Chapter 2
General Introduction to Original Art 227 TEC

Abstract This chapter provides a general overview of the original version of Article 227 TEC, as included in the 1957 text of the Treaty. The background to and reasons for the Article, relevant territories and general aims of the provision are examined. A brief comparison with the corresponding provisions of the ECSC and Euratom Treaties is also given.

Box 2.1 1957 TEC—Article 227 (original version)

(Part Six: General and Final Provisions)

Article 227:

1. This Treaty shall apply to the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands.

2. With regard to Algeria and the French overseas departments, the general and particular provisions of this Treaty relating to:
   - the free movement of goods;
   - agriculture, save for Article 40(4);
   - the liberalisation of services;
   - the rules of competition;
   - the protective measures provided for in Articles 108, 109 and 226;
   - the institutions,
   Shall apply as soon as this Treaty enters into force.

The conditions under which the other provisions of this Treaty are to apply shall be determined, within two years of the entry into force of this Treaty, by decisions of the Council, acting unanimously on a proposal from the Commission.
The institutions of the Community will, within the framework of the procedures provided for in this Treaty, in particular Article 226, take care that the economic and social development of these areas is made possible.

3. The special arrangements for association set out in Part Four of this Treaty shall apply to the overseas countries and territories listed in Annex IV to this Treaty.

4. The provisions of this Treaty shall apply to the European territories for whose external relations a Member State is responsible.

2.1 Introduction to Article 227 TEC (1957)

The original version of Article 299, of the TEC, signed in 1957 by the first 6 Member States, was set out in Part Six of the Treaty headed ‘General and Final Provisions’. Although not specifically entitled as such, Article 227 was intended to set out in the broadest terms the territorial scope of the Treaty. In essence, Article 227 provided that the Treaty applied to the 6 original Member States (in subparagraph (1)) and then addressed, in the remaining three subparagraphs, the ‘exceptions’ to this general principle, namely,

– (subparagraph (2)): the French overseas dependencies, which were an integral part of France i.e. Algeria and the French DOMs,
– (subparagraph (3)): the overseas countries and territories including the French TOMs and other Member States territories which had a large degree of autonomy and the specifics of whose relationship with the EU was defined in Part Four of the Treaty,
– (subparagraph (4)): those European territories for whose external relations a Member State is responsible—as we will see, when the Treaty was signed, no European territories fell within this provision.

2.2 Pre 1957: Political and Economic Backdrop

The origins of the EU lie in the Second World War in the aftermath of which Europeans were determined to take collaborative action to try to prevent a recurrence of such conflict. In addition, the 1950s was dominated by the cold war between east and west. The creation of the Council of Europe in 1949 was a first

1 See Annex II infra, Article 227 TEC 1957.
step towards cooperation, the broad aim of which was to defend human rights, promote democracy and the rule of law.

Six European countries, however, wanted to go further and in April 1951 the six original members of the EU—France, Germany, Italy, Luxembourg, Belgium and the Netherlands—signed a treaty to run their coal and steel industries under common management. In so doing, the aim was to ensure that none of the members could make their own weapons of war to turn against the other. In March 1957, building on the success of the Coal and Steel Treaty, the six countries created a ‘European Economic Community’ or ‘common market’. The intention was to permit people, goods, services and capital to move freely across their borders.

In 1957 associated and sometimes forming an integral part of these six countries were many overseas territories, some of which had close ties to their mother country, others had less close ties. The Treaty sought to address the position of these territories vis à vis the European Community under Article 227 and in Part Four of the Treaty (Articles 131 to 136).

2.3 Relevant Member States and Territories

The 1957 TEC was signed by the following six Member States:

– Belgium
– Germany
– France
– Italy
– Luxembourg
– The Netherlands.

It is by reference to these six Member States that Article 227(1) defined the scope of the Treaty.

The broad definition set out in Article 227(1) was intentional. It was meant to cover in general Member States and the territories over which they had jurisdiction. However, it was acknowledged and agreed that special provision should be made for the overseas territories of the Member States, particularly France, and so Article 227 went onto to specify and therefore act as a legal framework for relations between the EU and these territories. At the time of the signing of the Treaty in 1957, these territories were:

– Article 227(2):
  – French
– Algeria
– French DOMs (Guadeloupe, Martinique, French Guiana, Réunion)

• French:
  – French West Africa comprising Senegal, French Sudan, French Guinea, Ivory Coast, Dahomey, Mauritania, Niger and Upper Volta;
  – French Equatorial Africa comprising Middle Congo, Ubangi-Shari, Chad and Gabon;
  – Saint Pierre et Miquelon, the Archipelago of the Comores, Madagascar and dependencies, the French Somali Coast, New Caledonia and dependencies, French settlements in Oceania and French Southern and Antarctic Territories;

• French/British:
  – Autonomous Republic of Togo
  – The trust territory of the Cameroons under French administration
  – The British/French condominium of the New Hebrides

• Belgian:
  – The Belgian Congo and Rwanda-Urundi

• Italian:
  – The trust territory of Somaliland under Italian administration

• Dutch:
  – Netherlands New Guinea

– Article 227(4):

  As we shall see below, although originally conceived for the Saar region over whose jurisdiction France and Germany had been in dispute prior to the signing of the TEC, since that dispute had been resolved just before the Treaty was signed in 1957, Article 227(4) in fact was redundant at the time the Treaty was signed—until UK accession on 1 January 1972.

