

# Treaty establishing the European Atomic Energy Community (Non-official consolidated version)

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*Consolidated version incorporating the changes made by the Treaty on European Union, signed at Maastricht on 7 February 1992.*

*This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents.*

*This document is likely to contain errors as well as certain imperfections; please let us know.*

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(\*) EDITORIAL NOTE: The reader will find below a complete amended version of the Treaty establishing the European Community as it results from Title IV of the TEU: Provisions amending the Treaty establishing the European Atomic Energy Community [Article I(1) to (29)].

## I - Text of the Treaty(\*)

HIS MAJESTY THE KING OF THE BELGIANS, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, THE PRESIDENT OF THE FRENCH REPUBLIC, THE PRESIDENT OF THE ITALIAN REPUBLIC, HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBOURG, HER MAJESTY THE QUEEN OF THE NETHERLANDS,

RECOGNIZING that nuclear energy represents an essential resource for the development and invigoration of industry and will permit the advancement of the cause of peace,

CONVINCED that only a joint effort undertaken without delay can offer the prospect of achievements commensurate with the creative capacities of their countries,

RESOLVED to create the conditions necessary for the development of a powerful nuclear industry which will provide extensive energy resources, lead to the modernization of technical processes and contribute, through its many other applications, to the prosperity of their peoples,

ANXIOUS to create the conditions of safety necessary to eliminate hazards to the life and health of the public,

DESIRING to associate other countries with their work and to cooperate with international organizations concerned with the peaceful development of atomic energy,

HAVE DECIDED to create a EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM) and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Mr Paul Henri SPAAK, Minister for Foreign Affairs,

Baron J. Ch. SNOY ET D'OPPUERS, Secretary General of the Ministry of Economic Affairs, Head of the Belgian Delegation to the Intergovernmental Conference;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Dr Konrad ADENAUER, Federal Chancellor,

Professor Dr Walter HALLSTEIN, State Secretary of the Federal Foreign Office;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr Christian PINEAU, Minister for Foreign Affairs,

Mr Maurice FAURE, Under Secretary of State for Foreign Affairs;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr Antonio SEGNI, President of the Council of Ministers,

Professor Gaetano MARTINO, Minister for Foreign Affairs;

HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBOURG:

Mr Joseph BECH, President of the Government, Minister for Foreign Affairs,

Mr Lambert SCHAUS, Ambassador, Head of the Luxembourg Delegation to the Intergovernmental Conference;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr Joseph LUNS, Minister for Foreign Affairs,

Mr J. LINTHORST HOMAN, Head of the Netherlands Delegation to the Intergovernmental Conference;

WHO, having exchanged their full powers, found in good and due form, have agreed as follows.

## TITLE I

### The tasks of the Community

#### *Article 1*

By this Treaty the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM). It shall be the task of the Community to contribute to the raising of the standard of living in the Member States and to the development of relations with the other countries by creating the conditions necessary for the speedy establishment and growth of nuclear industries.

#### *Article 2*

In order to perform its task, the Community shall, as provided in this Treaty:

- a. promote research and ensure the dissemination of technical information;
- b. establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied;
- c. facilitate investment and ensure, particularly by encouraging ventures on the part of undertakings, the establishment of the basic installations necessary for the development of nuclear energy in the Community;
- d. ensure that all users in the Community receive a regular and equitable supply of ores and nuclear fuels;
- e. make certain, by appropriate supervision, that nuclear materials are not diverted to purposes other than those for which they are intended;
- f. exercise the right of ownership conferred upon it with respect to special fissile materials;
- g. ensure wide commercial outlets and access to the best technical facilities by the creation of a common market in specialized materials and equipment, by the free movement of capital for investment in the field of nuclear energy and by freedom of employment for specialists within the Community;

- h. establish with other countries and international organizations such relations as will foster progress in the peaceful uses of nuclear energy.

*Article 3(\*^2)*

1. The tasks entrusted to the Community shall be carried out by the following institutions:

- a EUROPEAN PARLIAMENT,
- a COUNCIL,
- a COMMISSION,
- a COURT OF JUSTICE,
- a COURT OF AUDITORS.

Each institution shall act within the limits of the powers conferred upon it by this Treaty.

2. The Council and the Commission shall be assisted by an Economic and Social Committee acting in an advisory capacity.

**TITLE II**

**Provisions for the encouragement of progress in the field of nuclear energy**

**CHAPTER 1**

**PROMOTION OF RESEARCH**

*Article 4*

1. The Commission shall be responsible for promoting and facilitating nuclear research in the Member States and for complementing it by carrying out a Community research and training programme. 2. The activity of the Commission in this respect shall be carried out within the fields listed in Annex I to this Treaty. This list may be amended by the Council, acting by a qualified majority on a proposal from the Commission. The latter shall consult the Scientific and Technical Committee established under Article 134.

*Article 5*

For purposes of coordinating and complementing research undertaken in Member States, the Commission shall, either by a specific request addressed to a given recipient and conveyed to the government concerned, or by a general published request, call upon Member States, persons or undertakings to communicate to it their programmes relating to the research which it specifies in the request. After giving those concerned full opportunity to comment, the Commission may deliver a reasoned opinion on each of the programmes communicated to it. The Commission shall deliver such an opinion if the State, person or undertaking which has communicated the programme so requests. By such opinions the Commission shall discourage unnecessary duplication and shall direct research towards sectors which are insufficiently explored. The Commission may not publish these programmes without the consent of the State, person or undertaking which has communicated them. The Commission shall publish at regular intervals a list of those sectors of nuclear research which it considers to be insufficiently explored. The Commission may bring together representatives

of public and private research centres as well as any experts engaged in research in the same or related fields for mutual consultation and exchanges of information.

#### *Article 6*

To encourage the carrying out of research programmes communicated to it the Commission may:

- a. provide financial assistance within the framework of research contracts, without, however, offering subsidies;
- b. supply, either free of charge or against payment, for carrying out such programmes, any source materials or special fissile materials which it has available;
- c. place installations, equipment or expert assistance at the disposal of Member States, persons or undertakings, either free of charge or against payment;
- d. promote joint financing by the Member States, persons or undertakings concerned.

#### *Article 7*

Community research and training programmes shall be determined by the Council, acting unanimously on a proposal from the Commission, which shall consult the Scientific and Technical Committee. These programmes shall be drawn up for a period of not more than five years. The funds required for carrying out these programmes shall be included each year in the research and investment budget of the Community. The Commission shall ensure that these programmes are carried out and shall submit an annual report thereon to the Council. The Commission shall keep the Economic and Social Committee informed of the broad outlines of Community research and training programmes.

#### *Article 8*

1. After consulting the Scientific and Technical Committee, the Commission shall establish a Joint Nuclear Research Centre. This Centre shall ensure that the research programmes and other tasks assigned to it by the Commission are carried out. It shall also ensure that a uniform nuclear terminology and a standard system of measurements are established. It shall set up a central bureau for nuclear measurements. 2. The activities of the Centre may, for geographical or functional reasons, be carried out in separate establishments.

#### *Article 9*

1. After obtaining the opinion of the Economic and Social Committee the Commission may, within the framework of the Joint Nuclear Research Centre, set up schools for the training of specialists, particularly in the fields of prospecting for minerals, the production of high purity nuclear materials, the processing of irradiated fuels, nuclear engineering, health and safety and the production and use of radioisotopes. The Commission shall determine the details of such training. 2. An institution of university status shall be established; the way in which it will function shall be determined by the Council, acting by a qualified majority on a proposal from the Commission.

#### *Article 10*

The Commission may, by contract, entrust the carrying out of certain parts of the Community research programme to Member States, persons or undertakings, or to third countries, international organizations or nationals of third countries.

*Article 11*

The Commission shall publish the research programmes referred to in Articles 7, 8 and 10, and also regular progress reports on their implementation.

**CHAPTER 2****DISSEMINATION OF INFORMATION****Section 1****Information over which the Community has power of disposal***Article 12*

Member States, persons or undertakings shall have the right, on application to the Commission, to obtain non exclusive licences under patents, provisionally protected patent rights, utility models or patent applications owned by the Community, where they are able to make effective use of the inventions covered thereby. Under the same conditions, the Commission shall grant sublicences under patents, provisionally protected patent rights, utility models or patent applications, where the Community holds contractual licences conferring power to do so. The Commission shall grant such licences or sublicences on terms to be agreed with the licensees and shall furnish all the information required for their use. These terms shall relate in particular to suitable remuneration and, where appropriate, to the right of the licensee to grant sublicences to third parties and to the obligation to treat the information as a trade secret. Failing agreement on the terms referred to in the third paragraph, the licensees may bring the matter before the Court of Justice so that appropriate terms may be fixed.

*Article 13*

The Commission shall communicate to Member States, persons and undertakings information acquired by the Community which is not covered by the provisions of Article 12, whether such information is derived from its own research programme or communicated to the Commission with authority to make free use of it. The Commission may, however, make the disclosure of such information conditional on its being treated as confidential and not passed on to third parties. The Commission may not disclose information which has been acquired subject to restrictions on its use or dissemination such as information known as classified information unless it ensures compliance with these restrictions.

**Section 2****Other information**

(a) Dissemination by amicable agreement

*Article 14*

The Commission shall endeavour, by amicable agreement, to secure both the communication of information which is of use to the Community in the attainment of its objectives and the granting of licences under patents, provisionally protected patent rights, utility models or patent applications covering such information.

*Article 15*

The Commission shall establish a procedure by which Member States, persons and undertakings may use it as an intermediary for exchanging provisional or final results of their research, in so far as these results have not been acquired by the Community under research contracts awarded by the Commission. This procedure must be such as to ensure the confidential nature of the exchange. The results communicated may, however, be transmitted by the Commission to the Joint Nuclear Research Centre for documentation purposes; this shall not entail any right of use to which the communicating party has not agreed.

(b) Compulsory communication to the Commission

#### *Article 16*

1. As soon as an application for a patent or a utility model relating to a specifically nuclear subject is filed with a Member State, that State shall ask the applicant to agree that the contents of the application be communicated to the Commission forthwith. If the applicant agrees, this communication shall be made within three months of the date of filing the application. If the applicant does not agree, the Member State shall, within the same period, notify the Commission of the existence of the application. The Commission may require a Member State to communicate the contents of an application of whose existence it has been notified. The Commission shall make any such request within two months of the date of notification. Any extension of this period shall entail a corresponding extension of the period referred to in the sixth subparagraph of this paragraph. On receiving such a request from the Commission, the Member State shall again ask the applicant to agree to communication of the contents of the application. If the applicant agrees, communication shall be made forthwith. If the applicant does not agree, the Member State shall nevertheless be required to make this communication to the Commission within 18 months of the date on which the application was filed.

2. Member States shall inform the Commission, within 18 months of the filing date, of the existence of any as yet unpublished application for a patent or utility model which seems to them, *prima facie*, to deal with a subject which, although not specifically nuclear, is directly connected with and essential to the development of nuclear energy in the Community. If the Commission so requests, the contents of the application shall be communicated to it within two months.

3. In order that publication may take place as soon as possible, Member States shall reduce to a minimum the time taken to process applications for patents or utility models relating to subjects referred to in paragraphs 1 and 2 concerning which a request has been made by the Commission.

4. The Commission shall treat the abovementioned communications as confidential. They may only be made for documentation purposes. The Commission may, however, make use of the inventions communicated to it, either with the consent of the applicant or in accordance with Articles 17 to 23.

5. The provisions of this Article shall not apply when an agreement concluded with a third State or an international organization precludes communication.

(c) Grant of licences by arbitration or under compulsory powers

#### *Article 17*

1. Failing amicable agreement, non exclusive licences may be granted either by arbitration or under compulsory powers in accordance with Articles 18 to 23:

- a. to the Community or to Joint Undertakings accorded this right under Article 48 in respect of patents, provisionally protected patent rights or utility models relating to inventions directly connected with nuclear research, where the granting of such licences is necessary for the continuance of their own research or indispensable to the operation of their installations.

If the Commission so requests, such licences shall include the right to authorize third parties to make use of the invention, where they are carrying out work for or orders placed by the Community or Joint Undertakings;

- b. to persons or undertakings which have applied to the Commission for them in respect of patents, provisionally protected patent rights or utility models relating to inventions directly connected with and essential to the development of nuclear energy in the Community, provided that all the following conditions are fulfilled:
- i. at least four years have elapsed since the filing of the patent application, save in the case of an invention relating to a specifically nuclear subject;
  - ii. the requirements arising out of the development of nuclear energy, in the Commission's conception of such development, in the territory of a Member State where an invention is protected, are not being met with regard to that invention;
  - iii. the proprietor, having been called upon to meet such requirements either himself or through his licensees, has not complied with this request;
  - iv. the persons or undertakings applying for licences are in a position to meet such requirements effectively by making use of the invention.

Member States may not, in order to meet such requirements, take any coercive measures provided for in their national legislation which will limit the protection accorded to the invention, save at the prior request of the Commission.

2. A non exclusive licence may not be granted as provided for in paragraph 1 where the proprietor can establish the existence of legitimate reasons, in particular that he has not had sufficient time at his disposal.<sup>3</sup> The granting of a licence pursuant to paragraph 1 shall confer a right to full compensation, the amount of which shall be agreed between the proprietor of the patent, provisionally protected patent right or utility model and the licensee.<sup>4</sup> The provisions of this Article shall not affect those of the Paris Convention for the Protection of Industrial Property.

#### *Article 18*

An Arbitration Committee is hereby established for the purposes provided for in this Section. The Council shall appoint the members and lay down the Rules of Procedure of this Committee, acting on a proposal from the Court of Justice. An appeal, having suspensory effect, may be brought by the parties before the Court of Justice against a decision of the Arbitration Committee within one month of notification thereof. The Court of Justice shall confine its examination to the formal validity of the decision and to the interpretation of the provisions of this Treaty by the Arbitration Committee. The final decisions of the Arbitration Committee shall have the force of *res judicata* between the parties concerned. They shall be enforceable as provided in Article 164.

#### *Article 19*

Where, failing amicable agreement, the Commission intends to secure the granting of licences in one of the cases provided for in Article 17, it shall give notice of its intention to the proprietor of the patent, provisionally protected patent right, utility model or patent application, and shall specify in such notice the name of the applicant for and the scope of the licence.

#### *Article 20*

The proprietor may, within one month of receipt of the notice referred to in Article 19, propose to the Commission and, where appropriate, to the applicant that they conclude a special agreement to refer the matter to the Arbitration Committee. Should the Commission or the applicant refuse to enter into such an agreement, the Commission shall not require the Member State or its appropriate authorities



to grant the licence or cause it to be granted. If, when the matter is referred to it under a special agreement, the Arbitration Committee finds that the request from the Commission complies with the provisions of Article 17, it shall give a reasoned decision containing a grant of the licence to the applicant and laying down the terms of the licence and the remuneration therefor, to the extent that the parties have not reached agreement on these points.

#### *Article 21*

If the proprietor does not propose that the matter be referred to the Arbitration Committee, the Commission may call upon the Member State concerned or its appropriate authorities to grant the licence or cause it to be granted. If, having heard the proprietor's case, the Member State, or its appropriate authorities, considers that the conditions of Article 17 have not been complied with, it shall notify the Commission of its refusal to grant the licence or to cause it to be granted. If it refuses to grant the licence or to cause it to be granted, or if, within four months of the date of the request, no information is forthcoming with regard to the granting of the licence, the Commission shall have two months in which to bring the matter before the Court of Justice. The proprietor must be heard in the proceedings before the Court of Justice. If the judgment of the Court of Justice establishes that the conditions of Article 17 have been complied with, the Member State concerned, or its appropriate authorities, shall take such measures as enforcement of that judgment may require.

#### *Article 22*

1. If the proprietor of the patent, provisionally protected patent right or utility model and the licensee fail to agree on the amount of compensation, the parties concerned may conclude a special agreement to refer the matter to the Arbitration Committee. By doing so, the parties waive the right to institute any proceedings other than those provided for in Article 18.2. If the licensee refuses to conclude a special agreement, the licence he has been granted shall be deemed void. If the proprietor refuses to conclude a special agreement, the compensation referred to in this Article shall be determined by the appropriate national authorities.

#### *Article 23*

After the lapse of one year, the decisions of the Arbitration Committee or the appropriate national authorities may, if there are new facts to justify it, be revised with respect to the terms of the licence. Such revision shall be a matter for the body which gave the decision.

### **Section 3**

#### **Security provisions**

#### *Article 24*

Information which the Community acquires as a result of carrying out its research programme, and the disclosure of which is liable to harm the defence interests of one or more Member States, shall be subject to a security system in accordance with the following provisions.

1. The Council shall, acting on a proposal from the Commission, adopt security regulations which, account being taken of the provisions of this Article, lay down the various security gradings to be applied and the security measures appropriate to each grading.
2. Where the Commission considers that the disclosure of certain information is liable to harm the defence interests of one or more Member States, it shall provisionally apply to that information the security grading required in that case by the security regulations.

It shall communicate such information forthwith to the Member States, which shall provisionally ensure its security in the same manner.

Member States shall inform the Commission within three months whether they wish to maintain the grading provisionally applied, substitute another or declassify the information.

Upon the expiry of this period, the highest grading of those requested shall be applied. The Commission shall notify the Member States accordingly.

At the request of the Commission or of a Member State, the Council may, acting unanimously, at any time apply another grading or declassify the information. The Council shall obtain the opinion of the Commission before taking any action on a request from a Member State.

3. The provisions of Articles 12 and 13 shall not apply to information subject to a security grading.

Nevertheless, provided that the appropriate security measures are observed,

- a. the information referred to in Articles 12 and 13 may be communicated by the Commission:
  - i. to a Joint Undertaking;
  - ii. to a person or undertaking other than a Joint Undertaking, through the Member State in whose territory that person or undertaking operates;
- b. the information referred to in Article 13 may be communicated by a Member State to a person or to an undertaking other than a Joint Undertaking, operating in the territory of that State, provided that the Commission is notified of this communication;
- c. each Member State has, however, the right to require the Commission to grant a licence under Article 12 to meet the needs of that State or those of a person or undertaking operating in its territory.

