



DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



**EU COMPETENCIES
AFFECTING THE ARCTIC**

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DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

DIRECTORATE B

POLICY DEPARTMENT

STUDY

EU COMPETENCIES AFFECTING THE ARCTIC

Abstract

The study will examine the legal competences of the EU - after the entry into force of the Lisbon Treaty - to influence the development of the Arctic. The particular emphasis of the study will be on the role the European Parliament plays in decision-making in various Arctic-relevant policy areas. The report will address both internal and external competences as well as the consequences of the EEA Agreement for the implementation of EU legislations in Iceland and Norway. The study is structured into two parts. The first part looks into the general principles of competence sharing between the EU and its Member States, as well as the role of the European Parliament in post-Lisbon EU decision-making. The second part examines in more detail eleven sectoral policy areas: what legal competences the EU has in each, what are the legal consequences for Iceland and Norway via the EEA Agreement and what is the role of the European Parliament in EU's decision-making over the development of these various policies in the Arctic.

This study was requested by the European Parliament's Committee on Foreign Affairs.

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LIST OF ACRONYMS

ACIA	Arctic Climate Impact Assessment
AMSA	Arctic Marine Shipping Assessment
CAP	Common Agricultural Policy
CBD	Convention on Biological Diversity
CFP	Common Fisheries Policy
CITES	Convention on International Trade in Endangered Species
CJEU	Court of Justice of the European Union
CLP Regulation	Regulation (EC) No 1272/2008 on the classification, labelling and packaging of substances and mixtures
CMS	Convention on the Conservation of Migratory Species of Wild Animals
CO ₂	Carbon dioxide
CREST	Committee for Scientific and Technical Research
DDT	Dichlorodiphenyltrichloroethane
EC	European Community
ECCP	European Climate Change Programme
ECHA	European Chemicals Agency
ECHR	(European) Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	(European) Court of Justice
EEA	European Economic Area
EEC	European Economic Community
EEZ	Exclusive economic zone
EFTA	European Free Trade Association
ERDF	European Regional Development Fund
ESA	EFTA Surveillance Authority
ETS	Emission trading system
EU	European Union
EP	European Parliament
FAO	Food and Agriculture Organization
FAP	Forest Action Plan
FLEGT	Forest Law Enforcement, Governance and Trade Action Plan
GATT	General Agreement on Tariffs and Trade
GC	General Court (EU)
ILO	International Labour Convention
IMO	International Maritime Organization
IPPC Directive	Directive 96/61/EC concerning integrated pollution prevention and control
ITK	Inuit Tapiriit Kanatami
ITTO	International Timber Trade Organization
IUU	Illegal, unreported and unregulated fishing
IWC	International Whaling Commission
JHA	Justice and home affairs

MCPFE	Ministerial Conference for the Protection of Forests in Europe
MS	EU Member State
NAFO	Northwest Atlantic Fisheries Organization
NASCO	North Atlantic Salmon Conservation Organization
NEAFC	North East Atlantic Fisheries Commission
OIE	World Organization for Animal Health
OSPAR	Convention for the Protection of the Marine Environment of the North-east Atlantic
PCBs	Polychlorinated biphenyls
POPs	Persistent organic pollutants
REACH	Registration, Evaluation, Authorisation, and Restriction of Chemicals
REIO	Regional economic integration organization
RFMO	Regional fisheries management organization
TEC	Treaty Establishing the European Community
TEEC	Treaty Establishing the European Economic Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNFF	UN Forum on Forests
US	United States
VTMIS	Vessel traffic monitoring and information system
WTO	World Trade Organization

