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EUROPEAN PARLIAMENT

*Directorate-General for Research*

**WORKING PAPER**

# The European Parliament and the Euratom Treaty: past, present and future

*Energy and Research Series*

**ENER 114 EN**

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*Directorate-General for Research*

# WORKING PAPER

# The European Parliament and the Euratom Treaty: past, present and future

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**ENER 114 EN**
2-2002

# PREFACE

In the 1950s, three European Communities were created by a series of international legal instruments: the European Coal and Steel Community (ECSC) by the Treaty of Paris, 1952; the European Economic Community (EEC, now EC), and the European Atomic Energy Community (EAEC - usually referred to as 'Euratom'), both in Rome in 1957.

The ECSC Treaty expires in 2002. The other two are of limitless duration. The EEC (now EC) Treaty has been much amended, by, inter alia, the Single European Act (1987), and the Maastricht Treaty (1993), which created the European Union, comprising the existing European Communities, plus two other 'pillars' concerning co-operation in justice and home affairs, and a common foreign and security policy. The most recent amendments have been introduced by the Treaty of Amsterdam, which came into force in 1999. The Treaty of Nice, which makes further amendments, has not yet come into force. **The Euratom Treaty has never been amended as to substance.**

**The provisions of the Euratom Treaty**

Believing that civil nuclear power was the key energy technology of the future, the founding fathers of the European Communities shared a functionalist belief that by obliging collaboration over the development of this technology between the Member States, via the Euratom Treaty, then political integration would more likely follow. The Treaty aimed to give considerable centralised powers to the Commission responsible for its implementation. Thus, the Euratom Supplies Agency would own and control the supply of all fissile materials in the Community, and the Commission would control the distribution of patent rights and production licences for a series of reactor designs and fuel cycle technologies to be developed by the Joint Nuclear Research Centre (JNRC). Provisions for research (Article 7) and international agreements (Article 101) were important features of the Treaty: research was required to establish nuclear capability, and international agreements were required to gain access to fissile materials and technologies. (The USA, for example, was and is the major supplier of enriched uranium, and had a virtual monopoly of the supply of the highly enriched uranium required for research reactors).

The basic purpose and structure of the Euratom Treaty are set out in its first two articles:

'The tasks of the Community

Article 1

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

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

Article 2

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

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

Control by democratically elected Parliaments was not exactly a significant feature of the nuclear sector in the 1950s. All the nuclear weapon States developed their military technology in secret, free from scrutiny by their national Parliaments. Moreover the link between the development of civil nuclear technology and the military technology was so close that the same culture of secrecy also pervaded the civil nuclear sector (and to a certain extent still does). Parliaments were not involved in the key decisions relating to development of either the military or the civil technologies, or in the international agreements which lubricated them. Thus it comes as no surprise that monitoring and control by the European "Assembly" (now officially "Parliament" since the adoption of the European Single Act) was not a strong feature of the Euratom Treaty, although, ironically, it can be plausibly argued that it is precisely in these areas that the public most feels the need for rigorous democratic scrutiny, control and accountability.

**The current role of the European Parliament in the Euratom Treaty**

The most obvious problem concerns the lack of any requirement for the Council to formally consult the European Parliament on a whole range of issues relating to different articles of the Euratom Treaty, even though the Parliament is the co-budgetary authority for all expenditure based on this Treaty. In contrast, consultation of the unelected Economic and Social Committee (ESC) and the unelected (advisory) Scientific and Technical Committee (which is nominated by the Member States) is usually required.

Since 1957, as mentioned above, there have been substantial changes and modifications to the EEC (now EC) Treaty, via the Single European Act, the Maastricht Treaty, and now the Treaty of Amsterdam. These changes have, inter alia, steadily increased the role, power, and influence of the European Parliament, by the introduction of co-decision, and the assent procedure for international agreements. But no such changes have been made to the Euratom Treaty: apart from minor adjustments, it remains essentially unamended. The Member States, sometimes aided and abetted by the Commission, appear to use only parts of the Treaty, and they only use those when it suits them.

**Parliamentary efforts to reform or revise the Euratom Treaty**

Dissatisfaction with the institutional 'imbalance' enshrined in the Euratom Treaty compared to the provisions laid down in the TEC is one of the major reasons why the European Parliament

has repeatedly called for revision of the Euratom Treaty. In contrast to the Euratom Treaty, the Treaty establishing the European Community (TEC) provides for substantial parliamentary involvement in the legislative process (with the co-decision procedure endowing Parliament with the right to co-legislate in an ever growing number of areas), or in the conclusion of international agreements (assent procedure). None of these procedural rights apply to Parliament in the realm of nuclear energy or related issues covered by the Euratom Treaty.

The European Parliament, and in particular its Committee on Industry, External Trade, Research and Energy (and previously its Committee on Research, Technological Development and Energy) has continuously demanded that the Member States should revise certain provisions of the Euratom Treaty. The Treaty's 'democratic deficit', i.e. the lack of parliamentary involvement in the decision-making process, has been a subject of particular concern. This concern is considered particularly relevant with regard to Chapters I ('Promotion of Research') and Chapter 10 ('External Relations') of the Euratom Treaty, the latter having also been vigorously pursued by Parliament's Foreign Affairs Committee. Furthermore, the European Parliament has repeatedly drawn attention to those Treaty provisions which it regards as seriously out-dated, either because they were never implemented, or because their material content no longer corresponds to present realities. Did any activity on behalf of the Council or the Commission follow Parliament's repeated calls for more parliamentary involvement? The various proposals and opinions have not been translated into action by the Member States. Not only did Euratom never assume a prominent position on the Parliament's agenda for the IGCs, the Member States equally successfully excluded Euratom from the negotiating package. It has to be admitted frankly that the call for selective Treaty revision has not produced results. This 'outcome' is not too surprising given the interest-constellations in the Council (and in particular the position of the French government which sturdily resists any attempt for Treaty reform), and the unanimity requirement for any Treaty revision.

Thus we see the general context which explains why this study was requested by Parliament's Committee on Industry, External Trade, Research, and Energy (ITRE). The terms of reference were that DG 4 should undertake: 'a study which summarises the developing relationship over time between the EP and the Euratom Treaty, and which offers guidelines as to possible future developments and possible EP initiatives in this domain'. Given this ambitious and wide-ranging brief a decision was taken to carry out the study on an internal/external basis. External expertise was sought concerning both the history of the European Atomic Energy Community (Euratom), and concerning Parliamentary strategies for Treaty reform/revision/re-interpretation. Other chapters, on research, Euratom loans, nuclear safety, supplies, nuclear safeguards, and international agreements have been written in-house.

**The structure of the study**

Thus the structure of this study is as follows: Part One of the study is a history of the Euratom Treaty, which covers the period from the early 1950s to the late 1960s. History informs the present, not least because the Euratom Treaty has never been significantly amended, yet this particular history is not at all well known. It is hoped that this part of the study will result in a much wider understanding of the forces which shaped the Euratom Treaty, and which still affect its current implementation.

Part Two of the study considers and analyses the most important provisions of the Euratom Treaty, chapter by chapter, and then Part Three offers some thoughts on possible strategies

which the Parliament might use so as to reduce the ‘democratic deficit’ which is generally thought to characterise the Euratom Treaty.

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# Executive Summary

## S.1. Summary of Part One: the History of the Euratom Treaty

The Euratom Treaty is often overlooked in the history and operation of the European Union. This neglect is unwarranted. Its tactical pairing with the EEC was a crucial factor in initially persuading and eventually convincing a sceptical French Government to engage with European integration after the embittering experience of the aborted European Defence Community. Jean Monnet's nuclear energy community proposal, and the negotiations that it generated during 1955, played a crucial role in initiating the *relance***.** In due course, Euratom was to be overshadowed by its sister proposal for the creation of a 'common market'. At the time in 1955 and early 1956, however, it was widely believed in many quarters that the Euratom proposal held the greatest promise of success, while the EEC negotiations faltered.

The negotiation and creation of Euratom reflected a wider contemporary international phenomenon: universal optimism about the commercial and scientific applications of nuclear energy. The shift away from coal as the primary source of energy in the Western European economy exacerbated European anxieties about the dangers of dependence on Middle East oil. The political goal of furthering European integration through the device of a nuclear energy community thus proved attractive.

The first objective of this history is to determine how the momentum for European nuclear energy cooperation first developed. It examines, inter alia, the doubly mistaken belief of Monnet and the 'Europeanists' in 1955 and 1956, that since nuclear energy was 'virgin territory' there were no national interests, and so European integration could proceed smoothly in this sector. This subsequently led to the emasculation of the original Euratom proposals. France, in particular, had strong pre-existing stakes in nuclear energy before the Euratom proposal, and the FRG and Belgium also had strong preferences. Therefore, to understand how the negotiations proceeded once Euratom was proposed, an appreciation of the wide variations between the ECSC member states on the matter of nuclear energy is necessary. The varying experiences, institutions, interests and values of individual member states affected the course of the Euratom negotiations.

Three major issues were at stake during the negotiations to establish Euratom:

1) whether Euratom should construct a gaseous diffusion plant to produce enriched uranium;
2) whether member states should be prohibited from the development of the military applications of nuclear energy; and
3) whether Euratom should have a monopoly of ownership and use with respect to nuclear materials.

By their very nature these questions revolved around the issue of whether Euratom should become a totally self-sufficient Western European organisation, that would allow Europe to become a 'third power' economically and militarily independent of the USA. France, in particular, supported this 'third power' approach, but her more Atlanticist neighbours, in particular the FRG, disliked this notion. A basic difference in economic approaches between France's statist and interventionist approach, and the more *laissez-faire* or liberal economic policies of the FRG also complicated the negotiations, which unfortunately failed to reconcile the divergent interests and values of the member states. This led to a weak treaty and the

subsequent failure of the nuclear Community to achieve its substantive goal of an integrated European nuclear industry.

Sectoral integration of nuclear energy was chosen by Spaak and Monnet because it was viewed as less ambitious than a general common market or customs union, and therefore less likely to fail. Nuclear energy was an appealing prestige technology, especially after the liberalisation of US nuclear policy. The primary assumption of the integrationists was that the demands of a 'big science', such as nuclear energy, were probably beyond the capabilities of the individual medium and small states of Western Europe, but that together in an integrated collective programme they could build an industrial scale nuclear sector producing competitively priced electricity in a matter of years.

The determination and ingenuity of Monnet and Spaak ultimately led to the breakthrough that placed nuclear integration on the agenda of the 'Six' in mid-1955, by linking it with Beyen's idea of a customs union or common market, as a means to reconcile the divergent interests of France and the FRG in a package deal. However, the neoliberal priorities of Germany's Economic Ministry and powerful sections of German industry militated against agreement on a strong supranational Euratom structure with a total monopoly on ownership of all fissile materials and control on their use. It was the presumed strongest supporters of Euratom who weakened the organisation irretrievably at the outset: the extremely tenuous assumptions upon which Euratom was conceived began to disentangle in the face of intransigent sectional interest groups within both the FRG and France.

In sum, the Euratom concept initiated the *relance* and was considered the most likely vehicle for further European integration by Monnet, Spaak, France, the USA and the Action Committee. But in the light of this substantial progress in the EEC negotiations, Franco-German fundamental difficulties over the Euratom Treaty appeared less salient and they effectively agreed to differ. A centralised Euratom Supplies Agency was instituted but denied a de facto monopoly. France eventually went ahead with its own isotope separation programme. Domestic politics ensured that France had no room for manoeuvre as regards the military option. Euratom's control stopped at the gates of military installations.

In the final analysis, the Euratom Treaty was effectively 'gutted'. The treaty was inadequate, civil nuclear energy was still in its commercial infancy, and the economic predictions for nuclear energy were wildly unrealistic. The primary underlying difficulty was that too much political importance was vested in an untested economic sector. The 'myth' of an energy shortage that had propelled Monnet's efforts during 1955, 1956 and early 1957, dissipated thereafter when an abundance of cheap oil flooded Europe. This denied Euratom a major centripetal force that could have checked the fissiparous influences of national interest and motivated a common energy and nuclear policy. Ultimately, it was the absence of a Franco-German Axis in nuclear matters that was the undoing of the Treaty during its negotiation and implementation stages. A workable and mutually beneficial Franco-German compromise was central to the success of the EEC Treaty, but nothing similar existed in Euratom.

The final objective of this history is to assess the establishment, development and performance of Euratom in the first decade of its existence. 1967 is chosen as the end date for two main reasons. Firstly, the treaty to merge the institutions of the three communities (ECSC, Euratom, and the EEC) took effect in that year. Secondly, the unanimous consensus of commentators is that 1967 signals the end of Euratom as an effective force. Many explanations for '*l'échec d'Euratom*' are considered including *inter alia* shortcomings of the Euratom Treaty, nuclear

nationalism, a lack of leadership, overinflated initial expectations, and inauspicious circumstances. At the centre of the entire saga is the Franco-German relationship in the nuclear energy sector.

The Commission argued that Europe's comparative lack of progress in comparison with the USA (in the development of nuclear power) was a product of the 'fragmentation of the [European] effort, the bulk of which has been pursued at the national level with national objectives in view'. The damning conclusion was that: 'Member countries have reserved appropriations and public contracts for their own domestic industries, and orders placed by the electricity utilities have been awarded solely to domestic contractors. The weakness of industrial structures within the Community is in fact the result as much as the cause of this lack of co-ordination of officially sponsored projects' (*Bulletin of the European Communities*, Supplement, Sept/Oct 1968). The EC Commission, in effect, admitted that Euratom had failed to meet even the whittled down objectives that survived the negotiation process to be included in the Treaty. Competing national interests made Euratom more of a broker than a prime mover in the commercial use of energy in Europe.

## S.2. Summary of Part Two: The main provisions of the Euratom Treaty

### Introduction

In the 1950s, three European Communities were created by a series of international legal instruments: the European Coal and Steel Community (ECSC) by the Treaty of Paris, 1952; the European Economic Community (EEC, now EC), and the European Atomic Energy Community (EAEC - usually referred to as 'Euratom'), both in Rome in 1957.

The ECSC Treaty expires in 2002. The other two are of limitless duration. The EEC (now EC) Treaty has been much amended, by, inter alia, the Single European Act (1987), and the Maastricht Treaty (1993), which created the European Union, comprising the existing European Communities, plus two other 'pillars' concerning co-operation in justice and home affairs, and a common foreign and security policy. The most recent amendments have been introduced by the Treaty of Amsterdam, which came into force in 1999, and the Treaty of Nice, which has not yet come into force. The Euratom Treaty has never been amended as to substance.

### The provisions of the Euratom Treaty

Believing that civil nuclear power was the key energy technology of the future, the founding fathers of the European Communities shared a functionalist belief that by obliging collaboration over the development of this technology between the Member States, via the Euratom Treaty, then political integration would more likely follow. The Treaty aimed to give considerable centralised powers to the Commission responsible for its implementation. Thus, the Euratom Supplies Agency would own and control the supply of all fissile materials in the Community, and the Commission would control the distribution of patent rights and production licences for a series of reactor designs and fuel cycle technologies to be developed by the Joint Nuclear Research Centre (JNRC). Provisions for research (Article 7) and international agreements (Article 101) were important features of the Treaty: research was required to establish nuclear capability, and international agreements were required to gain access to fissile materials and technologies.

The basic intent of the Euratom Treaty is set out in its first article:

'The tasks of the Community

Article 1

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

It shall be the task of the Community to contribute to the raising of the standard of living in the Member States and to the development of relations with the other countries by creating the conditions necessary for the speedy establishment and growth of nuclear industries'.

## The current role of the European Parliament in the Euratom Treaty

Since 1957, as mentioned above, there have been substantial changes and modifications to the EEC (now EC) Treaty, via the Single European Act, the Maastricht Treaty, the Treaty of Amsterdam, and, if ratified, the Treaty of Nice. These changes have, inter alia, steadily increased the role, power, and influence of the European Parliament, by the introduction of co-decision, and the assent procedure for international agreements. But no such changes have been made to the Euratom Treaty: apart from minor adjustments, it remains essentially unamended.

The most obvious problem concerns the lack of any requirement for the Council to formally consult the European Parliament on a whole range of issues relating to different articles of the Euratom Treaty, even though the Parliament is the co-budgetary authority for all expenditure based on this Treaty. In contrast, consultation of the unelected Economic and Social Committee (ESC) and the unelected (advisory) Scientific and Technical Committee (which is nominated by the Member States), is usually required.

## Support for research activities by the European Communities

Between 1998 and 2002 the European Union will spend BEURO 14.96 in its Fifth Framework Programmes for Research, Technological Development, and Demonstration (Programmes because there is an EC Programme, and a Euratom Programme.) This contrasts sharply with the situation even as late as in the 1970's, when European Economic Community R & D was a very modest affair indeed: the idea that science and technology policy have a general legitimacy at the European level is a relatively novel one. The 1957 EEC Treaty of Rome contained no provision for Community research. Indeed, the only significant coverage of research was provided by the Euratom Treaty, the most relevant provisions of which include the following:

## Treaty Chapter 1. Promotion of Research

'Article 4

1. The Commission shall be responsible for promoting and facilitating nuclear research in the Member States and for complementing it by carrying out a Community research and training programme.

[…]

Article 7

Community research and training programmes shall be determined by the Council, acting unanimously on a proposal from the Commission, which shall consult the Scientific and Technical Committee.

These programmes shall be drawn up for a period of not more than five years.

The funds required for carrying out these programmes shall be included each year in the research and investment budget of the Community.

The Commission shall ensure that these programmes are carried out and shall submit an annual report thereon to the Council.

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

The Euratom Treaty thus effectively defined research as nuclear research, and contained specific provision for an initial 5-year research and training programme to be carried out at the Joint Nuclear Research Centre (established by the Commission pursuant to provisions in Article 8 of the Euratom Treaty).

Since the early 1980s the European Economic Community (now European Community) has become more and more involved in the support of activities in the area of research and technological development (R&TD). There was no explicit provision for this in the EEC Treaty, and so the first so-called R&TD Framework Programmes were based on the then Article 235 EEC. A chapter on R&TD was added to the Treaty by the Single European Act. The Framework Programmes for EC RTD&D are now based on Article 166(1) of the EC Treaty, which involves co-decision by Parliament and Council, pursuant to Article 251 of this Treaty. The so-called 'Euratom Framework Programmes' are still based on Article 7 of the Euratom Treaty, which does not formally oblige *any* consultation of the EP, though in practice the Council does now request Parliament's opinion in a single-reading 'consultation facultative'.

**Treaty Chapter 3. Health and Safety**

Article 2 of the Euratom Treaty provides, inter alia, for the Community to 'establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied'. Chapter 3 of the Treaty, 'Health and Safety', shows how this is to be done.

'Article 30:
Basic standards shall be laid down within the Community for the protection of the health of workers and the general public against the dangers arising from ionizing radiations'.

It is important to realise what this provision means and includes, and what it does not. It essentially provides for the Community to establish a series of dose limits for exposure of human beings to radiation. (This has been done, usually following the line established by the International Commission for Radiological Protection (ICRP)). But it does not provide any competence to Euratom either with respect to possible damage to the natural environment caused by radiation, and perhaps even more remarkably, **it provides no Euratom Community competence with respect to the safety of nuclear reactors.**

Thus while there is extensive talk of 'international safety standards' and 'Western standards' in many EU documents dealing with nuclear safety issues, there is no Euratom Directive establishing the basic safety standards for the design, construction and operation of nuclear reactors in the EU. Thus it is up to each Member State to define its own nuclear reactor safety regulations, and regulatory structure, with some possible co-ordination via the IAEA. Given the

more-or-less inevitably cross-border nature of any major nuclear accident, and given the aim of the Euratom Treaty of creating a Common Market for nuclear energy, the omission of any harmonisation provisions for nuclear reactor safety does seem surprising, even more so in the light of the enlargement negotiations. The Member States, especially the 'nuclear' states, appear to have a fear of even considering a possible Euratom Directive on the safety of nuclear installations, including the establishment of basic safety criteria for the design, construction and operation of nuclear reactors in the Community. Why is this? Perhaps because they appear to assume, arguably erroneously, that this would inevitably lead to the creation of a European Nuclear Installations Safety Inspectorate, which would involve teams of staff from other Member States being allowed to inspect sensitive national nuclear installations. This fear seems to arise from the model provided by Euratom Safeguards provisions (see below), and the existence of Euratom Safeguards inspectors who do have such powers. But this model would not of course apply in the case of a Community Directive. A nuclear installations/reactor safety Directive would be implemented via the existing national nuclear regulatory provisions and organisations, and would thus not require the creation of any European Inspectorate at all. In the absence of such Community legislation, the '*acquis*' on nuclear reactor safety is being elaborated in an essentially inter- governmental/ inter-regulatory authority process.

**Euratom Loans**

The Euratom Treaty makes no mention of the provision of Euratom Loans. Nevertheless, they have in recent years become a particularly visible feature in the Euratom political landscape, because of their (potential and actual) use to modernise and upgrade the safety systems and other technical features of nuclear reactors in Central and Eastern Europe.

Euratom Loans was first established by 'Council Decision 77/270/EURATOM of 29 March 1977[1] empowering the Commission to issue Euratom Loans for the purpose of contributing to the financing of nuclear power stations'.

The 1977 decision only concerns projects within the Member States of Euratom, and in fact, few such loans were ever made. The consequence was that the Euratom loans unit was subsequently mothballed, only to be re-established following the Council Decision 94/179/Euratom of 21 March 1994, 'amending Decision 77/279/Euratom, to authorize the Commission to contract Euratom borrowings in order to contribute to the financing required for improving the degree of safety and efficiency of nuclear power stations in certain non-member countries'. (Actually the countries of central and eastern Europe, including the CIS countries).

Once again the Commission is empowered to issue these loans: there is no apparent role for the Council, and certainly, as with the original 1977 decision, no requirement to consult the European Parliament. Appearances, can, however, be deceptive: annexed to the minutes of the Council meeting of 21 March 1994 is a set of 'guidelines'. Their official title is 'Guidelines relating to the financing required for improving the safety and efficiency of nuclear power stations in certain non-member countries'. These guidelines are not mentioned in the Council Decision. Accordingly we must assume that they are somewhat akin to a Council Declaration in the minutes of Council meetings, and the Court of Justice has clearly stated that such declarations have no legal force. Nonetheless, it is quite clear that the Commission treats these particular 'guidelines' as a clear set of instructions from the Council, which determine what

[1]OJ L88 of 6 April 1977.

kind of projects, undertaken by what kind of organisation, can be financed. The guidelines are reproduced in this chapter of the study.

**Treaty Chapter 6 -Supplies, and Chapter 8 - Property Ownership**

Chapter 6 of the Euratom Treaty has a special mythology in the history of the European Communities. It created the Euratom Supplies Agency, with its own capital, which was designed to control the civil market for fissile materials in the Community. The Community, according to the Treaty, owns all such fissile materials, and the Supplies Agency has a right of option to purchase all such materials, and has the exclusive right to conclude contracts for the supply of such materials. Unfortunately Chapter 6 is, it would seem, not all that it appears to be: many articles have apparently either not been implemented at all, or only partially implemented or applied. The key provisions of Chapter 8 have never been implemented. The Supplies Agency exists, but is a mere shadow of what was intended. It does not appear to have ever exercised its purchase option: indeed it does not seem to have ever, in 35 or so years, used any of its capital. The Court of Auditors has regularly asked what the Supplies Agency actually does. France appears in the past to have sometimes largely ignored the very existence of the Agency, considering that France is exempt from most of the provisions of Chapter 6 (which it has also challenged the legitimacy of in the European Court of Justice - so far unsuccessfully). There is some evidence that France has recently adopted a more co-operative approach with the Agency, since it sympathises with its aim of reducing reliance on imports from the CIS, and in particular Russia.

The Treaty further specifies that seven years after the coming into force of the Treaty the Council should either confirm the provisions of Chapter 6, or modify them by qualified majority. The Council has done neither. No Failure to Act case has been brought by the Commission against the Council in this or any other matter relating to the non-implementation of key provisions of the Euratom Treaty. In recent years the Supplies Agency has enjoyed a modest re-vitalisation, as it has attempted to limit imports of nuclear materials from Russia (so as to prevent a distortion of the market), and has been supported by the Court of Justice in a number of cases relating to this policy.

**Treaty Chapter 7 - Safeguards**

Euratom Safeguards are designed to prevent the diversion of civil fissile materials to ‘uses not declared by their owners’. This peculiar phrase is universally interpreted to mean ‘the production of nuclear weapons’. At least this is unambiguously the interpretation that the Euratom Safeguards staff put upon it. Chapter 7 is thus a prototype European Non-Proliferation Treaty. Indeed its real purposes were presumably (a) to offer a guarantee to the USA that fissile material of US origin would always be ‘tracked’ to ensure that it was only used for ‘declared’ (i.e. civil) uses, and (b) to prevent Germany from secretly developing a nuclear weapons programme - the requirement for declared use would have obliged an explicit decision by Germany to follow this path, (as France subsequently did) and Safeguards inspections would detect any covert attempt so to do.

The UN Non-Proliferation Treaty gives a Safeguards role to an Inspectorate created within the International Atomic Energy Agency, based in Vienna. Crucially, however, such Inspectors do not carry out a significant level of inspection within the five States which officially possess nuclear weapons - in particular they do not carry out detailed inspections of reprocessing plants in these States, even though these produce most of the fissile materials. The IAEA does not do

so because such States have dedicated military facilities which are immune to inspection, and the Non-Proliferation Treaty recognised that there was little point in inspecting civil facilities in these countries, since if the State concerned chose to break the Treaty provisions, it could divert fissile material to whoever it liked whenever it liked under the cloak of military secrecy.

Euratom Safeguards - or rather the Euratom Treaty - does not accept this logic, since it now devotes over 70% of its resources to inspecting the two major sources of fissile materials in the Community - the reprocessing plants at Sellafield in the UK, and at Cap la Hague in France. Since both States are nuclear weapon States, both have military production facilities, and stocks of Pu 239 and U 235, which are wholly outside Euratom's control, - since the third paragraph of Article 84 of the Euratom Treaty provides that:

'The safeguards may not extend to materials intended to meet defence requirements'.

One question that must be addressed therefore, is what is the point in inspecting just the civil side of fissile materials production in the weapon States, at considerable cost to the European taxpayer? Should inspection be extended to all fissile materials (a highly unlikely scenario), should European inspection of State owned facilities in nuclear weapons States simply cease, or is the current situation acceptable?

**International Agreements**

International agreements in the areas covered by the Euratom Treaty are covered by Article 101 of the Euratom Treaty, which reads as follows:

'The Community may, within the limits of its powers and jurisdiction, enter into obligations by concluding agreements or contracts with a third State, an international organisation or a national of a third State.

Such agreements or contracts shall be negotiated by the Commission in accordance with the directives of the Council: they shall be concluded by the Commission with the approval of the Council, which shall act by a qualified majority.

Agreements or contracts whose implementation does not require action by the Council and can be effected within the limits of the relevant budget shall, however, be negotiated and concluded solely by the Commission; the Commission shall keep the Council informed'.

There is no mention of the European Parliament in this article. For once, there is no mention of the Economic and Social Committee either. This therefore effectively guarantees that any such international agreements can be negotiated in secret, away from public scrutiny by European taxpayers, or by their elected representatives in the European Parliament, although the other countries with whom such agreements are signed may well have extensive provisions for Parliamentary accountability. Parliament's Rules of Procedure do provide for Parliamentary monitoring of international agreements - but such rules have no legal force, and the Council and the Commission have in the past somewhat neglected them with respect to Article 101.

In 1998, Parliament refused to cast a favourable vote on budgetary appropriations destined for Community participation in the financing of the modernisation of nuclear power plants in North Korea under the guidance of KEDO (Korea Peninsula Energy Development Organization) which had been founded in 1997 on an initiative by the United States. Negotiations of a Euratom-KEDO agreement were covered by Article 101 of the Euratom Treaty and thus did not

formally require the Commission to consult Parliament. Yet Parliament strongly criticised the Commission for not asking for its opinion. Parliament's Foreign Affairs Committee requested that Parliament be consulted by the Commission on a voluntary basis 'in the light of the extremely important foreign policy implications of the Agreement'[2]. However, the agreement between Euratom represented by the Commission and KEDO had already been concluded without the Parliament having delivered an opinion thereon. Nevertheless, Parliament sought to improve its position with regard to future international agreement based on Article 101 of the Euratom Treaty by making use of its budgetary powers over what then were non-compulsory expenditures.

In a meeting between the Commission, (represented by Sir Leon Brittan) and the Parliament representatives in Strasbourg on 09/03/1999, Brittan promised that the Commission would provide a list annually of **all** agreements being negotiated or planned under Article 101. Furthermore, it was promised that any draft agreement would be forwarded automatically to Parliament at the same time as to the Council and it was also proposed that deadlines should not be fixed as there should be ample time for Parliament to express its views. It thus seemed that, finally, Parliament having expressed its dissatisfaction with the exchange of letters and having re-iterated its 'threat' to make use of the budgetary weapon, has succeeded in making a small step towards reducing the 'democratic deficit' on one important aspect of the Treaty.

## S.3. (A) Summary of strategy paper one

In those areas where the European Parliament can make use of its budgetary, procedural and oversight instruments, there is a very real opportunity to overcome the subordinate position it is endowed with in the Euratom Treaty, vis-à-vis the Commission and the Council. However, the use of these instruments will only be successful if it is supplemented by strategic considerations by Parliament. The main elements that might be included and questions that might be asked so as to devise a strategy are as follows:

- **What is the aim of Parliament's activity?**

  Parliament should specify a hierarchy of aims. This hierarchy could, for example, be as follows: full revision of the Euratom Treaty; selective Treaty revision; 'small-steps' without a formal revision of the Treaty etc.

- **What are the probabilities that can be attached to each of the previously defined aims?**

  In order to assess the likelihood of achieving the different aims, the following steps have to be taken:

  - Assessment of the interests of all the actors involved in the (formal or informal) revision 'game'; their likely strategies, and the payoffs they attach to the different outcomes.
  - Specification of the procedural constraints: seeking discretion on the basis of the existing Treaty.
  - Assessment of the degree to which a large majority of MEPs and party groups can commit themselves to the means employed to achieve particular aims.
  - Assessing the instruments and the 'instrument mix' that can be deployed by Parliament.

[2] Letter by the Chairman of the Committee on Foreign Affairs, Security and Defence Policy, Tom Spencer, to the President of the European Parliament, José Maria Gil-Robles, 10/03/1998.

The first strategy chapter highlights the areas where the small steps approach is most likely to produce immediate and tangible results for the European Parliament. It must be vigilant, and seek out 'windows of opportunity' which may open up possibilities for Treaty revision. Here are some examples:

- One tactical device Parliament could employ is to commit Member States to strive for Treaty revision. Parliament could seek a commitment from the Council Presidency and other 'revision-positive' Member States to place the item on the agenda for an IGC.

- In this context, Parliament could continue to communicate the absurdity and partly farcical nature of some of the Treaty provisions to a wider audience. One ingredient for successful agenda placement is the creation of an interested public (awareness raising), which includes a critical mass of interested Member States, but also a large majority of parliamentary members.

- Parliament could also focus its major criticisms on the institutional shortcomings of the Treaty. This would allow Parliament to act more coherently and make it more difficult for the Council to reject Parliament's claims for 'more democracy'.

- Although Parliament will not have much influence on the number and kind of issues discussed at an IGC, the likelihood of Euratom revision will be greatly enhanced if issue linkages are made possible during an IGC.

Parliament also needs to pay much closer attention to the activities of the Council's 'Atomic Questions Group' (AQG), which is the Council Working Group, comprised of national officials, which prepares for Council all matters concerning the Euratom Treaty. The Commission is present at the meetings of the AQG, but Parliament, of course, is not. This does not prevent Parliamentarians, or Parliamentary officials, making informal contact with the members of the AQG, in order to ensure that Parliament is fully aware of the issues which are of current concern to the AQG.

## S.3. (B) Summary of strategy paper two

The leitmotifs of enlargement and inter-institutional debate are democracy, openness, accountability, effectiveness, and efficiency. Enlargement requires institutional change. This presents the EP with an opportunity to seek to insert itself more effectively into constitutional processes: in short, enlargement, the next IGC and the future of Euratom present the EP with the opportunity to insist on a parliamentary voice being heard and heeded as a general matter of principle and practice.

The EP's over-arching goal must be to show that it is relevant, and has something worthwhile to contribute in the sensitive areas covered by Euratom. MEPs' legislative clout might be expanded either juridically via treaty change and entrenched expansion of their authority (universalisation of co-decision); or de facto via intervention as permitted by existing treaties (questions, budget, investigations, public hearings, legislative tactics to delay implementation pending modification of specific clauses, etc).

It is no longer acceptable to assume that Euratom's concerns are fundamentally so technical as to dispense with the need for effective political oversight and public scrutiny. Technical desiderata are vital but in a democracy they cannot be allowed to be seen to be implemented

without open scrutiny. Moreover, public concern about many of the matters covered by Euratom and nuclear energy, means that ideally appropriate mechanisms of accountability should be in place to which the public can relate.

Enlargement alone requires EU level public scrutiny of the range of issues associated with the matters falling under Euratom. As in the past, one of the most useful political weapons available to the EP remains the one which is not a legally entrenched right but a tool of political operators: the instrument of embarrassment.

**Normative issues**

It behoves each EU institution to uphold the Transparency, Openness, Democracy, and Accountability norms. The European Parliament is not the custodian of these norms. It may, however, become their de facto guardian. This has the merit of being non-provocative, non-expansionary, non-threatening vis-à-vis the unique competences of the Commission and the Council, and therefore unlikely to provoke downright opposition on the part of the member governments. Especially at a point of enlargement (to nascent democracies), it would be very difficult for governments in practice to object to MEPs seeking to sustain democratic values, norms and **behaviour** themselves by virtue of their position as the elected representatives of the people.

**Constitutional**

The constitutional expression of these values has been developed by (a) successive revisions of the treaties establishing the EU; (b) reform of inter-institutional relations whether through inter-institutional declarations, trilogue agreements, Codes of Conduct or through formal amendment to specific articles of the relevant treaties. An unspoken but guiding principle for the European Parliament, has been to assume that anything that is not expressly prohibited by the treaties is implicitly permitted, until the governments decide otherwise. Many of the legislative powers now exercised by the EP were seen as radical and unacceptable not so long ago. There is no good reason why the EP should desist from seeking to exercise an appropriate, even radical, role for itself in respect of the Euratom Treaty, and many of the issues that fall both under its remit and that of the EU treaty pillars. In particular, the EP should issue own-initiative opinions, even if it has not been formally consulted by the Council. And MEPs must seek out every opportunity to make known the EP's voice and views whether expressly provided for in the treaties or not.

It is entirely appropriate and proper that MEPs should question any issue on which they feel inadequately informed; inadequately primed; inadequately prepared by not receiving timely information; and inadequately inserted into the legislative process governing the decision on the proposal on the table. The EP could combine attempts to set precedents under pillars II and III in respect of securing greater acknowledgement of its existence and 'voice' by the other institutions, with efforts to use the same tactics in respect of Euratom treaty provisions. To this end, it would be appropriate for MEPs to use all channels open to them – including the right to veto a proposal having budgetary implications, or international repercussions – to assert their legitimate right to have a say, and ultimately, of course, to be an equal partner in the process of approving or refusing approval for a proposal or course of action proposed by the Commission and/or member governments.

**Threats and negotiations**

The EP needs a strategy having several components. This means prioritising and combining several negotiating tactics to secure a clearly defined end goal: for example:

- a gradualist small steps approach (securing informal inter-institutional arrangements to exchange information, allow MEPs access to letters, briefing, documents etc. on an informal but systematic basis, for example),
- combined with a tactic to codify small changes in practice (derived, possibly from the former) and entrench them in formal inter-institutional agreements,
- medium level negotiations to incorporate these in treaty articles, worded as generally as possible, to
- full-blown treaty revision designed to universalise co-decision.

The first three would be amenable to persuasion and bargaining, possibly coupled with carefully targeted use of threats deploying EP existing power to maximum advantage.

The EP might persuade the Commission to share information, even where this is not explicitly required under the Euratom treaty. For example, it could systematically ask the Commission and Council for copies of information and develop with them a practice of information sharing.

The most obvious threat open to the EP is to withhold assent on spending, especially non-compulsory expenditure, and to query and withhold assent for spending relating to international agreements, enlargement, or research programmes, where this is legally possible.

**Constraints in the EP**

None of these tactics is realisable unless there is a good probability of maintaining a winning majority behind them in the EP. Great care needs to be taken in assessing 'opponents' (from member governments to vested interests) and in building and **sustaining an environment** inside the EP and outside receptive to EP wishes in respect of the broad strategy relating to remedying the democratic deficit, lack of transparency and accountability in the policy sectors covered by Euratom. A strategy of mixing and deploying these tactics strategically and selectively is essential. It needs to be coupled with a strategy of deliberation with national parliaments, because of their role in Treaty ratification.

If the EP can demonstrate to other institutions and to member governments the usefulness of its inputs, it might be possible for MEPs to persuade member governments with an interest in treaty reform (especially regarding Euratom and the issue of nuclear reactor safety on the eve of enlargement) to include it as an agenda item for the upcoming IGC. The high profile and sensitive nature of nuclear issues means that the EP should be able to make political capital out of the incomprehensible differences between the treaties over the type and extent of role the EP is permitted.

Whilst acknowledging that wholesale revision of Euratom is highly unlikely, the EP cannot afford to be seen by the public to be silent about nuclear issues. The EP already has a de facto position post-Kedo in being consulted on agreements with third countries, but needs to refine and accelerate its own internal procedures to be sure of having an impact. In short, it needs to act as a full legislative partner regardless of the formal limitations on its role.

# I. The origins and early history of Euratom, 1955-1968

'…contrary to traditional interpretations, the Atomic Community was neither an irrelevant peripheral affair in the shadow of the Common Market negotiations, nor was it merely a vehicle for the realization of the EEC. On the contrary, the concept of, and the negotiations toward, Euratom seem to have been indispensable stepping stones to the development of the Common Market'. (Deubner, 1979: 206).

## Introduction

The Euratom Treaty is often overlooked in the history and operation of the European Union. This neglect is unwarranted. Its tactical pairing with the EEC was a crucial factor in initially persuading and eventually convincing a sceptical French Government to engage with European integration after the embittering experience of the aborted 'European Army'. Thus, Euratom's underlying motive was political. It originated as the vehicle for relaunching European integration after the stillbirth of the European Defence Community (EDC). As such its origins are closely intertwined with that of the ECSC (European Coal and Steel Community), EDC and EEC (European Economic Community). Jean Monnet's nuclear energy community proposal, and the negotiations that it generated during 1955, played a crucial role in initiating the *relance*. In due course, Euratom was to be overshadowed by its sister proposal for the creation of a 'common market'. At the time in 1955 and early 1956, however, it was widely believed in many quarters that the Euratom proposal held the greatest promise of success, while the EEC negotiations faltered. In this sense it performed a substantial service to the 'European idea'.

The negotiation and creation of Euratom reflected a wider contemporary international phenomenon: universal optimism about the commercial and scientific applications of nuclear energy. Alluring speculations that electricity produced by nuclear power stations would become so cheap and could be produced in such vast quantities that the general public would not even have to pay for it were commonplace during 1954 and 1955. Such excessively optimistic predictions caught the imagination of scientific and political audiences in 'Little Europe'. After all, 'the Six' were only just recovering from the energy shortages that that had threatened their economic reconstruction after World War II. Their economies were growing strongly and, though the formation of the ECSC had overcome the coal and steel bottlenecks of the late 1940s and early 1950s, strong economic growth projections fuelled expectations of future shortages. The shift away from coal as the primary source of energy in the Western European economy exacerbated European anxieties about the dangers of dependence on Middle East oil. The political goal of furthering European integration through the device of a nuclear energy community thus proved attractive.

Thus the first grand objective of this chapter is to determine how the momentum for European nuclear energy cooperation first developed. This is necessary for a number of reasons:

- First, the European interest in nuclear energy integration began earlier than is normally presumed,

- Second, specific discussions of European co-operation in the nuclear energy field predated Monnet's eventual successful attempt to place the subject on the integrationist agenda.

Two common misconceptions surrounding the origins of Euratom also require particular attention.

- The first is that Jean Monnet single-handedly inspired European interest in nuclear energy in late 1954 and 1955. Certainly, he recognised the zeitgeist and saw an opportunity to link the widespread nuclear optimism to his overriding political objective of European unity, but his idea of European nuclear integration was not new.

- The second fallacy was the doubly mistaken belief of Monnet and the 'Europeanists' in 1955 and 1956, that since nuclear energy was 'virgin territory' there were no national interests, and so European integration could proceed smoothly in this sector.

These cardinal errors subsequently led to the emasculation of the original Euratom proposals. France, in particular, had strong pre-existing stakes in nuclear energy before the Euratom proposal. The FRG and Belgium also had strong preferences. Therefore, to understand how the negotiations proceeded once Euratom was proposed, an appreciation of the wide variations between the ECSC member states on the matter of nuclear energy is necessary. The varying experiences, institutions, interests and values of individual member states affected the course of the Euratom negotiations.

The second grand objective is to trace the negotiations from the intergovernmental conference at Messina (June 1955) to the signing of the Euratom Treaty in Rome on 25 March 1957. Three major issues were at the stake during the negotiations to establish Euratom:

1) whether Euratom should construct a gaseous diffusion plant to produce enriched uranium;
2) whether member states should be prohibited from the development of the military applications of nuclear energy; and
3) whether Euratom should have a monopoly of ownership and use over the use of nuclear materials.

By their very nature these questions revolved around the issue of whether Euratom should become a totally self-sufficient Western European organisation, that would allow Europe to become a 'third power' economically and militarily independent of the USA (Polach, 1964: 61; Donnelly, 1972: 77). France, in particular, supported this 'third power' approach, but her more Atlanticist neighbours, in particular the FRG, disliked this notion. A basic difference in economic approaches between France's statist and interventionist approach, and the more laissez-faire or liberal economic policies of the FRG (which were credited for the *Wirtschaftswunder* or economic miracle), also complicated the negotiations. Unfortunately the negotiations failed to reconcile the divergent interests and values of its member states. This led to a weak treaty and the subsequent failure of the nuclear Community to achieve its substantive goal of an integrated European nuclear industry.

The third, and final, objective, therefore, is to assess the establishment, development and performance of Euratom in the first decade of its existence. 1967 is chosen as the end date for two main reasons. Firstly, the treaty to merge the institutions of the three communities (ECSC, Euratom, and the EEC) took effect in that year. Secondly, the unanimous consensus of commentators is that 1967 signals the end of Euratom as an effective force. Many explanations for '*l'échec d'Euratom*' are considered including inter alia shortcomings of the Euratom Treaty, nuclear nationalism, a lack of leadership, over-inflated initial expectations,

and inauspicious circumstances. At the centre of the entire saga is the Franco-German relationship in the nuclear energy sector.

## I.1. CERN: An 'Experimental' Precursor?

During the post-war decade, most Western European states' interest in nuclear energy was muted. General economic reconstruction was prioritised. The US dual policy of monopolisation (of known reserves and sources of strategic nuclear raw materials) and denial (of all information relating to nuclear science) condemned other powers to construct a nuclear programme in isolation. West European countries were forced to pursue the costly approach of developing the necessary nuclear infrastructure, research and expertise independently if they were determined to enter the 'atomic business'. A 'catch-up' syndrome ensued in Britain and France, because of their pre-war and wartime experiences in the field. In 'Little Europe' on a whole, however, the prerogative of rapid rebuilding necessitated the exploitation and maximisation of proven conventional energy sources rather than the diversion of scarce state resources to the risky, experimental and largely untried field of civil nuclear energy. This pragmatism contributed to the foundation of the European Coal and Steel Community.

Some interest in nuclear co-operative ventures existed nevertheless. After the European Unity Movements' Hague Congress of May 1948, the possible establishment of a European nuclear institute for physics was debated. 'Towards the very end of 1949, in the aftermath of President Truman's announcement of the explosion of the first Soviet atomic bomb, several personalities associated with nuclear matters in Europe began to think seriously about the possibilities of multinational co-operation in this area' (Krige and Pestre, 1987: 524). Denis de Rougemont, a Swiss writer, was active in promoting such ideas. Other interested parties included three key senior scientific administrators in Italy, Belgium and France. Their motivation was not only to co-operate on fundamental nuclear research but on industrial production as well.

Thus, Raoul Dautry, the Administrator-General of the French CEA, argued that 'the factories manufacturing the components for nuclear equipment cannot be used to full capacity by one country alone. … A single group of installations could thus meet the need of several countries'. This rationale foreshadowed the central economic and technical reasons put forward for the creation of Euratom between 1955 and 1957. Simultaneously, at the end of 1949, nuclear physicists from the Netherlands, France, Belgium, Denmark, Switzerland and Sweden, led by another key member of France's pre-war nuclear research programme, Lew Kowarski, began discussing co-operation in the field of experimental nuclear physics (Pestre, 1987: 68-70). Such pressures led the Lausanne Conference (December 1949) to pass a resolution calling for studies to be undertaken into the feasibility of creating a European institute for nuclear science 'directed towards applications in everyday life' (Krige & Pestre, 1987: 524 ). Dautry argued that 'what each European nation is unable to do alone, a united Europe can do and, I have no doubt, would do brilliantly' (Pestre, 1987: 74).

The eventual product of the negotiations was CERN – an intergovernmental organisation devoted to fundamental research in high-energy physics. By the time the CERN Convention was signed on 1 July 1953, therefore, the whole objective of the organisation had become much narrower than originally conceived by Dautry. It was the first genuinely European science organisation, but why was the 'minimalist' nuclear route chosen by CERN?

Firstly, contrary to the high 'humanitarian' hopes placed in it, the entire nuclear field was umbilically connected to military nuclear energy. Allied countries, France in particular, would not countenance the risk of former Axis states, especially the FRG, gaining the technical expertise of this dual-use technology. Mutual trust was still lacking so soon after World War II, and the USA tried to block the development of any nuclear energy applications. Thus geopolitics barred co-operation in practical atomic energy matters. Fundamental research necessitating the building of a European laboratory and particle accelerator was a different matter. High-energy physics research offered a safe and relatively low cost way to demonstrate European unity. The field was prestigious, and since it required relatively large-scale equipment, international co-operation in Western Europe could accelerate its advancement. More importantly, although it was firmly within the 'mythical' nuclear area, any possible applications that developed from it were only likely far into the future, so national rivalry and the 'military' question did not present insurmountable obstacles.

Secondly, most European governments before 1953 took little interest in science policy. The United Kingdom, and France to an extent, was the notable exception. Consequently, individuals, in particular scientists, had considerable freedom to frame CERN to meet their scientific interests without the imposition of national agendas (see Krige and Pestre, 1987: 526-28). Conversely, Euratom, since it was conceived later and was driven by the expectation of extensive benefits from civil nuclear applications, encountered strong national and industrial interests. But even before such a 'maximalist' nuclear integrative project could emerge as a viable concept one major impediment had to be removed.

## I.2. US Nuclear Policy

Europe, in general, lacked access to not only the raw materials, but also to much of the information and technology, to build a nuclear industry. The US imposed a policy of nuclear denial designed to prevent other states from constructing nuclear weapons (Gillon, 1994: 21-24). US non-proliferation policy, in concert with the UK and Canada, sought to monopolise and restrict access to the uranium and thorium resources of the post-war world for the US (Skogmar, 1993: 297-320). The USA policy was enshrined in the McMahon Atomic Energy Act, 1946. It prohibited any civil nuclear co-operation with other states unless US Congress was satisfied with the international safeguards in place (Scheinman, 1987: 17).

A volte-face in US nuclear policy during 1953 and 1954 single-handedly induced an international 'euphoria' about the presumed potential of civil nuclear energy. President Eisenhower's 'Atoms for Peace' speech on December 8, 1953 signalled this turnaround. The 'Atoms for Peace' programme aimed at diverting military fissile material to civil uses in order to slow Soviet efforts in the arms race. It was also designed to develop US private enterprises to compete more effectively for the potential market for atomic energy in high cost energy countries such as in Western Europe (Hewlett & Holl, 1989: 209-37). The USA recognised that a `nuclear export race' was in danger of commencing between France and the UK (Goldschmidt, 1977: 73). If the USA was to benefit, a change of US legislation was required. Consequently, the USA rethought its legislation for a number of reasons including competitive commercial concerns, the questionable success of its non-proliferation policies, and the realisation of the potential civil applications.

Consequently, the 1954 US Atomic Energy Act permitted the transfer of American civil nuclear information to her allies (Botti, 1987: 133-41). However, this major amendment to

the 1946 Act still proscribed the communication of any military nuclear information to allies (Weiss, 1985: 133-35). The 'military risks of exporting civilian nuclear technology' were realised (Sokolski, 1985: 42). Though Allies would be provided with the necessary raw materials and technological know-how for civilian nuclear energy production, the USA would also establish an International Atomic Energy Authority (IAEA), to inspect civilian nuclear programmes created under its auspices to verify that they were not abused for military purposes. The US specifically sought to prevent the transfer of two key technologies related to uranium enrichment technology and chemical reprocessing of depleted reactor fuel to produce plutonium (Ehrlich, 1985: 326-7).

Even so, 'Atoms for Peace' was the 'catalyst' (Stirk, 1996: 137) for the idea of European integration of nuclear energy and for determining some of the main contours of the intra-European discussions during the Euratom negotiations.

Though nuclear power stations were still at a very early stage of development, in February 1955 Britain's announced that it was inaugurating the world's first industrial nuclear electricity production programme reinforced widely held hopes about the potential of nuclear energy. The British predicted that the cost of nuclear-generated electricity would be competitive with that of conventionally produced electricity by 1963. This led to the 'crazy years' of nuclear energy enthusiasm (Goldschmidt, 1982: 260-61). The euphoria generated several international and national nuclear energy institutions between 1955 and 1958. In the space of a few months the IAEA (29 June 1957), Euratom (1 January 1958), and the OEEC's European Nuclear Energy Agency (1 February 1958) were created.

## I.3. The OEEC

The OEEC was the first organisation to examine the possibilities for regional nuclear energy co-operation. The rising imports of energy (especially oil) were perceived as a threat to the continued economic recovery of Western Europe. The Council of the OEEC began to consider the implications of the rising imports and the rising costs of energy in late 1953 (Guillen, 1994: 112).

In early 1954, the OEEC commissioned a study of the region's energy needs led by M. Louis Armand (Nelsen, 1958: 43), the Chairman of the French National Railway (Société Nationale des Chemins de Fer) (Milward, 2000: 205). He was a strong advocate of nuclear energy and European integration and 'had a natural tendency toward international co-operation and wanted the whole world' to benefit from his work (Hecht, 1998: 34-38). In 1951 he had refused to take over the leadership of the French Commissariat à l'Energie Atomique (CEA), because he was 'convinced of the need for a nuclear Europe' rather than nuclear nations (Goldschmidt, 1982: 290). In 1954 the OEEC gave him the opportunity to put his nuclear vision of Europe into practice.

Armand's OEEC Report (*'Quelques Aspects du Problème Européen de l'Energie'*) was published in June 1955. It highlighted that Europe's energy needs were increasing and that Europe needed an indigenous source of energy, especially electrical energy. Armand predicted that peaceful nuclear energy was an ideal energy source and would become economically competitive in a few years (Gaudet, 1959: 147; Arbuthnott, 1979: 124). Because of the extraordinarily large scientific, technical, industrial and financial demands involved in the development of civil nuclear energy, the Report believed extensive European co-operation was vital (Nelsen, 1958, p. 43). Co-operation would accelerate and maximise

the commercialisation of nuclear-generated electricity by facilitating the pooling of research results and by financing joint installations that were beyond the resources of individual states, in particular nuclear enrichment facilities. The OEEC Council took note of this positive analysis, established an OEEC Commission for Energy and commissioned a three-man expert Nicolaides Working Group to investigate co-operation in peaceful nuclear energy.

Meanwhile, the ECSC 'Six' (who were also members of the OEEC) began to consider forming a nuclear organisation. Therefore, two regional nuclear plans were discussed in tandem for much of the period between 1955 and 1957. This complicated both sets of negotiations. A tug-of-war developed for the devotion of France, the FRG, Italy, and Benelux. Armand dissociated from the OEEC option which he had pioneered, because he disliked the minimal intergovernmentalist approach of the OEEC. He preferred the more ambitious supranationalist approach contemplated by the advocates of Euratom (Vaïsse, 1994: 108). But where did the Euratom proposal spring from?

## I.4. L'Inspirateur?

Three individuals, Jean Monnet, Paul-Henri Spaak and Johan Willem Beyen, were central in proposing further integration within 'Little Europe' after the ignominious collapse of the EDC. The French Assemblée Nationale's rejection of the EDC Treaty appeared to end the prospect of further integration on the ECSC model (Duchêne, 1994: 258). The Mendès-France proto-Gaullist government was inherently hostile to European integration. De Gaulle publicly maligned Monnet as the promoter of a 'stateless' European 'monstrosity', i.e., the EDC (quoted in Duchêne, 1994: 254).

