

Opinion on the draft Council Regulation (EEC) amending Regulation (EEC) No 1056/72 on notifying the Commission of investment projects of interest to the Community in the petroleum, natural gas and electricity sectors⁽¹⁾

(90/C 75/07)

On 28 September the Council, acting in accordance with Article 198 of the EEC Treaty, asked the Economic and Social Committee for an Opinion on the abovementioned draft Regulation.

The Committee instructed its Section for Energy, Nuclear Questions and Research to prepare the Opinion. The Section adopted its Opinion on 1 December 1989. (Rapporteur: Mr. Aspinall.)

The Committee adopted with one vote against and one abstention the Opinion set out below at its 273rd plenary session (meeting of 31 January 1990).

1. Introduction

1.1. The key role of investment in determining the structure and operation of the Community energy market was first recognized by the Council back in 1972, when it adopted the first Regulation on Commission notification of investment projects of Community interest in the petroleum, natural gas and electricity sectors⁽²⁾.

1.2. The Regulation requires Member States to notify the Commission, before 15 February of each year, of investment projects (listed in an Annex) relating to the production, transport, storage or distribution of petroleum, natural gas or electric power and which are scheduled to start within three years from 1 January of the year of notification.

1.3. The Regulation thus extended to the petroleum, natural gas and electricity sectors' obligations already incumbent on the coal and nuclear industries under Article 54 of the Treaty of the European Coal and Steel Community (ECSC) and Chapter IV of the Euratom Treaty respectively.

1.4. The Regulation was first amended in 1976⁽³⁾ in order to:

- require notification of investment projects in the electricity sector scheduled to start within five years from 1 January of the year of notification,
- include in the notification, in the case of investment projects which are at the planning stage, information on the stage reached in decisions on each project,

- extend the list of investment projects considered to be of Community interest and hence covered by the 1972 Regulation.

1.5. The Committee Opinion on the Regulation, adopted in November 1975⁽⁴⁾, stated that 'the most comprehensive, accurate and timely information possible on future investments is among the most important prerequisites for a Community energy policy'.

1.6. The Regulation is now being amended for the second time. The four aims of the present proposal are listed on pages 1 and 2 of the accompanying explanatory memorandum, i.e. 'without increasing the workload of the Member States and firms concerned which derives from the 1972 Regulation', the Commission proposal, based on Article 213 of the Treaty is designed to:

- enable the Commission to be informed, at the feasibility study stage, of investment projects planned in the member States in the fields covered by the Regulation,
- enable the Commission to inform the other Member States of aspects of those investment projects which are of Community interest,
- enable the Commission to organize a flexible form of consultation between the member States concerned with a view to achieving the greatest possible consistency of planned major investment,
- enable the party responsible to take the fullest possible account of Community interest when taking the final decision authorizing the investments.

⁽¹⁾ OJ No C 250, 3. 10. 1989, p. 5.

⁽²⁾ OJ No L 120, 25. 2. 1972.

⁽³⁾ OJ No L 140, 28. 5. 1976.

⁽⁴⁾ OJ No C 35, 16. 2. 1976.

2. General comments

2.1. As the Community progresses towards an European strategy for a Single Internal Market, the Section agrees that appropriate procedures are required, while preserving undertakings' current freedom, to promote a certain level of consultation between the Member States on the development of investment in the energy sector.

2.2. The Committee considers that closer cooperation between member States resulting in a more coordinated approach to investments could lead to lower overall costs in new and replacement capacity, which in turn would benefit the consumer through lower prices of energy.

2.3. To achieve this objective, the Commission considers that it is not only necessary that Member States and the Commission be informed of investment projects that persons and undertakings are planning to carry out, but also that this information be provided at a stage which permits consultation to take place.

2.4. The Committee notes that the aim of the new procedures proposed is to permit a flexible form of consultation between Member States with a view to achieving the greatest possible consistency of planned major investments and that it is not the intention of the Commission to interfere with the investment policies of the persons and undertakings concerned; they would remain free to carry out their investment projects as originally planned, or to modify them.

2.5. In noting the Commission's desire to maintain confidentiality of information and indeed competitiveness, the Committee believes that any developed form of consultation between the interested parties at the end of the feasibility study stage would negate such an objective and is premature.

