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Peter Palinkas\*

# The EC on the Way to an Internal Energy Market

*Over the last two years EC energy policy has become a key policy area in the creation of an internal market by 1992. The Commission is now proposing new Directives in the energy sector (public procurement, fiscal harmonization, freedom to provide goods and services, price transparency, and technical and environmental harmonization), which may well affect all energy industries in Europe. After a short description of present EC energy policies and objectives, the following article gives an overview of the main policy guidelines and policy actions in the EC on the way to an Internal Energy Market (IEM).*

The European Community has set itself the ambitious goal of creating a single internal market by 1992 in which still existing barriers and obstacles to trade are to be abolished. The creation of such an internal market, which has been described several times as the greatest deregulation task in world history, will have severe consequences and repercussions on all markets and all economic decisions in the EC and will also affect world trade relations and world economic conditions.

The Commission's White Paper<sup>1</sup> of June 1985 on completing the internal market discusses three main areas in which Community action is necessary for achieving the internal market, these being the abolition of physical, technical and fiscal barriers. All these barriers are to be found in various forms of national interventions and numerous national regulations in the energy market, which is often described as the market with the highest degree of regulation. The White Paper does not expressly discuss the energy market. There is, however, no doubt that this market has to be one of the main candidates for deregulation; if not, the whole process to achieve the internal market may well be jeopardized.

The European Parliament<sup>2</sup> and the Commission<sup>3</sup> had outlined in various working documents the far-reaching effects which the internal market plan would have specifically on the energy market. The main questions concerning the internal energy market stem from the discrepancy between freedom of choice in the purchase of energy on the one hand and security of supply on the other.

Member States' energy policies should be targeted on realizing the ambitious 1995 Community energy objectives. The Council Resolution of September 1986<sup>4</sup> concerning these objectives commits the Member States to pursuing the process of restructuring energy policy. Despite present trends towards an easing of conditions on the energy and oil markets, the Community's long-term energy policy objectives are to be maintained, including in particular:

- ☐ greater energy efficiency in all sectors, and action to highlight ways and means of saving energy; in particular, the efficiency of final energy demand (ratio of final energy demand to GDP) should be improved by at least 20% by 1995;
- ☐ oil consumption to be kept down to about 40% of energy consumption and net oil imports thus maintained at less than one third of total energy consumption in the Community in 1995;
- ☐ continued efforts to promote consumption of solid fuels and to improve the competitiveness of relevant production capacity;
- ☐ the share of natural gas in the energy balance to be maintained on the basis of stable and diversified

<sup>1</sup> COM (85) 310 final.

<sup>2</sup> Cf. European Parliament (EP): The Attainment of the Internal Energy Market (working document), PE 121.291, March 1988; EP, Generaldirektion Wissenschaft, Reihe Energie und Forschung, No. 6: Die Verwirklichung des Marktes für Energie, August 1988; EP: Report on the Internal Energy Market, Doc. A2-158/89 and the respective resolution of 26 May 1989, OJ C (forthcoming).

<sup>3</sup> Cf. EC Commission: The Internal Energy Market (working document), COM (88) 238 final, May 1988; EC Commission: The Internal Energy Market, in: Energy in Europe, Special Issue 1988.

<sup>4</sup> Council Resolution of 16 September 1986, OJ C 241/1986.

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supplies and intensified natural gas exploration and production in the Community;

- ☐ the proportion of electricity generated from hydrocarbons to be reduced to less than 15%;
- ☐ the planning, construction and operation of nuclear installations to proceed under optimum safety conditions on the basis of the highest safety standards;
- ☐ output from new and renewable energy sources to be increased substantially to replace conventional fuels;
- ☐ to achieve these goals, the Commission must examine whether national energy policies comply with Community objectives and must report to the Council on this at regular intervals.

In pursuit of these objectives (reducing energy dependence, crude oil substitution, energy saving), the Community has already notched up notable achievements. Primary energy production has been boosted considerably since 1975 – principally as a result of increased oil production in the United Kingdom – (see Table 1) while, despite a marked increase in economic output, the rise in gross inland consumption of energy in the Community has been but slight. Community energy dependence and oil dependence has been reduced substantially since 1975; nevertheless, there are still considerable disparities between the Member States as regards energy production, consumption and dependence and, most importantly, the degree to which the objectives of energy saving and crude oil substitution have been realized. The proportion of total consumption accounted for by the various energy sources also varies considerably from Member State to Member State – a situation brought about not only by structural disparities between the countries concerned, but also by the existence of differing national energy objectives (e.g. in nuclear energy).