#### *Article 25*

1. A Member State notifying the existence or communicating the contents of an application for a patent or utility model relating to a subject specified in Article 16(1) or (2) shall, where appropriate, draw attention to the need to apply a given security grading for defence reasons, at the same time stating the probable duration of such grading. The Commission shall pass on to the other Member States all communications received in accordance with the preceding subparagraph. The Commission and the Member States shall take those measures which, under the security regulations, correspond to the grading required by the State of origin. 2. The Commission may also pass on these communications to Joint Undertakings or, through a Member State, to a person or to an undertaking other than a Joint Undertaking operating in the territory of that State. Inventions which are the subject of applications referred to in paragraph 1 may be used only with the consent of the applicant or in accordance with Articles 17 to 23. The communications and, where appropriate, the use referred to in this paragraph shall be subject to the measures which, under the security regulations, correspond to the security grading required by the State of origin. The communications shall in all cases be subject to the consent of the State of origin. Consent to communication and use may be withheld only for defence reasons. 3. At the request of the Commission or of a Member State, the Council may, acting unanimously, at any time apply another grading or declassify the information. The Council shall

obtain the opinion of the Commission before taking any action on a request from a Member State.

#### *Article 26*

1. Where information covered by patents, patent applications, provisionally protected patent rights, utility models or applications for utility models has been classified in accordance with Articles 24 and 25, the States which have applied for such classification may not refuse to allow corresponding applications to be filed in the other Member States. Each Member State shall take the necessary measures to maintain the security of such rights and applications in accordance with the procedure laid down in its own laws and regulations. 2. No applications relating to information classified in accordance with Article 24 may be filed outside the Member States except with the unanimous consent of the latter. Should Member States fail to make known their attitude, their consent shall be deemed to have been obtained on the expiry of six months from the date on which the information was communicated to the Member States by the Commission.

#### *Article 27*

Compensation for any damage suffered by the applicant as a result of classification for defence reasons shall be governed by the provisions of the national laws of the Member States and shall be the responsibility of the State which applied for such classification or which either obtained the upgrading or extension of the classification or caused the filing of applications outside the Community to be prohibited. Where several Member States have either obtained the upgrading or extension of the classification or caused the filing of applications outside the Community to be prohibited, they shall be jointly responsible for making good any damage arising out of their action. The Community may not claim any compensation under this Article.

### **Section 4**

#### **Special provisions**

#### *Article 28*

Where, as a result of their communication to the Commission, unpublished applications for patents or utility models, or patents or utility models classified for defence reasons, are improperly used or come to the knowledge of an unauthorized person, the Community shall make good the damage suffered by the party concerned. Without prejudice to its own rights against the person responsible for the damage, the Community shall, to the extent that it has made good such damage, acquire any rights of action enjoyed by those concerned against third parties. This shall not affect the right of the Community to take action against the person responsible for the damage in accordance with the general provisions in force.

#### *Article 29*

Where an agreement or contract for the exchange of scientific or industrial information in the nuclear field between a Member State, a person or an undertaking on the one hand, and a third State, an international organization or a national of a third State on the other, requires, on either part, the signature of a State acting in its sovereign capacity, it shall be concluded by the Commission. Subject to the provisions of Articles 103 and 104, the Commission may, however, on such conditions as it considers appropriate, authorize a Member State, a person or an undertaking to conclude such agreements.

## **CHAPTER 3**

### **HEALTH AND SAFETY**

### *Article 30*

Basic standards shall be laid down within the Community for the protection of the health of workers and the general public against the dangers arising from ionizing radiations.

The expression 'basic standards' means:

- a. maximum permissible doses compatible with adequate safety;
- b. maximum permissible levels of exposure and contamination;
- c. the fundamental principles governing the health surveillance of workers.

### *Article 31*

The basic standards shall be worked out by the Commission after it has obtained the opinion of a group of persons appointed by the Scientific and Technical Committee from among scientific experts, and in particular public health experts, in the Member States. The Commission shall obtain the opinion of the Economic and Social Committee on these basic standards. After consulting the European Parliament the Council shall, on a proposal from the Commission, which shall forward to it the opinions obtained from these Committees, establish the basic standards; the Council shall act by a qualified majority.

### *Article 32*

At the request of the Commission or of a Member State, the basic standards may be revised or supplemented in accordance with the procedure laid down in Article 31. The Commission shall examine any request made by a Member State.

### *Article 33*

Each Member State shall lay down the appropriate provisions, whether by legislation, regulation or administrative action, to ensure compliance with the basic standards which have been established and shall take the necessary measures with regard to teaching, education and vocational training. The Commission shall make appropriate recommendations for harmonizing the provisions applicable in this field in the Member States. To this end, the Member States shall communicate to the Commission the provisions applicable at the date of entry into force of this Treaty and any subsequent draft provisions of the same kind. Any recommendations the Commission may wish to issue with regard to such draft provisions shall be made within three months of the date on which such draft provisions are communicated.

### *Article 34*

Any Member State in whose territories particularly dangerous experiments are to take place shall take additional health and safety measures, on which it shall first obtain the opinion of the Commission. The assent of the Commission shall be required where the effects of such experiments are liable to affect the territories of other Member States.

### *Article 35*

Each Member State shall establish the facilities necessary to carry out continuous monitoring of the level of radioactivity in the air, water and soil and to ensure compliance with the basic standards. The Commission shall have the right of access to such facilities; it may verify their operation and

efficiency.

#### *Article 36*

The appropriate authorities shall periodically communicate information on the checks referred to in Article 35 to the Commission so that it is kept informed of the level of radioactivity to which the public is exposed.

#### *Article 37*

Each Member State shall provide the Commission with such general data relating to any plan for the disposal of radioactive waste in whatever forms will make it possible to determine whether the implementation of such plan is liable to result in the radioactive contamination of the water, soil or airspace of another Member State. The Commission shall deliver its opinion within six months, after consulting the group of experts referred to in Article 31.

#### *Article 38*

The Commission shall make recommendations to the Member States with regard to the level of radioactivity in the air, water and soil. In cases of urgency, the Commission shall issue a directive requiring the Member State concerned to take, within a period laid down by the Commission, all necessary measures to prevent infringement of the basic standards and to ensure compliance with regulations. Should the State in question fail to comply with the Commission directive within the period laid down, the Commission or any Member State concerned may forthwith, by way of derogation from Articles 141 and 142, bring the matter before the Court of Justice.

#### *Article 39*

The Commission shall set up within the framework of the Joint Nuclear Research Centre, as soon as the latter has been established, a health and safety documentation and study section. This section shall in particular have the task of collecting the documentation and information referred to in Articles 33, 36 and 37 and of assisting the Commission in carrying out the tasks assigned to it by this Chapter.

### **CHAPTER 4**

#### **INVESTMENT**

#### *Article 40*

In order to stimulate action by persons and undertakings and to facilitate coordinated development of their investment in the nuclear field, the Commission shall periodically publish illustrative programmes indicating in particular nuclear energy production targets and all the types of investment required for their attainment. The Commission shall obtain the opinion of the Economic and Social Committee on such programmes before their publication.

#### *Article 41*

Persons and undertakings engaged in the industrial activities listed in Annex II to this Treaty shall communicate to the Commission investment projects relating to new installations and also to replacements or conversions which fulfil the criteria as to type and size laid down by the Council on a proposal from the Commission. The list of industrial activities referred to above may be altered by the Council, acting by a qualified majority on a proposal from the Commission, which shall first obtain the opinion of the Economic and Social Committee.

*Article 42*

The projects referred to in Article 41 shall be communicated to the Commission and, for information purposes, to the Member State concerned not later than three months before the first contracts are concluded with the suppliers or, if the work is to be carried out by the undertaking with its own resources, three months before the work begins. The Council may, acting on a proposal from the Commission, alter this time limit.

*Article 43*

The Commission shall discuss with the persons or undertakings all aspects of investment projects which relate to the objectives of this Treaty. It shall communicate its views to the Member State concerned.

*Article 44*

The Commission may, with the consent of the Member States, persons and undertakings concerned, publish any investment projects communicated to it.

**CHAPTER 5****JOINT UNDERTAKINGS***Article 45*

Undertakings which are of fundamental importance to the development of the nuclear industry in the Community may be established as Joint Undertakings within the meaning of this Treaty, in accordance with the following Articles.

*Article 46*

1. Every project for establishing a Joint Undertaking, whether originating from the Commission, a Member State or any other quarter, shall be the subject of an inquiry by the Commission. For this purpose, the Commission shall obtain the views of Member States and of any public or private body which in its opinion can usefully advise it. 2. The Commission shall forward to the Council any project for establishing a Joint Undertaking, together with its reasoned opinion.

If the Commission delivers a favourable opinion on the need for the proposed Joint Undertaking, it shall submit proposals to the Council concerning:

- a. location;
- b. statutes;
- c. the scale of and timetable for financing;
- d. possible participation by the Community in the financing of the Joint Undertaking;
- e. possible participation by a third State, an international organization or a national of a third State in the financing or management of the Joint Undertaking;
- f. the conferring of any or all of the advantages listed in Annex III to this Treaty.

The Commission shall attach a detailed report on the project as a whole.

#### *Article 47*

The Council may, when the matter has been submitted to it by the Commission, request the latter to supply such further information or to undertake such further inquiries as the Council may consider necessary. If the Council, acting by a qualified majority, considers that a project forwarded by the Commission with an unfavourable opinion should nevertheless be carried out, the Commission shall submit to the Council the proposals and the detailed report referred to in Article 46. Where the opinion of the Commission is favourable or in the case referred to in the preceding paragraph, the Council shall act by a qualified majority on each of the proposals from the Commission.

The Council shall, however, act unanimously in respect of:

- a. participation by the Community in the financing of the Joint Undertaking;
- b. participation by a third State, an international organization or a national of a third State in the financing or management of the Joint Undertaking.

#### *Article 48*

The Council may, acting unanimously on a proposal from the Commission, make applicable to each Joint Undertaking any or all of the advantages listed in Annex III to this Treaty; each Member State shall for its part ensure that these advantages are conferred. The Council may, in accordance with the same procedure, lay down the conditions governing the conferment of these advantages.

#### *Article 49*

Joint Undertakings shall be established by Council decision. Each Joint Undertaking shall have legal personality. In each of the Member States, it shall enjoy the most extensive legal capacity accorded to legal persons under their respective national laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. Save as otherwise provided in this Treaty or in its own statutes, each Joint Undertaking shall be governed by the rules applying to industrial or commercial undertakings; its statutes may make subsidiary reference to the national laws of the Member States. Save where jurisdiction is conferred upon the Court of Justice by this Treaty, disputes in which Joint Undertakings are concerned shall be determined by the appropriate national courts or tribunals.

#### *Article 50*

The statutes of Joint Undertakings shall be amended, where necessary, in accordance with the special provisions which they contain for this purpose. Such amendments shall not, however, enter into force until they have been approved by the Council, acting in accordance with the procedure laid down in Article 47 on a proposal from the Commission.

#### *Article 51*

The Commission shall be responsible for carrying out all decisions of the Council relating to the establishment of Joint Undertakings until the bodies responsible for the operation of such undertakings have been set up.

### **CHAPTER 6**

## **SUPPLIES**

### *Article 52*

1. The supply of ores, source materials and special fissile materials shall be ensured, in accordance with the provisions of this Chapter, by means of a common supply policy on the principle of equal access to sources of supply.
2. For this purpose and under the conditions laid down in this Chapter:
  - a. all practices designed to secure a privileged position for certain users shall be prohibited;
  - b. an Agency is hereby established; it shall have a right of option on ores, source materials and special fissile materials produced in the territories of Member States and an exclusive right to conclude contracts relating to the supply of ores, source materials and special fissile materials coming from inside the Community or from outside.

The Agency may not discriminate in any way between users on grounds of the use which they intend to make of the supplies requested unless such use is unlawful or is found to be contrary to the conditions imposed by suppliers outside the Community on the consignment in question.

### **Section 1**

#### **The Agency**

### *Article 53*

The Agency shall be under the supervision of the Commission, which shall issue directives to it, possess a right of veto over its decisions and appoint its Director General and Deputy Director General. Any act, whether implied or expressed, performed by the Agency in the exercise of its right of option or of its exclusive right to conclude supply contracts, may be referred by the parties concerned to the Commission, which shall give a decision thereon within one month.

### *Article 54*

The Agency shall have legal personality and financial autonomy. The Council shall lay down the statutes of the Agency, acting by a qualified majority on a proposal from the Commission. The statutes may be amended in accordance with the same procedure. The statutes shall determine the Agency's capital and the terms upon which it is to be subscribed. The major part of the capital shall always belong to the Community and to the Member States. The contributions to the capital shall be determined by common accord of the Member States. The rules for the commercial management of the activities of the Agency shall be laid down in the statutes. The latter may provide for a charge on transactions to defray the operating expenses of the Agency.

### *Article 55*

The Member States shall communicate or cause to be communicated to the Agency all the information necessary to enable it to exercise its right of option and its exclusive right to conclude supply contracts.

### *Article 56*

The Member States shall be responsible for ensuring that the Agency may operate freely in their



territories. They may establish one or more bodies having authority to represent, in relations with the Agency, producers and users in the non European territories under their jurisdiction.

## Section 2

### Ores, source materials and special fissile materials coming from inside the Community

#### *Article 57*

1. The right of option of the Agency shall cover:
  - a. the acquisition of rights to use and consume materials owned by the Community under the provisions of Chapter 8;
  - b. the acquisition of the right of ownership in all other cases.
2. The Agency shall exercise its right of option by concluding contracts with producers of ores, source materials and special fissile materials. Subject to Articles 58, 62 and 63, every producer shall offer to the Agency the ores, source materials or special fissile materials which he produces within the territories of Member States before they are used, transferred or stored.

#### *Article 58*

Where a producer carries out several stages of production from extraction of the ore up to and including production of the metal, he may offer the product to the Agency at whichever stage of production he chooses. The same shall apply to two or more connected undertakings, where the connection has been duly communicated to the Commission and discussed with it in accordance with the procedures laid down in Articles 43 and 44.

#### *Article 59*

If the Agency does not exercise its right of option on the whole or any part of the output of a producer, the latter:

- a. may, either by using his own resources or under contract, process or cause to be processed the ores, source materials or special fissile materials, provided that he offers to the Agency the product of such processing;
- b. shall be authorized by a decision of the Commission to dispose of his available production outside the Community, provided that the terms he offers are not more favourable than those previously offered to the Agency. However, special fissile materials may be exported only through the Agency and in accordance with the provisions of Article 62.

The Commission may not grant such authorization if the recipients of the supplies fail to satisfy it that the general interests of the Community will be safeguarded or if the terms and conditions of such contracts are contrary to the objectives of this Treaty.

#### *Article 60*

Potential users shall periodically inform the Agency of the supplies they require, specifying the quantities, the physical and chemical nature, the place of origin, the intended use, delivery dates and price terms, which are to form the terms and conditions of the supply contract which they wish to conclude. Similarly, producers shall inform the Agency of offers which they are able to make, stating

all the specifications, and in particular the duration of contracts, required to enable their production programmes to be drawn up. Such contracts shall be of not more than 10 years duration save with the agreement of the Commission. The Agency shall inform all potential users of the offers and of the volume of applications which it has received and shall call upon them to place their orders by a specified time limit. When the Agency has received all such orders, it shall make known the terms on which it can meet them. If the Agency cannot meet in their entirety all the orders received, it shall, subject to the provisions of Articles 68 and 69, share out the supplies proportionately among the orders relating to each offer. Agency rules, which shall require approval by the Commission, shall determine the manner in which demand is to be balanced against supply.

#### *Article 61*

The Agency shall meet all orders unless prevented from so doing by legal or material obstacles. When concluding a contract, the Agency may, while complying with the provisions of Article 52, require users to make appropriate advance payments either as security or to assist in meeting the Agency's own long term commitments to producers where these are essential to carrying out the order.

#### *Article 62*

1. The Agency shall exercise its right of option on special fissile materials produced in the territories of Member States in order:

- a. to meet demand from users within the Community in accordance with Article 60; or
- b. to store such materials itself; or
- c. to export such materials with the authorization of the Commission which shall comply with the second subparagraph of Article 59(b).

2. Nevertheless, while continuing to be subject to the provisions of Chapter 7, such materials and any fertile wastes shall be left in the possession of the producer, so that he may:

- a. store them with the authorization of the Agency; or
- b. use them within the limits of his own requirements; or
- c. make them available to undertakings in the Community, within the limits of their requirements, where for carrying out a programme duly communicated to the Commission, these undertakings have with the producer a direct connection which has neither the aim nor the effect of limiting production, technical development or investment or of improperly creating inequalities between users in the Community.

3. The provisions of Article 89(1)(a) shall apply to special fissile materials which are produced in the territories of Member States and on which the Agency has not exercised its right of option.

#### *Article 63*

Ores, source materials and special fissile materials produced by Joint Undertakings shall be allotted to users in accordance with the rules laid down in the statutes or agreements of such undertakings.

### **Section 3**

## **Ores, source materials and special fissile materials coming from outside the Community**

### *Article 64*

The Agency, acting where appropriate within the framework of agreements concluded between the Community and a third State or an international organization, shall, subject to the exceptions provided for in this Treaty, have the exclusive right to enter into agreements or contracts whose principal aim is the supply of ores, source materials or special fissile materials coming from outside the Community.

### *Article 65*

Article 60 shall apply applications from users and to contracts between users and the Agency relating to the supply of ores, source materials or special fissile materials coming from outside the Community. The Agency may, however, decide on the geographical origin of supplies provided that conditions which are at least as favourable as those specified in the order are thereby secured for the user.

### *Article 66*

Should the Commission find, on application by the users concerned, that the Agency is not in a position to deliver within a reasonable period of time all or part of the supplies ordered, or that it can only do so at excessively high prices, the users shall have the right to conclude directly contracts relating to supplies from outside the Community, provided that such contracts meet in essential respects the requirements specified in their orders. This right shall be granted for a period of one year; it may be extended if the situation which justified its granting continues. Users who avail themselves of the right provided for in this Article shall communicate to the Commission the direct contracts which they propose to conclude. The Commission may, within one month, object to the conclusion of such contracts if they are contrary to the objectives of this Treaty.

## **Section 4**

### **Prices**

### *Article 67*

Save where exceptions are provided for in this Treaty, prices shall be determined as a result of balancing supply against demand as provided in Article 60; the national regulations of the Member States shall not contravene such provisions.

