

2

External Security of Energy Supply in Europe: Historical Overview

2.1. INTRODUCTION

THIS SECTION EXAMINES the development of energy policy measures adopted within Europe since the end of the Second World War (WWII). The purpose of this study is to analyse initiatives to secure energy supply in Europe. It is shown that these measures have taken different forms over time, based on the political, social and environmental considerations of the Member States of the European Community, either in their capacity as individual countries or as parties to the European integration process.

A discussion on the issue of security of supply is inevitably linked to an analysis of the development of an energy policy for Europe. However, because the main aim of this study is to analyse the measures necessary to secure energy supply from an external perspective, ie relations with energy-producing countries, the study does not examine the development of the European internal energy market in detail, but touches upon the relevant internal measures or policies related to the discussion of external relations.

The year 1951 marks the beginning of this historical overview. However, the importance of third country suppliers of energy to guarantee security of supply already existed before that time. For instance, Churchill had already in 1911 thought of converting the British Navy's power source to oil in place of coal. This was then thought as 'a pure folly' as it meant that the Navy could no longer depend on the secure supply of Welsh coal, but would depend on distant and insecure oil supplies.¹ His reasons for such a move were the strategic benefits of oil of greater speed and more efficient use of manpower, and he committed himself to achieving that goal. However, in other European countries, coal was still considered as the main source of energy and its abundance did not necessitate an energy policy to secure the availability of other sources, either domestically or externally. This perception changed after the WWII, due to the decreased

¹ See D Yergin, *The Prize: The Epic Quest for Oil, Money and Power* (New York, Free Press, 1992) at 12.

productivity of coal mines, as the analysis below demonstrates. This meant that reliance on external sources increased and with it grew the complex web of bilateral and multilateral relations with third countries to guarantee a constant and uninterrupted energy flow to Europe.

This study first covers the aftermath of WWII until 1958. This period marks the struggle to maintain coal as the main source of energy for Europe. The second section examines the policies developed between 1959 and 1972 during which period the necessity of having a European energy policy, comprised not only of coal but also of other sources of energy, was considered vital. The third period covers the oil crisis of 1973 and the measures that were established to better remedy the situation in case the same incident were to take place in the future. This study covers these activities until the year 1986 and the adoption of the Single European Act. The fourth period analyses the time between 1986 and the creation of the single market, the fall of the Berlin Wall, the increasing role of Russia as an important energy supplier for Europe, and the discussion of the Energy Charter Treaty as an important multilateral effort to guarantee energy supply. The last period will be more extensively discussed in later chapters because of its importance to the current discussion of energy security.

2.2. THE RESTRUCTURING OF THE ENERGY SUPPLY FRAMEWORK: 1951–1958

The effects of WWII on Europe's energy supply framework were immense. Before the war, 90 per cent of Europe's energy needs were met by coal. After the war, exports from Germany, Poland and the United Kingdom were halted completely. No new investment had been made to explore new sources, and the main energy infrastructures were destroyed by bombardments.² Towards the end of the war, only one-fifth of Germany's coal was being mined as compared to maximum mining before the War.

After the war, in order to retain an adequate energy supply for Europe, an ad hoc governmental institution known as the European Coal Organisation (ECO) was established. As its main task, it undertook the fair distribution of coal among its 13 members.³ It also sought to safeguard the interests of producers and consumers, disseminate information with regard to supply and distribution of coal, and make appropriate recommendations to the member countries.⁴

In order to establish closer collaboration between the states of Europe, and to participate in a joint programme for each country's economic recovery, the

² WG Jensen, *Energy in Europe: 1945–1980* (London, GT Foulis, 1967) at 2.

³ The members of the European Coal Organisation were Belgium, Czechoslovakia, Denmark, France, Greece, Luxembourg, the Netherlands, Norway, Turkey, the UK, the US, USSR and Yugoslavia.

⁴ Later in May 1947 the task of ECO was taken over by a new regional commission of the Economic and Social Council of the United Nations—the Economic Commission for Europe, which still functions. See <http://www.unece.org>.

Organisation for European Economic Cooperation ('OEEC'; later called the Organisation for Economic Cooperation and Development or the 'OECD') was established in 1948 to administer the Marshall Plan. This organisation not only sought to deal with activities in the field of energy, but also aimed at expanding production, liberalising trade and possibly harmonising monetary policy.⁵ Three committees of oil, coal and electricity were established within that framework and they were given the task of determining the necessary changes in Europe's energy supply and the necessity of diversifying supply. The Oil Committee was in charge of examining the long-term refinery plans of the industry and expanding refineries in Western Europe.

Although some oil was imported at that time into Europe, this source of energy did not play a major role among all the European countries. Hence, oil played the role of a secondary fuel for Europe, and coal was still more prominent. In 1950, Robert Schuman, then Foreign Minister of France, made the proposal to pool French and German coal and steel as they were considered as 'commanding heights of the economy', and the creation of a common market in these fields was considered necessary. Coal and steel were said to be critically important for economic development, and pooling these resources indicated a new age of cooperation. The creation of a common market in these fields was proposed in order to 'make war between France and Germany not merely unthinkable but materially impossible'.⁶ Negotiations began on 20 June 1950 to establish a common authority for coal and steel and ended with the creation of the European Coal and Steel Community (ECSC) by a Treaty signed on 18 April 1951 between Germany, Belgium, France, Italy, Luxembourg and the Netherlands. This treaty entered into force on 24 July 1952. It required member countries to abolish import and export restrictions, financial preferences, dual pricing systems and discriminatory practices in transport, among other things. What is interesting with regard to external relations is that governments remained free to determine their policies vis-a-vis third countries (although the ECSC later moved towards a common external tariff).⁷

At the same time, the world oil market slowly changed. Previously, no cohesive world oil cartel existed. Oil contributed about 8 per cent of the total consumption of primary energy in Western Europe. However, European companies endeavoured to have a stake in the world oil industry, which was by then completely dominated by the US. Different European countries started to look

⁵ NJD Lucas, *Energy and the European Communities* (London, Europa Publications, 1977) at 3. The members of this organisation were Austria, Belgium, Denmark, France, West Germany, Great Britain, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Sweden, Switzerland, Turkey and the United States.

⁶ See the Declaration of Robert Schuman on 9 May 1950, in U Kitzinger, *The European Common Market and Community: A Selection of Contemporary Documents* (London, Routledge and Kegan Paul, 1967) at 37.

⁷ Jensen, *Energy in Europe 1945–1980*, above n 2, at 30.

for shares in different companies in the producing countries. The United Kingdom, for example, gave its support to those oil companies in areas in which their military and political presence was effective, for example, the Anglo-Persian Oil Company (now British Petroleum) in Iran. France eventually joined the oil business in this region, along with the US and UK by acquiring a 25 per cent share in the Turkish Petroleum Company (later Iraq Petroleum Company) and later created the government-controlled companies of *Compagnie Française des Pétroles* and *Compagnie Française de Raffinage* to dispose of imported oil.⁸ The participation of publicly owned oil companies of Europe in the oil business of third countries gradually became stronger. Their respective governments kept them more or less isolated from and unaffected by developments taking place with respect to the creation of a European common market.

In May 1956, in the report of a specific commission of the Coal and Steel Community, named the Hartley Report after its head, the necessity was mentioned of looking into other sources of energy, apart from coal, and treating all sources of energy in a similar fashion, including coal, gas, electricity and oil.⁹ The reason seemed to be the importance of diversification of energy sources in order to guarantee better security of supply. Gradually, oil was playing an important role in the transport sector and it was substituting coal. However, there was repeated emphasis on the principal role that coal would continue to play in other sectors of the European economy for the obvious reason that Europe still had vast resources of coal. In order not to lose this source of energy to competition with other sources, long term investments, better methods of extraction of coal and better working conditions for miners were suggested.¹⁰

However, it was inevitable that the economy of Europe, even through the efficient use of its domestic coal, was changing from an energy-exporting economy to an energy-importing economy because the cheap production of oil made the coal industry unattractive. On the other hand, the effect of this change on the general economic situation was found worthy of specific attention. One important result of this dependence on imported energy was the inevitable risks it entailed, especially because the main sources of energy for import to Europe were situated in one region, the Middle East.¹¹ Transport of oil from this region, on which most of the energy-dependent countries rely, would be problematic due to its political instability. The best means to decrease the negative effect of this situation was to encourage Member States to fully utilise their own domestic reserves, and governments were asked not to impose legislative or administrative restrictions on the exploitation of these reserves. The main task was placed in the hands of oil companies. They were asked to raise the supply by extensive

⁸ PF Cowhey, *The Problems of Plenty: Energy Policy and International Politics* (Berkeley, University of California Press, 1985) at 84.

⁹ *L'Europe face à ses besoins croissants en énergie* (Paris, OEEC, 1956) at 11.

¹⁰ *Ibid* at 61.

¹¹ *Ibid* at 26.

investment in both upstream and downstream sectors. Nonetheless, the inevitable fact was that Middle Eastern oil was cheap, which compared to the high-cost coal industry of Europe and the domestic oil industry of the United States would make the latter gradually lose its position in the world market. However, it was not until 1956 and the Suez Canal crisis that Europeans were struck by the reality of dependence.