## Energy in the Internal Market Concept

The energy sector is one of the least integrated sectors; the energy market is still comparatively partitioned in all Member States and there are therefore many barriers to the free movement of energy products. Nevertheless, neither the Commission's White Paper for the completion of the Internal Market by 1992 nor the Single European Act (SEA) made any specific reference to the energy sector as such. But the energy sector is undoubtedly an integral part of the internal market, as already stated in the above mentioned Council resolution of 1986 on energy objectives. On the basis of

this objective the Commission announced in June 1987 its intention to draw up an inventory of the existing obstacles and to submit to the Council appropriate proposals for their progressive elimination before the end of 1992. In May 1988 the Commission submitted its above mentioned working programme (COM (88) 238 final) and presented in July 1989 its first proposals (see below) to implement the "internal energy market programme".

The internal market is, generally speaking, a means of making Europe more competitive in a changing world. The IEM should contribute to this general aim. Purpose and benefits can briefly be summarized as follows:

- ☐ The IEM should reduce energy costs, to the direct benefit of individual consumers and industrial users.
- ☐ The IEM should also have beneficial effects on the structure of the Community's energy industry; it will make it possible to derive greater advantage from complementarities, improve the cost structure and rationalize energy production, transmission and distribution activities.
- ☐ The IEM can also be regarded as an additional factor concerning the security of energy supply for all Member States (via greater interconnection, flexibility and emergency resources available).
- ☐ The IEM may lead to an increase in energy trading between Member States and therefore contribute to reducing the various costs of production and living.
- ☐ The "cost of non-Europe" in the energy sector is affecting Europe's economic performance. It is difficult to evaluate the implications, but first estimates indicate (following the Commission),<sup>5</sup> that, excluding the public market procurement effects, it could amount to at least 0.5 % of the Community's GDP or around ECU 20 billion per year (nearly equivalent to the whole of Ireland's GDP or one quarter of Denmark's GDP).

## Problems of Individual Energy Sources

Various obstacles and regulations are hindering the achievement of a real IEM. The Commission has prepared in detail (in the working document on the IEM, COM(88) 238) an inventory of potential obstacles. Only the most obvious ones should be summarized very briefly.

**Gas.** Potential obstacles in the gas sector are (above others): integration of the existing transmission grid is incomplete; price-transparency is difficult to achieve, especially in relation to off-tariff sales to industrial consumers. Further action is required in the field of price

<sup>5</sup> COM (88) 238 final, para. 19.

and tax policy (both VAT and special excise duties) in order to reduce large price differentials and thus to remove implied distortions of competition; exploration monopolies, differences in rules and technical norms; the existence of statutory or de facto monopolies concerning the transport of gas in the Member States is hindering competition and free trade relations. The most controversial question is the introduction of a "common carrier"-system, which gives third parties access to the grid against payment of a reasonable charge ("common-carrier" will be discussed in more detail below).

**Oil.** Obstacles in the oil sector are in some respect similar to those of the gas sector, for example: price and tax policy (VAT and special excise duties); exploration and production monopolies, differences in rules and technical norms. Furthermore: national obligations and restrictions concerning imports and shipping/carriage, transfrontier deliveries and storage.

**Coal.** The EC energy objectives for 1995 stress the important role of coal to cover future energy demand. But as regards the creation of an IEM in the long term, it is particularly necessary to determine which national aids promoting Community coal-mining should be granted in future. One has to keep in mind that the ECSC Treaty contains a prohibition on subsidies and that at present national aids such as those granted to the coal industry in various Member States have been

authorized by the Commission only until 1993 and will afterwards be subject to the proviso of obtaining a licence from the Commission. The Commission's complaints about the German special aid system for the benefit of the coal industry ("the Jahrhundertvertrag") already highlights the severe political controversies which may be in store. It is also essential to lay down clear requirements relating to the protection of the environment, as coal, in particular, is responsible for serious damage to the environment. Unless requirements of this kind are applicable throughout the Community uniform conditions of competition will not exist.

*Alternative energies and energy saving.* No special direct action is necessary in this respect, but no measures should be adopted in connection with the creation of the IEM which restrict the future potential in this area.