Within months, however, Monnet, Spaak and Beyen formulated and linked the proposals for the creation of Euratom and the 'Common Market'. They also ensured that the proposals received a hearing from the Six governments, despite pronounced caution in Paris and Bonn. Monnet was the senior member of this triumvirate, but an able team of supporters backed him: Pierre Uri, Max Kohnstamm, Richard Mayne, and François Duchêne. The Common Assembly of the ECSC may also have played a role. In its 1954 session, the Common Assembly adopted a report urging the High Authority of the ECSC 'to explore possibilities of expanding the scope of the Coal and Steel Community and its institutions…' (Polach, 1964: 20; see also Kramer, 1976: 31-64 & Meyer-Cording, 1957). Though the Common Assembly's call expressed the sentiments of all convinced 'Europeans', it lacked any power to act on the impulse.

The decisive action was Spaak's encouragement of Monnet to act within twenty-four hours of the French Assemblée Nationale's veto of the EDC (Moravscik, 1999: 139). Spaak and Monnet began to draft a declaration that would amount to a manifesto for renewed integration. They busied themselves with formulating a feasible but attractive proposal, and they had several from which to choose. Various 'political entrepreneurs' proposed over a dozen integrationist plans in the eighteen months after the EDC's collapse (Moravscik, 1999: 139). Why did Monnet and Spaak decide to pursue atomics as the route to integration? What ensured that a nuclear energy scheme would rise above the other proposals and become enshrined in the Euratom Treaty?

Until January 1955, neither Spaak nor Monnet had discovered a core practical proposal for Monnet's planned declaration. The expansion of the ECSC to new forms of energy and

transport was a persistent theme, but only one of many, throughout the numerous drafts. It was not until Monnet met Max Isenbergh in January 1955 that civil nuclear energy co-operation was suggested. Isenbergh, the deputy legal counsel of the US Atomic Energy Commission (USAEC), gave Monnet the idea for Euratom (Duchêne, 1994: 263-4). Monnet favoured this as a continuation of the integrative approach that the ECSC had inaugurated, also known as sectoral or vertical or functional integration. This involved the pooling of particular economic sectors, such as coal and steel, for the 'common good'. Monnet believed that once the benefits of integrating one economic sector was realised, there would be less resistance to integrating other sectors of the member states' economies. Thus functional integration would 'spillover'. Integration would occur gradually or incrementally. Monnet believed that the nationalism in France would prevent more ambitious 'horizontal' integrationist projects, such as a 'common market'.

In light of the nuclear optimism that prevailed at the time, Monnet began to view nuclear energy as 'God's gift to integrators'. Europe was falling behind the USA and Britain in a new technology that held enormous potential. Therefore, a common European interest existed. A pooling of resources and energies in a great 'collective effort' was the best solution in Monnet's perspective, in light of the great outlays of resources and finance required to enter the nuclear sphere. Additionally, the nuclear situation necessitated regulation, to ensure the impartial allocation of scarce raw materials and finance, as well as to ensure no diversification of materials to military applications (Duchêne, 1994: 264-5).

Hence, Monnet believed that an atomic energy community could easily be established since it 'only' required the member states to 'persuade their Parliaments to extend the range of the High Authority's mandate and to set up a new Authority for atomic power' (Monnet, 1978: 401). In light of his previous role in the French economic modernisation programme, the formulation of the Schuman Plan, and his role as President of the ECSC's High Authority, Monnet was predisposed to seeking integration in sectors which required the existence of a strong centralised economic planning authority. Monnet believed that nuclear energy 'was the right star to hitch [the] European wagon to'(cit. in Scheinman, 1965: 133). Certainly, circumstances were good.

The anti-integrationist Mendès-France government collapsed on 6 February 1955 to be replaced by a centre-right government led by Edgar Faure (Milward, 2000: 192). Though Faure's cabinet was riven by disputes, the fall of the slayer of the EDC was viewed as a positive development by pro-integrationists (Stirk, 1996: 136). Additionally, the 'vexed issue' of West German rearmament and sovereignty was close to solution. In December 1954 the main obstacle to German rearmament, the French National Assembly, ratified the Paris Treaty and thus the setting up of the Western European Union (WEU) (Dedman, 1996: 89-90). Following successful ratification by all the states party to the Treaty, the FRG joined NATO on 5 May 1955.

Finally, Monnet's programme for an atomic community was framed with French nuclear energy interests in mind. Even the Eurosceptical Gaullists were prepared to countenance integration in the field (Milward, 2000: 206). Thus, Monnet calculated that French interest in European integration was most likely to return if the proposed integration occurred in a sector, in which it had strong interests and thought that it could gain from a pooling of resources.

France was well on her way to becoming an independent producer of fissile materials as a result of the £40 million First French Five Year Plan for Atomic Energy, which was

approved in 1952 (Goldschmidt, 1982: 58-59). Meanwhile, the French civil nuclear energy project grew rapidly throughout 1955. The budget of the Commissariat à l'Énergie Atomique (CEA) almost doubled under Mendès France's Government. Then on 20 May 1955 this was almost doubled again, bringing appropriations to the CEA to just under 1% of the national budget (O'Driscoll, 1996: 50). The French nuclear programme dwarfed the cumulative nuclear efforts of all its ECSC partners by the mid-1950s (Scheinman, 1967: 30).

Despite France's progress, she still required substantial external scientific expertise and industrial might. The French needed large amounts of enriched uranium for ostensibly civilian purposes but the gaseous/isotopic diffusion process was still denied to them by US national security policy. The United Kingdom Atomic Energy Authority (UKAEA) was unable to meet the CEA's rapidly increasing demands for enriched uranium from its existing 'modest' enrichment plant at Capenhurst. France's suggestion that Britain should build a separation diffusion plant in France for French needs was rejected on 5 February 1955 as 'politically difficult'. This was a veiled reference to the British priority of maintaining the Anglo-American 'Special Relationship'. The UKAEA counterproposal that a plant could be built in Britain to meet French demands, if France signed a long-term contract agreeing to buy enriched uranium, failed to satisfy the CEA. France wanted its own diffusion plant independent of external influence and control (see O'Driscoll, 1996: 56).

Following her failure to acquire either sufficient quantities of enriched uranium or the necessary gaseous diffusion technology to do so from Britain, France began to see some advantages in co-operation with the FRG. Though Germany was only just initiating a nuclear industry, she had a world-renowned chemical industry and world-class scientists which would ensure rapid progress. Siemens and Allgemeine Elektrizitäts Gesellschaft (AEG) were world class electrochemical firms (Walker & Lönnroth, 1983: 20). French political initiative led to negotiation of a Franco-German nuclear agreement which was signed on 30 April 1955. The underlying rationale was that the two countries should coordinate their activities for the development of the nuclear energy. The notion of a 'common approach' was central to the agreement. According to Polach this 'common approach' was considered by both countries as 'the best instrument for strengthening European solidarity' (Polach, 1964: 21).

Earlier, and independently, on 4 April, Spaak had written to the Foreign Ministers of Germany, Italy and France (Adenauer, Pinay, and Gaetano Martino). He 'proposed that a conference be convened to negotiate treaties to extend the ECSC to all of energy and transport (including airlines) and to create a new Community for civil nuclear power' (Duchêne, 1994: 268). However, the replies were discouraging. As Monnet admits, 'Pinay…was afraid to reopen the European debate which had so recently closed. The Germans, contrary to my first expectations, were not enthusiastic about the idea of an atomic Community on the model of the ECSC' (Monnet, 1978: 403). Adenauer recalls in his memoirs that he 'reacted coolly' to Monnet's proposal. Though Spaak believed him to be 'passionately pro-European' (Schwarz, 1997: 230), Adenauer was 'haunted by the thought that it would be disastrous for a new attempt to fail' (Monnet, 1978: 403).

On 6 April 1955, the German Foreign Office's Political Department confirmed that the German Government could not support Euratom, but that it might support a 'general common market' (Duchêne, 1994: 269). Ludwig Erhard, the Minister for Economic Affairs, and his Under-Secretaries Ludger Westrick and Alfred Müller-Armack, were hostile to *dirigiste* sectoral integration on the model of the ECSC and favoured international free-trade system as the basis of the FRG economy (Schwarz, 1997: 230). The 'future producers' of

West German nuclear technology, viz, the chemical, electrical engineering, machine-building and non-ferrous metals industries, were expanding into international markets and sought to be internationally competitive (Deubner, 1979: 211-215). These advanced industries resented any interference with their commercial freedoms, and considered that nuclear co-operation with the advanced nuclear powers, Britain and particularly the USA held out the greatest prospects (Moravcsik, 1999: 140).

The French for their part were cautious. Pinay, the French Foreign Minister, feared that the proposals 'to supranationalise energy and transport might produce another EDC in France'. Faure, was hostile to Monnet personally, and feared an ECSC High Authority with a new role in nuclear energy. The Italian Foreign Minister Gaetano Martino was reportedly 'opaque' (Duchêne, 1994: 271). These discouraging replies to the Monnet-Spaak initiative surprised Monnet.

## I.5. Junktim

Johan Willem Beyen, the Dutch Foreign Minister, was the only Foreign Minister to react in a constructive manner to the Monnet-Spaak proposals for Euratom. He suggested the very idea of a customs union that Spaak and Monnet had downplayed or rejected as too ambitious. A Western European customs union had been under serious consideration in Dutch government circles since 1952 (Milward, 2000: 173-193). Independently of Monnet and Spaak, Beyen had gained confidence that progress in integration matters was again possible with the fall of Mendès-France, and he revived his customs union proposal in March 1955 (Milward, 2000: 193). Thus, Beyen replied to Spaak's Euratom solicitation with the argument that 'partial integration' on a sector-by-sector basis did not go far enough. In order to increase productivity and European 'solidarity' he asserted that: 'it is vital that a feeling of joint responsibility of the European states for the common welfare should be embodied in an organisation which follows the general interest, with an executive which is answerable not to the national government but before a supranational parliament' (Duchêne, 1994: 273). Though Spaak was initially 'scared' by the 'daring' of the Beyen Plan, reflection convinced him of the rightness of Beyen's approach (Duchêne, 1994: 274).

Monnet was also in the process of reaching the same conclusions. His discussions with Ophüls of the German Foreign Office revealed that at 'no time were the Germans willing to swallow Euratom without a general common market' (Duchêne, 1994: 269, 274). The strong liberal internationalist objections of German industry and the Economic Affairs Minister presented a major stumbling block. Monnet was convinced by this potentially powerful opposition that a Common Market should also be considered in tandem with Euratom (Monnet, 1978: 403; see also Schwarz, 1997: 230).

As a result, the Beyen Plan was linked with the Monnet-Spaak one creating a 'joint approach'. The linkage or 'junktim' between the vertical (nuclear sector) and horizontal (common market) modes of integration was a creative compromise. It would always be a balancing act to find a single integrative project that would satisfy the two key actors, the French and the Germans, as well as the other member states of the ECSC, but it appeared to Beyen, Spaak and Monnet that a 'package deal' could be achieved from the 'junktim'. Both France and Germany potentially had something to gain.

Though Beyen convinced Spaak that the French could be persuaded to join a common market, Spaak still retained deep-seated fears that it was too ambitious and according to one commentator, 'The sectoral approach was put into it because, Spaak said, if we fail in the

overall approach, we have to have a fall-back position' (Duchêne, 1994: 274). Beyen and Spaak arrived at this compromise on 23 April. They then composed the now famous Benelux Memorandum and circulated it on 20 May as part of the agenda for the next meeting of ECSC foreign Ministers on 1-2 June 1955 (Moravscik, 1999: 141), which had been convened to select a successor to Jean Monnet as President of the ECSC High Authority. But in order to fully understand the positions take by the national governments at Messina and in the subsequent negotiations it is first essential to appreciate the state of the nuclear industries among the Six.

Wide differences existed in the nuclear sectors of the ECSC 'Six'. France was the most advanced, with an extensive nuclear infrastructure, and since 1952 it was moving from the experimental into the industrial stage. Its programme was dual-purpose in character, and harboured military intent. Meanwhile, the Netherlands and Italy were still in the initial experimental stages. Belgium showed considerable promise owing to a close relationship with the USA and its uranium deposits in the Belgium Congo. The FRG, though a late starter, also held considerable potential. In terms of economic philosophies and administrative bodies the situation in each state was extremely disparate. Administratively, France had a powerful centralised public body, the CEA, directly accountable to the Prime Minister. There was little or no private involvement in the nuclear sphere. Belgium and Germany favoured a more liberal, business-friendly approach to nuclear development. Italy wavered between a liberal and more interventionist policy. '[E]ach country faced different internal circumstances and preoccupations which shaped its perceptions of international priorities' (Nau, 1974: 95)[3]. These variations help to explain the considerable difficulties that were about to arise in discussions of regional cooperation on nuclear matters that began at Messina.

## I.6. Messina

Messina's historical importance derives from the fact that it kept the prospect of further integration alive. It did not ensure the success of the *relance*. Instead, Messina simply kept the option open, so that in the next twenty months, a gradual convergence of interests could occur. Monnet was not present because he had become such a controversial figure in France. Faure had vetoed his attendance. It was an intergovernmental conference and the ECSC High Authority was ignored. Although there was a widespread view among the 'Six' that integration was worthwhile pursuing, there was still no consensus about the 'method' of integration to be adopted.

The mixed responses between the ECSC 'Six' to the Benelux Memorandum resulted in an awkward atmosphere at the Messina Conference (1-2 June 1955). Though Adenauer recognised the potential significance of Messina, he refused to attend 'for fear of failure' (Duchêne, 1994: 281). At a crucial meeting of representatives of the German Economic Affairs Ministry on 22 May it was decided that the Beyen proposals served German interests better than Euratom. However, Adenauer and the German Foreign Office indicated that political, rather than economic, imperatives were crucial, and European integration was desirable for normalising Germany's relationship with its Western neighbours (Milward, 2000: 198-201). Initial indications were that Italy held a similar position. She backed further European integration, but strong domestic actors favoured 'horizontal' integration over atomic energy integration (Polach, 1964: 21; Duchêne, 1994: 277-8).

[3] This entire section relies heavily on the comprehensive assessment provided by H.R. Nau (1974: pp. 66-95).

The key problem encountered at Messina was that of how to bridge the gap between France's position and the other five states. France was concerned not to agree to an ambitious initiative that would meet the same disastrous end as the EDC Treaty (see Milward, 2000: 210). French politicians were beginning to view European cooperation in the nuclear sector as a multi-functional tool. At a diplomatic level it would help to control or monitor the military implications of Germany's nuclear industry without discriminating against her. French support for nuclear co-operation would also act as a valuable French gesture towards European unification, and aid her rehabilitation following her ignominious role in destroying the EDC. Finally, the French nuclear programme would benefit (DDF, 1955, Vol. I, doc. 239). France's difficulty in obtaining either enriched uranium or the technology necessary to achieve uranium enrichment, led its policymakers to consider the possibility of developing a European joint facility. This would permit subsidisation of the French nuclear programme.

Thus, Pinay's position was 'yes to Euratom and no to the Common Market' which was unacceptable to the other member states. Even Pinay's support for Euratom during the conference was heavily qualified: 'It was to have decision-making powers, but none to take over bilateral national agreements with the USA, none to pool information and none to replace or coordinate national policies' (Duchêne, 1994: 281). This was a reflection of the CEA's initial hostility to Monnet's Euratom idea. It feared that since France had the by far the largest nuclear energy industry among the ECSC countries, she would have to bear the substantial costs of setting up a European nuclear energy community. The CEA also disliked the intrusive supranational features of the proposed Euratom, preferring the intergovernmental option being proposed by the OEEC instead (DDF, 1955, Vol. I, docs. 288 & 301). Thus, Pinay proposed a minimal Euratom that would not drain resources from France's national programme, but which would complement it.

Only an all-night tête-à-tête between Spaak and Pinay produced the Messina communiqué, which sanctioned the continuation of 'exploratory' talks to examine the feasibility of implementing the Benelux Memorandum. The Director of Economic Relations at the Quai d'Orsay, 'emphasised the French had only agreed not to oppose a continuation of talks, and that this was very different from assent' (Duchêne, 1994: 282).

## I.7. The Spaak Committee

Spaak was appointed as head of the Intergovernmental Committee of experts mandated to investigate the feasibility of the various proposals for integration and produce a report for consideration by the governments. The Spaak Committee instituted four commissions of national experts, one of which was devoted to atomic energy (Polach, 1964: 22). Louis Armand was appointed chairman of the Commission on Atomic Energy. The final Armand Report urged the governments to adopt measures to ensure the development of the industry, non-discriminatory access to resources and a common price-level. Armand coined the term Euratom.

Thus, the report proposed a strong supranational Euratom. Governments should delegate the right to purchase and own all fissile resources to a Community agency. This agency would also control their supply. This agency was to possess a community monopoly over supplies and be the legal owner of the material. The Report, therefore, saw the necessity for what became the Euratom Supplies Agency (ESA). It also recommended the creation of authoritative health and safety measures, active coordination of scientific and technological knowledge and the establishment of joint installations (e.g., an isotope separation plant). The

'core' Euratom should be a trade monopoly (the term 'monopoly' was excluded in the final report) over fissile materials (Weilemann, 1983: 42-47). Two 'possibilities for common action' were presented as possibilities for co-operation: the construction of an isotopic separation and a plutonium extraction plant.

Though the majority of the Armand commission supported the report, the German delegates were dissatisfied. The federal Ministry of Economic Affairs led by Ludwig Erhard, and the newly created Ministry of Atomic Affairs led by Franz Josef Strauss were strongly opposed to the idea of a supply monopoly which was to be exercised by an independent Community organ. Erhard feared a new supranational, *dirigiste* project modelled on the ECSC. German businessmen believed that cooperation with the USA would be more beneficial (Helmreich, 1991: 394). Strauss viewed Euratom as 'a transparent attempt to capture the burgeoning German nuclear industry' (Schwarz, 1997: 230). The German members of the Armand Commission were aware of these concerns.

The second major cleavage that emerged, and subsequently threatened the negotiation of Euratom, was the military question. Spaak had originally recognised that the question of the military atom was a serious problem because of the French military predilections (Scheinman, 1965: 141). Spaak admitted that he did not know whether French had a military nuclear programme, but he knew that the military and peaceful uses of atomic energy were inseparable. He believed that the French could have their own nuclear weapons programme outside the nuclear energy pool and rely on their domestic sources of natural uranium to maintain it, while using the proposed community's sources for its peaceful atomic energy programme (NARA, RG59, 840.1901/9-155, 1 Sept. 1955). The French feared that if they were forced to reject their right to manufacture nuclear weapons, they would 'not only place themselves outside the circle of great powers but resign themselves to total impotence' (NARA, OEAO, ROS, Subject Files, 1956-7, Box 67). Meanwhile, other Europeans, the USA and Britain feared that German nationalists would demand atomic armaments as a symbol of equality, if all the members of Euratom did not renounce nuclear military ambitions (NARA, RG59, Central Files, 840.1901, 9 Feb 1956).

And this seemed possible. Adenauer's unilateral renunciation of the FRG's right to manufacture weapons of 'mass destruction' 'on its own soil' as part of the WEU package was implicitly conditional and ambiguous. The conditionality of the pledge was underlined by Dulles at the time Adenauer made this famous declaration at the London Conference of October 1954. According to Adenauer's memoirs: 'When I had given this declaration, Dulles rose from his seat. He came to me and said in a loud voice, so that everyone in the room could hear it: "Herr Chancellor, you have just declared that the Federal Republic will renounce the production of NBC weapons on its own soil. You have meant with this that it, like all declarations and obligations under international law, is valid only *rebus sic stantibus*!" I replied in an equally loud voice: "You have interpreted my declaration correctly". The others present remained silent' (quoted in Schwarz, 1997: 123). This exchange implied 'that as the general situation changed, the pledge would no longer be binding' (Trachtenberg, 1999: 234).

The implication was that the German 'nuclear question' could be reopened if the European geopolitical environment changed. If the US commitment to Europe faltered or the credibility of the US 'nuclear umbrella' protecting Western Europe was seriously dented, then the German 'nuclear question' could become a live issue. Occasionally, Franz-Josef Strauss' ambivalent public and private pronouncements on the issue of German access to nuclear weapons fuelled speculation that the FRG might develop a nuclear deterrent

(Ahonen, 1995: 25-28). However, it was not the 'military question' that put the whole Euratom project at immediate risk.

## I.8. OEEC Proposals

In December 1955, the OEEC Nicolaides Working Party's Report (Possibilities of Action in the Field of Nuclear Energy) was published (Nelsen, 1958: 44). It advocated the establishment of an OEEC directorate for atomic energy to coordinate national research activities and prepare joint projects. One of the core objectives of the OEEC should be the creation of an isotope separation plant in order to ensure European self-sufficiency in the provision of fissile materials. This OEEC report stood in stark contrast to the idea (advanced in the Messina Declaration) of an independent agency with a supply-monopoly. The OEEC plan foresaw a more liberal 'regime' with regard to the trading rules for nuclear materials between the member states.

This initiative was welcomed by those groups who opposed Euratom either on economic grounds or who disliked supranationalism on the model of the ECSC. It produced debates inside the German cabinet. At an interministerial meeting in December 1955, there was no majority support for the Armand Report. One month later, in early January, even foreign minister von Brentano, a convinced pro-European, did not press for a quick solution of the plans to create an atomic energy community. In his estimation, it was premature to take a final view on the proposals elaborated by the different working commissions following Messina. Simultaneously, British policy aggravated the German divisions.

Britain participated in the Spaak Committee, on the invitation of the 'Six', but it was very 'sceptical' of the proposals for nuclear energy. The British representative, a relatively low-level Board of Trade official, was instructed by London to guide the talks towards a limited intergovernmental OEEC solution away from the supranational alternative (Young, 1998: 85-88). The UK made it clear that it did not intend to commit itself to the goals set out in the Messina Declaration merely by participating in these meetings. Then in early October 1955, the UKAEA proposed Anglo-German civil nuclear cooperation. This would include the installation of nuclear power stations in Germany. The French, who felt that the British offer reinforced Erhard's negative attitude towards Euratom, were naturally displeased (DDF, 1956-I, Doc. 104: 210-11). The British offer threatened the success of the *relance,* since both West Germany's industrial leaders and Strauss (Fischer, 1992: 391) were encouraged in their criticism of the potential 'socialisation of industry and the discriminatory [against Germany] leanings of Euratom' (Helmreich, 1991: 394-95).

On 7 November 1955, Britain withdrew from the Spaak Committee's deliberations and contended that her interdependent civil and military nuclear programmes prevented her from joining Euratom (PRO, FO 371/116054, 17 November 1955). None of the Messina powers had a declared military nuclear programme and West Germany had unilaterally renounced such a programme. Besides, if Britain joined Euratom, the British nuclear infrastructure would not be able to meet the other members' demands for expertise and materials without damaging her own domestic nuclear programme. As a result the British government favoured any programme produced by the OEEC Working Party on European Energy (the Nicolaides Working Party) whereby Britain would retain `freedom to deal bilaterally with individual countries' and 'to arrange our own contribution according to our resources' (PRO, FO 371/116054, 14 November 1955).

The Euratom negotiations had reached a nadir. The split in the German cabinet, the military question, the threat posed by the alternative OEEC plan and Britain's implicit opposition to the Euratom project threatened to derail the whole process. A disillusioned Louis Armand resigned from the Nuclear Energy Sub-Commission and began to work closely with Jean Monnet and the Action Committee instead to progress the Euratom proposal (Vaïsse, 1994: 108).

## I.9. Adenauer Intervenes

The pro-integration forces rallied. Jean Monnet launched the Action Committee for the United States of Europe on 13 September 1955. Monnet assembled leading representatives of non-extremist parties (excluding nationalists and communists) and trade unions to commit parliaments and governments to the path of further integration. Monnet's Action Committee was devoted to the idea of Euratom and until 1957 it only paid 'lip service to the Common Market' (Duchêne, 1994: 292).

In January 1956, the Action Committee unanimously adopted a Declaration that was to be put to the vote in each of the six ECSC assemblies. The declaration emphasised the 'supranationality' of the cooperative nuclear proposal. A Euratom Commission was to be endowed with extensive competencies in order to ensure the development atomic energy solely for civil purposes only. The Action Committee aimed at a renunciation of nuclear weaponry by endowing a supranational Commission with the rights to buy, own and distribute fissile material to ensure non-military applications. The Committee's pressure for a French renunciation of her right to fabricate nuclear weapons (NARA, RG59, 840.1901). This would ensure that the FRG who had renounced the manufacture of nuclear weapons would not be discriminated against. As Duchêne notes, 'Monnet's Community for strictly civil nuclear power was rather attractive to the Socialists [across the 'Six'] since it implied planning, a renunciation of weapons by the French and nuclear controls on the Germans' (Duchêne, 1994: 287). To ensure non-diversion of Euratom's nuclear materials and the misuse of its facilities for illicit purposes it was deemed necessary in the eyes of Monnet, the Action Committee, the Armand Report and eventually the Spaak Report, that the ownership of fissionable materials and all by-products should be vested in Euratom. Thus strict nuclear controls and safeguards were envisioned.

Meanwhile, Adenauer reacted to the OEEC threat. He was strongly in favour of the *relance* even if some of the substantive proposals ran counter to the interests of some of his cabinet and parts of the German industry. For him Euratom was '*un mal nécessaire*' but it was a necessary concession to gain France's agreement for a 'common market' (Bitsch, 1999: 112). The dissension within the FRG cabinet threatened the *'junktim'*, and Adenauer acted decisively.

In a directive to his ministers on 19 January 1956, he demanded 'a clear, positive German attitude to European integration' (Schwarz, 1997: 231). With reference to Article 65 of the German 'Basic Law' (Grundgesetz), which posits that the chancellor shall determine the broad goals of governmental policies (Richtlinienkompetenz), Adenauer stated that the Messina agreements had to be implemented rigorously without alteration and delay. Furthermore, he advocated that the political character of the entire integration project should be more strongly recognised (see Kramer, 1976: 50 and Weilemann, 1983: 68). He rejected outright the OEEC proposal, which did not go far enough in terms of political integration in his view. The OEEC 'framework' failed to guarantee the wider political objectives sought by the 'Six', according to Adenauer. International distrust of any German drive for 'a pure

national nuclear settlement' must be taken into account. Outside pressure, especially from the U.S. to signal that Germany should not 'sabotage' the *relance*, provided another reason to redouble integration efforts. Erhard was 'particularly incensed' by Adenauer's 'integration order'. He demanded that Britain should be included in all integration projects (Schwarz, 1997: 231). At this point the USA made a timely intervention.

## I.10. US Intervention

Before December 1955 the USA had maintained a 'reserved' and 'cautious', but 'friendly', attitude towards Euratom fearing that an overtly active US role in the discussions might jeopardise its chances of success (Schwarz, 1992b: 210-11; Helmreich, 1991: 400). However, the hostile British attitude, the threat posed by the OEEC and internal German division elicited a US initiative to support the Euratom proposal. For Eisenhower, John Foster Dulles (US Secretary of State) and many senior officials the 'six-nations approach', which promised to produce a cohesive nuclear organisation with state-like attributes, was preferable to a 'loose' organisation under the OEEC umbrella. Euratom could facilitate Franco-German reconciliation, bind West Germany to Western Europe, promote a United States of Europe, and allow the US Atomic Energy Commission (USAEC) to deal with a single organisation rather than six separate states (O'Driscoll, 1998a: 150-52).

To underline the US commitment to Euratom, on 22 February 1956 Eisenhower announced that the US would provide 20,000 kg of enriched uranium for peaceful uses to friendly states (Hewlett & Holl, 1989: 324). The offer was promised greater privileges to a community such as Euratom than to an individual country such as Germany. The offer favoured the powerful civil model of Euratom á la Monnet (Winand, 1993: 84). This would have strong powers of inspection as well as 'ownership and monopoly of the purchase and sale' of all fissionable materials in the territories of the Six (Duchêne, 1994: 293).

The US government outlined its position in greater detail in a circular to the 'Six' governments in May 1956 just prior to their crucial meeting to deliberate on the Spaak Report at Venice. In effect, the USA would only enter a direct relationship with a multinational nuclear organisation if it 'had effective communal authority and could undertake responsibilities and duties similar to those of national governments'. The multinational organisation had to have complete and control ownership of nuclear fuels vested in it to implement the necessary safeguards to prevent diversion of nuclear materials to illicit purposes. Then the USA would adopt a more liberal attitude to assisting the organisation than to individual states (Goldschmidt, 1982: 293-4). The US administration and Monnet believed that it would strengthen the case for Euratom (Winand, 1993: 86).

This US policy line was maintained throughout 1956; it was calculated to counter the case advocated by Erhard and German industry. This policy was reinforced by the US Atomic Energy Commission's (USAEC). Dulles and Eisenhower impressed upon the USAEC Chairman, Lewis L. Strauss, to postpone, suspend or amend bilateral accords and negotiations with the individual member states of the ECSC so as not to threaten the Euratom negotiations. The US-Belgian nuclear agreement of 1955 was amended in July 1956 to permit Belgium to make available increasing amounts of Congolese uranium to Euratom until 1960. It held out the possibility that all uranium produced in the Belgium Congo after 1960 could be purchased by Euratom. In view of the fact that uranium was in short supply, US withdrawal of its claims to the Congolese ore was calculated to strengthen the arguments in favour of a strong Euratom. Under the amendment, the US permitted Belgium to dilute its most-favoured-nation status and communicate nuclear information to

other members of Euratom, with appropriate security assurances. In addition, the US signalled that it was favourable towards the establishment of Euratom facilities for processing nuclear materials (Helmreich, 1991: 401-3). Most importantly, the amendment stated that the US 'would be prepared if so requested by the Government of Belgium to arrange for the integrated group to assume the rights and obligations of the Government of Belgium under this Agreement, provided the integrated group can, in the judgement of the Government of the United States of America, effectively and securely carry out the undertakings of this Agreement' (quoted in Helmreich, 1991: 403). Spaak, as the Belgian Foreign Minister, was more than willing to agree to this, if it meant that European integration was stimulated.

Cumulatively, this more active US policy overcame the danger that British support for the OEEC could destroy Euratom. Britain could not possibly provide similar privileges to an OEEC grouping. The US offer made Euratom more attractive to the Germans, though US policymakers had to continue to work steadily at convincing sceptical German interest groups throughout 1956 (Winand, 1993: 87). The entire US approach was designed 'to lend encouragement to European efforts to restore [the] impetus [of] European integration through effective supranational European atomic energy', according to Dulles (NARA, RG59, Central Files, 840.1901, 29.2.1956). This reinforced Adenauer's support of the Euratom against his errant Cabinet colleagues.

Apart from the developments in Germany and the new more overtly supportive US policy, the results of the French elections produced new 'hope'. Guy Mollet, a member of the Action Committee and a convinced pro-European, was elected Prime Minister. Furthermore, with Pineau in the Quai d'Orsay and Faure as state secretary, Mollet had a number of allies in his endeavours to promote integration. Already as leader of the French Socialists (SFIO), he committed his party to a pro-European stance.

## I.11. From Brussels to Venice

Nevertheless, these improvements in the general prospect for Euratom were still insufficient to produce immediate agreement. The conference of the six foreign ministers that took place in Brussels on 11-12 February 1956 was inconclusive.

Pineau stated that France would not renounce its military option. On the question of property ownership of fissile materials, the German delegation still stuck to its 'liberal' position supported by the German industry. As to the relationship between the two communities (i.e. atomic energy and common market), France now preferred to unlink the two communities and integrate the atomic energy sector more quickly (Stirk, 1996: 142).

Mollet had signalled this French approach in his investiture speech two weeks earlier. On that occasion he informed the Assemblée Nationale that establishing 'a Common Market in Europe will be a long haul' and that it should be postponed until later (Duchêne, 1994: 294; see also Milward, 2000: 210-11). The other governments expressed their preference for a close connection between the two plans (Kramer, 1976: 53). Spaak feared a dissolution of the Junktim might provoke Germany, the Netherlands and Italy to renounce their commitment to Euratom (Weilemann, 1983: 79). Euratom and the common market proposals were mutually dependent. It appeared that France would not countenance a common market without Euratom, while the FRG and Italy in particular, would only contemplate Euratom if the common market proposal succeeded.

Nonetheless, the Euratom discussions were making greater progress than the common market ones. Despite several outstanding issues, the outlines of a workable Euratom solution appeared possible, in conjunction with US patronage and Franco-German compromise. The Spaak Report, which was completed and finally released on 21 April 1956, recommended that the governments should begin to negotiate both a European Economic Community and a Euratom. The Report mirrored widespread consensus and compromise in relation to much of the Euratom proposal. The Spaak Report served 'as the "blueprint" for Euratom' (Howlett, 1990: 23). It proposed that Euratom should not create a single integrated supranational organisation that would end the need for national nuclear institutions. Instead Euratom's role would be limited to promoting the development of nuclear energy and to coordinating national programmes for collective benefit. Its overarching objective should be to assist 'in creating conditions favouring rapid growth of nuclear industry as well as the application of nuclear techniques in other industries and economic activities' (cit. in Polach, 1964: 29).

Therefore, the Spaak Report revealed substantial agreement on the liberalisation of trade in the nuclear sector, the need to harmonise safety rules, and the necessity to implement health and environmental protection matters to create a single market in the nuclear industry. Euratom should also promote nuclear research and disseminate the results. There was also agreement on the question of joint undertakings in areas that were beyond the resources of independent member states. A central role was thus envisaged for cooperation in establishing joint installations to produce enriched uranium and reprocess plutonium.

The institutional set-up foreseen in the Spaak Report corresponded to the ECSC model: a separate Euratom Commission would be responsible to a Common Assembly and a Council of Ministers was to exercise 'governing' functions alongside the Commission. Such a Euratom Commission would undertake to:

- issue decisions with regard to the control of safety and materials,
- assume operational responsibility for the joint installations and undertakings,
- coordinate intra-community research, and
- develop its own research programmes.

The Commission was also to be endowed with a sufficient budget to cover administrative expenses, the costs of community research centres, and the costs of contributions to joint installations as well as research grants.

The 'Six' Foreign Ministers met in Venice on 29 and 30 May to discuss the Spaak Report. Despite continued French objections to the common market, the insistence of the 'Five' ensured that Pineau agreed that the negotiation of the treaties were interdependent and should proceed in parallel. The 'junktim' continued as a necessary means to facilitate agreement. Thus intergovernmental negotiations on the two treaties were sanctioned to commence on the 26 June 1956 (Milward, 2000: 210-11; Stirk, 1996: 142). These negotiations occurred at Château Val Duchesse near Brussels and the Spaak Report acted as the basis of their discussions. Three committees were established to subdivide the work. Hans von der Groeben presided over the Common Market Committee. The Euratom Committee was chaired by the administrator-general of the French CEA, Pierre Guillaumat. Spaak became the chairman of the committee of the national delegations (Bitsch, 1999: 113).

## I.12. Moratorium

One of the main problems at Venice, and at Val Duchesse subsequently, concerned the 'military question', but this was soon solved. Guy Mollet, the French Socialist leader, was an active member of Monnet's Action Committee. When he was invested as French Prime Minister, in early February 1956, he stated that he preferred a French renunciation of military nuclear research (Soutou, 1989: 3).

Nationalist pressure forced Mollet to reverse his position. Members of his own Cabinet such as Christian Pineau (Foreign Minister) and Maurice Bourgès-Maunoury (Defence Minister) were unwilling to support a French renunciation. The Gaullists were determined that France should not renounce her right to research and manufacture nuclear weapons. Therefore, Mollet had to guarantee to protect France's right to manufacture nuclear weapons in order to win the National Assembly's approval of France's bargaining position in the Euratom negotiations. On 21 June 1956 the French Senators, led by the Gaullist Michel Debré, voted to set up a military division within the CEA. Mollet had to retract his earlier statements during the Assemblée Nationale debate on Euratom in July 1956. He stated that: 'Euratom … will not stand in the way of a possible French decision to build nuclear weapons' (cit. in Monnet, 1978: 420). In the end, Mollet was mandated to progress with the negotiations on the proviso that France's freedom to pursue the a nuclear weapons programme was not prejudiced. The final vote was 332 to 181 in favour of pursuing the negotiations on Euratom.

At the suggestion of Dulles and Spaak (Helmreich, 1991: 401), a compromise was suggested whereby Mollet would pledge that France would not manufacture or test atomic bombs before January 1961. But she could continue to research and develop nuclear weapons during the moratorium. This concession ensured the Council of the Republic approved France's participation in the negotiations for European atomic co-operation, but it angered the Germans provoking a new crisis in the Euratom negotiations. A fundamental rationale for Euratom was undermined: 'The primary purpose of Euratom controls, to preclude nuclear weapons had lost its point. There was still a secondary one, to stop any diversion of fissionable materials earmarked for civil use to the military. But this was binding only on horses which had no intention of bolting from the stable. Euratom could now be presented as a hypocritical device of the French to control Germany while evading all obligations themselves…It was a golden opportunity for the anti-Euratom lobby in Germany' (Duchêne, 1994: 296-7).

The German position was thus hostile against the *dirigiste* character of the envisaged supply monopoly on both commercial and equality grounds. Strauss, supported by the Bund der Deutschen Industrie (BDI), renounced the supply-monopoly and community ownership of fissile materials as 'socialistic' (see Kramer, 1976: 60; Moravscik, 1998: 97; Deubner, 1979).

Another divergence in fundamentals also caused problems. The organisational set-up of Euratom was a matter of disagreement. Agreement was reached over the basic structure of Community organs which coincided with the set-up chosen for the ECSC: a Council of Ministers, a Commission, a parliamentary assembly and a Court of Justice. However, the 'Six' had not yet reached an agreement with regard to the actual distribution of competencies that were to be attributed to the different organs (Weilemann, 1983: 116).

Overall, the German and French positions seemed overly rigid. According to the French conception, all military measures, even if they involved nuclear material, had to be exempt from Euratom control. However, in practice it was difficult to draw a clear demarcation between the civil and military use of atomic material. As a result, states with a military nuclear programme could escape Euratom control by assuming the mantle of 'military secrecy' as a means to prevent inspections of dual purpose facilities; states without military programmes had to disclose their entire knowledge and research. Consequently, the German delegation was adamant that both military and civil uses of nuclear material should be dealt with under the same control system (see Weilemann, 1983: 126). France disagreed.

The seriousness of these differences emerged in the negotiations at a ministerial meeting in Paris on 19 and 20 October. The only positive development that arose from this meeting was the decision to commission 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' (Gaudet, 1959: 150). This initiative was undertaken on the suggestion of Monnet's Action Committee (Duchêne, 1994: 300; Monnet, 1978: 421-22). In November, three distinguished experts, the so-called 'Three Wise Men', were appointed to undertake this task. The sagacious ones were: Louis Armand, Franz Etzel (then Vice-President of the ECSC High Authority) and Francesco Giordani (head of the Italian Atomic Energy Commission).

Otherwise, at the Paris meeting it was clear that France wanted to safeguard her high level of social welfare provision and demanded welfare harmonisation across the proposed Common Market to create a level playing field. Erhard rejected this French proposal (Milward, 2000: 211-16). In relation to Euratom, Strauss declared that Euratom's ownership of all fissile material to the exclusion of private enterprise, as envisaged by France, was 'radically unacceptable' (DDF, 1956, II, doc. 192). Monnet believed that 'Strauss is making Euratom impossible', and was strengthening the hand of the CEA which was sceptical of Euratom (cit. in Duchêne, 1994: 297). Erhard was confident that the 'distasteful common market project' was dying, and preferred Britain's idea of a free trade area (Schwarz, 1997: 240). The *relance* was extremely vulnerable.

## I.13. Improving Prospects

Several auspicious international factors intervened. The international environment markedly deteriorated encouraging the 'Six', particularly France and West Germany, to reconcile their differences. The Eastern Bloc experienced widespread instability commencing in Poland in June 1956 and culminating in Soviet military intervention in Hungary in November. In this uncertain atmosphere, Adenauer experienced a crisis of confidence in the US commitment to West German and European defence. Firstly, in June, he heard rumours that the Soviet leaders would be invited to Washington D.C. by Eisenhower, after the upcoming presidential election, which fuelled his fears of a US-Soviet détente and the neutralisation of West Germany. Secondly, on 13 July 1956 the New York Times revealed that the US Radford Plan. This proposed the reduction of US conventional forces in Europe and its replacement by tactical nuclear forces in order to cut US defence expenditure. West Germans feared that their troops would become cannon fodder and that Germany would be reduced to a nuclear battlefield (Schwarz, 1997: 233-40).

Monnet's timely suggestion that the Euratom Treaty should be finalised tempted Adenauer. The prospect of deeper European integration, Franco-German reconciliation and European defence co-operation could act as complements and, if necessary, substitutes for dependence

on the USA. The US commitment to the German defence was further undermined in December 1956 when the US informed NATO that it wanted to withdraw six divisions. Adenauer no longer trusted the US 'nuclear umbrella' (Schwarz, 1997: 239). Meanwhile, other events inclined the French leadership towards compromise, particularly on their demands for harmonization of social costs.

President Nasser's nationalisation of the Suez Canal, in conjunction with increased tensions between Israel and her Arab neighbours, provoked Anglo-French military intervention on November 6. Eisenhower's condemnation and undermining of the Anglo-French intervention led to its collapse. The crisis accelerated European integration among the Six Messina powers (cf. Moravscik, 1998: 119-20). As A. V. Freeman stated: 'If Suez did not give birth to Euratom, it was at least a midwife or, possibly, a lady-in-waiting' (Freeman, 1960: 384). It highlighted European, and especially French, dependence on Middle Eastern oil. It appeared to confirm the successive calls of the Armand Reports (for the OEEC and the Spaak Committee) and the Spaak Report for an alternative source of energy. Mollet, abandoned by the Anglo-Americans, perceived the advantage of a strong European regional unit as a prop to a weakened French economy and her international profile. Armand jokingly suggested that a statue should be erected to Nasser as 'the federator of Europe' (Monnet, 1978: 422).

Again, Adenauer asserted his authority in the German Cabinet. On the 31 October just as the Hungarian and Suez crises were approaching their crescendo he persuaded Erhard that it was in the FRG's interest to persist with the Common Market. Earlier on 5 October at a Cabinet meeting Adenauer responded to Strauss's criticisms that Euratom 'controlled German development rather than promoted it'. The Chancellor ambiguously argued that Euratom would give the FRG 'the chance to get at nuclear weapons in the normal way' (Schwarz, 1997: 239-40). Whether this was simply an attempt to diffuse the criticisms of Strauss, or the communication of intent that the FRG could use Euratom to build either an independent national weapons capability or a Euro-deterrent is unclear. However, the episode demonstrated that Adenauer was prepared to bridge the differences with France.

The FRG now moved towards accepting the Community's supply monopoly for fissile materials. The US Ambassador to the FRG made a 'decisive intervention'. He stressed that it was essential that Euratom maintained a monopoly over fissile materials and controlled their use. He thus rejected Strauss' claim that Euratom was 'socialistic' pointing to the fact that the USA maintained such a strict regime (Duchêne, 1994: 297-8).

Meanwhile, the French Premier, Guy Mollet, influenced by international events was also looking for ways to 'repair' relations (Milward, 2000: 214-15). The bulk of French business, though initially sceptical, was also moving steadily in the direction of qualified support of the common market proposal. Farmers began to see the EEC plan as an outlet for growing agricultural surpluses. Thus, the French Government and key producer groups realised that France's best economic interests lay with the 'Six' (Moravscik, 1998: 108-12).

Adenauer's state visit to France on 6 November 1956 catalysed this convergence in Franco-German attitudes. The previous day the US presidential election had been held and the invasion of the Suez Canal Zone had commenced. Mollet welcomed Adenauer's willingness to show solidarity with France by going through with the state visit. Adenauer's unconditional approval of France's actions strengthened Franco-German relations (Schwarz, 1997: 242-44). When the British Prime Minister rang to appraise Mollet that he was unilaterally terminating the Suez intervention, Adenauer advised Mollet to 'make Europe

your revenge' (Moravscik, 1998: 144). Adenauer agreed 'in principle' to the harmonisation of social welfare provisions in the Common Market which broke the negotiating logjam in the junktim (Stirk, 1996: 143). In effect, on 6 November, both Adenauer and Mollet agreed to work in earnest to resolve their remaining differences and finalise Euratom and the EEC. There were still several points of difference remaining in relation to Euratom, but the political will now existed to overcome them by February 1957.

On the military question, the FRG eventually admitted French freedom to pursue a national nuclear deterrent. The French envisaged 'the possibility of two programs carried out simultaneously but separately': an independent dual-purpose French one and a collective civil Euratom one (Goldschmidt, 1987: 12). The key decision came on 24 January 1957, when the Germans agreed that Euratom's control over fissile material would not be applied to military installations. This was confirmed at a conference of the 'Six' foreign ministers between 26 and 28 January. In effect, France was given total freedom to conduct a military nuclear programme outside of Euratom controls (Guillen, 1994: 122). The Euratom Treaty enshrined the compromise in the following way: 'Safeguards may not extend to materials intended to meet defence requirements which are in the course of being specially processed for this purpose or which, after being so processed, are, in accordance with an operational plan, placed or stored in a military establishment' (Euratom Treaty, 1957: Article 84).

In relation to the ownership of fissile materials, France had consistently maintained that Euratom should have a total monopoly for several reasons. First, it would control the development of the FRG's nuclear industry, and dissuade it from acquiring a military capability. Second, it would convince the USA that Euratom's safeguards against diversion of nuclear materials were so strong that US or IAEA inspectors were not required to police it permitting an independent European nuclear industry. Finally, France harboured the hope that Euratom would ensure the supply of sufficient nuclear materials (uranium, enriched uranium etc) to permit the rapid development of France's nuclear programme. This was a period of acute scarcity in nuclear materials and France's strategem was to convince the USA that Euratom was a responsible, self-policing vehicle of European integration, which could safely receive large quantities of US fissile materials. France, as the largest nuclear power among the ECSC, expected to benefit disproportionately from any US preferential treatment of Euratom (Guillen, 1994: 123).

However, the FRG still remained averse to 'a Euratom (de facto French) monopoly' as it would constrain the freedom of the German nuclear sector. It was only on 19 and 20 February 1957 that a compromise position was reached at a final conference between the heads of government (Stirk, 1996: 144). France's and Monnet's demands that all fissionable materials should be owned by Euratom were diluted. The new atomic energy community would only own 'special fissile materials which are produced or imported by a Member State' (Euratom Treaty, 1957, Article 86). The 'special fissile materials' were listed in Annex IV. Ownership and possession of the fissile material was explicitly separated on the suggestion of von Brentano to Pineau (see Weilemann, 1983: 128-129 and Kramer, 1976: 62). Formal ownership of special fissile material was vested in the Community but 'member states, persons or undertakings shall have unlimited right of use and consumption' in most circumstances (Euratom Treaty, 1957, Article 87). The final obstacles to the Treaty had been cleared.

## I.14. Treaty

The 'Six' signed the Euratom Treaty on 28 March 1957. The fundamental objective of the Treaty was outlined in Article 1: 'It shall be the task of the Community to contribute to the raising of the standard of living in the Member States and to the development of relations with other countries by creating the conditions necessary for the speedy establishment and growth of nuclear industries'. To achieve this industrial mission, it was tasked to promote research (Euratom Treaty, Chapter I) and disseminate research information (Euratom Treaty, Chapter II). To 'stimulate' entrepreneurial and research activity in the nuclear sector, it was to promote investment in the nuclear sector, by coordinating research within the Community and by 'periodically' publishing 'illustrative programmes' (which later became known as PINCs) indicating nuclear energy production targets and the investment required to achieve these targets (Euratom Treaty, Chapter IV, Article 40).

Euratom was granted powers to establish joint undertakings, with a 'legal personality', in areas of 'fundamental importance to the development of the nuclear industry in the Community' (Euratom Treaty, Chapter V, Article 45). To ensure 'equal' and nondiscriminatory 'access' to necessary materials, a common supply policy and a Euratom Supplies Agency (ESA) were to be created. The ESA was given the 'right of option on ores, source materials and special fissile materials produced in the territories of the Member States and an exclusive right to conclude contracts relating to the supply of ores, source materials and special fissile materials coming from inside the Community or from outside' (Euratom Treaty, Chapter 6, Article 52).

Another crucial element of the Euratom Treaty was its international dimension. It was deemed essential by the framers of the Treaty that Euratom, in particular its Commission, should have exclusive powers to negotiate and conclude agreements with third powers such as individual countries like the USA, UK and Canada or international organisations (Euratom Treaty, Chapter X). External assistance in the form of research, scientists, equipment (research and industrial), uranium ores, and special fissile materials were considered invaluable to supplement the embryonic West European industry in a world market that was experiencing a scarcity in nuclear resources. By giving the Euratom Commission exclusive competence to act on behalf of the Member States in the international domain, 'a united and, therefore, stronger front' could be presented in negotiation with third countries (Gaudet, 1959: 452).

In order to placate potential third parties, in particular the non-proliferationist USA, the Treaty instituted the first working international safeguards system (Euratom Treaty, Chapter 7). The safeguards system sought to assure third parties and Member States that:

- ores, source materials, and special fissile materials were not diverted to unintended uses or destinations;
- special safeguarding provisions in Euratom's agreements with third parties were adhered to (Euratom Treaty, Article 77).

However, this was not a control system designed to prevent military activities (see Euratom Treaty, Article 84). It was a simple 'conformity-control' system, i.e., 'conformity of the use with declared destination and with the Treaty provisions regarding supply' (Mathijsen, 1961: 448). The Euratom Commission was endowed with substantial powers to enforce

compliance with this control system including total withdrawal of assistance (financial etc) and supplies from the guilty party (Euratom Treaty, Article 83).

Since nuclear materials are often hazardous, their uses and transport have to be closely supervised. The control, supply and external dimensions of the Euratom Treaty, therefore, were inseparable from issues of ownership and public safety (Gaudet, 1959: 168). Euratom was granted legal ownership of all special fissile materials (Euratom Treaty, Chapter 7, Article 86), excepting those of a military character or on loan from suppliers outside the Community. Ownership did not normally mean possession. Rightful possessors of special fissile materials, i.e., member states, persons or firms engaged in the nuclear industry, were conferred with full rights to their use and consumption subject to safeguards against their diversion to undeclared uses, Euratom's ultimate right of option, and the maintenance of Euratom's health and safety regulations (Euratom Treaty, Article 87). Euratom was given rights and powers to ensure the establishment and implementation of community-wide 'basic standards' in the Member States to ensure the health protection of the nuclear workers and the general public (Euratom Treaty, Chapter III, Articles 30-39).

The creation of a nuclear common market was also a prime brief (Euratom Treaty, Chapter 9). Euratom was designated responsibility for ensuring unimpeded trade in many nuclear ores and materials within the nuclear community, as well as the free movement of properly qualified labour, capital and services necessary for the nuclear industry. All quantitative hindrances on free movement of goods, services and persons necessary for a nuclear industry, such as taxes and tariffs between the member states, were to be removed.

It can be seen, therefore, that Euratom's primary mission was 'promotional', i.e., the promotion of the nuclear industry. However, it was vested with secondary functions, those of regulating the nuclear industry and maintaining safeguards against the diversion of fissile material from the stated aims of the users, which proved more durable in the long-term (Mathijsen, 1965-66: 330; Lyons, 1994: chapter 8). At the time of Euratom's conception and initialisation, however, these secondary functions were viewed as incidentals necessary to achieve the primary goal of the commercial development of nuclear energy for the 'Six'.

Unfortunately, as a result of national and sectional interests, the Treaty was vested with limited exclusive competencies to achieve its maximalist industrial objective. Nau concludes that: 'The Euratom Treaty, in fact, contained weaker provisions than the EEC Treaty, despite the fact that Euratom was charged with an explicitly industrial task' (Nau, 1974: 102-3). Many commentators are of a similar opinion (see for example, Polach, 1964: 71; Mathijsen, 1965-66; Scheinman, 1967). For instance, the Treaty did not contain any guidelines like those of the EEC Treaty (Articles 85 and 100) regulating industrial competition and harmonising relevant laws across the community. In only one domain was Euratom granted exclusive competence, that of health protection. In almost all the other fields, such as research and development, joint enterprises, and investment, Euratom had to share competencies with the member states. The Treaty was weak. According to Scheinman: 'Unlike the tasks of the ECSC…Euratom's functions with regard to nuclear integration are less imposing; the scope of its juridical authority is more tightly circumscribed; the means at its disposal are more limited; and its functions are supplemental rather than exclusive' (Scheinman, 1967: 11).

