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SECOND PROGRESS REPORT

ON THE

INTERNAL ENERGY MARKET

(presented by the Commission)

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SECOND PROGRESS REPORT ON THE INTERNAL ENERGY MARKET

Summary

The Commission has now presented its major legislative proposals for completion of the internal energy market. These proposals provide for increased competition in several sectors. Its concern to see a more competitive environment in the granting of hydrocarbon and extraction licences has taken the form of the draft Directive now before the other institutions. It has also presented its proposals for a second stage of liberalisation in the areas of gas and electricity. These, too, are on the table and should be adopted given the need to complete the internal market, including the energy sector, with its vital importance as an input to other parts of the economy. A third stage of gas and electricity liberalisation is yet to come, conditional as it is on the experience of operating measures of the second stage. This approach has the merits of gradualness and pragmatism and gives all concerned the time to adapt to changes in the market.

But this does not exhaust the action being taken to liberalise the internal energy market, much of which, like the control of aid to the coal industry, or the taking of action against abuses of dominant positions, is based upon Treaty powers or legislation of long standing. In other fields, such as standards, there is already the experience of achievements so far, which points to where future efforts can best be directed.

Together with the measures of liberalisation, there is continued progress on the flanking policies which accompany them and provide the framework of social economic cohesion which enables the gains from liberalisation to be spread across the Community. In all these areas, the Commission will continue to ensure that other Community interests - and in particular those of the environment - are served as the internal energy market is progressively liberalised.

Introduction

1. A first progress report (COM(90)124 final) on the internal energy market was made by the Commission to the Council on 18 May 1990 in accordance with paragraph 36 of the Commission's Working Document ("White Paper") on the internal energy market of 2 May 1986 (COM(88)238 final). The Commission is now making a second report in order to record progress made since the first report.

Work has continued in the implementation of the White Paper on such subjects as standardisation on the supply and demand sides, public procurement and fiscal policy, and the existing Community law continues to be applied in order to remove obstacles to energy market integration. The proposals for new legislation which in the first progress report were reported as having been put forward have, with the exception of the investment information proposal, which Council requested the Commission to reconsider, become Community Directives. There has also been progress in accompanying measures and the external aspects of the Community's energy market. But more remains to be done.

Since the first report, the Community has adopted a strategy for the limitation of CO₂ emissions and improvement of energy efficiency, in response to the problem of global climate change. It has signed the Framework Convention on Climate Change and agreed to ratify the Convention before the end of 1993. It has also adopted an environmental action programme "Towards Sustainable Development".

In this programme special emphasis is given to the integration of environmental considerations into the development of policy in the energy sector. A key element of the programme is to move towards the internalisation of external environmental costs. The Commission's proposal for a carbon/energy tax in its package of measures under the CO₂ strategy comes under this heading. Actions for the completion of the internal energy market will be of critical importance in the attainment of the goals of the above programme.

In compiling this second progress report, the Commission is conscious of the necessity of completing the internal energy market and takes the view that what has been achieved so far represents only part of that process.

Chapter I - The achievement so far

1) Energy and the implementation of the White Paper

The main items of progress achieved since the date of the first report are as follows:

- (a) Public procurement in the energy sector: a significant step forward was made with the adoption in September 1990 of Directive 90/531/EEC of 17.9.90⁽¹⁾ on the procurement procedures of entities operating in the hitherto excluded sectors, namely water, energy, transport and telecommunications. This Directive, which came into effect on 1 January 1993 for all Member States except Spain (1 January 1996) and Greece and Portugal (1 January 1998) applies the Community rules for public procurement to entities which benefit from special or exclusive rights in the areas concerned. Supplies and works requirements of a value of

(1) OJ N° L 297 of 29.10.1990

400,000 ECU (supplies) and 5,000,000 ECU (works) are required to be put out to tender according to procedures, including publication in the Official Journal, which ensure that bids can be made by undertakings in other Community countries. The specification of requirements must make reference to European Standards where these exist. The Directive does not apply to supplies of energy itself, which will be considered in the light of the development of the internal energy market.

