

WHAT IS ENERGY POLICY?

INTRODUCTION

Energy policy issues are at the very roots of the European Community. By 1957, three Treaties had established the European Coal and Steel Community, the European Atomic Energy Community and the European Economic Community. These three Communities still exist today and are collectively called the European Communities, but are more often referred to as the European Community (EC) and, in the late 1990s, as the European Union (EU), as established by the Maastricht Treaty.

Apart from coal and nuclear concerns, though, the EC has no specific energy policy competences. The Commission has to rely on Article 235, which says: *“If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.”*

From the late 1960s onwards, the appropriate measures were centred around the single objective of ensuring the security of energy supply. This approach had its zenith in 1986 when the Council adopted a Resolution with both general and specific targets aimed at 1995. The general objectives concerned the development of the Community’s own energy resources, diversification of external sources of supply; increased flexibility of energy systems; joint crisis measures; and energy saving and diversification between the different forms of energy. By and large, these are still valid today (Chapter Five).

The specific targets - on raising energy efficiency, on restraining oil consumption levels, and on increasing coal use - were outdated even before the half-way mark, thanks largely to the stabilising of the oil markets at chronically low price levels, and also to the emergence of climate change issues.

By the early 1990s, environmental and Single Market policies had taken a firm hold at Community level and were already having a far more potent impact on the energy industries than the old security of supply policies. The Commission, which should have reviewed the 1986 objectives mid-term but was sidetracked by the Gulf war and the internal energy market developments, started a new energy policy exercise in 1993-94. This eventually led to a green paper and then a white paper on energy policy, in which it established that the Community’s energy policy should be based around the three objectives of security of supply, sustainable development and competitiveness. Both of these policy papers, along with the responses of the Council and the Parliament, are discussed in this chapter.

This chapter also looks at the attempts by the Commission and the Parliament to persuade the Member States of the need for a revision of the Treaties and/or the inclusion of an energy chapter in order to provide a more coherent approach embracing all three energy objectives. These attempts, however, failed, leaving the Commission with Article 235 on which to base those energy policy actions which fall outside the Single Market or environmental objectives.

Thus, in the late 1990s, the Commission was pursuing three separate energy initiatives which were aimed at developing a limited EU policy into the 21st century. The first proposal, which now looks unlikely to succeed, is a Council Decision for agreed energy objectives. The second is an improved framework for cooperation with the energy industry itself and those which seek to influence it. The third initiative is the pooling of all the energy programmes, managed by the Commission’s Directorate-General for Energy (DGXVII), into a single Energy Framework Programme.

DEVELOPING A COMMUNITY STRATEGY FOR ENERGY

The green paper “For a European energy policy”, issued in January 1995, was the first substantial policy document on energy since the late 1980s. Its aim was to stimulate a major debate across the continent on how the EU could and should give itself new energy policy goals to serve as a frame of reference for the actions of the Community and of its Member States. The Commission acknowledged in the paper that, of the three main objectives identified for energy policy (overall

Chapter Two

competitiveness, security of supply, and the environment), the search for competitiveness would be the driving force for a Community energy policy. However, the acceptance that EU Directives would lead to an increased integration of the European market, the Commission said, must lead to new concerns.

Three areas to be pursued to protect the consumer

It described broadly three areas which needed to be pursued in order to protect the interest of consumers: cooperation between the regulatory authorities; network management, in view of the increasing interdependence of the networks; and the need for harmonisation to complement the introduction of competition rules by making the distinction between those which concern the Community and those which concern a limited number of Member States. There was a very widespread debate on the green paper

The Parliament's Resolution, in October 1995, placed far more emphasis on environment and cohesion concerns than the green paper. While recognising the importance of the internal market, it also stressed fiscal harmonisation, the rights of the consumer, and respect for general economic interests.

Detailed statement on energy policy by Council of Ministers

In November 1995, the Council adopted a Resolution on the green paper which was tense with compromise between States pushing for liberalisation and States worried about the need for long-term planning. It concluded with this hesitant statement: "[The Council] considers that the operation of the internal market requires the strengthening of consultation and cooperation between the Member States within the Community and the development of Community methods of analysis, in particular with respect to the functioning of the market mechanisms, which could enlighten the Community decision-making process."

The second half of the Resolution included a set of energy policy goals (which were to be reinforced by a subsequent Resolution on the white paper - see below - and therefore remain the Council's most important statement on the subject): "[The Council] considers that improved convergence of energy policies within the EU must first consider use of existing Community instruments, should take into account the observations and principles mentioned above and should go towards:

The Council's most up-to-date statement on energy policy goals

- the incorporation of energy policies, including the completion of the internal market in natural gas and electricity, in the strategy for renewed growth, employment, competitiveness and cohesion within the EU;
- regular assessment of the existing EC legislation in the energy sector and where necessary repeal of those rules that are no longer needed;
- better alignment of energy and environmental goals and, to this effect, consideration and, to the extent necessary and practicable, development of instruments such as economic incentives, internalisation of environmental costs and the dissemination of information;
- the development of the requisite energy infrastructure, in particular trans-European networks, where the need arises and on economically viable terms;
- closer relations with third countries in the field of energy and, if appropriate, e.g. with signatories of the European Energy Charter and with the Mediterranean countries, the development of international agreements, thereby creating a necessary dialogue on the fundamental aspects of energy policy;
- the promotion of efficiency and conservation in the energy field, including for example transport savings and, where appropriate, combined heat and power production, and the promotion of new and renewable energy sources and indigenous resources, for the purposes of environmental protection and of reducing energy dependence on satisfactory economic terms;
- the evaluation of existing measures and consideration of measures to be introduced, where necessary, taking into account, as appropriate and inter alia, the role of the International Energy Agency to the extent of its specific competence, concerning supplies, so as to cope with possible risks of a cut-off of supplies and to contribute to security of supplies in the long term;
- diversification of supplies for the purpose of bringing stability to the energy sector, taking account of all forms of energy production, subject to compliance with the provisions of the Treaty concerning safety, security and environmental protection."