## Electricity and Nuclear Energy

The main area of concern for realizing the IEM are electricity and nuclear energy. Due to the technical characteristics of electricity supply (it can only be supplied as each customer needs it and cannot be stored; in addition, supply is dependent on corresponding power distribution lines), similar electricity supply structures have developed in all Member States. These structures are characterized by hermetic supply areas with a total lack of competition

**Table 1**  
**Production of Primary Energy in the EC Member States, in 1988**  
(in million tonnes of oil equivalent = mtoe and in %)

|                         | D     | F    | I    | NL   | B    | L   | UK    | IRL  | DK   | GR   | SP   | P    | EUR 12 | cf:<br>EUR 10<br>in 1975 |
|-------------------------|-------|------|------|------|------|-----|-------|------|------|------|------|------|--------|--------------------------|
| Total product. (mtoe)   | 127.3 | 91.6 | 23.7 | 54.9 | 12.9 | 0.0 | 228.4 | 3.4  | 7.0  | 7.7  | 30.1 | 1.3  | 588.1  | 368.1                    |
| of which:               |       |      |      |      |      |     |       |      |      |      |      |      |        |                          |
| hard coal               | 52.4  | 7.8  | —    | —    | 1.8  | —   | 60.6  | 0.0  | —    | —    | 9.1  | 0.1  | 131.8  | 159.7                    |
| lignite (and peat)      | 21.0  | 0.5  | 0.3  | —    | —    | —   | —     | 1.7  | —    | 7.3  | 2.3  | —    | 32.0   | 28.0                     |
| crude oil + condens.    | 3.9   | 3.7  | 4.5  | 4.3  | —    | —   | 114.6 | —    | 4.7  | 0.1  | 1.8  | —    | 138.6  | 12.1                     |
| natural gas             | 11.6  | 2.6  | 13.5 | 49.6 | 0.0  | —   | 36.5  | 1.6  | 2.2  | 0.1  | 0.8  | —    | 118.6  | 131.9                    |
| nuclear energy          | 35.6  | 70.2 | —    | 0.9  | 10.8 | —   | 16.3  | —    | —    | —    | 13.0 | —    | 146.9  | 23.9                     |
| primary el. energy      | 2.7   | 6.7  | 5.4  | 0.1  | 0.2  | 0.0 | 0.4   | 0.1  | 0.0  | 0.2  | 3.1  | 1.2  | 20.2   | 10.9                     |
| cf.: tot. prod. in 1975 | 117.5 | 33.8 | 18.6 | 71.4 | 6.6  | 0.0 | 116.2 | 1.3  | 0.2  | 2.6  | —    | —    |        | 368.1 <sup>1</sup>       |
| Total product. (%)      | 100   | 100  | 100  | 100  | 100  | 100 | 100   | 100  | 100  | 100  | 100  | 100  | 100    | 100                      |
| of which:               |       |      |      |      |      |     |       |      |      |      |      |      |        |                          |
| hard coal               | 41.2  | 8.5  | —    | —    | 14.0 | —   | 26.5  | 0.0  | —    | —    | 30.2 | 7.7  | 22.4   | 43.4                     |
| lignite (and peat)      | 16.5  | 0.5  | 1.3  | —    | —    | —   | —     | 50.0 | —    | 94.8 | 7.6  | —    | 5.4    | 7.6                      |
| crude oil + condens.    | 3.1   | 4.0  | 19.0 | 7.8  | —    | —   | 50.2  | —    | 67.1 | 1.3  | 6.0  | —    | 23.6   | 3.3                      |
| natural gas             | 9.1   | 2.8  | 57.0 | 90.3 | 0.0  | —   | 16.0  | 47.1 | 31.4 | 1.3  | 2.7  | —    | 20.2   | 35.8                     |
| nuclear energy          | 28.0  | 76.6 | —    | 1.6  | 83.7 | —   | 7.1   | —    | —    | —    | 43.2 | —    | 25.0   | 6.5                      |
| primary el. energy      | 2.1   | 7.3  | 22.8 | 0.2  | 1.6  | —   | 0.2   | 2.9  | 0.0  | 2.6  | 10.3 | 92.3 | 3.4    | 3.0                      |

<sup>1</sup> For comparison: EUR 10 in 1975: 368,1 mtoe and EUR 10 in 1988: 556,7 mtoe.

Sources: EUROSTAT, Energy statistics, Series B-4, No. 4/1989 and own calculations.

between electricity producers and/or distributors. This is inconsistent with the general aim of the internal market.

