

EUROPEAN ECONOMIC COMMUNITY

**SUPPLEMENT**  
**TO**  
**BULLETIN No. 7 -1966**  
**of the European Economic Community**

EXECUTIVE SECRETARIAT OF THE COMMISSION

Memorandum  
on the Community's  
policy for petroleum  
and natural gas

# Memorandum by the Commission to the Council on the Community's policy for petroleum and natural gas

(presented by the Commission to the Council on 16 February 1966)

1 The purpose of the present memorandum is to inform the Council of what the Commission has done in the petroleum and natural gas sectors and to make proposals for the later stages of the work in this field.

Before preparing this memorandum the Commission took the advice of the senior government officials concerned with petroleum and natural gas; the views expressed are, however, published on the sole responsibility of the Commission and do not commit the officials who were consulted.

The ECSC High Authority and the Euratom Commission were also consulted.

2. This interim report deals with the energy products falling within the scope of the Treaty of Rome, without prejudice to the planning of a general energy policy.

Nevertheless the Commission takes this opportunity of reasserting the need to create as rapidly as possible conditions that will enable the Member States to adopt a common energy policy covering all sectors.

3. In outlining the action it proposes to take, the Commission paid particular attention to the objectives set out in the Protocol of Agreement which was adopted on 21 April 1964 by the Governments of the Member States represented in the Special Council of Ministers of ECSC (1). This stated that the Governments were convinced of the need to establish a Common Market for energy aimed at ensuring:

- i) Cheapness of supply;
- ii) Security of supply;
- iii) Phasing of substitution processes;
- iv) Stability of supply as regards both cost and quantities available;
- v) Freedom of choice for the consumer;
- vi) Fair competition among the different energy sources within the Common Market; and taking into account the interests of general economic policy.

(1) Official gazette, 30 April 1964, p. 1099.

## I. NEW STRUCTURE OF THE ENERGY MARKET

4. The Memorandum on Energy Policy submitted to the Governments in June 1962 by the ECSC High Authority, the Euratom Commission and the EEC Commission, which contained proposals for a common energy policy, was based on two facts: the rapidly increasing share of petroleum and natural gas in the Community's energy supplies, and the considerable price difference between coal produced in the Community and imported sources of energy, whether coal or petroleum.

This analysis has been confirmed by the trend of the energy market over the last four years.

5. From 1961 to 1965 when the consumption of energy rose from 488m. metric tons coal equivalent to 623m. metric tons c.e. — an average annual increase of 6.3%, the demand for coal dropped from 240m. metric tons to 228m. metric tons, while demand for petroleum went up from 111m. metric tons (159m. metric tons c.e.) to 207m. metric tons (296m. metric tons c.e.) (2).

For natural gas the increase, which averaged 8% per year from 1960 to 1964, was less rapid than in the case of petroleum; however, in view of the size of the recent discoveries in the Netherlands and Germany and the prospects held out by the North Sea continental shelf, there is reason to expect that by 1970 enough natural gas will be produced to cover 8 to 10 % of the Community's energy consumption, as against only 3 % at present.

6. On the whole, the memorandum's assumptions as regards prices have proved correct. While the price of coal produced in the Community continued to rise, cost increases being only partly offset by improved productivity in the mines, the price of imported coal tended to remain steady and that of crude oil and refined products tended to fall.

(2) Including non-energy products. Provisional estimate for 1965.

7. A profound change is thus taking place on the Community energy market. Petroleum is more and more displacing coal, until such time as nuclear energy can supplement traditional sources of energy.

In 1950 coal accounted for 75% of the Community countries' energy supplies, and petroleum 10%. In 1965 petroleum and natural gas covered 49 % of requirements, while the share of coal had dropped to 38%. In 1975 petroleum and natural gas may together account for 60%, as against only 24% for coal <sup>(1)</sup>.

From this development it is clear that the problem of quantities and prices will arise much more in the case of petroleum and natural gas than in that of coal.

8. Where quantities are concerned, the world's known resources are more than adequate to meet demand even if the latter rises rapidly.

The proven reserves <sup>(2)</sup> of oil are at present estimated at 46m. metric tons, and output was running at 1 400m. metric tons in 1964. These reserves are, however, only a small fraction of the economically usable resources, which certain geologists estimate at 850 000m. metric tons; these comprise 300 000m. metric tons primary reserves (obtainable by present-day methods of extraction), 200 000m. metric tons secondary reserves (obtainable by new techniques which make possible a higher extraction rate), and 350 000m. metric tons to be extracted from bituminous sands and shales <sup>(3)</sup>.

Moreover, the extraction of oil from primary reserves does not involve any appreciable increase in technical costs, particularly in the Middle East region, which is the source of most of the Community countries' supplies.

9. Prices on the European market have fallen substantially during the last few years, for both crude oil and refined products. This is due to many factors, the chief of which are: protection of high-cost American production since 1958; increasing use of the cheap sources of supply in the Middle East and Africa; the development of lively competition between the producing companies which is shown particularly in the increasing interest of many American and European companies in the rapidly expanding European market; supplies of Russian oil at low prices which, although probably not the direct cause of the fall in prices, have certainly helped it. Costs have fallen as a result of technical progress which, in the field of transport, is above all reflected in the use of large-capacity

tankers and in the extension of pipelines, which are more economical than conventional modes of transport.

