

Consolidated version of the Treaty establishing the
European Atomic Energy Community 2016/C 203/01

TITLE II

**PROVISIONS FOR THE ENCOURAGEMENT OF
PROGRESS IN THE FIELD OF NUCLEAR ENERGY**

CHAPTER I

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.

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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 organisations 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 of the European Union 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.

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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, insofar 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 organisation 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 authorise 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;

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- (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.

[^{XI}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.

3 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.

4 The provisions of this Article shall not affect those of the Paris Convention for the Protection of Industrial Property.

Editorial Information

- XI** Substituted by [Erratum to the Consolidated version of the Treaty establishing the European Atomic Energy Community \('Official Journal of the European Union' C 84 of 30 March 2010\) \(2010/C 181/01\)](#).

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 of the European Union.

An appeal, having suspensory effect, may be brought by the parties before the Court of Justice of the European Union against a decision of the Arbitration Committee within one month of notification thereof. The Court of Justice of the European Union 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 of the European Union.

The proprietor must be heard in the proceedings before the Court of Justice of the European Union.

If the judgment of the Court of Justice of the European Union 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.

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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.

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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 unauthorised 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 organisation 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, authorise 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 harmonising 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.

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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 form 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 258 and 259 of the Treaty on the Functioning of the European Union, bring the matter before the Court of Justice of the European Union.

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;

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- 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 organisation 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 organisation 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 of the European Union 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.

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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 authorised 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 authorisation 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.

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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 authorisation 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 authorisation 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 organisation, 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

[^{XI}Article 60 shall apply to 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.

Editorial Information

- X1** Substituted by [Erratum to the Consolidated version of the Treaty establishing the European Atomic Energy Community](#) ('Official Journal of the European Union' C 84 of 30 March 2010) (2010/C 181/01).

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.

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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 organisation 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 organisation 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 organisation 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 organisation or national or to any other consignee likewise outside the Community designated by such organisation 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 1 January 1958, 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.

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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 organisation 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 of the European Union for an order to ensure that the inspection be carried out compulsorily. The President of the Court of Justice of the European Union 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 of the European Union 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 258 and 259 of the Treaty on the Functioning of the European Union, refer the matter to the Court of Justice of the European Union 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.

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By way of derogation from Article 157, appeals brought before the Court of Justice of the European Union against decisions of the Commission which impose any of the sanctions provided for in paragraph 1 shall have suspensory effect. The Court of Justice of the European Union 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.

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Article 93

Member States shall prohibit between themselves 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.

Articles 94 and 95

(repealed)

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.

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

(repealed)

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 organisation 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 organisation 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 organisation 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 of the European Union, 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 of the European Union 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 organisation or a national of a third State after 1 January 1958 or, for acceding States, after the date of their accession, 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 dates referred to in the first paragraph, within the scope of this Treaty, by a person or undertaking with a third State, an international organisation or a national of a third State. The Commission may require

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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 of the European Union 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 1 January 1958 or, for acceding States, before the date of their accession, by a Member State, a person or an undertaking with a third State, an international organisation 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 aforesaid dates.

Agreements or contracts concluded between 25 March 1957 and 1 January 1958 or, for acceding States, between the signature of the instrument of accession and the date of their accession, by a person or an undertaking with a third State, an international organisation 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 of the European Union, 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 1 January 1958 or, for acceding States, before the date of their accession, 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.