Even before the Suez Canal crisis, Jean Monnet's Action Committee proposed that a report be prepared to present the case for nuclear energy. The idea was that developing nuclear energy would assist Europe in overcoming its energy dependence altogether. The so-called heads of delegations of the ECSC Member States' Foreign Ministries met in Messina on 1 June 1955, and agreed on a new start for economic integration. They decided that a concurrent effort be made to establish a Western European atomic energy agency (EURATOM) and to abolish trade obstacles for all commodities, or the co-called 'General Common Market'.¹² An intergovernmental committee was set up chaired by Paul-Henri Spaak, the Belgian Foreign Minister, whose work resulted in the drafting of the Treaty on the European Economic Community and the EURATOM Treaty and their signature in March 1957.

The Spaak Committee established various commissions of experts on the basis of which a final report was published in April 1956. The Report was divided into three parts: (1) the common market, (2) EURATOM and (3) sectors where urgent action was needed, the first among which was conventional energy.¹³ This last section gave priority to sources of energy other than oil. It was also emphasised that the electricity and gas sectors were peculiar sectors, in which the introduction of principles of competition was not appropriate. It explained that the manufacture, transport, and distribution of energy economically and technically differ from other manufactured goods. This issue was elaborated by stating:

The electricity supply industry and coal-based industry are made up of relatively small organisations enjoying effective monopoly within most of their area of operation. The usual concept of competition did not apply and evidently could not be introduced. Therefore, it was not thought possible to establish immediately a common market of the sort built up for coal within the ECSC.¹⁴(emphasis added)

¹² EB Haas, *The Uniting of Europe: Political, Social, and Economic Forces 1950–1957* (Stanford, Stanford University Press, 1958) at 108.

¹³ *Rapport des Chefs de Délégation aux Ministres des Affaires Etrangères (Comité Intergouvernemental créé par la Conférence de Messine)* (Spaak Report), Bruxelles, 21 Avril 1956. For an online version of the Spaak Report see <<http://www.ena.lu/mce.cfm>>.

¹⁴ The Spaak Report states that

le transport et la distribution du gaz et de l'électricité se présentent dans des conditions techniques et économiques toutes différentes de la circulation de marchandises. C'est pourquoi il n'y a pas lieu d'envisager par priorité une extension du marché commun du charbon aux autres sources d'énergie. Une action limitée n'en est pas moins urgente.

See also NJD Lucas, *Energy and the European Communities*, above n 5, at 15.

The Report, however, found it necessary to determine the necessary investment required in the field of conventional energy before the imminent switch to nuclear, because 'the emphasis on nuclear energy should not have threatened to compromise the viability of investment on conventional sources'.¹⁵ However, this undertaking did not, according to the Report, justify a new institution. Responsibility for this undertaking was to be assigned to the ECSC. Lucas believed that 'this was not unreasonable for the function proposed at that time, because both the gas and electricity supply industries depended almost exclusively on the coal industry for their feedstock, which was dealt with within the framework of the ECSC'.¹⁶

The EURATOM Treaty came into force in January 1958. However, between March 1957 and January 1958 some interesting events took place. Firstly, the so-called 'Report of the Three Wise Men' laid down 'a target for Euratom' and emphasised the necessity of developing nuclear energy to overcome the difficulties manifested in increased dependence on unreliable oil supplies from the Middle East.¹⁷ The Report further provided that the 'aim was to prevent oil from becoming a device for exerting international pressure'. The document anticipated that energy imports into Europe would be doubled or even tripled over the next few years. Accordingly, it recommended the building of nuclear power stations as a gradual replacement for those running on coal and oil. Europe's international independence and prestige were at stake.¹⁸ France later indicated that it gave priority to the EURATOM project rather than a common market. However, the Suez Crisis of 1956 made European unity essential and France accepted that both initiatives be followed.

On 26 July 1956, Gamel Abd al-Nasser of Egypt froze the assets of international oil companies, defied the West, and nationalised the Suez Canal. France and the UK took retaliatory measures, blocked all Egyptian accounts in their countries, and later declared their intention to seize the canal. Eventually an Israeli-British-French trio attacked the canal on 29 October 1956. A ceasefire order by the United Nations was finally accepted by these countries on 6 November. However, in the meantime the Egyptians had blocked the canal by sinking ships and blowing up installations.

This event had grave consequences for Europe's economy because the canal was considered vital to the European energy supply, and that year 69 million tons of oil was carried through the Suez Canal to enter Europe. However, the temporary interruption of the import of this oil was not in the beginning considered as problematic because of a belief in the abundance of European coal.

¹⁵ Lucas, above n 5, at 15.

¹⁶ *Ibid.*

¹⁷ See L Armand, F Etzel and F Giordani, *A Target for Euratom* (Report of the Three Wise Men) submitted at the request of the governments of Belgium, France, German Federal Republic, Italy, Luxembourg and the Netherlands, May 1957, pp 13–40.

¹⁸ *Ibid.*

Nevertheless, this crisis sparked some reactions within each individual member country¹⁹ as they feared the gradual, complete closure of the canal and its detrimental effects on the energy sector. It is from this time onward that the importance of the activities of a small group of powerful suppliers outside Europe was brought to the attention of European countries. This led to the adoption of measures designed to confront any sudden harmful action taken by this group in relation to oil exports. It was therefore deemed absolutely appropriate to accept the important role that nuclear energy could play in limiting Europe's dependence on imported oil.²⁰

Although it was found difficult to assess the exact repercussions of the Suez Canal crisis on European energy supply, some facts were appraised and some measures were proposed. Firstly, the detrimental effect of the scarcity of fuel oil was deemed more substantial than that of any other source of energy. Levels of production in different economic sectors fell sharply in various industries in Europe. For example, the car industry in some countries, notably the United Kingdom, suffered substantial cuts in output following falls in domestic and foreign demand influenced by restrictions on the use of petrol and apprehension of continuing shortages. Direct repercussions were also found in the glass industry of France, and in building maintenance and building materials industries in other countries. There was rapid reduction in working hours and an increase in unemployment in related professions.²¹ Moreover, road transport enterprises, in which gas/diesel oil played an important role, reduced their activities.²²

Recourse to suppliers of energy for Europe other than the Middle East, namely the US, was unlikely to improve the situation. Until 1956, the US was considered as one of the main exporters of crude oil to Europe. However, Europeans believed that unless the Texas authorities decided to increase their production of crude oil

¹⁹ A reaction from the French Government accused such activity as being a threat to overall economic relations:

[Ce] que nous admettrons jamais, c'est une violation de la morale internationale commise par un dictateur, c'est qu'il ait pris des mesures unilatérales d'une exceptionnelle gravité au mépris d'accords conclus. Le régime du Colonel Nasser fait ainsi peser une lourde menace sur les relations économiques entre l'Europe et l'Asie, et particulièrement sur l'approvisionnement en pétrole de la France et de toute l'Europe . . . Le Canal doit être exploité dans l'intérêt général, dans l'intérêt du commerce mondial. (Déclaration pour le lancement de l'emprunt national 1956 et de l'emprunt pour l'Algérie, 09/1956.)

²⁰ For a recent analysis of the role of Euratom, see European Commission, *Nuclear Energy in Europe: How the Euratom Protects European Citizens* (Luxembourg, European Communities, 2005).

²¹ Report to the Executive Committee from the Economic Committee on Economic Consequences for Europe of the Suez Crisis, Organisation for European Economic Cooperation, Energy Committee, Paris, 20 February 1957, EN (57) 16, at 2.

²² *Projet de Rapport du Comité Économique au Conseil sur les Conséquences économiques de la crise de Suez pour l'Europe*, Organisation Européenne de Coopération Économique, Comité Économique, Paris, le 31 Janvier 1957. EC (57) 3 (1ère révision) at 2.

above the limited amount that they had abided by, imports of crude to Europe from this source would not increase, and therefore the situation would not improve.²³

There were concerns that if these shortages continued for a long time, they would cause a complete halt of the economy. The immediate action was to substitute coal as much as possible, or use gas. However, the continuing decrease in oil production would make it impossible to have recourse to even these sources, whose production was very costly.²⁴ The fact that the consumption of crude oil increased by 90 per cent between 1950 and 1955 indicated that the prominent role of coal was under threat. The main reason for the rapid increase in the use of oil was undoubtedly due to the greater convenience of the use of liquid fuels.²⁵ By the year 1957, liquid fuels were used in road, water and air transport. The growing use of oil as feedstock for Europe's petrochemical industry also contributed to this rise. Oil products were selling at low market prices that compared favourably with coal prices, which had risen continuously since WWII.²⁶ All this provided evidence that the place of coal would be usurped by the oil industry in the near future.

