

# COMMISSION OF THE EUROPEAN COMMUNITIES

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## PROPOSAL FOR A COUNCIL DECISION

adopting new provisions relating to Chapter VI "Supplies"  
of the Treaty establishing the European Atomic Energy  
Community

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(presented by the Commission to the Council)

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PROPOSAL FOR A COUNCIL DECISION ADOPTING NEW PROVISIONS RELATING TO  
CHAPTER VI "SUPPLIES" OF THE TREATY ESTABLISHING THE EUROPEAN ATOMIC  
ENERGY COMMUNITY

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1. Over the last twenty-five years, far-reaching developments, both quantitative and qualitative, have taken place in industry and trade as regards materials and services for the nuclear fuel cycle. The quantitative developments can be measured in terms of the contribution of the nuclear industry to electricity generation : it now exceeds 20% on average, for the Community as a whole, and will continue to grow in the years to come. The qualitative developments have been marked by two apparently opposing tendencies : on the one hand, production of and in consequence trade in nuclear materials has become increasingly commonplace, whilst, on the other, political interventions by public authorities, mainly for reasons connected with the non-proliferation of nuclear weapons, have become more frequent.
2. The situation in the nuclear sector today is thus very different from when the Euratom Treaty was signed. To take account of this, the Commission considers it advisable to amend those provisions of the Treaty which govern Community supplies of nuclear materials. The Commission's initiative has been very carefully considered. It is in conformity with the letter and spirit of the Euratom Treaty, which explicitly provides for the possibility of amending Chapter VI by means of a simplified procedure.
3. Positive results have certainly been obtained under the present system; but the evolution of nuclear industry and trade has led to the continuing development of practices not in conformity with the basic rule of the system, namely the exclusive right of the Euratom Supply Agency to make purchases and sales. In its present form, Chapter VI gives rise to both a legal problem of non-conformity with the law by its subjects, and to a political and economic problem of increasingly obvious lack of correspondence with the realities of the market in nuclear materials and fuel services.
4. Proposals to amend the provisions of Chapter VI have already been made on two occasions in the past<sup>(\*)</sup>. Those attempts failed; but, since the nuclear industry has meanwhile attained genuine industrial and commercial maturity, the facts of the situation are now different, being both clearer and more stable. That is why the Commission believes that, given an objective analysis of the facts and an effort of mutual comprehension, it should be possible to reach agreement on its new proposal.
5. In preparing this proposal, the Commission has made a point of seeking the opinions of Member States and industry.

It has held a series of detailed discussions with the national administrations. And it has consulted the nuclear industry (producers of nuclear materials and services, and electricity producers), both within the framework of the Consultative Committee of the Euratom Supply Agency and by means of ad hoc meetings.

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(\*) In 1964 and again in 1970, the Commission put forward proposals aimed at instituting greater flexibility in respect of the Agency's monopoly.

6. These consultations have contributed substantially to the identification of the problems to be solved, and the Commission has largely taken account of their results in preparing this communication. But the opinions expressed about possible solutions were often divergent and sometimes contradictory. So, where no common denominator could be found, the Commission has made a choice.
7. The Commission based its deliberations on the principle that the fundamental tasks of the Community are and remain those defined in Article 2 of the Treaty, in particular paragraphs (d) and (g) thereof, namely to "ensure that all users in the Community receive a regular and equitable supply of ores and nuclear fuels" and to "ensure wide commercial outlets and access to the best technical facilities by the creation of a common market in specialised materials and equipment ...".

Consequently the proposed amendment of Chapter VI relates solely to the modalities for fulfilling these fundamental tasks and does not call into question the application of the other Chapters of the Treaty.

8. The Commission has moreover taken the view that the new provisions must allow the nuclear industry the greatest possible freedom of action to enable it to assume its new role to the full, and must at the same time provide all guarantees necessary to ensure that the behaviour of the Member States, undertakings and individuals concerned could not in any way prejudice regular and equitable supplies to all users.
9. Starting from these considerations, the proposed system does away with the commercial monopoly accorded to the Supply Agency and embraces the following basic elements :
  - the principle of the unity of the Community market;
  - the Community's competence on the international level;
  - the implementation of certain specific solidarity measures aimed chiefly at ensuring the security of supplies;
  - the definition of the Agency's new role, the main aim being to ensure market transparency;
  - supervision of compliance with the new provisions.

In conformity with the Community's aims and existing practice, the new supply system is, moreover, expressly confined to civil and non-explosive uses of nuclear energy. This means, on the one hand, that the system covers all nuclear materials allocated for such uses, even if they are not subject to an undertaking that they will be used for such purposes and, on the other hand, that it does not concern materials which have not yet been so allocated, even provisionally.

## 10. The principle of market unity

- (a) The Community must guarantee that no restriction on the free movement of nuclear materials within the Community be either decided on or applied outside the Community framework.

Strict observance of this principle is essential in order to ensure regular and equitable supplies to all users, while avoiding any discrimination where they are concerned. It also has obvious advantages for the Community's nuclear industry as a whole. A genuine nuclear common market, operating without barriers, will permit those Member States which do not possess a complete nuclear cycle to turn to those of their partners who do, without feeling that it would be more prudent to secure supplies by acquiring their own complete cycles, which would call for lengthy lead times and considerable investment, often out of all proportion to the size of their nuclear programmes. Smooth operation of the market will also enable those Member States with complete cycles to find guaranteed outlets in the other Member States, thus opening up an industry which is particularly well suited to export trade.

The application of Community safeguards pursuant to Chapter VII of the Euratom Treaty and the Verification Agreements concluded in this field with the International Atomic Energy Agency in Vienna enables the Community as a whole to assume the responsibilities inherent in a system of free intra-Community movement of nuclear materials.

- (b) The principle of market unity is embodied in a general, automatic prohibition on any restriction on transfers of materials within the Community or on imports from outside the Community, and on any conditions governing use and storage within the Community.

This "special law" for the field of nuclear supplies does not, however, cover barriers (for example, certain abuses of dominant position, certain price practices, etc.) which are not real restrictions on transfers or conditions governing use and storage. The rules of the EEC Treaty governing competition are therefore applicable to such barriers. The application of both systems does not pose any particular problems, since the special law takes precedence over the provisions of the EEC Treaty.

