# The End of the ECSC

**Benedetta Ubertazzi**

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**Keywords**

sovereignty, competences, legal personality, ECSC, law

**Abstract**

This paper studies the end of the ECSC and the events related to it. Particularly, in the silence of the ECSC Treaty, the paper analyses how these questions have been regulated by the creators of the Community system: the Member States. The paper takes into consideration the relevant set of rules which created a bridge, allowing for the survival of the legal relationships based upon the ECSC Treaty in different fields under a regulatory and administrative umbrella created under EC Treaty, and under the general rules established by it. Finally the paper will juridically qualify the transfer of legal relationships between the ECSC and the EC in the international legal order and in the internal system of each member States, with a particular attention to the Italian one.

**Kurzfassung**

Dieser Aufsatz befaßt sich mit dem Ende der EGKS und den damit in Verbindung stehenden Ereignissen. Insbesondere wird analysiert, wie die vorliegende Problematik von den Gründern der EG, den Mitgliedsstaaten, behandelt wird. Außerdem werden die wichtigsten Rechtssätze betrachtet, die eine Verbindung zwischen der EGKS und der EG hestellten und ein Bestehenbleiben der Rechtsbeziehungen ermöglichen, die auf dem EGKS-Vertrag gründen, der in verschiedenen Feldern unter einem regulativen und administrativen Schutz des EG-Vertrages kreiert und unter dessen generellen Regeln erlassen wurde. Abschließend wird in diesem Aufsatz die rechtliche Übertragung von Rechtsbeziehungen zwischen der EGKS und der EG sowohl in Bezug auf die internationale Rechtsordnung als auch in Bezug auf die nationalen Rechtssysteme der einzelnen Mitgliedsstaaten juristisch bewertet, wobei dem italienischen Rechtssystem dabei besondere Beachtung geschenkt wird.

**The author**

***Benedetta Ubertazzi***, Ph.D. candidate in international private and public Law "Alberico Gentili" at the University of Padua, Italy; email: benedettaubertazzi@yahoo.com or info@ubertazzi.it

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## Introduction ↑

On July 23, 2002, the Treaty establishing the ECSC expired.(1) This event is of certain importance, because it represents the lowering of the flag on the first of the European Communities, because it inserts itself into the ongoing reorganization and unification process of the internal structure of the European Union and because it places the problem of the death or not of the international organization into international law.(2) It is therefore worth the effort to synthetically reconstruct in this first part of the article the different rules adopted by the various acts relating to the event.

The institution of the ECSC was established by certain States with the Treaty of Paris (1951).(3) The birth of the ECSC was followed a few years later by the establishment of the EEC and EURATOM with the Treaties of Rome of 1957. The Member States wanted the institutions of the three Communities to be united: they therefore decided, with the 1965 Treaty of Brussels,(4) to exercise through the Commission also the functions first attributed to the High Authority of the ECSC. This Treaty furthermore established that the competent Ministers periodically convene to determine coal and steel policy. Instead, they were born as common the Assembly (which became the European Parliament), the Court of Justice, and the Court of Auditors.(5) The States then redefined the composition and manner of functioning of the united community institutions, first of all with the 1986 Single European Act, successively with the 1992 Treaty of Maastricht, which instituted the European Union, then with the Treaty of Amsterdam, and, finally, with the Treaty announced at Nice in December 2000 and signed in February 2001.(6)

Until this "end", the States operated through the EC, the ECSC, and the EURATOM. The Member States of these three Communities were, nevertheless, the same. The institutions of these organizations functioned based on partially different rules according to the sector of intervention: sector of EC' authority, or respectively of ECSC' and of EURATOM'. The institutions were, nevertheless, the same (save for the Consultative committees of the three Community organizations that remained separate). In synthesis, the three Communities masked the presence of "a single form of aggregation".(7)

According to art.97 of the Treaty establishing the European Coal and Steel Community, "the Treaty is concluded for a period of 50 years of its entry into force".(8) Like all international treaties, that of the ECSC could also be timely extended by its Member States. With the resolutions "of the Council and of the Representatives of the Governments meeting within the Council", of July 20, 1998 and of June 21, 1999,(9) the Member States nevertheless decided not to renew the ECSC Treaty, as they wanted instead to continue operating in the Coal and Steel sectors through the EC.

