Contents

1 General Introduction ........................................... 1
  1.1 Overview .................................................. 1
  1.2 Current EU Treaties Framework: EU/Member State Territories ........................................... 2
    1.2.1 Background ............................................. 2
    1.2.2 Developments Since 1957 .............................. 2
    1.2.3 Lisbon Treaty Changes to Article 299 TEC .............. 4
  1.3 Introduction to Current EU Treaties Framework: EU/Member State Territories ......................... 5
    1.3.1 Overview of Current Relevant Lisbon Treaty Provisions ............................................. 5
    1.3.2 Background to the Current EU Treaties Framework and Developments Since 1957 ..................... 6
  1.4 Scope ....................................................... 6
    1.4.1 Territories Concerned .................................. 6
    1.4.2 Territorial Scope of Treaties ........................... 8
  1.5 Aims ......................................................... 8
  1.6 Methodology ............................................... 9
  References ..................................................... 12

Part I  Background to Article 299 (ex Article 227) at the Time the Provision was Drafted in 1957

2 General Introduction to Original Art 227 TEC .................. 15
  2.1 Introduction to Article 227 TEC (1957) ...................... 16
  2.2 Pre 1957: Political and Economic Backdrop .................. 16
  2.3 Relevant Member States and Territories ...................... 17
  2.4 General Aims of Article 227, 1957 TEC ...................... 18
8 Article 299(1): Territorial Scope of the TEC (as Compared with 1957 Version) ................................................................. 51
  8.1 Introduction (Comparison to 1957 Version) ....................... 51
  8.2 Relevant Member States and Territories ............................ 52
      8.2.1 Ceuta and Melilla ........................................... 52
  8.3 Article 299(1): Developments Since 1957, Including Treaty Amendments ................................................................. 57
      8.3.1 Clarification of the Aims and Scope of Article 299(1) .... 57
      8.3.2 Meaning of Territory ......................................... 57
      8.3.3 Application to Member State Territories .................... 58
      8.3.4 The Two Germanys ............................................ 58
      8.3.5 EU Customs Territory ......................................... 59
      8.3.6 Application of Second and Third Pillars to Article 299 .. 61
      8.3.7 Member State Accessions .................................... 62
  8.3.8 2007: Lisbon Treaty Amendments to Article 299 in General ................................................................. 64
      8.3.9 2007: Lisbon Treaty Amendments to Article 299(1) Specifically ................................................................. 68
  8.4 Conclusions ............................................................. 69
References ........................................................................... 70

9 Article 299(2): The Outermost Regions .................................. 71
  9.1 Introduction (Comparison with 1957 Version) ..................... 71
  9.2 Applicable Member States and Territories: Present Day ........ 72
  9.3 General Characteristics of Outermost Regions .................... 73
  9.4 Overview of the Outermost Regions ................................ 74
      9.4.1 Constitutional Relations with their Member States ....... 75
  9.5 Article 299(2): Developments Since 1957, Including Treaty Amendments ................................................................. 79
      9.5.1 Member State Accessions ..................................... 79
      9.5.2 1960s and 1970s: Early Developments and Interpretation of Article 227(2) ................................................................. 80
      9.5.3 1980s: the POSEI Programmes ................................ 81
      9.5.4 1993: Maastricht Treaty ........................................ 82
      9.5.5 1990s: Legros, Lancry Judgments ............................ 83
      9.5.6 1997: Amsterdam Treaty ....................................... 84
      9.5.7 2000: Post Amsterdam Treaty ................................ 85
      9.5.8 2007: Lisbon Treaty Amendments to Article 299(2) .... 89
  9.6 Conclusions ............................................................. 90
Reference ........................................................................... 90
10 Article 299(3): Overseas Countries and Territories .......... 91
  10.1 Introduction (Comparison with 1957 Version) ............... 91
  10.2 Applicable Member States and Territories: Present Day .... 92
  10.3 General Characteristics of the OCTs ....................... 93
  10.4 Overview of the OCTs ................................... 93
    10.4.1 Constitutional Relations with Their Member State ... 94
  10.5 Article 299(3): Developments Since 1957, Including
    Treaty Amendments ........................................ 96
    10.5.1 Member State Accessions and Territories ............. 96
    10.5.2 1958: Emergence of EU/ACP Partnership ............. 100
    10.5.4 1991: Council Decision 91/482/EEC ................ 105
    10.5.5 1993: Maastricht Treaty .......................... 106
    10.5.6 1997: Council Decision 97/803/EC ................. 106
    10.5.7 1997: Amsterdam Treaty ........................... 106
    10.5.8 2001: Council Decision 2001/822/EC ............... 107
    10.5.9 2007: Lisbon Treaty Amendments
to Article 299(3) ........................................... 107
    10.5.10 June 2008: Commission Communication .......... 108
  10.6 EU Legal Framework and Policy Governing Relations
    Between the OCTs and the EU ............................... 109
    10.6.1 Part Four (Articles 182–188) of the TEC 2009 .......... 109
    10.6.2 Council Decision 2001/822/EC .................... 110
    10.6.3 Application to OCTs of Other TEC Provisions .... 112
    10.6.4 Areas of EU/OCT Co-operation ...................... 113
    10.6.5 Implementation of the EU/OCT Arrangements .... 115
    10.6.6 EU Financial Assistance ............................ 115
    10.6.7 OCT/ACP Parallelism ................................ 116
  10.7 Conclusions ............................................. 118
  References .................................................................. 118