- (c) Exceptions to the general prohibition mentioned above may, however, be justified, given the special precautions needed for nuclear trade to ensure in particular that, within the Community, the public authorities control the way in which materials are used, and to respond, in the context of external relations, to the legitimate concerns of outside suppliers.

To ensure that such exceptions are compatible with the task assigned to the Community under Article 2 of the Treaty, it is however important that they be implemented only within a Community framework, so that uncoordinated interventions by Member States and operators, which may be contrary to market unity, are avoided.

To this end, the proposed new system makes provision for the Commission to establish, by means of regulations, rules governing conditions for transfers of materials within the Community and imports from outside the Community, together with conditions for use and storage within the Community. There should however be a possibility for any Member State to refer such a regulation to the Council. To facilitate adoption of the system, it might be desirable for an initial regulation concerning these conditions to enter into force at the same time as the new system itself.

#### 11. The powers of the Community at international level

- (a) Given the Community's dependence on third countries for certain fundamental aspects of nuclear supplies, and the restrictions which such countries tend to apply to nuclear trade, regular and equitable supplies for all users within the Community could be prejudiced as a result of the behaviour of such countries.

To mitigate this risk, there must be a common attitude towards third countries. This should preferably find expression in the conclusion of agreements by the Community, in order to turn the Community dimension to best account.

Cases may however arise in which the Community might not be able, or might not wish, to conclude an agreement.

If this were so, the Commission would authorise the conclusion of bilateral agreements by Member States, in line with existing administrative jurisprudence.

The Commission's authorisation is a necessary condition. It requires that these agreements be in conformity with the Treaty, in particular the principle of the unity of the market, and that the possibility of incorporating such agreements in Community agreements be accepted.

In the existing system, the international competence of the Community is based upon a monopoly. Because of the ending of that monopoly, the Commission proposed that new rules should establish explicitly the Community's right to conclude international supply agreements.

- (b) International action by the Community must also be considered from another fundamental angle, namely that of exports from the Community.

In the present system, Article 59 stipulates that such exports are subject to authorisation by the Commission, which verifies their conformity with the general interests of the Community.

The principle of prior authorisation of exports by the Commission must be retained in the new system for the same reasons that led to its inclusion in the existing Chapter VI.

The object of such authorisation is not simply to verify that the exports under consideration are not liable to jeopardise the supplies of other users in the Community by removing materials which are needed to meet their requirements. If such were the case, the authorisation would, in practice, take the form of automatic approval, except in situations of shortage.

Authorisation is necessary also in order to check whether the exports are in conformity with international commitments entered into by the Community concerning the materials exported, and in order to prevent exports taking place which could be extremely prejudicial to the Community's good relations with certain third countries.

It is because of the very nature of the materials exported that special treatment is necessary : the "London Guidelines"(\*) provide proof - if proof were needed - that exporting States, whether or not they possess nuclear weapons, recognise the need for collective discipline.

On the other hand the nature of these materials has as its corollary a position under which authorisation by the Commission of exports is not exclusive. Each Member State can in fact establish its own system of authorisation; it is thus possible that differences of appreciation between the Member State concerned and the Commission could arise.

The Commission takes the view however that such differences of view are very improbable as they will tend to be averted by the work carried out on a continuing basis in the political cooperation framework.

In the existing Chapter VI, Article 75 stipulates that the provisions of that Chapter - and therefore also the prior authorisation rule - do not apply in particular to materials imported for processing, conversion or shaping within the Community and intended to be re-exported to the original undertaking nor to materials exported outside the Community for such operations and intended to be re-imported.

There is no reason to retain such exceptions in the new system, since the existing Chapter VI is based on the monopoly principle and the main aim of Article 75 is to exclude the operations described from the Agency's exclusive right to enter into supply contracts.

In the absence of a monopoly, this exclusion is no longer justified and there is no reason why materials exported or imported for the sole purpose of conversion should be treated differently from a prior export authorisation standpoint : the reasons that justify verification of the political opportuneness of exports are valid for all types of exports.

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(\*) Guidelines for the export of nuclear material, equipment and technology (Doc. INFCIRC/254 of the IAEA, February 1978).

This supervision could not however in any case have as a consequence the appropriation by the Community of materials which it does not own, namely, those from outside the Community which are to be processed in the Community and are to be returned, either to the original individual or undertaking or to any other recipient situated outside the Community, and so designated by this individual or undertaking.

Besides for these materials, authorisation would be given under the processing contract itself and thus would cover, subject to any conditions which the Commission could impose, all the deliveries which arise from it and which are very often spread over several years.

## 12. Specific solidarity measures

The risks of disturbances that may prejudice the regularity of nuclear fuel supplies are less than those affecting supplies of fossil fuels, particularly petroleum products. The main reason for this is that nuclear fuels are easier to store. Current stocks of uranium in the Community are enough to cover requirements for about four years.

It cannot however be ruled out that disturbances of the nuclear fuel market will occur in the future.

It is therefore essential to have the ability to take measures at Community level aimed both at forestalling such disturbances and at remedying them.

To this end, the proposed system

- provides consultative machinery, intended to facilitate cooperation between Community investors;
- maintains Community financial support for uranium prospecting and extends it to cover the territories of non-member States;
- provides the possibility of establishing decentralised strategic stocks and of taking appropriate action as regards prices and import controls in the event of imbalances of supply and demand.

## 13. The new role of the Supply Agency

Despite the abolition of the monopoly, the Commission plans to keep the Supply Agency in being : the Agency will have to continue to fulfil its other duties, which experience has shown to be worthwhile, and it seems particularly well suited for carrying out certain new tasks within the proposed system.

The Agency will continue to keep the Commission, Member States and operators informed of the current market situation and trends, basing itself on its knowledge of the contracts and data sent to it and on surveys conducted by it.

The Agency will also continue to conclude supply contracts when provision is expressly made for this in international agreements concluded by the Community.

The Agency will examine the contracts submitted to it to see whether they conform to the specific rules of Chapter VI and will draw the attention of the Commission, within a period to be strictly observed, to any objections to which their provisions might give rise. In that context, it will also be free to fulfil an advisory function vis-à-vis any operators who choose to submit their contracts in draft before signature.

