

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

TITLE II

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

CHAPTER 2

Dissemination of information

Section 2

Other information

(a)

Dissemination by amicable agreement

Article 14

The Commission shall endeavour, by amicable agreement, to secure both the communication of information which is of use to the Community in the attainment of its objectives and the granting of licences under patents, provisionally protected patent rights, utility models or patent applications covering such information.

Article 15

The Commission shall establish a procedure by which Member States, persons and undertakings may use it as an intermediary for exchanging provisional or final results of their research, insofar as these results have not been acquired by the Community under research contracts awarded by the Commission.

This procedure must be such as to ensure the confidential nature of the exchange. The results communicated may, however, be transmitted by the Commission to the Joint Nuclear Research Centre for documentation purposes; this shall not entail any right of use to which the communicating party has not agreed.

(b)

Compulsory communication to the Commission

Article 16

1 As soon as an application for a patent or a utility model relating to a specifically nuclear subject is filed with a Member State, that State shall ask the applicant to agree that the contents of the application be communicated to the Commission forthwith.

Status: This is the revised version from EUR-Lex dated 01/05/2019. There are no timeline of changes available for treaties, instead, previous dated versions from EUR-Lex (as pdf) can be accessed via the More Resources menu.

If the applicant agrees, this communication shall be made within three months of the date of filing the application. If the applicant does not agree, the Member State shall, within the same period, notify the Commission of the existence of the application.

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

The Commission shall make any such request within two months of the date of notification. Any extension of this period shall entail a corresponding extension of the period referred to in the sixth subparagraph of this paragraph.

On receiving such a request from the Commission, the Member State shall again ask the applicant to agree to communication of the contents of the application. If the applicant agrees, communication shall be made forthwith.

If the applicant does not agree, the Member State shall nevertheless be required to make this communication to the Commission within 18 months of the date on which the application was filed.

2 Member States shall inform the Commission, within 18 months of the filing date, of the existence of any as yet unpublished application for a patent or utility model which seems to them, *prima facie*, to deal with a subject which, although not specifically nuclear, is directly connected with and essential to the development of nuclear energy in the Community.

If the Commission so requests, the contents of the application shall be communicated to it within two months.

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

4 The Commission shall treat the abovementioned communications as confidential. They may only be made for documentation purposes. The Commission may, however, make use of the inventions communicated to it, either with the consent of the applicant or in accordance with Articles 17 to 23.

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

(c)

Grant of licences by arbitration or under compulsory powers

Article 17

1 Failing amicable agreement, non exclusive licences may be granted either by arbitration or under compulsory powers in accordance with Articles 18 to 23:

- a to the Community or to Joint Undertakings accorded this right under Article 48 in respect of patents, provisionally protected patent rights or utility models relating to inventions directly connected with nuclear research, where the granting of such licences is necessary for the continuance of their own research or indispensable to the operation of their installations.

If the Commission so requests, such licences shall include the right to authorise third parties to make use of the invention, where they are carrying out work for or orders placed by the Community or Joint Undertakings;

Status: This is the revised version from EUR-Lex dated 01/05/2019. There are no timeline of changes available for treaties, instead, previous dated versions from EUR-Lex (as pdf) can be accessed via the More Resources menu.

- b to persons or undertakings which have applied to the Commission for them in respect of patents, provisionally protected patent rights or utility models relating to inventions directly connected with and essential to the development of nuclear energy in the Community, provided that all the following conditions are fulfilled:
- (i) at least four years have elapsed since the filing of the patent application, save in the case of an invention relating to a specifically nuclear subject;
 - (ii) the requirements arising out of the development of nuclear energy, in the Commission's conception of such development, in the territory of a Member State where an invention is protected, are not being met with regard to that invention;
 - (iii) the proprietor, having been called upon to meet such requirements either himself or through his licensees, has not complied with this request;
 - (iv) the persons or undertakings applying for licences are in a position to meet such requirements effectively by making use of the invention.

