Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

30 April 2024*

(References for a preliminary ruling – Energy – Directive 2009/119/EC– Supply of stocks of crude oil and/or petroleum products – Article 3 – Obligation for Member States to maintain emergency stocks – Article 8 – Economic operators – Regulation (EC) No 1099/2008 – Energy statistics – National legislation making it possible to impose an obligation on an economic operator to build up and maintain emergency stocks of a petroleum product, including where that product is unrelated to the economic activity of that operator – Charter of Fundamental Rights of the European Union – Article 16 – Freedom to conduct a business – Article 17 – Right to property)

In Joined Cases C-395/22 and C-428/22,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Administrativen sad – Varna (Administrative Court, Varna, Bulgaria), made by decisions of 3 and 14 June 2022, received at the Court respectively on 14 and 28 June 2022, in the proceedings

'Trade Express-L' OOD (C-395/22),

'DEVNIA TSIMENT' AD (C-428/22)

v

Zamestnik-predsedatel na Darzhavna agentsia 'Darzhaven rezerv i voennovremenni zapasi',

THE COURT (Third Chamber),

composed of K. Jürimäe (Rapporteur), President of the Chamber, N. Piçarra and N. Jääskinen, Judges,

Advocate General: A. Rantos,

Registrar: R. Stefanova-Kamisheva, Administrator,

having regard to the written procedure and further to the hearing on 5 July 2023,

after considering the observations submitted on behalf of:

– 'DEVNIA TSIMENT' AD, by E. Evtimov, Y. Mateeva, S. Vasilev, V. Vidolov, advokati, and B. Lazarov,

* Language of the case: Bulgarian.

– the Bulgarian Government, by T. Mitova and L. Zaharieva, acting as Agents,

– the Netherlands Government, by E.M.M. Besselink, M.K. Bulterman and C.S. Schillemans, acting as Agents,

– the Slovak Government, by S. Ondrášiková, acting as Agent,

– the European Commission, by V. Bozhilova, B. De Meester and C. Georgieva, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 October 2023,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 1, points (i) and (j) of the first paragraph of Article 2, and Articles 3 and 8 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 (OJ 2009 L 265, p. 9), as amended by Commission Implementing Directive (EU) 2018/1581 of 19 October 2018 (OJ 2018 L 263, p. 57) ('Directive 2009/119'), Article 2(d) of Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics (OJ 2008 L 304, p. 1), as amended by Commission Regulation (EU) 2019/2146 of 26 November 2019 (OJ 2019 L 325, p. 43) ('Regulation No 1099/2008'), and Article 17 and Article 52(1) of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The requests have been made in proceedings between 'Trade Express-L' OOD ('Trade Express') (C-395/22), and 'DEVNIA TSIMENT' AD ('Devnia Tsiment') (C-428/22), on the one hand, and the Zamestnik-predsedatel na Darzhavna agentsia 'Darzhaven rezerv i voennovremenni zapasi' (Vice-Chairperson of the National Agency for 'State Reserves and Military Stocks'), on the other, concerning the lawfulness of orders issued by the latter imposing on those companies an obligation to build up and maintain emergency stocks of heavy fuel oil for a period of one year.

Legal context

The IEA Agreement

3 The Agreement on an International Energy Programme, signed in Paris on 18 November 1974 ('the IEA Agreement'), established, within the framework of the Organisation for Economic Cooperation and Development, the International Energy Agency (IEA).

European Union law

Directives 68/414/EEC and 2006/67/EC

4 The first rules governing emergency stocks of oil and petroleum products were introduced by Council Directive 68/414/EEC of 20 December 1968 imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products (OJ 1968 L 308, p. 14).

5 Directive 68/414, as last amended by Council Directive 98/93/EC of 14 December 1998 (OJ 1998 L 358, p. 100) ('Directive 68/414'), was repealed by Council Directive 2006/67/EC of 24 July 2006 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products (OJ 2006 L 217, p. 8). Directive 2006/67 was in turn repealed by Directive 2009/119. It is the latter directive which is applicable *ratione temporis* in the main proceedings.

6 Article 1(1) of Directive 68/414 corresponding, in essence, to Article 1(1) of Directive 2006/67 provided as follows:

'Member States shall adopt such laws, regulations or administrative provisions as may be appropriate in order to maintain within the European Community at all times, subject to the provisions of Article 7, their stocks of petroleum products at a level corresponding, for each of the categories of petroleum products listed in Article 2, to at least 90 days' average daily internal consumption in the preceding calendar year referred to in Article 4.'

7 The first paragraph of Article 2 of Directive 68/414, corresponding, in essence, to the first paragraph of Article 2 of Directive 2006/67, was worded as follows:

'The following categories of product shall be taken into account in calculating internal consumption:

– motor spirit and aviation fuel (aviation spirit and jet-fuel of the gasoline type);

– gas oil, diesel oil, kerosine and jet-fuel of the kerosine type;

– fuel oils.'

Directive 2009/119

8 Recitals 3, 5, 8, 11, 21 and 33 of Directive 2009/119 are worded as follows:

'(3) The European Council, in its Action Plan (2007 to 2009), entitled "Energy Policy for Europe", underlined the need to enhance security of supply for the European Union … as a whole and for each Member State, inter alia, by reviewing the Union's oil stocks mechanisms, with special reference to the availability of oil in the event of a crisis.

