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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. 175/72-d) for a regulation concerning trans-frontier oil and gas pipelines

Rapporteur: Mr N. HOUGARDY

PE 31.850/fin.

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By letter of 2 November 1972 the President of the Council of the European Communities requested the opinion of the European Parliament, pursuant to Article 75 of the EEC Treaty, on the proposal from the Commission of the European Communities to the Council for a regulation on oil and gas pipelines which cross frontiers.

On 13 November 1972 the President of the European Parliament referred this proposal to the Committee on Energy, Research and Technology as the committee responsible and to the Economic Affairs Committee, the Committee on Finance and Budgets, the Transport Committee and the Committee on External Trade Relations for their opinions.

On 24 November 1972 the Committee on Energy, Research and Technology appointed Mr Hougardy rapporteur. The committee considered this proposal at its meetings of 4 December 1972, 26 January, 20 February, 6 March, 20 March and 2 April 1973.

At its meeting of 2 April 1973 the committee unanimously adopted the motion for a resolution and explanatory statement.

The following were present: Mr SPRINGORUM, Chairman; Mr HOUGARDY, rapporteur; the Earl of BESSBOROUGH, Mr BRO, Mr BURGBACHER, Mr COVELLI, Mr FLAMIG, Mr GLESENER, Mr JAHN (deputizing for Mr MEMMEL), Mr JAKOBSEN, Mr LEONARDI, Mr NOE', Mr NORMANTON, Mr PETERSEN, Mr RADOUX (deputizing for Mr GIRAUD), Mrs WALZ.

The opinions of the Committee on Economic and Monetary Affairs, the Committee on Budgets, the Committee on Regional Policy and Transport and the Committee on External Economic Relations will be published separately.

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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 regulation on oil and gas pipelines which cross frontiers

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council¹,
 - having been consulted by the Council pursuant to Article 75 of the EEC Treaty (Doc. 175/72, d),
 - recalling its previous resolutions on energy policy which remain valid,
 - having regard to the report of the Committee on Energy, Research and Technology and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Budgets, the Committee on Regional Policy and Transport and the Committee on External Economic Relations (Doc. 31/73),
1. Notes the proposal from the Commission of the European Communities to the Council for a regulation on oil and gas pipelines which cross frontiers, subject to the reservations contained in paragraph 6 of this resolution.
 2. Considers that care should be taken to ensure that the capital required for the construction of oil and gas pipelines is used in the best interests of the Communities and that pipeline owners or operators are not led to take advantage of their dominant position, even if they have not done so to date;
 3. Joins with the Commission in emphasizing that transport on behalf of third parties should be provided only for quantities and periods compatible with the transport and supply requirements of undertakings owning or operating pipelines recognized as being of common interest;
 4. Is of the opinion that the owners or operators of such pipelines should provide transport on behalf of third parties at prices and on terms which are non-discriminatory, without prejudice to their own interests in regard to transport and supply;

¹OJ No. C134, 27 December 1972, p.22

5. Considers that the methods of calculating transport charges should be defined in each separate case, having due regard to the real costs incurred by the undertakings at the time when the contract was concluded;
6. Shares the opinion that the proposed regulation should apply not only to pipelines which cross frontiers but also to the major national pipelines, so as not to create discrimination in cases where pipelines in these two categories find themselves competing;
7. Suggests that the special problems which will arise in applying the regulation should be dealt with by the Council, acting by qualified majority on a proposal from the Commission, in accordance with Article 75 of the EEC Treaty;
8. Proposes that, by derogation from Article 4 of Regulation (EEC) No. 1056/72 referring to the confidential nature of information compiled, the Commission should publish officially all information relating to the construction of oil or gas pipelines acknowledged to be of common European interest, thus enabling any oil or gas companies concerned to negotiate with the principals within a strict time limit of six months the terms under which transport could be provided;
9. Approves, under these conditions, the proposal from the Commission of the European Communities, and invites the latter to adopt the following modifications, pursuant to the second paragraph of Article 149 of the EEC Treaty;
10. Instructs its President to forward this resolution, together with its committee's report, to the Council and Commission of the European Communities.