Article 3 of the Directive provides for Member States to make requests to benefit from an alternative regime, and several such requests have been made; the Commission has already adopted a decision allowing France to apply such a lighter system in public procurement from 1 January 1993. As conditions for such an authorisation to be given, Article 3 provides that there shall be transparency and non-discrimination by the Member State not only in procurement matters, but also in the granting of oil, gas and coal concessions. A Directive on remedies against infringements of the Directive on the "excluded sectors", 92/13/EEC, was adopted in February 1992;

- (b) As regards fiscality, the Council reached agreement on 24 June 1992 on rates and modalities for VAT and excise duties affecting energy products, among others. This provided for a regime for mineral oils from 1 January 1993 under which excise duties would be paid in the country of destination. Target rates for excise duties are no longer proposed. Minimum rates for excise duties on oil have been agreed, ranging from 337 ECU per 1000 litres for super leaded petrol to 13 ECU per tonne for heavy fuel oil. For gas and electricity, VAT is charged as from 1 January 1993 at a standard rate of 15% except where the Commission agrees that no distortion of competition would arise from charging at a reduced rate of not less than 5%. VAT is charged in the country of destination as from 1 January 1993 and in the country of origin from 1 January 1997 and thereafter; an agreement of 11 November 1991 lays down that during the transitional period the tax point for both VAT and excise duty shall be on delivery from bonded warehouse in the country of destination instead of on crossing a frontier; this will remain the case for excise duties once the transitional period is over;
- (c) Progress in the realm of energy standardisation is being made at a steady rate.

In June 1992, the Commission adopted a Communication (SEC(92)724 final) which reports progress on energy standardisation to the Council and suggests further action. Its purpose was to :

- explain the Commission's approach to standardisation in the energy sector to the Council;
- inform the Council of progress on the standardisation of energy products and equipment for the production, transport and distribution of energy products;

- present to the Council the Commission's strategy for future work with a view to completing the internal market.

The Communication reported progress in the various fields as follows :

- as regards oil, the quality of petroleum products was made the subject of a remit from the Commission to CEN in 1984 which resulted in the adoption in 1987 of European Standard EN 228 for unleaded petrol. In 1988 the Commission gave CEN a further remit for the preparation of 5 new European standards (EN's) concerning unleaded petrol (Euro-super 85/95) supplementing EN 228, substitute fuels (two standards), liquefied petroleum gas for motor vehicles and diesel. These standards will be ready in the course of 1993.

Problems remain in this area, because the lack of specifications for a number of products at Community level has prompted certain Member States to introduce autonomous national legislation, and also because the new environmental directives require changes involving both engines and fuels.

The Commission therefore proposes to adopt a comprehensive approach which takes account of the links between fuel quality, engine technology and exhaust emissions in order to meet the new requirements at minimum cost, by means of either Community rules or voluntary standards.

In the area of other petroleum products such as heating oils, the Commission has commissioned a study the results of which indicate that additional standardisation is not required at present.

The field of oil and gas exploration and production equipment is covered by various Community directives including the Directive on public procurement, which makes it compulsory for tender specifications for procurement contracts to refer to existing European standards or other standards in established use in the Community. The report drawn up by CEN in 1989 noted the use of specifications laid down by the American Petroleum Institute (API) and recommended their transposition into European standards. The Commission is discussing with CEN the best way of carrying out such a transposition where possible, bearing in mind that in this sector excessive European standardisation would be artificial.

- In electricity a new EN is being prepared by CENELEC at the request of the Commission to harmonise the physical characteristics of low- and medium-voltage electricity; this is expected to be ready in 1993 having been delayed for technical and legal reasons. Electricity generating equipment is the subject of action by a CEN/CENELEC Joint Task Force which has as its objective the drawing-up of

procurement guides in the form of European standards, the identification of additional standardisation requirements and the proposal of a list of priorities. The Commission is to provide financial support for the implementation of the programme and its subsequent application.

Electricity transport and distribution equipment is the subject of a special CENELEC Committee - the Public Procurement Coordination Committee - which manages a work programme on the hundred or so items for which standards need to be supplemented or drawn up. Although budgetary resources are limited, the Commission intends to encourage and accelerate implementation of this programme, which is aimed at helping to complete the internal market in this sector.

- Gas: gas quality is the subject of a remit given to CEN by the Commission for the standardisation of appliances burning gaseous fuels. This remit covered the preparation of 54 ENs, one of which was to define the characteristics and quality of test gases. CEN is expected to adopt the new EN 437 during the course of 1993.

As regards gas transport and distribution equipment, CEN has set up four specialised committees enabling work to start in the field and nine draft standards are currently under preparation for gas supply equipment.

- solid fuel: solid fuel quality is being standardised by the International Organisation for Standardisation (ISO) ; specific action at Community level is not necessary in the short term. Solid fuel production equipment is the subject of safety standards which are being prepared by CEN: the Commission does not consider further action necessary in this sector.
- energy efficiency : under the SAVE programme (1991-1995), where there has already been standardisation activity on the demand side (hot water boilers, efficiency labelling) future efforts will be concentrated on the domestic appliance sector. At present energy efficiency standards are being developed for refrigerators and freezers, for which European measurement standards already exist. As CEN/CENELEC completes its work on other appliances, the Commission will develop appropriate efficiency standards.
- the European standards institutes have drawn up virtually no European standards relating to renewable forms of energy. The Commission is currently investigating whether it is necessary to harmonise the essential requirements of wind generators as regards performance, the environment and safety and to introduce a certification system. It is also considering standards in the area of thermal solar energy. The ALTENER programme will give an appropriate framework for standardisation work in this area.

