

## Treaty establishing the European Atomic Energy Community (Rome, 25 March 1957) — Consolidated version 1992

**Caption:** Treaty establishing the European Atomic Energy Community as amended by the Treaty of Maastricht of 7 February 1992.

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## Treaty establishing the European Atomic Energy Community

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[Consolidated version including the amendments of the Treaty of Maastricht of 7 February 1992].

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,

REALISING that nuclear energy constitutes the essential resource for ensuring the expansion and invigoration of production and for effecting progress in peaceful achievement,

CONVINCED that only a common effort undertaken without delay can lead to achievements commensurate with the creative capacities of their countries,

RESOLVED to create the conditions required for the development of a powerful nuclear industry which will provide extensive supplies of energy, lead to the modernisation of technical processes and in addition have many other applications contributing to the well-being of their peoples,

ANXIOUS to establish conditions of safety which will eliminate danger to the life and health of the people,

DESIROUS of associating other countries with them in their work and of co-operating with international organisations concerned with the peaceful development of atomic energy,

HAVE DECIDED to establish 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 of 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 of Foreign Affairs,

Mr. Maurice FAURE, Under-Secretary of State in the Ministry of Foreign Affairs;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr. Antonio SEGNI, President of the Council of Ministers,

Professor Gaetano MARTINO, Minister of Foreign Affairs;

HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBOURG:

Mr. Joseph BECH, Prime Minister, Minister of 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 of 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 ONE — Aims of the Community**

### **Article 1**

By the present Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM).

It shall be the aim of the Community to contribute to the raising of the standard of living in Member States and to the development of commercial exchanges with other countries by the creation of conditions necessary for the speedy establishment and growth of nuclear industries.

### **Article 2**

For the attainment of its aims the Community shall, in accordance with the provisions set out in this Treaty:

- (a) develop research and ensure the dissemination of technical knowledge,
- (b) establish, and ensure the application of, uniform safety standards to protect the health of workers and of the general public,
- (c) facilitate investment and ensure, particularly by encouraging business enterprise, the construction of the basic facilities required for the development of nuclear energy within the Community,
- (d) ensure a regular and equitable supply of ores and nuclear fuels to all users in the Community,
- (e) guarantee, by appropriate measures of control, that nuclear materials are not diverted for purposes other than those for which they are intended,
- (f) exercise the property rights conferred upon it in respect of special fissionable materials,
- (g) ensure extensive markets and access to the best technical means by the creation of a common market for specialised materials and equipment, by the free movement of capital for nuclear investment, and by freedom of employment for specialists within the Community,
- (h) establish with other countries and with international organisations any contacts likely to promote progress in the peaceful uses of nuclear energy.

**Article 3**

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 TWO — Provisions designed to encourage Progress in the Field of Nuclear Energy****CHAPTER I — Development of Research****Article 4**

1. The Commission shall be responsible for promoting and facilitating nuclear research in Member States and for supplementing it by carrying out the Community's own research and instructional programme.
2. The Commission shall, for the above purposes, act within the field defined by the list set out in Annex I to this Treaty.

This list may be amended by the Council acting by means of a qualified majority vote on a proposal of the Commission. The latter shall consult the Scientific and Technical Committee set up under Article 134.

**Article 5**

In order to promote the co-ordination of research undertaken in Member States and to be able to supplement such research, the Commission shall invite Member States, persons or enterprises, either by means of a special request addressed to a specific person or enterprise and communicated to the appropriate Member State having jurisdiction over such person or enterprise or by means of a general request made public, to communicate to it their programmes relating to the research mentioned in the request.

The Commission may, after giving the interested parties every opportunity to submit their comments, formulate a reasoned opinion on each of the programmes communicated to it. The Commission shall, at the request of the State, person or enterprise communicating a programme, be bound to formulate such an

opinion.

By means of such opinions the Commission will discourage unnecessary duplication and will direct research towards sectors insufficiently studied. The Commission may not publish any programmes without the consent of the States, persons or enterprises communicating them.

The Commission shall periodically publish a list showing the sectors of nuclear research which it considers insufficiently studied.

The Commission may, for the purposes of mutual consultation and exchange of information, convene the representatives of public and private research centres and also any experts engaged upon research in the same or allied fields.

### **Article 6**

In order to encourage the implementation of the research programmes communicated to it, the Commission may:

- (a) furnish financial assistance, excluding subsidies, in respect of research contracts;
- (b) supply, for the purpose of carrying out these programmes, any source materials or special fissionable materials at its disposal, either against payment or free of charge;
- (c) place facilities, equipment or expert assistance at the disposal of Member States, persons or enterprises, either against payment or free of charge; and
- (d) initiate joint financing by the Member States, persons or enterprises concerned.

### **Article 7**

The Community's research and instructional programmes shall be laid down by the Council acting by means of a unanimous vote on a proposal of the Commission which shall consult the Scientific and Technical Committee.

These programmes shall be drawn up for a period not exceeding five years.

The funds necessary for the implementation of these programmes shall be included each year in the research and investment budget of the Community.

The Commission shall ensure the implementation of the programmes and shall each year submit to the Council a report thereon.

The Commission shall keep the Economic and Social Committee informed of the broad outlines of the Community's research and instructional programmes.

### **Article 8**

1. The Commission shall, after consulting the Scientific and Technical Committee, set up a Joint Nuclear

Research Centre.

The Centre shall ensure the implementation of the research programmes and of any other tasks entrusted to it by the Commission.

The Centre shall also ensure the establishment of uniform nuclear terminology and of a standard system of measurements.

It shall organise a central bureau of nuclear measurements.

2. The work of the Centre may, for geographical or operational reasons, be carried on in separate establishments.

### **Article 9**

1. After requesting the opinion of the Economic and Social Committee, the Commission may, within the framework of the Joint Nuclear Research Centre, set up schools for training specialists, particularly in prospecting for ores, producing nuclear materials of a high degree of purity, processing irradiated fuels, in atomic engineering, health protection and the production and use of radioactive isotopes.

The Commission shall settle the particulars of instruction.

2. An institution at university level shall be set up; the particulars of its operation shall be settled by the Council acting by means of a qualified majority vote on a proposal of the Commission.

### **Article 10**

The Commission may, by means of contracts, entrust Member States, persons or enterprises or also third countries or international organisations or nationals of third countries with the implementation of certain parts of the Community's research programme.

### **Article 11**

The Commission shall publish the research programmes referred to in Articles 7, 8 and 10, as well as periodical reports on the progress of their implementation.

## **CHAPTER II — Dissemination of Information**

### **Section I — Information at the disposal of the Community**

### **Article 12**

Member States, persons or enterprises shall, by means of a demand addressed to the Commission, be entitled to benefit by non-exclusive licences of patents, provisionally protected claims, utility models or patent applications, which are the property of the Community, in so far as they are in a position effectively to

exploit the inventions to which they relate.

The Commission shall, on the same conditions, grant sub-licences of patents, provisionally protected claims, utility models or patent applications, where the Community holds contractual licences conferring this right.

The Commission shall grant these licences or sub-licences on conditions to be settled by agreement with the licensee and shall make available all information necessary for exploiting them. These conditions shall cover, in particular, the question of suitable compensation and, where appropriate, the right of the licensee to grant sub-licences to third parties and the obligation to treat the information imparted as trade secrets.

If agreement on the conditions provided for in the third paragraph cannot be reached, the licensee may, with a view to the settlement of suitable conditions, refer the matter to the Court of Justice.

### **Article 13**

The Commission shall communicate to Member States, persons or enterprises any information acquired by the Community which is not covered by the provisions of Article 12, irrespective of whether such information results from the implementation of the Community's research programme or is communicated to the Commission with the right to make free use of it.

The Commission may, however, make the communication of this information conditional on its being treated as confidential and not transmitted to third parties.

The Commission may communicate information acquired subject to restrictions upon its use and dissemination — such as “classified” information — if it ensures observance of these restrictions.

## **Section II — Other information**

### **(a) Dissemination by amicable arrangement**

#### **Article 14**

The Commission shall, by friendly means, endeavour to obtain or to cause to be obtained, the communication of information useful to the Community in the pursuit of its objects and the granting of licences to exploit patents, provisionally protected claims, utility models or patent applications relating to such information.

#### **Article 15**

The Commission shall arrange a procedure by which Member States, persons or enterprises may use it as an intermediary to exchange provisional or final results of their research in so far as these are not results acquired by the Community under research contracts granted by the Commission.

The procedure shall guarantee the confidential nature of the exchange. The results communicated may, however, be transmitted by the Commission to the Joint Nuclear Research Centre for purposes of documentation, provided that such transmission shall not confer any right of use to which the originator of the communication has not consented.

### **(b) Ex officio 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, the latter shall ask the applicant to consent to the contents of the application being immediately communicated to the Commission.

If the applicant so consents, this communication shall be made within a period of three months after the date of the filing of the application. If the applicant does not so consent, the Member State shall, within the same period, notify the Commission of the existence of the application.

The Commission may require the Member State to communicate to it the contents of an application of whose existence it has been notified.

The Commission shall make this demand within a period of two months after the date of the notification. Any extension of this period shall cause the period mentioned in the sixth sub-paragraph to be similarly extended.

The Member State shall, on receiving the Commission's demand again ask the applicant to consent to the communication of the contents of his application. If the applicant so consents, the communication shall be made forthwith.

If the applicant does not so consent, the Member State shall nevertheless make the communication to the Commission after a period of eighteen months from the date of the filing of the application.

2. Member States shall notify the Commission, within a period of eighteen months from the date of its filing, of the existence of any unpublished application for a patent or utility model which appears *prima facie* to them to deal with a subject that, without being of a specifically nuclear nature, is directly connected with and essential to the development of nuclear energy within the Community.

The contents of the application shall, at the demand of the Commission, be communicated to it within a period of two months.

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

4. The Commission shall consider the above-mentioned communications as confidential. They must not serve any other purpose than that of documentation. 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 inclusive.

5. The provisions of this Article shall not apply if an agreement concluded with a third country or with an international organisation precludes communication.

### **(c) Licences granted by means of arbitration or *ex officio***

#### **Article 17**

1. Failing an amicable arrangement, non-exclusive licences may be granted, either by means of arbitration or *ex officio*, in accordance with the provisions laid down in Articles 18 to 23 inclusive:

(a) to the Community or to Joint Enterprises entitled to them under the terms of Article 48 in respect of patents, provisionally protected claims or utility models relating to inventions directly connected with nuclear research, in so far as the granting of such licences is necessary to the pursuit of their own research or indispensable for the operating of their facilities.