EXECUTIVE SUMMARY

Often the Arctic governance issues are discussed with the erroneous assumption that the EU is an outside actor to the Arctic region, since it has no shoreline in the Arctic waters. The EU Commission's application to become a permanent observer in the Arctic Council was not accepted in the last ministerial meeting of the Arctic Council in April 2009. Yet, three out of the eight member states to the Arctic Council are Member States of the EU: Finland, Sweden and Denmark (and Iceland has commenced accession negotiations to become a MS); via European Economic Area (EEA) agreement, Iceland and Norway are obligated to implement much of the EU legislation; and even Greenland and Faroe Islands have strong links to the EU, even if not being part of the EU; Greenland is a member of the Overseas Countries and Territories Association. Although we examine the EU's role and competence in the Arctic from a purely territorial perspective, the EU does have a strong role and competence in the Arctic. This is even more pronounced if we examine the economic and other activities that are – now and more so in the future – conducted in the Arctic. In fact, this is one of the findings of this report. The EU, and its Parliament, has various legal competences and thus possibilities to influence the development of the region.

1. EU'S LEGAL COMPETENCES IN THE ARCTIC

As a general matter, the Lisbon Treaty clarified the EU competences by articulating these (exclusive EU competence, shared competence and complementary one), with only some minor modifications made (e.g. inclusion of energy). From the perspective of the European Parliament (EP), the Lisbon Treaty placed more policy areas under the co-decision procedure making it the ordinary legislative procedure, and thus, gave the Parliament more decision-making powers.

In most policy areas, the EU's competence is clear, especially when it is now articulated in the Lisbon Treaty. Yet, there are "grey zone" areas where the European Court of Justice (ECJ) has given legal guidance as to how the EU's institutions need to evaluate their legal competence to act.

From the Arctic perspective – if the Arctic's southernmost border is understood to lie at the Arctic Circle – there are three dimensions for evaluating the EU's competence. First, there are the northernmost parts of Finland and Sweden, which are part of the EU territory and for which the EU's internal competence to legislate must be determined. In order to legislate, the EU must – in addition to basing itself on primary law legal basis – show that the objectives of the proposed action cannot be sufficiently achieved by the Member States (principle of subsidiarity) and that the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties (principle of proportionality). Second, the European Economic Area (EEA) States – Norway and Iceland – are required to implement EU legislation that is related to the functioning of the common market, and therefore, some of the EU legal competences have a direct impact on these two countries. Third, and most importantly from the viewpoint of the Arctic, the EU has competence to act externally, alone or together with Member States (MS). This takes place normally via participation to the functioning of treaty regimes and inter-governmental organizations having regulatory competence and role in the Arctic.

The EU has some of its **external competences** written out in the Lisbon Treaty but some derive from the doctrines developed by the ECJ, in particular the implied external competence. The idea advanced by the ECJ is that the EU's external competence mirrors its internal competence (the so-called principle of parallelism), so if the EU has already legislated extensively in a certain internal policy field, it has come to possess also competence to act externally, thus preventing the MS's circumventing this legislation e.g. by participating in an international treaty.

The **determination of the legal basis** of a specific action by the EU plays a critical role. The form of the EU competence, which can be exclusive, shared or complementary, will depend on the choice of legal basis for each specific action. The ECJ has highlighted the importance of the choice of legal basis in the adoption of a legislative act: "[t]he choice of the appropriate legal basis has

constitutional significance” and that the choice of the legal basis should rely on objective factors which are amenable to judicial review. This choice is fairly clear when there is an obvious legal basis relevant to the adoption of a particular policy instrument. In relation to most Arctic policies, however, many EU competences could possibly be invoked. Hence, some policies or regulatory actions of the EU might relate to more than one competence. In such a case, the determination of the legal basis will rely on a) the identification of the most relevant competences as well as b) the determination on whether one of those competences prevails over the others. The ECJ has laid prime importance to basing the EU competence on a single predominant competence, and only if this proves impossible two or more legal basis can be invoked. The problem with many legal bases is that they imply different decision-making procedures.

