

Marek Rzotkiewicz

Legal Advisor, PhD the author works for the Faculty of Law and Administration at the University Cardinal Stefan Wyszyński in Warsaw, and for the Ministry of Foreign Affairs of the Republic of Poland, <https://orcid.org/0000-0001-8428-7966>

Anna Södersten, Euratom at the Crossroads, Edward Elgar Publishing 2018, 272 pages¹

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The EAEC's (European Atomic Energy Community's) place, legal status and its role in EU law is worth a thousand questions. These encompass legal literature² and EU court case-law.³ They reflect the scepticism about nuclear energy,⁴ but EU law does not offer any answers. Under Article 1 TEU, and

¹ The eBook version is available from eBook vendors, while in print the book can be ordered from the Edward Elgar Publishing website.

² L.J. Droutman, *Nuclear Integration: The failure of Euratom*, University of Michigan, Ann Arbor 1982; A. Bouquet, *How current are Euratom provisions on nuclear supply and ownership in view of the European Union's enlargement?*, 'Nuclear Law Bulletin' 2001, vol. 68, p. 7; J. Grunwald, *Peaceful uses of nuclear energy under Euratom Law*, [in:] J.L. Black-Branch, D. Fleck (eds), 'Nuclear Non-proliferation in International law', vol. III, T.M.C. Asser Press, The Hague 2016; I. Cenevska, *The European Atomic Energy Community in the European Union Context: The Outsider Within*, Brill 2016.

³ *Land de Sarre*, 187/87, Judgment of 22.9.1988, EU:C:1988:439; *Commission/United Kingdom of Great Britain and Northern Ireland (Jason case)*, C-61/03, Judgment of 12.4.2005, EU:C:2005:210; of the latest one may mention *Austria/European Commission*, T-356/15, Judgment of 12.7.2018, EU:T:2018:439.

⁴ Of the current 27 EU Member States, 14 do not use nuclear energy at all, and only two, namely France and Great Britain, which is a former Member State, use it for military purposes.

Article 1 TFEU (Treaty on the Functioning of the European Union), both treaties have the same legal value. They form the foundation for the Union, but what about EAEC and what about TEAEC? Do they have any place in the Union? Do they have any value?

So, what is the place of TEAEC (Treaty on the European Atomic Energy Community) in European Union law – especially if Article A of the original TEU stated that the Communities that form the EU – are not just those that formed the EC, but also include the Communities that applied to the ECSC (European Coal and Steel Community) and to the EAEC? As the ECSC no longer exists, questions about its status make no sense, but that is not the case with the EAEC. Is it continual relevance because the EU's centre of gravity lies in the TFEU and in the TEU? That would certainly justify the absence of the TEAEC in Article 1 TEU, and in Article 1 TFEU. Unfortunately, the reality does not follow this logic. For example, the Council directive 2013/59/EURATOM⁵ takes as its legal basis, Article 31 of the TEAEC – yet excludes Article 168 of the TFEU – despite the fact that a great part of directive 2013/59/EURATOM lies in the field of public health.

The revised book makes an exhaustive and profound legal analysis of the EAEC. It offers many answers for the above questions. The author bases her analysis on European Union law and on international law.

Before the main parts, the author provides a brief history of the EAEC's development, and explains the differences between the TEAEC and the TEU/TFEU. In that part, the author draws attention to the fact that the TEAEC has changed little since 1957. This is not the case with the TEU and TFEU.

The book's Part I sets out an analysis. It is about the links between the TEAEC and the TEU/TFEU. In this part, the author strives to answer many questions, e.g.: Are the EAEC and the EU separate organizations? Is the EAEC a part of the EU? If so, in what sense? What are the links between the EU and the EAEC? What are the links between the TEAEC and the TEU/TFEU?

She finds that the EAEC and the EU share the same legal regime. Moreover, they share the same institutions, and use similar legal instruments (e.g. regulations, directives, decisions). What is more, they

⁵ Council Directive 2013/59/EURATOM of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, OJ L 13 of 17.1.2014, p. 1.

have a common, general budget framework, and there are no rival claims of supremacy between the EAEC and the EU.

