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Report

drawn up on behalf of the Committee on Energy, Research and Technology

on the proposal from the Commission of the European Communities to the Council (Doc. 237/73) for a decision adopting provisions for the dissemination of information relating to research programmes for the European Economic Community

Rapporteur: Mr K. Helveg PETERSEN

By letter of 14 November 1973 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 235 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a decision adopting provisions for the dissemination of information relating to research programmes for the European Economic Community.

On 15 November 1973 the President of the European Parliament referred this proposal to the Committee on Energy, Research and Technology as the committee responsible.

The Committee on Energy, Research and Technology appointed Mr Helveg Petersen rapporteur on 3 December 1973.

It considered this proposal at its meetings of 17 December 1973, 25 January and 5 February 1974.

At its meeting of 5 February 1974 the committee unanimously adopted the motion for a resolution and the explanatory statement with one abstention.

The following were present: Mr Springorum, chairman; Mr Flämig, vice-chairman; Mr Helveg Petersen, rapporteur; Lord Bessborough, Mr Burgbacher, Mr Covelli, Mr Giraud, Mr Glesener, Mr Hougardy, Mr Krall, Mr Lautenschlager, Mr Leonardi, Mr Noè, Mr Verhaegen, Mrs Wolz.

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A

The Committee on Energy, Research and Technology hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament
on the proposal from the Commission of the European Communities to the Council for a decision adopting provisions for the dissemination of information relating to research programmes for the European Economic Community

The European Parliament,

- having regard to the Commission's proposals to the Council,¹
 - having been consulted by the Council pursuant to Article 235 of the Treaty establishing the EEC (Doc. 237/73),
 - having regard to the report of the Committee on Energy, Research and Technology (Doc. 355/73),
1. Holds the fundamental view that the results of Community-financed research should be published as widely as possible so as to be available to all;
 2. Believes, however, that the Community must take the most necessary measures to ensure that European industry is the first to benefit from research results with industrial applications;
 3. Expects the Commission to live up to its express intentions to administer the proposed arrangements in the least restrictive manner possible and to pursue an open information policy in respect of the various research programmes;
 4. Considers, on the basis of these expectations, that the Commission's proposal strikes a reasonable balance between the wish to make information generally known and the wish to give priority to the development of European industry, and can therefore approve the Commission's proposal;
 5. Wishes the Commission to keep it informed about the further rules for actually administering the arrangements in practice;
 6. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

¹ OJ No. C 104, 29 November 1973, p.15

EXPLANATORY STATEMENT

I. Background to the proposal

1. EURATOM and ECSC have for many years had arrangements for disseminating information derived from Community research programmes. The present proposal follows on from an undertaking contained in the Council decisions of 14 May¹ and 18 June 1973²; there were 8 decisions in all on the launching of research programmes outside the scope of the EURATOM and ECSC Treaties. This is the reason why the Commission has had to produce a proposal for separate provisions for the dissemination of knowledge gained from these new research programmes which include research on the protection of the environment, standards and reference substances, new technology, etc. Each of these decisions includes an Article 5 stating that provisions for the dissemination of information from research programmes will be worked out at a later date. The Council stated that the practice hitherto applied in EURATOM should be followed during the transitional period.

2. The purpose of the present proposal is therefore to discharge the Commission's obligations under Article 5 mentioned above. Even though the present arrangement cannot be guaranteed to cover all future research programmes, statements by the Commission's representatives in committee and in discussions with the rapporteur suggest that the present proposal should be seen as a general arrangement which, possibly with slight amendments, could be applied to other research programmes.

3. The Council's decisions on the research programmes were taken on the basis of Article 235 of the EEC Treaty, and the present proposal is also based on that article, i.e. the Council must consult Parliament.

It should also be mentioned that in fact most of the research programmes to be covered by the proposal will be carried out at the Ispra Joint Research Centre. A few of the projects are, however, carried out under contract.

As the proposal is largely based on previous experience in EURATOM and ECSC the systems applied in the latter are outlined below.

II. The EURATOM system

4. The results of research carried out under the EURATOM Treaty are disseminated to Member States and enterprises in accordance with

¹ OJ No. L 153, 9 June 1973, pp. 9 - 14.

² OJ No. L 189, 11 July 1973, pp. 30-35, 41-44.

Articles 12 and 13 of the EURATOM Treaty. The main aim of the system applied is to give undertakings in the Community priority in the commercial and industrial exploitation of the results obtained from Community research. In practice the question of whether the information should be disseminated and even perhaps published depends on the nature of the information.

