Primary Sources of the European Community Law: Institutive Treaties of the European Communities

Bucur Constantin Emil

During the centuries, Europe has not represented only a simple geographic space, but also a continent connected, through strong reminiscences, to its historic roots, which have always gone deep. Europe has been and still remains a conglomerate of cultures that have left in history their wishes of unification. The integrator concept was neither an original nor a spontaneous idea, which has belonged wholly to the 20th century, but an utopia of the European philosophy, as proven by the careful study of numerous projects carried on during history[1]. The idea of the unification of the European continent is lost in time. Thus, since the early thinkers of the Middle Age, like Pierre Dubois and Abbey Saint-Pierre, to Kant and Auguste Comte, very many personalities have considered the idea of an European organization that was shaped in the people's mentality, though the elements proper to its development have delayed to appear[2].

We have to notice that the first half of the 20th century was based on the above-mentioned coordinates, recording new projects, like those of Richard Coudenhove-Kalergi and Aristides Briand, whose fundamental idea was the cohesion of a continent, too long time divided[3]. The manner in which the 20th century had started announced sanguinary conflicts that would not be solved but in two world wars, which shook the humanity at a 21-year distance one from another.

At the end of WW2, a good part of the European economy was under ruins, and millions of people had remained homeless. The anti-fascist coalition, molded during the war, was dissolving due to the tendencies of the Soviet Union to extend its influence in the Eastern Europe. The year 1947 would be the year of the Marshall plan, launched by the United States of America, of economic reconstruction of the continent. This plan was offered to all the European States, but it was accepted only by the states of the Western Europe, the Soviet Union perceiving it as a form of undermining its recently founded hegemony in the eastern part of the continent. In view to manage the funds offered by the American government, the Organization of European Economic Cooperation was set up, later on turned into the Organization for Economic Cooperation and Development[4]. We may say that the European idea finds, paradoxically, a good moment to be developed, at the end of the world war, when Europe starts to be divided between East and West. In 1948, the Custom Union of Benelux is formed, defined as a new model of transfrontalier cooperation, among its three members. Some time later, in the same year, by signing the Treaty from Brussels, Belgium, Holland, Luxembourg, Great Britain and France put the basis of a military alliance, initially aimed at Germany. The next year was the witness of setting up the European Council, which reunited the states with democratic regime in Europe. It is about the signatories of the Treaty from Brussels, next to the northern countries, Ireland, Italy, Iceland, Greece and others[5]. In this context, we may say that the element that attracted the change of the old mentalities in favour of accepting new concepts and attitudes at national level is, as some specialists claim, the enormous wish of the Western European countries to remake their gravely affected economy after WW2[6].

For the first time, the concept of French-German reconciliation and of setting up some "United States of Europe" was advanced by the former British prime minister, Winston Churchill, in a speech held in Zurich, on September 19, 1946[7]. This political personality had been aware of the fact that only an united Europe could pass over the century-old rivalries and enmities of the nations, in order to face a much bigger danger than the others. He would say: "... This noble continent, containing wholly the most prosperous

and the best cultivated regions of land, enjoys a temperate and equitable climate, it is the house of all the great races of the occidental world. It is the foundation of Christian belief and ethnicity. It is the origin of most of the cultures, arts, philosophy and science, both in antiquity and in the modern times. If Europe had been united in sharing its common heritage, it would have not existed limits of happiness, prosperity and glory that the three or four hundred million of inhabitants would have enjoyed. Still, the nationalist quarrels started from Europe, initiated by the Teutonic tribes, which we saw even in this 20th century, and in our own life, breaking peace and damaging he perspectives of the whole humanity" [8]. Despite these, the idea of the European integration is due to Jean Monnet who, as chief of the National Planning Organization from the post-war France, proposed for the production of steel and coal of Germany and his country to be managed commonly by a body having supra-national character.

The initiative of Jean Monnet was taken over by the French minister of Foreign Affairs, Robert Schuman, and was put down in an official statement on behalf of the French government. This statement was made public on May 9, 1950 and has remained in the history of the European integration as the Schuman Statement. This one mentioned the putting in common, according to the model anticipated by Monnet, of these two raw materials belonging to the big rivals during the world war[9]. The Europe of the 6 was born, through the Treaty instituting the European Community of Coal and Steel, signed in Paris, on April 18, 1951[10]. This is, in our opinion, the moment of birth of not only the above-mentioned community, but also of the whole concept of the European Communities. In this sense, I make an argument by the very idea of putting in common the industries claiming a possible war, which represents probably the most revolutionary plan in the sphere of the international relations that the specialists achieved in the 20th century. Secondly, we must notice that no French citizen would have imagined during the war that, five years after its end, their Foreign Minister would have been a German minority from Aslatian region.

The set up of C.E.C.O. had as main purpose, as Schuman declared, to make that no conflict between France and Germany "... become not only unthinkable, but also impossible, from the material point of view" [11]. The founding of this organization was followed by the setting up of two Communities, by signing the treaties from Rome, on March 25, 1957. Together, the three Communities represented the basis of the further institutional developments at European level, which peaked with the Treaty on the European Union, sealed on February 7, 1992 and entered in force one year later[12].

In order to realize what the European Communities represents, it is absolutely necessary to know certain aspects related to their nature, to their legal personality and to their legal order.

