

The European Union and Member State  
Territories: A New Legal Framework Under  
the EU Treaties

Fiona Murray

The European Union and  
Member State Territories:  
A New Legal Framework  
Under the EU Treaties

T · M · C · A S S E R P R E S S

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*For my husband, Barry O'Halpin*

# Foreword

Dr. Fiona Murray's book on *The European Union and Member State Territories* should be praised as a major contribution in the English language literature to an important topic which had been almost only covered until 2011 by literature in French or Spanish. It is worthwhile quoting the preface that has been written for the only other English language book dealing with this topic (Dimitry Kochenov, *EU Law of the Overseas*, 2011) by the Honourable Sir Richard Plender, Justice of the High Court of England and Wales, to which he was appointed in 2007, as it also applies to Dr. Murray's work:

“The study of European Union (EU) law has become too Eurocentric. Essays on inter-personal and commercial exchanges within the EU abound, but rarely do they consider the impact of the Union's laws in non-European territories. Even the treaty-making capacity of the Union is more frequently examined from a constitutional than from an international perspective. This is much to the disadvantage of those who have to address the EU's external impact: a disadvantage that I experienced at first hand, when required to deal with the status of the Faeroe Islands [...] and in my years as legal adviser to the States (parliament) of the Bailiwick of Jersey”.

Differently from Kochenov's book, which is a collection of essays by some twenty leading experts—mainly academics—Dr. Murray's book is the work of a single author, who researched her topic with passion during the years which led to her being awarded the grade of Ph.D at the Erasmus university, Rotterdam. The book is proposing a thesis, namely that the clauses of the EU treaties dealing with the differentiated statuses of Member States' Territories which are not part of mainland Europe or the British Isles (Channel Islands and Isle of Man excepted) are not adapted to the present and future situation and should be redrafted. Arguing a thesis does not necessarily mean developing abstract reasoning: on the contrary, Dr. Murray's book is firmly rooted in reality.

The major contribution of Dr. Murray's book, which should open it a large readership, is the extremely precise and detailed study of the different EU Member States' Territories which enjoy a differentiated status: European territories for whose external relations a Member State is responsible, EU outermost regions which are non-European territories forming part of France, Portugal and Spain,

and the overseas countries and territories associated with the union, which are non-European territories constitutionally bound to Denmark, France, the Netherlands, or the United Kingdom.

Far from being a dull legal work, Dr. Murray's book is therefore also an invitation to travel around the world, which the reader will certainly enjoy.

Jacques Ziller, Ph.D.

Professor of EU law at the University of Pavia, formerly professor at the European University Institute (Florence), at Sorbonne University (Paris) and at the University of the French West Indies and Guyana

# Preface

During the 20 years I have been working in the area of EU law and policy, a considerable part of this experience has been devoted to advising and assisting EU Member State territories, both Governments and private sector. In working with these territories from an EU perspective, a number of factors have struck me, notably:

- The disparate nature of their relationships with the EU; whilst some territories chose to join the EU, others opted to remain outside; all, however, had negotiated derogations or special arrangements from the TEC
- The absence of any coherent overall EU policy in relation to these territories, despite their many broad similarities
- The piecemeal nature of their evolution *vis à vis* the EU.

In general, in my work for these territories, it was not always easy to find source materials that would, for example, clarify the precise nature of their legal relations with the EU or facilitate comparisons between territories or groups of territories in the context of the EU.

It was in order to address the dearth of source materials on EU Member State Territories as a whole that I wrote and published a book in 2004 on “*EU and Member State Territories: The Special Relationship under Community Law*”.<sup>1</sup> The then European Commissioner for Development, Poul Nielsen acknowledged in a foreword to the book the “information deficit” on the subject.

Having written what was intended to be a straightforward reference book about the territories, I then began to consider the Treaty’s basic legal framework for relations between Member State Territories and the EU as set out (until the recent entry into force of the Lisbon Treaty) in Article 299 TEC. Once I had reviewed the individual relations with the EU particularly in the context of their evolution since 1957, I observed that Article 299 seemed somewhat incongruous as a broad legal framework for relations between Member States Territories and the EU, due

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<sup>1</sup> Murray 2004.

particularly to the many developments that had taken place since the TEC was signed in 1957 which no longer seemed to fit appropriately into the current Article 299 framework. Therefore, I decided to investigate further:

- The origins of Article 299 as a legal framework for relations between the EU and territories as drafted in 1957
- The various developments that have taken place since 1957, including Member State accessions, the addition of new territories and the departure of former territories with independence, the emergence of new groups or associations of territories, the impact of the changing political and economic setting as compared to 1957, Treaty amendments including those that resulted from the Lisbon Treaty.
- On the basis of the first two elements above, to re-examine Article 299 and the current EU Treaties framework for EU/Member State territories and to argue the case for and propose a new model Treaties framework for relations between the EU and the relevant Member State Territories.

Many people have helped me in my research for this book, to whom I extend a general heartfelt thank you. I would like to extend my particular gratitude, however, to the following: to Professor Dr. Jaap W. De Zwaan for his unfailing patience, kindness, commitment and incisive comment throughout the period of research for this book. It has been a pleasure to know and to work with you. To Associate professor Dr. Flora Goudappel, thank you for generously giving of your time and experience. To Professor Dr. Jacques Ziller for his expert and helpful comments and especially for graciously agreeing to prepare the foreword to this book. To my publishers, particularly Philip van Tongeren, Marjolijn Bastiaans and Antoinette Wessels for their kind, patient and experienced guidance in the editing of this book. To my three sons, Fionn, Oisín and Áengus who provided tireless love, inspiration and encouragement to keep me going. And, last but not least, to my husband, Barry, who has supported and encouraged me unceasingly in this project and to whom I dedicate this work. I love you and thank you.

## Reference

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# Abbreviations

|          |   |
|----------|---|
| ACP      | African, Caribbean and Pacific States   |
| CAP      | Common Agricultural Policy  |
| CCP      | Common Commercial Policy  |
| CCT      | Common Customs Tariff   |
| CFI      | European Court of First Instance  |
| DOMS     | Départements d'outre-mer (French Overseas Departments)                                    |
| ECJ      | European Court of Justice   |
| ECSC     | European Coal and Steel Community   |
| EDF      | European Development Fund   |
| EPA      | European Partnership Agreements   |
| ERDF     | European Regional Development Fund  |
| ESF      | European Social Fund  |
| EU       | European Union  |
| EUR      | Euro  |
| EURATOM  | European Atomic Energy Treaty   |
| FPA      | Fisheries Partnership Agreement   |
| GDP      | Gross Domestic Product  |
| OCTs     | Overseas Countries and Territories  |
| OJ       | Official Journal  |
| OP       | Operational Programme   |
| POSEIDOM | Programmes of options specific to the remote and insular nature of the DOMs               |
| POSEICAN | Programmes of options specific to the remote and insular nature of the Canary Islands     |
| POSEIMA  | Programmes of options specific to the remote and insular nature of Madeira and the Azores |
| R&D      | Research and Development  |
| SBAs     | Sovereign Base Areas of the UK in Cyprus  |
| TCE      | Treaty establishing a Constitution for Europe   |
| TEC      | Treaty on the European Community  |
| TEU      | Treaty on the European Union  |

|      |   |
|------|---|
| TFEU | Treaty on the Functioning of the European Union       |
| TOMs | Territoires d'outre mer (French Overseas Territories) |
| VAT  | Value Added Tax                                       |
| UK   | United Kingdom  |