The Commission's white paper - an energy policy for the EU

Following the intense debate on energy policy in 1995, the Commission presented a white paper - "An energy policy for the European Union" - which started by noting several key parameters about energy use in the future:

- Europe will significantly increase its dependence on imported energy;

- gas will compete with oil as a leading component of the fuel mix;
- European consumers will become increasingly dependent on grid-supplied energy;
- there will be considerable flexibility over the future fuel mix, depending on the climate change policy, the effects of technology, renewables and liberalisation of the market.

The bulk of the white paper, though, and its most important content, was contained in the section called "Guidelines for energy policy implementation". It provided a fairly concise discussion of energy policy at the Community level: "*Energy policy, like all Community actions, will ultimately be judged on the extent to which it contributes to the central objectives of the Treaties, in particular market integration, sustainable economic growth, job creation and prosperity for its citizens. In this context the following objectives: overall competitiveness, security of energy supply, [and] environmental protection are considered as being the most relevant to the energy sector.*"

Energy policy must aim to reconcile differing objectives

It is difficult to think of energy measures which do not have some effect on at least two and quite often three of these objectives but these effects can be contradictory. Energy policy must aim, wherever possible, to reconcile these objectives while being consistent. In this endeavour, the Community already has a sound base since many of its actions in the energy sector are consistent with all three objectives. A future priority will be to ensure that in a long-term perspective the consistency of Community energy actions is maintained and where possible strengthened. . .

While the three objectives remain paramount, other dimensions, notably social and economic cohesion cannot be neglected. It is essential that in a more competitive market this social role is not undermined, in view of the importance of energy for the quality of life and for the creation of jobs."

The white paper discussed future policy in four areas - integration of the market, managing external dependency, sustainable development, and energy technology and research - and analysed a large number of existing and potential policy and practical actions for each one. These were summarised in an action plan, with target dates for proposals. (Most, if not all, of the actions mentioned in the white paper are covered in this report in the relevant chapters.)

A final part of the white paper entitled "Instruments for energy policy" laid great stress on the subsidiarity principle and that actions in the energy sector should be taken only if they bring added value. It said, though, that there was a need to start a move towards more compatible national policies and a coherent Community strategy. Three concrete proposals to establish a framework for improved dialogue with the various actors were included at the end of the white paper:

White paper proposes instruments for energy policy

- the establishment of a programme to monitor energy trends, in cooperation with Member States, industry and other bodies, in order that political decisions related to energy can be made on the basis of a shared analysis;
- the setting up of an Energy Consultative Committee, under Commission auspices, consisting of representatives of the principle economic and social actors in the energy sector. The aim would be to ensure as much transparency as possible on the development of Community initiatives on energy policy;
- the organisation of cooperation between Member States on agreed energy objectives.

Member States' response to the white paper

In July 1996, the Council formally adopted a short Resolution on the white paper. It welcomed the white paper as a useful basis for further work "in view of the fact that it endorses the necessity of reconciling the objectives of competitiveness, security of supply and protection of the environment taking into account the principle of subsidiarity and economic and social cohesion".

The Council said: "*[It] considers that the possible accomplishment of Community objectives requires the use of all the instruments available in the Treaties. This involves, inter alia:*"

- *the improvement of the functioning of the internal energy market, in particular the completion of the internal electricity and gas market;*
- *respect for the general principles of competition, as well as, wherever they exist and according to the conditions established by the Treaty, the services of general economic interest;*
- *the definition of standardisation programmes to promote energy efficiency and new and renewable sources of energy;*
- *a consistent approach in the environmental field;*
- *the development of trans-European networks;*
- *the setting of energy priorities in future research programmes;*
- *the establishment of a consistent approach as regards external relations;*
- *the more coherent definition of programmes for energy efficiency and new and renewable sources of energy to allow for more effective use of budgetary means."*

Council Resolution confirms relevant energy policy tools

Chapter Two

The Council reinforced its earlier, more expansive, statement on energy policy by saying it “considers that the agreed common energy objectives identified in the Resolution on the green paper should be implemented at Community level”. The Resolution also supported, in some degree, the new instruments proposed by the Commission. It invited the Commission “to put in place a process of cooperation between the Community and Member States in order to ensure that Community and national energy policies are compatible with these objectives”. It also said that “energy decision-making at Community level needs to be placed in the context of a shared analysis of the energy situation and of future trends and invites the Commission to organise cooperation between Member States on energy studies”.

The final paragraphs of the Resolution gave support for the promotion of renewable energies, the periodic publication of “a report on the development of energy policy at Community level in relation to agreed energy objectives”, and invited the Commission to look into measures for ensuring the transparency of economic indicators.

Parliamentary approval for the main thrust of the white paper

In a detailed Resolution, the Parliament agreed with the “main thrust” of the Commission’s white paper but called for, among other things, a strengthening of the EU’s policy on renewables, the establishment of an energy panel for nuclear safety actions in Eastern Europe, and the inclusion of an objective to lower import dependency. It also called for one or more well-prepared regional energy conferences to be organised with a host of international organisations - the EIB, EBRD, World Bank, IMF - and energy NGOs in Central and Eastern Europe, and for Phare and Tacis funds to be used in their organisation.

NEW ENERGY POLICY INSTRUMENTS FOR THE 21ST CENTURY

Following the Council’s Resolution, the Commission moved quickly, at least initially, to implement the new instruments for energy policy. Still during 1996, it put forward a proposal on common energy objectives, and it set up the Energy Consultative Committee (see below). The third instrument, that of a programme to monitor energy trends, was already part of DGXVII’s ongoing work and was given a more formal status in the 1997 proposal for an Energy Framework Programme (see below).

Proposal for agreement on common energy objectives

In October 1996, the Commission brought forward a draft Council Decision under which the Member States would agree to a set of common energy objectives, discuss regularly their progress towards the objectives, and exchange information on best practices. The Commission’s proposal was slightly amended in August 1998 after the Parliament’s Opinion. The (amended) draft Council Decision contained just three main articles. The first called for a framework for energy cooperation between the Community and the Member States to be established around a set of agreed energy objectives - an annex lists what these objectives should be, as follows:

The annex list of draft energy objectives

“1) Energy policy at the Community level should contribute to the achievement of the various energy objectives set out in the Treaties, notably market integration, sustainable development, environmental protection and security of supply.