Regarded as a whole and from the perspective of the institutive Treaties, the European Communities are, in the vision of some doctrinaires, a real juridical hybrid among what represents a confederation and a federation in the international public law. In their actual stage, the Communities have exceeded the level of a confederation, but they have not reached the one of a federation, because: "... they do not have the general competence or the power to determine the distribution of the competencies among them and their member states" [13]. Other specialists think that these Communities are somewhere at the middle of the road between a private international organization and a supra-national one. Not in the least, we consider that the constitutive Treaties only created a private international organization that holds a real common public power, separated from the one of their signatories[14].

In this context, the Court of Justice of the European Communities recorded the distinct juridical personality of each of the three European Communities, based on the principle of their recognition by the member states, freely, by the force of their sovereign rights[15]. Therefore, we can see that these Communities are legal persons of public law, by studying the art. 6 of the C.E.C.O. Treaty, 210 of the Treaty instituting C.E.E. and art. 184 of the Treaty instituting C.E.E.A.[16]; and, if we take into account the specialty doctrine retaining the criterion of juridical force of the community norms, we notice that the institutive Treaties are part of the strongest category, the one of primary sources.

As regards the legal personality in the community juridical order, the institutive Treaties foresee obligations and rights for Communities, with the intention of assuring their specificity. These have juridical links both with the member states and with natural and legal persons. Also,

the international juridical personality can be seen more in case of the Treaties instituting C.E. and Euroatom[17].

When we talk about the juridical order of the European Communities, we must mention that the Court from Luxembourg pronounced in this matter in a very famous case: Algemene Transporten Expeditie Onderneming van Gend en Loos v. Nederlandese Administratie der Belastingen (Dutch administration), through the voice of Attorney general Roemer. He mentioned that, from the point of view of the international law of contracts and general practice of the states, the institutive Treaties represented a legal innovation and it would have not been fair for them to be regarded only from the perspective of the internal law[18]. Therefore, the juridical order of the Communities seems to be a new invention that assimilates elements from the classic international law and from the federal one. It is based on two principles: direct and immediate applicability of the community law in the juridical order of the member states and the principle of preeminence of the community law compared to the national law of the member states. This new juridical community order presents two important features: autonomy, which is related to the concept of institutional autonomy. The second feature is present in form of the community juridical order, in the national law of the member states. Not in the least, the juridical order of the European Communities is made up of two categories of juridical norms; the ones with value of fundamental law, meaning the institutive Treaties, the amending ones and those made by community institutions that have value of ordinary law[19].

We conclude by saying that the European Communities represents an innovating construction, both in the juridical domain and in the institutional domain, their particularities being an efficient blend between old and new, without any of them to exclude the other one.

By signing the Treaty instituting the European Committee of Coal and Steel, on April 18, 1951, the series of treaties that will set up be basis of the European Union is open. The feature of this Community comes from the very provisions of the treaty following "a universal federalist vocation having a sectorial feature" [20]. In other words, the intention was to set up a market free from any quantitative restrictions and customs taxes that should be limited only to the two materials mentioned in the title of the treaty. The Community, whose Treaty entered in force on July 25, 1952, was intended to function on a limited period of time, of 50 years, and, according to the Preamble, it would assure the premises of a community "...larger and deeper among the peoples a long time in opposition, due to sanguinary divisions; and to put the basis for the institutions that will give meaning to a destiny from now on shared" [21].

In the context of the cold war, the efforts of integration at European level, at least in the western side of the continent, continued to be felt. Still, not always they led to success. There existed failures in this process, due to the reticence of one of the political factors on that date. Some of these failures were the one of the set up of the Defense Political Community, next to the lack of initiative of the European Political Community[22]. The failure of C.E.A. caused a change of optics as regards the process of European reconstruction. Thus, between June 1-6, 1955, the Messina Conference took place, which, by the statement of the participants, expressed their political wish to pass to a new stage within the community construction. The resolution considered that only the economic domain was viable for developing community institutions and aimed at a common policy in the domains of electric power and transports[23]. In the conditions of a strong divergence between the domains that had to be reunited under a common management, a commission of specialists was set up, managed by the Belgian P. H. Spaak, who made a report. This document mentioned the difficulties of a sectorial approach, except for the atomic power, and emphasized the instruments or means of making the Unique Market[24]. We must observe that the whole political effervescence from Europe on this project drew the attention of the dignitaries living across the ocean. In one of the telegrams sent to the State Department of the United States, the state secretary, John Foster Dulles, detailed his preoccupation on the opposition of the Great Britain at these projects and considered benefic the Europeans' interest on the development of the nuclear power sector[25].

The negotiations between the governments involved in erecting the community edifice ended on March 25, 1997, by signing in Rome two distinct treaties: the Treaty Instituting the European Economic Community and the Treaty Instituting the European Community of Atomic

Power. These two treaties entered in force on January 1, 1958. If C.E.C.O. and C.E.E.A. had a sectorial character, discussing limited topics, C.E.E. was a frame treaty that would allow it to become preponderant within the three Communities.

Coming back to the Treaty Instituting C.E.C.O., this one mentioned, under art. 2, the objectives of the Communities, meaning the establishment of a common market, the economic increase and the elevation of the living level[26]. The purposes of C.E.C.O., according to the next article, would be achieved by granting equal access to the production sources, the improvement of the working and living conditions of the workers, the fixing of some prices at the lowest level possibly, the stimulation of the international changes, the increase of the capacity and the promotion of a policy of rational exploitation of resources. Art. 4 stipulated, in exchange, the activities incompatible to the New Common Market, among which, the import and export taxes, the quantitative restrictions on the products' movement, the practices that discriminated the producers or consumers, the subsidies granted by the states and any kind of taxes[27].