…

(5) Under [Directive 2006/67], stocks are calculated on the basis of average daily inland consumption during the previous calendar year. However, stockholding obligations under the [IEA Agreement] are calculated on the basis of net imports of oil and petroleum products. For that reason, and owing to other differences in methodology, the way in which stockholding obligations and Community emergency stocks are calculated should be brought more into line with the calculation methods used under the IEA Agreement …

…

(8) The availability of oil stocks and the safeguarding of energy supply are essential elements of public security for Member States and for the Community. The existence of central stockholding entities (CSEs) in the Community brings those goals closer. In order to allow the Member States concerned to make optimal use of national law to define the terms of reference for their CSEs while easing the financial burden placed on final consumers as a result of such stockholding activities, it is sufficient to prohibit the use of stocks for commercial purposes, while allowing stocks to be held in any location across the Community and by any CSE set up for that purpose.

…

(11) Member States should ensure full availability of all stocks held pursuant to Community legislation. In order to guarantee that availability, there should be no restrictions or limitations on the right of ownership of those stocks that could hamper their use in case of oil supply disruption. Petroleum products owned by companies facing a significant risk of enforcement proceedings against their assets should not be taken into account. Where a stockholding obligation has been imposed on operators, initiation of bankruptcy or settlement proceedings could be considered to demonstrate the existence of such a risk.

…

(21) In order to prevent double reporting with regard to the information to be provided by Member States on the different product categories, Regulation (EC) No 1099/2008 … should serve as a point of reference for the different categories of petroleum products referred to in this Directive.

…

(33) Since the objective of this Directive, namely to maintain a high level of security of oil supply in the Community through reliable and transparent mechanisms based on solidarity amongst Member States while complying with the internal market and competition rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the [EC] Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.'

9 Article 1 of Directive 2009/119, entitled 'Objective', provides:

'This Directive lays down rules aimed at ensuring a high level of security of oil supply in the Community through reliable and transparent mechanisms based on solidarity amongst Member

States, maintaining minimum stocks of crude oil and/or petroleum products and putting in place the necessary procedural means to deal with a serious shortage.'

10 Points (f), (i), (j) and (l) of the first paragraph of Article 2 of that directive contain the following definitions:

'For the purposes of this Directive:

…

(f) "central stockholding entity" (CSE) means the body or service upon which powers may be conferred to act to acquire, maintain or sell oil stocks, including emergency stocks and specific stocks;

…

(i) "oil stocks" means stocks of the energy products listed in Chapter 3.4 of Annex A to Regulation (EC) No 1099/2008 [as amended by Commission Regulation (EU) 2017/2010 of 9 November 2017 (OJ 2017 L 292, p. 3)];

(j) "emergency stocks" means the oil stocks that each Member State is required to maintain pursuant to Article 3;

…

(l) "specific stocks" means oil stocks that meet the criteria set out in Article 9.'

11 Article 3 of that directive, entitled 'Emergency stocks – Calculating stockholding obligations', provides in paragraph 1:

'Member States shall adopt such laws, regulations or administrative provisions as may be appropriate in order to ensure, by 31 December 2012, that the total oil stocks maintained at all times within the Community for their benefit correspond, at the very least, to 90 days of average daily net imports or 61 days of average daily inland consumption, whichever of the two quantities is greater.'

12 Article 4 of that directive, relating to 'calculating stock levels', provides in paragraph 1:

'The levels of stocks held shall be calculated using the methods set out in Annex III. …'

13 As regards the CSEs, Article 7(1) of Directive 2009/119 provides the following:

'Member States may set up CSEs.

No Member State may set up more than one CSE or any other similar body. A Member State may set up its CSE at any location within the Community.

Where a Member State sets up a CSE, it shall take the form of a body or service without profit objective and acting in the general interest and shall not be considered to be an economic operator within the meaning of this Directive.'

14 Article 8 of that directive, entitled ‘Economic operators’, is worded as follows:

‘1. Each Member State shall ensure that any economic operator on which it imposes stockholding obligations in order to fulfil its obligations under Article 3 is given the right to delegate those obligations at least in part and at the choice of the economic operator, but only to:

(a) the CSE of the Member State on whose account such stocks are held;

(b) one or more other CSEs which have in advance declared themselves willing to hold such stocks, provided that such delegations have been authorised in advance both by the Member State on whose account such stocks are held and by all Member States within whose territories the stocks will be held;

(c) other economic operators which have surplus stocks or available stockholding capacity outside of the territory of the Member State on whose account the stocks are held within the Community, provided that such delegation has been authorised in advance both by the Member State on whose account such stocks are held and by all Member States within whose territories the stocks will be held; and/or

(d) other economic operators which have surplus stocks or available stockholding capacity within the territory of the Member State on whose account the stocks are held, provided that such delegation has been communicated in advance to the Member State. Member States may impose limits or conditions on such delegations.

…

2. Each Member State may restrict the delegation rights of the economic operators on which it imposes or has imposed stockholding obligations.

However, where such restrictions limit the delegation rights of an economic operator to amounts corresponding to less than 10% of the stockholding obligation imposed on it, the Member State shall ensure that it has set up a CSE that is required to accept delegations in respect of the amount needed to safeguard the right of an economic operator to delegate at least 10% of the stockholding obligation imposed on it.

The minimum percentage referred to in this paragraph shall be increased from 10% to 30% by 31 December 2017.

…’

15 Article 9 of the directive, entitled ‘Specific stocks’, provides:

‘1. Each Member State may undertake to maintain a minimum level of oil stocks, calculated in terms of number of days of consumption, in accordance with the conditions set out in this Article.

Specific stocks shall be owned by the Member State or the CSE set up by it and shall be maintained on the territory of the Community.