- nuclear power is covered by the Illustrative Nuclear Programme for the Community (PINC) which includes aspects dealing with the standardisation of nuclear power generation and nuclear safety. The Commission is working on the safety aspects of nuclear power generation. The CEN/CENELEC Joint Task Force set up to draw up standardisation requirements in electricity generation (see above) considers standardisation work for the nuclear site in power generation stations to have lower priority than others. Nevertheless, the Commission intends to continue with its examination of the sector.
- With regard to the protection of the environment, the Commission stresses the need for technical specifications and standards to take account of environmental considerations, so that the Single Act objective of a high level of environmental protection can be achieved. Should it be necessary, the Commission will submit proposals for an appropriate level of environmental protection in accordance with that objective.

2) New legislation specifically related to the energy sector

The proposals referred to in the first report for price transparency and the transit of gas and electricity passed successfully into Community law. They represent a first stage in the liberalisation of the gas and electricity markets, to be followed by a second stage, proposals for which are summarised in this report, and in due course by a third stage based upon experience of the second. The implementation of the first-stage legislation has proceeded as described below.

2.1 Transit of electricity and gas

(a) Electricity

Directive 90/547/EEC on transit of electricity through transmission grids was adopted on 29 October 1990 and entered into force on 1 July 1991. Under the directive, electricity transmission utilities are required to act without delay to

- notify the Commission and the national authorities concerned of any request for transit in connection with contracts for the sale of electricity of a minimum of one year's duration,
- open negotiations on the conditions of electricity transit requested;
- inform the Commission and the national authorities concerned the conclusion of a transit contract;

- inform the Commission and the national authorities concerned of the reasons for the failure of the negotiations to result in the conclusion of a contract in the 12 months following communication of the request.

The Directive has so far been transposed into national law by 10 Member States, whereas the remaining 2 have proposed adequate implementation measures, which, however, have not yet been adopted by their governments. Germany will have to propose entities to be included in a new (revised) annex to the directive relating to the new Länder.

To date, one contract concluded between two Community and one non-Community country, concerning the transit of electricity up to 300 MW for a period of two years, has been notified to the Commission.

A committee of experts on the transit of electricity between grids has been recently set up by Commission decision 92/167/EEC of 4 March 1992. This committee (named OSTE - Organisme de Suivi pour le Transit d'Electricité), the creation of which is provided for at point 4 of Article 3 of the transit directive, will advise the Commission on determining the rules for operation of transit and will where necessary conciliate the entities negotiating transit. The 17 members of OSTE have been nominated by the Commission and held a first meeting on 26 October 1992.

(b) Gas

Directive 91/296/EEC on the transit of natural gas through grids was adopted on 31 May 1991. Under the Directive, Member States are required to take the measures necessary to ensure that gas transmission entities act without delay to :

- notify the Commission and the national authorities concerned of any request for transit;
- open negotiations on the conditions of the natural gas transit requested;
- inform the Commission and the national authorities concerned of the conclusions of the transit contract;
- inform the Commission and the national authorities concerned of the reasons for the failure of the negotiations to result in the conclusion of a contract within twelve months following communication of the request.

The Directive has so far been transposed into national law by four Member States. The Governments of five other Member States have informed the Commission about the start of implementing procedures shortly to be given effect.

There has been no request for transit nor has the conclusion of a transit contract been notified as yet.

The Commission has started the administrative procedure to set up a Committee of Experts for the Transit of Natural Gas (CETG), as provided for in article 3.4 of the Directive to conciliate the conditions of transit if requested by entities concerned.

The Commission has received requests to update the list of eligible entities annexed to the Directive and qualifying for transit. The Commission is preparing a relevant decision.

2.2 Price transparency

Council Directive 90/377/EEC of 29 June 1990 set up a Community procedure ensuring price transparency to the final industrial consumer of gas and electricity.

As regards the implementation of the Directive, ten Member States have incorporated it into their national legislations, whereas the remaining two have initiated the appropriate national procedures; the measures proposed have not yet been adopted. Germany has already indicated the reference points in the new Länder for which electricity prices will have to be communicated to Eurostat.

The deadlines for the communication of price data to the Statistical Office of the European Community and for the latter's publication of them have been adhered to and four publications under the Directive are already available, one relating to data provided as at 1 July 1991 and the others as at 1 January 1992, 1 July 1992 and 1 January 1993. It is worth emphasising that these communications were made even before the transposition into national law had taken place.

