

Research in the European Treaties

SUMMARY

Whilst Community research activities were a key component of the Treaties establishing the European Coal and Steel Community in 1951 and the European Atomic Energy Community in 1957, there were no provisions related to research policy in the Treaty establishing the European Economic Community (EEC) in 1958.

In 1972, the European Commission proposed to define and implement a Community research policy; however, there was no legal basis for it in the EEC Treaty. That is why in the 1970s and early 1980s, the first EEC research programmes were adopted on the basis of Article 235 of the EEC Treaty, which gave the Council the implicit competence to adopt Community measures on policy areas not included in this Treaty.

In 1982, the European Parliament called for the situation to be clarified. The Single European Act, signed in 1986, enshrined research policy in the EEC Treaty. It defined cooperation and coordination of national research policies as the objectives of the common research policy, provided a clear legal framework for the adoption of the Community framework programme for research, and offered additional tools for the implementation of research policies. The amendments introduced by the Treaty of Maastricht in 1992 and the Treaty of Amsterdam in 1997 concerned mainly the legislative procedures to be used for the adoption of the relevant provisions.

The inception of the European Research Area (ERA) in 2000 triggered the use of articles, dormant since 1986, for the establishment of public-public and public-private partnerships (Articles 185 and 187 of the Treaty on the Functioning of the European Union, TFEU). While the Treaty of Nice (2001) did not amend the articles related to research, the Treaty of Lisbon (2007) recognised research and space as a shared competence. It made the completion of ERA a Treaty requirement and provided the legal basis for the adoption of legislation to implement ERA. So far, this possibility, supported by the Parliament, has not been used due to opposition from the Council.



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The Treaties of Paris and Rome

Treaty establishing the European Coal and Steel Community – 'Treaty of Paris'

The [Treaty](#) establishing the European Coal and Steel Community (ECSC), signed in Paris on 18 April 1951 and in force from 23 July 1952, provided the possibility for establishing European research programmes. Article 55(1) tasks the High Authority¹, one of the four institutions running the ECSC, with pursuing the objective to 'encourage technical and economic research relating to the production and increased use of coal and steel and to occupational safety in the coal and steel industries.'

Article 50 specifies that the Community budget, based on the levies on coal and steel production defined in Article 49, can be used to fund these research programmes. Article 55(2) authorises the use of funds received as gifts as a potential funding source. It also mentions that research results accomplished under these programmes 'shall be made available to all concerned in the Community.' The High Authority may also promote joint financing by undertakings interested in research activities.²

Treaty establishing the European Atomic Energy Community – 'Euratom'

Research is at the heart of the [Treaty](#) establishing the European Atomic Energy Community which was signed on 25 March 1957 and entered into force on 1 January 1958. As specified in Article 2 of Euratom, the Community shall 'promote research and ensure the dissemination of technical information' in this field.

Chapter 1 of Euratom is dedicated to the promotion of research. Article 4.1 puts the Commission in charge of 'promoting and facilitating nuclear research in the Member States and for complementing it by carrying out a Community research and training programme (CRTP).' According to Article 7, the Council, acting unanimously on a proposal from the Commission, shall adopt the CRTP for a period of up to five years.

In order to coordinate and complement EU Member States' research activities, the Commission can give opinions on their research programmes (Article 5). These opinions shall help to 'discourage unnecessary duplication' and 'direct research towards sectors which are insufficiently explored.' Article 6 gives the Commission different options for accomplishing its coordinating task, including by promoting joint financing for research programmes. Finally, Article 8 establishes the Joint Nuclear Research [Centre](#) as an internal Community research centre managed by the Commission.

Treaty establishing the European Economic Community – 'Treaty of Rome'

Research was nearly totally absent from the [Treaty](#) establishing the European Economic Community (EEC), which was signed on 25 March 1957 and entered into force on 1 January 1958. The Treaty focused on the establishment of a common market and a customs union. Common policies were to be developed for trade, transport and agriculture.