2. Specific stocks can only be composed of one or more of the following product categories, as defined in Chapter 3.4 of Annex A to Regulation (EC) No 1099/2008 [as amended by Regulation 2017/2010]:

– Ethane

– LPG

– Motor gasoline

– Aviation gasoline

– Gasoline-type jet fuel (naphtha-type jet fuel or JP4)

– Kerosene-type jet fuel

– Other kerosene

– Gas/diesel oil (distillate fuel oil)

– Fuel oil (high sulphur content and low sulphur content)

– White spirit and SBP

– Lubricants

– Bitumen

– Paraffin waxes

– Petroleum coke

…

5. Each Member State that has not made a commitment for the full length of a given calendar year to maintain at least 30 days of specific stocks shall ensure that at least one-third of their stockholding obligation is held in the form of products composed in accordance with paragraphs 2 and 3.

…’

16 The sixth paragraph of Annex III to that directive entitled ‘Methods for calculating the level of stocks held’ provides:

‘Member States may:

(a) include all other stocks of the petroleum products identified in Chapter 3.4 of Annex A to Regulation (EC) No 1099/2008 [as amended by Regulation 2017/2010] and calculate the crude oil equivalent by multiplying the quantities by a factor of 1.065; or

(b) include stocks of only the following products: motor gasoline, aviation gasoline, gasoline-type jet fuel (naphtha-type jet fuel or JP4), kerosene-type jet fuel, other kerosene, gas/diesel oil (distillate fuel oil) and fuel oil (high sulphur content and low sulphur content) and calculate the crude oil equivalent by multiplying the quantities by a factor of 1.2.'

Regulation No 1099/2008

17 Article 2(d) of Regulation No 1099/2008 defines, for the purposes of that regulation, the concept of 'energy products' as 'combustible fuels, heat, renewable energy, electricity, or any other form of energy'.

18 Annex A to that regulation is entitled 'Clarifications of terminology'. Chapter 3.4 of that annex concerns the concept of 'oil (crude oil and petroleum products)', which covers, inter alia, heavy fuel oil, lubricants and petroleum coke, within the meaning, respectively, of points 3.4.18, 3.4.20 and 3.4.23 of that annex.

Bulgarian law

19 Under Article 2(1) of the Zakon za zapasite ot neft i neftoprodukti (Law on stocks of oil and petroleum products, DV No 15 of 15 February 2013), in the version applicable to the disputes in the main proceedings ('the ZZNN'):

'Under this law, emergency stocks of oil and of the categories of petroleum products listed below shall be built up, maintained, renewed, used, replenished and monitored:

1. automotive gasoline;

2. diesel, kerosene-type jet fuel and fuel for diesel engines;

3. heavy fuel oil;

4. propane-butane gas.'

20 Article 3(4) of the ZZNN provides:

'Parties subject to this obligation shall themselves organise and finance, on their own behalf and by their own means, the building up, maintenance, renewal and replenishment of the levels of emergency stocks which they are ordered to guarantee.'

21 Article 12 of the ZZNN states:

'(1) … The Chairperson of [the National Agency for "State Reserves and Military stocks"] shall establish each year, by 30 April at the latest, the emergency stocks to be built up and maintained by persons subject to this obligation and by the State-owned undertaking "Darzhavna petrolna compania" [(National Oil Company)], by orders setting the overall and individual stock levels …

…

(4) The levels of emergency stocks of each person subject to this obligation shall be determined in proportion to their share of total net imports and of intra Community acquisitions or total domestic consumption in the previous calendar year in relation to the total share of all entities subject to this obligation.

…

(11) Any Bulgarian or foreign natural or legal person registered as traders, and any of their branches, which, during the previous calendar year, imported and/or supplied lubricating oils (including base oils), bitumen, paraffin waxes, petroleum coke, tar and sulphur into the territory of the country from intra-Community acquisitions shall be assigned emergency stock levels in the form of heavy fuel oil.'

22 Article 21 of the ZZNN is worded as follows:

'(1) Emergency stocks may be maintained in the form of oil and/or petroleum products as listed in Article 2(1).

…

(11) Levels of emergency stocks in the form of heavy fuel oil, determined on the basis of net imports and intra-Community acquisitions or average daily consumption, may be built up and maintained, up to 100%, in the form of gas oil, automotive gasoline and/or fuel for diesel engines, and the quantity must be equal to the quantity of heavy fuel oil stock for which substitution is requested.

…'

The disputes in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

23 Trade Express, the applicant in the proceedings giving rise to Case C-395/22 declared intra-Community acquisitions in Bulgaria of 89.6 tonnes of lubricating oils during 2020. Those lubricating oils, which fall under point 3.4.20 of Annex A to Regulation No 1099/2008, were intended for sale.

24 Devnia Tsiment, the applicant in the proceedings giving rise to Case C-428/22, imported 34 657.39 tonnes of petroleum coke into Bulgaria during 2020. That petroleum coke, which falls under point 3.4.23 of Annex A to Regulation No 1099/2008, is used in a mineralogical process for the production of non-pulverised cements known as 'clinkers'.

25 As a result of those activities, by two orders, one dated 28 April 2021 and the other 29 April 2021, the Vice-Chairperson of the National Agency for 'State Reserves and Military Stocks' ordered Devnia Tsiment and Trade Express respectively to build up and maintain emergency stocks of heavy fuel oil, on their own behalf and by their own means, for the period from 1 July 2021 to 30 June 2022. Devnia Tsiment had to build up such an emergency stock of 7 806.058 tonnes, while Trade Express had to build up a stock of 15.947 tonnes.