The institutional system of C.E.C.O. was specified in the 2nd Title, art. 7 of the Treaty, entitled: "Institutions of the Community". The main bodies of the Communities were: a High Authority made up of 6 personalities invested with the agreement of their national governments which they did not represent, though. This had huge legislative and executive powers, assisted by a Consultative Committee of Socio-Economic representation. There was also a Special Council of Ministers, made up of minister representing the interests of the member states, whose objective was to synchronize their position with the one of the Community. A Parliamentary Assembly, similar to a national parliament played the role of exercising a so much democratic role as possible. Still, its components were extremely limited. Beside these, also functioned a Court of Justice, which had as purpose to watch the compliance of the treaty[28].

Articles 78, 78a and 78b referred to the manner of making the Community's budget. What surprises is that the financing of the Community is done through a tax directly flown by the companies having activity in the domain of coal and steel, into the account of the High Authority, to confer this one a surplus of political independence[29]. Finally, article 100 specifies that the government of France is the depository of the Treaty, which is made in one language, and the adhering instruments.

As regards the Treaty Instituting the European Economic Community, this shows that the Community's central objective was "... to establish a unique market and an economic and monetary union", based on a customs union and "to promote a harmonious and balanced development of the economic activities in the whole Community, a durable increase, without inflation, which should comply with the environment, a high degree of convergence of the economic performances, a high level of the labor force and social protection, the improvement of the living level and life quality, and, not in the least, the economic and social cohesion at the level of the member states[30]".

In order to turn into reality these noble ideals proposed in art. 3 of the Treaty, there are no less than 20 general principles governing the Community, among them, there are: to eliminate the customs barriers (par. a), a commune commercial policy (par. b), putting national legislation closer (par. h), association with other nations at the objectives of the Community, therefore the open character of the treaty (par. r), strengthening the economic and social cohesion (par. j), and so on[31]. Also, article 4 proves that, institutionally, the C.E.E. Treaty complies with the scheme offered by C.E.C.O., but there are several differences compared to the Paris Treaty, the first one consisting in the fact that this one was a treaty with sectorial character and C.E.E. is a frame treaty. Another aspect is related to the period of validity of the two international juridical instruments, because C.E.C.O., according to art. 97, is valid for 50 years and the European Economic Community enjoys, according to art. 240, an unlimited period of existence.

The 3rd part of the Treaty instituting C.E.E. discusses about the community policies, aspect that we cannot find in the other two treaties. As regards the four fundamental freedoms, they can be found in the 3rd part of the Treaty, as well. The dispositions regarding the free circulation of persons, services and capitals can be found in the 3rd Title, art. 48-73H. Other titles aim at transports, economic and currency policy, culture, public health, agriculture, industry,

consumers protection and environment[32]. The 5th Part, chapter 1, from the Treaty presents the dispositions regarding the C.E.E. institutions. As we have mentioned before, these do not differ a lot from those of C.E.C.O. Thus, the Parliament is "... made up of representatives of the peoples of the states reunited in the Community exercise the powers that are given to them in this treaty" [33]. This is a relatively restrained power, among its few competences being the capacity to sanction the Commission with motion of censure[34]. In case of the Commission, it is interesting to see that, though with less power than the High Authority, being allowed to act in a large socio-economic area, it will exceed the force of the High Authority, in time[35].

In its clauses, the treaty institutes an Account Court, which main task is to examine "the whole incomes and expenses of the Community" and aims at complying with the legality within the financial flows from inside. It assists the Parliament and Council in exercising their control function regarding the budgetary execution[36]. Among the provisions of the 6th part of the Treaty, one is specifying the place of the community juridical personality in the national juridical order of the member states, stipulating the following: "The Community owns the largest juridical capacity recognized to the juridical persons by the national legislation; particularly, it can get and alienate real estates and other assets and to stand in justice. In this purpose, the Community is represented by the Commission"[37].

The Treaty instituting the European Community of the Atomic Power wished to organize a Common Marked in the domain of using civil nuclear power. Institutionally, the scheme of the other two treaties was reproduced. An Economic and Social Committee was created to work for C.E.E., and an Agency was created to represent the policies related to the radioactive materials. The Commission had a large authority, because any company that manipulated such materials had to communicate any action made, according to the treaty[38].

The tasks of this Community were to establish uniform safety standards to protect the healthy of the workers and civil population; to assure the equitable and equal access to the sources of raw materials; to allow the scientific development in the domain and to encourage it; to create a cooperation network in the domain with other states and international organizations in order to use nuclear power peacefully; to be sure that the fissionable materials are not misappropriated to be used in other unspecified purposes, etc[39]. In article 52, par. B, an Agency was created to take care of the special fissionable materials, which supply was to be done through a Common Marked, where all the Community's members had access. Article 53 mentioned the fact that the Agency was subordinated to the Community Commission, whereas article 54 offered juridical personality to that Agency. In the same 6th chapter, called "Stocks", article 57 stipulated the rights that the Agency had and article 60 specified the obligation to be permanently informed on the operations with nuclear materials[40].