Such licences shall, at the request of the Commission, include the right to authorise third parties to use the invention in so far as they are carrying out work or orders for the Community or for Joint Enterprises; or

(b) to persons or enterprises having made an application to the Commission therefor, in respect of patents, provisionally protected claims or utility models relating to inventions directly connected with and essential to the development of nuclear energy within the Community, provided that all the following conditions are fulfilled, namely:

- (i) that a period of at least four years has elapsed since the filing of the application for a patent, save in the case of an invention relating to a specifically nuclear subject;
- (ii) that the needs arising from the development of nuclear energy in the territories of a Member State where an invention is protected, as the Commission understands that development, are not met in respect of that invention;
- (iii) that the owner, having been asked to satisfy these needs either personally or through his licensees, has not done so; and
- (iv) that the persons or enterprises applying for licences are in a position effectively to meet these needs by exploiting the licences.

Except at the prior demand of the Commission, Member States may not, in order to meet the aforesaid needs, take any coercive measure provided for under their municipal law, where the effect of such measure would be to limit the protection accorded to the invention.

2. A non-exclusive licence may not be granted under the conditions laid down in the preceding paragraph if the owner establishes a legitimate reason, in particular the fact that he has not had an adequate period of time at his disposal.

3. The granting of a licence under the terms of paragraph 1 confers the right to full compensation, the amount of which shall be agreed between the holder of the patent, provisionally protected claim or utility model and the licensee.

4. The provisions of this Article shall not affect the provisions of the Paris Convention for the protection of industrial property.

### **Article 18**

An Arbitration Committee shall hereby be established for the purposes stated in this Section; its members shall be appointed and its rules of procedure laid down by the Council acting on a proposal of the Court of Justice.

Decisions of the Arbitration Committee may, within a period of one month after their notification, be the subject of appeals brought by the parties before the Court of Justice to stay execution. The Court may decide only upon the regularities of form of the decision and upon the interpretation given by the Arbitration Committee to the provisions of this Treaty.

The final decisions of the Arbitration Committee shall have the force of *res judicata* as between the parties. They shall be enforceable under the provisions laid down in Article 164.

### **Article 19**

Where, failing an amicable arrangement, the Commission proposes to have a licence granted in a case

provided for under Article 17, it shall notify the holder of the patent, provisionally protected claim or utility model or the applicant for the patent accordingly, giving in its notification the name of the applicant for, and the scope of the said licence.

#### **Article 20**

The owner may, within a period of one month after the receipt of the notification mentioned in Article 19, propose to the Commission and, where necessary, to the third party applying for the licence that a compromise be concluded for the purpose of referring the matter to the Arbitration Committee.

If the Commission or the said third party refuses to conclude a compromise, the Commission may not require the Member State or its competent agencies to grant the licence or to cause it to be granted.

If, when the matter comes before it under the compromise, the Arbitration Committee rules that the Commission's demand is in conformity with the provisions of Article 17, it shall give a reasoned decision ordering the granting of the licence to the applicant and determining the conditions to be observed and the compensation to be made, in so far as the parties have not reached agreement thereon.

#### **Article 21**

If the owner does not propose to refer the matter to the Arbitration Committee, the Commission may require the Member State concerned or its competent agencies to grant the licence or to cause it to be granted.

If, after hearing the owner, the Member State or its competent agencies consider that the conditions laid down in Article 17 have not been fulfilled, they shall notify the Commission of their refusal to grant the licence or to cause it to be granted.

If they refuse to grant the licence or to cause it to be granted or if, within a period of four months after the date of the demand, they fail to make any statement concerning the granting of the licence, the Commission may, within a period of two months, refer the matter to the Court of Justice.

The owner shall be heard in the proceedings before the Court of Justice.

If the judgment of the Court establishes that the conditions laid down in Article 17 have been fulfilled, the Member State concerned or its competent agencies shall take the measures required for the execution of that judgment.

#### **Article 22**

1. If the owner of the patent, provisionally protected claim or utility model and the licensee fail to agree on the amount of compensation due, the interested parties may conclude a compromise for the purpose of referring the matter to the Arbitration Committee.

They thereby waive all right of appeal except as provided for under Article 18.

2. If the licensee refuses to conclude such compromise, the licence granted to him shall be deemed to be null and void.

If the owner refuses to conclude such compromise, the compensation provided for in this Article shall be determined by the competent national agencies.

#### **Article 23**

The decisions of the Arbitration Committee or of the competent national agencies shall be subject to revision in respect of the conditions of the licence after the expiry of a period of one year and in so far as new facts

justify such revision.

Revision shall be incumbent upon the agency which gave the decision.

### **Section III — Provisions concerning security**

#### **Article 24**

Information which is acquired by the Community through the implementation of its research programme and the disclosure of which might be harmful to the defence interests of one or more Member States shall be treated as classified information in accordance with the following conditions:

1. Security regulations adopted by the Council on a proposal of the Commission shall, in accordance with the provisions of this Article, determine the various security gradings applicable, and the security measures to be enforced, in respect of each grade.
2. The Commission shall provisionally apply the grading required by the security regulations to any information the disclosure of which it considers might be harmful to the defence interests of one or more Member States.

It shall immediately communicate such information to Member States which shall provisionally ensure its security in accordance with the same conditions.

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

At the end of this period, the strictest of those gradings so required shall be applied. The Commission shall notify Member States thereof.

At the request of the Commission or of a Member State, the Council, acting by means of a unanimous vote, may at any time apply a different grading or declassify the information. The Council shall, before ruling on such request by a Member State, obtain the opinion of the Commission.

3. The provisions of Articles 12 and 13 shall not apply to classified information.

Subject, however, to the observance of the security measures applicable,

(a) the information referred to in Articles 12 and 13 may be communicated by the Commission

(i) to a Joint Enterprise; or

(ii) to a person or enterprise other than a Joint Enterprise through the intermediary of the Member State in whose territories the said person or enterprise is operating;

(b) the information referred to in Article 13 may be communicated by a Member State to a person or enterprise, other than a Joint Enterprise, operating in the territories of that State, provided that the Commission is notified of such communication; and

(c) moreover, each Member State has the right to require the Commission to grant a licence in accordance with Article 12 for the needs of such Member State or for the needs of a person or enterprise operating in its territories.

## Article 25

1. A Member State communicating the existence or the contents of an application for a patent or utility model relating to a subject referred to in Article 16, paragraph 1 or 2, shall, where appropriate, state the need for defence reasons of applying to that application the security grading indicated by such State and shall mention the probable duration of such grading.

The Commission shall transmit to other Member States all communications received in implementation of the preceding subparagraph. The Commission and the Member States shall observe the measures necessitated under the security regulations by the grading which the originating State has required.

2. The Commission may also transmit these communications to Joint Enterprises or, through the intermediary of a Member State, to a person or enterprise other than a Joint Enterprise, operating in the territories of that State.

Inventions which are the subject of the applications referred to in paragraph 1 may be only used with the consent of the applicant or in accordance with the provisions of Articles 17 to 23 inclusive.

The communications and, where appropriate, the uses referred to in this paragraph shall be governed by the measures necessitated under the security regulations by the grading which the originating State has required.

Such communications and uses shall in all cases be subject to the consent of the originating State. The latter may not refuse its consent except for defence reasons.

3. At the request of the Commission or of a Member State the Council, acting by means of a unanimous vote, may at any time apply a different security grading or declassify the invention. The Council shall, before ruling on a request from a Member State, obtain the opinion of the Commission.

## Article 26

1. Where information forming the subject of a patent, patent application, provisionally protected claim, utility model or application for a utility model is classified in accordance with the provisions of Articles 24 and 25, the States requiring a certain grading may not refuse to allow corresponding applications to be filed in the other Member States.

Each Member State shall take the necessary measures to ensure the maintenance of security for all such titles, applications and claims, in accordance with the procedure laid down by its domestic legislative provisions.

2. No applications may be filed outside Member States in respect of information classified in accordance with Article 24 save by the unanimous consent of Member States. If these States do not declare their attitude, their consent shall be presumed after the expiry of a period of six months from the date of the communication of the information by the Commission to Member States.

## Article 27

Compensation for damage suffered by an applicant as a result of the imposition of the security classification for defence reasons shall be subject to the provisions of the municipal law of Member States and shall be the responsibility of the State which has requested such classification or procured an upgrading or an extension of such classification or prevented the filing of an application outside the Community.

In the event of two or more Member States having procured an upgrading or an extension of classification or having prevented the filing of an application outside the Community, such States shall be jointly and severally liable for making reparation for the resultant damage.

The Community shall not be entitled to claim any compensation under the terms of this Article.

#### **Section IV — Special provisions**

##### **Article 28**

If any applications for patents or utility models not yet published or any patents or utility models classified for defence reasons are improperly used or come to the knowledge of an unauthorised third party as a result of their communication to the Commission, the Community shall make reparation for any damage suffered by the persons concerned.

In the event of such persons having the right to take action against third parties, the Community shall, without prejudice to its own claims against the author of the damage, be substituted for such persons to the extent that it has borne the cost of making reparation for the damage suffered. The right of the Community itself to take action, in accordance with general provisions in force, against the author of the damage shall not be affected.

##### **Article 29**

Any agreement or contract for the purpose of exchanging scientific or industrial information on nuclear matters between a Member State, person or enterprise and any third country, international organisation or national of a third country shall, if it requires on either part the signature of a State exercising its sovereignty, be concluded by the Commission.

Nevertheless, the Commission may, on such conditions as it deems proper, authorise a Member State, a person or enterprise to conclude such agreements, subject to the application of the provisions of Articles 103 and 104.

#### **CHAPTER III — Health Protection**

##### **Article 30**

Basic standards for the protection of the health of workers and of the general public from the dangers arising from ionising radiation shall be established within the Community.

The term “basic standards” shall mean:

- (a) the maximum doses compatible with adequate safety;
- (b) the maximum permissible degree of exposure and contamination; and
- (c) the fundamental principles governing the medical supervision of workers.

##### **Article 31**

The Commission shall work out the basic standards after obtaining the opinion of a group of authorities appointed by the Scientific and Technical Committee from among the scientific experts, especially public health experts, of the Member States. The Commission shall request the opinion of the Economic and Social

Committee on the basic standards thus worked out.

After consulting the European Parliament, the Council, acting by means of a qualified majority vote on a proposal of the Commission which shall transmit to it the opinions received from the Committees, shall determine the basic standards.

### **Article 32**

At the request of the Commission or of a Member State, the basic standards may be revised or supplemented according to the procedure laid down in Article 31.

