

THE EU AND MEMBER STATE ISLAND TERRITORIES

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Introduction

Many of the 15 EU Member States have autonomous or semi-autonomous territories, most of which are islands. When the Member States concerned decided to join the EU, their territories, because of their constitutional links with the Member States, negotiated their own special relationships with the EU. These relationships, which are determined by primary Community law (generally the EC Treaty), vary significantly. Thus, some territories are formally part of the EU, others are not. All have particular arrangements or derogations under EU law. Moreover, in some cases, these initial arrangements have changed or are in the process of changing. This article will attempt to show the dynamic and evolving nature of the EU/Member State island territory relationship. It will also briefly examine EU policy on island regions.

Which territories?

Those territories which are constitutionally linked to a Member State and whose relationships with the EU are governed by primary Community law are: the so-called "ultraperipheral regions"¹, the Overseas Countries and Territories (OCTs)², the Åland Islands, the Faroe Islands, the Channel Islands, the Isle of Man, Gibraltar, Ceuta and Melilla. Of these, only the ultraperipheral regions, the Åland Islands, Gibraltar, Ceuta and Melilla are formally part of the EU. The remainder are not part of the EU territory. All of these Member State territories are islands with the exception of Gibraltar, French Guiana, Ceuta and Melilla.

The nature of the EU/Member State island territory relationship

There are two particular points worthy of note as regards the nature of the EU/island territory relationship — first, the relationship between the EU, on the one hand, and each island territory, on the other, is unique; second, the initial arrangement is not carved in stone and in respect of certain island territories has changed.

– a series of opt-ins and outs

The unique nature of the relationship between the EU and each island territory can be illustrated by comparing territories which share broad similarities but which have chosen sometimes very different arrangements with the EU.

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(i) The Åland Islands and the Faroe Islands

The Åland Islands and the Faroe Islands are both constitutionally linked to Nordic countries -- the Ålands with Finland and the Faroes with Denmark. Both enjoy a large degree of autonomy as regards internal matters. Whilst the Åland Islands are, however, part of the EU, the Faroe Islands chose to remain outside the EU.

The relationship between the Åland Islands and the EU is governed by Protocol No.2 to the Finnish Accession Act. Article 1 of Protocol No.2 permits restrictions on the right of individuals to hold regional citizenship and on the right to hold or acquire real property. Article 2 of Protocol No.2 provides for a derogation from EU indirect taxes. This derogation was permitted in view of the fact that the Islands' economy depended in large measure from income from the ferry crossings between the Islands and Sweden and Finland. The EU, however, inserted a safeguard provision in Article 2 which provides that the objective of the derogation is to maintain a "*viable local economy in the islands*" and should not have any adverse effects on the EU. Should such adverse effects occur, the Commission may submit proposals to the Council which shall act in accordance with relevant Treaty articles. The latter presumably refers to the adoption of tax harmonization measures under Article 93 of the EC Treaty. Finally, Article 3 of Protocol No.2 requires the Åland Islands to accord the same treatment to both Finnish and other EU nationals.

In contrast to the Ålands, Article 299(6)(a) of the EC Treaty states briefly that "*the Treaty shall not apply to the Faroe Islands*". Originally, Denmark hoped that the Faroes would become part of the EU upon Danish accession. The Faroes, wary of the EU's long term aim of having unlimited access to the Islands' fishing waters, rejected membership of the EU. Instead, the Faroe Islands negotiated two agreements with the EU, one on fisheries -- which provides for access by the EU and the Faroes to each others' coastal waters to fish³ -- and the other on trade -- which broadly provides for the abolition of customs duties and quantitative restrictions in trade between the EU and the Faroe Islands⁴.

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(ii) The French Overseas Departments and the French Overseas Territories

The French Overseas Departments (the so-called "DOMS"⁵) and the French Overseas Territories (known as the "TOMs"⁶) are, of course, both constitutionally linked to France and both suffer the physical and economic disadvantages of being underdeveloped and remote.