This crisis also had a damaging effect on the balance of payments. The increase in the price of oil imports had aggravated the balance,²⁷ especially compared to the dollar value, the currency with which all oil contracts were made. This imbalance was worse for some countries of Europe compared to others, and the diversity of repercussions on various member countries aggravated the already existing imbalance of payments among European countries. A solution to this problem was required and sought after in the interests of increasing economic cooperation in Europe.²⁸

Although it was difficult to assess their adequacy, some measures were deemed necessary in order to overcome the energy shortage:²⁹

1. The staggering of working hours in industries in general, so as to level down peak consumption of electricity and gas, which render necessary the operation of plants working under uneconomic conditions;
2. Temporary reductions in public lighting at peak hours;
3. Provisions to prevent consumers which are short of coal or oil products from using too much gas and electricity;
4. Some government measures were adopted

²³ *Ibid* at 3:

Quant au brut, la situation des stocks n'est guère meilleure. A moins que les autorités du Texas ne modifient leur récente décision qui n'autorisait qu'un accroissement très limité de la production courante de brut, il ne faut pas compter pouvoir augmenter sensiblement, dans un proche avenir, les livraisons de produits pétroliers aux consommateurs Européens.

²⁴ *Ibid*.

²⁵ Jensen, *Energy in Europe: 1945-1980*, above n 2, at 60.

²⁶ *Ibid* at 60.

²⁷ *Projet de Rapport du Comité Économique*, above n 22, at 8.

²⁸ *Ibid* at 9.

²⁹ Overall Assessment of the Consequences of the Suez Canal Crisis for the Energy Supply of Western Europe, Organisation for European Economic Cooperation, Energy Committee, Paris, 20 February 1957, EN (57) 3, at 2.

to promote: i) The development of certain indigenous energy by facilitating investment (rendering available public funds, encouraging private investment through an appropriate tax policy, attracting foreign capital); ii) A better utilization of available sources of energy (e.g. long distance and urban heating combined with electricity production, based on coal, oil or nuclear energy); iii) A price policy enabling the energy industries to run on sound commercial principles.

Witnessing the damage inflicted after the Suez crisis, it was clear that the Hartley Report had great merit as it foresaw Europe's 'transition from a self-sufficient or energy exporting region to a region heavily dependent on imports', and it correctly described the problems that this would bring, including strategic dependence.³⁰ The European Commission repeatedly rejected the view that 'the most satisfactory way of ensuring security of supply lay in a greater degree of self-sufficiency, and argued in favour of wider diversification of sources of supply as the best means of achieving this objective'.³¹

The Suez Canal crisis slightly changed the perception within the Community away from unlimited reliance on nuclear energy. In 1958, a report by the Oil Committee of the OEEC once more drew attention to the Suez crisis in order to analyse its long-term repercussions. This report found it necessary to emphasise the importance of oil. The Committee proposed some new measures to minimise the effects of such a crisis in the future. These measures were: (1) to assure the equitable distribution of available supplies between member countries in the event of any future emergency; (2) to accumulate larger reserves of oil in Europe than had been held up to that time; (3) to diversify the origin of supplies; (4) mutual consultation and appropriate planning by government and industry to place Europe in a better position to overcome interruptions.³²

The most interesting aspect of this report is that the '*doctrine of mutual interdependence of Europe and the Middle East*' was considered as an essential element of security of energy supply for the first time.³³ This doctrine is based on the fact that the Middle East is as much dependent on oil revenues as Western Europe is on the import of oil. A balance should therefore be struck between the two, according to which a more secure energy supply for Europe can be guaranteed.³⁴ The idea in simple terms is that Europe depends economically on one particular energy-producing region and that region depends on Europe as a

³⁰ Lucas, *Energy and the European Communities*, above n 5, at 19.

³¹ Jensen, *Energy in Europe: 1945-1980*, above n 2, at 88. The Energy Committee later determined that by the year 1980 the net import of oil to Europe will reach 1100 million tons of coal-equivalent, as compared to 87 million tons in 1950. However, this consideration is not examined in depth in the Energy Committee reports and only the aim of better diversification of supplies was repeatedly mentioned as a means of overcoming the problem of dependence on one major source.

³² See *Implications and Lessons of Suez Crisis* (Paris, OEEC, 1958).

³³ *Ibid*.

³⁴ Against, see W Hager, 'The Community and the Mediterranean' in M Kohnstamm and W Hager (eds), *A Nation Writ Large? Foreign Policy Problems before the European Community* (London, Macmillan, 1973) at 196.

source of its income from sale of that energy: thus a balance exists between the demands of both sides. Others, however, did not find the theory of 'mutual interdependency' adequate to guarantee full security. They advocated the use of nuclear energy and thought that any attempt to guarantee oil supply would become obsolete in the long term. In some reports the importance of oil is denied in favour of the advantages of nuclear energy and the reason may be the pursuance of the aim of 'promoting unity by leading Europe into a new age',³⁵ the age of nuclear fuel, and not to allow any distraction as to the importance of nuclear energy.³⁶

The European Commission emphasised that reaching the objectives of EURATOM could not be viewed in isolation from the general energy context, and great importance was attached to the proper study of all the problems involved in the framing of a common energy policy, which was found vital to the smooth economic development of the Community. However, the emphasis of some Member States on atomic energy diminished the level of desirable attention paid to other sources. From the Member States' perspective, nuclear energy was going to be top of the list of sources to guarantee energy security for Europe for years to come.³⁷ However, the reality was that the oil was cheaper and more readily available. Therefore, it was finally accepted as one major source of Europe's energy supply. No concrete supply framework for oil dependence was established in this period. It was only in the next period, explained below, that efforts in managing the use of oil in Europe were undertaken.

2.3. THE DEVELOPMENT OF THE ENERGY SUPPLY FRAMEWORK: 1959–1972

Changes in energy markets ensued in the years between 1958 and 1960. The level of demand for coal and oil gradually increased. New oil refineries were built in different countries of Europe and technical improvement lowered some energy-related costs (eg shipping).³⁸ Oil-producing governments in turn insisted on more production and thus more revenues. During this time, Europe began to import energy from the Union of Soviet Socialist Republics (USSR). Increases in the tonnage of Soviet crude on offer contributed to the low level of oil prices in most Community markets.

³⁵ Lucas, *Energy and the European Communities*, above n 5, at 24.

³⁶ Protocol sur les Moyens d'assurer une politique coordonnée dans le domaine de l'énergie, [1957] OJ 574/57.

³⁷ See the Third General Report of the European Atomic Energy Community, April 12, 1960.

³⁸ The shipping industry started to construct larger vessels of 15,000–20,000 dwt (deadweight tonnage) with higher speeds. Therefore, shipments across the Atlantic were economically carried for as little as \$5 per ton. The transport of oil by pipeline became more and more common in the Community and elsewhere, as a means of supplying the refineries. See The General Report of the European Coal and Steel Community, 8th General Report, Luxembourg 1960.

National governments, on the other hand, did not submit themselves to applying the rules on the common market to energy. Germany was the proponent of a common market in coal but still emphasised the protection of its home coal industry and imposed a temporary duty on imports in excess of a five million ton quota.³⁹ Belgium and the Netherlands also abided by free market principles in general, but introduced protectionist measures for their energy market, including restrictions on imports from third countries. In France, the number of oil importers was restricted and investment in oil required prior authorisation. On the other hand, the policy of the Italian government was to buy the cheapest available fuel.⁴⁰

It was later agreed among member countries that the objectives of an energy policy could be achieved by protecting the production capacity of the Community through subsidies rather than import restrictions. Finally, a Protocol of Agreement on Energy Policy was adopted in April 1964.⁴¹ Oil and natural gas sectors were also dealt with by the Commission of the European Economic Community (EEC) based on the principles formulated in this Protocol. The policies were to focus on possible cooperation of companies with other consumers; analysing the possibility of sharing supplies and stockpiling petroleum products; promoting exploration in the Community; and offering subsidies for indigenous production of petroleum.⁴² The Commission also proposed freedom of establishment, a common policy for coordination of pipeline regulations and rules concerning sales of, and taxes on, energy products. The measure to safeguard security of supply in times of shortage was the 65-day stockpiling of petroleum in each Member State.

In 1968, the first guidelines towards a Community Energy Policy were established. Dependence on imports, although a strategic weakness for European countries, was seen by the Commission as an opportunity, to exert more influence on the world market by adopting a common approach.⁴³ The Commission explored the necessity to finance exploration and production of hydrocarbons in circumstances that were of particular interest to the Community and also finance a variety of investments that might be in the common interest.⁴⁴ The Commission concluded that security could be achieved by diversity and political cooperation. However, in diversifying, it was found essential to bear in mind that 'in a field affected by political tension, power balances and monopoly situations,

³⁹ Lucas, *Energy and the European Communities*, above n 5, at 32.

⁴⁰ *Ibid.*

⁴¹ See Protocol on Energy Problems concluded between the Member States and the European Communities at the 94th session of the Special Council of Ministers of the European Coal and Steel Community held in Luxembourg on April 21 1964. 13th General Report of the European Economic Community, March 1965 at 87. See also Official Gazette no 69, 29 April 1964, 'Protocol d'accord relatif aux problèmes énergétiques', OJ 30 April 1964.

⁴² See generally, Lucas, *Energy and the European Communities*, above n 5, at 35–40.

⁴³ *Ibid.* at 47.

⁴⁴ *Ibid.* at 48.

it is not possible to rely entirely on the sources, which are cheapest by virtue of their cost of production' (ie relying solely on the Middle East).⁴⁵ It was proposed that a permanent inventory (stock piling) of world oil resources should be kept by the Commission, which might be available in an emergency. The Commission also contacted the major international oil companies with a view to regular consultations on supplying the Community market.