Title II on agriculture is the only place within the Treaty where research is mentioned. Article 41 states that 'an effective co-ordination of efforts in the spheres of vocational training, of research and of the dissemination of agricultural knowledge' could be planned in order to reach the objectives of the common agricultural policy defined in Article 29. This could include joint financing of projects or institutions.

Following a Commission initiative to start developing a Community policy in research,³ in 1973 the Council adopted research programmes on [solar energy](#), the [environment](#) and [teledetection](#) of earth resources. The legal basis for their adoption was Article 235 of the EEC Treaty that gave implicit competences to the Community by stating that, 'if action by the Community should prove necessary to attain, in the course of the

operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the [European Parliament], take the appropriate measures'. The programmes were to be carried out by the Joint Research Centre, its mandate having been [broadened](#) in 1971 beyond nuclear research.

In its November 1982 [resolution](#) on the common research policy, the European Parliament said it 'insists on a Treaty amendment that will break with the existing ad hoc basis and anchor research policy firmly in the EEC Treaty with a clear allocation of responsibilities between the institutions.' Without any amendments to the Treaty, Article 235 of the EEC Treaty was used as the legal basis for adopting the [pilot](#) project for the European programme for research and development in information technology (Esprit) in 1982; the first [framework](#) programme for Community research, development and demonstration activities in 1983; and the Esprit [programme](#) in 1984.

The Single European Act

The [Single European Act](#) (SEA) was signed in 1986 and entered into force on 1 July 1987. It provided a stronger legal basis for Community research policies by introducing Title VI 'Research and Technological Development' (Articles 130f to 130q) into the EEC Treaty.

Article 130f states that the aim of the Community is to 'strengthen the scientific and technological basis of European industry and to encourage it to be more competitive at international level.' As set out in Article 130g, unmodified since 1986 (Table 2), 'the Community shall carry out the following activities, complementing the activities carried out in the Member States:

- implementation of research, technological development and demonstration programmes, by promoting co-operation with undertakings, research centres and universities;
- promotion of co-operation in the field of Community research, technological development, and demonstration with third countries and international organizations;
- dissemination and optimization of the results of activities in Community research, technological development, and demonstration;
- stimulation of the training and mobility of researchers in the Community.'

That way, two key aspects of the European research policy developed since 1972 were introduced in the Treaty: coordination, with Article 130h providing that 'Member States shall, in liaison with the Commission, co-ordinate among themselves the policies and programmes carried out at national level'; and cooperation, with Article 130i and 130k introducing a legal basis for the framework programme for Community research.

New tools were created with a view to forging a common research policy. In implementing the framework programme, it became possible:

- to create supplementary programmes involving the financial participation of certain Member States only (Article 130l);
- for the Community to make provision for participation in research and development programmes undertaken by several Member States (Article 130m);
- for the Community to make provision for cooperation in Community research with third countries and international organisations (Article 130n); and
- for the Community to set up joint undertakings or any other structure necessary for the efficient execution of Community research programmes (Article 130o).

Article 130p dealt with the adoption of the financial and budgetary aspects of the framework programme. Finally, Article 130q specified the procedure for the adoption of the provisions referred to in the different articles (Table 1):

- the consultation procedure, with unanimity in Council, for the adoption of the framework programme (Article 130i) and the joint undertakings (Article 130o);
- the cooperation procedure, with the Council acting by qualified majority (QMV), for Articles 130k to 130p.