  The ensuing chapters will examine in more detail each of the original subparagraphs of Article 227 as set out in the TEC, with a particular focus on the aims and intentions of the drafters of these provisions.

2.4 General Aims of Article 227, 1957 TEC

Concerning Article 227 specifically, this was set out in Part Six of the 1957 Treaty dealing with ‘General and Final Provisions’. The intention of Article 277 was to set out the territorial scope of the Treaty in very general terms and within that to
clarify the position of the many Member States territories, broadly those overseas (French) territories forming an integral part of metropolitan France and the remaining Member State overseas territories with less close ties to their ‘mother’ country. Many of the latter were also in a state of flux facing and eventually opting for independence.

Regarding the former category, the French DOMs had been given full equality with other regions in France, and Algeria had its own regime but was very close to France. Thus, Article 227(2)—applicable to the French DOMs and Algeria and reflecting these territories’ constitutional relationship with France—was set up.

Concerning those territories with less close ties to their mother country, Article 227(3) was established to cover those overseas territories which had not yet opted for independence. The OCTs were not included in the Common Market as they did not form part of the domestic markets of their Member States. For overseas Member State territories falling under Article 227(3) (and eventually for those territories choosing independence), Part Four (Articles 131 to 136) of the 1957 Treaty provided for the setting up of a special development fund—the European Development Fund (EDF)—aimed at giving technical and financial assistance to African—and later, Caribbean and Pacific—countries still colonized at the time. This first EDF lasted for the 5 year period from 1958 to 1963 and in subsequent cycles became successively the Yaoundé and Lomé Conventions and finally the Cotonou Agreement providing EU development aid to ACP territories, former colonies of EU Member States.

2.5 ECSC and Euratom Treaties

It is worth noting here the application of the other two original EC Treaties—the ECSC and Euratom. Briefly, the ECSC Treaty, signed in Paris in 1951, created a framework of production and distribution of the key coal and steel industries and set up an institutional system to manage it. The Treaty expired in 2002. The objective of the Euratom Treaty, issued in Rome in 1957, was to contribute to the formation and development of Europe’s nuclear industries.

All three Treaties—EC, ECSC and Euratom—had different fields of application to Member States and their territories specifically. The scope of these three treaties in relation to Member State territories reflects the different political and economic background at the time they were signed. In 1951, when the ECSC Treaty was signed, the many Member State overseas territories having a great variety of legal and constitutional relations with their mother countries, not to mention economic and political diversity, would have made it extremely difficult to create a uniform EU legal framework for them. Thus, the application of the ECSC Treaty was limited to European territories of Member States, as set out in Article 79 ECSC.
By 1957, when the EC and Euratom Treaties were signed, the process of decolonisation was well under way. Only the territories of France and Belgium were economically important to their mother countries. Thus, the scope of both Treaties in respect to territories, was significantly broader than the ECSC Treaty. The ECSC expired in July 2002, bringing the products the ECSC Treaty covered into the scope of EC rules. The Euratom has the widest territorial scope as it applies both to European territories and to non-European territories within their jurisdiction with some exceptions for Danish and UK territories—Article 198.2

The common denominator was therefore the principle of the integral application of European territories for whose external relations a Member State is responsible. Article 227(4) was transposed from the corresponding provision in the ECSC Treaty which had been devised to address the position of the Saarland and also possibly Berlin which was then under the joint sovereignty of France, Great Britain, the Soviet Union and the United States.3

2.6 Conclusions

Article 277 was set out in Part Six of the Treaty on General and Final Provisions so was not part of the core operational part of the Treaty, nor of Parts One and Two of the 1957 Treaty dealing with respectively the basic Principles and Foundations of the Community. Nevertheless, it is noteworthy that Article 227 was drafted in the broadest terms. Explicitly, all six Member States (and implicitly their territories) are covered whereas those with special provisions are mentioned in subparagraphs (2) and (3).

The only Member State with a significant number of territories at the time was France which requested these special provisions for its more integrated DOMs and Algeria and its more distant TOMs. Thus, subparagraph (2) was drafted to accommodate specifically the French territories of Algeria and the DOMs, whereas those territories with less close ties were intended to be covered by Article 227(3). In general, both subparagraphs (2) and (3) were drafted with specific territories in mind and with little or no foresight given to how to accommodate possible future territories.

Subparagraph (4) was anomalous from the beginning in that it did not apply to any specific territory or territories. Its redundancy is reflective of the general absent-minded approach to Article 299 that has persisted to the present day.

The overall structure and aims of Article 227 thus were broad, all-encompassing and uncomplicated with special general provisions for the French ‘integrated’

2 The Danish Faroe Islands and Greenland, and the UK Sovereign Base Areas in Cyprus are exempt. The UK Crown Dependencies are mainly exempt.
territories. It was not intended to be any more than that. It is important to keep this broad original objective foremost when considering in Part II the various developments and Treaty amendments and in the light of the proposed new model provision in Part III.
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