Both the DOMs and the TOMs have a special status under EU law. The DOMs are recognized as "ultraperipheral regions" under Article 299(2) of the EC Treaty along with the Azores, Madeira and the Canary Islands. The TOMs are part of the group of Overseas Countries and Territories ("OCTs") whose relationship with the EU is determined under Part Four of the EC Treaty (Articles 182–188).

When France became part of the EU, the DOMs also automatically became part of the EU by virtue of their being part of France. The TOMs, on the other hand, unlike the DOMs, enjoy a

large measure of legislative autonomy and may adapt their own legislation to implement Community acts relating to them.

As the DOMs are part of the EU, all EC Treaty provisions apply. In 1989, the Community adopted "*programmes of options specific to their remote and insular nature*" in relation to the DOMs. The so-called POSEIDOM programme provided both funding for the DOMs under the EU Structural Funds and the adaptation of the EU's common policies to deal with the specific problems of these regions⁷.

As an OCT, the TOMs' relationship with the EU is governed by Articles 182-188 of the EC Treaty. Article 182 establishes the basic aim of this relationship which is "*to promote the economic and social development of the overseas countries and territories and to establish close economic relations between them and the Community as a whole*". Article 184 provides for duty-free access for OCT products to the EU. Article 187 provides that the Council shall adopt detailed rules and procedures for the EU-OCT association. These detailed rules have been set out in a succession of Council Decisions.

The current applicable Decision is Decision 91/482/EEC⁸, as amended by Decision 97/803/EC⁹. These Decisions govern the EU-OCT, and specifically the EU-TOMs relationship providing for both technical and financial assistance, the latter under the European Development Fund.

- an evolving arrangement

The EU/Member State island relationship is an evolving one, as is evidenced by the following examples of island territories which have altered their initial status with the EU.

(i) Greenland

Greenland was originally a Danish colony but became part of the Kingdom of Denmark in 1953. When Denmark joined the EU in 1973, Greenland, too, became part of the EU. In 1979, Greenland acquired home rule status. As a result of its new status, the EC Treaty was amended in 1984 and Greenland became part of the EU-OCT arrangement.

Unlike the other OCTs, however, Greenland was granted OCT status only on condition that it entered into a fisheries agreement with the EU. Instead of receiving financial and technical assistance like the other OCTs, Greenland receives financial compensation from the EU in return for fish.

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(ii) Canary Islands

The Canary Islands — one of Spain's autonomous communities — are also one of the Community's "ultra-peripheral regions" to which all of the EC Treaty provisions apply by virtue of Article 299 (2) of the Treaty.

Until July 1, 1991, the Canary Islands shared the same status *vis a vis* the EU as Ceuta and Melilla which are also Spanish autonomous communities. The relationship of these regions with the EU was governed by Protocol 2 of the Spanish Accession Act. This broadly provided that the Canary Islands were part of the EU but were excluded from the Community's Common Customs Tariff (CCT) and from the Common Agricultural Policy (CAP).

In 1991, the Canary Islands took the view that it would be more economically viable to be part of the CCT. This was particularly because Spain was approaching the end of its transitional period following its accession to the EU in 1986 and would also become fully part of the CCT. The EC Council therefore, in 1991, adopted a Regulation providing for the gradual incorporation of the Canary Islands into the CCT¹⁰.

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EU/Member State island territories – the future

The Amsterdam Treaty, which has been in force since May 1999, introduced a number of important provisions to the EC Treaty relating to islands. Although these provisions apply specifically only to islands which are formally part of the EU, indirectly at least they have implications for the EU's relations with islands generally. Specifically:

- Article 158 of the EC Treaty, which now forms the legal basis for the Community's economic and social cohesion policy, makes specific mention of reducing the backwardness of least-favoured island regions. Article 158 provides:

"In order to promote its overall harmonious development, the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion.

In particular, the Community shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas" (emphasis added).