### *Article 68*

Pricing practices designed to secure a privileged position for certain users in violation of the principle of equal access laid down in the provisions of this Chapter shall be prohibited. If the Agency finds that any such practices are being employed it shall report them to the Commission. The Commission may, if it accepts the findings, set the prices of the offers in issue at a level compatible with the principle of equal access.

### *Article 69*

The Council may fix prices, acting unanimously on a proposal from the Commission. When the Agency lays down, in pursuance of Article 60, the terms on which orders can be met, it may propose to the users who have placed orders that prices be equalized.

## **Section 5**

### **Provisions relating to supply policy**

#### *Article 70*

Within the limits set by the budget of the Community, the Commission may, on such conditions as it shall determine, give financial support to prospecting programmes in the territories of Member States. The Commission may make recommendations to the Member States with a view to the development of prospecting for and exploitation of mineral deposits. The Member States shall submit annually to the Commission a report on the development of prospecting and production, on probable reserves and on investment in mining which has been made or is planned in their territories. The reports shall be submitted to the Council, together with an opinion from the Commission which shall state in particular what action has been taken by Member States on recommendations made to them under the preceding paragraph. If, when the matter has been submitted to it by the Commission, the Council finds by a qualified majority that, although the prospects for extraction appear economically justified on a long term basis, prospecting activities and the expansion of mining operations continue to be markedly inadequate, the Member State concerned shall, for as long as it has failed to remedy this situation, be deemed to have waived, both for itself and for its nationals, the right of equal access to other sources of supply within the Community.

#### *Article 71*

The Commission shall make all appropriate recommendations to Member States with regard to revenue or mining regulations.

#### *Article 72*

The Agency may, from material available inside or outside the Community, build up the necessary commercial stocks to facilitate supplies to or normal deliveries by the Community. The Commission may, where necessary, decide to build up emergency stocks. The method of financing such stocks shall be approved by the Council, acting by a qualified majority on a proposal from the Commission.

## **Section 6**

### **Special provisions**

#### *Article 73*

Where an agreement or contract between a Member State, a person or an undertaking on the one hand, and a third State, an international organization or a national of a third State on the other, provides inter alia for delivery of products which come within the province of the Agency, the prior consent of the Commission shall be required for the conclusion or renewal of that agreement or contract, as far as delivery of the products is concerned.

#### *Article 74*

The Commission may exempt from the provisions of this Chapter the transfer, import or export of small quantities of ores, source materials or special fissile materials such as are normally used in research. The Agency shall be notified of every transfer, import or export operation effected by virtue of this provision.

#### *Article 75*

The provisions of this Chapter shall not apply to commitments relating to the processing, conversion or shaping of ores, source materials or special fissile materials and entered into:

- a. by several persons or undertakings, where the material is to return to the original person or undertaking after being processed, converted or shaped; or
- b. by a person or undertaking and an international organization or a national of a third State, where the material is processed, converted or shaped outside the Community and then returned to the original person or undertaking; or
- c. by a person or undertaking and an international organization or a national of a third State, where the material is processed, converted or shaped inside the Community and is then returned either to the original organization or national or to any other consignee likewise outside the Community designated by such organization or national.

The persons and undertakings concerned shall, however, notify the Agency of the existence of such commitments and, as soon as the contracts are signed, of the quantities of material involved in the movements. The Commission may prevent the commitments referred to in subparagraph (b) from being undertaken if it considers that the conversion or shaping cannot be carried out efficiently and safely and without the loss of material to the detriment of the Community. The materials to which such commitments relate shall be subject in the territories of the Member States to the safeguards laid down in Chapter 7. The provisions of Chapter 8 shall not, however, be applicable to special fissile materials covered by the commitments referred to in subparagraph (c).

#### *Article 76*

On the initiative of a Member State or of the Commission, and particularly if unforeseen circumstances create a situation of general shortage, the Council may, acting unanimously on a proposal from the Commission and after consulting the European Parliament, amend the provisions of this Chapter. The Commission shall inquire into any request made by a Member State. Seven years after the entry into force of this Treaty, the Council may confirm these provisions in their entirety. Failing confirmation, new provisions relating to the subject matter of this Chapter shall be adopted in accordance with the procedure laid down in the preceding paragraph.

### **CHAPTER 7**

#### **SAFEGUARDS**

#### *Article 77*

In accordance with the provisions of this Chapter, the Commission shall satisfy itself that, in the territories of Member States:

- a. ores, source materials and special fissile materials are not diverted from their intended uses as declared by the users;
- b. the provisions relating to supply and any particular safeguarding obligations assumed by the Community under an agreement concluded with a third State or an international organization are complied with.

#### *Article 78*

Anyone setting up or operating an installation for the production, separation or other use of source

materials or special fissile materials or for the processing of irradiated nuclear fuels shall declare to the Commission the basic technical characteristics of the installations, to the extent that knowledge of these characteristics is necessary for the attainment of the objectives set out in Article 77. The Commission must approve the techniques to be used for the chemical processing of irradiated materials, to the extent necessary to attain the objectives set out in Article 77.

#### *Article 79*

The Commission shall require that operating records be kept and produced in order to permit accounting for ores, source materials and special fissile materials used or produced. The same requirement shall apply in the case of the transport of source materials and special fissile materials. Those subject to such requirements shall notify the authorities of the Member State concerned of any communications they make to the Commission pursuant to Article 78 and to the first paragraph of this Article. The nature and the extent of the requirements referred to in the first paragraph of this Article shall be defined in a regulation made by the Commission and approved by the Council.

#### *Article 80*

The Commission may require that any excess special fissile materials recovered or obtained as by products and not actually being used or ready for use shall be deposited with the Agency or in other stores which are or can be supervised by the Commission. Special fissile materials deposited in this way must be returned forthwith to those concerned at their request.

#### *Article 81*

The Commission may send inspectors into the territories of Member States. Before sending an inspector on his first assignment in the territory of a Member State, the Commission shall consult the State concerned; such consultation shall suffice to cover all future assignments of this inspector. On presentation of a document establishing their authority, inspectors shall at all times have access to all places and data and to all persons who, by reason of their occupation, deal with materials, equipment or installations subject to the safeguards provided for in this Chapter, to the extent necessary in order to apply such safeguards to ores, source materials and special fissile materials and to ensure compliance with the provisions of Article 77. Should the State concerned so request, inspectors appointed by the Commission shall be accompanied by representatives of the authorities of that State; however, the inspectors shall not thereby be delayed or otherwise impeded in the performance of their duties. If the carrying out of an inspection is opposed, the Commission shall apply to the President of the Court of Justice for an order to ensure that the inspection be carried out compulsorily. The President of the Court of Justice shall give a decision within three days. If there is danger in delay, the Commission may itself issue a written order, in the form of a decision, to proceed with the inspection. This order shall be submitted without delay to the President of the Court of Justice for subsequent approval. After the order or decision has been issued, the authorities of the State concerned shall ensure that the inspectors have access to the places specified in the order or decision.

#### *Article 82*

Inspectors shall be recruited by the Commission. They shall be responsible for obtaining and verifying the records referred to in Article 79. They shall report any infringement to the Commission. The Commission may issue a directive calling upon the Member State concerned to take, by a time limit set by the Commission, all measures necessary to bring such infringement to an end; it shall inform the Council thereof. If the Member State does not comply with the Commission directive by the time limit set, the Commission or any Member State concerned may, in derogation from Articles 141 and 142, refer the matter to the Court of Justice direct.

### *Article 83*

1. In the event of an infringement on the part of persons or undertakings of the obligations imposed on them by this Chapter, the Commission may impose sanctions on such persons or undertakings.

These sanctions shall be in order of severity:

- a. a warning;
- b. the withdrawal of special benefits such as financial or technical assistance;
- c. the placing of the undertaking for a period not exceeding four months under the administration of a person or board appointed by common accord of the Commission and the State having jurisdiction over the undertaking;
- d. total or partial withdrawal of source materials or special fissile materials.

2. Decisions taken by the Commission in implementation of paragraph 1 and requiring the surrender of materials shall be enforceable. They may be enforced in the territories of Member States in accordance with Article 164. By way of derogation from Article 157, appeals brought before the Court of Justice against decisions of the Commission which impose any of the sanctions provided for in paragraph 1 shall have suspensory effect. The Court of Justice may, however, on application by the Commission or by any Member State concerned, order that the decision be enforced forthwith. There shall be an appropriate legal procedure to ensure the protection of interests that have been prejudiced. 3. The Commission may make any recommendations to Member States concerning laws or regulations which are designed to ensure compliance in their territories with the obligations arising under this Chapter. 4. Member States shall ensure that sanctions are enforced and, where necessary, that the infringements are remedied by those committing them.

### *Article 84*

In the application of the safeguards, no discrimination shall be made on grounds of the use for which ores, source materials and special fissile materials are intended. The scope of and procedure for the safeguards and the powers of the bodies responsible for their application shall be confined to the attainment of the objectives set out in this Chapter. The safeguards may not extend to materials intended to meet defence requirements which are in the course of being specially processed for this purpose or which, after being so processed, are, in accordance with an operational plan, placed or stored in a military establishment.

### *Article 85*

Where new circumstances so require, the procedures for applying the safeguards laid down in this Chapter may, at the request of a Member State or of the Commission, be adapted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament. The Commission shall examine any such request made by a Member State.

## **CHAPTER 8**

### **PROPERTY OWNERSHIP**

### *Article 86*

Special fissile materials shall be the property of the Community. The Community's right of

ownership shall extend to all special fissile materials which are produced or imported by a Member State, a person or an undertaking and are subject to the safeguards provided for in Chapter 7.

#### *Article 87*

Member States, persons or undertakings shall have the unlimited right of use and consumption of special fissile materials which have properly come into their possession, subject to the obligations imposed on them by this Treaty, in particular those relating to safeguards, the right of option conferred on the Agency and health and safety.

#### *Article 88*

The Agency shall keep a special account in the name of the Community, called 'Special Fissile Materials Financial Account'.

#### *Article 89*

1. In the Special Fissile Materials Financial Account:

- a. the value of special fissile materials left in the possession of or put at the disposal of a Member State, person or undertaking shall be credited to the Community and debited to that Member State, person or undertaking;
- b. the value of special fissile materials which are produced or imported by a Member State, person or undertaking and become the property of the Community shall be debited to the Community and credited to that Member State, person or undertaking. A similar entry shall be made when a Member State, person or undertaking restores to the Community special fissile materials previously left in the possession of or put at the disposal of that State, person or undertaking.

2. Variations in value affecting the quantities of special fissile material shall be expressed for accounting purposes in such a way as not to give rise to any loss or gain to the Community. Any loss or gain shall be borne by or accrue to the holder.3. Balances arising from the transactions referred to above shall become payable forthwith upon the request of the creditor.4. Where the Agency undertakes transactions for its own account, it shall, for the purposes of this Chapter, be deemed to be an undertaking.

#### *Article 90*

Where new circumstances so require, the provisions of this Chapter relating to the Community's right of ownership may, at the request of a Member State or of the Commission, be adjusted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament. The Commission shall examine any such request made by a Member State.

#### *Article 91*

The system of ownership applicable to all objects, materials and assets which are not vested in the Community under this Chapter shall be determined by the law of each Member State.

### **CHAPTER 9**

### **THE NUCLEAR COMMON MARKET**

#### *Article 92*



The provisions of this Chapter shall apply to the goods and products specified in the lists forming Annex IV to this Treaty. These lists may, at the request of the Commission or of a Member State, be amended by the Council, acting on a proposal from the Commission.

#### *Article 93*

Member States shall abolish between themselves, one year after the entry into force of this Treaty, all customs duties on imports and exports or charges having equivalent effect, and all quantitative restrictions on imports and exports, in respect of:

- a. products in List A1 and A2;
- b. products in List B if subject to a Common Customs Tariff and accompanied by a certificate issued by the Commission stating that they are intended to be used for nuclear purposes.

Non European territories under the jurisdiction of a Member State may, however, continue to levy import and export duties or charges having equivalent effect where they are of an exclusively fiscal nature. The rates of such duties and charges and the system governing them shall not give rise to any discrimination between that State and the other Member States.

#### *Article 94*

The Member States shall set up a Common Customs Tariff in accordance with the following provisions:

- a. with regard to products specified in List A1, the Common Customs Tariff shall be fixed at the level of the lowest tariff in force in any Member State on 1 January 1957;
- b. with regard to products specified in List A2, the Commission shall take all appropriate measures to ensure that negotiations between Member States shall begin within three months of the entry into force of this Treaty. If, on some of these products, no agreement can be reached within one year of the entry into force of this Treaty, the Council shall, acting by a qualified majority on a proposal from the Commission, determine the applicable duties in the Common Customs Tariff;
- c. the Common Customs Tariff on the products specified in Lists A1 and A2 shall be applied from the end of the first year following the entry into force of this Treaty.

#### *Article 95*

The Council may, acting unanimously on a proposal from the Commission, decide on the earlier application of the duties in the Common Customs Tariff on products in List B where such a measure would tend to contribute to the development of nuclear energy in the Community.

#### *Article 96*

The Member States shall abolish all restrictions based on nationality affecting the right of nationals of any Member State to take skilled employment in the field of nuclear energy, subject to the limitations resulting from the basic requirements of public policy, public security or public health. After consulting the European Parliament, the Council may, acting by a qualified majority on a proposal from the Commission, which shall first request the opinion of the Economic and Social Committee, issue directives for the application of this Article.

*Article 97*

No restrictions based on nationality may be applied to natural or legal persons, whether public or private, under the jurisdiction of a Member State, where they desire to participate in the construction of nuclear installations of a scientific or industrial nature in the Community.

*Article 98*

Member States shall take all measures necessary to facilitate the conclusion of insurance contracts covering nuclear risks. Within two years of the entry into force of this Treaty, the Council, acting by a qualified majority on a proposal from the Commission, which shall first request the opinion of the Economic and Social Committee, shall, after consulting the European Parliament, issue directives for the application of this Article.

*Article 99*

The Commission may make any recommendations for facilitating movements of capital intended to finance the industrial activities listed in Annex II to this Treaty.

*Article 100*

Each Member State undertakes to authorize, in the currency of the Member State in which the creditor or the beneficiary resides, any payments connected with the movement of goods, services or capital, and any transfers of capital and earnings, to the extent that the movement of goods, services, capital and persons between Member States has been liberalized pursuant to this Treaty.

**CHAPTER 10****EXTERNAL RELATIONS***Article 101*

The Community may, within the limits of its powers and jurisdiction, enter into obligations by concluding agreements or contracts with a third State, an international organization or a national of a third State. Such agreements or contracts shall be negotiated by the Commission in accordance with the directives of the Council: they shall be concluded by the Commission with the approval of the Council, which shall act by a qualified majority. Agreements or contracts whose implementation does not require action by the Council and can be effected within the limits of the relevant budget shall, however, be negotiated and concluded solely by the Commission; the Commission shall keep the Council informed.

*Article 102*

Agreements or contracts concluded with a third State, an international organization or a national of a third State to which, in addition to the Community, one or more Member States are parties, shall not enter into force until the Commission has been notified by all the Member States concerned that those agreements or contracts have become applicable in accordance with the provisions of their respective national laws.

*Article 103*

Member States shall communicate to the Commission draft agreements or contracts with a third State, an international organization or a national of a third State to the extent that such agreements or contracts concern matters within the purview of this Treaty. If a draft agreement or contract contains

clauses which impede the application of this Treaty, the Commission shall, within one month of receipt of such communication, make its comments known to the State concerned. The State shall not conclude the proposed agreement or contract until it has satisfied the objections of the Commission or complied with a ruling by the Court of Justice, adjudicating urgently upon an application from the State, on the compatibility of the proposed clauses with the provisions of this Treaty. An application may be made to the Court of Justice at any time after the State has received the comments of the Commission.

#### *Article 104*

No person or undertaking concluding or renewing an agreement or contract with a third State, an international organization or a national of a third State after the entry into force of this Treaty may invoke that agreement or contract in order to evade the obligations imposed by this Treaty. Each Member State shall take such measures as it considers necessary in order to communicate to the Commission, at the request of the latter, all information relating to agreements or contracts concluded after the entry into force of this Treaty, within the purview thereof, by a person or undertaking with a third State, an international organization or a national of a third State. The Commission may require such communication only for the purpose of verifying that such agreements or contracts do not contain clauses impeding the implementation of this Treaty. On application by the Commission, the Court of Justice shall give a ruling on the compatibility of such agreements or contracts with the provisions of this Treaty.

#### *Article 105*

The provisions of this Treaty shall not be invoked so as to prevent the implementation of agreements or contracts concluded before its entry into force by a Member State, a person or an undertaking with a third State, an international organization or a national of a third State where such agreements or contracts have been communicated to the Commission not later than 30 days after the entry into force of this Treaty. Agreements or contracts concluded between the signature and the entry into force of this Treaty by a person or an undertaking with a third State, an international organization or a national of a third State shall not, however, be invoked as grounds for failure to implement this Treaty if, in the opinion of the Court of Justice, ruling on an application from the Commission, one of the decisive reasons on the part of either of the parties in concluding the agreement or contract was an intention to evade the provisions of this Treaty.

#### *Article 106*

Member States which, before the entry into force of this Treaty, have concluded agreements with third States providing for cooperation in the field of nuclear energy shall be required to undertake jointly with the Commission the necessary negotiations with these third States in order to ensure that the rights and obligations arising out of such agreements shall as far as possible be assumed by the Community. Any new agreement ensuing from such negotiations shall require the consent of the Member State or States signatory to the agreements referred to above and the approval of the Council, which shall act by a qualified majority.

### **TITLE III**

#### **Provisions governing the institutions**

#### **CHAPTER 1**

#### **THE INSTITUTIONS OF THE COMMUNITY**

#### **Section 1**

## The European Parliament

### *Article 107*

The European Parliament, which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the advisory and supervisory powers which are conferred upon it by this Treaty.

### *Article 107a*<sup>(\*)</sup>

The European Parliament may, acting by a majority of its Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Community act is required for the purpose of implementing this Treaty.

### *Article 107b*<sup>(\*)</sup>

In the course of its duties, the European Parliament may, at the request of a quarter of its Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by this Treaty on other institutions or bodies, alleged contraventions or maladministration in the implementation of Community law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings. The temporary Committee of Inquiry shall cease to exist on the submission of its report. The detailed provisions governing the exercise of the right of inquiry shall be determined by common accord of the European Parliament, the Council and the Commission.

### *Article 107c*<sup>(\*)</sup>

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Community's fields of activity and which affects him, her or it directly.

