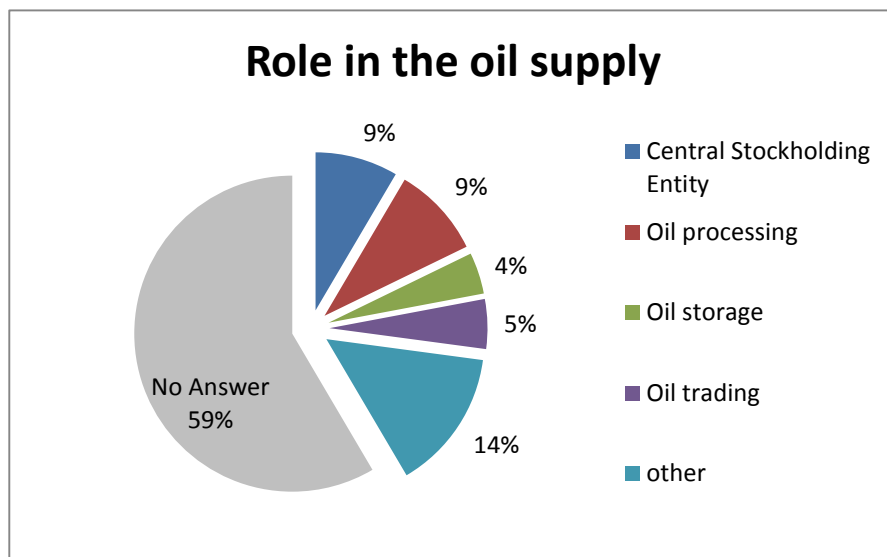
Who replied

We received 59 answers. 40 % of contributions came from the public sector, including 15 Member States through their competent ministries (Austria, Belgium, Cyprus, France, Germany, Greece, Lithuania and Sweden, amongst others) and four Central Stockholding Entities ("CSEs"). Five respondents declared to be a public undertaking, including four CSEs. No third country answered to the consultation.



48 % were submitted by private entities. Submissions from the private sector come from stakeholders that declared being established or having interests across all 28 Member States. 14 declared to be a private enterprise, including two CSEs, and 14 declared to be professional organisations.

Two international organisations, including the International Energy Agency (IEA), answered to the consultation. Four submissions came from EU citizens acting in their individual capacity and one from a non-governmental organisation (NGO); the lack of contribution from the civil society may be owing to the technicality of the subject.



Private and public enterprises declared to be involved in different levels of the oil supply chain (processing, storing and trading). 34 % of respondents declared to be obliged to hold oil stocks and therefore directly concerned by the Directive. Out of the 23 existing CSEs in the EU, 10 replied to the public consultation.

Nine respondents also provided additional comments in a separate document.

A detailed assessment of the replies confirms a general support for the EU intervention as regards emergency oil stocks, even though many respondents brought up several issues that the report conducted by an external contractor had also put forward.

How effective has the EU intervention been?

Respondents were asked to assess whether the Directive fulfilled its objectives. A majority of them is positive that the Directive was indeed effective.

With regards to the objectives of improving the availability and the physical accessibility of the oil stocks in case of supply disruption, a majority agrees it was at least partly met: 80 % agree the availability increased and 69 % recognize that the physical accessibility improved. Several submissions (Denmark, Germany and Greece and several CSEs) praise the clearer rules as having fostered better coordination between EU Member States and thus contributed to the availability and accessibility.

Professional organisations such as FuelsEurope, as well as Total, consider that the inclusion of "non-strategic products" as emergency stocks undermines the stock's availability. They also identify the lack of clarity with regard to cross-border stockholding as a hindrance to further physical accessibility.

A better harmonization of EU rules with the IEA system is also believed by 78 % to have been achieved by the Directive. The IEA specifically indicates in its submission that the Directive improved the codification of cooperation and communication between IEA/EU and clarified the role for non-IEA EU member in the collective system. Nevertheless, more than half of the respondents note the existence of remaining discrepancies. Cyprus and its CSE as well as Sweden (amongst other Member States) call for further alignment when it comes to calculation methodologies. Germany argues that

the current alignment has brought about appreciable synergies and Denmark insists on the necessity for the EU system to remain slightly different so as to take better account of each Member State's specificities.