Many oil companies have said that despite falling prices prospecting and extraction have continued and even increased in new fields which offered good prospects.

These various factors, the abundance of resources, and lively competition between the companies that supply the market, should ensure favourable supply conditions over a long period.

10. Certain risks which may affect this situation should not, however, be underrated. In the first place, political unrest may develop in certain producing areas, leading to partial or total stoppage of deliveries. When large-scale purchases are concentrated in a single area, this risk must be taken seriously into consideration. Price increases may also be induced artificially by producers.

11. If sufficiently large stocks were built up, it would be possible to surmount temporary crises. This is, however, only a partial and inadequate solution in times of prolonged crisis. It would therefore help to solve this problem if other production capacities could be found that would be constantly available for use at short notice in case of serious disturbance of certain sources of supply, and if sources were sufficiently diversified to enable the risks to be more widely spread.

12. The risk of certain sources failing must be seen in its true proportions. Though it is true that the consumer countries are dependent on the producer countries for their supplies of petroleum, it is equally true that the producer countries obtain substantial revenues from petroleum with which they finance the greater part of their national budgets, so that they have every interest in ensuring that petroleum supplies to Europe are not interrupted.

(1) Provisional estimate; the long-term forecasts for energy made in December 1962 are at present being brought up to date.

(2) "Proven reserves", as defined by the American Petroleum Institute, means the known quantities of oil in fields already discovered which, under existing conditions, can be produced by present-day methods of extraction. Evaluation of these reserves necessitates much costly exploration and drilling which is only undertaken by oil companies when it becomes essential to ensure continuity of production. The concept of "proven reserves" thus differs from reserves of other mineral resources such as coal, the extent of which is calculated from precise geological data.

(3) Figures given at the Sixth Congress in Frankfurt in June 1963. This is a cautious estimate; other geologists have given figures even as high as 2 500 m. metric tons.

The Community's sources of supply are, moreover, less concentrated in certain regions than was the case a few years ago. Imports from the Middle East at present cover about 60% of the Community's requirements, as against 80%, owing to production from new fields in Algeria and Libya, for example. Furthermore, not all the producer countries in any one region necessarily pursue the same policy towards the consumer countries.

Lastly, there are production capacities that could rapidly be made available in various areas of the world; these have been estimated at 200m. metric tons, of which almost 130m. are in the Western hemisphere alone (United States, Canada and Venezuela). Other capacities almost as large could be on stream within a year.

Under the circumstances, the effects of any emergency that might arise could therefore be very much attenuated.

13. In the future the problem of security of supplies will be even more acute than it is today, as petroleum comes to take a larger share in the Community's energy supply. The main problem will therefore be to ensure that the three factors which make for security — existence of adequate stocks, availability of production capacities, and diversification of sources — are maintained or reinforced in order to obviate the risks of a supply crisis or of price increases.

14. The international oil companies are making a very effective contribution towards diversification of sources. In spite of the fact that there have been large surpluses on the world market for several years now, prospecting has continued unabated and new strikes have been made. It is of course logical that companies which have to supply markets throughout the world should draw on oil fields that are as widely scattered as

possible. These companies are thus playing a decisive part in ensuring security of supplies.

15. Another problem arises for the Community, however, which is connected with security of supplies and lies in the differences of structure between the enterprises concerned.

In addition to the enterprises which have a fully integrated structure, from the production of crude oil to the distribution of refined products, there are numerous companies which have only small resources of crude oil of their own and whose activities are therefore confined mainly to refining and marketing, or possibly to marketing only. The financial situation of these companies may be adversely affected by their dependence on the companies that supply them with crude oil or petroleum products.

Such companies, as also other small or medium-sized ones, may find themselves at a disadvantage in international competition because of their inadequate scale, their almost exclusive concentration on the European market, and the taxation to which they are subject.

But these companies also help to supply the market and to maintain competition, which is essential if the interests of consumers are to be safeguarded, and care should therefore be taken to see that they do not disappear.

Moral factors also militate in favour of the maintenance, alongside the large-scale international firms, of companies whose scope is more limited, whether they are integrated or not.

In different ways the Member States have arranged that these enterprises play a part on the market. The common petroleum policy should also take them into account.

## II. PROPOSALS FOR COMMON ACTION BY THE MEMBER STATES

16. In the Protocol of Agreement of April 1964 the objectives of the Community's common policy on oil and natural gas were defined in the following terms:

"The Governments, in accordance with the Treaty of Rome,

*Article 13* — Declare their willingness to introduce a common policy ensuring a widely diversified flow of supplies, at prices as low and as stable as possible, in accordance with practical arrangements which can be adopted to prevailing circumstances;

*Article 14* — Are prepared to promote the economically rational development of the production of hydrocarbons in the Community;

*Article 15* — Will endeavour to agree a common policy on hydrocarbon stocks;

*Article 16* — Reaffirm that they are resolved to eliminate progressively from their municipal laws and regulations and in the application thereof all discriminations between their own nationals and those of the other Member States;

*Article 17* — Will endeavour to work out for fuel oils a fiscal system appropriate to the objectives of the energy policy as set forth above;

*Article 18* — Trust that the question of harmonizing taxes on the other petroleum products will be duly examined;

*Article 19* — Resolve to institute standing arrangements for consultation with a view to attaining the above objectives and to coordinating the measures taken in the hydro-carbon sector”.