### *Article 107d*<sup>(\*)</sup>

1. The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries. The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries. 2. The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment. The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct. 3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not. 4. The European Parliament shall, after seeking an opinion from

the Commission and with the approval of the Council acting by a qualified majority, lay down the regulations and general conditions governing the performance of the Ombudsman's duties.

#### *Article 108*

*(Paragraphs 1 and 2 lapsed on 17 July 1979 in accordance with Article 14 of the Act*

*[See Article 1 of that Act which reads as follows:*

1. The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage.]

*[See Article 2 of that Act which reads as follows:*

2. The number of representatives elected in each Member State is as follows:

Belgium	25
Denmark	16
Germany	99
Greece	25
Spain	64
France	87
Ireland	15
Italy	87
Luxembourg	6
Netherlands	31
Austria	21
Portugal	25
Finland	16
Sweden	22
United Kingdom	87(*)

(\*) Number of representatives as laid down by Article 11 AA A/FIN/SWE in the version resulting from Article 5 AD AA A/FIN/SWE.

3. The European Parliament shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States. (\*4)The Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component Members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements. (\*5)

#### *Article 109*

The European Parliament shall hold an annual session. It shall meet, without requiring to be convened, on the second Tuesday in March. (\*6)(\*7)The European Parliament may meet in extraordinary session at the request of a majority of its Members or at the request of the Council or of the Commission.

#### *Article 110*

The European Parliament shall elect its President and its officers from among its Members. Members of the Commission may attend all meetings and shall, at their request, be heard on behalf of the Commission. The Commission shall reply orally or in writing to questions put to it by the European Parliament or by its Members. The Council shall be heard by the European Parliament in accordance with the conditions laid down by the Council in its Rules of Procedure.

#### *Article 111*

Save as otherwise provided in this Treaty, the European Parliament shall act by an absolute majority of the votes cast. The Rules of Procedure shall determine the quorum.

#### *Article 112*

The European Parliament shall adopt its Rules of Procedure, acting by a majority of its Members. The proceedings of the European Parliament shall be published in the manner laid down in its Rules of Procedure.

#### *Article 113*

The European Parliament shall discuss in open session the annual general report submitted to it by the Commission.

#### *Article 114(\*^8)*

If a motion of censure on the activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote. If the motion of censure is carried by a two thirds majority of the votes cast, representing a majority of the Members of the European Parliament, the Members of the Commission shall resign as a body. They shall continue to deal with current business until they are replaced in accordance with Article 127. In this case, the term of office of the Members of the Commission appointed to replace them shall expire on the date on which the term of office of the Members of the Commission obliged to resign as a body would have expired.

### **Section 2**

#### **The Council**

#### *Article 115*

The Council shall carry out its duties and exercise its powers of decision in accordance with the provisions of this Treaty. It shall take all measures within its powers to coordinate the actions of the Member States and of the Community.

#### *Article 116(\*^9)*

The Council shall consist of a representative of each Member State at ministerial level, authorized to commit the government of that Member State. The office of President shall be held in turn by each Member State in the Council for a term of six months in the order decided by the Council acting unanimously. (\*^10)

#### *Article 117(\*^11)*

The Council shall meet when convened by its President on his own initiative or at the request of one of its Members or of the Commission.

#### *Article 118*

1. Save as otherwise provided in this Treaty, the Council shall act by a majority of its Members.
2. Where the Council is required to act by a qualified majority, the votes of its Members shall be weighted as follows:

Belgium	5
Denmark	3
Germany	10
Greece	5
Spain	8
France	10
Ireland	3
Italy	10
Luxembourg	2
Netherlands	5
Austria	4
Portugal	5
Finland	3
Sweden	4
United Kingdom	10

For their adoption, acts of the Council shall require at least:

- 62 votes in favour where this Treaty requires them to be adopted on a proposal from the Commission,
- 62 votes in favour, cast by at least 10 Members, in other cases.<sup>([\\*^12](#))</sup>

3. Abstentions by Members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity.

#### *Article 119*

Where, in pursuance of this Treaty, the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal. As long as the Council has not acted, the Commission may alter its original proposal, in particular where the European Parliament has been consulted on that proposal.

#### *Article 120*

Where a vote is taken, any Member of the Council may also act on behalf of not more than one other Member.

#### *Article 121([\\*^13](#))*

1. A committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council. 2. The Council shall be assisted by a General Secretariat, under the direction of a Secretary General. The Secretary General shall be appointed by the Council acting unanimously. The Council shall decide on the organization of the General Secretariat. 3. The Council shall adopt its Rules of Procedure.

#### *Article 122*

The Council may request the Commission to undertake any studies which the Council considers desirable for the attainment of the common objectives and to submit to it any appropriate proposals.

#### *Article 123([\\*^14](#))*

The Council shall, acting by a qualified majority, determine the salaries, allowances and pensions of the President and Members of the Commission, and of the President, Judges, Advocates General and Registrar of the Court of Justice. It shall also, again by a qualified majority, determine any payment

to be made instead of remuneration.

### Section 3

#### The Commission

##### *Article 124*

In order to ensure the development of nuclear energy within the Community, the Commission shall:

- ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied;
- formulate recommendations or deliver opinions in the fields covered by this Treaty, if the Treaty expressly so provides or if the Commission considers it necessary;
- have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament in the manner provided for in this Treaty;
- exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter.

##### *Article 125(\*^15)*

The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the Community.

##### *Article 126(\*^15)*

1. The Commission shall consist of 20 Members, who shall be chosen on the grounds of their general competence and whose independence is beyond doubt.(\*^16)The number of Members of the Commission may be altered by the Council, acting unanimously.Only nationals of the Member States may be Members of the Commission.The Commission must include at least one national of each of the Member States, but may not include more than two Members having the nationality of the same State.2. The Members of the Commission shall, in the general interest of the Community, be completely independent in the performance of their duties.In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the Members of the Commission in the performance of their tasks.The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 129 or deprived of his right to a pension or other benefits in its stead.

##### *Article 127(\*^17)*

1. The Members of the Commission shall be appointed, in accordance with the procedure referred to in paragraph 2, for a period of five years, subject, if need be, to Article 114.Their term of office



shall be renewable.2. The governments of the Member States shall nominate by common accord, after consulting the European Parliament, the person they intend to appoint as President of the Commission. The governments of the Member States shall, in consultation with the nominee for President, nominate the other persons whom they intend to appoint as Members of the Commission. The President and the other Members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by common accord of the governments of the Member States.3. Paragraphs 1 and 2 shall be applied for the first time to the President and the other Members of the Commission whose term of office begins on 7 January 1995. The President and the other Members of the Commission whose term of office begins on 7 January 1993 shall be appointed by common accord of the governments of the Member States. Their term of office shall expire on 6 January 1995.

*Article 128(\*^17)*

Apart from normal replacement, or death, the duties of a Member of the Commission shall end when he resigns or is compulsorily retired. The vacancy thus caused shall be filled for the remainder of the Member's term of office by a new Member appointed by common accord of the governments of the Member States. The Council may, acting unanimously, decide that such a vacancy need not be filled. In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his term of office. The procedure laid down in Article 127(2) shall be applicable for the replacement of the President. Save in the case of compulsory retirement under Article 129, Members of the Commission shall remain in office until they have been replaced.

*Article 129(\*^18)*

If any Member of the Commission no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council or the Commission, compulsorily retire him.

*Article 130(\*^18)*

The Commission may appoint a Vice President or two Vice Presidents from among its Members.

*Article 131(\*^18)*

The Council and the Commission shall consult each other and shall settle by common accord their methods of cooperation. The Commission shall adopt its Rules of Procedure so as to ensure that both it and its departments operate in accordance with the provisions of this Treaty. It shall ensure that these rules are published.

*Article 132(\*^18)*

The Commission shall act by a majority of the number of Members provided for in Article 126. A meeting of the Commission shall be valid only if the number of Members laid down in its Rules of Procedure is present.

*Article 133*

*(Repealed)*

*Article 134*

1. A Scientific and Technical Committee is hereby set up; it shall be attached to the Commission

and shall have advisory status. The Committee must be consulted where this Treaty so provides. The Committee may be consulted in all cases in which the Commission considers this appropriate.<sup>2</sup> The Committee shall consist of 38 Members, appointed by the Council after consultation with the Commission.<sup>(\*)19</sup> The Members of the Committee shall be appointed in their personal capacity for five years. Their appointment shall be renewable. They shall not be bound by any mandatory instructions. The Scientific and Technical Committee shall each year elect its chairman and officers from among its Members.

#### *Article 135*

The Commission may undertake any consultations and establish any study groups necessary to the performance of its tasks.

### **Section 4**

#### **The Court of Justice**

#### *Article 136*

The Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed.

#### *Article 137(\*)20*

The Court of Justice shall consist of 15 Judges.<sup>(\*)21</sup> The Court of Justice shall sit in plenary session. It may, however, form chambers, each consisting of three, five or seven Judges, either to undertake certain preparatory inquiries or to adjudicate on particular categories of cases in accordance with the rules laid down for these purposes.<sup>(\*)22</sup> The Court of Justice shall sit in plenary session when a Member State or a Community institution that is a party to the proceedings so requests. Should the Court of Justice so request, the Council may, acting unanimously, increase the number of Judges and make the necessary adjustments to the second and third paragraphs of this Article and to the second paragraph of Article 139.

#### *Article 138*

The Court of Justice shall be assisted by eight Advocates General. However, a ninth Advocate General shall be appointed as from the date of accession until 6 October 2000.<sup>(\*)23</sup> It shall be the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases brought before the Court of Justice, in order to assist the Court in the performance of the task assigned to it in Article 136. Should the Court of Justice so request, the Council may, acting unanimously, increase the number of Advocates General and make the necessary adjustments to the third paragraph of Article 139.

#### *Article 139*

The Judges and Advocates General shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognized competence; they shall be appointed by common accord of the governments of the Member States for a term of six years. Every three years there shall be a partial replacement of the Judges. Eight and seven Judges shall be replaced alternately.<sup>(\*)24</sup> Every three years there shall be a partial replacement of the Advocates General. Four Advocates General shall be replaced on each occasion.<sup>(\*)25</sup> Retiring Judges and Advocates General shall be eligible for reappointment. The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

*Article 140*

The Court of Justice shall appoint its Registrar and lay down the rules governing his service.

*Article 140a(\*^26)*

1. A Court of First Instance shall be attached to the Court of Justice with jurisdiction to hear and determine at first instance, subject to a right of appeal to the Court of Justice on points of law only and in accordance with the conditions laid down by the Statute, certain classes of action or proceeding defined in accordance with the conditions laid down in paragraph 2. The Court of First Instance shall not be competent to hear and determine questions referred for a preliminary ruling under Article 150.2. At the request of the Court of Justice and after consulting the European Parliament and the Commission, the Council, acting unanimously, shall determine the classes of action or proceeding referred to in paragraph 1 and the composition of the Court of First Instance and shall adopt the necessary adjustments and additional provisions to the Statute of the Court of Justice. Unless the Council decides otherwise, the provisions of this Treaty relating to the Court of Justice, in particular the provisions of the Protocol on the Statute of the Court of Justice, shall apply to the Court of First Instance.3. The Members of the Court of First Instance shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office; they shall be appointed by common accord of the governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring Members shall be eligible for re appointment.4. The Court of First Instance shall establish its Rules of Procedure in agreement with the Court of Justice. Those rules shall require the unanimous approval of the Council.

*Article 141*

If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

*Article 142*

A Member State which considers that another Member State has failed to fulfil an obligation under this Treaty may bring the matter before the Court of Justice.Before a Member State brings an action against another Member State for an alleged infringement of an obligation under this Treaty, it shall bring the matter before the Commission.The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court of Justice.

*Article 143(\*^27)*

1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice.2. If the Commission considers that the Member State concerned has not taken such measures it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the judgment of the Court of Justice.If the Member State concerned fails to take the necessary measures to comply with the Court's judgment within the time limit laid down by the Commission, the latter may bring the case before the Court of Justice. In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers

appropriate in the circumstances. If the Court of Justice finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it. This procedure shall be without prejudice to Article 142.

#### *Article 144*

The Court of Justice shall have unlimited jurisdiction in:

- a. proceedings instituted under Article 12 to have the appropriate terms fixed for the granting by the Commission of licences or sub licences;
- b. proceedings instituted by persons or undertakings against sanctions imposed on them by the Commission under Article 83.

#### *Article 145*

If the Commission considers that a person or undertaking has committed an infringement of this Treaty to which the provisions of Article 83 do not apply, it shall call upon the Member State having jurisdiction over that person or undertaking to cause sanctions to be imposed in respect of the infringement in accordance with its national law. If the State concerned does not comply with such a request within the period laid down by the Commission, the latter may bring an action before the Court of Justice to have the infringement of which the person or undertaking is accused established.

#### *Article 146(\*^28)*

The Court of Justice shall review the legality of acts of the Council and of the Commission, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis à vis third parties. It shall for this purpose have jurisdiction in actions brought by a Member State, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers. The Court shall have jurisdiction under the same conditions in actions brought by the European Parliament for the purpose of protecting its prerogatives. Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former. The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

#### *Article 147*

If the action is well founded, the Court of Justice shall declare the act concerned to be void. In the case of a regulation, however, the Court of Justice shall, if it considers this necessary, state which of the effects of the regulation which it has declared void shall be considered as definitive.

#### *Article 148*

Should the Council or the Commission, in infringement of this Treaty, fail to act, the Member States and the other institutions of the Community may bring an action before the Court of Justice to have the infringement established. The action shall be admissible only if the institution concerned has first been called upon to act. If, within two months of being so called upon, the institution concerned has not defined its position, the action may be brought within a further period of two months. Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the

Court of Justice that an institution of the Community has failed to address to that person any act other than a recommendation or an opinion.

*Article 149*

The institution whose act has been declared void or whose failure to act has been declared contrary to this Treaty shall be required to take the necessary measures to comply with the judgment of the Court of Justice. This obligation shall not affect any obligation which may result from the application of the second paragraph of Article 188.

*Article 150*

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- a. the interpretation of this Treaty;
- b. the validity and interpretation of acts of the institutions of the Community;
- c. the interpretation of the statutes of bodies established by an act of the Council, save where those statutes provide otherwise.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon. Where any such question is raised in a case pending before a court or tribunal of a Member State, against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

*Article 151*

The Court of Justice shall have jurisdiction in disputes relating to the compensation for damage provided for in the second paragraph of Article 188.

*Article 152*

The Court of Justice shall have jurisdiction in any dispute between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment.

*Article 153*

The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Community, whether that contract be governed by public or private law.

*Article 154*

The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of this Treaty if the dispute is submitted to it under a special agreement between the parties.

*Article 155*

Save where jurisdiction is conferred on the Court of Justice by this Treaty, disputes to which the

Community is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

#### *Article 156*

Notwithstanding the expiry of the period laid down in the third paragraph of Article 146, any party may, in proceedings in which a regulation of the Council or of the Commission is in issue, plead the grounds specified in the first paragraph of Article 146, in order to invoke before the Court of Justice the inapplicability of that regulation.

#### *Article 157*

Save as otherwise provided in this Treaty, actions brought before the Court of Justice shall not have suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

#### *Article 158*

The Court of Justice may in any cases before it prescribe any necessary interim measures.

#### *Article 159*

The judgments of the Court of Justice shall be enforceable under the conditions laid down in Article 164.

#### *Article 160*

The Statute of the Court of Justice is laid down in a separate Protocol. The Council may, acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, amend the provisions of Title III of the Statute.<sup>([\\*^29](#))</sup> The Court of Justice shall adopt its Rules of Procedure. These shall require the unanimous approval of the Council.

### **Section 5<sup>([\\*^30](#))</sup>**

#### **The Court of Auditors**

##### *Article 160a*

The audit shall be carried out by the Court of Auditors.

##### *Article 160b*

1. The Court of Auditors shall consist of 15 Members.<sup>([\\*^31](#))</sup> 2. The Members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective countries to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt. 3. The Members of the Court of Auditors shall be appointed for a term of six years by the Council, acting unanimously after consulting the European Parliament. However, when the first appointments are made, four Members of the Court of Auditors, chosen by lot, shall be appointed for a term of office of four years only. The Members of the Court of Auditors shall be eligible for reappointment. They shall elect the President of the Court of Auditors from among their number for a term of three years. The President may be re-elected. 4. The Members of the Court of Auditors shall, in the general interest of the Community, be completely independent in the performance of their duties. In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action

incompatible with their duties.5. The Members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.6. Apart from normal replacement, or death, the duties of a Member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 7. The vacancy thus caused shall be filled for the remainder of the Member's term of office. Save in the case of compulsory retirement, Members of the Court of Auditors shall remain in office until they have been replaced.7. A Member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.8. The Council, acting by a qualified majority, shall determine the conditions of employment of the President and the Members of the Court of Auditors and in particular their salaries, allowances and pensions. It shall also, by the same majority, determine any payment to be made instead of remuneration.9. The provisions of the Protocol on the privileges and immunities of the European Communities applicable to the Judges of the Court of Justice shall also apply to the Members of the Court of Auditors.

#### *Article 160c*

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Community. It shall also examine the accounts of all revenue and expenditure of all bodies set up by the Community in so far as the relevant constituent instrument does not preclude such examination. The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. The audit of revenue shall be carried out on the basis of the amounts established as due and the amounts actually paid to the Community. The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made. These audits may be carried out before the closure of accounts for the financial year in question.3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Community and in the Member States. In the Member States the audit shall be carried out in liaison with the national audit bodies or, if these do not have the necessary powers, with the competent national departments. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit. The other institutions of the Community and the national audit bodies or, if these do not have the necessary powers, the competent national department, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions of the Community and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the Official Journal of the European Communities. The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions of the Community. It shall adopt its annual reports, special reports or opinions by a majority of its Members. It shall assist the European Parliament and the Council in exercising their powers of control over the implementation of the budget.

## **CHAPTER 2**

### **PROVISIONS COMMON TO SEVERAL INSTITUTIONS**

#### *Article 161*

In order to carry out their task the Council and the Commission shall, in accordance with the provisions of this Treaty, make regulations, issue directives, take decisions, make recommendations or deliver opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. A decision shall be binding in its entirety upon those to whom it is addressed. Recommendations and opinions shall have no binding force.