These declaratory proposals of the Commission came to nothing with respect to external security. The only steps taken were purely internal and they concentrated on the need to extend the system of subsidies,⁴⁶ increase the volume of mandatory oil stocks, and the obligation to notify the Commission of imports and investments in hydrocarbons.⁴⁷ No policy on political cooperation with energy producers was pursued. Lucas believed that this poor performance can be attributed to a lack of political will among Member States and a lack of leadership from the Commission.⁴⁸ Although he believed that a conflict of interest is the prerequisite of any situation from which a common policy can evolve, this conflict did not exist because the old distinction between coal-producing countries and energy deficient countries was disappearing, due to the diminishing role of coal in the Community. In fact, 'there was growing similarity among member countries' energy patterns and they were all destined to eventually become very much net importers of energy products'.⁴⁹ However, a threat from energy-producing countries could have been considered as a new incentive for Member States to reach a common policy. Although the Suez Canal crisis could have been considered as a major reason to initiate discussions with third party producers of energy, this opportunity was not exploited by the Commission or the Member States, and therefore no concerted European action materialised at that time.

⁴⁵ The General Report of the European Coal and Steel Community, 7th Report, 1 February 1959, at 124.

⁴⁶ The system of subsidies was planned 'to remedy a serious disruption of the economic affairs of a Member State and to maintain and improve productivity and further the adjustment of the coal mining industry to the changes in the sale positions'. See the Draft Transitional Protocol among the Member States of the European Coal and Steel Community containing Special Temporary Provisions Aimed at the Attainment of the Objectives laid down in the Treaty Establishing the European Coal and Steel Community, prepared by the German government in Bonn, 11 September 1963 in the 12th General Report of the European Economic Community, March 1964, at 85.

⁴⁷ For this purpose the Commission submitted a questionnaire to the governments covering imports made during the last few years and the possibilities of their expansion. This would enable the Commission to propose to the governments the adoption of a common approach towards imports from the countries concerned. See generally, the Fourth General Report of the European Economic Community, May 1961 at 121. See also Lucas, *Energy and the European Communities*, above n 5, at 51. Reg (EEC) No 1055/72 on notifying the Commission of imports of Crude Oil and Natural Gas, [1972] OJ L/120/3.

⁴⁸ Lucas, *Energy and the European Communities*, above n 5, at 51.

⁴⁹ General Report of the European Coal and Steel Community, 12th Report, March 1964, at 74.

The Special Committee on Energy Policy prepared a draft resolution in 1964, which represented the minimum for a common energy policy on which governments might possibly agree in that period.⁵⁰ The purpose of introducing a common policy was said to be the recognition of the growing proportion of imported hydrocarbons, the prospects opened up by the development of nuclear energy and the importance of social considerations. This common policy would then aim to ensure a cheap, secure and stable supply as regards both cost and quantities available, freedom of choice for the consumer and fair competition. With regard to the hydrocarbon sector, the draft resolution declared that governments should be prepared to promote the economically rational development of the production of hydrocarbons in the Community; endeavour to agree a common policy on hydrocarbons stocks; eliminate all regulations that discriminate between their own nationals and those of the other Member States;⁵¹ endeavour to work out a fiscal system for fuel oils, and harmonise taxes.⁵² Governments were also asked to declare their willingness to introduce a common policy to ensure a widely diversified flow of supplies at low prices and as stable as possible. However, there was no clarification of how governments could guarantee such a stable flow of supply. There was no external aspect to this Draft outlining a common position concerning energy producers to determine to what extent the flow could be stable and diversified.

This Draft did not secure unanimous acceptance by the Council as it was found to be 'wholly inadequate to bring about a common energy policy'.⁵³ They believed that the Protocol was too much confined to a declaration of intent and the only specific measure contemplated was the legalisation of subsidies. Therefore, the task was once again given to the Commission to seek a way out of that impasse and to forbid governments from introducing exclusively national measures. However, this task was found to be difficult to achieve and the focus was mainly on the creation of a common market for nuclear energy, on which most of the governments agreed. They wanted this new energy source to become the major source of European energy at the earliest possible date to 'make its full contribution, at economic costs, to the coverage of Community energy requirements' (emphasis added).⁵⁴

⁵⁰ See the Draft Resolution submitted to the Council of Ministers on 22 November 1963. 12th General Report of the European Economic Community, March 1964, at 88. See also the Draft Agreement creating with respect to the Treaty Establishing the European Coal and Steel Community, the Prerequisite Conditions for the Introduction of a Common Market for Energy, Arts 2 and 3, (3 April, 1963). 12th General Report of the European Economic Community, March 1964, at 82.

⁵¹ One example of such discrimination was that in the Netherlands, exploration of oil and natural gas from the North Sea Continental Shelf for nationals could be carried out freely and only production was subject to concessions, whereas for non-nationals both exploration and production were subject to a system of licenses and concessions.

⁵² The Draft Resolution (22 Nov 1963), above n 50, at 90.

⁵³ 12th General Report of the EEC (March 1964), above n 50, at 78.

⁵⁴ *Ibid* at 91.

The Commission believed that the energy market is a global market and decisions of each player can affect the others. It was therefore accepted that energy supply could only be effectively handled if it were seen and treated as an international affair and not merely a national one.⁵⁵ They were already aware that an energy crisis in the US (eg the 1971 crisis which resulted in the closure of schools and the restriction of airline services) could raise concerns in Europe and could affect the energy supply of the European member countries.⁵⁶ In analysing these effects, the differences of views between the Member States were manifested. They all agreed that oil security was an international security issue, and that energy supply difficulties in one country can have consequences on the supply of another, but they differed on how this matter should be approached. For example, France argued that the Community had no authority to create a common external policy, and also argued that a common internal policy for prices and imports had priority over the definition of a Community attitude in external matters related to energy. France strongly believed that there were more gains in having an independent diplomacy in the Middle East rather than a 'European' one, and also believed that 'acting within a consumer grouping would restrict its actions elsewhere'.⁵⁷ Other Member States did not insist on establishing an external policy either. Hence, no proposal of the Community to create a common external energy policy became effective.

The Member States' disagreement over creating a 'consumer grouping' did not alter even in the aftermath of the creation of the Organization of Petroleum Exporting Countries (OPEC) in 1960. OPEC was established as a permanent, intergovernmental organisation, created in September 1960 by the most important energy-producing countries at the time, namely, Iran, Iraq, Kuwait, Saudi Arabia and Venezuela. OPEC's objective was to coordinate and unify petroleum policies among its member countries, in order to secure fair and stable prices for petroleum producers, guarantee an efficient, economic and regular supply of petroleum to consuming nations along with a fair return on capital to those investing in the industry. OPEC was seen as strong cooperation among energy exporting countries. It could have been considered by the Community Member States as a threat because they might no longer be able to easily approach individual energy-exporting countries, influence their production policies and guarantee their domestic security of energy supply. However, the creation of

⁵⁵ See the Commission Paper, *Necessary Progress in Community Energy Policy 1975–1985*, COM (72) 1201. The High Authority intended to draw up a memorandum describing the energy position of the main non-Community industrial countries like the United States, the Soviet Union, Canada and Japan. It reached the conclusion that all four countries strived to combine security of supply with minimum costs. Moreover, they all gave particular attention to the development of nuclear energy. See the 12th General Report of the EEC (March 1964), above n 50, at 75.

⁵⁶ See Lucas, *Energy and the European Communities*, above n 5, at 55.

⁵⁷ See P Noël, 'Pétrole et sécurité internationale: de nouveaux enjeux' (1998) <<http://www.upmf-grenoble.fr/iepe/textes/Noel98.PDF>>, at 12 [hereinafter 'Pétrole et sécurité internationale']. See also, Lucas, *Energy and the European Communities*, above n 5, at 57.

OPEC did not lead them to seek cooperation among themselves (the only grouping of consumers took place a decade later through the creation of the International Energy Agency (IEA), the details of which will be explained in the next section).

In 1967, the Suez Canal was again blocked by Egypt during the Arab–Israeli six-day war. Representatives of Abu Dhabi, Algeria, Bahrain, Egypt, Iraq, Kuwait, Libya, Qatar and Saudi Arabia, together with representatives of Lebanon and Syria decided to halt the export of oil to those countries whose policies were supportive of Israel or hostile to the Arab side in the conflict. After some time the shipments resumed but oil was not sold to embargoed countries, such as the US, Britain and West Germany.⁵⁸ Interestingly enough, the consequences of this embargo were not critical.⁵⁹ Some believe that in fact no real crisis materialised due to some factors: (1) the embargo on the US was mostly symbolic because the export constituted less than 5 per cent total US oil consumption; (2) stockpiled supplies existed in Western Europe; (3) swap arrangements undermined the destination embargoes; (4) Iran and Venezuela, the two main non-Arab producing countries carried on their shipments and they further increased them after the embargo; (5) due to the introduction of a new generation of tankers too large to pass through the Suez Canal, the importance of this canal for shipments from the Gulf to the West had decreased.⁶⁰ Therefore, the events of 1967 were not as important for security of supply in the importing countries as the vigorous crisis that occurred in 1972–73, the details of which will be explained in the next section.