5. As a rule information gained from general basic scientific research and from humanitarian (e.g. medical or biological) research is always published. On the other hand information of commercial and industrial interest is considered to be in the first instance, confidential. If it is possible to patent the knowledge (inventions) concerned, to guarantee the Community's rights, it may also be published. However, if the knowledge concerned is technical 'know-how' which is impossible to patent, it is disseminated by a special communication procedure designed to safeguard its confidential nature and give the countries and undertakings of the Community priority knowledge of the information concerned.

6. In any event the system as practised is that more general research results - and the results of research programmes which are of primarily industrial interest - are usually published. As a rule there has been at least one generally accessible document on each research programme. In the past few years about 55% of research documents have been published and about 45% have been confidential. But at the same time these proportions are due to the fact that intense discussion on the activities of the Joint Research Centre has orientated Community research more towards basic scientific research than applied research more specifically intended for industrial exploitation.

7. As mentioned above the results of confidential research are disseminated by special communication procedure. The distribution is decentralised to the extent that the Commission has a national correspondent in each Member State in charge of distribution. The 'correspondents' are usually documentation or information centres concerned with nuclear research.

Undertakings wishing to be placed on the distribution lists must make an application to that effect and also give evidence of genuine interest in familiarizing themselves with the Community research results. On the advice of the national correspondents the Commission decides whether an enterprise may be included in a particular list. In practice an effort has been made not to apply this system too restrictively to avoid unfair exclusion of undertakings which might profit from the results of the research.

III. The ECSC system

8. The Community does not prepare independent research programmes within the Coal and Steel Community, but Article 55 of the ECSC Treaty provides for the granting of support to research programmes prepared by undertakings. Such undertakings do not usually receive 100% support - the Community grant is more often set at 50% of expenditure. Under Article 55 the results of research financed in this way must be made available to all interested parties in the Community. As a rule details of the conditions concerning the dissemination of information obtained from these research programmes are laid down in the contracts concluded between the undertakings and the Community. In practice the general results of research programmes have usually been published, whereas technical 'know-how' and similar information derived from the research programmes has been restricted to the contracting parties.

IV The main principles of the proposal

9. Considering the proposal itself and the explanatory statement together with subsequent information provided by the Commission, the main points of the proposal may be summarized as follows.

10. Industrial exploitation: the main aim of the proposal is to ensure that industrial undertakings within the Community have priority of access for the exploitation of results of research financed by Community Funds.

11. The Community's rights: according to the proposal (Article 2) information resulting from the execution of research programmes shall be the property of the Community. The Community has the right to take out patents on inventions resulting from research programmes but in cases where the invention is the result of research work done under contract, the contractor has a prior right to the patent, and is both entitled and obliged to exploit the invention or to allow it to be exploited in the Community within a reasonable period (Article 8). In such cases the proposal stipulates that the Community shall obtain a free and non-exclusive licence with the right to grant sub-licences (Article 5), if the contractor does not fulfil his obligation to exploit it, if market demand is not covered, or if the contractor's conditions of sale are not compatible with the interests of the Community (Article 8).

12. Restriction vs. disclosure: in principle information derived from research programmes is confidential. It shall be communicated as rapidly as possible to Member States and to persons and undertakings which - in the words of the proposal - 'pursue a research or production activity entitling them to access to such information, and whose interests coincide with those of the Community' (Article 3). The Commission envisages the introduction of a communication procedure corresponding in principle to that used hitherto in EURATOM.

13. These provisions relate first and foremost to information which has industrial applications. Article 4 therefore also stipulates that: 'Information which cannot be put to industrial use and the nature of which does not warrant its limitation to the Member States nor to the persons and undertakings referred to ...' shall be published. The Commission believes that immediate publication of research results will be less usual for research under the EEC Treaties than for EURATOM research, in respect of which 55% of research documents have been published during recent years, as mentioned above.

14. Licensing agreements: the aim of the proposal is to encourage the industrial and commercial exploitation of information and inventions derived from research programmes by establishing licensing agreements with production undertakings (whether the invention has been patented or not). The licences will mainly be non-exclusive, i.e. a licensing agreement with one undertaking shall not exclude other undertakings capable of 'manufacturing effectively' if they do so on the territory of a Member State, and their interests coincide with those of the Community. The conditions of the licence shall furthermore usually incorporate a clause on an appropriate financial contribution to the Community (Article 6).

15. The proposal also contains provisions on the publication of offers to grant licences and the possibility of granting a temporary exclusive licence (maximum validity five years) in cases where there are no applicants for non-exclusive licenses (Article 7).