Difficulties remain with regard to the communication to the Statistical Office of the breakdown of consumers and corresponding volumes by consumption category, which should enable these categories to be accepted as representative at national level.

The objective of the Directive - to ensure price transparency to the industrial final consumer - representing the first step in the creation of an internal energy market has thus been achieved, while safeguarding the confidentiality of contracts.

The data provided underline the need for increased competition in order to achieve an efficient internal market in which prices accurately reflect costs so as to allow more efficiency to be introduced into the system and the necessary price adjustments to be made.

The price transparency directive, together with those on transit, is intended to be extended to the EFTA countries after ratification of the EEA agreement. EFTA countries have made provision for similar mechanisms and procedures for the follow-up of the transit directive in their territories.

3. Application of existing law

3.1 State Aids

The Commission has striven to ensure that the provisions of Decision 2064/86/ECSC⁽¹⁾ on State aid to the coal industry are strictly followed. Financial measures planned by Member States have been authorised only when in line with the objectives of the Decision and complying with the criteria on the granting of aid laid down in it. Since the Decision is applicable for a limited period, the Commission has made its authorisation subject to the requirement that Community aid to the coal industry should be sufficiently degressive and accompanied by restructuring, rationalisation and modernisation plans. The German authorities and coal producers have contested the Commission's approach and a case is pending before the Court of Justice.

As provided in Article 16 of Decision 2064/86/ECSC, the Commission submitted a report to the Council on the experiences and problems encountered in applying the Decision in the period 1986 to 1990. The Commission subsequently proposed to the Council a new state aid framework to replace Decision 2064 upon its expiry at the end of 1993. The proposed new regime features a Community guide cost based on the weighted average costs of Community production for the year 1992. It is proposed that this guide cost should be fixed for a four year period and that Commission authorisations of financial aid by Member States should be dependent on a planned convergence of the high cost capacities towards this target. This proposal was discussed by the Energy Council of 30 November, which by a large majority asked the Committee of Permanent Representatives to examine the question with a view to the preparation of discussions at ministerial level in the following year.

Elsewhere in the energy sector, the Commission considers that aid promoting Community objectives such as environmental protection, employment and energy saving may be compatible with the common market if their benefits outweigh their distorting effects on trade.

In controlling protection measures in the field of electricity generation, the Commission sought to limit such protection in order to restrict its impact on trade in electricity. This approach allows adequate provision for security of supply; it was prominent in the Commission's Security of Supply paper in 1990 and is paralleled in Article 13(5) of the draft electricity market liberalisation directive, which provides for a certain privileging of power generated from indigenous fuels. The principle of limiting the protection of indigenous fuels has been applied with the appropriate flexibility in the framework of the EEC Treaty to a series of individual cases involving aid to indigenous fuels and the approval of exclusive supply contracts under Article 85.

(1) O.J. n° L177 of 1.7.1986.

3.2 Infringement proceedings

In the gas and electricity sectors, the Commission noted at the outset that in several Member States legislation provided for exclusive rights to import or export gas and electricity, which are clearly contrary to Articles 30, 34 and 37 of the EEC Treaty. In August 1991 the Commission initiated infringement proceedings under Article 169 of the EEC Treaty against those Member States having exclusive rights for the import and export of electricity and natural gas. France, Denmark, Spain, Italy, Ireland, The Netherlands, Belgium, Greece and the United Kingdom were given the opportunity to submit their observations. It resulted from the Member States' replies that there were no exclusive rights for the import and export of electricity and gas in the legislation of Belgium and Greece; the infringement proceedings against these two Member States were therefore dropped. The United Kingdom committed itself to eliminating the existing exclusive rights for imports and exports of electricity in Northern Ireland; the infringement proceedings against the United Kingdom have therefore been suspended. In November 1992, the Commission sent reasoned opinions to the remaining six Member States (France, Denmark, Spain, Italy, Ireland and The Netherlands) which have explicit exclusive rights for the importation and/or exportation of gas and/or electricity in their legislation, claiming that these exclusive rights were in violation of Treaty provisions, namely Articles 30, 34 and 37. The Commission has invited these Member States to comply with the reasoned opinion within two months. The next step will be for the Commission to decide on whether to bring the matter before the Court of Justice.

Further examples of developments in this area include the case of IJsselcentrale, where the Commission adopted a formal decision under Article 85 of the Treaty as it applies to competition in the electricity sector, and the case of Grangeville, where the Commission opened proceedings based upon Article 85 of the Treaty against EDF and ENEL; in this case, the element of discrimination in pricing which was alleged was removed, and the Commission did not pursue the proceedings.

