

before the expiry of the ECSC Treaty had to be assessed under the substantive provisions of the ECSC Treaty even if, after the expiry of that Treaty, such assessment was to be carried out on the basis of the procedural provisions laid down under the EC Treaty.¹⁵

11.005 Unlimited period. The subsequent Treaties were concluded for an unlimited period (EEC Treaty, Article 240 and EAEC Treaty, Article 208; see also EU Treaty, Article 51 [*now Article 53 TEU*]; Treaty of Amsterdam, Article 13; Treaty of Nice, Article 11; and Treaty of Lisbon, Article 3).¹⁶ The fact that a Union, having its own institutions and powers, was established for an unlimited duration demonstrates that the Member States intended to create a new legal order, which binds both their subjects and themselves.¹⁷ In order to bring about the abrogation of the Treaties and, with them, the Union, the Member States may not rely unconditionally on the rule of international law that a treaty may be terminated if the parties conclude a subsequent treaty between them.¹⁸ It appears to be contrary to Union law for the Member States simply to bring an end to European integration by means of an amendment to the Treaties or in some other manner.¹⁹

However, Article 50 TEU makes it possible for a Member State to unilaterally withdraw from the European Union. At the end of the period provided for in Article 50(3) TEU the Treaties cease to apply to the State in question.²⁰

III. Territorial Scope of the Treaties

11.006 Jurisdiction of Member States. The territorial scope of the Treaties is defined by Article 52(1) TEU, which declares the Treaties to be applicable to all of the Member States, which are listed therein.²¹ The territorial scope of application of the Treaties is thus constituted by the Member States of the Union. Secondary Union law applies in principle to the same area as the Treaties themselves.²²

Under international law, the Treaties apply to all areas which are under the sovereignty or within the jurisdiction of the Member States. As far as Union legislation on checks at external borders is concerned, the Treaties expressly confirm that the Union's competence in that area is not to affect the competence of the Member States concerning the geographical demarcation, in accordance with international law, of their borders (Article 77(4) TFEU).²³ The territorial scope of the Treaties is further specified in Article 355 TFEU, which contains

¹⁵ Ibid., paras 85–9; see also T-405/06, *ArcelorMittal Luxembourg and Others v Commission*, 2009, paras 59–69.

¹⁶ The TEU and TFEU also expressly state that they are concluded for an unlimited period (see Article 53 TEU and Article 356 TFEU).

¹⁷ 6/64, *Costa*, 1964, at 593 (para. 1-025, *supra*).

¹⁸ For this rule, see Article 54 of the 1969 Vienna Convention (para. 26-013, *infra*).

¹⁹ This question is directly related to the possible substantive limitations on amending the Treaties, para. 3-010, *supra*.

²⁰ The Treaties thus ceased to apply to the United Kingdom following its withdrawal from the Union on 1 February 2020. See also C-621/18, *Wightman*, 2018, para. 54 and paras 4-016–4-017, *supra*.

²¹ Article 52 was introduced by the Treaty of Lisbon. Before that, the EU Treaty did not define its territorial scope, but simply employed the expression 'Member States'. In contrast, Article 299(1) of the EC Treaty (now repealed) declared that the EC Treaty was applicable to all the Member States, which were listed therein. For the EAEC Treaty, see Article 198 EAEC.

²² C-132/14 to C-136/14, *European Parliament and Commission v Council*, 2015, para. 77.

²³ C-457/18, *Slovenia v Croatia*, 2020, para. 105.

provisions on territories with a special status under Union law, such as the Member States' overseas territories (see also Article 51(2) TEU; see the discussion in para. 10-013, *supra*).²⁴

The application of the Treaties extends to the airspace and maritime waters, which come under the sovereignty or within the jurisdiction of the Member States; territorial waters; and, in so far as the Member State concerned lays claim to it, the fishing zone or exclusive economic zone, together with the continental shelf.²⁵ The Union itself accepted the international rules adopted in 1982 in the Convention on the Law of the Sea.²⁶ As long as the northern part of the territory of Cyprus is occupied, the Union *acquis* applies, according to a protocol annexed to the 2003 Act of Accession, only to those (southern) areas in which the Government of the Republic of Cyprus exercises effective control.²⁷

Within that framework, the Treaties apply to legal relationships which can be located 'within the territory of the Union', by reason of the place where they are entered into or of the place where they take effect²⁸ or by reason of a sufficiently close link with the law of a Member State and thus the relevant rules of Union law.²⁹

²⁴ For a general discussion, see Ziller, 'The European Union and the Territorial Scope of European Territories' (2007) VUWLR 51–62; Ziller, 'Flexibility in the Geographical Scope of EU Law: Diversity and Differentiation in the Application of Substantive Law on Member States' Territories', in De Búrca and Scott (eds), *Constitutional Change in the EU—From Uniformity to Flexibility?* (Hart Publishing, 2000), 113–31; Groux, '“Territorialité” et droit communautaire' (1987) RTDE 5–33.