26 Each of those companies brought an action before the Administrativen sad – Varna (Administrative Court, Varna, Bulgaria), the referring court in the present cases, requesting that the order issued against it be annulled. In essence, they dispute the obligation to build up, at their expense, emergency stocks of heavy fuel oil, when that petroleum product does not form part of their economic activities.

27 That court states that Trade Express and Devnia Tsiment did not carry out, in 2020, any economic activity with the types of products listed in Chapter 3.4 of Annex A to Regulation No 1099/2008 other than lubricating oils and petroleum coke, respectively. It states that those companies have neither the quantities of emergency stock of heavy fuel oil required by the orders referred to in paragraph 25 above nor a depot to hold such stocks. As a result, the building up and storage of the emergency stocks required by those orders would entail a significant financial burden for them.

28 In that context, the referring court expresses doubts as to the compatibility of the ZZNN with the provisions of Directive 2009/119, read in the light of the Charter, in so far as that law makes it possible to require companies, such as Trade Express and Devnia Tsiment, to build up and maintain emergency stocks of petroleum products that are unrelated to their activity.

29 It follows, in essence, from recital 33, points (i) and (j) of the first paragraph of Article 2, and Articles 3 and 8 of Directive 2009/119 that that directive seeks to build up emergency stocks of all the products referred to in Chapter 3.4 of Annex A to Regulation No 1099/2008.

30 However, the ZZNN only requires the building up of such stocks for oil and four other petroleum products, including heavy fuel oil. That legislation requires any economic operator that has imported products covered by that chapter to build up and maintain emergency stocks of one of those products.

31 Moreover, according to the referring court, the obligation for an economic operator to store a petroleum product that it does not use in the course of its economic activities would require that operator to purchase or borrow – by delegating part of its obligation – the necessary quantity of that product and to store it in accordance with the regulatory requirements. That would create a financial burden for that operator and could affect the internal market and competition rules. The general scheme of Directive 2009/119 and the need for consistency tend to support an interpretation to the effect that obligations in kind be imposed on such an operator, that is to say, an obligation to store an energy product falling within the scope of its economic activities, so as to ensure a reasonable balance between the public interests of the European Union and private interests.

32 In those circumstances, the Administrativen sad – Varna (Administrative Court, Varna) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling in Case C-395/22:

‘(1) Having regard to the objective of [Directive 2009/119], and to Article 2(d) of [Regulation No 1099/2008], and in the light of the principle of proportionality under Article 52(1) of the [Charter], in conjunction with Article 17 thereof, must recital 33 and Article 1, Article 3, Article 8 and Article 2 [,first paragraph, points] (i) and (j) of [Directive 2009/119] be interpreted as precluding national legislation, such as that at issue in the main proceedings,

under which persons who have made intra-Community [acquisitions] of lubricating oils as defined in point 3.4.20 of Annex A to [Regulation No 1099/2008] (or importers of such lubricating oils) can be obliged to [build up] emergency stocks?

(2) Having regard to the objective of [Directive 2009/119], and in the light of the principle of proportionality under Article 52(1) of the [Charter], in conjunction with Article 17 thereof, must recital 33 and Article 1, Article 3, Article 8 and Article 2[, first paragraph, points] (i) and (j) of [Directive 2009/119] be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the types of products in respect of which emergency stocks must be [built up] and maintained are limited to some of the types of products in Article 2 [,first paragraph, point] (i), of that directive, in conjunction with Chapter 3.4 of Annex A to [Regulation No 1099/2008]?

(3) Having regard to the objective of [Directive 2009/119], and in the light of the principle of proportionality under Article 52(1) of the [Charter], in conjunction with Article 17 thereof, must recital 33 and Article 1, Article 3, Article 8 and Article 2[, first paragraph, points] (i) and (j) of [Directive 2009/119] be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the making by a person of intra-Community [acquisitions] or imports of one of the types of products referred to in Article 2[, first paragraph, point] (i) of that directive, in conjunction with Chapter 3.4 of Annex A to [Regulation No 1099/2008], entails an obligation on the part of that person to [build up] and maintain emergency stocks of another, different type of product?

(4) Having regard to the objective of [Directive 2009/119], and in the light of the principle of proportionality under Article 52(1) of the [Charter], in conjunction with Article 17 thereof, must recital 33 and Article 1, Article 3, Article 8 and Article 2[, first paragraph, points] (i) and (j) of [Directive 2009/119] be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which a person is obliged to [build up] and maintain stocks of a product which he or she does not use in the course of his or her economic activity and which is not connected with that activity, whereby that obligation also entails a significant financial burden (leading, in practice, to the impossibility of compliance), since the person neither possesses the product nor imports it and/or holds stocks of it?

(5) If any of those questions is answered in the negative: Having regard to the objective of [Directive 2009/119], and in the light of the principle of proportionality under Article 52(1) of the [Charter], in conjunction with Article 17 thereof, must recital 33 and Article 1, Article 3, Article 8 and Article 2[, first paragraph, points] (i) and (j) of [Directive 2009/119] be interpreted as meaning that a person who has made intra-Community [acquisitions] or imports of a particular type of product can only be obliged to [build up] and maintain emergency stocks of the same type of product which was the subject of the intra-Community [acquisitions]/imports?'

33 In Case C-428/22, the national court has referred five questions for a preliminary ruling which are, in essence, identical to those cited in the preceding paragraph, except that the first question concerns the situation of persons who have made intra-Community acquisitions of petroleum coke, within the meaning of point 3.4.23 of Annex A to Regulation No 1099/2008, for production purposes.

34 By decision of the President of the Court of 10 August 2022, Cases C-395/22 and C-428/22 were joined for the purposes of the written and oral parts of the procedure and the judgment.