Both private and public sector respondents evaluate the overall administrative burden to have increased at least slightly (although two third of the respondents either had no opinion or did not answer). 8 Member States mention the annual reporting obligations under article 9(5) as the main source of increased burden. Germany also refers to the prior authorisation of cross-border agreements as an additional administrative burden created by the Directive. Professional organisations simply indicate that the administrative burden varies between Member States.

As to the objective of increasing transparency of the level of emergency oil stocks held in the Member States and the European Union as a whole, 69 % of respondents are positive the Directive succeeded in that regard, especially by distinguishing commercial stocks and stocks qualifying as emergency stocks. Several note, nevertheless, that this differentiation is subject to different interpretations across Member States. 19 % specifically find that the transparency of cross border stocks did not improve. To tackle this problem, professional organisations suggest setting up an EU-wide registry system and to enforce the prohibition of bilateral agreements that is already in the Directive. Union of European Petroleum Independents (UPEI) recommends doing away with the prior authorisation a Member State has to give when a stockholder wishes to keep emergency oil stocks abroad, but instead to regulate clearly the possibility.

A number of respondents also shared what they perceived as unexpected or unintended effects of the Directive. The volatility of the levels of compulsory stocks to be held as emergency stocks from a year to the next is mentioned in several submissions as an unintended consequence brought about by the 7 % naphtha trigger that is taken into account in the calculation methodology laid out in Annex I.

Most professional organisations, including FuelsEurope, *Union Française des Industries Pétrolières* (UFIP), United Kingdom Petroleum Industry Association (UKPIA) and *Unión de Petroleros Independientes* (UPI), that undertook the consultation, as well the Polish oil refiner and petrol retailer PKN ORLEN and Total raised the issue of dissimilar compulsory stock obligations being imposed on oil refiners and oil importers.

Denmark is concerned that the lack of harmonisation across Member States may distort cross-border competition. Sweden believes that, by spurring Member States on to assign the stockholding obligation to state-managed CSE rather than to the industry, the Directive has the unintended negative effect of aligning the availability and accessibility levels: holding emergency oil stocks mostly in public stockholding entities make them available less immediately (because of longer start-up times), whereas a mix between several stockholding systems (private and public) would ensure various speed of responsiveness thanks to different levels of availability and accessibility. Sweden fears that this weakens the effectiveness of crisis management as most stocks become available at the same time, where different systems would provide for stocks becoming available throughout a crisis.

Furthermore, a number of CSEs and Member States shared that the current annual compliance date (1st of April) for the constitution of emergency oil stocks is too early and undermines the effectiveness of the Directive.

How efficient has the EU intervention been?

Respondents were asked to evaluate the compliance costs induced by the implementation of the Directive. Both private and public sectors respondents evaluate costs to be ranging from moderate to very high. Member States and CSEs agree that costs on CSE have increased at least moderately. The most expensive costs induced by the Directive being the constitution of emergency oil stocks, Member States that already had sufficient volume built up were therefore not financially affected. There is no clear trend to emerge from the answers as to who bore most of the implementation costs. Some perceived the financial burden to be higher either on industry and consumers while others find it higher on state finance and tax payers. This is further supported by answers from the 18 respondents under a stockholding obligation: 7 estimate implementation costs to have been high while 9 evaluate them to have been either moderate or low. Nevertheless, several remarks were made regarding these costs.

The 7 % naphtha trigger is again identified as an issue as it may increase the mandatory volume from a year to the next, thus begetting higher costs on the stockholding entities. Three professional organisations indicate that costs are higher for refiners and importers and for that reason demand a level playing field to have costs spread evenly on all parties. They insist however that costs vary not only from one national stockholding system to another but also between the different enterprises under a stockholding obligation in a system where the obligation is borne by the industry: in several Member States oil refiners are required to hold a higher obligation than importers.

Respondents are polarised regarding the simplification of reporting, as 36 % find that it has improved the efficiency to some extent, while the same percentage find it has not. Even though the alignment of the reporting with the IEA requirements is praised by several, the annual reporting provided for in article 9(5) of the Directive is presented as burdensome. Private sector respondents advocate for the installation of an EU-wide reporting scheme so as to simplify this administrative burden and save costs.