The Commission shall be bound to examine any such request made by a Member State.

### **Article 33**

Each Member State shall enact the legislative and administrative provisions required to ensure compliance with the basic standards so determined and shall take the necessary measures with regard to instruction, education and professional training.

The Commission shall make recommendations in order to ensure the harmonisation of the provisions applicable in Member States in this respect.

For this purpose, Member States shall communicate to the Commission all such provisions applicable at the time of the entry into force of this Treaty and any subsequent draft provisions of the same nature.

Any recommendations by the Commission in respect of such draft provisions shall be made within a period of three months after the date of such communication.

### **Article 34**

Any Member State in whose territories experiments of a particularly dangerous nature are to take place shall take additional health precautions, concerning which it shall first obtain the opinion of the Commission.

The consenting opinion of the Commission shall be required when such experiments are likely to affect the territories of other Member States.

### **Article 35**

Each Member State shall set up the facilities necessary for the permanent control of the level of radioactivity in the atmosphere, water and soil and for controlling compliance with the basic standards.

The Commission shall have right of access to such control facilities; it may examine their operation and efficiency.

### **Article 36**

The competent authorities shall, in order that the Commission may be kept informed of the level of radioactivity likely to affect the population, report regularly to the Commission on the control provided for

in Article 35.

### **Article 37**

Each Member State shall submit to the Commission such general data concerning any plan for the disposal of any kind of radioactive waste as will enable the Commission to determine whether the implementation of such plan is likely to involve radioactive contamination of the water, soil or airspace of another Member State.

The Commission, after consulting the group of experts referred to in Article 31, shall give its opinion thereon within a period of six months.

### **Article 38**

The Commission shall make recommendations to Member States regarding the level of radioactivity in the atmosphere, water or soil.

The Commission shall, in case of urgency, issue a directive requiring the Member State concerned to take, within a period fixed by the Commission, all measures necessary to prevent the basic standards from being exceeded and to ensure observance of any applicable provisions.

If such State does not comply with the Commission's directive within the prescribed period, the Commission or any Member State concerned may, notwithstanding the provisions of Articles 141 and 142, refer the matter to the Court of Justice immediately.

### **Article 39**

The Commission shall establish within the Joint Nuclear Research Centre, as soon as the latter has been set up, a Section for documentation on, and the study of, health protection.

It shall be the particular task of this Section to collect the documentation and information required under Articles 33, 37 and 38, and to assist the Commission in carrying out the duties imposed upon it by the provisions of this Chapter.

## **CHAPTER IV — Investment**

### **Article 40**

In order to stimulate the initiative of persons and enterprises and to facilitate the co-ordinated development of investment by them in the nuclear field, the Commission shall periodically publish programmes indicating, in particular, the production targets for nuclear energy and the various types of investment required for their attainment.

The Commission shall request the opinion of the Economic and Social Committee on such programmes prior to their publication.

### **Article 41**

Persons and enterprises connected with the branches of industry specified in Annex II to this Treaty shall communicate to the Commission any investment projects relating to such new facilities, replacements or conversions as correspond in respect of type or scope to the criteria laid down by the Council acting on a proposal of the Commission.

The list of branches of industry referred to above may be amended by the Council acting by means of a qualified majority vote on a proposal of the Commission which shall previously request 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 purposes of information, to the Member State concerned not later than three months before the conclusion of the first contracts with suppliers or, if the work is to be carried out by the enterprise itself, three months before such work is to begin.

The Council, acting on a proposal of the Commission, may vary this time-limit.

#### **Article 43**

The Commission shall discuss with the persons or enterprises all aspects of any investment projects related to the aims of this Treaty.

The Commission shall communicate its views thereon to the Member State concerned.

#### **Article 44**

With the agreement of the Member States, persons or enterprises concerned, the Commission may publish any investment projects communicated to it.

### **CHAPTER V — Joint Enterprises**

#### **Article 45**

Undertakings of outstanding importance to the development of the nuclear industry in the Community may be constituted as Joint Enterprises within the meaning of this Treaty and in accordance with the provisions of the following Articles.

#### **Article 46**

1. Any project for the establishment of a Joint Enterprise, whether originating from the Commission, a Member State or any other source, shall be the subject of an enquiry by the Commission.

For this purpose, the Commission shall consult Member States and any public or private bodies which it considers likely to provide useful information.

2. The Commission shall transmit to the Council any project for the establishment of a Joint Enterprise, together with its reasoned opinion thereon.

If the Commission gives a favourable opinion regarding the need for such Joint Enterprise, it shall submit proposals to the Council on the following points:

- (a) location of plant;
- (b) statutes;
- (c) volume and rate of financing;
- (d) possible participation by the Community in the financing of the Joint Enterprise;
- (e) possible participation by a third country, an international organisation or a national of a third country in the financing or management of the Joint Enterprise; and
- (f) the granting of all or any of the advantages specified in Annex III to this Treaty.

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

#### **Article 47**

The Council may, on a reference to it by the Commission, ask the latter to supply such additional information or to carry out such additional enquiries as the Council may deem necessary.

If the Council, acting by means of a qualified majority vote, considers that a project transmitted by the Commission with an unfavourable opinion should nevertheless be carried out, the Commission shall submit to the Council the proposals and detailed report referred to in Article 46.

In the case of a favourable opinion by the Commission or in the case referred to in the preceding paragraph, the Council shall act by means of a qualified majority vote on each of the Commission's proposals.

The Council shall, however, act by means of a unanimous vote with regard to:

- (a) participation by the Community in the financing of the Joint Enterprise; and
- (b) participation by a third country, an international organisation or a national of a third country in the financing or management of the Joint Enterprise.

#### **Article 48**

The Council, acting by means of a unanimous vote on a proposal of the Commission, may declare applicable to each Joint Enterprise all or any of the advantages specified in Annex III to this Treaty; Member States shall ensure the application of such advantages to the extent that each State is concerned.

The Council may, in accordance with the same procedure, determine the conditions by which the granting of such advantages shall be governed.

**Article 49**

The constitution of a Joint Enterprise shall result from a decision of the Council.

Each Joint Enterprise shall have legal personality.

Each Joint Enterprise shall, in each of the Member States, enjoy the most extensive legal capacity accorded to legal persons under their respective municipal law; it may, in particular, acquire and transfer movable and immovable property and may sue or be sued in its own name.

Unless otherwise provided for in this Treaty or in its statutes, each Joint Enterprise shall be subject to the rules applying to industrial or commercial undertakings; the statutes may make subsidiary reference to the municipal law of Member States.

Subject to the powers conferred on the Court of Justice by this Treaty, litigation concerning Joint Enterprises shall be dealt with by the competent domestic courts or tribunals.

**Article 50**

The statutes of Joint Enterprises shall, where appropriate, be amended in accordance with the particular provisions set out for that purpose in the said statutes.

Such amendments shall not, however, enter into force until they have received the approval of the Council acting on a proposal of the Commission and in accordance with the same provisions as are set out in Article 47.

**Article 51**

The Commission shall, prior to the setting up of the bodies charged with the operation of the Joint Enterprises, ensure the carrying out of all decisions of the Council concerning the constitution of such enterprises.

**CHAPTER VI — Supplies****Article 52**

1. The supply of ores, source materials and special fissionable materials shall, in accordance with the provisions of this Chapter, be ensured on the principle of equal access to resources and by the pursuit of a common supply policy.

2. For this purpose and in accordance with the provisions set out in this Chapter:

(a) all practices designed to ensure a privileged position for certain users shall hereby be prohibited; and

(b) an Agency shall be constituted, having a right of option on all ores, source materials and special fissionable materials produced in the territories of Member States and having the exclusive right of

concluding contracts relating to supplies of ores, source materials and special fissionable materials coming from inside or from outside the Community.

The Agency shall not make any discrimination between users based on the use they intend to make of the supplies requested unless such use is unlawful or is found to be contrary to conditions laid down by suppliers outside the Community in respect of the particular delivery concerned.

## **Section I — The Agency**

### **Article 53**

The Agency shall be placed under the control of the Commission which shall issue directives to it, exercise a right of veto over its decisions and appoints its Director-General and Deputy Director-General.

Any act of the Agency, whether implicit or explicit, in the exercise of its right of option or its exclusive right to conclude supply contracts, may be referred by the parties concerned to the Commission which shall, within a period of one month, take a decision thereon.

### **Article 54**

The Agency shall have legal personality and financial autonomy.

The Council, acting by means of a qualified majority vote on a proposal of the Commission, shall lay down the Statute of the Agency.

This Statute may be revised in accordance with the same procedure.

The Statute shall determine the Agency's capital and the terms of subscription. The majority of the shares shall in any case belong to the Community and to the Member States. The allotment of the shares shall be determined by the Member States acting in common agreement.

The Statute shall determine the particulars of the commercial management of the Agency. The Statute may provide for the payment of a tax on transactions designed to cover the operating expenses of the Agency.

### **Article 55**

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

### **Article 56**

The Member States shall guarantee the free exercise, in their territories, of the functions of the Agency.

The Member States may constitute one or more bodies competent to represent producers and users in the non-European territories under their jurisdiction in respect of the dealings of such producers and users with the Agency.

## **Section II — Ores, Source Materials and Special Fissionable Materials coming from within the Community**

**Article 57**

1. The Agency's right of option shall cover:

(a) the acquisition of user and consumer rights in respect of materials owned by the Community pursuant to the provisions of Chapter VIII; and

(b) the acquisition of rights of ownership in all other cases.

2. The Agency shall exercise its right of option by the conclusion of contracts with producers of ores, source materials and special fissionable materials.

Subject to the provisions of Articles 58, 62 and 63, every producer shall, prior to their use, transfer or stockpiling, offer to the Agency any ores, source materials or special fissionable materials which he may produce in the territories of Member States.

**Article 58**

When a producer carries out several stages of production from the extraction of the ore up to and including the production of the metal, he shall offer his product to the Agency at any stage of production chosen by him.

The same provision shall apply to two or more enterprises having ties with each other, provided that such ties have been duly notified to the Commission and discussed with it in accordance with the procedure laid down in Articles 43 and 44:

**Article 59**

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

(a) may have the ores, source materials or special fissionable materials transformed, either by his own means or under sub-contract, provided that he offers to the Agency the product of such transformation, and

(b) shall be authorised by decision of the Commission to dispose of his available production outside the Community, provided that he offers it on terms no more favourable than those of his previous offer to the Agency. The export of special fissionable materials may, however, in accordance with the provisions of Article 62, be carried out only by the Agency.