#### *Article 162*

Regulations, directives and decisions of the Council and of the Commission shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty.

#### *Article 163*

Regulations shall be published in the Official Journal of the European Communities. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following their publication. Directives and decisions shall be notified to those to whom they are addressed and shall take effect upon such notification.

#### *Article 164*

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission, to the Court of Justice and to the Arbitration Committee set up by Article 18. When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority. Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

### **CHAPTER 3**

#### **THE ECONOMIC AND SOCIAL COMMITTEE**

#### *Article 165*

An Economic and Social Committee is hereby established. It shall have advisory status. The Committee shall consist of representatives of the various categories of economic and social activity.

#### *Article 166* ([\\*^32](#))

The number of members of the Economic and Social Committee shall be as follows:

Belgium	12
Denmark	9
Germany	24
Greece	12
Spain	21
France	24
Ireland	9
Italy	24
Luxembourg	6



Netherlands	12
Austria	12
Portugal	12
Finland	9
Sweden	12
United Kingdom	24(*)
(*) First paragraph as amended by Article 23 AA A/FIN/SWE in the version resulting from Article 14 AD AA A/FIN/SWE.	

The members of the Committee shall be appointed by the Council, acting unanimously, for four years. Their appointments shall be renewable. The members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of the Community. The Council, acting by a qualified majority, shall determine the allowances of members of the Committee.

#### *Article 167*

1. For the appointment of the members of the Committee, each Member State shall provide the Council with a list containing twice as many candidates as there are seats allotted to its nationals. The composition of the Committee shall take account of the need to ensure adequate representation of the various categories of economic and social activity. 2. The Council shall consult the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors to which the activities of the Community are of concern.

#### *Article 168(\*^33)*

The Committee shall elect its chairman and officers from among its members for a term of two years. It shall adopt its Rules of Procedure. The Committee shall be convened by its chairman at the request of the Council or of the Commission. It may also meet on its own initiative.

#### *Article 169*

The Committee may be divided into specialized sections. These specialized sections shall operate within the general terms of reference of the Committee. They may not be consulted independently of the Committee. Subcommittees may also be established within the Committee to prepare, on specific questions or in specific fields, draft opinions to be submitted to the Committee for its consideration. The Rules of Procedure shall lay down the methods of composition and the terms of reference of the specialized sections and of the subcommittees.

#### *Article 170(\*^34)*

The Committee must be consulted by the Council or by the Commission where this Treaty so provides. The Committee may be consulted by these institutions in all cases in which they consider it appropriate. It may issue an opinion on its own initiative in cases in which it considers such action appropriate. The Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time limit, the absence of an opinion shall not prevent further action. The opinion of the Committee and that of the specialized section, together with a record of the proceedings, shall be forwarded to the Council and to the Commission.

### TITLE IV

#### Financial provisions

### Article 171

1. Estimates shall be drawn up for each financial year of all revenue and expenditure of the Community, other than those of the Agency and the Joint Undertakings, and such revenue and expenditure shall be shown either in the operating budget or in the research and investment budget. The revenue and expenditure shown in each budget shall be in balance. 2. The revenue and expenditure of the Agency, which shall operate in accordance with commercial principles, shall be budgeted for in a special account. The manner of estimating, implementing and auditing such revenue and expenditure shall be laid down, with due regard to the statutes of the Agency, in financial regulations made pursuant to Article 183. 3. The estimates of revenue and expenditure, together with the operating accounts and the balance sheets of the Joint Undertakings for each financial year, shall be placed before the Commission, the Council and the European Parliament in accordance with the statutes of those undertakings.

### Article 172

*(Paragraphs 1, 2 and 3 repealed)*

4. Loans for the financing of research or investment shall be raised on terms fixed by the Council in the manner provided for in Article 177(5). The Community may borrow on the capital market of a Member State, either in accordance with the legal provisions applying to internal issues, or, if there are no such provisions in a Member State, after the Member State concerned and the Commission have conferred together and have reached agreement upon the proposed loan. The competent authorities of the Member State concerned may refuse to give their assent only if there is reason to fear serious disturbances on the capital market of that State.

### Article 173(\*^35)

Without prejudice to other revenue, the budget shall be financed wholly from own resources. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall lay down provisions relating to the system of own resources of the Community, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

### Article 173a(\*^36)

With a view to maintaining budgetary discipline, the Commission shall not make any proposal for a Community act, or alter its proposals, or adopt any implementing measure which is likely to have appreciable implications for the budget without providing the assurance that that proposal or that measure is capable of being financed within the limit of the Community's own resources arising under provisions laid down by the Council pursuant to Article 173.

### Article 174

1. The expenditure shown in the operating budget shall include in particular:
  - a. administrative expenditure;
  - b. expenditure relating to safeguards and to health and safety.
2. The expenditure shown in the research and investment budget shall include in particular:
  - a. expenditure relating to the implementation of the Community research programme;

- b. any participation in the capital of the Agency and in its investment expenditure;
- c. expenditure relating to the equipment of training establishments;
- d. any participation in Joint Undertakings or in certain joint operations.

#### *Article 175*

The expenditure shown in the operating budget shall be authorized for one financial year, unless the regulations made pursuant to Article 183 provide otherwise. In accordance with conditions to be laid down pursuant to Article 183, any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only. Appropriations to cover expenditure shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided, as far as may be necessary, in accordance with the regulations made pursuant to Article 183. The expenditure of the European Parliament, the Council, the Commission and the Court of Justice shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.

#### *Article 176*

1. Subject to the limits resulting from programmes or decisions involving expenditure which, in pursuance of this Treaty, require the unanimous approval of the Council, allocations for research and investment expenditure shall include:
  - a. commitment appropriations, covering a series of items which constitute a separate unit and form a coherent whole;
  - b. payment appropriations which represent the maximum amount payable each year in respect of the commitments entered into under subparagraph (a).
2. The schedule of due dates for commitments and payments shall be annexed to the corresponding draft budget proposed by the Commission.
3. Appropriations for research and investment shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided, as far as may be necessary, in accordance with the regulations made pursuant to Article 183.
4. Unused payment authorizations shall be carried forward to the next financial year by decision of the Commission, unless the Council decides otherwise.

#### *Article 177*([\\*^37](#))([\\*^38](#))

1. The financial year shall run from 1 January to 31 December. Within the meaning of this Article, 'budget' shall include the operating budget and the research and investment budget.
2. Each institution of the Community shall, before 1 July, draw up estimates of its expenditure. The Commission shall consolidate these estimates in a preliminary draft budget. It shall attach thereto an opinion which may contain different estimates. The preliminary draft budget shall include an estimate of revenue and an estimate of expenditure.
3. The Commission shall place the preliminary draft budget before the Council not later than 1 September of the year preceding that in which the budget is to be implemented. The Council shall consult the Commission and, where appropriate, the other institutions concerned whenever it intends to depart from the preliminary draft budget. The Council shall, acting by a qualified majority, establish the draft budget and forward it to the European Parliament.
4. The draft budget shall be placed before the European Parliament not later than 5 October of the year preceding that in which the budget is to be implemented. The European Parliament shall have the right to amend the draft budget acting by a majority of its Members, and to propose to the Council, acting by an absolute majority of the votes cast, modifications to the draft

budget relating to expenditure necessarily resulting from this Treaty or from acts adopted in accordance therewith. If, within 45 days of the draft budget being placed before it, the European Parliament has given its approval, the budget shall stand as finally adopted. If within this period the European Parliament has not amended the draft budget or proposed any modifications thereto, the budget shall be deemed to be finally adopted. If within this period the European Parliament has adopted amendments or proposed modifications, the draft budget together with the amendments or proposed modifications shall be forwarded to the Council.

5. After discussing the draft budget with the Commission and, where appropriate, with the other institutions concerned, the Council shall act under the following conditions:

- a. the Council may, acting by a qualified majority, modify any of the amendments adopted by the European Parliament;
- b. with regard to the proposed modifications:
  - where a modification proposed by the European Parliament does not have the effect of increasing the total amount of the expenditure of an institution, owing in particular to the fact — that the increase in expenditure which it would involve would be expressly compensated by one or more proposed modifications correspondingly reducing expenditure, the Council may, acting by a qualified majority, reject the proposed modification. In the absence of a decision to reject it, the proposed modification shall stand as accepted;
  - where a modification proposed by the European Parliament has the effect of increasing the total amount of the expenditure of an institution, the Council may, acting by a qualified majority, accept this proposed modification. In the absence of a decision to accept it, the proposed modification shall stand as rejected;
  - where, in pursuance of the two preceding subparagraphs, the Council has rejected a proposed modification, it may, acting by a qualified majority, either retain the amount shown in the draft budget or fix another amount.

The draft shall be modified on the basis of the proposed modifications accepted by the Council. If, within 15 days of the draft budget being placed before it, the Council has not modified any of the amendments adopted by the European Parliament and if the modifications proposed by the latter have been accepted, the budget shall be deemed to be finally adopted. The Council shall inform the European Parliament that it has not modified any of the amendments and that the proposed modifications have been accepted. If within this period the Council has modified one or more of the amendments adopted by the European Parliament or if the modifications proposed by the latter have been rejected or modified, the modified draft budget shall again be forwarded to the European Parliament. The Council shall inform the European Parliament of the results of its deliberations. 6. Within 15 days of the draft budget being placed before it, the European Parliament, which shall have been notified of the action taken on its proposed modifications may, acting by a majority of its Members and three fifths of the votes cast, amend or reject the modifications to its amendments made by the Council and shall adopt the budget accordingly. If within this period the European Parliament has not acted, the budget shall be deemed to be finally adopted. 7. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been finally adopted. 8. However, the European Parliament, acting by a majority of its Members and two thirds of the votes cast may, if there are important reasons, reject the draft budget and ask for a new draft to be submitted to it. 9. A maximum rate of increase in relation to the expenditure of the same type to be incurred during the current year shall be fixed annually for the total expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith.

The Commission shall, after consulting the Economic Policy Committee, declare what this maximum rate is, as it results from:

- the trend, in terms of volume, of the gross national product within the Community;
- the average variation in the budgets of the Member States;

and

- the trend of the cost of living during the preceding financial year.

The maximum rate shall be communicated, before 1 May, to all the institutions of the Community. The latter shall be required to conform to this during the budgetary procedure, subject to the provisions of the fourth and fifth subparagraphs of this paragraph. If, in respect of expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith, the actual rate of increase in the draft budget established by the Council is over half the maximum rate, the European Parliament may, exercising its right of amendment, further increase the total amount of that expenditure to a limit not exceeding half the maximum rate. Where the European Parliament, the Council or the Commission considers that the activities of the Communities require that the rate determined according to the procedure laid down in this paragraph should be exceeded, another rate may be fixed by agreement between the Council, acting by a qualified majority, and the European Parliament, acting by a majority of its members and three fifths of the votes cast.<sup>10</sup> Each institution shall exercise the powers conferred upon it by this Article, with due regard for the provisions of the Treaty and for acts adopted in accordance therewith, in particular those relating to the Communities' own resources and to the balance between revenue and expenditure.

*Article 178(\*<sup>39</sup>)*

If, at the beginning of a financial year, the budget has not yet been voted, a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget in accordance with the provisions of the Regulations made pursuant to Article 183; this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one twelfth of those provided for in the draft budget in the course of preparation. The Council may, acting by a qualified majority, provided that the other conditions laid down in the first subparagraph are observed, authorize expenditure in excess of one twelfth. If the decision relates to expenditure which does not necessarily result from this Treaty or from acts adopted in accordance therewith, the Council shall forward it immediately to the European Parliament; within 30 days the European Parliament, acting by a majority of its Members and three fifths of the votes cast, may adopt a different decision on the expenditure in excess of the one twelfth referred to in the first subparagraph. This part of the decision of the Council shall be suspended until the European Parliament has taken its decision. If, within this period, the European Parliament has not taken a decision which differs from the decision of the Council, the latter shall be deemed to be finally adopted. The decisions referred to in the second and third subparagraphs shall lay down the necessary measures relating to resources to ensure application of this Article.

*Article 179(\*<sup>40</sup>)*

The Commission shall implement the budgets, in accordance with the provisions of the regulations made pursuant to Article 183, on its own responsibility and within the limits of the appropriations. The regulations shall lay down detailed rules for each institution concerning its part in effecting its own expenditure. Within the budgets, the Commission may, subject to the limits and conditions laid down in the regulations made pursuant to Article 183, transfer appropriations from one chapter to another or from one subdivision to another.

*Article 179a(\*^41)*

The Commission shall submit annually to the Council and to the European Parliament the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the assets and liabilities of the Community.

*Article 180*

*(Repealed)*

*Article 180a*

*(Repealed)*

*Article 180b(\*^42)*

1. The European Parliament, acting on a recommendation from the Council which shall act by a qualified majority, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts and the financial statement referred to in Article 179a, the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, and any relevant special reports by the Court of Auditors.2. Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.3. The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council. At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budgets. These reports shall also be forwarded to the Court of Auditors.

*Article 181*

The budgets and the account provided for in Article 171(1) and (2) shall be drawn up in the unit of account determined in accordance with the provisions of the financial regulations made pursuant to Article 183. The financial contributions provided for in Article 172 shall be placed at the disposal of the Community by the Member States in their national currencies. The available balances of these contributions shall be deposited with the Treasuries of Member States or with bodies designated by them. While on deposit, such funds shall retain the value corresponding to the parity, at the date of deposit, in relation to the unit of account referred to in the first paragraph. The balances may be invested on terms to be agreed between the Commission and the Member State concerned.

*Article 182*

1. The Commission may, provided it notifies the competent authorities of the Member States concerned, transfer into the currency of one of the Member States its holdings of currency of another Member State, to the extent necessary to enable them to be used for purposes which come within the scope of this Treaty. The Commission shall as far as possible avoid making such transfers if it possesses cash or liquid assets in the currencies which it needs.2. The Commission shall deal with each Member State through the authority designated by the State concerned. In carrying out financial operations the Commission shall employ the services of the bank of issue of the Member State

concerned or any other financial institutions approved by that State.<sup>3</sup> As regards expenditure which the Community has to incur in the currencies of third countries, the Commission shall, before the budgets are finally adopted, submit to the Council a programme indicating anticipated revenue and expenditure in the different currencies. This programme shall be approved by the Council, acting by a qualified majority. It may be modified in the course of the financial year in accordance with the same procedure.<sup>4</sup> Member States shall provide the Commission with the currency of third countries needed for the expenditure shown in the programme provided for in paragraph 3 according to the scales laid down in Article 172. Amounts collected by the Commission in the currency of third countries shall be transferred to Member States in accordance with the same scales.<sup>5</sup> The Commission may freely make use of any amounts in the currency of third countries derived from loans it has raised in such countries.<sup>6</sup> The Council may, acting unanimously on a proposal from the Commission apply, in whole or in part, to the Agency and to Joint Undertakings the exchange arrangements provided for in the preceding paragraphs, and, where appropriate, adapt these arrangements to their operational requirements.

*Article 183(\*<sup>43</sup>)*

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors, shall:

- a. make Financial Regulations specifying in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;
- b. determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the Community's own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements;
- c. lay down rules concerning the responsibility of financial controllers, authorizing officers and accounting officers, and concerning appropriate arrangements for inspection.

*Article 183a(\*<sup>44</sup>)*

Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests. Without prejudice to other provisions of this Treaty, Member States shall coordinate their actions aimed at protecting the financial interests of the Community against fraud. To this end they shall organize, with the help of the Commission, close and regular cooperation between the competent departments of their administrations.

## TITLE V

### General provisions

*Article 184*

The Community shall have legal personality.

*Article 185*

In each of the Member States, the Community shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Community shall be represented by the Commission.

*Article 186*

*(Article repealed by Article 24(2) of the Merger Treaty)*

*[See Article 24(1) of the Merger Treaty which reads as follows:*

1. The officials and other servants of the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community shall, at the date of entry into force of this Treaty, become officials and other servants of the European Communities and form part of the single administration of these Communities. The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the other institutions concerned, lay down the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of these Communities.]

*Article 187*

The Commission may, within the limits and under the conditions laid down by the Council in accordance with the provisions of this Treaty, collect any information and carry out any checks required for the performance of the tasks entrusted to it.

*Article 188*

The contractual liability of the Community shall be governed by the law applicable to the contract in question. In the case of non contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties. The personal liability of its servants towards the Community shall be governed by the provisions laid down in the Staff Regulations or in the Conditions of Employment applicable to them.

*Article 189*

The seat of the institutions of the Community shall be determined by common accord of the governments of the Member States.

*Article 190*

The rules governing the languages of the institutions of the Community shall, without prejudice to the provisions contained in the Rules of Procedure of the Court of Justice, be determined by the Council, acting unanimously.

*Article 191*

*(Article repealed by the second paragraph of Article 28 of the Merger Treaty)* *[See the first paragraph of Article 28 of the Merger Treaty which reads as follows:* The European Communities shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks, under the conditions laid down in the Protocol annexed to this Treaty. The same shall apply to the European Investment Bank.]

*Article 192*

Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardize the attainment of the objectives of this



Treaty.

*Article 193*

Member States undertake not to submit a dispute concerning the interpretation or application of this Treaty to any method of settlement other than those provided for therein.

*Article 194*

1. The members of the institutions of the Community, the members of committees, the officials and other servants of the Community and any other persons who by reason of their duties or their public or private relations with the institutions or installations of the Community or with Joint Undertakings are called upon to acquire or obtain cognizance of any facts, information, knowledge, documents or objects which are subject to a security system in accordance with provisions laid down by a Member State or by an institution of the Community, shall be required, even after such duties or relations have ceased, to keep them secret from any unauthorized person and from the general public. Each Member State shall treat any infringement of this obligation as an act prejudicial to its rules on secrecy and as one falling, both as to merits and jurisdiction, within the scope of its laws relating to acts prejudicial to the security of the State or to disclosure of professional secrets. Such Member State shall, at the request of any Member State concerned or of the Commission, prosecute anyone within its jurisdiction who commits such an infringement. 2. Each Member State shall communicate to the Commission all provisions regulating within its territories the classification and secrecy of information, knowledge, documents or objects covered by this Treaty. The Commission shall ensure that these provisions are communicated to the other Member States. Each Member State shall take all appropriate measures to facilitate the gradual establishment of as uniform and comprehensive a security system as possible. The Commission may, after consulting the Member States concerned, make recommendations for this purpose. 3. The institutions of the Community, their installations and also the Joint Undertakings shall be required to apply the rules of the security system in force in the territory in which each of them is situated. 4. Any authorization granted either by an institution of the Community or by a Member State to a person carrying out his activities within the field covered by this Treaty to have access to facts, information, documents or objects covered by this Treaty which are subject to a security system, shall be recognized by every other institution and every other Member State. 5. The provisions of this Article shall not prevent application of special provisions resulting from agreements concluded between a Member State and a third State or an international organization.