As regards the 7th chapter from the 2nd Title, called "Safety", it mentioned the obligation of the Commission to keep strict records of the materials with high risk of safety and its possibility to make inspections. Exception made the materials intended to the military industry and classified scientific researches[41]. We also notice that in this Community, a primordial role in managing the problems related to the atomic power belongs to the Commission. This assertion can only confirm the similarities, at institutional level, that the three treaties share. What is new compared to the previous treaties are the dispositions regarding research, public health and security. It is surprising the presence of article 192 in the 5th Title ("General Provisions"), which clauses create a real antecedent for what would become the principle of direct applicability of the community law and its priority to the internal juridical order of the states. We dare assert that art. 193 of the Treaty is on the same line[42].

The Treaty was made in 4 languages: French, English, Dutch and German and will be kept by the Italian Government, in its archives, the same as the Treaty Instituting C.E.E. This document has a few annexes and protocols, such as Protocol on the Court of Justice of the European Community of Atomic Power.

The primary sources of the European community law are the three Treaties that institute the Communities, next to amending treaties and composite treaties, which extend the first ones. Beside the above-mentioned categories, there are the annexes and protocols attached to the treaties, having a value of fundamental law. Therefore, the most important protocol for C.E.E. and C.E.E.A. is the Statute of

the European Investment Bank, plus the protocols regarding the community privileges and immunities, and the Court of Justice of the Communities[43].

The amending treaties extend the institutive treaties. This category of primary sources is made up of treaties, various documents of the community institutions referring to the procedures of simplifying the revision and from the documents that hold an exceptional juridical *nature* – decisions. The following documents are important: Treaty instituting a unique *Council* and a unique Commission for Communities, the unique Protocol regarding immunity and privileges, Budgetary Treaties, which increased the duties of the European Parliament and the Decision dated April 21, 1970, which replaced the financial contributions with own resources of the Communities, decision based on art. 269 from the Treaty Instituting C.E. and art. 173 from the Treaty Instituting C.E.E.A. [44] Therefore, we can say that the system of financing the Communities, after these changes, became an important feature of them, being different from the systems of the other international organizations, using stipends supplied by the member states. At the above-mentioned documents, the documents of new members' adhering to the European Communities are added, during the extension process.

Beside the amending Treaties, there is also the category of the three composite Treaties. It is about the Unique European Act, entered in force on July 1, 1987, the Treaty on the European Union from Maastricht, sealed on February 7, 1992 and the Treaty from Amsterdam, signed on October 2, 1997. These Treaties are considered to be primary sources of the community law, having a composite feature[45].

A.U.E. improved the provisions of the institutive Treaties, in its attempt to pass from the Common Market to the Unique Market[46]. A.U.E. offered instruments of achieving this wish and reasserted the political cooperation between the members of the Communities, by simplifying the decisional process. For example, it was discussed the set up of the Court of First Instance beside C.J.C.E. in order to diminish the latter's duties. The achievement of the objectives proposed in A.U.E. was foreseen to be executed in stages. Not in the least, A.U.E. increased the Community's competence by extending the provisions of art. 118A from the Treaty instituting C.E.E. [47]

The Treaty from Maastricht brought some significant changes, among which the intention to institute a unique currency and economic and monetary union, the latter finding its origins in the constitutive Treaties. The elements of innovation of this treaty are related to the larger extension of the competence of the European Parliament and of the community institutions. The Treaty did not grant juridical personality to the E.U., but built, at institutional level, a structure in form of three pillars, the first reserved to the community evolutions and economic and monetary *union*, the second aimed at external policy and common security and the third one was intended to justice and internal affairs[48]. Maastricht also launched two new concepts, subsidiarity and European citizenship. If the first one referred to the distribution of tasks among Community and States, the second one specified the rights of the citizens of this new political entity, in art. 8B and 8C of the Treaty on the E.U. [49]

As regards the Treaty from Amsterdam, this one has three parts. The first one contains the amendments brought to the Treaty from Maastricht and institutive Treaties, the second part eliminated the null orders of the previous community Treaties and abrogates the Merging Treaty from Brussels, and the third part renumbers the articles of the document signed in Amsterdam, in order to eliminate the juxtapositions[50].

The European community law has launched other types of sources, such as derivative and complementary sources, beside the primary ones, but the primary sources are more important than the others.

The European communities are characterized by the fact that they are associations of integrated economic type, because they represent the result of the member states' putting in common, peacefully and freely, of their economic capacities, having as initial purpose the development in this domain. They are regional international organizations, with close and supra-*national* character, offering, at the same time, to other European states the possibility to adhere. The communities have an institutional structure that is proper and original to them, with specific community institutions and body[51]. Beside the above-mentioned particularities, the autonomy of the instituting Treaties is added. This autonomy is associated,

as we mentioned, to the concept of institutional autonomy that the Communities have.

The Treaty for merging the executives of the three Communities, according to art. 32, did not unify the three previous treaties, but only the community institutions[52]. In this context, we must specify that the relations between the three institutive Treaties are managed by art. 232 of the Treaty instituting C.E.E, which shows that its orders do not amend the ones of C.E.C.O. and do not depart from those of the Treaty instituting C.E.E.A.[53] There is also a reverse process, which was very well specified by C.J.C.E. as regards the non-application of the provisions within the two sectorial treaties compared to the frame treaty. Other exceptions from this rule may be also seen, when there are gaps in the special Treaties, gaps that can be replaces by applying the dispositions of the Treaty instituting C.E.E. The only body that may specify how far the autonomy of the institutive Treaties can go is the Court of Justice, which, by its jurisprudential construction "promotes a bigger harmony in interpreting the dispositions of the three Treaties in the light of one of them"[54].