The Commission may not grant the authorisation referred to above if the persons to whom delivery is to be made do not offer all possible guarantees that the general interests of the Community will be respected or if the terms and conditions of the contracts concerned are contrary to the aims of this Treaty.

**Article 60**

Potential users shall periodically inform the Agency of their requirements in the matter of supplies, specifying the quantities, physical and chemical properties, place of origin, proposed use, delivery dates and price terms which are to be included in the terms and conditions of the supply contract which they wish to conclude.

Similarly, producers shall inform the Agency of offers which they are in a position to make, together with full particulars, including the duration of contracts, necessary to enable them to draw up their production programmes. The duration of such contracts shall not, except with the agreement of the Commission, exceed a period of ten years.

The Agency shall inform all potential users of the offers and of the volume of the demands received by it and shall invite them to place their orders by a given date.

The Agency shall, after receiving all such orders, make known the conditions on which it can fulfil them.

If the Agency is unable completely to fulfil all the orders received, it shall, subject to the provisions of Articles 68 and 69, allocate in respect of each offer the available supplies prorata to the orders.

Agency regulations, to be submitted to the Commission for approval, shall determine the manner in which offers and demands are to be compared.

#### **Article 61**

The Agency shall fulfil each order received unless there are legal or material obstacles to its execution.

The Agency may, subject to compliance with the provisions of Article 52, require users to make suitable advance payments on the conclusion of a contract, either as security or in order to facilitate such of its own long-term obligations to producers as are necessary to the execution of the order.

#### **Article 62**

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

(a) to meet the demands of users within the Community in accordance with the provisions laid down in Article 60;

(b) itself to stock such materials; or

(c) to export such materials subject to the authorisation of the Commission which shall comply with the provisions of Article 59, paragraph (b), second sub-paragraph.

2. Nevertheless, while continuing to be subject to the provisions of Chapter VII, these materials and their fertile residues shall be left in the possession of the producer, in order that the latter may:

(a) stock them with the authorisation of the Agency;

(b) use them within the limits of his own requirements; or

(c) make them available, within the limits of their requirements, to enterprises within the Community which have direct ties with him, for the purpose of carrying out a programme duly communicated to the Commission; provided that such ties do not, in intention or in fact, restrict production, technical development or investment or improperly create inequalities between users within the Community.

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

#### **Article 63**

Any ores, source materials or special fissionable materials produced by Joint Enterprises shall be allotted to users in accordance with the statutory or conventional rules governing such Enterprises.

### **Section III — Ores, Source Materials and Special Fissionable Materials coming from outside the Community**

**Article 64**

The Agency, acting, as the case may be, within the framework of any agreements entered into between the Community and a third country or an international organisation, shall, subject to the exceptions provided for in this Treaty, have the exclusive right to conclude agreements or conventions having as their principal object the supply of ores, source materials or special fissionable materials coming from outside the Community.

**Article 65**

The provisions of Article 60 shall apply to demands from users and to contracts entered into between users and the Agency concerning the supply of ores, source materials or special fissionable materials coming from outside the Community.

The Agency may, however, decide as to the geographical origin of the supplies provided that in doing so it ensures for the user conditions at least as favourable as those specified in his order.

**Article 66**

Where the Commission finds, at a request from the users concerned, that the Agency is unable, within a reasonable period, to fulfil either in whole or in part an order for supplies or is able to fulfil it only at an excessive price, users shall have the right to conclude direct contracts for supplies coming from outside the Community, provided that such contracts correspond substantially to their requirements as specified in their order.

Such right shall be granted for a period of one year and shall be renewable where the situation originally justifying the grant of such right continues to exist.

Users availing themselves of the right provided for in this Article shall communicate to the Commission any proposed direct contracts. The Commission may, within a period of one month, oppose the conclusion of such contracts if they are contrary to the aims of this Treaty.

**Section IV — Prices****Article 67**

Subject to the exceptions provided for in this Treaty, prices shall result from the comparison of offer and demand, in accordance with the provisions laid down in Article 60; Member States may not, by means of domestic provisions, contravene these provisions.

**Article 68**

All price manipulations designed to ensure a privileged position for certain users, which are contrary to the principle of equal access resulting from the provisions of this Chapter, shall be forbidden.

If the Agency finds that any such practices exist, it shall report them to the Commission.

If the Commission considers that the Agency's findings are well founded, it may, in the case of disputed offers, restore the prices to a level compatible with the principle of equal access.

**Article 69**

The Council may fix prices acting by means of a unanimous vote on a proposal of the Commission.

Where the Agency, in applying the provisions of Article 60, determines the conditions on which orders may be fulfilled, it may propose price adjustments to any users who have placed orders with it.

**Section V — Provisions concerning Supply Policies****Article 70**

The Commission may, within the limits set out in the budget of the Community, contribute financially, on conditions laid down by itself, to any prospecting activities in the territories of Member States.

The Commission may make recommendations to Member States with a view to the development of prospecting for and the exploitation of mineral deposits.

Member States shall submit annually to the Commission a report on the development of prospecting and production, on probable reserves and on mining investment effected or proposed in their territories. Such reports shall be submitted to the Council together with the opinion of the Commission, which shall in particular concern the action taken by Member States on the recommendations made to them in accordance with the preceding paragraph.

Where, on such reference to it by the Commission, the Council by means of a qualified majority vote finds that, in spite of extraction possibilities appearing economically justifiable on a long-term basis, the measures taken for prospecting and the increase in the exploitation of mineral deposits continue to be substantially inadequate, the Member State concerned shall, for as long as it has not corrected this state of affairs, be deemed to have relinquished, both for itself and for its nationals, the right of equal access to other such resources within the Community.

**Article 71**

The Commission shall make any appropriate recommendations to Member States in regard to fiscal or mining provisions.

**Article 72**

The Agency may, from the quantities available inside or outside the Community, build up the commercial stocks necessary to facilitate the Community's supplies or current deliveries.

The Commission may decide to build up emergency stocks. The terms of financing such stockpiling shall require the approval of the Council acting by means of a qualified majority vote on a proposal of the Commission.

**Section VI — Special Provisions****Article 73**

Where an agreement or a convention between a Member State, a person or enterprise, of the one part, and a third country, an international organisation or a national of a third country, of the other part, also contains any provisions relating to the delivery of products coming within the competence of the Agency, the prior

consent of the Commission shall be required for the conclusion or renewal of such agreement or convention, to the extent that the delivery of such products is concerned.

#### **Article 74**

The Commission may exempt from the application of the provisions of this Chapter the transfer, importation or exportation of such small quantities of ores, source materials or special fissionable materials as are commonly used for purposes of research.

Any transfer, importation or exportation effected pursuant to this provision shall be notified to the Agency.

#### **Article 75**

The provisions of this Chapter shall not apply to undertakings in respect of the processing, transformation or shaping of ores, source materials or special fissionable materials entered into between:

(a) several persons or enterprises, in cases where the materials, after being processed, transformed or shaped, are subsequently to be returned to the person or enterprise of origin;

(b) a person or enterprise and an international organisation or a national of a third country, in cases where the materials, after being processed, transformed or shaped outside the Community, are subsequently to be returned to the person or enterprise of origin; or

(c) a person or enterprise and an international organisation or a national of a third country, in cases where the materials, after being processed, transformed or shaped within the Community, are subsequently to be either returned to the organisation or national of origin or sent to any other consignee, also outside the Community, designated by such organisation or national.

The persons or enterprises concerned shall, however, notify the Agency of the existence of any such undertakings and also, upon signature of the contract, of the amounts of materials involved. The Commission may oppose the undertakings referred to in sub-paragraph (b) if it considers that the transformation or shaping involved cannot be carried out efficiently, safely and without loss of material to the detriment of the Community.

All materials covered by such undertakings shall, as long as they are within the territories of Member States, be subject to the measures of control provided for in Chapter VII. The provisions of Chapter VIII shall not apply to any special fissionable materials covered by undertakings referred to in sub-paragraph (c).

#### **Article 76**

The Council, acting by means of a unanimous vote on a proposal of the Commission and after the European Parliament has been consulted, may, at the suggestion of a Member State or of the Commission, amend the provisions of this Chapter, particularly in the event of unforeseen circumstances creating a general shortage. The Commission shall examine any such request made by a Member State.

The Council may, at the end of a period of seven years after the date of the entry into force of this Treaty, confirm these provisions *in toto*. Failing such confirmation, new provisions dealing with the subject-matter of this Chapter shall be laid down in accordance with the procedure set out in the preceding paragraph.

### **CHAPTER VII — Safety Control**

#### **Article 77**

Within the framework of this Chapter, the Commission shall satisfy itself that in the territories of Member

States:

(a) ores; source materials and special fissionable materials are not diverted from their intended uses as stated by the users; and

(b) the provisions concerning supplies and any special undertaking concerning measures of control entered into by the Community in an agreement concluded with a third country or an international organisation are observed.

#### **Article 78**

Anyone setting up or exploiting facilities for the production, separation or use of source materials or special fissionable materials, or for the processing of irradiated nuclear fuels, shall make a declaration to the Commission setting out the basic technical characteristics of such facilities to the extent that such information is necessary to the achievement of the purposes stated in Article 77.

The processes to be used for the chemical processing of irradiated material shall be subject to the approval of the Commission to the extent that is necessary for the achievement of the purposes stated in Article 77.

#### **Article 79**

The Commission shall require the maintenance and production of operating records in order to permit accountability for ores, source materials and special fissionable materials used or produced. The same shall apply to the transport of source materials and special fissionable materials.

Persons subject to such control shall notify the authorities of the Member State concerned of any communications which they make to the Commission pursuant to Article 78 and to the first paragraph of this Article.

The nature and scope of the obligations referred to in the first paragraph of this Article shall be defined in regulations drawn up by the Commission and approved by the Council.

#### **Article 80**

The Commission may require that any excess of any special fissionable materials recovered or produced as a by-product, not being actually in use or ready for use, be deposited with the Agency or in storage premises which are or can be controlled by the Commission.

The special fissionable materials so deposited shall, at the request of the parties concerned, be returned to them without delay.

#### **Article 81**

The Commission may send inspectors into the territories of Member States. It shall, prior to the first visit of an inspector to the territories of any State, enter into consultations, which shall cover all future visits of this inspector, with the Member State concerned.

On presentation of their credentials, inspectors shall at all times have access to all places and data and to any

person who by reason of his occupation deals with materials, equipment or facilities subject to the control provided for in this Chapter, to the extent necessary to control ores, source materials and special fissionable materials, and to satisfy themselves concerning the observance of Article 77. Inspectors appointed by the Commission shall be accompanied by representatives of the authorities of the State concerned, if that State so requests, provided that the inspectors shall not thereby be delayed or otherwise impeded in the exercise of their functions.