Despite these hermetic supply areas a supranational grid system has developed within Europe. But this grid is only designed for differences in peak load. The total cross-border exchange of electricity within the Community is very small: exports and imports of electricity amounted to only approximately 5 % of total electrical production on average in the EC as a whole and in the individual Member States. Hermetic supply areas and de facto barriers on the political side impede greater exchange of electricity within the EC – again a severe infringement of the general aim of the internal market.<sup>6</sup>

Although the general structures of electricity production and distribution in the Member States are similar, there are still considerable differences affecting the respective competitive position of electricity producers or distributors in the Member States:

- the coexistence of business-oriented private electricity supply undertakings (such as for example in the Federal Republic of Germany) and nationalized undertakings, as for example in France (EdF) and Italy (ENEL); most of the latter do not pay any earnings tax and receive subsidies, in some cases direct and in others indirect; in some cases losses are covered by the State;
- in some countries electricity supply companies must satisfy energy requirements (for example: obligation to use indigenous energy sources such as coal in the German "Jahrhundertvertrag") which increase the cost of electric power; in other States they do not;
- the varying legislation on the protection of the environment applicable to power stations, which affects electricity production costs;
- the percentage of nuclear energy in the power supply of each country, which is unequal in every respect;
- the different rules in the various Member States with regard to the covering of the risks connected with nuclear energy (varying insurance costs, limits of liability and so forth).

The question arising here is whether the existing partitioning into separate hermetic supply areas, the quasi-monopolies of single companies in several

countries and the real restrictions on imports and exports of electricity do not constitute important obstacles to the completion of the internal market. Such measures, which actually hamper imports and exports of electricity, are in principle breaches of Article 30 of the EEC Treaty. It will be necessary to examine in addition how the electricity market could be opened up to increased competition.

The question of opening-up the electricity market is closely linked with the debate over nuclear power. In order to guarantee equal competitive conditions for electricity producers on the European market, it would be necessary first of all to harmonize the basic conditions, which would mean in particular:

- the highest possible uniform safety standards and safety requirements for all nuclear energy plants; since national standards, requirements and safety philosophies differ in this respect, supranational arbitration bodies or supervisory bodies will be required;
- the lowest uniform limit values for emissions of pollutants into the air and water (at present these limit values vary);
- ensuring a verifiable fissile material safeguard system and secure management and storage of radioactive waste;
- safeguarding the principle of complete cost accounting without hidden or open subsidies, etc., in order to guarantee equal conditions of competition between suppliers and sources of energy (in particular calculation of the cost of management and storage of radioactive waste);
- to ensure that atomic energy is accepted by society to the greatest possible extent: greater rights to obtain, or duties to provide, information and more rights of appeal for all Community citizens in legal proceedings against the planning, construction and operation of atomic stations will be required.

#### Four Areas of Action

The above mentioned barriers and obstacles to achieving an IEM differ in type and in significance. Most of them stem from domestic rules and regulations, for example domestic monopolies and hermetic supply areas; others are due to technical specifications. Further obstacles are highly political, for example national aid schemes in the coal industry which may lead to distorted competition as far as electricity trading is concerned.

<sup>6</sup> It remains to be seen if the first steps towards deregulation and more competition in the electricity sector in the United Kingdom and The Netherlands also lead to more cross-border exchange of electricity.

<sup>7</sup> Cf. COM (88) 238 final.

The last group of obstacles are of quasi-psychological nature, for example the goal of energy or electricity self-sufficiency on only a national basis. The EC Commission proposed in its first working document<sup>7</sup> four areas of action to achieve the IEM, corresponding to the various groups of obstacles and barriers; i.e. implementation of the 1985 White Paper; determined application of the provisions of Community law; actions to attain a satisfactory equilibrium between energy and environment; specific energy policy measures (prices and tariffs, infrastructure, investments, cross-border transit).<sup>8</sup>

### Implementation of the 1985 White Paper

The following elements of the 1985 White Paper are regarded as being relevant for the energy sector:

*Harmonization of rules and technical norms.* This coincides with the "new approach" of harmonization of technical rules<sup>9</sup>, which should guarantee the free circulation of goods as well as guaranteeing health and safety.

*Public procurement.* The de facto compartmentalisation of the public procurement market vis-à-vis foreign competition represents an immense waste of economic resources. A special directive on public procurement in the energy sector, which is so far excluded from the general Community directives on public procurement, will be adopted very soon.<sup>10</sup>

*Harmonization of taxation.* The differences in energy taxation are often considered to be the major obstacle to the achievement of the IEM. Energy is affected by two types of taxes, by VAT and by excise duties (especially on petroleum products); differences in taxation between Member States lead to considerable energy price differences and thus hinder free movements of energy products within the EC. Harmonization of taxation in the energy sector is not yet solved and remains part of the burden of general tax harmonization threatening the attainment of the internal market.

