EURATOM

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IN AN interview at the end of 1955, Jean Monnet, that Frenchman who has untiringly been the driving force in the movement for European integration, said: "The United States of Europe, means: a federal power linked to the peaceful exploitation of Atomic Energy".[1]

An important step was taken in this direction two years later with the creation, on January 1, 1958, of a European Atomic Energy Community called Euratom. This was but a first step; the formula seemed so extreme that many, and some with a degree of success, tried to act as moderators. Yet, as it stands, Euratom—so its name shows—is truly the product of the fusion of two contemporary revolutions: the European revolution and the atomic revolution.

I. THE EUROPEAN REVOLUTION

The Second World War saw the end of a long and fruitful period in Man's evolution: that of the history written by the divided countries of Europe. In order to ensure their economic progress—a condition they must fulfil if they are to remain independent—the nations of Europe must unite.

Everything compels them to do so. Their peoples, greatly shaken by the repeated horrors born of nationalistic excesses, are ready to begin the building of a new European equilibrium. Their leaders, deeply disturbed by the decline of European influence throughout the world, cannot foresee any possible future without a broadening of markets and a co-ordination of policies. Together the peace and prosperity of Europeans, without which fruitful exchanges with the rest of the world cannot exist, make European unity imperative. In the minds of

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the Europeans there has come to be a revolution defined by W. Röpke as "a gradual awakening of conscience and an aspiration toward unity".

Very soon after the Second World War, events were to give this new European spirit a chance to express itself. The two major post-war problems facing the nations of Western Europe were undoubtedly the growing Soviet domination of Central Europe and the dollar shortage. Both have been at the source of repeated efforts towards co-operation.

On September 19, 1946, in a famous speech delivered at Zurich, Sir Winston Churchill solemnly underlined the need for a reconciliation and the hope for a unification of Europe. Three years later, fifteen countries of Western and Mediterranean Europe joined together in the *Council of Europe* where Governments on the one hand, and Parliamentary delegations on the other, periodically compare their views on European problems and help further the conclusion of arrangements for co-operation.

On June 5, 1947, in a speech no less famous delivered at Harvard, General Marshall proposed that the United States support the concerted effort the nations of Western Europe were undertaking to restore their economy, ruined by war. Less than a year later, the fifteen countries of the Council of Europe founded the *Organization for European Economic Co-operation* (O.E.E.C.), with which the United States and Canada became associated. This institution set itself one immediate objective: to allocate American aid with a general view to eliminating duplication and promoting the development of a healthy European economy. It also proposed a permanent objective: to further the progressive economic unification of Europe. To this end, the O.E.E.C. strove to lessen quantitative restrictions and to set up a multilateral payments system, thus re-establishing the bases required for a flow of trade among the countries belonging to the Organization. Moreover, through facilities opened by the permanent contacts between the national delegations, the O.E.E.C. created a climate of general economic co-operation, in which the abolition of tariff barriers between member countries has been considered.

Progress, though very real, seemed slow. The states facing each other in the Council of Europe and in the O.E.E.C. were sovereign states, all enjoying the right of veto on any issue before them. The most varied, if not contradictory, characteristics of the several national economies led to conflicts of interest ending frequently in inaction or poor compromise. Since the rhythm of World Evolution was gaining speed every day, it became apparent that a more efficient method of co-operation was indispensable.

On May 9, 1950, M. Robert Schuman proposed that an active and well organized united Europe be achieved through *integration*. Integration borrowed from the federal system the method of pooling some fields of activities under a single authority exercising in all the integrated countries powers which until then had been left in the hands of the states and, particularly, direct power over

the interested parties. A general economic integration would have implied a federal political system for which the countries of Western Europe were not yet ready. The first experience had perforce to be limited, but it had to be nonetheless decisive. It had to have a deep meaning, both politically, by bringing about a Franco-German reconciliation without which no European structure was possible, and economically, by selecting a fundamental sector which, once unified, would be the embryo of a greater integration. That is why the French Government proposed to "place the entire coal and steel production of Germany and France under a common High Authority, in an organization open to the other countries of Europe".

Less than a year later, Belgium, France, the Federal Republic of Germany, Italy, Luxembourg and the Netherlands signed a treaty instituting the European Coal and Steel Community (E.C.S.C.) which was ratified with a heavy majority vote by the parliaments of the six countries. The E.C.S.C. began operating in August, 1952.

1. *European Coal and Steel Community*

With the creation of this first European Community, the existence of common economic objectives was formally recognized: economic expansion, increased employment and a higher standard of living in the member states. The E.C.S.C. is to help reach these objectives by creating, in the coal and steel field, a common market governed by the terms of the Treaty. Free circulation within the common market is the necessary condition for a sensible distribution of industries, and, in the end, for the achievement of the common objectives:

(a) Economic barriers between the member states of the Community must be abolished. This elimination implies not only the abolition of customs duties and of quantitative restrictions, but also the freedom of movement of qualified workers as well as the prohibition of aids and discriminations emanating from Government sources, either direct, as in the case of subsidies, or indirect, as in the case of discriminatory transportation rates. Distortions resulting from the disparity in the general economies of the member states should be compensated if they seriously affect competition between the enterprises of the Community. This competition, freed from the distortions inflicted upon it by the public measures adopted by the member states, must be protected against the manœuvres of the enterprises themselves, which in fact might also jeopardize free circulation of the Community's goods. That is why the common market prohibits discriminatory or dishonest sales practices, as well as agreements between enterprises which might have the effect of falsifying, restricting or barring competition. Concentrations are subject to previous authorization. Enterprises making an abusive use of their dominant position to circumvent the Treaty's objectives would be subject to penalties.

(b) Periods of economic disequilibrium in the common market may revive arbitrary disparities which are eliminated in normal periods by free circulation rules. In such cases, the common institutions must make sure that regulations are observed in the common market. It is better to prevent than to cure. In order to promote stability in expansion, an overall survey of the common market will be constantly kept up to date by the publication of all available information, programmes and general objectives. Investments conforming to the rational development of the Community will be encouraged, as the case may be, by the granting of financing facilities which the Community, through its credit can extend to the enterprise. The enterprises concerned are warned against the risks implied in other investments. Finally, if, in spite of the joint efforts of private initiative and community regulations, an economic crisis or a serious shortage arises, the common institutions, if necessary, would again intervene.

(c) Integration, even in a limited sector, of national economies so long divided cannot possibly take place all at once. Under the Treaty, a five-year transitional period was established and special safeguards were applied, under well-defined conditions, with the agreement and under the control of the common institutions.

It is evident, then, that the role of these *common institutions* is fundamental. Consequently their organization is of great importance. Integration requires that organizations formed to give effect to the concept be independent, and that powers hitherto exercised in each member state by the highest national authority be transferred to new institutions. The common democratic tradition of the countries of Western Europe demands that the executive power be controlled by the judicial and parliamentary branches of the government. The fact that integration is limited to one sector of the economy makes it essential, for the functioning of the Community, that there be a co-ordination between the decisions taken, by the Common Authority in the integrated sector and by the national authorities in each member state as regards the other sectors of their economic life.

A High Authority, composed of nine members who are independent from their national governments, wields the executive power of E.C.S.C. A Consultative Committee, comprising producers, workers, consumers, and businessmen in the field of coal and steel in all six countries, has the task of informing it about the opinions of those professionally concerned. A Council of Ministers comprising one member from each national government has to be consulted by the High Authority on most important decisions, and makes possible frequent exchanges of views about harmonizing the economic policies of the Community in the coal and steel sector with those of the member states in their economy in general.

Decisions taken by the High Authority, as well as those the Council of Ministers may take, either in administrative matters or in case of regulations formulated under the E.C.S.C. Treaty, can be referred for judicial review to the Court of Justice, composed of seven judges and of two advocates-general—all independent of their national governments.

The High Authority is politically responsible for its activities to a Common Assembly, numbering seventy-eight persons designated by the national parliaments from among their own members proportionately to the populations and interests of each member state. Lacking the legislative power which is inseparable from a real political federation, the Assembly nevertheless exercises a form of parliamentary control: by a vote of censure taken with a two-thirds majority on the annual report which the High Authority must present on its activities, the Common Assembly can force the Authority to resign in a body.

By affirming common objectives, accepting common regulations and common institutions, the six countries of the E.C.S.C. launched a new phase of the European revolution.

The six countries wished to associate with their new venture all the other countries of Western Europe willing to make the same decisions. Great Britain, invited from the first to join, showed interest but maintained an attitude of "wait and see". She had a representative accredited to the High Authority immediately after this institution began functioning. In December 1954, she concluded with the Community, whose experience was proving to her both its solidity and its efficiency, an agreement creating an organic liaison between the British Government on the one hand, and the High Authority and the governments of the member states on the other. The purpose of the liaison was to proceed jointly with studies, negotiations, and proposals which might encourage trade among the associated countries. Various countries of Western Europe, such as the Scandinavian states, sent representatives to the High Authority. Switzerland and Austria, linked to the states of the Community by their common interests as neighbours, also concluded with the High Authority agreements of a limited scope. The United States for its part had also shown its interest in the E.C.S.C. at an early date by naming a U.S. representative to the Authority, with the rank of Ambassador, and later by extending a $100 million loan to that agency.

The creation and the success of the Coal and Steel Community imparted to the idea of a United Europe two notions which were to play a prominent role: that of the transfer of authority to common institutions, and that of a common market. As a trial test for the realization of both these objectives, the E.C.S.C. offers a guide and, in many respects, a precedent. The role of innovator played by this first experience in integration justifies even more than its immediate fruitful bearings on European economy the place it holds in the history of contemporary Europe.

2. *The Setting for E.E.C. and Euratom*

The E.C.S.C. was hardly under way when a vast attempt at military and political integration was begun. Presented too soon to populations ill-prepared for it, technically unsatisfactory, apparently superfluous in a so-called climate of detente, the European Defence Community (E.D.C.) met with failure before the French Parliament on August 30, 1954.

Despite the confusion which followed this failure, the movement toward European integration was to start again, and without delay, in the economic field. Meeting at Messina in June 1955, to name a successor to Jean Monnet, the resigning President of the High Authority, the Foreign Ministers of the six countries of the E.C.S.C. adopted a resolution which constituted the charter of "the relaunching of Europe".