This advisory function could cover only conformity of the provisions of the contract with Community law, to the exclusion of these aspects of the contract which are in fact commercial or industrial. The Agency will receive contracts from all operators, on a confidential basis, will be able only to use them to assess the market for the benefit of the Community and of all operators and will have to refrain from any interference in the commercial and industrial field, which will henceforth be for the initiative of operators.

The Agency will furthermore be charged with the task of implementing most of the solidarity measures concerning security of supply and, generally speaking, with any specific tasks the Commission may assign to it.

#### 14. Compliance with the new provisions

In order to ensure that the new provisions of Chapter VI are respected, it is necessary to install a clear and dissuasive system of sanctions and specific arrangements for supervision.

Under the system of sanctions :

- contracts which are not in conformity with the principle of the unity of the market, or with an international agreement concluded by the Community, or with any solidarity measures, shall be null and void;
- the Commission shall be entitled to impose fines and penalties for any infringement of the rules of Chapter VI.

Under the specific arrangements for supervision :

- the full text of all supply contracts will be communicated ex post to the Agency within 15 days of their conclusion; if no objections are raised by the Commission within one month from the time of communication, the contracts will be deemed in conformity with the specific rules of Chapter VI;
- on-the-spot verifications can be made to ensure that the obligation to communicate the abovementioned contracts has been fulfilled.

It does not seem desirable to lay down exceptions to the rule of ex post communication for particular categories of contracts, since infringements of the new provisions of Chapter VI, particularly the principle of the unity of the market, may occur in the case of any commercial transaction and have repercussions on subsequent transactions.



The Commission proposes that contracts should be communicated ex post rather than ex ante so as to underline the fact that, under the new system, it is the operators who have the prime responsibility for supplies: this means that they are free to negotiate and conclude contracts without let or hindrance and the Community authorities will only intervene in cases of infringement of Community law.

A requirement to communicate contracts ex ante would be a residue from the former system of Agency monopoly and would not correspond to any real need. Any operators who so wish will, however, still be able to send their draft contracts to the Agency ex ante and thus make sure, by prior consultation with the Community institutions, that they are fully consistent with Community law.

Finally it should be noted that systematic control of contracts by the Agency is aimed solely at ensuring that they are in conformity with the specific provisions of Chapter VI and with international agreements concluded by the Community; in particular it will not be concerned with observance of EEC Treaty rules on competition, which will apply to the nuclear sector once the Agency's monopoly is abolished. There is no reason to set up a special system for monitoring observance of the rules on competition in this sector.

The Commission has endeavoured to propose a system that will cause the least trouble to operators while at the same time enabling it to ensure that the fundamental requirements of the Treaty are observed.

15. The information on the proposed system set out above is confined to the main points.

For a more detailed study of the Commission's proposals, reference should be made to Annex 1 : "Historical review and main features of the proposed system" and to the text of the revised Chapter VI (Annex 2). Furthermore, comments on each individual Article are set out in a document prepared by the Commission and forwarded separately.

#### Conclusion

16. The supply system outlined above would enable the main objectives of the Euratom Treaty concerning supplies to be achieved and yet give economic operators the autonomy they are entitled to expect, given the way the nuclear sector has developed. It is also fully compatible with the international commitments made by the Community and/or its Member States in respect of supply, use, movement and control of nuclear materials.
17. The Commission therefore invites the Council to adopt the attached draft decision adopting new provisions relating to Chapter VI of the Treaty establishing the European Atomic Energy Community.

Proposal for a Council Decision adopting new provisions relating  
to Chapter VI "Supplies" of the Treaty establishing the European  
Atomic Energy Community

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"Historical review and main features of the proposed system"

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## I. INTRODUCTION

1. In its communication entitled "The development of an energy strategy for the Community"\* , the Commission put forward a set of guidelines intended to establish a pattern for the individual behaviour of operators and to promote the convergence of national policies so that, special situations apart, the overall situation of the Community with respect to the difficulties affecting the supply of energy would steadily improve.

In this regard, the need to expand the utilization of nuclear energy was once again stressed and the Commission stated, inter alia, that it would make further efforts to find a solution to the problems that still existed where supplies of nuclear fuel were concerned.

2. More recently, in its communication entitled "An energy strategy for the Community: the nuclear aspects"\*\* , the Commission reviewed the various aspects of utilizing nuclear energy that are of interest to the Community and its Member States. At its meeting on 13 July, the Council broadly agreed with that analysis from the standpoint of the macroeconomic aspects.

As regards the problems facing the Community in the accomplishment of the fundamental tasks assigned to it under Article 2 of the Euratom Treaty, and in particular paragraphs (d) and (g) thereof, the Commission put forward in the abovementioned document guidelines that seemed to it likely to open the way towards a solution which would simultaneously be compatible with the Treaty, the main interests of the Member States and those of the operators.

These guidelines, moreover, included substantial amendments to the present provisions governing supplies, which could not be effected with the requisite legal certainty solely by an interpretation of those provisions. The Commission thus came out in favour of amending them formally.

In respect of this important subject, which goes far beyond the macroeconomic aspects, the Council took note of the fact that the Commission would place a proposal before it; the Commission is now complying with that undertaking.

3. Where the body of this document is concerned, it starts with a brief description of the conception of the original Chapter VI, the results obtained and the difficulties encountered in applying it and of the previous attempts to amend its provisions (Section II); it then presents the overall conception of the new system proposed and its most important features (Section III).

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\* COM(81)540 final, 1 October 1981.  
\*\* COM(82)36 final, 9 February 1982.

## II. ORIGINAL CHAPTER VI

### A. Historical context and basic principles

4. The present Chapter VI was devised in the mid-1950s, as the Suez crisis (1956) was making clear Europe's vulnerability where oil supplies were concerned. Nuclear energy was even then regarded as a serious alternative to oil, but on condition that a large-scale technological and industrial breakthrough was achieved and that access to the source material, uranium ore, could be reasonably guaranteed.

The nuclear industry was in its infancy in the countries that were about to form the European Atomic Energy Community; at the close of the 1950s, the nuclear power generating capacity installed and under construction hardly exceeded 50 MWe\*; little uranium had by then been discovered and the fundamental options relating to reactor concepts and industrial strategies had not yet been adopted. At that time, the United States dominated the nuclear industry, particularly the fuel sector.

That situation motivated the choice of the system established by the original Chapter VI.

