

by them. Further, if the contract still subsisted, it was arguable that Norelf were themselves subsequently in breach by failing to tender the bill of lading and otherwise perform their own obligations under the contract.

Norelf contended that their actions in failing to take steps to perform the contract and disposing of the cargo elsewhere themselves amounted, in the circumstances, to acceptance of Vitol's repudiatory breach. Since Vitol were aware of Norelf's conduct (as had been found by the arbitrator), there was no further need to communicate that acceptance to them.

Phillips J held that Norelf's conduct, in failing to perform its own obligations under the contract, could in law amount to acceptance of Vitol's repudiation. Norelf had taken action which was incompatible with their own continued performance of the contract, and this constituted conduct treating the contract as at an end. Vitol appealed to the Court of Appeal who allowed the appeal.

Held: (1) The question was whether an innocent party could accept a repudiation of the contract merely by failing to perform his own obligations under it. Where a party was in repudiatory breach, the innocent party could generally choose between acceptance of the repudiation (terminating the contract) and affirmation of the contract. The consequences of each option were totally different and, if the innocent party intended to accept the repudiation, he had to do so clearly and unequivocally.

(2) Silence and inaction would generally be equally consistent with termination and affirmation and could not therefore constitute acceptance of a repudiation. An innocent party's failure to perform his own contractual obligations was only one kind of silence or inaction. It therefore remained equivocal 'being equally consistent, for example, with a misunderstanding . . . of his rights . . . indecision or even inadvertence . . .'. It followed that Norelf's claim against Vitol for repudiatory breach failed.

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EC

OIL IMPORTS Registration

*Regulation introducing registration for
crude oil imports and deliveries in the
Community*

Council Regulation (EC) 2964/95
20 December 1995

Article 1 of Council Regulation (EC) 2964/95 of 20 December 1995,¹ introducing registration for crude oil imports and deliveries in the Community, subjects the importation or receiving of crude oil from third countries or other Member States to the notification with the Member State in which the importer is established.

Article 2 of the regulation obligates Member States to forward in regular intervals to the Commission such information which enables the obtention of a true picture to be obtained of the developments in the conditions under which the imports or deliveries have taken place, and the information shall be circulated to Member States.

Article 3 of the regulation provides that the information collected and forwarded pursuant to this regulation shall be confidential which, however, shall not prevent the publication of basic information not containing details relating to individual undertakings.

Article 4 of the regulation states that the information of the importer shall relate to each import or delivery of crude oil at a specific price, whereas the term 'import' is defined as meaning each quantity of crude oil which enters the customs territory of the Community for purposes other than transit, and the term 'delivery' as each quantity of crude oil coming from another Member State for purposes other than transit.

Article 4 of the regulation excludes imports or deliveries from the obligation of notification which are carried out on behalf of companies outside of the importing country which are intended for refining under contract and subsequent exportation. Also excluded is oil extracted from the seabed over which a Member State exercises exclusive rights of exploitation.

Article 5 of the regulation states that the notification shall include the designation of the crude oil, including the API gravity, the quantity in barrels, the cif price paid per barrel and the percentage sulphur content.

Article 6 of the regulation obligates the importers to forward the information to Member States in respect of a period not exceeding one month.

¹ OJ L310/5 of 22 December 1995.

Article 7 of the regulation imposes on Member States the obligation to forward the information obtained according to Article 6 of the regulation to the Commission within one month of the end of each month. The information shall relate to the quantities referred to in Article 5 of the regulation and also to the number of companies reporting.

Article 8 of the regulation provides that the Commission shall analyse the information and communicate it to the Member States each month, and consultations may be held in relation to the consultations.

Article 9 of the regulation states that the information which importers supply and the information which Member States communicate to the Commission shall be confidential, but information which does not relate to individual undertakings (that is, information which refers to at least three undertakings) may be distributed.

Article 10 of the regulation states that the Commission shall adopt detailed rules for implementing the regulation.

Article 11 of the regulation determines as date of entry into force the publication in the Official Journal of the European Communities.

Comment: The Council bases the regulation on Article 213 of the Treaty of European Union which authorises the Commission, within the limits and under the conditions in accordance with the provisions of the Treaty, to collect any information and to carry out any checks required for the performance of the tasks entrusted to it. In order to establish the common energy policy, the Commission wants to obtain market transparency with the aim to achieve security of supply at stable prices. Since the former Regulations (EEC) 1893/79² and (EEC) 2592/79³ which concerned the duty of registration of imports of crude oil expired on 31 December 1991, the new regulation reintroduces the system by adapting it to the current trading conditions. The scope of the duty of providing of information which is explained in Article 5 of the regulation avoids a differentiated application of the regulation so that disadvantages to undertakings of a Member State which may derive from excessive communications of this Member State to the Commission are avoided.

2 OJ L220/1 of 30 August 1979, as last amended by Regulation (EEC) 1370/90, OJ L133/1 of 24 May 1990.

3 OJ L297/1 of 24 November 1979, as last amended by Regulation (EEC) 1370/90, OJ L133/1 of 24 May 1990.

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