²⁵ Most Member States limit their territorial waters to 12 nautical miles from the baseline, except for Greece (6 nautical miles). In accordance with the Council Resolution of 3 November 1976, OJ 1981 C105/1, the Member States concerned have set their fishing zone or an exclusive economic zone in the North Sea and the North Atlantic Ocean at 200 nautical miles. Where a State has exclusive rights over the continental shelf in respect of the exploration and the exploitation of the natural resources of the sea-bed and subsoil of the shelf (see also C-347/10, *Salemink*, 2012, paras 31–5), it also has exclusive fishing rights in an exclusive economic zone (cf. Articles 77–81 and 55–73 of the Convention on the Law of the Sea, see following n.). For the contested general application of Union law to the continental shelf, see Waverijn and Nieuwenhout, 'Swimming in ECJ Case Law: The Rocky Journey to EU Law Applicability in the Continental Shelf and Exclusive Economic Zone' (2019) CMLRev 1623–1648; Michael, 'L'application du droit communautaire au plateau continental des Etats membres et ses conséquences' (1983) RMC 82–90; Van der Mensbrugghe, 'La CEE et le plateau continental des Etats membres', in *Mélanges F. Dehousse* (Nathan/Labor, 1979), Vol. II, 311–317. For the limitations imposed by customary international law on Union competence, see C-286/90, *Poulsen and Diva Navigation*, 1992, paras 21–34; for its competence in respect of the conservation of the fishery resources of the high seas, see *Poulsen*, paras 9–11, and C-405/92 *Mondiet*, 1993, paras 12–15; C-25/94, *Commission v Council*, 1996, para. 44.

²⁶ United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982, which was ratified by the Community (together with the Agreement of 28 July 1994 relating to the implementation of Part XI thereof) by Council Decision 98/392/EC of 23 March 1998, OJ 1998 L179/1. See Garzón Clariana, 'L'Union européenne et la Convention de 1982 sur le droit de la mer' (1995) BTIR 36–45. Nonetheless, the nature and the broad logic of the Convention prevent the Court of Justice from being able to assess the validity of a Union measure in the light of that Convention: C-308/06, *Intertanko and Others*, 2008, paras 53–65.

²⁷ Article 1 of Protocol (No. 10) on Cyprus, annexed to the 2003 Act of Accession, suspends the application of the *acquis* in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control. This does not preclude application of Union rules on the recognition of judgments to those delivered by courts located in the southern area, but concerning land situated in the northern area (C-420/07, *Apostolides*, 2009, paras 32–9). See Skoutaris, 'The Application of the Acquis Communautaire in the Areas not under the Effective Control of the Republic of Cyprus: The Green Line Regulation' (2008) 45 CMLRev 727–55; Bilge, 'La situation juridique de Chypre dans ses deux composantes par rapport au droit communautaire' (2006) RMCUE 586–91; Yakemchouk, 'Chypre: la réunification avortée' (2004) RMCUE 239–96; Klebes-Pelissier, 'L'adhésion de la République de Chypre à l'Union européenne' (2003) RTDE 441–69; Berramdane, 'Chypre entre adhésion à l'Union européenne et réunification' (2003) RDUE 87–108. See para. 11-008, *infra* for the procedure for bringing this exceptional regime to an end.

²⁸ See 36/74, *Walrave*, 1974, para. 28; 237/83, *Prodest*, 1984, paras 6–7 (para. 7-056, *supra*); 89, 104, 114, 116–17 and 125–29/85, *Åhlström v Commission*, 1988, paras 16–17 (para. 9-014, *supra*); T-102/96, *Gencor v Commission*, 1999, paras 89–108 (para. 9-018, *supra*).

²⁹ C-214/94, *Boukhalfa*, 1996, para. 15 (para. 7-056, *supra*). For a definition of the legal subjects of the Union, see also Vanhamme, *Volkenrechtelijke beginselen in het Europees recht* (Europa Law Publishing, 2001), 131–48.