The authors of the Treaty, moreover, took full account of the fact that the nuclear supply situation as they knew it was only at an initial stage. For this reason, they expressly provided for a means of amending the provisions laid down at that time by means of a simplified procedure.

5. The fundamental task of the Community where nuclear supplies are concerned is described in Article 2 of the Treaty. Chapter VI lays down the procedures in accordance with which the Community is to fulfil that task. The present provisions of that Chapter are based on the principle of equal access to resources and on the implementation of a common supply policy.

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\* At the present time, an installed capacity of 50 000 MWe produces over 20% of the electricity consumed in the Community. By the end of the century, the contribution of nuclear energy to electricity generation could exceed 50% in certain countries, and even 80% in one of them.

To that end, the Treaty created a veritable European monopoly and entrusted it to the Supply Agency which is under the supervision of the Commission.

Apart from certain derogations, the Commission has the right of option on all Community production and an exclusive right to conclude all supply contracts.

A procedure for balancing supply against demand is intended to enable the users' requirements to be satisfied in accordance with the principle of equal access; in the event of a shortage, that procedure may result in distribution measures.

All exports of nuclear materials from the Community are subject, with a few exceptions, to authorization by the Commission, which ensures that the general interests of the Community are safeguarded.

The Commission may give financial support to uranium prospecting programmes in the territories of Member States; furthermore, central stocks may be built up by the Commission or the Agency.

The other aspects of the common supply policy are inherent in the Agency's activities in the exercise of its monopoly; in particular, the Agency, when making use of its exclusive right, may decide on the geographical origin of the supplies outside the Community.

#### B. Favourable results and principal difficulties of application

6. The present Chapter VI enables the Community to obtain important results:

- in relations with non-Community countries, the monopoly gave legal substance to the Community's powers to conclude international agreements concerning supplies of nuclear materials; this was the basis of very important agreements associating the Community with countries such as the USA, Canada and Australia;
- as regards commercial relations, the Agency, in the case of the contracts subjected to its supervision, has made every effort to prevent restrictions being applied to Community transfers so that the principle of the unity of the market would be respected;
- in addition, the Agency has been instrumental in assisting the operators in the Community by providing them with Community support in securing supplies for them (for example, American enrichment services or enriched uranium) or by improving the conditions of supply;

- as regards common policy, the Commission's activities in support of uranium prospecting programmes in the territories of Member States have made it possible, firstly, to stimulate such programmes and, secondly, to discover interesting geological indications and appreciable deposits.

7. The serious problems to which the application of Chapter VI has given rise since the beginning should not however be underestimated.

Since the entry into force of the Treaty, the application of certain provisions of Chapter VI to uranium supplies has given rise to difficulties. A practical solution makes it possible to surmount them : the temporary establishment in a Regulation of the exemption of natural uranium supplies from the procedure for balancing supply and demand, accompanied by a notification of contracts to the Agency, which is equivalent to conclusion of the contracts by the Agency itself, if no objections are raised in a specific period.

The exclusive right to conclude contracts which the Treaty has laid down as an essential procedure to exercise this monopoly is thereby broadly transformed into a system of supervision of contracts negotiated and concluded directly by operators.

In this context, the principle of equal access to resources tends to make difficulties if it is literally interpreted. Indeed, it has the effect of restraining competition between suppliers and of dissuading the purchasers from taking measures themselves to strengthen their own guarantees of supplies.

The right of option has been exercised only implicitly and imperfectly through the Agency's participation in the conclusion of contracts. The procedure involving the centralised balancing of supply against demand has, in the course of time, proved to be increasingly inappropriate to the conditions obtaining on the nuclear materials market.

Finally, the field of intervention by the Agency and the Commission has been reduced by a controversial interpretation of the exceptions laid down in Article 75 (processing, conversion or shaping of materials) and in Article 58, paragraph 2 and in Article 62, paragraph 2 (c) (connected undertakings) as well as by a frequent removal from the Agency's hold of contracts concluded by intermediaries, a category not expressly laid down by the present Chapter VI : there are still differences between the Commission and certain Member States on the scope of these articles.

This has resulted in a situation in which the conditions of the market in nuclear fuel materials and services corresponds less and less in certain fundamental aspects with the present provisions of chapter VI.

8. The rather unsatisfactory application of the present Chapter VI, if continued, would in all probability have increasingly harmful consequences:

- the legal uncertainty resulting from the present situation does not create a climate favourable to initiatives on the part of the operators;
- it is likely to give rise to a negative image of the Treaty as a whole;
- since important supply sectors evade Agency supervision, certain practices which are likely to depress intra-Community trade and interfere with supplies to users, have been emerging, both in respect of materials from outside the Community and as regards those of internal origin ; in other words, this situation could induce the Member States to adopt incompatible measures both inside and outside the Community with the result that certain users would be in a privileged position at the expense of other operators;
- the lack of Community cohesion that could result from this would have deleterious effects on the Community's international activities, which are essential in ensuring regular and equitable uranium supplies for all users.

C. Previous attempts at amendment

9. In the light of the difficulties of application referred to above, the Commission proposed to the Council in 1964\* an amendment to Chapter VI which was aimed, on the one hand, at reducing the monopoly and, on the other hand, at reinforcing activities in implementation of a common policy; the right of option would have been dropped, but re-established by the Council in the event of shortage, and the exclusive right to conclude contracts conferred upon the Agency would have been maintained, but its exercise would have been suspended by the Commission during "normal" periods.

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\* In accordance with the second paragraph of Article 76.

Since the Council found it impossible to reach a consensus, the Commission, in 1970, submitted a revised and simpler proposal which took account of certain amendments requested by the Member States; however, it did not differ in substance from the 1964 proposal. The Council discussions were once again centred on the Agency's commercial rights; the problem was to determine whether they would be maintained or done away with, and, in the latter case, if and under what conditions they could be re-established. These discussions were interrupted in 1973 during the first enlargement of the Community in order to allow the new Member States to become familiar with the details of the matter.

10. In the meantime, the Court of Justice (1971) ruled that, pending confirmation or revision of Chapter VI, that Chapter would continue to apply in its entirety.