17. The Council acknowledged that simply fixing these objectives did not solve all the problems. It is in fact clear that some of them, such as the low price of energy, cannot be dealt with independently of the policy for coal. The level of consumer prices will, in particular, be determined by the types of protection (customs duties and charges, quantitative restrictions or subsidies) that will be adopted to keep coal production at the level the Member States consider desirable.

In the Memorandum on Energy Policy of June 1962, the ECSC High Authority and the Euratom and EEC Commissions proposed a system of subsidies to collieries supplemented by moderate charges on the products that compete with coal, in order to enable consumers to share in the benefits resulting from the reduction in energy prices which is made possible by economic development.

It is unfortunate that in the present circumstances it is not possible to envisage an agreement between the Governments on these measures or on others that would have similar results. For the moment the Commission's activity must therefore be confined to the fields in which progress is still possible without a common energy policy.

18. In pursuance of the Treaty's provisions, the Commission has already taken steps which, in several cases, have culminated in Council decisions:

i) Fixing of the common customs tariff for petroleum products (Decision of 8 May 1964);

ii) Introduction of freedom of establishment for the extraction of petroleum and natural gas (Council directive of 7 July 1964);

iii) Submission to the Council in September 1964 of a proposal for a directive introducing freedom of establishment for the transport and distribution of natural gas;

iv) Submission to the Council in November 1964 of a draft directive requiring the

Member States to maintain minimum stocks of crude oil and petroleum products;

v) Transmission to the French Government in 1962 and 1963 of two recommendations on the adjustment of the French system governing petroleum imports, in pursuance of Article 37;

vi) Transmission to the Government of the Federal Republic of Germany in 1964 of an opinion concerning the system of aid to the petroleum industry that was instituted in that country in place of the system of tariff protection which came to an end on 1 January 1964, in accordance with the Protocol annexed to the Treaty concerning mineral oils.

19. At the same time, the Commission has since 1960 organized frequent and regular discussions with senior government officials concerned with petroleum, and has examined with them the various problems facing the Community as regards its supplies of petroleum. Since the beginning of 1964, this working party has also dealt with natural gas.

From the exploratory talks within this working party, certain common views have emerged. In some cases common machinery has been set up; in others, the problems still require further examination, and proposals have as yet only been made on procedure for their examination.

20. The Commission considers that the time has come for the Member States to review the work that has been done and indicate the lines on which it should be continued. The Commission's proposals on the various points mentioned in the Protocol of Agreement are given below, first for petroleum and next for natural gas.

21. Under the Protocol of Agreement the Member States decided that study of three problems should be postponed until the merger of the Communities had taken place. These are:

i) Commercial policy and policy regarding supplies from non-member countries;

ii) The system of State aids;

iii) The rules and conditions governing competition from the different sources of energy.

These will be dealt with partially, only in so far as immediate harmonization of national policies appears necessary.

The Commission is also considering whether the provisions of the Rome Treaty apply to deposits of petroleum and natural gas on the parts of the continental shelf which come under the jurisdiction of the Member States.

## A. PETROLEUM

### 1. Measures to ensure widely diversified supplies at prices as low and stable as possible, in accordance with practical arrangements which can be adapted to prevailing circumstances (Article 13 of the Protocol of Agreement)

World petroleum resources and available reserves of production capacity

22. The Community is dependent on the outside world for most of its petroleum needs. The existence of constantly available reserves of production capacity to which consumer countries could have recourse in the event of some of their sources of supply being partly or wholly cut off, and an appropriate policy on stocks, are essential if regularity of supply is to be guaranteed.

23. A permanent inventory of world petroleum resources and of the reserves of production capacity actually available will enable the Member States to judge better the size of stocks they should hold and the extent of the measures they should envisage in the event of an emergency over supplies.

24. The drawing up of such an inventory will require:

i) *Exchange of information between the Member States.* This work has been started by the senior officials, who have collected the available information together in a preliminary memorandum on the reserves of production capacity available in the world.

ii) *Consultation with the oil companies.* The Commission has held preliminary talks with oil companies, international groups and European companies, in order to see how consultations might be organized regarding the conditions governing the Community's petroleum supplies. Generally speaking, the companies, realizing how concerned the European countries are to ensure security of supplies since they depend mainly on outside sources, have agreed to provide the Commission with any information that may help the Community to get a clearer picture of the situation.

iii) *Standing arrangements for consultation with the Governments of non-member countries, particularly the United States and the United Kingdom*

Such consultations are already taking place, and the Commission and several of the

Member States are participating in the work of the OECD Oil Committee. The main purpose is to consider with these countries what measures would have to be taken in the event of an emergency over supplies.