After the events of 1967, the Commission was convinced of the soundness of the actions that they had previously recommended. These were firstly, the importance of having a 'framework of action' for energy policy measures, such as the creation of guidelines which would define the conditions for greater security of supply as well as the problems raised by the industrial structure in this sector; secondly, the need for suitable measures to alleviate a partial interruption of energy imports, such as stockpiling for 90 days' consumption, the expediency of promoting unification of the market and the importance of establishing a common supply policy. The Commission also placed the 'supply policy' at the centre of its energy policy because of the Community's reliance on outside sources for two-thirds of its requirements. For this reason, the Community took the first and most important step in guaranteeing security of energy supply through the adoption of Directive 68/414/EEC in 1968. This Directive obliged

⁵⁸ 'Failure of 1967 Arab Oil Embargo: Causes and Effects of 1970 Freight Crisis' in J Evans, *OPEC and Its Member States and the World Energy Market* (Harlow, Longman, 1986) at 75.

⁵⁹ The First General Report of the European Economic Community, February 1968 at 173. In Europe, procurement of petroleum products declined and an additional burden was placed on the Member States' balance of payments.

⁶⁰ 'Failure of 1967 Arab Oil Embargo' in Evans, *OPEC and Its Member States*, above n 58, at 75.

Member States to maintain a level of stocks equivalent to 65 days of consumption. Member States with indigenous oil production had a reduced stockpiling obligation to a maximum 15 per cent of total production (the details of this Directive will be explained in chapter 4.3).⁶¹

In 1972, the alarm of increasing reliance on external supplies resonated more vigorously and the Commission sought to outline the problem in a Communication to the Council.⁶² This Communication is the first important report setting out the main considerations for improving the external relations of the Community with energy suppliers. The Commission pointed out considerable changes in the energy policy context based on some factors, one of which was the dilemma between 'cheap or secure oil', and if the choice was to fall on the latter, on how to secure it: through cooperation with the US or with the oil-producing countries? While cooperation with the US was barred by France, the Europeans saw very clearly the importance of maintaining good relations with the Arab nations.⁶³ Although no answer was yet decided upon, the Communication demonstrated that maintaining relations with energy-producing countries could become an element of energy security. This was especially the case when the mutual interdependence of Europe and energy suppliers situated in the Mediterranean and the Middle East regions was also raised again. The Commission was of the opinion that developing countries' economies should be developed and Europe could play a major part in that respect. It was said that exporting countries tried to diversify their economic activities in order not to depend exclusively upon a single export. They were also found to be interested in utilising Europe's economic capacities in the fields of commerce, economic cooperation, manpower, know-how, the capital market and tourism.⁶⁴ Moreover, Europe was considered as the main market for the most important of these countries' exportable products, and Europe also attributed primary importance to these products, and therefore, this 'complementarity of interests' was said to be a means of developing a relationship on 'equal footing':⁶⁵ a desirable goal.⁶⁶

In this respect, the Commission found the following actions necessary:

1. To create a consultative procedure with the exporting countries permitting better reciprocal information and discussion.
2. To stimulate, at the same time, the sending of

⁶¹ See the Council Dir 68/414/EEC of 29 December 1968 on Imposing an Obligation on Member States of the EEC to Maintain Minimum Stocks of Crude Oil and/or Petroleum Products, [1968] OJ L/308/14. See Council Decision 68/416/EEC of 20 December 1968 on the Conclusion and Implementation of Individual Agreements Between Governments Relating to the Obligation of Member States to Maintain Minimum Stocks of Crude Oil and/or Petroleum Products [1968] OJ L/308/19.

⁶² See the Communication from the Commission to the Council forwarded on 13 October 1972 on the Necessary Progress in Community Energy Policy, [1972] 11 *Supplement to the Bulletin of the European Community*.

⁶³ See F Bicchi, 'From Security to Economy and Back: Euro-Mediterranean Relations in Perspective', at <<http://ies.berkeley.edu/research/bicchiconvergenceofciv.pdf>>.

⁶⁴ Necessary Progress in Community Energy Policy, above n 55, at 14.

⁶⁵ *Ibid* at 13.

⁶⁶ *Ibid* at 14.

groups of industrialists from the Community to the exporting countries and vice-versa, in order to determine practical ways of economic cooperation. 3. To negotiate cooperation agreements, which incorporate in particular the following points: i) an undertaking by the Community to promote the economic and social development of the exporting countries by the provision of technical and, where appropriate, financial assistance, and also by opening up markets for the industrial and agricultural products of these countries, ii) An undertaking by the exporting countries and the Community to apply rules and guarantees yet to be worked out, to their enterprises, commercial transactions and industrial investments.

Likewise, it was found necessary to monitor the activities of large international firms in the energy sector. It was pointed out that large firms had expanded their activities from the oil sector to natural gas, coal and nuclear energy and they had emerged as 'energy companies'. As this widening of the scope of their activities would gradually increase their influence on the energy market, the Commission found it necessary to monitor their activities and guarantee fair competition.⁶⁷

From what was said above, it is clear that the Commission had come up with various advantageous proposals and guidelines in order to expedite the development of an energy policy. It also acknowledged the important place of the non-member countries, exporters of energy that should be considered in designing a common energy policy, and the guarantee of security of supply as its primary objective. However, the differences among Member States' strategies to guarantee this security created barriers to reaching a common policy as desired by the Commission. The next decade and the occurrence of the disastrous oil crisis of 1973 confirmed that in order to reach a common position on energy, there was still a long and arduous way to go.

2.4. THE OIL CRISIS AND THE NEW PHASE OF ENERGY POLICY: 1973–1986

On 6 October 1973, Egypt and Syria declared their aim of recapturing the Arab territories occupied by Israel since 1967. Following this event, the Arab Oil Exporting Countries threatened to cut their production of oil by 5 per cent and to continue to reduce that amount thereafter, until Israel withdrew from the occupied Arab lands. Saudi Arabia pressured the US to change its policy towards Israel and declared that Aramco's exports (the major Saudi Arabian oil company) would be halted if no change in their policy took place. The United States, having the weak repercussions of the 1967 crisis in mind, did not take this threat seriously and thought of the use of the 'oil weapon' by Saudi Arabia as having no more effect than in 1967.⁶⁸ Saudi Arabia, on the other hand, sought to ensure that the non-Arab productive capacity would not undermine the embargo and also

⁶⁷ See generally, *ibid* at pp 8–10.

⁶⁸ Evans, *OPEC and Its Member States*, above n 58, at 84. An 'oil weapon' signifies 'any manipulation of price and/or supply of oil by exporting nations with the intention of changing the

supervised the destination embargo more closely⁶⁹ to prevent the swap arrangements, which had been used during the 1967 crisis to undermine the boycott.⁷⁰

Exporting countries, worried about the negative effects of the embargo on their revenue, increased the tax on oil, which enabled production to be cut without causing the revenue to fall below the revenue of the previous month.⁷¹ In order to minimise the detrimental effects of these gradual cutbacks, a wide variety of measures were introduced by consuming countries, such as conservation of the oil stocks, restrictions on the sale of gasoline and the use of motor vehicles, restrictions on non-essential uses of electricity, and limitations on the heating of buildings.⁷² There was at no point a shortage of petroleum in European markets, but the price kept increasing.

Oil import prices quadrupled. The posted price of Arabian light crude increased from \$3 per barrel in early October 1973 to \$11.65 per barrel in January 1974. Sudden inflation and economic recession ensued, leading to unemployment, the closing down of schools and offices and cuts in the production of major factories. This fact caused some to believe that 'a staggering disequilibrium in the global balance of payment will occur that will place strains on the monetary system far in excess of any that have been experienced since the war'.⁷³ The German Chancellor Helmut Schmidt explained the situation as an extraordinarily unstable one, which revealed the fragility of the elaborate system of economic relations among the nations of the world. However, the positive note was that, whereas the oil crisis could have touched off a chain reaction of destructive forces, it might in fact have helped to improve international cooperation.⁷⁴

The anxiety of an oil shortage led some consumers to approach oil-exporting countries directly in order to satisfy their crude oil needs, trying to buy as much as possible at whatever price (panic buying). Major oil companies also failed to take steps to reduce this consumer anxiety. Unlike some who believe that their failure to act was due to impotence, others believe the reason to be the fact that

political behaviour of the consumer nations'. See H Maull, 'Oil and Influence: the Oil Weapon Examined' in G Trevorton (ed), *Energy and Security* (Farnborough, Gower Publishing, 1980) at 3.

⁶⁹ Evans, *OPEC, Its Member States*, above n 58, at 84.

⁷⁰ The arrangements allowed the Arab oil to be swapped by another country's energy to be sent to the embargoed country.

⁷¹ Evans, *OPEC, Its Member States*, above n 58, at 84.

⁷² *Ibid.*

⁷³ Statement of the Managing Director of the International Monetary Fund, Johannes Wittveen, in January 1974. See in general, M Mauksch, *Energy and Europe: EEC Energy Policy and Economy in the context of the World Energy Crisis* (Brussels, European News Agency, 1975) at 13.