This relaunching was to require simultaneous efforts in several directions. The situation of the energy reserves of Europe demonstrated the urgency of following a co-ordinated policy of wide scope in that field. Lessons gleaned from the first years of the Coal and Steel Community threw a useful light on the weakness of an integration limited to specific sectors of the economy, and showed that the success of specialized drives, for example in the field of energy, was linked to the progress toward general economic integration. The Messina Resolution declared that "the time had come to take another step toward the construction of Europe", and "that it was now necessary to strive to establish a united Europe through the development of common institutions, the gradual fusion of national economies, the creation of a common market, the gradual harmonization of their social policies". The resolution then proceeded to set multiple objectives: the constitution of a common market, to be completed by the creation of a European Investment Fund and by a gradual harmonization of social regulations in use in the member states; joint development of the main communication systems; co-ordination of the development and use of various sources of energy in general and in particular the development of the peaceful uses of atomic energy.

At Messina a committee of governmental delegates from the six countries of the E.C.S.C. (in which the British Government was invited to participate) was formed under the chairmanship of Paul-Henri Spaak, then Foreign Minister of Belgium, and was given the task of preparing a general report for the Ministers. The report was presented in April 1956. While very summary as regards the co-ordination of energy and of communications, it provided a well advanced study for a common market and for an atomic energy organization, already called Euratom.

Meeting in Venice in May 1956, the six Foreign Ministers decided to adopt this report as the basis for drafting a Treaty to establish a common market and another to set up Euratom. An Intergovernmental Conference, also presided over by M. Spaak, was charged to prepare draft treaties, expressly leaving the way open for the entry or association of other countries of Europe. This work,

strongly stimulated at the end of 1956 by the political repercussions of the Suez affair and of the Hungarian uprising, required several meetings of the Foreign Ministers. Finally, a meeting of the Heads of Governments in Paris in February 1957, was necessary to settle remaining political questions. The following month a treaty instituting a European Economic Community (E.E.C.), that is to say organizing a general common market among the six countries, and a treaty instituting a European Atomic Energy Community (Euratom) were signed in Rome. Ratified with imposing majorities by the various Parliaments, the two Treaties came into force on January 1, 1958. The Commissions, which are the independent executives of the two Communities, began functioning on January 10, 1958.

With the birth of the European Economic Community a new phase of the European revolution begins. The six countries form a zone with a common economic policy, a zone which is also open to all the other countries of Europe wishing to join or associate themselves. The extension of integration to the whole economy, currency excepted, commands and allows more daring solutions than those of the Coal and Steel Community. The free circulation of goods is to be made possible by the creation of a customs union, meaning the suppression of duties and quotas for trade between the member states and the establishment of a common duty applicable to imports into all member states of goods coming from outside. Freedom of circulation of goods within the common market is to apply to all products, other than coal and steel, which remain under the control of the Coal and Steel Community, and products destined for nuclear installations which are controlled by the Euratom Treaty. The Economic Community will extend also to persons, investments and services, and is to be completed by the freedom to establish business. To ensure fair competition, common regulations are to be established and national legislation to be harmonized.

Such advanced integration requires a common economic policy. The Treaty provides for such policy in commercial relations with outside countries. It promotes it, either by outlining common objectives of social policy or of transportation policy, or by providing permanent liaison groups between the member states as for example in the fields of market or monetary policies. A European Investment Bank is to help in the development of less advanced regions of the Community and to encourage investments of general interest. A European Social Fund is to come to the aid of unemployed labour. Taking into account the role played in the life of several member states by overseas countries and territories (mainly in Africa), with which they are especially linked, the Treaty associates these countries and territories with the Community.

The E.E.C. institutions, like those of the E.C.S.C., reflect the needs of integration as well as the traditions of democracy. At the same time they are adapted to the broad tasks and to the decisions on economic policy which are their responsibility. These institutions are in part parallel with those we shall

describe in the case of Euratom; in part they are common to the Economic Community, to Euratom and to the E.C.S.C.

The accomplishment of integration, great in its economic daring as well as in its political scope and human aspects, must be reached within twelve years, or fifteen years at the most; during the transition period, temporary deviations from the requirements of integration are allowed subject to limited and precise conditions.

Such is the general framework within which Euratom will function. The true meaning of the European atomic effort cannot be separated from the deep transformation of contemporary Europe.

II. Negotiations of the Euratom Treaty

Among the countries of Western Europe, only Britain and to a lesser degree France, retarded by war and its economic aftermath, had undertaken an ambitious national programme of nuclear energy development. These two nations were gradually realizing the scope of the problems to be solved, whether they be concerned with the number of scientists or technicians, the volume of investments, or the vastness and complexity of the needed industrial equipment. Their thoughts on the subject largely reflected the increasing concern of all the countries of Western Europe over their energy requirements, as a result of constantly rising energy consumption.

The first report on the energy problem was prepared on the initiative of the O.E.E.C., by Louis Armand, then Chairman of the French National Railroads, chosen because of his extensive technical knowledge and of his exceptional capacity. The report he prepared for the O.E.E.C. was published in June 1955 under the title "Some Aspects of the European Energy Problem". This document showed the increasing need for energy in Europe and the necessity of making the best use of energy resources. It described the immense potentialities of nuclear energy, both as regards available quantities and as regards distribution facilities and lower costs. It stressed, however, that more than any other, this form of energy needed for its development close European co-operation especially for the exchange of information and for the building and financing through joint effort, of nuclear industrial plants.

The responsible governments were thus officially advised of the scope and promise of a common nuclear policy. They still had to be convinced that they should consider and give effect to such a policy. Their action, within the O.E.E.C., which was to lead in December 1957 to the creation of a "European Nuclear Energy Agency", is described elsewhere in this same volume. The present article can only trace the broad outlines of Euratom.

An immediate consequence of the report presented by M. Armand to the O.E.E.C. was that he was made a member of the French Delegation and Chairman of the Commission on Nuclear Energy, in the Intergovernmental

Committee charged with applying the resolution adopted at Messina, in June 1955. The Messina resolution had recommended that "the creation of a common organization be studied, such an organization to be entrusted with the responsibility and given the means of ensuring the peaceful development of atomic energy, taking into consideration the special arrangements entered into by certain governments with outside parties".

In November 1955, M. Armand presented the conclusions of the Commission over which he presided. These conclusions were to be reproduced in substance, after completion or refinement, in the general report of the Committee, adopted at Venice by the six Foreign Ministers, in May 1956. That report in turn was to serve as the basis for the Treaties.

The agreement reached at this stage was to prove definitive in most of its features. The scope of the effort to be undertaken was recognized. The need for new sources of energy, much greater for Europe than for the United States, were emphasized. The potentially revolutionary consequences of nuclear energy justified a common effort on the part of all public, private and mixed enterprises. It was necessary, said the report, "to create basic conditions so that industry as a whole and free enterprise may play their essential part", and "to help in the formation and in the rapid growth of a nuclear industry as well as in the nuclear development of industries and of economy as a whole". It was contemplated that the impulse supplied by Euratom would be felt in various fields:

(a) It was to stimulate and co-ordinate scientific research, by acting directly in joint research and teaching, as well as by co-ordinating research pursued by the six countries in the nuclear field;

(b) It was to further the exchange and the pooling of information and of licences, either on a mutually agreeable basis or through compulsion or arbitration, with the guarantee of full compensation in all cases;

(c) It was to set up minimum standards for the protection of health, and institute a control over installations; it was to require the preliminary communication of plans for nuclear installations to which objections might be made on grounds of safety;

(d) It was to publish programmes reflecting developments and it was to grant financial aid to installations, in order to guide investments without inhibiting the freedom of enterprises in such matters;

(e) It was to take over, partially or even totally, common installations, keeping in mind the principle "that its task was to bring about investments on a public scale in so far as the initiatives or possibilities of private industry, alone or in joint effort, seemed insufficient";

(f) It was to set up a nuclear common market destined to help freedom of movement among the six countries of men, money, materials and equipment needed for the development of nuclear energy;

(g) It was to ensure the respect of equal access of all enterprises to supplies or

ores and nuclear fuel, this equality having a bearing in fact on prices rather than on quantities, since there seems no likelihood of scarcity.

On all these points, the March 1957 Treaty was not to stray far from the positions defined in the spring of 1956 in the general report adopted at Venice. However, two questions, which had a major political bearing, still remained unsolved: the possibility for member states to make, despite Euratom, military use of atomic energy; the attribution to Euratom of monopoly of the supply of nuclear materials and fuels, as well as the ownership of special fissile materials. France was in favour of the first point, Germany was opposed to the second. In either case, decisions had to be made at the highest political level if the negotiations were to be successful. The determination of men, strengthened by events, was to bring success.

At the end of 1955, Jean Monnet organized "The Action Committee for the United States of Europe" with the representatives of the Socialists, Christian Democrat and Liberal parties, as well as of the Labour Unions, of the six countries of the E.C.S.C. The Committee, meeting for the first time in January 1956, stated that "it was intended to ensure the unity of action of all the organizations belonging to it in order to realize, through successive concrete achievements, the United States of Europe. . . . Among the achievements which our Committee is determined to see succeed, one—which must and can be the most rapid—concerns atomic energy".

In fact, while remaining vitally concerned with all other aspects of European integration, the Committee used its influence over parliaments and public opinion to promote first of all the success of the Euratom negotiations. Its initial choice for the exclusively peaceful development of nuclear energy contributed in France to a controversy between defenders and opponents of the production of national nuclear weapons. A parliamentary debate soon appeared necessary to throw light on the situation before negotiations could be resumed. The debate took place in the French National Assembly in mid-July 1956. The Assembly heard—a rather rare event in French parliamentary history—the technical reports of Louis Armand and Francis Perrin, High Commissioner to the Atomic Energy Commission of France and a scientist of great repute. It also heard the statements of Premier Guy Mollet and of his ministers on the specific subject of reserving France's legal and practical capacity to produce nuclear weapons. The National Assembly thereupon took a stand on "Little Europe" for the first time since the E.D.C. fiasco, voted in favour of the Euratom negotiations, 332 deputies for, 181 opposed to the negotiations.

The French parliamentary debate gave heart to all the negotiators. It also helped determine a point until then left open: Euratom, as it stands, has an exclusively peaceful role. But, unless special agreements are concluded with an outside supplier, Euratom does not forbid member states, under the condition that they respect their international commitments, from making military use of

nuclear fuels, which then escape Euratom's control. As will be seen below, the point of escape from Euratom's control is carefully defined in the Treaty, and other international security controls begin where that of Euratom ends.