Table 1 – Evolution of the legislative procedures for the articles in the Treaties, which set forth provisions for the adoption of legislative acts on research⁴

Single European Act EEC Treaty		Maastricht Treaty TEC		Amsterdam Treaty TEC		Lisbon Treaty TFEU	
Art.	Procedure	Art.	Procedure	Art.	Procedure	Art.	Procedure
130i	Consultation <i>unanimity</i>	130i.1	Co-decision <i>unanimity</i>	166.1	Co-decision <i>QMV</i>	182.1	OLP
		130i.3	Consultation <i>QMV</i>	166.3	Consultation <i>QMV</i>	182.3	Consultation
		-	-	-	-	<u>182.5</u>	OLP
130k	Cooperation <i>QMV</i>	130j	Cooperation <i>QMV</i>	167	Co-decision <i>QMV</i>	183	
130l		130k		168		<u>184</u>	
130m		130l		169		185	
130n		130m	Consultation* (Article 228)	170	Consultation* (Article 300)	186	Consent* (Article 218)
130p		-	-	-	-	-	-
130o	Consultation <i>unanimity</i>	130n	Consultation <i>unanimity</i>	171	Consultation <i>QMV</i>	187	Consultation
-	-	-	-	-	-	189	OLP

Data source: EPRS based on [EUR-LEX](#) - Text in *italics* indicates the requirement for adoption by the Council.

*In these cases, the Council acts by unanimity or qualified majority, depending on the nature of the agreement.

QMV – Qualified majority voting; OLP – Ordinary legislative procedure; Article not used yet

Legislative procedures

The [consultation](#) procedure requires the Council to consult the European Parliament (EP) before adopting legislation. However, the Council is not bound by the EP's position.

The [cooperation](#) procedure, introduced by the SEA, required that before adopting a common position on a legislative proposal, the Council submit it to the EP for a first reading. The position was then submitted to the EP for a second reading. Rejection by the EP could only be overruled by a unanimous vote in the Council. The Lisbon Treaty repealed this procedure.

The Maastricht Treaty introduced the [co-decision](#) procedure (now the 'ordinary legislative procedure', in which the Council always acts by QMV), which requires a proposal to be submitted to the EP for a first reading. Should the Council not agree with the EP's position, the proposal receives a second reading in the EP, where it can be rejected or amended. Should the Council disagree with the EP, a conciliation committee is set up. If an agreement is found, the proposal is adopted; if not, it is rejected.

The [consent](#) procedure requires the Council to obtain the consent of the EP before adopting legislation. The EP can accept or reject the proposal but cannot propose amendments.

The Treaty on European Union – 'Maastricht Treaty'

The [Treaty](#) on European Union (TEU), which was signed in Maastricht in February 1992 and entered into force on 1 November 1993, established the European Union with the EEC becoming one of its three pillars, the European Community, and renamed the EEC Treaty as '[Treaty](#) establishing the European Community' (TEC). Article 3 TEC introduced 'The promotion of research and technological development' as one of the activities of the European Community and Title XV on 'Research and Technological Development' was also amended (Table 2).

Article 130f TEC added to the Community research policy objectives that of strengthening the scientific and technological bases of Community industry 'while promoting all the research activities deemed necessary by virtue of other Chapters of this Treaty'. The article also introduced the requirement of ensuring the 'high quality' of all research and technological development activities, while its newly inserted paragraph 3 specified that 'all Community activities under this Treaty in the area of research and technological development ... shall be decided on and implemented in accordance with the provisions of [Title XV].'

The amended Article 130h TEC clarified the key objective of achieving coordination between the national and shared research policies, stating that 'the Community and the Member States shall coordinate their research and technological development activities so as to ensure that national policies and Community policies are mutually consistent'. It also authorised the Commission to take initiatives for promoting this coordination.

Article 130i TEC redefined the method for the adoption of the framework programme by the Council and the European Parliament under the co-decision procedure, with the Council acting unanimously. This article also incorporated the financial and budgetary aspects previously defined in Article 130p of the EEC Treaty.

Article 130i(3) TEC stipulated that the Council, acting by a qualified majority, shall adopt the specific programmes implementing the framework programme under the consultation procedure, while Article 130j TEC further authorised it to lay down the rules for participation and for the dissemination of the research results attained under the framework programme.