Proposed Council regulation on oil and gas pipelines
which cross frontiers¹

Preamble and recitals unchanged

Article 1

Oil and gas pipelines which meet the criteria set out in the annex to Council Regulation (EEC) 1056/72 of 18 May 1972² and run through the territory of at least two Member States, and the principal national oil and gas pipelines, may be declared of common European interest by a Council decision taken by a qualified majority on a proposal from the Commission.

Article 2

1. Persons or undertakings operating oil or gas pipelines of common European interest within the meaning of Article 1 are required to provide transport in these pipelines for third parties on non-discriminatory terms and conditions if the capacity of the pipeline and the nature of the products to be transported so permit, and if such service does not prejudice their own transport and supply interests.

2. These persons or undertakings shall provide the Commission, on request, with any relevant information for the purpose of assessing whether the requirements of Article 2(1) are met, such information being confidential.

¹ See OJ No. C 134, 27 December 1972, p. 22, for the full text of this regulation, which is available in Dutch, French, German and Italian only.

² OJ No. L 120, 25.5.1972

The particular problems arising from application of the regulation shall be settled by decision of the Council, acting by a qualified majority, on a proposal from the Commission, pursuant to Article 75 of the EEC Treaty.

3. By way of derogation from Article 4 of EEC Regulation 1056/72 referring to the confidential nature of information compiled¹, the Commission shall publish officially information relating to the construction of pipelines acknowledged to be of common European interest, thus enabling all oil or gas companies concerned to negotiate within a strict time limit of six months with the principals the terms under which transport could be provided.

Article 3 unchanged

¹In this case provision should be made for a formal amendment to this regulation in a separate text.

EXPLANATORY STATEMENTI - THE REASONS BEHIND THE PROPOSED REGULATION

1. The proposal from the Commission to the Council for the adoption of common rules applicable to the transport of oil and gas by pipeline from or to a point inside the territory of a Member State on non-discriminatory terms and conditions is one of the measures recommended by the Commission to facilitate the establishment of a genuine common market in the petroleum and natural gas sectors. One of the main motives behind this proposal is a desire to stimulate the implementation of the rules on competition and intra-Community trade.

The lack of common regulations in the hydrocarbon production, transport and distribution sectors proves too frequently to be an obstacle to the implementation of a Community supply policy, which is essential if security of hydrocarbon supplies is to be improved and consumers in the Community assured of the most economical conditions of delivery.

2. Consequently, in its 'Initial guidelines for a Community energy policy' of 18 December 1968, the Commission proposed a number of measures for the establishment of a common market in the energy sector. These included the removal of technical barriers to trade and the suggestion 'to consider rules on transport by oil and gas pipelines and power cables, insofar as such transport is of common interest, as well as rules on price structures for this class of transport and, where appropriate, to introduce such rules by means of recommendations or directives' (proposal No. 10).

3. The draft regulation submitted to the Committee on Energy, Research and Technology relates directly to this latter proposal.

What are the grounds for the proposal?

In justification of its proposed regulation, the Commission stresses that 'it is in the interests of the Community that, as the network of oil and gas pipelines expands, competition should be safeguarded by the continuing presence of a sufficient number of undertakings of various sizes with a requirement for hydrocarbon transportation; it therefore appears desirable that all undertakings supplying the market should have equal access to these pipelines, and this implies an obligation on the pipeline operators to provide transport for third parties on non-discriminatory terms and conditions'.

There are clear reasons for the Commission's interest in the transport of hydrocarbons by pipeline. Community consumption of petroleum and natural gas will increase rapidly over the next ten years. It is forecast that consumption of crude oil by the enlarged Community will be slightly more than double today's level by 1985, whilst consumption of natural gas will be roughly four times as high. It will thus be readily appreciated that the construction of oil and gas pipelines in the Community will develop rapidly, since they provide the most economic means of transporting oil and natural gas over long distances.