The community treaties represent, first of all, official documents concluded at international level and subject to jurisprudence of the international public law. From the point of view of their structure, they follow the type of all the documents sealed in the classic international law. What is truly interesting is seen in the clear similarities between the three treaties. Their structure contains four categories of clauses: Preamble and preliminary clauses, institutional clauses, material clauses and final clauses.

The Preamble is a constant of the three institutive Treaties, and it contains the ideals that made the chiefs of state and government of the founding countries to agree upon their achievement. If we analyze all the three Preambles, we can see that they contain socio-economic objectives, which, though they belong to each Community, are very similar. We offer an example as regards the perception of the political leaders on the common effort to set right the old continent. Thus, the first paragraph of the Preamble of the Treaty Instituting C.E.C.O. says: "Considering that the world's peace can be saved only by creative efforts according to the dangers threatening it[55]", ideal specified in the Treaty instituting C.E.E.A., under the following form: "Persuaded that only a common effort assumed without any delay can offer the perspective of the proper achievement with those capacities of other countries"[56].

The preliminary orders can be found, also, in art. 2 and 3 of the Treaty instituting C.E.C.O. and C.E.E.A., as well as in art. 1 and 2 from the Treaty instituting C.E.E. Within these orders, there are principles with universal feature that exercise the same juridical power like the other provisions of the Treaties. Thus, to justify the principle of the direct effect of the community law, the Court of Justice used the Preamble of the Treaty instituting C.E.E. in the case Van Gend en Loos[57]. This certifies once more the essential of the provisions stipulated in the preamble of any treaty and of the preliminary dispositions.

The institutional clauses represent the dispositions that guarantee the efficiency of the institutions at community level, using the stabile scheme. These clauses are found in the Treaties, generally called "Institutions of the Community" as it is the case of C.E.C.O. and C.E.E. or "Provisions governing the institutions", like C.E.E.A. They pursue to delimit the organization, functions and powers of the institutions, their manner of financing and their external relations. The material clauses refer to the social and economic regime of the Communities and differ from one treaty to another. The Treaty instituting C.E.C.O. "contains a complete and detailed coding... in the sector of coal and steel, meaning a real legislation, leaving to the High Authority only an execution mission". In parallel, the Treaty instituting C.E.E. preoccupied only to configure the objectives in view to make the Common Market, appreciating its provisions[58]. The last of the treaties[59] was only combining the juridical techniques used in the documents previously drawn up.

The authority of the constitutive Treaties of the Communities is the most important in the hierarchy of the community juridical order. The Court of Justice specified the principle of their priority to the other community and national sources, mainly, by the decision given in the case Costa v. E.N.E.L., where he explained the following: "...the executory force of the community law can only vary from one state to another in favour of the internal legislation, without endangering the objectives of the Treaty C.E.E. aimed by art. 5-2 and not to provoke a discrimination forbidden by art. 7"[60]. This priority governed by art. 7 of the Treaty

instituting the E.C. is protected by other legal provisions among which art. 35 of the Treaty instituting C.E.C.O.[61]

The preeminence of the institutive Treaties is unanimously admitted and is achieved at the level of several stages. The Treaty instituting C.E.E.A. stipulates a preventive control similar to the one specified by art. 238 from the Treaty instituting E.C., which allows to the Council, Commission and member states to require negative endorsement regarding the international agreements concluded by the Community's institutions[62]. Art. 234 of the European Community makes us consider the fact that the institutive Treaties hold a bigger juridical force compared to the documents previously sealed by the members of the Communities with third states[63].

As regards the procedure of reviewing the treaties, there are three possibilities: ordinary review, international review and community review.

The ordinary review was mentioned in art. 96, 236 and 204 from the Treaties instituting C.E.C.O., C.E.E. and Euroatom. The procedure granted to the states or to the Commission the initiative in these cases. A project aiming at the revision of the Treaties had to receive the agreement of the Council of Ministers, after having been consulted the Parliament[64], as well, afterwards the inter-governmental negotiations regarding the review, followed. As regards the international review, this technique is extremely rare and improbably to be used with real success, because the constitutive Treaties keep international law norms, according "... to which the agreement of all the parties of a treaty is enough to review it"[65]. Still, the most used remains the community review. Art. 76 and 85 of the Treaty instituting C.E.E.A. order this procedure. The former shows the manner of reviewing the chapter 6, entitled "Special Provisions", which is pretty complicated. Thus, the Council, based on the unanimity and at the proposal of the Commission, after consulting the European Parliament, can amend the chapter[66]. The latter, belonging to the chapter "Safety" mentions as having the legislative initiative of revision beside the Commission and any of the member states, in its final, being identical to art. 76[67].

The three institutive Treaties differ as regards the length of their validity. Art. 97 of C.E.C.O. specifies that the document signed in Paris is valid for 50 years[68]. The other two treaties are concluded on an unlimited period of time, considering that they have an irreversible character[69]. If we analyze this topic from the perspective of the evolution of the community construction, we notice that the Treaty on the European Union has no procedure of its denouncing and there was not mentioned the problem of sanctioning any state, by excluding it from the Union[70].