Still, some aspects signal the existence of different legal regimes. The TEAEC and the TEU are separate treaties, and the EU and the EAEC have separate legal personalities. They seek different goals, even though the same institutions safeguard them. The EAEC and the EU have different 'ethos', and display different features. Herein, for example, the EU no longer limits itself to commercial goals. It has adopted the Charter of Fundamental Rights and promotes human rights.

On the other hand, the EAEC remains purely functional. It promotes the civil use of atomic energy, not human rights. The EAEC/EU adopt similar legal acts, but apply different procedures. In the EU, the European Parliament acts as a co-legislator. In the EAEC, the European Parliament plays a consultative role.

The next part in the book is Part II, which focuses on substantive issues. Its purpose is to stake out the relationship between the EAEC and the EU. To achieve this, the author compares and contrasts the TEAEC against the TEU/TFEU and she assesses the resemblances between the TEAEC and TEU/TFEU. These concern the type of actions adopted under the TEAEC.

Here, the following questions arise: Are they harmonizing measures? Is the scope of the TEAEC limited? Do the activities under the TEAEC supplement or coordinate Members States' activities? Are there special rules and procedures that apply only to the TEAEC? What is the form of measures taken under the TEAEC? Are they similar or different to measures under the TFEU?

The author analyses 'gaps and overlaps' in the TEAEC against the TFEU. She tries to identify the rules that apply in the TFEU, but not in the TEAEC, and to assess the meaning of these gaps. She asks whether it is possible to replace them with rules from the TFEU? And asks about situations wherein there are no gaps, but the rules in the TEAEC differ? In the following chapters, the author offers information regarding:

- a. the EU's general energy policy,
- b. nuclear industrial development,
- c. the common market in nuclear goods,
- d. radiation protection,
- e. nuclear safety,
- f. nuclear non-proliferation.

Chapter 4 provides a context of the EU's general energy policy. Moreover, it provides the reader with information on the evolution of that

field, and the changes the Lisbon Treaty has made within it. Herein, the EU's general energy policy has encompassed all energy sources, for example, the TFEU regulates gas and oil, and after the expiration of the TECSC, the TFEU now also regulates coal production and use. In contrast, there have been few if any changes in what the TEAEC regulates (atomic energy). What is more, the energy aims of TFEU overlap with the energy objectives of TEAEC. Both promote energy supply, and under TEAEC regulation, all users in the EAEC should receive a regular supply of conventional fuels, mineral ores and nuclear fuels.

Chapter 5 concerns the EAEC's main objective. That is to promote the nuclear industry. The TEAEC emphasizes economic planning and state intervention. Chapter 5 provides the reader with a discussion on the provisions that depart from market rules. It should be noted that the treaty framers put in place such provisions due to the economic situation after WWII. In those years, Europe experienced a common shortage of nuclear materials. Still, the economic situation in Europe has changed, so the TEAEC's main objective has lost its rationale.⁶ Today, some of these provisions are not being applied, or only are done so in a simplistic way. Hence, it is well worth changing these obsolete or framing provisions.

Chapter 6 gives the readers insight into the nuclear common market provisions. Accordingly, the TEAEC's provisions are simplistic to the common market under the TFEU, and there are some gaps in coverage within the TEAEC, as compared to the TFEU. Despite this, it would be unjustified to fill in such gaps by applying the provisions found in the TFEU. For example, Article 106a TEAEC does not mention common market rules as revealed in the TFEU, thus the rules found in the TFEU do not apply here.

Another area where there are such gaps is that of state aid and competition. This area is more problematic than that of the nuclear common market. Article 106a TEAEC does not mention competition or state aid rules, hence, it implies that such rules cannot apply. However, the final answer is not so easy. The absence of rules in Article 106a TFEU is not conclusive, as the Commission makes decisions regarding state aid in Europe's nuclear energy practices.⁷ In consequence, EU level courts

⁶ A. Södersten, *Euratom*, p. 115.