Policy on prospecting and the role of companies in the Community

25. In view of the growing importance of petroleum for the Community's economy and the small amount produced within the Community, the latter will be increasingly dependent on the producing regions outside. If the risk of a crisis occurring over supplies is to be reduced, adequate diversification of resources is essential. Such diversification has increased considerably during the last few years owing to the particularly active policy pursued by the international oil companies with regard to prospecting. The smaller-scale Community companies, whether integrated or not, also help to supply the market; they represent a useful element of competition for the future and constitute a not inconsiderable security factor (see sec. 15).

26. The amount of prospecting undertaken by companies is sometimes influenced by government action.

In the United States, the fiscal system contains provisions to facilitate the financing of searches. For example, "tax credits" are granted to all enterprises operating abroad; these enable the oil companies to deduct from their income tax such taxes and charges as they pay to the Governments of the countries where they get their oil. The "depletion allowance" is a tax relief peculiar to the oil industry, which allows enterprises to choose between two ways of calculating expenditure on prospecting and the development of oilfields in order to offset the progressive decline in the capital value of a field as its oil is extracted: the first method — "cost depletion" — consists in amortizing the costs according to the annual output of crude oil; the second — "percentage depletion" — makes it possible for 27.5% of the gross receipts less royalties obtained from the crude oil extracted to be deducted annually when computing the charges to be paid. The "intangible drilling and development cost deduction" determines the conditions under which the costs of exploration and development are deductible from taxable income.

In the United Kingdom, the system allows deduction from taxable income of amounts

spent on prospecting in the country or abroad, and taxes paid abroad can also be deducted (1).

The Member States also intervene in various ways:

i) In Germany, since the beginning of 1964 and until 31 December 1969, loans can be granted for prospecting outside the ECC, such loans being repayable only if oil is found.

ii) In Belgium, tax concessions will be made to any firm that discovers or exploits oil on the national territory;

iii) In France, the support fund for hydrocarbons grants companies that prospect for oil in France limited financial aid which will be gradually reduced over the next five years. The fund can also provide public undertakings with the necessary capital; originally these undertakings operated only on the national territory or in countries of the franc area, but they have recently extended their operations to other regions. The producing companies which carry out exploration also benefit from special fiscal arrangements in the form of the "depletion allowance" (provision pour reconstruction de gisements), and since the law of 12 July 1965, which amended the tax assessment on companies and on incomes from floating assets, they have been allowed to submit consolidated balance-sheets.

Furthermore, the royalties that companies have to pay in the EEC countries where oil is extracted are appreciably smaller than those demanded by other producer countries.

27. The common petroleum policy should be such as to enable Community companies to continue operations in spite of competition from the international companies, provided they show themselves to be as efficient as the latter. To this end it may be advisable, *inter alia*:

i) To offset inequalities in the conditions of competition between the Community companies and the international companies by adopting fiscal or other provisions equivalent to those granted by non-member countries. This means, in particular, measures such as the French depletion allowance, but also the possibility of deducting from taxable income any investments made for prospecting in the country or abroad. In addition, consideration should be given both to the possibility of reducing the companies' income tax by the amount of tax paid abroad in respect of productive operations, and in general to any measures that would put enterprises in the Community on an equal footing with the international companies where taxation is concerned;

ii) To make it easier for enterprises in the Community to acquire their own sources of supply, by granting aids for prospecting, harmonized at Community level;

iii) To encourage all forms of association between enterprises in the Community for the purpose of obtaining licences and concessions, particularly by appropriate fiscal measures, in order to increase the chance of discoveries by greater concentration of effort. Where necessary, association between companies in the Community and international companies could also be envisaged.

28. In order to be able to take well-informed decisions the Member States should:

i) Study the provisions adopted by non-member countries in order to encourage oil prospecting;

ii) Compare the results of the policy adopted towards companies established in the different Member States;

iii) Consider what measures would be most suitable in order to enable enterprises in the Community to continue to compete in the market on equal terms.

In this connection, the following would have to be regarded as Community companies: companies, as defined in Article 58 of the Treaty, which have resources of crude oil or natural gas of their own or engage in prospecting on their own account.

#### Harmonization of commercial policies

29. The Member States' commercial policies will have to be gradually harmonized so that the conditions necessary for the implementation of a common policy that takes into account the ideas expressed in sections 25-28 above can be fulfilled by the end of the transition period, as required by Articles 111 and 113 of the Treaty. As was stated in the Protocol of Agreement of April 1964, the common policy will have to form part of a wider common commercial policy extending to all forms of energy.

At present the position is not the same in all the Community countries:

i) In Italy, there is free entry for imports from all countries, except for imports of products from the East bloc countries;

(1) Changes liable to affect oil companies have recently been made in British taxation.

ii) In the Benelux countries, there is free entry for imports from all countries, except for imports of crude oil and products from the East bloc countries;

iii) In Germany, imports of crude oil and products from the East bloc countries are subject to control, and in addition a check is kept on imports of products from other countries by means of the newly instituted procedure for issuing licences;

iv) In France, the current import arrangements enable the Government to direct companies to whatever sources of supply are considered to be in the best interests of the country.