*Article 195*

The institutions of the Community, the Agency and the Joint Undertakings shall, in applying this Treaty, comply with the conditions of access to ores, source materials and special fissile materials laid down in national rules and regulations made for reasons of public policy or public health.

*Article 196*

For the purposes of this Treaty, save as otherwise provided therein:

- a. 'person' means any natural person who pursues all or any of his activities in the territories of Member States within the field specified in the relevant chapter of this Treaty;
- b. 'undertaking' means any undertaking or institution which pursues all or any of its activities in the territories of Member States within the field specified in the relevant Chapter of this Treaty, whatever its public or private legal status.

*Article 197*

For the purposes of this Treaty:

1. 'Special fissile materials' means plutonium 239; uranium 233; uranium enriched in uranium 235 or uranium 233; and any substance containing one or more of the foregoing isotopes and such other fissile materials as may be specified by the Council, acting by a qualified majority on a proposal from the Commission; the expression 'special fissile materials' does not, however, include source materials.
2. 'Uranium enriched in uranium 235 or uranium 233' means uranium containing uranium 235 or uranium 233 or both in an amount such that the abundance ratio of the sum of these isotopes to isotope 238 is greater than the ratio of isotope 235 to isotope 238 occurring in nature.
3. 'Source materials' means uranium containing the mixture of isotopes occurring in nature; uranium whose content in uranium 235 is less than the normal; thorium; any of the foregoing in the form of metal, alloy, chemical compound or concentrate; any other substance containing one or more of the foregoing in such a concentration as shall be specified by the Council, acting by a qualified majority on a proposal from the Commission.
4. 'Ores' means any ore containing, in such average concentration as shall be specified by the Council acting by a qualified majority on a proposal from the Commission, substances from which the source materials defined above may be obtained by the appropriate chemical and physical processing.

*Article 198*

Save as otherwise provided, this Treaty shall apply to the European territories of Member States and to non European territories under their jurisdiction. It shall also apply to the European territories for whose external relations a Member State is responsible.

Notwithstanding the previous paragraphs:

- a. This Treaty shall not apply to the Faeroe Islands (\*<sup>45</sup>). This Treaty shall not apply to Greenland (\*<sup>45bis</sup>).
- b. This Treaty shall not apply to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus.
- c. This Treaty shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not listed in Annex IV to the Treaty establishing the European Community.
- d. This Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972. (\*<sup>46</sup>)(\*<sup>47</sup>)
- e. This Treaty shall not apply to the Åland Islands. The Government of Finland may, however, give notice, by a declaration deposited when ratifying this Treaty with the Government of the Italian Republic, that the Treaty shall apply to the Åland Islands in accordance with the provisions set out in Protocol No 2 to the Act concerning the conditions of accession of the

Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded. The Government of the Italian Republic shall transmit a certified copy of any such declaration to the Member States. (\*^48)

*Article 199*

It shall be for the Commission to ensure the maintenance of all appropriate relations with the organs of the United Nations, of its specialized agencies and of the General Agreement on Tariffs and Trade. The Commission shall also maintain such relations as are appropriate with all international organizations.

*Article 200*

The Community shall establish all appropriate forms of cooperation with the Council of Europe.

*Article 201(\*^49)*

The Community shall establish close cooperation with the Organization for Economic Cooperation and Development, the details of which shall be determined by common accord.

*Article 202*

The provisions of this Treaty shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of this Treaty.

*Article 203*

If action by the Community should prove necessary to attain one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.

*Article 204*

*(Repealed)*

*Article 205*

*(Repealed)*

*Article 206(\*^50)*

The Community may conclude with one or more States or international organizations agreements establishing an association involving reciprocal rights and obligations, common action and special procedures. These agreements shall be concluded by the Council, acting unanimously after consulting the European Parliament. Where such agreements call for amendments to this Treaty, these amendments shall first be adopted in accordance with the procedure laid down in Article N of the Treaty on European Union.

*Article 207*

The Protocols annexed to this Treaty by common accord of the Member States shall form an integral

part thereof.

*Article 208*

This Treaty is concluded for an unlimited period.

**TITLE VI**

**Provisions relating to the initial period**

**Section 1**

**Setting up of the institutions**

*Article 209*

The Council shall meet within one month of the entry into force of this Treaty.

*Article 210*

The Council shall, within three months of its first meeting, take all appropriate measures to constitute the Economic and Social Committee.

*Article 211*

The Assembly<sup>([\\*^51](#))</sup> shall meet within two months of the first meeting of the Council, having been convened by the President of the Council, in order to elect its officers and draw up its Rules of Procedure. Pending the election of its officers, the oldest member shall take the chair.

*Article 212*

The Court of Justice shall take up its duties as soon as its members have been appointed. Its first President shall be appointed for three years in the same manner as its members. The Court of Justice shall adopt its Rules of Procedure within three months of taking up its duties. No matter may be brought before the Court of Justice until its Rules of Procedure have been published. The time within which an action must be brought shall run only from the date of this publication. Upon his appointment, the President of the Court of Justice shall exercise the powers conferred upon him by this Treaty.

*Article 213*

The Commission shall take up its duties and assume the responsibilities conferred upon it by this Treaty as soon as its Members have been appointed. Upon taking up its duties, the Commission shall undertake the studies and arrange the contacts with Member States, undertakings, workers and consumers needed for making an overall survey of the situation of nuclear industries in the Community. The Commission shall submit a report on this subject to the European Parliament within six months.

*Article 214*

1. The first financial year shall run from the date when this Treaty enters into force until 31 December following. Should this Treaty, however, enter into force during the second half of the year, the first financial year shall run until 31 December of the following year. 2. Until the budgets

for the first financial year have been established, Member States shall make the Community interest free advances which shall be deducted from their financial contributions to the implementation of these budgets.<sup>3</sup> Until the Staff Regulations of officials and the Conditions of Employment of other servants of the Community provided for in Article 186 have been laid down, each institution shall recruit the staff it needs and to this end conclude contracts of limited duration. Each institution shall examine together with the Council any question concerning the number, remuneration and distribution of posts.

## **Section 2**

### **Provisions for the initial application of this Treaty**

#### *Article 215*

1. An initial research and training programme, which is set out in Annex V to this Treaty and the cost of which shall not, unless the Council unanimously decides otherwise, exceed 215 million EPU units of account, shall be carried out within five years of the entry into force of this Treaty.<sup>2</sup> A breakdown of the expenditure necessary for the implementation of this programme is set out by way of illustration under main subdivisions in Annex V. The Council may, acting by a qualified majority on a proposal from the Commission, modify this programme.

#### *Article 216*

The Commission proposals on the way in which the institution of university status referred to in Article 9 is to function shall be submitted to the Council within one year of the entry into force of this Treaty.

#### *Article 217*

The security regulations provided for in Article 24 concerning the security gradings applicable to the dissemination of information shall be adopted by the Council within six months of the entry into force of this Treaty.

#### *Article 218*

The basic standards shall be determined in accordance with the provisions of Article 31 within one year of the entry into force of this Treaty.

#### *Article 219*

Provisions laid down by law, regulation or administrative action to ensure the protection of the health of the general public and of workers in the territories of Member States against the dangers arising from ionizing radiations shall, in accordance with Article 33, be communicated to the Commission by these States within three months of the entry into force of this Treaty.

#### *Article 220*

The Commission proposals relating to the statutes of the Agency which are provided for in Article 54 shall be submitted to the Council within three months of the entry into force of this Treaty.

## **Section 3**

### **Transitional provisions**

### *Article 221*

The provisions of Articles 14 to 23 and of Articles 25 to 28 shall apply to patents, provisionally protected patent rights and utility models, and also to patent and utility model applications in existence before the entry into force of this Treaty, under the following conditions.

1. When assessing the period of time referred to in Article 17(2), allowance shall be made, in favour of the owner, for the new situation created by the entry into force of this Treaty.
2. With regard to the communication of an invention which is not secret, where either or both of the periods of three and eighteen months referred to in Article 16 have expired at the date on which this Treaty enters into force, a further period of six months shall run from that date.

If either or both of those periods remain unexpired at that date, they shall be extended by six months from the date of their normal expiry.

3. The same provisions shall apply to the communication of a secret invention in accordance with Article 16 and Article 25(1); in such case, however, the date of entry into force of the security regulations referred to in Article 24 shall be the date taken as the starting point for the new period or for the extension of a current period.

### *Article 222*

During the period between the date of entry into force of this Treaty and the date fixed by the Commission on which the Agency takes up its duties, agreements and contracts for the supply of ores, source materials or special fissile materials shall be concluded or renewed only with the prior approval of the Commission. The Commission shall refuse to approve the conclusion or renewal of any agreements and contracts which it considers would prejudice the implementation of this Treaty. It may in particular make its approval dependent upon the insertion in agreements and contracts of clauses permitting the Agency to take part in carrying them out.

### *Article 223*

By way of derogation from the provisions of Article 60, reactors installed in the territories of a Member State which may go critical before the expiry of a period of seven years from the date of entry into force of this Treaty shall, during a period of not more than 10 years from that date, in order to take account of work and studies already initiated, be granted priority which may be exercised in respect both of supplies of ores or source materials coming from the territories of that State and also of supplies of source materials or special fissile materials which are the subject of a bilateral agreement concluded before the entry into force of this Treaty and communicated to the Commission in accordance with Article 105. The same priority shall be granted during the same period of 10 years in respect of supplies for any isotope separation plant, whether or not it constitutes a Joint Undertaking, which comes into operation in the territory of a Member State before the expiry of a period of seven years from the date of entry into force of this Treaty. The Agency shall conclude the appropriate contracts, after the Commission has ascertained that the conditions for the exercise of the right of priority have been fulfilled.

## **Final provisions**

### *Article 224*

This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government

of the Italian Republic. This Treaty shall enter into force on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step. If, however, such deposit is made less than 15 days before the beginning of the following month, this Treaty shall not enter into force until the first day of the second month after the date of such deposit.

*Article 225*

This Treaty, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the governments of the other signatory States.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Treaty.

Done at Rome this twenty fifth day of March in the year one thousand nine hundred and fifty seven.

*P. H. SPAAK*

*J. Ch. SNOY ET D'OPPUERS*

*ADENAUER*

*HALLSTEIN*

*PINEAU*

*M. FAURE*

*Antonio SEGNI*

*Gaetano MARTINO*

*BECH*

*Lambert SCHAUS*

*J. LUNS*

*J. LINTHORST HOMAN*

(\*)

**EDITORIAL NOTE:**

**The reader will find below a complete amended version of the Treaty establishing the European Community as it results from Title IV of the TEU: Provisions amending the Treaty establishing the European Atomic Energy Community [Article I(1) to (29)].**

(\*<sup>2</sup>) As amended by Article I(1) TEU.

(\*<sup>3</sup>) As inserted by Article I(2) TEU.

(\*<sup>4</sup>) On this point, see also Article 7(1) and (2) of the Act concerning the election of the representatives of the European Parliament.

(\*<sup>5</sup>) Paragraph 3 as amended by Article I(3) TEU.

(\*<sup>6</sup>) First paragraph as amended by Article 27(1) of the Merger Treaty.

- (\*^7) For the second sentence of this paragraph, see also Article 10(3) of the Act concerning the election of the representatives of the European Parliament.
- (\*^8) As amended by Article I(4) TEU.
- (\*^9) As inserted by Article I(5) TEU.
- (\*^10) *Second subparagraph as amended by Article 12 AA A/FIN/SWE. See also Council Decision of 1 January 1995 determining the order in which the office of President of the Council shall be held (see Volume I, p. 865).*
- (\*^11) As inserted by Article I(5) TEU.
- (\*^12) Paragraph 2 as amended by Article 15 AA A/FIN/SWE in the version resulting from Article 8 AD AA A/FIN/SWE.
- (\*^13) As inserted by Article I(6) TEU.
- (\*^14) As inserted by Article I(7) TEU.
- (\*^15) As inserted by Article I(8) TEU.
- (\*^16) First subparagraph of paragraph 1 as amended by Article 16 AA A/FIN/SWE in the version resulting from Article 9 AD AA A/FIN/SWE.
- (\*^17) As inserted by Article I(8) TEU.
- (\*^18) As inserted by Article I(8) TEU.
- (\*^19) First subparagraph of paragraph 2 as amended by Article 26 AA A/FIN/SWE in the version resulting from Article 17 AD AA A/FIN/SWE.
- (\*^20) As amended by Article I(10) TEU.
- (\*^21) First paragraph as amended by Article 17 AA A/FIN/SWE in the version resulting from Article 10 AD AA A/FIN/SWE.
- (\*^22) Second paragraph as amended by Article 18 AA A/FIN/SWE.
- (\*^23) First paragraph as amended by Article 20 AA A/FIN/SWE in the version resulting from Article 11 AD AA A/FIN/SWE.
- (\*^24) Second and third paragraphs as amended by Article 21 AA A/FIN/SWE in the version resulting from Article 12 AD AA A/FIN/SWE.
- (\*^25) Second and third paragraphs as amended by Article 21 AA A/FIN/SWE in the version resulting from Article 12 AD AA A/FIN/SWE.
- (\*^26) As amended by Article I(11) TEU.
- (\*^27) As amended by Article I(12) TEU.
- (\*^28) As amended by Article I(13) TEU.
- (\*^29) Second paragraph inserted by Article 27 of the SEA.
- (\*^30) **Section 5 (Articles 160a to 160c, formerly Articles 180 and 180a) as inserted by Article I(14) TEU.**
- (\*^31) Paragraph 1 as amended by Article 22 AA A/FIN/SWE in the version resulting from Article 13 AD AA A/FIN/SWE.
- (\*^32) As amended by Article I(15) TEU.
- (\*^33) As amended by Article I(16) TEU.
- (\*^34) As amended by Article I(17) TEU.
- (\*^35) As amended by Article I(19) TEU.
- (\*^36) As inserted by Article I(20) TEU.
- (\*^37) As amended by Article 20 of the Treaty amending Certain Financial Provisions.
- (\*^38) EDITORIAL NOTE:

The Joint Declaration by the European Parliament, the Council and the Commission, adopted on 30 June 1982, on various measures to improve the budgetary procedure is



reproduced on p. 865 of Volume I.

- ([\\*^39](#)) As amended by Article 21 of the Treaty amending Certain Financial Provisions.
- ([\\*^40](#)) As amended by Article I(21) TEU.
- ([\\*^41](#)) As added by Article 22 of the Treaty amending Certain Financial Provisions.
- ([\\*^42](#)) As amended by Article I(23) TEU.
- ([\\*^43](#)) As amended by Article I(24) TEU.
- ([\\*^44](#)) As inserted by Article I(25) TEU.
- ([\\*^45](#)) As amended by Article I(26) TEU.
- ([\\*^45bis](#)) As amended by the second Proces-Verbal of rectification of the TEU, done in Rome on 6 December 1996 and not published in the Official Journal.
- ([\\*^46](#)) See Book II, Volume II, of this edition.
- ([\\*^47](#)) Third paragraph added by Article 27 AA DK/IRL/UK modified by Article 16 AD AA DK/IRL/UK.
- ([\\*^48](#)) Point (e) added by Article 28 AA A/FIN/SWE in the version resulting from Article 19 AD AA A/FIN/SWE.
- ([\\*^49](#)) As amended by Article I(27) TEU.
- ([\\*^50](#)) As amended by Article I(29) TEU.
- ([\\*^51](#)) EDITORIAL NOTE:

Notwithstanding the provisions of Article 3 of the SEA, and for historical reasons, the term ‘Assembly’ has not been replaced by the terms ‘European Parliament’.

## Annexes

### ANNEX I

#### **FIELDS OF RESEARCH CONCERNING NUCLEAR ENERGY REFERRED TO IN ARTICLE 4 OF THIS TREATY**

##### I Raw materials

1. Methods for the prospecting and mining of base materials (uranium, thorium and other products of particular importance in the field of nuclear energy).
2. Methods of concentrating these materials and converting them into technically pure compounds.
3. Methods of converting these technically pure compounds into nuclear grade compounds and metals.
4. Methods for the conversion and processing of these compounds and metals as well as plutonium, uranium 235 or uranium 233, either pure or combined with such compounds or metals into fuel elements by the chemical, ceramic or metallurgical industries.
5. Methods of protecting such fuel elements against corrosion or erosion by external agents.
6. Methods of producing, refining, processing and preserving other special materials used in the field of nuclear energy, in particular:
  - a. moderators, such as heavy water, nuclear grade graphite, beryllium and beryllium oxide;
  - b. structural materials such as zirconium (hafnium free), niobium, lanthanum, titanium, beryllium and their oxides, carbides and other compounds capable of being used in the field of nuclear energy;
  - c. coolants, such as helium, organic liquids, sodium, sodium potassium alloys, bismuth, lead bismuth alloys.
7. Methods of isotope separation:
  - a. of uranium;
  - b. of materials in ponderable quantities which can be used in the production of nuclear energy, such as lithium 6, lithium 7, nitrogen 15 and boron 10;
  - c. of isotopes used in small quantities for research.

##### II Physics applied to nuclear energy

1. Applied theoretical physics:
  - a. low energy nuclear reactions, in particular neutron induced reactions;
  - b. fission;
  - c. interaction of ionizing radiation and photons with matter;
  - d. solid state theory;
  - e. study of fusion, with particular reference to the behaviour of an ionized plasma under the action of electromagnetic forces and to the thermodynamics of extremely high temperatures.
2. Applied experimental physics:

- a. the same subjects as those specified in 1 above;
  - b. study of the properties of transuranic elements of importance in the field of nuclear energy.
3. Reactor calculations:
- a. theoretical macroscopic neutron physics;
  - b. experimental neutron measurements; exponential and critical experiments;
  - c. thermodynamic calculations and calculations of strength of materials;
  - d. corresponding experimental measurements;
  - e. reactor kinetics, reactor control problems and relevant experiments;
  - f. radiation protection calculations and relevant experiments.

