

Federal Ministry of Economy, S.ME.s, Middle class and Energy

5 FEBRUARY 2019. - Royal decree defining the measures applicable, in the event of a supply crisis, to the international and national allocation and the equitable supply of available oil and oil products and setting the rules for the use of compulsory stocks of oil and oil products

PHILIPPE, King of the Belgians,

To all, present and to come, I salute you.

Given Article 108 of the Constitution;

Given the law of 13 July 1976 on the Agreement on an International Energy Program and the Annex drawn up in Paris on 18 November 1974, Article 2, para. 1, 2 and 3 and Articles 4 and 5, inserted by the law of 20 July 2006;

Given the consultation of 21 September 2016 with the companies which have a stockholding obligation;

Given the consultation of 18 November 2016 with the board of directors of the public limited company APETRA;

Given the opinion of the Finance Inspector given on 15 May 2018;

Given the approval of the Budget Minister given on 28 May 2018;

Given the impact analysis of the regulation undertaken on 18 May 2018 in accordance with Articles 6 and 7 of the law of 15 December 2013 on the provisions for administrative simplification;

Given opinion no. 63.755/3 of the Council of State given on 31 July 2018 in application of Article 84, para. 1, section 1, 2 of the laws governing the Council of State, coordinated on 12 January 1973;

Considering the law of 26 January 2006 on the holding of compulsory stocks of oil and oil products and the creation of an agency for the management of a portion of these stocks and amending the law of 10 June 1997 on the general scheme, the holding, the circulation and the monitoring of products subject to excise duties;

Considering the ministerial decree of 27 December 1978 on the registration of persons involved in the channel to supply the country and consumers with oil and oil products, amended by the ministerial order of 1 December 2000 and by the law of 26 January 2006;

Considering that the availability of oil stocks and the protection of energy supplies are essential aspects of public security and economic life;

Considering that registered oil companies responsible for the supply of the national and international markets in the event of a supply crisis must comply insofar as possible with the

historical refining, supply and delivery schemes and must treat their existing buyers, whether affiliated or not, in an equitable manner;

Considering that the compulsory stocks can be used to deal with both national and international supply problems;

Considering that the minister can take the measures required to facilitate the distribution of oil products and compulsory stocks and guarantee their accessibility in times of supply crisis. This is true, in particular, for the compulsory stocks that are stored in Belgium by mutual consent in favour of another Member State;

At the recommendation of the Energy Minister and based on the opinion of the Ministers who deliberated on it in Council;

It is hereby ordered:

CHAPTER I - General provisions

Article 1. This decree partially transposes Directive 2009/119/EC of the Council of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products.

Article 2. Para. 1. The definitions contained in Article 2 of the law of 26 January 2006 on the holding of compulsory stocks of oil and oil products and the creation of an agency for the management of a portion of the stocks and amending the law of 10 June 1997 on the general scheme, the holding, the circulation and the monitoring of products subject to excise duties are applicable to this decree.

Para. 2. In addition, the following is meant with respect to the application of this decree:

- 1° The “law of 13 July 1976”: the law of 13 July 1976 on the approval of the Agreement on an International Energy Program and the Annex drawn up in Paris on 18 November 1974;
- 2° “IEA”: the International Energy Agency, as meant by the Agreement on an International Energy Program and the Annex drawn up in Paris on 18 November 1974;
- 3° “the law of 26 January 2006: the law of 26 January 2006 on the holding of compulsory stocks of oil and oil products and the creation of an agency for the management of a portion of the stocks and amending the law of 10 June 1997 on the general scheme, the holding, the circulation and the control of products subject to excise duties;
- 4° “NOB”: the National Oil Board (*Bureau national du Pétrole (BNP)* in French – *Nationaal Olie Bureau (NOB)* in Dutch) as meant in the royal decree of 19 December 2018 on the creation, the composition, the missions and the operation of a National Oil Board;
- 5° “Balance sheet”: the balance sheet as meant by the royal decree of 15 November 2017 on the requirement to declare biofuels, mineral oils and their organic substitution products;
- 6° “Release”: the offer by APETRA during a supply crisis of eligible oil products and/or of crude oil subsequent to an order in accordance with Article 5, para. 3, 2° or Article 10, para. 3, 2° of this decree or in accordance with Article 4, para. 4 of the law of 26 January 2006;

7° “Eligible product”: means the oil products listed in the three categories of products in Article 3, para. 1 of the law of 26 January 2006.

CHAPTER 2. - International allocation

Article 3. This chapter governs the international allocation in the event of a supply crisis and, in particular, a reduction in the oil supply as meant in Articles 13, 14 and 17 of the Agreement on an International Energy Program, or recognised as such by a unanimous decision of the IEA Governing Board or by the European Commission on the basis of the findings of the Coordination Group.