The application to reopen the oral part of the procedure

35 By letter received at the Registry of the Court of Justice on 12 January 2024, Devnia Tsiment requested that the Court order the reopening of the oral part of the procedure, pursuant to Article 83 of the Rules of Procedure of the Court of Justice.

36 In support of its request, Devnia Tsiment relies on the existence of a new fact, that is to say, a legislative amendment made after the hearing before the Court. According to Devnia Tsiment, that legislative amendment should be taken into account in the answers to the questions referred, even if it is not applicable *ratione temporis* to the disputes in the main proceedings. In that request, Devnia Tsiment also puts forward substantive arguments in response to those questions.

37 In that regard, it should be borne in mind that, according to Article 83 of the Rules of Procedure, the Court may, at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

38 In the present case, the Court considers, after hearing the Advocate General, that the conditions laid down in Article 83 are not satisfied. Apart from the fact that the Court, when giving a preliminary ruling, is not called upon to rule on national law, it must be pointed out that the legislative amendment on which Devnia Tsiment relies is not, according to Devnia Tsiment itself, applicable to the disputes in the main proceedings. In those circumstances, that legislative amendment cannot be regarded as 'a new fact which is of such a nature as to be a decisive factor for the decision of the Court', within the meaning of Article 83.

39 In any event, the Court considers that it has all the information necessary to rule on the requests for a preliminary ruling and that the present joined cases must not be decided on the basis of an argument which has not been debated before it.

40 Accordingly, there is no need to order the reopening of the oral part of the procedure.

Consideration of the questions referred

The second question

41 By its second question in each of the present joined cases, which it is appropriate to deal with first, the referring court asks, in essence, whether Article 3 of Directive 2009/119, read in conjunction with Article 1 and points (i) and (j) of the first paragraph of Article 2 of that directive, must be interpreted as meaning that Member States are required to maintain emergency stocks for all the categories of energy products referred to in Chapter 3.4 of Annex A to Regulation No 1099/2008, or whether the Member States are able to fulfil their obligation under Article 3 of that directive to maintain emergency stocks by maintaining emergency stocks of only some of those categories.

42 As a preliminary point, it should be recalled that, as is apparent from Article 1 of Directive 2009/119, read in the light of recitals 3, 8 and 33 thereof, the objective of that directive is to ensure a high level of security of oil supply in the European Union through transparent mechanisms based on solidarity amongst Member States while complying with the internal market and competition rules, maintain minimum stocks of crude oil and/or petroleum products and put in place the necessary procedural means to deal with a serious shortage. In so doing, that directive seeks to ensure public security for Member States and for the European Union, for which the availability of oil stocks and the safeguarding of energy supply are essential elements.

43 Points (i) and (j) of the first paragraph of Article 2 of Directive 2009/119 define the terms 'oil stocks' and 'emergency stocks' for the purposes of that directive.

44 'Oil stocks' within the meaning of point (i) of the first paragraph of Article 2 are the stocks of energy products listed in Chapter 3.4 of Annex A to Regulation No 1099/2008. That chapter contains a list of 24 categories of products grouped under the heading 'Oil (crude oil and petroleum products)', including heavy fuel oil, lubricants and petroleum coke.

45 'Emergency stocks' within the meaning of point (j) of the first paragraph of Article 2 of Directive 2009/119 are defined as oil stocks that each Member State is required to maintain pursuant to Article 3.

46 Thus Article 3(1) of Directive 2009/119 requires Member States to adopt such laws, regulations or administrative provisions as may be appropriate in order to ensure that the total oil stocks maintained at all times within the European Union for their benefit correspond, at the very least, to 90 days of average daily net imports or 61 days of average daily inland consumption, whichever of the two quantities is greater. Article 3(2) and (3) of that directive lays down the methods and detailed rules for assessing that level.

47 For the purpose of interpreting those provisions of EU law, it is necessary to consider, in accordance with settled case-law, not only their wording but also their context and the objectives of the legislation of which they form part (judgment of 21 December 2021, *Bank Melli Iran*, C-124/20, EU:C:2021:1035, paragraph 43 and the case-law cited).

48 In the first place, it is clear from the wording of Article 3 of Directive 2009/119 that the Member States are required to ensure that 'total oil stocks', calculated in accordance with the methods and procedures laid down in that article, are maintained. As the Advocate General observed in point 61 of his Opinion, that article thus determines the required volume of those stocks. On the other hand, that wording does not in any way define the actual composition of those stocks as regards the categories of products to be included in those stocks.

49 In the light of that wording, it does not appear therefore that the Member States are obliged to maintain emergency stocks for all the energy products listed in Chapter 3.4 of Annex A to Regulation No 1099/2008. On the contrary, that wording indicates that the EU legislature wished to grant the Member States a certain discretion in order to determine, in particular, the actual composition of the emergency stocks.

50 The fact that, in point (i) of the first paragraph of Article 2 of Directive 2009/119, 'oil stocks', within the meaning of that directive, are defined by reference to the energy products listed in Chapter 3.4 of Annex A to Regulation No 1099/2008 cannot lead to a different interpretation. As is clear from recital 21 of that directive, Regulation No 1099/2008 constitutes a legal act of

reference in relation to that directive. That regulation cannot therefore alter either the extent of the obligation or the discretion of the Member States, as laid down in Article 3 of that directive, read in conjunction with the definition of 'emergency stocks' in point (j) of the first paragraph of Article 2 of that directive.

51 In the second place, the literal interpretation set out in paragraph 49 above is supported by the context and the legislative history of Article 3 of Directive 2009/119 and by the objectives of that directive.