A procedure for unofficial consultations has already been established, by which the Member States submit annually their import forecasts both for the current year and also, as far as possible, for the coming year. The main object is to see how much of the Community's total supply is accounted for by imports from the East bloc countries, and to make it possible for the necessary steps to be taken at Community level if it is found that the Community is becoming dangerously dependent on this source of supply.

Arrangements for regular consultations over a longer period should enable the Member States to confront their different views and arrive at a common commercial policy within the time and by the procedure laid down in the Treaty.

Another problem that will have to be considered is that of a common definition or origin for petroleum products.

## 2. Promotion of rational development of oil and natural gas production in the Community (Art. 14 of the Protocol of Agreement)

30. The Community countries' resources of oil and natural gas contribute to its supplies in a not inconsiderable measure. In 1965 output rose to 16m. metric tons of petroleum and 18 000m. cubic metres of gas, equivalent to 16m. metric tons of petroleum (1).

For crude oil, the production cost is sometimes higher than import prices in general, and in the absence of tariff protection some Member States have found it necessary to grant aid in order to ensure its disposal.

31. The fiscal measures or financial inducements mentioned in sec. 27 would help to encourage prospecting both within the Community and outside, and would of themselves

help to promote development of the Community's resources.

Should production not be fully competitive with imported crude oil, fiscal advantages or aids could be granted, on the conditions laid down in Article 92(3).

## 3. A common policy on petroleum stocks (Art. 15 of the Protocol of Agreement)

32. Security of supplies of petroleum products cannot be attained without a common policy on stocking.

33. The object of compulsory stocking is, if certain imports are interrupted, to maintain supplies to home markets until the situation is restored to normal or until supplies can be obtained from other sources. It will also help to keep prices more stable by reducing the risk of speculation on the part of producers or transporters.

34. The Commission has submitted to the Council a proposal for a directive (2) requiring Member States, in the initial period, to maintain stocks equivalent to 65 days' average daily consumption of petroleum products in the preceding year, with the possibility of deducting up to 15% having regard to production in the territory of the Member State in question.

If the directive is adopted, the Commission will each year submit to the Council a report on the implementation of the provisions adopted, based on statistical data supplied by the Member States at the end of each quarter. It will make any necessary suggestions, taking into account changes that occur in the conditions affecting supplies of petroleum products, and will where appropriate arrange consultations between the Member States.

## 4. Particular cases of application of the Treaty designed to eliminate discrimination on grounds of nationality (Art. 16 of the Protocol of Agreement)

### State intervention

35. In several Member States the public authorities intervene in the production or distribution of petroleum. Such intervention may, for example, take the following forms:

i) In France, all the oil companies' activities are subject to strict control under the law of

(1) Provisional estimate.

(2) See supplement to Bulletin 2-65.

1928, which lays down arrangements governing imports of crude oil and petroleum products;

ii) In Italy, most of the natural gas is produced by a government concern whose activities also extend to the production and distribution of petroleum;

iii) In Germany, steps have recently been taken to ensure that rationalization of the coal industry, which is at present in progress, is not jeopardized by too rapid an increase in oil consumption.

36. These measures, however sound the reasons for them, must conform to the Treaty's provisions. Procedures for this purpose are provided, and it is for the Commission to ensure that the Treaty's provisions are not infringed.

It is, however, obvious that after the end of the transition period, by which time all direct or indirect obstacles to trade between the Member States will have disappeared and a common commercial policy will have been established, it will become virtually impossible to pursue purely national objectives, and these will therefore have to be superseded by common objectives.

The case of the French import arrangements is discussed more fully below.

Adjustment of the arrangements governing petroleum imports and of problems connected with the organization of the market in petroleum products in France

37. The Commission considers that Article 37 of the Treaty should apply to the French arrangements governing petroleum imports.

Article 37(1) runs:

"Member States shall progressively modify any State monopolies of a commercial character in such a manner as will ensure the exclusion at the expiry of the transition period, of all discrimination between the nationals of Member States in regard to conditions of supply or marketing of goods.

The provisions of this Article shall apply to any body by means of which a Member State shall *de jure* or *de facto* either directly or indirectly control, direct or appreciably influence importation or exportation between Member States. These provisions shall apply also to monopolies assigned by the State".

38. The responsibility for such modification thus lies with the French Government, the Commission, for its part, being empowered to make recommendations.

In response to the two recommendations which the Commission addressed to the French Government, the French imports quotas for oil and petroleum products from other Member States were increased; they went up from 900 000 metric tons in 1957 to 1 650 000 metric tons in 1964. But the enlargement of quotas is not of itself enough to ensure free movement of petroleum products within the Community.

Application of Article 37 to the French arrangements governing petroleum imports will pose serious problems. Nevertheless it would seem that the time has now come to deal also with the economic aspects of the problem, taking into account the requirements of a common petroleum policy designed to assure the Community of supplies at prices as low as possible and with an adequate degree of security.