In any case, the Treaty of ECSC did not explicitly regulate its own end and the events related to it. Here, it is then useful to observe how these questions were regulated by the creators of the Community system: the Member States.

# 1. The Acts upon the « end » of the ECSC

## 1.1. Financial resources and assets

The budget of the ECSC originally regarded the revenues and expenditures of the administration of its institutions. These balance sheet items constituted the "administrative budget" of the ECSC. The budget of the ECSC also regarded some other specific revenues and expenditures that constituted the "operating budget" of this Community.

In 1965, the Treaty of Brussels(10) created a single budget for all revenues and expenditures of the administration of the ECSC, EEC and EURATOM. This budget "substituted" the respective administrative budgets of the ECSC, EC, and EURATOM(11) and was named the "budget of the European Communities" in 1965(12) and the budget of the European Union in 1992.(13) It contained also the revenues and expenditures of the ECSC until its "end". The operating budget of the ECSC remained instead in the ECSC.(14)

At the expiry of the ECSC Treaty certain financial operations "will [...] still need to be carried out, involving both revenue and expenditure and resulting from the implementation of the ECSC operating budgets for earlier years and ECSC borrowing and lending activities".(15) Hence, a Protocol "on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel" was annexed to the Treaty of Nice.(16) Then were a decision of the "Representatives of the Governments of the Member States, meeting within the Council" of the European Union on February 27, 2002,(17) and three decisions of the Council of the European Union of February 1, 2003, 2003/76/EC,(18) 2003/77/EC,(19) and 2003/78/EC.(20)

The aforementioned decision of February 27, 2002 was adopted in expectation of the possibility that the Treaty of Nice and, therefore, the annexed ECSC Protocol, would not have entered into force before the expiry of the ECSC Treaty and, consequently, the decision had a transitory function. This decision established particularly that the existing assets and liabilities on July 23, 2002 "shall, as from 24 July 2002, be managed by the Commission on behalf of the Member States" and that the net worth of these assets and liabilities resulting from the liquidation would constitute a separate fund, denominated as the "Assets of the Research Fund for Coal and Steel". This fund was inscribed into the general budget of the EU, as definitively adopted by the Parliament in the declaration of December 19, 2002, 2003/94/EC EURATOM,(21) and is managed by the Commission according to the rules of the EC Treaty, and of the February 1, 2003 decisions of the Council of the European Union mentioned above. The scope of this fund is to stimulate research in sectors related to coal and steel industry.

More specifically, the first of the February 1, 2003 decisions establishes the measures necessary for the implementation of the ECSC Protocol. The second decision, 2003/77/EC, lays down multiannual financial guidelines for managing the assets of the ECSC in liquidation and, on completion of the liquidation, the assets of the Research Fund for Coal and Steel. As for decision 2003/78/EC, it lays down the multiannual technical guidelines for the Research fund for Coal and Steel.

## 1.2. The personnel and components of the Consultative Committee

At the expiry of the Treaty establishing the ECSC, there no longer existed "employees" of the ECSC, because those assigned to its institutions were progressively transferred to the single community apparatus, as created by the Merger Treaty.