Chapter II: The next steps

4. Proposed Stage 2 legislation for electricity and gas

The successful introduction of the Stage 1 legislation on transit and price transparency was, as the first progress report noted, only a beginning. For the integration of the gas and electricity market to proceed further there must be proposals affecting the fundamental relationships between suppliers, transmitters, distributors and consumers of the grid-bound energies.

4.1 Preparation by the Consultative Committees

The Commission, in its Communication to the Council COM (89) 334 final - SYN 206 dated September 6, 1989, indicated that it would consult all interested parties, in order to examine in depth whether third party access to the European electricity and natural gas systems should be introduced, and if so, how security of supply and quality of service to consumers should be maintained. For this purpose, the Commission set up two consultative committees for gas and two for electricity. The first two of these committees consisted of representatives of the gas and electricity industries, such as the integrated utilities, in the case of electricity the generators and in that of gas the producers, the distributors, transmission companies, large industrial users, domestic and other consumers; these were called the Professional Consultative Committee on Electricity (PCCE) and the Professional Consultative Committee on Gas (PCCG) respectively. The other two committees consisted of representatives of the Member States and their alternates and were called the Comité Consultatif Etats Membres Electricité (CCEME) and the Comité Consultatif Etats Membres Gaz (CCEMG).

The four committees met monthly throughout 1990 and during the early part of 1991. The Commission chaired the proceedings and in May 1991 issued four reports; these proved an indispensable element in enabling the Commission to formulate its new proposals.

4.2 Proposals for the second phase of completion of the internal market in electricity and gas

The proposals put forward by the Commission provide for a responsible approach based on four general principles. The first is the need for the approach to be gradual, enabling the integration of the gas and electricity markets to take place over a period of time sufficiently long to enable the industry to adapt in a flexible and ordered manner to its new environment. The second principle is that of subsidiarity, with Member States being able to opt for the system best suited to their natural resources, the state of their industry and their energy policies, within a framework defined by the Commission. The third principle is the avoidance of excessive regulation, with the Commission restricting itself to what is necessary in order to achieve the aims of liberalisation. Fourthly - the institutional framework - the Commission's proposals, which as document COM(91) 548 were adopted by the Commission on 22 January 1992, take the form of draft directives under Articles 57(2), 66 and 100a of the Treaty, since this provides for a dialogue with the Council and the European Parliament under the cooperation procedure, while enabling the consultations with other interested parties to be pursued.

The Commission's proposals are characterised by three main features:

Firstly, the creation of a transparent and non-discriminatory system for granting licences for the production of electricity and the building of electricity lines and gas pipelines. The aim here is to open up investment in production and transport to independent operators;

Secondly, the concept of unbundling, i.e. separation of the management and accounting of production, transmission and distribution operations, to be put into practice in vertically-integrated undertakings, so as to ensure transparency of operations; it does not affect ownership structures.

Thirdly, the introduction on a limited basis of third party access whereby the transmission and distribution companies are obliged to offer access to their network to eligible entities at reasonable rates, within the limits of available transmission and distribution capacities.

It is proposed that the eligibility criteria for this second stage shall be such as to include:

- large industrial users whose consumption exceeds 100 GWh of electricity or 25 million cubic metres of gas on a site; in total, about 500 electricity consuming undertakings in the Community will be covered, mainly in the aluminium, metallurgical, chemical, building materials and glass industries; as regards gas consumers, whose number is likely to be similar, fertilizer and electricity producers are chiefly concerned;
- distributors of a certain size in each of the Member States, being those who supply respectively at least 3% of the electricity, or at least 1% of the gas, consumed in their Member State; distributors who do not reach the threshold can join together in order to qualify; in all, about a hundred electricity distributors, either individually or associated, will be eligible in the Community for electricity TPA and a similar number for gas; this will allow consumers, especially the smallest, to profit indirectly from the gains resulting from enhanced competition.

In the course of this second stage, the Commission will, in keeping with its principles, avoid excessive regulation and will leave room for subsidiarity. The Member States will continue to be able to regulate gas and electricity tariffs for all those final consumers not parties to competitive purchasing. They will remain free to decide the extent and the nature of the rights of distribution companies and their public service obligations, in particular the obligation to supply. They can also lay down detailed criteria for the granting of licences for the production of electricity and the transport of electricity and gas, particularly with regard to the requirements of energy, environmental and planning policy.

The Commission, in putting forward its proposals, was fully aware of the need to add to the opening-up of the markets the further objectives of safeguarding security of supply, the protection of the environment, and the protection of the small consumer. Its proposals allow, within the principle of subsidiarity, sufficient freedom for national energy and environmental policies to attain these objectives.

When presenting the proposals, the Commission made clear in the explanatory memorandum that security of supply is a paramount objective of energy policy, and that the progressive opening-up of gas and electricity markets is likely to make for a more flexible and broadly-based supply that in turn will lead to a higher level of security of supply.