It would appear that one of the French Government's objects in imposing these imports arrangements was to achieve a certain balance between imports of crude oil from different sources. The pursuit of this aim must not, however, have the effect of limiting the free movement of goods within the Community and isolating the French market.

39. The Commission hopes that the French Government will inform it and the other Member States of the objectives of its petroleum policy which it considers most important, and say how it proposes to reconcile its pursuit of those objectives with its commitments under the Treaty of Rome.

The Commission proposes that talks be held with the French Government's representatives in order to study these problems, without prejudice to the implementation of the Treaty or to the special responsibilities it lays upon the Commission.

In particular, it will be necessary to see how far the measures adopted have fulfilled their purpose and how much the results obtained have cost. In this connection, it will be useful to study the general economic consequences of these import arrangements and their effects on prices net of tax, especially for fuel oil.

It will also be possible to see how the Community's future policy on petroleum supplies can take objectives of common interest into account, particularly as regards greater security. Various measures to encourage prospecting are mentioned in the present memorandum.

Freedom of establishment for prospecting and extraction of petroleum and natural gas

40. Freedom of establishment for the extraction of petroleum and natural gas has been introduced by virtue of Directive No. 64/428/CEE of 7 July 1964 <sup>(1)</sup>. The directive does not, however, apply, in the case of petroleum and natural gas, to prospecting and drilling, to the extent that this activity is not carried out by the concessionary, and another directive applicable to these operations is at present in preparation.

41. Article 4(1) of Directive No. 64/428/CEE lays down that "Member States shall in particular remove restrictions:

a) Which prevent beneficiaries <sup>(2)</sup> from establishing themselves in the host country or providing services there under the same conditions and with the same rights as nationals;

b) Which, as a result of an administrative practice, have the effect of applying to beneficiaries, treatment which is discriminatory in comparison with that applied to nationals;

c) Which, by reason of regulations or practices, exclude beneficiaries from the acquisition of concessions or licences and thereby subject them to limitation or to conditions applying to them alone."

42. Under this directive, the Member States must take the necessary steps to ensure that non-discriminatory treatment is in fact accorded to enterprises from all the Member States when prospecting licences or operating concessions are granted. The possibility should be considered of instituting a procedure for satisfying any legitimate claims submitted by enterprises in the Member States.

Freedom of establishment and freedom to supply services relating to the distribution of petroleum products

43. Wholesale trade in petroleum products was liberalized by Council Directive No. 64/223/CEE of 25 February 1964 <sup>(3)</sup>.

With regard to retail trade in petroleum products, a proposal for a directive was submitted to the Council on 13 April 1965 <sup>(4)</sup>.

44. The principal problems likely to arise concern petrol stations because there are special provisions governing the construction of new stations in most of the Member States. These may result in discrimination against nationals of other Member States; this is, for example, the case when concessions or licences for the construction of new petrol stations are only granted to persons who have previously worked in the country in question.

45. Under the two directives mentioned above, such discrimination will have to be abolished. With regard to practices relating to the granting of concessions or licences, the possibility should be considered of instituting a procedure for satisfying any legitimate claims submitted by enterprises in the Member States.

#### 5. Harmonization of fiscal systems relating to fuels and other petroleum products (Articles 17 and 18 of the Protocol of Agreement)

46. If the application of different fiscal provisions to petroleum products, depending on the country, does not in itself constitute an obstacle to free movement within the Community, the competitive position of the various modes of transport and of the industries that consume energy may nevertheless be adversely affected by the existence of differing fiscal systems, and it is therefore desirable that taxes on energy products should be harmonized.

47. The Commission has made an initial comparison of the fiscal provisions in force in the Member States, and brings this information up to date at regular intervals.

It has to admit that, at least as regards petroleum fuels, these taxes are mainly designed to protect domestic production of coal or other sources of energy and should therefore be regarded as instruments of energy policy. Any proposals to harmonize them on the basis of the Treaty of Rome will therefore have to take the objectives of common energy policy into account (see sec 17).

(1) Official gazette No 117, 23 July 1964, p. 1871.

(2) For the definition of beneficiaries, see Title I of the General Programmes for the removal of restrictions on freedom of establishment and freedom to supply services, official gazette No 2, 15 January 1962, p. 36.

(3) Official gazette, 4 April 1964, p. 863.

(4) See supplement to Bulletin 6-65.

**6. Co-ordination of certain measures  
taken by governments (Art. 19 of the  
Protocol of Agreement)**

**Common rules governing the  
transport of petroleum**

48. The construction of refineries in centres of consumption has led to the development of pipelines to bring crude oil from the ports to the refineries.

The increase in demand for petroleum in the Community also justifies the construction of pipelines for the conveyance of products.

49. As this form of transport is, in a large number of cases, of an international character, common principles applicable to it should be worked out.

Moreover, in connection with the examination of technical obstacles to trade, the Member States should seek to adopt common safety rules governing conveyance by pipeline.

50. On 22 June 1964 the Council instructed the Commission to set up a joint panel of experts from the Member States and from the Commission to study the problem of pipelines under the headings "energy" and "transport".