In case of opposition to the carrying out of an inspection, the Commission shall apply to the President of the Court of Justice for a warrant to enforce the carrying out of the inspection. The President of the Court of Justice shall give a decision within a period of three days.

If there is danger in delay, the Commission may itself issue a written order, in the form of a decision, to the effect that the inspection be carried out. Such order shall be submitted without delay to the President of the Court of Justice for subsequent approval.

After service of the warrant or decision, the national authorities of the State concerned shall ensure access by the inspectors to the places named in the warrant or decision.

## **Article 82**

Inspectors shall be recruited by the Commission.

They shall have the responsibility of obtaining and verifying the accounting mentioned in Article 79. They shall report any infringement to the Commission.

The Commission may issue a directive requiring the Member State concerned to take, within a period to be determined by the Commission, all necessary measures to terminate any infringement so found and it shall inform the Council thereof.

If the Member State does not comply with the Commission's directive within the time specified, the Commission or any interested Member State may, notwithstanding Articles 141 and 142, refer the matter to the Court of Justice immediately.

## **Article 83**

1. In the event of any infringement of the obligations imposed on persons or enterprises under the provisions of this Chapter, penalties may be imposed on them by the Commission.

These penalties, in order of gravity, shall be as follows:

- (a) a warning;
- (b) the withdrawal of special advantages, such as financial or technical assistance;
- (c) the placing of the enterprise, for a maximum period of four months, under the administration of a person or board appointed jointly by the Commission and the State having jurisdiction over such enterprise; or
- (d) the complete or partial withdrawal of source materials or special fissionable materials.

2. Decisions of the Commission which require delivery in implementation of the preceding paragraph shall be enforceable. They may be enforced in the territories of Member States in accordance with the provisions laid down in Article 164.

Notwithstanding the provisions of Article 157, appeals brought before the Court of Justice against decisions of the Commission which impose any of the penalties provided for in the preceding paragraph shall have a staying effect. The Court of Justice may, however, at the request of the Commission or of any interested Member State, order that the decision be enforced immediately.

The protection of injured interests shall be guaranteed by an appropriate legal procedure.

3. The Commission may make any recommendations to Member States concerning legislative provisions designed to ensure the observance in their territories of the obligations resulting from the provisions of this Chapter.

4. Member States shall ensure the enforcement of penalties and, where applicable, the making of reparation by those responsible for any infringement.

#### **Article 84**

No discrimination shall, in the exercise of control, be made on the ground of the purpose for which ores, source materials and special fissionable materials are intended.

The field of action, the manner of control and the powers of the bodies responsible for control shall be limited to the requirements necessary for the achievement of the purposes stated in this Chapter.

Control may not extend to materials intended for the purposes of defence which are in course of being specially prepared for such purposes or which, after being so prepared, are, in accordance with an operational plan, installed or stocked in a military establishment.

#### **Article 85**

Where new circumstances so require, the manner of applying the control provided for in this Chapter may, at the request of a Member State or of the Commission, be amended by the Council acting by means of a unanimous vote on a proposal of the Commission and after the European Parliament has been consulted. The Commission shall examine any such request by a Member State.

### **CHAPTER VIII — Property Rights**

#### **Article 86**

Special fissionable materials shall be the property of the Community.

The Community's right of ownership shall extend to all special fissionable materials produced or imported by a Member State, a person or enterprise and subject to the safety control provided for in Chapter VII.

**Article 87**

Member States, persons or enterprises shall have the widest rights of the use and consumption of special fissionable materials properly in their possession, subject to their obligations resulting from the provisions of this Treaty, particularly in regard to safety control, the right of option conferred on the Agency and health protection.

**Article 88**

The Agency shall keep on behalf of the Community a special account, called “Financial Account of Special Fissionable Materials”.

**Article 89**

1. In the Financial Account of Special Fissionable Materials:

(a) the value of special fissionable materials left or put at the disposal of a beneficiary Member State, person or enterprise shall be credited to the Community and debited to such Member State, person or enterprise; and

(b) the value of special fissionable materials produced or imported by a contributory Member State, person or enterprise and becoming the property of the Community shall be debited to the Community and credited to such State, person or enterprise. A similar entry shall be made when a Member State, person or enterprise returns in kind to the Community special fissionable materials previously left or put at the disposal of such State, person or enterprise.

2. Fluctuations of value in such special fissionable materials shall be treated in the accounts in such a manner as not to cause any loss or any gain to the Community. Any losses or gains shall be borne by the holders.

3. Balances resulting from the above transactions shall, at the request of the creditor, be payable immediately.

4. For the purposes of this Chapter, the Agency shall be regarded as an enterprise in respect of transactions effected on its own account.

**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 modified by the Council acting by means of a unanimous vote on a proposal of the Commission and after the European Parliament has been consulted. The Commission shall examine any such request made by a Member State.

**Article 91**

The ownership rules applicable to all such objects, materials and assets as are not subject to any property right of the Community pursuant to the terms of this Chapter shall be determined by the municipal law of each Member State.

## CHAPTER IX — The Nuclear Common Market

### Article 92

The provisions of this Chapter shall apply to the goods and products mentioned in the lists set out in Annex IV to this Treaty.

These lists may, at the request of the Commission or of a Member State, be modified by the Council acting on a proposal of the Commission.

### Article 93

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

- (a) products mentioned in lists A1 and A2; and
- (b) products mentioned in list B, to the extent that they are subject to a common customs tariff and are covered by a certificate issued by the Commission to the effect that they are intended for nuclear purposes.

Non-European territories under the jurisdiction of a Member State may, however, continue to levy such import and export duties or charges with equivalent effect as are of a purely fiscal nature. The levels or the methods of application of such duties and charges shall not effect any discrimination as between such State and any other Member States.

### Article 94

Member States shall establish a common customs tariff as follows:

- (a) the level of the common customs tariff applicable to products mentioned in list A1 shall be laid down as that of the lowest tariff applied on 1 January 1957 in any Member State;
- (b) the Commission shall take all expedient measures for the opening of negotiations within a period of three months after the date of the entry into force of this Treaty between Member States with regard to the products mentioned in list A2. Where, in the case of certain such products, it is not found possible to reach agreement before the end of the first year following the entry into force of this Treaty, the Council, acting by means of a qualified majority vote on a proposal of the Commission, shall lay down the duties of the common customs tariff to be applied; and
- (c) the common customs tariff on products mentioned in lists A1 and A2 shall be applied as from the end of the first year after the date of the entry into force of this Treaty.

### Article 95

The Council, acting by means of a unanimous vote on a proposal of the Commission, may decide upon an

earlier application of the duties of a common customs tariff to products mentioned in list B, in cases where such earlier application would be of a nature to contribute to the development within the Community of nuclear energy.

#### **Article 96**

Member States shall abolish all restrictions based on nationality, which have been placed upon access by nationals of any of the Member States to specialised employment in the nuclear field, subject to such limitations as may be imposed by the basic requirements of public order, public safety and public health.

After the European Parliament has been consulted, the Council, acting by means of a qualified majority vote on a proposal of the Commission which shall previously obtain the opinion of the Economic and Social Committee, may issue directives as to the particulars of application of this Article.

#### **Article 97**

No restriction based on nationality may be applied to natural or legal persons, whether public or private, coming within the jurisdiction of a Member State and desiring to participate in the construction within the Community of nuclear facilities of a scientific or an industrial character.

#### **Article 98**

Member States shall take all necessary measures to facilitate the conclusion of insurance contracts covering atomic risks.

Within a period of two years after the date of the entry into force of this Treaty and after the European Parliament has been consulted, the Council, acting by means of a qualified majority vote on a proposal of the Commission which shall previously obtain the opinion of the Economic and Social Committee, shall issue directives as to the particulars of application of this Article.

#### **Article 99**

The Commission may make recommendations with a view to facilitating movements of capital intended to finance the types of production mentioned in the list set out in Annex 11 to this Treaty.

#### **Article 100**

Each Member State undertakes to authorise, in the currency of the Member State in which the creditor or the beneficiary resides, payments relating to the exchange of goods, services or capital, and also transfers of capital and of wages, to the extent to which the movement of goods, services, capital and persons is liberalised as between Member States in application of this Treaty.

### **CHAPTER X — External Relations**

#### **Article 101**

The Community may, within the limits of its competence, enter into obligations by means of the conclusion

of agreements or conventions with a third country, an international organisation or a national of a third country.

Such agreements or conventions shall be negotiated by the Commission in accordance with directives issued by the Council and shall be concluded by the Commission with the approval of the Council acting by means of a qualified majority vote.

Agreements or conventions the implementation of which does not require action by the Council and can be effected within the limits of the appropriate budget shall, however, be negotiated and concluded by the Commission, provided that it keeps the Council informed thereof.

### **Article 102**

Any agreement or convention, which is concluded with a third country, an international organisation or a national of a third country and to which, in addition to the Community, one or more Member States are parties, shall enter into force only after all the Member States concerned have notified the Commission that such agreement or convention has become applicable in accordance with the provisions of their respective municipal law.

### **Article 103**

A Member State shall communicate to the Commission any draft agreement or convention with a third country, an international organisation or a national of a third country to the extent that such agreement or convention concerns the field of application of this Treaty.

If a draft agreement or convention contains clauses impeding the application of this Treaty, the Commission shall, within a period of one month after the date of receipt of such communication, make its comments to the State concerned.

Such State may not conclude the proposed agreement or convention until it has removed the objections of the Commission or complied with the ruling of the Court of Justice, which has acted in expedited proceedings at that State's petition, as to the compatibility of the proposed clauses with the provisions of this Treaty. The State concerned may submit its petition to the Court of Justice at any time after receiving the comments of the Commission.

### **Article 104**

No person or enterprise concluding or renewing, after the date of the entry into force of this Treaty, an agreement or convention with a third country, an international organisation or a national of a third country, may invoke such agreement or convention to evade any of the obligations imposed by this Treaty.

Each Member State shall take all such measures as it considers necessary in order to communicate to the Commission, if so required by it, all information regarding any agreement or convention concluded by any person or enterprise with a third country, an international organisation or a national of a third country, where such agreement or convention has been concluded after the date of the entry into force of this Treaty and falls within the field of its application. The Commission may require such information only for the purpose of ascertaining that such agreement or convention does not contain clauses impeding the application of this Treaty.

On a petition by the Commission, the Court of Justice shall rule as to the compatibility of such agreement or convention with the provisions of this Treaty.