4. Current developments in oil tanker construction can only lend impetus to this trend: access to shallow seas (Straits of Dover, North Sea) will no longer be open to the 500,000 ton giant super-tankers now being built. They will be obliged to lay alongside deep water positions, which will naturally be limited in number, and the cargo unloaded will have to be transported by pipeline to delivery points for consumption.

5. In the light of these developments, the Commission is of the opinion that measures should be taken to ensure that the capital required for the construction of pipelines is expended in the best interests of the Community without unnecessary waste: elimination of duplication on either side of intra-Community frontiers: possibly of transfers between Member States in the event of supply difficulties affecting part of the Community. However, the interests of the Community also require that products carried by pipeline should be delivered to the consumer on the most advantageous terms possible. This implies that a degree of competition between petroleum and natural gas suppliers should be maintained. Since, however, the economic and financial weight of these various suppliers varies considerably, the Commission fears that the pipeline owners (in Europe, these are usually groups of oil companies) may attempt to take advantage of their privileged position and to eliminate small and medium sized distributors by charging discriminatory rates for the use of pipelines.

II. THE IMPLICATIONS OF THE 'DECLARATION OF EUROPEAN INTEREST'

6. The Commission took the view that the maintenance of healthy competition in this sector might thereby be jeopardized.

Consequently, it proposes that, by Council decision adopted by a qualified majority on a proposal from the Commission, it should be possible to declare pipelines as defined below to be of European interest:

- (a) Oil and gas pipelines that meet the criteria set out in the annex to EEC Regulation No. 1056/72 of 18 May 1972 viz: crude oil pipelines with a minimum installed or planned capacity of 3 million tons per

year and a minimum length of 30 km, as well as extensions or spurs of such pipelines, with a minimum length of 30 km (pipelines for military purposes are excluded), if they run through the territory of more than one Member State;

- (b) The proposed regulation has its legal basis in Article 75 of the EEC Treaty, which provides that the Council, acting by a qualified majority, shall, on proposals from the Commission and after consulting the European Parliament and the Economic and Social Committee, lay down 'common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States'.

7. Persons or undertakings operating oil or gas pipelines of European interest are required to provide transport for third parties on non-discriminatory terms and conditions if the capacity of the pipeline and the type of products to be transported permit (Article 2(1)). They must also provide the Commission, on request, with any relevant information for the purposes of assessing whether the requirements of Article 2(1), are being met, such information being confidential.

The Commission's concern appears to be that the most economic means of transporting oil and natural gas over long distances might not be available to all companies with activities in the oil and natural gas sectors in the Community. There may be grounds for even greater concern in a few years time when large oil and gas pipelines crossing the territory of more than one Member State of the Community will have been built and will probably have assumed even greater importance to the oil and gas economy of the Community during the period up to 1985.

III. THE PROBLEMS RAISED BY THE PROPOSED REGULATION

8. The essential provisions of the proposed regulation having been outlined above, consideration should next be given to the consequences of the introduction of the proposed measures on supplies of hydrocarbons to the Community.

The objectives of the proposed regulation are first to rationalize pipeline construction, avoiding duplication, to develop an integrated pipeline network, and secondly to prevent the pipeline owners from abusing their dominant position with regard to small and medium-sized undertakings supplying the market in hydrocarbons. Would these objectives have been achieved without the adoption of the Commission's proposal?

Each of them is considered in turn below:

9. Is there a risk of duplication and wasted effort in pipeline construction?

On the basis of findings to date, it may be doubted whether there is any real danger here, even on a Community scale, partly because pipeline routing is dictated not by the whim of any undertaking, but by objective geographical conditions and constraints and partly because pipelines have usually been laid by groups of oil companies which have pooled their resources to find the necessary capital but have remained in competition with each other as regards the products transported.

Thus the financing of such projects has depended on consensus decisions by the major undertakings supplying the market and no instances of the laying of more pipelines than necessary have so far been recorded. This is borne out by the utilization factor of pipelines laid which stands at roughly 80%.