2) The integration of the Community energy market, based on the principle of open and competitive markets, is essential for achieving flexibility, efficiency and long-term security in the energy sector. Integration should take into account the diverse energy mix of the Member States, both fossil and non-fossil, and enhance economic and social cohesion particularly through the development of trans-European networks.

3) Transparent energy prices with the aim of ensuring that markets for all fuels in the Community work efficiently and - taking into account the goal of environmentally sustainable development - operate on the basis of fair competition.

4) In order to achieve the Treaty objective of sustainable development, energy and environmental objectives need to be integrated. Wherever possible the full cost of energy production and consumption should be reflected in the price. Economic non-fossil fuels such as renewables and nuclear incorporating the highest safety standards, can make an important contribution to this goal.

5) The strengthening of security of supply through improved diversification and flexibility of domestic and imported supplies, by developing environmentally sound indigenous energy resources and by ensuring energy suppliers have the ability to respond quickly and flexibly to supply emergencies, notably with respect to oil and gas.

6) *A coordinated approach to external energy relations in order to ensure free and open trade and a secure framework for energy investments using the best possible environmentally acceptable technologies. Cooperation with non-member countries should be developed to enhance energy security, to achieve environmental goals and to stimulate the development and dissemination of appropriate energy technologies to third countries.*

7) *The promotion of renewable energy resources through supportive measures at both Community and national level with the aim of achieving for this fuel a significant share of primary energy production in the Community by 2010.*

8) *A significant improvement in energy efficiency in the Community by the year 2010 through an improved coordination of both national and Community measures.”*

Article 2 set out a number of actions to be undertaken by the Commission to achieve the energy objectives:

- the monitoring of the impact of energy policy developments in the Member States on the agreed energy objectives and of the evolution of the global energy situation in case any changes should be needed to the agreed energy objectives;
- the scrutiny of EC and national actions in the energy field and the exchange of best practices;
- the monitoring, evaluation and exchange of energy-related information on all aspects of energy policy;
- the development of cooperation and linkages in the energy field;
- the encouragement of the broad dissemination of the results thereby obtained;
- the development and rapid introduction of a taxation or incentive system commensurate with sustainable energy policy objectives; (this action was introduced in the amended proposal on the suggestion of the Parliament);
- the examination of specific EC actions to support measures taken in the Member States.

Draft list of actions to be taken to achieve the energy objectives

Article 3 would require the Member States to inform the Commission every year of the measures taken to achieve the agreed common energy objectives and the Commission to use the information to prepare a Communication every two years “on the compatibility of energy policies in the Member States and Community actions in the energy field with the agreed energy objectives”.

This proposal was solidly supported by the European Parliament (EP) in its May 1997 Opinion. A number of the EP’s changes were absorbed in the Commission’s proposal, as above, but several proposed amendments - such as those calling for a European Climate Agency and an energy consumption tax - were not taken on board by the Commission.

The Council, however, was not able to make any progress on the dossier, partly because many of the Member States did not like it, and partly because an analysis by the Council’s legal service rejected the use of a formal Decision. The legal service concluded: “*The above proposal for a Decision does not comply with the Treaty provisions concerning the transfer of implementing powers by the Council to the Commission and is not covered by the proposed legal basis. It must, therefore, be reexamined by the Commission in order, particularly, to determine the need for a legislative act and, if necessary, to define the basic rules to be implemented by the Commission.*” By the end of 1997, it was clear the Council would not make any progress on this proposal unless the Commission considered revising it, perhaps into a draft non-binding Recommendation.

Council rejection of draft energy objectives Decision

The Energy Consultative Committee for a dialogue with industry

The second, and less controversial, instrument proposed in the white paper, the Energy Consultative Committee (ECC), has made progress, albeit rather slowly. A Commission Decision, dated 8 November 1996, formally set up the ECC to consist of 31 “eminent persons” representing the energy industry (15 members), energy consumers (8), energy sector unions (6), environmental protection organisations (1), and the Commission (1). The Commission aims to seek “pertinent advice about the objectives and the implementation of European energy policy”.

ECC to be consulted on energy policy problems

The Decision says the ECC may be consulted by the Commission “on all problems related to Community energy policy” and it “shall issue opinions or submit reports to the Commission at the latter’s request or on its own initiative”. In fact, at the time of the Decision, the Commission explained that it would use the ECC to help identify areas in which Commission action is needed, to advise on how to implement the Commission’s energy policy proposals, and to deliver opinions on proposals before they are officially adopted.

The parameters for the workings of the committee provided in the Commission Decision are fairly general, the aim being to let the ECC work out more detailed working procedures for itself. The

Chapter Two

committee will elect, every three years, its own chairman and three vice-chairman (one from industry, one from consumers, and one from the unions) by a two-thirds majority. These four will constitute the steering committee and organise the ECC's work. Working parties, with a maximum number of 11, will be set up when necessary, and Members can authorise an expert to take their place in the working groups.

The ECC will advise the Commission through its opinions. If they are agreed unanimously then they will be submitted as "common conclusions", if there is no agreement then the dissenting views must also be submitted to the Commission. According to Article 14 of the Commission Decision, the committee members will be required to preserve the confidentiality of their work. The Commission will provide all the secretariat services for the committee and thus be able to monitor its activities.

ECC chairman and vice-chairmen appointed

It was not until early 1998, that the Commission adopted a further Decision appointing, from the beginning of March, the actual members of the ECC, according to the guidelines it had set in the original Decision. A first meeting of the ECC took place in April at which the chairman, Lionel Taccoen, of Electricite de France and Eurelectric, was appointed, along with three vice-chairmen.