#### **Article 105**

The provisions of this Treaty may not be invoked as an obstacle to the implementation of any agreement or convention concluded before the date of the entry into force of this Treaty by a Member State, a person or enterprise with a third country, an international organisation or a national of a third country, where such agreement or convention has been communicated to the Commission not later than thirty days after the date of the entry into force of this Treaty.

An agreement or convention concluded during the period between the signature and the date of the entry into force of this Treaty by a person or enterprise with a third country, an international organisation or a national of a third country may not be invoked as an obstacle to this Treaty if, in the opinion of the Court of Justice ruling on a petition by the Commission, one of the essential motives of either of the parties in concluding such agreement or convention was to evade the provisions of this Treaty.

#### **Article 106**

Member States which, before the date of the entry into force of this Treaty, have concluded agreements with third countries for co-operation in the field of nuclear energy shall, jointly with the Commission, enter into the necessary negotiations with such third countries in order, as far as possible, to cause the rights and obligations arising out of such agreements to be assumed by the Community.

Any new agreement resulting from such negotiations shall require the consent of the Member State or States signatories to the said agreements as well as the approval of the Council acting by means of a qualified majority vote.

### **TITLE THREE — Provisions relating to Institutions**

#### **CHAPTER I — The Institutions of the Community**

##### **Section I — The European Parliament**

#### **Article 107**

The European Parliament, which shall be composed of representatives of the peoples of the States united within the Community, shall exercise the powers of deliberation and of control which are conferred upon it by this Treaty.

#### **Article 107a**

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**

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**

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**

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 him 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 concerning the election of the representatives of the European Parliament)*

[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	24
Denmark	16
Germany	81
Greece	24
Spain	60
France	81
Ireland	15
Italy	81
Luxembourg	6
Netherlands	25
Portugal	24
United Kingdom	81].

3. The European Parliament shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States.

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.

#### **Article 109**

The European Parliament shall hold an annual session. It shall meet, without requiring to be convened, on the second Tuesday in March.

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 appoint 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 its members.

The Council shall be heard by the European Parliament under the conditions which the Council shall lay down in its rules of procedure.

#### **Article 111**

Except where otherwise provided for in this Treaty, the European Parliament shall act by means of an absolute majority of the votes cast.

The quorum shall be laid down in the rules of procedure.

#### **Article 112**

The European Parliament shall adopt its rules of procedure by a vote of the majority of its members.

The records of the European Parliament shall be published in accordance with the provisions of its rules of procedure.

#### **Article 113**

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

#### **Article 114**

If a motion of censure concerning the activities of the Commission is introduced in the European Parliament, a vote may be taken thereon only after a period of not less than three days following its introduction, and such vote shall be by open ballot.

If the motion of censure is adopted 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 their office in a body. They shall continue to carry out current business until their replacement in accordance with the provisions of Article 127 has taken place.

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 II — The Council**

#### **Article 115**

The Council shall exercise its functions and powers of decision under the conditions laid down in this Treaty.

It shall take all measures within its competence in order to co-ordinate the actions of Member States and of the Community.

#### **Article 116**

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 following order of Member States:

— for a first cycle of six years: Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, Netherlands, Portugal, United Kingdom;

— for the following cycle of six years: Denmark, Belgium, Greece, Germany, France, Spain, Italy, Ireland, Netherlands, Luxembourg, United Kingdom, Portugal.

#### **Article 117**

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. Except where otherwise provided for in this Treaty, the conclusions of the Council shall be reached by a majority vote 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	
Portugal	5	
United Kingdom	10	

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

— fifty-four votes in favour where this Treaty requires them to be adopted on a proposal from the Commission,

— fifty-four votes in favour, cast by at least eight members, in other cases.

3. Abstentions by members either present or represented shall not prevent the adoption of Council conclusions requiring unanimity.

#### **Article 119**

When, pursuant to this Treaty, the Council acts on a proposal of the Commission, it shall, where the amendment of such proposal is involved, act only by means of a unanimous vote.

As long as the Council has not so acted, the Commission may amend its original proposal, particularly in cases where the European Parliament has been consulted on the proposal concerned.

#### **Article 120**

In case of a vote, any member of the Council may act as proxy for not more than one other member.

#### **Article 121**

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 achievement of the common objectives, and to submit to it any appropriate proposals.

#### **Article 123**

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 III — The Commission**

#### **Article 124**

With a view to ensuring the development of nuclear energy within the Community, the Commission shall:

— ensure the application of the provisions of this Treaty and of the provisions enacted by the institutions of the Community in pursuance thereof;

— formulate recommendations or opinions in matters defined by this Treaty where the latter expressly so provides or where the Commission considers it necessary;

— under the conditions laid down in this Treaty dispose of a power of decision of its own and participate in the preparation of acts of the Council and of the European Parliament; and

— exercise the competence conferred on it by the Council for the implementation of the rules laid down by the latter.

#### **Article 125**

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**

1. The Commission shall consist of seventeen members, who shall be chosen on the grounds of their general competence and whose independence is beyond doubt.

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**

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**

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**

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**

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

#### **Article 131**

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**

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. There shall hereby be established, attached to the Commission, a Scientific and Technical Committee with consultative status.

The said Committee shall be consulted in all cases provided for in this Treaty. It may be consulted in all cases where the Commission considers it desirable.

2. The Committee shall be composed of thirty three members appointed by the Council after the Commission has been consulted.

Members of the Committee shall be appointed in their personal capacity for a term of five years. This term shall be renewable. They may not be bound by any mandatory instructions.

The Scientific and Technical Committee shall appoint annually its Chairman and officers from among its members.

#### **Article 135**

The Commission may hold any consultations and set up any study committees necessary to the accomplishment of its task.

## Section V — The Court of Justice

### Article 136

The Court of Justice shall ensure observance of law and justice in the interpretation and application of this Treaty.

### Article 137

The Court of Justice shall consist of thirteen Judges.

The Court of Justice shall sit in plenary session. It may, however, form Chambers, each consisting of three or five 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.

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 six advocates-general.

The duty of the advocate-general shall be to present publicly, with complete impartiality and independence, reasoned conclusions on cases submitted to the Court of Justice, with a view to assisting the latter in the performance of its duties as laid down in Article 136.

Should the Court of Justice so request, the Council may, by means of a unanimous vote, increase the number of advocates-general and make the requisite amendments to Article 139, third paragraph.

### Article 139

The judges and the advocates-general shall be chosen from among persons of indisputable independence who fulfil the conditions required for the holding of the highest judicial office in their respective countries or who are jurists of a recognised competence; they shall be appointed for a term of six years by the Governments of Member States acting in common agreement.

Every three years there shall be a partial replacement of the Judges. Seven and six Judges shall be replaced alternately.

Every three years there shall be a partial replacement of the Advocates-General. Three Advocates-General shall be replaced on each occasion.

The retiring judges and advocates-general shall be eligible for reappointment.

The judges shall appoint from among their members the President of the Court of Justice for a term of three years. Such term shall be renewable.

### Article 140

The Court of Justice shall appoint its registrar and determine his status.

#### **Article 140a**

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 any of its obligations under this Treaty, it shall give a reasoned opinion on the matter after requiring such State to submit its comments.

If such State does not comply with the terms of such opinion within the period laid down by the Commission, the latter may refer the matter to the Court of Justice.

#### **Article 142**

Any Member State which considers that another Member State has failed to fulfil any of its obligations under this Treaty may refer the matter to the Court of Justice.

Before a Member State institutes, against another Member State, proceedings relating to an alleged infringement of the obligations under this Treaty, it shall refer the matter to the Commission.

The Commission shall give a reasoned opinion after the States concerned have been required to submit their comments in written and oral pleadings.

If the Commission, within a period of three months after the date of reference of the matter to it, has not given an opinion, reference to the Court of Justice shall not thereby be prevented.

#### **Article 143**

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 full jurisdiction in respect of:

(a) matters referred to it under Article 12, with a view to the determination of suitable conditions for the granting by the Commission of licences or sub-licences; and

(b) appeals brought by persons or enterprises against any penalties imposed on them by the Commission under Article 83.

#### **Article 145**

If the Commission considers that a person or enterprise has committed an infringement of this Treaty to which the provisions of Article 83 are not applicable, it shall invite the Member State having jurisdiction over such person or enterprise to impose penalties in accordance with its municipal law in respect of such infringement.

If the Member State concerned does not comply with this invitation within the period laid down by the Commission, the latter may refer the matter to the Court of Justice with a view to establishing that such infringement has been committed by the person or enterprise concerned.

#### **Article 146**

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 appeal is well founded, the Court of Justice shall declare the act concerned to be null and void.

In the case of regulations, however, the Court of Justice shall, if it considers it necessary, indicate those effects of the regulation annulled which shall be deemed to remain in force.

#### **Article 148**

In the event of the Council or the Commission in violation of this Treaty failing to act, the Member States and the other institutions of the Community may refer the matter to the Court of Justice with a view to establishing such violation.

Such appeal shall only be admissible if the institution concerned has previously been invited to act. If, at the expiry of a period of two months after such invitation, that institution has not stated its attitude, the appeal may be lodged within a further period of two months.

Any natural or legal person may submit to the Court of Justice, under the conditions laid down in the preceding paragraphs, a complaint to the effect that one of the institutions of the Community has failed to address to him an act other than a recommendation or an opinion.

#### **Article 149**

An institution originating an act subsequently declared null and void or an institution whose failure to act has been declared contrary to the provisions of this Treaty shall take the measures required for the implementation of the judgment of the Court of Justice.

This obligation shall not affect any obligation arising from the application of the second paragraph of Article 188.

#### **Article 150**

The Court of Justice shall be competent to make a preliminary decision concerning:

- (a) the interpretation of this Treaty;
- (b) the validity and interpretation of acts of the institutions of the Community; and
- (c) the interpretation of the statutes of any bodies set up by an act of the Council, save where such statutes otherwise provide.

Where any such question is raised before a court or tribunal of one of the Member States, such court or tribunal may, if it considers that its judgment depends on a preliminary decision on this question, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a domestic court or tribunal from whose decisions no appeal lies under municipal law, such court or tribunal shall refer the matter to the Court of Justice.

#### **Article 151**

The Court of Justice shall be competent to hear cases relating to compensation for damage as provided for in Article 188, second paragraph.

#### **Article 152**

The Court of Justice shall be competent to decide in any case between the Community and its employees within the limits and under the conditions laid down by the relevant statute of service or conditions of employment.

#### **Article 153**

The Court of Justice shall be competent to make a decision pursuant to any arbitration clause contained in a contract concluded, under public or private law, by or on behalf of the Community.