### Application of Community Law

Some obstacles to trade in energy between Member States have already been described above. In order to eliminate these obstacles the Commission will follow the

general guide-line which has been outlined in the White Paper, i.e. determined application of Community law with four sets of instruments:

*Free movements of goods and services.* This is the very core of the internal market concept as embodied in Articles 30 to 36 of the EEC Treaty and in Article 4a of the ECSC Treaty. Although there were few doubts in the past that the provisions of the Treaties apply to the energy sector as much as they do to other industrial sectors, it has almost never been tried to apply them fully. The Commission will examine various existing measures in the energy sector; these various measures which may constitute an infringement of the above-mentioned Treaty rules are for example: requirements for import licences or certificates of origin; technical requirements for products, incitements to purchase national products and so on.

*Monopolies.* National or regional supply monopolies which are exclusively entitled to supply consumers in a particular area might be a breach of Article 37 of the EEC Treaty.<sup>11</sup> Closely linked with monopolies are exclusive rights for public or private enterprises to import or export other products and exclusive rights of transport and distribution. This question will be discussed below in the context of the Commission's proposals of free transit for gas and electricity.

*Rules of competition.* It is unclear whether the partitioning of the energy market into supply areas, as is the case mainly in the electricity industry, is an infringement of the EEC Treaty,<sup>12</sup> especially Article 85.

*State aid.* State aids and subsidies represent one of the most widespread and common infringements of the Treaties. The Commission proposes therefore – generally speaking – a rigorous application of the rules of the Treaty with a view to eliminating the distortions of competition and permitting increased competitiveness. The new Community rules on state aid to the coal industry which entered into force in 1986 are in line with this. National aids are permitted<sup>13</sup> only if they comply with the new Community rules for State measures to promote mineral coal mining (at present applicable only until 1993). A further application of the Treaties to prevent unjustified aid schemes is the Commission's attempt to prohibit special compensation funds in Germany for promoting coal consumption ("Kohlepfennig" and "Jahrhundertvertrag").

<sup>8</sup> Ibid.

<sup>9</sup> Cf. Council Resolution of 7 May 1985, OJ C 136/85.

<sup>10</sup> Cf. the Commission proposal COM (88) 377 final and the report of European Parliament, Doc. A2-68/89 and the respective resolution of 25 May 1989, OJ C (forthcoming).

<sup>11</sup> For more details cf. EP, PE 121.291; and EP, Reihe Energie und Forschung, No. 6, op. cit.

<sup>12</sup> For more details see again: *ibid.*

<sup>13</sup> Commission decision 2064/86/ECSC of 30 June establishing Community rules for State aid to the coal industry, OJ L 177/86.

<sup>14</sup> See: COM (88) 238 final, para. 74.

### Energy and the Environment

The Single European Act (SEA) states in Article 100a (3) that environmental protection requirements shall be a component of the Community's other policies. Furthermore, the SEA laid down that the EC's environmental actions are to ensure a prudent and rational utilisation of natural resources, and to be based on a high level of protection. Thus, energy and the environment are also closely interlinked by the Treaties.

There is no doubt that the harmonization of safety standards (environmental standards and also human health and safety) and their application is one of the centrepieces on the way to an IEM. As the SEA allows Member States to apply more stringent standards than others (Article 100a (4) SEA), there are two main problems in respect of creating a real internal market:<sup>14</sup>

□ In Member States with stringent standards, will it be possible to market products complying with less stringent standards, bearing in mind the objective of free movement of goods by 1992?

□ In Member States with less stringent standards, there is already an influx of lower quality products which are distorting trade.

The Commission<sup>15</sup> is at present analyzing the environmental effects of the realization of the internal market. The Commission believes that the realization of the internal market by 1992 will have positive overall effects on the environment; accelerated economic growth, growing trade and traffic due to the internal market will increase energy demand and pollution, but this is counterbalanced by control and conservation measures, and restructuring processes towards less polluting industries and more efficient technologies. Many experts are very doubtful concerning these optimistic environmental consequences of the realization of the internal market.

The Commission is at present also analyzing the impact of energy use on air pollution, where for the time horizon 1980 to 2010 the SO<sub>2</sub>, NO<sub>x</sub> and CO<sub>2</sub> emissions are being projected (according to various policy assumptions and scenarios). Above all three policy recommendations are presently being discussed in order to achieve a considerable reduction of emissions (especially CO<sub>2</sub> emissions to reduce the Greenhouse Effect):

□ increased nuclear production by 2010 (with perhaps more than half of total electricity production produced by nuclear plants, compared with 34 % today);

□ considerable increase of the percentage share of natural gas used in power stations;

□ increased energy efficiency by both penetration of more innovative technologies and consumer savings in all sectors of the economy; in this case energy intensity (ratio of final energy demand to GDP) should decrease by around 2.5 % per year.