Towards a restructuring of DGXVII's energy programmes

Under severe pressure (such as blocking finance for SAVE and Synergy) from some Member States, notably Germany but others also, the Energy Commissioner Christos Papoutsis was obliged in 1996 to begin examining a more rational framework for the variety of energy programmes operated by DGXVII. A first step in this process was the publication, in April 1997, of a 20-page Communication entitled "An overall view of energy policy and actions".

An overall view of energy policy and actions

Most of the Communication described the various Community programmes and policies as they related to the four "top priorities" of the white paper: ensuring security of supply and strengthening international cooperation; integrating the European energy markets; promoting sustainable development; and promoting research and technological development. However, the Commission also put forward five arguments "for a more overall approach" to the range of policy measures in the energy field:

- the need for a clear and specific legal base for energy issues because Article 235 is not sufficient;
- the need for greater transparency in EU energy policy actions because "sometimes" there is "a lack of transparency in existing actions, both for industry and for political decision-makers";
- the need for better targeting - "the primary concern should be to identify any policy gaps, encourage synergies and avoid duplication between these Community measures so as to ensure their maximum effectiveness"; (an annex listed all the various EC programmes or actions which provide finance for energy - see table opposite);
- the need for closer cooperation between the Community and the Member States - "the aim is to enable Member States to ensure that their energy choices are compatible with the priority Community objectives and to help them achieve this";
- a need for fuller involvement of all interested parties.

Mixed bag of draft legislative proposals

This was followed late in the same year by a formal proposal for an Energy Framework Programme (EFP) with a mixed bag of draft legislative proposals. The draft base Decision, proposed under Article 235, is to define the general framework, its duration, the main financial elements and the implementing bodies, particularly the committee to oversee all the energy programme projects. Furthermore, there are:

- two draft Council Decisions for energy efficiency and renewables programmes under Article 130s (Chapter Four B);
- a draft Council Decision for a coal technology scheme, Carnot, under Article 235 (see below);
- a draft Council Regulation for the Synergy programme under Article 235 (see below);
- two non-legislative programmes, one for prospective analyses and market monitoring (see below), and the other for cooperation in the nuclear sector on safety, industrial collaboration with the NIS and the transport of nuclear materials (Chapter Seven).

The Energy Framework Programme structure

A key factor in the proposal is the use of a single flexible committee to oversee the operation of all the programmes within the EFP. At present, a whole range of different committees assist the Commission in implementing the various programmes. Furthermore, the Commission said it would take a more formalised approach for increased cooperation between all committees with programmes and policies which have an energy component - the RTD, regional and Phare/Tacis programmes.

In practice, this would involve, the Commission said, a network of Directors-General with the task of ensuring that:

- “policy or operational guidelines involving an energy dimension will be drawn up in accordance with the principles of consultation and transparency”;
- “the actions implementing these guidelines and the allocation of resources relating thereto will be coordinated on a constant basis and assessed in the light of their contribution to the priority objectives of energy policy”.
- a summary is drawn up of all the energy actions undertaken under the various EC policies.

Papoutsis had originally asked the Commission to finance the 1998-2002 programme with Ecu300m, but was knocked back by his fellow Commissioners to Ecu200.4m (plus Ecu12.5m for nuclear transport safety actions). The Commission’s indicative allocations were as follows:

- Analyses (Observatory) - Ecu7.8m;
- International (Synergy) - Ecu36.4m;
- Renewables (Altener) - Ecu81.1m;
- Energy efficiency (SAVE) - Ecu68.4m;
- Solid fuels (Carnot) - Ecu4.1m;
- Nuclear security - Ecu2.6m;
- Nuclear safety - Ecu12.5m.

*Indicative budget
breakdown for
individual EFP
programmes*

Main sources of finance for Community energy actions

<u>Financing of energy policy actions</u>	Financing period	Ecu m*
Thermie	1995-98	(see below)
SAVE II	1996-2000	45
Altener	1993-97	40
Synergy	1997	7
Energy Observatory	1997	2
<u>Financing of networks</u>	1995-99	112
<u>Energy RTD</u>		
Joule	1995-98	464
Thermie	1995-98	566
Safety of nuclear fission	1995-98	170.5
Nuclear fusion	1995-98	846
Joint Research Centre	1995-98	312.5
INCO	1995-98	30
<u>Structural Funds</u>		
Community support	1994-99	2,500
Community Initiatives (Regen and Regis)	1994-99	534
<u>International cooperation</u>		
Phare	1994-96	158.7
Tacis	1994-96	415.4
Meda	1994-96	-
Developing countries in Asia	1994-96	20
Developing countries in Latin America (inc. Alure)	1994-96	28.5
European Development Fund (Africa/Caribbean)	1995-96	18.2
Synergy	1997	(see above)
External aspect of environmental policy	1995-96	4.6
<u>Euratom safeguards</u>	1997	15.8
<u>ECSC support for coal</u>		
Readjustment	1994-96	164.7
Research	1994-96	69.6
Social measures	1994-96	103.2
<u>European Investment Bank loans</u>		
European Union	1996	4,975
Third countries	1996	702.4
<u>ECSC loans</u>	1996	97.3
<u>Euratom loans</u>	1996	-
<u>European Investment Fund guarantees</u>		
European Union	1996	88
Third countries	1996	182

* In the Commission’s original table each of the grant figures (i.e. those from the top down to the line) were qualified more precisely as being either reference, indicative or committed amounts for the period indicated.

Source: COM/97/167

Chapter Two

The Energy Observatory and Carnot programmes

The only one of the EFP programmes which can be considered to be devoted to the elucidation of energy policy per se rather than implementation of that energy policy is the small non-legislative programme for analyses and market monitoring, sometimes called the “Energy Observatory”. In fact, DGXVII has been carrying out this kind of work for many years, the results of which have been published in influential reports such as “A view to the future” and “European energy to 2020”.