While Euratom's primary aim was the promotion of commercial nuclear power in Europe, it is an unavoidable conclusion that the original conception of a Euratom *à la* Monnet was emasculated by national and industrial interests, leaving it with strong powers only in certain

regulatory areas (Mathijsen, 1965-66: 227-30; Nau, 1974). Consequently, 'it is essentially advisory and directed at stimulating and coordinating investments in the field of nuclear energy' (Mathijsen, 1965-66: 336). Whether Euratom had the institutional strength to deliver on the grand objective of a European nuclear industry was thus doubtful from the beginning. Euratom's role was that of 'a middleman, a broker…'. (Donnelly, 1972: 81). The Commission's powers under the Treaty were severely constrained by comparison to the ECSC High Authority's, because of objections, primarily German, that the latter had been too interventionist. From the outset the Euratom Commission felt that it had to avoid 'systematic intervention' or 'any semblance of authoritarianism' (Donnelly, 1972: 81). As an official in the Euratom Division of the Legal Service of the European Executives, Pierre Mathijsen, wrote in 1965: 'the many exterior similarities between Euratom and the other two Communities do, in fact, cover essential differences as far as the main activities of the Institutions are concerned. And the question, therefore, arises whether the elaborate institutional structure of a Community with its delicate balance for instance between the Commission with its right of initiative and the Council with its practically exclusive regulatory powers, is the ideal solution for an agency whose main task is of scientific and semi-industrial nature (Mathijsen, 1965: 343)'. In the final analysis, the only way that Euratom could hope to achieve its industrial remit was to stimulate and coordinate investments and research in nuclear energy. Thus it could only have a directive effect on the industrial policy of the Member States, and the magnitude of Euratom's ability to act as a guide and a coordinator was dependent upon a consensus among the Member States in the Council.

## I.15. A Target for Euratom

Regardless of these enforced institutional and treaty limitations, the Euratom Treaty might still have fulfilled its objective of developing a vibrant civil nuclear industry in the succeeding decade, circumstances permitting. Superficially, at least, the Suez Crisis had appeared to provide ample evidence for the 'energy gap' thesis of Euratom adherents. The Crisis indicated the precariousness of overseas energy supplies. The Six's imports of oil had more than doubled between 1950 and 1955, and 70% of Western Europe's crude oil originated in the Middle East of which 70% was transported through the Suez Canal. Western Europe had been a net exporter of energy since the beginning of the Industrial Revolution owing to its large coal deposits, but now it was a net importer. Security of energy supplies became recognised as strategically important for the first time. For Euratom's proponents the development of an indigenous Western European nuclear industry was an economic necessity. At a time when the region was experiencing a negative balance of payments (and oil imports had to be paid for with scarce US dollars) monetary concerns dictated a reduction in these oil imports (Polach, 1964: 37-39).

These assumptions informed the report of the 'Three Wise Men', *A Target for Euratom*, which was published in May 1957. At face value the arguments marshalled were compelling. Any stoppage of oil would be an economic disaster for Europe. The Middle East's political instability heightened the possibility of further oil crises. The 'Three Wise Men' estimated that the Six's total energy requirements would rise by 83% from 1955 to 1975. Moreover, electricity consumption would treble during the same period. The Six were not expected to be able to meet this from increased domestic coal production. France and Italy both lacked significant coal deposits and were becoming rapidly dependent on oil and natural gas imports (Polach, 1964: 30-33, 53). Another secure source of energy supplies was necessary, in particular for the production of the anticipated rise in demand for electricity (Armand, Etzel & Giordani, 1957). Consequently, the authors of A Target for Euratom

believed that this should be the mission of Euratom. The 'Three Wise Men' ambitiously proposed that the Six should install 15,000 megawatts of nuclear power by 1967, or a quarter of the electricity estimated necessary to meet total needs on that date (Goldschmidt, 1982: 301). At the time a nuclear power plant was thought capable of producing 250 megawatts, so the authors wanted to construct 60 nuclear power plants in a decade (Donnelly, 1972: 75). Since it took at least four years to 'complete a nuclear power installation, it was mandatory to start immediately' (Polach, 1964: 56). The penultimate objective of Euratom, according to Armand, Etzel and Giordani, should be the elimination as far as possible of the need for imported fuels for European thermal power stations.

The propitious publication of the 'Three Wise Men' report in the aftermath of the Suez Crisis ensured that it received an optimistic public reception (Polach, 1964: 59). It may even have facilitated the speedy ratification of the Treaty by the Six's parliaments (Goldschmidt, 1982: 300). After all, A Target for Euratom had the active and enthusiastic support of the main nuclear power in the world, the USA. The 'Three Wise Men' had consulted extensively with the US in early 1957 to determine how Euratom could best build such a large nuclear programme. Eisenhower and Dulles supported Euratom as a 'unique' political opportunity to strengthen European solidarity and as an economic opportunity to promote US nuclear reactor technology in Europe (Helmreich, 1991: 387). The USA was determined that the 'Three Wise Men' should be permitted unheard of access to US nuclear installations and US scientific personnel when they were preparing A Target for Euratom. An academic think-thank, the American Assembly, summed up US policy when it stated that: 'While it can be expected that highly industrialized countries such as those in Europe will ultimately establish their own facilities for building their atomic power plants, Euratom can provide American industry with experience as well as a market for its products and technology. Such an effort would assist with the aims of American foreign policy in developing the economic strength of, and American ties with, the Western European community, and … would provide experience in the operation of large-scale reactors of great and immediate benefit to our own development program' (quoted in Donnelly, 1972: 76). The optimistic joint communiqué issued by the White House and the 'Three Wise Men' at the end of the latter's visit to the USA, demonstrated publicly US support for Euratom and promised significant US aid (both material and skills) to the organisation. The fact that the Euratom Treaty fulfilled many of the US Administration's wishes re-security control, regional integration, and cooperation in civil nuclear energy (as opposed to military atomics) increased US willingness to give more information and support to an integrated Euratom than to the European nations individually (Helmreich, 1991: 408). At the time it was believed that the 'Three Wise Men' had provided Euratom with a nuclear power programme that was achievable with the backing of the USA.

## I.16. Gaseous Diffusion Politics and the US-Euratom Agreement

A fundamental difficulty nevertheless existed. The US and European perspectives on Euratom's objectives were not identical. Several of Euratom's proponents saw the organisation primarily as having as a political objective: the re-establishment of 'Little Europe's' influence in international power politics. The USA, on the other hand, disliked this 'third force' idea. In the joint US-'Three Wise Men' communiqué issued in Washington DC on 25 February 1957, the two parties nonetheless agreed that Euratom's sole objective was to realise the objectives of developing peaceful nuclear power (Polach, 1964: 61; Donnelly, 1972: 76). This amounted to a reversal of the previous European position.

In practical terms, the 'Three Wise Men' were finally convinced by the Americans that it was unnecessary for Euratom to construct a gaseous diffusion plant (or isotopic separation plant) to enrich uranium. Following Eisenhower's announcement (17 November 1956) that the price of enriched uranium for foreign customers would be significantly reduced, it was estimated that enriched uranium could be purchased from the USA at between one-third and one-half of the price that an indigenous Euratom plant could produce it. A Euratom gaseous diffusion plant would be costly to build and require exorbitant quantities of electricity to operate (Winand, 1993: 89).

A Target for Euratom's explicit discounting of the need to construct a uranium enrichment plant was the 'fatal blow' for French support of Euratom (see Winand, 1993: 93). Despite the fact that the Treaty had been weakened by substantial compromises, France had still maintained an interest because the Treaty had left open the possibility of a 'joint enterprise' in the production of enriched uranium. However, with the publication of A Target for Euratom, the study syndicate that had been established in November 1955 to investigate the possibility for such a Euratom plant was terminated (Goldschmidt, 1982: 298-9; Guillen, 1994: 124-25).

The CEA remained determined to build a uranium enrichment plant free of US controls. In late 1957 a new prospect presented itself. The USSR's launch of its Sputnik satellite in October 1957 evoked widespread European doubts about the efficacy of the US nuclear guarantee to Europe (Winand, 1993: 98-99). France launched a new initiative involving Italy and Germany in an organisation that became known as F-I-G (France-Italy-Germany). The French-led F-I-G established a shadowy 'advanced' military research and development programme which sent shockwaves through the Atlantic Alliance because it was rumoured to have a 'Euronuclear defence project' at its core (Melissen, 1993: 106). In December 1957 France canvassed Bonn with the idea of using F-I-G to fund and develop a uranium enrichment plant. In Easter 1958, the F-I-G countries signed an agreement to trilaterally fund the construction of such a plant (O'Driscoll, 1998b; Barbier, 1990)[4].

To restore Europe's confidence, the US deployed Thor and/or Jupiter IRBMs (Intermediate Range Ballistic Missiles) and established stockpiles of tactical nuclear weapons in European/NATO countries (Melissen, 1993: 93-115). Full and open US cooperation with Europe in the field of peaceful nuclear energy was another means that the Eisenhower administration pursued to allay European anxieties (Winand, 1993: 93; Nieburg, 1963: 615-16). Thus, the US attempted to give greater material expression to its earlier rhetoric supporting Euratom. On 8 November 1958, the Agreement for Cooperation between Euratom and the USA was signed. The Euratom-USA agreement set up a joint nuclear power programme that had as its target the installation of 5,000 megawatts of nuclear generated electricity by 1965. European utilities were offered low interest loans from the Export-Import Bank to build nuclear power stations. The USAEC would lease fuel to Euratom and guarantee the supply of enriched uranium (Donnelly, 1972: 96). Euratom was granted control rights over this enriched uranium, rather than the USAEC (Scheinman, 1967: 29). Thus the agreement seemed to offer advantageous terms to Euratom. By developing civil nuclear power in cooperation with Euratom the USA was intending to demonstrate her technological superiority over the USSR. Sputnik made it imperative to prove that US

[4] De Gaulle terminated the F-I-G arrangement soon after he acceded to power in mid-1958, because he did not wish to be involved in an enterprise that might facilitate Germany's acquisition of nuclear weapons. Instead the CEA decided to commence research and construction of a French national plant at Pierrelatte to ensure its nuclear independence, notwithstanding the enormous undertaking involved.

civilian nuclear reactors were superior, and the US national interest 'called for the spread of US technology' (Cowan, 1990: 563).

Herein lay a serious problem. The USA had 'clearly oversold' nuclear power to the 'Three Wise Men' and Euratom (Nau, 1975: 629). Civil nuclear energy was in its infancy and was still largely in its research and development (R & D) phase. Small competing prototypes of nuclear reactors had just begun operation. The world's first electricity generating nuclear reactor was the UK's Calder Hall natural uranium-fuelled, gas graphite moderated reactor plant which commenced operation in August 1956. The world's second electricity generating reactor, the US light water reactor (LWR) at Shippingport, Pennsylvania, was only switched on in December 1957. France, like Britain, pursued a gas-graphite moderated reactor in its projected civil nuclear programme, because the military could use its by-product, plutonium. The USA LWR model was a simple derivative of the one used in US nuclear submarines and had been hastily converted to civilian purposes in the mid-1950s to prove US leadership over the USSR in the civil nuclear field. The LWR was chosen by the USA because it was the only advanced reactor at its disposal that could ensure the necessary international demonstration effect that the US sought, not because it was proven to be a more efficient generator of electricity (Cowan, 1990: 562-64). In fact, a scientific debate conducted within the journal Nucleonics in 1957 concluded that it was unclear whether LWRs were technically or economically superior to gas graphite reactors because there was so little experience of operating them for electricity generation (Cowan, 1990: 558).

Thus the development of the commercial nuclear power plants, including the LWR variety, was still at an early stage. Several years were required to 'work the bugs out' and reduce the costs of generating nuclear electricity before large-scale nuclear power plants would be accepted as commercial propositions by public utilities (Cowan, 1990: 549-52). The people involved in the Euratom negotiations and in the framing of *A Target for Euratom* lacked specific knowledge of the nuclear sector and uncritically accepted US 'experts' exaggerated claims for the potential of nuclear energy and, in particular, for the LWR (Nau, 1975: 629). Thus, *A Target for Euratom* was excessively ambitious. It was 'reminiscent of school homework that is so often difficult to grade' because of its reliance on 'a great deal of guessing and rationalization' (Goldschmidt, 1982: 300; Polach, 1964: 49). Furthermore, its 'grandiose industrial-scale plans contrasted sharply with the meager powers of the New Atomic Energy Community' (Nau, 1974: 104). A clear capabilities-expectations gap thus existed. The LWR 'turned out to be far more costly to develop than experts had originally estimated' (Winand, 1993: 102). This reality only became gradually apparent in the decade after the signing of the Euratom Treaty and was not immediately apparent to contemporaries.

## I.17. The First Five-Year Plan

Though technical, commercial and institutional challenges lay ahead, Euratom was launched amid considerable optimism on 1 January 1958. The Euratom Commission was established with Armand as its President. This gave Euratom a recognisable leadership. The signing of the US-Euratom Agreement seemed to offer a means to implement the ambitious goals of A Target for Euratom using first-generation US LWR technology, until such time as the US or Euratom would develop second-generation reactors. Euratom launched its first five-year programme (1958-62) which aimed at the development and coordination of a viable community-wide nuclear research effort necessary to run a large nuclear power programme.

This first five-year programme concentrated upon setting up, equipping, staffing and organising the Joint Nuclear Research Centre (JNRC) provided for in the Treaty. The JNRC was central to Euratom's own research programme and eventually grew to include four research centres in the 1960s. These were Ispra (Italy), Geel (Belgium), Karlsruhe (Germany) and Petten (the Netherlands). Ispra was the principal JNRC research centre and concentrated on Euratom's main research project, ORGEL (from the French ORGanique Eau Lourde). This was dedicated to the development of an experimental European second-generation nuclear reactor that was heavy-water moderated, organic liquid-cooled and used natural uranium as fissile material. The aspiration behind ORGEL was the production of a European designed nuclear reactor to succeed the US LWR model (Nau, 1974: 157-83). In case the ORGEL Project failed, Euratom became involved in the OEEC (OECD after December 1960) European Nuclear Energy Agency's (ENEA) Dragon project in 1959, which was dedicated the development of a high temperature gas graphite reactor. Euratom co-funded the Dragon project in the expectation that another viable European second-generation power reactor could be developed reducing Euratom's dependence on US technology.

The second element of Euratom's research programme was the use of 'contracts of association', by which the Community co-funded and shared in the work of national nuclear programmes extending its influence over the national projects of the member states. According to Christopher Layton, 'For four years, the Euratom Community developed in a hopeful atmosphere' (Layton, 1969: 107).

Nevertheless, difficulties emerged during the first five-year programme and these intensified during the period of Euratom's second five-year research programme (1963-67). An interim committee had monitored nuclear developments among the member states between the ratification of the Treaty and its coming into effect in 1958. Unfortunately, it had made no effort to coordinate existing national nuclear activities at this stage. Between 1955, when the Euratom negotiations commenced, and the establishment of Euratom in 1958, most member states inaugurated national nuclear programmes if they did not already have them. The Community officials nicknamed this duplicative nuclear nationalisation process as 'planting the flag' (Nau, 1974: 104-5). Among the new national nuclear research facilities established during this period were Grenoble (France), Jülich (Germany), Karlsruhe (Germany), Ispra (Italy), and Petten (the Netherlands). Belgium's CEN centre was also dramatically expanded (Nau, 1975: 629-30). Vested national, commercial and organisational interests thus grew rapidly, diverged and became 'entrenched' before Euratom could coordinate the national efforts into a common nuclear policy (Scheinman, 1967: 35-37).

When the Euratom Commission was finally formed in January 1958, it preoccupied itself with the highly visible area of external affairs, i.e., negotiating nuclear cooperation agreements with the USA and the UK in 1958 and 1959. Armand, as the first President of the Euratom Commission, understood the importance of publicity and promotion. He considered that external technology would permit Euratom to start-up quickly (Nau, 1974: 106). This approach had two negative consequences. Firstly, France, the 'nuclear giant' within Euratom, was antagonised. It argued that Euratom should be drawing on French technology and expertise, rather than on outside technology, as the basis of its programmes. Secondly, the Commission's international preoccupations at this early stage led it to ignore the progressive fragmentation of nuclear activities within the Community. Armand's obsession with external cooperation was exacerbated by his ill-health which imposed frequent absences from his post as President of the Commission, leaving the Commission without a central direction during Euratom's crucial start-up phase (Bitsch, 1999: 157).

When the Commission turned its attention towards creating the internal structures for Euratom in 1959 it discovered a major duplication and dispersal of resources between the member states (Euratom DG for Research and Education, 1959). One commentator perorated: 'The rivalry between Euratom and national nuclear technology programs appeared at an early stage and has since afflicted Euratom's program. Member states seem to have acted on the principle that a national nuclear development effort must necessarily precede or accompany multinational technological cooperation in Europe' (Donnelly, 1972: 83-4).

Member states with a less developed nuclear sector feared permanent French domination would be institutionalised within Euratom. They reacted by developing their domestic nuclear sectors as rapidly as possible. For instance, a rule of thumb was established in Germany that 'whatever one did internationally [in nuclear research], one must do at home on at least twice the scale' (Nau, 1974: 109). By the mid-1960s the ratio was closer to four to one in favour of the German home laboratories. Thus the disequilibrium between the large French nuclear effort on the one hand, and the backward Italian, Dutch, Belgian, and German national programmes, on the other hand, created problems. France believed that Euratom should be used to close the external nuclear gap between Europe and the Anglo-Americans. But Italy, France and Germany were more concerned with closing the internal nuclear gap within Euratom between France and their own national programmes. They considered that the use of external technology, i.e., LWR, was a perfectly legitimate means to end this internal disparity to the annoyance of Gaullist France. It permitted the less developed nuclear states to catch up quickly (Nau, 1974: 108). This basic divergence in perspective on Euratom's strategic role and its choice of reactor technology fuelled the so-called 'reactor war' that raged between France and the other members of Euratom and that reached its highpoint in the mid-1960s. This conflict revolved around whether Euratom should pursue natural uranium gas graphite moderated reactors on the French model or manufacture the US enriched uranium LWR model under licence.

Consequently, when the Commission set about establishing the JNRC in 1959 there was no consensus within Euratom either on research priorities or reactor choice. Furthermore, Euratom found itself to be in direct competition with national programmes for scarce research resources, in particular scientists and technicians. The original Euratom plan to acquire a green field site and construct a purpose-built JNRC was impossible. France rejected the proposal because it did not conform to the French conception of Euratom as supplementing not supplanting national efforts. Thus, the Commission proposed a less contentious route of taking over an existing nuclear research centre, but first France, then Belgium, and finally Germany refused to hand over any of their facilities. The Ispra Centre in northern Italy was finally handed over to Euratom in late 1960 after ratification of the Italian-Euratom deal was delayed by domestic opposition. Thus it had taken nearly four years following the Treaty signing for Euratom to initiate the JNRC and commence in-house research on ORGEL (Nau, 1974: 107).

By this time the principal raison d'être for Euratom, the energy crisis, had receded. By 1959 Western Europe, contrary to earlier predictions, confronted a coal glut, undermining the enthusiasm of the main coal producers (Belgium and Germany) for the extensive development of nuclear energy (Polach, 1964: 116-118, 123). With the end of the Middle East crisis, oil imports recommenced. The increase in known oil reserves with the discovery of oil in the Sahara and the North Sea led to a reduction in oil prices and an increase in consumption (see Polach, 1964: 118-20). An additional factor was the hostile attitude of the USSR towards Euratom. The USSR conducted an 'oil offensive' against member states of

Euratom in the early 1960s, focussing on Italy, to undermine the attractiveness of nuclear energy. The prices of Soviet crude oil were reduced below the prices of those of international oil companies (Polach, 1964: 135). The accumulation of these forces ensured an abundance of cheap oil and this made it difficult for a new, untested energy technology to establish itself on a competitive basis. This changed energy context meant that nuclear energy could not become competitive by 1963 as predicted by the 'Three Wise Men'(Polach, 1964: 125-27).

The result was that there was an initial 'weak European response' to the joint US-Euratom nuclear programme. Despite the advantageous inducements offered to public utilities to construct LWR plants, the joint US-Euratom nuclear programme received a 'disappointing' response to its first call for bids from would-be contractors to build nuclear power plants in Europe (Donnelly, 1974: 103-5). Only one power station was contracted under its auspices, that of the 150 MW SENN Italian reactor. Subsequent calls for submissions had only marginal success. In 1960, the joint Franco-Belgian project, SENA was sanctioned to construct a 240 MW plant at Chooz on the Franco-Belgian border. In 1962 the joint US-Euratom program approved the construction of a plant at Gundremmingen in Bavaria. All these 'demonstration' plants were of the US LWR variety (Goldschmidt, 1982: 308-9). According to Polach at the time: 'The crux of the problem is willingness of the European utility companies to put credence in the cost calculations for nuclear power' (Polach, 1964: 126).

Another premise upon which the Euratom Treaty was based proved incorrect almost as soon as the Euratom began operation. The framers of the Treaty had assumed that the shortage of nuclear materials before and during the 1950s would continue. Thus the ESA was to ensure the equitable distribution of nuclear materials between the member states and various industrial enterprises. However, after 1960 with the end of the US monopoly on the use of uranium produced in the Belgian Congo, the discovery of new deposits of nuclear materials, and US liberalisation of the international nuclear materials market through the IAEA, the shortage of nuclear materials ended. Thus, the principal function of the Supplies Agency, that of assuring equal access to nuclear materials, was undermined since all consumers had access to sufficient raw materials to meet their needs (Polach, 1964: 131-2; Donnelly, 1972: 87).

As there was less need for the ESA, some member states began to resist cooperating with it since they perceived it as interfering and offering limited benefits to national nuclear programmes. Several states failed to register their bilateral agreements arranging fuel supplies with Euratom. Germany and the Netherlands rushed through their bilateral agreements with the UK in 1957 to prevent them from coming under the Treaty (Polach, 1964: 130). France became the most high profile objector to this Treaty requirement. After 1964, France began to conclude external agreements with third parties for nuclear fuel supplies without the permission of Euratom. France's recalcitrance on this issue was facilitated by the increased availability of non-US nuclear supplies, particularly enriched uranium from the USSR. Thus, it could bypass Euratom controls and develop an independent *force de frappe* (Nau, 1974: 100-1). These emerging difficulties disillusioned an already old and ill Armand, who resigned as President of the Commission in early 1959.

His replacement by another Frenchman, Etienne Hirsch, appeared to signal an improvement in the fortunes of the Commission. Hirsch was a dynamic, close acquaintance of Jean Monnet. But de Gaulle's instinctive antipathy towards Monnet the individual and Monnet the supranationalist integrator, ensured that difficulty that was developing concerning the

relationship of Euratom to national nuclear programmes was personalised in a clash between de Gaulle and Hirsch (Scheinman, 1967: 36, 40).

Hence, the posture of France, the main initial supporter of Euratom during the negotiations, altered substantially during the first years of Euratom's operation. Charles de Gaulle had been an opponent of European integration and, in particular, Euratom. After he regained power in mid 1958, his attitude was more constructive and only slowly changed to renewed hostility. His earliest pre-1958 fear that Euratom would undermine France's nuclear independence and her ability to develop a military nuclear programme were proven to be largely unfounded, and upon being shown the Euratom Treaty he reportedly exclaimed 'Is that all it is?' (quoted in Nau, 1974: 100). His fears of, and consequently his initial hostility towards, Euratom were assuaged temporarily. Of all member states perhaps the attitude of France was essential to Euratom's success or failure. In 1964 France's civil nuclear budget ($400m) accounted for two-thirds of the total of national nuclear funding in Euratom. It had 'as many nuclear scientists and technicians as the other five put together' into the late 1960s (Scheinman, 1967: 31). The overriding objective of the French civil nuclear programme, like that of its military nuclear programme, was the grandeur of France in a Europe independent of outside influences and in a Europe which did not threaten the national autonomy of its constituent states. Thus, Euratom as a weak, promotional organisation could fit into de Gaulle's vision of Europe.

Of course, Euratom's early discounting of France's chief motivation for supporting nuclear integration, that of constructing a common uranium enrichment plant, ensured that future French policy towards Europe would be lukewarm at best. Additionally, France was critical of Euratom's dependence on external cooperation agreements with the USA and the UK. The CEA unsuccessfully attempted to wean the Commission and the other member states (in particular Germany) away from technological and material reliance upon the USA. This was a continuation of France's interest in Germany as a potential nuclear partner during the Euratom negotiations, because of the latter's strength in advanced industrial sectors. France actively sought to cooperate with Germany in the early years of Euratom (Melissen, 1993: 106). Among the French proposals for Franco-German nuclear cooperation in the years between 1958 and 1961 were: Electricité de France (EdF, the nationalised electricity utility) should participate in the construction of a German nuclear plant; German industry should participate in the ORGEL project; and German and French utilities should conduct common meetings on the nuclear power matters (Nau, 1974: 108).

Thus there was considerable evidence to show that divergent national nuclear interests were 'firmly entrenched' by 1960, the very time that Euratom was beginning to function properly and it acquired a pro-active President. 'Reactor wars' were already underway, while the international energy environment was unfriendly towards nuclear energy. Hirsch argued before the European Parliament in June 1961 that European integration needed a European spirit to succeed (Euratom Commission, 'Speech by Mr Etienne Hirsch before the European Parliamentary Assembly', Strasbourg, 1961, EUR/C/2280/61e, p. 6). With the international downturn in interest in nuclear energy and a redirection of Euratom's efforts away from the immediate installation of nuclear power plants towards research, Hirsch became an avid supporter for the establishment of a European University as one means to develop a common European spirit. Subsequent developments in Hirsch's career illustrated graphically the lack of a European spirit.

In 1961 the Commission proposed that it should become involved in several reactor projects to help overcome some of the start-up costs, in return receiving information from the

operation of these plants (see Euratom Fifth Annual Report: 95-101). France objected to the use of Community funds for subsidising US nuclear technology (France had failed to get any of its nuclear reactor projects included in the joint power programme). Hirsch, using Euratom's supranational rules, overruled French objections against the redirection of the first five-year research budget to aid reactors being constructed under the US-Euratom and UK-Euratom agreements (Scheinman, 1967: 41-42).

Hirsch also angered French national interests when he sought to ensure that all member states complied with Article 106 of the Euratom Treaty, i.e., that all bilateral agreements concluded between member states and third countries before Euratom came into being should be registered with and approved by the Euratom Council, and 'that the rights and obligations arising out of such agreements shall as far as possible be assumed by the Community' (Euratom Treaty, 1957: Article 106). As part of Hirsch's efforts to ensure that this Article was implemented, he unsuccessfully attempted to ensure that the enriched uranium France purchased under the US-French Agreement should in future be included under the US-Euratom Agreement. As Goldschmidt states: 'This…. was, of course, intended to strengthen Euratom's prerogatives in international relations as compared with those of the individual member states. It demonstrated a fundamental difference between Euratom's and the French government's concept of the respective roles of the community's member states and of the commission itself' (Goldschmidt, 1982: 310).

A further point of controversy between the Hirsch Commission and France occurred when the former began to insist that the Euratom inspectors should be permitted access to the dual-purpose French plutonium facility at Marcoule in accordance with the Euratom Treaty's control of fissile materials' provisions. France objected to such an intrusion and declared that Marcoule was a military installation and thus exempt from the safeguards provisions (Howlett, 1990: 107-109). Thus, France won the exchange 'between France and the Commission as to where national defense purposes began (Scheinman, 1967: 37).

De Gaulle's failure to renominate Hirsch for a second term, contrary to the wishes of the other five member states, was an indication of French displeasure at the Commission's supranationalist tendencies under an assertive President. Instead a more docile and acceptable candidate to France, M. Chatenet, became the third President. These incidents cumulatively indicated that the French CEA 'supported cooperation through Euratom as long as such cooperation supplemented French resources and did not become the basis of independent Community programs' or subsidise Anglo-American penetration of the European nuclear market (Nau, 1974: 108).

## I.18. The Second Five-Year Plan

Euratom's problems and the dissension between the member states about its objectives escalated during the second five-year research programme (1962-67). The divergent interests of the member states became overtly irreconcilable. The less developed nuclear states, the Netherlands and Italy, who had JNRC research centres located in their countries wanted an extension of JNRC research activities. The other three states, Belgium, Germany and France, all of who had relatively strong or rapidly developing national nuclear programmes, either wanted to limit or reduce JNRC research. They favoured 'association contracts', by which the Euratom research budget would fund research in national research centres rather than in JNRC research centres. France and Germany, in particular, favoured Euratom involving itself in more long-term research projects rather than in projects with immediate industrial relevance (see Nau, 1974: 110-11). Thus the more advanced and

ambitious state and industrial interests sought to minimise Euratom's interference in nuclear industrial matters. This substantive variation in national attitudes played havoc with Euratom's second five-year programme, because it became impossible to agree upon priorities.

Unfortunately, the Commission was a largely impotent force in this debate, because its power had largely been stymied by de Gaulle's symbolic rejection of Hirsch and its remaining authority was undermined by the approaching merger of the institutions of the three communities in 1967. Thus, the 'destructive dialogue' between the member states was not solved by strong leadership from the Commission. Though the second five-year plan was almost double the first five-year research programme at $425 million there were a number of problems with it. A larger proportion of the second programme was devoted to association contracts than the first implying a relative downgrading of the JNRC. All future research programmes were to be conducted using association agreements and during 1962 flagship JNRC projects, such as ORGEL, were cut back. Commentators are in agreement about the state of Euratom at this time. According to Scheinman, Euratom in 'seeking to satisfy all…really satisfied none' (Scheinman, 1967: 45). Nau says that 'The program sought to satisfy everyone, but succeeded in satisfying no one, paying least attention, in the process, to Community requirements' (Nau, 1974: 111).

Then in 1963 and 1964 the JNRC began to experience inflation. The main centre at Ispra, which had taken the brunt of the 1962 JNRC cuts and was in competition with national programmes for scientists and technicians, was worst effected. It experienced a severe financial crisis. In an attempt to solve the crisis the Commission proposed to increase Euratom's subvention to Ispra. France reacted angrily and voted against the 1964 budget arguing that the Commission was overspending because it lacked strategic priorities (see Agence Europe, May 8, 1964). This period in 1964 and 1965 has been characterised as the highpoint of the 'reactor war', since it revolved around the choice of nuclear reactors by Euratom's member states. The US LWR had entered its industrial stage and had finally become commercially competitive with conventional fossil-fuel power plants. The USA's leading electrochemical companies, General Electric and Westinghouse, developed their first turnkey commercial industrial scale LWR nuclear power plants for sale in 1963 and 1964, and a 'nuclear boom' ensued in the US and spread to Europe (see Walker & Lönnroth, 1983: 25-28).

The commercialisation of the American reactor type together with US guaranteed enriched uranium supplies and the joint US-Euratom reactor programme converged to overcome the previous obstacles to commercial nuclear power. In 1962 the joint reactor participation programme had approved the construction of a boiling water reactor (BWR) at Grundremmingen in Germany for Siemens. The success of, and information received from, this demonstration plant, together with the development of turnkey commercial reactors, convinced Siemens that LWR technology was preferable. Thus, the US-Euratom joint reactor programme was eventually responsible for familiarising many European states and firms with US technology permitting a US export surge to Europe in the mid-1960s. Siemens lost interest in natural uranium reactors, and in 1964 another two LWRs were ordered by German utilities (Goldschmidt, 1982: 309; Nau, 1974: 144-45).

US LWRs progressive capture the European commercial nuclear energy market, undermined interest in Euratom's own attempts to develop an indigenous European reactor in the ORGEL project. An ORGEL prototype reactor had not even been produced yet, while many of the problems of the LWR prototypes had been solved and the cost of their construction

had reduced substantially. In addition, fast breeder reactors were increasingly viewed as the technology of the future in Europe. Thus, after 1962 ORGEL was in retreat (Nau, 1974: 168-70).

In general, French nuclear interests opposed Euratom's subsidisation of US technological penetration of Europe's nuclear reactor market. They wanted Euratom to adopt France's indigenous natural uranium fuelled, gas graphite moderated reactor model. Some French nuclear personnel even regretted de Gaulle's veto of British membership of the EEC and Euratom in January 1963. Together France and Britain might have had a chance of persuading Euratom to accept a variety of a natural uranium gas graphite reactor that they were both developing (Goldschmidt, 1982: 309). French disappointment at the downgrading of its reactor model led it to criticise the distribution of Euratom's funds. France criticised the development of *saupoudrage*, i.e., the division of research funds among the member states on political rather than technical or scientific grounds. This was linked to the growth of an unofficial policy of *juste retour* within the Commission, that is, each state regains a portion of research funding equal to its original contributions to the Community without regard to technical or scientific competence, or commercial viability. *Juste retour* was a Commission response to conciliate the fierce nuclear nationalism that had emerged and an attempt to maintain concord, but it led to a directionless and incoherent research agenda. Instead France argued for a research strategy of concentration. This would entail the focussing of Euratom's funds on projects of major benefit to all of the member states. France recommended centring Euratom's funds on:

- fusion which held distant prospects for unlimited energy;
- fast reactors (breeders) which required high long-term investment;
- ORGEL which would develop an independent European reactor in the medium-term.

Germany and Belgium largely agreed with the choice of the targets for concentration.

Italy resisted vociferously and rejected any major revision of the second five-year plan. It favoured concentration on projects which would have immediate benefits, i.e., continued funding for the development of US LWRs. Research, according to Italy, should be focussed on making such 'proven reactors' (i.e., US LWRs) more competitive and productive for the benefit of Europe rather than pursuing the 'holy grail' of European nuclear autonomy. The objective should be cheap energy and European economic growth. The Netherlands was of a similar view. Though Germany did not believe in European nuclear independence, however it favoured ultimate industrial freedom, in line with its earlier *antidirigiste* mindset. In 1965, France largely achieved its objective obtaining a general programme revision in line with its proposals for concentration. However, this was achieved by a Qualified Majority Vote in the Euratom Council, the third such qualified majority decision in four years, and it alienated Italy (Scheinman, 1967: 48).

Hence, the general problem of agreeing Euratom's research objectives unleashed an amalgam of traditional and fundamental controversies concerning Euratom's essence, i.e.:

- internal versus external technology,
- *juste retour* versus concentration,
- national versus Euratom programmes,
- industrial freedom versus centrally directed Euratom programmes.

Consequently, after 1962 Euratom was largely immobilised by acrimonious debates concerning the revision of the research budget with the 'reactor war' at its heart. Successive budgetary compromises, which Nau appropriately terms 'band-aids' sufficed to ensure the

survival of the second five-year plan (Nau, 1974: 114). Pierre Chatenet coined the term 'additional programmes' for these supplementary budgetary subventions which allowed the irreconcilable partners to pursue their own research agendas using Community funding.

After 1964 an exponential growth in multilateral and bilateral arrangements occurred outside of Euratom. Under their 1963 Treaty of Cooperation, France and Germany commenced work on joint projects at Fessenheim and Grenoble. Later the Netherlands, Britain and Germany began work on a centrifuge uranium enrichment project. By 1965 the member states had grown disillusioned with the Euratom forcing Chatenet to admit that flexible nuclear cooperation (or Euratom *á la carte*) was the only way to make progress. This was an admission that there could no agreement on common policies and projects.

This 'destructive dialogue' within Euratom paused during the 'Empty Chair Crisis' of late 1965 and early 1966. During this controversy, all the European communities were affected by France's boycott of their institutions. However, this was simply a temporary respite and the disagreements between Euratom's member states continued in 1966 and 1967. The Commission presented its first target programme in April 1965. France wanted a common industrial European policy, as did the Commission, and lobbied for its natural uranium power reactors as the European prototype. Italy agreed with the concept of a common nuclear industrial policy, but disliked the proposal concerning French reactors. Germany and Benelux rejected any centralised direction of nuclear industrial policy, which they considered to be national matters. Thus, dissension was increasing (Nau, 1974: 115-16).

Simultaneously, the Six were becoming increasingly aware of Europe's R & D, as well as technological, inferiority relative to the USA. The publication of the 1965 OECD study of R & D indicated that the US was both spending more on R & D and accruing more industrial and commercial advantage from research than the Western Europeans. This was seen as the main factor in American capital penetration of Europe and the loss of Europe's manufacturing competitiveness. This had always been the Gaullist position but now it appeared vindicated by the OECD research. The concept of a 'technology gap' between the USA and Europe gained widespread credence throughout Europe. Italy, Belgium, Germany and Britain all began to call for remedial action to reverse the alleged European overdependence on US technology in both the nuclear and non-nuclear fields. Servan-Schreiber's, *Le Défi Américain*, a hard-hitting critique of the alleged American economic invasion of Europe, became an instant bestseller when it was published in 1967 (see Nau, 1974: 50-53).

Investment in science and technology became an issue of vital national sovereignty. To coordinate the fragmented European R & D market, the 'Six' wanted to extend cooperation in science and technology beyond nuclear energy. In this environment, the consolidated EC Commission (after 1967) feared that Euratom would be downgraded in preference to cooperation in other technological areas (Nau, 1974: 116). After all, Euratom was in 'deep crisis'. Despite the fact that the Community was co-funding national nuclear projects under 'association contracts' the attempts to establish both common research and industrial programmes had failed. In late 1966 Italy declared that since the other member states were acting nationalistically, then Italy would begin doing so too and demanded Euratom funding for an Italian test reactor (Layton, 1969: 109). In the area of fast reactors where it was generally presumed that Europe was ahead of all other competitors, France and Germany's fast reactor research programmes were in competition, rather than complementary, militating against the development of a joint prototype and a joint commercial reactor (see Nau, 1972).

By the late 1960s Germany's commercial nuclear sector was developing and it was 'staking its claim to be regarded as the leading civil nuclear industrial state in Europe'. AEG and Siemens, having acquired LWRs under licence and in partnership deals with General Electric and Westinghouse, steadily cut their ties with the US and began to export nuclear reactors themselves (Walker & Lönnroth, 1983: 30). This unleashed Franco-German commercial rivalry and prevented Euratom from coordinating the European nuclear sector.

Dissension between the member states meant that a third five-year research plan, which was due to commence in 1968, could not be agreed. Thus, in 1968, Euratom had to depend on a 'stop-gap one year' research budget amounting to half the 1967 amount (Donnelly, 1974: 85). 'Transitional' or emergency one year budgets continued into the 1970s. Euratom had effectively failed in meeting its headline goals. The 'Three Wise Men's' and Commission's objective of 15,000 MW of installed nuclear power among the member states by 1968 far exceeded the technical and commercial capabilities at the time. Only approximately 1,500 MW had been constructed by the deadline. It had also proved politically impossible to coordinate the diverse interests and views of the 'Six'. Euratom's role as seen in the activities of the JNRC (symbolically renamed Joint Research Centre thereafter) was now increasingly restricted to uncontentious areas such as basic or fundamental research which had little prospect of commercial applicability in the short or medium-term (such as plasma physics and high temperature fusion), necessary support services for the nuclear industry (for example nuclear measurements), regulation (health and safety) and controls.

## I.19. Conclusion: L'échec d'Euratom?

Sectoral integration of nuclear energy was chosen by Spaak and Monnet because it was viewed as less ambitious than a general common market or customs union, and therefore less likely to fail. Nuclear energy was an appealing prestige technology, especially after the liberalisation of US nuclear policy. The Euratom proposal was expected to appeal to the French, since France had a strong interest in the development of the nuclear energy. The primary assumption of the integrationists was that the demands of a 'big science', such as nuclear energy, were probably beyond the capabilities of the individual medium and small states of Western Europe, but that together in an integrated collective programme they could build an industrial scale nuclear sector producing competitively priced electricity in a matter of years.

The determination and ingenuity of Monnet and Spaak ultimately led to the breakthrough that placed nuclear integration on the agenda of the 'Six' in mid-1955, by linking it with Beyen's idea of a customs union or common market. This junktim was inspired as a means to reconcile the divergent interests of France and the FRG in a package deal. Despite the wishes of Mollet, Pineau and Monnet, the junktim could not be unpackaged during 1956 to accelerate Euratom's path towards a treaty though it appeared that the nuclear energy negotiations were making far more substantial progress than the Common Market ones. Nonetheless, the neoliberal priorities of Germany's Economic Ministry and powerful sections of German industry militated against agreement on a strong supranational Euratom structure with a total monopoly on ownership of all fissile materials and control on their use. Even Adenauer who began to see virtue in Euratom as a stand-alone integration project in mid-1956, was unable to totally impose his will on his recalcitrant Ministers and domestic economic interests, especially the nascent German nuclear industry.

Nevertheless, it was the presumed strongest supporters of Euratom who weakened the organisation irretrievably at the outset. Unrelenting French domestic insistence (right wing,

Gaullists and the CEA) upon the maintenance of their right to manufacture nuclear weapons, forced Mollet to retract his initial renunciation of France's military intentions. France, therefore, undermined Monnet's primary goal of utilising Euratom to demilitarise nuclear energy in Western Europe. As the FRG had voluntarily and unilaterally renounced her sovereign rights in this area as the price of admission into the Atlantic Alliance, French demands for monopolistic fissile material ownership and controls after Mollet's reversal on the French military question was perceived as a confirmation in Euratom-sceptical German circles of their suspicions that the nuclear community was simply a discriminatory French device to exploit German resources and prevent the FRG from acquiring nuclear weapons. Thus the extremely tenuous assumptions upon which Euratom was conceived began to disentangle in the face of intransigent sectional interest groups within both the FRG and France.

In sum, the Euratom concept initiated the *relance* and was considered the most likely vehicle for further European integration by Monnet, Spaak, France, the USA and the Action Committee. However, France eventually recognised that the EEC was in the best interests of the French economy if safeguards for French social provision, agriculture and overseas territories could be assured, while the FRG was prepared to make substantial concessions in these areas to ensure commercial benefit for German industry and the commencement of 'ever closer union' (see Milward, 2000: 214-23). A turbulent international environment facilitated and accelerated the resolution of the outstanding issues related to the Common Market. In light of this substantial progress in the EEC negotiations, Franco-German fundamental difficulties over the Euratom Treaty appeared less salient and they effectively agreed to differ. Thus in the end Euratom was a 'sectoral sideshow' and 'a "smokescreen" for the more controversial customs union' (Moravcsik, 1998: 148).

The isotope separation plant and the (*de facto*) French monopoly on the provision of uranium was rejected by the German industry. In the end, a centralised Euratom Supplies Agency was instituted but denied a *de facto* monopoly. It was clear by early 1957, that 'there was little prospect that the community would support an isotope separator, which had been one of the "principal attractions of Euratom" for France' (Stirk, 1996: 144). As early as December 1956, therefore, the French Quai d'Orsay was admitting internally that Euratom would not further European integration (DDF, 1956, III, doc. 146). France eventually went ahead with its own isotope separation programme. Domestic politics ensured that France had no room for manoeuvre as regards the military option. Euratom's control stopped at the gates of military installations.

In the final analysis, the Euratom Treaty was effectively 'gutted' (Moravscik, 1998: 120). The treaty was inadequate, civil nuclear energy was still in its commercial infancy, and the economic predictions for nuclear energy were wildly unrealistic. The primary underlying difficulty was that too much political importance was vested in an untested economic sector. As Kramish writes: 'Looking hard at the economic and technical "facts," one actually finds very little justification whatsoever for the existence of Euratom…. Euratom is justified largely by the expedient of political argument, by its role in contributing to a united Europe' (Kramish, 1963: 233-34).

The 'myth' of an energy shortage that had propelled Monnet's efforts during 1955, 1956 and early 1957, dissipated thereafter when an abundance of cheap oil flooded Europe. This denied Euratom a major centripetal force that could have checked the fissiparous influences of national interest and motivated a common energy and nuclear policy. Ultimately, it was the absence of a Franco-German Axis in nuclear matters that was the undoing of the Treaty

during its negotiation and implementation stages. A workable and mutually beneficial Franco-German compromise was central to the success of the EEC Treaty, but nothing similar existed in Euratom.

Consequently, despite the best efforts of Monnet's inspiration, the fragmentation of the nuclear energy market of the Six already existed at the time of the signing of the Euratom Treaty, and the divergences grew in the subsequent decade. An economy of scale was not achieved. As the EC Commission's 'white paper' on nuclear policy noted in 1968: 'The effort of the Six, on both the national and Community levels as regards public spending on civilian research has been only marginally lower than in the USA, which means that it has been higher in proportion to the gross domestic product' (Bulletin of the European Communities, Supplement, Sept/Oct 1968).

Nevertheless, all the evidence pointed to a greatly inferior European commercial and industrial return than in the USA. In the USA four or five firms were building or planning to build 87 nuclear power stations, but in Europe 12 firms were involved in the construction of only 16 plants. The EC Commission thus argued that Europe's comparative lack of progress was a product of the 'fragmentation of the [European] effort, the bulk of which has been pursued at the national level with national objectives in view'. The damning conclusion was that: 'Member countries have reserved appropriations and public contracts for their own domestic industries, and orders placed by the electricity utilities have been awarded solely to domestic contractors….The weakness of industrial structures within the Community is in fact the result as much as the cause of this lack of co-ordination of officially sponsored projects' (Bulletin of the European Communities, Supplement, Sept/Oct 1968). The EC Commission, in effect, admitted that Euratom had failed to meet even the whittled down objectives that survived the negotiation process to be included in the Treaty. Competing national interests made Euratom more 'of a broker than a prime mover in the commercial use of energy in Europe' (Camilleri, 1983: 33).

# I.20. BIBLIOGRAPHY

**(Note: this bibliography relates only to the previous section "I. The origins and early history of Euratom 1955-1968").**

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# II. The Main Provisions of the Euratom Treaty

## II.1. Promotion of Research[5]

The promotion of research was (and still is) a central feature of the Euratom Treaty. The key provisions are the following Treaty articles:

> 'Chapter 1. Promotion of Research
>
> Article 4
>
> 1. The Commission shall be responsible for promoting and facilitating nuclear research in the Member States and for complementing it by carrying out a Community research and training programme.
>
> Article 6
>
> To encourage the carrying out of research programmes communicated to it the Commission may:
>
> a. provide financial assistance within the framework of research contracts, without, however, offering subsidies;
> b. supply, either free of charge or against payment, for carrying out such programmes, any source materials or special fissile materials which it has available;
> c. place installations, equipment or expert assistance at the disposal of Member States, persons or undertakings, either free of charge or against payment;
> d. promote joint financing by the Member States, persons or undertakings concerned.
>
> […]
>
> Article 7
>
> Community research and training programmes shall be determined by the Council, acting unanimously on a proposal from the Commission, which shall consult the Scientific and Technical Committee. These programmes shall be drawn up for a period of not more than five years. The funds required for carrying out these programmes shall be included each year in the research and investment budget of the Community. The Commission shall ensure that these programmes are carried out and shall submit an annual report thereon to the Council. The Commission shall keep the Economic and Social Committee informed of the broad outlines of Community research and training programmes.
>
> […]

(Authors' note: this article does not allocate any role to the European Parliament: merely to the non-elected Scientific and Technical Committee. Nonetheless, the Council does in fact request Parliament's opinion, via a process known as a *'consultation facultative'* (optional consultation). This is a simple consultation, with a single reading in Parliament, which the Council is not obliged to respond to, or even take notice of).

> Article 8
>
> 1. After consulting the Scientific and Technical Committee, the Commission shall establish a Joint Nuclear Research Centre.

[5] This chapter makes considerable use of the excellent *A Brief History of European Union Research Policy* by Luca Guzzetti, European Commission DG XII, Office for Official Publications, 1995, ISBN 92-827-5353-0.

> This Centre shall ensure that the research programmes and other tasks assigned to it by the Commission are carried out. It shall also ensure that a uniform nuclear terminology and a standard system of measurements are established.
>
> It shall set up a central bureau for nuclear measurements.
>
> 2. The activities of the Centre may, for geographical or functional reasons, be carried out in separate establishments.
> […]'.

The subjects to be addressed by Euratom's research and training programmes are spelled out in considerable detail in Annex I of the Treaty. They are presented in eight thematic groups: raw materials, physics applied to nuclear energy, physical chemistry of reactors, processing of radioactive material, applications of radioisotopes, study of the harmful effects of radiation on living organisms, equipment, and economic aspects of energy production. Furthermore, the Euratom Treaty, in its Article 215, explicitly provided for an initial research and training programme:

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

Annex V to the Treaty spells out the subjects to be addressed within this initial research programme, and indicates the division of tasks between the 'Joint Centre' (ie the JNRC), and other contractors. The JNRC was to include:

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

Furthermore the JNRC was to 'have at its disposal' a high fast-neutron flux reactor. It was also to arrange for a large-scale exchange of information, and organise specialised courses relating particularly to the training of prospectors and to the applications of radioisotopes. The former provision was instrumental in defining the early responsibilities of what later became DG 13 (now part of DG Enterprise), including the dissemination (and promotion of the use of) research findings from the JNRC, and (later) other Community research programmes.

Not all of the 215 million units of account were spent in the course of the first five-year programme: some monies were carried over into the second programme. There were delays in the establishment of the JNRC, which was finally created at a number of separate sites, in some cases by 'Europeanising' an existing national research centre: this was the case, for example, with the largest JNRC establishment at Ispra in northern Italy, and with the Petten site in the Netherlands. The second five-year programme (1963-1967) was a continuation of, and indeed in some ways the real implementation of, the first programme, since a number of the original proposed activities did not really get under way until 1962. The programme was given a budget of 425 million U.A., plus the unspent 20.5 million U.A. from the first programme. The areas of research remained essentially the same, though a higher percentage of the budget (about 50%) was to be spent by 'direct means' ie by the JNRC – since the latter, in its various locations, was now 'up-and-running', with a staff complement planned to increase from 1,500 at the start to 2,530 by the end of the second five-year programme. The research programme was to concentrate on the Orgel reactor (an unusual design unique to JNRC Ispra, using natural uranium fuel, a heavy water moderator, and an organic liquid coolant), high-temperature gas-cooled reactors, and fast-neutron reactors, as well as thermo-nuclear fusion. Orgel itself was the single most important research project, and even at that time there were concerns expressed that the Euratom Research Programme in general, and the JNRC in particular, was putting 'all its eggs in one basket'. (The reply, that diversification of research projects would lose 'that unity of purpose essential to its success', is still at the core of similar debates on current research priorities, for example over the ITER project).

In 1964 an acrimonious debate began in the Council (of Foreign ministers, not Research Ministers) concerning a proposal to increase the budget and modify in other respects the second five-year research programme. The eventual compromise accorded a modest increase in the budget (not as much as the Commission wanted) and further concentrated research on projects, including Orgel, which were far removed from the rapidly evolving market-place for power reactors. The difficulties encountered in making this decision were merely indicative of a more general malaise concerning the Euratom Treaty, which had clearly not lived (or not been permitted to live) up to its original expectations. The Commission presented a discouraging summary to the Council, on 9 October 1968, which, suggests Luca Guzzetti, may stand as an epitaph for EURATOM:

'The founding Treaty of the European Atomic Energy Community was intended to establish the conditions in which the nuclear industries could develop. Ten years later we must admit to having achieved very few of its aims. It is true that Euratom's actions have often been fruitful within their limits, but the Community generally has not succeeded in co-ordinating and even less in drawing together into a coherent whole, the efforts of Member States. The dispersion of research and development programmes throughout the Community has been an obstacle to the effective realisation of a common nuclear market. Member States have reserved finance for their own industries, and orders from public institutions have been placed with national companies. Orders from electricity producers, too, have gone to national construction companies. The development of the nuclear industries within the Community have thus not benefited from the suppression of border tariffs and quotas which followed the EURATOM Treaty. This sequence of events has led to the present crisis, which is not only the crisis of EURATOM, but is a crisis in the development of the nuclear sector'[6].

[6] Secretary General of the Commission: 'Survey of the nuclear policy of the European Communities', Supplement to the *Bulletin*, n.9-19, 1968, p.5, and quoted in full in Guzzetti, op cit., p.31.

The 1967 merger of the three founding treaties resulted in responsibilities for the various chapters of the Euratom Treaty being divided up between various administrative units in the newly formed single Commission. One consequence of the temporary hiatus was that the life-time of the second research programme was extended by a series of ad-hoc decisions, and the decision on a third five-year research programme was at first postponed to 1968, and then subsequent postponements meant that the decision was not taken until February 1973, when the Council adopted a programme from 1973 to 1976. In the interim, an interesting decision had been taken during the 1969 financial year to set up, in addition to the 'joint programme', a series of 'supplementary programmes' in which Member States could participate, or not do so, on an 'à la carte' basis. One such programme concerned the operation of the high-flux reactor at Petten, which only involved the Dutch and the German governments; this was, and still is, one of the very few examples of 'variable geometry' in any EU research programme.