A little after the settlement of this first question, the Suez affair underlined the urgency of having nuclear energy to supplement Europe's conventional sources. Two consequences followed:

Firstly, after the suggestion put forth by the Action Committee for the United States of Europe, the six Foreign Ministers, in November 1957 asked the "Three Wise Men", Louis Armand, Franz Etzel, then Vice-President of the High Authority of the E.C.S.C. and Francesco Giordani, to present a report "on the quantities of atomic energy which can be produced in the near future by the six countries, and on the means to be employed for this purpose". Presented to the Ministers in May 1957, this report was published under the title "A Target for Euratom". It recommended "the installation of a nuclear capacity of 15 million kW by the end of 1967, in order to stabilize our imports early in the 1960's".

Secondly, negotiations on the Treaty received another impulse. While the final drafting of the texts was being undertaken, the Heads of Governments themselves were applying their efforts to remove the last obstacles. The German Government, sharing the apprehensions voiced in Germany, in Belgium and in the Netherlands by big industry, strongly attached by tradition and principle to a climate of freedom, had been from the first reluctant to accept the theses expounded by France. France, relying upon its own experience and upon that of the United States and of Great Britain, favoured strengthening the control of Euratom through the centralization of supplies and the public ownership of fissile materials. The negotiations of the Treaty revealed that the agreement given to the report adopted at Venice was somewhat equivocal on these points. Yet the German Government, and with it all France's partners, accepted little by little, the need for a strong public organization to control the use of some of the most dangerous materials. In November 1956, an interview between Chancellor Adenauer and Premier Guy Mollet paved the way to an agreement of the Six on the attribution to a supply Agency of Euratom of a purchasing priority over ores and nuclear fuels produced or imported within the Community. At the end of the negotiation, the six Heads of Governments meeting in Paris on February 19, 1957, to settle the remaining disagreements in the two Treaties of the Common Market and Euratom, decided that the latter "would have ownership rights over all special fissile materials".

From that moment, the treaty negotiation was a formality. The Treaty was soon ready to make its appearance as it did in the agreement already referred to, signed in Rome in March 1957. Ratification by all six Parliaments and deposit of the instruments of ratification took place as shown in the Table below.

As has been seen, the Euratom Treaty came into force on January 1, 1958, together with the Treaty instituting a European Economic Community.

Countries		Ratification date	Majority	Date on which instruments of ratification were deposited
BELGIUM[2]	—Chamber of Representatives	Nov. 19, 57	174 a/4–2 abs.	Dec. 13, 1957
	—Senate	Nov. 28, 57	134 c/2–2 abs.	
GERMANY[2]	—Bundestag	July 5, 57	No nominal vote	Dec. 9, 1957
	—Bundestag	July 19, 57	Unanimity	
FRANCE	—National Assembly	July 9, 57	332 a/240	Nov. 25, 1957
	—Council of the Republic	July 24, 57	216 c/80	
ITALY[2]	—Chamber of Deputies	July 30, 57	311 a/144–54 abs.	Nov. 23, 1957
	—Senate	Oct. 9, 57	No nominal vote	
LUXEMBOURG	—Chamber of Deputies	Nov. 26, 57	46 a/3	Dec. 13, 1957
NETHERLANDS	—Second Chamber	Oct. 4, 57	No nominal vote	Dec. 13, 1957
	—First Chamber	Dec. 4, 57	Unanimity	

III. The Institutions and Agencies of Euratom

It would be impossible to describe clearly the functions and means of action of Euratom without first describing its institutions. The institutions were discussed, their final shape formulated, and their powers defined, in the last two months of a two-year negotiation, and this was done keeping in mind the agreement previously reached on proposed objectives and on initiatives to be undertaken through joint effort. The adversities of the E.D.C. had aroused in a great part of French public opinion a systematic opposition to any partial transfers of sovereignty to independent European bodies. Deeply hostile to any political European federalism, and consequently desirous of inhibiting anything that might reinforce the first institutions of Little Europe, these opponents wished to deprive Euratom of institutions in common with the E.C.S.C., and in this respect, they had been reassured by French Foreign Minister Pineau, in the course of the July 1956 debate before the French National Assembly.

Thus the institutions of Euratom were not set up with the view of uniting Europe politically, but rather to protect, in the field of nuclear energy, certain common indispensable objectives. Nevertheless, these institutions could not escape the general design already imposed upon the E.C.S.C. by the combined search for efficiency and by the traditions of democracy. Despite some dogmatic

opposition, the diplomatic instruments signed in Rome and ratified with nearly a 100 vote majority by the French Parliament in 1957, finally accept, for obvious motives of political coherence and administrative economy, certain institutions common to the three European communities, the Economic Community, the E.C.S.C. and Euratom.

Dispositions governing the Euratom institutions are contained in several texts, which have been ratified as a whole by each of the six national parliaments. Along with the Euratom Treaty, whose Chapter III is concerned with institutional provisions, the six governments also signed at Rome in March 1957, a Convention on certain institutions to be common to all European Communities. Furthermore, the governments signed at Brussels, in April of the same year, a protocol on the Privileges and Immunities of Euratom, and a protocol on the status of the Court of Justice. It is to the whole of these documents that one must refer in order to examine the organization and powers of the Euratom institutions.

The European Atomic Energy Community is an organization with a mission to reach common objectives. Each member country puts at the disposal of this organization the necessary means of action. Material means, of course, but specially the legal means which are the necessary mark of public authority: the power of direction over the nationals of the Community. It is this transfer of their own powers to a common organization, agreed to by the member states, which is the fundamental characteristic of Euratom, and of the other European Communities.

Common institutions are necessary in order to exercise full authority and receive the transferred powers according to a system acceptable to Western democratic ideas. These institutions consist of two executive institutions which are called to collaborate closely—the Commission and the Council; and two institutions of control—the Assembly and the Court of Justice. In addition, the Economic and Social Committee provides for a representation of all types of professional interests before the executive institutions. We turn now to a separate description of each of these institutions. They are so related to one another, however, that none can be described adequately without reference to others.

1. *The Commission*

Of the two executive Institutions, the Commission[3] is the most original in concept. A permanent body, exclusively devoted to the realization of the missions of the Community, the Commission is to be the constant expression of single general interest of the Community. The Commission's authority is dependent upon the confidence it inspires. Friendly to all, it must not extend favours to any. To this end, two traits mark its status: it is a body, and it is independent.

Since the decisions of the Commission are to be taken by a majority of the members composing it, the number of these members must be uneven. The E.E.C. Commission and the E.C.S.C. High Authority number nine members each. However, it appeared that a smaller group would be best designed to serve the interests of the highly specialized Euratom and to facilitate the making of prompt decisions. Furthermore, Luxembourg, with a population of but three hundred thousand, not having the means of devoting a very important effort to the development of nuclear energy, agreed not to claim a seat for one of its nationals in the Euratom Commission. Following this action by Luxembourg it was decided to have a Commission composed of five members, each coming from a different member state. This number can be changed by a unanimous decision of the Council. The Council, which we shall come to presently, may also by unanimous vote agree to the government of a member state appointing an accredited representative to serve as permanent liaison with the Commission. A qualified representative of the Government of Luxembourg is accredited in application of this clause.

The exercise of the powers granted the Commission by the Treaty is to be debated by its members as a body. The Commission drafts its own rules of procedure, which are to be published. Thus it sets the quorum for meetings, a figure which obviously cannot be less than three, since that is the required majority for the adoption of decisions. Being the collective holder of the authority granted to it by the Treaty, the Commission is also responsible as a collective unit for its action. Before public opinion as well as in its debates with the other institutions of the Community, the Commission constitutes an indivisible entity. If the Assembly emits a vote of censure against the Commission, the latter resigns collectively. Minority opinions are never to be published, nor are the conditions under which votes actually take place in the Commission. Only the conclusions of the deliberations are to be made public, never the manner in which they took place. This regulation is indispensable, in order to leave a real freedom to each of its members in debates and in votes.

The members of the Commission, because they are closely united, can more easily discharge their duty to be independent from outside influences. High priests of the Community, they are to devote themselves exclusively to the realization of the great hope the people have placed in them. Their personal status will bear the stamp of this preoccupation. Each member is appointed by agreement among the governments of the member states. He does not represent the country of which he is a national. Appointed for a four-year period, which can be renewed, the members of the Commission cannot be recalled by the governments. All the governments can do is to suspend a member temporarily from his functions, pending the decision of the Court of Justice. The Court of Justice is the only one authorized to remove a member from office if he no longer fulfils the conditions required for the exercise of his functions, or if he commits a serious

offence. Each member makes a solemn promise that both during and after his term in office, he will respect the obligations of his office. In particular, he is not to ask nor to accept instructions from any government or other body. As a corollary each member state promises not to seek to influence the members of the Commission in the performance of their duty. The Commission has a President and a Vice-President, selected from among its members (for a renewable period of two years) by the governments of all the member states. *Primus inter pares*, the President is not endowed by the Treaty with specific powers. His position of President, however, does give him a co-ordinating power and offers him an opportunity to exert a personal and practical influence over the other members.

To inform it and to support its action, the Commission has a permanent administration with services regulated by the Commission itself. The Commission can request any advice or call upon any study committees it deems necessary to the fulfilment of its mission. The Treaty itself provides the Commission with a Scientific and Technical Committee, of advisory status, composed of twenty members appointed individually by the Council, after consultation of the Commission. The Commission seeks the advice of this Committee each time it considers it desirable. The Committee must also be consulted in all cases prescribed in the Treaty.

2. *The Council*

The Council's organization[4] applies to Euratom a formula commonly used in international organizations. The Council is composed of representatives of the member states, each government appointing to it one of its members; this member may change according to matters involved. Presidency is rotated, each member of the Council holding the office for six months. The Council thus become a political forum where open exchanges of views can take place between the competent members of the government on the various problems facing the Community. The value and influence of this institution will depend largely on the frequency of and attitude displayed in contacts among men who are charged with political responsibility and who may obtain decisions on the national level. The political debates within the Council will fulfil its essential function. In preparation for these debates, co-ordinated technical studies are to be made by each national administration. The Council can set up a committee, whose authority and mission are to be defined by the Council, with a view to assuring that such co-ordinated technical studies are made.