⁷⁴ See H Schmidt, 'The Struggle for the World Product: Politics between Power and Morals' (1974) 52 *Foreign Affairs* 437 at 437:

He believes that each side, the oil-producing and the oil-consuming countries, must learn to understand and appreciate the other's interests, means and possibilities, since there is no other way of avoiding abortive actions and corresponding reactions. (*ibid* at 443)

See also GA Pollack, 'The Economic Consequences of the Energy Crisis' (1974) 52 *Foreign Affairs* 452.

'they welcomed the higher prices and higher profit margins that this panic-buying induced'.⁷⁵ Whatever the reason, the oil companies would not or could not cooperate as the European Commission had predicted. Cooperation between companies and governments did not develop to mitigate the effect of the crisis, and distrust and doubt prevailed regarding the capacity and will of the companies to satisfy national and European interests.⁷⁶

The belief existed that the concept of 'oil weapon' was shaping the attitude of the oil-exporting countries. The use of the 'oil weapon' meant that exporting countries would take advantage of the dependence of the importing countries on their energy resources to achieve their political goals in combating Israel. Some nations had been reluctant to use this weapon. For example, Saudi Arabia was reluctant to have recourse to this policy due to their traditional position of 'not mixing oil with politics'. However, the deadlock in the Arab-Israeli conflict in 1973 put an end to this policy and they showed their enthusiasm to use this new strategy. However, their emphasis was that this policy should not be translated into a revenge policy. The original intent was rather to 'alert the world public opinion to the gravity of the Arab-Israel conflict'.⁷⁷ Other small Arab states followed the leadership of Saudi Arabia in adopting this policy (Kuwait, Qatar, Abu Dhabi and Bahrain). However, Iraq, having a long history of tense relations with the US and Britain, showed outright hostility towards the Saudi attitude and favoured a more harsh reaction and a selective embargo. They believed that all foreign oil companies belonging to 'hostile' countries (namely US and Britain) located in the Middle East should be nationalised and they themselves nationalised the Basra Petroleum Company (BPC), which possessed shares owned by American Exxon and Mobil. The other exporting countries of the Middle East did not follow this policy.⁷⁸

Following two meetings of the Arab countries, a distinction was created between different Western countries and more importantly between Western European ones. In these meetings, followed by other Arab summits, a basic boycott policy was launched through which various European countries were favoured or disapproved by the Arab world. The most favoured countries were

⁷⁵ For an introduction to the interpretation of the oil crisis, see R Vernon contribution in R Vernon (ed), *The Oil Crisis* (New York, WW Norton, 1976) at 6.

⁷⁶ See R Prodi and A Clò, 'Europe' in Vernon (ed), *The Oil Crisis, ibid*, at 91.

⁷⁷ See G Lenczowski, 'The States as Actors: The Oil Producing Countries' in Vernon (ed), *the Oil Crisis*, above n 75, at 62.

⁷⁸ It is rightly pointed out that the policy of nationalisation of oil companies located in the Middle East or other Arab exporting countries could not be followed in a uniform way. It was important to see how much the foreign company had a stake in that national company. Eg, the nationalisation of Basra Petroleum Company could not have detrimental effects upon the economy of Iraq as such because Exxon and Mobil were only 'remote shareholders'. On the other hand, if Libya, a country in which American companies had a great stake and played a very important role in oil production, wanted to follow the policy of Iraq, grave economic consequences would have ensued, and it would have been difficult for them to find substitutes for production of their energy. See generally Lenczowski, 'The States as Actors', *ibid*.

held to be Spain, France and Britain, as they did not show support for the state of Israel. Belgium was placed in the list of friendly countries because it changed its approach towards the Arab world, and it was therefore eligible to receive supplies before the cutbacks began. Neutral countries such as Italy were subject to the first 5 per cent cutback only and not to the following ones. Regarding the hostile countries, such as the Netherlands and Portugal, a full embargo applied⁷⁹ since Arab countries believed that they were directly or indirectly supporting Israel.

The different approach towards Community member countries increased the already existing difficulties in reaching a common policy. France and Britain enjoyed privileged access to oil in the Middle East, and the proposal of oil sharing by the Community was resisted by Britain. In November 1973, the EEC published a declaration urging both parties in the Arab–Israeli war to withdraw and called for a peace settlement. Finally, the Foreign Ministers of the Community took a joint stand in favour of the Arab States which was later confirmed in the Copenhagen summit of December 1973. This declaration was received with satisfaction by the Arab world. They suspended their earlier decision to cut back supplies to Europe by another 5 per cent.⁸⁰ The Heads of States of the Community also agreed to develop a special relationship with the Arab world through an Arab–Euro dialogue.⁸¹ However, this remained a mere declaration and no practical steps were taken at the time because it sparked a hot debate between the Community Ministers and the US Secretary of State, Henry Kissinger, and made it difficult for the European party to move towards this dialogue without the blessing of the American ally.⁸² The Americans saw the Euro–Arab Dialogue as a threat to their plan of coordinated Western energy policy, the best example of

⁷⁹ See Lenczowski, 'The States as Actors' above n 77, at 66.

⁸⁰ See R Prodi and A Clò, 'Europe', above n 76, at 106.

⁸¹ The Council accepted the idea of having a dialogue between the Community and the Arab countries on 11 February 1974. In November 1974, the Arab League demanded the participation of the PLO (Palestinian Liberation Organisation) in the first meeting that was scheduled to take place on 26 November 1974. The Community did not reach an agreement to accept the participation of the PLO and the summit did not take place. The Community later suggested discussing the establishment of a dialogue between experts in different fields, and asked the PLO to nominate their expert as well.

⁸² See Lucas, *Energy and the European Communities*, above n 5. At the time, it was not only reaching a consensus among Members of the Community to establish a common policy towards producing countries that was difficult to achieve; the diversity of interests among Arab countries themselves added to the problems of creating an efficient dialogue. As Vanden Abeele explains:

si la Communauté Européenne ne parvient pas à définir dans le domaine de l'énergie quelle est la nature de sa communauté d'intérêts, les divergences existent également dans le camp des partenaires arabes. Il faut tout d'abord se demander quelle communauté d'intérêts peut exister entre l'Egypte et le Koweït dont les revenus nationaux par tête se situent aux deux extrémités de l'échelle et dont les problèmes de développement sont totalement différents. Même au sein du group des pays producteurs de pétrole les objectifs de développement mais surtout les besoins sont totalement différents. Il en va de même pour les régimes politiques. Comment, en effet, voir une ligne cohérente entre le socialisme militant de l'Algérie et le capitalisme sauvage de certains pays du Golfe Persique?

See M Vanden Abele, 'Problématique de l'énergie et dialogue Euro–Arab' in J Bourrinet, *Le Dialogue Euro–Arab* (Paris, Economica, 1979) at 224.

which was the creation of the IEA, which they considered to be a means of placing counter-pressure on the Arab states.⁸³

Nonetheless, the first declaration of the Community in the context of Euro–Arab dialogue was wholly dedicated to the Middle East peace process. It was believed that security in the Middle East would guarantee security in Europe. Only in June 1974 did the Community adopt a text in which they enumerated the fields in which cooperation should be established, and the field of energy was named as one along with agriculture, transport, science and technology, and financial cooperation. In 1975, the economic objective of this dialogue was said to be the assistance of the development of Arab countries and the reduction of 'le fossé technologique' that separated the Arab and the European countries.⁸⁴ The necessary instruments were in place for giving this assistance: great potential in the field of technology on the part of the Community and the possession of abundant primary resources on the part of the Arab states. However, the Arab League insisted that the dialogue was not a substitute either for the current efforts of finding a solution to the Middle East crisis or for discussions between the 'consumers' and 'producers' of oil. It was said that 'Europe can and should play a more active role in presenting initiatives aimed at both, supporting current efforts and preventing polarization'.⁸⁵

Although a declaration was published by all the Ministers, the real gap between the Member States did not diminish. The difficulties of the crisis were mainly the result of disturbances in the internal distribution of oil products due to the non-cooperation of Member States and the non-transparency of the activities of the oil companies. With respect to the Member States, the French and British refused to abide by any cooperation measures with other members as they were eager to maintain their favoured positions on the 'Arab Preference lists' for the future.⁸⁶ Moreover, no measure was in place to regulate the activities of the energy companies, which led some to complain that 'it is inadmissible to be kept in the dark about the sales, policies, prices and profits of the international oil companies, which were operating in their territory and which were behaving like a state within a state'.⁸⁷

This state of affairs in the aftermath of the oil crisis not only shows the difficulty in creating a comprehensive common energy policy but also highlights

⁸³ See U Steinbach, 'The European Community and the United States in the Arab World: Political Competition or Partnership' in B Khader, *Cooperation Euro–Arab* (Université Catholique de Louvain, Le Centre d'Étude et de Recherche sur le Monde Arabe Contemporain, 1982) at 316.

⁸⁴ See the first formulation of the general principles and objectives of the Euro–Arab Dialogue, reproduced in J Bourrinet, *Le Dialogue Euro–Arab* (Paris, Economica, 1979) at 296.