The EFP proposal said the Commission already relies on expertise provided by some of the most distinguished European centres in the field of energy forecasting, but, because of the increased integration of the markets and the growing importance of environmental constraints, the economic outlook for energy is changing. Therefore, economic analyses must go further than hitherto, “progress has to be made in the area of shared analyses”. The objective is not to achieve standardisation but “to align points of view so that those taking decision have identical reference bases in terms of economic studies and analyses, energy forecasts, [and] the dynamics of energy systems”. Particular attention will have to be paid to the effects of the single currency, the Commission added.

The main areas for action identified by the Commission for this programme were as follows:

*Energy
Observatory
areas for action*

- identification, at European level, of the major problems concerning future energy demand and production as well as energy policy with a special emphasis on climate change, market opening, and world energy market trends;
- improved analytical capability so as to be able to identify energy trends and possible scenarios on a comparable basis in all Member States.

The proposed Carnot programme, although being hinted at in DGXVII’s work programmes over a number of years, only made its first formal appearance in the EFP. The Commission said it would support actions to promote the industrial penetration of clean and efficiency technologies for coal utilisation. The programme would provide full grants for measures leading to the creation of an information network aimed at promoting commercial opportunities and technical information among national, Community or international activities, the Commission said. It would also provide cofunding, up to 50%, for measures to foster industrial strategic cooperation (workshops, site visits, evaluations, etc.) aimed at promoting the industrial exploitation of clean coal technologies, and the exporting of European technologies.

*Carnot programme
in support of coal
technologies*

Support for international cooperation through Synergy

Until recently, DGXVII was operating, on the basis of a small budget line approved each year by the Parliament (in a similar fashion to the Energy Observatory work), a grant programme of energy projects in developing regions around the world. However, in mid-1995, the Commission proposed a legal base for the programme with a budget of Ecu50m for the five year period 1996-2000. It said the programme should focus on promoting sustainable development through reduction of greenhouse gas emissions and other pollutants linked to energy use; the enhancement of security of supply; and improving energy efficiency.

In presenting the draft Regulation, Papoutsis referred to the EC’s high degree of dependence on non-member countries for energy supplies, to the role of energy in the stability of society, and to the growing problems of pollution: “*They make international energy cooperation a matter of vital importance for the European Community. . . I am convinced that this programme, because of its flexibility, its highly targeted operations and its ability to act quickly, will enhance the Commission’s international influence in an area crucial to its economy and that of its partners.*”

*International
energy cooperation
is a matter of vital
importance*

Because of a requirement for unanimity within the Council under Article 235, and despite strong support from the Parliament, the draft Regulation was delayed and diminished under pressure from those Member States calling for an EFP. At the end of 1996, the Council agreed a one year programme for 1997 with Ecu7m, and the possibility for a one year extension if an EFP was in negotiation but not in place. At the end of 1997, the Council approved a budget of Ecu5m for 1998.

The Regulation, adopted formally on 14 April, set up a programme of cooperation with all states, but especially with those important to the Community in terms of “political, security of energy and economic interests” in the “formulation, elaboration and implementation in fields of mutual benefits of energy policy”. According to an indicative allocation, the countries of Eastern Europe, the NIS and the Mediterranean were to be allocated 18%, 21% and 20% respectively, with 12%

for Asia, and 9% each for Africa and Latin America. The remaining 11% was for general or inter-regional projects. Examples of Synergy actions are given in Chapters Nine and Ten.

The Commission's proposal for a Synergy programme within the EFP followed much the same line as the earlier proposal. It said: "*Synergy represents the main external element of the EFP. It constitutes the link between an internal policy and the external actions of the Community and is one of the main supports for penetration by Community firms of major external markets.*"

Monitoring energy investment in the Member States

There is a further modest instrument available to the Commission. A Council Regulation, dating from 1972, obliges Member States to notify the Commission of energy investment projects, but it was rarely utilised until the 1990s. When, in 1989, the Commission proposed strengthening the Regulation, the Member States told the Commission to make use of the existing rules first. It then began producing annual reports and, on the basis of that experience, made a proposal in 1995 suggesting modest amendments.

A new Regulation, approved by the Council in 1996, requires Member States to provide information on investment projects which relate to the production, transport, storage and distribution of petroleum, natural gas or electric power (an annex provides specifications on project type and size). In the case of electricity, the information must be provided for projects on which work is scheduled to start within five years, for the other sectors the time frame is three years. The submissions must take account of the latest developments in the project, any decreases in capacity as well as increases, and all parts of the project "in so far as together they constitute a technically indivisible whole, even where the project is carried out in several successive stages". The Regulation also insists that projects be notified even if the major features are still subject to further review or final authorisation.

New Regulation requiring details of energy investments

The Member States must provide specific information on the projects: the precise purpose and nature of the investment; the planned capacity or power; the probable date of commissioning (or decommissioning); and the type of raw materials to be used. There is also a paragraph requiring the undertakings concerned to notify the Member States of relevant investment projects, but this can be waived if a Member State has an alternative means of obtaining the information.

During the negotiations in the Council, some Member States were particularly concerned about the confidentiality of information. One article says that the information provided under this Regulation shall be confidential but that "this provision shall not prevent the publication of general information or of summaries not containing particulars concerning individual undertakings". The Commission also attached a statement to the Council minutes to the effect that the Commission will take account of confidentiality "by presenting data in aggregate form and deleting references to undertakings in the forms used". In another statement attached to the minutes, the Commission said it would examine the possibility of reducing the amount of information or even repealing the Regulation within five years. Subsequently, the Commission adopted an implementing Regulation setting out, in tabular form, the data required from Member States to fulfil the terms of the revised Council Regulation.

Concerns over confidentiality of information

In the last of the annual reports, published in 1997 on the basis of the old Regulation, the Commission concluded that the refinery sector was still faced with a structural conversion overcapacity; that there was an increase in investment in gas infrastructure; and that the investment in the electricity sector remained centred in Italy, UK and Germany, representing about 70% of the total capacity of conventional thermal plant under construction and planning.