On the other hand, there was still in existence the Consultative Committee of the ECSC, which was composed of 108 members. The destiny of this Committee needed to be decided".(22) The October 23, 2002 decision of the EC Economic and Social Committee set up the "Consultative Commission on Industrial Change" (CCMI)(23), made up of 24 Economic and Social Committee members and of 30 "external delegates" coming initially from socio-occupational organizations in the coal and steel sector and progressively extended to other sectors affected by the modernisation of the economy and to all related interests.(24)

## 1.3. International agreements

### 1.3.1. The survival of the international agreements of the ECSC

The ECSC concluded with third States various "pure" and "mixed" international agreements,(25) none of which provide for the eventuality of the expiry of the ECSC Treaty.(26)

The Representatives of the Governments of the Member States meeting within the Council and the Council respectively adopted the decisions 2002/595/EC(27) and 2002/596/EC,(28) establishing that the rights and obligations arising under the international agreements concluded by the ECSC shall be "taken over"(29) by the EC.(30) Those decisions created a bridge that allowed the agreements concluded through the ECSC with third States to survive with the EC "hat", within the single EU apparatus.

### 1.3.2. Subjective changes arising from the expiry of the ECSC ↑

This survival regards the pure agreements and the mixed ones. The mixed agreements are concluded with third-party states by the Member States acting as one and acting through the ECSC/EU apparatus. Naturally, the parties of these agreements concluded by third-party States and by Member States *uti singoli* remain the same despite of the expiry of the ECSC Treaty. The parties of these agreements concluded by third-party States and by Member States through the apparatus of the EU similarly remain the same, although they avail themselves of the name of the EC, rather than that of the ECSC. (31)

### 1.3.3. Substantial and procedural changes arising from the expiry of the ECSC ↑

Regarding the international agreements, the substantive and procedural regime of the ECSC was at least formally different from that of the EC. Anyway the community practice overcame those differences. It followed that in practical terms, the substantial and procedural changes arising from the expiry of the ECSC Treaty are likely to be limited.

First of all, art. 6, par. 2 of the ECSC Treaty expressly established the principle of symmetry between the internal and external competence of the ECSC. The Treaty establishing the EEC (now EC) remained instead silent on the point and established the external competence of the European Economic Community only in specific sectors. The prevailing opinion, therefore, maintained that the external competence of the European Economic Community was limited to this specific sector. (32)

Successive developments in the practice and in the Community case law have, nevertheless, consecrated the principle of symmetry between internal and external competence also in the EC. (33)

Another difference between the external competence of the ECSC and that of the EC concerned the commercial policy: the ECSC Treaty, "even without excluding the possibility that certain commercial agreements were to be concluded directly by the Community, left intact the competence of the Member States to stipulate" *uti singuli*. (34)

Article 71 par. 1 of the Treaty of the ECSC in fact reserved to the Member States all the powers in matters of commercial policy not directly or indirectly attributed to the community institutions by the Treaty itself, as such allowing for exclusive State management of relations with third countries in respect to community direction and supervision. Conversely, according to art.133 TCE (ex.133) and the relevant case law in the field, the competence of the EC in matters of common commercial policy is exclusive. (35)

In reality, the Court limited the significance of art.71 if the ECSC Treaty with the opinion of November 11, 1975, 1/75, recognizing the necessity to harmonize Community commercial relations in the International arena. (36)

For its part, the general practice of the community has been accomplished by "juridical acrobatics"(37) and as a result the actions of the single Member States were frequently substituted by decisions of the Representatives of the Governments of the Member States meeting within the Council. (38)

On the other hand, the exclusive competence of the Member States in relations with third States was substantially reduced, and the Member States and the ECSC most often formed mixed international agreements. (39) As well, the ECSC Treaty lacked an ad hoc rule concerning the agreements between the Community and other international organizations(40), differently from the EC, which has the power to establish opportune associations with any international organization (art.310 EC Treaty).

In reality, the ECSC established various associations with other international organizations, and, as such, the general community practice overcame also this difference, allowing the affirmation that the "ability" of the three communities "to establish international connections" with other organizations was identical. (41)

Moreover, the ECSC Treaty did not contain a rule similar to actual art.300, last par. TCE (ex art. 228, par. 2) according to which the agreements concluded through the EC bound the institutions of the Community and the Member States. Instead, it contained art. 86 ECSC Treaty, which specifically underlined the obligation of Member States: "to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations resulting from decisions and recommendations of the institutions of the Community and to facilitate the performance of the Community tasks" and "to refrain from any measures incompatible with the common market". (42)