Increased energy efficiency should play the most important part. But the impressive improvements in the past (more than 20 % between 1973 and 1982) have slowed down today due to falling oil and energy prices during recent years.<sup>16</sup>

Closely linked with all considerations concerning energy prices is the question of "social" or "external" costs, which hitherto have usually not been taken into account; but these cost elements must be evaluated and incorporated into the pricing process. The main aim of internalizing these environmental costs is to ensure that present-day energy consumption and the damage it causes do not become a liability for future generations, but rather that a share of the costs is borne by present-day consumers.

The Commission is now analyzing the wide range of possibilities of taxation as a means of improving energy efficiency and incorporating the respective social costs of energy sources. Under discussion are the introduction of new taxes (especially a CO<sub>2</sub>-levy), the modulation of existing taxes and the introduction of zero VAT rates, for example on energy efficiency investments.

Thus, the energy-environment complex is a clear example of all the problems still to be solved on the way to create an IEM. The environmental aspects will open up again the discussion concerning nuclear power and the role of other energy sources, like coal, in the EC's energy strategy. Furthermore, environmental concern, which may well lead to various measures in the field of taxation, will make the burden of tax harmonization on the way to the internal market even more difficult.

### Specific Energy Policy Measures

Last July the Commission presented four proposals for Council directives in order to create the necessary policy instruments for preparing the IEM. The European Parliament will give its opinion on these proposals in the next few months;<sup>17</sup> this legislative procedure may well reveal in detail all the problems involved within the

<sup>15</sup> The relevant Commission paper is not yet finally released and published.

<sup>16</sup> For more details see the Commission's review of Member States energy policies (COM(88) 174 final Vol. I).

respective proposals. It seems most unlikely that the final Council decision on these proposals can be reached in the near future; the time-schedule foreseen by the Commission, which implies final Council decisions on these four proposals by the end of this year, appears to be unrealistic. The four proposals are:

1. *Procedures to improve the transparency of gas and electricity prices.* The Commission pointed out in the relevant proposal for a Council directive,<sup>18</sup> which is based on Article 213 of the EEC Treaty, that the lack of price transparency – mainly in the gas and electricity sector – hinders competition, in particular in the case of large energy users. More price transparency should help to obviate discrimination between users by increasing their freedom to choose between different energy sources and different suppliers. In order to improve price transparency Member States have to ensure that gas and electricity suppliers provide to the Commission twice a year (in January and July) information on their prices and sales conditions for industrial consumers. The respective prices for various consumer groups will be published by the EC statistical office (SOEC).

It is obvious that the main concern about this proposal on price transparency has to do with the inherent problems of confidentiality when the biggest users or producers have to report on the respective rates. It is often argued by the industries concerned that this does not improve competition; on the contrary, competition may well be hindered and prices will presumably tend to rise.

2. *Investment projects in the oil, natural gas and electricity sector.* This Commission proposal<sup>19</sup> is intended to widen the scope of an old regulation<sup>20</sup> on this matter which has been in force since 1972. Its intention is to collect information and facilitate coordination between Member States concerning investment projects in the energy sector. This proposal, which is again based on Article 213 of the EEC Treaty, covers investment projects for production, storage or distribution. Persons and undertakings concerned are obliged to transmit data on planned projects to the Member State on whose territory the project is planned. With respect to the 1972 Regulation two main changes are introduced: first, the Member States are obliged to transmit all project details to the Commission immediately following completion of the feasibility study. Secondly, the Commission should be empowered to inform other Member States on all projects with a Community interest and the Member States would be allowed one month in which to comment or to propose

alternative solutions. In addition, the proposed Regulation imposes an obligation of confidentiality on those who receive information circulated in line with the Regulation's procedure.

Needless to say this proposed Regulation has already given rise to a lot of concern in the industries involved due to the inherent problems of confidentiality, fears of ceding investment planning to a threatening and anonymous national or European bureaucracy, and the impossibility of defining a "Community interest" beyond all doubt. Furthermore, it seems uncertain whether this regulation will allow the reduction or prevention of overcapacities in the industries involved or establish a kind of "Community interest" in investment planning and decision-making.

3. *Extension of electricity supply and transit of electricity through transmission grids.* The costs of non-Europe, estimated above to be approximately 0.5 % of the Community's GDP, are mainly expected to arise in the electricity sector. For this reason the EC wants to open up the electricity sector; greater integration with more transborder exchange of electricity (now in the range of only 5 %) and more competition between electricity producers and/or distributors should allow greater economic efficiency and substantial savings.