2.6. The whole process leading up to the completion of an investment project of the magnitude under consideration—from the feasibility study stage, through the stage when final proposals are submitted to the competent authority for authorization to proceed—may take several years depending on the financial or political factors involved.

2.7. The Committee believes that a more appropriate stage to pass on information relating to an energy investment project would be when a proposal is placed before a competent authority for approval to proceed.

2.8. It should be noted that, whether the investment project is in the private or the public sector, factors related to the building programme, the type of plant to be built, and the option to purchase land and obtain planning permission, determine the point in time when a decision can be taken to submit a proposal to a competent authority. The decision-making process is a delicately balanced one.

2.9. The Committee agrees that, ultimately, the new procedures to be set up should enable the parties concerned to take into account, if they wish to do so, the comments which may have been made relating to the Community dimension of the investment project in question.

2.10. Article 2a of the proposal provides for a period of not more than one month for the submission of comments by Member States on a given investment project. The Committee considers that this is too short to enable Member States to comment and to permit serious consultation to take place between them.

2.11. In any case, the Committee stresses that a time limit, from the date when a given investment project is notified to the other Member States, should be set by which the whole process should be completed. Beyond this time limit, the parties concerned would be entitled to proceed with the investment project, whether or not comments had been made and taken into account. The Committee considers appropriate that it should not exceed three months.

2.12. The proposed Regulation does not provide for any changes in the thresholds for the planned capacity or power of the investment projects referred in Annex I to the 1972 Regulation, as modified in 1976. Since the new Regulation will cover the investment projects in question, the Committee wonders whether these thresholds remain appropriate, and asks the Commission to look into the matter and, if necessary, to make proposals to modify them.

2.13. The Committee believes that the closing down of energy infrastructure may have an impact on the supply and demand of energy and may also have significant economic and social consequences. Therefore it considers that the Commission should examine whether it is necessary to make proposals to set up information procedures which would permit consultation to take place between Member States on the closing down of energy infrastructure.

3. Specific comments

3.1. In the light of the comments made above, the Committee would suggest that the Commission pro-

posal be amended to provide for more information in the spirit of its objectives yet at the same time ensuring entrepreneurial freedom, confidentiality and competitiveness.

3.2. Therefore the Committee would propose the following amendments it urges the Commission and Council to take into consideration.

3.2.1. In Article 1 (1), first line of the first paragraph, the word 'communicate' should be replaced by 'notify'.

3.2.2. The second paragraph of Article 1 (1) should be amended as follows:

'(2) In order to fulfill the obligations laid down in paragraph 1, the persons and undertakings concerned shall communicate details of the investment projects referred to in paragraph 1 to the Member State in whose territory they are planning to carry them out, before any final authorization has been given by a competent authority.'

3.2.3. Article 2a should be amended as follows:

Done at Brussels, 31 January 1990.

- '(a) Upon receipt of the notification referred to in Article 1 the Commission shall immediately inform the other Member States of the investment project and invite them to submit to the Commission within a period which it sets, any comments they may have relating to the Community dimension of the project and in particular, on the existence of possible alternatives to the planned investment or of proposals for such alternatives.
- (b) The Commission shall immediately communicate to the Member State referred to in Article 1 (2) the comments it has received on the basis of the provisions of paragraph (a).
- (c) The Member State in question shall immediately communicate the comments it has received on the basis of the provisions of paragraph (b) to both the competent authority and the persons and undertakings, referred to in Article 1 (2).
- (d) The procedure referred to in paragraphs (a), (b) and (c) shall be completed within a period which cannot exceed three months.'

3.2.4. The rest of the draft Regulation would remain unchanged.

*The Chairman
of the Economic and Social Committee*
Alberto MASPRONE

APPENDIX

The following amendment was rejected during the discussions:

Page 3 — point 2.4

Insert the following after 2.4:

'Special procedures should be laid down for the petroleum sector in particular, bearing in mind the impact which unduly early knowledge of projects could have on competing enterprises in the sector.'

Reason

Self explanatory.

Voting

For: 20, against: 42, abstentions: 12.