11. In 1973 and 1974, two events profoundly influenced the context in which nuclear energy was developing: the Yom Kippur War, with the oil supply crisis, which it provoked and which imparted additional urgency to the industrial development of nuclear power production so that it would be possible to cope with the energy challenge, and the Indian atomic explosion. A consequence of the latter, for a relatively short time, was a marked stiffening in the attitudes and policies of most of the countries which export nuclear materials, fuel services and equipment in view of the threat of nuclear arms proliferation.

Certain Governments, particularly the United States Government, came out in favour of putting a stop to the development of technologies concerned with the production and use of plutonium for an indefinite period.

As regards the aspects more particularly concerned with supplies, the market, which was becoming increasingly like any other market under the effects of industrial maturity, experienced the development of state interventions which, in a contradictory manner, imposed conditions on sales and restrictions on the use of materials that had been supplied or converted.

12. In parallel with these events, the Euratom safeguards established in 1958 continued to expand in scope, which mainly consisted of ensuring that the nuclear materials in the territories of the Community Member States would not be diverted from the purposes for which it had been stated that they were intended.

In addition, the system for supervising nuclear materials established under the Non-Proliferation Treaty was set up under the responsibility of the International Atomic Energy Agency.



The Community, thus subjected to joint international supervision of nuclear materials, became the region of the world most thoroughly supervised in this respect.

13. It would have been difficult in this troubled and changing context, which often exhibited contradictory aspects, to resume discussions on the Community nuclear supply system.

14. In June 1979, the Commission forwarded to the Council a communication in which it set out three possible solutions to the problems arising from Chapter VI: confirmation, revision and interpretation, without, however, proposing a specific approach at that stage.

15. In July 1979, France forwarded a memorandum to the Council requesting the revision of Chapter VI along the lines laid down in the Treaty and calling upon the Commission to deal with the matter; that proposal was aimed at doing away with the Agency's right of option and its right to conclude contracts and recommend that the principle of equal access be replaced by that of non-discrimination, that the principle of Community preference be adopted and, finally, that the common policy measures to be decided on by the Council be expanded.

In September 1979, the Council examined the two documents together and noted that the Commission would submit to it a report on the subject as soon as it had examined the French proposal. To this end, the Commission sought the opinions of independent experts and, in February 1982, forwarded to the Council the communication referred to in paragraph (2) above, in which it adopted a position in favour of the revision of Chapter VI and stated that it would shortly submit specific proposals in that regard.

### III. NEW COMMUNITY SUPPLY SYSTEM

#### A. Overall conception

16. The Community fuel-cycle industry has now reached maturity and has acquired a structure which, where the supply of nuclear materials is concerned, makes it possible to apply market economy rules to the operators' initiatives.

For this reason, the Community no longer requires interventionist mechanisms such as the monopoly and the balancing of supply and demand in order to accomplish the task assigned to it under Article 2, and in particular paragraph (d) thereof.

17. However, the nuclear materials market is and will continue to be characterized by numerous interventions on the part of the public authorities.

There is thus a very real danger that, if there is no Community discipline, the trade in nuclear materials will be subjected to increasingly numerous unilateral constraints which are completely contrary to the concept of regular and equitable supplies for all users in the Community and which jeopardize the very existence of the nuclear common market.

18. This proposal for a revision of Chapter VI has been designed to avert that danger. In other words, it is aimed at ensuring that the nuclear supply system does not run counter to the common interest.

19. To this end, it is necessary for the Community:

- to ensure that no restrictions on the transfers of materials within the Community and on imports from outside the Community and no conditions governing use and storage within the Community (whether or not such restrictions and conditions are discriminatory) are decided on outside the Community framework; this is the principle of the unity of the market;
- to retain its powers in the field of external relations in order to:
  - (a) take advantage of its size to obtain satisfactory supply conditions and to prevent non-Community countries from prejudicing the unity of the Community market;
  - (b) to ensure that the behaviour of one or other operator or Member State where exports are concerned is not contrary to the general interests of the Community;
- to safeguard the option of taking specific solidarity measures with regard to supply, in particular to forestall market disturbances or to remedy them;
- to use the Supply Agency, while modifying its role, as a privileged instrument to implement the common supply policy which derives from the new provisions of Chapter VI;

- to implement an effective system of supervision to ensure compliance with the new provisions.

B. Main features

20. We shall confine ourselves here to providing further particulars of the aims and scope of the new system proposed in addition to the information already presented.

For a more detailed study of that system, it is advisable to refer to the text of the proposal itself (Annex 2) and to the article-by-article comments set out in a report drawn up by the Commission and forwarded separately to the Council.

Definition and field of application of the new common supply policy

21. The proposal from the Commission first of all defines the constituent parts of the new common supply policy, namely: principle of the unity of the market, exercise of the Community's powers at international level and adoption of specific solidarity measures.

It specifies simultaneously that the Supply Agency is to contribute to the implementation of that policy.

22. The supply policy as defined above concerns only the tasks of the Community as such, independently of the role of the national policies which contribute, to a considerable extent, to ensuring supplies for the users.

The Community's action supplements, reinforces and coordinates these policies, while simultaneously ensuring that they are compatible with the common interest.

23. As regards the application of the new system, it is confined to civilian and non-explosive uses of nuclear materials in contrast with the original Chapter VI, which makes no distinction between uses. This limitation is in conformity with the civilian nature of the Community's task, such as emerges from the preamble and Article 1 of the Treaty.

It implies that arrangements for supplies to be used for the manufacture of explosives or for military purposes will be made, in accordance with current practice, outside the Community framework.

In conclusion, the new system applies to all nuclear materials which have, in fact, been allocated for civilian uses, even if they are not subject to an undertaking to use them for peaceful purposes. On the other hand, it does not apply to materials which have not yet been allocated for such purposes either definitively or provisionally.

The unity of the market; restrictions/conditions compatible with regular and equitable supplies for all users; coexistence of the new provisions of Chapter VI with the rules on competition laid down in the EEC Treaty

24. The principle of the unity of the market takes concrete form as a general prohibition on all restrictions on transfers of materials within the Community and on imports from outside the Community as well as on all conditions governing use and storage within the Community, except for those conditions/restrictions accepted by the Community in international agreements in order to meet the legitimate concerns of outside suppliers.

25. However, owing to the special nature of nuclear materials, it has become necessary to authorize or even impose, at Community level, certain conditions/restrictions other than those accepted in the international agreements.