⁷ Commission decision of 8.10.2014 on the aid measure SA.34947 (2013/C) (ex 2013/N) which the United Kingdom is planning to implement for Support to the Hinkley Point C Nuclear Power Station; Commission decision of 6.3.2017 on the measure/aid scheme/state aid SA.38454 – 2015/C (ex 2015/N) which Hungary is planning to

adjudicate disputes in such cases.⁸ So, Article 106a TFEU is not conclusive. For the sake of clarity, the author suggests a Treaty revision.

In Chapter 7, the author finds that the TEAEC offers an alternative legal base to the TFEU. This is the case in the area of environment, public health and protection of workers, but not in the military sphere, where TEAEC does not apply.⁹ These areas in the TEAEC overlap with the TFEU as they share the same objectives. Thus, it is possible to use the TEAEC provisions in place of those of the TFEU. Unfortunately, there is consequence in making such a choice. Under the TEAEC, the European Parliament plays a weaker role, but TEAEC-based provisions provide added value against the TFEU. That is the case in border disputes.

Chapter 8 of the book concerns nuclear safety. This is the most significant area of the TEAEC, yet the TEAEC does not reflect the importance of that area. It does not mention the objectives of nuclear safety. This chapter describes the TEAC's broadening competence in that area.

The EU's nuclear safety regime developed after the Chernobyl accident in 1986, and under the aegis of the IEAE, member states have adopted four conventions.¹⁰ These are, however, international conventions under the IAEA, not under the umbrella of the EAEC. The TEAEC seems outdated in that area. That speaks out for TEAEC revision.

Chapter 9 is the last substantive chapter of the book. It concerns the area of non-proliferation. Herein, the author analyses different legal instruments in that field, but firstly, she presents a brief overview of the international framework, beginning from the NPT.¹¹ The author points out that the TEAEC is not a non-proliferation instrument. Indeed, it is not, even an instrument for military purposes. The TEAEC is about the use of

implement for supporting the development of two new nuclear reactors at Paks II nuclear power station.

⁸ *Austria/European Commission*, T-356/15, Judgment of 12.7.2018, EU:T:2018:439.

⁹ *Commission/United Kingdom of Great Britain and Northern Ireland (Jason case)*, C-61/03, Judgment of 12.4.2005, EU:C:2005:210.

¹⁰ Convention on Early Notification of a Nuclear Accident, Vienna, 26.9.1986; Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, Vienna, 26.9.1986; Convention on Nuclear Safety, Vienna, 17.6.1994; Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 5.9.1997.

¹¹ Treaty on the Non-Proliferation of Nuclear Weapons, London, Moscow and Washington, DC, 1.7.1968.

atomic energy for civil purposes,¹² but it contains provisions that can be applied to prevent nuclear proliferation. The instruments in that area may be built upon diverse legal bases. And in their enacting, they may easily use legal principles established under the TEAEC, the TEU or/and the TFEU. Moreover, they may apply CFSP or non-CFSP provisions.

Conclusions

The revised book offers brilliant legal analysis in the area of the TEAEC. It touches on many issues that reflect the hot questions in legal literature. These concern the very status of the EAEC and its place in EU law, but the text does not answer all possible questions. Rather, it offers some answers that may ignite discussion in the field of civil atomic energy policy. It explains TEAEC and the EAEC and what aspects they differ from EU and TEU/TFEU law, as well as what aspects they overlap. Furthermore, it provides some answers as to when it is possible to employ as a legal basis, both TEAEC and TFEU/TEU, as well as in what aspects procedures for adopting legal acts under the TEAEC and TEU/TFEU differ. Finally, this book explains the legal relationship between the EAEC and TEU. To sum up, this is an exhaustive work that is worth recommending to all those who study EU law.

¹² *Commission/United Kingdom of Great Britain and Northern Ireland (Jason case)*, C-61/03, Judgment of 12.4.2005, EU:C:2005:210.