Of classical structure, the Council is less classical in its voting procedures, as a result of the transfers of sovereignties and of powers to the Community. Being a truly Community organization, and not simply an organization where states meet while retaining their sovereignty, the Council, like the Commission, has the power to take decisions directly applicable to the interested parties throughout

the territories of the Community. For the adoption of resolutions, majority voting is the rule, unanimity the exception. To counteract the weakness which might result from the indifference or from the international neutrality of a member state, an abstention will not prevent the adoption of the rare Council decisions requiring unanimity. Majority is generally calculated according to number of members composing the Council: the agreement of any four of the six member states is usually enough to make a decision final. But the most important decisions to be taken by the Council require a prescribed majority, with weighted votes. Save for some financial decisions, where special weighted votes are provided, the prescribed majority has the effect of preventing any decision of the Council being taken either against the advice of two of the three larger countries: Germany, France or Italy, or against the advice of the three Benelux countries, unless, in this latter case, the decision is proposed to the Council by the Commission.

These different voting procedures throw light on what has been done to avoid two of the main pitfalls usually found in international organizations: inefficiency resulting from a prescribed unanimous vote; partisan coalition made possible by a simple majority. Although no basic rule has been set, it can be said briefly that in the Euratom Council, decisions pertaining to the current operation of the Community are to be taken by a simple majority vote; decisions involving considerable political implications, by a prescribed majority; unanimity is reserved for those few decisions destined to amend the Treaty or implying an extension of the commitments already undertaken by the member states, in which case each member state has the right of veto.

3. *Relationship of Commission and Council*

In their organization as well as in their method of operation, the two executive institutions are adapted to the exercise of the community powers given to them. The practical distribution between them of the authority and powers transferred to Euratom by the member states will be described in the course of the study of the missions assigned the Community. It is necessary to emphasize, however, that apart from exercising those special powers that belong to it alone, the Commission associates itself with almost all the deliberations of the Council, save, naturally, those bearing on decisions concerning the internal structure of the Council. This association presents two distinct aspects.

First, the Commission is consulted by the Council before the latter takes a stand. This preliminary consultation, always possible upon the initiative of the Council, is sometimes made obligatory by the Treaty, for example in the case of some appointments or in budgetary matters.

Secondly, and this is the case in a great number of important decisions, the Council cannot take a stand except upon a proposal of the Commission. If the Commission's proposal does not meet with the required majority or unanimity of

the Council, it is not adopted. The Commission must then present another proposal. If no agreement can be reached on its first proposal the Commission must then amend its own proposal which, whilst taking in account debates before the Council, may gather the required majority. The Council can always, when unanimous, modify the Commission's proposal. The Council can adopt, with a majority vote, only the proposal presented by the Commission—when such a majority, plain or prescribed is sufficient according to the Treaty. As a result of these rules each member state recovers its right of veto when the Commission, which is but the expression of the general interest of the Community, is in disagreement with the majority of the Council. A majority formed by a partisan coalition is no longer sufficient to force a decision. And the obligation of obtaining on all important matters either the unanimity of the Council, or the agreement of the Commission and the required majority before the Council, brings about a permanent give-and-take between the Commission and the Council.

Close co-operation is therefore essential between the Council and the Commission. The fact that members of the national governments on the one hand and members of the Commission on the other are thus working together is the best guarantee of understanding and of efficiency.

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The Commission and Council of Euratom are particular to this Community although similar in power and responsibility to corresponding institutions of the European Economic Community. Those of the Coal-Steel Community are rather different.

On the other hand, the Court of Justice and the Assembly are one and the same for all the three Communities.[5] These single institutions have a plural charter. In the exercise of their powers and authority, the single Assembly and the single Court of Justice apply to each Community the provisions of the Treaty dealing with that particular Community. The provisions governing the composition and organization of the single Assembly and single Court of Justice must therefore be identical. This requirement having been met by aligning the provisions of the three Treaties on these points, the Assembly and the Court of Justice, both unchangeable in their structure, no matter what Community they deal with, exercise their powers and authority in the field of Euratom, exclusively according to the provisions of the Euratom Treaty.

4. *The Assembly*

The Assembly[6] is the parliamentary institution of the Communities. Its members represent peoples and not governments. A witness and a guarantee of political democracy in an integrated Europe, it may become the most active agent of a genuine federalism. The provisions dealing with it are inspired by the wish to avoid unduly rushing the evolution of European public opinion, while leaving

room to influence the life of the Community toward the concept of European political unity.

The Assembly is now composed of 142 delegates appointed by the national Parliaments from among their own members. Each one of the three large member states—Germany, France and Italy—has 36 delegates; Belgium and the Netherlands have 14 each, and Luxembourg has six. The total number of seats as well as their distribution (which takes into account the size of populations and the strength of economic forces) is the same as that for the consultative Assembly of the Council of Europe. An attempt has thus been made to facilitate a future grouping of all the European Assemblies, around an unchangeable parliamentary nucleus, common to the Europe of the Six and to all other European organizations. But apart from this method of indirect appointment, now in practice, the Treaty provides that the Assembly will draw up proposals for election by direct universal suffrage, according to an identical procedure in all the member states. The possibility of a political evolution is thereby recognized. However, the rights of national governments are also protected: the Assembly simply drafts proposals. The Council can only recommend those proposals that are voted unanimously. Only the final agreement of the member states can bring about an effective reform of the Assembly.

The rules of procedure of the Assembly are based on usual parliamentary practice. Each year, the Assembly appoints its President and its officers; it sets its own rules of procedure. It holds at least one annual meeting and can also hold extraordinary sessions, either on its own initiative, or at the request of the Council or of the Commission. Except where otherwise provided in the Treaty, the Assembly takes its decisions by an absolute majority of votes cast.

The Assembly's first task—the basic function of all parliaments—is to supervise the Executive. The Commission is held politically responsible for its administration before the Assembly. It must answer questions addressed to it. The Commission may attend all meetings of the Assembly and be heard by it. The Commission presents an annual general report on the activities of the Community to the Assembly, which then discusses it in a public meeting. The Assembly's right to censure the Commission is a guarantee that the Commission will be politically responsible; this guarantee is indispensable if the Assembly is to exercise an effective influence. As indicated earlier in discussing the Commission, if such a motion of censure is adopted—by a two-third majority of votes cast, representing a majority of the members of the Assembly—the members of the Commission must tender their resignation collectively.

The right of censure exercised by the Assembly also exists in the case of the Coal-Steel Community, although it is subject to more strict regulations than in Euratom. Experience has proved that the existence of this provision allowed the creation of a virtually permanent and unlimited regime of parliamentary control over the administration of the Commission.

This development of parliamentary practice is most encouraging for the future; as regards the Commission, it underlines even more the anomaly resulting from the absence of any control of the Assembly over the Council which wields the power of decision in the most important matters in the name of the Community. Not only does the Council escape the censure of the Assembly, but according to the Treaty it has the right to be heard by the Assembly under conditions laid down by itself in its own rules of procedure.

A supervisory institution first, the Assembly also takes part in the drafting of the rules of the Community. The Assembly's role in Euratom in this respect is much greater than in the E.C.S.C., where the Assembly is much more circumscribed. However, it is true that the Assembly, as it now stands, has a purely advisory role. Its advice is to be sought before important decisions can be taken by the Council, but by itself it can take no decision, even as regards its own budget. In other words, the Assembly has no legislative power.

5. *The Court of Justice*

The existence of a Court of Justice[7] common to the European Communities shows again that these Communities have borrowed much from the federal machinery. The definition of the limits of the authority and powers transferred by the member states to the Communities, the jurisdictional control over acts performed by the common institutions, the gradual interpretation of the rules of law in relation to common objectives—such are the missions which, far removed from the traditional mission of international courts, inevitably recall those functions proper to sovereign tribunals acting in matters pertaining to public law.

The Court's functions remind one of those of the Constitutional Courts of Germany and Italy, and the Councils of State of France, Belgium, Italy and Luxembourg. These functions go even further and suggest those of federal supreme courts. They involve—and no one found this surprising for the E.C.S.C., nor for the two new Communities—the institution of a special Court of Justice whose authority extends to the whole Community, and which shares with the Commission, the Council and the Assembly, the responsibility of defining a common rule of law in relation to common objectives, and seeing that it is enforced.

The Court of Justice, the same for all three Communities, is composed of seven judges assisted by two advocates-general. These magistrates are chosen among jurists of recognized impartiality and qualifications. Their number can be increased by unanimous vote of the Council and at the request of the Court of Justice. Judges and advocates-general are appointed for a term of six years renewable by common agreement of the governments of member states. The judges elect the President of the Court of Justice from among their own number, for a three-year term, which is renewable. However, its first President is named for three years by the governments of member states.[8] The Court can sit in

plenary session. It may also set up divisions, each composed of three to five judges, in order to conduct certain enquiries or to judge certain categories of cases in accordance with rule prescribed by the Court for these purposes.

Each case submitted must produce first written reports in behalf of all sides of the case, then an oral presentation. The Court can question the parties and conduct any enquiry it deems necessary. In each case, one of the advocates-general must publicly present, after the close of oral hearing marking the end of the public proceeding, his views which are to assist the Court in its mission. The Court adopts its own rules of procedure, within the limits of its statute, and submits them for the unanimous approval of the Council. It appoints its own registrar and personnel.

The Court is intended to ensure observance of the rules of law in the interpretation and application of the Treaty. To this end, the Court has several areas of jurisdiction. It is to take note of violations of the Treaty by member states; these are then bound to adopt all measures necessary to execute the Court's orders. Alleged violation can be brought before the Court either by the Commission or by a member state, but in both cases the Commission must have previously drawn up a reasoned opinion regarding the alleged violation and given the opportunity to the accused member state to present its observations.

The Court also exercises a control over the legality of acts of the executive institutions. Their acts, or failure to act, can be the object of appeals lodged either by the member states or by the other institutions of the Community. The right to appeal for an annulment has been granted only in a small number of cases to other entities even if they have a strong interest in the issue. This is regrettable because in the case of decisions taken by the common institutions it offers no legal protection such as the parties concerned might have if these same decisions were taken by national insitutions. It is all the more difficult to explain, since any party concerned can at any time invoke the jurisdiction of the Court to avoid enforcement of a questionable action of the Commission or Council. To avoid a paralysis of the executive institutions, legal appeals directed against their decisions do not have a staying effect. This rule, however, is moderated by the power of the Court, if it feels circumstances so require, to order suspension of the execution of the decision under attack.