26. The Community procedure envisaged for that purpose takes the form of Regulations to be adopted by the Commission, the most appropriate institution to take in an impartial manner the decisions that are necessary in this regard; the delicate nature of such Regulations, moreover, is sufficient justification for intervention by the Council when an appeal is made.

27. A list of restrictions that could be covered by a first Regulation in this field, including special Community provisions concerning the use and the transfer of plutonium and highly enriched uranium, is presented in the report prepared by the Commission and containing comments on each individual Article, which was forwarded separately to the Council.

28. The general prohibition referred to in paragraph (24) above does not, however, cover barriers such as abuses of dominant position and certain practices with regard to prices where these are not real restrictions on transfers or conditions governing use and storage. Since, in this respect, nuclear materials are not sufficiently different from other products to justify specific competition rules, the provisions of the EEC Treaty which cover competition are applicable for the purpose of preventing the occurrence of such barriers. By virtue of Article 232 of the EEC Treaty, express reference in the new text of Chapter VI to these provisions would not be necessary.

However, the Commission considers it preferable to mention the provisions in question explicitly for reasons of legal certainty, that is to say, in order to avoid any dispute in the future regarding their applicability to the field of nuclear supplies.

The Community's powers at international level (conclusion of Community agreements; prior Commission authorization for exports)

29. By the terms of the original Chapter VI, the international powers of the Community with regard to the supply of nuclear materials are not directly conferred, but derive from the Agency's monopolistic prerogatives in accordance with the principle of parallelism between external powers and internal powers, which is enshrined in Article 101 of the Treaty.

Revoking the monopoly thus gives rise to the need for a specific provision defining the Community's powers to conclude international agreements concerning nuclear supplies.

The confirmation of these essential Community powers is accompanied by a provision on procedure based on Article 113 of the EEC Treaty which lays down that the Commission, when conducting negotiations, shall take account of the opinions and expert knowledge of representatives of the Member States.

30. Provision is also made for cases in which the Community either cannot or does not wish to conclude this type of agreement.

In such cases, it is usual for the Member State concerned to be able to take whatever measures are necessary in order to ensure supplies for its users by concluding bilateral agreements with non-Community countries.

Authorization by the Commission for such agreements is, however, necessary. Pursuant to Article 103 of the Treaty, it presupposes that the agreements in question are in conformity with the Treaty, in particular with the principle of the unity of the market.

In addition, since this authorization is a derogation from one of the basic principles of the new Chapter VI, special precautions are necessary, and it must be explicitly ensured that the bilateral agreement can be incorporated in a subsequent Community agreement.

31. As regards exports of nuclear materials from the Community, the principle, as established by the original Chapter VI, of prior authorization by the Commission, which must verify whether these exports are in conformity with the general interests of the Community, is retained.

Furthermore, an analysis of the exceptions which beset this principle under the present system and which are justified by the existence of the monopoly led the Commission to conclude that, if such exceptions were maintained under the new system, they would result in confused situations, since, in certain cases, authorization by the Commission for the export of sensitive materials would not be required.

It is consequently proposed that the scope of the authorization be extended to all exports so as to ensure that, under all circumstances, they will be compatible with the general interests of the Community.

#### Community solidarity measures

32. The purpose of these measures is to improve supply conditions both as regards all the producers and users in the Community taken together and in respect of each of them as an individual in the event of serious difficulties arising which hinder the provision of regular and equitable supplies for all users.

To this end, the Commission proposes that:

- a consultative mechanism be established at Community level for the purpose of facilitating preferential access of the Community partners to investments in industrial-scale installations for the processing of nuclear materials;
- the option of Community financial participation in uranium prospecting programmes in the territories of the Member States be maintained and expanded to include participation in prospecting programmes in the territories of non-Community countries;
- consideration be given to building up decentralized emergency stocks to be held by the Member States, producers or users, who would be obliged to do so by a Community Act to that effect;
- in the event of imbalance between supply and demand which is such as to affect regular and equitable supplies within the Community, the Council adopt measures relating to prices, to determination of the geographical origin of the supplies and to the establishment of quotas for imports from outside the Community.

#### The new role of the Supply Agency

33. Despite revocation of the commercial monopoly, the provisions governing the establishment and functioning of the Agency are not substantially different from those under the present system.

As regards its new tasks, it is laid down that the Agency shall:

- (a) receive communication of all contracts concerning supplies, after their conclusion, and verify that they are in conformity with the new provisions of Chapter VI;

- (b) make every effort to ensure transparency of the market, particularly on the basis of the information contained in such contracts and by carrying out market surveys;
- (c) make every effort to improve the conditions of supply, in particular by endeavouring to forestall situations of imbalance between supply and demand within the Community;
- (d) accomplish the tasks assigned to it by the Commission, in particular those relating to the implementation of Community solidarity measures;
- (e) conclude supply contracts in cases where provision is made for such action by an international agreement concluded by the Community.

The Agency may also act in the capacity of adviser to operators who submit to it on an optional basis their draft contracts before they are signed.

This advisory function will only be able however to cover conformity of the provisions of contracts with the rules of Community law, to the exclusion of those aspects of contracts which are completely commercial or industrial.

34. Bearing in mind the fact that the work of the Agency can never be fully effective without close cooperation with the producers and users, the Commission proposes that the new provisions of Chapter VI confirm the existence and the tasks of the Advisory Committee of the Agency, composed of representatives of the operators and of highly qualified governmental experts in the field of nuclear supplies.

#### Compliance with the new provisions

35. In order to ensure compliance with the new provisions, it is proposed that an arrangement along the following lines be adopted:

##### - as regards supervision

- . post facto communication to the Agency of every detail of all supply contracts within 15 days of their conclusion; if no objections are raised by the Commission (before which the Agency would place the matter in accordance with appropriate internal procedures) within a period of one month, or if the Commission's objections are withdrawn, or if the contract is amended in accordance with the Commission's request, such contracts shall be deemed to be in conformity with the new provisions of Chapter VI;
- . verifications in respect of persons and firms, to be decided on case by case by the Commission, for the purpose of ensuring that the abovementioned obligation to communicate contracts is fulfilled ;

##### - as regards sanctions

- . contracts which are contrary to the provisions of the new Chapter VI to be declared null and void,

- . fines and penalty payments to be determined by an ad hoc Commission Regulation.