At present the transborder transit between large networks is based entirely on voluntary cooperation activities without any legal obligation to transfer electricity from one network to another. The Commission, therefore, recently presented a proposal for a Council Directive<sup>21</sup> to establish such an obligation and to boost transfrontier electricity transfer. This proposal, based on Article 100a of the EEC Treaty, introduces means and modalities for applying the right of transit between integrated high-voltage electricity networks whether or not on the territory of the same Member State. Negotiation and conclusion of transit agreements between the parties involved (electricity producers and undertakings operating the high-voltage electricity networks) are subject to Community control. The conditions of the transit of electricity are to be negotiated directly between the respective electricity

<sup>17</sup> Consultation procedure when the Commission's proposals are based on Article 213 of the EEC Treaty (in the case of price transparency and investment regulation) and cooperation procedure according to the SEA when proposals are based on Article 100a of the EEC Treaty.

<sup>18</sup> COM (89) 332 final.

<sup>19</sup> Cf. COM (89) 335 final.

<sup>20</sup> Council Regulation EEC/1056/72 of 18 May 1972, OJ L 120/72, modified by Regulation EEC/1215/76 of 4 May 1976, OJ L 140/76.

<sup>21</sup> Cf. COM (89) 336 final.



companies. The conditions must be the same for all parties affected and no abusive clauses or unjustified restrictions are allowed. If the negotiations concerning electricity transit do not lead to results within a period of 12 months the national authorities and the Commission has to be informed of the reasons. If there are no good reasons for the failure to reach an agreement the Commission can, either at the request of the applicant of the transit request or on its own initiative, open proceedings in accordance with the relevant provisions of the EC Treaty.

The philosophy of the internal market dictates that the end-user, whether an industrial consumer or a private household, must reap the benefits. To bring about these benefits, the Commission is examining the possibility of more generalized access by third parties (large industrial consumers and electricity distributors) to the grid. This "common carriage" option,<sup>22</sup> not yet included in the actual Commission proposal on electricity transit, is regarded as a possible development within the near future towards a real IEM. The access of third parties is, to some extent, already part of deregulation measures introduced in the United Kingdom and The Netherlands.

It is obvious that the objections brought forward to the Commission's proposal on electricity transit will be much more valid in the case of "common carriage".

Needless to say this Commission proposal is very controversial, as illustrated by diverging views of the respective electricity undertakings.<sup>23</sup> The electricity undertakings argue that the proposed regulations will not raise but reduce security of supply – especially in the longer run, as more competition will lead to higher uncertainty concerning future sales and higher investment risks. For these reasons prices in the electricity sector may not be reduced by introducing an "electricity transit system", but, on the contrary, may tend to rise. In addition, most of the technical questions concerning this proposal are very controversial. It looks difficult to reach an agreement concerning the negotiation and consultation procedure; and it is most doubtful how solutions for the various technical problems can be found, for example: data on the capacity of the grid, fixing of prices for the transit of

electricity, problems when prohibitive prices are asked, etc. It seems most unlikely that a final Council decision on this proposal can be reached within the coming months, so that Member States can bring into force their respective laws, regulations and administrative provisions not later than 1 July 1990, as proposed by the Commission.

4. *Natural gas transit in the high-pressure grid.* The share of natural gas in the Community energy balance rose substantially during the last decade and has achieved a present share of 18 %. The share of natural gas in gross inland consumption certainly varies between Member States, but the Community as a whole envisages in its energy objectives for 1995 a continuing and important role for natural gas in a diversified mix of energy supplies. The main characteristics of the Community's industry today can be summarized as follows:

- ☐ Structure and organization of the gas industry are quite different; but certain common features emerge, mainly the fact that gas production is in most cases separated from transmission and distribution.
- ☐ Some Member States (United Kingdom, Ireland, Spain, Greece and Portugal) are not yet interconnected to the existing rather well-integrated European high-pressure gas grid which currently covers France, Belgium, The Netherlands, Luxembourg, West Germany, Denmark and Italy (together with Austria and Switzerland).
- ☐ Flows in this interconnected European grid are quite important and cover approximately half of total gas consumption in the Community.
- ☐ Transit of gas within the Community, crossing one or more Member States, covers around 22 % of total gas imports (intra and extra EC imports).