Article 4. Para. 1. The provisions of this decree must be complied with when the minister, in the event of a supply crisis as meant in Article 3, uses the option and the powers provided in Article 4, para. 4 of the law of 26 January 2006.

Para. 2. A temporary use as envisaged in para. 1 is implemented as follows:

- 1° As a temporary decrease of the individual stockholding obligation by the companies having such obligation, as meant in Articles 2, 15° and 4 of the law of 26 January 2006 and the royal decree of 15 June 2006 setting the threshold quantity and the individual stockholding obligation, after which the companies having a stockholding obligation offer these stocks freed from obligation to the and/or;
- 2° As the release, by APETRA, of compulsory stocks it manages, by organising a competitive bid process for which it establishes the modalities.

Article 5. Para. 1. In addition to the temporary use of the compulsory stocks as meant in Article 4, the minister can, in the event of a supply crisis as meant in Article 3, entrust to the companies having a stockholding obligation and/or to APETRA the mission to use compulsory stocks for the benefit of one or more specific Member States of the IEA or of the EU.

Para. 2. Such mission can be general or individual in nature.

Para. 3. Such missions can mention, among others:

- 1° The specific market(s) or Member State(s) of the IEA or of the EU for the benefit of which the stocks must be used;
- 2° The quantity and nature of stocks to be used;
- 3° The start and duration of the period during which this use must take place; and,
- 4° The information to be provided regarding the measures taken to carry out the mission and regarding their results.

Para. 4. The parties to which the mission is entrusted are assumed to have completed it if they demonstrate that they have made the necessary direct and/or indirect offers under conditions which are in line with the conditions valid at that time on the market(s) or in the Member State(s) in para. 3, 1° and that the non-execution cannot be reasonably imputed to them.

Article 6. In the event of the activation of Chapter III “Allocation” of the International Energy Program, in accordance with Chapter IV “Activation” of the same agreement:

- 1° The companies reporting to the IEA (“reporting companies”) supply the oil data and, if need be, voluntary offers directly to the IEA;
- 2° The other registered oil companies than those in 1° and APETRA supply oil-related data and, if need be, voluntary offers to the BNP;
- 3° The NOB coordinates and comments on the voluntary offers, forwards them to the IEA and analyses those selected by the IAE based on their impact on the national supply situation;
- 4° The NOB secretariat is responsible for the information exchange between the IEA and the national companies involved, the national representative professional federations of the oil and oil storage sector and the national bodies concerned.

Article 7. If a decision of the IEA results in the use of compulsory stocks, the minister will immediately inform the European Commission.

CHAPTER 3. - National allocation

Section 1. - General principle

Article 8. This chapter governs allocation at the national level in the event of a supply crisis acknowledged as such by the government by a decree deliberated by the Council of Ministers.

Article 9. Para. 1. The provisions of this decree must be complied with when the minister, in the event of a supply crisis as meant in Article 8, uses the option and the powers provided for in Article 4, para. 4 of the law of 26 January 2006.

Para. 2. The temporary use provided for in para. 1 is implemented as follows:

- 1° Except in the case of a decision to the contrary in accordance with Article 10, as a temporary decrease of the individual stockholding obligation by the companies having such obligation, as meant in Articles 2, 15° and 4 of the law of 26 January 2006 and the royal decree of 15 June 2006 setting the threshold quantity and the individual stockholding obligation, after which the companies having a stockholding obligation offer these stocks freed from obligation to the and;
- 2° Except in the case of a decision to the contrary in accordance with Article 11, as a release, by APETRA, of the compulsory stocks it manages solely to the primary participants, as stipulated in Article 12, para. 1.

Article 10. Para. 1. If a supply crisis requires the imposition of national measures, the minister can, in addition to the temporary use of the compulsory stocks meant in Article 4, para. 4 of the law of 26 January 2006, entrust companies having an stockholding obligation to use the compulsory stocks on the national market.

Para. 2. This mission can be general or individual in nature.

Para. 3. These missions can include, among others:

- 1° The quantity and nature of stocks to be used;
- 2° The start and duration of the period during which the use must take place; and,
- 3° The information to be provided regarding the measures taken to carry out the mission.

Para. 4. The parties to which the mission is entrusted are assumed to have completed it if they demonstrate that they have made the necessary direct and/or indirect offers under conditions which meet those in effect on the national market and that the non-execution cannot be reasonably imputed to them.

Article 11. Instead of, or in addition to, a release in accordance with Article 9 para. 2, 2°, the minister can entrust to APETRA the mission of releasing its compulsory stocks via a competitive bid procedure for which the description of the market is determined by APETRA in consultation with the NOB, or using another method. This mission can include more extensive instructions.