The panel held its first meeting in January 1965. A working paper had been prepared by the Commission, reviewing the situation and drawing the experts' attention to the principal problems under these two headings. It was suggested that a procedure should be established for consultations regarding plans to construct new pipelines which would be of common interest, and that the possibility should be considered of applying the concept of "common carrier" to pipelines used to convey crude oil or petroleum products from one Member State to another. The Commission is at present considering whether such rules should be established.

Independently of this panel, the Commission's staff, assisted by technical experts from the Member States, are drafting common rules concerning security.

**Exchange of information on  
laws and regulations**

51. In order to work out the lines along which the Community's common petroleum policy should be developed, it is essential

that the Member States and the Commission should have a complete picture of all the current laws and regulations relating to petroleum in the Member States.

52. As early as 1960 the senior officials agreed to draw up a list of these provisions. A comprehensive document has been handed to the Member States, outlining the present position, particularly with regard to prospecting and production, transport, refining, stocking, distribution, taxation, and air and water pollution. It is planned to bring this information up to date every year.

**Exchange of information on  
investment programmes**

53. Consumption of petroleum can be expected to rise very rapidly and the interdependence of markets will increase also.

54. Exchanges of information regarding investment programmes in this sector need to be organized systematically, so that enterprises in each country may know as early as possible how supply is likely to develop in the other Member States. Such arrangements will also enable the public authorities to obtain precise information on the situation.

55. The Member States have already agreed to review investment programmes regularly. They have instructed their experts to collect the information necessary for this purpose, and to present an annual report on the subject. The inquiry which is thus in progress covers prospecting, production, refining and conveyance by pipeline.

**B. NATURAL GAS**

**1. Particular cases of application of the  
Treaty designed to eliminate all  
discrimination based on nationality  
(Art. 16 of the Protocol of Agreement)**

**Conditions governing the  
sale of natural gas**

56. Hitherto natural gas, although important for certain regions of the Community, was regarded as a product of local interest only and the possibility of exporting it to other Member States had never arisen.

The size of the deposits recently discovered in the Netherlands and the north of Germany, and the good prospects apparently held out by the North Sea continental shelf, have altered the scale of the problem entirely. It is in fact already certain that much of the natural gas available in the Netherlands will be exported to other Member States. Intra-Community trade in natural gas might also develop in other regions.

57. Consideration must be given to conditions which must be fulfilled in order that the Treaty should be respected in this sector. If the Community allows situations to develop which are contrary to the Treaty and to the common interest of the Member States, it will perhaps be unable to remedy them later, on for it is always difficult to change the status quo.

In the case of one or more enterprises enjoying a dominant position, improper practices as defined in Article 86 would have to be avoided, particularly discrimination with regard to prices as mentioned in paragraph (a) of that article. In addition, care will have to be taken to see that the provisions of Articles 7, 37, 85 and 90 are respected. Government participation in the management of a monopoly would not constitute a guarantee for the consumer since it would amount in effect to a transfer of the producer's profit to the State.

58. Regular exchanges of views which the Member States have agreed to hold through the working party of senior officials should, moreover, make it possible to work out common principles governing the sale of natural gas.

#### Freedom of establishment for the transport and distribution of natural gas

59. The extraction of natural gas was liberalized at the same time as that of petroleum by the Directive of 7 July 1964 (see sec. 40). A draft directive providing for the liberalization of activities connected with the transport and distribution of natural gas was submitted to the Council on 24 September 1964 (1).

#### 2. Co-ordination of certain measures taken by governments (Art. 19 of the Protocol of Agreement)

#### Common rules governing transport

60. Apart from the removal of obstacles to free movement, there is the question of estab-

lishing common principles governing the transport of natural gas, in order to facilitate the development of intra-Community trade.

61. The Commission, in co-operation with the Member States, has begun a study of the economic aspects of the transport of natural gas and the implications of the Treaty's rules on competition for this sector.

Moreover, at the same time as studies are being made on the conveyance of liquids by pipeline (see sec. 50), a working party has been instructed to examine the safety rules that apply to the construction and operation of these installations, with a view to harmonization.

#### Exchange of information of laws and regulations

62. As in the case of petroleum, the Member States need to have a picture of all the laws and regulations relating to natural gas in the Community.

Following a decision taken by the senior officials, an inventory of these laws and regulations is being drawn up; it covers prospecting, extraction, transport, stocking and distribution.

The senior officials have also agreed to keep each other informed of new draft laws and regulations and of plans to amend existing provisions.

#### Exchange of information on investment programmes

63. The creation or extension of networks for the transport of natural gas has effects which are generally irreversible on the market not only for gas but also for other sources of energy. The investment effected are of crucial importance for the areas concerned. Moreover, the sums spent in providing means of transport for large quantities of gas are substantial, and these means should therefore be used to the fullest extent possible.

64. Exchange of information on schemes for investment in means of transport for gas is necessary to enable enterprises in the energy sector to foresee possible developments in the natural gas sector in the Community, and to take decisions concerning their own investments accordingly. Notification of such schemes will also keep the public authorities informed of the situation.