[^{X1}Member States may not, in order to meet such requirements, take any coercive measures provided for in their national legislation which will limit the protection accorded to the invention, save at the prior request of the Commission.]

2 A non exclusive licence may not be granted as provided for in paragraph 1 where the proprietor can establish the existence of legitimate reasons, in particular that he has not had sufficient time at his disposal.

3 The granting of a licence pursuant to paragraph 1 shall confer a right to full compensation, the amount of which shall be agreed between the proprietor of the patent, provisionally protected patent right or utility model and the licensee.

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

Editorial Information

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

Article 18

An Arbitration Committee is hereby established for the purposes provided for in this Section. The Council shall appoint the members and lay down the Rules of Procedure of this Committee, acting on a proposal from the Court of Justice of the European Union.

An appeal, having suspensory effect, may be brought by the parties before the Court of Justice of the European Union against a decision of the Arbitration Committee within one month of notification thereof. The Court of Justice of the European Union shall confine its examination to the formal validity of the decision and to the interpretation of the provisions of this Treaty by the Arbitration Committee.

The final decisions of the Arbitration Committee shall have the force of *res judicata* between the parties concerned. They shall be enforceable as provided in Article 164.

Status: This is the revised version from EUR-Lex dated 01/05/2019. There are no timeline of changes available for treaties, instead, previous dated versions from EUR-Lex (as pdf) can be accessed via the More Resources menu.

Article 19

Where, failing amicable agreement, the Commission intends to secure the granting of licences in one of the cases provided for in Article 17, it shall give notice of its intention to the proprietor of the patent, provisionally protected patent right, utility model or patent application, and shall specify in such notice the name of the applicant for and the scope of the licence.

Article 20

The proprietor may, within one month of receipt of the notice referred to in Article 19, propose to the Commission and, where appropriate, to the applicant that they conclude a special agreement to refer the matter to the Arbitration Committee.

Should the Commission or the applicant refuse to enter into such an agreement, the Commission shall not require the Member State or its appropriate authorities to grant the licence or cause it to be granted.

If, when the matter is referred to it under a special agreement, the Arbitration Committee finds that the request from the Commission complies with the provisions of Article 17, it shall give a reasoned decision containing a grant of the licence to the applicant and laying down the terms of the licence and the remuneration therefor, to the extent that the parties have not reached agreement on these points.

Article 21

If the proprietor does not propose that the matter be referred to the Arbitration Committee, the Commission may call upon the Member State concerned or its appropriate authorities to grant the licence or cause it to be granted.

If, having heard the proprietor's case, the Member State, or its appropriate authorities, considers that the conditions of Article 17 have not been complied with, it shall notify the Commission of its refusal to grant the licence or to cause it to be granted.

If it refuses to grant the licence or to cause it to be granted, or if, within four months of the date of the request, no information is forthcoming with regard to the granting of the licence, the Commission shall have two months in which to bring the matter before the Court of Justice of the European Union.

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

If the judgment of the Court of Justice of the European Union establishes that the conditions of Article 17 have been complied with, the Member State concerned, or its appropriate authorities, shall take such measures as enforcement of that judgment may require.

Article 22

1 If the proprietor of the patent, provisionally protected patent right or utility model and the licensee fail to agree on the amount of compensation, the parties concerned may conclude a special agreement to refer the matter to the Arbitration Committee.

By doing so, the parties waive the right to institute any proceedings other than those provided for in Article 18.

2 If the licensee refuses to conclude a special agreement, the licence he has been granted shall be deemed void.

Status: This is the revised version from EUR-Lex dated 01/05/2019. There are no timeline of changes available for treaties, instead, previous dated versions from EUR-Lex (as pdf) can be accessed via the More Resources menu.

If the proprietor refuses to conclude a special agreement, the compensation referred to in this Article shall be determined by the appropriate national authorities.

Article 23

After the lapse of one year, the decisions of the Arbitration Committee or the appropriate national authorities may, if there are new facts to justify it, be revised with respect to the terms of the licence.

Such revision shall be a matter for the body which gave the decision.