Articles 130k to 130n TEC were only renumbered (Table 2). Article 130o TEC confirmed that the cooperation procedure (defined in Article 189c TEC) would continue to apply for the adoption of legislation under Articles 130j to 130l TEC, and that the consultation procedure with Council unanimity would remain in use for setting up joint undertakings as specified in Article 130n TEC. The international programmes referred to in Article 130m TEC would be adopted after consulting the EP, as set out in Article 228 TEC.

A new Article 130p set up a requirement for the Commission to send an annual report to the European Parliament and the Council, including 'information on research and technological development activities and the dissemination of results during the previous year, and the work programme for the current year'.

The Treaty of Amsterdam

The [Treaty](#) of Amsterdam was signed on 2 October 1997 and entered into force on 1 May 1999. It introduced modifications on the legislative procedures laid out in the articles on research in the TEC, while also renumbering [them](#) (Tables 1–2).

First, as called for by the Parliament in its [resolution](#)⁵ of June 1995 on research and technological development, the framework programme (Article 166(1) TEC) was now to be adopted following the co-decision procedure, with the Council acting by qualified majority rather than by unanimity. Second, co-decision replaced the cooperation procedure for the adoption of the acts under Articles 167, 168 and 169 TEC. Finally, the Council would act by qualified majority and not unanimity under the consultation procedure, when setting up the joint undertakings referred to in Article 171 TEC.

Table 2 - Development of the articles on research in the Treaty

Single European Act 1986/1987 EEC Treaty	Maastricht Treaty 1992/1993 TEC	Amsterdam Treaty 1997/1999 TEC	Lisbon Treaty 2007/2009 TFEU
Articles on the competences of the Union			
-	3	3	4
Articles on research and development			
Title VI	Title XV	Title XVIII	Title XIX
130f	130f	163	179
130g	130g	164	180
130h	130h	165	181
130i	130i	166	182
130k*	130j	167	183
130l	130k	168	184
130m	130l	169	185
130n	130m	170	186
130o	130n	171	187
130p	[included in 130i]	-	-
130q	130o	172	188
-	-	-	189
-	130p	173	190

Data source: EPRS based on [EUR-LEX](#). Numbers in bold mean that the adopted treaty adds or amends the article.

*The Single European Act did not introduce an Article 130j.

The Treaty of Lisbon

The TEC was renamed '[Treaty](#) on the Functioning of the European Union' (TFEU) by the [Treaty](#) of Lisbon, which was signed in December 2007 and entered into force on 1 December 2009. The Lisbon Treaty clarified the competences of the EU. It recognised research as a shared competence, yet set limitations for the Union. Article 4(3) TFEU states that 'in the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs'.

The objectives of the Union research policy were broadened. The original focus on 'Community industry', introduced in 1986, shifted to the implementation of the concept of a European Research Area² (ERA), developed since 2000. Article 179(1) TFEU makes this a legal requirement stating that 'the Union shall have the objective of strengthening its scientific and technological bases by achieving a European research area in which researchers, scientific knowledge and technology circulate freely, and encouraging it to become more competitive, including in its industry, while promoting all the research activities deemed necessary by virtue of other Chapters of the Treaties'. Article 179(2)

places greater focus on the role of the Union in supporting the efforts of undertakings 'aiming at permitting researchers to cooperate freely across borders'.

Article 181(2) TFEU specifies the role of the Commission in helping to coordinate Member States' research and technological development activities. The Commission may take 'in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.'

Complementing the framework programme, Article 182(5) TFEU opens the possibility to adopt EU legislation to enforce the implementation of ERA, stating that 'the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall establish the measures necessary for the implementation of the European Research Area'.

In terms of legislative procedures, the co-decision procedure became the ordinary legislative procedure, set out in Article 294. The consent procedure as defined in Article 218 (Table 1) replaced the consultation procedure in the adoption of international agreements for cooperation with third countries or international organisations under Article 186.

Finally, a new Article 189 gave the Union the possibility to 'draw up a European space policy' in order to support 'scientific and technical progress, industrial competitiveness and the implementation of its policies'. The Union's activities in this field may include promotion of joint initiatives, support for research and technological development and coordination of the efforts needed for the exploration and exploitation of space. In practice, 'the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the necessary measures, which may take the form of a European space programme, excluding any harmonisation of the laws and regulations of the Member States.' Moreover, 'the Union shall establish any appropriate relations with the European Space Agency'.