Annual report on energy investments

FAILED ATTEMPTS TO INTRODUCE AN ENERGY CHAPTER

Prior to the intergovernmental conference (IGC) that was to lead to the Maastricht Treaty, the Commission put forward a proposed chapter to cover energy policy. However, the text was weakened in successive drafts of the new Treaty and finally dropped altogether. The only concession to those States which called for a joint energy policy was a Declaration (No. 1) attached to the Treaty on European Union. It said that the Treaty revision negotiations, to start in 1996, should look again at the question of chapters on energy, tourism and civil protection, on the basis of a Commission proposal.

When Christos Papoutsis took over as Energy Commissioner, immediately after the adoption of the green paper, he took on the cause of energy policy. In July 1995, for example, he said: "*I am*

WHAT IS ENERGY POLICY?

Chapter Two

in favour of an energy chapter within the Treaty. Considering the importance of energy for our economies, for citizens of Europe and their welfare, I believe we need to give energy policy a framework in which it can be developed efficiently and effectively.”

EP and ESC in favour of energy chapter in Treaty

The Council, in its Resolution on the green paper, gave no indication that it would consider an energy chapter in the next IGC. Most of the lobby groups which delivered opinions to DGXVII on the green paper also explicitly rejected the idea of a chapter or said they could see no reason why such an instrument was necessary. Only the European Parliament (EP) and the Economic and Social Committee (ESC) came down firmly in support of the idea of new Treaty rules. The ESC produced an own initiative Opinion in 1994 with a specific proposal for a draft chapter. It set out a framework in which public service obligations, concerns about cohesion, and harmonisation of fiscal and environmental actions would all be legitimate energy policy issues.

The Parliament’s 1995 Resolution on the green paper, however, in a single paragraph called for a much more radical approach than the simple insertion of a modest chapter on energy: “[*The EP stresses that the energy policy aspects of the ECSC and Euratom Treaties and other energy considerations should be integrated within a common energy framework, helping to ensure overall cooperation with regard to security of supply and environmental protection, and requests the Commission to include in its forthcoming white paper a draft proposal for an energy chapter to be tabled at the 1996 IGC for inclusion in the Treaty.*”

Reflection Group discussions on energy

The small so-called Reflection Group, set up with a representative from each Member State to prepare for the 1996 IGC on a Treaty revision, met regularly throughout 1995 and produced a final report to the Essen summit in December. Although several of the Group’s meetings had examined the question of energy on the basis of unpublished papers from the Commission, there was no mention of energy in the final report. It appeared there was insufficient support, at least to counteract the considerable antipathy from a few of the larger Member States, for any new Treaty provisions on energy.

With very little public backing from any of the Member States, the Commission began to play down its support for an energy chapter. Early drafts of the energy policy white paper had contained strong arguments in favour, but the final document, when it emerged in December 1995, simply said the Commission “will make proposals on the question of whether a modification of the Treaty in the 1996 IGC is necessary”.

Commission Opinions for intergovernmental conference

The Commission put forward its general Opinion on the IGC in February 1996. Although it did not make specific reference to energy, it did follow the Parliament’s lead and propose a restructuring of the Treaties: “*As years have gone by the Treaties establishing the Union and the Communities have grown progressively more complex and progressively less understandable. . . The coexistence of three legally separate Communities and of a Union encompassing them but not enjoying its own legal personality does not make for easy public understanding of the European integration process. . . The task of simplifying and consolidating the Treaties should be pursued to the utmost extent.*”

Treaties must be simplified and consolidated

A few weeks later, in April, the Commission put forward its specific proposals in response to Declaration No. 1 of the Maastricht Treaty. The six-page report to the Council did not support new titles for civil protection and tourism, but did propose making the legal bases for the energy sector more coherent. The Commission’s energy policy objectives are far from being shared by all the Member States, it said, although coal and nuclear do fall under the common frameworks of the ECSC and Euratom Treaties, neither are necessarily consistent with policies on other types of fuels, arising out of the EC Treaty. It pointed out that, with the imminent expiry of the ECSC Treaty, there was a need to find a mechanism to maintain its social and research measures in the coal and steel sector. It also admitted that some of the provisions of the Euratom Treaty governing the nuclear sector were “no longer as relevant as they once were”.

The main question regarding energy, the Commission concluded, was how to rationalise and bring into line the various components of energy policy so as to ensure their overall coherence and to find a better way of exercising existing powers while, at the same time, updating certain aspects in view of present conditions. It suggested two ways of doing this: consolidation of the Treaties or a new chapter. An in-depth consolidation of the three Treaties would enable the scattered legal bases to be brought together in a single chapter, it said, and would give coherence to Community energy policy. Failing this, an alternative approach would be to insert a chapter on energy into the

Treaty, spelling out the objectives of energy policy and providing for relevant instruments and procedures. It stressed, though, that it was not asking for new powers.

Interventions on energy by Ireland and Italy

The IGC opened in Turin during March 1996. The Commission's proposal was discussed as were other papers put forward by Member States. There was a document from Ireland in autumn 1996 which focused on strengthening the Euratom Treaty in order to reinforce the solidarity of the Community's nuclear safety provisions and provide a determined signal to the accession countries. It proposed six key changes, including prior consultation with the Commission for the construction of nuclear installations likely to affect another Member State (as currently exists on radioactive waste plans). By the following February, however, it was clear that the IGC would not touch the Euratom Treaty (Chapter Seven).

Irish call for revision of Euratom Treaty

In spring 1997, Italy made a last ditch attempt to make progress on energy in the IGC with a draft text for an energy chapter comprising five articles and the use of the codecision procedure. It argued that reinforcement of the Community's capacity to take action in the energy sector, respecting the principle of subsidiarity, represents "an essential element within the context of the completion and reinforcement of the Single Market, as well as for the competitiveness of the European economic and industrial system".

Italy's proposal for an energy chapter

Despite these determined actions from Italy, Ireland, and also Belgium, and some support from Member States such as Greece, Austria and Portugal, there was still a strong lobby - not least the UK, the Netherlands, Germany, France, and even Spain - that opposed any significant change from the status quo, even if for different reasons. Thus, needless to say, none of the ideas was taken up and the IGC closed in Amsterdam in June 1997, without making any alterations in favour of energy policy. It did, though, widen the application of the codecision procedure in the spheres of transport and environment legislation - both of which have important impacts on energy use.