Finally Article 9 provides for the possibility of passing on information and inventions to third countries within the framework of an international agreement under Article 228 of the EEC Treaty.

V. Observations on the proposal

16. An assessment of the present proposal must be based on the consideration that although it only applies to eight specific research programmes it should have more general application as a set of standard rules for the dissemination of information derived from research under the EEC Treaty. Although the Commission does not claim that the system proposed can automatically be applied, as it stands, to all later research programmes, the proposal should not be assessed exclusively on the basis of its application to the programmes already decided on.

17. As mentioned above the basis of the proposal is that the knowledge obtained should in principle be treated as confidential and therefore only distributed on a limited scale, while publication as such should depend on the nature of the research results.

Your rapporteur believes in principle that it would have been better for the present proposal on the dissemination of research results to establish as a basic tenet that the knowledge derived should be published to make it universally available, and only in special cases restricted to Member States and undertakings.

18. At the same time your rapporteur naturally appreciates the view that it is reasonable to take the most necessary measures in order to ensure that European industry is the first to benefit from results of Community research which have industrial application. There is also the fact that, in practice, the differences between the two procedures (based on the two different principles enunciated above) are not necessarily very great. The difference depends entirely on how the Commission intends to administer the regulations contained in the proposal. On this point the Commission's officials have assured your rapporteur that the intention is to administer the regulations as liberally as possible and pursue a policy of open publicity about the individual research programmes, as is the present practice in EURATOM.

19. Your rapporteur considers this is a very important undertaking on the part of the Commission, especially as conditions in the non-nuclear sectors of industry vary in many respects from those in the nuclear sector. Many different undertakings of greatly varying size will be interested in information about the results and it would be very unfortunate if a number of them were excluded as a result of strict interpretation of the regulations. Consequently the practical administration of the provisions of the proposal should be organized to make it possible to keep abreast of the Community's research programmes in several different ways.

20. In practical terms, this means that:

- the results of basic scientific research and of research of social or humanitarian interest should be published as a matter of course;
- results of interest to industry should in principle be restricted to European industry, but usually only for a fairly short period, after which they should be published;
- the criteria taken as a basis for communicating research results to European undertakings should be interpreted so liberally that as far as possible no European undertakings which could possibly have an interest in a certain piece of information should be excluded from the distribution list;
- at least one universally available document should be published on every research programme. In the case of research of interest to industry this document could present a more general account of results while the actual information to be exploited industrially could be disseminated in the first instance to interested European industrial undertakings;
- frequent reports should be published on the progress of work within each programme for which no documents have been published.

21. Provided that the proposed system is administered on the basis of the above guidelines, the Committee on Energy, Research and Technology believes that the practical consequence of the system will be to create a reasonable balance between the wish for the greatest possible publicity for the Community's research programmes and the wish that European industry should be the first to benefit from the research results. The committee is therefore able to accept the Commission's proposal in its present form. At the same time, however, it would request the Commission to keep it informed of the exact nature of the more specific rules adopted for the purely practical administration of the system.

22. It is evident that the primary purpose of the proposal is the dissemination of information which the undertakings themselves are interested in receiving and which they can put to their advantage in their industrial production. For this reason the system also mentions that licences to exploit specific research results will normally contain a condition on 'appropriate financial consideration' for the Community (Article 6).

It is easy to imagine a case in which undertakings may decide, for one reason or another, not to use a certain invention, construction or method, although the Community's interest in its exploitation may be very great. This could conceivably occur in central sectors such as energy or data processing where the Community desires a certain minimum of independent research and at the same time independence of foreign interests, but where the undertakings may well be satisfied with their previous sources of information.

Developments in these fields may well be instrumental for our future living conditions and it is therefore regrettable that the Community is not now contemplating measures to influence market conditions in Europe with a view to guaranteeing the dissemination and practical exploitation of possible Community research results in these major fields.

VI. Conclusion

23. The Committee on Energy, Research and Technology agrees that the results of research financed by the Community should be published as widely as possible so that they are available to all the interested parties.

The committee also agrees that research results which can be exploited industrially should in the first instance be distributed to interested persons and undertakings in the Community.

24. During its discussion of the Commission's proposal the committee has been reassured that the proposed system will, in practice, be administered as liberally as possible. The committee therefore finds that the Commission's proposal strikes a reasonable balance between the wish for publicity and the wish for priority for industrial development in Europe.

The committee would like the Commission to keep it informed about the way in which the proposal is implemented in practice.

25. Finally, it is the committee's view that the Community must in the longer term consider measures to influence the conditions obtaining on the European market so that the industrial exploitation of important research results can be guaranteed in the interests of the whole Community.