- Declaration No. 30 on island regions defines the Community's obligations in respect of island regions as set out in Article 158 of the EC Treaty. Declaration No. 30 provides:

"The Conference recognizes that island regions suffer from structural handicaps linked to their island status, the permanence of which impairs their economic and social development.

The Conference accordingly acknowledges that Community legislation must take account of these handicaps and that specific measures may be taken, where justified, in favour of these regions in order to integrate them better into the internal market on fair conditions".

- Article 299(2) of the EC Treaty, as we have seen, concerns the Community's ultra-peripheral regions. Article 299(2) requires the EC Council to adopt specific measures for

these regions taking account of their "*special characteristics and constraints*" including their "*insularity*".

- Article 154 of the EC Treaty deals with trans-European networks. It provides that in developing trans-European networks the Community "*shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the Community*" (emphasis added).

In response to Article 158 of the EC Treaty and to Declaration No. 30 in particular, the European Commission is to oversee a study entitled "*The Analysis of Island Regions*". The study, which will commence in September 2001 and will take approximately one year to complete, will be in two parts. Part one will consist of the creation of a statistical database of all the islands forming part of the EU. The database will include criteria for each of the islands relating to geography, demography, infrastructure, environment and socio-economic structure. Part two of the study will, on the basis of the statistical material collected, compare the situation of the islands to the Community and Member State references.

The objectives of the study will be, *inter alia*, to ascertain any particular problems connected with being an island region and the specific needs of islands. Any obstacles which could prevent island-based companies from benefiting fully from the EU's Single Market will be considered. Finally, the study will include an analysis of measures and policies taken by Member States and the Community to remedy the backwardness in development caused by being an island and to propose future steps to be taken, if any.

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Conclusion

The EU has always implicitly recognized the special nature and needs of islands. This is shown by the diversity of its relationships with Member State island territories and from the special derogations and arrangements negotiated with these territories. A more explicit recognition by the EU of the particular situation of islands has only emerged in recent years. The references to islands introduced by the Amsterdam Treaty, in particular by Article 158, now provide a sound legal basis for the Community to take particular account of islands in the adoption of EU policy.

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Notes

1. The ultraperipheral regions consist of the Portuguese Azores and Madeira, the Spanish Canary Islands and the French Overseas Departments (Guadeloupe, Martinique, French Guiana and Reunion).
2. The OCTs are made up of 12 British territories (Anguilla, Cayman Islands, South Georgia and South Sandwich Islands, Montserrat, Pitcairn, St. Helena, British Antarctic Territory, British

Indian Ocean Territory, Turks and Caicos Islands, British Virgin Islands and Bermuda); 6 French territories (New Caledonia, French Polynesia, French Southern and Antarctic Territories, Wallis and Futuna Islands, Mayotte, St. Pierre and Miquelon); 2 Dutch territories (Aruba and the Netherlands Antilles) and 1 Danish territory (Greenland).

3. The fisheries agreement is contained in Council Regulation 2211/80 (EEC), OJ L226/11, 29.8.1980.

4. The trade agreement is contained in Council Decision 97/126/EC, OJ L53/1, 22.2.1997.

5. From the French "*Departments d'outre-mer*".

6. From the French "*Territoires d'outre-mer*".

7. The POSEIDOM programme is set out in Council Decision 89/687/EEC , OJ L 399/39, 30.12.1989. The POSEI programme was extended in 1991 to the Canary Islands (POSEICAN -- Council Decision 91/314/EEC, OJ L 171/5, 29.6.1991) and to the Azores and Madeira (POSEIMA -- Council Decision 91/315/EEC, OJ L 171/10, 29.6.1991).

8. Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community, OJ L 263/1, 19.9.1991.

9. Council Decision 97/803/EC of 24 November 1997 amending mid-term, Decision 91/482/EEC on the association of the overseas countries and territories with the European Economic Community, OJ L 329/50, 29.11.1997.

10. Council Regulation 1911/91 on the application of the provisions of Community law to the Canary Islands, OJ L171/1, 29.6.1991.

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