10. Can the pipeline owners be suspected of abuse of their dominant position over small and medium-sized undertakings supplying the market?

To our knowledge this has never happened. Even if such abuses did occur, they could be halted by recourse to Article 86 of the EEC Treaty. On this particular point, therefore, the Commission's proposed regulation does not appear to create a new situation.

In the explanations it gave to the members of the Committee on Energy, Research and Technology, the Commission mentioned the risk to small and medium-sized undertakings of being forced out of the market if they were dependent for their supplies of refined products on pipelines owned by large companies. This risk does not appear very great since the transport of refined products accounts for only a small proportion of intra-Community trade in oil.

11. The Committee on Energy, Research and Technology has, moreover, taken note of the Commission's explanations of the interpretation to be given to the concept of 'common European interest' which the Council might apply to those categories of oil and gas pipelines which meet the criteria set out in the annex to Regulation No. 1056/72. These explanations show that this decision would be taken by the Council in each particular case on the basis of objective information available to the Community authorities.

12. Under the Commission's proposal, the requirement to transport products on behalf of third parties applies to pipelines which cross frontiers but in the absence of legislation on the matter, not to domestic pipelines. This

might well give rise to discrimination in cases where there is an element of competition between pipelines falling into these two categories.

It would therefore be desirable to include the most important national pipelines in the proposed regulation in order to prevent such discrimination.

A pipeline crossing national frontiers which has its starting or terminal point in a third country would not be covered by the proposed common rules, and this could be a source of difficulty.

A further question is whether the use of a pipeline by certain parties could be prohibited in Member States with special legislation on pipelines.

Generally speaking, the Committee on Energy, Research and Technology considers that specific problems raised by the regulation should be settled by decision of the Council acting by a qualified majority on a proposal from the Commission, pursuant to Article 75 of the EEC Treaty.

13. The Commission has not explained how the availability of spare capacity should be proved or on what terms third parties would have access to transport facilities. In order to ensure that a third party's right to use an existing pipeline is not detrimental to the interests of the owners, it would be necessary to lay down fixed rules on rates and volumes, and to determine the period during which the pipeline is to be used. The Committee on Energy, Research and Technology considers, however, that pipelines crossing national frontiers within the Community will not have any spare capacity in the long term. The point here is that as part of their constant efforts to reduce unit costs to an absolute minimum, owners will gear capacity as accurately as possible to the volumes which they will need to balance supply and demand in the regions where they operate.

The committee considers that if such transport is carried out on behalf of third parties, the quantities and the time periods involved must at all events be compatible with the operators'/users' own transport and supply requirements.

The method of calculating charges for the use of existing pipelines should, in the Committee's view, be determined in each individual case with particular reference to costs actually incurred at the time of construction.

14. The Commission also appears concerned to avoid duplication. The Committee on Energy, Research and Atomic Problems is of the opinion that this is only one aspect of the problem. Pipeline networks crossing frontiers and built by joint enterprise are clearly intended not simply to exploit the economic advantages of major pipelines, but also to avoid duplication in the form of less profitable pipelines in the urban regions of the Community.

The Committee also feels that having more than one oil pipeline to serve a given region (e.g. Bavaria or the Upper Rhine) does not necessarily create a problem. On the contrary, a network of this kind might provide a safer guarantee that such regions will be supplied at favourable prices.

15. The Commission clearly considers it most important that the Council should adopt measures acting as a spur to the implementation of the rules of competition in this field. However, in their detailed report on competition policy published in 1969, the Commission's experts did not report any complaints or serious evidence of infringement of the EEC Treaty rules of competition by companies operating pipelines in general or pipelines crossing frontiers in particular. Nor, to the committee's knowledge have any complaints been lodged since the publication of this report; recent reports on the pipeline network in Europe published in the magazine 'Petroleum Press Service' indicate that several independent international and state-owned or controlled oil companies have acquired holdings in several joint ventures of varied membership with interests in all existing transnational pipelines, but have remained competitors as far as the products carried by the pipelines are concerned.