(1) See supplement to Bulletin 11-64.

65. The senior officials have decided to inform each other annually of any programmes for investment in means of transport for natural gas that may be in the common interest. The first report, relating to the year 1965, has been transmitted to the Member States.

In addition, the senior officials have agreed to keep each other informed of any new

investment projects that may be in the common interest, in cases where the decision to carry them out would have to be taken before they could be notified by the usual annual procedure.

Lastly, at a later stage, there should be periodical exchanges of information concerning the sums to be invested in distribution networks.

### III. SUMMARY AND CONCLUSIONS

66. The Commission proposes to continue its work on the application of the Treaty's provisions to the petroleum and natural gas sectors, along the lines indicated by the Governments of the Member States in the Protocol of Agreement relating to energy problems adopted on 21 April 1964.

67. It considers that the most appropriate means would be:

#### A. PETROLEUM

*In order to ensure widely diversified supplies, at prices as low and as stable as possible, in accordance with practical arrangements which can be adapted to prevailing circumstance:*

- i) To keep a permanent inventory of world oil resources and of the reserves of production capacity to which the Member States could have recourse in the event of some of their sources of supply being partially or wholly cut off;
- ii) To continue consultations with the oil companies in order to obtain information on the conditions governing the Community's oil supplies;
- iii) To continue consultations with the Governments of the non-member countries concerned, particularly the United States and the United Kingdom, in order to determine what measures would have to be taken in the event of an emergency over supplies;
- iv) To consider what measures would be most suitable in order to enable enterprises in the Community to continue to play their part on the market on equal terms of competition;
- v) To harmonize the Member State's commercial policies progressively, so that the conditions necessary for the implementation of a common policy can be fulfilled by the end of the transition period.

*In order to promote the rational development of the production of petroleum and natural gas in the Community:*

To grant, where necessary and on the conditions laid down in the Treaty, fiscal advantages or aids in order to facilitate the sale of Community production should it not be fully competitive with imported crude oil.

*In order to apply a common policy on stocking:*

To fix, under a general directive, the minimum stocks of oil and products that each Member State will be required to maintain, taking into account changes that occur in the conditions affecting supplies on the world market.

*In order to ensure application of the Treaty and in particular the elimination of all discrimination on grounds of nationality:*

- i) To eliminate, in pursuance of the Treaty, all discrimination on grounds of nationality in the exercise of powers held by the Member States by virtue of special legislation or when they control the management of enterprises;
- ii) To ensure, where necessary and by appropriate means, that enterprises in the Member States are accorded non-discriminatory treatment when prospecting licences or operating concessions are granted;
- iii) To ensure, where necessary and by appropriate means, that enterprises in the Member States are accorded non-discriminatory treatment for the construction of retailing establishments, particularly petrol stations.

*In order to harmonize taxation on fuels and other petroleum products:*

To compare the fiscal provisions in force in the Member States, and seek to harmonize them on the basis of the Rome Treaty, taking into account the objectives of the common energy policy.

*In order to co-ordinate certain measures taken by governments:*

- i) To determine the common rules that should apply to conveyance by pipeline; to study in particular the possibility of establishing a procedure for consultations regarding plans to construct new pipelines which would be of common interest, and to apply the concept of "common carrier" to pipelines used to convey crude oil or petroleum products from one Member State to another;
- ii) To harmonize the safety rules that apply to the construction and operation of pipelines;
- iii) To exchange information on new draft laws and regulations and on plans to amend existing provisions which are likely to be of common interest in view of their effect on intra-Community trade in petroleum products;
- iv) To exchange information each year on investment programmes in the petroleum sector, covering in particular prospecting, extraction, refining and conveyance by pipeline.

## B. NATURAL GAS

*In order to ensure application of the Treaty discrimination on grounds of nationality; and in particular the elimination of all discrimination on grounds of nationality.*

To determine the conditions that must be fulfilled if the Treaty's provisions are to be respected in the natural gas sector, particu-

larly with regard to the policy of enterprises on sales.

*In order to co-ordinate certain measures taken by governments*

- i) To determine common rules that should apply to the conveyance of natural gas by pipeline within the Community;
- ii) To harmonize the safety rules that apply to the construction and operation of pipelines for the conveyance of natural gas;
- iii) To exchange information on new draft laws and regulations and on plans to amend existing provisions which are likely to be of common interest in view of their effect on trade in natural gas;
- iv) To exchange information each year, and where necessary at more frequent intervals, on investment programmes in the natural gas sector, covering in particular means of transport which are of common interest.

68. In order to achieve the desired results, the Commission will arrange for the necessary consultations to take place within the working party of senior government officials concerned with petroleum and natural gas.

It will inform the Council each year of the progress of its work, and will in particular report on the results of the consultations arranged within the working party of senior government officials. Where appropriate it will submit concrete proposals on the various points mentioned above.

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### PRICE PER ISSUE

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£0.2.6	\$0.30	FF 1.50	FB 15.-	DM 1.20	Lit. 180	Fl. 1.10
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The supplement is supplied free of charge to subscribers and purchasers of the Bulletin.

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