52 First, as regards the context of Article 3, it should be noted that, in accordance with Article 4(1) of, and Annex III to, Directive 2009/119, the levels of stocks held, other than crude oil stocks, are to be calculated in crude oil equivalent. In that regard, points (a) and (b) of the sixth paragraph of Annex III to that directive provide for two alternative methods of calculation. Thus, the Member States may include, in the calculation of the level of stocks held, 'all other stocks of the petroleum products identified in Chapter 3.4 of Annex A to [Regulation No 1099/2008]' or only the stocks of some of those products (motor gasoline, aviation gasoline, gasoline-type jet fuel (naphtha-type jet fuel or JP4), kerosene-type jet fuel, other kerosene, gas/diesel oil (distillate fuel oil) and fuel oil (high sulphur content and low sulphur content)).

53 As the Advocate General observed in point 65 of his Opinion, the grant of such a choice to the Member States presupposes that they enjoy a margin of discretion in determining the actual composition of their emergency stocks.

54 In addition, it follows from a complete reading of Directive 2009/119 that only Article 9(5) of that directive contains elements defining the composition of the emergency stocks of the Member States. Under that provision, Member States which have not given an undertaking to maintain, for the full length of a given calendar year, at least 30 days of specific stocks, within the meaning of point (l) of the first paragraph of Article 2 of that directive, are to ensure that at least one third of their stockholding obligation is maintained in the form of products the composition of which complies with Article 9(2) and (3) of that directive. Paragraph 2 contains a list of 14 categories of petroleum products, as defined in Chapter 3.4 of Annex A to Regulation No 1099/2008.

55 It may be inferred from a comparison of Article 3 and Article 9(5) of Directive 2009/119 that, where the EU legislature intends to limit the Member States' discretion as to the composition of the emergency stocks, it expressly provides for this.

56 Second, that conclusion is also supported by the legislative history of Article 3 of Directive 2009/119.

57 In that regard, it should be noted that, in Article 1(1) and Article 2, Directives 68/414 and 2006/67 imposed on the Member States an obligation to maintain emergency stocks for three specific categories of petroleum products expressly referred to in Article 2, namely (i), motor spirit and aviation fuel (aviation spirit and jet-fuel of the gasoline type), (ii), gas oil, diesel oil, kerosene and jet-fuel of the kerosene type, and, (iii), fuel-oils.

58 By contrast, as stated in paragraph 48 above, Article 3 of Directive 2009/119 no longer identifies the categories of products which must be included in emergency stocks. By refraining from defining those categories, the EU legislature expressed its intention henceforth to grant the Member States a margin of discretion in that regard. Furthermore, as is apparent from recital 5

of that directive, that change of approach is explained by the need to adapt the method for calculating stockholding obligations in order to align it with the methods used under the IEA Agreement.

59 Third, as regards the objectives of Directive 2009/119, recalled in paragraph 42 above, it must be held, as the Advocate General observed in point 67 of his Opinion, that the objective of ensuring a high level of security of oil supply in the European Union justifies conferring such discretion on the Member States. When they exercise that discretion, they may, inter alia, decide to maintain the emergency stocks of the most essential and strategic products having regard to national consumption patterns and national production or imports of those products.

60 In the light of all the foregoing reasons, the answer to the second question in each of the present joined cases is that Article 3 of Directive 2009/119, read in conjunction with Article 1 and points (i) and (j) of the first paragraph of Article 2 of that directive, must be interpreted as meaning that Member States are not required to maintain emergency stocks for all the categories of energy products referred to in Chapter 3.4 of Annex A to Regulation No 1099/2008. On the contrary, they may fulfil their obligation under Article 3 of that directive to maintain emergency stocks by maintaining emergency stocks of only some of those categories.

The first question

61 By its first question in each of the present joined cases, the referring court asks, in essence, whether Articles 3 and 8 of Directive 2009/119 must be interpreted as precluding national legislation under which an obligation to build up and maintain emergency stocks may be imposed on an economic operator who has imported energy products falling within Chapter 3.4 of Annex A to Regulation No 1099/2008.

62 In that regard, it should be borne in mind that, under Article 3 of Directive 2009/119, the Member States are required to maintain a certain level of emergency oil stocks.

63 Article 8(1) of that directive provides, inter alia, that each Member State is to ensure that any economic operator on which it imposes stockholding obligations in order to fulfil its obligations under Article 3 of that directive is given the right to delegate those obligations at least in part to a CSE or to other economic operators which have surplus stocks or available stockholding capacity in the territory of the European Union.

64 It follows unequivocally from a combined reading of those two provisions, as all the parties and interested persons who have submitted observations to the Court agree, that Member States may fulfil their obligation to maintain emergency stocks by imposing stockholding obligations on economic operators.

65 That said, neither those provisions nor any other provision of Directive 2009/119 defines the term ‘economic operator’. In those circumstances, the meaning and scope of those words must, in accordance with settled case-law, be determined by considering their usual meaning in everyday language, while also taking into account the context in which they occur and the purposes of the rules of which they are part (judgment of 12 June 2018, *Louboutin and Christian Louboutin*, C-163/16, EU:C:2018:423, paragraph 20 and the case-law cited).

66 In that regard, first of all, it should be noted that the term ‘economic operator’ commonly refers to any natural or legal person who pursues an economic activity.

67 Next, as regards the context in which that term is used, it should be noted that the third subparagraph of Article 7(1) of Directive 2009/119 distinguishes, in essence, between an economic operator, within the meaning of that directive, and a CSE, which, according to the wording of that provision, takes 'the form of a body or service without profit objective and acting in the general interest'.