As regards the improvement of competitiveness, the objective is that resources will be used in the most efficient manner and all consumers, large and small, will be able to reap the benefits of higher efficiency, which is particularly important for energy intensive industries competing in world markets.

The completion of the internal energy market may also yield benefits in other policy areas such as environmental protection, for instance by encouraging greater efficiency and a more rapid adoption of "cleaner" technologies.

4.3 Progress so far in the Council, the European Parliament and the Economic and Social Committee

The Directives are in the process of being discussed in the Council and the European Parliament.

A Working Party of the Economic and Social Committee held a public hearing on 20 May 1992. The Committee gave its opinion on 27 January 1993 (doc.ENE/202), approving the principle of liberalisation of the gas and electricity industries, the opening-up of power station and line construction, unbundling, and the independence of electricity and gas networks, while expressing doubts about Third Party Access, which should be considered at a later stage in the light of experience in the Member States and in third countries.

On the 1-2 October, the European Parliament organised a hearing at the end of which the rapporteur, who is also the Chairman of the Committee for Energy, Research and Technology, concluded that the Commission's proposals could not be accepted as such, nor rejected, but that it was necessary to propose amendments, involving possibly a transitional period.

At the Energy Council of 30 November 1992 there was recognition that the progress made in the first place was insufficient and that new measures were needed to overcome the remaining obstacles, together with a request to the Commission to consider modifications

of its proposals in the light of the Council discussions and the opinion of Parliament, with the aim of introducing more competition into the hitherto more or less closed energy supply systems.

5. Exploration and production of gas and oil

5.1 Preparation

As mentioned in the Commission Working Document on the integration of the internal energy market, the sector of exploration and production of hydrocarbons (oil and natural gas) still suffers from a number of restrictions on equal access of undertakings to those activities and on the freedom to exchange those products.

With a view to completing the internal energy market in this sector, the Commission included in its work programme the preparation and adoption of a proposal for a Directive establishing common licensing rules. Informal consultations with the industry and experts from the governments of the Member States took place during 1991 and 1992 with this end in view.

The proposal which as document COM(92)110 was approved by the Commission on 25 March 1992 takes the form of a draft directive based on Articles 57 (2), 66, 100a and 113.

5.2 The proposals

The proposals would require Member States to grant authorisations for prospecting, exploring for and extracting hydrocarbons according to non-discriminatory and transparent procedures. These procedures should allow all interested companies to apply for an authorisation. Criteria for a decision by competent authority would have to be defined in advance on an objective basis and be published, and all conditions and requirements related to the authorisations made available in advance to possible applicants. Furthermore, these conditions and requirements should be justified exclusively by general interest reasons (national security, environment, safety, etc), by the payment of a financial contribution or a contribution in hydrocarbons or by the need to ensure the proper performance of the activities in the area concerned.

The proposal in no way prejudices the sovereignty of Member States over their oil and gas resources. Member States will retain their rights and responsibilities concerning management of these resources, including revenues accruing from the activities but are required to exercise them in a manner compatible with the achievement of the single market. In line with the principle of subsidiarity, Member States will remain free to maintain or choose the rules most appropriate to natural operating conditions and to their long-term policy for resource management. Consequently, the aim of the proposal is not to establish detailed regulations but to lay down a framework of general principles to which those rules must conform.

The proposals provide for a clear link and interface with Directive 90/531/EEC on public procurement (see point 1(1)(a) above).

5.3 Progress so far

The proposal has been discussed in the Council, the European Parliament and the Economic and Social Committee. The European Parliament and the Economic and Social Committee both expressed favourable opinions at their sessions of November 1992.

At the Energy Council of 30 November, after a debate in which some convergence of Member States' views occurred, the Committee of Permanent Representatives was asked to continue with the examination of the proposal, in particular its application to existing authorisations.

6. Standards - further action

The Commission's conclusions as set out in its Communication of 9 June 1990 (see 1(1)(c) above) are :

- standardisation in the energy sector is of prime importance for the completion of the internal market, the reduction of environmental impact, energy safety and efficiency, and for the development and spread of advanced energy technologies. Requests for the preparation of European standards must come in the first instance from the parties directly concerned.
- completion of the internal energy market calls for standardisation work to be stepped up, particularly in the sectors of oil (environmental aspects); oil refining and distribution equipment; electricity generation, transport and distribution equipment; gas transport and distribution equipment; renewable energies; and environmental protection.
- the preparation of new European standards not explicitly required by Community legislation may need to be combined with Community legislation making reference to standards compulsory, in cases where standards fail to result in the abolition or adaptation by the Member States of conflicting national rules.
- where necessary, the Commission may propose Community harmonisation legislation based upon the new approach (essential requirements);
- energy programmes aimed at specific objectives such as energy efficiency or the development of renewable energies should include a standardisation aspect.