Art.86 TECSC consequently allowed applying the doctrinal and case law contributions regarding the agreements concluded by the EC to those concluded by the ECSC. (43) According to those contributions, the agreements concluded by the EC are automatically efficacious in the community legal system, bounding the Member States and the institutions to implement their dispositions(44), and producing direct effects, at least when they were comprised of clear, precise, and unconditioned orders. (45)

Finally, there remains a difference in the procedure by which the external competencies of the ECSC and those of the EC are exercised. (46) After the expiry of the ECSC Treaty, the procedure of the latter, by the express will of the Member States of the EU applies to the coal and steel sector as well.

## 1.4. Competition law

According to the dominant opinion, the acts adopted by an international organization expire in the moment of its extinguishment.(47) The binding acts of the ECSC would, therefore, have expired on July 23, 2002. The Italian government accepted this thesis with the action against the Commission of the European Community brought before the Court of Justice on 22 May 2003, in which it asked the Court of Justice to declare that following the expiration of the ECSC Treaty, "the powers and competence of the Commission of the European Communities [...] in the sectors assigned under the ECSC Treaty to the High Authority have lapsed with the result that any measure adopted or to be adopted by it in those sectors which have not formed the subject-matter of a new agreement by the signatory States, is to be deemed null and void and of no effect."(48) Nevertheless, the Court held that it was without jurisdiction to hear the action and, consequently, rejected it with the December 9, 2003 ordinance, not resolving therefore the problem of procedural continuity.(49)

In reality, the Member States had decided to extend the tasks and the substantial and procedural EC competition rules to the coal and steel industry. The Council of the European Union and the Commission adopted some acts to regulate this extension.

The June 3, 2002 Council regulation 963/2002/EC "laying down transitional provisions concerning anti-dumping and anti-subsidy measures adopted pursuant to Commission decisions No. 2277/96/ECSC and No. 1889/98/ECSC as well as pending anti-dumping and anti-subsidy investigations, complaints, and applications pursuant to those decisions", established that the pending anti-dumping measures, investigations, and complaints after July 7, 2002(50) were to be regulated by the December 22, 1995, Council regulation 384/96/EC on protection against dumped imports from countries not members to the EC.(51) The July 23, 2002, Council regulation 1407/2002/EC,(52) for its part, regulated the granting of State aid to the coal industry. Finally, the June 3, 2002, Council regulation 963/2002/EC set out that the pending measures, investigations, and applications in the field of State aid to the steel industry were to be regulated through the October 6, 1997, Council regulation 2026/97 on the protection against subsidized imports from countries not members of the European Community.(53)

Particularly significant in the field of competition and of State aid is also the June 18, 2002, Commission communication concerning certain aspects of the treatment of competition cases resulting from the expiry of the ECSC Treaty(54). As it is well known the communications of the Commission are acts of soft law with binding force only vis-à-vis its author, the Commission: in any case in the field of competition and of State aid, the Commission has a discretional power, and, consequently, its communications have a decisive value. The June 18, 2002, Commission communication is relevant also because it has inspired the December 17, 2002, decision of the Commission which sanctioned for a total value of 85 million euro certain Italian firms and which is at time being under discussion before the Court of First Instance(55). It is therefore worth the effort to synthetically reconstruct the relevant content of the June 18, 2002, Commission communication.

This communication recognized that, as a consequence of the will of the Member States, as manifested through international agreements and Community acts adopted by virtue of them,(56) the EC' substantive and procedural rules in the field of antirust, merger control and State aid control apply to the coal and steel industry as well, extending the EC Treaty to the coal and steel sector. Therefore, according to point 1 of this communication, there will be a continuity of the procedures eventually initiated under the ambit of the application of the ECSC Treaty, which "will be subject to the rules of the EC Treaty as well as the procedural rules and other secondary legislation derived from the EC Treaty."(57) About this transitional regime, point 31 of the communication is important: (58) according to this point when the Commission identifies an infringement in a field covered by the ECSC Treaty, "the substantive law applicable will be, irrespective of when such application takes place, the law in force at the time when the facts constituting the infringement occurred. In any event, as regards procedure, the law applicable after the expiry of the ECSC Treaty, will be the EC law."