#### **Article 154**

The Court of Justice shall be competent to decide in any dispute between Member States in connection with the object of this Treaty, where such dispute is submitted to it under the terms of a compromise.

#### **Article 155**

Subject to the powers conferred on the Court of Justice by this Treaty, cases to which the Community is a party shall not for that reason alone be excluded from the competence of domestic courts or tribunals.

#### **Article 156**

Where a regulation of the Council or of the Commission is the subject of a dispute in legal proceedings, any of the parties concerned may, notwithstanding the expiry of the period laid down in Article 146, third paragraph, invoke the grounds set out in Article 146, first paragraph, in order to allege before the Court of Justice that the regulation concerned is inapplicable.

#### **Article 157**

Except where otherwise provided for in this Treaty, appeals submitted to the Court of Justice shall not have any staying effect. The Court of Justice may, however, if it considers that circumstances so require, order the suspension of the execution of the act appealed against.

#### **Article 158**

The Court of Justice may, in any cases referred to it, make any necessary interim order.

#### **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 shall be 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.

The Court of Justice shall adopt its rules of procedure. They shall be submitted to the Council for unanimous approval.

### **Section V — 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 twelve members.
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 insofar 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 II — Provisions Common to Several Institutions**

### **Article 161**

For the achievement of their aims and under the conditions provided for in this Treaty, the Council and the Commission shall adopt regulations and directives, make decisions and formulate recommendations or opinions.

Regulations shall have a general application. They shall be binding in every respect and directly applicable in each Member State.

Directives shall bind any Member State to which they are addressed, as to the result to be achieved, while

leaving to domestic agencies a competence as to form and means.

Decisions shall be binding in every respect for the addressees named therein.

Recommendations and opinions shall have no binding force.

#### **Article 162**

The regulations, directives and decisions of the Council and of the Commission shall be supported by reasons and shall refer to any proposals or opinions which are to be obtained pursuant to this Treaty.

#### **Article 163**

The regulations shall be published in the *Official Journal of the Community*. They shall enter into force on the date fixed in them or, failing thus, on the twentieth day following their publication.

Directives and decisions shall be notified to their addressees and shall take effect upon such notification.

#### **Article 164**

Forced execution shall be governed by the rules of civil procedure in force in the State in whose territory it takes place. The writ of execution shall be served, without other formality than the verification of the authenticity of the written act, by the domestic authority which the government of each Member State shall designate for this purpose and of which it shall give notice to the Commission, to the Court of Justice and to the Arbitration Committee established under Article 18.

After completion of these formalities at the request of the party concerned, the latter may, in accordance with the municipal law, proceed with such forced execution by applying directly to the authority which is competent.

Forced execution may only be suspended pursuant to a decision of the Court of Justice. Supervision as to the regularity of the measures of execution shall, however, be within the competence of the domestic courts or tribunals.

### **CHAPTER III — The Economic and Social Committee**

#### **Article 165**

There shall hereby be established an Economic and Social Committee with consultative status.

The Committee shall be composed of representatives of the various categories of economic and social life.

#### **Article 166**

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
Portugal	12
United Kingdom	24

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. With a view to the appointment of the members of the Committee, each Member State shall send to the Council a list containing twice as many candidates as there are seats allotted to its nationals.

The Committee shall be composed in such a manner as to secure adequate representation of the different categories of economic and social life.

2. The Council shall consult the Commission. It may obtain the opinion of European organisations representing the various economic and social sectors concerned in the activities of the Community.

#### **Article 168**

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 specialised sections.

These specialised sections shall operate within the framework of the general competence of the Committee. They may not be consulted independently of the Committee.

Sub-committees may also be established within the Committee in order to prepare, in specific matters or

fields, draft opinions to be submitted to the Committee for consideration.

The rules of procedure shall determine the particulars of the composition of, and the rules of competence concerning, the specialised sections and sub-committees.

#### **Article 170**

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 FOUR — Financial Provisions**

#### **Article 171**

1. Estimates shall be drawn up for each financial year for all revenues and expenditures of the Community other than those of the Agency and Joint Enterprises and shall appear either in the operational budget or in the research and investment budget.

Each budget shall be in balance as to revenues and expenditures.

2. Estimates of the revenues and expenditures of the Agency, which shall operate in accordance with customary business usage, shall appear in a separate statement.

The conditions governing the estimates, implementation and verification of these revenues and expenditures shall be determined, having due regard to the Statute of the Agency, in the financial regulations adopted pursuant to Article 183.

3. The estimates of revenues and expenditures, together with the trading accounts and balance-sheets of Joint Enterprises for each financial year, shall be communicated to the Commission, the Council and the European Parliament, in accordance with the provisions laid down in the statutes of those Enterprises.

#### **Article 172**

Loans for the financing of research or investment shall be contracted on terms to be laid down by the Council acting as provided for in Article 177, paragraph 5.

The Community may raise loans on the capital market of a Member State in accordance with the legal provisions applying to internal issues or, where such provisions do not exist in a Member State, after

agreement has been reached between such Member State and the Commission in regard to the proposed loan.

The consent of the competent agencies in the Member State may not be refused unless serious disturbances in its capital market are to be feared.

### **Article 173**

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**

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 appearing in the operational budget shall comprise, in particular:

- (a) administrative expenses; and
- (b) expenses relating to safety control and health protection.

2. The expenditure appearing in the research and investment budget shall comprise, in particular:

- (a) expenses relating to the implementation of the Community's research programme;
- (b) any participation in the capital of the Agency and in its investment expenses;
- (c) expenses relating to the equipment of instructional establishments; and
- (d) any participation in Joint Enterprises and in certain joint operations.

### **Article 175**

The expenditure entered in the operational budget shall be authorised for the duration of one financial year, unless any provisions to the contrary are contained in the regulations adopted pursuant to Article 183.

Subject to the conditions to be laid down pursuant to Article 183, any such appropriations other than those relating to staff costs as are unexpended at the end of the financial year may be carried over, but not beyond

the end of the following financial year.

Appropriation for operational expenditure shall be set out under different headings according to the type or purpose of such expenditure and subdivided, as far as necessary, in accordance with the regulations adopted pursuant to Article 183.

The expenses 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 the setting up of a special system for certain common expenses.

#### **Article 176**

1. Appropriations for research and investment, subject to the limits resulting from programmes or decisions on expenditure which, pursuant to this Treaty, require the unanimous vote of the Council, shall comprise:

(a) budgetary commitments covering a tranche which constitutes an individual item and a coherent whole; and

(b) payment authorisations representing the maximum sum payable each year for covering commitments contracted under paragraph (a).

2. The calendar of due dates of commitments and authorisations shall be annexed to the corresponding draft budget proposed by the Commission.

3. Appropriations for research and investment shall be set out under different headings according to type or purpose of the expenditure and subdivided, as far as necessary, in accordance with the regulations adopted pursuant to Article 183.

4. Unused payment authorisations shall be carried over to the following financial year by a decision of the Commission, unless the Council decides otherwise.

#### **Article 177**

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.

10. 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

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**

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, having regard to the principles of sound financial management.

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**

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**

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 statement provided for in Article 171, paragraphs 1 and 2, shall be drawn up in the unit of account fixed in accordance with the provisions of the financial regulations adopted pursuant to Article 183.

The financial contributions provided for in Article 172 shall be made available to the Community by Member States in their respective domestic currencies.

The available balances of these contributions shall be deposited with the Treasuries of Member States or with bodies designated by them. The funds, while on deposit, shall retain their par value in relation to the unit of account mentioned in the first paragraph, such par value being that in force at the date of deposit.

These balances may be placed under conditions to be settled in agreements concluded 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 its holdings in the currency of any one Member State into the currency of another Member State, in so far as this may be necessary in order to enable such funds to be used for the purposes for which they are intended in accordance with this Treaty. The Commission shall, as far as possible, refrain from making such transfers if it possesses liquid or realisable assets in the currencies which it needs.

2. The Commission shall communicate with each Member State through the channel of the authority designated by the State concerned. For the carrying out of financial operations, the Commission shall have recourse to the services of the bank of issue of the Member State concerned or of any other financial institution approved by that State.

3. As regards expenditure to be effected by the Community in currencies of third countries, the Commission shall submit to the Council, before the budgets are finally adopted, a programme showing the intended revenues and expenditures in the different currencies.

This programme shall be subject to the approval of the Council acting by means of a qualified majority vote. It may be amended in the course of the financial year in accordance with the same procedure.

4. Funds in currencies of third countries, when required in order to meet items of expenditure appearing in the programme mentioned in paragraph 3, shall be assigned to the Commission by Member States according to the scales provided for in Article 172. The same scales shall be applied for the assignment to Member States of currencies of third countries collected by the Commission.

5. The Commission may dispose freely of funds in the currencies of third countries obtained by loans raised in those countries.

6. The exchange arrangements set out in the preceding paragraphs may be made wholly or partly applicable to the Agency and to Joint Enterprises and may be adapted to their operational needs by the Council acting by means of a unanimous vote on a proposal of the Commission.

### **Article 183**

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**

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 FIVE — General Provisions**

### **Article 184**

The Community shall have legal personality.

### **Article 185**

The Community shall in each of the Member States possess the most extensive legal capacity accorded to legal persons under their respective municipal law; it may, in particular, acquire or transfer movable and immovable property and may sue and be sued in its own name. For this purpose, 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**

For the performance of the tasks entrusted to it, the Commission may collect any information and verify any matters within the limits and under the conditions laid down by the Council in accordance with the provisions of this Treaty.

#### **Article 188**

The contractual liability of the Community shall be governed by the law applying to the contract concerned.

As regards non-contractual liability, the Community shall in accordance with the general principles common to the laws of Member States make reparation for any damage caused by its institutions or by its employees in the performance of their duties.

The personal liability of employees towards the Community shall be determined in the provisions establishing the statute of service or the conditions of employment applicable to them.

#### **Article 189**

The seat of the Community's institutions shall be fixed by the Governments of the Member States acting in common agreement.

#### **Article 190**

The rules concerning the languages of the institutions of the Community shall, without prejudice to the provisions laid down in the rules of the Court of Justice, be determined by the Council acting by means of a unanimous vote.

#### **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 general or particular measures which are appropriate for ensuring the carrying out of the obligations arising out of this Treaty or resulting from acts of the institutions of the Community. They shall facilitate the achievement of the aims of the Community.

They shall abstain from any measures likely to jeopardise the achievement of the aims 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 in this Treaty.