The Energy Council of 30 November adopted conclusions endorsing the continuation of work along the lines proposed by the Commission. The Commission proposes to achieve its aims by stepping up consultations with interested parties at all levels of production,

transport, distribution and consumption of energy products, in order to encourage more active participation; and to organise with CEN and CENELEC conferences bringing together those responsible for different energy sectors, so as to exploit their many common features for standardisation purposes.

7. Continued application of Community law

The Commission will continue to make use of all powers conferred on it by the Treaty. This could involve specific instruments like Decision 2064/86/ECSC on the granting of state aids to the coal industry, or infringement proceedings under particular Treaty articles. The Commission intends to continue the application of Community law as and when appropriate.

8. Public procurement

In the general public procurement context, but including energy, it is proposed to modify Directive 90/531/EEC to extend the public procurement rules to services contracts. A common position was reached on 21 December 1992 and it is hoped that Council will be able to adopt the Commission's proposals in the course of the current Presidency.

Chapter III - accompanying measures within and outside the Community

Work has continued on policies designed to accompany the effects of the liberalisation of the internal energy market within the Community, on the one hand; and on the other to strengthen it by means of increased security of energy supply from outside the Community.

9. Internal dimension

9.1 Energy and Cohesion

There are sizeable disparities within the Community as regards access to energy, energy dependence, structure and security of supply. These disparities may represent a serious handicap for the development of the less favoured regions and the integration of the internal energy market.

Regional and urban energy planning: the Commission has analysed activities in energy planning at the regional and urban levels and has set priorities for the period 1991-93. A Communication has been submitted to Council (COM(91)53 final).

Within the framework of this energy planning action, the Commission regards the following as having priority:

- regions which are on frontiers, are isolated or ultraperipheral, together with rural regions or regions in industrial decline;

- urban regions having serious environmental problems connected with energy.

As regards the type of action, the Commission will favour :

- feasibility studies for investment projects;
- actions strengthening the rôle of local authorities;
- cross-frontier cooperation.

At its meeting on 22.5.1991 the Council endorsed the orientations and priorities indicated by the Commission and took note of its intention of assessing this action and of informing it of the outcome thereof by the end of 1993 at the latest.

Specific actions for certain islands: the Commission approved in July 1992 the granting of a first contribution in favour of the Azores and Madeira regions, thus giving effect to the energy measure provided in the Council POSEIMA decision (91/315 EEC). The purpose of this measure is to compensate for the extra cost of energy supply during the period 1991-1993. At the end of this period of time the Commission will proceed to evaluate the measures taken and re-examine the situation.

The Commission might consider giving increased aid for certain energy investment projects in the Greek Islands of the Aegean Sea, in line with the conclusions of its final report on the specific situation of those islands of 20 December 1992 (COM(92)569final).

Structural funds: the Community has already made an initial response to the development and strengthening of the networks in the areas which are eligible for support under the Structural Funds. Between 1989 and 1993 some 1700 million ECU of the European Regional Development Fund is to be committed to energy infrastructure projects in Objective 1 regions under their Community Support Frameworks. A further 300 million ECU has been allocated to the Community initiative REGEN for basic projects relating to the diversification of energy sources and the strengthening of the security of energy supplies.

The Commission has begun study of the elements of an "Energy and Cohesion" policy, undertaken with a view to a greater contribution by energy to the process of integration and the strengthening of economic and social cohesion in the Community. At a conference on this subject, held in Lisbon on 4-5 June 1992, a degree of consensus was reached on the following elements:

- the objective to be pursued, that is access for the less-developed regions to energy which is diversified, of high quality and at reasonable prices;
- the strategy to be developed, which ought to be based mainly on the improvement of access to the large energy networks, the promotion of energy efficiency and the exploitation of indigenous energy sources;

- implementing action involving a coordinated approach at the "energy - regional development" interface at all levels (Community, Member States and regions).

A Communication developing these themes is in preparation.

9.2 European networks

On 27 March 1992 the Commission presented a communication to the Council concerning "Electricity and natural gas transmission infrastructures in the Community" (SEC(92)553 final).

This document explains the current situation with regard to networks for the transmission of electricity and natural gas, indicates the courses to be followed to take account effectively of the Community and, in some cases, the Continental dimension of those networks, and draws up a list of projects, either in progress, planned or which might be envisaged in order to complete and reinforce networks.