### III Physical chemistry of reactors

1. Study of changes in the physical and chemical structure and of alterations in the technical properties of various materials in reactors brought about by:
  - a. heat;
  - b. the nature of the agents with which they are in contact;
  - c. mechanical factors.
2. Study of degradation and other phenomena produced by irradiation in:
  - a. fuel elements;
  - b. structural materials and coolants;
  - c. moderators.
3. Application of analytical chemistry and analytical physical chemistry to reactor components.
4. Physical chemistry of homogeneous reactors: radiochemistry, corrosion.

### IV Processing of radioactive material

1. Methods of extracting plutonium and uranium 233 from irradiated fuels, and possible recovery of uranium or thorium.
2. Chemistry and metallurgy of plutonium.
3. Methods of extracting and chemistry of other transuranic elements.
4. Methods of extracting and chemistry of useful radioisotopes:
  - a. fission products;
  - b. radioisotopes obtained by irradiation.
5. Concentration and storage of useless radioactive waste.

### V Applications of radioisotopes

Application of radioisotopes as active elements or tracers in:

- a. industry and science;
- b. medicine and biology;
- c. agriculture.

#### VI Study of the harmful affects of radiation on living organisms

1. Study of the detection and measurement of harmful radiations.
2. Study of adequate preventive and protective measures and the appropriate safety standards.
3. Study of the treatment of radiation effects.

#### VII Equipment

Studies relating to the construction and improvement of equipment specially intended not only for reactors but also for any of the industrial and research installations required for the research activities listed above. As examples may be mentioned:

1. The following types of mechanical equipment:
  - a. pumps for special fluids;
  - b. heat exchangers;
  - c. apparatus for nuclear physics research, such as neutron velocity selectors;
  - d. remote handling equipment.
2. The following types of electrical equipment:
  - a. instruments for radiation detection and measurement, used particularly in:
    - prospecting for minerals;
    - scientific and technical research;
    - reactor control;
    - health and safety;
  - b. reactor control equipment;
  - c. low energy particle accelerators (up to 10 MeV).

#### VIII Economic aspects of energy production

1. Comparative studies, both theoretical and experimental, of the various reactor types.
2. Technical and economic study of fuel cycles.

**ANNEX II****INDUSTRIAL ACTIVITIES REFERRED TO IN ARTICLE 41 OF THIS TREATY**

1. Mining of uranium and thorium ore.
2. Concentration of such ores.
3. Chemical processing and refining of uranium and thorium concentrates.
4. Preparation of nuclear fuels, in any form.
5. Fabrication of nuclear fuel elements.
6. Production of uranium hexafluoride.
7. Production of enriched uranium.
8. Processing of irradiated fuels for the purpose of separating some or all of the elements contained therein.
9. Production of reactor moderators.
10. Production of hafnium free zirconium or compounds thereof.
11. Nuclear reactors of all types and for all purposes.
12. Facilities for the industrial processing of radioactive waste, set up in conjunction with one or more of the facilities specified in this list.
13. Semi industrial installations intended to prepare the way for the construction of plants involved in any of activities 3 to 10.

**ANNEX III****ADVANTAGES WHICH MAY BE CONFERRED ON JOINT UNDERTAKINGS UNDER  
ARTICLE 48 OF THIS TREATY**

1.
  - a. Recognition that public interest status in conformity with the national laws applies to the acquisition of immovable property required for the establishment of Joint Undertakings.
  - b. Application of national procedure for compulsory acquisition on the grounds of public interest, so that such acquisition may be effected where amicable agreement has not been reached.
2. The right to be granted licences, either through arbitration or under compulsory powers as provided in Articles 17 to 23.
3. Exemption from all duties and charges when Joint Undertakings are established and from all duties on assets contributed.
4. Exemption from all duties and charges levied upon acquisition of immovable property and from all registration and recording charges.
5. Exemption from all direct taxes to which Joint Undertakings, their property, assets and revenue might otherwise be liable.
6. Exemption from all customs duties and charges having equivalent effect and from all prohibitions and restrictions on imports or exports, whether of an economic or of a fiscal nature, with regard to:
  - a. scientific and technical equipment, excluding building materials and equipment for administrative purposes;
  - b. substances which have been or are to be processed in the Joint Undertaking.
7. Exchange arrangements provided for in Article 182(6).
8. Exemption from restrictions on entry and residence for nationals of Member States employed by Joint Undertakings and for their spouses and dependent members of their families.

**ANNEX IV****LIST OF GOODS AND PRODUCTS SUBJECT TO THE PROVISIONS OF CHAPTER 9 ON  
THE NUCLEAR COMMON MARKET**

## List A1

Uranium ores containing more than 5% by weight of natural uranium.

Pitchblende containing more than 5% by weight of natural uranium.

Uranium oxide.

Inorganic compounds of natural uranium other than uranium oxide and uranium hexafluoride.

Organic compounds of natural uranium.

Crude or processed natural uranium.

Alloys containing plutonium.

Organic or inorganic compounds of uranium enriched in organic or inorganic compounds or uranium 235.

Organic or inorganic compounds or uranium 233.

Thorium enriched in uranium 233.

Organic or inorganic compounds of plutonium.

Uranium enriched in plutonium.

Uranium enriched in uranium 235.

Alloys containing uranium enriched in uranium 235 or uranium 233.

Plutonium.

Uranium 233.

Uranium hexafluoride.

Monazite.

Thorium ores containing more than 20% by weight of thorium.

Urano thorianite containing more than 20% of thorium.

Crude or processed thorium.

Thorium oxide.

Inorganic compounds of thorium other than thorium oxide.

Organic compounds of thorium.

List A2

Deuterium and its compounds (including heavy water) in which the ratio of the number of deuterium atoms to normal hydrogen atoms exceeds 1 : 5 000.

Heavy paraffin in which the ratio of the number of deuterium atoms to normal hydrogen atoms exceeds 1 : 5 000.

Mixtures and solutions in which the ratio of the number of deuterium atoms to normal hydrogen atoms exceeds 1 : 5 000.

Nuclear reactors.

Equipment for the separation of uranium isotopes by gaseous diffusion or other methods.

Equipment for the production of deuterium, its compounds (including heavy water) and derivatives, and mixtures or solutions containing deuterium in which the ratio of the number of deuterium atoms to normal hydrogen atoms exceeds 1 : 5 000:

- equipment operating by the electrolysis of water;
- equipment operating by the distillation of water, liquid hydrogen, etc.;
- equipment operating by isotope exchange between hydrogen sulphide and water by means of a change of temperature;
- equipment operating by other techniques.

Equipment specially designed for the chemical processing of radioactive material:

- equipment for the separation of irradiated fuel:
  - by chemical process (solvents, precipitation, ion exchange, etc.);
  - by physical processes (fractional distillation, etc.);
- waste processing equipment;
- fuel recycling equipment.

Vehicles specially designed for the transport of highly radioactive substances:

- railway and tramway goods vans, goods wagons and trucks of any gauge;
- motor lorries;
- motorized works trucks for the handling of goods;
- trailers and semi trailers and other non motorized vehicles.



Containers with lead radiation shielding for the transport or storage of radioactive material.

Artificial radioactive isotopes and their inorganic or organic compounds.

Remote controlled mechanical manipulators specially designed for handling highly radioactive substances:

- mechanical handling gear, fixed or mobile, but not being capable of being operated manually.

List B

...(\*^52)

Lithium ores and concentrates.

Nuclear grade metals:

- crude beryllium;
- crude bismuth;
- crude niobium (columbium);
- crude zirconium (hafnium free);
- crude lithium;
- crude aluminium;
- crude calcium;
- crude magnesium.

Boron trifluoride.

Anhydrous hydrofluoric acid.

Chlorine trifluoride.

Bromine trifluoride.

Lithium hydroxide.

Lithium fluoride.

Lithium chloride.

Lithium hydride.

Lithium carbonate.

Nuclear grade beryllium oxide.

Refractory bricks of nuclear grade beryllium oxide.

Other refractory products of nuclear grade beryllium oxide.

Artificial graphite in the form of blocks or bars in which the boron content is less than or equal to one part per million and in which the total microscopic thermal neutron absorption cross section is less than or equal to 5 millibarns.

Artificially separated stable isotopes.

Electromagnetic ion separators, including mass spectrographs and mass spectrometers.

Reactor simulators (special analog computers).

Remote controlled mechanical manipulators:

- hand controlled (i.e. operated manually like a tool).

Liquid metal pumps.

High vacuum pumps.

Heat exchangers specially designed for nuclear power stations.

Radiation detection instruments (and spare parts) of one of the following types, specially designed, or adaptable, for the detection or measurement of nuclear radiation, such as alpha and beta particles, gamma rays, neutrons and protons:

- Geiger counter tubes and proportional counters;
- detection or measuring instruments incorporating Geiger Muller tubes or proportional counters;
- ionization chambers;
- instruments incorporating ionization chambers;
- radiation detection or measuring equipment for mineral prospecting and for reactor, air, water and soil monitoring;
- neutron detector tubes using boron, boron trifluoride, hydrogen or a fissile element;
- detection or measuring instruments incorporating neutron detector tubes using boron, boron trifluoride, hydrogen or a fissile element;
- scintillation crystals, mounted or in a metal casing (solid scintillators);
- detection or measuring instruments incorporating liquid, solid or gaseous scintillators;
- amplifiers specially designed for nuclear measurements, including linear amplifiers, preamplifiers, distributed amplifiers and pulse height analysers;
- coincidence devices for use with radiation detectors;

- electroscopes and electrometers, including dosimeters (but excluding instruments intended for instruction purposes, simple metal leaf electroscopes, dosimeters specially designed for use with medical X ray equipment and electrostatic measuring instruments);
- instruments capable of measuring a current of less than one picoampere;
- photomultiplier tubes with a photocathode which gives a current of at least 10 microamperes per lumen and in which the average amplification is greater than 105, and any other types of electric multiplier activated by positive ions;
- scalers and electronic integrating meters for the detection of radiation.

Cyclotrons, Van de Graaff or Cockcroft Walton electrostatic generators, linear accelerators and other machines capable of imparting an energy greater than 1 MeV to nuclear particles.

Magnets specially designed and constructed for the abovementioned machines and equipment (cyclotrons etc.).

Accelerating and focusing tubes of the type used in mass spectrometers and mass spectrographs.

Intense electronic sources of positive ions intended for use with particle accelerators, mass spectrometers and similar devices.

Anti radiation plate glass:

- cast or rolled plate glass (including wired or flashed glass) in squares or rectangles, surface ground or polished but not further worked;
- cast or rolled plate glass (whether or not ground or polished) cut to shape other than square or rectangular, or curved or otherwise worked (for example, bevelled or engraved);
- safety glass, consisting of toughened or laminated glass, shaped or not.

Airtight clothing affording protection against radiation or radioactive contamination:

- made of plastic;
- made of rubber;
- made of impregnated or coated fabric:
  - for men;
  - for women.

Diphenyl (when it is in fact the aromatic hydrocarbon  $C_6H_5C_6H_5$ ).

Terphenyl.

(\*<sup>52</sup>) Heading deleted by Article 1 of Regulation No 5 of the Council of the European Atomic Energy Community of 22 December 1958 ([OJ 7, 9. 2. 1959](#)).

## ANNEX V

### INITIAL RESEARCH AND TRAINING PROGRAMME REFERRED TO IN ARTICLE 215 OF THIS TREATY

#### I. Programme of the Joint Centre

##### 1. Laboratories, equipment and infrastructure

The Joint Centre shall include:

- a. general laboratories for chemistry, physics, electronics and metal lurgy;
- b. special laboratories for the following subjects:
  - nuclear fusion;
  - separation of isotopes other than uranium 235 (this laboratory shall be equipped with a high resolution electromagnetic separator);
  - prototypes of prospecting instruments;
  - mineralogy;
  - radiobiology;
- c. a bureau of standards specializing in nuclear measurements for isotope analysis and absolute measurements of radiation and neutron absorption, equipped with its own experimental reactor.

##### 2. Documentation, information and training

The Joint Centre shall arrange for a large scale exchange of information, particularly in the following fields:

- raw materials: methods of prospecting, mining, concentration, conversion, processing, etc.;
- physics applied to nuclear energy;
- physical chemistry of reactors;
- processing of radioactive material;
- applications of radioisotopes.

The Joint Centre shall organize specialized courses relating particularly to the training of prospectors and to the applications of radioisotopes.

The health and safety documentation and study section referred to in Article 39 shall collect the necessary documentation and information.

##### 3. Reactor prototypes

A group of experts shall be set up as soon as this Treaty enters into force. After comparing the programmes of the Member States, it shall submit to the Commission, as soon as possible, appropriate recommendations on the choices before it in this field and the ways and means of implementing them.

It is planned to construct three or four low power prototypes and to participate for example, by supplying fuel and moderators in several power reactors. (\*^53)

4. High flux reactor

The Centre shall within the shortest possible time have at its disposal a reactor with a high fast neutron flux for the testing of materials under irradiation.

Preparatory studies shall be undertaken for this purpose as soon as this Treaty enters into force.

The high flux reactor shall be provided with extensive experimental areas and suitable laboratories for users.

II. Research carried out under contract outside the Joint Centre

A considerable part of the research work shall be carried out under contract outside the Joint Centre in accordance with Article 10. Such research contracts may take the following forms.

1. Research complementary to that of the Joint Centre shall be carried out in the fields of nuclear fusion, separation of isotopes other than uranium 235, chemistry, physics, electronics, metallurgy and radiobiology.
2. The Centre may arrange to have use of space for experiments in high flux reactors of Member States. (\*^54)
3. The Centre may make use of the specialized installations of Joint Undertakings to be established in accordance with Chapter 5, by assigning to them by contract certain research of a general scientific nature.

BREAKDOWN BY MAIN HEADINGS

of the expenditure required to carry out the research and training programme

I - JOINT CENTRE

II - RESEARCH CARRIED OUT UNDER CONTRACT OUTSIDE TDE CENTRE

(in millions of EPU units of account)				
	EQUIPMENT	OPERATIONS (1)	EQUIPMENT AND/OR OPERATION	TOTAL
1. <i>Laboratories, equipment and infrastructure:</i>		1st year 1,3		
(a) General laboratories for chemistry, physics, electronics and metallurgy	12	2nd year 4,3		
(b) Special laboratories:		3rd year 6,5		
— nuclear fusion	3,5	4th year 7,4		
— isotope separation (except U 235)	2	5th year 8,5		
	1			

— prospecting et mineralogy		28	
(c) Central Bureau for nuclear measurements	3		
(d) Other equipment for the Centre and its establishments	8		
(e) Infrastructure	8,5		
	38		66
2. <i>Documentation, information and training</i>	1	1st year 0,6	8
		2nd year 1,6	
		3rd year 1,6	
		4th year 1,6	
		5th year 1,6	
		7	
3. <i>Reactor prototypes:</i>		1st year 0,7	
Group of experts to choose prototypes programme			59,3(2) 60
4. <i>High-flux reactor:</i>		4th year 5,2	
Reactor	15		
Laboratory	6	5th year 5,2	
Replacement of equipment	3		
	24	10,4	34,4
1. <i>Work complementary to that of the Centre:</i>			
(a) Chemistry, physics, electronics, metallurgy			25
(b) Nuclear fusion			7,5
(c) isotope separation (except U 235)			1
(d) Radiobiology			3,1
2. <i>Renting of space in high-flux reactors of Member States</i>			6
3. <i>Research carried out in Joint Undertakings</i>			4
			46,6
			46,6
Total			215
(1) Estimate based on a staff of about 1 000.			
(2) Part of this sum may be allocated to work carried out under contract outside the Centre.			

(\*^53) Second subparagraph as amended by Article 1 of the Decision of the Council of the European Atomic Energy Community of 3 July 1961 ([OJ 55, 16. 8. 1961](#)).

(\*^54) Paragraph 2 as amended by Article 1 of the Decision of the Council of the European Atomic Energy Community of 19 July 1960 ([OJ 75, 25. 11. 1960](#)).

## II Protocols

### Protocol on the application of the Treaty establishing the European Atomic Energy Community to the non European parts of the Kingdom of the Netherlands

THE HIGH CONTRACTING PARTIES,

ANXIOUS, at the time of signature of the Treaty establishing the European Atomic Energy Community, to define the scope of the provisions of Article 198 of this Treaty in respect of the Kingdom of the Netherlands,

HAVE AGREED upon the following provisions, which shall be annexed to this Treaty:

The Government of the Kingdom of the Netherlands, by reason of the constitutional structure of the Kingdom resulting from the Statute of 29 December 1954, shall, by way of derogation from Article 198, be entitled to ratify this Treaty either on behalf of the Kingdom of the Netherlands in its entirety or on behalf of the Kingdom in Europe and Netherlands New Guinea. In the event of ratification being limited to the Kingdom in Europe and Netherlands New Guinea, the Government of the Kingdom of the Netherlands may at any time, by notification to the Government of the Italian Republic as depositary of the instruments of ratification, declare this Treaty also applicable either to Surinam, or to the Netherlands Antilles, or to both Surinam and the Netherlands Antilles.

Done at Rome this twenty fifth day of March in the year one thousand nine hundred and fifty seven.

*P. H. SPAAK*

*J. Ch. SNOY ET D'OPPUERS*

*ADENAUER*

*HALLSTEIN*

*PINEAU*

*M. FAURE*

*Antonio SEGNI*

*Gaetano MARTINO*

*BECH*

*Lambert SCHAUS*

*J. LUNS*

*J. LINTHORST HOMAN*

## **Protocol**

### **on the Statute of the Court of Justice of the European Atomic Energy Community**

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY,

DESIRING to lay down the Statute of the Court provided for in Article 160 of this Treaty,

HAVE DESIGNATED as their Plenipotentiaries for this purpose:

HIS MAJESTY THE KING OF THE BELGIANS:

Baron J. Ch. SNOY ET D'OPPUERS, Secretary General of the Ministry of Economic Affairs, Head of the Belgian Delegation to the Intergovernmental Conference;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Professor Dr Carl Friedrich OPHÜLS, Ambassador of the Federal Republic of Germany, Head of the German Delegation to the Intergovernmental Conference;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr Robert MARJOLIN, Professor of Law, Deputy Head of the French Delegation to the Intergovernmental Conference;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr V. BADINI CONFALONIERI, Under Secretary of State in the Ministry of Foreign Affairs, Head of the Italian Delegation to the Intergovernmental Conference;

HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBOURG:

Mr Lambert SCHAUS, Ambassador of the Grand Duchy of Luxembourg, Head of the Luxembourg Delegation to the Intergovernmental Conference;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr J. LINTHORST HOMAN, Head of the Netherlands Delegation to the Intergovernmental Conference;

WHO, having exchanged their full powers, found in good and due form,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Atomic Energy Community.