2. THE EU’S LEGAL COMPETENCE IN THE ARCTIC: CONSEQUENCES FOR THE EUROPEAN PARLIAMENT

The choice of legal base has much importance for the EP; it determines the type of decision-making procedure, and therefore, the role played by the EP in decision-making. The Treaty of Lisbon modified the legislative procedures of the EU by strengthening the role of the EP. Previously, the EP acted as co-legislator with the Council only in specific cases (former article 251 TEC). Since the entry into force of the Lisbon Treaty, the former co-decision procedure has now become the ordinary legislative procedure and applies as the default procedure (article 289 TFEU). Only those policies for which another procedure is specifically provided for in the Treaty fall outside the scope of this procedure. Consequently, many existing and new EU policies have now become subject to the co-decision procedure, all of which have direct relevance in the Arctic (and which will be studied below in the sectoral analysis).

The EP has also a strong role in the EU’s External Policy. By extending the EP’s decision-making role internally, the Lisbon Treaty enlarges the EP’s role also in external affairs. In the first stage, the question is over what is the role of the EP when the EU is about to become a party to an international agreement. For many categories of international agreements, the Council needs to obtain a consent from the EP before concluding an international treaty (article 218.6(a)); the role of the EP is limited to consultation (article 218.6(b) TFEU) in cases which do not fall under these categories of treaties. Yet, even in these cases, the EP must be rapidly and fully informed of all stages related to the conclusion of an international agreement. According to the ECJ’s case-law, if the conclusion of an international agreement is based on a dual legal basis, one falling under the scope of article 218.6(a) TFEU and the second under article 218.6(b) TFEU, the agreement will need to be adopted under the one which gives more power to the EP, namely Article 218.6(a). The EP - as co-legislator - plays also a strong role in incorporating the requirements of international agreements into EU law by implementing legislation.

3. SECTORAL COMPETENCES

Most of the EU’s sectoral competences that are relevant from the Arctic viewpoint fall under the shared competence between the EU and its MS’s. The main exception is the conservation of fisheries resources that is mostly under exclusive competence for the EU. These competences are studied below. Yet, when the EU makes use of common commercial policy measures in a shared competence area, (or e.g. the competition rules guiding the functioning of the internal market are affected) it assumes exclusive competence for that part of the policy. Moreover, if the EU has exhaustively regulated a policy area, its competence has become in practice exclusive. On the other hand, as the Lisbon Treaty makes clear, if the EU withdraws from regulating a certain policy field, this will return a competence for the MS’s.

In this executive summary, only the main findings will be taken up in relation to the sectoral competences, which are studied carefully below in the report. In addition, the decision-making

implications for the EP are taken up. It is useful to structure this part in such a manner that the more important sectoral competences of the EU in the Arctic are studied first and more comprehensively, after which the other competences are briefly explained.

The changes in the coverage of Arctic sea ice have triggered a lot of discussion over when the shorter navigational routes for shipping will be opened, even the trans-Arctic route crossing the Arctic Ocean as analysed in the Arctic Council's 2009 Arctic Marine Shipping Assessment (AMSA). Another areas where e.g. the Arctic Council sponsored Arctic Climate Impact Assessment (ACIA) and Oil and Gas Assessment predict changes are fisheries and offshore oil and gas activities. Fish stocks are projected to move northwards with the warming waters and offshore oil and gas activities further seaward.

Conservation of marine biological resources under the common fisheries policy belongs to an exclusive competence for the EU. The EU needs to address two main issues as regards Arctic **fisheries**. First, even if EU flagged vessels do some Arctic fishing, this number remains low. The main role the EU can have in influencing how the Arctic fisheries are currently conducted is as one of the major consumers for fishes caught in the Arctic. If the EU would aim to e.g. reduce illegal, unreported and unregulated (IUU) fishing in the Arctic waters, which may well increase with the opening of new fisheries, it could use trade measures for this purpose. Such measures are clearly within the exclusive competence of the EU, given that the purpose of the possible Regulation would be conservation of living resources, but are, of course, liable to legal challenge in the World Trade Organisation's (WTO) dispute settlement procedures.