68 Lastly, in the light of the objective of Directive 2009/119, which is to guarantee a high level of security of oil supply in the European Union, it is reasonable to regard as economic operators, within the meaning of that directive, inter alia operators whose activity is linked to energy products falling within Chapter 3.4 of Annex A to Regulation No 1099/2008. These include, in particular, producers, importers and traders of those products, as well as manufacturers who use them for production purposes.

69 In the light of all the foregoing reasons, the answer to the first question in each of the present joined cases is that Articles 3 and 8 of Directive 2009/119 must be interpreted as not precluding national legislation under which an obligation to build up and maintain emergency stocks may be imposed on an economic operator who has imported energy products falling within Chapter 3.4 of Annex A to Regulation No 1099/2008.

The third to fifth questions

70 By its third to fifth questions in each of the present joined cases, which it is appropriate to examine together, the referring court asks, in essence, whether the provisions of Directive 2009/119, read in the light of Article 17 and Article 52(1) of the Charter, must be interpreted as meaning that they preclude the importation, by an economic operator, of energy products falling within a category of products covered by Chapter 3.4 of Annex A to Regulation No 1099/2008, from giving rise to the obligation, for that operator, to build up and maintain an emergency stock of an energy product falling within another category of products referred to in that chapter, even where that operator does not use that product in the course of its economic activity, which is unrelated to that product, and that obligation constitutes a significant financial burden for that operator.

71 In the first place, it should be recalled that it is apparent from the answers given to the first and second questions in each of the present joined cases that, in accordance with Articles 3 and 8 of Directive 2009/119, the Member States have a margin of discretion in determining the composition of the emergency stocks which they must maintain under Article 3 and that they may impose stockholding obligations on economic operators, such as an operator that has imported lubricating oils or petroleum coke within the meaning of points 3.4.20 and 3.4.23 of Chapter 3.4 of Annex A to Regulation No 1099/2008, respectively.

72 In the absence of any express provision in Directive 2009/119 and in the light of that discretion, the view must be taken that that directive does not preclude, as such, a Member State which has decided that its emergency stock is to be comprised only of four categories of petroleum products referred to in Chapter 3.4 from imposing on an economic operator an obligation to build up and maintain an emergency stock of one of those categories, even though that category is unrelated to the economic activity of that operator.

73 However, in the light of the referring court's questions, it is necessary, in the second place, to ascertain whether the provisions of the Charter preclude legislation laying down such an obligation. Although that court limited its questions to the interpretation of Article 17 of the Charter, which guarantees the right to property, and the principle of proportionality, the parties

and interested persons also debated, in particular at the hearing before the Court, the compatibility of that legislation with the freedom to conduct a business, within the meaning of Article 16 of the Charter. Therefore, in order to provide the referring court with a full and useful answer, it is necessary to take into account the combined provisions of Articles 16 and 17 of the Charter.

74 In that regard, it should be borne in mind that the Charter's scope is defined in Article 51(1) thereof, according to which, so far as action of the Member States is concerned, the provisions of the Charter are addressed to those Member States only when they are implementing EU law (judgments of 13 June 2017, *Florescu and Others*, C-258/14, EU:C:2017:448, paragraph 44 and the case-law cited, and of 27 January 2022, *Sātiņi-S*, C-234/20, EU:C:2022:56, paragraph 51).

75 As the Advocate General stated in point 74 of his Opinion, where a Member State adopts measures in the exercise of the discretion conferred on it by an EU act, such as Directive 2009/119, and imposes on economic operators, within the meaning of that directive, stockholding obligations in order to fulfil its obligations under Article 3 of that directive, it must be regarded as implementing EU law, within the meaning of Article 51(1) of the Charter.

76 Article 16 of the Charter recognises the freedom to conduct a business in accordance with EU law and national laws and practices. The protection afforded by that article covers the freedom to exercise an economic or commercial activity, freedom of contract and free competition (judgments of 22 January 2013, *Sky Österreich*, C-283/11, EU:C:2013:28, paragraph 42, and of 16 July 2020, *Adusbef and Others*, C-686/18, EU:C:2020:567, paragraph 82).

77 Under Article 17(1) of the Charter, everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions and no one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

78 That being said, the freedom to conduct a business and the right to property are not absolute (see, to that effect, judgment of 16 July 2020, *Adusbef and Others*, C-686/18, EU:C:2020:567, paragraphs 83 and 85).

79 Thus, it is apparent from Article 52(1) of the Charter, limitations may be imposed on the exercise of the rights and freedoms recognised by the Charter, such as the freedom to conduct a business and the right to property, as long as those limitations are provided for by law, respect the essence of those rights and freedoms and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

80 In the present case, it should be noted that the obligation imposed on an economic operator to build up and maintain, for a period of one year, on its own account and by its own resources, an emergency stock of an oil product, namely heavy fuel oil, which is unrelated to its economic activities, is liable to restrict its freedom to conduct a business and its right to property.

81 In that regard, in so far as that restriction is provided for by the relevant national legislation, namely the ZZNN, it must be regarded as being provided for by law, within the meaning of Article 52(1) of the Charter.

82 As regards the essence of the right to property and the freedom to conduct a business, it should be noted that the obligation to build up and maintain an emergency stock, which is, moreover, limited in time, does not entail a deprivation of property and therefore does not constitute interference impairing the very substance of the right to property. Similarly, since such an obligation in no way prevents, in principle, the exercise of the activities of the economic operator concerned, it also respects the essence of the freedom to conduct a business (see, by analogy, judgment of 16 July 2020, *Adusbef and Others*, C-686/18, EU:C:2020:567, paragraph 89).