The major problem was that the JNRC's 'flagship' Orgel project was formally abandoned in June 1969, when it was finally acknowledged that there was simply no commercial interest in this type of reactor. This decision provoked a deep crisis (including protest strikes) in the JNRC's Ispra establishment; so it was the attempts to solve the problems at the JNRC which led to the delay in the adoption of the next research programme. The Commission proposed that the JNRC be re-named the JRC, and should play a central role in the elaboration of Community science and technology policy, with a more independent management structure (proposals which, remarkably enough, find strong echoes in current thinking in the Commission on the future role of the JRC.) The Euratom Council met to discuss these proposals on 6 December 1971. The options considered were wide-ranging, including the possibility of closing the JNRC completely, and sacking all the staff. But in order to do so, in the face of opposition from the Commission, the Council would have required unanimity, which it clearly did not have. So even if no research programme was adopted (an option considered by some Member States), the staff salaries and maintenance expenditures would still have to be met. The result was the reluctant adoption, by the Council, of an annual research programme which was little more than a 'holding operation' while the recently appointed Commissioner for Industry, Research and Technology, Altiero Spinelli, continued his attempts to develop a more wide-ranging Community research policy[7]. These resulted inter alia, in an agreement at the December 1972 Paris Summit of the Heads of State to permit the JRC to work on non-nuclear research, and a new Council Decision in February 1973 to provide a 1973-76 research programme for the JRC.

The latter decision reflected once again a compromise between those Member States advocating closure, those still supporting a Community nuclear research programme, and those defending JRC establishments on their own territory: but perhaps more importantly represented, albeit hesitatingly, a new and wider vision of Community research. Progress was, however, to be painfully slow. Throughout the 1970s and early 1980s, every single research programme had to be unanimously approved by the Council, either on the basis of Article 7 Euratom, or (the then) Article 235 EEC, on an essentially ad-hoc basis. It is important to note that the 1957 EEC Treaty contained no explicit provisions for the promotion of research, and so the Euratom Treaty had thus effectively defined European Community research as nuclear research, and established the basic frameworks within which such Community research would be supported, including the creation of the JNRC (later JRC). Articles 7 and 215 are almost certainly the origin of the concept of the five-year

[7] Spinelli's outspoken account of the December 1971 Euratom Council meeting is reproduced in English in Guzzetti, op cit., pp 46-47.

framework programme, later enshrined in the EEC Treaty. Indeed the neglect of research in the EEC Treaty only began to be challenged in the late 1970s, with the subsequent elaboration of EEC Framework Programmes, and their later incorporation into the EEC (later EC) Treaty, but nuclear research continues to be supported in the manner provided for in the Euratom Treaty.

Thus EEC research activities gradually began to increase, and the need for some kind of over-arching political framework gradually became apparent, not least because of a perceived need to meet head-on the challenge represented by the American and Japanese economies. Nowhere was this perception more clearly felt than in the domain of scientific research and, more particularly, technological development: in order to meet this challenge, and strongly prompted by a series of reports from the European Parliament's (then) Committee on Energy, Research, and Technology, it was felt necessary to create a competitive 'European Technological Community'. Part of this process was to be aided by EEC R&TD programmes, the legitimacy for which was established by the new chapter on Research and Technological Development introduced into the EEC Treaty by the Single European Act (SEA), which came into force in 1987. In fact the Commission had launched its first framework programme in 1984, in an attempt to render coherent its disparate R&D support programmes, and the SEA enshrined this notion in the Treaty. The SEA also provided for a new two-reading co-operation procedure in the European Parliament, coupled with qualified majority voting in Council, for certain legislative proposals, mainly concerned with the completion of the internal market. With respect to the R&TD programmes, unanimity was required for the adoption of the Framework Programme in Council, after a single consultation of the European Parliament. Most of the specific programmes were to be adopted by qualified majority in Council, after the co-operation procedure with the European Parliament. Nuclear research programmes were still, however, based on Article 7 of the Euratom Treaty, and thus required Council unanimity, after a single reading in Parliament, kindly requested by the Council (consultation facultative) in the absence of any Treaty requirement so to do.

The Maastricht 'Treaty on European Union' (TEU), which came into force in November 1993, modified the R&TD provisions as follows (new text in italics):

'Article 130f

1.The Community shall have the objective of strengthening the scientific and technological bases of Community industry and encouraging it to become more competitive at international level, *while promoting all the research activities deemed necessary by virtue of other Chapters of this Treaty'.*

One rather important procedural amendment was that the EC Framework Programme was in future to be adopted by Council and Parliament under the so-called 'co-decision' procedure created by the (then) new Article 189 (c), (unfortunately with an additional and exceptional requirement for unanimity in the Council); but that (almost as a trade-off) the Specific Programmes would in future be adopted by the Council after a simple one-reading consultation of Parliament, whereas this had previously involved the two-reading 'co-operation procedure'.

The Euratom Treaty was not substantially amended by the TEU, so whereas Parliament now has formal powers of co-decision over the EC Framework Programme, it is only given a single reading on the so-called Euratom Framework Programme (so-called because the Euratom Treaty, unlike the EC Treaty, has never been amended to explicitly include the concept of a 'Framework Programme for Research and Technological Development'). This

increased procedural and political asymmetry between the two Framework Programmes (EC and Euratom) is an issue of on-going concern to Parliament.

The coming into force of the Treaty of Amsterdam, in May 1999, means that the legal basis of EC Research policy is now Chapter XVIII of the newly amended EC Treaty. The significant change was that under the new provisions, the Council will act by qualified majority during the co-decisions on future Framework Programmes, pursuant to Article 166 of the new Treaty. It is also worth noting that both for the adoption of the 4th and of the 5th Framework Programmes, the Council preferred not to adopt its final decision on the Euratom Framework Programme until the end of the co-decision procedure for the adoption of the EC Framework Programme. Nonetheless, the Research Council had in both cases agreed a 'common political orientation' at meetings held long before the final co-decision process. Thus both Council and Commission have sought to present each Euratom 'Framework Programme' as being in many ways linked to, structurally similar to, and co-terminous with, the EC Framework Programme, and to play down the clear and manifest asymmetry between the two decision-making procedures, and indeed the structure, character, and legal basis of the research work undertaken.

One Euratom Research programme which has been of particular interest to the Parliament in recent years has been that of research into controlled thermonuclear fusion. This programme has been in existence since the very beginnings of Euratom research activities at the JNRC, and Euratom coordinates national research efforts in the so-called 'associations', as well as carrying out for many years a European research programme at the JET (Joint European Torus) Joint Undertaking in the UK.

In 1987 the Parliament established within its secretariat the STOA (Scientific and Technological Options Assessment) service, and one of the first studies which STOA was asked to perform was an appraisal of the European fusion research programme. The resultant external study (Criteria for the Assessment of European Fusion Research, volume I, STOA, EP, May 1988) was rather critical, arguing that far too little attention had been given to the difficulties that would have to be faced in bringing fusion energy to the market place, in the shape of reactors which would be of interest to electric power utilities. This prompted a very lively debate both inside and outside the Parliament, which eventually led to a second set of studies by STOA which included work by both supporters and critics of fusion research (Study on European Research into Controlled Thermonuclear Fusion, vols 1 to 5, STOA, EP, July 1991), all of which contributed a great deal to subsequent Parliamentary considerations of the on-going fusion research programme within the 4th and 5th Euratom Framework Programmes (see below).

### II.1.1. The Fourth Euratom Framework Programme

The so-called '4th Euratom Framework Programme (1994-8)' included three so-called 'Specific Programmes' within it (despite the absence of any Euratom Treaty mention of, or requirement to adopt, 'Specific Programmes'). The involvement of the European Parliament in the adoption of these research programmes is summarised below:

*II.1.1.1. JRC (Euratom):(Legal basis of proposal: Art. 7 Euratom)*

| Document Ref. | Rapporteur | Title | Adopted by EP Plenary |
|---|---|---|---|
| A4-0069/94 | Claude DESAMA | Report of the Committee on Research, Technological Development and Energy on the proposal for a Council Decision adopting a specific research and technological development programme to be implemented by the Joint Research Centre for the European Atomic Energy Community (1994-1998) | 17-11-1994* |
| * Final Act : OJ L 361, 31 December 1994, p.132 | | | |

Parliament, in following the proposal from the Committee and its rapporteur, adopted 16 amendments to the proposal, including a series of horizontal amendments. These covered, inter alia, the authority of the EP and the Council to check the implementation of the programme and its cost; the importance of safeguarding the environment: the encouragement of cooperation between laboratories, scientific institutions and the Joint Research Centre; assistance to the countries of Central and Eastern Europe and to the former Soviet Union with regard to improving reactor safety; the prospect of the Community's future accession to the International Convention on Nuclear Safety; the extension of the areas covered by Community support concerning institutional scientific and technical support activities and, in practical terms, safeguards; and the involvement of Parliament in Council decisions based on the evaluations of the activities covered by the programme.

The Commission accepted all the amendments put forward by the European Parliament. The final Council Decision incorporated 9 of Parliament's amendments, concerning the extension of the areas covered by Community support concerning institutional scientific and technical support activities and, in practical terms, nuclear safeguards; the involvement of Parliament in Council decisions based on the evaluations of the activities covered by the programme; the JRC's contribution to the training and mobility of researchers; and the encouragement of cooperation between laboratories and public and private scientific institutions.

*II.1.1.2. Thermo-nuclear Fusion (Euratom): (Legal basis of proposal: Art. 7 Euratom)*

| Document Ref. | Rapporteur | Title | Adopted by EP Plenary |
|---|---|---|---|
| A4-0066/94 | Elly PLOOIJ-VAN GORSEL | Report of the Committee on Research, Technological Development and Energy on the proposal for a Council Decision adopting a specific programme of research and training in the field of controlled thermo-nuclear fusion (1994-1998) | 17-11-1994* |
| * Final Act : OJ L 331, 21 December 1994, p.22 | | | |

Parliament, in following the proposal from the Committee and its rapporteur, adopted 7 amendments to the proposal, including the horizontal amendments. These covered, inter alia, the need to carry out studies to assess the social acceptability of such research; the availability of resources under the financial perspective; the inclusion of potential commercial viability as a criterion for assessing the programme; and the setting of a ceiling of 17% of the programme's budget for staff and administrative expenditure.

The Commission accepted some of the horizontal amendments put forward by the European Parliament. The final Council Decision incorporated all the amendments adopted by Parliament.

*II.1.1.3. Nuclear safety and safeguards: (Legal basis of proposal: Art. 7 Euratom)*

| Document Ref. | Rapporteur | Title | Adopted by EP Plenary |
|---|---|---|---|
| A4-0068/94 | Gordon ADAM | Report of the Committee on Research, Technological Development and Energy on the Commission proposal for a Council Decision adopting a specific research and training programme in the field of nuclear safety and safeguards (1994-1998) | 18-11-1994* |
| * Final Act : OJ L 361, 31 December 1994, p.143 | | | |

Parliament, in following the proposal from the Committee and its rapporteur, adopted 32 amendments to the proposal, including the horizontal amendments. These covered, inter alia, disposal in deep geological strata of radioactive waste; the inclusion of medical and industrial establishments in efforts to achieve common safety and radioactive protection standards in using nuclear energy; and the shutdown of certain nuclear installations.

The Commission accepted most of the amendments. The final Council Decision incorporated fully or partially 7 of Parliament's amendments (including the horizontal elements): allocation of a minimum of 30% of the total budget for fundamental research; a reduction in the expenditure envisaged by the Commission for staff and running costs (although it did not adopt Parliament's figures); the dosimetric approach to epidemiological studies of populations exposed to radiation; and recognition of storage in deep geological strata as the only known method of long-term isolation of radioactive substances from the biosphere.

### II.1.2. The Fifth Euratom Framework Programme

The EP's involvement in the adoption of the so-called '5th Euratom Framework Programme (1998-2000)' can be summarised as follows:

#### *II.1.2.1. Euratom Framework Programme Proposal: (Legal basis of proposal: Art. 7 Euratom)*

| Document Ref. | Rapporteur | Title | Adopted by EP Plenary |
|---|---|---|---|
| A4-0395/97 | Godelieve QUISTHOUDT –ROWOHL | Report on the proposal for a Council Decision concerning the fifth framework programme of the European Atomic Energy Community (Euratom) for research and training (1998-2000) | 17-12-1997 (single reading only)* |
| * Final Act: 22-12-1998, OJ L026, 1 February 1999 | | | |

Parliament, in following the proposal from the Committee and its rapporteur, set the financial reference amount for the implementation of the Euratom framework programme for 1998-2002 at €1 300 million (of which €326 million for the JRC). (The Commission had proposed €1 460 million).

Parliament considered that Chernobyl should serve internationally (including the European Union, Russia and the United States) as a focal point of concentration for scientific and industrial R & D with regard to nuclear safety. It called on the Commission to prepare the ground for such an international venture. With respect to radiation protection, Parliament called for emphasis to be placed on awareness of the hazards related to ionising radiation, and especially the effects of low-dose radiation on human beings, and general research on genomic instability. Parliament also stressed the importance of the management of nuclear emergencies and the restoration of contaminated environments.

With respect to controlled thermo-nuclear fusion it considered that the objective of the action should be the maintenance of scientific and technological expertise in this field with a view in the long term to the possible construction of safe, clean and economically competitive prototype reactors for power stations operated in an increasingly liberalised and privatised market.

Lastly, Parliament advocated support for nuclear disarmament by technical contributions in cooperation with the nuclear powers and the IAEA in Vienna, including research into stepping up the pace of nuclear disarmament by the development of techniques for the safe removal of the radioactive components of nuclear weapons.

Since Parliament was (and still is) only given a simple consultation on the so-called Euratom Framework Programme, its role in the legislative process terminated at this point. The Council, however, preferred not to adopt its final decision until the end of the co-decision procedure for the adoption of the EC 5th Framework Programme. Nonetheless, the Research Council had in fact agreed a 'common political orientation' at its meeting of 12 February 1998.

The decision by the Council on 22 December 1998 modified the budget to €1.260 million in the light of the agreement with Parliament on the EC Framework Programme. It did not, however, incorporate many of Parliament's amendments to the content of the Programme, illustrating once more the weak position of Parliament vis-à-vis the Euratom Treaty Framework Programme, in comparison with the co-decision on the EC Programme.

In the EC Fifth Framework Programme, the Commission, supported by the Parliament and the Council, had sought to dramatically reduce the number of Specific Programmes, and to concentrate research efforts in broad thematic areas. This presented a considerable difficulty for the presentation of the Specific Programmes within the Euratom Framework Programme, since the Commission effectively argued that these were part of the same thematic structure established within the EC Framework Programme. Thus it was that the two programmes hitherto known in FP4 as 'Nuclear Safety' and 'Controlled thermonuclear fusion', were deemed to be the constituent parts of a Euratom Specific Programme entitled 'Preserving the ecosystem', a title also of a Specific Programme within the EC Framework Programme. (Once again, the impression is given of a close relationship between the Euratom Programme and the EC Programme, although in reality they are separated by a wide political and procedural gulf).

In addition, a separate programme was proposed for the JRC. The involvement of the European Parliament in the adoption of these research programmes is summarised below:

*II.1.2.2. JRC Programme: [Legal basis of proposal: Art. 7 (Euratom]*

| Document Ref. | Rapporteur | Title | Adopted |
|---|---|---|---|
| A4-0458/98 | Eryl McNALLY | II. on the proposal for a Council Decision adopting a specific programme for research and training to be implemented by the Joint Research Centre by means of direct actions for the European Atomic Energy Community (1998-2002) | 15-12-1998* |
| * Final Act: 25-01-1999, OJ L064, 12 March 1999, p. 154 | | | |

Parliament, in following the proposal from the Committee and its rapporteur, approved its opinion on this specific RTD programme. The Parliament put forward an overall budget of

€281 million for the 1998-2000 period; of which €71.8 million would be available for the period 1998/99 and €209.2 million for the period 2000/02. Another of the amendments adopted dealt with the carrying out of prospective studies in order to foresee the safeguard implications of proposed changes in the fuel cycle, in particular with respect to accelerator driven systems, and also thermonuclear fusion. Parliament also called for studies and activities relating to the lowering of the radio-toxicity of nuclear waste, via transformation of hazardous radionuclides.

In relation to nuclear fission safety, Parliament called for the theoretical study of severe accidents, whereas the Commission asked for such a study to include the operation of the FARO facility - to allow the study of in-vessel and ex-vessel phenomena following core meltdown using real materials and representative configurations. The Commission's proposal was, in the end, favoured by the Council.

*II.1.2.3. 'Preserving the eco-system': (Legal basis of proposal: Art. 7 (Euratom))*

| Document Ref. | Rapporteur | Title | Adopted |
|---|---|---|---|
| A4-0459/98 | Marjo MATIKAINEN -KALLSTRÖM | Report on the proposal for a Council Decision adopting a specific programme (Euratom) for research and training on "Preserving the ecosystem" (1998 to 2002) | 15-12-1998* |
| * Final Act: 25-01-1999, OJ L064, 12 March 1999, p.142 | | | |

Parliament, in following the proposal from the Committee and its rapporteur, approved its opinion on this specific RTD programme. The title of the programme was amended to that of research and training on 'Nuclear Energy'. The overall budget for the programme was set at €979 million, of which €238.2 million will be available for the period 1998/99, and €740.8 million for the period 2000/02. Parliament also adopted an amendment which repeated the concerns expressed in Mrs Quisthoudt-Rowohl's report on the 'Euratom Framework Programme', by stating that the purpose of the fusion research programme should be the maintenance of scientific and technological expertise in the domain of controlled thermonuclear fusion, with a view, in the long term, to the possible construction of safe, clean and economically competitive prototype reactors for power stations operated by utilities in an increasingly liberalised and privatised market. The Parliament also called for the establishment of a parliamentary committee to oversee the next step of nuclear fusion - the ITER programme involving co-operation with the US, Japan and Russia and several other nations, so as to ensure more transparency and closer monitoring of thermo-nuclear fusion research. In addition, the Parliament wants to see a full assessment of current proposals for fusion reactors by an independent consultancy.

Parliament also wanted any possible engagement in international agreements not only to be based on Article 101 of the Euratom Treaty, but also (and more importantly) on Article 206, which gives Parliament the right to be heard. The Council did not accept this, although further progress has since been made in keeping Parliament better informed of international agreements being negotiated by the Commission on the basis of the Euratom Treaty, following the adoption in plenary of the Tindemans Report on KEDO.

Parliament also asked for a select International Parliamentary Committee (IPC) to be set up in which members of the parliaments of the ITER participants shall be represented, and shall be kept informed of the achievements of ITER. The IPC is also to be asked for its opinion. This proposal was not adopted in the final Council Decision, though other mechanisms are being sought to implement this proposal. The Council did however agree that 'Nuclear Energy' was a more accurate title than 'Preserving the Eco-system', and changed it accordingly.

### II.1.3. The 6th Annual Framework Programme 2002-2006: [Legal basis of proposal: Art. 7 (Euratom)]

| Document Ref. | Rapporteur | Title | Adopted by EP Plenary |
|---|---|---|---|
| A5-0355/ 2001 | Gérard CAUDRON | Report on the proposal for a Council Decision concerning the multi-annual framework programme 2002-2006 of the European Atomic Energy Community (EURATOM) for research and training activities aimed at contributing towards the creation of the European Research Area. | 14-11-2001 |

On 21 February 2001 the Commission made its two proposals for the 6th Framework Programme (2002-2006). The proposed Euratom Framework Programme is summarised by Parliament's legislative observatory as follows:

'in the space of just over a year, the European Research Area (ERA) has become the reference framework for research policy issues in Europe. The EU has a specific role to play through its legal instruments, such as, for example, the Community patent and also its financial instrument for promoting research and European cooperation in this area, namely the framework programme.

The *raison d'être* of this new framework programme is to help to make a reality of the European Research Area with a view to stepping up innovation in Europe, in conjunction with all the efforts made to this end at national, regional and European level.

The new framework programme will be based on the following main principles: concentrating on a selected number of research areas in which EU action can add the greatest possible value; defining the various activities in such a way as to enable them to exert a more structuring effect on the research activities conducted in Europe thanks to a stronger link with national, regional and other European initiatives; simplifying and streamlining the implementation arrangements, on the basis of the intervention methods defined and the decentralised management procedures envisaged. Two fundamental aspects of this new framework programme are the opportunity for the candidate countries to participate fully in all the activities as countries associated with its implementation, and the fact that to a large extent it opens up EU research activities to the rest of the world. This proposal lays down that the multiannual framework programme for research and training activities in the field of nuclear energy (2002-2006) shall comprise all research, technological development, international cooperation, dissemination and exploitation activities as well as training in the following fields:

- treatment and storage of waste;
- controlled thermonuclear fusion;
- other Euratom activities;
- the Joint research Centre's Euratom activities.

The financial reference amount for the implementation of this framework programme for the period 2002-2006 shall be EUR 1 230 million, of which EUR 150 million for the treatment and storage of waste, EUR 700 million for controlled thermonuclear fusion, EUR 50 million for other Euratom activities, and EUR 330 million for the Joint Research Centre's activities. The framework programme is open to the participation of: the EEA countries, in accordance with the conditions established in the EEA agreements; the central and eastern European candidate countries (CEEC), in accordance with the conditions established in the Europe Agreements, in the additional protocols thereto and in the decisions of the respective Association Councils; Cyprus, Malta and Turkey, on the basis of bilateral agreements to be concluded with these countries; Switzerland and Israel, on the basis of bilateral agreements to be concluded with these countries. To enable this new framework programme to be implemented on schedule, the aim is that it should be adopted no later than the first half of 2002'.

Parliament's rapporteur for both the EC Framework Programme and the Euratom Framework Programme is Gérard CAUDRON (PSE, France). The Committee on Industry, External Trade, Research and Energy adopted Mr Caudron's report on the Euratom Framework Programme on 18 October 2001. In supporting the Rapporteur's position, the Committee, inter alia, 'called for the funds for research into thermonuclear fusion provided for in the proposal to be increased by EUR 100m (making a total of EUR 800m), thereby maintaining funding at the level provided for in the 5th framework programme. The committee also wanted the proposal to attach greater importance to the safety of existing nuclear reactors, with priority for reactors in the candidate countries, as well as reactors of the new generation. Moreover, it felt that the proposal should be complemented with a further emphasis on gender equality and cooperation with the candidate countries. Another key point raised in the report was the need for budgetary transparency and accountability. The Commission was urged to present a programming report each year on all activities to be financed under Heading 3 of the financial perspective, with a separate budget line for each specific programme, as well as an annual report on financial implementation. It should also inform the budgetary authority in advance whenever it intended to depart from the breakdown of expenditure stated in the general budget'.

But of particular significance for this study is amendment no. 4 in the Committee's report. This proposes a new recital 13(d) to read as follows:

'(13d) With a view to planning future framework programmes for research, technological development and demonstration and all other political instruments pertaining to the European Research Area, preparatory work should begin forthwith on measures to make good the democratic deficit in various European research policy areas, particularly nuclear research, by ensuring that Europe's citizens are deeply involved in discussions and the decision-making process,'

which is justified as follows:

'Justification

The diverse range of provisions laid down in the different treaties has resulted in a variety of procedures, thereby hindering supervision by Parliament (and, by extension, public involvement) in many European research policy areas. By way of example, it is unreasonable to exclude research in the area of nuclear physics from the framework programme itself on the basis of its having been set apart from the other research areas and brought under the EURATOM programme - all the more so

since the latter is not subject to codecision. There is ample time available between the sixth and seventh framework programmes to make good the resultant democratic deficit'[8].

Parliament adopted the Caudron reports on both the EC and Euratom Framework Programmes on 14 November 2001[9]. Amendment No. 4 on the Euratom Framework Programme was adopted unchanged.

The Commission published its modified proposals for both Framework Programmes on 22 November 2001[10]. It did not incorporate amendment No. 4 into its modified Euratom proposal.

### II.1.4. Conclusions

The development, over the years, of EC Treaty provisions which oblige a co-decision by Parliament and Council to adopt EC Research Framework Programmes, stands in stark contrast to the complete and total failure to amend the corresponding Euratom Treaty provisions. The European Parliament has hitherto reluctantly accepted the status quo, though whether it will be prepared to do so for much longer is at least debatable, not least because as part of the Budgetary Authority, it has the final say on non-compulsory expenditure, such as research activities under the Euratom Treaty.

One strategic option which Parliament might consider presupposes a disagreement arising between it and the Council in the adoption process of both any future EC Framework Programme and the 'any future Euratom Framework Programme'. In such a case, a Conciliation procedure would be introduced for the EC Programme, based on Articles 166 and 251 EC. But a Conciliation procedure (albeit technically a different one) can also be introduced where Parliament only has a simple consultation (single reading) – but where the act concerned has 'appreciable financial implications'. This possibility was created by the 'Joint Declaration by the European Parliament, the Council and the Commission on the institution of a conciliation procedure, of 4 March 1975', which states, inter alia, that the procedure 'may be followed for Community acts of general application which have appreciable financial implications, and of which the adoption is not required by virtue of acts already in existence'. Furthermore, 'The conciliation shall take place in a Conciliation Committee' consisting of the Council and representatives of the European Parliament. 'The Commission shall participate in the work of the Conciliation Committee,' and 'The aim of the procedure shall be to seek an agreement between the European Parliament and the Council'. Thus, although the rules concerning any final agreement differ, the structure of the Conciliation Committee is essentially the same as that later established for the co-decision procedure.

Accordingly, should the Council intend to depart from the Parliament's opinion on any future 'Euratom Framework Programme', Parliament could request the above Conciliation procedure. Moreover, and most interestingly, if Parliament and Council were at the same time involved in a co-decision Conciliation procedure for the parallel EC Framework Programme, then Parliament could try to ensure that both Conciliation Committees were comprised of the same members, and met on the same day in the same building. The Council would then arguably find it very difficult to negotiate in a wholly different manner and spirit

[8] EP Doc. A5-0355/2001, pp 6-7.
[9] EP minutes of 14/10/2001.
[10] COM (2001)709 final.

in the Euratom Conciliation, with the result that the latter process might actually be likened to a '*co-décision facultative*'. An alternative strategy would be for Parliament to deny the legitimation sought by the Commission's and Council's presentation of 'Euratom Framework Programmes' as being closely akin to the EC Framework Programmes, and to insist that they be presented simply as individual Euratom Research Programmes. (Reserving the term 'Framework Programme' for strategic programmes co-decided by Parliament and Council).

## II.2. Health and Safety

It will be recalled that the fundamental task assigned by the Euratom Treaty to the European Atomic Energy Community is 'to contribute to the raising of the standard of living in the Member States and to the development of relations with other countries by creating the conditions necessary for the speedy establishment and growth of nuclear industries'. (Article 1 Euratom). Article 2 then lists the actions the Community shall undertake 'in order to perform its task'. One of these, defined in Article 2(b), is to 'establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied'. This provision is further elaborated in Chapter III of the Euratom Treaty, entitled 'Health and Safety'. Since the chapter is relatively short, the essential elements can be reproduced here in their entirety.

'Article 30

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

The expression basic standards' means:

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

Article 31

The basic standards shall be worked out by the Commission after it has obtained the opinion of a group of persons appointed by the Scientific and Technical Committee from among scientific experts, and in particular public health experts, in the Member States. The Commission shall obtain the opinion of the Economic and Social Committee on these basic standards.

After consulting the European Parliament the Council shall, on a proposal from the Commission, which shall forward to it the opinions obtained from these Committees, establish the basic standards; the Council shall act by a qualified majority.

Article 32

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

The Commission shall examine any request made by a Member State.

Article 33

Each Member State shall lay down the appropriate provisions, whether by legislation, regulation or administrative action, to ensure compliance with the basic standards which have been established and shall take the necessary measures with regard to teaching, education and vocational training.

The Commission shall make appropriate recommendations for harmonizing the provisions applicable in this field in the Member States.

To this end, the Member States shall communicate to the Commission the provisions applicable at the date of entry into force of this Treaty and any subsequent draft provisions of the same kind.

Any recommendations the Commission may wish to issue with regard to such draft provisions shall be made within three months of the date on which such draft provisions are communicated.

Article 34

Any Member State in whose territories particularly dangerous experiments are to take place shall take additional health and safety measures, on which it shall first obtain the opinion of the Commission.

The assent of the Commission shall be required where the effects of such experiments are liable to affect the territories of other Member States.

Article 35

Each Member State shall establish the facilities necessary to carry out continuous monitoring of the level of radioactivity in the air, water and soil and to ensure compliance with the basic standards.

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

Article 36

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

Article 37

Each Member State shall provide the Commission with such general data relating to any plan for the disposal of radioactive waste in whatever forms will make it possible to determine whether the implementation of such plan is liable to result in the radioactive contamination of the water, soil or airspace of another Member State.

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

Article 38

The Commission shall make recommendations to the Member States with regard to the level of radioactivity in the air, water and soil.

In cases of urgency, the Commission shall issue a directive requiring the Member State concerned to take, within a period laid down by the Commission, all necessary measures to prevent infringement of the basic standards and to ensure compliance with regulations.

Should the State in question fail to comply with the Commission directive within the period laid down, the Commission or any Member State concerned may forthwith, by way of derogation from Articles 141 and 142, bring the matter before the Court of Justice.

Article 39

The Commission shall set up within the framework of the Joint Nuclear Research Centre, as soon as the latter has been established, a health and safety documentation and study section.

This section shall in particular have the task of collecting the documentation and information referred to in Articles 33, 36 and 37 and of assisting the Commission in carrying out the tasks assigned to it by this Chapter'.

We have already noted that the implementation mechanisms foreseen in the Euratom Treaty are essentially the same as those provided for in the EC Treaty: via Commission or Council Regulations, Directives, Decisions and Recommendations. Over the years the Health and Safety provisions in the Euratom Treaty have indeed been implemented via secondary legislation within this framework. The Commission has regularly published a compilation of all the current legislation in this domain[11].

The observant reader will by now have noted something rather surprising. The Euratom Treaty (and in particular its Chapter III) provides no competence whatsoever to the European Atomic Energy Community concerning the safety of nuclear reactors, or other nuclear installations.

This was, and, as we shall see, still is, regarded by the Member States as an exclusively national competence. The only current legal basis for Euratom activities in the domain of nuclear reactor safety are two Council Resolutions which establish what is an essentially inter-governmental (or inter-regulator) framework for such activities, which are focussed on improving safety standards in Central and Eastern Europe.

Thus the Euratom Treaty provides for the establishment of basic safety standards (i.e. maximum dose/exposure limits) for workers, and for the general public against the dangers of ionising radiation; it provides for the exchange of information between the Member States (and the Commission) in the event of a radiological emergency such as a nuclear reactor accident); and it has enabled the establishment of maximum permitted levels of radioactive contamination of foodstuffs following a nuclear accident. But, remarkably, it has nothing whatsoever to say about the standards to be applied in the design, construction, or operation of nuclear reactors, the failure of which could provoke exactly the kind of radiological emergency: the consequences of which the Euratom Health and Safety secondary legislation is designed to address.

### II.2.1. Radiation Protection Standards

This study cannot comment on the appropriateness, or otherwise, of the basic radiation protection standards which have been set by Euratom. By and large these have followed (but have occasionally led) the recommendations issued periodically by the International Commission on Radiological Protection (ICRP), an authoritative (but essentially self-appointed) group of scientific experts in the field of radiation protection. Exposure limits have been significantly reduced over time, as further research has been carried out into the health consequences of exposure to ionising radiation. The cohort of survivors of the atomic bombing of Hiroshima and Nagasaki are the most important study group in this regard, but medical exposure via X-rays, and its consequences, is also widely monitored, as is the health of workers in the nuclear industry.

There has always been a lively debate in the scientific community about the shape of the so-called ‘dose-response’ curve, especially concerning exposure to low doses of radiation. Some have argued that the curve can simply be extrapolated back to zero, others that there are significant effects even at very low doses and others that below certain ‘threshold’ doses

[11] Radiation Protection: Community Radiation Protection Legislation (available free of charge from European Commission, DG ENV.C.I (Radiation Protection Unit), rue Alcide de Gasperi, L-2920 Luxembourg. Available also at http://www.europa.eu.int/comm/environment/radprot/legislation/legis.htm).

the effects are insignificant. The debate is on-going. **The important point to note, however, and one which is often overlooked, is that any 'above zero' radiation exposure standard embodies some form of risk-benefit analysis.** X-rays do damage tissues to a certain extent - but they also enable life-saving diagnoses, or more mundanely the prevention of handicap via the accurate setting of broken bones. Everyone is exposed to a natural background radiation: those who live on granite sub-strata, or those who spend a great deal of time in aircraft, more so than some of the rest of us. Few, if any, industries can afford to reduce the risk to their workforce to zero - be it the construction industry, the chemical industry, or even the commercial sector with its company representatives driving company cars on a daily basis. Thus the basic standards proposed by the ICRP, and those adopted by Euratom, represent a balance between socio-economic benefit, and individual risk. In the case of Euratom, the task of the Community, as we have seen, is, inter alia, that of 'creating the conditions necessary for the speedy establishment and growth of nuclear industries'. The setting of basic safety standards by the Community is to be done 'in order to perform its task'. It is not to be done so as to render impossible the growth and establishment of nuclear industries.

If the industry (including in particular the nuclear reprocessing industry) is ever in a techno-economic position to be able to live with the concept of zero emissions and zero 'above-background' exposure (and this is the long-term goal it sets itself), then standards could be adjusted accordingly. It is important just to note that radiation standards are not simply arrived at by the application of science, but by the application of science in a real world socio-economic context - which is why parliamentary scrutiny of such standards is both legitimate and necessary.

### II.2.2. Radioactive Waste

The Euratom Treaty provides very little Community competence concerning radioactive wastes, indeed only Article 37 (reproduced above) makes mention of the subject and simply obliges the Member States to provide the Commission with such data relating to any plan for the disposal of radioactive waste 'as will make it possible [for the Commission] to determine whether the implementation of a such plan (sic) is liable to result in the radioactive contamination of the water, soil or airspace of another Member State'. It is thus quite probable that most of the activities carried out relating to radioactive wastes within the Member States will not involve Euratom, other than with respect to basic radiation protection standards. The same applies to shipments of radioactive wastes. Internal shipments within a Member State must of course respect the basic exposure limits to workers and the general public, but are not subject to any other Community legislation (unless Euratom safeguards have to be informed because of the fissile material content of the wastes).

The major pieces of Community legislation regulating the shipment of radioactive wastes is Council Directive 92/3/EURATOM 'on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community[12], which, as its title plainly states, is only concerned with trans-frontier shipments.

It is, incidentally, instructive to read some of the recitals of this Directive. There we read, for example, that 'Council Directive 84/631/EEC of 6 December 1984 on the supervision and

[12] OJ L 35, 12/02/92, p.24ff.

control within the European Community of the trans-frontier shipment of hazardous waste does not apply to radioactive waste;'

and furthermore that

'Whereas by Decision No 90/170/EEC the Council has decided that the Community should be Part to the Basel Convention on the control of trans-boundary movements of hazardous wastes and their disposal of 22 March 1989; whereas that Convention does not apply to radioactive waste;'

These recitals are revelatory of the typical exclusion of radioactive substances from both EC and international legal provisions controlling hazardous substances.

But the Euratom Treaty sets only the legal basis for legislation covering the **protection of human beings** against radiation: it is debatable which legal basis applies to the **protection of the environment** from radiation. The position of some Member States is quite clear: radiation as it affects the environment (earth, water and soil) is not covered by the EC Treaty (which would imply that the codecision procedure was to apply). However, it is not particularly clear which legal basis could be applied. In this context the Commission has pursued a strategy of systematically including man-made radioactive substances in legislative proposals. The recent Framework Directive on Water Policy is a case in point[13]. Whereas the Council did not include man-made radioactive substances in the list of main pollutants (Annex VIII of the proposed directive), the Commission did so and was supported by Parliament: in the recommendation for a second reading, Parliament's rapporteur, Mrs Lienemann, explicitly emphasised the inclusion of radioactive substances in the recommendation[14]. Thus, Parliament in its second reading went along with the recommendation of its rapporteur and the Commission that there should **not** be a natural right to discharge hazardous or (man-made) radioactive substances into water. Parliament chose a similar approach in the negotiations leading to the future adoption of a Community framework directive for cooperation concerning accidental marine pollution[15]. Rapporteur McKenna called for the inclusion of radioactive substances to be included in a definition of harmful substances as regards marine pollution, a stance that was endorsed by the Commission.

The radioactive wastes shipment Directive essentially imposes a system of prior informed consent by national competent authorities for trans-frontier shipments, similar to that required for hazardous wastes.

The latest manifestation of the complex relationship between the Euratom Treaty and the EC Treaty in matters of environmental protection is the recent Commission proposal for two Council Decisions, the first 'to approve on behalf of the European Atomic Energy Community (EURATOM) the "International Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Mangement"'[16],

and the second

[13] This can be located on the European Parliament's website www.europarl.eu.int. Legistlative Observatory (OEIL) code: COD/1997/0067, initial proposal COM(1997)0049 and COM(1997)0614 (modified).
[14] 'Recommendation for second reading on the common position adopted by the Council with a view to the adoption of a European Parliament and Council directive on establishing a framework for Community action in the field of water policy', A5-0027/2000, rapporteur Lienemann, 03/02/2000.
[15] OEIL code: COD/1998/0350, initial proposal COM(1998)0769.
[16] COM(2001)520 final, 15/10/2001.

'to conclude for the European Community (EC) the "International Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management"'[17].

The Commission's reasoning behind the presentation of these two related proposals is spelled out in the Explanatory Memorandum:

'4. **Objectives Of The European Atomic Energy Community And The European Community Reflected In The Scope And The Objectives Covered By The Joint Convention**

The Treaty establishing the European Atomic Energy Community in its preamble requests the creation, within the framework of the development of a nuclear industry, of the "conditions of safety necessary to eliminate hazards to the life and health of the public" and expresses the desire "to cooperate with international organisations concerned with the peaceful development of atomic energy".

To this purpose "the Community may, within the limits of its powers and jurisdiction, enter into obligations by concluding agreements or contracts with… an international organisation …". (Article 101 EAEC-Treaty).

Within the concept of the European Atomic Energy Community in the first place human beings ("workers and the general public") are protected against the dangers arising from ionising radiation and only ancillary aspects of the environment which are conditions for human health as e.g. water, air, soil. The environment as an independent concept, equivalent to human health, is not covered in the Euratom Treaty or, concomitantly, by derived law enacted under it.

On the contrary, the Treaty establishing the European Community, in parallel to the objectiveof "protecting human health", stipulates the equivalent concept of the protection of the environment. It requires that "Community policy on the environment shall contribute to pursuit the "… objectives" of "preserving" and "protecting … the quality of the environment". And further: "promoting measures at international level to deal with regional or worldwide environmental problems" (Article 174 paragraph 1 EC-Treaty).

To achieve these objectives "within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations" (Article 174 paragraph 4 EC-Treaty).

In the area of radioactive waste management important aspects of environmental protection are included that go beyond the scope of the Euratom Treaty. Therefore, there is a major environmental dimension, which, as it has not been included in the Euratom Treaty, requires reference to the environmental provisions both in and resulting from the EC-Treaty'.

It remains to be seen how the Council of Ministers will react to these two proposals, but they do illustrate the uncertainty and confusion which inevitably result from the existence of two sets of Treaty provisions which can be used to address the problems of the management of spent nuclear fuel and radioactive wastes.

### II.2.3. Nuclear Reactor Safety

We have already noted the complete absence from the Euratom Treaty of any provisions directly concerning safety of nuclear installations in the European Atomic Energy Community. It is also worth noting that there is widespread misunderstanding and confusion

[17] ibid.

about this, because of the existence of the Euratom Safeguards system and the inspectors it employs. But the concept of safeguards in the context of the Euratom Treaty has got nothing to do with 'safety'. Rather it concerns the systems put in place to prevent or detect the diversion of 'special fissile materials' (i.e. Plutonium - 239, Uranium - 233, and Uranium - 235) from their 'declared use'. In other words, it concerns the 'accountancy' systems for the control of fissile materials in the civil nuclear fuel cycle that could be diverted from their declared use - i.e. the **covert** construction of nuclear weapons. Euratom Safeguards system is described in more detail in Chapter 5, but essentially it is the job of Euratom Safeguards inspectors to monitor and control the flow of 'special fissile materials', which activity has no formal connection whatsoever with the issue of nuclear safety, be it in reactors, in reprocessing plants, enrichment plants or fuel fabrication facilities.

The Member States, via the Euratom Treaty, handed over control of nuclear safeguards in the civil cycle to a supranational authority, and have given that authority considerable powers. But they were (and by and large still are) extremely reluctant to do the same with respect to the safety of nuclear installations, and thus the latter has remained a more-or-less exclusively national competence, controlled by national regulatory bodies.

Thus while there is extensive talk of 'international safety standards' and 'Western standards' in many EU documents dealing with nuclear safety issues, especially in the context of Enlargement, there is no Euratom Directive establishing the basic safety standards for the design, construction and operation of nuclear reactors in the EU. A recent report by the Court of Auditors makes this point rather forcibly: 'At the end of 1997, owing to the absence of a binding legal basis, there was still no formal consensus at [the] European level concerning technical standards in the area of design and operational safety of nuclear installations. The 25 basic nuclear-safety principles published by the IAEA are still implemented in accordance with each Member State's own technical standards and regulations, which has not facilitated the action the EU has been taking with regard to the safety authorities in the CEECs and the NIS'[18].

It is also noteworthy that the Commission, in its replies to the Court, does not comment on this observation.

The nearest equivalent EC Directive is the so-called 'Seveso Directive'. The original version of this Directive, as specified by its Article 2, did not apply (inter alia) to 'nuclear installations and plant for the reprocessing of radioactive substances and material'. Subsequent amendments to the 'Seveso Directive' have all left in place this exclusion of nuclear power. The latest version of this Directive, which repealed earlier versions, excludes from its coverage: '(b) hazards created by ionising radiation' (in Article 4). The justification for this on-going exclusion has always been that, according to the Commission, the nuclear sector was covered by 'specific, specialised legislation'. This is rather a remarkable (as well as remarkably vague) assumption, given the effective exclusion from the Euratom Treaty of any provisions concerning nuclear reactor safety. Thus it is up to each Member State to define its own nuclear reactor safety regulations, and regulatory structure, with some possible co-ordination via the IAEA.

Given the more-or-less inevitably cross-border nature of any major nuclear accident, and given the aim of the Euratom Treaty of creating a Common Market for nuclear energy, the omission of any harmonisation provisions for nuclear reactor safety does seem quite remarkable, even more so in the light of the enlargement negotiations. In Agenda 2000, published in 1997, the Commission expressed its concern about nuclear safety in Central and

[18] Court of Auditors Special Report 25/98, OJ C 35, 09/02/1999, p.10, para 3.1.

Eastern Europe, while at the same time it recognised these countries' strong wish to keep the nuclear option open and their sovereign right to do so. The Commission stated that:

'The problem of nuclear safety in some candidate countries causes serious concern to the EU, even independently of enlargement, and should urgently and effectively be addressed. It is imperative that solutions, including closure where required, be found to these issues in accordance with the Community nuclear *acquis* and a "nuclear safety culture" as established in the western world as soon as possible and even before accession'.

and:

'The solution is not simply to close them down, as they do not all pose the same risk and the cost of obtaining alternative energy supplies would be extremely high'.

In order to deal with unsafe reactors in the region, Agenda 2000 sets out the implementation of a number of nuclear safety programmes for some, and calls for the early closure of others. Unfortunately, as noted above, the Euratom Treaty provides no explicit *Communautaire* legal basis for such a policy, although it does possess, in its Article 203, the equivalent of the EC Treaty 'general purpose' Article 308, although this does require unanimity in Council.

It would, however, not be correct to assume that therefore no initiatives have been taken, under the 'umbrella' of the Euratom Treaty (or at least standing somewhere near to the 'umbrella'…), in the field of nuclear safety, especially concerning the countries of Central and Eastern Europe - initially out of post-Chernobyl self-interest, and now because of the question of Enlargement.

The Euratom Council of Ministers, which is, of course, institutionally distinct from the EC Council of Ministers, has adopted two resolutions on nuclear safety issues, which have provided a modest on-going mandate for the Commission to develop policy initiatives in this area. The Commission's web-site provides a good summary of these developments[19]. In its Resolution of 22 July 1975[20], the Council considered that the technological problems relating to nuclear safety, in view of their environmental and health implications, called for appropriate action at Community level which would take into account the prerogatives and responsibilities assumed by national authorities (i.e., preserving the inter-governmental, non-*Communautaire* approach). The Council Resolution of 18 June 1992[21] encouraged the continuation of the process of consultation and co-operation established by the resolution of 1975, and recommended its extension to third countries, notably to the CEEC and the NIS. The Commission states that these two Council resolutions 'give a framework and working methods for the progressive harmonisation of safety requirements and practices'; but in the absence of any formal Treaty base, or formal Council Decision, such 'inter-governmental' or 'inter-operator/regulator' standards (or breaches thereof) could not be enforced by the European Court of Justice. And it is the supremacy of Community law over national law that is the cornerstone of the European Communities.

The Commission tries hard to maintain the impression that it has some competence in the domain of nuclear reactor safety, especially in the context of enlargement. Witness this Parliamentary written question and Commission response: -

[19] http://europa.eu.int/comm/environment/nuclear/nuclearsafety/htm.
[20] OJ C 185/1, 14/08/1975.
[21] OJ C 172/2, 08/07/1992.

‘(2000/C 225 E/108) **WRITTEN QUESTION E-2335/99**
**by Rolf Linkohr (PSE) to the Commission**
(13 December 1999)

Subject: Nuclear reactors in the applicant countries

1. What is the Commission’s position with regard to nuclear reactors in the applicant countries.

2. Does the Commission intend that the reactors should be shut down ahead of schedule and if so, what is its timetable for this?

3. Does the Commission agree with the closure plans for reactors contained, in particular, in the national energy plans of Lithuania and Slovakia?

4. Can the Commission say whether and when nuclear reactors in Lithuania are due to be inspected?

**Answer given by Mr Verheugen on behalf of the Commission**
(11 January 2000)

1. The Commission has always accorded particular attention to nuclear safety in the context of enlargement. This area will be subject to continued scrutiny and supportive action by the Commission in the pre-accession period. The Commission has entered into close co-operation with the safety authorities of the candidate countries in order to strengthen their resources and their independence and thereby to further extend the nuclear safety culture which has developed within the Community.

2. The Commission’s policy on these issues is clearly outlined in Agenda 2000 of July 1997, where the reactors of the nuclear power plants in the candidate countries are divided into three categories: reactors of Western design, Soviet-designed plants which can be upgraded to meet international safety standards, and Soviet-designed units which can not be upgraded at a reasonable cost. The Commission has repeatedly stated that the third category nuclear power plants operating in candidate countries should be closed at earliest practical dates, in the framework of a comprehensive energy strategy. This applies to Bohunice V-1 in Slovakia and to the Ignalina nuclear power plan (NPP) in Lithuania, as well as to units 1-4 of the Kozloduy NPP in Bulgaria.

3. The Commission has had intense and fruitful discussion on this issue with the authorities of the candidate countries. In the second regular reports on progress of candidates towards accession of 13 October 1999, the Commission welcomed the decisions of the Lithuanian and Slovak authorities on early closure of the Ignalina an Bohunice V-1 reactors. The Commission also welcomes the recent understanding with Bulgaria with regard to early closure of Kozloduy 1-4. The Commission regards these decisions as an expression of the countries’ commitment to integration and as an important contribution to nuclear safety in Europe. The Commission will certainly continue the dialogue on this issue with the authorities concerned.

4. The Lithuanian safety authority ensures on a regular basis that the operator of the nuclear reactors implements the safety provisions of the safety improvement programme. Granting of operation permits is conditional on the results of these safety revisions, the safety evaluation reports. The Commission supports the Lithuanian safety authority and its work with resources from the PHARE programme’[22].

[22] OJ C 225E, 08/08/2000, pp. 106-107.

The European Parliament has, to a certain extent, acknowledged the difficulties concerning Community competence (or the lack of it) in this domain. In its resolution of 11 March 1999 'on the Communication from the Commission to the Council and the European Parliament on nuclear sector related activities for the applicant countries of Central and Eastern Europe and the new Independent States' (COM(98)0134)[23] the Parliament, in paragraph 4, called on the Commission -

'to seek an accord on nuclear safety standards and regulation for the construction and operation of nuclear power stations, the fuel cycle and transport conditions with the CEEC and NIS, within the framework of the International Convention on Nuclear Safety and with EURATOM, if and when EURATOM guidelines are established;'

and in paragraphs 5 & 6

> '5. Proposes that the accession negotiations with the countries of Central and Eastern Europe should ensure that compliance with these safety standards is guaranteed;
>
> 6. Welcomes the formation of the Western European Nuclear Regulators Association and its contribution both to a definition of nuclear safety standards which could apply to the European Union, and to the creation of independent authorities to ensure compliance with the rules on reactor safety and transport safety in the candidate countries;'

Thus it was that in 1999 the Commission launched a project 'to produce indicators that should assist in assessing nuclear safety in the candidate countries'. Furthermore, a forum was established, bringing together nuclear regulators and power plant operators from the Acceding States. This in fact meant enlarging the existing Nuclear Regulators Working Group (NRWG) to include the applicant countries.

Furthermore, in paragraph 5 of its Resolution of 18/05/2000 'on falsification of data concerning MOX fuels at Sellafield'[24], Parliament, concerned about nuclear safety, requested 'the Commission to propose legislation for establishing EU-wide high minimum standards for the safe and reliable design, construction and operation of nuclear and nuclear-related installations and for nuclear safety management systems, particularly in view of the practical, and possibly political, problems arising from the forthcoming accession of new Member States'.

### II.2.4. Recent initiatives with respect to nuclear installations

One of the more 'fully-fledged' initiatives to have emerged from the determinedly non-*Communautaire* approach emanating from the Member States has come from WENRA - the Western European Nuclear Regulators' Association.

This is the association of the Heads of nuclear regulatory authorities of Western European countries with nuclear power plants, namely Belgium, Finland, France, Germany, Italy, the Netherlands, Spain, Sweden, Switzerland and the United Kingdom. The association has the following objectives:

- To develop a common approach to nuclear safety and regulation, in particular within the European Union,

[23] OJ C 175, 21/06/1999, p. 288.
[24] OJ C 059, 23/02/2001, p. 237.

- To provide the European Union with an independent capability to examine nuclear safety and regulation in candidate countries,
- To evaluate and achieve a common approach to nuclear safety and regulatory issues which arise.

These objectives seem rather similar to those that a Euratom '*Communautaire*' approach to the issue might have come up with - except, of course, that WENRA is self-created, and emphatically *non-Communautaire*. Having created itself, one of the issues it has chosen to address is the problem of nuclear safety in the applicant countries applying to join the EU.

In October 2000 WENRA published a report entitled "Nuclear safety in EU candidate countries"[25]. The report justifies its own existence in the following paragraphs in the 'foreword' to the report, which are so concise that they can be reproduced here in their entirety:

> 'Nuclear safety in the candidate countries to the European Union is a major issue that needs to be addressed in the framework of the enlargement process. Therefore WENRA members considered it was their duty to offer their technical assistance to their Governments and the European Union Institutions. They decided to express their collective opinion on nuclear safety in those candidate countries having at least one nuclear power plant: Bulgaria, the Czech Republic, Hungary, Lithuania, Romania, Slovakia and Slovenia.
>
> The report is structured as follows:
> - A foreword including background information, structure of the report and the methodology used,
> - General conclusions of WENRA members reflecting their collective opinion,
> - For each candidate country, an executive summary, a chapter on the status of the regulatory regime and regulatory body, and a chapter on the nuclear power plant safety status.
>
> Two annexes are added to address the generic safety characteristics and safety issues for RBMK and VVER plants. The report does not cover radiation protection and decommissioning issues, while safety aspects of spent fuel and radioactive waste management are only covered as regards on-site provisions.
>
> In order to produce this report, WENRA used different means:
> - For the chapters on the regulatory regimes and regulatory bodies, experts from WENRA did the work,
> - For the chapters on nuclear power plant safety status, experts from WENRA and from French and German technical support organisations did the work,
> - Taking into account the contents of these chapters, WENRA has formulated its general conclusions in this report.
>
> WENRA's methodology for reaching the collective opinion expressed in the general conclusions has been to compare the current situation in the candidate countries to that in Western European countries using a common format which is reflected in the structure of the chapters. All major safety issues identified in past international co-operation have been considered. For each candidate country, a comparison was made with the current Western European practices and, whenever appropriate, discrepancies or deficiencies were clearly identified.

[25] http://www.asn.gouv.fr/data/information/wenraRpt02.htm.