16. The Committee on Energy, Research and Atomic Problems considers that the Commission should be made aware that its proposed regulation might have the opposite effect. The fact is that individual undertakings might no longer be prepared to take financial risks during the initial phase of setting up a pipeline crossing a frontier if, as a result of the Commission's proposal, they were free to join in the project at a later stage, once the operation had been shown to be viable and transport costs lower. The introduction of a requirement to carry products within the Community would thus be detrimental to the rational development of transnational pipelines.

17. The committee fears that the Commission's proposal may lead to unfair situations in law. Pipelines carrying crude oil, petroleum products and gas were put into operation long before the Commission's proposal was submitted. In deciding to lay these pipelines, the owners acted on certain assumptions and their operating licences were granted by municipal, provincial and national authorities on firm conditions. Applying the draft regulation to

existing oil and gas pipelines would create the impression that the Commission was seeking to introduce the principle of retrospective effect which the committee considers undesirable from the legal point of view.

18. To take another aspect of the situation, it should be noted that the only similarities between transnational pipelines carrying crude oil, petroleum products and natural gas lie in methods of construction, the acquisition of rights of way, delays in completion, high costs caused by stringent safety requirements and specific conditions imposed by the various political systems.

Transnational natural gas pipelines do differ, however, from other pipelines. They are the only practical means of transporting large quantities of the product between the countries of the Community. The committee therefore wonders whether it is in fact desirable to align the rules for the transport of natural gas on those applicable to the transport of hydrocarbons in general in the Community, having regard to the fact that there is no 'transport market' for intra-Community gas transport.

19. The construction of natural gas pipelines crossing the internal frontiers of the Community began when sales were first made to other Member States after the discovery of substantial reserves in certain Member States - in particular the Netherlands. In several cases the number of pipeline operators is equal to the number of Member States through which the gas pipeline runs and the public authorities have a majority interest in them. Sometimes several companies each own a section of a transnational natural gas pipeline. But in the Community there are no independent operators of gas pipelines able to offer transport capacity to interested third parties and no natural gas companies seeking capacity for intra-Community transport.

20. However, a majority of members of your committee felt that, despite the differences which exist at present between the market for oil and petroleum products on the one hand and the market for natural gas on the other, there was no reason to make a distinction between rules applicable to gas pipelines and those for oil pipelines.

According to the explanations given by the representative of the Commission, even if it appears that application of the regulation will not be equally important for gas and oil pipelines (since there will be no permanent spare capacity for natural gas transport in the next few years), the provisions of the regulation may also be invoked for gas pipelines in the event of accidental breakage of a pipeline or interruption of supply contracts. Application of the provisions of the regulation would enable the undertakings concerned to deal on an equal footing with the operators or owners of the pipelines, since the dues claimed by the latter for transport could if necessary be submitted to arbitration by the Community authorities.

21. The transnational crude oil pipelines which are used primarily to carry imports in the Community and link tanker terminals with refining centres are characterized by their relatively large dimensions. They have been built and are operated by joint undertakings or groups of companies in which several oil companies have owned shares or holdings from the outset. Normally the agreements establishing these pipelines contain non-discriminatory provisions allowing the flexible adaptation of the transport capacity to the processing capacity of the refineries served in order to ensure close on 100% utilization of the capacity and minimize operating costs. The bulk of the increase in capacity required for crude oil pipelines up to the period 1980-1985 will be obtained by extending existing pipelines.

22. Pipelines carrying petroleum products but not crude oil link coastal refineries like those at Le Havre, Marseilles and Rotterdam with inland distribution depots and points or inland refineries with less flexibility. Contrary to the Commission's statement that a large number of existing pipelines in the Community are earmarked for substantial development, there is only one pipeline carrying petroleum products across frontiers (between Rotterdam and the Ruhr). There are no plans for substantial pipeline development and for many reasons economic justification is difficult to provide. The committee therefore doubts that pipelines will stimulate intra-Community trade in petroleum products to any appreciable extent.