⁸⁵ E Volker (ed), *Euro–Arab Cooperation* (Leiden, AW Sijthoff, 1976) at 220. For example, they respected the right of the Community to conclude agreements with other states or group of states but did not accept that the agreement reached between the Community and Israel on May 1975 would necessarily further the objectives made in the declaration of November 1973 in creating an Arab–Euro Dialogue.

⁸⁶ Prodi and Clò, 'Europe', above n 76, at 106.

⁸⁷ Statement of the German Ministers of Commerce in Prodi and Clò, 'Europe', above n 76, at 104.

the link between energy security and foreign policies of various member countries. This crisis created an opportunity to pressure the Member States to also establish a common foreign policy within the Community but the time was not ripe to touch upon such sensitive issues.

Nonetheless, the crisis led to the adoption of some common measures by energy-consuming countries. A conference in Washington in February 1974 highlighted the divergence of ideas between France and the other members of the Community over the pursuit of a largely multilateral approach by the major oil-consuming countries to rectify their supply difficulties through the establishment of the Energy Coordinating Group (ECG). This Group, along with the United States, Norway, Australia, Canada and Japan, devised an oil-sharing scheme. France remained outside. The ECG later formed the International Energy Agency in the context of the OECD.⁸⁸ The two main elements of the strategy to create this agency, initially proposed by the US, were, on the one hand,

the implementation of an oil-sharing mechanism in order to protect the oil-consuming countries against a new embargo, and on the other hand, the shift from a seller's market to a buyer's market through the enforcement of oil-saving measures and the switch to other energy sources.⁸⁹

The political motive of eight Community members, France excluded,⁹⁰ to accede to the IEA lay in their realisation of OPEC's success in establishing a cartel for a commodity and the conclusion that the only safe course was to 'rally behind the US in the latter's bid to build up a countervailing power to OPEC'.⁹¹ Although they had already reached a consensus to possess an oil-saving mechanism through Directive 68/414 (referred to above), these Community Member States realised the predicament of not being powerful enough to combat any embargo in the future on their own and without the cooperation of other consuming nations outside the Community.

In 1974, a Communication from the Commission to the Council revealed again the necessity of promoting the development of nuclear energy. They referred to the detrimental effects of the oil crisis on the balance of payments and stated that a trade deficit would immediately result in an increase in the external debt of the Community.⁹² However, the problem was identified as the differences between the Member States, due to their varying gross domestic products (GDPs) and the availability of energy resources in some countries as opposed to another.

⁸⁸ See also M Willrich and M Conant, 'The International Energy Agency: An Interpretation and Assessment' (1977) 71 *American Journal of International Law* 202 at 202.

⁸⁹ See H Simonet, 'Energy and the Future of Europe' (1975) *Foreign Affairs* 450 at 454.

⁹⁰ France did not join the International Energy Agency until 1992 because of its strong belief that its country's energy security can be better guaranteed through independent action rather than a concerted action with third countries outside the Community.

⁹¹ See H Simonet, 'Energy and the Future of Europe', above n 89, at 455.

⁹² Communication presented to the Council by the Commission on 5 June, 1974, *Towards a New Energy Policy Strategy for the Community* [1974] 4 *Supplement to the Bulletin of the European Community* at 7.

The lack of energy resources in one country results in their growing dependence, which would create disequilibrium compared to the less dependent countries. The solution for such disequilibrium was once again said to be the promotion of nuclear energy.

Hence, for the first time, diversity of energy sources, ie diversification from one source of energy, such as oil, to other sources such as electricity, gas or nuclear energy, was considered as a desirable objective. It was said that natural gas would also play an important role in decreasing the dependence on oil, and a more competitive Community coal industry would give rise to the development of a greater potential market for imported coal. In addition, nuclear-generated electricity consumption was encouraged, which would in turn establish the largest market for nuclear energy. With respect to natural gas, they mentioned its inherent advantages as regards pollution and its rational use. Moreover, in the long term

natural gas was meant to offer the advantage of an additional outlet for nuclear energy in a way that the infrastructure for transporting gas could gradually be used for distributing hydrogen or synthesis gas produced by means of heat of nuclear origin.⁹³

The import of natural gas from third countries could entail a degree of dependence on outside sources of supply, but 'they may nevertheless be more secure than oil imports, in that they further diversify the origin of supplies and their conditions of supply offer particular safeguards'.⁹⁴ It was acknowledged, however, that oil would continue to be a basic element in the supply pattern. Therefore, relations with the producing countries and continued negotiations with them to obtain information regarding future market trends were considered as an essential aspect of Community oil policy.

The Community had yet to realise the problem that creating an energy policy was much more than the mere implementation of economic and financial measures to sustain coal production or to increase nuclear energy production. Although this policy covers the whole area of energy conservation and development of energy sources other than oil, it also covers the broader issue of maintaining an alliance between the IEA members. The role of the US and their emphasis on being 'independent' rather than involving the producing countries in designing an energy policy, hampered the Community in acting on its own. The influence of the US and their insistence on strengthening their position within the IEA pushed the Community away from initiating a dialogue with the producing countries.⁹⁵

⁹³ *Ibid* at 8.

⁹⁴ *Ibid* at 23.

⁹⁵ No substantive measures were taken in the second half of the 1970s. At the Conference on International Economic Cooperation, a dialogue was initiated between the industrialised countries and developing countries (both the importers and exporters of energy). The final declaration of this Conference, however, did not include the Community's proposal to have a continuous consultation on energy problems between these two sets of countries. The mechanism due to be set up for the New

The Iranian revolution of 1979 caused serious disturbances to the world oil market as prices went up once more. In this year the Community's efforts were concentrated on remedying this situation. Proposals were made by the Commission to design a concrete energy policy, and in June 1980 the Council adopted a Resolution on the Community's energy policy objectives for 1990. These policies reaffirmed the need for greater energy savings and a reduction in oil imports. At the external level, the Commission sent the Council a Communication on aspects of external measures by the Community in the energy sector.⁹⁶ Moreover, for the first time energy formed the main topic of a European Council meeting, held in Luxembourg in April 1980, which underlined the importance of international energy cooperation and the opening of a constructive dialogue with the oil-producing countries.⁹⁷

War broke out between Iran and Iraq in 1980 and the suspension of oil exports from these two important energy-producing countries prompted the Commission to propose to the Council the reinforcement of measures to prevent unjustified price increases as had occurred during the 1973 crisis. These measures were mainly directed at the utilisation of oil stocks by the Member States and refraining from abnormal purchases.⁹⁸ Later in 1981, the measures were extended to cover the reduction of natural gas imports. Nonetheless, uncertainties regarding trends in the price of oil were still worrisome. Consequently, the Commission launched a technical cooperation programme with various organisations representing producer and consumer countries, (such as the Organization of Arab Petroleum Exporting Countries (OAPEC)), and established contacts with the Gulf Cooperation Council (GCC) (details of this latter cooperation are given in chapter 6.3).⁹⁹

For the remainder of the decade, the world oil market was marked by surplus production capacity and therefore no immediate danger threatened the Community's economy. However, one major event in 1986 shifted the perspective: the

International Economic Order within the UN General Assembly's 32nd session was not applied to the energy sector. See Conference on International Economic Cooperation: Final Communiqué on Energy Raw, Materials and Trade, Development, And Finance, reproduced from the US Department of State Press Release no 257 of 3 June 1977 in (1977) 16 *ILM* 970.

⁹⁶ Communication presented to the Council by the Commission, (1979) 1 *Bulletin of the European Community*, points 1.2.1 to 1.2.11.

⁹⁷ (1980) 6 *Bulletin of the European Community*, point 1.1.4.

⁹⁸ See the 14th General Report of the European Economic Community, 1980 at II-12.

⁹⁹ See the 17th General Report of the European Economic Community, 1983 at II-13. The Gulf Cooperation Council was created in 1981 between 6 countries of the Gulf, namely Bahrain, Kuwait, Qatar, Oman, Saudi Arabia and the UAE. The GCC Charter states that the basic objectives of the Council are to

affect coordination, integration and inter-connection between Member States in all fields, strengthening ties between their peoples, formulating similar regulations in various fields such as economy, finance, trade, customs, tourism, legislation, administration, as well as fostering scientific and technical progress in industry, mining, agriculture, water and animal resources, establishing scientific research centres, setting up joint ventures, and encouraging cooperation of the private sector.

See <http://www.gcc-sg.org>.

accident at the Chernobyl nuclear power station. The Commission, based on Chapter III of the EURATOM Treaty, took the initiative of sending to the Council and the Parliament an outline communication on the consequences of the Chernobyl accident, which pinpointed five areas where action was needed: health protection, intrinsic and operating safety of installations, emergency procedures, international action and research.¹⁰⁰ This event showed the importance of the international responsibilities involved in the operation of a nuclear power plant and two further international conventions were adopted: one on early notification of a nuclear accident and the other on assistance in the case of a nuclear accident or radiological emergency in the framework of the International Atomic Energy Agency.¹⁰¹ The Council also adopted an important resolution concerning new Community energy policy objectives for 1995,¹⁰² in which the necessity of 'adequate and secure availability of energy on a satisfactory economic basis, as a prerequisite for the pursuit of the economic and social objectives of the Community and of the Member States was acknowledged'. For that reason, the resolution sought to contain energy consumption, to restrict the share of oil, and to ensure that the level of dependence on imported energy (in particular imported oil), was not unreasonable. An innovative aspect of the resolution was its call 'for the development of the Community's external relations in the energy sector by virtue of a coordinated approach, in particular, on the basis of regular consultations between member States and the Commission' (Art 5(h)). The objective was to promote the consumption of solid fuels (such as coal) and to explore and exploit the oil and gas reserves of the Community, keeping oil imports at less than one third of energy consumption (Art 6(b)). The Council also agreed that nuclear energy should play an important part in the energy balance of the Community and appropriate measures, based on the highest standards of safety, must ensure that all aspects of planning construction and operation of nuclear installations fulfil optimal safety conditions (Art 6(e)).