The Court, throughout the Community, is also competent to bring about uniformity in law not only by deciding upon the validity of actions of the common institutions but also by interpreting the Treaty in relation to such actions. National judicial tribunals can appeal to the Court of Justice on these issues, if they consider there is a need to do so; they must, in fact, do so if such issue is raised in a case being heard by a national tribunal from whose decisions no aopeal lies under the national law. Finally, the Court of Justice has been made competent in certain special cases: it can hear, sometimes of necessity, sometimes after arbitration or by means of a stipulated arbitrated clause, all conflicts concerning

the application of the Treaty or connected with the objectives pursued by the Treaty.

Decisions rendered by the Court of Justice affecting the Coal and Steel Community during recent years have demonstrated the importance of the Court's contribution to the gradual building of a Community and to the accomplishment of its mission. The public views of the advocates-general, which are a complete commentary on each case, compensate, theoretically, for the absence of publication of the dissenting minority opinions, such a publication being for the moment difficult to reconcile with the judicial practices of the six countries. The fact that the Court is not competent to give opinions before a case actually arises, protects it from the executive branches which might be tempted to hide behind the Court's authority in the exercise of their own responsibilities. The Court is all the more free to set the scope of the rule of law as it applies to concrete cases brought to its attention.

6. *The Economic and Social Committee*[9]

This Committee is not a common institution. Its function is purely advisory; it exercises none of the powers transferred to the Community. However, it serves both the European Economic Community and Euratom. Composed of 101 members chosen from representatives of various sections of economic and social life, it is appointed by the unanimous vote of the Council, after consultation with the Commission, the states and European professional organizations; it is subdivided into several specialized sections, and particularly a specialized section in those fields pertaining to Euratom. This Committee is consulted by the Executive institutions as they deem necessary. It must be consulted in certain cases for which provision is made in the Treaty. The Committee thus provides the executive institutions of Euratom with a liaison with the various social and economic interests, and especially with trade and labour unions, whose cooperation is indispensable for the development of a nuclear industry.

IV. Euratom's Means of Action

All the means of action, legal, administrative or financial, bear the mark of, and are limited by, the gradual integration of countries deeply divided for a very long time. Despite existing frontiers, these countries are striving to bring about the construction of a Community law and the achievement of Community action.

1. *Legal Means*

Two essential means of legal action have been put in Euratom's hands.

In order to achieve their purposes and under the conditions laid down in the Treaty, the executive institutions may issue mandatory orders.[10] Independently of all recommendations and opinions which have no binding force but give the Council and the Commission the possibility of influencing actions, these execu-

tive institutions issue regulations and directives and take decisions under the conditions laid down in the Treaty. Regulations, which have a general scope, and decisions which apply to a named addressee, are directly applicable without the intervention of any national body; they can bind member states, enterprises or any other entity. Directives are addressed to a member state imposing upon it the obligations of achieving certain results, but they leave the national authorities free to choose the means. Regulations, directives and decisions are mandatory, in all the territories of the Community. They must be supported by reasonable explanations and published in the Official Journal of the Community, or be the subject of direct notification. When necessary, execution of the decisions of the Commission, or of the judgments of the Court of Justice, is assured according to national procedure, after the State involved has appended its decree for the enforcement of these decisions. This appending is a formality which allows the national authority to do nothing more than verify the authenticity of the proceedings emanating from the common institutions.

Euratom is also endowed with a legal personality.[11] This means that in each member state it is accorded the same capacity granted to legal persons by national laws. Having rights and duties, and owning property, Euratom is naturally subject to national laws in each member state. Important exceptions, however, deserve mention: a protocol on privileges and immunities extends to Euratom the prerogatives and fiscal exemptions usually granted international organizations. The property of Euratom cannot be the object of any compulsory measure without authorization by the Court of Justice. The contractual responsibility of the Community is governed, according to custom, by contract law. But the Treaty provides in the case of non-contractual responsibility a rule which will take on meaning as the Court of Justice develops experience in applying it. Simply stated, the rule is that the Community must, in conformity with the general principles common to the laws of the members, make good any damage caused by its institutions or by its agents in the discharge of their duties.

2. *Administrative Means of Action*[12]

The administrative means given Euratom cannot be fully effective from the beginning. The choice of headquarters, for example, requires the unanimous agreement of the governments of the members; linked to the overall problem of implementation of the European communities, it has not found an immediate solution, and work will start under precarious and complicated conditions, which may hinder the organization's efficiency. The coexistence of four different languages within the community creates a heavily handicapped linguistic regime which only the unanimous Council can remedy, through measures that could not be easily taken at this stage of European integration. Since the status of the agents of the Community is to be fixed by unanimous decision of the Council, the first recruits will be given contracts of a limited duration. Stability and efficiency in

Euratom's services will be fully attained only at the conclusion of its initial phase. But the Treaty has provided the necessary bases for the gradual establishment of an effective administration.

The Euratom Commission enjoys the right to seek information and to verify it, as far as is necessary, for the accomplishment of its mission, and within the limits and under the conditions set forth by the Council. As a counterpart, access to information protected by secrecy is strictly regulated. The violation of secrecy is to be prosecuted throughout the Community like a breach of national security or the disclosure of professional secrets.

3. *Financial Means of Action*

Detailed provisions of the Treaty govern Euratom's financial means of action.[13] These provisions establish two budgets: the administrative budget and the research and investment budget. The latter is to be based on programmes extending over several years. Both budgets, drafted provisionally by the institutions of the Community, each acting for its own account, then combined by the Commission, are to be finally adopted by the Council, voting with the prescribed majority, after consultation with the Assembly. Financing is to be accomplished in the main by contributions made by the states, according to a sliding scale. However, the financial contributions of members may eventually be replaced by the yield of taxes collected by the Community in member states. To this end, the Commission is to submit proposals to the Council, which by a unanimous decision after consultation with the Assembly, is to draw up provisions which it will recommend member states to adopt. Euratom can also raise loans under conditions set by the Council (voting by a prescribed majority), in order to finance research and investments.

V. The Aims of Euratom

"It shall be the aim of the Community [says Article I of the Treaty] 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."

This preamble shows the close liaison of Euratom with the E.C.S.C. and the Economic Community. The creation and development of a nuclear industry are means which, along with others, are to serve the interests of the social progress of the members and to strengthen world solidarity. Undoubtedly, the thought behind the creation of a powerful nuclear industry was that, through it, Europe would not only acquire independent sources of energy but could also come increasingly to the help of under-developed countries. Moreover, as indicated earlier, the authority of Euratom extends not only to the European territories of member states and of states for whose foreign relations a

member state is responsible but also to the non-European territories within their jurisdiction, among which are French Africa and the Belgian Congo.[14]

In pursuance of the Treaty provisions, Euratom is to accomplish its mission by pursuing actions in several fundamental domains: research, industrial development, public health and safety, supplies of materials for the Community, and foreign policy.

1. *Research*

Euratom is to promote the development of research[15] in those fields most closely linked to the development of a nuclear industry. A first selection is affixed as an annex to the Treaty; it can be amended by the Council.

The Commission, while refraining from coercion, is expected to orient the research undertaken by the member states, so as to discourage wasteful duplication and fill any gaps. To this end, it may ask member states to advise Euratom of their research programmes and Euratom may express opinions about them to the states. It may call together research specialists for discussion and exchange of views. It is to publish periodically a list showing the areas of research it considers inadequately studied. In order to encourage the implementation of a research programme, it may furnish financial aid or material support: plants, equipment or experts.

Euratom may also act directly by training specialists and organizing research. The Commission is to set up a Community Nuclear Research Centre, which will carry out the tasks entrusted to it by the Commission. Within the framework of the Centre, the Commission can set up schools for training specialists, after consulting the Economic and Social Committee. An institution is to be created at the university level. Finally, Euratom is to be responsible for common training and research programmes. These programmes, to cover periods not exceeding five years, are to be drawn up by the Council, voting unanimously, on a proposal submitted by the Commission. The execution of Euratom's programmes is to be entrusted to either the Community Research Centre, the states, international organizations, firms or individuals, in accordance with contracts concluded between them and the Commission. Euratom is to publish its research programmes and periodical progress reports on their execution. An initial research and teaching programme of 215 million dollars, to be carried out before January 1, 1963, is provided for in an annex to the Treaty.[16]

This method of action, as adopted by Euratom, should prove effective, while being fully respectful of the free initiative of private enterprise. It envisions complementing public and private efforts within the member states with the execution by Euratom of a programme pertaining to equipment, training and research.

2. *Industrial Development*

Initiative concerning industrial equipment is inspired by much the same intention. Euratom will endeavour to create the most favourable climate for the development of nuclear industries, taking into account the decisions freely arrived at by either private or public enterprises, who will be kept fully informed by Euratom. The institution of a nuclear common market, organized dissemination of knowledge, and study of investment programmes, all contribute to reaching this objective. Complementary industrial equipment can be obtained through Euratom, thanks to the setting up of Community enterprises. Hand-in-hand with the industrial development, the establishment of an appropriate control must be assured for safeguarding public health.

(a) *The nuclear common market*[17]—This can be considered as a preview, simplified in form and limited to the fields directly concerning nuclear industry, of the system which at the end of a provisional twelve to fifteen year period, is intended to guarantee the free movement of goods and persons within the common market of the European Economic Community. From January 1, 1959, customs barriers between member states are to be abolished on all goods and products mentioned on the lists attached to the Euratom Treaty, subject in some cases to the proof of a nuclear purpose. From the same date, customs duties common to all member states are to be applicable to imports from outside countries on most goods and products. No restriction based on nationality may be applied by the Community to individuals of member states, seeking either specialized employment in the nuclear field, or participation in the construction of nuclear plants being built for scientific or industrial purposes. Necessary measures will be taken to facilitate the conclusion of insurance contracts against atomic risks. Currency restrictions between the member states will be abolished in a manner commensurate with the freedom of movement extended to goods, services, capital and persons.

These measures, which are intended to facilitate the pooling of the human and material resources of the Community, are for the most part left in the hands of the member states. In matters pertaining to customs duties, these states are bound to respect a certain calendar. In other fields, they are subjected to pressure to be exerted by Euratom. At times, the Commission may send recommendations to the member states or otherwise make sure that they fulfil their obligations. At other times, the Council, voting with a prescribed majority on a proposal set forth by the Commission, after seeking the opinion of the Assembly and the Economic and Social Council, may address to the member states directives which firmly commit them to reach certain objectives.