> WENRA has not made a detailed safety assessment of the different nuclear power plants. Nuclear safety is a national responsibility and it belongs to the regulatory body of the various candidate countries to regulate the safety of all nuclear installations on their national territory, in line with the national legislative and regulatory framework.
>
> WENRA's collective opinion on the regulatory systems is based on generic preconditions for an independent and strong regulatory regime such as a comprehensive nuclear legislation, the existence of an adequate licensing system, appropriate resources and technical support. WENRA's collective opinion on nuclear power plant safety is based on widely applied standards in Western European countries for the defence-in-depth and associated barriers. Quantitative comparisons of probabilistic safety assessments have not been used as the available results are of different depth and quality.
>
> A first version of this report was issued in March 1999. It was solely based on the direct evidence WENRA had gathered through the different activities of its members (participation in multilateral assistance programmes, and in particular the PHARE programmes and the IAEA extra-budgetary programme, and in bilateral contacts). In particular, information necessary to formulate an opinion on the regulatory regimes and the regulatory bodies were in many cases derived from the regulatory assistance projects of the RAMG implemented under the PHARE programme. With regards to the safety status of nuclear power plants, WENRA had to recognise that in some cases the direct information was not sufficient to formulate an opinion.
>
> For the present version, WENRA took the appropriate steps to collect the necessary information. In addition to the direct evidence already available, supplementary information was gathered through meetings with the candidate countries' regulatory bodies and plant operators. In particular, an ad-hoc Task Force was established to gather and evaluate additional information on VVER-440/230 reactors.

WENRA's analysis of the situation with respect to nuclear safety in each of the candidate countries (and these analyses are reasonably detailed) is then introduced with the following words:

> "We, Heads of the Nuclear Regulatory Authorities assembled in WENRA, considering the status achieved on nuclear safety in the candidate countries to the European Union and taking into account the results of the investigations of experts from WENRA and from French and German technical support organisations, come to the following conclusions:'

What is the European Parliament to make of all this? WENRA is undoubtedly authoritative, but since its report is presented **entirely outwith** the European Communities framework, Parliament has no institutional mechanism to react to it, either positively or negatively. It does not even have an institutional mechanism to deal with the rather peculiar goings-on in the Council of the European Union, in which a Community Institution is elaborating an approach to nuclear safety in the context of enlargement which is decidedly and avowedly *non-Communautaire*.

The details are as follows:

On 26 July 2000 the Committee of Permanent Representatives of the Member States at the European Union (Coreper) adopted a mandate instructing the Working party on Atomic Questions (usually known as 'The Atomic Questions Group') to supply a contribution with a view to defining the European Union's position on nuclear safety in the context of enlargement. The Working Party was requested to report to Coreper before the end of 2000.

The report was in fact submitted to Coreper at the end of November 2000[26]. The report states its purpose with admirable clarity[27].

> '**I. PURPOSE OF THE REPORT**
>
> The purpose of this contribution is to provide relevant methodology and documents on how to evaluate legislation in the nuclear sector, the organisation of management and regulatory authorities and the level of safety of the installations in each of the candidate States with a view to defining the Union's position on a "high level of nuclear safety" to be requested in those countries.
>
> The following comments should be kept in mind when looking at the other sections of the report:
>
> i. The report addresses nuclear safety only in the context of the enlargement process. It will focus on the means of defining the EU position on a "high level of nuclear safety".
>
> ii. This contribution ought not in any circumstances to lead to any transfer of competences from the Member States to the Community.
>
> iii. There should be no time limit as to the validity of this contribution be it with respect to the date of accession of a given country or a specific stage in the enlargement process. In other words the methodology and documentation to be recommended should remain valid throughout the enlargement process; to that effect some review mechanism could be foreseen.
>
> iv. The competence and responsibilities relating to the safety of the design, construction and operation of a nuclear installation lie with the State which has jurisdiction for the installation concerned.
>
> v. The methodology for the evaluation process should be universal with respect to candidate States. This means that there is no prior identification of specific States to which this information should be applied, which implies that:
>
> a) it is not limited to candidate States with a nuclear power programme up and running at present.
> b) it should be applicable to all types of reactor designs and varied regulatory environments encountered in the candidate States.
>
> In any case it is understood that the demands made of the candidate States for them to achieve the expected "high level of nuclear safety" ought not to be stricter than the requirements in force in the EU'.

The Atomic Questions Group in particular, and the Council in a more general sense, thus gave themselves the rather difficult task of defining a sort of 'general *acquis*' in the domain of nuclear safety, whilst at the same time insisting that it was in no sense a European Atomic Energy Community *acquis*, but rather the embodiment of the collective wisdom and experience of the national regulators within the EU. (In fact, on 29 September 2000, the

[26] Council of the European Union, Document Ref. 13789/00 ATO 74 ELARG210, 24/11/2000. (Note. This report does not carry a **security** classification within the meaning of the 'Decision of the Secretary-General of the Council/High Representative for Common Foreign and Security Policy of 27 July 2000 on measures for the protection of classified information applicable to the General Secretariat of the Council'. It is classed as *limité*. This classification and its consequences, are explained in Article 2.2 of this Decision. Members of the public can request a copy of the report by sending an e-mail request to: access@consilium.eu.int quoting the reference number).

[27] ibid. p.3.

Commission had provided the Atomic Questions Group with a 'non-paper' which summarises 'non-binding EU *acquis* in the field of nuclear installation safety')[28].

The report by the Atomic Questions Group is quite explicit about the *'non-communautaire'* nature of the '*acquis*':

> '**IV. ACQUIS RELATED TO THE SAFETY OF NUCLEAR INSTALLATIONS:**
>
> Although the mandate makes use of the term "*acquis*" this term refers to the corpus of legally binding Community acts, already subject to the formal screening process, and ultimately to the appreciation of the Court. But the achievements in EU Member States towards a "high level of safety", to a large extent, do not find their origin in the *acquis* in its strict legal sense, given their unique responsibility in the field of safety of the design, construction and operation of nuclear installation.
>
> The purpose of this section of the report is to identify where can be found the appropriate information to define a "high level of nuclear safety", irrespective of the binding or non-binding nature of this information'[29].

The report therefore considers two sources of such a '*non-Communautaire acquis*': existing international conventions relevant to nuclear safety; and 'common principles and views on nuclear safety issues reached by the EU'.

The report stresses that a high degree of convergence on the substance of technical and organisational requirements and criteria has been achieved in the EU, within the framework of national responsibility for nuclear safety regulation, but that this 'has been developed through voluntary co-operation' - though adding that the Commission has, via a variety of mechanisms, supported this co-operative work. So, although there is no Community '*acquis*', there is by now a 'common EU perspective' which 'has to be made available to candidate States and [which] must be reflected when defining a high level of nuclear safety'. (In fact one of the main mechanisms which has been established to facilitate this process was the establishment of 'WENRA', the Western European Nuclear Regulators Association).

The report proposes the creation of a 'Working Party on nuclear safety' 'established for the sole purpose of the enlargement process under the auspices of the Council'. It would comprise experts nominated by the Member States, and representatives of the Commission, and 'will follow the confidentiality rules for the Council Working Parties'. It would in fact be an ad-hoc formation of the Atomic Questions Group.

The task of the Working Group on Nuclear Safety would be to undertake the technical review process of the safety standards in the nuclear installations in the applicant countries, and to recommend improvements where necessary.

Coreper, at its meeting of 6 December 2000 approved the proposal from the Atomic Questions Group, and duly established the Working Party on Nuclear Safety. The Member States and the Commission have nominated representatives to it. Moreover, in April 2001 the Commission presented a report entitled 'Nuclear Safety in Central and Eastern Europe' (EUR19895EN)[30], which contributed to the ongoing work in the Atomic Questions Group.

[28] http://europa.eu.int/comm/energy/en/nuclearsafety/pdf/non_binding_acquis.pdf.
[29] ibid. p.6.
[30] http://europa.eu.int/comm/energy/en/nuclearsafety/pdf/eur19895_main.pdf.

The European Parliament had no role or involvement in this process, or in the subsequent activities of the Working Party, which presented its report in May 2001[31]. At the time of writing, this report represents the latest thinking by the Member States on the issue of nuclear reactor safety in Central and Eastern Europe. But in order for the European Parliament to be involved in this process, nuclear installation safety would have to become a Community matter.

The Euratom Treaty provides, in its Article 203, the potential legal basis for a Community Directive to establish basic standards for, in current parlance, 'benchmarking', the criteria for the safe design, construction, and operation of nuclear installations in the European Energy Community.

'Article 203

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

Such a Directive, being implemented by the Member States, who already have in place Nuclear Regulatory Authorities which doubtless already meet the requirements for expertise and independence which such a Directive would require, would not alter the current status quo at all: French inspectors would continue to monitor and control French nuclear installations; and the same for the British, the Germans, the Spanish, the Dutch, and so on. So, it is quite difficult to understand the hostility to this concept which is manifested by the Member States, especially the 'nuclear' States, which appear to have a pathological fear of even considering a possible Euratom Directive on the safety of nuclear installations, including the establishment of basic safety criteria for the design, construction and operation of nuclear reactors in the Community. Why is this the case? Perhaps because they appear to assume, erroneously, that this would necessitate the creation of a European Nuclear Installations Safety Inspectorate, which would involve teams of staff from other Member States being allowed to wander around sensitive national nuclear installations. This fear seems to arise from the model provided by Euratom Safeguards provisions (see below), and the existence of Euratom Safeguards inspectors who do have such powers. But this model would not of course apply in the case of a Community Directive. A nuclear installations/reactor safety Directive would be implemented via the existing national nuclear regulatory provisions and organisations, and would thus not require the creation of any European Inspectorate at all.

Other elements may also contribute to explaining the phenomenon. Perhaps the Member States are concerned that any safety standards they considered it necessary to apply in central and Eastern Europe would also, logically, be imposed in Western Europe too, with possible consequences for some of the older reactors in current operation. A Community Directive would, necessarily, be intended to establish uniform standards - a level playing field - which would rule out the possibility of special pleading that experienced operators who have the requisite expertise should be permitted to operate older reactor-types which don't quite meet current safety requirements. Lastly, the Member States simply seek to limit the acquisition of further competences by the European Communities. Having resisted

[31] Council Document 9181/01 of 27 May 2001. http://register.consilium.eu.int/pdf/en/01/st09/09181en1.pdf and addendum: http://register.consilium.eu.int/pdf/en/01/st09/09181-a1en1.pdf.

Community competence in this domain for over 40 years, they will not be easily persuaded that it must now be envisaged.

The applicant countries, faced with a requirement to meet Western European Nuclear Safety standards, might be tempted to ask just where these standards are defined and how they are enforced within the Framework of Community law. On the other hand, they wish to join the EU, so may conclude that rocking the nuclear safety boat is not a propitious approach to so doing.

The European Parliament, on the other hand, is increasingly frustrated by its non-involvement in nuclear safety issues, and is calling with increasing insistence for some kind of Community approach.

## II.3. Euratom Loans

The Euratom Treaty makes no mention of the provision of Euratom Loans. Nevertheless they have in recent years become a particularly visible feature in the Euratom political landscape, because of their (potential and actual) use to modernise and upgrade the safety systems and other technical features of nuclear reactors in Central and Eastern Europe.

Euratom Loans was first established by 'Council Decision 77/270/EURATOM of 29 March 1977[32] empowering the Commission to issue Euratom Loans for the purpose of contributing to the financing of nuclear power stations'.

Article 1 of this Decision is clear and to the point:

'Article 1

The Commission is hereby empowered to issue loans, on behalf of the European Atomic Energy Community (Euratom) and within amounts fixed by the Council, the proceeds of which will be lent for the purpose of financing investment projects relating to the industrial production of electricity in nuclear power stations and to industrial fuel cycle installations.

The Commission shall borrow no more than the amounts of the loans for which it has received applications'.

Article 3 allocates to the Commission the responsibility for the decisions on Euratom loans.

'Article 3

The Commission shall decide on the grant of each loan. Its decision shall be based in particular on the principle that preference will be given to the use of resources under the most profitable conditions in installations of optimum size.

Loans shall be guaranteed in the manner customary in banking practice'.

The 1977 decision only concerns projects within the Member States of Euratom, and in fact, few such loans were ever made. Since most nuclear power developments in Europe were essentially designed and built either by State-run enterprises, or those with close affiliations to the State concerned, there was little incentive to pursue Euratom loans, since

[32] OJ L88 of 6 April 1977.

such enterprises could typically raise capital on much the same terms as Euratom. The consequence was that the Euratom loans unit was subsequently mothballed, only to be re-established following the Council Decision 94/179/Euratom of 21 March 1994[33];

'amending Decision 77/279/Euratom, to authorize the Commission to contract Euratom borrowings in order to contribute to the financing required for improving the degree of safety and efficiency of nuclear power stations in certain non-member countries'.

This revitalisation and reorientation of Euratom loans obviously reflected increasing concerns, following both the Chernobyl accident, and then the collapse of the Soviet Union, about the safety of soviet-designed nuclear reactors in Central and Eastern Europe.

Since this Council (amending) Decision has a sole article, it is reproduced here in its entirety:

'Sole Article

Article 1 of Decision 77/270/Euratom shall be replaced by the following:

Article 1

The Commission is hereby empowered to contract, on behalf of the European Atomic Energy Community (Euratom), and within the limits fixed by the Council, borrowings, the proceeds of which will be allocated in the form of loans to finance, within the Community, investment projects relating to the industrial production of electricity in nuclear power stations and to industrial installations in the nuclear fuel cycle. The Commission shall also be empowered to contract, within the same limits, borrowings, the proceeds of which will be allocated in the form of loans to finance projects to increase the safety and efficiency of the nuclear power stations of the non-member countries listed in the Annex. For these projects to be eligible they must:

- relate to nuclear power stations or installations in the nuclear fuel cycle which are in service, or under construction, or to the dismantling of installations where modification cannot be justified in technical or economic terms,

- have received all the necessary authorization at national level and in particular the approval of the safety authorities,

- have received a favourable opinion from the Commission in technical and economic terms.

The Commission may borrow only within the limits of loans requested of it.

The borrowing and corresponding lending operations shall be denominated in the same monetary unit and carried out under the same conditions as regards repayment of the principal and interest payments. Cost incurred by the Community in concluding and executing each operation shall be borne by the recipient undertakings.

*ANNEX*

**List of eligible non-member countries**

- Republic of Bulgaria
- Republic of Hungary
- Republic of Lithuania
- Romania

[33] OJ L84 of 29 March 1994, pp 41-43.

- Republic of Slovenia
- Czech Republic
- Slovak Republic
- Russian Federation
- Republic of Armenia
- Ukraine'

Once again the Commission is empowered to issue these loans: there is no apparent role for the Council, and certainly, as with the original 1977 decision, no requirement to consult the European Parliament. Appearances, can, however, be deceptive. Annexed to the minutes of the Council meeting of 21 March 1994 is a set of 'guidelines'. Their official title is 'Guidelines relating to the financing required for improving the safety and efficiency of nuclear power stations in certain non-member countries'. These guidelines are not mentioned in the Council Decision. Accordingly we must assume that they are somewhat akin to a Council Declaration in the minutes of Council meetings, and the Court of Justice has clearly stated that such declarations have no legal force. Nonetheless, it is quite clear that the Commission treats these particular 'guidelines' as a clear set of instructions from the Council, which determine what kind of projects, undertaken by what kind of organisation, can be financed.

Unfortunately, like all non-co-decision Council Declarations, these guidelines would seem at first sight to be confidential. The European Parliament, at the time of writing this report, has never been formally given them. Indeed it only became formally aware of their existence during the year 2000, when the Commission, on two separate occasions, presented proposals for Euratom loans to the European Parliament. It did so, not because of any legal requirement so to do (there is none), but 'provided voluntarily to the European Parliament in the spirit of transparency and in a way similar to that applied under the understanding reached in July 1998 between the Commission and the Parliament for the treatment of cases covered by Article 101, 2nd paragraph of the Euratom Treaty'[34].

The meeting of the European Parliament's ITRE Committee in April 2000 which was convened for the Commission to 'present' this Euratom loan proposal for the Kozloduy project in Bulgaria, was organised at very short notice, which did not really give enough time for Members to digest the large dossier which was distributed to them. The Committee thanked the Commission for this modest further step along the road to democratisation of the Euratom Treaty, but was not able, given the short notice, to ask many further questions.

However, on 28 November 2000, another extraordinary meeting of the European Parliament's ITRE Committee was held in Brussels, as a dedicated 'question-time' to the Commission on various nuclear issues, one of which was the proposed Euratom loan to Ukraine for the 'post Chernobyl closure' K2R4 project. The Commission once again presented the complete Euratom loan dossier to the Committee. Following the main questions concerning the desirability or otherwise of going ahead with the planned project, Mrs Eryl McNally MEP asked the following question:

> 'My understanding of the current situation with respect to Euratom loans, is that in addition to the Council Decisions empowering the Commission to issue Euratom Loans, which were

[34] Letter from Mr G Ravasio, Director-General, DG Economic and Financial Affairs, European Commission, to Mr C Westendorp, Chairman on Industry, External Trade, Research and Energy, dated 28.03.00, concerning "Bulgaria-Euratom loan to Natsionalna Electricheska Kompania EAD (NEK) for the Kozloduy 586 project". (The letter and attached dossier was distributed to Members of the ITRE Committee for an extraordinary Committee meeting held in Strasbourg on 11 April 2000.

adopted after consulting the European Parliament, (the co-budgetary authority), the Council also issued sets of guidelines, annexed to the Council minutes, which effectively constrain and guide the Commission's Euratom lending policies. Those relating to the 1994 Council Decision are apparently entitled "Guidelines relating to the financing required for improving the safety and efficiency of nuclear power stations in certain non-member countries." (And are referred to in footnote 1 on p.13 of the briefing document kindly provided by the Commission on the proposed Ukraine loan.) Will the Commission make a copy of these guidelines available to the European Parliament?'

To which the Commission replied unhesitatingly, 'YES'.

It seems, at the time of writing, that the Commission may either have been a little too hasty with its reply, or misunderstood the question somewhat. The 'guidelines' are of course of a hitherto confidential Council document, and only the Council, not the Commission, can agree to provide a copy to the European Parliament. Fortunately, under the Council's new arrangements to improve public access to its documents, the guidelines **can** be obtained, and indeed the Council Secretariat kindly provided a copy in response to an e-mail request. They are reproduced below[35]:

**'GUIDELINES RELATING TO THE FINANCING REQUIRED FOR IMPROVING THE SAFETY AND EFFICIENCY OF NUCLEAR POWER STATIONS IN CERTAIN NON-MEMBER COUNTRIES**

**COVER NOTE**

**Subject: Council Decision amending Decision 77/270/Euratom to authorize the Commission to contract Euratom borrowings in order to contribute to the financing required for improving the degree of safety and efficiency of nuclear power stations in certain non-member countries**

**Statements**

Delegations will find attached the texts for entry in the Council minutes concerning the above Decision:

– in section A, the guidelines relating to the financing required for improving the safety and efficiency of nuclear power stations in certain non-member countries,
– in section B, the organization of co-operation with the EIB and the Member States' participation in the decisions to grant loans to third countries,
– and in section C, the other statements.

**ANNEX**

**A. GUIDELINES RELATING TO THE FINANCING REQUIRED FOR IMPROVING THE SAFETY AND EFFICIENCY OF NUCLEAR POWER STATIONS IN CERTAIN NON-MEMBER COUNTRIES**

The guidelines relating to Decision 77/270/Euratom and contained in the Council minutes of 29 March 1977 will continue to apply to Euratom loans to Member States. As regards operations to contribute to the financing required for improving the safety and efficiency of nuclear power stations

[35] Council document 5311/94, of 8 March 1994.

in the non-member countries referred to in the Annex to this Decision, the Council invites the Commission to follow the guidelines below.

I. BORROWINGS

(a) The costs involved in contracting the borrowings must correspond to those paid by category-one issuers, and the Commission will take all the necessary steps to ensure that the Euratom borrowings benefit from the same favourable conditions as those enjoyed by other Community borrowings.
(b) Given the type of investment to be financed, the borrowings must be contracted over as long a period as possible; short or medium-term loans may also be concluded should such a requirement be expressed by the enterprises concerned.
(c) The repayment schedule of the borrowings will, as far as possible, be accompanied by a grace period.

II. LOANS

1. Technical and economic acceptability of applications

1.1. Types of project involved

The projects must give priority to improving the safety and efficiency of nuclear power stations and installations in the nuclear fuel cycle which are in service or under construction (see points 1.2 and 1.3).

Projects may also relate to the decommissioning of installations for which modification to bring them up to standard is not feasible in technical or economic terms and which would pose a safety hazard if simply abandoned. The financing granted may relate to investment during the period between shut-down and the start of decommissioning and to the decommissioning measures themselves. The financing of decommissioning measures will be considered only where no provision to finance these measures has been made during the operating life of the installation.

1.2. Obtaining authorization at national level

Financing will be granted only to projects which have received the approval of the competent national authorities, particularly the safety authorities.

1.3. Obtaining a favourable opinion from the Commission in technical and economic terms

(a) At technical level, the Commission will, with the support of experts from the Member States, examine the extent to which the project provides a solution to the safety problem which exists. The examination will also include an assessment of the environmental impact of the project.

The Commission's examination will refer to the studies on nuclear safety carried out by the international bodies, IAEA and WANO, and under the PHARE and TACIS programmes, and will, with the support of experts from the Member States, assess the project in comparison with measures implemented in the Member States to solve similar types of problem, taking account of the recommendations made by the international bodies.

Although the list below is not exhaustive, the Council invites the Commission to give particular consideration to the following modification measures:

- improving the containment of the primary circuit (reactor vessel and primary piping);
- improving the reactor cooling system, particularly the emergency cooling system;
- fire detection and extinguishing systems;
- installation of specific and independent alarm systems;

- improving the reactor protection and monitoring system;
- control room equipment.

Other measures resulting from the studies under way will also be taken into consideration.

(b) At economic level, the Commission will establish that the projects are justifiable, by comparing the economic characteristics and the efficiency of the projects in question with those of non-nuclear alternatives which are potentially available. Investment must relate to installations which are economically viable. The opinion will refer to the overall energy plan which has been defined for the recipient country, insofar as such guidelines exist.

The economic and efficiency studies will be based on assumptions which reflect the reality of a market economy in terms of both the positive financial flows (price and quantity produced) and the negative financial flows (investment costs, cost of factors utilized, etc.).

(c) The Commission will establish regular contacts with the EBRD, with which it will seek to promote the closest possible mutual co-operation.

1.4. Necessity of close co-operation with at least one Community enterprise

This condition will be considered to have been met if a major proportion of the capital goods item or service which is to be financed is provided by a Community enterprise.

1.5. Securities

The guarantee of the State on whose territory the project is situated will be required.

The Commission will ensure that in prudential terms the securities obtained are equivalent to those provided for in the 1976 guidelines for operations within the Community.

Where appropriate, other first-class securities will also be contemplated.

2. Limits of loan amounts

2.1. The Commission will grant only loans which supplement those which the enterprise has contracted with other parties.

2.2. The Commission will limit its loans to 50% of the total cost of the projects mentioned in point 1.1 (in one or several tranches). The total Community financing for a particular project will not exceed 50%.

2.3. In the event of co-financing with the EBRD, the cumulative total of Community financing will under no circumstances exceed 70% of the total cost of the project mentioned in point 1.1.

3. Order of granting of loans

3.1. Applications concerning the financing of expenditure effected after 1 July 1992 will be acceptable.

3.2. The Commission will use the technical and economic studies to decide, if necessary, which projects are to receive priority treatment.

4. Other financing conditions

4.1. Currencies

Loans will be paid out in several currencies (a combination) or in a single currency, according to the recipient's preferences and subject to availability. The main currencies used will be those of the EEC Member States, the ecu, the US dollar, the Swiss franc and the yen.

4.2. Duration

Loans will be granted on a medium and long-term basis, with the particular duration depending on the type of project and life of the assets financed. The maximum duration of loans will be twenty years.

4.3. Interest rates

The interest rates will closely follow the cost of the borrowings from which the loans are granted, and they will not vary according to the nature or location of the project, nor according to the type or nationality of the recipient. Rates will be set for each of the currencies used.

The loans will be at a fixed or variable rate, according to the recipient's preferences and subject to availability.

4.4. Reimbursement

Reimbursement of the loans will be carried out in line with reimbursement of the borrowings utilized. Reimbursements will be made in the same currencies and in the same proportions as the loan payouts.

## B. ORGANIZATION OF CO-OPERATION WITH THE EIB AND THE MEMBER STATES' PARTICIPATION IN THE DECISIONS TO GRANT LOANS TO THIRD COUNTRIES

The Council notes that the rules, which have already been agreed with the EIB, for Community participation in the financing of investment referred to in Decision 77/270/Euratom and listed in the Council minutes[36] relating to that Decision will continue to apply in respect of investment carried out in the Member States.

The Commission will define with the EIB how these rules are to be extended to apply to the loans aimed at improving the safety and efficiency of nuclear power stations in the list attached to the Council Decision.

Decisions on loans for third countries will be taken by the Commission after consultation with the Committee set up under the PHARE/TACIS programmes (Working Party of Experts on Nuclear Questions) and after a recommendation from the EIB.

## C. OTHER STATEMENTS

1. Re the Council Decision

(a) The Council and the Commission note that there are not, at present, any applications for the financing of nuclear projects within the Community.

[36] See R/1124/76, Annex III.

The Council therefore considers it appropriate to use the Euratom facility to improve the degree of safety and efficiency of nuclear power stations in certain non-member countries, within the limit laid down by Decision 90/212/Euratom. If applications for financing are submitted in respect of projects within the Member States, they will be given priority.

(b) The Council and the Commission state that, as far as decommissioning is concerned, financing should normally be provided by means of other instruments; however, exceptionally, where there are serious concerns about the safety of the installation verified by the competent international organizations and where the project is part of a programme showing overall profitability or is otherwise linked to an adequate income stream and adequate guarantees are provided, recourse to the loan mechanism established under this Decision could be envisaged.

This statement does not constitute a decision by the Council to grant financing in the form of aid for the decommissioning of former power stations.

(c) The Greek delegation in a spirit of compromise and aware of the urgent need to approve this Council Decision, is withdrawing the substantive reservation it expressed concerning the joint statement by the Council and the Commission on the financing of the decommissioning of nuclear power stations.

However, it considers that the statement is exceptionally restrictive in its wording and that it renders the financing of the decommissioning of nuclear power stations by means of loans virtually impossible in practice, given that the main consideration is the protection of human lives which may be endangered by the operation of unsafe installations.

(d) The Council and the Commission consider that Community enterprises must be encouraged to play an important role in projects for the modification of nuclear power stations in the CCEE and the CIS States. To that end, the Council and the Commission consider that projects financed by Euratom must involve close industrial or commercial co-operation with at least one Community enterprise. They also consider that third countries should be associated in the financing of the projects concerned.

(e) The Commission states that, with the Monetary Committee, it will keep a close watch on the overall balance of payments and external debt situation of third country recipients under the lending operations covered by this Decision.

Should a recipient country's balance of payments situation be unsustainable and that country be unable to service its external debt regularly, particularly vis-à-vis the Community, the Commission will take this into account in its assessment of the securities given by the State concerned and, if the circumstances so require, may, on advice from the Monetary Committee and having informed the Council, suspend the grant of loans in respect of that country.

(f) The Council and the Commission take note that the World Bank is currently carrying out studies of the nuclear energy sector in Central and Eastern Europe and the countries of the former Soviet Union. They agree that the findings of these studies should be taken into account in the implementation of the EURATOM facility and that, where appropriate, lending should be co-ordinated with assistance provided by other international bodies.

(g) The Commission states that loans under this Decision cannot be given to finance new nuclear power stations or installations in the nuclear fuel cycle.

(h) The Commission states that, having regard to the objectives of the Euratom Treaty, financing granted under this Decision may not under any circumstances benefit military installations.

2. Re point II.1.1 of the guidelines

The Council and the Commission state that, in implementing this Decision, priority will be given, in compliance with all the economic and financial criteria, to investment projects concerning installations which present the highest level of risk'.

# II.4. Supplies

(Note: this chapter has a separate bibliography at the end of the chapter).

Asked to describe the role and function of the Euratom Supplies Agency, many seasoned EU commentators would be reduced to silence. It does not exactly have a high profile. Before their move on 4 December 2000, to rue de la Loi, the Euratom Supplies Agency was located at no.3, Rond Point Schuman, in Brussels. Visitors to this building would encounter the following enigmatic inscription on the front door:

> 'This building is NOT A BANK
> The bank is NEXT DOOR
> Ce bâtiment n'est PAS UNE BANQUE
> La banque est à DROITE en sortant'

There was, however, no indication that it was indeed the headquarters of the Euratom Supplies Agency. All of which is perhaps unsurprising, given the somewhat surreal history of this Agency, and its role in the Euratom Treaty: both of which are the subject of this chapter.

## II.4.1. Origins and Basic Provisions of Chapter 6

Article 2 (d) of the Euratom Treaty stipulates that the Community shall 'ensure that all users in the Community receive a regular and equitable supply of ores and nuclear fuels' in order to contribute to the Treaty's overarching goal laid down in Article 1, i.e. of creating conditions 'necessary for the speedy establishment and growth of nuclear industries'. The objective of ensuring **regular** supply implies that prices should be relatively stable and that the quantities supplied should correspond to the needs of the utilities so as to impede any threat to the realisation of nuclear programmes and undertakings. Hence, the **equitable** supply-objective condemns any kind of discrimination that could thwart the realisation of these latter aims[37].

Chapter 6 of the Treaty was designed to meet these broad goals. Article 52 (1) sets out the basic guiding principle in achieving the aim of regular and equitable supply: 'The supply of ores, source materials and special fissile materials shall be ensured … by means of a **common supply policy** on the principle of equal access to sources of supply', thus putting all Community utilities on an equal footing (emphasis added). These provisions aim, inter alia, to prevent any utility from abusing a 'dominant position' (Art. 52, Para.2 (a)). To fulfil these broad policy goals, Article 52, Para.2 (b) foresaw the creation of the Euratom Supplies Agency, which has been operational since 1 June 1960[38]. The Agency possesses legal personality and financial autonomy (Art. 54, Para.1). It operates under the supervision of the

[37] See Pirotte et al. (1988: 59-60).

[38] See 'Decision fixing the date on which the Euratom Supplies Agency shall take up its duties and approving the Agency Rules of 5 May 1960 determining the manner in which demand is to be balanced against the supply of ores, source materials and special fissile materials', OJ 32, 11/05/1960; p. 776/60. See also 'The statutes of the Euratom Supplies Agency', OJ 27, 06/12/1958, p. 534.

Commission, which has the right to exercise a veto over all its decisions, and the Commission appoints its Director General. Pursuant to Article 52 (2 b), the Agency has two major tools at its disposal to achieve its mission: It 'shall have the *right of option* on ores, source materials and special fissile materials produced in the territories of Member States and an **exclusive right to conclude contracts** relating to the supply of ores, source materials and special fissile materials coming from inside the Community or from outside' (emphasis added). In addition to its two major 'tools', the Agency also possesses some other specific means of action: (a) the right to receive small amount contracts and notification of transformation of nuclear materials ('processing, conversion, or shaping') (Arts. 74 and 75), (b) its intervention to obtain Commission export authorisation for export of Community production (Art. 59), (c) its contacts with Euratom Safeguards (Chapter 7), and (d) its role in the management of the Community's ownership right for special fissile materials (Chapter V8). Furthermore, the Treaty envisaged some other means of intervention for the Commission and the Agency in the nuclear fuel cycle. However, these provisions were never applied, such as the establishment of commercial stocks by the Agency to facilitate supply (Art. 72, Para.1), the establishment of emergency stocks by the Commission (Art. 72, Para.2), as well as Commission support and recommendations in the field of uranium prospection (Art. 70) (see Bouquet, 1998: 6-7).

#### *II.4.1.1. The Agency's Right of Option and its Exclusive Right to Conclude Contracts*

The Agency's right of option applies to material produced inside the Community, and affects the full ownership of ores and source materials and the right of use and consumption of special fissile materials[39]. Although this right was considered an essential tool in successfully executing the Community's supply policy, the provision never actually fully materialised. It can be argued, albeit in more abstract terms, that the Agency exercises this right **indirectly** through the conclusion of supply contracts (see Bouquet, 1998: 7). The right to conclude contracts is regarded as the Supplies Agency's 'central operating tool' (Bouquet, 1998: 8). It applies to different kinds of contractual relationships as well as to different types of materials: (a) purchases and sales of materials (natural, depleted and enriched uranium; thorium and plutonium); (b) exchanges and loans, (c) enrichment contracts. It has to be emphasised that this view is shared by the Agency and, of course the Commission. However, it does not represent the view of all the Member States, notably France. This contrasting view posits that enrichment contracts would only be contracts covering 'processing, conversion or shaping', i.e. transformation-contracts subject to the notification obligation under Art. 75. In the Agency's view, to be valid under Community law, the above mentioned contracts all have to be concluded by the Supplies Agency.

#### *II.4.1.2. Treaty Intentions Fail to Match Initially Expected Conditions*

When the Euratom Treaty entered into force in 1958, the provisions laid down in Chapter 6 had already been challenged by the course of events. The supply-monopoly, so dear to some of the negotiating parties in the mid-1950s, had become – in practice – a watered down version of what its creators intended. In 1955, when the "Six" signed the Messina Declaration, one of the means to achieve the goal of the rapid development and the peaceful use of nuclear energy was considered the provision of 'free and adequate access to raw

[39] This is due to the provisions of Chapter 8 which stipulate that Community-produced and imported special fissile materials are owned by the Community (see Bouquet, 1998: 7).

materials'[40]. Following Messina, a working group was set up in order to develop more concrete measures which the prospective Member States of a future Euratom Treaty would have to comply with in order to support the rapid development of the nuclear industry, including non-discriminatory access to resources and a common price-level. It was argued that governments would have to delegate the right to purchase and the right of ownership with regard to fissile materials to a Community agency. It was furthermore envisaged that this agency would possess a Community monopoly over supplies and, at the same time, it should be the legal owner of the material. Thus, one of the most crucial aspects of the then embryonic treaty was this envisaged de facto trade monopoly with regard to fissile materials[41]. However, this monopoly was not undisputed and differences in opinion as to the Agency's competencies surfaced strongly. The main differences as to how this Agency was to operate materialised in fierce disputes between supporters of the idea of 'public authority interventionism' and state *dirigisme* (particularly the French government), and 'a more free market approach'[42] which was advocated by the German industry and parts of the German government, notably the Ministries for Economic and Nuclear Affairs headed by Erhard and Strauss respectively. The more *dirigiste* approach resulted in a monopolistic system of supplies embodied in the right of option and the exclusive right to conclude contracts by the Supplies Agency (see below). The free-market ideas had been translated in the 'commercial organisation of the [Supplies Agency] responsible for the implementation of supply provisions (separate legal entity, market economy pricing)'[43].

It has often been argued that the perceived scarcity of uranium supply was one of the central motives that led the Member States negotiating the Treaties of Rome to provide for a Euratom Supplies Agency that was to guarantee **regular** and **equitable** supply as set out in Article 2 (d) of the Euratom Treaty. Yet, already in 1956 there was the widespread view that uranium supply on the world-market would exceed demand and that most of the prospective Member States wished to pursue their own bilateral contracts for the supply of fissile materials. Even before the entry into force of the Euratom Treaty, in late 1957, Germany entered bilateral agreements with the United States and Canada to ensure the provision of fissile material. Germany was followed by France and Italy, both of which established bilateral contracts to purchase fissile material from the US. Consequently, these practices undermined some of the Agency's basic goals: the Agency could neither exercise its right of option, nor was it able to fulfil its mandate of guaranteeing community-wide regular and equitable supply: it was the Member States that 'did the job' and, quite logically, they tolerated this state of affairs. At the point of Treaty ratification the Agency was thus already deprived of its core purpose, because it could not authoritatively purchase and distribute fissile materials (as was initially envisaged)[44]. Added to which, the 'threat' of a shortage of fissile materials was more remote than it was a few years earlier. As a result, not only was the initial French call for a supply-monopoly for uranium rejected outright by the German industry and the Ministries for Economic and Nuclear Affairs on 'ideological' grounds, but Germany also continued to prefer bilateral trade agreements with the USA and the UK to cover its demand for resources. Germany was able to purchase cheap supplies of enriched uranium from the USA and France had also entered bilateral supply agreements. In the end, a Supplies Agency was instituted but denied a *de facto* monopoly.

[40] The Messina Declaration [1955], History of European Integration Site, University of Leiden, http://www.let.leidenuniv.nl/history/rtg/res1/messina.htm.
[41] See Weilemann (1983: 42-47).
[42] See Bouquet (1998: 3).
[43] ibid.
[44] See Deubner (1977: 119).

### II.4.2. The First Years: Early Reorientation in Times of Abundance

With one of the 'original' concerns of the Treaty founders being largely obsolete (the perceived scarcity of uranium in the mid-1950s had turned into a permanent situation of abundance), together with the lax *de facto* application of Chapter 6, it was only two years after the entry into force of the Treaty that the principles enshrined in the treaty-wording of Chapter 6 lost much of their force.

#### *II.4.2.1. The 'Simplified Procedure': Adjusting to Reality*

The Council Resolution of 5 May 1960[45], laying down the 'Rules of the Supplies Agency of [Euratom] determining the manner in which demand is to be balanced against supply of [fissile materials]' basically rendered the Agency's 'exclusive right to conclude contracts' (Art. 52; Para.2 (b)) futile. The Member States decided that in the context of uranium abundance, the Agency would employ a 'simplified procedure' for the conclusion of supply contracts. Article 5 of the 'Rules' states:

> 'If, in respect of a specific product and where particular the Agency takes the initiative, the Commission, having heard the Advisory Committee, finds that the situation on the market shows a clear surplus of supply over demand, it may, by means of an appropriate directive call upon the Agency to apply the simplified procedure…'[46]

Part (b) of Art. 5 stipulates, that producers and users of fissile materials 'shall then be empowered to negotiate directly and to sign contracts'[47]. In return, the contract has to be 'communicated' to the Agency and is deemed concluded by it 'if no objection is notified by the Agency to the party concerned within eight days from the time of the receipt of the contracts'[48]. In effect, the Agency was thus given the role of an *officier d'état civile*[49] instead of an active 'configurator' of supply policy. The adoption of the 'simplified procedure' acknowledged the independence of the nuclear industry and the practice of direct negotiation and signature of contracts by the parties involved. This early regulation, therefore, reduced the Agency's right to conclude contracts, rendering it an exercise of pure formality. As early as 1960, the interpretation of the Agency's role followed a *minimaliste* conception, and, at most, it could be attributed a 'watchdog' role[50].

This 'simplified procedure' which was essentially a means to adapt to the exigencies of the supply situation, however, was amended in 1975 when the economic terms for energy supply changed. The preamble to the revised Agency rules provide that the 'uncertain outlook for the short and medium term'[51] be met with a more attentive role to be assumed by the Supplies Agency. Under the amended rules, a new Article 5$^{bis}$ was inserted. Although producers and users may still directly negotiate contracts[52], they have to be sent to the Agency for signature. Even under the amended rules, contracts are deemed concluded if the Agency solely co-signs the agreement negotiated between the two contracting parties within ten working days of receipt.

[45] OJ No 32, 11/05/1960, p. 770.
[46] ibid. Art. 5, Para.1. Art. 5 does not apply to special fissile materials.
[47] ibid. Art. 5 (b).
[48] ibid. Art. 5 (c).
[49] Pirotte et al. (1988: 90).
[50] Allen (1984: 480).
[51] OJ L 193, 25/07/1975, p. 37.
[52] See OJ L 193, 25/07/1975, Art. 1 (a).

### *II.4.2.2. The Gradual Loss of the Agency's Monopoly*

The suppression of the active role the Agency was supposed to play according to the Treaty but could never exercise, was more than confirmed by the fact that the USA effectively possessed the monopoly for enrichment services[53], which bore far-reaching consequences for the role of the Supplies Agency. The role assigned to the Agency by the Treaty is one of an intermediary between the USA (supplier) and a Community user. The 1954 **Atomic Energy Act** stipulates that a cooperation agreement was necessary for the delivery of nuclear materials from the USA to third parties. The implication of this piece of legislation was that the Agency's role was strongly tied to U.S. legal provisions governing the exchange between U.S. suppliers and Community users. It was especially the 1964 **Private Owner of Special Material Act** that challenged the (already *minimaliste*) role of the Supplies Agency. Under this provision, it was no longer obligatory for the Agency to act as an intermediary between the Euratom Member States and the United States owing to the possibility of different contractual procedures. Article 64 (Euratom), which stipulates that the 'Agency, acting where appropriate within a framework of agreements concluded between the Community and a third State or an international organization, shall … have the exclusive right to enter into agreements or contracts whose principal aim is the supply of ores, source materials or special fissile materials coming from outside the Community' was thus deprived of its core content'. In addition, the fact that France adopted its own supply policy, negotiating directly and signing contracts with the USA underlined the weakness of Chapter 6. The Agency, being reduced to the role of a material-registrar, intervenes, if at all, on a purely *a posteriori* basis (receiving notification of the conclusion of contracts). The Agency's exclusive right to conclude contracts thus never materialised and neither did its right of option[54].

The Commission itself draws a somewhat less 'damaging' picture. Although admitting that the monopolistic character of the Agency had to be considerably attenuated, for example, by introducing the 'simplified procedure' or by the only "virtual and implicit" exercise of its right of option, the Commission refers to the application of Chapter 6 as a 'flexible regime'[55]. However, an Aide-Mémoire prepared by the Commission in 1993 on the application of Chapter 6 of the Euratom Treaty sheds more light on the difficulties accompanying the application of the alleged 'flexible regime'. The Aide Mémoire identified three cases undermining the application of the Commission's approach, with France being the main reason for concern. For example, France at that time refused to communicate contracts concluded by two parties with 'direct contact' ('entreprises liées'). The Aide Mémoire stated that practically all French nuclear undertakings were 'liées'. The same applied to acquisition contracts concluded by suppliers (intermediaries and producers). At the time the Aide Mémoire was published (1993), contracts by COGEMA were still not subjected to the rule of notification and co-signature. Another factor for concern was the French interpretation of Article 75 of the Treaty[56]. The basic question was whether

[53] The following paragraph is based on Pirotte et al. (1988: 90-91).
[54] See Pirotte et al. (1988: 91) and Délégation du Sénat pour l'Union Européenne (2000: 86).
[55] See Commission (1993) 'Aide Mémoire: Application du Chapitre VI du Traité Euratom', 29/10/1993.
[56] Art. 75 of the Euratom Treaty reads: '(Para.1) The provisions of the Chapter shall not apply to commitments relating to the processing, conversion or shaping of ores, source materials or special fissile materials into: (a) by several persons or undertakings, where the material is to return to the original person or undertaking after being processed, converted or shaped; or (b) by a person or undertaking and an international organization or a national of a third State, where the material is processed, converted or shaped outside the Community and then returned to the original person or undertaking; or (c) by a person or undertaking and an international organization or a national of a third State, where the material is processed, converted or shaped inside the Community and is then returned either to the original organization or national or to any other consignee

enrichment services constituted a supply contract which, if so, required the Agency to intervene in order to conclude the contract. France's reading of Article 75 exempted contracts relating to enriched fuels through reprocessing from Agency intervention[57]. Consequently, the exclusive right to conclude contracts applied neither to imports of enrichment services to France from outside, nor to intra-community exchanges of these type of goods, nor to exports to extra-community countries[58]. However, the Commission's conclusion was that, apart from the French 'infringements' of the provisions of Chapter 6, the situation in the other Member States was broadly 'acceptable'[59]. In contrast, a recent report by the French Sénat Delegation for the European Union draws a rather more 'grim' picture. Published in 2000, the report states:

> 'Presently, the effective role of the Supplies Agency consists in signing supply contracts, verifying their conformity with regard to Community law and in the engagement by Euratom in the realm of international agreements'[60].

Pirotte et al. summarise this state of affairs by pointing out that the 'Treaty practice has profoundly watered down the text initially ratified'[61]. The apparent gap between the *de jure* provisions as laid down in Chapter 6 and their *de facto* operation has resulted in a situation which is, from a legal point of view, unsatisfactory. As far as the practical execution of Chapter 6 is concerned, this state of affairs increases rather than reduces legal uncertainty. Politically, it led the Commission and some Member States to produce various proposals with a view to revise Chapter 6 and adjust it to the 'real world'. Art. 76 of the Euratom Treaty provides two possible pathways to achieve revision, one of which has been subject to much discussion but also to much frustration. In the following section, this pathway and the various difficulties encountered will be addressed.

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likewise outside the Community designated by such organization or national. (Para.2) The persons and undertakings concerned shall, however, notify the Agency of the existence of such commitments and, as soon as the contracts are signed, of the quantities of material involved in the movements. The Commission may prevent the commitments referred to in subparagraph (b) from being undertaken if it considers that the conversion or shaping cannot be carried out efficiently and safely and without the loss of material to the detriment of the Community. (Para.3) The materials to which such commitments relate shall be subject in the territories of the Member States to the safeguards laid down in Chapter 7. The provisions of Chapter 8 shall not, however, be applicable to special fissile materials covered by the commitments referred to in subparagraph (c)'.

[57] Pirotte et al. (1988: 95) state: '…il s'agit d'une opération de transformation de l'uranium (plutôt qu'une opération de production). Il se fond sur le fait que la séparation isotopique de l'uranium 238 et de l'uranium 235 s'effectue avec conservation de la masse des deux composants; l'usine ne fournissant qu'un 'travail' de séparation'. The Commission does not agree with this interpretation. The Treaty founders, for example, could not know that enrichment processessing would be such a widely used contracting formula.

[58] The report of the Délégation du Sénat pour l'Union Européenne (2000: 87) states in this regard: 'La France a développé une practique d'application minimale du Chapitre VI … qui about it à faire échapper la quasi-totalité des contrats de fournitures conclu par les opérateurs français à la cosignature de l'Agence d'approvisionnement. En effet, la COGEMA ne transmet pas ses contrats d'approvisionnement car; selon la France, elle n'est pas 'utilisateur' au sens du traité Euratom, tandis que les contrats d'enrichissement d'Eurodif relèvent, toujours selon la France, d'un simple 'façonnage' et non pas d'une 'production' de matières nucléaires.'

[59] Commission (1993) 'Aide Mémoire: Application du Chapitre VI du Traité Euratom', 29/10/1993.

[60] Délégation du Sénat pour l'Union Européenne (2000: 86).

[61] Pirotte et al. (1988: 91).

### II.4.3. Article 76, the Court's Interpretations and the Subsequent Failure(s) to Revise Chapter 6

Article 76, Para.2 of the Euratom Treaty reads: 'Seven years after the entry into force of this Treaty, the Council may confirm these provisions [Chapter 6] in their entirety. Failing confirmation, new provisions relating to the subject matter of this Chapter shall be adopted …'. On 31 December 1964, the seven years period after the entry into force of the Treaty expired. Although the Commission came up with a proposal for revision, the Council failed to act. Hence, no 'new provisions' were adopted. What followed was a controversy over the question of the validity of the Chapter 6 provisions after 1964.

#### *II.4.3.1. French 'Exceptionalism': Chapter 6 is 'Caduque' – The European Court of Justice disagrees*

France stuck to the position that the failure to act, i.e. the failure to confirm or revise Chapter 6, implied that the provisions laid down in Chapter 6 were no longer valid ('*caduque*'). Yet, other Member States were in favour of maintaining Chapter 6 provisionally until new dispositions were adopted. Following the French unwillingness to apply the provisions laid down in Chapter 6, the Commission brought before the Court, under Article 141 of the Euratom Treaty, 'an action seeking a declaration that the French Republic has failed to fulfil its obligations under the provisions of … Chapter 6 … by refusing to submit to the Commission the annual reports prescribed by Article 70 of the Treaty, by concluding, without knowledge of the Supplies Agency, contracts relating to the importation from the Federal Republic of Germany, from Canada and from Italy, and to the supply to Italy of special fissile materials, and finally by refusing to notify to the Agency the existence of an undertaking relating to the processing of uranium imported from South Africa, and the quantities involved in the delivery in question'[62].

As to the latter claim, which is of greater interest as it covers a much broader range of activities covered by Chapter 6, France continued to apply its own supply policy, instead of applying the provisions foreseen in the Treaty. Following the lapse of the seven-year period, the French government had consistently expressed the opinion that the provisions of Chapter 6 were no longer in force. Furthermore, France affirmed that 'it is not open to the Commission to bring before the Court of Justice in 1971 a situation which has lasted since 1965 and which it has known about since that time'[63]. The Court, however, was of the opinion that the Treaty provisions laid down in Chapter 6 were still valid. It argued that the 'member states agreed to establish a community of unlimited duration, having permanent institutions invested with real powers, stemming from a limitation of authority or a transfer of powers from the states to that community'[64]. It follows that powers which have been delegated in this spirit 'could not, therefore, be withdrawn from the community, nor could the objectives with which such powers are concerned be restored to the field of authority of the member states alone, except by virtue of an express provision of the treaty'[65]. The Court, furthermore, found that 'the fact that market conditions may during a given period have rendered less necessary the use of the supply mechanisms prescribed by the treaty does not

[62] Judgement of the Court of Justice, Case 7/71, para 1, *Commission v French Republic* [1971] ECR 1003.
[63] ibid. Para.4.
[64] ibid. Para.19.
[65] ibid. Para.20.

suffice to deprive the provisions relating to these mechanisms of their mandatory character'[66]. The French government has also contended that the lack of any decision by the Council at the end of the seven-year period prescribed by Article 76 has led to a legal situation characterised by uncertainty and ambiguity. However, the Court's judgement reads that is not possible to justify a failure to fulfil an obligation by invoking the uncertainty of the legal situation in which the Member State found itself, and against which the Treaty affords it means of action[67].

The Court thus concluded that the French Republic had failed to fulfil its obligations under the Euratom Treaty (especially Articles 52, 55, 57, 64). It is often suggested that the theory of the *effet utile* has inspired the judgement by the Court. The Court's interpretation of the provisions of Chapter 6 stuck closely to the Treaty wording. Despite the changes in circumstances which had made the application of Chapter 6, as foreseen in the initial Treaty wording, an illusion rather than a reality, a fundamental re-interpretation of the Treaty did not occur. In sum, the Court's judgement was mainly in line with the Commission's attitude that the non-application of Chapter 6 by France was not justifiable on Treaty grounds. Yet, even after the Court's judgement, a revision of Chapter 6 did not take place.

#### *II.4.3.2. The Court's 1978 Ruling: Interpreting the Present from the Past*

However, a further Court judgement, delivered in 1978, vividly demonstrated that Chapter 6, in the Court's interpretation, was alive and well[68]. Following an initiative by the International Atomic Energy Agency, a convention on physical protection of nuclear materials, installations and transports was drawn up. This (draft) convention (finally adopted in 1979 and entered into force in 1987[69]) aimed to deal with the risk of theft and misuse of nuclear materials put to **civil** uses. The provisions laid down in the convention therefore intended to protect states and their inhabitants against the dangers that could arise as a result of sabotage of nuclear installations and if nuclear material fell into the hands of unauthorised persons. Ensuring the **physical protection** of installations and materials was therefore the prime goal of the convention.

Why should the adoption of this convention pose a problem to the Euratom Treaty in general, and Chapter 6 in particular? The reason why the Belgian government, pursuant to Article 103, Para.3[70] of the Treaty, called upon the Court to issue a ruling, was the question of whether the adhesion to the convention of Community Member States was compatible with the rules laid down in the Treaty. Could the convention be adopted without the Community being party to the convention? Article 103, Para. 3 of Chapter 10 (External Relations) of the Euratom Treaty reads:

[66] ibid. Para.43.
[67] ibid. Para.47.
[68] Ruling 1/78, *Draft Convention of the IAEA on the Physical Protection of Nuclear Materials, Facilities and Transports* [1978].
[69] International Atomic Energy Agency (INFCIRC/274/Rev. 1) 'The Convention on the Physical Protection of Nuclear Material'.
[70] Article 103 (3) of Chapter 10 (External Relations) of the Euratom Treaty reads: 'The State shall not conclude the proposed agreement or contract until it has satisfied the objections of the Commission or complied with a ruling by the Court of Justice … on the compatibility of the proposed clauses with the provisions of this Treaty. […]'

'The State shall not conclude the proposed agreement or contract until it has satisfied the objections of the Commission or complied with a ruling by the Court of Justice … on the compatibility of the proposed clauses with the provisions of this Treaty …'.