It remains that the principles that underlie the competition rules of the ECSC and the EC Treaties are "similar",(59) because arts.81 and 82 of the EC Treaty are "clearly inspired"(60) by the corresponding arts.65 and 66, par. 7, of the ECSC Treaty. Furthermore, practices under the two Treaties have been converging "for many years". It follows that "in practical terms, the changes, both substantial and procedural, arising from the expiry of the ECSC Treaty are likely to be limited in scope."(61)

One of the changes of major relevance is the recognition of the national competition authorities and national courts jurisdiction to apply the European antitrust rules to the coal and steel sector.(62) The Commission retained in fact exclusive competence in the application of arts.65 and 66 of the ECSC Treaty.(63) As a consequence, the Commission and the national authorities and courts actually have parallel powers to apply Community competition law in the coal and steel sector as well.(64)

Moreover, arts.65 and 66, par.7 of the ECSC Treaty did not include any condition relating to effect on trade, in contrast to arts.81 and 82 of the EC Treaty, which apply only if trade between Member States is affected.(65) "Thus, where agreements or practices restricting competition, or an abuse of dominant position, do not affect trade between Member States, the national competition authorities and the national courts will, from 24 July 2002, be authorized to apply their national competition rules in the field coal and steel".(66)

The aforementioned set of rules has created a bridge. This bridge allowed for the survival of the legal relationships based upon the ECSC Treaty in the field of competition under a regulatory and administrative umbrella created under EC Treaty, and under the general competition rules established by it.

### 1.5. The continuity of the procedures in intertemporal law

The community case law has now the opportunity to resolve the problem of the continuity of the procedures that was brought before the Court of Justice on 22 May 2003 by the Italian government (67). In fact, pending before the Court of First Instance are various cases(68) initiated by actions brought before the Court by a group of Italian coal and steel companies sanctioned, for a total value of 85 million euro, by a December 17, 2002, decision,(69) adopted by the Commission in its fulfilment of the aforementioned June 18, 2002, communication.(70) The appellants request the overturning of the contested decision because it was in their view adopted by the Commission without competence to issue decisions based on art. 65 of the ECSC Treaty after its expiry in the absence of the express will of the Member States in that sense.

In reality the decision in question applies the transitional rules established by the June 18, 2002 Commission communication(71), which was adopted by virtue of the Member States will to preserve the survival in the EC/EU of every legal relationship regulated by the ECSC Treaty, the will that manifested itself in international agreements and in community acts adopted by virtue of them. It therefore seems devoid of foundation the assertion of the Italian companies, according to which there was lacking an agreement between the Member States allowing the Commission's intervention to guarantee the continuity of procedures. As a consequence, it is highly probable that the Court of First Instance will decide the cases before it by affirming the validity of the contested decision that respects the June 18, 2002, decision, which respects the will of the Member States.

## 2. The apparent death of the ECSC in international law

### 2.1. The transfer of tasks between international organizations according to international law

#### 2.1.1. International conventions and customs

Until now, recognition has been made of the rules specifically adopted to regulate the EC/ESCS "succession".(72) In the following paragraphs we will demonstrate that the transfer of legal

relationships between the ECSC and the EC does not constitute a true "succession" between international organizations in the international legal system, but a mere reorganization of the single EU apparatus.

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Above all, one must ask himself if there are certain international conventions or customs regarding the transfer of legal relationships between international organizations and, if so, if those rules apply to the event here in question.