The second issue that may arise in the future is something that ACIA has pointed out, namely that fish stocks may move northwards, requiring new management arrangements for their sustainable harvesting. The US Congress (joint resolution by both the House of Representatives and the Senate) has already proposed to consider whether regional management fisheries organization (RFMO) on the basis of the Straddling and Highly Migratory Fish Stocks Convention (to which all the eight Arctic states are parties) should be concluded. The Commission of the EU contemplated in its Communication (COM/2008/0763) the possibility of the North East Atlantic Fisheries Commission to extend its already existing mandate in some Arctic waters further to the Arctic Ocean. There is currently no progress in negotiating an RFMO for the Arctic Ocean, but if such process were to commence at some point in future, the EU would possess exclusive external competence to negotiate a treaty on behalf of all the MS's and participate in a treaty regime and its meetings, similarly as in the NEAFC.

Under the Treaty of Lisbon (Art. 43.2.), the EP is a co-legislator in the common fisheries policy, except for the adoption of measures "on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities"; the latter are done by the Council exclusively (Art. 43.3. TFEU).

The consent of the EP is needed when the EU concludes an international agreement related to the fisheries. Yet, if such an agreement has an impact on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities, the EP would only be consulted for a decision made by the Council.

Transport is a policy with competence shared between the EU and its MS's. From the viewpoint of gradually opening new maritime corridors in the Arctic waters, the most important process from the viewpoint of the EU is that of the International Maritime Organisation's (IMO) aim to make the 2009 December adopted IMO Polar Code legally binding. As will be shown below, the EU has already regulated aspects of maritime transportation that have a direct bearing on the Polar Code. Even if the EU is not a member of the IMO, it seems clear that EU and MS's are both competent in the process to translate the requirements of Polar Code into legally binding ones. Even if there is a process in motion to translate the requirements of Polar Code into hard-law, it is still unclear how this is done, that is, whether this would mean negotiating a separate international treaty or incorporate the Polar Code requirements into existing treaties, such as the International Convention for the Safety of Life at Sea (SOLAS). Conclusion of international agreements relating to maritime

transport (art. 100(2) TFEU) requires consent from the EP, since it is internally regulated through ordinary legislative procedure.

Environmental policy is a shared competence policy between the EU and its MS's, even if many environmental protection areas are so exhaustively regulated by the EU that it is difficult to foresee much competence for the MS's. Moreover, EU's environmental policy together with e.g. common agricultural policy (CAP) have influence even on environmental related policy sectors like Forestry Policy where generally speaking MS's alone have the legal competence. Environmental policy of the EU applies at its full in the northern parts of Finland and Sweden, but most of it also to Norway and Iceland via the EEA Agreement, given that most environmental policy is internal market relevant. Yet, from the viewpoint of environmental problems facing the Arctic, most important ones are regulated internationally, via the biodiversity convention, climate regime, etc. Both MS's and the EU have competence in these issues and both also participate in these global conventions. Yet, some aspects of these conventions can fall under the exclusive competence of the EU.

One of the biggest environmental problems in the Arctic are persistent organic pollutants (POP's) that are regulated by the Stockholm Convention on POP's, participated in by both the EU and its MS's. The European National Implementation Plan requires that most issues under the Stockholm Convention need "close and constructive cooperation between the Commission and the Member States". The issues of exclusive competence for the EU are related to the competition policy for the internal market and international trade, i.e. prohibitions and restrictions of production, export, import etc. of POP substances.

Mercury poses one of the greatest environmental challenges in the Arctic and it is still not covered by a specific international treaty (even if a process for such an international convention has been ongoing for a while). Through its Directive 2007/51/EC on the Restriction on Marketing of Mercury and its Regulation (EC) No. 1102/2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury, the EU has likely assumed exclusive competence over some parts as economic issues of the mercury policy, which need to be taken into account if an international treaty is concluded at some point in future. Yet, it is too early to conclude anything on this, given that the evaluation of EU's and its MS's legal competences in this case depends on the content of the possible agreement, if any.