(b) *Information and patents*—In order rapidly to develop a strong nuclear industry, the common market must have access to all information, classified or not. Euratom sets up in member states an ambitious programme bearing on the dissemination of information.[18] Its apparent complexity is the result of the dual

character of national patent systems in force in the states of the Community. In Germany and in the Netherlands, provisional licences or patents are delivered only after a period of several years has expired during which time the scientific value of a discovery can be verified. In the territory of other members, patents are delivered in a few months, by simply registering requests, without any guarantee as to the value or the authenticity of the discovery, which is open to question before law-courts at any time. Since a choice between these two systems is now the object of a world-wide discussion, Euratom has not been able to rally the member states to a common system. Therefore, the community allows for both types of national legislation so that the patent system may be applied according to each.

The pooling of information at the disposal of Euratom does not give rise to any basic difficulty. The Commission can grant licences or sub-licences for protected claims it owns, or such licences that may be at its disposal, with appropriate compensation and under conditions which, if not mutually agreed to, can be determined by the Court of Justice. The Commission communicates also at the request of members any information not protected by licences, patents or the like which it may have acquired.

Dissemination throughout the Community of information which is not its exclusive property must also be assured in so far as it helps achieve common objectives. Owing to the need for careful organization, the system adopted pursues several aims. It must allow within the Community a direction of research as well as a sufficient degree of application of discoveries, both of which are needed for the development of nuclear energy. To this end, the Commission is entitled to be notified of all information for which some form of protection is applied for in a member state, whether it relates to a nuclear matter or to a matter which, without being nuclear, is directly linked to the development of nuclear energy within the Community. No agreement with an outside state implying participation of a fully sovereign state can be concluded without the authorization or participation of the Commission, if its purpose is to exchange scientific or industrial information on nuclear matters.

Recourse to compulsory procedures can be made only after failure to reach a mutually acceptable settlement among the parties concerned. The Commission is to encourage, organize and promote amicable exchanges. In the absence of agreed settlement, the Commission can, within specific limits and under carefully determined conditions, force the granting of licences when these licences are necessary either to the pursuit of common research programmes or to the satisfactory development of nuclear energy in the Community. Upon being notified of the Commission's intention, patent owners can reach a special agreement for the purpose of submitting the matter to an Arbitration Committee. The arbitration body then takes a decision on the granting of the licence and sets the conditions under which it is to be granted. In the alternative, patent owners can risk

the compulsory licensing by the member state that is competent, according to its own national legislation.

But, compulsory measures made necessary for the protection of the Community's interest must not damage the interests of the owners of the patents.

As regards the information it has acquired, the Commission can use it for its own information with due regard to the rights of others. The granting of licences through arbitration or compulsion is to be made with full compensation. If damages are inflicted, they must be compensated. Finally, security regulations have been provided for so as to allow the communication of information within the Community and use of it without jeopardizing the defence interests of a member state.

(c) *Investment advice*—With the help of the new facilities and greater means provided by the common nuclear market and the dissemination of information, private or public firms will be able to increase their effort to develop their industrial nuclear equipment. To encourage them, Euratom is to give advice on investments.[19] Periodically, the Commission is to publish programmes indicating objectives for the production of atomic energy and the various types of investment required for the realization of those objectives. These objectives can be more easily determined since the High Authority of the E.C.S.C. has recently been made responsible for the study and drafting of all proposals destined to facilitate a co-ordinated policy as regards energy matters in the six countries. Furthermore, prior to their execution, the Commission must be notified of all investment plans in the field of nuclear industry and the Commission is required to discuss them with the persons or firms concerned, communicate its views thereon to the member state concerned, and as the case may be, publish such plans with the agreement of all concerned.

(d) *Joint enterprises*—It may happen that private initiative is not able to supply in sufficient quantity and at the required speed all the needs of industrial equipment within the Community. Euratom can help by conferring the status of joint enterprise[20] to those undertakings of outstanding importance to the development of nuclear industry in the Community. Any member state, any person, can—like the Commission—make plans for the establishment of a joint enterprise. The Commission is required to conduct an enquiry on each plan, seek all the opinions it deems necessary, and submit proposals for joint enterprises to the Council. If the Council, by a prescribed majority, approves the proposal, the joint enterprise achieves a status which brings various advantages. Each joint enterprise, thus approved, is a legal person with the widest recognized rights in each of the member states. The Council, voting unanimously, can also extend to these joint enterprises in the member states various rights such as the right to acquire movable and immovable property and patents, the right to be exempted from certain fiscal charges or to benefit from certain currency exchange facilities. The

Council can even decide that Euratom, an international organization, or a national or a state outside the Community, may participate in the financing of a joint enterprise.

3. *Health and Safety*

The development of nuclear industry must not endanger public health. The Euratom institutions can influence in important ways the efforts pursued by member states in order to establish basic standards for the protection of the health of the workers and of the general population against the dangers arising from ionizing radiation.[21] After consulting experts, the Economic and Social Committee and the Assembly, the Council, on the proposal of the Commission, voting by the prescribed majority, is to determine for the whole of the Community the maximum doses as well as the maximum permissible degree of contamination and of exposure, and the principles governing the medical supervision of workers. Each member state is to take whatever steps are necessary to ensure the observance of minimum standards. The Commission, which is to be informed on measures taken to this effect and on contemplated measures is expected to make recommendations to harmonize such measures. Should a member state propose to conduct particularly dangerous experiments, it must first consult the Commission on additional health precautions to be taken. The approval of the Commission is required concerning these precautions if the experiments are likely to affect the territory of other member states.

Each member state is to establish on its territory the installations necessary for control. The Commission is to have access to such installations. The Commission is also to be kept informed on all plans to dispose of radioactive waste, and the Commission, in turn, will in its discretion communicate to the member states views and recommendations which it deems pertinent. In an emergency, it may issue a directive with which the member state will be bound to comply, within a time fixed by the Commission; should the government fail to comply, the Commission can bring the matter immediately before the Court of Justice.

4. *Supply and Control of Nuclear Material*

Ores, raw materials and special fissile materials are defined in the Treaty (as in the Treaty of the International Atomic Agency) and can be adapted to scientific and technical evolution by the Council, voting by a prescribed majority, on a proposal submitted by the Commission.[22] These materials are unequally divided among the member states. The world market for them is a highly specialized one, and the industries in the Community likely to take an interest in the development of nuclear energy have little experience with this market. Centralization of trade as regards all nuclear industries of the Community will give Euratom a strong position on the world market, will make possible a joint supply policy, and will ensure equal access of all the industries of the Community to the resources thus

pooled. Moreover, nuclear materials, and most particularly special fissile materials, are dangerous products, and as such their traffic is to be strictly supervised for reasons of public safety. That is why the organization and the tasks of Euratom in the field of supply cannot be separated from those relating to ownership of special fissile materials and to supervision of safety measures.[23]

(a) *The Supply Agency*—The mission of Euratom in relation to materials is entrusted, in the first instance, to the Commission and through it to a special agency which is provided for in the Euratom Treaty. The agency is to play a central part in commercial operations involving ores and nuclear materials in the Community. Enjoying legal personality and financial autonomy, the Agency is to be administered like a business in conformity with a charter adopted by the Council, voting by a prescribed majority, on a proposal submitted by the Commission. The greater part of its capital will belong either to the Community and to the member states, or to both. It is placed under the strict control of the Commission, which appoints its Director, issues directives to it, and enjoys the right of veto as well as that of amending its decisions.

The Agency's activities are supported by two fundamental rights: a right of option over the ores and nuclear materials produced in the Community, and the exclusive right to conclude contracts for the supply of ores and nuclear materials originating from within the Community or from without.

All producers of the Community are required to offer the Agency the ores or nuclear materials they produce in the territories of the member states. However, the producer who on his own or with other enterprises linked with him processes materials through several stages of production, from the extraction of the ore up to and including the production of the final metal, may offer his products to the Agency at any of the stages of production he chooses. The only condition is that the producer who wishes to take advantage of this privilege must keep the Commission fully informed of his activities and arrangements.

The Agency is to exercise its right of option by concluding contracts with the producers. If it does not exercise its option, the producer may process his product and offer it afterwards to the Agency. He may also be authorized, by decision of the Commission, to export his product on terms which must not be more favourable than those he offered to the Agency. The Agency cannot exercise its right of option over the special fissile materials produced in the Community, in the cases described in paragraph (b) below.

Thanks to this right of option, the Agency can conclude all supply contracts concerning ores and materials produced within the Community. It also has the exclusive right to conclude agreements and conventions having as their main object the supply of ores and of nuclear materials originating outside the Community. However, if the Agency is unable to fulfil an order for supplies, either in whole or in part, within a reasonable period, or is able to fulfil it only at exorbitant prices, the Commission may authorize a user to make a direct

contract, provided always that the Commission is notified of such contracts; the Commission may oppose their conclusion if they are contrary to the aims of the Treaty. This safety valve gives the user the opportunity of trying to prove, subject to approval of the Commission, the deficiencies of the Agency. It provides a practical guarantee against any monopolistic abuse on the part of the Agency.

Thus assured of the power to conclude contracts for the supply of products available inside and outside the Community, the Agency periodically collects information on all offers and detailed supply requirements of ores and nuclear materials. It makes known to all potential users the conditions under which it can fulfil the needs of users and producers. In case the Agency is unable to fulfil orders completely, it is to allocate available supplies in proportion as orders are received. (Certain noteworthy exceptions to this system of supply are described in Note 24 at the end of this chapter.)

The interplay of supply and demand through the Agency is expected freely to determine prices. However, the Agency may put forward to users proposals for the equalization of prices. An arbitrary fixing of prices can only be decided by the Council, voting unanimously on a proposal submitted by the Commission.

In all its activities, the Agency is bound to respect, and to enforce respect for, the principle of equal access. In particular it may not discriminate between users on the grounds of the use they intend to make of the supplies requested unless such use is illicit. The Agency must fulfil every order received, unless there are legal or material obstacles to execution. Finally, the Agency must report to the Commission any price manipulation designed to ensure a privileged position for certain users, contrary to the principles defined in the Treaty. In case of a conflict over prices, the Commission may restore the latter to a level compatible with the principle of equal access.