The Commission stated in a recent document,<sup>24</sup> that the natural gas supply within the Community is characterized by a series of national, regional or local monopolies; and despite the fact that gas competes with other fuels in most of its end-markets, "there is for practical and technical reasons no competition between gas suppliers for sales to end-consumers anywhere in the Community. In cases where competition from other fuels is not particularly intense, there is a lack of competitive pressure on gas suppliers to operate efficiently and minimise costs".<sup>25</sup>

For these reasons the Commission – as in the case of electricity – prepared a proposal for a Council directive for the application of transit rights between the gas

<sup>22</sup> "Common carriage" means common transport for third parties, who have access – on payment of a reasonable tariff – to the existing transportation networks.

<sup>23</sup> Cf. for example: Hearing on the Internal Energy Market, Brussels, November 1988, in: EP: Series on Energy and Research, No. 7, Luxembourg 1989.

<sup>24</sup> COM (89) 334 final, para. 13.

<sup>25</sup> Ibid.

companies of the Community in the high-pressure grid of the EC. This proposal, based again on Article 100a of the EEC Treaty, says that conditions of the transit of natural gas are to be negotiated directly between the respective gas companies. All further questions concerning the transit of natural gas (negotiation and consultation procedures, actions to be taken in the case of conflict between the partners involved, etc.) are regulated in the same way as in the case of the above-mentioned proposal on electricity transit.

As in the case of electricity, the Commission also declares that it will examine in the near future the access of third parties to the gas network, which means "common carriage" in the gas sector.

The first reactions from the gas companies concerned have already revealed their intense opposition to these Commission proposals. The arguments brought forward by the gas industry are similar to those of the electricity industry; and again it seems very unlikely that the Commission's time schedule for implementing this proposal on gas transit by the Member States not later than 1 July 1990, which is identical with the time schedule for electricity transit, will be fulfilled.

## Outlook

To sum up, a few important implications of a genuine IEM should be mentioned:

□ Completing the internal market means increased economic growth, trade and traffic and thus increased energy demand and pollution; completing the internal market may well, therefore, jeopardize the Community's energy objectives (i.e. above all energy saving and higher energy efficiency and less pollution) if not counterbalanced by control and conservation measures and restructuring processes towards less polluting industries and more energy efficient technologies.

□ Various measures in the field of taxation (for example: energy tax, CO<sub>2</sub>-levy, modulation of existing taxes and the introduction of zero VAT rates) aimed at achieving the energy objectives will make the burden of tax harmonization on the way to the internal market even more difficult.

□ Strict application of the internal market plan also implies, at least *de facto*, coordination of the energy policies of the Member States far beyond the present loose cooperation; this obligation to coordinate energy policies (expressly or implicitly) is a result of the fact that with the application of the internal market plan the present degree of independence of the national governments in the field of energy policy (for example

the policy of giving priority to coal, backing or abandoning nuclear energy, etc.) will be reduced.

□ This coordination of the energy policies of the Member States is especially important because in order to achieve the Community's energy policy objectives a coherent and consistent energy policy is required. In the case of the free movement of goods and services in the energy field, which is a basic element of the internal market plan, the above-mentioned energy policy objectives can only be pursued with any chance of success if the policies themselves are coordinated to a large extent; this implies in particular coordinated price and tax policies.

□ The relevant market for energy products can no longer be the national market but, unless the Community itself and *a fortiori* the internal market plan is not to be reduced to a farce and a contradiction in terms, only a Community-wide common market. Resort can no longer be had to *de facto* protectionist market partitioning measures using the cliché of security of supply. This, however, also has repercussions in the case of shortages, in particular the obligation to provide mutual support, burden-sharing and the pooling of available Community reserves in case of crisis.

□ In the energy field, too, it is becoming especially apparent again that the genuine creation of an internal market is possible only if there is a thorough-going harmonization of the general operating conditions; this implies especially: a large degree of harmonization of VAT rates and similarly comprehensive arrangements for, or total abolition of, specific excise duties; the greatest possible degree of harmonization of norms and standards and environmental protection and safety requirements; harmonization of government measures that affect the cost structure of industry in the energy sector.

It is obvious that the creation of a genuine IEM opens a wide range of risks and opportunities. It will depend on the respective policy measures to what extent the completion of the internal market in the energy sector will be of benefit to Europe. The very first reaction to the latest Commission proposals on issues of the IEM (transit of electricity and gas, price transparency and investment) have already indicated the scope of opposition. The political discussion on these issues within the European Parliament in the coming months may well reveal in detail all the problems involved in the respective proposals. But a short look at the consequences if the tasks of creating a real IEM are not, or incompletely, performed shows clearly that there is no going back in the face of this difficult challenge.