As regards the sphere inside which the constitutive Treaties are applied, we shall give example art. 227 of the Treaty instituting C.E.E. This mentions, under paragraph 1 a series of nations to whom the document applies[71]. The second paragraph refers to the overseas French departments to which the following are applicable: freedom of merchandise circulation, freedom of services and chapters related to institutions, agriculture and safeguarding measures, under art. 109H, 109I and 226[72]. The 4th paragraph specifies that "The dispositions of this treaty apply to the European territories whose external representation was assumed by a member state", here entering the British territory of Gibraltar[73]. As exception, the 5th paragraph from art. 227 stipulates that the Treaty does not apply to the Faeroe Islands, zones of sovereignty of the United Kingdom and Northern Ireland from Cyprus, Anglo-Normandy isles and Man Isle, but with a certain deviation and to the Aaland Isles, only if the Finnish government agrees and in conformity with the 2nd Protocol from the Treaty of Finland's Adhesion at Communities[74].

By extension, the Treaty instituting C.E.E.A. applies to the European and extra-continental territories of the member states of the Community, such as New Dutch Guinea, but not to Surinam and/or Dutch Antilles. These territories are, from the juridical point of view, under the statute of association at the overseas countries and territories[75].

From the above-mentioned, we may conclude that the institutive Treaties apply to the whole European territory of the member states, except for the localities Campione d'Italia, Livigno, Busingen and Helgoland isle; the first two localities in Italy, the others in Germany. A few exceptions are added to these[76]. Generally, when we refer to the sphere of applicability of the authority of the institutive Treaties, a series of

Protocols and Conventions establishing the juridical statute that some territories benefit from at the periphery of the Communities, should be taken into account. In many cases, it is necessary the opinion of a legal advisor or of a specialist competent in the domain.

The second aspect that we wish to approach is related to the contents of the three original Treaties. Along this work, we have also referred to this aspect, but we consider that it is the moment to underline some elements.

By signing the Treaty instituting C.E.C.O., four principles that stood at the basis of the community edifice were born: superiority and independence of the community institutions, the collaboration between these and equality between states. The superiority of the Communities' institutions in comparison to the ones existing at national level comes from the modality used for their set up, by the free agreement of the parties and not as a consequence of the violence or military occupation. As regards their independence, this reflects onto three essential aspects in the good functioning of the institutions: financial domain, executive's responsibility in front of the legislative and investing the officers according to the common agreement of the governments of the member states. The collaboration between the institutions o the European Communities represented a central desire in the philosophy of the founders. The institutional structure contained a High Authority whose purpose was to achieve the organizations' objectives, the Council of Ministers defended the wishes of the member states, the Assembly or Parliament, which was the institution of democratic control later on and the Court of Justice that supervised the compliance of the Treaties. Collaboration existed among these four institutions, not subordination[77].

The equality among the states participant at the Communities was an essential element in view to set them up, because the old mentalities had to be replaced to prove the viability of the new process of European reconstruction. This principle wanted not to disfavor anybody and succeeded in finding the place in the Community, today being at its foundation. Perhaps the most important article of C.E.C.O. remains article 4, which specifies the activities incompatible with the treaty: taxes for export and import or taxes equivalent to them, as well as quantitative restrictions imposed to the merchandise circulation; discriminatory measures and practices between producers and consumers; the actions that hindered the consumer's free choice of the manufacturer; subsidies or bonuses granted by the state; restrictive practices that aimed at dividing or exploiting markets and so on[78].

The Treaty instituting C.E.E. mentioned the 4 fundamental freedoms and delimited the frame within which the community institutions would carry on their activity. The objective of this document was to set up a commune market, which was not defined. If we study, carefully, the decisions of C.J.C.E. in cases Van Gend en Loos and Costa, we shall discover that this community institution confirms those asserted by the Treaty C.E.E., such as a new juridical order was set up through its agency, order that is proper to the Communities and integrated to the juridical system of the member states. This is set up in an autonomous and specific source that no national law could be opposed to it[79].

The Treaty instituting C.E.E.A. contains provisions intended to encourage the scientific research and the progress of the civil atomic power; to assure the security of all those who take part in the manipulation of the fissionable materials and to set up a unique market in this domain[80]. We shall stop in this case at the 7th chapter, the 2nd Title of Euroatom which refers to the security of this domain of preoccupation. Art. 77 suggests the manner in which the Commission regulates the supply with dangerous materials and assures that these are not intended to be used in other ways. The next article imposes the declaration of all the nuclear operations made by the Commission, which may request, according to art. 80, the redistribution to other centers of any surplus of special materials. Art. 81 empowers the Commission to make inspections in the territory after a previous consulting with the aimed state, and art. 83 will fix the sanctions for the deeds that are incompatible with this chapter. Not in the least, art. 85 foresees the procedure of amending the chapter according to which, upon the request of a state or of a Commission, by the unanimous decision of the Council and at the previous proposal of the executive body, after the Parliament is consulted, it was possible to examine the state's request[81].

Since the beginning of the first ideas regarding a large process of economic and political development on long term, the founding

treaties of the European Communities have represented the base of the European construction. They are the new mentality of the political classes after WW2, mentality aiming at accepting the collaboration in exchange of rivalry. These treaties have been, by their institutional structure to whom they have offered juridical personality, the real pillars of the European Union. The constitutive Treaties mean the basis on which all the other Community treaties, either amending or composite, have erected.