In line with the comments issued by the Commission, the Court found that several fundamental provisions of the Euratom Treaty, such as those relating to supplies, safeguards, property ownership and the nuclear common market, were affected if Community Member States were to become party to the convention. Although the actual reasoning for the ruling is of less interest here, the Court's handling of the Chapter 6 provisions is of interest as it mirrors the Court's interpretation of these provisions. The Chapter 6-related question to be answered by the Court was 'whether the Community exercises, in the fields of supply … jurisdiction and powers which give it the right to participate in the proposed convention'[71]. The obligations for the prospective signatories of the convention laid down in Article 4 of the draft convention were of particular concern: This article defines the precautions to be taken on the import, export, storage, transport and transit of nuclear materials and then divides the relevant materials into different categories and lays down the minimum measures of physical protection applicable to each of the categories. According to the Court, the Euratom Treaty makes explicit, through Article 64, that with regard to nuclear materials coming from outside the Community, the Supplies Agency has an exclusive right to enter into agreements or contracts relating to the supply of such products 'acting where appropriate within the framework of agreements concluded between the Community and a third State or an international organization'. Furthermore, the Court argued that, following from the provisions of Article 60 in conjunction with Article 65, the Supplies Agency must be used as an intermediary between users of nuclear materials and suppliers who are outside the Community. The Court then stated that '[t]hese provisions … show the care taken in the Treaty to define in a precise and binding manner the exclusive right exercised by the Community in the field of nuclear supply in … external relations'[72]. The Court concluded on this issue that it would not be possible for the Community to define a supply policy, as foreseen by the Treaty, if it could not also, as a party of the convention, decide itself on the obligations to be entered into with regard to the physical protection of nuclear materials in so far as its functions in the field of supply were affected[73]. Therefore, if the Community Member States were to enter into and implement obligations such as defined under Article 4 of the draft convention, **without the participation of the Community**, the Member States 'would necessarily interfere with the scope and jurisdiction of the Community and they would thus impede the application of the Euratom Treaty'[74]. The ruling concluded that the draft convention could be implemented as regards the Community 'only by means of a close association between the institutions of the Community and the Member States both in the process of negotiation and conclusion and in the fulfilment of the obligations entered into'[75]. With its ruling, the Court reaffirmed the Community's exclusive jurisdiction over issues affecting Community supply of fissile materials.

According to Pirotte and his collaborators, the Court of Justice, in its ruling of 14 November 1978, has adopted a rigid interpretation ("interprétation stricte") of the Euratom Treaty[76]. They observe that the Court's interpretation of Chapter 6, mirrored in the 1971 judgement and its 1978 ruling, is biased towards a **teleological** interpretation of the European

[71] op. cit. Footnote 65, Para.13.
[72] ibid. Para.14.
[73] ibid. Para.15.
[74] ibid. Para.18.
[75] ibid. Para.34.
[76] Pirotte et al. (1988: 86).

'enterprise'. The authors see a danger in this practice adopted by the Court. Citing law professor Charles de Visscher:

*'[S]i l'on doit en principe interpréter un traité de manière à lui permettre d'atteindre le but voulu par les parties …, la recherche de ce but ne peut dégénérer en un raisonnement abstrait autour du but que l'on suppose avoir été celui des parties alors que l'inefficacité partielle du Traité peut s'expliquer, en fait, par leur volonté réfléchie de ne pas s'engager au-delà d'un certain point*'[77].

The often perceived necessity for adjusting the provisions relating to the Supplies Agency's right to conclude contracts and its right of option in order to match the exigencies of the changes in the 'nuclear environment' has thus not been met by the Court, whose interpretations seem to mirror relatively closely the intentions of the Treaty founders in the mid-1950s. Pirotte and his collaborators view the Court's jurisprudence rather critically. They argue that the bulk of the Treaty provisions are mainly the result of a particular political and economic context and are ill-suited to correspond to the past and present environment: *'Nombre de ces dispositions … avaient été dictées plus par des circonstances inhérentes à l'époque que par un accord réel portant sur le long terme'*[78]. But clearly developments aimed at rendering the Treaty provisions more flexible, for example, by introducing the 'simplified procedure', had to emanate from the Commission together with the Member States. The Court's judgement of 1971 and its ruling of 1978 provided further incentives for some actors to aim for revision. However, the attempt to narrow the gap between the *de facto* operation of the Treaty and the *de jure* provision was anything but a success story.

#### *II.4.3.3. The Attempt to Revise Chapter 6 in 1982/84: The Most Prominent Failure to Adjust to Reality*

The Commission has on numerous occasions taken up the initiative to achieve the revision of Chapter 6 pursuant to Article 76 of the Euratom Treaty. However, none of these initiatives, which were presented to the Council in 1964, 1975, 1979, and 1982 (revised in 1984) have succeeded[79]. The most 'recent' Commission proposal submitted to the Council dates back to 1982[80], with the Commission adopting a revised version of the 1982 proposal in 1984[81]. The amended proposal which was, again, transmitted to the Council has not been subject to discussion inside the Council.

Ten years after the Court's 1971 judgement and shortly after the 1978 ruling reaffirmed the validity of the provisions laid down in Chapter 6, and after a number of unsuccessful Commission proposals for revision, the time was considered ripe to adjust the 'words' to the 'facts'. The most striking feature of the Commission's 1982 proposal was the complete renunciation of the supply monopoly so dear to the Treaty founders in the mid-1950s:

'Gone is the right of option, … gone is the exclusive right to conclude contracts. Gone with them is the obligatory involvement of the Community instrument in nuclear commerce'[82].

[77] Pirotte et al. (1988: 86-87).
[78] Pirotte et al. (1988: 87).
[79] Pirotte and his collaborators provide an overview on previous attempts to revise Chapter VI (Pirotte et al. 1988: 96-101).
[80] OJ C 330, 16/12/1982, pp. 4-8.
[81] COM(84) 606 final/2.
[82] Allen (1984: 485).

The declared aim of the 1982 proposal was thus to reconcile the basic Treaty provision laid down in Art. 2 (d) ensuring that 'all users in the Community receive a regular and equitable supply of ores and nuclear fuels' and the need for a more flexible interpretation of the provisions of Chapter 6 in the light of new challenges and circumstances. The basic thrust of this proposal was that the (new) mission of the Agency should be that of an observer and market analyst rather than of a monopoly supplier and price setter. However, this did not imply that the Agency's role was to become negligible. According to Art. 52, Para.1 (new), the Agency shall continue to ensure the regular and equitable supply of fissile materials 'by means of a common policy based on the principle of the unity of the market and covering, in particular, the conclusion by the Community of international agreements and the adoption of specific solidarity measures'. The 1982 document thus acknowledged that the nuclear industry was able to 'look after itself' commercially. In addition, the Commission identified those areas in which it considered Community intervention to be justified, i.e. being in the Community's public interest. The first area, as mentioned in Article 52 (new) relates to the free movement of nuclear materials within the Community ('unity of the market')[83], and the second relates to the conditions that shall be applied for the use, storage, and transfer of materials supplied from outside the Community ('international relations')[84].

As to the former, Article 53, Para.1 states that 'all restrictions on the transfer of materials within the Community and on imports from outside the Community are prohibited, together with any conditions governing use and storage within the Community'[85]. As to the latter, the newly proposed Article 55, Para.1 states: 'The Community shall conclude international agreements concerning supplies from outside the Community'. And Art. 55, Para.2 lays down the procedural mechanisms: 'The negotiation of the agreement … shall be conducted by the Commission in accordance with the procedures laid down in Article 101 in consultation with a special committee appointed by the Council to assist it in that task'. Allen states that in 'practice the Commission has over the years accepted that Member States conclude international agreements affecting the supply of nuclear materials, provided that … the agreement does not contain clauses which impede the application of the Treaty'[86]. With its proposal, the Commission has attempted to formally legitimise this practice. The 'Community interest' will be preserved here in two ways: first, the application of Article 103 to such agreements is preserved and second, the right of the Community to take over the Member States' rights and obligations wherever the Community itself concludes an agreement covering the same grounds is ensured. According to Allen, the 'new 6 Chapter 6 provisions' contained in the 1982 Commission proposal 'abolished the Community monopoly of supply and replaced it by a Community monopoly of public interest'[87].

However, the reactions to this proposal, especially those of the European Parliament, were critical, to say the least. Parliament was invited by the Council, pursuant to Art. 76, Para.2 of the Euratom Treaty to deliver its opinion on the proposal of the Commission. The Parliament's Committee on Energy, Research and Technology adopted an 'Interim Report'

[83] Proposed Articles 53 (new) and 54 (new) of the Commission proposal for the revision of Chapter 6, OJ C 330, 16/12/1982, pp. 4-8.
[84] Proposed Articles 55 (new) to 57 (new) of the Commission proposal for the revision of Chapter 6, OJ C 330, 16/12/1982, pp. 4-8.
[85] Exceptions to Article 53, Para.1 are laid down in Art. 53, Para.2, and affect in particular the conditions accepted in the framework of international agreements.
[86] Allen (1984: 493).
[87] Allen (1984: 485).

on the proposal from the Commission[88]. In this report, rapporteur Ippolito heavily criticised the Commission's proposal. One main point of criticism refers to the impression 'that priority has been given to the interests of the most powerful nuclear countries'[89]. For example, the principle of the 'unity of the market' so forcefully proclaimed by the Commission is not fully respected: 'It is clear that Community countries such as France and the United Kingdom, which possess nuclear weapons, will be able to enjoy a privileged market,' because the new text of Article 52 'not only fails to mention the need to avoid discrimination, but it actually creates the principle of discrimination by affirming that the Community's action should apply only to materials intended for 'civil and non-explosive purposes'[90]. Although the 'Ippolito Report' welcomed the Commission proposal from the viewpoint that a debate on revision is better than no debate, it further emphasised that the Commission failed to insert its ideas into the broader institutional image of the Community: '… the Commission's proposal weakens the image of Community solidarity and goes against the European Parliament's aim of achieving greater European integration'[91]. However, the plenary never cast a vote on the Commission proposal. The Chairman of the Committee on Energy, Research and Technology (Mrs Waltz) pointed out that the 'Ippolito Report' was an '*Interim* Report' and thus, the Commission proposal of 1983 should not be voted upon. The plenary agreed. Instead a Resolution was adopted that called upon the Commission to adjourn the discussion on Chapter 6 revision to the EP's next term following the 1984 elections and to make 'appropriate amendments to the original proposal' taking into account the suggestions made in the 'Interim Report'[92].

Following reception of the opinion of the Economic and Social Committee, of the Parliament's 'Interim Report' and the Resolution adopted on 24 May 1984, and after consultations within Council working groups, Commission Vice-President Davignon wrote to the President of the Council, Peter Barry, explaining that the main goal was to 'bring to an end discrimination which is characteristic of the present situation, in which a growing proportion of civil supply contracts … falls outside the rules of the Community supply system'[93]. Furthermore, the Commission affirmed its position adopted in 1982 that the application of the new Chapter 6 shall be 'limited to supplies for civil and non-explosive uses'[94] thereby ignoring the criticism brought forward by the European Parliament. The Commission thus recognised and formally enshrined in the new revised proposal the common practice since the entry into force of the Euratom Treaty: supplies for military purposes were excluded from the jurisdiction of the Treaty and left to the (nuclear-weapon) Member States. However, the 'unity of the market' emphasis was upheld and continued to cover both the prohibition of all restrictions on intra-Community transfers and on imports from outside the Community (Art. 53, Para.1) and the possibility of introducing provisions for special precautions relating to such transfers and imports (Art. 53, Para.2). In the end, remedies were found in the revised Commission proposal for previous 'misunderstandings' and 'misgivings'.

[88] Session doc number 1-0228/84. Ref doc noc 1-1164/82, COM ref. no. COM/82/0732. OJ C330 16 December 1982, p.004 (PE 84.748 final).
[89] PE 84.748 final, p. 12.
[90] PE 84.748 final, p. 15.
[91] PE 84.748 final, p. 9.
[92] 'Resolution on the proposal from the Commission of the European Communities to the Council for a Decision adopting new provisions relating to Chapter 6 'Supplies' of the Treaty establishing the European Atomic Energy Community', OJ C 172, 02/07/1984, pp. 152-153.
[93] COM(84) 606 final/2, p. 1.
[94] ibid. p. 2.

In the course of 1983 and 1984, discussions among the Member States were extended, especially in the context of the non-proliferation working group in the European Political Cooperation (EPC) framework, an intergovernmental mechanism established in 1970. The problem with respect to the issue of non-proliferation was to find a way to reconcile the application of national non-proliferation policies with the principle of the 'unity of the market', i.e. the free circulation of nuclear materials within the Community. In 1984, the 'wish' to cooperate in the field of non-proliferation was met with concrete action: the adoption of the 'London Directives' on nuclear exports, announced on 20 November 1984, which was the first substantive result of harmonisation in the EPC framework[95]. The 'London Directives' introduced uniform Community transfer-rules with regard to highly sensitive nuclear materials (plutonium and highly enriched uranium)[96]. These 'directives' spelt out the conditions that must be fulfilled for the transfer of nuclear materials between states in order to satisfy the non-proliferation policy of each of the (then) ten Member States.[97] The revised Commission proposal of 1984[98] has been drafted in the very light of the 'London Directives'. Essentially, the Commission did not demand anything more of the Member States than to translate their agreement under the EPC framework into Community law[99]. As Commission Vice-President Davignon stated clearly in 1984:

'A new situation has thus been created which is in fact such as to simplify the further work on revision of Chapter 6. On the one hand, the fact that the position of Member States with regard to the London Guidelines … have been defined in an inter-governmental framework averts all ambiguity on the exclusivity of the competence of the Member States in the field of non-proliferation. On the other hand, this harmonization … constitutes the indispensable political base which enables there to be a reconciliation between the imperatives of their policies of non-proliferation and the need for a regular and equitable supply system'[100].

These reflections were incorporated in the Commission's new version of Article 53, Para.2, setting up a procedure for the adoption of special conditions relating to intra-Community transfers and imports of nuclear materials. The Commission, in its revised 1984 version of Article 53, Para.2 proposed a new procedure with the aim of reconciling the Member States' non-proliferation concerns with the general principle of the 'unity of the market'. The revised proposal was thus much more Member State 'friendly', responding to the criticism of the initial 1982 Commission proposal that the delicate conditions laid down in Art. 53, Para.2 (1982 version) would result in insufficient involvement of the Council. Juxtaposing Article 53, Para.2 (1982) and Article 53, Para.2 (1984), it is obvious that the emphasis has changed profoundly, and in the 1984 version, it is the Council who is now in the 'driver's seat' with regard to laying down the conditions relating to transfers of nuclear materials so as to satisfy the different Member States' non-proliferation and security concerns (while at the same time respecting the 'unity of the market')[101].

[95] Grand (2000: 7).
[96] Commission (1993) 'Aide Mémoire: Application du Chapitre 6 du Traité Euratom', 29/10/1993, Annex II, p. 98.
[97] op. cit. Footnote 93, p. 2.
[98] ibid. p. 2.
[99] op. cit. Footnote 96, p. 98.
[100] op. cit. Footnote 93, p. 3.
[101] ibid. Para.7-9.

| | **Commission proposal of December 1982**[102] | **Amended Commission proposal of 1984**[103] |
|---|---|---|
| Art. 53, Para.2 | […] the *Commission* shall lay down, in a Regulation, conditions relating to the transfers of materials within the Community and to imports from outside the Community together with conditions governing the use and storage within the Community. […] | […] the *Council*, acting unanimously on a proposal from the Commission, shall lay down, in a Regulation, conditions relating to transfers of materials between Member States and to imports from outside the Community. |
| Art. 53, Para.3 | n.a. | In exceptional and unforeseen circumstances, any Member State may, in the absence of an appropriate Regulation within the meaning of paragraph 2 above, take whatever measures it considers necessary to protect its essential security interests … |
| Art. 53, Para.4 | n.a. | The Member State concerned shall forthwith *consult* the other member States and the Commission with regard to the measures taken pursuant paragraph 3, so as to ensure that such measures are not incommensurate with the objectives pursued and not unduly affect the unity of the market. |
| Art. 53, Para.5 | n.a. | [Possibility of Court action against improper use of powers provide for by paragraph 3 to be brought before the Court by the Commission or a Member State] |

Why did the Member States not adopt the revised Commission proposal of 1984? According to the Commission's Aide-Mémoire, the problem was essentially one of an institutional nature featuring the problem of the distribution of competencies between national governments on the one hand, and Community institutions on the other. It seems that the Member States preferred the existing status quo to the Commission's revised proposal and in the context of the intergovernmental agreement on harmonising non-proliferation policies ('London Directives') some Member States saw no urgency to amend Chapter 6. Even the revised Commission proposal of 1984, strongly emphasising the intergovernmental component, was probably too much of a commitment for some Member States that did not like the idea of potentially being the object of Court action or involvement by the Commission and other Member States (even if only consulted) on measures taken to 'protect its essential security interests'[104].

The end of the story was unspectacular: the 1984 Commission proposal was never an object of discussion in the Council. It disappeared completely from the agenda. In the course of 1985, the responsible Commissioner held meetings with French, British and German Member State representatives which hinted at the unlikelihood of this proposal ever getting the Council's unanimous support.

Furthermore, Parliament never produced a follow-up of its resolution on the Commission's 1984 proposal[105]. As the Commission Aide Mémoire of 1993 unmistakably emphasises: '*Il*

[102] OJ C 330, 16/12/1982, p. 5.
[103] op. cit. Footnote 93, Annex.
[104] See Art. 53, Para.3 of the Commission's revised proposal of 1984.
[105] 'Resolution on the proposal from the Commission of the European Communities to the Council for a Decision adopting new provisions relating to Chapter 6 'Supplies' of the Treaty establishing the European Atomic Energy Community', OJ C 172, 02/07/1984, pp. 152-153.

*est à noter que le Parlement n'a pas été en mesure d'adopter un avis sur les propositions les plus récentes faites par la Commission en la matière'*[106]. One part of the reasons that explain this 'neglect' was the unfavourable view vis-à-vis the Commission proposal expressed in a working document published by the Committee on Energy, Research and Technology (Rapporteur Mr Staes), which noted that the revised Commission proposal of 1984 regarding Chapter 6 was considered insufficient in two respects: first, because the proposal would result in the implementation of 'extensive liberalization measures' so that 'the Agency would in fact be downgraded into a sort of marketing bureau and would be able to perform ex post facto inspections only'[107]. Additionally, the 'Chapter 6 only'approach was considered too modest in scope: 'There is a world of difference between the sixties and the present; circumstances are different. The entire Treaty should be revised; it should bear witness to the dynamic of man's spirit'[108]. Secondly, and more importantly, in a letter to the Committee's chairman Mr Michel Poniatowski, dated 16 September 1986, Ippolito expressed his reservations as to the renewed attempt to make the revision of Chapter 6 an item for the committee's agenda:

'During the present Parliament neither the Commission nor the Member States have raised the matter so far. Rather, since the accident at Chernobyl, not only parliament, but also the public opinion have demanded stricter safeguards and more decisive action on the nuclear problem on the part of the Commission. In this situation, therefore, where what is called for is the application by the Commission, at the very least, of the rules laid down in Chapter 6 (and Chapter 7) … it seems to be misplaced to be considering and discussing proposals put forward by the Commission to make provisions in Chapter 6 … less restrictive'[109].

### *II.4.3.4. After 1984: Rethinking the Strategy for Revision or Dropping the Game?*

The 1984 failure to revise Chapter 6 led the Commission to re-think its strategy on bringing about changes in the Treaty. In 1986 the Commission drafted a document listing different scenarios for bringing about changes in the application of Chapter 6 and their likelihood of success. In this context, it was underlined that an interpretation of the original Treaty rather than its formal modification was probably most suited to provide a remedy for the gap between the *de facto* operation and the *de jure* provisions which still go back (unamended) to 1957. Commissioner Mosar tried to put the issue on the Commission's agenda, however, two unexpected events, the Chernobyl disaster and the Transnuklear/Mol affair, forced the Commission to freeze discussions surrounding a possible revision, formal or informal, of Chapter 6[110].

Since then, Chapter 6 of the Euratom Treaty was more or less 'out' of the Community's 'headlines', and continued to dwell in its 1957-state. The Commission Aide-Mémoire unambiguously recognises that (at the time of writing) the supply of nuclear materials was ascertained through the play of the market forces, and the unity of the market is guaranteed because of the Member States' agreement on the 'London Directives' in November 1984 in the EPC framework. Furthermore, the Supplies Agency continued to operate in the *minimaliste* fashion inherited from the early years of Euratom. Following the diverse failures to adjust Chapter 6 and the Agency's mandate to the 'real world', in 1989 even the Court of

[106] op. cit. Footnote 96, Para.4.
[107] PE 96.973 of 27/03/1985, p. 26.
[108] ibid. p. 28.
[109] PE 108.629, Annex.
[110] op. cit. Footnote 96, Annex II, p. 98.

Auditors raised the question of the suitability of the Agency's mandate as defined in Chapter 6 of the Euratom Treaty.

'For a number of reasons, principally to do with the unexpectedly plentiful supply of uranium on the world market and the decisions of the Member States not to comply fully with the Treaty provisions, the Agency has not been in a position to fulfil the role foreseen for it. Instead it has played only a limited role in ensuring regular, equitable supply of ores and nuclear fuels to users in the Community, in the main restricted to giving formal approval to contracts which have already been signed by the contracting parties'[111].

The Court of Auditor's conclusions to the 1989 assessment read: 'In the Court's view the present position of the Agency is unsatisfactory. It recommends that the following steps should be taken: (a) agreement to the role and responsibilities of the Agency in the 1990s; …'[112]. Up until 1995, the Court of Auditors has, on an annual basis, reiterated its recommendation as to the redefinition of the Agency's principal tasks. After two years of 'silence', the Court's 1998 Report again referred to its 'previous observations in respect of the Agency's role and responsibilities'[113].

What developments did the 1990s bring about with regard to the provisions of Chapter 6 in general, and the Supplies Agency in particular? Whereas the Member States strongly (and the Commission more reluctantly) distanced themselves from re-inserting the call for the revision of Chapter 6, the 1990s, nevertheless, have brought about a number of developments and landmark events which had profound impacts on the role of the Supplies Agency and the application of Chapter 6. These developments and events will be discussed in the following section which will emphasise the following three points. First, one of the driving forces in legitimising and endorsing the Supplies Agency's role continues to be the European Court of Justice. In two cases, it has filled the Agency's role with new life. Secondly, the 'new' markets for fissile materials following the breakdown of Communism in Eastern Europe and the former Soviet Union have 'enlarged' the market for fissile materials. As a consequence, the Council has adopted a rule of maximum-dependency of nuclear supplies from a country or a region, a rule which has been interpreted favourably by the Court of Justice in the two cases referred to. Third, a new *modus vivendi* had been reached between the Commission and France, which had been refusing for several years to communicate to the Agency a vast number of its supply contracts. The 'Memorandum of Understanding' adopted in June 2000 provides for an *extra-Treaty* accommodation of the developments which have taken place throughout the past decades.

### II.4.4. The Euratom Supplies Agency in the Process of Redefinition

From the perspective of the Supplies Agency, the 1990s proved to be, if not the 'Golden Age', at least a decade of renewed activity. For example, the Report published by the EU delegation of the French Senate describes the more recent events as having resulted in a "recent regain of interest" in the Agency and Chapter 6[114]. The nature and implications of these events will be discussed in the following sections.

[111] Court of Auditors: 'Report of the Court of Auditors on the accounts of the Euratom Supplies Agency in respect of the financial year 1989 together with the Agency's replies', Para.4.1, p. 4.
[112] ibid. Para.6.1, p. 6.
[113] Court of Auditors: 'Report on the financial statements of the Euratom Supplies Agency for the financial year 1998 together with the Agency's replies', Para.5, p. 4.
[114] Délégation du Sénat pour l'Union Européenne (2000: 87).

#### *II.4.4.1. Securing Community Supply: From Managing Non-existent Scarcity to Managing Diversification of Nuclear Supply Sources*

The early 1990s witnessed a massive wave of natural uranium supplies from the former Soviet Union (now referred to as NIS (Newly Independent States)) entering the 'Western' markets at very low prices. Until 1989, the (former) Soviet Union supplied virtually no natural uranium to the Community. However, at about that time, the national authorities allowed the export of natural uranium which came on the world market in large quantities and very low prices, mainly through spot sales by intermediaries[115]. As a response to these changes in the uranium market, it was claimed that the prices at which uranium from the former Soviet Union had been offered bore no relationship to the production costs considered 'normal' for 'Western' companies. In this context, it is interesting to note for the case presented here that, in 1992, an Ad Hoc Working Group of the Supplies Agency's Advisory Committee argued that 'Soviet producers had no significant cost advantage which could justify their low prices'[116]. This development led the Supplies Agency and the Commission to believe that it could 'jeopardize the viability of producers, and hence could create a risk for the long-term security of supply to Community users'[117]. The 'abnormally low prices'[118] charged by the NIS or intermediaries could soon put natural uranium producers in severe danger and thus lead to a small number of suppliers assuming a dominant position in the market for uranium. The Agency's interpretation of Article 2 (d) of the Treaty which calls upon the Community to ensure that all Community users receive 'a regular and equitable supply' in connection with the allegation of prices which are 'unfair' or 'dumping', is that these practices by the NIS are a danger to the **security of supply** in the Community. In line with the restrictions imposed by U.S. anti-dumping legislation aimed at limiting the import of natural uranium from the NIS, the Community announced a similar policy to be implemented through the exercise of the Agency's right to **refuse** those contracts that do not correspond to the Community's **policy of diversification of supply sources**. This policy envisages the imposition of quantitative restrictions ('reasonable limits')[119] on the import of fissile materials from the NIS. These 'reasonable limits' prescribe that the amount of natural uranium an individual Community utility is entitled to acquire is set at 25% of its average net requirements. A figure of 15%-20% applies for enrichment. This policy has been supported by the Council. The so-called *Corfu-Declaration*, which is a joint Council-Commission declaration adopted in 1994 and 'published' only in the confidential minutes of the Corfu Council meeting, confirms the Agency's policy of imposing restrictions on the import of fissile materials from the NIS.

#### *II.4.4.2. Commission and MEPs in Dispute over the Agency's Approach towards the NIS*

The Commission has subsequently endorsed the Agency's policy in the Green and White Papers on energy policy (1994 and 1995 respectively) as well as in the illustrative Nuclear

[115] Blanquart (1995, Para.4) for a more elaborate statement on the price development of the market for natural uranium following the 'opening' of the Soviet Union.
[116] ibid. para.5. In addition, the U.S. Department of Commerce found that exports from six republics of the former Community of Independent States (CIS) were sold at dumping prices. See also Bouquet (1998: 18)
[117] ibid. para.6.
[118] International Nuclear Law Association, Nuclear Inter Jura 1995, Report of Commission 3, Helsinki, 3-7 September 1995.
[119] Blanquart (1996: 2).

Programme of the Community ('PINC') dating back to 1997[120]. Furthermore, Commissioner Leon Brittan affirmed the Agency's supply policy in an appearance before Parliament on 18 November 1992 answering a question by MEP Mrs Jessica Larive who wanted to know the reasons and the legal basis for the Supplies Agency's policy of quantitative restrictions. Commissioner Brittan's answer reads as follows (selection)[121]:

'Massive imports at extremely low prices, coming from the CIS republics risk endangering the diversification of the Community supply sources and hence its long-term security of supply and the viability of its production industries. That is why the Supplies Agency, in exercising its right to conclude contracts, is ensuring the Community does not become over-dependent on a single source of supply beyond reasonable limits and that the acquisition of nuclear material from CIS republics takes place at prices related to those on the market; that is to say prices which reflect cost of production and are compatible with prices of producers in market economy countries'.

Criticsm was voiced by of some MEPs as to the 'protectionist and restrictive policies of the agency' (Jesscia Larive, then 'LDR') or the policy of 'keeping the price up artificially' (Madron Seligmann, EPP). Furthermore, in a letter to the chairman of the Parliament's Committee on Energy, Research and Trade, Claude Desama, dated 12 March 1993, Larive strongly criticised the protectionist activities exercised by the Agency which, according to her assessment, lack a legal basis. In another letter to a COGEMA representative dated 11 March 1993, Larive and Seligmann countered the argument that the prices for uranium charged by the CIS did not reflect production costs: 'We have obtained information on CIS production costs which show that they are extremely low, much lower than current spot price levels. It would appear that the sellers from the CIS are making available an important product at competitive prices … We in Europe should take advantage of this'. The Report issued by the French Senate Delegation to the European Union also hints at the fact that the policy adopted by the Agency and the Commisison '*ne fait pas l'unanimité*'[122]. The report states that essentially the countries which prefer a more liberal market regime, particularly the United Kingdom and Sweden, stand in stark contrast to more *dirigiste* policies such as pursued in France: these states dispute the Agency's monopoly in terms of its exclusive right to conclude contracts still formally exercised by the Agency, and the policy of supply quotas for imports of fissile materials which results from the present market conditions[123].

However, in the view of the Agency, the 'policy of diversification of supply sources' and of 'recommending market-related prices for [N]IS supplies' is legally based on the provisions of a 'common supply policy' set out in Article 52, Para.1 of the Treaty. In order to ensure the diversification of supply sources, the Agency's 'exclusive right to conclude contracts' (Article 52, Para.2 (b)) has been revitalised through the practices described above via the Agency's capacity to refuse the conclusion of contracts that do not correspond to the 'policy of restriction'. And recently, the 'approach' advocated by the Supplies Agency and the Commission has been forcefully endorsed by the European Court of Justice.

[120] For the 'Green Paper for a European Union Energy Policy' see COM(94)659 fin., Para. 195. For the White Paper 'An Energy Policy for the European Union', see COM(95)682 fin., point 4.3.1.2. For the 'PINC', see COM(97)401 fin.
[121] Question No 50, H-1087/92, Debates of the European Parliament, 18/11/1992, No 3-424, p. 183.
[122] Délégation du Sénat pour l'Union Européenne (2000: 87).
[123] ibid.

### *II.4.4.3. Winning the Legal Battle: ECJ Endorsement of Agency's Discretion in KLE and ENU.*

In essence, the Court has declared the establishment of the quantitative restriction set up by the Agency and the Commission in conjunction with the Council to be in conformity with the Euratom Treaty. In the KLE (Kernkraftwerk Lippe-Ems) judgement the right of the Commission (Supplies Agency) to refuse the signing of contracts was upheld if contractual provisions violate these quantitative restrictions[124]. Details follow:

A heavily contested decision by the Supplies Agency, concerning the refusal to sign a supply contract between KLE, a nuclear power station operator in Lower Saxony, and British Nuclear Fuels (BNFL) in 1993 triggered legal activity. The contract signed between the two parties was silent as to the place of origin of the uranium to be supplied. After the Agency received the contract, it asked KLE and BNFL for information concerning the origin of the nuclear material. In December 1993, BNFL informed the Agency that the uranium would come from the CIS, probably Russia. The Agency replied, in line with its policy on 'diversification of supply sources', that the contract submitted by KLE might make it too dependent on uranium of CIS origin. The Supplies Agency considered the conclusion of the contract inappropriate and asked the parties to submit their comments before taking a final decision. KLE referred the matter to the Commission pursuant to Art. 53, Para.2 arguing that the Agency had failed to act. The Commission, in two subsequent decisions directed to KLE, rejected the requests made by KLE on the Agency's failure to act and the disregard of the time limit within which the Agency has to act, in its Decisions 94/95/Euratom of 4 February 1994 and 94/285/Euratom of 21 February 1994[125]. KLE instituted proceedings before the Court of First Instance against the two Commission Decisions seeking their annulment[126].

The Court of First Instance in its judgement of 25 February 1997 declared as legal the Supplies Agency's action to refuse the conclusion of a supply contract for natural uranium from the NIS. According to Article 61, Para.1 of the Treaty, the 'Agency shall meet all orders unless prevented from so doing by legal material obstacles'. In the KLE case, the Court of First Instance identified three legal obstacles to concluding the contract which were upheld by the ECJ's judgement in 1999.

As to the **first** obstacle, the policy of diversification of supply sources set a maximum level of dependence from a single supplier country or region (here: NIS). The Court argued that the Agency could exercise discretion in order to bar certain imports of uranium which would reduce the diversification of external sources of supply. The Court thus 'admitted', in line with the Agency's position elaborated in 1991/1992, that security of supply could be jeopardised if NIS imports were permitted in unlimited quantities and were to replace traditional supplies. Part of the ECJ's judgement reads:

'In order to ensure geographical diversification of external sources of supply, the Agency has a discretion – exercising its exclusive right to conclude contracts for the supply of ores and other nuclear fuels so as to ensure reliability of supplies in accordance with the principles of equal access

[124] Judgement of the Court of First Instance, Joint Cases T-149/94 [1997] and T-181/94 *Kernkraftwerk Lippe-Ems (KLE) v.Commission*, [1997] ECR II-161, and Judgement of the Court of Justice, Case C-161/97 P *Kernkraftwerk Lippe-Ems (KLE) v.Commission*' [1999] ECR I-2057.

[125] See Decision 94/95/Euratom, OJ L48, 19/02/1994, p. 45 and Decision 94/285/Euratom, OJ L122, 17/05/1994, p. 36.

[126] op cit Footnote 124.

to resources, in conformity with the task conferred on it by the Treaty – to bar certain imports of uranium which would reduce such diversification'[127].

With regard to the **second** obstacle, the Commission submitted that the supply system established by the Euratom Treaty aims at ensuring that nuclear materials are imported at market-related prices. The contract between BNFL and KLE was concluded at a price that was even lower than the average spot market price and thus did not comply with the rule that supplies are to take place at market-related prices[128].

The **third** legal obstacle to concluding the contract was derived from the obligation to ensure equal access to fissile material resources and the therefore prevent one user from being given a privileged position in relation to competitors. In order to guarantee equal access to resources pursuant to Article 52, Para.1 of the Treaty, the Court considered justified the application of a permissible threshold of dependence, fixed by reference to the state of the market at a maximum percentage of individual users' consumption. The judgement reads:

'The Agency, within the bounds of its broad discretion, fixed a permissible degree of dependence at a maximum of 25%, taking account inter alia of the existing long-term production capacity of the CIS and of the fact that that represented some 25% of world production'[129].

Following KLE's appeal against the judgement of the Court of First Instance, the ECJ examined only the first obstacle owing to the fact that each of the legal obstacles was sufficient to support the Agency's decision of non-conclusion of the contract between KLE and BNFL. The ECJ upheld the reasoning adopted by the Court of First Instance and therefore, dismissed KLE's apppeal[130]. Hence, the KLE case demonstrated that the Agency's signature under a supply contract is **not merely a formality**. The policy of supply diversification proclaimed by the Commission, agreed upon by the Member States and endorsed by the Court has developed into an important if not **the** all-important instrument of the Supplies Agency, following the recent developments on the world market for nuclear supplies. With the help of the Court, the Supplies Agency was thus able to re-interpret its mandate and to creatively assume competencies the Treaty founders, departing from the idea of supply scarcity, had not remotely envisaged.

In the so-called ENU case, the Empresa Nacional de Urânio, a small-scale producer of natural uranium in Portugal, had been facing the problem of how to plan its output for the next several years. On 15 September 1995, the Court of First Instance issued its judgement in the case brought by ENU against the Commission[131]. The purpose of the proceedings launched by ENU was to ensure a 'Community preference' for the Portugese uranium production, even if offered at higher prices. Furthermore, ENU challenged the legality of the 'simplified procedure' which, as described above, allows direct negotiations between the users and the suppliers of their choice, subject to the Agency's co-signature[132]. The Court of First Instance held that the Treaty does not guarantee special treatment of Community

[127] Judgement of the Court, Case C-161/97 *Kernkraftwerk Lippe-Ems (KLE) v.Commission*' [1999] ECR I-2057, Para. 92.
[128] ibid. Para.96-101.
[129] ibid. Para. 103.
[130] See also Euratom Supplies Agency, Annual Report 1999, http://europe.eu.int/comm/Euratom/docum_en.html
[131] Judgement of the Court of First Instance, Joint Cases T-458/93 and T-523/93 *ENU vs. Commission* [1995] ECR II-2459.
[132] Blanquart (1996: 7).

producers and that, secondly, the 'simplified procedure' is in conformity with the system governing supplies as laid down in the Treaty. The Court of First Instance thus dismissed the claims brought to the Court by ENU. But what is of more interest to this chapter are the general implications of this judgement for the role ascribed to the Supplies Agency. The judgement of the ECJ of 11 March 1997[133], upholding the judgement and reasoning of the Court of First Instance, states that Chapter 6 of the Treaty does not contain any provision that obliges the Supplies Agency to guarantee the utilisation of Community production of ores. On the contrary, since the procedure for balancing supply against demand applies not only to supplies from the Community but also, pursuant to Article 65 in conjunction with Article 60 of the Treaty, to applications from users and contracts between users and the Agency relating to supplies from outside the Community, **no distinction may be made according to the origin of the products.** Consequently, the Agency 'is therefore not obliged to give preferential treatment to the disposal of Community production, in so far as the supply scheme established by the Treaty does not guarantee Community preference for producers'[134].

Consequently, these legal challenges to the Agency's mandate and policy may sound surprising in the light of the marginal role the Agency used to play in **securing** Community supply, as this was, more or less, an affair that was resolved via market forces. With the Commission and Agency pursuing a policy of diversification of supply sources, the Agency is the only Community body in the energy domain that happens to be endowed with relatively far-reaching discretionary powers that allow, for example, the setting of quantitative import restrictions to fissile materials from the NIS. The Commission White Paper 'An Energy Policy for the European Union' mirrors the Community's variable competencies with regard to managing the Community's external dependency on energy: whereas no Community supply policy exists for managing the supply of oil or gas, (although, for example, the dependency on Russian gas creates increasing concern) in the nuclear energy sector the Euratom Treaty explicitly calls for a Community supply policy: '… assuring security of supply is one of the fundamental objectives of the Euratom Treaty'. Thus, the Supplies Agency, together with the Commission, were given the necessary instruments to 'manage external dependency'[135].

In this light the Court, in both the ENU and KLE cases, ruled that where decisions concerning nuclear policy and the securing of nuclear supplies are at stake, the Agency has a broad discretion when exercising its powers. Reiterating the Treaty, the Court thus stated that the Agency plays an essential role in the common supply policy and that it is the task of the Agency to guarantee one of the essential aims which the Treaty has assigned to the Community, namely the reliability of supply pursuant to Article 2 (d)[136].

[133] Judgement of the Court, Case C-357/95 P *ENU vs. Commission* [1997] ECR I-1329.
[134] ibid. Para.23.
[135] Commission of the European Communities: White Paper 'An Energy Policy for the European Union', COM(95)682 fin., point 4.3.1.2.
[136] For a summary of the KLE and ENU cases and their implications for the Agency's role see Euratom Supplies Agency, Annual Reports, 1997, 1999, http://europe.eu.int/comm/Euratom/docum_en.html

#### *II.4.4.4. The 'Millennium-Solution'? The 'Memorandum of Understanding' between the Commission and France*

With the Agency's role 'confirmed' (according to the view of the Agency itself) or '(re)vitalised', one of the outstanding issues was the 'special relationship' between France and the Agency with regard to the French handling of supply contracts. Although EDF submits a considerable number of its supply contracts to the Agency (i.e. direct contracts with extra-Community suppliers including the those of the NIS), there are different types of contracts that continue to pose problems, including contracts on enrichment through processing, contracts between 'linked' enterprises ('*entreprises liées*') such as between EDF and COGEMA/Eurodif, and purchases by COGEMA. With the review of Chapter 6 still pending (it has to be recalled that the Commission's 1984 revised proposal for revision is still before the Council awaiting debate …), the Commission and France set up a working group aimed at adjusting the provisions of Chapter 6 to the 'new' circumstances. However, the approach chosen this time was not one of fully-fledged revision, but rather an incremental approach seeking to reach agreement on the application of Chapter 6 on an extra-Treaty basis through some sort of 'bilateral' inter-institutional agreement. As a result of the working group's deliberations, a document entitled 'Memorandum of Understanding' was elaborated in 1998 by the Supplies Agency as a basis of the discussions between the Commission and France. The document is confidential and is not subject to disclosure.

According to a 'Note' of 15 January 1999 circulated by France to the other Member States, the 'Memorandum of Understanding' provides for a set of criteria that shall in an exhaustive and precise manner, deal with all the contingencies that can be envisaged for the conclusion of different types of contracts. Different procedures for signature are provided (such as 'signature', '*signature partielle'*, '*communication des éléments contractuels'*) that are applied to different types of contracts all of which are enumerated in the French 'Note'. The 'Memorandum of Understanding' entered into force after an exchange of letters between France (represented by the Sécretaire d'Etat à l'Industrie, Christian Pierret) and the Commission (represented by the Commissioner of DG TREN, Loyola de Palacio). With the response by the Commissioner to the French government's letter, the agreement is in force as of June 2000.

With the adoption of the 'Memorandum of Understanding' a means has been found flexibly to adjust the provisions set out in Chapter 6 so as to make their application 'acceptable' for France which had, hitherto, only rudimentarily applied the provisions of the Chapter. Thus, a *modus vivendi* has been found between the Commission/the Supplies Agency and France that constitutes an informal reinterpretation of Chapter 6 (since any formal attempt to revise Chapter 6 would open a 'Pandora's box' releasing the uncontrollable 'threat' of a fully-fledged Treaty revision that would be unacceptable to France). The French Government has distributed the 'Note' to the other Member States in order to outline the 'new bilateral system' suggesting its application on an 'experimental' basis.

### II.4.5. Conclusion

For a number of decades, the Euratom Supplies Agency, with its small group of dedicated staff, has lived a quiet life, seeing the initial conditions that led to its creation in the mid-50s fade away in the context of abundant supply of fissile materials. Where and when it was

possible, the Commission sought to adjust to the changing circumstances of the Supplies Agency's environment. With reference to the Agency's 'exclusive right to conclude contracts' spelled out in Article 52 of the Treaty, the 'simplified procedure' of 1960 and its revision in 1975 suggest that where the institutional conditions permitted adjustment to 'reality', it was exercised in a flexible manner. On the other hand, this did not prevent some Member States, France in the first place, from disregarding the obligation to submit supply contracts to the Agency. Apart from the challenges the Agency's 'exclusive right to conclude contracts' was facing, the Treaty signatories never applied other provisions central to Chapter 6. For example, the Agency has certainly not been allowed by any of the Member States to exercise one of its most important tasks, its 'right of option' of fissile materials. As regards the Agency's role in determining the prices pursuant to Article 67, it has to be stated that the Agency never got to exercise this function[137].

On a number of occasions, the Commission, pursuant to Article 52, Para.2 has proposed a revision of Chapter 6 of the Treaty. After the last attempt in 1984 which failed to produce an outcome due to the unanimity requirement in the Council, it took almost a decade to re-launch the debate surrounding the application of Chapter 6.

In the European Parliament MEPs Madron Seligmann and Jessica Larive occasionally brought the issue of the application of Chapter 6 back on the agenda. In questions put before the Commission and the Council, Mrs Larive asked the President-in-Office of the Council whether it was desirable, in the context of a policy of non-proliferation, to relieve the CIS republics of their military stocks of natural and enriched uranium by purchasing this material as a fuel for power stations in the Community[138]. During the same exchange of views, Mr Seligmann asked the Council about the general role of the Supplies Agency in the context of the restrictions imposed on nuclear materials from the former Soviet Union:

'… [I]n Chapter 6 the Euratom Supplies Agency had to provide a regular supply of uranium for the Community but that was when uranium was in short supply. Today there is no shortage, and the agency now seems to have adopted a policy of keeping prices high although it is not authorized to do that in any of the clauses. Does the Council consider the agency has really outlived its purpose? […]'.

The reply by the President-in-Office of the Council read:

'Chapter 6 of the Euratom Treaty does still apply and revision of the chapter is not a matter that is under discussion or agreed at present'[139].

At the same session, Mrs Larive questioned the Commission (represented by Sir Leon Brittan) on the issue of import restrictions vis-à-vis the former Soviet republics (see above). In the Commission's replies the role of the Agency as prime instrument to secure regular and equitable Community supply is affirmed and its role in promoting a policy of supply diversification justified, even if this implies the imposition of quantitative restrictions to nuclear materials stemming from a certain region[140].

[137] 'Ippolito Report', Part B, Annex II. Session doc number 1-0228/84. Ref doc noc 1-1164/82, COM/82/0732. OJ C330 16 December 1982, p.004 (PE 84.748 final).
[138] Question No 4, H-1088/92, Debates of the European Parliament, 18/11/1992, No 3-424, p. 170.
[139] Question No 4, H-1088/92, Debates of the European Parliament, 18/11/1992, No 3-424, p. 170.
[140] Question No 50, H-1087/92, Debates of the European Parliament, 18/11/1992, No 3-424, p. 183. See also question No 95, H-0158/93, Debates of the European Parliament, 10/03/1993, No 3-429, p. 190.

Yet, in a letter from 9 November 1993 addressed to the Chairman of the Committee on Energy, Research and Technology, Claude Desama, Commissioner Matutes referred to internal Commission work being done on the issue of Chapter 6 revision. These internal discussions did not, apparently, produce tangible results. Furthermore, the 'non-inclusion' of the Euratom Treaty on the agendas for the Maastricht, Amsterdam and the Nice summits, although regularly advocated for by the Parliament's Committee on Industry, External Trade, Research and Energy, suggests that Euratom Treaty revision seems not to be a preferred option by a large number of Member States. However, instead of waiting for the 'big bangs' of Treaty revision the approach adopted by France and the Commission in drafting and adopting a 'Memorandum of Understanding' so as to find a *modus vivendi* on the application of Chapter 6 (nota bene: certain aspects of Chapter 6), seems to be more likely to produce results that do not require Treaty revision and the opening of 'Pandora's box'.

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# II.5. Nuclear Safeguards within the Framework of the Euratom Treaty

## II.5.1. Introduction

Article 77 of the Euratom Treaty reads as follows:

'In accordance with the provisions of this Chapter, the Commission shall satisfy itself that, in the territories of Member States, (a) ores, source materials and special fissile materials [i.e. Plutonium -239 + Uranium -235 - author's note] are not diverted from their intended uses as declared by the users,'

So the first (and, to those unfamiliar with the Euratom Treaty, the most surprising) thing to note is that **'Safeguards' has got nothing whatsoever to do with nuclear safety**. Rather it concerns the systems put in place to prevent or detect the diversion of special fissile materials (essentially Plutonium-239 and Uranium-235) from their 'declared use'. In other words, it concerns the 'accountancy' systems for the control of nuclear materials in the civil cycle that could be diverted to military uses - i.e. the **covert** construction of nuclear weapons.

The Euratom Safeguards system is, as stated above, designed to prevent the diversion of civil fissile materials to 'uses not declared by their owners'. This peculiar phrase is universally interpreted to mean 'the production of nuclear weapons'. At least this is unambiguously the interpretation that the Euratom Safeguards staff put upon it. (Otherwise if owners declared that their intention was to make such materials available to terrorists, this would be quite in order, and Euratom Safeguards would have to accept this as a declared use, which is plainly ridiculous.) Chapter 7 thus has some of the elements of a prototype European Non-Proliferation Treaty, although others argue that its primary role was/is to ensure 'good housekeeping' by the operators of (civil) nuclear facilities. The original purposes of the Safeguards chapter are often assumed to have been (a) to offer a guarantee to the USA (as the source of most of Europe's fissile materials in the 1950s) that fissile material of US origin (described, in Euratom terminology, as 'US -obligated') would always be 'tracked' to ensure that it was only used for 'declared' (i.e. civil) uses; and (b) to prevent Germany from secretly developing a nuclear weapons programme: the requirement for declared use would have obliged an explicit decision by Germany to follow this path, (as France subsequently did), and Safeguards inspections would detect any covert attempt so to do.

Whereas in some areas, the Euratom Treaty simply created the legal framework to ensure normative harmonisation, co-ordinated actions and regular supply; in the domain of safeguards however, (and in total contrast to the domain of nuclear reactor safety) the Member States agreed to submit nuclear materials in their civil nuclear activities to the rules and control of an independent, supranational authority[141]. The Member States have accepted that this authority - Euratom Safeguards -should have direct contact with their nuclear operators.

[141] In practice, this task is performed by the EURATOM Safeguards Directorate (based in Luxembourg) which is administratively attached (at present) to DG TREN of the Commission of the European Communities.

### II.5.2. Euratom Safeguards in Practice

To enable the Commission to fulfil its tasks, the Treaty provides specific means in its Chapter 7, which can be summarised as follows:

- an obligation for any operator to submit to Euratom Safeguards the **Basic Technical Characteristics** of its installation and intended activities,
- an obligation for any operator to have an **Accountancy System** for all nuclear materials,
- the right for Euratom Safeguards to make **inspections** at any time in any installation,
- the right for Euratom to store any excess of special fissile material when necessary,
- the right for Euratom to impose **sanctions**, and finally,
- the obligation for Euratom to issue a specific regulation precising the requirements for the operator's accountancy system.

To this end, and to fulfil other requirements of the Treaty, two regulations were adopted by the Council in 1959, and inspections commenced around that time. These regulations provided the legal framework for the application of EURATOM safeguards until 1976, when they were replaced by Euratom Regulation 3227/76, which is still in force today[142].

Euratom Regulation 3227/76 essentially defines the obligations of operators of plants storing or handling nuclear materials, the most important being:

- the operator has to provide Euratom with the **Basic Technical Characteristics (BTC)** of the installation concerned, by following a detailed questionnaire. The information required includes an account of the arrangements for handling nuclear material, a description of the nuclear material, and a description of the system for nuclear material accountancy and control. Precision and accuracy of all determinations and measurements must be established and submitted to Euratom as part of the BTC. Any changes to the basic technical characteristics must be communicated to Euratom,
- the outline of the operator's programme of activities must be notified on a regular basis,
- the operator must establish and maintain **a system of nuclear material accounts** when he starts to handle such material. Features of this material accounting system are that all parts of the installation in which nuclear material may be found have to be allocated to one out of a series of **Material Balance Areas (MBA)** defined by Euratom after concertation with the operator. For each MBA, Regulation 3227 says that the accounts must record the details of all material which enters and leaves the area including quantity, type, composition of material; safeguarding obligations and, of course, the type of inventory change. Changes to the inventory other than receipts or shipments, for example nuclear transformation by irradiation, must also be recorded. Separate accounts must be maintained for plutonium, highly enriched uranium, low enriched uranium, natural uranium, depleted uranium and thorium. The material must also involve taking a physical inventory from time to time (typically once a year) the results of which should be reported to Euratom,
- the intention to carry out a **physical inventory** and the programme for doing so must be notified,
- certain **transfers**, imports and exports of nuclear material must be **notified in advance,**

[142] OJ L 363, 31/12/76, p. 1 - 57

- in addition to the above obligations, the Regulation provides for a derogation/exemption regime in a very limited number of cases, specific provisions for ore producers, carriers and intermediaries. Finally, Regulation 3227 provides for specific provisions only applicable in Nuclear Weapon States.

On the other hand, one thing is not addressed in Regulation 3227: the inspection criteria or activities, which can freely be defined and adapted to particular circumstances by the Euratom Safeguards Directorate.

In parallel with the signature of the Euratom Treaty, and the establishment of its Safeguards provisions, the International Atomic Energy Agency (IAEA) was established in 1957. The aim was to disseminate the benefits of nuclear energy whilst ensuring that civil nuclear material remained in peaceful nuclear programmes through submission to international safeguards control. The system of safeguards adopted initially by the IAEA, mainly outside Europe, was limited in scope, having been conceived primarily for application to reactors, and did not imply that a State had to submit all its nuclear activities to international safeguards. Later, a more complete system of control was developed - at least for the Non Nuclear Weapon States - and materialised through the Treaty on the Non-Proliferation of nuclear weapons (NPT) and subsequent arrangements. The NPT was opened for signature in 1968, and has now, inter alia, been ratified by all the Member States of the EU.

The Non-Proliferation Treaty gives a Safeguards role to an Inspectorate created within the International Atomic Energy Agency, based in Vienna. Crucially, however, such Inspectors do not carry out a significant level of inspection within the five States which officially possess nuclear weapons - in particular they do not carry out detailed inspections of reprocessing plants in these States, even though these produce most of the fissile materials. The IAEA does not do so because such States have dedicated military facilities which are immune to inspection, and the Non-Proliferation Treaty recognised that there was no point in inspecting civil facilities in these countries, since if the State concerned chose to break the Treaty provisions, it could divert fissile material to whoever it liked whenever it liked under the cloak of military secrecy. The 1958 NPT recognises the asymmetry between Nuclear weapon states and non-weapon states – indeed it seeks to freeze this status quo, for better or worse. Thus the IAEA has never seriously inspected the Nuclear weapon states – since they could effectively do what they want with their own military material. The argument, especially, is that there is no point in inspecting an alcoholic's cupboards to see if he/she has any alcohol in them – you know that they do. Moreover there is no point in seeking to control what they do with the alcohol in their 'civil' cupboard, if you have no control whatsoever of how, what and when goes into their 'military' cupboards, or what and when comes out of them and where it goes to.

Euratom Safeguards - or rather the Euratom Treaty - does not accept this logic, since it now devotes over 70% of its resources to inspecting the two major sources of fissile materials in the Community - the reprocessing plants at Sellafield in the UK, and at Cap le Hague in France. Euratom Safeguards argues that in so-doing it is simply following the 'equal pain for all' principle - since the Treaty does not differentiate between the inspection regimes to be implemented in the Nuclear Weapon States (UK and France), and the rest.