All these measures regulate and supervise within the Community commercial transactions relating to ores and nuclear materials from inside or outside the Community. But the Agency is not authorized to alter the users' orders, except for the origin of imported products and for quantities delivered, when demand exceeds supply. Users are bound to act through the medium of the Agency, but they are free to set their own requirements and the terms of their orders. They will be able to make an informed choice because the Agency is required to inform them on all offers of available products it has been able to collect. Although regulated and centralized, the exchange of ores and nuclear materials remains essentially in the hands of producers and of users. (A few special provisions of limited scope forming the exceptions to this system are described in Note 25 at the end of this chapter.)

(b) *Special nuclear materials*—The system described above applies equally to ores and to nuclear materials. But because of the added risks involved, special fissile materials are further subject to special important regulations.

In the first place, following the precedent set by America and Britain in this respect, special fissile materials either produced or imported are the property of Euratom. There are only two exceptions: the case of special fissile materials having a military character which puts them beyond Euratom's control under the conditions described below, and that of materials which are imported into the Community only temporarily for a given project, and are to be returned to the sender. Ownership by Euratom leaves the normal possessor the fullest rights to use and consume these materials, subject to the obligations imposed on him by the provisions of the Treaty. To simplify the Community's problem of financing as a result of this system of ownership, the Agency keeps, on behalf of the Community, a special account for special fissile material. This account is administered as a current account between Euratom on one hand, and all the users on the other, the Agency acting as a user; balances are to be payable immediately on request of the creditor. This system of ownership will reduce operating complications to a minimum while maintaining in Euratom a special right.

In the second place the possible uses of special fissile materials are to be strictly controlled. They can only be stocked by the Agency itself or by a producer with the authorization of the Agency. The Commission may require that they be deposited with the Agency or placed in storage premises which are to be or can be controlled by the Commission. Special fissile materials may not be exported save with the authorization of the Commission, which is to examine the proposed contracts in the light of the Treaty's objectives and of the general interests of Euratom.

A supply priority is recognized when the Agency waives its right of option. Special fissile materials are to be left in the possession of the producer, either to make use of these products within the limits of his requirements, or to make them available, within the limits of others' requirements, to firms with which the producer has a direct agreement for the purpose of carrying out a programme about which the Commission has been notified. However, this priority right does not apply if agreements between enterprises have the intent or the effect of limiting production, technical development, or investments, or of creating unfair inequalities between the users of the Community.

(c) *Controls*—Observance of rules concerning materials is imperative for all concerned from a commercial point of view, and for the Community from the point of view of safety. That is why strict control is to be established. Its organization follows closely the control agency of the International Atomic Agency: declaration to the Commission of the technical characteristics of the plants designed for production, separation or any other utilization of nuclear materials; approval by the Commission of processes to be used for the chemical treatment of irradiated materials; accounting for ores and nuclear materials; a corps of inspectors appointed by the Commission and having access to any premises in the Community.

If a violation is verified, the Commission can issue a directive enjoining the member state in question to take within a prescribed period all measures necessary to put an end to the violation, after which period the Commission must promptly bring the matter before the Court of Justice. The Commission may also impose direct penalties against persons and enterprises guilty of infringements. These penalties can include the withdrawal of special advantages, either technical or financial, the placing of the firm under a provisional administration for a maximum period of four months, or even the withdrawal of nuclear materials.

Exercise of these powers is limited to the pursuance of the three objectives of control. The first concerns the application of supply regulations which have already been described.

The second seeks to present diversion of ores and nuclear materials from their intended use as stated by the users. This formula implies a free determination of the ultimate destination of the product, which determination the Treaty itself does not limit in any other way. Military uses as such are not forbidden by the Euratom Treaty. The Treaty is content to stipulate that control is not to extend to material intended for the purposes of defence that is being specially processed for such purposes, or which after being processed, is, in accordance with an operational plan, deposited or stocked in a military establishment. But once they have acquired a military character, these materials are subject to armaments controls. Where the control of Euratom ceases to operate, other international organisms are expected to begin functioning. Moreover, even nuclear materials intended from the beginning for military purposes are submitted to the ordinary rules of supply, i.e. have to pass through Euratom's Agency. This is the means of preserving the total control of nuclear materials which is one of the principal concerns of Euratom and its member states.

The third objective of control by Euratom is to ensure the observance of all special agreements relating to control entered into by the Community with an outside state, or with an international organization. Only time can tell how far the extension of Euratom's control will go in this respect.

(d) *Amendments*—This body of provisions relating to supply, control and ownership has been established *a priori*, as it has not been possible to make reference to any experience in this field in several member states. These provisions are linked to a certain stage of the development of industrial and legal techniques. Under these conditions, the member states have reserved their right to amend, should circumstances justify it, the system established by the Treaty. Such amendment can be made by the Council, voting unanimously on a proposal submitted by the Commission, after consulting the Assembly; any member state may also initiate procedures for such amendment. In any case, the Council will have to confirm or amend the supply regulations at the end of seven years.

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On the basis of the provisions described above, the Commission must determine its supply policy. In order to regulate supply, the Agency may build up its stocks. Furthermore, available resources must be increased. As regards resources within the Community, the Commission may contribute to the development of prospection and exploitation of ores. It can participate in their financing, within its budgetary limits. Moreover, if the Council feels a member state is not making the necessary effort in that domain, it may withdraw from this state or its nationals the right of equal access to the internal resources of the Community produced by other member states.

An import policy toward outside countries and international organizations is all the more imperative since quantities presently produced in the Community are relatively small and since one must expect a certain amount of orders for resources from outside the Community. The supply policy on this point is closely linked to Euratom's external policy.

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5. *Foreign Agreements*

For the creation and rapid expansion of a powerful nuclear industry in the Community, important assistance must be sought abroad in the form of scientists and experienced technicians, of information, of equipment and of materials. To pave the way for the exchanges throughout the world which the development of this industry will make possible in the future, contacts, negotiations, and agreements appear imperative now. Euratom cannot reach its objectives without a broad, coherent external policy. The Treaty has sought to provide Euratom with the necessary means.[26]

The right of the Community to conclude international agreements or conventions is expressly recognized by the member states. Obviously, this right is recognized only within the general framework of the powers conferred upon Euratom. Two categories of agreements are established. Agreements having an object exclusively within the authority delegated to the Community are negotiated and concluded by the common institutions. They are binding for the member states and their nationals, under the same conditions and to the same degree as would be internal acts of the common institutions bearing on the same objects. Agreements having an object which does not come solely under the Community's authority, but is also related to matters left within the power of the member states, require the joint participation of the Community and of these states. A commitment by the Commission is not enough for such agreements; their coming into force must wait until all required national procedures have been concluded in each member state party to such agreement.

Whether the object of the agreement calls for the participation of member states at the side of Euratom or not, the Community is always represented in the negotiations and at the conclusion of the agreement by the Commission. The

latter negotiates in accordance with directives given by the Council, and before concluding negotiations, must obtain the approval of the Council, voting with a prescribed majority. However, the Commission may negotiate and conclude on its own, provided the Council is kept informed, the agreements it can carry out within the Community without intervention of the Council, even with the view of obtaining new budgetary credits. The division of community powers between the Council and the Commission is therefore not affected by the internal or external character of the acts in question.

Enjoying the right of making international commitments on its own, Euratom is further authorized to examine the compatibility of international agreements concluded by the member states or their nationals with the general provisions of the Treaty. Provisions of the Treaty may not be invoked against agreements concluded before its entry into force and communicated to the Commission before January 31, 1958, unless these agreements have been concluded during the period between the signature and the entry into force of the Treaty. In the latter event, the Treaty can be invoked if the Court of Justice, to which the Commission presents the case, is of the opinion that the intention to circumvent the provisions of the Treaty has been one of the motives of either of the parties.

Conclusion or renewal of international agreements after January 1, 1958, must take the Treaty into account. Member states must notify the Commission of any proposed agreements so far as they fall within the scope of the Treaty. In the case of an objection by the Commission, the member state may request the Court of Justice to make an expeditious determination of the compatibility of the proposed clauses with the provisions of the Treaty. For motives of practicability, and in the case of at least some member states, for motives of principle, international agreement entered into by nationals of member states are not subject to pre-control of the Commission. But this device cannot be used as justifying non-compliance with the Treaty. The Commission may request from member states full information enabling it to verify the compatibility of agreements with the provisions of the Treaty, and as the case may be, to ask the Court of Justice to give option on the question of compatibility.

While endowing Euratom with these means of action, the Treaty also enables it to assign three objectives to its external policy:

(a) *The establishment of sound relationships with outside countries and international organizations*[27]—The Treaty specially provides for the establishment of useful contacts with international bodies, the UNO and GATT in particular, and of a close co-operation with international organizations, the Council of Europe and most specially the OEEC. Contacts with outside countries, which may be given the most flexible forms and established according to a broad concept, may eventually bring about the appointment to Euratom of an accredited mission, or an exchange of representatives. It has, indeed, brought about, in February 1958, the appointment to Euratom of an accredited mission of the United States.

(b) *The development of co-operation agreements with outside countries or international organizations in the field of peaceful use of atomic energy*—These provisions of the Treaty place Euratom at the centre of international co-operation. Euratom may offer outside countries participation either in the execution of its research programmes, or in the joint enterprises which are created; it controls agreements of a state character relating to information, as well as to imports and exports of ores and nuclear materials. Euratom may also conclude co-operation agreements in the field of nuclear energy, and to this end enter into special agreements as regards safety controls. To give greater strength to Euratom in this respect, the Treaty makes it obligatory for member states to negotiate, in conjunction with the Commission, transfer to the Community of rights and duties arising from agreements on nuclear co-operation concluded with outside countries before the entry into force of the Treaty. New co-operation agreements concluded as a result of these negotiations require the consent of member states and the approval of the Council voting with the prescribed majority.

Independent from these co-operation agreements of classical type, Euratom may conclude broader agreements destined to create a true association, close and lasting in character, for the development of nuclear energy. To this effect the Treaty provides that the Community may conclude with an outside state, a union of states or an international organization, agreements creating an association characterized by mutual rights and obligations, joint action, and special procedures. Such an agreement is to be concluded by the Council, voting unanimously, after consultation with the Assembly. The intervention of member states as such is not required save in the case where amendment of the Treaty appears necessary.[28]

(c) *The extension of the Community to other European states*—Any European state may ask to join Euratom.[29] The Council, after seeking the opinion of the Commission, takes a decision on such a request by a unanimous vote.

Admission of a new member requires that the Treaty be amended, at least as regards institutional clauses, and particularly the clause on weighted votes in the Council. Since the issue of the internal balance of the Community is raised, the intervention of the member states is required for the conclusion of the necessary agreements with the state applying for admission, such agreements having to be ratified by all of the contracting states.