In general, the Council, in its conclusions of 31 March 1992, invited the Commission to "submit to it guidelines concerning trans-European networks which can serve as a reference point for preparing, as soon as possible, the implementation of Title XII of the Treaty establishing the European Union"; more particularly, in the field of energy, the Energy Council of 21 May 1992 reaffirmed that the development of trans-European energy networks is aimed at increasing security of supply in the Community, permitting balanced operation of the internal market, and strengthening economic and social cohesion. It called upon the Commission to continue its work in close conjunction with the Member States. Subsequently, recognising the key rôle which trans-European energy networks can play in contributing to a number of core Community policy objectives, the European Council of December concluded in favour of inviting the European Investment Bank to establish a new temporary lending facility of 5 billion Ecus for the purpose of promoting trans-European networks including those in the energy sector. In addition, trans-European energy network projects will be eligible for funding under the new European Investment Fund, to be set up with a start-up capital of 2 billion Ecus.

The Commission is now engaged in the preparation of Community "guidelines" for transeuropean energy networks; in keeping with the provisions of Title XII of the Treaty on European Union, these guidelines will:

- define objectives and priorities for Community action on energy networks;
- identify projects of common interest responding to those objectives and priorities and

- indicate the measures which may be of use in promoting the realisation of those projects.

The preparation of these guidelines is based on wide consultation of experts from the Member States and of bodies representing the professional and consumer groupings concerned, a process which began in June 1992 and is now finished.

10. The external dimension

10.1 Common commercial policy

The completion of the common commercial policy is an important part of the internal energy market. As far as the energy sector is concerned, negotiations with Eastern and Central European countries have led to the elimination or suspension of all remaining national restrictions. However, the non-specific national restrictions for the Republics of the former USSR have still to be addressed. The Commission is considering possible ways of removing these quantitative restrictions. The remaining restrictions concerning oil, natural gas and electricity will be removed under a harmonisation measure, namely before the end of 1992. Preferential rules for oil products still remain to be harmonised.

Where coal is concerned, there are now no measures under Article 71(3) and 74 of the ECSC Treaty restricting free circulation of coal originating in third countries. Commission policy is not to authorise any such measures under these articles.

As regards export restrictions, progress has been made to adapt these, whether Community or national, to the internal market. The remaining national export restrictions for oil/gas products have been eliminated in the context of the new Regulation 3918/91.

Article 29 of Directive 90/531/EEC on public procurement gives the possibility to contracting entities of excluding from supplies contracts tenders which rely on more than 50% of third countries' products and of giving a price preference of 3% to Community tenders.

This provision is aimed at all third countries with which no agreement has been concluded with the Community on a multilateral or bilateral basis. The Council has asked for a specific mandate to negotiate agreements with different third countries independently of the negotiations on public procurement being currently conducted in parallel with the Uruguay Round discussions.

The Commission's proposal for a directive on public procurement of services contains a third country clause which allows the Commission to propose to the Council to take safeguard measures if its attempts to resolve any difficulties of access with the third countries concerned are unsuccessful.

10.2 European Economic Area

In June 1990 the Community, the Member States and the EFTA countries started negotiations on establishing a European Economic Area (EEA): the Agreement was to cover, inter alia, the free movement of goods, services, capital and persons throughout the EEA on the basis of the relevant EC acquis.

The Agreement, which was to have entered into force on 1 January 1993, has been set back as a result of the negative vote in the Swiss referendum. The contracting parties agreed during a diplomatic conference on 17 February 1993 on a Protocol adjusting the Agreement in the light of Switzerland's non-participation. This Protocol and the EEA Agreement itself are currently in the process of being ratified by the signatories. The Agreement contains provisions similar to those of the EEC Treaty. Among the sectors for which most of the Community acquis is adopted is the energy sector. Thus the EFTA countries will observe the requirements to notify, inform and consult as regards energy use - in particular the use of oil - so as to achieve rationalisation and efficiency in energy consumption. They will also observe the provisions on gas and electricity transit and price transparency. Furthermore, the acquis on public procurement in the excluded sectors, including energy, will apply throughout the EEA, albeit with possible transitional periods of 2 years for two EFTA countries (Liechtenstein and Norway).

For coal, the Agreement on the EEA lays down that the individual Free Trade Agreements shall be unaffected and that all customs duties and quantitative restrictions on coal trade (which in practice is small) shall be abolished and that EFTA undertakings shall observe Community rules regarding restrictions on state aids and the exchange of information on the state of the market and of investment. In the field of state aid, EFTA States will be subject to control by the EFTA Surveillance Authority in their granting of state aid on the basis of the same substantive rules and pursuant to the same procedures as the EC Member States in the Community.

Should problems not be solved by a commonly agreed solution, the affected Contracting Party (e.g. the EC) will be entitled to take measures to remedy the situation.

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