Both Nuclear Weapon States of course have military production facilities, and stocks of Pu-239 and U-235, which are wholly outside Euratom's control, since Art 84 para 3 (Euratom) states that:

'The safeguards may not extend to materials intended to meet defence requirements which are in the course of being specially processed for this purpose or which after being so processed, are, in accordance with an operational plan, placed or stored in a military establishment'.

Thus Euratom safeguards inspectors may not carry out inspections during military campaigns conducted at 'mixed' facilities such as Sellafield's Magnox fuel reprocessing plant, or part of Cap Le Hague – or Capenhurst – or at all at any of the dedicated military facilities such as Aldermaston & Burghfield in the UK. It seems very unlikely that inspection rights will ever be given by Nuclear weapon states to all their military nuclear facilities, so the question which must be asked whether there is any purpose to be served in inspecting the civil cycle of such states? (Especially when it consumes 2/3 of your budget money which might be much better spent elsewhere.)

A further complication is that the Treaty does not and cannot prevent a Nuclear weapon state changing the designation of fissile material. Thus, according to Euratom regulations, a Nuclear weapon state can, at short notice, inform Euratom Safeguards that these X kilos of Pu-239, which had been declared as civil material, are to be re-designated as military material. Thus state condoned 'diversion' is perfectly legitimate. Given that BNFL and COGEMA are both state owned, it might be questioned whether it is worth devoting so much effort to assuring that material declared civil 'for the moment' remains as such.

If, however, it is agreed that there is a continuing case for the application of Euratom Safeguards in the UK and France, then it remains to be debated whether or not it is appropriate (as Euratom Safeguards has chosen to do) to use the criterion of timeliness in its inspection regimes in these States. (Timeliness concerns the minimum time-periods in which a diversion could take place, a concept whose use in Nuclear Weapon States has sometimes been criticised. It is the application of this principle which requires continuous and expensive monitoring of Sellafield and Cap-le-Hague, because of their huge through-put of nuclear materials. The IAEA, on the other hand, just concerns itself with monitoring input and output materials from such plants, leaving the actual re-processing operation as an unexplored 'black box').

One other issue remains to be addressed. Given the 'maximalist' interpretation of the requirements of Chapter 7 by the Euratom Safeguards Directorate up to now, a decision was taken to build and man two on-site laboratories for testing nuclear materials: one at Sellafield, and one at Cap-le Hague. These are two of the most expensive facilities owned by the European Commission. They duplicate the existing analytical laboratories operated at these sites by BNFL and Cogema respectively. Clearly a point for discussion is why it was not sufficient simply to monitor and control the analyses conducted in these operator-run (and very highly regarded) laboratories.

It is arguably possible to interpret the Treaty as requiring Euratom Safeguards to simply audit and monitor the safeguards systems put in place by the national authorities, to ensure that they meet Euratom Treaty requirements; but in fact a much more 'maximalist' interpretation has been followed, in which Euratom Safeguards now either duplicates, or entirely replaces, national safeguards systems. In order so to do, its staff and resources have grown substantially over the last 25 or so years. It should also be noted that Euratom Safeguards is a regional safeguards system; but there is also an international (indeed global) safeguards system (and inspectorate), operated by the International Atomic Energy Agency in Vienna, under the auspices of the 1958 Non-Proliferation Treaty (NPT), and which all the

EU Member States are party to. Some of these also operate in addition their own national safeguards systems.

The most recent 'annual' report from Euratom Safeguards, entitled 'Operation of the Euratom Safeguards Office in 1999-2000', (COM (2001) 436 final) was published on 26 July 2001. With respect to its future activities, DG TREN has established a group of 'three wise men' to examine:

- the task of the Office and its operating targets,
- working methods and inspection procedures,
- the relationship between resources and activities.

The group comprises:

- Henning Christophersen, former Vice-President of the European Commission, and former Danish Foreign Minister ;
- Bruno Pellaud, Chairman of the 'Swiss Nuclear Association', former Deputy Director General of the AIEA (International Atomic Energy Agency), responsible for Nuclear Safeguards; and
- Michel Eliat, former Director General of ABB Belgique.

The European Energy Foundation's Newsletter of September 2001[143] reported a recent speech by the Director of Euratom Safeguards, which he delivered at the 23rd ESARDA symposium (European Safeguards R&D Association), in which he is reported as having posed the following questions:

First, what will be the impact of the accession of Central and Eastern European candidate countries to the Community, in the safeguards area? These countries have their own safeguards system. Why should the Commission take over? This problem has already been encountered in the frame of the discussions about the implementation of the IAEA Additional Protocol. In the Council of Ministers, EU Member States were divided about the sharing of responsibilities associated with such implementation. It is not surprising that those who were in favour of a transfer to the Commission are the original Member States, and those who didn't agree to it were the newcomers. The problem remains to be solved. Who will do what and at which cost?

Second question: how might the new IAEA Integrated Safeguards concepts influence Euratom safeguards goals and practices? If it allows the IAEA to reduce inspection efforts in countries with high safeguards credentials, why should Euratom not reduce its own efforts and equally make savings? Two divergent interpretations still exist here. Either the IAEA reduction of efforts will rely entirely on the full implementation of national/regional safeguards systems or similar reduction at regional or national levels will take place. Safeguards control being intrusive by nature, how will the operators react according to one or the other interpretation?

Third question: is it right to spend more than two thirds of the resources available in only two out of fifteen EU countries? This is especially important when it is noted that in these countries material for civilian and military applications are stored at the same place. Which is the level of guarantee achieved in terms of non-proliferation, despite the price we pay?

[143] http://www.f-e-e.org/newsletter/last-nl.htm.

Fourth question: will new technologies help to alleviate the existing budgetary constraints? Remote monitoring systems are very promising, but will the technology be reliable and politically acceptable? Will the cost remain attractive in view of the rather small and specific equipment markets? Will then confidentiality of the data transmitted on line, remain properly protected?

Fifth question: why should the safeguards controls, world wide, be concentrated where they seem easy and not where they are desirable? An interesting alternative would be a sharing of responsibilities with regional safeguards system, in reliable areas of the world. They would take the original responsibility and of course report to the IAEA. The UN would, as a consequence, be able to concentrate its efforts elsewhere in the world where control is desperately needed.

Final question: knowing that any insurance scheme has a price, how much will the taxpayer still be prepared to spend on safeguards? In view of the shortcomings of the present systems, will the public also accept that the cost of a democratic control ensuring security in the nuclear fields is not fully paid by the industrial operators for which the safeguards control is becoming a kind of a rubber stamp certifying a sound behaviour[144]?

It thus seems that the Euratom Safeguards Office is now asking, perhaps for the first time. the kind of questions which have concerned Parliamentary observers for some time, and which were outlined in this chapter.

## II.6. Property Ownership.

This chapter is so short, and so remarkable, that it is worth quoting here in full. It should be noted that the term 'special fissile materials', which is used throughout the Euratom Treaty, refers, essentially, to the fissile isotopes of Thorium, Uranium, and Plutonium. It is also important to note that the body which was charged in the Treaty with implementing these provisions, is the Euratom Supplies Agency, established by Chapter 6, which is analysed in detail elsewhere in this study.

***'CHAPTER 8***

**PROPERTY OWNERSHIP**

Article 86

Special fissile materials shall be the property of the Community.

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

Article 87

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

Article 88

[144] ibid. p. 3-4.

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

Article 89

1. In the Special Fissile Materials Financial Account:

a. the value of special fissile materials left in the possession of or put at the disposal of a Member State, person or undertaking shall be credited to the Community and debited to that Member State, person or undertaking;

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

2. Variations in value affecting the quantities of special fissile material shall be expressed for accounting purposes in such a way as not to give rise to any loss or gain to the Community. Any loss or gain shall be borne by or accrue to the holder.

3. Balances arising from the transactions referred to above shall become payable forthwith upon the request of the creditor.

4. Where the Agency undertakes transactions for its own account, it shall, for the purposes of this Chapter, be deemed to be an undertaking.

Article 90

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

Article 91

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

The distance between these provisions and everyday reality can be gleaned from the following Parliamentary Oral Question to the Commission, and the response to it[145]:

***"Question No. 59, by Mr Ford (H-118/88)***

Subject: Euratom Treaty, Articles 88 and 89

Have these two articles been implemented, and in particular does the "Special Fissile Materials Financial Account" exist?

If the account does exist, where is it available, and if not, why not?

***Answer***

Articles 88 and 89 of the Euratom Treaty have never been implemented and there is no "Special Fissile Materials Financial Account."

[145] Debates of the European Parliament, No. 2-367 (sitting of 6 July 1998) pp 219-220.

This situation, which has existed since the Euratom Treaty came into force, is the result of decisions taken by the Council and Commission having regard to the circumstances prevailing at the time when the Euratom Supplies Agency was set up in the period 1958-60.

The absence of the special fissile materials financial account has not caused any practical difficulties and no Member State has asked for this account to be drawn up.

The Safeguards Directorate in Luxembourg does, of course, keep a complete account, from the data it has, of all the special fissile materials present in the Community at any time'.

There is however at least one anomaly here. Only in Chapter 7 (Safeguards) is there an exclusion clause specifically exempting military nuclear materials from inspection and control: the rest of the Euratom Treaty is completely silent on the vexed question of whether it applies, or not, to military nuclear activities. Thus the ownership provisions of Chapter 8, it could be argued, must indeed include all nuclear special fissile materials of military origin as well as those in the civil cycle. Unsurprisingly, this is not the interpretation which the Commission has generally chosen to follow.

## II.7. International Agreements under the Euratom Treaty

### II.7.1. Legal Basis

The legal basis for most international agreements which have been negotiated and concluded within the framework of the Euratom Treaty is Article 101 of that Treaty, which reads as follows:

'Article 101

The Community may, within the limits of its powers and jurisdiction, enter into obligations by concluding agreements or contracts with a third State, an international organization or a national of a third State.

Such agreements or contracts shall be negotiated by the Commission in accordance with the directives of the Council: they shall be concluded by the Commission with the approval of the Council, which shall act by a qualified majority.

Agreements or contracts whose implementation does not require action by the Council and can be effected within the limits of the relevant budget shall, however, be negotiated and concluded solely by the Commission; the Commission shall keep the Council informed'.

There is no mention of the European Parliament in this article (or indeed any other Community Institution or body apart from the Council and the Commission), whereas of course for most (non-trade related) international agreements under the EC Treaty, Parliament is required to give its assent (Article 300 EC). Moreover in the case of the EC Treaty these agreements are concluded by the Council, whereas in the case of the Euratom Treaty they are concluded by the Commission.

A detailed appraisal of all the international agreements under the provisions of the Euratom Treaty is well beyond the scope of this study. Instead, a commentary and analysis is offered relating to two particular agreements, in which the European Parliament sought to exercise some influence - or even to remedy the 'democratic deficit'.

### II.7.2. Revision of the Cooperation Agreement between the European Atomic Energy Community and the United States of America on cooperation in the peaceful uses of nuclear energy.

Perhaps the most important of the international cooperation agreements was and is, that with the USA. The original agreement, dating from 1958, provided for extensive cooperation in the peaceful uses of Atomic Energy - but by the early 1990s was clearly showing its age. Moreover, the existing agreement was due to expire at the end of 1995. Thus it was that the Council of Ministers, in December 1991, pursuant to Article 101 Euratom, approved a mandate for the Commission to negotiate a new agreement. (Authors note: It is perhaps worth pointing out here that in actual practice it is typically the Commission which provides the Council with the draft text of the negotiating mandate, which is then approved by the latter. The Commission, in effect, thus often gives itself a negotiating mandate. It, after all, is the repository of most of the expertise concerning the substance of Euratom international agreements, and it is the Commission which will in any event already have been in informal 'pre-negotiation' contact with the other party/parties).

Although the agreement covered a wide range of subjects, including R&TD, nuclear safety, trade and commercial issues, the subsequent substantive difficulties with the re-negotiation of the agreement centred on the issue of US consent rights. According to the USA's 1978 Nuclear Non-Proliferation Act, the US had to retain 'prior consent rights' for transfers and re-transfers of US-origin materials. Although the US President had authorised an annual waiver for the Community since 1978 in order to honour the existing agreement, the US made it clear that no new agreement would ignore the 1978 law, nor could it compromise the application of that law in US agreements with other (i.e. non-Euratom) countries.

The Euratom Member States on the other hand, especially those with important nuclear industries, refused to grant the US any such rights over activities within the Euratom jurisdiction. The Commission claimed, on behalf of the Council, that Euratom had its own effective and extensive safeguards system and that any agreement which implied that the European Atomic Energy Community was less responsible that the US authorities, or set any kind of precedent along those lines, would be unacceptable to the Member States. As the deadline for expiry of the existing agreement drew closer, the issue became more and more politicised. Finally, however, a carefully worded agreement was reached, and was signed on 7 November 1995. The USA did not complete the formal ratification procedure until 10 March 1996, and the Agreement came into force on 12 April 1996.

The details of the agreement have been succinctly summarised as follows:

'Three areas of cooperation are defined in Articles 2 to 4 of the agreement: R&D, industrial and commercial, and trade. The nuclear trade Article says that authorisation procedures "shall not be used to restrict trade" and, in a side letter, a maximum time of four months is specified for deciding on authorisations. This should be an advantage to the Euratom members since the procedures in the US were usually rather slow. Article 6 on the detailed regime for safeguards is a key one for the US. It defines the application of the Euratom and IAEA safeguards, and procedures to follow if IAEA safeguards are not being applied.

Article 8, which is also crucial and is supplemented by a detailed minute (including an annex which lists all the facilities in the European Community and in the US to which Article 8 applies), covers nuclear fuel cycle activities. According to a Commission summary, it defines the following procedures :

- any non-sensitive nuclear activities, as well as enrichment up to 20%, irradiation of fissile materials and post-irradiation examination involving chemical dissolution or separation of irradiated nuclear material, will be freely and unconditionally allowed,
- re-transfers to third countries will be authorised on a long-term basis according to the procedures set out in the Agreement,
- storage of sensitive fissile material will be possible in any facility that meets the usual physical protection levels,
- reprocessing and alteration in form of content of sensitive fissile materials will take place under a generic programmatic consent, in facilities forming part of the list of nuclear facilities delineated by each party. This generic consent will be valid in practice for the entire life of the Agreement.

The terms of the Agreement are to be implemented in good faith, says Article 10, and with due regard to legitimate commercial interests, whether domestic or international. This is fundamental to Euratom since, in effect, both parties agree to the principle of non-interference, despite the authorisation procedure. Also important for the European Union is Article 13 which deals with suspension and termination of the Agreement. Among other clauses it effectively gives the EU the right to terminate the Agreement if the US would pass a new non-proliferation law restricting further trade'[146].

### *II.7.2.1. The European Parliament's Position*

Both houses of the US Congress were involved in the process of approving the new agreement. The European Parliament, however, was not. As we have seen, the Euratom Treaty does not provide for any such involvement. But perhaps prompted by increasing concern that the two relatively recent Inter Governmental Conferences had signally failed to address the 'problem' of the Euratom Treaty, whilst proposing radical changes to the EC Treaty, the European Parliament began to express its deep dissatisfaction with its lack of consultation concerning Euratom international agreements.

On 16 March 1995[147] the Parliament adopted a 'Resolution on the nuclear cooperation agreement between Euratom and the US', which included, inter alia, the following recitals :

'G. noting that the Treaty on European Union intends to "enhance further the democratic and efficient functioning of the institutions so as to enable them better to carry out, within a single institutional framework, the tasks entrusted to them"; noting further that, whereas the Treaty establishing the European Community includes provisions that strengthen the participation of Parliament in most policies, the Euratom Treaty is still characterised by a considerable democratic deficit, making it partially obsolete,

H. whereas in this case, as in other cases concerning the Euratom Treaty, Parliament should be fully informed, including the definition of the mandate – if necessary on a confidential basis – at each stage of the negotiations; whereas its opinion must be taken into account before the end of the negotiations and it must be consulted before the signing of a new EU-US agreement according to the optional procedure, pending the forthcoming integration of the Euratom Treaty into the EC Treaty'.

and all of the following paragraphs

[146] Lyons, Paul, 'EU Energy Policies towards the 21st Century' -*EC Inform*, June 1998, p. 132.
[147] OJ C89, 10 April 1995, p.139.

'1. Requests the Council and the Commission, as a follow-up to the initial exchanges of views with Parliament and its relevant committee, to inform Parliament thoroughly on the negotiating mandate for the new agreement on nuclear cooperation between the US and Euratom, especially regarding US conditions on and control over the processing of nuclear material of US origin, as well as on the progress of the negotiations, and to take its views duly into account before the conclusion of the negotiations ; calls on the Council to consult it before the signature of the new agreement ;

2. Instructs its relevant committee, in the context of Parliament's involvement and in order to prepare Parliament's positions as formulated above, to remain actively involved in this process including :

- further exchanges of views with the Commission and the Council, to be based on timely and full information on aims, developments and prospects of the current negotiations,
- research by and consultations with experts, internal and external to Parliament, including the consequences if no new agreement on nuclear cooperation with the US comes into force on 1 January 1996 ;

3. Demands that the new agreement :

- enhance rigorous and effective control mechanisms, restricting the production, isolation, stockpiling, trade and trafficking of plutonium and weapons-grade uranium and other nuclear material in excess of the needs of a cost-effective and environmentally responsible energy policy, and guarantee transparency in this respect,
- take into account, besides policy considerations in the field of nuclear cooperation itself, consequences in the spheres of economic viability and employment, environment and health, as well as foreign and security policy,
- in the context of the above points, give the highest priority to nuclear non-proliferation;'

This was perhaps the opening move in Parliament's increasingly vociferous campaign for greater consultation on such international agreements. The next move followed the conclusion of this particular agreement. In a letter of 25 April 1996 the Commission forwarded to Parliament, for information, the agreement for peaceful nuclear cooperation between the European Atomic Energy Community and the United States of America. At the plenary sitting of 20 May 1996 the President of Parliament announced that he had referred this agreement to the Committee on Research, Technological Development and Energy as the committee responsible and to the interested committees for their opinions. At its meeting of 11 June 1996 the Committee on Research, Technological Development and Energy appointed Mrs Nuala Ahern as rapporteur. The Parliament's (then) energy and research Committee (CERT) thus seized this opportunity to develop a more general critique of the parliamentary role in this particular process.

The Committee adopted the resolution in the report on 27 February 1997, by 26 votes to 3, the report was presented in the April 1997 plenary[148], and the resolution was adopted on 24 April 1997[149]. If we limit ourselves to the sections of the subsequent report's Explanatory Statement which address inter-institutional issues concerning the Parliament and the Euratom Treaty (since this study was not designed to address questions of nuclear energy policy), we find the following paragraphs:

'Parliament had and has to deal with a contradictory situation: the Treaty on European Union has extended the powers of the European Parliament in various fields, including energy policy, but policy based on the Euratom Treaty remains outside the Treaty on European Union. The Euratom

[148] EP Session Document A4-0074/97.
[149] OJ C 150, 19 May 1997, p. 66.

Treaty generally provides for decision-making by the Council on a proposal from the Commission, with consultation of the Scientific and Technical Committee and the Economic and Social Committee and only scarce requirements of consultation with the Parliament.

This disparity in Parliament's involvement in energy policy is materially unfounded and hard to justify: funds to the amount of 984 million ECU were allocated by co-decision under the EEC IV Framework Program (1994 - 1998) for non-nuclear energy research, whereas 1,254 million ECU were allocated with simple consultation under the EAEC IV Framework Programme for nuclear safety research. The inadequate parliamentary involvement under the Euratom Treaty continues to prevail and leads to losses of efficiency (through disputes over the applicable legal basis), and the formation of 'niches' inaccessible to democratic decision making, monitoring and control.

On relations with third countries, Title X of the Euratom Treaty does not mention any role of the European Parliament at all, so any information to or exchange of view with the Parliament takes place on a non-obligatory consultative basis'[150].

And, with respect to this particular 'non -obligatory' procedure, the report noted that:

'In the beginning of 1995, and on the initiative of Parliament, the Commission did supply oral information to and exchanged views with Parliament (partly on a confidential basis), but this positive attitude subsided quickly, as negotiations with the USA proceeded during 1995. The request in paragraph 1 of the March (1995) resolution for follow-up information and consultation before signature was never properly and actively honoured. The Commission Communication to the Council, inviting it to approve the agreement just concluded with the US was announced publicly through a press release on May 10, 1995 (IP/95/449) and, ultimately, a regular COM document. In August 1995 the services of Parliament had to learn from the press about the approval by Council of this agreement and duly circulated this external information to Committee members.

Meanwhile, the agreement was not as complete as one would have concluded from these announcements: only after exactly half a year of protracted negotiations on some final aspects the agreement and its annexes could be duly signed and side letters between the two parties exchanged on November 7, 1995. The agreement finally entered into force three months later, after the (obligatory) fulfilment of the procedural finalisation between the US administration and Congress. All along, the in-depth dialogue between Parliament and the Commission or the Council was not resumed, neither before nor after conclusion of the May and November agreements with the US. The summary exchange of views between the Commission and the Parliament in autumn 1995 can only be characterized as 'too little and too late'.

The procedural aspects of the (non-)involvement of Parliament in the US-Euratom Agreement deserves such detailed elaboration, as history seems to repeat itself. Council and Commission have recently refrained from regular involvement of Parliament more than once: the agreement with the Russian nuclear ministry to acquire HEU, negotiations on peaceful nuclear co-operation with Argentina and Japan (more on the substance of these negotiations to follow) and the Korean Energy Development Organization (KEDO). Again, Parliament has to learn about developments from other, external sources, before its relevant Committee or individual Members decide to take up the matter with them. According to press reports of September-October 1996 Japan may even get ahead of the European Union on greater openness and public debate on nuclear energy policy. The positions on parliamentary involvement in the March and May 1995 resolutions, quoted above, therefore remain valid and relevant, especially since prospects are bleak for an outcome of the IGC negotiations which fulfils these demands'[151].

The Resolution adopted by the Parliament on 24 April 1997 expressed some of these concerns in forceful terms. The recitals include:

[150] op cit. Footnote 148, pp. 7-8.
[151] ibid. pp.8-9.

'A. dismayed that it had and has to deal with the contradictory situation in which the Treaty on European Union has extended the powers of the European Parliament in various fields, including some aspects of energy policy, but the democratic approach provided by the Treaty is still not applied to policy under the Euratom Treaty,

B. whereas, both with regard to negotiations on the US-Euratom agreement and in subsequent, similar cases, Parliament should have been better informed and involved by Commission and Council, in accordance with the aims and possibilities of relevant paragraphs in the Treaty on European Union and subsequent positions adopted by Parliament on its involvement in all aspects of EU energy policies,

C. whereas the European Parliament has not been able to play a constructive part in drafting the agreement now being considered, although to do so would have helped the transatlantic relationship to grow in a sustained, harmonious and balanced way and would have accorded with the democratic rules of the game,

D. pointing out that inadequate parliamentary involvement under the Euratom Treaty continues to prevail, a clear example of which is the different involvement of Parliament in the allocation of funds for the Fourth Framework Programme for nuclear safety research (1254 million ECU) as compared to non-nuclear energy research (984 million ECU),

E. […]

F. reaffirming its commitment, through its involvement in the IGC process, to ensure that its positions with regard to integration of the ECSC and Euratom treaties into the Treaty on European Union, as expressed in its abovementioned resolutions of 7 April 1992 and 13 March 1996, are reflected in the revision of the Treaty on European Union'[152].

And in the paragraphs we find:

'2. Considers unacceptable its weak involvement in current, similar cases of international cooperation under the provision of the Euratom Treaty, in the context of the broader debate on the EU democratic deficit concerning nuclear policy and other energy policies;

3. Demands that the Commission and the Council introduce greater democracy by putting right the current non-involvement of Parliament in the Euratom agreements with USA, Russia, Argentina, Japan and the Korean Energy Development Organization (KEDO), as well as other future Euratom agreements with third countries;

4. Asks the Council to recognize Articles 203 of the EAEC Treaty and 235 of the EC Treaty as a relevant and valid legal base for formal consultation and involvement of Parliament in all matters relating to nuclear energy, and reserves the right to use the provisions of Article 107a of the EAEC Treaty as a way of overcoming the democratic deficit in those areas;

[…]

9. Demands that the Commission and Council inform Parliament about and discuss with it, fully and in good time, all current and forthcoming international negotiations in the nuclear technologies field;'[153]

[152] op cit. Footnote 149, p. 66.
[153] ibid., p. 67.

The last paragraph is of particular significance in the context of the second international agreement to be considered in this chapter, which did in fact provide Parliament for the first time with a budgetary weapon it could use in its attempt to achieve greater democratic control over international agreements concluded under the Euratom Treaty. This was the KEDO agreement.

### II.7.3. KEDO and its consequences.

The most significant developments in recent years with respect to international agreements under the Euratom Treaty, were triggered by the accession of the European Atomic Energy Community (Euratom) to the Korean Peninsular Energy Development Organisation (KEDO), in 1997[154]. In order to understand these developments, a brief history of the project must first be outlined.

In the early 1980s, with Soviet assistance, the Democratic Peoples' Republic of Korea (DPRK) (popularly known as 'North Korea') built a gas-cooled, graphite moderated, 5MW(electric) nuclear research reactor at Yongbyon, which came into operation in 1986. A reactor such as this is one of the most suitable for the production of weapons-grade plutonium, (Pu239), since (a) it contains only natural uranium metal as fuel, which is much easier to chemically reprocess (so as to extract the plutonium which builds up in the fuel), than would be the uranium oxide fuels used in modern pressurised water reactors; and (b) because its on-line refuelling characteristics permit the extraction of fuel elements after a relatively short period in the reactor, which optimises production of Pu239. In addition, since the DPRK did not possess a uranium enrichment plant, the reactor permitted the use of its indigenous uranium deposits, rather than being reliant on imported enriched fuel. In the early 1990s the DPRK also had under construction a 50 MW(e) graphite moderated reactor at Yongbyon, as well as a 200 MW(e) graphite moderated reactor at Taechon.

Since 1957 a series of international measures has been introduced to prevent the proliferation of nuclear weapons, including the safeguards system of the International Atomic Energy Agency (IAEA), the "Euratom" Treaty of 1957, with its Chapter 7 on nuclear safeguards; and, importantly, the U.N.'s Nuclear Weapons Non-Proliferation Treaty (NPT) which came into force in 1970.

The NPT permits the five existing nuclear weapon states to retain their nuclear weapons (whilst encouraging nuclear disarmament) but obliges the others not to acquire them. To guarantee this, each non-nuclear weapon state (NNWS) which is an NPT signatory accepts the imposition of an international safeguards regime by inspectors from the IAEA. Thus nuclear installations are independently inspected to ensure full knowledge of the quantities and whereabouts of all special fissile materials contained therein, in particular plutonium 239 and uranium 235, the key constituents of nuclear weapons. No such obligation is placed on the N-weapon states, although some have now voluntarily opened some of their facilities to IAEA inspection.

The NPT provides that the NNWS be given access to plutonium and other fissile material and nuclear technology, in return for accepting their status as non N-weapon states, and international safeguards inspections and control. The DPRK, under pressure from the Soviet Union (prompted by Western concern) signed the NPT on December 12 1985. In

[154] OJ L 070, 10/03/1998, p. 10-22.

1989 the press reported the existence of a suspected plutonium separation plant, referred to by the DPRK merely as a 'radiochemical laboratory'; moreover the DPRK refused to sign a safeguards agreement with the IAEA, mandatory under the NPT. Following more Western pressure the DPRK signed such an agreement with the IAEA on 30 January 1992, and in May 1992 provided the IAEA with its initial declaration of all nuclear material. During the ensuing IAEA inspections the agency discovered discrepancies between its findings and the information provided by the DPRK, which possibly implied that plutonium had been extracted from fuel rods in 1990 and in 1991. IAEA member states also provided information about an undeclared nuclear waste site near the plutonium separating plant. In January 1993 the DPRK forbade further access for inspection, and consequently the IAEA asked for 'special inspections', under the provisions of the NPT. In March 1993 the DPRK announced its withdrawal from the NPT, but later in June 1993 suspended it. In May 1994 it announced that it had unloaded the fuel rods of its only working reactor, worsening the crisis with the IAEA and the USA in particular. The protracted crisis finally resulted in negotiations which led to the adoption of the Agreed Framework of October 1994 between the USA and the DPRK.

Under this agreement the DPRK froze its Russian-designed graphite moderated reactors and related facilities, remained party to the NPT, and agreed to gradually restore full implementation of its safeguard agreement with the IAEA. In return the USA undertook to organise an international consortium, i.e. KEDO, for the supply and financing of two Western-designed 1000MW light water reactors (LWRs) by the year 2003, and the immediate supply of alternative energy supplies which turned out to be 500,000 tonnes of heavy fuel oil. KEDO was estimated to cost approximately $5.2 billion. The USA agreed to pay for the provision of alternative energy supplies and the encasement of the research reactors' fuel elements, but the bulk of KEDO's financing is being provided by S.Korea (up to 60%) and Japan (up to 20% - or $1 billion), which left an unresolved shortfall. Since S. Korea is the main financier, it was agreed that it would provide its own reactor type for the project. This is modelled on its Ulchin 3 + 4 reactors which in turn are based on the reactor type System-80 of the American company ABB-CE. KEDO was formally established on 9 March 1995.

The non-proliferation interests in this agreement are crystal clear: the DPRK loses control of the nuclear fuel cycle: it will neither produce or reprocess the fuel elements for the new reactors. Moreover the previously extracted fuel rods from its old nuclear reactor are now being encased by the US and will have to be taken out of the DPRK under the stipulations of the Agreed Framework.

#### *II.7.3.1. EU Involvement*

In November 1995 Council agreed in principle to the Commission's proposal that there should be EU participation in KEDO. The arguments in favour were both political - showing an EU commitment to security in Asia and a sort of quid pro quo for Japan's financial contribution to Bosnia - and economic - European industry could benefit from contracts to help build the LWRs. The Council adopted, on 5 March 1996, a Joint Action providing for an immediate European Union contribution of 5 MECU to KEDO to be charged to the 1996 EU Budget (it was taken from the CFSP budget line B8-013).

The Commission subsequently negotiated an agreement on terms and conditions for Euratom accession to KEDO, whereby the Commission would gain a place on KEDO's

Executive Board in return for a financial contribution of 15 MECU p.a. over five years[155]. On 16 June 1997 the Commission submitted a proposal for a Council decision approving the conclusion by the Commission of such an agreement (SEC(97) 1118 final). On 24 July 1997 the Council approved this Commission proposal and on 30 July the Commission (as Euratom) signed the Accession Agreement in Brussels.

### *II.7.3.2. The involvement of the European Parliament*

EU accession to KEDO was a major foreign policy issue. It also had significant budgetary implications. KEDO membership was and is part of the EU's Common Foreign and Security Policy. Article J.7 of the TEU states that 'the Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European parliament are duly taken into consideration…' This was not done in the case of KEDO.

The Accession Agreement has as a legal base the Euratom Treaty and in particular its Article 101, second paragraph. This covers agreements or contracts with a third State, an international organisation or a national of a third State and says that 'such agreements or contracts shall be negotiated by the Commission in accordance with the directives of the Council: they shall be concluded by the Commission with the approval of the Council, which shall act by a qualified majority'. Although consultation of the Parliament is not obligatory under the Euratom Treaty, the Council could nevertheless have asked for Parliament's opinion (consultation facultative). There were precedents for such consultation, and in this case Parliament felt it would have been particularly desirable, given the budgetary as well as foreign policy implications.

In its resolution of 24 April 1997[156] on the agreement for peaceful nuclear cooperation between the European Atomic Energy Community and the United States of America (A4-0074/97) the Parliament stated that it was 'dismayed that it had and has to deal with the contradictory situation in which the Treaty on European Union has extended the powers of the European Union in various fields, including some aspects of energy policy, but the democratic approach provided by the Treaty is still not applied to policy under the Euratom Treaty' (recital A). The same resolution demanded 'that the Commission and Council introduce greater democracy by putting right the current non-involvement of Parliament in the Euratom agreement…with…KEDO' (paragraph 3).

In the Preliminary Draft Budget for 1997 the Commission placed funds intended for KEDO (15 MECU) in a line (B7-6602) entitled 'Agreements and other instruments of cooperation with third countries', giving no formal indication of their intention to use these for KEDO. The Budgets Committee voted on first reading to reduce the total appropriations to 10 MECU and place the whole in the reserve. This was partly because of the perceived lack of information about KEDO and partly because of the issue of the legal base. The justification for this amendment was that a report should be submitted by the Commission on the activities undertaken under this line. Council rejected this amendment and in the second reading the Budgets Committee accepted the figure of 15 MECU but placed it all in the reserve. Parliament inserted a reference in the remarks to KEDO.

[155] The Financial Statement in the Commission proposal gave the figure of 25 MECU for 1997; this was to complement the 1996 contribution of only 5 MECU; the total over five years was 75 MECU.
[156] op cit. Footnote 149.

On 4 June 1997 the Commission requested the transfer of the 15 MECU from the reserve for KEDO, which gave the Budgets Committee the usual period of six weeks to take a decision. The Budget's Committee sought the views of the Foreign Affairs Committee which, meeting on 15 July, declined to pronounce on the issue of EU accession to KEDO but expressed itself strongly in favour of Parliament's being consulted on the matter. The Committee understood that the EU could not accede to KEDO until funds were available for disbursement. The Budgets Committee, meeting on 22 July, decided not to approve the request for transfer.

In the meantime, the Committee received the Commission proposal (SEC(97) 1118 final) and an 'activities report related to the use of the intended Community financial contribution to KEDO'. Parliament was not consulted by the Council.

There followed a rather remarkable exchange of letters, interspersed with various high-level meetings, during the course of which the Parliament and the Commission sought to resolve their differences over KEDO in particular, and over Parliament's desire for a formal role in monitoring and approving international agreements under the Euratom Treaty in general. The letters provide a reasonably good picture of the evolving character of this 'discussion', and constitute the current '*acquis*' in terms of Parliament's present and future role. We therefore reproduce their substantive content in the section which follows.

### *II.7.3.3. The exchange of letters concerning KEDO, and international agreements based on the Euratom Treaty*

The first letter that concerns us here was sent by Tom Spencer, Chairman of the EP's Foreign Affairs Committee, to Parliament's President, José-Maria Gil-Robles, on 10/03/98. It reads as follows[157]:

(i) 'Dear President,

You will be aware that the Foreign Affairs Committee protested last September about Parliament's not being consulted on the Euratom-KEDO (Korean Peninsula Energy Development Organization) Accession Agreement. As this agreement was concluded under Article 101 of the Euratom Treaty, there was no formal obligation for the Commission or Council to consult the Parliament, but the Committee had requested that this be done voluntarily, in the light of the extremely important foreign policy implications of the Agreement.

When the Agreement was concluded without Parliament having been consulted, the Committee decided to request authorisation to draw up a report on the Agreement nevertheless and to seek to place the funds destined for KEDO in the 1998 Budget in reserve so that if Parliament adopted a negative opinion this could be enforced. Authorisation was duly granted - the Budgets and Research Committees are involved through the Hughes Procedure. The 1998 Budget funds have been placed in the reserve.

In view of past experience of lack of consultation and in particular what has happened with KEDO, the Committee, which discussed KEDO at its meeting of 3 March 1998, decided, on a proposal from the rapporteur Mr Tindemans, that an inter-institutional agreement should be sought and that until one had been agreed their report on KEDO should not be placed on a plenary agenda. Such an

[157] EP courrier reference No. 007753, 10/03/1998.

inter-institutional agreement should provide for Parliament to be consulted and duly deliver an opinion on all international agreements falling under the Euratom Treaty.

Euratom is supposed to pay its annual dues to KEDO by 30 June this year. If there is an inter-institutional agreement by May, we should seek to have our report placed on the agenda of the June plenary, to enable the Commission to pay up in time.

I should like to request, therefore, that you raise this matter with Council and Commission in the inter-institutional trialogue.

Yours sincerely

Tom SPENCER'

(ii) The EP President replied on 29/04/98[158]:

'Dear Mr Spencer,

At the trialogue meeting held on 1 April 1998, I drew the attention of the President of the Council and the President of the President of the Commission to the fact that the European Parliament had not been consulted prior to the conclusion of the KEDO Agreement.

The Commission, the institution responsible for the consultation of Parliament in respect of that Agreement, which is based on the EURATOM Treaty, has failed to provide me with any substantive explanation concerning either the procedure selected or the unsystematic nature of its approach to such prior consultation.

Nevertheless, President Santer was fully aware of the European Parliament's deep dissatisfaction with this situation and of the serious problems that might arise as regards the granting of the budgetary authorisations required for the implementation of the Agreement.

It is no longer possible to turn back the clock in the case of an agreement that has already been concluded and in respect of which the third countries party thereto expect the Community to fulfil its obligations. However, I do believe that it is important for Parliament to secure from the Commission, either in the form of an addendum to the Code of Conduct concerning its relations with the European Parliament to which it subscribed, or at the very least by means of an ad hoc declaration, an undertaking that it will, in future, consult Parliament in advance on the conclusion of agreements based on Article 101 of the EURATOM Treaty.

I would therefore ask you to use your best endeavours to that end and to keep me informed of the outcome thereof.

I am writing in the same terms to Mr Samland, Chairman of the Committee on Budgets and to Mr Scapagnini, Chairman of the Committee on Research, Technological Development and Energy.

Yours sincerely,

José Maria GIL-ROBLES'

[158] EP courrier reference No. 002938, 29/04/1998.

(iii) The next development was a letter from Commission President Jaques Santer to Parliament's President on 9 June 1998:

'Monsieur le Président,

Permettez-moi d'appeler votre attention sur l'exécution de l'accord entre EURATOM et l'organisation pour le développement énergétique de la péninsule coréenne (KEDO).

Cet accord a été conclu par la Commission au nom de la Communauté européenne de l'énergie atomique après approbation du Conseil statuant à la majorité qualifiée, conformément aux dispositions de l'article 101 paragraphe 2 du traité CEEA. Il est entré en vigueur le 19 septembre 1997. Il comporte pour EURATOM des obligations financières qui supposent que la ligne pertinente du budget soit normalement provisionnée. Tel n'est pas encore le cas pour l'exercice 1998.

Vous aviez vous-même pris l'initiative d'évoquer cette question lors du trilogue du 1er avril 1998. J'avais alors eu l'occasion de vous faire part de certains doutes quant à l'opportunité d'une discussion entre nos trois institutions sur les accords conclus en vertu du traité EURATOM, que les récentes conférences intergouvernementales n'ont pas cru devoir modifier. C'est bien volontiers cependant que je fais copie de cette correspondance à la Présidence du Conseil, en soulignant tout l'intérêt que le Parlement européen attache à cette question.

J'ajoute que rien ne s'oppose, de mon point de vue, à ce que le Parlement européen reçoive en temps utile copie des communications que la Commission transmet au Conseil aux fins de conclusion des accords d'une importance significative. Sans préjudice de l'avis du Conseil sur ce point, la Commission continuera à manifester son constant souci de bonne coopération avec le Parlement européen.

En ce qui concerne l'accord EURATOM-KEDO, vous conviendrez avec moi que la Commission a fait preuve d'une volonté marquée de transparence à l'égard du Parlement européen, auquel elle a transmis de nombreuses informations avant la conclusion de l'accord. En outre, Sir Leon Brittan, Vice-président, a participé à deux reprises aux échanges de vues que les commissions parlementaires ont organisés sur ce dossier.

Alors qu'il est plus que jamais nécessaire de lutter contre la prolifération nucléaire, je n'ai pas besoin de souligner que l'opinion publique européenne, et nos partenaires américains ou asiatiques, comprendraient difficilement que la procédure budgétaire mette en péril l'accord conclu avec le KEDO. Une telle situation serait du reste contraire aux dispositions du traité relatives à l'exécution des obligations découlant des actes des institutions de la Communauté, telles que la Cour de Justice les a interprétées à plusieurs reprises.

Vous comprendrez dès lors que je fasse appel à votre concours personnel pour assurer la mise à disposition des crédits prévus avant la fin du mois de juin. Telle est en effet la date que nous nous sommes engagés à respecter à l'égard de la KEDO.

Je vous prie d'agréer, Monsieur le Président, l'expression de ma haute considération.

Jacques SANTER'

(iv) Following a trilogue meeting on 15 July 1998, during which the question was raised, Mr Santer wrote again to Parliament's President on 16 July 1998:

'Monsieur le Président,

Lors du trilogue du 15 juillet, nous avons eu l'occasion d'évoquer la proposition de virement présentée par la Commission le 15 juin pour libérer la contribution *communautaire* à l'organisation pour le développement énergétique de la péninsule coréenne (KEDO).

Cet échange de vues m'a permis de constater notre souci commun de régler cette affaire sans délai. Je m'en réjouis vivement et tiens à confirmer que la Commission, dans le plein respect des dispositions du traité, est tout à fait favorable à améliorer l'information du Parlement européen sur les accords internationaux qui relèvent de l'article 101 paragraphe 2 du traité EURATOM, lorsqu'ils revêtent une importance significative.

A cette fin, la Commission tiendra la commission parlementaire compétente informée du déroulement de la négociation de tels accords, dans des conditions propres à assurer la confidentialité requise. Le Parlement européen aura l'occasion de faire connaître son point de vue en temps utile avant la décision de conclusion.

La Commission procèdera ainsi si vous êtes en mesure de confirmer que notre proposition de virement sera approuvée lors de la prochaine réunion de la commission des budgets du Parlement européen.

Je transmets copie de cette correspondance à S.E. Monsieur Manfred Scheich, Président du Comité des Représentants permanents.

Avec mes remerciements pour votre engagement personnel sur cet important dossier, je vous prie d'agréer; Monsieur le Président, l'expression de ma haute considération.

Jacques SANTER'

(v) Mr Gil-Robles replied on 22 July 1998:

'Monsieur le Président,

J'accuse réception de votre lettre du 16 juillet dernier qui fait suite au trilogue du 15 juillet au cours duquel la proposition de virement n° 14/98 présentée par la Commission à l'autorité budgétaire a été évoquée.

Le Parlement est en mesure d'accepter cette proposition de virement pour la contribution *communautaire* à l'organisation pour le développement énergétique de la péninsule coréenne (KEDO) selon l'interprétation suivante :

- l'information du Parlement européen sur les accords internationaux qui relèvent de l'article 101 paragraphe 2 du traité EURATOM est de droit, sauf pour des accords d'importance très mineure ou de nature exclusivement technique ;

- le Parlement considère que cette information, préalable à la conclusion de l'accord, doit permettre à la Commission de tenir compte en temps utile de l'opinion du Parlement.

J'exprime le souhait que, dans ces conditions, KEDO puisse recevoir un soutien politique et financier de la part de toutes les institutions de l'Union.

Veuillez agréer, Monsieur le Président, l'expression de ma très haute considération.

José Maria GIL-ROBLES'

(vi) Mr Santer replied on 27 July 1998:

'Monsieur le Président,

J'ai bien reçu votre lettre du 22 juillet dernier, relative à la proposition de virement présentée par la Commission le 15 juin pour libérer la contribution *communautaire* à l'organisation pour le développement énergétique de la péninsule coréenne (KEDO).

Compte-tenu de la teneur de nos échanges de vues à ce propos lors du trilogue du 15 juillet, vous comprendrez que je ne sois pas en mesure de m'associer à l'interprétation que vous proposez. Je ne puis que vous confirmer en tous points les termes de ma lettre du 16 juillet.

Je transmets copie de notre échange de correspondance à S.E. Monsieur Manfred Scheich, Président du Comité des Représentants permanents.

Je vous prie d'agréer, Monsieur le Président, l'expression de ma très haute considération.

Jacques SANTER'

So the matter stood in late July 1998. Optimists in the European Parliament referred to this exchange of letters as being, effectively, an Inter-Institutional Agreement between the Parliament and the Commission, which guaranteed that Parliament would, if not formally consulted, at least be kept informed of on-going negotiations on international agreements under the Euratom Treaty. Pessimists saw it as an Inter-Institutional Agreement to Disagree - or at least to maintain distinct 'interpretations' as to what exactly had been agreed.

The next few months provided an excellent opportunity to test out the working in practice of the new 'agreement'. Parliament fairly rapidly came to the conclusion that it was not working at all well, when it emerged that in December 1998 the Commission had concluded an international agreement with Canada, based on Article 101 Euratom, and that Parliament had not been informed about this. Rumblings of discontent in both Parliament's Foreign Affairs Committee and its (then) Committee on Energy, Research and Technology, led Commission vice-President Sir Leon Brittan to send the following letter to Leo Tindemans, MEP, in his capacity as rapporteur on KEDO for the Foreign Affairs Committee:

(a) 'Letter to Mr Leo TINDEMANS
from Mr Leon BRITTAN
date : 23.03.1999

Dear Leo,

I understand that you are concerned that the procedures agreed upon in the exchange of letters between President Santer and President Gil-Robles of July last year relating to international

Euratom agreements are not being honoured by the Commission. In particular, I understand that you have serious reservations concerning the manner in which the Commission concluded the Euratom agreement with Canada in December of last year.

Let me say from the outset the Commission remains fully committed to the procedural promises made by President Santer in his letter of 16 July last year to inform the European Parliament of international Euratom agreements concluded on the basis of Article 101, second paragraph, of the Euratom Treaty when they are of particular significance and to give the Parliament an opportunity to make its views known well in advance of a decision on the conclusion of any such agreement.

Given that the Canada agreement was initialled in April 1998, several months before the exchange of letters between the two Presidents took place, I hope you will understand that any subsequent procedural omissions on the part of the Commission were entirely due to innocent administrative oversight. I accept that it has taken a little while for the Commission to establish the necessary internal procedures which flow from the exchange of letters.

Naturally, the Canada agreement does not match the enormous substantive and political importance of the KEDO agreement, not least since it does not involve the same substantial financial commitment. Thus I very much hope any legitimate reservations you may have on the manner in which the Canada agreement was concluded will not impinge on the difficult and highly valuable understanding reached by Presidents Santer and Gil-Robles last year.

Indeed, I hope you will agree that the priority now is to make sure the existing understanding works effectively rather than reopen the understanding altogether. Given that the Commission is subject to a highly circumscribed institutional margin of manoeuvre in this field, I am not persuaded that reopening the difficult interinstitutional issues at this stage, before the present understanding has been given sufficient opportunity to prove itself in practice, would be fruitful for either the Commission or the Parliament.

Of course, I accept that it is primarily the Commission's responsibility to improve existing procedures to meet the commitments made in the exchange of letters. To that end, I have issued strict instructions to the relevant Commission services to ensure that the correct procedures will be followed in future.

Needless to say, if you would like to discuss this matter further with me I am always available to meet with you at the earliest convenient opportunity.

Leon BRITTAN'

(b) To which Mr Tindemans replied as follows:

'Letter to Mr Leon BRITTAN
from Mr Leo TINDEMANS
date : 01.03.1999

Dear Leon,

Thank you for your letter of 23 February 1999 concerning the involvement of the European Parliament in international agreements concluded under the Euratom Treaty.

As you know, the Foreign Affairs Committee was most displeased to discover that the Commission was not respecting the agreement on such involvement it had reached with Parliament. The Committee noted in particular the fact that the Commission had provided no information on the Euratom-Canada Agreement, which I understand that you yourself signed on behalf of the

Commission, and had therefore also not provided the agreed opportunity for Parliament to express its views on this before its conclusion.

The question of the extension of the ITER Agreement was also briefly raised in committee. This is an agreement involving the United States, Russia and Japan, and large sums of money, and as such clearly of great interest to the Parliament and its Foreign Affairs Committee. The agreement was concluded on 26 June by the Commission, but we feel that, given the fact that we were well into the process of negotiating our own agreement on parliamentary information/consultation, the Commission might have felt it appropriate at least to send a copy to the Parliament some time before that date. Moreover, as the EU's future work on nuclear fusion is in fact ITER, as JET comes to an end, and as difficulties have emerged regarding US participation, the agreement with Canada, which covers nuclear fusion, does have a clear link and clear importance.

The Foreign Affairs Committee felt that, although the Commission's failure to inform Parliament of the Canada agreement was doubtless an administrative oversight, the only way to ensure that such an oversight did not occur again was to make the agreement between our two institutions rather more formal and specific. You will see from the copy of the report which I enclose that we call for a formal Interinstitutional Agreement, some sort of document to be signed by both parties, which will provide for Parliament to be informed of all international agreements to be concluded under any article of the Euratom Treaty and to be formally consulted on all such agreements based on Article 101(2) of that Treaty.

We may have some small margin of manoeuvre here, but I and the other rapporteurs feel that we should do our utmost to move significantly towards what is called for in the Foreign Affairs Committee's report sufficiently in advance of the plenary debate for amendments to be tabled to take that move into account.

Without committing myself at this point, might I suggest that the 'exchange of letters arrangement' at least be tightened up and the modalities of its operation be specified to some extent, perhaps as follows :

- the Commission will inform Parliament before, during and after negotiation of ALL international agreements under Euratom,
- for all those to be concluded by the Commission under 101(2), Parliament will be given a chance to express its views,
- the Commission will state if it considers an agreement to be of particular significance,
- Parliament will decide within one month of receiving the text of a 101(2) agreement whether it wishes to express its views (i.e. do a report),
- if it does not wish to do so, Commission may proceed to conclude the agreement,
- if Parliament does wish to express its views it will be given a further three months to do so,
- the Commission will take any views expressed by the Parliament fully into account before deciding whether to conclude the agreement.

Messrs Brinkhorst and Ford and I should be happy to discuss this with you, and we feel that this would best be done as soon as possible. Unfortunately, a several political groups will be meeting outside Brussels during the week of 1-5 March, the three of us would be available only at one time then - Wednesday, 3 March at 7.15 p.m. If that time were possible for you, given that Mr Brinkhorst is hosting a meeting at his home in Brussels just before that time, it would be most convenient if we could meet there. He lives at 235 Rue de la Loi, which is just yards from your office.

If this is not convenient for you, perhaps we could meet in Strasbourg on the Monday or Tuesday. Your office could make arrangements through our committee secretary, Mr Wood, whose telephone number is 284 2483.

We look forward, then, to meeting you shortly.

Leo TINDEMANS'

(c) This letter elicited the following reply, addressed to Parliament's President:

'Letter to Mr José Maria GIL-ROBLES
from Sir Leon BRITTAN
date : 22 March 1999

Dear Mr President,

Following extensive discussion between myself and various Members of the European Parliament, I am writing to you to confirm the practical arrangements which will now be followed by the Commission to ensure that the understanding reached in July last year in the exchange of letters between yourself and President Santer (related to the conclusion of agreements of significant importance based on Article 101.2 of the EURATOM treaty) is now fully implemented.

First, at the beginning of each year the Commission will provide a list of all the relevant EURATOM agreements under Article 101.2 which are under negotiation or for which negotiations are to be launched in the coming year. This list will be regularly updated and forwarded to the Parliament, under the necessary conditions of confidentiality.

Second, the Commission will provide oral information on request to the relevant EP Committee on the conduct of the negotiations, under the necessary conditions of confidentiality.

Third, the Commission will forward the proposals for conclusion of the relevant EURATOM agreements to the Parliament at the same time at which they are forwarded to the Council for approval. This is a significant procedural innovation since it provides a guarantee to the Parliament that it will be informed before the Council has taken a position on the conclusion of those agreements.

Thus, the Parliament will have the opportunity to make its views known before a decision is made to conclude the agreement, in line with the commitments made in our exchange of letters. I should add that the time it takes for the Council to reach a decision on conclusion is generally fairly lengthy and thus leaves ample time for the Parliament to express its view if it so wishes. In those cases where the Council may wish to take a particularly rapid decision, the Commission will duly inform the Parliament of this possibility.

Fourth, by way of this letter I wish to provide you with information on the relevant agreements under Article 101.2 EURATOM which are currently either under negotiation or for which a decision of conclusion has not yet been taken, according to the information presently available to the Commission services. Please note that the agreements referred to represent all agreements covered by Article 101.2 EURATOM which are under negotiation or for which negotiations are to be launched in the coming year :

- EURATOM Agreement with Ukraine (nuclear fusion & nuclear security): the draft agreement was established on October 16th 1998. The relevant documents are now being prepared to be officially forwarded to the Council and the Parliament within a matter of weeks.

- EURATOM Agreement with Kazakhstan - nuclear fusion (separate adoption of nuclear security agreement already in preparation): draft agreement should be ready within a matter of

weeks (the last substantive talks were held in January 1999) following which the relevant documents will be forwarded officially to the Council and the Parliament.

- EURATOM Agreement with Russia (nuclear fusion & nuclear security). Negotiations are still underway.

- EURATOM Agreement with Japan. Negotiations are due to start in the coming weeks.

It has been brought to my attention that there have been some teething problems in applying the understanding reached last year to those agreements for which negotiations were concluded after the date of the exchange of letters. In order to ensure there is no further misunderstanding between the Commission and the Parliament, I have instructed my services to convey separately to your services all relevant texts of agreements which should have been covered by the understanding during the latter half of the year and the beginning of this year.