It seems necessary to signal the fact that we follow the unanimous opinion expressed by the doctrinaires of the domain, reasserted by the decisions of the Court of Justice of Communities, according to which these Communities have built an own specific and original juridical order of public law. Also, these organizations represent an innovation from the point of view of the classic international law, being practically an embryo between the international and the supra-national organizations. Therefore, the Treaties sealed in Rome meant a withdrawal of the last principle in the damage of the integration concept, initially economical and later on political. The institutive Treaties have been based mainly on the economical side of the European cooperation, because the then political leaders considered that, through it, the obstacles and reticence could be removed from the way of political integration. Though, generally, the three institutive juridical instruments have a structure with multiple similitude, we must specify that each of them represents self-standing entities, having its own particularities. This can be seen from the very fact that today, the European Community of Coal and Steel has ceased its existence, its duties being taken over by the other two treaties.

Not in the latest, we must specify the fact that this research made by a non-specialist in the legal domain, risks to contain inadvertence for which we assume our responsibility. Finally, we wish to reassert our trust according to which the institutive Treaties are the essence of the whole community construction, which has peaked when the Treaty on the European Union entered in force.

NOTES:

[1] We wish to show that there is no intellectual who respects oneself who has not wondered about Europe. Among them, we notice: Hesiod, Homer, Herodot, Aristotle, Montesquieu, Voltaire, Rousseau, Kant, Schiller, Saint-Simona, Novalis, Comte, Victor Hugo, Lamartine, Mazzinii, Tosltoi, Kierkegaard, A. Briand and Nietzche, to remind only a few, the list being longer.

[2] Iordan Gheorghe Barbulescu, *European Union – Broadening and Expansion. 1st Book. From the European Communities to the European Union*, Trei Publishing House, Bucharest, 2001, pages 42-43

[3] *Ibidem*, pages 43-45

[4] Iordan Gheorghe Barbulescu, *European Union – Broadening and Expansion. 1st Book. From the European Communities to the European Union*, Trei Publishing House, Bucharest, 2001, pages 42-43

[5] *Ibidem*, page 226

[6] Eric Hobsbawm, *The Century of Extremes*, Lider publishing house, Bucharest, 1994, translated by Anca Irina Ionescu, pages 302-303

[7] A.G. Harrzvan and J. Van der Harst, *Documents on European Union*, MacMillan Press Ltd., Houndmills, Basingstoke Hampshire..., 1997, pages 38-41. The leader of the conservatory opposition expressed like this: "...We must build a kind of United States of Europe".

[8] *Ibidem*, page 38

[9] *Ibidem*, pages 61-63

[10] The official title of the Treaty is: "Treaty instituting the European Community of Coal and Steel", by convention, the further references will specify the C.E.C.O. Treaty or the Treaty instituting C.E.C.O.

[11] A.G. Harryvan and J. Van der Harst, *quoted work*, page 61

[12] Augustin Fuerea, *European Community Law. General Part*, All Beck publishing house, Bucharest, 2003, page 8

[13] *Ibidem*, page 31

[14] Cornelia Lefter, "*Institutional Community Law*", Economic publishing house, Bucharest, 2001, page 16

[15] Augustin Fuerea, *quoted work*, page 33

[16] Article 6 of C.E.C.O. www.infoeuropa.ro http://europa.eu.int/abc/obj/treaties/en/entoc291.htm and article 184 of C.E.E.A www.infoeuropa.ro http://europa.eu.int/abc/obj/treaties/en/entoc385.htm