Section 2. - Annual identification of the primary participants and of their relative share in the release of compulsory stocks by APETRA

Article 12. Para. 1. In preparation for the release as meant in Article 9, para. 2, 2°, the Directorate-General identifies, annually, on the basis of the balance sheet, or if need be on the basis of any other federal public authority source available for each eligible product the list of primary participants to a release of compulsory stocks.

In order to compile the list of primary participants, the Directorate-General starts from those registered oil companies which jointly are responsible for at least ninety percent of the total volume put into consumption in Belgium of this eligible product.

For the conversion of the volume unit to a mass unit, the average of the densities fixed in the technical standards in force is used.

Para. 2. With respect to the previous calendar year, the Directorate-General informs the registered oil companies concerned annually, at the latest by 30 June, via email of the volume of eligible products which they have put into consumption according to the balance sheet.

Para. 3. Volumes of oil products put into consumption by a registered oil company in the name of and on behalf of another registered oil company must be transferred from the first company to the latter one.

Para. 4. The minister defines any additional rules required for the procedure based on which the transfer as meant in para. 3 can be made.

Para. 5. Taking into account the possible transfers as meant in para. 4, the Directorate-General compiles the list of primary participants and for each of them, for each product category, the relative share of its volume put into consumption in proportion to the total volume put into consumption by all primary participants of the eligible product. Para. 6. The Directorate-General informs APETRA, by 30 June at the latest, of the complete list of primary participants and their relative share per eligible product in order to enable APETRA to prepare for a possible supply crisis.

Section 3. - Identification of absolute shares during a supply crisis

Article 13. Para. 1. In the event of a release to the national market in accordance with Article 9, para. 2, 2°, the Directorate-General identifies the absolute share of each primary participant. For this purpose, the relative shares as meant in Article 12 are applied to the quantity of compulsory stocks which, as decided by the minister in accordance with Article 4, para. 4 of the law of 26 January 2006, must be released within a specific time frame.

Para. 2. The Directorate-General immediately communicates the absolute shares to the primary participants and to APETRA.

Section 4. - Release procedure

Article 14. At the express request of the minister in accordance with Article 9, para. 2, 2°, APETRA will release the stocks it manages. In order to adjust the injection of compulsory stocks as optimal as possible to the evolving shortage, the release will take place over one or several offer periods which APETRA determines in consultation with the primary participants during the release preparation.

Article 15. APETRA will organise a logistical matching between the stocks it manages and the absolute shares, taking into account the overall delivery possibilities of its storage facilities and the size of the shares. For this purpose, APETRA will conclude, as part of its crisis preparation, arrangements with the primary participants, storage operators and ticket sellers. Concerned companies will participate voluntarily to these preliminary arrangements.

Article 16. Para. 1. In each offer period, APETRA will release to the primary participants stocks amounting to their absolute share, allocated in accordance with Article 13 para. 2 and in accordance with the spread of this absolute share over the offer periods as meant in Article 14.

Barring the case as meant in para. 4, the release by APETRA consists of a sales offer which the primary participant can accept in full or in part by signing and returning the sales contract within the indicated deadline. Following signature and return, the primary participant will become the buyer of the stocks released.

Notwithstanding Article 18, the stocks purchased are solely intended to supply the Belgian market.

Para. 2. When helpful, the absolute shares of the primary participants-refineries can also be expressed as a volume of crude oil. In this case, the sales offer is for APETRA crude oil.

Para. 3. The volumes offered but not taken up, return to the compulsory stocks and will be released by APETRA via a competitive bid procedure for which the description of the market is determined by APETRA in consultation with the NOB.

Para. 4. In the event that a primary participant has put stocks at APETRA's disposal ('tickets'), APETRA will appoint this primary participant as the buyer of these stocks put at disposal in proportion to the stocks put at disposal and the volumes to which this primary participant has an absolute share, hereby offsetting the latter's absolute share.

Section 5. Other provisions

Article 17. If the use of compulsory stocks at the national level results in, or can result in, Belgium no longer meeting its obligations with respect to Article 2 of the Agreement on an International

Energy Program and/or Article 3 of Directive 2009/119/EC, the minister will immediately inform the IEA and the European Commission. This communication will also include the quantities involved.

CHAPTER 4. Equitable supply

Article 18. Para. 1. In the event of a supply crisis as meant in Article 3 or Article 8, registered oil companies are required to:

- 1° By priority execute existing contracts with current buyers; and,
- 2° Only conclude new contracts with current or new buyers under contractual conditions equivalent to those stipulated in existing contracts which were agreed over the previous 12 months or were in effect during this period.

Para. 2. The existing contracts as meant in para. 1 concern all sales contracts required for the national trade in oil products which were agreed prior to the supply crisis and which are still in effect. The existing buyers as meant in para. 1 are those buyers who purchased from the registered oil company during the one-month period preceding the crisis.