Regarding international conventions, the rules of the 1969 Vienna Convention on the Law of Treaties that regulate the termination of the existence of international treaties apply also to the treaties establishing international organizations, but they do not regulate the transfer of legal relationships between those organization.(73) There are no other specific international conventions on the point. According to art.74 par.2 of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, its provisions "shall not prejudge any question that may arise in regard to a treaty from [...] the termination of the existence of the organization". In addition, the 1978 Vienna Convention on Succession of States in respect of Treaties did not enter into force.(74)

As far as international customary law is concerned, the creators of the events related to the existence of an international organization are its Member States and consequently those events are always different one to another and are impossible to codify.(75)

### 2.1.2. The constitutionalist theory ↑

Conversely, according to several authors, the treaties establishing certain international organizations modify the decentralized structure of international legal system and institute organizations with constitutional functions and superior powers over the State.(76) This theory, denominated "constitutionalist", wants the Member States to be hierarchically subordinate to international organizations, which could extinguish themselves and succeed each other in the international legal system through mere unilateral acts of their own institutions(77) or even automatically.(78)

### 2.1.3. The opposing thesis, rooted in a contractual conception of international organizations ↑

According to an opposing thesis, rooted in a contractual conception of international organizations and in a dualistic conception of the relationship between international law and internal law, an international organization is, instead, only an apparatus with the international personality limited to the conjoined exercise of the "powers, faculties, or liberties" of its Member States "that the general or conventional international law, in any case, confers them", and the survival of the organizations "depends on the Member States enduring will to continue to sustain and utilize it".(79) According to this thesis, international organizations are not hierarchically sopraordinate to their own Member States,(80) but these States are the only creators of the events in which the organizations are involved. Therefore, the termination of the existence of an international organization always constitutes a realization of the will of the Member States that could be expressed in the treaty establishing the organization in question, as in the case of the ECSC, or in an agreement concluded in another form, as in the case of the League of Nations.

### 2.1.4. The UN succession to the League of Nations ↑

Favourable to the succession of international organizations by mere unilateral acts of their institutions, regarding specifically the UN succession to the League of Nations was Judge Read. (81)

In reality, the Secretary General of the League of Nations was fully conscious of the fact that the Assembly of the Organization would only have been able to construct a *forum* of discussion between the Member States, because « les pouvoirs nécessaires » to the dissolution of the Organization and to its succession « devant être obtenus des gouvernements ».(82)

The Secretary General had therefore sent a telegram to the Member States averting them of the necessity to present the question of the termination of the existence of the Organization to the Assembly and inviting them to «accuser réception de la présente communication par télégramme contenant éventuellement les observations qu'ils désireraient présenter. [...] Au cas où je ne recevrais pas d'observations avant le 5 octobre, l'acceptation sera considérée acquise». The Member States had not objected and the Assembly of the League of Nations met deliberately at Geneva from the 8th to the 18th of April 1946, « for the purpose of going out of existence and transferring its responsibilities and assets to the United Nations ». (83)

The Member States in Assembly then unanimously approved the resolution of dissolution of the League of Nations and of the devolution of its tasks to the UN, which was adopted in Geneva April 18. 1946. (84) The Member States that were not present in the Assembly at the moment of the adoption of this resolution did not raise a single objection. The unanimous vote of the Member States of the League of Nations present in Assembly April 18, 1946 and the successive acquiescent behaviour of those who were not present at the moment of the vote therefore constituted at close look a tacit agreement between the Member States. (85)

## 2.2. The end of the ECSC as internal reorganization of the single EU apparatus ↑

According to the above mentioned constitutionalist theory, the ECSC would have been one of the organizations hierarchically sopraordinate to its own Member States, that would have extinguished itself in the international legal order on July 23, 2002, and that would have transferred goods, services, and functions to the EC. Therefore, this transfer would have constituted a succession between two international organizations. This succession would have taken place through mere unilateral acts of the community institutions or even automatically.