Overall, the period between 1973 and 1986 marked the beginning of the establishment of an energy policy that took the externalities of energy security into account. The aftermath of the oil crisis of 1973, followed by the rise in oil prices after the Iranian revolution and the Iran–Iraq war (which saw the largest oil disruption since 1973 and resulted in the shortage of 5.6 mb/d of oil in the market for 6 months),¹⁰³ triggered an understanding among the members of the Community that some measures needed to be undertaken. At the internal level these measures mainly concentrated on the accumulation of oil stocks and the increase in the use of nuclear energy. At the external level, although measures

¹⁰⁰ (1986) 6 *Bulletin of the European Community*, point 2.1.241.

¹⁰¹ See the Convention on Early Notification of a Nuclear Accident, INFCIRC/335 and Convention on Assistance in the case of Nuclear Accident or Radiological Emergency, INFCIRC/336.

¹⁰² See the Council Resolution of 16 September 1986 concerning New Community Energy Policy Objectives for 1995 and Convergence of the Policies of the Member States, [1986] OJ C/241/1.

¹⁰³ For a review of world oil disruption see the IEA report at <<http://www.iea.org/Textbase/Papers/2004/factsheetcover.pdf>>.

were limited to initiating very basic dialogues with energy-producing countries, it showed that cooperation with them was inevitable in order to guarantee full security of supply.

2.5. THE FEEBLE ATTEMPT TO CREATE AN EFFICIENT EXTERNAL ENERGY POLICY: 1987–2006

The period between 1987 and 2006 is marked by the collapse of the Soviet Union, the signing of the Energy Charter Treaty, the adoption of the Gas and Electricity Directives, the establishment of a European energy market, and the discussion of the new Constitution for Europe, with all their direct and indirect implications for Europe's external energy security. Many measures were adopted at the Community level and many opinions were communicated between the Community institutions and the Member States. Due to the importance of these initiatives and because they reveal the current state of the Community's external energy policy, the rest of this study is dedicated to their detailed analysis. Nonetheless, a brief general overview is provided here.

In the aftermath of the adoption of the Single European Act in 1986, and up until the collapse of the USSR, there was no strong 'Community' initiative to establish external relations with energy-producing countries in order to specifically guarantee Europe's future demand for energy supply. In its 1988 working document on the 'Internal Energy Market', the Commission stated the need for the establishment of an internal energy market and analysed the obstacles to the creation of such a market in Europe. The only reference to externalities was by mentioning that 'there is an international side to energy' and the fact that Europe was dependent on the outside sources for nearly half of its energy supplies. The Commission suggested that it was in the interests of all concerned to strengthen links with the outside world and to support free trade of energy based on international trade rules as embodied in the GATT (para 26).¹⁰⁴ The rest of the document seeks to highlight the ways through which existing obstacles to the establishment of an internal energy market, such as fiscal and technical barriers, should be eliminated.

The real spark of enthusiasm came after the collapse of the USSR, which initiated a long debate on establishing international relations that were mainly focused on the energy sector with the objective of setting up a framework for the long-term guarantee of a free flow of energy into the Community. Although the need to secure the Community's energy supply had always existed, it was mainly taken care of by the Member States in their individual capacity, with the exception of the Community Directive on holding oil stocks as a safety measure in case of a crisis (see chapter 4.3.). After the collapse of the USSR, considering

¹⁰⁴ See the Commission Working Document, 'The Internal Energy Market', COM (1988) 238 Final.

the vast endowment of energy resources in that country and the geographical proximity of some of the newly independent states to Europe, efforts were initiated to take advantage of the situation and to build a new framework at the external level that concentrates exclusively on energy security, and it was then that the Energy Charter Treaty came into being. This treaty can be regarded as the first attempt of the Community to guarantee its external energy security on a multilateral level, which includes investment in, and trade and transit of, energy (see Chapter 5).

Although the necessity of establishing external relations with the energy-producing countries of the East, and later other energy-producing countries of both North Africa and the Middle East, never disappeared, efforts subsequently shifted to include the energy sector within the overall framework of the internal market, something that had not happened in previous periods. Although the concentration on creating an internal energy market could have contributed to the long-term security of energy supply, the way it was shaped focused too much on internalities rather than on also incorporating relations with energy-producing countries, because after all a major part of the energy needs of Europe were supplied from outside the borders of the internal market. Nevertheless, the initial belief was that the creation of an internal energy market would largely eradicate the problem of 'dependence'.

After the adoption of the electricity and gas directives and the difficulties faced by Member States in adjusting their domestic policies to them, attention is again being paid to the necessity of first establishing links with the geographically adjacent countries of the Community, such as Russia and the countries of the Mediterranean, which are important both for their energy reserves and the transit of energy, and secondly with the energy-rich countries of the Middle East. These efforts can be traced in the new energy dialogue with Russia, the inclusion of energy relations in the EU–Mediterranean partnership and initial attempts to build relations with the countries of the Gulf Cooperation Council. On the other hand, some traces of 'externalities' can be located in the internal legislation of the Community, although they remain dim, and some more attention is paid in soft documents, such as the Commission Communications and Green and White Papers. This new trend is due to the fact that the Community was faced with the reality that no matter how efficient the internal energy market functions, the dependence on external energy was increasing and something had to be done sooner than later, especially due to the fact that projections heralded a sharp rise in energy demand over the years to come. Especially for that reason, the European Community became more active in 2006, after the Russia–Ukraine gas crisis, and dedicated a substantial effort in the Presidency Conclusions of March and June 2006 to energy and management of external dependence. Conferences were also held by the European Commission to discuss a possible 'EU external energy policy' and how to assure a high level of supply security. For the first time the Commissioner for External relations and the Energy Commissioner highlighted in November 2006 that it is in the direct interest of the European

Community to 'maximise coordination in the external area and speak with one voice' and 'work together for the extension of the European energy market beyond the EU borders'.¹⁰⁵ While these attempts should be praised, an efficient external energy policy that encompasses all aspects of energy security does not yet exist in the Community for reasons that are extensively elaborated on in this study.

This study enumerates these measures step by step and gives an analytical account of how the Community and the Member States' responsibilities in dealing with issues of security of energy supply are divided. Secondly it examines whether these efforts have been successful in creating an efficient framework for external relations with energy-supplying countries through highlighting the missing links between various measures at the Community level. The study seeks to demonstrate that the overall endeavour suffers from various shortcomings, which, unless rectified, prevent the emergence of a genuine external energy policy.

¹⁰⁵ See the Press Release 'Energy Actors Meet to Discuss an External Energy Policy', 17 November 2006, IP/06/1578.

3

Division of Competences and Security of Energy Supply

3.1. BRIEF REMARK

BEFORE ANALYSING THE law of competences, it is important to mention one noteworthy characteristic of the energy market as far as consumer–producer relations are concerned. As previously emphasised, we should firstly highlight the distinction between oil and gas markets in our analysis. The oil market, unlike the gas market, is a flexible and global market which indicates that the origin and the destination of oil may not play an important role in formulating an oil security framework for the purposes of our discussion on competences. In the oil market, supply is not addressed to a particular region or country but to a 'great pool' that constitutes the 'world' oil market.¹ The oil can be easily re-directed to other destinations. The gas market, however, does not yet possess this characteristic. It is regional and rigid. It is therefore important to create a physical link (eg a pipeline) between producer and consumer and a privileged relationship between the two would thus guarantee a more efficient energy security system. For this reason, the following discussion on the creation of an external energy policy, by either the Community or the Member States, would be definitely relevant for energy in the form of gas. What about oil? Would the fact that the oil market is a global market lead to the conclusion that establishing a privileged relation with particular oil-producing countries is worthless and would not prevent an oil crisis? Would this characteristic lead us to have a global approach in dealing with oil security matters rather than a 'regional' approach, or, for the purposes of our study, a 'Community' approach? The answer is no.

¹ See in particular, P Noël, 'Approvisionnement énergétique de l'Europe et politique étrangère commune: une problématique', at 3, available at <<http://www.upmf-grenoble.fr/iepe/textes/PNeurope.PDF>> [hereinafter 'Approvisionnement énergétique']. See also P Noël and P Criqui, 'Marchés énergétiques et géopolitique pétrolière, 1990–2030', (1998) <<http://www.upmf-grenoble.fr/iepe/textes/pnpc98.pdf>> [hereinafter 'Marchés énergétiques et géopolitique'].