#### *Article 1*

The Court established by Article 3 of this Treaty shall be constituted and shall function in accordance with the provisions of this Treaty and of this statute.

## **TITLE I**



## **JUDGES AND ADVOCATES GENERAL**

### *Article 2*

Before taking up his duties each Judge shall, in open court, take an oath to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

### *Article 3*

The Judges shall be immune from legal proceedings. After they have ceased to hold office, they shall continue to enjoy immunity in respect of acts performed by them in their official capacity, including words spoken or written. The Court, sitting in plenary session, may waive the immunity. Where immunity has been waived and criminal proceedings are instituted against a Judge, he shall be tried, in any of the Member States, only by the Court competent to judge the members of the highest national judiciary.

### *Article 4*

The Judges may not hold any political or administrative office. They may not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Council. When taking up their duties, they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. Any doubt on this point shall be settled by decision of the Court.

### *Article 5*

Apart from normal replacement, or death, the duties of a Judge shall end when he resigns. Where a Judge resigns, his letter of resignation shall be addressed to the President of the Court for transmission to the President of the Council. Upon this notification a vacancy shall arise on the bench. Save where Article 6 applies, a Judge shall continue to hold office until his successor takes up his duties.

### *Article 6*

A Judge may be deprived of his office or of his right to a pension or other benefits in its stead only if, in the unanimous opinion of the Judges and Advocates General of the Court, he no longer fulfils the requisite conditions or meets the obligations arising from his office. The Judge concerned shall not take part in any such deliberations. The Registrar of the Court shall communicate the decision of the Court to the President of the European Parliament and to the President of the Commission and shall notify it to the President of the Council. In the case of a decision depriving a Judge of his office, a vacancy shall arise on the bench upon this latter notification.

### *Article 7*

A Judge who is to replace a member of the Court whose term of office has not expired shall be appointed for the remainder of his predecessor's term.

### *Article 8*

The provisions of Articles 2 to 7 shall apply to the Advocates General.

## **TITLE II**

## ORGANIZATION

### *Article 9*

The Registrar shall take an oath before the Court to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

### *Article 10*

The Court shall arrange for replacement of the Registrar on occasions when he is prevented from attending the Court.

### *Article 11*

Officials and other servants shall be attached to the Court to enable it to function. They shall be responsible to the Registrar under the authority of the President.

### *Article 12*

On a proposal from the Court, the Council may, acting unanimously, provide for the appointment of Assistant Rapporteurs and lay down the rules governing their service. The Assistant Rapporteurs may be required, under conditions laid down in the Rules of Procedure, to participate in preparatory inquiries in cases pending before the Court and to cooperate with the Judge who acts as Rapporteur. The Assistant Rapporteurs shall be chosen from persons whose independence is beyond doubt and who possess the necessary legal qualifications; they shall be appointed by the Council. They shall take an oath before the Court to perform their duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

### *Article 13*

The Judges, the Advocates General and the Registrar shall be required to reside at the place where the Court has its seat.

### *Article 14*

The Court shall remain permanently in session. The duration of the judicial vacations shall be determined by the Court with due regard to the needs of its business.

### *Article 15* <sup>([\\*^55](#))</sup>

Decisions of the Court shall be valid only when an uneven number of its members is sitting in the deliberations. Decisions of the full Court shall be valid if nine members are sitting. Decisions of the chambers consisting of three or five Judges shall be valid only if three Judges are sitting. Decisions of the chambers consisting of seven Judges shall be valid only if five Judges are sitting. In the event of one of the Judges of a chamber being prevented from attending, a Judge of another chamber may be called upon to sit in accordance with conditions laid down in the Rules of Procedure.

### *Article 16*

No Judge or Advocate General may take part in the disposal of any case in which he has previously taken part as agent or adviser or has acted for one of the parties, or on which he has been called upon to pronounce as a member of a court or tribunal, of a commission of inquiry or in any other capacity. If, for some special reason, any Judge or Advocate General considers that he should not take part in the judgment or examination of a particular case, he shall so inform the President. If, for

some special reason, the President considers that any Judge or Advocate General should not sit or make submissions in a particular case, he shall notify him accordingly. Any difficulty arising as to the application of this Article shall be settled by decision of the Court. A party may not apply for a change in the composition of the Court or of one of its chambers on the grounds of either the nationality of a Judge or the absence from the Court or from the chamber of a Judge of the nationality of that party.

### **TITLE III**

### **PROCEDURE**

#### *Article 17*

The States and the institutions of the Community shall be represented before the Court by an agent appointed for each case; the agent may be assisted by an adviser or a lawyer entitled to practise before a court of a Member State. Other parties must be represented by a lawyer entitled to practise before a court of a Member State. Such agents, advisers and lawyers shall, when they appear before the Court, enjoy the rights and immunities necessary to the independent exercise of their duties, under conditions laid down in the Rules of Procedure. As regards such advisers and lawyers who appear before it, the Court shall have the powers normally accorded to courts of law, under conditions laid down in the Rules of Procedure. University teachers being nationals of a Member State whose law accords them a right of audience shall have the same rights before the Court as are accorded by this Article to lawyers entitled to practise before a court of a Member State.

#### *Article 18*

The procedure before the Court shall consist of two parts: written and oral. The written procedure shall consist of the communication to the parties and to the institutions of the Community whose decisions are in dispute of applications, statements of case, defences and observations, and of replies, if any, as well as of all papers and documents in support or of certified copies of them. Communications shall be made by the Registrar in the order and within the time laid down in the Rules of Procedure. The oral procedure shall consist of the reading of the report presented by a Judge acting as Rapporteur, the hearing by the Court of agents, advisers and lawyers entitled to practise before a court of a Member State and of the submissions of the Advocate General, as well as the hearing, if any, of witnesses and experts.

#### *Article 19*

A case shall be brought before the Court by a written application addressed to the Registrar. The application shall contain the applicant's name and permanent address and the description of the signatory, the name of the party against whom the application is made, the subject matter of the dispute, the submissions and a brief statement of the grounds on which the application is based. The application shall be accompanied, where appropriate, by the measure the annulment of which is sought or, in the circumstances referred to in Article 148 of this Treaty, by documentary evidence of the date on which an institution was, in accordance with that Article, requested to act. If the documents are not submitted with the application, the Registrar shall ask the party concerned to produce them within a reasonable period, but in that event the rights of the party shall not lapse even if such documents are produced after the time limit for bringing proceedings.

#### *Article 20*

A case governed by Article 18 of this Treaty shall be brought before the Court by an appeal addressed to the Registrar. The appeal shall contain the name and permanent address of the applicant and the description of the signatory, a reference to the decision against which the appeal is brought,

the names of the respondents, the subject matter of the dispute, the submissions and a brief statement of the grounds on which the appeal is based. The appeal shall be accompanied by a certified copy of the decision of the Arbitration Committee which is contested. If the Court rejects the appeal, the decision of the Arbitration Committee shall become final. If the Court annuls the decision of the Arbitration Committee, the matter may be re opened, where appropriate, on the initiative of one of the parties in the case, before the Arbitration Committee. The latter shall conform to any decisions on points of law given by the Court.

#### *Article 21*

In the cases governed by Article 150 of this Treaty, the decision of the court or tribunal of a Member State which suspends its proceedings and refers a case to the Court shall be notified to the Court by the court or tribunal concerned. The decision shall then be notified by the Registrar of the Court to the parties, to the Member States and to the Commission, and also to the Council if the act the validity or interpretation of which is in dispute originates from the Council. Within two months of this notification, the parties, the Member States, the Commission and, where appropriate, the Council, shall be entitled to submit statements of case or written observations to the Court.

#### *Article 22*

The Court may require the parties to produce all documents and to supply all information which the Court considers desirable. Formal note shall be taken of any refusal. The Court may also require the Member States and institutions not being parties to the case to supply all information which the Court considers necessary for the proceedings.

#### *Article 23*

The Court may at any time entrust any individual, body, authority, committee or other organization it chooses with the task of giving an expert opinion.

#### *Article 24*

Witnesses may be heard under conditions laid down in the Rules of Procedure.

#### *Article 25*

With respect to defaulting witnesses the Court shall have the powers generally granted to courts and tribunals and may impose pecuniary penalties under conditions laid down in the Rules of Procedure.

#### *Article 26*

Witnesses and experts may be heard on oath taken in the form laid down in the Rules of Procedure or in the manner laid down by the law of the country of the witness or expert.

#### *Article 27*

The Court may order that a witness or expert be heard by the judicial authority of his place of permanent residence. The order shall be sent for implementation to the competent judicial authority under conditions laid down in the Rules of Procedure. The documents drawn up in compliance with the letters rogatory shall be returned to the Court under the same conditions. The Court shall defray the expenses, without prejudice to the right to charge them, where appropriate, to the parties.

#### *Article 28*

A Member State shall treat any violation of an oath by a witness or expert in the same manner as if the offence had been committed before one of its courts with jurisdiction in civil proceedings. At the instance of the Court, the Member State concerned shall prosecute the offender before its competent court.

*Article 29*

The hearing in court shall be public, unless the Court, of its own motion or on application by the parties, decides otherwise for serious reasons.

*Article 30*

During the hearings the Court may examine the experts, the witnesses and the parties themselves. The latter, however, may address the Court only through their representatives.

*Article 31*

Minutes shall be made of each hearing and signed by the President and the Registrar.

*Article 32*

The case list shall be established by the President.

*Article 33*

The deliberations of the Court shall be and shall remain secret.

*Article 34*

Judgments shall state the reasons on which they are based. They shall contain the names of the Judges who took part in the deliberations.

*Article 35*

Judgments shall be signed by the President and the Registrar. They shall be read in open court.

*Article 36*

The Court shall adjudicate upon costs.

*Article 37*

The President of the Court may, by way of summary procedure, which may, in so far as necessary, differ from some of the rules contained in this Statute and which shall be laid down in the Rules of Procedure, adjudicate upon applications to suspend execution, as provided for in Article 157 of this Treaty, or to prescribe interim measures in pursuance of Article 158, or to suspend enforcement in accordance with the last paragraph of Article 164. Should the President be prevented from attending, his place shall be taken by another Judge under conditions laid down in the Rules of Procedure. The ruling of the President or of the Judge replacing him shall be provisional and shall in no way prejudice the decision of the Court on the substance of the case.

*Article 38*

Member States and institutions of the Community may intervene in cases before the Court. The same right shall be open to any other person establishing an interest in the result of any case submitted to the Court, save in cases between Member States, between institutions of the Community or between Member States and institutions of the Community. Submissions made in an application to intervene shall be limited to supporting the submissions of one of the parties.

#### *Article 39*

Where the defending party, after having been duly summoned, fails to file written submissions in defence, judgment shall be given against that party by default. An objection may be lodged against the judgment within one month of it being notified. The objection shall not have the effect of staying enforcement of the judgment by default unless the Court decides otherwise.

#### *Article 40*

Member States, institutions of the Community and any other natural or legal persons may, in cases and under conditions to be determined by the Rules of Procedure, institute third party proceedings to contest a judgment rendered without their being heard, where the judgment is prejudicial to their rights.

#### *Article 41*

If the meaning or scope of a judgment is in doubt, the Court shall construe it on application by any party or any institution of the Community establishing an interest therein.

#### *Article 42*

An application for revision of a judgment may be made to the Court only on discovery of a fact which is of such a nature as to be a decisive factor, and which, when the judgment was given, was unknown to the Court and to the party claiming the revision. The revision shall be opened by a judgment of the Court expressly recording the existence of a new fact, recognizing that it is of such a character as to lay the case open to revision and declaring the application admissible on this ground. No application for revision may be made after the lapse of 10 years from the date of the judgment.

#### *Article 43*

Periods of grace based on considerations of distance shall be determined by the Rules of Procedure. No right shall be prejudiced in consequence of the expiry of a time limit if the party concerned proves the existence of unforeseeable circumstances or of force majeure.

#### *Article 44*

Proceedings against the Community in matters arising from non contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Community. In the latter event the proceedings must be instituted within the period of two months provided for in Article 146; the provisions of the second paragraph of Article 148 shall apply where appropriate.

### **TITLE IV(\*<sup>56</sup>)**

## **THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES**

*Article 45*

Articles 2 to 8 and 13 to 16 of this Statute shall apply to the Court of First Instance and its members. The oath referred to in Article 2 shall be taken before the Court of Justice and the decisions referred to in Articles 3, 4 and 6 shall be adopted by that Court after hearing the Court of First Instance.

*Article 46*

The Court of First Instance shall appoint its Registrar and lay down the rules governing his service. Articles 9, 10 and 13 of this Statute shall apply to the Registrar of the Court of First Instance *mutatis mutandis*. The President of the Court of Justice and the President of the Court of First Instance shall determine, by common accord, the conditions under which officials and other servants attached to the Court of Justice shall render their services to the Court of First Instance to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Court of First Instance under the authority of the President of the Court of First Instance.

*Article 47*

The procedure before the Court of First Instance shall be governed by Title III of this Statute, with the exception of Articles 20 and 21. Such further and more detailed provisions as may be necessary shall be laid down in the Rules of Procedure established in accordance with Article 140a(4) of this Treaty. Notwithstanding the fourth paragraph of Article 18, the Advocate General may make his reasoned submissions in writing.

*Article 48*

Where an application or other procedural document addressed to the Court of First Instance is lodged by mistake with the Registrar of the Court of Justice it shall be transmitted immediately by that Registrar to the Registrar of the Court of First Instance; likewise, where an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of the Court of First Instance, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice. Where the Court of First Instance finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice; likewise, where the Court of Justice finds that an action falls within the jurisdiction of the Court of First Instance, it shall refer that action to the Court of First Instance, whereupon that Court may not decline jurisdiction. Where the Court of Justice and the Court of First Instance are seised of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question, the Court of First Instance may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice shall have delivered judgment. Where applications are made for the same act to be declared void, the Court of First Instance may also decline jurisdiction in order that the Court of Justice may rule on such applications. In the cases referred to in this subparagraph, the Court of Justice may also decide to stay the proceedings before it; in that event, the proceedings before the Court of First Instance shall continue.

*Article 49*

Final decisions of the Court of First Instance, decisions disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility, shall be notified by the Registrar of the Court of First Instance to all parties as well as all Member States and the Community institutions even if they did not intervene in the case before the Court of First Instance.

*Article 50*

An appeal may be brought before the Court of Justice, within two months of the notification of the decision appealed against, against final decisions of the Court of First Instance and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility. Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the Community institutions may bring such an appeal only where the decision of the Court of First Instance directly affects them. With the exception of cases relating to disputes between the Community and its servants, an appeal may also be brought by Member States and Community institutions which did not intervene in the proceedings before the Court of First Instance. Such Member States and institutions shall be in the same position as Member States or institutions which intervened at first instance.

#### *Article 51*

Any person whose application to intervene has been dismissed by the Court of First Instance may appeal to the Court of Justice within two weeks of the notification of the decision dismissing the application. The parties to the proceedings may appeal to the Court of Justice against any decision of the Court of First Instance made pursuant to Article 157 or 158 or the third paragraph of Article 164 of this Treaty within two months from their notification. The appeal referred to in the first two paragraphs of this Article shall be heard and determined under the procedure referred to in Article 37 of this Statute.

#### *Article 52*

An appeal to the Court of Justice shall be limited to points of law. It shall lie on the grounds of lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Community law by the Court of First Instance. No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

#### *Article 53*

Where an appeal is brought against a decision of the Court of First Instance, the procedure before the Court of Justice shall consist of a written part and an oral part. In accordance with conditions laid down in the Rules of Procedure the Court of Justice, having heard the Advocate General and the parties, may dispense with the oral procedure.

#### *Article 54*

Without prejudice to Articles 157 and 158 of this Treaty, an appeal shall not have suspensory effect. By way of derogation from Article 159 of this Treaty, decisions of the Court of First Instance declaring a regulation to be void shall take effect only as from the date of expiry of the period referred to in the first paragraph of Article 50 of this Statute or, if an appeal shall have been brought within that period, as from the date of dismissal of the appeal, without prejudice, however, to the right of a party to apply to the Court of Justice, pursuant to Articles 157 and 158 of this Treaty, for the suspension of the effects of the regulation which has been declared void or for the prescription of any other interim measure.

#### *Article 55*

If the appeal is well founded, the Court of Justice shall quash the decision of the Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment. Where a case is referred back to the Court of First Instance, that Court shall be bound by the decision of the Court of Justice on points of law. When an appeal brought by a Member State or a Community institution, which did



not intervene in the proceedings before the Court of First Instance, is well founded the Court of Justice may, if it considers this necessary, state which of the effects of the decision of the Court of First Instance which has been quashed shall be considered as definitive in respect of the parties to the litigation.

*Article 56*

The Rules of Procedure of the Court provided for in Article 160 of this Treaty shall contain, apart from the provisions contemplated by this statute, any other provisions necessary for applying and, where required, supplementing it.

*Article 57*

The Council may, acting unanimously, make such further adjustments to the provisions of this statute as may be required by reason of measures taken by the Council in accordance with the last paragraph of Article 137 of this Treaty.

*Article 58*

Immediately after the oath has been taken, the President of the Council shall proceed to choose by lot the Judges and the Advocates General whose terms of office are to expire at the end of the first three years in accordance with the second and third paragraphs of Article 139 of this Treaty.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Protocol.

Done at Brussels this seventeenth day of April in the year one thousand nine hundred and fifty seven.

*J. Ch. SNOY ET D'OPPUERS*

*C. F. OPHŪLS*

*Robert MARJOLIN*

*Vittorio BADINI CONFALONIERI*

*Lambert SCHAUS*

*J. LINTHORST HOMAN*

(\*<sup>55</sup>) As amended by Article 19 AA A/FIN/SWE.

(\*<sup>56</sup>) **Inserted by Article 9 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ L 319, 25.11.1988, p. 1). The text of the Decision appears on p. 513 of this volume.**