

EDITORIAL COMMENTS

The oil crisis in the Community

The reduction of the oil exports of the Arab States rudely awakened the Common Market to reality. This reality is that for over 60 per cent. of their energy requirements member States must depend on imports from third countries and that by far the greater part of these imports consists of oil. It is very unlikely that only the crisis in the Middle East is responsible for the measures restricting production. Whatever the further development in the conflict in the Middle East, the industrialised countries cannot count on a restoration of the *status quo ante*. This is why member States of the Communities will have to set about the creation of a common energy policy in real earnest, a task they have been putting off ever since the entry into force of the ECSC Treaty in 1952.

The Suez crisis did actually help to bring about the Rome Treaties but the warnings of the experts who had drawn up the report *A target for Euratom* and had at that time stressed the danger of the rapid rise of the share of imported oil in satisfying the energy needs of the Six (10 per cent. in 1950; 27 per cent. in 1960) were too easily forgotten. Oil was abundant and cheap; its main drawback was that it endangered too strongly coal production. Consequently energy problems were mainly viewed from the angle of coal mining. It is true that the employment issue made this quite justifiable, but the increasing dependence on imported oil was thus left out of consideration. Besides the provisions for coal and for nuclear materials laid down in the ECSC Treaty and the Euratom Treaty respectively, combined with the rules regarding the establishment and the proper functioning of the Common Market which also applied to fuel oil, natural gas and electric energy, did not by themselves constitute an adequate basis for a coherent energy policy.

Pressed by their problems in the field of coal, the six Member States drew up the so-called Protocol of Understanding on energy problems of April 21, 1964 (J.O. 1964 no. 69 p. 1099). This understanding appeared to make the formulation of a common energy policy feasible but all efforts undertaken to this end foundered in a sea of difficulties and finally led to a blind alley. The conflicting interests of the member States proved too powerful for the small measure of political goodwill shown in 1964. It was not before the end of 1968 that the Commission tried to break the deadlock by submitting to the Council a comprehensive document entitled "First orientation for a common energy policy." A year later the Council commented favourably on this document, but again practical results were not forthcoming. The problem did not again come up for discussion until the Summit Conference of October 1972; a rather cryptic paragraph of the official statement "invites the European Institutions to formulate as soon as possible an energy policy guaranteeing certain and lasting supplies under satisfactory economic conditions" (p. 111 of this

Volume). To this end the European Commission set to work and drew up an exhaustive memorandum (April 1973) in which the problems were once again set before the Council and a series of proposals was announced.

The European Parliament at once responded with a very positively worded resolution (J.O. 1973 C 37/19), but in the meeting which as early as on May 22, 1973 was entirely devoted to energy problems, it again became apparent that the members of the Council were unable to do more than pay lip service to the principle of a common energy policy. The European Parliament did not fail to take the Council sharply to task in a resolution of July 3 (J.O. 1973 C 62/14) in which the Parliament explicitly stated that the long-term safeguarding of the Community's energy supply is being endangered through its own fault if the Council is only prepared to give its opinion at the end of 1973 in the light of new proposals to be submitted by the Commission concerning (*inter alia*) the promotion of the co-operation between energy importing and energy exporting countries. Be that as it may, even if the Council had taken this dressing-down to heart, it would still have been too late to cope with the situation that has now arisen. For the time being, the Community will have to manage by applying the treaty provisions and any existing implementing measures.

Legal elements of the present situation

The Community Treaties do not contain a complete set of provisions specially designed to cope with general situations of shortage. As regards coal and steel, Article 59 ECSC may be applied which provides for an allocation mechanism if the European Commission finds that the Community is faced with a serious shortage. Setting up this allocation system may be blocked by the Council acting unanimously, but its application does not depend on unanimous decisions of the Council. Exports of coal to third countries, too, can be regulated in case of a serious shortage by the Commission (see Art. 59, para. 5). With an exception for nuclear fuels, which are treated by a special Agency under Chapter VI of the Euratom Treaty, all other kinds of fuel and of energy fall under the provisions of the EEC Treaty. If any difficulty should arise in the supply of certain products, Article 103 paragraph 4 provides a legal basis for taking and implementing appropriate measures in accordance with the same procedure as applicable within the framework of a common conjunctural policy. In contrast to Article 59 ECSC, the Council, on a proposal of the Commission has to decide unanimously upon such measures. By virtue of this article, the Council laid down provisions compelling member States to maintain a 65 days' supply of oil and fuel oil (Directive 68/414 J.O. 1968 L 305/14), to be increased by January 1, 1975 at the latest so as to be sufficient for 90 days (Directive 72/425, J.O. 1972 L 291/154). Furthermore the Council directed on July 24, 1973 (Directive 73/238 J.O. 1973 L 228/1) that member States were to take measures

enabling them, in case of difficulties in the supply of crude oil and petroleum products " to distribute such supplies, to restrict the consumption of such products for a specific or all purposes and to check abnormal price increases. In the circumstances there is little point to this directive since member States are only required to take such measures by July 30, 1974 at the latest (Art. 5). Article 3, however, provides that in case of difficulty in the supply of the Common Market or a member State, the Commission, upon request or on its own initiative, shall convene a group of delegates from the member States, the Commission presiding.

Awaiting what the Community Institutions may be able to do for the purpose of coping with the deteriorated supply situation, the member States will have to respect the principles of the Common Market, and notably the principle of free circulation of goods. Evading the ban on export restrictions between member States by arbitrary measures would be clearly incompatible with the prohibition laid down in Article 4 ECSC and in Article 34 EEC. This prohibition is, according to Article 42 of the Treaty of Accession, also applicable in the relations between the original member States and the new member States and between the new member States themselves, with the limitation that the application of Article 37 EEC, providing for the adjustment of state monopolies of commercial character, may have a restrictive effect until December 31, 1977 (Art. 44 Treaty of Accession). Moreover, as long as a common commercial export policy does not exist with regard to oil and fuel oil, the member States may apply different policies towards third countries (see Regulation no. 2603/69 J.O. 1969 L 325/25). In order to avoid difficulties arising from differences between these commercial policies, member States may be tempted to take protective measures which may infringe upon the principle of free circulation. However it should be stressed that such measures may not be taken unilaterally and without consent of the European Commission; see Article 115 EEC.

We cannot but go on hoping that the governments of the member States will observe these legal elements while taking measures, separately and collectively, in the present crisis situation. Their behaviour will test the extent of their awareness both of the legal nature of the Community system and of their self-interest in respecting and maintaining the Common Market.