83 As regards the objectives pursued by the ZZNN and by the stockholding obligations imposed under that law on the applicants in the main proceedings, the referring court states that those objectives are intended to guarantee security of oil supplies.

84 Such an objective constitutes an objective of general interest recognised by the European Union, within the meaning of Article 52(1) of the Charter. The Court has already held that the maintenance on national territory of a stock of petroleum products which makes it possible to ensure continuity of supply constitutes an objective of public security (see, to that effect, judgments of 10 July 1984, *Campus Oil and Others*, 72/83, EU:C:1984:256, paragraph 35, and of 25 October 2001, *Commission* v *Greece*, C-398/98, EU:C:2001:565, paragraph 29), the importance of which is reflected, as regards oil, in Directive 2009/119 (see, to that effect, judgment of 10 November 2011, *Commission* v *Portugal*, C-212/09, EU:C:2011:717, paragraph 82).

85 National legislation such as that at issue in the main proceedings, providing for the possibility to impose on economic operators stockholding obligations in order to fulfil the obligation to maintain emergency stocks, imposed, under Article 3 of Directive 2009/119, on the Member State concerned and, therefore, the imposition of such obligations on those operators appear appropriate for the purpose of attaining that objective.

86 Finally, as regards the proportionality of the stockholding obligations that may be imposed on economic operators under such national legislation, in so far as those obligations relate to petroleum products other than those used by those operators in the course of their activities, it is for the referring court to assess that proportionality by carrying out an overall assessment of all the relevant circumstances of the disputes in the main proceedings.

87 In that regard, it must take account of the conditions under which those operators may, under the national legislation transposing Article 8 of Directive 2009/119, delegate at least part of their stockholding obligations to a CSE or to another economic operator within the European Union. In that regard, as the Advocate General stated in point 79 of his Opinion, a real possibility of delegating, at a reasonable cost, those stockholding obligations to a CSE or to another economic operator should be regarded as constituting a guarantee that those obligations are proportionate.

88 The referring court should also take account of the extent of the obligations concerned, in terms of the duration of the stockholding required and the quantities of petroleum products to be stored, as well as the possibility of leasing or even purchasing and reselling stocks at the end of the compulsory stockholding period. The fact that the stockholding obligation imposed is limited in time for a predetermined quantity may also support a conclusion that those obligations are proportionate.

89 That court will also have to take into consideration the financial effect of the stockholding obligations in relation to the size of the economic operators concerned and the turnover generated by them in the course of their activities, and to compare that effect with the burden

imposed on all other economic operators subject to stockholding obligations. In that respect, having regard, moreover, to recital 11 of Directive 2009/119, the fact that the imposition of a stockholding obligation entails a serious risk to the economic survival of the economic operator concerned or is likely to have a substantial effect on its competitive position is evidence of the disproportionate nature of that obligation, unless it is accompanied by appropriate compensation.

90 Subject to the assessment of its proportionality, in the light of the foregoing considerations, the combined provisions of Articles 16 and 17, and Article 52(1) of the Charter do not preclude the imposition on an economic operator of an obligation to build up and maintain emergency stocks in respect of products unrelated to the activity of that operator, even where the implementation of that obligation gives rise to a significant financial burden for that operator.

91 In the light of all the foregoing reasons, the answer to the third to fifth questions in each of the present joined cases is that the provisions of Directive 2009/119, read in the light of Articles 16 and 17, and of Article 52(1) of the Charter, must be interpreted as meaning that they do not preclude the importation, by an economic operator, of energy products falling within a category of products covered by Chapter 3.4 of Annex A to Regulation No 1099/2008, from giving rise to the obligation, for that operator, to build up and maintain an emergency stock of an energy product falling within another category of products referred to in that chapter, even where that operator does not use that product in the course of its economic activity, which is unrelated to that product, and that obligation constitutes a significant financial burden for that operator, provided that that obligation is proportionate.

Costs

92 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Article 3 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, as amended by Commission Implementing Directive (EU) 2018/1581 of 19 October 2018, read in conjunction with Article 1 and points (i) and (j) of the first paragraph of Article 2 of Directive 2009/119, as amended,**

   must be interpreted as meaning that Member States are not required to maintain emergency stocks for all the categories of energy products referred to in Chapter 3.4 of Annex A to Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics, as amended by Commission Regulation (EU) 2019/2146 of 26 November 2019. On the contrary, they may fulfil their obligation under Article 3 of that directive to maintain emergency stocks by maintaining emergency stocks of only some of those categories.

2. **Articles 3 and 8 of Directive 2009/119, as amended by Implementing Directive 2018/1581,**

must be interpreted as not precluding national legislation under which an obligation to build up and maintain emergency stocks may be imposed on an economic operator who has imported energy products falling within Chapter 3.4 of Annex A to Regulation No 1099/2008, as amended by Regulation 2019/2146.

3. The provisions of Directive 2009/119, as amended by Implementing Directive 2018/1581, read in the light of Articles 16 and 17, and of Article 52(1) of the Charter of Fundamental Rights of the European Union,

must be interpreted as meaning that they do not preclude the importation, by an economic operator, of energy products falling within a category of products covered by Chapter 3.4 of Annex A to Regulation No 1099/2008, as amended by Regulation 2019/2146, from giving rise to the obligation, for that operator, to build up and maintain an emergency stock of an energy product falling within another category of products referred to in that chapter, even where that operator does not use that product in the course of its economic activity, which is unrelated to that product, and that obligation constitutes a significant financial burden for that operator, provided that that obligation is proportionate.

[Signatures]