[17] Augustin Fuerea, *quoted work*, page 34

[18] Paul Craig and Grainne de Burca, *Eu Law*, Oxford University Press, Oxford, New York, Athens, 1998, pages 166-167. The exact expression of Roemer was: "...a far-reaching legal innovation". See Cornelia Lefer, *quoted work*, pages 17-19.
[19] Augustin Fuerea, *quoted work*, pages 44-45
[20] Irina Moroianu Zlatescu and Radu C. Demetrescu, *Institutional European Law and Community Policies*, f. 1, "Calistrat Hogas" Publishing House, 2001, page 58
[21] The 5th paragraph of the C.E.C.O. Preamble. www.infoeuropa.ro, http://europa.eu.int/abc/obj/treaties/entr30a.htm#11.
[22] Iordan Gheorghe Bărbulescu, *quoted work*, pages 53-57
[23] *Ibidem*, page 64
[24] *Ibidem*, page 64
[25] Foreign Relations of United States, 1955-1957, 4th volume, *Europe*, United States Government Printing Office, Washington, 1996, pages 369-371
[26] www.infoeuropa.ro; http://europa.eu.int/abc/obj/treaties/entoc291.htm
[27] *Ibidem.*
[28] Iordan Gheorghe Bărbulescu, *quoted work*, page 53
[29] Irina Moroianu Zlătescu and Radu C. Demetrescu, *quoted work*, page 60
[30] *Basic Documents of the European Community and Union,* Polirom, Iaşi, 1999, page 29; art. 2 of the Treaty Institution EC
[31] *Ibidem*, pages 30-31
[32] *Ibidem*, pages 38-106
[33] Article 137 of C.E.E.; www.infoeuropa.ro; http://europa.eu.int/abc/obj/treaties/entoc055.htm
[34] *Basic Documents of the European Community and Union*, Polirom, Iasi, 1999, pages 108-110
[35] Iordan Gheorghe Barbulescu, *quoted work*, page 59
[36] *Basic Documents of the European Community and Union*, Polirom, Iasi, 1999, pages 121-123; see art. 188C from the treaty
[37] *Ibidem*, page 139; art. 211 from the Treaty Instituting C.E.E.
[38] Irina Moroianu Zlatescu and Radu C. Demetrescu, *quoted work*, pages 66-67
[39] www.infoeuropa.ro; http://europa/eu.int/abc/obj/treaties/en/entoc381.htm; art. 2 from the Treaty instituting C.E.E.A.
[40] www.infoeuropa.ro; http://europa/eu.int/abc/obj/treaties/en/entoc388.htm; art. 52-66 from the Treaty instituting C.E.E.A.
[41] *Ibidem*, art. 8, from the Treaty C.E.E.A.
[42] www.infoeuropa.ro; http://europa/eu.int/abc/obj/treaties/en/entoc385.htm;
[43] Roxana Munteanu, *European Law*, Oscar Print, Bucharest, 1996, pages 117-199
[44] Augustin Fuerea, *quoted work*, pages 49-50
[45] G, Isaac, *Droit communautaire general,* 8th edition, Armand Colin, Paris, 1999, page 121.; *Apud.* Augustin Fuerea, *quoted work*, page 151
[46] A space without frontier
[47] Augustin Fuerea, *quoted work*, pages 8-10
[48] Iordan Gheorghe Bărbulescu, *quoted work*, pages 195-204
[49] Augustin Fuerea, *quoted work*, pages 13-14
[50] Octavian Manolache, *Community Law,* All Publishing House, Bucharest, 1996, page 93
[51] Dumitru Mazilu, *Community Law and European Institutions*, Lumina Lex Publishing House, Bucharest, 2001, pages 63-68; see the opinion expressed by Augustin Fuerea in the work *European Community Law. General Part*
[52] Augustin Fuerea, *quoted work*, page 52; his opinion is in concordance with the one of the occidental doctrinaires Paul Craig and Grainne de Burca in the work *EU Law*, Oxford University Press, Oxford, New York, Athens, 1998
[53] Alan Campbell and Denis Thompson, *Common Market Law: Texts and Commentaries,* Stevens & Sons, London, 1962, pages 301-302; see also the *Basic Documents of the European Community and Union,* Polirom Iasi, 1999, page 145
[54] Augustin Fueera, *quoted work*, page 52
[55] www.infoeuropa.ro; http://europa/eu.int/abc/obj/treaties/en/entr30a.htm;
[56] www.infoeuropa.ro; http://europa/eu.int/abc/obj/treaties/en/entr39a.htm;
[57] Paul Craig and Grainne de Burca, *quoted work*, page 167
[58] Augustin Fuerea *quoted work*, page 54
[59] Treaty instituting C.E.E.A.

[60] Cornelia Lefter, *quoted work*, page 63
[61] www.infoeuropa.ro; http://europa/eu.int/abc/obj/treaties/en/entoc292.htm;
[62] *Basic Documents of the European Community and Union,* Polirom, Iasi, 1999, pages 143-144
[63] *Ibidem*, page 145
[64] Augustin Fuerea, *quoted work*, page 57
[65] According to M. Deliege-Seguaris, *Revision des Traites europeennes en dehors des procedures prevues*, CDE, 1980, page 539, *Apud.* Auguting Fuerea, quotred work, page 58
[66] www.infoeuropa.ro; http://europa/eu.int/abc/obj/treaties/en/entoc382.htm;
[67] *Ibidem.*
[68] www.infoeuropa.ro; http://europa/eu.int/abc/obj/treaties/en/entoc294.htm; see also Irina Moroianu Zlatescu and Radu C. Demetrescu, *quoted work*, page 68
[69] Art. 240 of the Treaty instituting C.E.E. and art. 208 of the Treaty instituting C.E.E.A.
[70] C.J.C.E., July 15, 1964, Costa v. E.N.E.L., case 6/64 Rec. 1160, *Apud.* Augustin Fuerea, *quoted work*, page 59
[71] The member states of the Union: Belgium, Denmark, Republic of Greece, Spain, France, Ireland, Italy, Luxembourg, Netherlands, Germany, to which it was accepted without the revision of a treaty the integration of the territories of the former Democratic Republic of Germany, and so on.
[72] *The Basic Documents of the European Community and Union*, Polirom, Iasi, 1999, page 142
[73] *Ibidem*, page 143
[74] *Idem.*
[75] See Annexes of the Teraty instituting C.E.E.A.: "Protocol on the application of the Treaty instituting C.E.E.A. at the non-European parts of the Dutch kingdom"
[76] Augustin Fuerea, *quoted work*, page 61. See also the page 64, which specifies that Monaco and San Marino are integrated to the customs territory of the Community, based on art. 234 from the Treaty C.E.E. and for Andorra, there is a customs union with the Community. The Spanish territories from Africa – Ceuta and Melilla are not applied to the Treaty.
[77] *Ibidem*, pages 66-68
[78] www.infoeuropa.ro; http://europa/eu.int/abc/obj/treaties/en/entoc291.htm;
[79] Paul Craig and Graine de Burca, *quoted work*, pages 155-169; see also Renaud Dehousse, *The European Court of Justice,* MacMillan Press Ltd., Houndmills, Basingstoke, Hampshire and London, 1998, pages 37-40
[80] The 1st and 2nd Titles of the Euroatom Treaty, articles 92-100; www.infoeuropa.ro; http://europa/eu.int/abc/obj/treaties/en/entoc381.htm; and www.infoeuropa.ro; http://europa/eu.int/abc/obj/treaties/en/entoc382.htm;
[81] The 2nd Tile of the Euroatom Treaty; www.infoeuropa.ro; http://europa/eu.int/abc/obj/treaties/en/entoc382.htm;