ASSESSMENT

What is energy policy at the Community level? There are three, somewhat surprising, legitimate answers to this question, one for nuclear policy, one for coal, and one for everything else.

Nuclear policy is clearly set down in great detail in the Euratom Treaty. Specifically, though, it is directed at the "speedy establishment" of nuclear industries. Similarly, the Community has a detailed coal policy through the Economic Coal and Steel Community Treaty which is aimed at "economic expansion, growth of employment and a rising standard of living". These two answers look extremely odd today, when viewed against the likely, or at least possible, slow disestablishment of nuclear industries and the economic expiry of the coal production sector. At least the ECSC Treaty is itself expiring shortly; the indefinite Euratom Treaty, though, is moribund and must be amended (this theme is considerably developed in Chapter Seven).

The Commission's attempts to develop a wider energy policy, as described in this chapter, is the third answer. It starts from the fact that there is no specific legal base for energy policy at the Community level and that, therefore, the Commission has always had to tip-toe gingerly around the Member States sensitivities using Article 235. On the back of the major oil crises in the 1970s and early 1980s, it managed to persuade the Member States to sign up to energy policy objectives in 1986. In this period, the third answer, then, was simply security of energy, but mostly oil, supply. Energy policy was concerned with crisis measures, energy diversification and energy saving. But the objectives were soon undermined. Firstly, by the fact that the forecasts which underpinned them went awry; and, secondly, by the fact that all measures designed to help the Community meet its objectives were straitjacketed by the restrictions of Article 235.

An attempt to squeeze more juice out of Article 235

In the 1990s, the Commission moved on to develop green and white papers in an attempt to develop a deeper understanding of what the EU's energy objectives should be. In this period, energy policy evolved into a more complex interaction of market liberalisation, environmental objectives and security of supply, with the latter being very much the weaker driving force. In a vain attempt to bolster up this new approach and to squeeze more juice out of Article 235, the Commission proposed a Council Decision on agreed energy objectives. The Council, though, viewed this as a step too far and asked the Commission for a less binding approach.

Thus, this third answer, like the first two, illustrates an unsatisfactory state of affairs. This dependence on Article 235 is both embarrassing and harmful for the Community. It is clear from the

WHAT IS ENERGY POLICY?

Chapter Two

way the Article was written that it was meant to be a stop-gap, a temporary measure in case the Member States found some new area it wished to develop and which had been left out of the original 1957 Treaty. It was the kind of Article that was meant to be used once for a particular purpose until the next Treaty revision could fill the gap. But that was 40 years ago. Since then the Member States have had ample opportunity, not least at Maastricht and at Amsterdam, to insert a proper text, one crafted for the purpose. But they wilfully refused to do so. This situation seems even more absurd when the very same Member States have agreed qualified majority voting among themselves for internal market and environment issues, given the Parliament codecision powers in the same areas, and decided on political and monetary union. But, into the 21st century, Article 235 will continue to require unanimity in the Council and one single powerless reading in the Parliament.

Refusal by some Member States to accept EU rights over energy policy

Why is this? The core of the answer is that, despite the rapid evolution of the Union itself, key Member States have refused and continue to refuse to give up sovereignty over energy issues. It is no coincidence, for example, that the UK and the Netherlands both have sizeable energy reserves (and therefore no major security of supply concerns) and both argued during the 1990s against an energy chapter. France, too, has always been deeply concerned about the centralisation of any energy policy in Brussels because of its unique dependence on nuclear power - with unanimity the rule, it can always be sure to block any measure that might jeopardise national policy. Other Member States - Belgium and Italy in particular - have argued vehemently for an energy chapter in the Treaties, but so far they have made no impression.

At another level, though, the Commission is also guilty. One cannot doubt that it does, in fact, believe in the need for an energy chapter. It has said so on a number of occasions. Shortly before the Amsterdam IGC, the Energy Commissioner, Christos Papoutsis, went so far as to make available (informally for it was not a Commission document) a text for such a chapter. But, and it is a very big but, Papoutsis and the Energy Commissioners before him failed to evolve a clear, coherent and consistent campaign for such a chapter. The Maastricht Treaty opened up a chance, a slim chance but a definite one, by formally stating that the subject of an energy chapter should be discussed at the next Treaty revision.

Commission should have worked harder for an energy chapter

One important aspect of the campaign should have been to work tirelessly towards persuading the recalcitrant Member States that an energy policy was in their interests, and, if necessary, to play off one objective against another. It might, for example, have been easier to make progress on the internal energy market dossiers if the UK and the Netherlands, both keen on liberalisation, had been willing to compromise a little on energy policy developments. There was also an opportunity in 1997, perhaps, to finesse Germany, the UK and France over their insistence for an Energy Framework Programme. Papoutsis could have offered this quickly and efficiently in exchange for some give on energy in the IGC.

However, no such manoeuvring by the Commission was ever apparent (which of course does not mean it never took place). Worse, its white paper on energy policy, which came at a crucial time in the early run-up to the Amsterdam IGC and could have been utilised to present a powerful argument for an energy chapter, opted instead, in effect, to demonstrate how the EU could proceed without an energy chapter. There was a very short discussion, in a separate section at the end, which did question whether the current instruments were adequate for "a fully fledged energy policy". But the Commission said its approach "in no way prejudices the action that it will be called upon to take in the framework of the IGC". This was a fundamental mistake, for if the Commission was not trying to persuade the Member States of the need for such a chapter, then who was?

Later the Commission did present a short proposal suggesting either the integration of the Treaties or the inclusion of a new energy chapter. The tone of the Communication, which came in direct response to the Maastricht Treaty's requirement to look at the possibility of an energy chapter, was almost apologetic, as though it knew there was no chance of success.

Meanwhile, by early 1998, the energy policy white paper already appeared out of date, if only because the indicative work programme did not go beyond 1997, and because the key energy policy action - the Council Decision on agreed energy objectives - had been rejected. But there were other flaws with the paper.