23. The Committee fears that the Commission's proposal is likely to have an adverse effect on projects for transnational pipelines carrying crude oil and petroleum products.

These pipelines are not planned in isolation but in conjunction with the refineries and distribution centres that they serve. Owners faced with the requirement to accept transport on behalf of third parties might subsequently find insufficient economic capacity for quantities that they will no longer be able to transport via their own pipeline. This would prevent them from making optimum use of or extending their depot or refinery to the planned optimum size.

Thus in order to safeguard their own future transport rights, initial investors in a new transnational pipeline might well provide for a greater margin of spare capacity than they would have done if the pipeline had not been of European Community interest. This means that if transport is not carried out on behalf of third parties, unit costs will ultimately be higher than necessary.

24. A further point is that initial investors might decide to gear planned transport capacity to short-term requirements in order to avoid the economic disadvantages of overinvestment during the first few years of operation; third parties, on the other hand, would subsequently reap all or part of the economic benefits. If, therefore, the proposed requirement were imposed, the consequence might be the construction of pipelines below optimum size.

25. In order to forestall the construction of transnational pipelines with superfluous capacity, the Commission would be well advised to inform all companies required to submit notification in accordance with EEC Regulation No. 1056/72¹, of any project for the building of new transnational pipelines carrying crude oil or petroleum products. Any company wishing to join the consortium would be required to give notice with a strict time limit of six months. Following expiry of this time limit third parties interested in regular transport via the pipeline would have to join the groups and acquire a proportionate share capital holding. In the committee's opinion, a solution on these lines would cater for commercial interests and also allay the Commission's concern, both of which will be seen to have much in common when it is recalled that transnational pipelines are widely susceptible to economies of scale and must be operated to almost full capacity in order to minimize costs. The committee therefore proposes that, as an exception to Article 4 of EEC Regulation No. 1056/72 on the confidential nature of information provided, the Commission should officially publish information on the construction of pipelines recognized as being of European interest thus giving any oil companies interested in a certain period of time to negotiate possible transport terms with the operators.

CONCLUSIONS

26. An attempt has been made in the foregoing to point out the relatively limited scope of the Commission's proposal which, it is felt, will have no more than a marginal influence on the development of integrated oil and gas pipeline networks between the Member States of the Community. It has been shown that in all probability integration will develop spontaneously under what might be termed a natural law of geography and that abuses of a dominant position - one of the main reasons behind the Commission's proposals - could have been prevented where necessary simply by applying Article 86 of the EEC Treaty. This raises the question of the need to impose constraints on owners of transport facilities which, though modest, are nevertheless a hindrance to the free exercise of ownership rights.

27. Finally, the Committee on Energy, Research and Technology suggests that the Commission should review its proposal for a regulation, taking the following considerations into account :

1

Council Regulation (EEC) No. 1056/72 of 18 May 1972 on notification to the Commission of investment projects of Community interest in the petroleum, natural gas and electricity sectors - OJ L 120, 25 May 1972, p.7

- the method of calculating charges for the use of existing oil and gas pipelines should be determined in each individual case with particular reference to costs actually incurred by the undertakings concerned at the time when the contract was concluded, although the Committee on Energy recognized that the principle of retrospective effect is legally undesirable;
- the regulation shall apply not only to pipelines which cross frontiers but also to the more important national pipelines so as to avoid giving rise to discrimination in cases where there is an element of competition between pipelines falling into these two categories;
- the particular problems raised by application of the regulation shall be decided by the Council, acting unanimously on a proposal from the Commission;
- operators/users shall, in principle, undertake transports for third parties, where necessary, only to the extent that and for as long as their own transport and supply needs so permit;
- as an exception to Article 4 of EEC Regulation No. 1056/72 on the confidential nature of information provided, the Commission shall officially publish information on the construction of pipelines recognized as being of common European interest, thus giving any oil companies interested a strict time limit of six months in which to negotiate possible transport terms with the operators.