73 % of respondents find that efficiency has been improved through better harmonisation with the IEA system. Nevertheless, professional organisations point out that the 10 % deduction rule present in both systems should be revised as it may be technically outdated. They therefore call for both bodies to conduct a study on current practices and BAT.

All in all, only 17 % of the respondents find these cost increases to be unproportioned to the benefits achieved.

How coherent is the EU intervention internally and with other (EU) actions?

Respondents had to gauge how the different components of the Directive work together, not only internally but also with other EU policies and other external components .

59 % of the respondents deem the current EU rules to be coherent with the existing IEA system. Currently, IEA members are required to hold oils stocks equivalent to 90 days of net imports, while no obligation is imposed on net oil exporters. Stocks held for commercial or operational use can be counted to this purpose, which is not the case under the Directive. As the stockholding obligation under the EU system is higher than in the IEA system, the EU system is more onerous, point out several of the 17 % that believe the Directive is not coherent with the IEA obligations.

In order to increase coherence, a number of professional organisations call for a full harmonisation of the two systems. The IEA notes that the remaining discrepancies decrease the transparency. 20 Member States are member of the IEA. Private companies subject to a stockholding obligation, or represented through professional organisations, such as FuelsEurope, UKPIA, UFIP, the Swedish Petroleum & Biofuels Institute, Total and PKN Orlen, but also France and Sweden advocate for a full alignment to improve the coherence between the two systems. Denmark, Germany and Cyprus favour a separate EU system to ensure that the specificities of the European context are well taken into account.

When it comes to the coherence of the Directive with the Energy Union objectives, most of the respondents (76 %) find it to be in line with the objective of energy security, solidarity and trust. Opinions are more contrasted regarding the four other objectives. Many respondents find the Directive contributes to the achievement of a fully integrated European Energy market but two professional organisations point out it hinders its full completion, as the possibility to hold cross-border stocks, despite the Directive doing away with bilateral agreements, remains contingent upon agreements at national level, thus impeding free movement of goods. Similarly, Belgium points out that more and more Member States are resorting to Memorandum of Understanding when it comes to cross-border stockpiling, a requirement not in line with the integrated energy market objective.

A short majority (53 %) of respondents find the Directive to be coherent with other EU rules in the energy sector, 58 % with other EU rules related to the oil sector and 42 % with other EU policies. More than a third of the respondents had no opinion with regard to these questions.

Professional organisations welcome the Directive as it recognises the important role for oil in the EU supply and economy. One NGO as well as one individual claim it does not take into account the 2030 climate objectives of the EU.

What is the EU added value of the intervention?

European added value is defined as the value resulting from an EU intervention which is additional to the value that would have been otherwise created by Member State action alone.

Almost 90 % of the respondents indicate that they perceive an added value in having a coordinated mechanism for emergency oil stocks, while only 12 % are strictly against having an EU system separated from the IEA rules. Most of the stakeholders indeed think the EU system is a good complement to the IEA one, as it provides harmonisation with non IEA Member States, as long as the EU system remains consistent with the IEA.

Should the EU no longer require Member States to hold emergency oil stocks, a vast majority of respondents agree the level of oil stocks held would decrease and the security of supply would be more vulnerable. Indeed, as Sweden notes, it is very unlikely that Member States not parties to the

IEA would hold sufficient stocks, as they are costly. 83 % agree it would be detrimental to the security of oil supply in the EU.

Despite agreeing on the added-value of the EU approach, 73 % do not see further need for additional EU policies on emergency oil stocks. Several respondents stress the need to ensure the proper enforcement of the current Directive better.

How relevant is the EU intervention?

The public consultation asked respondents for their views on the relevance of the objectives of the Directive with regards to the needs and problems it tries to address.