11 Article 299(4): European Member State Territories for
Whose External Relations a Member State is

Responsible: Gibraltar .............................................. 121
  11.1 Introduction (Comparison with 1957 Provision) ............ 121
  11.2 Applicable Member State Territories: Present Day ....... 121
  11.3 Overview of Gibraltar ..................................... 122
    11.3.1 Constitutional Relations with the United Kingdom ... 125
  11.4 Article 299(4): Developments Since 1957 in Relation
to Article 299(4) ............................................... 126
    11.4.1 Member State Accessions ............................... 126
    11.4.2 Impact of UK/Spanish Relations ..................... 127
Part III  Assessment of Article 299 and Lisbon Treaty Amendments as a Legal Framework for EU/Territories Relations

Proposed New Model EU Treaties Framework

14 General Introduction to Part III .......................... 163
  14.1 Overview. ............................................. 163

15 Summary of Main Changes to Article 299 TEC Since 1957 ..... 165
  15.1 Introduction .......................................... 165
  15.2 Structure of Article 299. .......................... 165
  15.3 Relevant Member States and Territories ................. 166
  15.4 Outermost Regions and OCTs (Article 299 (2) and (3)) 166
  15.5 Territories for Whose External Relations a Member State is Responsible (Article 299(4)) .......................... 168
  15.6 Aland Islands and Territories not Part of the EU (Article 299(5) and (6)). .......................... 168

16 Adequacy of Article 299 as a Legal Framework for EU/Member State Territories Relations .......................... 169
  16.1 General Introduction .................................. 169
  16.2 Article 299(1) ........................................... 169
    16.2.1 Member State Accessions ........................ 170
  16.3 Article 299(2) ........................................... 174
    16.3.1 Member State Accessions ........................ 174
  16.4 Article 299(3) ........................................... 175
  16.5 Article 299(4) ........................................... 176
  16.6 Article 299(5) ........................................... 177
  16.7 Article 299(6) ........................................... 177
  16.8 Conclusions ............................................ 178
Reference .................................................. 178

17 The Lisbon Treaty and the European Constitution on Article 299: A Comparison ............................................. 179
  17.1 Introduction ............................................ 179
  17.2 Lisbon Treaty. .......................................... 179
  17.3 European Constitution ................................. 181
  17.4 Conclusions ............................................ 189

18 Proposed New Model EU Treaties Framework for Relations Between the EU and Member State Territories and Final Observations .......................... 191
  18.1 Introduction ............................................ 191
  18.2 Model Article 355(1) ................................... 192
  18.3 Model Article 355(2) ................................... 194
18.4 Model Article 355(3) ................................. 196
18.5 Model Article 355(4) ................................. 199
18.6 Final Observations ................................... 210

Part I: Original Version of Article 299 TEC, 1957 .......... 211
Part II: Article 299 TEC and Developments Since 1957 .... 211
Part III: Proposed New Model Article 355 TFEU .......... 211

Annexes ........................................................ 213

Annex I Lisbon Treaty Provisions Governing EU/Member State Territories ......................... 215
Annex II Article 227 TEC 1957 ................................. 219
Annex III Article 226 TEC 1957 ................................. 221
Annex IV Part Four (Articles 131–136) TEC 1957 ......... 223
Annex V Implementing Convention on the Association of Overseas Countries and Territories of the Community 1957 ................................. 227
Annex VI Article 299 TEC 2009 ................................. 233
Annex VII Article 25 Spanish Act of Accession 1985 (Ceuta and Melilla) ................................. 235
Annex VIII Protocol No. 2 Spanish Act of Accession 1985 (Ceuta and Melilla) ......................... 237
Annex IX Joint Declaration on the Azores and Madeira, Portuguese Act of Accession 1985 ............. 243
Annex X Declaration on the Outermost Regions, Maastricht Treaty 1992 ................................. 245
Annex XI Declaration on the Overseas Countries and Territories, Maastricht Treaty 1992 ............. 247
Annex XII Declaration No. 36 on the Overseas Countries and Territories, Amsterdam Treaty 1997 ......... 249
Annex XIII Part Four (Articles 182–188) TEC 2009 ............. 251
Annex XIV  Article 28 UK Act of Accession 1972 (Gibraltar) . . . 255
   (Aland Islands) . . . . . . . . . . . . . . . . . . . . . . . . . . 257
Annex XVI  Article 25(a) Danish Act of Accession 1972
   (Faroe Islands). . . . . . . . . . . . . . . . . . . . . . . . . . . . 259
Annex XVII  Protocol No. 2 Danish Act of Accession 1972
   (Faroe Islands). . . . . . . . . . . . . . . . . . . . . . . . . . . . 261
Annex XVIII  Protocol No. 3 Cyprus Act of Accession 2004
   (UK Sovereign Base Areas). . . . . . . . . . . . . . . . . . 263
Annex XIX  Protocol No. 10 Cyprus Act of Accession 2004
   (UK Sovereign Base Areas). . . . . . . . . . . . . . . . . . 269
Annex XX  Protocol No. 3 UK Act of Accession 1972
   (Channel Islands and Isle of Man) . . . . . . . . . . . . . 271

Source Materials . . . . . . . . . . . . . . . . . . . . . . . . . . 273

Selected Bibliography. . . . . . . . . . . . . . . . . . . . . . . . . . 273
Table of Treaties . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 274
Table of Legislation . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 276
EU Papers. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 279
Table of Written Questions . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 280
Table of Selected Cases . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 280

Index . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 283