36. It would also be advisable to stipulate that conformity of behaviour of the Member States (apart from the conclusion by them of supply contracts where necessary) with the provisions of Chapter VI would continue to be supervised, as in the original system, by means of the normal procedures laid down by the Treaty (in particular the procedure in respect of infringements set out in Articles 141 et seq.).

#### Other provisions

37. The provisions in question have been taken over from the existing system and concern the exclusion from the application of Chapter VIII (the Community's right of ownership) of materials being processed in the Community which have come from outside the Community and are to be returned to their original owners and the non-application of the new provisions of Chapter VI to small quantities of materials.

38. Finally, the Commission has decided to adopt the principle established in the first paragraph of Article 76 of the original Chapter VI, thus keeping open the option of having this Chapter revised subsequently on its own initiative or on that of a Member State.



Proposal for a Council Decision adopting new provisions relating to Chapter VI "Supplies" of the Treaty establishing the European Atomic Energy Community.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Atomic Energy Community and in particular Article 76, second paragraph, thereof;

Having regard to the proposal from the Commission;

Having regard to the opinion of the European Parliament;

Having regard to the opinion of the Economic and Social Committee;

Considering that Article 2 of the Treaty imposes on the Community, inter alia, the tasks of ensuring that all users in the Community receive a regular and equitable supply of ores and nuclear fuels and of setting up a common market in these materials;

Considering that in the application of Chapter VI of the Treaty the Community has to carry out these tasks by the action of the Supply Agency to which is given the right of option on materials produced on the territories of Member States and the exclusive right to conclude contracts and entrusted, by the exercise thereof, with the task of realising the principle of equal access to resources and the pursuit of a common supply policy;

Considering that the Treaty provides that seven years after its entry into force the provisions of Chapter VI may be confirmed or, failing that, amended by the Council;

Considering that the development of the nuclear industry since the entry into force of the Treaty no longer requires that there be a monopoly of supply vested in the Community;

Considering that in the absence of such monopoly the policies of the persons and undertakings concerned as well as those of the Member States need to be reinforced and coordinated and, where appropriate, supplemented by direct action on the part of the Community;

Considering that a modified role of the Community in the matter of supply has to continue to ensure the implementation of the tasks entrusted to it under article 2 through a common supply policy based on the principle of the unity of the market, providing for appropriate competences for the Community in external relations and establishing the framework for measures of solidarity and active intervention by the Community;

Considering that the pursuit of these aims entails, in order that they be met, the enactment of appropriate Treaty provisions to ensure that the rules hereby laid down are observed;

Considering that the Council has not confirmed the original provisions of Chapter VI;

Considering that pursuant to Article 76 of the Treaty the government of the French Republic made a request, in July 1979, for amendment of this Chapter;

Considering accordingly that it is appropriate to enact such new provisions;

DECIDES AS FOLLOWS :

Article 1

The provisions of Chapter VI of Title Two of the Treaty instituting the European Atomic Energy Community shall be replaced by the provisions set out in the Annex to this Decision.

Article 2

This Decision shall have effect 3 months after the date of publication thereof in the Official Journal of the European Communities.

Done at Brussels  
For the Council  
PRESIDENT

CHAPTER VISUPPLIESArticle 52

The Community shall ensure that all users receive a regular and equitable supply of ores, source materials and special fissile materials, hereinafter termed "the materials", for civil and non-explosive purposes, pursuant to the provisions of this Chapter, 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.

A Supply Agency, hereinafter termed "the Agency", shall contribute to the implementation of that policy.

SECTION IThe unity of the marketArticle 53

1. Without prejudice to the international agreements concluded by the Community, all restrictions on the transfers 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.
2. Without prejudice to the provisions of Chapter IX, the Commission shall lay down, in a Regulation, conditions relating to transfers of materials within the Community and to imports from outside the Community together with conditions governing use and storage within the Community. The Commission shall inquire into any request made by a Member State within three months of its receipt. The said Regulation can be referred to the Council by any Member State within a period of one month

of its publication in the Official Journal of the European Communities. The Council, within one month of the matter being referred to it, may repeal the Commission Regulation if acting by a qualified majority or amend it if acting unanimously.

Article 54

Articles 85 to 90 of the Treaty establishing the European Economic Community shall apply to those restrictions, conditions and measures relating to supplies which are not mentioned in Article 53(1).

SECTION II

International Relations

Article 55

1. The Community shall conclude international agreements concerning supplies from outside the Community.
2. The negotiation of the agreements referred to in this Article shall be conducted by the Commission in accordance with the procedure laid down in the second paragraph of Article 101 in consultation with a special committee appointed by the Council to assist it in that task.

Article 56

If no appropriate agreement between the Community and the third State concerned exists and subject to the application of Article 103, the Commission shall authorize a Member State to conclude an agreement for the purpose referred to in Article 55.

The possibility for the Community to assume the rights and obligations arising from that agreement must be ensured.

Article 57

All exports of materials from the Community shall be subject to authorization by the Commission, which shall verify whether those exports are in conformity with the general interests of the Community.

Authorization by the Commission may be made subject to conditions.

SECTION III

Solidarity Measures

Article 58

Without prejudice to the provisions of Chapter IV, persons and undertakings shall communicate to the Commission in good time all plans for the construction within the Community of any industrial-scale nuclear installation for the processing of materials which involve the formation of links with other investors in the Community.

After informing the persons and undertakings concerned of such plans in accordance with procedures which, where necessary, shall safeguard their confidentiality, the Commission shall facilitate the formation of appropriate links.

Article 59

1. Within the limits set by the budget, the Commission may give financial support to prospecting programmes in the territories of Member States and the territories of third States.

Every two years, the Commission shall submit to the Council and the Assembly a report on the state of progress of such support and on the forecasts for the four coming years, particularly with regard to the financial aspects.

2. The Member States shall submit annually to the Commission a report on the development of prospecting and production, on probable reserves and on investment in mining which has been made or is planned in their territories.

Article 60

1. The Council, acting by a qualified majority on a proposal from the Commission and after consulting the Assembly, may decide to build up stocks and establish the levels thereof in accordance with the procedures that it lays down.

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These stocks may receive financial support from the Community in accordance with the same procedure.

2. The Council, acting in accordance with the conditions laid down in paragraph (1) above, may establish procedures which provide for the use of such stocks.