Nearly all respondents are positive that emergency oil stocks are necessary to guarantee the security of the oil supply in the EU and 88 % that the EU therefore needs to have its own rules. 86 % are in favour of EU rules at least partly in line with the IEA rules. In order for the EU intervention to remain relevant, respondents from the private sector insist the Directive should fully align the EU system with the IEA one, whereas several Member States (Germany, Denmark and Cyprus) point out that the intervention should properly reflect the particular European context. Total concedes the EU system may be more restrictive but should not largely differ to remain relevant

The current stockholding obligation foreseen by the Directive specifies that the level of oil stocks must be equivalent to 90 days of average daily net imports or 61 days of average daily inland consumption, whichever of the two quantities is greater. This obligation is overall regarded as appropriate to cope with a serious oil supply disruption in the EU. Nevertheless, respondents indicated that the methodology used to calculate the reference daily averages (imports or consumption) is not necessarily well-adapted. 46 % find the calculation methodology to convert daily petroleum imports in crude oil equivalent to be partly or not well-adapted. 13 respondents specifically pointed the unexpected effects of the methodology linked to the 7 % naphtha yield threshold as an urgent problem to be addressed. The calculation methodology to convert the daily inland consumption in crude oil equivalent is less controversial, as only 19 % find it to be partly or not well-adapted. Respondents shared that the 10 % deduction rates to account for unavailability is too high: several professional organisations, including Central Europe Energy Partner, UKPIA and FuelsEurope outline the relevance of the Directive consistency with the IEA system, but suggest to launch a study to review this deduction rate, several CSEs explain their stocks are virtually immediately available. Denmark and UPEI suggests the potential regular review of stocks level as well as products based on risk assessment and costs.

Recommendations from the study conducted by an external contractor

A study in support of the mid-term evaluation of the Directive was prepared by an external contractor. The report made four main recommendations to improve the Directive which accurately identified problems respondents raised themselves in their submissions.

The study identified that the 7% naphtha threshold contained in the calculation methodology as laid out in Annex I might have an impact on the stockholding obligation. This issue is mentioned several times by a number of respondents throughout their submissions. 59 % wish Annex I to be amended

to tackle this problem. Submissions from across all the categories of stakeholders highlight the differences in volume from one year to the next fluctuations in naphtha yield may bring about. Stakeholders believe it undermines the efficiency of the Directive as it generates uncertainty and costs.

For the sake of legal clarity, a majority (66 %) believes Annex III of the Directive should be amended to explicitly indicate the full name of Crude, NGL, Feedstocks, Additives/oxygenates and Other Hydrocarbons. It would ensure the harmonisation of products kept as emergency oil stocks across Member States. The list of admissible products for the constitution of emergency oil stocks as described in Annex III is overall a contentious concern for a number of stakeholders. A number of respondents, including Cyprus, PKN ORLEN, UFIP, FuelsEurope and one CSE, call for the list to only include "strategic products". Professional organisations specifically point out that the current wording of the list is understood differently from one Member State to another. The transparency objective of the Directive is therefore undermined.

Views are polarised on whether the stocks of naphtha should count as emergency oil stocks as it is the case under the IEA system. 49 % are in favour and 29 % against. While it makes sense technically, several stress that it is actually hard to trace whether naphtha stocks are to be used as a gasoline component or for petrochemical use. Monitoring that the reported naphtha stocks are indeed used as gasoline component would be onerous. Nevertheless, professional organisations and Member States stress that including the naphtha stocks would be consistent with the objective of aligning the IEA and the EU systems.

The 10 % deduction rate to account for unavailable stocks provided for in Annex III is not felt to be justified anymore by a majority of respondents. Several note it undermines the relevance of the Directive. 22 % are in favour of a lower deduction rate. 19 % suggest simply doing away with any deduction rate for unavailability. 15 % of the respondents suggest several deduction rates based on the nature of the stock holders. Denmark suggests having deductions favour CSE to steer national emergency stockholding systems to CSE models. Several professional organisations (UPEI, FuelsEurope, UFIP, UPI) call for the launch of a study to assess an appropriate deduction rate.

Key findings

Respondents from all the stakeholders' categories widely support the Directive. They praise the relevance of the text when it comes to guaranteeing the security of the oil supply by ensuring emergency oil stocks are held in all Member States under an efficient system partly aligned the IEA rules in order to minimise costs and administrative burden. The Directive is reckoned to be coherent with the EU policies, and especially with the 'Energy security, solidarity and trust' pillar of the Energy Union. More than 90 % of the respondents find that the coordinated mechanism for emergency oil stocks provided for by the Directive adds value to the security of the EU oil supply and is a good complement to the IEA system. Respondents have raised a number of technical issues, mainly related to the methodologies used to calculate the crude oil equivalent of imports of petroleum products and the level of oil stocks held, as well as remaining obstacles to holding emergency stocks in another Member State, among other issues.