Finally, it would provide significant procedural clarity to the above arrangements if you could inform the Commission which Parliamentary Committee is the lead Committee in these matters so that the information can be properly communicated via the right channels.

On this basis, I trust that we can now fully implement the understanding reached last year to the mutual satisfaction of the European Parliament and of the Commission.

I am copying this letter to H.E. Dietrich von Kyaw, President of the Permanent Representatives Committee.

Leon BRITTAN'

This then, is the current practical interpretation of the agreement between the Commission and the Parliament concerning international agreements under the Euratom Treaty. One slight eccentricity is that although the Commission is believed to be regularly sending its summary table of on-going negotiations to Parliament (in the shape of the Foreign Affairs Committee, and the Committee on Industry, External Trade, Research, and Energy), it insists that this document is confidential, and should not be made public.

Having said that, it is also clear that a cultural change has, to a certain extent, been achieved, especially in the context of Euratom Loans (see the specific chapter thereon.) The Commission has provided an extensive dossier to Parliament on each of the last two major Euratom Loan projects, to Bulgaria, and to the Ukraine.

# III. Strategic possibilities for the European Parliament

## III.1. Strategy paper one: Possible Options for Revision or Re-interpretation of the Euratom Treaty

### III.1.1. The case for a different approach

> 'No strategy for institutional reform is likely to have much hope of success unless it is based on a realistic assessment of the present states of the Community'[159].

This statement by R. Pryce prompts the following observation: if Parliament wants to improve the scope of its powers and competencies with respect to issues covered in the Euratom Treaty, it has to develop a strategy based on the likelihood of the different aims being realised, given the availability of instruments to support such a strategy and the procedural constraints that may affect the success of the different strategies (e.g. unanimity in the Council for Treaty revision). Consequently, the elaboration of a strategy has to be based on a realistic assessment of the likelihood of its success. This assessment has to be based on an analysis:

(1) of the interests of the Member States and their likely responses to the strategy employed by Parliament,

(2) of the instruments that can be deployed to achieve the respective gaols (e.g. budgetary instruments, instruments referring to executive control, instruments that affect the procedures of decision-making [dealing with issues separately or in a 'package']),

(3) of Parliament's ability to muster the necessary majority to sustain the deployment of a certain strategy.

(4) Furthermore, it is obvious that Member States' preferences may be of varying intensity with regard to the many issues that are under debate. One strategy component therefore has to consist in Parliament seeking allies, i.e. trying to commit those Member States with a particular interest in Euratom-revision, so that the item is put on the agenda of an IGC[160].

Reviewing the parliamentary opinions referred to above, only one of the above-mentioned documents includes strategic calculations. In its 'Opinion for the Committee on Institutional

[159] Pryce, R. (1984), in: Hrbek, R., Jamar, J. and Wessels, W. (Eds) 'The European Parliament on the Eve of the Second Direct Election: Balance Sheet and Prospects', *Cahiers de Bruges*, N.S. 43, p. 193.

[160] Parliament could try to take advantage of situations in which influential Member States express a strong preference with regard to Treaty revision. This recently occurred in the case of the German government (and was hinted at by the Green Minister for the Environment and Reactor Safety, Jürgen Trittin) which intends to review all 'nuclear treaties' of which it is a signatory. The European Parliament could also take into account events that may affect public opinion and constitute a 'window of opportunity' through which a certain issue can suddenly rise to the top of the political agenda.

Affairs on the Treaty of Amsterdam', the (then) Committee on Research, Technological Development and Energy made an attempt to devise a strategy destined at Treaty revision:

> 'It is time for Parliament to **insist** on a revision of the Euratom Treaty. It has a very powerful weapon at its disposal to reinforce this action: Parliament has the final say on non-compulsory expenditure in the budget. **It could therefore threaten to systematically delete all expenditure based on the problematic articles of the Euratom Treaty, until such time as the provisions of the Euratom Treaty are brought into line with those of the EC Treaty as amended by the TEU, and as will be further amended by the Treaty of Amsterdam. By so doing, Parliament could set a non-negotiable timetable with deadlines which would concentrate the Member States' minds wonderfully'** (emphasis in original)[161].

In order to assess the likely success of this strategy, several questions have to be answered: what would the likely responses of the Member States in the Council be to the Parliament's 'budgetary threat' or its actual carrying out of this threat? Would Parliament be able to mobilise a majority of its members for long enough to force Member States to engage in a rethinking of the provisions subject to conflict? What counter measures are at the disposal of the Member States in the Council? Is the aim of achieving Treaty revision realistic with regard to the deployment of the budgetary instrument?

Detailed and ambitious proposals concerning the future of nuclear power and related issues in the European Union do exist in considerable numbers. But, in the specific context of the Euratom Treaty, all these proposals, including a previous study published by Parliament's Directorate General for Research entitled 'Revision of the European Treaties in the Energy Sector'[162], suffer from the same shortcoming: declarations do not make a difference unless they are supplemented with proposals on how the aims could be realised.

### III.1.2. Outlook

In those areas where the European Parliament can make use of its budgetary, procedural and oversight instruments, there is a very real opportunity to overcome the subordinate position it is endowed with in the Euratom Treaty, vis-à-vis the Commission and the Council. However, the use of these instruments will only be successful if it is supplemented by strategic considerations by Parliament. The main elements that might be included and questions that might be asked so as to devise a strategy are as follows:

- **What is the aim of Parliament's activity?**

Parliament should specify a hierarchy of aims. This hierarchy could, for example, be as follows: full revision of the Euratom Treaty; selective Treaty revision; 'small-steps' without a formal revision of the Treaty etc.).

- **What are the probabilities that can be attached to each of the previously defined aims?**

In order to assess the likelihood of achieving the different aims, the following steps have to be taken:

- assessment of the interests of all the actors involved in the (formal or informal) revision 'game'; their likely strategies, and the payoffs they attach to the different outcomes,

[161] EP Session Document A4-0347/97, p. 28.
[162] European Parliament, DG for Research, 'Revision of the European Treaties in the Energy Sector', *Energy and Research Series* W - 15, June 1995.

- specification of the procedural constraints: With unanimity being the governing principle of Treaty revision and no parliamentary involvement, full or selective Treaty revision is strongly status quo oriented compared to the small steps approach which may allow Parliament to exploit procedural constraints that are less status quo oriented (seeking discretion on the basis of the existing Treaty),
- assessment of the degree to which a large majority of MEPs and party groups can commit themselves to the means employed to achieve particular aims. It is obvious that it will be quite difficult for a majority of MEPs and party groups to commit themselves to a threat to use a veto on the annual budget, in order to seek full revision of the Euratom Treaty. The likely consequences of such an action would be difficult to predict. But it may be much easier to commit a parliamentary majority to selectively 'freeze' budgetary items in order to advance its position with regard to a number of well-defined Treaty provisions where discretion can be achieved and where the likely consequences of this action can be better calculated,
- assessment the instruments and the 'instrument mix' that can be deployed by Parliament. The number of instruments may be restricted for the attainment of certain aims (e.g., where no financial implications are involved, the budgetary instrument may be of no great utility). Furthermore, the use of some instruments can be supplemented with other activities so as to render Parliament's moves more effective (e.g. through seeking consistency in its actions, through committing other actors to the same goals, etc.).

The discussion of a limited number of Treaty provisions should not distract from the fact that there is much dissatisfaction with other Treaty 'chapters'. This strategy chapter has highlighted the areas where the **small steps approach** is most likely to produce immediate and tangible results for the European Parliament. Given the prospect that there is a minimal likelihood of overcoming the 'unanimity obstacle' required to revise the Treaty, the view presented here may be somewhat 'sobering' – there is not much hope of achieving a 'big hit' in the near future. Opening the 'Pandora's box' that the Euratom Treaty represents would be a risk that some Member States would not particularly like to take, given the highly diverging interests of different Member States with regard to nuclear energy. Keeping 'Pandora's box' closed seems to be a much less painful option, even for those who acknowledge that a number of Treaty 'chapters' have become dysfunctional. Furthermore, Treaty revision would be rendered even more cumbersome given the requirement of ratification through national parliaments.

This does not mean, however, that the European Parliament should cease to call loudly upon the Member States to review those Treaty provisions where the need for revision is most obvious. Furthermore, Parliament possesses the instruments to place considerable pressure on the Member States to induce some changes (assuming that Parliament can muster a majority in support of these courses of action). One important example is an issue that has been completely excluded from the Euratom Treaty at the time it was negotiated, **nuclear reactor safety**. In the context of enlargement, the issue of nuclear safety has assumed a top priority given the often questionable status of some nuclear power plants in the applicant countries. One of the problems facing the Community is to achieve an upgrading of these plants to 'Western safety standards'. Yet, given the lack of a definition thereof, there is much confusion and disagreement as to how to ensure a high level of nuclear safety, and whether this level should somehow be 'harmonised' across the E(AE)C.

Although there is a lot of movement under way, (particularly in a number of DG s inside the Commission), to find a universally accepted approach to define these standards or at least to

set out a uniform methodology to assess them, Parliament should show a strong interest in nuclear safety with regard to the applicant countries and future enlargement. Given Parliament's influence over non-compulsory expenditure, including technical assistance expenditures in the PHARE and TACIS programmes, Parliament can exercise pressure on the Commission by threatening to put appropriations destined for nuclear safety expenditures in the reserve until it has gained confirmation on how this money is spent[163]. Furthermore, Parliament's power of assent to accession of new Member States means that nuclear safety could be a top Parliamentary priority which would 'help' the Community Member States to 'concentrate their minds'.

With regard to 'genuine' Euratom Treaty provisions, Parliament should be vigilant and seek for 'windows of opportunity' that may eventually arise and open up possibilities for Treaty revision. This strategy paper ends with some examples:

- One tactical device Parliament could employ is to commit Member States to strive for Treaty revision. Given the fierce opposition on behalf of the French government to revision, together with the fact that France took over the Council Presidency in the second half of 2000 and thus presided over the Nice IGC, Euratom revision was not an agenda item at Nice. However, this might be different in the future if a Member State presiding over a subsequent IGC possessed a strong interest in revision. Under such circumstances, Parliament could seek a commitment from the Council Presidency and other 'revision-positive' Member States to place the item on the agenda for an IGC.

- In this context, Parliament could continue to communicate the absurdity and partly farcical nature of some of the Treaty provisions to a wider audience. One ingredient for successful agenda placement is the creation of an interested public (awareness raising), which includes a critical mass of interested Member States, but also a large majority of parliamentary members.

- Parliament could also focus its major criticisms on the institutional shortcomings of the Treaty. This would allow Parliament to act more coherently and make it more difficult for the Council to reject Parliament's claims for 'more democracy'.

- Although Parliament will not have much influence on the number and kind of issues discussed at an IGC, the likelihood of Euratom revision will be greatly enhanced if issue linkages are made possible during an IGC. Linkages can occur when governments have varying preferences across different issues, with marginal gains in some areas more important to some than to others. Thus, issue linkages are most advantageous where different Member States have highly asymmetrical interests on different issues. Owing to the strength of the 'nuclear' lobby, particularly in France, the creation of compensatory mechanisms would be very difficult to achieve. Furthermore, it may be easier for France to issue a credible ratification threat and for other Member States to threaten a 'veto' in the

[163] In 1993, Parliament entered 120 Million ECU in the reserve for the 1994 budget, more than half of the appropriations allocated for the TACIS programme. Parliament was not satisfied with the way that the expenditure entered in previous years was being spent and wanted more details on how future spending was to be organised. Sir Leon Brittan, the Commissioner responsible, came to Parliament early in 1994 providing detailed information on spending plans, which led to the money being unblocked (see Corbett, Jacobs, Shackleton, *The European Parliament*, Cartermill International, 1995. p.236).

event that Euratom is not revised. Nevertheless, issue linkages have produced negotiating results in the past that seemed highly unlikely prior to intergovernmental negotiations.

Although revision of the Euratom Treaty seems unlikely in the near future, this chapter has tried to demonstrate that it is nevertheless possible: it requires strategic thinking by the European Parliament in order to improve its influence over outcomes in the nuclear sector, but also to enhance the scope of its competencies to areas characterised by legal limbo such as the effects of radiation on the natural environment, and nuclear reactor safety. The European Parliament has been a main character in one of the most remarkable success-stories in the history of international co-operation and democratic governance. It has managed to cover the great distance from parliamentary control organ to co-legislator in less than five decades. Much of this success derives from its capacity creatively to interpret the legal provisions laid down in the Treaties, and its self-acclaimed status as the core element of a 'democratic' European Union, a claim which is difficult to dispute by the Member States. Even the most disputed and archaic Euratom Treaty may not be immune to a dose of democracy.

### III.1.3. The role of the Atomic Questions Group

We cannot conclude this section without mentioning what is one of the most important fora for the implementation of the provisions of the Euratom Treaty and the secondary legislation deriving from it. The Council of Ministers delegates the detailed examination of all matters falling under the Euratom Treaty to the so-called 'Atomic Questions Group' (AQG). This is a Council Working Group, usually comprising national civil servants seconded to Brussels, many of whom are experts on nuclear issues: many, indeed, have a background in nuclear science. Its job, like that of other Council Working Groups, is to do the preparatory work for the Council of Ministers.

But so far as we have been able to establish, the Atomic Questions Group would seem to be the de facto decision-making body with respect to the Euratom Treaty, since the Council of Ministers itself simply does not have the requisite expertise in nuclear matters, or the Euratom Treaty, which would be required to challenge any preparatory work carried out by the AQG. This is not to say that draft decisions bear no relationship to national interests, policies, and politics: the members of the Atomic Questions Group are often the repository of much expertise concerning the political positions of the various Member States in nuclear matters, and, moreover, expertise on the Euratom Treaty itself. The consequence of all this is that Council Decisions or other legislative acts under the Euratom Treaty are normally taken as 'A' points in the actual Council meetings.

The Commission is of course also present at meetings of the AQG, and is of course also the most important repository of knowledge and expertise concerning the Euratom Treaty. But the European Parliament does not, however, participate in meetings of such Council Working Groups. Parliament therefore needs to pay much closer attention to the on-going work of the Atomic Questions Group than it has in the past. It is thus very much in the Parliament's interest to make sure that its voice is heard by both the Commission and the AQG, and that Parliamentarians establish contact with the member of the AQG from their own countries, and seek to be regularly informed of what the AQG is doing.

# III.2. Strategy paper two

**Summary**

The leitmotifs of enlargement and inter-institutional debate are democracy, openness, accountability, effectiveness, and efficiency. They do not necessarily mean the same thing to people in different countries. Nor do people across the EU necessarily attach equal (or any) importance to their realisation. However, enlargement requires institutional change.

This presents the EP with an opportunity to seek to insert itself more effectively into constitutional processes. Different levers might be employed under different treaties, articles and constitutional processes – such as the next IGC – in order to insert the EP into decision making processes from which it is excluded under Euratom in its current form. By achieving results under Euratom and in respect of issues relating to Euratom concerns, the EP may have an indirect effect on its standing and role under the Nice treaty.

In short, enlargement, the next IGC and the future of Euratom present the EP with the opportunity to insist on a parliamentary voice being heard and heeded as a general matter of principle and practice. MEPs have the chance to require that policymakers accept their political responsibilities in all fields, and to challenge any breach which allows them by default to abdicate their responsibility.

## III.2.1. Rationale for European Parliament Role

Before examining the strategic options open to the EP, it is important to be clear as to the purpose behind EP interest in measures taken under the Euratom Treaty and associated measures agreed and implemented under the other treaties. These relate to:

i) the ability of the EP to perform its Treaty given duties and obligations effectively and efficiently (thereby conforming its credibility and worthiness as a legislative institution), and
ii) the political aspirations of its members (current and future role conceptions in an enlarging EU).

### *III.2.1.1. EP performance of legislative functions*

These broadly divide into:
(a) legal requirements for EP involvement under Euratom and the other treaties,
(b) EP interpretation of the possibilities for it to influence measures under these treaties (which may not be the same thing at all as (a); though may be informed by either experience under (a) or conflicting interpretations by different institutions as to the EP's role. They might also involve an expansive interpretation of possibilities by adapting a provision or procedure common under, say the Nice Treaty (such as own initiative activities) and 'applying' them to Euratom concerns.

How the EP performs its legislative functions depends not just on legal requirements governing its role, but on the EP's own vision, or lack of vision, as to what an appropriate

role for it is at a given time, and in a given area. The EP should have a general role conception for itself as the elected legislature of an enlarged EU. This needs to be preserved and transmitted to new members in the context of enlargement. The norms and values the EP purports to uphold and sustain need to be made manifest. The EP must be seen to be practising them and seeking to make them recognised as fundamental to good practice in respect of policymaking in the EU in general.

**EP role conceptions in an enlarging EU**

Enlargement itself offers the EP the opportunity to reappraise its role, how it executes it and how it exerts, prioritises and focuses its activities in respect of policy issues and geopolitical arenas. The legislative agenda may be largely determined by the Commission and Presidency. New members' circumstances may mean that (a) their policy priorities differ somewhat from those of existing members; and (b) that existing members' sense of political priorities may change because the circumstances in the new Member States are such as to require modification of policy priorities in order to safeguard or meet the broader common interests of the EU as a whole, or of those Member States bordering newer ones. For instance, it is conceivable that matters germane to Chapter 3 (Euratom) would accordingly rise much higher up the agenda and require much closer scrutiny and redefinition. This has implications for the way in which parties organise their business and maintain cohesion, policy coherence, prioritise issue areas, and seek out winning coalitions.

The over-arching goal must be to show that the EP is relevant, and has something worthwhile to contribute in the sensitive areas covered by Euratom. MEPs cannot afford to be seen by the public to be less effective, or less influential and vociferous on matters of public concern where highly toxic/hazardous substances and emissions are concerned, than in respect of the 'normal' business of the EU. If they were to be perceived as ineffective or irrelevant, the repercussions on perceptions of the value of MEPs and the EP in general in EU decision-making could be damaging.

Legislative clout and public image are linked. They may be of especial interest in the run-up to the next IGC and the coinciding Euro-elections. MEPs need, therefore, to consider the political context within which they seek to alter the EP's role under Euratom and in respect of related policy areas:

**Action:** MEPs' legislative clout might be expanded either juridically via treaty change and entrenched expansion of their authority (universalisation of co-decision); or de facto via intervention as permitted by existing treaties (questions, budget, investigations, public hearings, legislative tactics to delay implementation pending modification of specific clauses, etc).

**Action:** improve public image. MEPs need to be seen by the public to be pursuing politically (electorally relevant) salient issues of concern to the general public (i.e. showing themselves to be responsive to citizens' interests, and able to mobilise and present them in a politically relevant way which may be translated into politically ideological and relevant legislative outputs – something the Commission is ill-equipped to do, even if it does use e-interactive citizens' fora and 'ask the Commissioner' internet pages).

MEPs may feel that they are becoming redundant if other citizen interaction with policy makers (eg via NGOs, etc) seem to be more effective and have a more visible and immediate result than their inputs via the normal legislative channels.

**Action**: guardian of democracy role. MEPs may also have an interest in showing themselves to be the guardian of moral values associated with the idea of an engaged participatory democracy, and the 'voice of the people'.

The last consideration brings the strategic discussion full circle.

Arguably, to safeguard their existing role in the EU's inter-institutional set up, they need to preserve a modicum of public belief in their effectiveness. They cannot afford any implicit curtailing of their entrenched powers by the growth of 'soft law' or inter-institutional practices which limit their ability to influence the content of decisions across the range of issues (from funding discreet and related/overlapping research programmes, to policy on the transport/import/re-export of hazardous low level waste, and de-commissioning of old/dangerous nuclear waste sites and storage facilities whether in the existing EU, or in the enlarged EU.

#### *III.2.1.2. Strategic possibilities: Enlargement as an opportunity to prioritize sensitive issues (Chapter 3)*

Chapter 3 (Euratom) Art 34, for example, offers an area of activity which is subject, arguably, to insufficient scrutiny and political oversight. Is it sufficient merely to require Member States in whose territories particularly dangerous experiments are to take place to take additional health and safety measures subject merely to the requirement that they first obtain the Commission's opinion? Only where the effects of such experiments are liable to affect the territories of other member states, is Commission assent required. The EP could seek to insert itself into this process by seeking a means of securing access to and discussion of relevant information with the Commission prior to the issuing of such assent. Accordingly, such assent might be given only after the Commission has discussed the issues with the relevant EP committee at the minimum *in camera.*

Transfrontier pollution and health and safety hazards leading to civil emergencies has been the subject of some EU coordination. However, the EP has not yet become part of a procedure where there is open and informed debate about such issues of public interest. **This situation needs to be remedied both by procedural stealth and by formal treaty amendment**.

**Action:** Article 36 is another article which might be amended, or which might be examined with a view to exploiting its provisions to inject greater openness into a closed, and possibly, unsatisfactory procedure.

It provides for the appropriate authorities to periodically communicate to the Commission information on the checks on radioactivity to which the public is exposed. Presumably, the EP could elicit that information from the Commission, and devise further steps to enhance its capacity to scrutinise, monitor, control and influence policy choices pursuant to that information.

**Action:** It may, for example, be prudent to seek observer status in any meeting the Commission has with the group of experts as provided for under Article 31.

It is surely anomalous that the Economic and Social Committee should have a right to issue an opinion on basic standards, whereas the EP is merely the object of Council consultation. (Article 31).

**Action:** At the very least, the EP should be placed on a par with ESC. Moreover, wherever Euratom empowers the Council to act by QMV, the EP should seek a right of conciliation and preferably co-decision. So far, little consideration has been afforded to Euratom and related issues and the way in which inter-institutional interaction may be improved to the common good. It is no longer acceptable to assume that Euratom's concerns are fundamentally so technical as to dispense with the need for effective political oversight and public scrutiny. Technical desiderata are vital, but in a democracy they cannot be allowed to be seen to be implemented without open scrutiny. Moreover, public concern about many of the matters covered by Euratom and nuclear energy, means that ideally appropriate mechanisms of accountability should be in place **to which the public can relate**.

Citizens' charters, public 'discussions with the Commissioner over the internet' do not (or do not yet) meet the requirements for entrenched, visible, political responsive and responsible accountability. This is a role which properly falls to elected representatives of the people – hence, the EP. **The EP is the only institution that permits genuine interactive accountability.** Lone voices of individuals emailing ideas to the Commission, or whoever, over the internet are unlikely to have the same clout as the articulated expression of deliberations across frontiers and parties by MEPs in touch with citizens and, more importantly, with each other and with officials from the other institutions.

**Action:** Article 33 provides for the Commission to make appropriate recommendations for harmonising provisions in the member states relating to basic standards. This article should be amended to provide for EP consultation at a minimum, with a view to broadening it to co-decision in future.

**Action:** Article 33 - there is no formal provision for effective follow-up - technical or political – of the implementation of basic standards. The EP might make recommendations accordingly. Similarly, Article 38 permits the Commission in cases of urgency, to issue a directive addressed to a Member State to ensure that it takes measures, within a specified period, to prevent infringement of basic standards and ensure compliance with regulations.

**Action:** Article 38 - and all areas where the Commission issues directives - should be subject to parliamentary scrutiny and assent; again the emphasis being on amending the relevant articles to permit co-decision. Where this is politically too sensitive or unrealistic, the EP should move by stealth to gain access to information (either via the Commission or the target Member States' authorities or parliament, and to follow-up – and maybe publicise - any measures taken, or not taken). This might have the added advantage of accelerating remedial action, possibly pre-empting delaying tactics by the target state which lead the Commission to refer the matter to the Court of Justice.

Enlargement alone requires EU-level public scrutiny of the range of issues associated with the matters falling under Euratom. As in the past, one of the most useful political weapons available to the EP remains the one which is not a legally entrenched right but a tool of political operators: the instrument of embarrassment. If necessary, MEPs must be in a

position to mobilise themselves effectively in pursuit of issues in order to safeguard the public interest, as they see it. Access to relevant, timely and full information is an important element in this. Any denial of access by officials, the Commission, or the Council must therefore be challenged publicly; and equally publicly followed up.

### III.2.2. Strategy

#### *III.2.2.1. Normative*

Normative considerations concern the values which the EU member governments and the EU treaties seek to uphold. They underpin the constitutional arrangements established in the EU in respect of inter-institutional relations. They represent principles and guides to institutional behaviour both within the EU institutions and vis-à-vis the EU's public. They have been reiterated at the highest possible political level of the IGCs as values to which the EC subscribes. In short, they are not merely rhetorical or cosmetic. They have behavioural implications for decision-makers in respect of the actual conduct of policymaking, its presentation and implementation. Accordingly, they may be challenged when not honoured. Any challenge, of course, requires knowledge, vigilance, awareness and follow-up: functions which MEPs may perform in respect of any EU treaty commitments and which they may investigate with a view to performing in respect of the Euratom Treaty.

It behoves each EU institution to uphold the transparency, openness, democracy and accountability norms. The European Parliament is not the custodian of these norms. It may, however, become their de facto guardian. This would be an avenue open to it. It has the merit of being non-provocative, non-expansionary, non-threatening vis-à-vis the unique competences of the Commission and the Council, and therefore unlikely to provoke downright opposition on the part of the Member State governments.

Especially at a point of enlargement and impending further enlargement to nascent democracies, it would be very difficult for governments in practice to object to MEPs seeking to sustain democratic values, norms and **behaviour** themselves by virtue of their position as the elected representatives of the people; as collectively members of European political parties committed to upholding democratic, open, accountable and transparent political practices both internally within the parties; internally within the EP – in terms of intra-party and inter-party relations; and externally in terms of their relations with both other EU institutions (Commission, Council, Committee of the Regions, ESC) and national parliaments.

#### *III.2.2.2. Constitutional*

The constitutional expression of these values has been developed by (a) successive revisions of the treaties establishing the EU; (b) reform of inter-institutional relations whether through inter-institutional declarations, trialogue agreements, Codes of Conduct or through formal amendment to specific articles of the relevant treaties. An unspoken but guiding principle for the European Parliament, notably since the period from the time of the first direct elections to after the adoption of its Draft Treaty establishing the European Union in 1984, has been that of anything that is not expressly prohibited by the treaties is implicitly permitted until the governments decide otherwise. This facilitated the development of the

European Parliament's powers on a gradual, small steps basis. It was complemented by the grander vision of a big step forward (most keenly epitomised by explicitly federal recommendations for treaty reforms to lead to a bicameral, co-equal legislature based on the Council of Ministers and the European Parliament).

It remains the basis for a continuing pragmatic testing of the boundaries and limits to (a) what Member Governments will tolerate themselves individually and (b) collectively as the European Council and Council of Ministers and (c) the Commission will accede to in terms of the role that the European Parliament's members seek for the European Parliament. Many of the legislative powers now exercised by the EP were seen as radical and unacceptable not so long ago. There is no good reason why the EP should desist from seeking to exercise an appropriate, even radical, role for itself in respect of the Euratom Treaty, and many of the issues that fall both under its remit and that of the EU treaty pillars.

#### *III.2.2.3. Practical*

The practical implications of attachment to these norms is reflected in the often innovative and teleological way in which MEPs have sought to give effect to them in respect of a whole range of policy matters regardless of the official legal base under which an item falls. Of particular interest are items subject to 'soft law' developments, and those which potentially might be dealt with under different articles of either different pillars of the EU treaty, or under another EC treaty. It has not been unknown for items to be tabled under treaty articles which permit the minimum involvement of the European Parliament.

#### *III.2.2.4. Remedy: vigilance*

MEPs' vigilance has meant that the legal base of proposals could be challenged with a view to insisting on the European Parliament having a rightful say in the process. Equally, even where it has not been possible to change the legal basis for a proposal, MEPs have been adept at exploiting inter-institutional understandings, codes of conduct, and developing new procedures, to gain either an opportunity to express a view, or to open up a channel as a precedent for future EP inputs.

**Action:** Chapter 4 - EP should issue own initiative opinions. Chapter 4 on investment permits the Commission to obtain the ESC's opinion on programmes to facilitate coordinated development of nuclear energy production targets and types of investment to realise them. Such information should be made readily available to MEPs who should issue their opinion on the Commission's illustrative programmes, regardless of whether or not an opinion is desired by the Commission or not. MEPs should then publicise their opinion and the fact that it has been transmitted to the Commission. They should give a copy for information to national parliaments and both MPs and MEPs should ask pertinent questions in parliament of national ministers to elicit a government response to their opinion.

This would not require a treaty change as such, rather a change in practice which could be subsequently incorporated into a treaty amendment. Certainly, the political capital to be made out of an own initiative opinion is potentially vast on the technical front, on matters relating to transparency in respect of public health, safety and interest.

**Action**: link to the idea of presenting MEPs as voice and representative of the people, guardian of fundamental liberties and especially of good government practice (including respect for the rule of law, democracy, accountability, transparency and openness).

### III.2.3. Opportunities

The IGCs have reformed the EU treaties in ways which impact upon inter-institutional relations but which have also considerably expanded the scope of policy competence for those institutions. The norms to which the EU is attached in some respects provide an over-arching rationale and cover for a process which expressly expands the scope of integration into highly sensitive and contentious areas (in terms of modifying member governments' former sovereignty or exclusive competence over them). They also provide a cover for the fact that for reasons associated with the sensitive nature of expanding the competence of the European Parliament's legislative authority over these areas, there has not been a systematic corresponding, logical expansion of the European Parliament's actual powers.

**Action:** MEPs might construe the EP as a virtual legislature with full legislative authority over all policy areas subject to policymaking by the Commission and the Council in order to ensure that the EU's norms are respected and upheld. They should explore the possibility of the EP 'shadowing' decision-making where universalised co-decision is not explicitly provided in order to ascertain how and if the EP's views/voice would differ fundamentally from the decision taken.

**Action:** This means that they must seek out every opportunity to make known the EP's voice and views whether expressly provided for in the treaties or not. Especially in the case where the treaties do not make sufficient provision for MEPs to give their views, they must seek a means of so doing in order to uphold and apply the underlying values and norms of the EU treaties to the Euratom treaty.

Since it is highly unlikely that all decision-making even under the EU treaty will be subject to universal co-decision, the EP should consider whether it can further exploit pillars II and III, and be especially vigilant on matters relating to international organisations, international crime, and illegal cross-frontier movement of dangerous substances. It should interpret flexibly and expansively matters falling under these pillars to engineer greater access for itself, both informal and official, to information.

**Action:** exploit Chapter 5 on Joint undertakings to seek information on participation by a third state, international organisation or a national of a third state in the financing or management of a joint undertaking. (Arts 46-48). Pillars II and III do not provide adequate means for the European Parliament to exercise its functions but they are sufficiently vague to permit a range of questions to be asked of the other institutions. Given the overlap between them and pillar I, and the inexact policy boundaries and imprecise policy competence – and hence divergent legislative procedure provisions – between the EU Treaty (of Amsterdam and of Nice) and the Euratom Treaty, there is scope for (a) parliamentary challenge where MEPs feel their voice is not permitted; or is inadequately provided for; and (b) investigation as to how in future such lack of clarity may be improved in the name of democracy, openness, accountability, efficient and effective government.

It is entirely appropriate and proper that MEPs should question any issue on which they feel inadequately informed; inadequately primed; inadequately prepared by not receiving timely

information; and inadequately inserted into the legislative process governing the decision on the proposal on the table.

**Action:** combine attempts to set precedents under pillars II and III in respect of securing greater acknowledgement of the EP's existence and 'voice' by the other institutions, with efforts to use the same tactics in respect of Euratom treaty provisions. To this end, it would be appropriate for MEPs to use all channels open to them – including the right to veto a proposal having budgetary implications, or international repercussions – to assert their legitimate right to have a say, and ultimately, of course, to be an equal partner in the process of approving or refusing approval for a proposal or course of action proposed by the Commission and/or member governments.

By carefully selecting options likely to open doors, implementing chosen tactics within the context of an over-arching strategy, the EP could both seek to achieve particular goals in respect of its constitutional authority; in respect of its contribution to enhancing the EU's capacity to sustain its normative values and develop an open, liberal democratic political culture, and be seen to be championing both openness and the interests of the citizens in respect of environmental and related concerns: transport, health and safety, water, air and food hygiene and safety, chemical and industrial processes, relations with third countries, safe disposal of toxic waste, defence, responsible import and export policies, agricultural, scientific advance from biotechnology to medical research, etc.

**There is probably no area of human endeavour which should remain outside the scrutiny remit of the European Parliament either implicitly or explicitly.**

If the EP were to proceed accordingly, it would have to carefully choose tactics least likely to (unnecessarily) arouse a reflex knee-jerk reaction on the part of either anti-Europeans, Euro-cynics or those with vested interests (government, private or NGO sector) in secrecy and the exclusion of public scrutiny.

If an activity takes places within the territory of the EU that affects the public domain, then the EP could justify a legitimate claim in having an interest in ensuring that it has the ability to scrutinise it in the name of the public good. EP interventions must be timely, relevant and achievable and ideally tied to an over-arching strategy of persuasion.

### III.2.4. Persuasion

The European Parliament cannot afford to be seen to be abdicating responsibility: it is the only institution able to aggregate interests, give voice to and act as champion of the people. No matter how open and responsive the Commission is, this role is not one that it can consistently perform in a way that it clearly linked to choices predicated on political and ideological premises, that translate into articulated goals having majority support.

The EP needs a strategy having several components. This means prioritising and combining several negotiating tactics to secure a clearly defined end goal. For example:

- a gradualist small steps approach (securing informal inter-institutional arrangements to exchange information, allow MEPs access to letters, briefing, documents etc on an informal but systematic basis, for example),
- combined with a tactic to codify small changes in practice (derived, possibly from the former) and entrench them in formal inter-institutional agreements,

- medium level negotiations to incorporate these in treaty articles, worded as generally as possible, to
- full-blown treaty revision designed to universalise co-decision.

The first three would be amenable to persuasion and bargaining, possibly coupled with carefully targeted use of threats deploying EP existing power to maximum advantage.

The EP might persuade the Commission to share information (including technical documents such as procedural papers, guidelines, principles, recommendations to member states with regard to revenue or mining (Art 70) regulations, etc) even where this is not explicitly required under the Euratom Treaty. For example, it could systematically ask the Commission for copies of information and develop with the Commission a practice of information sharing. (For example, the Commission did agree to the request for a copy of the Council guidelines on Euratom loans).

It might also seek information on the activities and financial commitments of the Supplies Agency (under Chapter6). In particular, the EP may have special interest in the work of the Agency within the framework of agreements concluded with a third state or international organisation. (Art 64; Art 74).

The most obvious threat open to the EP is to withhold assent on spending, especially non-compulsory expenditure, and to query and withhold assent for spending relating to international agreements, enlargement, or research programmes. The anomalous situation in respect of co-decision of Framework programmes and the 'consultation facultative' approach under Euratom 'framework programmes' is plainly unhelpful. The EP could use the opportunity offered by the development of the 6$^{th}$ Framework Programme to move towards closing the gap between the two, possibly by seeking to introduce conciliation mechanisms.

In addition, other programmes offer opportunities to investigate (i) the procedural provisions for timely and influential EP involvement, deliberation and participation in determining the outcome; and (ii) the scope of the programme. For example, under Eloise and programmes dealing with coastal zone and water management and the environment, it would seem appropriate for the EP's relevant committee to ensure that account is taken of nuclear waste/toxic waste disposal and management, given the location of some nuclear reactors.

MEPs might undertake an own initiative report on evaluating the legal and operational 'fitness' of procedures and rules in applicant states as to nuclear safety provisions using the potential offered by inter-parliamentary committees to 'open up' a dialogue; and to access reports that applicants have to submit to Council on their ability to meet and implement performance criteria, containment requirements, civil emergency procedures, safety requirements for nuclear power plants, and transportation of fissile material and nuclear waste. This could then be used as the basis for EP recommendations addressed to the other institutions, and made public to and/or through national parliaments.

If the EP exercises co-decision in respect of such programmes which contain explicit references to matter pertinent to Euratom or to related matters, then there is a case for stressing the anomaly between that treaty and Euratom. It would be inconceivable that the EP's more extensive role under one treaty on such sensitive public health issues would be reduced in order to accommodate political niceties and objections which underpin a negligible role for it under Euratom.

There is also scope to creatively interpret articles to introduce a rolling process of approval by QMV in the Council in which the EP seeks to make any change subject to EP consultation and approval on a case by case basis (cf. Art 9.2). Similarly, it could pursue a strategy of seeking to upgrade provisions for its consultation, to one where the issue of a formal opinion, or preferably assent or co-decision is required (e.g. Article 76).

Chapter 2, section 3 (Art 24ff) is open to creative interpretation. Art 24.1 allows the Council to adopt security regulations on a proposal from the Commission. The EP could seek clarification of the basis for this (and voting requirement, if any) coupled with an attempt to institute a procedure for consultation of the EP by either the Commission or, preferably, the Council. It could also raise questions on this item alone, and possibly seek cross-examination hearings.

In addition, given the wide responsibilities of the Commission under Euratom, including for example in respect of inspections, and the lack of report back or follow-up to the European Parliament, MEPs might systematically begin to question the Commission about the state of play, progress on inspections, results, documents, and access to sites. This could be particularly useful to MEPs if a member state proves reluctant to submit to inspection, if there is prevarication and lack of openness, and if Court referral is imminent (Art 81).

The EP could also seek to follow up any sanctions, and to develop dialogue with national parliaments on relevant issues relating to infringements and enforcement. Together, parliamentary cooperation might assist in opening up and rendering this aspect of Euratom more transparent.

Under Chapter 8 on property ownership, there are plenty of avenues to explore in expansively interpreting the EP's right to be consulted under Article 90.

Chapter 9 on the nuclear common market is one which might lend itself to formal treaty amendment, notably in respect of Article 96 where the EP might seek not merely to be consulted but at least to be on a par with the ESC.

Chapter 10 on external relations probably offers the most potential for EP intervention, following KEDO and general public interest in and concern about the export, import and transport of nuclear materials and waste. The EP might seek to amend Article 106. However, in line with a less ambitious approach, again it must exploit all avenues under Euratom and the other treaties to increase the volume and utility of information it is able to access in order to enhance the effectiveness of its work, to make consulting it, or seeking its advice desirable (both in their own right but also in the negative sense of any omission risking public confrontation) and of any questions tabled to the Commission, Council or within national parliaments on relevant matters.

Overall, it is clear that although the EP is recognised as an institution (as the Assembly) under Euratom, its functions are minimal.

### III.2.5. Constraints in the EP

None of these tactics is realisable unless there is a good probability of maintaining a winning majority behind them in the EP. Great care needs to be taken in assessing 'opponents' (from

Member Governments to vested interests) and in **building and sustaining an environment** inside the EP and outside receptive to EP wishes in respect of the broad strategy relating to remedying the democratic deficit, lack of transparency and accountability in the policy sectors covered by Euratom.

A strategy of mixing and deploying these tactics strategically and selectively is essential. It needs to be coupled with a strategy of deliberation with national parliaments both because national parliaments might be an instrument to be used in softening up and developing a receptive domestic environment, and also because national parliaments have a role in the ratification of formal treaty revisions which can only proceed on the basis of unanimity among the member governments.

**Action:** National parliaments might also be encouraged to sensitise domestic governments and public opinion to highly contentious public interest issues such as nuclear reactor safety (at the time of enlargement negotiations) where the absence of generally agreed safety criteria must beg many questions both of the EU and of the member governments.

**Action:** The EP could easily champion the cause of public health on this occasion and use its dissatisfaction with the lack of standards to justify both demands for financial appropriations to assist applicants to reach reasonable standards, and to withhold financial approval pending EP satisfaction on this score. This could raise fears about an EP threat to refuse to endorse enlargement. This might be a powerful inducement to governments to accede to some of its 'lesser' requests in terms of it having a genuine decisional role in respect of Euratom issues.

**Action:** This could be expanded to include EP calls for due diligence and vigilance procedures.

The EP would need to be satisfied that applicants made use of technical assistance, for example, in an effective way which satisfied the EP. There would be room for the EP to devise procedures which allowed it to verify for itself that satisfactory measures were both drafted and implemented.

**Action:** Linkage to adjacent technical training schemes, such as Phare and Tacis, training of trainers, Marie Curie Scholarships, etc could all be explored to vindicate such an approach: again, in the name of universalising good practice. This again would open the door both to greater inter-institutional collaboration on technical information exchange and also to practices which developed a standard operating procedure involving the EP. If this were coupled with the EP demonstrating at least to other institutions and to Member Governments consistently the usefulness of its inputs, it might be possible for MEPs to persuade Member Governments with an interest in treaty reform (especially regarding Euratom and the issue of nuclear reactor safety on the eve of enlargement) to include it as an agenda item for the upcoming IGC.

In short, being the champion of the people's cause in this respect is not likely to be enough to secure the fundamental change the EP ideally seeks. It needs alliances (possibly with suppliers) and political champions. The latter might include transit states for the transport of nuclear waste, those bordering new states with 'dubious reactor safety levels'. They should include preferably one or more of the states likely to be in the Council Presidency sequence up to and including the ratification of enlargement treaties and the next IGC treaty reform.

**Using the nuclear issue to open up the case for universalising good parliamentary practice.**

The high profile and sensitive nature of nuclear issues means that the EP should be able to make political capital out of the incomprehensible differences between the treaties over the type and extent of role the EP is permitted.

**The EP needs to be creative in interpreting all the treaties on all issues related to the central concerns of the Euratom Treaty so that it insists on an input, no matter how small, and sets up a pattern of EP involvement which it would be embarrassing for Member Governments to try and curb or deny when MEPs transform this into a call for proper parliamentary scrutiny, co-decision and formal, legitimate legislative input.**

### III.2.6. Some possible avenues

**Energy policy**
In order to meet energy policy objectives and to maintain energy investment at the level needed to meet those objectives, the EC used its financial instruments to the full, particularly the Euratom borrowing arrangements and subsequent EC instrument for borrowing and lending. There is scope for a degree of post hoc control and oversight by the EP which might be skilfully developed to open the door to ongoing scrutiny, consultation and dialogue. This is necessary to shift the EP from a position of virtual invisibility in this sector (coupled with null-legislative role, to one of neutral influence – worth consulting for views, but essentially based on continued legislative impotence – to quickly shifting gear to make EP voice and consent essential).

One of the simplest and least provocative ways of demonstrating EP concern over lack of transparency and accountability might be to draw attention to differences regarding decisions in adjacent areas. Euratom versus Nice treaty provisions on research programmes such as Framework 6, for instance, might be used to try and lever more of a role under Euratom for the EP by insisting on the desirability in principle of subjecting all research programmes to the same forms of political oversight and accountability.

The issue is whether this can be achieved within the framework of a revised Euratom Treaty alone, or whether through the existing formal committee structures, and informal practical agreements and arrangements with the Commission (such as access to exchanges of letters) and other institutions at a pre-decisional stage.

There is a case for the EP to have a regular energy *colloque* with relevant ministers, Commission and Euratom officials, etc. This would provide:

- a forum for face-to-transmission of information,
- the basis for asking that before such colloques, the EP committee be given full access to relevant documentation (and, in the event that only partial, incomplete, late or ad hoc access occurs, making political capital out of that and going on to seek openness and transparency in the name of the people and democratic responsibility and accountability),
- scrutiny opportunities and the chance to cross-examine (possibly in public hearings) officials. Closed meetings would probably be more effective in terms of creating a climate of mutual trust, facilitating greater disclosure of pertinent information, and

developing a working practice of growing mutual consultation so that this de facto scrutiny can later be transformed into de facto treaty entrenched rights,

- a chance to develop a more coherent overall EP approach to the broad issues raised by energy policy, including civil nuclear power prospects and current developments, which other committees need to consider in conjunction with the specialist committees of the EP,
- EP links with national parliaments might also be exploited to develop a forum and strategy for discussing relevant issues, and turning that into subsequent requests for legally recognised right to influence and decide policy,
- this in turn may help the EP to evolve an approach for 'normalising' energy policy considerations and developing a requirement for an energy policy risk assessment to be conducted in all areas where relevant matters arise (especially environment, transport, building, urban/rural, agricultural, health and safety, promotion of research (Chap.1 ) external relations (Chap. 10) and so on),
- this in turn strengthens the case for universal co-decision across all pillars and treaties,
- it also may be a means of persuading treaty reformers, should the Euratom treaty be renewed, to include appropriate provisions for EP oversight.

### III.2.7. Open doors: EP post hoc inputs to be exploited

The above normalisation of energy policy broadly conceived carries the risk of duplication of effort, contradictory decisions and need for wider consultation and hence slower processing of information up to the point of decision delivery. However, this is not sufficient a risk to warrant retaining the status quo. Experience, particularly in respect of pillars II and III, shows the potency of a gradual approach, even in the face of the opposition of the entrenched vested interests of specific member states. (We recall the special position, for example, of France and the UK in respect of pillar II).

In addition, the EP may choose to use its very limited powers in respect of pillar III (notably for information purposes on matters relating to terrorism and Europol) to lever itself into the inter-institutional consultation and decision-making processes concerning Europol, its activities, and counter-terrorism (eg nuclear terrorism, use of low level waste, transport of fissile materials etc, civil emergencies) to **exact recognition** by the other institutions and Member Governments, that it has something worthwhile to say.

Moreover, this approach would be consistent with honouring the requirements under Article 2e Euratom concerning appropriate supervision of nuclear materials and guarding against their diversion to purposes other than those for which they are intended: whether military or whether misappropriated for illegal means, re-export or whatever.

No strategy adopted by the EP will succeed without the support of a majority of members within the EP (sufficient in number to sustain support for the strategy overall). It would be sensible, therefore, to build into the strategy a tactic for involving national parliaments (whose role in respect of EU decision-making is so limited as to beg for options for greater involvement). This would have the advantage of widening the scope of discussion, creating other forums to raise pertinent issues through parliamentary procedures within the Member States, raise the profile of those issues and legitimise them via national intermediaries (so that the EP cannot be vilified as being out of touch or merely 'trouble-making' or 'in search of a relevant role'), and build a broader based consensus as to the legitimacy and

justifiability of parliamentarians per se having a voice which is heard, respected and acted upon by member governments.

It may also be a way of softening up wavering governments should any of them eventually seek to place Euratom treaty reform as such on the IGC agenda. The constructive approach could be bolstered, as the (then) EP Committee on Energy, Research and Technology in its Opinion for the Committee on institutional Affairs on the Treaty of Amsterdam, by the EP systematically deleting all expenditure based on problematic articles of the Euratom Treaty until such time as those articles are brought in line with those of the EC Treaty as amended by the TEU, the Amsterdam Treaty (and, subsequently, Nice Treaty).

### III.2.8. Enlargement

In the context of enlargement and all pre-enlargement discussions, as well as in respect of agreements with third countries, there may be scope for MEPs to augment their capacity to scrutinise what is happening; to enhance their investigative actions; and ultimately to query (and refuse) discharge of financial arrangements, or endorsement of international agreements, or accession arrangements.

**EP pre-decisional opportunities to be developed**

In addition, the EP may wish to look more closely at energy investment plans and related borrowing, related to:

- Commission energy demand and supply models,
- bilateral cooperative agreements (EAEC Art 103) with energy suppliers such as Australia (on securing uranium supplies) and Canada (on safeguard arrangements in respect of 'sensitive nuclear operations'),
- international considerations, such as NSA,
- arrangements for closing reactors in would-be EU member states,
- arrangements regarding full disclosure of information about reactors on the EU's borders, including the appropriate levels of education, training and skills possessed by the local staff,
- means of ensuring good practice in nuclear energy processing, health and safety, transport etc.,
- assessing and requiring comparability of technical standards and safety standards across the board.

**Developing its investigative capabilities into a strategy to acquire real legislative decision-making power**.

- developing its investigative capacity by, for example, scrutinising and making recommendations on the criteria for performance evaluation guides (this might be an avenue for the EP to seek and exert oversight, and at the minimum to have a hearing or discussion on these matters. It may wish this to be used as an opportunity to 'embarrass' governments into being more open with MEPs about matters that directly concern the public but which are often clouded in technical smoke),
- seeking access to applicants' reports to the Council on their ability to meet and implement performance criteria, containment requirements, civil emergency procedures, safety requirements for nuclear power plants, and for the transport and disposal of fissile

material and nuclear waste. (A tactic towards this might be to hold a colloque on these issues with the applicants in closed session, first),

- assessing (by investigating, if necessary on the basis of an own initiative) the legal and operational 'fitness' of procedures and rules in applicant states as to their provisions regarding nuclear safety; and holding a colloque on the findings complete with recommendations on follow-up provisions and their prompt implementation where measures are deemed to be inadequate.

The linked advantages to this, include:

1. It would provide plenty of scope for constantly keeping these issues before the public and especially before the enlargement negotiators, Member State and EU officials.
2. It would enable the EP to set up its own dialogue with applicants on a sensitive issue which would enhance its ability independently to receive information not mediated by other EU institutions, to discuss these issues with pre-entrants, to make recommendations accordingly directed to whichever institutions are appropriate, and to seek – where desirable – programmes for improvements in the general public interest of those in the EU and seeking full EU membership.
3. It would enable the EP to have a role in setting the broad parameters and requirements of standards in this field.
4. It would enhance the EP's general visibility as a parliament addressing relevant public interest issues on which governments are evasive. This, too, would enable the EP to develop its role as champion and voice of the people, and allow MEPs to demonstrate their 'responsible' and responsive character to the electorate both in the EU and would-be members.
5. It would provide an opportunity for MEPs to suggest the establishment of, or the use of existing inter-parliamentary committees with MPs from applicant/pre-entry states to engage in open dialogue on these issues. At the minimum, this could 'open the door' to a mechanism to grant them a right to discuss and try and influence the debate within the EU set-up – that is, shifting the legal basis subtly from one setting (Euratom) to another (EU) where co-decision is the norm, or is being sought under pillars II (for example, lest military contracts relative to the common defence and security policy fall within Euratom's remit) and III (where appropriate).
6. It might enable it to develop ad hoc arrangements to remove, via informal and possibly later formal, inter-institutional arrangements, the democratic deficit in specific areas. These are glaringly obvious under pillar III (where illegal trade in nuclear / fissile material for example escapes EP scrutiny). They are less obvious, but a potent source of developing an EP role, in respect of research policy across the board, and international agreements. The latter may be tied to the civilian use of nuclear material and related issues, but might also quite properly encroach on the European defence and security realm (where under pillar II EP power might be gradually expanded, and where cooperation among the appropriate EP committees might prove productive).
7. It might be appropriate for the EP to look closely at the tactical opportunities for ensuring that Euratom meets its obligations under Art 2 (e) on the diversion of nuclear materials. This is an area where the EP may wish to develop closer links (unofficially or officially) with Europol with a view to developing (if this accords with security requirements which may operationally demand secrecy or closed interaction) the EP's role under pillar III - slippage from Euratom to EU may well be desirable.

In short, the political repercussions are such for the EP as an institution that it would have an educative and communication role that went beyond the more limited technical remit suggested by the activity in this seemingly very narrow and technical sphere:

- seeking observer status on any Council working party on relevant matters, such as the setting of standards, methods, procedures and funding of personnel, technical expertise, training of trainers, oversight of the trainers.

The time required to set up and implement legislation (eg a directive) on something as sensitive as nuclear safety standards, or nuclear reactor safety harmonisation means that the EP strategy needs to be elaborated within a long perspective of up to ten years. Clearly, it needs to complement this with short and medium term goals regarding access to information, challenging the largely unaccountable roles of the Commission and Council, the lack of accountability of the Atomic Questions Group and tendency for Council to 'rubber stamp' recommendations taken as 'A' points in Coreper.

Here is an opportunity to go beyond a passive role to transforming this into an active role for the EP on the occasion of either, or both, pre-enlargement agreements, and the next IGC : seeking a legitimate, treaty revision to entrench an EP role – preferably based on a co-decision right. Failing that, a right to have observer status coupled with a right to be consulted, issue an opinion which has to be heard and commented upon **before** any decision is taken; and to be allowed to follow-up, or failing that, to take an own initiative action to follow-up' by way of ongoing scrutiny, might help to insert the EP more effectively into a highly sensitive, and probably excessively closed set of procedures and decision-making practices under Euratom.

Whilst acknowledging that wholesale revision of Euratom is highly unlikely, not least because of the vested interests of member states committed to nuclear energy programmes (and the sizeable proportion of MEPs from across the EU opposed to nuclear energy), the EP cannot afford to be seen by the public to be silent about issues of nuclear safety either within the enlarged EU or further afield.

This in turn raises problematic issues internal to the Commission in respect of responsibility for Art 101 and for Euratom External Relations. The EP might, at a minimum, seek clarification and repeatedly follow up proceedings. It already has a de facto position post-Kedo in being consulted on agreements with third countries but needs to refine and accelerate its own internal procedures to be sure of having an impact. In short, it needs to act as a full legislative partner regardless of the formal limitations on its role.

The overall advantage from improving the EP's role under Euratom would seem to lie in the implications of that for all other legislative procedures in the EU which fall short of co-decision.