The articles on research in practice

In 1987, Articles 130i and 130q of the EEC Treaty were used for the first time as the legal basis for [adopting](#) the second framework programme for Community research and technological development activities. Subsequent framework programmes have been adopted on the basis of those articles and legislative procedures, as they have evolved.

The provisions on international cooperation (successive Articles 130n, 171 TEC and 187 TFEU) were used for the first time in June 1988 for the adoption, on the one hand, of a [plan](#) to stimulate researchers' cooperation and mobility and, on the other hand, of a research [programme](#) in metrology and chemical analysis. The conclusion of an [agreement](#) with Iceland in September 1989 marked the first use of this article for establishing scientific cooperation with a third country. While the legislative procedure has evolved, this article has remained the basis for all scientific cooperation agreements with third countries adopted since 1989.

In October 2000, when designing the structure of the sixth framework programme, the Commission [proposed](#), for the first time since 1986, to use Article 169 TEC for implementing the joint programming of Member States' research activities. The Council [welcomed](#) the idea. However, in 2001 the Parliament [expressed](#) 'the strongest possible reservations concerning the desired "variable geometry" between the EU and some

Member States, pursuant to Article 169 TEC'. The first Commission [proposal](#) to be based on Article 169 TEC was published in August 2002 for the European and Developing Countries Clinical Trials Partnership. The Council and the Parliament [adopted](#) the decision in June 2003. Five such 'Article 185' TFEU partnerships⁶ currently exist.

In June 2001, the Commission [proposed](#), for the first time since 1986, to use Article 171 TEC for setting up joint undertakings (JU), in order to manage the development phase of the Global Navigation Satellite System programme ('Galileo'). The regulation for the Galileo JU was [adopted](#) in May 2002. A proposal to use Article 171 TEC for supporting the development of the new generation European air traffic management system was [made](#) in 2005 and [effected](#) in 2007. In December 2007, Article 171 TEC was used once again, in order to create JUs to [implement](#) the joint technology initiatives [proposed](#) by the Commission in 2004. There are currently seven JUs running under Article 187. Lastly, the legal framework for the European Research Infrastructure Consortium [regulation](#) of 2009 is also based on Article 171 TEC.

Article 189 TFEU was used for the first time in October 2010 for the adoption of a [regulation](#) establishing the European earth-monitoring programme ('Copernicus').

In 2000, the Council [considered](#) the idea of making use of the provisions of Article 168 TEC (184 TFEU), but has not yet put it into practice. The Parliament has repeatedly requested and the Commission has suggested making use of Article 182(5) for adopting legislation to implement the ERA concept. However, this article has not been used so far due to opposition from the Council.

Main reference

[Chronological overview of the European Treaties](#), EUR-Lex.

Endnotes

¹ The High Authority merged with the Commissions of the EEC and Euratom in 1967, forming a single Commission of the European Communities.

² The European Coal and Steel Community Treaty expired in 2002. For information on the Research Fund for Coal and Steel implemented since 2003, see '[Overview of the EU funds for research and innovation](#)', EPRS, September 2015.

³ More information on the evolution of European research policies, the European Research Area concept and the situation on legislative options to implement ERA can be found in '[The European Research Area](#)', EPRS, March 2016.

⁴ The [Treaty](#) of Nice, signed in 2001 and effective since 2003, made no modifications regarding research.

⁵ 'The European Parliament calls on the Member States to reconsider the principle of unanimity which applies to the Framework Programme and hence, indirectly, to potential supplementary programmes.'

⁶ More information on the 'Article 185' partnerships and the joint undertakings under Article 187 can be found in sections 3.3 and 3.4 respectively of '[Horizon 2020 budget and implementation](#)', EPRS, November 2015.

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