According to the here accepted opposing contractualistic theory the end of an international organization instead only constitutes the realization of the will of its own Member States and takes place according to the precise instructions of those States, manifested in the treaty establishing the organization, in the acts adopted by virtue of it, as in the case of the ECSC, or in the agreements concluded in another form, as for the United Nations. Regarding, then, the "end" of the ECSC, the situation is even more complicated. The treaties establishing international organizations have both an organizational dimension and a substantive dimension. From the organizational point of view, the institutions of the EC and the ECSC were identical. From the substantive point of view, the EC Treaty instituted and regulated a general market. The ECSC Treaty regulated only the coal and steel market. The ECSC Treaty was therefore special with respect to that of the EC.

The "end" of the ECSC determined a termination of the existence of the Treaty establishing the organization and of the special regime that it founded, and a consequent expansion of the general regime regulated by the EC Treaty. The Member States had, in other words, decided to continue to operate in the coal and steel sector according to the substantive and procedural rules indicated for all other sectors by the EC Treaty, and through the community institutions that were already unified. Consequently, on July 23, 2002, only the ECSC Treaty extinguished itself, not the community organization that the Treaty established, which, instead, "survived" in the EC, into the apparatus of the EU.

The three European Communities, in other words, constituted the different titles of the single apparatus of the European Union in its activities,(86) the integrated parts of the single subject with international personality, that is the European Union:(87) and the end of the ECSC is not a true "death" of an international organization in international law, but only a reorganization of the EU' apparatus.

To sum, the transfer of the legal relationships from the ECSC to the EC did not constitute a succession between those organizations, but realized the will of the Member States to intervene in the coal and steel field through the institutions of the EC and, always, within the EU apparatus, that already occupied itself with the coal and steel sector, albeit while wearing another "hat". This transfer was regulated by agreements between the Member States of the same organization, adopted at the moment of the institution of the ECSC and at the moment of its "end", and by community acts adopted by virtue of them and specifying them.(88)

## 2.3. Conclusive remarks on the destination of juridical international and community legal relationships involved in the end of the ECSC Treaty

As it has been seen, the survival of the existing legal relationships based on the ECSC Treaty under the EC Treaty was regulated primarily by several agreements between the Member States of the EU: the ECSC Treaty itself (that prescribed the date of termination of the existence of the Treaty) and the Protocol annexed to the Treaty of Nice.

Furthermore, there have been several acts of the representatives of the governments of the Member States meeting within the Council of the European Union on the termination of the existence of the ECSC Treaty in general and, added to these acts, two decisions of the same representatives of the governments of the Member States meeting within the Council — on financial resources and on the ECSC' international treaties respectively. According to the prevailing opinion, these decisions constitute real agreements between the Member States, albeit in a simplified form.(89)

There have been also: three decisions of the Council of the European Union on financial resources, a resolution of the Consultative Committee of the ECSC and a decision of the European Economic and Social Committee on the institution of the Consultative Commission on Industrial Change, a decision of the Council of the European Union, two communications of the Commission and three regulations of the Council of the EU on the application of EC' competition rules to the coal and steel sector.

As it has been said, the Protocol annexed to the Treaty of Nice and the decisions of the representatives of the governments of the Member States meeting within the Council concerning the termination of the existence of the ECSC declared necessary the adoption of additional agreements to clarify and specify the obligations established by them. These additional agreements relating to the transition from the ECSC regime to that of the EC obviously could have been stipulated in different forms. The Member States decided to act through the EU apparatus, adopting the aforementioned acts of the institutions of the EU by virtue of the agreements between Member States (constituted, to sum, by the Treaty establishing the ECSC, by the ECSC Protocol, and by the decisions of the representatives of the governments of the Member States meeting within the Council).(90)

At this point, one must remember that the EU institutions were the same, notwithstanding the different titles under which they operated when acting as the ECSC or, respectively, the EC. They constituted part of the single EU apparatus, utilized at different times by the Member States in order to operate jointly and in concert with the organization. It is not important then the different title, ECSC or EC, utilized by the community institutions to adopt these acts. These acts constituted in fact in any case acts of the single EU apparatus.