Para. 3. When applying the two previous paragraphs, the oil demand restraint programme as meant in Article 2, 1° of the law of 13 July 1976 and the list of priority oil consumers as meant in Article 2, 4° of the law of 13 July 1976 are taken into account, if applicable.

Para. 4. This article is not applicable to APETRA.

CHAPTER 5. - Rules for the use of the compulsory stocks.

Section 1. - Compulsory stocks managed by companies having a stockholding obligation

Article 19. In case of a required temporary use in accordance with Article 4, para. 2, 1° or with Article 9, para. 2, 1° and equally in the event of a mission as meant in Article 5 or Article 10, the compulsory stocks are offered to the market by the companies having a stockholding obligation under conditions in line with those in force in the national market at that time.

In the event of non-compliance with the obligation as meant in para. 1, abuse of dominant position as meant in Article IV.2 of the Code of Economic Law is assumed.

Section 2. - Compulsory stocks managed by APETRA

Article 20. Para. 1. In the event of a release to primary participants in accordance with Article 9, para. 2, 2° or in the event of a mission as meant in Article 11, except in the case of a competitive bid procedure, APETRA will release the compulsory stocks at a sales price which includes the product price plus:

- 1° The average treatment costs at delivery, which consist of a weighted average of the treatment costs contracted in APETRA's overall rented storage capacity, as published on APETRA's website;
- 2° The location cost as meant in para. 2.

The product cost as meant in the first para. is based on the average price quotations published by an international quotation agency during the price calculation period. If these quotations are not available, they will be replaced by the most comparable index, as defined in good faith by APETRA.

The sales price meant in the first para. is identical for each buyer in a same offer period, with the exception of the location costs as meant in para. 2.

Para. 2. The location costs take into account the location zone of the storage facility from which the compulsory stocks are released and must be comparable to the costs imputed by sellers in this location zone.

Para. 3. The Directorate-General is responsible for the control of the fair determination of the sales price as meant in para. 1 and of its components by APETRA. For this purpose, APETRA provides the Directorate-General, at its request, and within five business days of the request, with all needed information as to the method applied to set the sales price.

para. 4. This article does not apply if APETRA carries out a release using a competitive bid procedure.

Article 21. Para. 1. For the compulsory stocks owned by APETRA, the sales contract is set between APETRA and the buyer by applying the APETRA General Terms and Conditions for Sale. These conditions include the constitution of a bank guarantee or prepayment in cash. APETRA sells in bulk and generally in free circulation using the excise number of its storage operator. Buyers take the measures necessary to prepare for these conditions.

Para. 2. For a release to the national market in particular, APETRA tries, insofar as possible, to respect the physical and customs delivery flows in the commercial storage facilities and to avoid the introduction of new buyers to these storage facilities.

Para. 3. For stocks put at APETRA's disposal, with the exception of the offsetting case as meant in Article 16, para. 4 for which there is no payment, the sales contract is established between the owner of the stocks put at APETRA's disposal and the buyer. Unless there is an agreement to the contrary between both parties, APETRA's General Terms and Conditions of Sale apply to this contract.

CHAPTER 6. - Sanctions

Article 22. Para. 1. The following are punishable by a fine of €15,000 to €25,000:

- 1° Parties which take action that goes against the equitable supply as meant in Articles 16 and 18;
- 2° Parties which do not carry out, or incorrectly implement, the transfer of the volumes put into consumption as meant in Article 12, para. 3;
- 3° Parties which do not meet the obligation as meant in Article 4, para. 2 or the obligation as meant in Article 9, para. 2;
- 4° Parties which refuse to execute the mission as meant in Article 5 or in the Articles 10 and 11;
- 5° Parties which deliberately hinder the offer to the market as meant in Article 4, para. 2, 1° and in Article 9, para. 2, 1°, or the release as meant in Article 4, para. 2, 2° and Article 9, para. 2, 2°.

Para. 2. Parties which do not comply with the provisions as meant in Articles 20 and 21 are punishable by a fine of €5,000 to €15,000.

Para 3. Parties which refuse the information exchange as meant in Article 6, 1° and 2° are punishable by a fine of €500 to €5,000.

CHAPTER 7. Final provisions

Article 23. The following take effect on the first day of the month after the expiration of a period of ten days which takes effect on the day following the publication of this decree in the Official Belgian Journal:

1° Article 2, para. 1, 2° and 3° and Article 4 of the law of 13 July 1976;

2 this present decree.

Article 24. The minister in charge of Energy is responsible for the execution of this decree.

Issued in Brussels, on 5 February 2019.

PHILIPPE

By the King:

The Minister for Energy

M. C. Marghem