**Article 194**

1. The members of the institutions of the Community, members of committees, officials and other employees of the Community and any other persons whose functions or whose public or private relations with the institutions or facilities of the Community or with Joint Enterprises make it necessary for them to obtain or receive communication of any facts, information, knowledge, documents or objects which are classified pursuant to provisions enacted by a Member State or an institution of the Community, shall, even after the termination of such functions or relations, maintain their security in respect of any unauthorised person or of the general public.

Each Member State shall regard any breach of this obligation as a violation of its classified matters which is subject, as regards both substance and jurisdiction, to the provisions of its municipal law concerning the endangering of the security of the State or concerning the disclosure of professional secrets. It shall, at the demand of any Member State concerned or of the Commission, proceed against any person who has committed such a breach within its jurisdiction.

2. Each Member State shall communicate to the Commission all provisions regulating in its territories the classification and security of information, knowledge, documents or objects relating to the field of application of this Treaty.

The Commission shall ensure that these provisions are communicated to the other Member States.

Each Member State shall take all appropriate steps to facilitate the gradual introduction of as uniform and as comprehensive a security protection as possible. The Commission may, after consulting the Member States concerned, make any recommendations for this purpose.

3. The institutions of the Community and their facilities as well as the Joint Enterprises shall apply the provisions regarding security protection which are in force in the territory in which each of them is situated.

4. Where any authorisation to obtain communication of facts, information, documents or objects relating to the field of application of this Treaty and protected by means of classification has been granted either by an institution of the Community or by a Member State to a person engaged in activities within the field of application of this Treaty, such authorisation shall be recognised by every other institution and every other Member State.

5. The provisions of this Article shall not be an obstacle to the application of special provisions resulting from agreements concluded between a Member State and a third country or an international organisation.

#### **Article 195**

The institutions of the Community, as well as the Agency and Joint Enterprises shall, in applying this Treaty, comply with any conditions, in regard to access to ores, source materials and special fissionable materials, imposed by domestic provisions enacted for reasons of public order or public health.

#### **Article 196**

For the purposes of this Treaty and except where otherwise provided for therein:

(a) the term “person” shall mean any natural person wholly or partly engaged in the territories of Member States in activities which come within the field defined in the appropriate Chapter of this Treaty;

(b) the term “enterprise” shall mean any enterprise or institution wholly or partly engaged in activities under the same conditions, whatever may be its public or private legal status.

#### **Article 197**

For the purposes of this Treaty:

1. the term “special fissionable materials” shall mean plutonium 239, uranium 233; uranium enriched in the isotopes 235 or 233; any material containing one or more of the foregoing; and such other fissionable materials as shall be defined by the Council acting by means of a qualified majority vote on a proposal of the Commission; but the term “special fissionable materials” shall not include source materials;

2. the term “uranium enriched in the isotopes 235 or 233” shall mean uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;

3. the term “source material” shall mean uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one or more of the foregoing in such concentration as shall be defined by the Council acting by means of a qualified majority vote on a proposal of the Commission;

4. the term “ores” shall mean any ore containing, in such average concentration as shall be defined by the Council acting by means of a qualified majority vote on a proposal of the Commission, substances from which the source materials as defined above can be obtained by 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.

(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.

#### **Article 199**

The Commission shall be responsible for ensuring all suitable contacts with the organs of the United Nations, of their Specialised Agencies and of the General Agreement on Tariffs and Trade.

The Commission shall also ensure appropriate contacts with all international organisations.

#### **Article 200**

The Community shall establish all suitable co-operation with the Council of Europe.

#### **Article 201**

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 be an obstacle to the existence or completion of regional unions between Belgium and Luxembourg, and between Belgium, Luxembourg and the Netherlands, in so far as the objectives of these regional unions are not achieved by application of this Treaty.

#### **Article 203**

If any action by the Community appears necessary to achieve one of the aims of the Community in cases where this Treaty has not provided for the requisite powers of action, the Council, acting by means of a unanimous vote on a proposal of the Commission and after the European Parliament has been consulted, shall enact the appropriate provisions.

#### **Article 204**

(Repealed)

#### **Article 205**

(Repealed)

#### **Article 206**

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 which are to be annexed to this Treaty by common agreement between the Member States shall form an integral part thereof.

#### **Article 208**

This Treaty shall be concluded for an unlimited period.

### **TITLE SIX — Provisions relating to the Initial Period**

#### **Section I — The setting up of the institutions of the Community**

#### **Article 209**

The Council shall meet within a period of one month after the date of the entry into force of this Treaty.

#### **Article 210**

The Council shall take all appropriate measures to constitute the Economic and Social Committee within a period of three months from the Council's first meeting.

#### **Article 211**

The Assembly shall meet within a period of two months after the first meeting of the Council and on being convened by the President of the latter in order to elect its officers and draw up its rules of procedure. Pending the election of its officers, the European Parliament shall be presided over by its oldest member.

**Article 212**

The Court of Justice shall enter upon its duties as soon as its members have been appointed. The first appointment of the President shall be made for a period of three years under the same conditions as the appointment of its members.

The Court of Justice shall adopt its rules of procedure within a period of three months after entering upon its duties.

Reference may not be made to the Court of Justice until after the date of publication of these rules of procedure. Periods laid down for the submission of cases shall only begin to run as from that date.

The President of the Court of Justice shall, upon his appointment, exercise the powers conferred upon him by this Treaty.

**Article 213**

The Commission shall enter upon its duties and assume the responsibilities conferred upon it by this Treaty as soon as its members have been appointed.

The Commission shall, on entering upon its duties, undertake the studies and establish the contacts with Member States, enterprises, workers and users which are necessary for making a general survey of the position of nuclear industries within the Community. The Commission shall, within a period of six months, address a report on this subject to the European Parliament.

**Article 214**

1. The period of the first financial year shall extend from the date of the entry into force of this Treaty to the following 31 December. If, however, this Treaty enters into force during the second half of the year, such period shall continue until 31 December of the following year.

2. Until the budgets for the first financial year have been adopted, Member States shall make to the Community non-interest-bearing advances which shall be deducted from the financial contributions relating to the implementation of the said budgets.

3. Until the statute of service for officials and the conditions of employment applicable to other employees of the Community, as provided for in Article 186, are established, each institution shall recruit the staff it needs and shall, for this purpose, conclude contracts of limited duration.

Each institution shall examine with the Council any questions concerning the number, remuneration and distribution of posts.

**Section II — Preliminary provisions for implementing this Treaty****Article 215**

1. An initial research and instructional programme which is set out in Annex V to this Treaty and which may not exceed 215 million E.P.U. units of account, unless the Council acting by means of a unanimous vote otherwise decides, shall be carried out within a period of five years after the date of the entry into force of this Treaty.

2. The breakdown of the expenditure required for the implementation of this programme is set out by way of indication under principal headings in Annex V.

The Council, acting by means of a qualified majority vote on a proposal of the Commission, may amend this programme.

#### **Article 216**

The Commission's proposals concerning the particulars of operation of the institution at university level referred to in Article 9 shall be submitted to the Council within a period of one year after the date of the entry into force of this Treaty.

#### **Article 217**

The security regulations provided for in Article 24 relating to the classification applicable to the dissemination of information shall be laid down by the Council within a period of six months after the date of the entry into force of this Treaty.

#### **Article 218**

The basic standards shall be fixed in accordance with the provisions of Article 31 within a period of one year after the date of the entry into force of this Treaty.

#### **Article 219**

The legislative and administrative provisions for protecting the health of workers and of the general public in the territories of Member States from the dangers resulting from ionising radiation shall, in accordance with the provisions of Article 33, be communicated by these States to the Commission within a period of three months after the date of the entry into force of this Treaty.

#### **Article 220**

The Commission's proposals relating to the Statute of the Agency, referred to in Article 54, shall be submitted to the Council within a period of three months after the date of the entry into force of this Treaty.

### **Section III — Transitional provisions**

#### **Article 221**

The provisions of Articles 14 to 23 inclusive and of Articles 25 to 28 inclusive shall apply to patents, provisionally protected claims and utility models, and also to applications for patents and utility models filed before the entry into force of this Treaty, under the following conditions:

- 1: In regard to the period of time mentioned in Article 17, paragraph 2, due account shall be taken, in favour of the owner, of the new situation arising after the date of the entry into force of this Treaty.
2. With regard to the communication of a non-classified invention, if either or both of the periods of three months and eighteen months provided for in Article 16 have expired at the date of the entry into force of this Treaty, a further period of six months shall begin to run as from that date.

If either or both of these periods are unexpired at that date, they shall be extended for a period of six months as from the date of their normal expiry.

3. The same provisions shall apply to the communication of a classified invention in accordance with the provisions of Article 16 and Article 25, paragraph 1, except that in such cases the new period or the

extension of a current period shall be deemed to begin on the date of the entry into force of the security regulations referred to in Article 24.

#### **Article 222**

During the period between the date of the entry into force of this Treaty and the date, fixed by the Commission, when the Agency assumes its functions, the conclusion or renewing agreements and conventions for the supply of ores, source materials or special fissionable materials shall be subject to the prior approval of the Commission.

The Commission shall refuse to approve the conclusion or renewal of agreements and conventions which it considers of a nature to prejudice the application of this Treaty. It may, in particular, make its approval conditional upon the inclusion in these agreements and conventions of clauses enabling the Agency to participate in their implementation.

#### **Article 223**

Notwithstanding the provisions of Article 60, and in order to take account of work and studies already in progress, supplies for reactors installed in the territories of a Member State which may become critical before the expiry of a period of seven years as from the date of the entry into force of this Treaty, shall be granted priority for a maximum period of ten years as from that date, in regard both to ores and source materials coming from the territories of that State and in regard to source materials or special fissionable materials forming the subject of a bilateral agreement concluded before the entry into force of this Treaty and communicated to the Commission in accordance with the provisions of Article 105.

The same priority shall be granted during such period of ten years in regard to supplies for any isotope separation factory, whether or not a Joint Enterprise, which begins to operate in the territories of a Member State before the expiry of a period of seven years after the date of the entry into force of this Treaty.

The Agency shall conclude the relevant contracts after the Commission has ascertained that the conditions for the application of the priority right have been fulfilled.

### **Final Provisions**

#### **Article 224**

This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional rules. 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 comply with this formality. If, however, such deposit is made less than fifteen days before the beginning of the following month, this Treaty shall not enter into force until the first day of the second month following the date of such deposit.

#### **Article 225**

The present Treaty, drawn up in a single original in the German, French, Italian and Netherlands 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 FAITH WHEREOF, the undersigned Plenipotentiaries have placed their signatures at the end of the present Treaty.

Done at Rome, on the 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.