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Euratom is not an exclusive agency for international efforts intended to encourage, facilitate and control the peaceful development of nuclear energy. In Europe the International Atomic Energy Agency and the European Nuclear Energy Agency are also active. Within different geographic regions, performing in the manner of concentrical circles, the three organizations are to pursue similar

objectives: they are to stimulate and support research and teaching, improve supplies, and ensure security. Sometimes, they are to apply almost identical methods, in matters of control for example. Means of action provided by Euratom and the European Nuclear Energy Agency are frequently analogous: for instance, in the setting of standards for the protection of health, the eventual creation of enterprises or joint plants, and the development of nuclear exchanges.

These common traits, however, cannot hide obvious differences. For instance, it is evident that to achieve their purpose in the field of nuclear energy, the member states have accepted heavier burdens and more strictly defined restrictions in Euratom than in any of the other organizations. The creation of a joint research centre, the careful establishment of voluntary or coercive procedures for the pooling of information, the creation of a supply Agency which collects and controls exchanges of ores and nuclear materials, joint ownership of special fissile materials, the pursuit of a joint external policy—these are the traits which are the proof of Euratom's originality and the guarantee of its strength. These characters single out Euratom from the other organizations, but they do not set it apart from them. On the contrary, the broadness of the missions and extent of the powers of Euratom make close agreement with the International Agency and the European Agency both easier and more useful. Experience will gradually provide objects and indicate limits.

Still it must be said that certain differences between Euratom and the other international organizations are deep-rooted. Opportunities open to Euratom are greater because the member states have agreed to establish a closer union among themselves. The member states have not been content with the institution of an international organization to animate and control activities; they have not been content with an organization empowered to make proposals and to interpose itself between states who still reserve for themselves a sovereign right as regards a final decision. The member states of Euratom bind themselves by rules and put themselves in the hands of joint institutions in order to reach their objectives. The very broadness and urgency of the task before them has made them decide to pool their efforts, and they have agreed to provide the unity of decision which is a fundamental condition to such a pooling. Thus they have applied to a civilian international effort a classic principle of military alliances, that of a unified command.

Five years of E.C.S.C. experience have shown that such daring, if the source of problems, is also the source of solutions. The change in capacities and in needs, the comparing of tendencies and structures varied and sometimes contradictory, the scientific and technical requirements of nuclear industries, make it necessary to seek a new economic equilibrium through joint effort. According to the provisions of the Treaty, Euratom is to find this equilibrium through an association of enterprises, both public and private, with the common institutions. Resolutely empirical, the Treaty gives to the enterprises and to the institutions

the means for a full contribution to the joint effort. Euratom encourages initiatives and inspires the free action of enterprises by setting up a nuclear common market, organizing the dissemination of information, providing equal access to supplies, collecting and communicating, publicly whenever possible, all data useful to research and investments. The institutions of Euratom prevent the general interests of the Community from being disregarded, by means of security control, standards for the protection of health, the centralization of supply operations, the pursuit of a joint external policy, the right to complement by its own action research pursued within the Community territory and to exploit discoveries or operate industrial plants in the absence of action on the part of private enterprises. All acting within well-defined responsibilities, proper to their respective character, the institutions and enterprises should be able to achieve together the objectives of the Community, through a trusting co-operation which is a requisite of success.

The efforts that have become necessary to the creation and rapid expansion of a powerful common nuclear industry are centred in member states which are very different in their characteristics. The combining of the institutions of integrated Europe is intended to surmount all types of obstacles arising from these differences. Minds familiar with federal structures will have recognized both the inspired character and the weakness of Euratom's institutional organization.

The transfer of sovereignties to the Community by member states, mandatory powers entrusted to the common institutions, provide the very heart of Euratom with federal mechanisms. Concluded for an unlimited period, the Euratom Treaty creates a permanent institution system similar to the conventions upon which federal states are founded. Since the Treaty cannot be renounced, it must be open to amendment. Amendments do not always require the intervention of the member states; the Council, voting unanimously after consultation with the Assembly, and acting on a proposal submitted by the Commission, can, as we have observed, amend the provisions of the Treaty relating to supply, control and ownership. Under the same conditions, it can take those steps necessary to the achievement of the objectives of the Community, not provided by the Treaty.[30]

The nature of the institutions of Euratom, however, and the distribution of powers among them, conform but in part to the classic pattern of federal states. At times, the Council appears to share the exercise of legislative or even constituent power; it amends or completes the provisions of the Treaty, enacts rules, and sets standards. Although comparable in this respect to a federal Senate, it is actually very different. The use of weighted votes for member states or the requirement of unanimity in voting, often emphasizes the Intergovernmental character of the Council more than that of a Community institution. At other times, the Council performs acts of an executive character, yet escapes all

political responsibility. As a Community institution, it cannot be overthrown by national parliaments. As an Intergovernmental body, it is not held responsible to the Assembly. Such an abnormal situation might encourage the development of an irresponsible bureaucracy if the decisions of the Council were not taken by members of national governments whose parliamentary background and national governmental responsibilities protect them against temptation.

The peculiarities of the Council stress those of an Assembly which does not exercise constituent and legislative power, and which has no control over the institution empowered to take the most important executive decisions—except through vote of censure. True, the Assembly exercises a parliamentary control over the Commission. The latter is at the centre of the action of Euratom, by the exercise of its own powers as much as by the obligation in which the Council finds itself in most cases where it is competent to take a decision on a proposal submitted by the Commission. Whilst escaping direct political control, the Council is thus open to the indirect criticism of the Assembly through the medium of the Commission, and to that of national Parliaments through the medium of the members of the governments seated in the Council. Under these conditions, harmony and action depend essentially on the authority of the Commission, constant animator of the Community and link between the Assembly and the Council.

In the end, the Court of Justice alone enjoys a sovereign community power, like a federal supreme court. Thus it can contribute importantly to the definition and application of a common rule of law for Euratom.

The insitutional anomalies we have found are not surprising. Euratom is not a federal state, but the European Atomic Energy Community. We would seek in vain in the present European Communities, which are merely economic, a totally rational federal construction, as this would imply the pooling of political power to which the six founding countries of Euratom have not yet agreed. However, we must not underestimate the scope of their enterprise. In this respect, as we said at the outset, Euratom cannot be examined separately from the European Economic Community and the Coal and Steel Community. Europe is given new dimensions by the close union of the three Communities, indispensable to a coherent economic policy and made inevitable by the existence of common institutions. This is a qualitive change—not just a changing of scale—in order to find solutions to economic problems greater than the possibilities of nations when they act by themselves.

Europeans are drawing from this contemporary revolution a clear insight and renewed vigour which is transforming the face of Europe. Together with the other Communities, Euratom is proof that Europeans know how to unite in order to create. While stimulating in Western Europe both the development of nuclear industries and the aspiration of men towards unity, Euratom contributes to

releasing two great sources of energy, the latter being the more powerful and, if correctly understood, the more necessary to world peace as well as to Europeans themselves.

NOTES AND REFERENCES

The Treaty establishing Euratom and connected documents are printed in Volume 2 of this Work.

1. LES ECHOS (1955); special end-of-year issue.
2. The vote was taken on all the Rome Treaties, without a separate vote for the Euratom Treaty.
3. Euratom Treaty, Art. 124 to 135.
4. Euratom Treaty, Art. 115 to 123.
5. Convention relating to certain institutions common to the European Communities.
6. Euratom Treaty, Art. 107 to 115.
7. Euratom Treaty, Art. 136 to 160; Protocol on the status of the Euratom Court of Justice.
8. Euratom Treaty, Art. 212.
9. Euratom Treaty, Art. 165 to 170; Conventions relating to certain institutions common to the European Communities.
10. Euratom Treaty, Art. 161 to 164.
11. Euratom Treaty, Art. 184, 185 and 188; Protocol on the privileges and immunities of Euratom.
12. Euratom Treaty, Art. 186 to 195; Protocol on privileges and immunities of Euratom.
13. Euratom Treaty, Art. 171 to 183.
14. Euratom Treaty, Art. 198.
15. Euratom Treaty, Art. 4 to 11.
16. Euratom Treaty, Art. 215.
17. Euratom Treaty, Art. 92 to 100.
18. Euratom Treaty, Art. 12 to 29.
19. Euratom Treaty, Art. 40 to 44.
20. Euratom Treaty, Art. 30 to 39.
21. Euratom Treaty, Art. 45 to 51.
22. Euratom Treaty, Art. 197.
23. Euratom Treaty, Art. 52 to 91.
24. On one hand, ores and nuclear materials produced by joint enterprises are assigned to users in accordance with the statutory or conventional regulations governing such enterprises. The manner in which their production is to be allocated may actually have been a decisive factor in their establishment. On the other hand, in the case of requests for supplies from outside the Community, the Agency can choose the geographical source of the supplies as long as the user is offered conditions at least as favourable as those specified in his order. By means of this provision the Agency is able to pursue a coherent policy relating to supplies from outside the Community, without jeopardizing the user's interests.

    Another exception is provisional in character (See Euratom Treaty, Art. 223). Although no scarcity was foreseeable, it was necessary, in order to obtain ratification of the Treaty, to assure public opinion in member states that the coming into force of Euratom would in no way jeopardize the implementation of supply programmes corresponding to the needs of nuclear plants at present in operation or soon to be constructed. Supplies for reactors or for isotope separation plants, in operation on the territory of a member state before January 1, 1965, are to be given a ten-year priority over national resources or over resources acquired by virtue of bilateral agreements concluded before January 1, 1958.

25. The conclusion or renewal of international agreements and conventions including among other provisions some relating to deliveries of nuclear products must be approved by the Commission as regards these deliveries. This provision leaves each country free to import or to export nuclear plants without having to go through the Agency to obtain the fuels needed to start operations in those plants. The Commission may also exempt from the application of the general provisions the transfer of small quantities of ores and nuclear materials, such as are used for research, providing the Agency is notified. The Treaty itself exempts from the general provisions transfers of ores and nuclear materials for treatment, transformation or processing inside or outside the Community.
26. Euratom Treaty, Art. 101 to 106.
27. Euratom Treaty, Art. 199 to 201; Protocol on privileges and immunities, Art. 16.
28. Euratom Treaty, Art. 206.
29. Euratom Treaty, Art. 205.
30. Euratom Treaty, Art. 203 and 208.