#### Article 61

1. In the event of an imbalance between supply and demand such as to affect regular and equitable supplies to all users in the Community, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the Assembly, may decide as follows:

- (a) on appropriate measures with regard to prices;
- (b) on the geographical origin of the supplies;
- (c) on the establishment of quotas for imports from outside the Community.

2. The Commission shall make all appropriate recommendations to the Member States persons and undertakings with a view to promoting a balance between supply and demand within the Community.

#### Article 62

Should the measures referred to in Article 61 above prove to be inadequate, the Council, acting unanimously on a proposal from the Commission and after consulting the Assembly, may adopt any other appropriate measure.

#### Article 63

The Commission shall ensure that the measures referred to in this Section are implemented. For this purpose, it may call upon the assistance of the Agency.

### SECTION IV

#### The Supply Agency

#### Article 64

1. An Agency is hereby established and placed under the supervision of the Commission, which shall issue directives to it, possess a right of veto over its decisions and appoint its Director-General and Deputy Director-General.

2. Any act performed by the Agency in the exercise of its functions may be referred by the parties concerned to the Commission, which shall give a decision thereon within one month.

#### Article 65

1. The Agency shall have legal personality and financial autonomy.

The Council shall lay down the statutes of the Agency, acting by a qualified majority on a proposal from the Commission and after consulting the Assembly.

The statutes may provide for a charge on transactions to defray the operating expenses of the Agency.

The statutes may determine the Agency's capital and the terms upon which it is to be subscribed. The major part of the capital shall always belong to the Community and to the Member States. The contributions to the capital shall be determined by common accord of the Member States.

The statutes may be amended in accordance with the procedure described in the second indent of this paragraph.

2. An Advisory Committee for the Agency is hereby established which shall be formed of representatives of the producers and users and of highly qualified experts in the field of nuclear supplies. The statutes of the Agency shall determine the rules governing the composition and procedures of the Committee.

#### Article 66

Pursuant to the provisions of this Chapter, the Agency shall:

(a) receive communications on all contracts concerning supplies and verify whether they are in conformity with the provisions of this Chapter;



- (b) make every effort to ensure transparency of the market, in particular on the basis of the information contained in such contracts and by carrying out market surveys;
- (c) make every effort to improve the conditions of supply, in particular by doing its utmost to forestall situations of imbalance between supply and demand within the Community;
- (d) fulfil the tasks assigned to it by the Commission, in particular by implementing the measures adopted pursuant to Section III of this Chapter;
- (e) conclude the contracts referred to in Article 69.

#### Article 67

The Agency shall inform, advise and assist the producers and users.

It may promote concerted action intended to improve supplies, in particular by forestalling situations of imbalance between supply and demand within the Community.

It shall keep the Commission informed of its activities and shall submit to it any appropriate suggestion.

#### Article 68

The Agency shall regularly carry out market surveys concerning the requirements of the users within the Community for materials and the prospects of covering these requirements, in particular at Community level, and shall publish the results of such surveys.

#### Article 69

The Agency shall conclude contracts concerning supplies if provision is made to this effect in an international agreement concluded by the Community.

Article 70

1. The Member States shall be responsible for ensuring that the Agency may operate freely in their territories.
2. The Member States, persons and undertakings shall regularly communicate to the Agency all the information necessary to enable it to discharge its duties, in particular that relating to nuclear programmes, the requirements for materials arising from them and the market situation.

Article 71

A Commission Regulation shall establish the procedures for applying this Section.

SECTION V

Special provisions

Article 72

1. All contracts relating to supply which impede the application of the provisions of Article 53, those of an international agreement concluded by the Community or those laid down pursuant to Section III of this Chapter shall be automatically void .
2. All contracts concerning supply shall be communicated by the contracting parties to the Agency within fifteen days of their having been concluded so that their conformity with the provisions referred to in paragraph (1) above can be verified.
3. If a contract which has been communicated pursuant to paragraph (2) above impede the application of the provisions referred to in paragraph (1) above, the Commission shall make its comments to those concerned within one month of receipt of the contract.

If the objections of the Commission are not withdrawn, the contract must be amended in accordance with the comments of the Commission within a period which it shall determine.

4. The contract shall be deemed to be in conformity with the provisions referred to in paragraph (1) above:

- if the Commission makes no comments;
- if the objections by the Commission have been satisfied;
- if the contract has been amended in accordance with the Commission's comments.

### Article 73

1. In order to ensure that the obligation deriving from paragraph (2) of Article 72 is fulfilled, the Commission may decide to verify whether persons or undertakings are complying with the provisions of that paragraph.

2. On presentation of a document establishing their status, the officials responsible for verifying compliance may, to the extent necessary for the accomplishment of their task:

- (a) examine any books or other business document together with the accounts;
- (b) have copies of or extracts from such documents made available to them;
- (c) request additional verbal information;
- (d) enter any premises, sites and means of transport belonging to persons or undertakings.

3. The officials of the competent authority of the Member State within the territory of which compliance must be verified may, at the request of that authority or of the Commission, assist the Commission officials in the accomplishment of their tasks.

4. Where a person or undertaking objects to a verification operation decided on pursuant to paragraph (1) above, the Member State concerned shall give every assistance to the Commission officials responsible for verification of compliance which is necessary to the accomplishment of their task.

Article 74

In the event of <sup>an</sup> infringement by persons or undertakings of the provisions of this Chapter, including those of international agreements concluded by the Community, the Commission may impose fines and penalty payments.

The Court of Justice shall have unlimited jurisdiction in respect of proceedings by persons and undertakings against the sanctions imposed upon them <sup>instituted</sup> pursuant to this Article.

The procedures for applying this Article shall be laid down in a Commission Regulation.

Article 75

1. The provisions of Chapter VIII shall not apply to materials which are processed within the Community where such materials have come from outside the Community and are then to be returned either to the original person or undertaking or to any other consignee outside the Community designated by such person or undertaking. However, these materials shall be subject in the territories of the <sup>under-</sup> Member States to the safeguards laid down in Chapter VII.

2. The Commission may exempt small quantities of materials such as are normally used in research from the application of this Chapter.

Article 76

On the initiative of a Member State or of the Commission, the Council may, acting unanimously on a proposal from the Commission and after consulting the Assembly, amend the provisions of this Chapter. The Commission shall inquire into any request made by a Member State.