The agreements and the acts in question explicitly regulated the transition of every legal relationship from the ECSC regime to that of the EC. In any case, these acts fulfil the will of the States to preserve the continuation, through the EC, within the single apparatus of the EU, of any legal relationship regulated by the ECSC Treaty: for this reason, the goods, services, and functions regulated by the ECSC Treaty and eventually "forgotten" are, in any case, subject to the EC Treaty.

Incidentally, it should be noted that the scheme of the normative packages has been retained by the Treaty establishing a Constitution for Europe. In fact, article IV-3 of this Treaty prescribes that the "European Union established by this Treaty shall be the successor to the European Union established by the Treaty on European Union and to the European Community".(91) In other words, the international legal system will not perceive the termination of the existence of the EC and the succession of the EU to EC, but merely an internal reorganization of the EU apparatus and a redefinition of its tasks in the relationships between Member States and between Member States and third States. Naturally, this symmetry could reveal itself only to be in appearance if the nature of the European Union that will come out of the entrance into force and application of the Treaty establishing a Constitution for Europe will result substantially different from the current one.

# 3. The end of the ECSC in internal law

## 3.1. The events of the ECSC in internal law

Until now, it has been noted that the transfer of legal relationships between the ECSC and the EC does not constitute a true "succession" between international organizations in the international legal system, but a mere reorganization of the single EU apparatus. We will in the following paragraphs demonstrate that a true succession occurred in the internal Italian legal system between the internal legal entities ECSC and EC.

Since the moment of its end the ECSC operated as a legal person in the internal legal system of the Member States, among them that of the Italian.(92) The third paragraph of Art.6 of the Treaty establishing the ECSC prescribed, in fact, that "in each of the Member States, the Community shall [have] enjoyed the most extensive legal capacity accorded to legal persons constituted in that State; it may [have], in particular, acquire[d] and dispose[d] of movable and immovable property and [may have been] a party to legal proceedings". Therefore, the ECSC Treaty and its art.6.3 founded an express and specific obligation on the Member States to attribute to an international organization the legal capacity in internal law.(93) Art.6 of the ECSC Treaty furthermore constituted a, not peremptory, but an exemplary rule on the manifestations of the legal capacity of an international organizations.(94)

In the Italian legal system, the ECSC acquired its legal capacity from the moment in which Italy executed its institutional Treaty.(95) Whether the legal capacity of the ECSC was public or private in nature is under discussion.

According to some authors, the position of the Communities in international law would be different from their position in the internal legal systems of the Member States. These authors sustain that the Communities pursue public aims at the international level by not in the internal legal systems of the Member States,(96) and consequently the ECSC would only have had a private legal capacity in the internal system of its Member States.

The authors that sustain this thesis recognize nevertheless that as a consequence of the nature of the ECSC as an international organism its legal capacity could possess special characteristics, with respect to internal legal entities.(97) The special nature of the ECSC' legal capacity would have determined an analogy between the ECSC and public Italian entities in some private legal relationships among which, those of employment or those for which the Italian State would have adopted apposite rules of assimilation.(98) This analogy could allow the legal operator to apply to the ECSC the rules governing legal relationships of public Italian entities, "appropriate to reflect the analogy of the situation".(99) This application would not have mutated the private nature of the internal legal capacity of the ECSC.

In reality, any legal entity with public goals has, in order to achieve them, the need of a legal capacity of public law that would allow it some privileges similar to those of internal public entities. (100) The Member States decided to work through the ECSC to pursue public goals. This consideration confirms the opinion that the legal capacity attributed by the State to the community organization *de qua* was similar to that of internal public entities — in other words, was a legal capacity of public law.(101) Additionally, the public nature of the capacity of the ECSC seems confirmed by the rules that extend to the ECSC some privileges of the internal public entities.

The public legal capacity of the ECSC determined the automatic extension to this organization of the internal regulations on public entities, even in the absence of specific dispositions in that sense. (102)

Within this regulatory scheme, private legal relationships were represented as well. The ECSC therefore had a capacity to act also in legal relationships of a private nature within the Italian State, and, as such, it also had contractual, patrimonial, and procedural capacity.(103)