Firstly, it identified three main objectives for energy policy - competitiveness, sustainable development and security of supply - when it made more sense to include economic and social cohesion as a fourth objective (Chapter Six). Secondly, the main section provided guidelines not in the same categories as the objectives but in slightly different ones: integration of the market,

managing external dependency, sustainable development, and energy technology and research. This was confusing, especially the inclusion of research on the same level as the other three - research is an instrument of energy policy, and the white paper itself, suitably digested, should have been the basis for RTD guidelines. Thirdly, despite the importance and extent of nuclear issues, these were bundled up together in a small sub-section of the discussion on diversification of energy sources, which was a sub-section of the guidelines on secure energy supplies, which itself was a sub-section of managing external dependency.

It is to be lamented that the Commission, in the mid-1990s, did not delay the work on an energy white paper in favour of pressing for an energy chapter. If, then, it had failed to win an energy chapter, it could have opened an energy policy debate with a view to presenting a white paper in 1998. There would have been no uncertainty about the short-term future Treaty possibilities and it would have been a good time to provide a vision for the 21st century. Unfortunately, we are left with a somewhat tired white paper, and a sometimes demoralised DGXVII, never quite sure how to take things forward.

White paper should have been delayed until after IGC

But, nevertheless, there are opportunities beckoning. A new IGC after 2000 will be a fresh opportunity for the institutions to bring some coherence to their energy policies. The Parliament will insist on, and enlargement will almost certainly require, some changes to the Euratom Treaty. The development of the internal market will make European-wide regulation in the energy sectors both more needed and acceptable and this will lead to increased pressure for the conditions, under which the industries operate, to be harmonised (Chapter Three A).

Meanwhile, at a more practical level, the Commission is trying to press on with its business through two initiatives announced in the white paper: the Energy Framework Programme and the Energy Consultative Committee.

The Commission's Energy Framework Programme proposal is a muddle. This is partly because there is no proper legal base for energy in the Treaties, one which would guide the Commission clearly. But, given the limitations of the Treaties, the Commission could have done much better. The Member States asked for a restructuring of the energy programmes in order to ensure coherence between them. However, the Commission's response, particularly led by Papoutsis, was to create a framework programme under which the existing programmes would continue to exist together with a couple of extra bits. Thus, where there had been three legislative decisions previously - for Altener, SAVE and Synergy - there were then five. One might be forgiven for thinking that Papoutsis, a Greek, was trying the old Trojan Horse trick again.

There were several things wrong with this approach. Firstly, there was no apparent logic for including a nuclear component in the EFP. Nuclear issues fall under the Euratom competences and there must be a legal questionmark over whether they can be carried out, albeit as a quasi programme, under Article 235. It is also difficult to understand why it was included when there is absolutely no problem at all of overlap with other programmes within the EFP (although there might be overlaps with DGXI's nuclear safety work or DGI's Phare and Tacis).

Secondly, it would have made far more sense simply to combine all DGXVII's grant activities (apart from those in the nuclear area), outside of the RTD Framework Programme, into two new programmes. Altener and SAVE, both of which are based on the more advanced Treaty Article of 130s allowing qualified majority in the Council (and codecision with the Parliament after ratification of the Amsterdam Treaty), should be combined into a single programme. They both support similar kinds of activities to promote renewables and energy efficiency respectively. The second programme, based on Article 235, should include all the other activities: the important energy forecasting and economics work, some technology promotion support beyond the RTD programme (as proposed for the Carnot programme but covering a potentially wider area than just coal), and the international projects, currently under Synergy. Both these two programmes should use the same committee structure, but with different operating rules dependent on the legal bases, and should be set up in such a way as to ensure coherence between them, without the need for an extra bureaucratic framework programme level.

Two programmes would have been enough

The Energy Consultative Committee, although a new approach for energy is hardly a bold experiment. DGXVII has always consulted, to a greater or lesser extent, the relevant actors when preparing new legislation - it was lesser during the early 1990s, but has picked up since the mid-1990s. The new committee is an attempt to consolidate on this improved ambience and provide a mechanism for a more consistent and formal dialogue. The advantages for the Commission are that it will be able to seek feedback on proposals in preparation and have some of the arguments

Chapter Two

between lobby groups aired and possibly even resolved prior to adoption as a proposal. It will also be an advantage for DGXVII to have some independent and fresh ideas brought forward on a regular basis.

For the lobby groups, there will also be advantages. The committee will provide an extra mechanism, not only for them to ensure their views and positions are listened to and understood, but for the interest groups to be informed on the work and progress of the Commission. However, it is difficult to imagine such a wide range of interest group representatives, in a ferociously territorial sector, finding common ground on any subject. And if each of the committee's Opinions is accompanied by half a dozen dissenting views, the Commission's preparatory file on the dossier will not look much different from the one which would have been compiled without the committee.

Weakness of the Energy Consultative Committee

There are two weaknesses to the ECC which were apparent even before it got going. Firstly, the committee contains no independents or academics who could provide some kind of intellectual rigor, with a longer-term focus and without a particular bias, to the debates and arguments. Neither does the choice, in April 1998, of chairmen inspire confidence in the ECC's future role: the chairman is from the nuclear industry and two of the three vice-chairmen are from the coal industry (one a representative of the producers, and one of the unions), both industries more of the past than of the future.

Transparency of ECC's work necessary

Secondly, the committee will have no public profile other than that which the Commission chooses to publicise. The confidentiality/transparency issue is always a difficult one. Confidentiality is required, presumably, because, the committee will be dealing with internal (not yet public) Commission papers. Secondly, the Commission hopes that, if the media is not constantly dissecting their views, the lobby groups will be more flexible in the way they debate issues. However, bringing internal Commission documents to a table at which 30 energy sector individuals are sitting will inevitably lead to a wider circulation of the draft in question; but the circulation will be a privileged one. By allowing some public scrutiny of the committee's opinions/conclusions, the Commission could, perhaps, ensure a more even, and perhaps useful, transparency.