In most environmental policy fields (including climate policy), the EP has to consent to the conclusion of an international environmental agreement by the EU. The exceptions are town and country planning, water resources, and land use (apart from waste management), where EP will only need to be consulted. The consent of the EP will be required when the agreement results in important budgetary implications or an establishment of a specific institutional framework.

One of the clearest changes brought by the Lisbon Treaty is that **energy** is now explicitly included in the list of competences, mainly one shared between the EU and the MS's. Since the EU is heavily dependent on fossil fuels produced in the Arctic regions of Norway and especially Russia, it is important to examine the issue from the viewpoint of energy security – an issue that has already been a problem between Russia and the EU. In Article 122 on the Treaty on the Functioning of the European Union (TFEU) energy supply is taken up as a specific field on the basis of which the Council may adopt measures appropriate to the economic situation in the frame of the EU economic policy. It is important to point out that Norway's EEA obligations do not extend to energy policy.

Prior to the entry into force of the Treaty of Lisbon, decisions related to the regulation of the internal energy market fell under the co-decision procedure prescribed in former article 251 TEC. The new energy competence of the EU comes mainly within the scope of the ordinary legislative procedure and therefore extends the role of the EP as a co-legislator to all energy policies. However, the measures affecting a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply form exception. In these cases the Council acts unanimously in accordance with a special legislative procedure and after consulting the EP, the Economic and Social Committee and the Committee of the Regions.

Energy policy is obviously important also in the EU's climate change policy, which is part of the environmental competence, also one shared between the EU and its MS's. For instance, energy efficiency and saving measures are part of the shared energy policy, which evidently are important for the overall climate change policy. The EU's competence in climate change is important for the future of the Arctic, as climate change is the main driver of change in the Arctic and the EU's share of overall global emissions is approximately 16%. The EU's shared competence in climate change policy with its MS's is studied in detail in Antje Neumann's briefing report as well as briefly in this study.

Similarly than in all environmental policies, the consent of the European Parliament needs to be obtained by the Council when deciding to become a party to an international agreement related to climate policy, such as the UN Framework Convention on Climate Change, the Kyoto Protocol or any future legally binding treaty on climate change (Art. 218.6 a (v)).

Most issues related to **animal welfare** in the Arctic fall within the environmental or agricultural policies of the EU and thus fall under the shared competence of the EU and its MS's. Yet, since the EU has adopted Regulation prohibiting the entry of seal products into the internal market, this specific policy area is now within the exclusive competence of the EU. It still remains to be seen, as is studied below in section 3.6., whether the EU regulation will hold as it is currently been legally challenged in two ways: by various indigenous and some non-indigenous organizations as well as natural persons in the ECJ and by Canada via the WTO dispute settlement.

Since the question of seal welfare is currently approached via the internal market regulations (establishing internal market as area without internal frontiers based on four freedoms), the approximation of laws regarding the establishment and functioning of the internal market is adopted via the ordinary legislative procedure (arts. 26, 114 and 116 TFEU), giving the EP a strong role in the process.

Majority of legislation referring to whaling has environmental policy as its legal basis for which the ordinary legislative procedure would apply. Even in the event that whaling is regulated through conservation of marine biological resources, the ordinary legislative procedure would apply. If EU was to conclude also in whaling animal welfare international agreements that would fall under its environmental policy and internal market regulations, the consent of the EP would be required.

The EU can carry out actions to support, coordinate or supplement Member States' actions when the legal competence lies with the MS's. Below, some of these areas are studied from the Arctic perspective: research, tourism, forestry, regional policy and indigenous people; after each sector, the EP's role will also be elaborated on. As will be shown, the EP does have a role also in implementation of these sectoral policies. It bears mentioning that even if e.g. forestry policy lies clearly with the competence of the MS's, there are already existing legal components concerning forest management in the EU that are part of different policy sectors likewise the common agricultural or commercial policy and thus fall under the shared or exclusive competence of the EU.

INTRODUCTION

This study examines the EU's legal competences affecting the Arctic. The main goal is to examine in various Arctic relevant policy areas what are the legal competences of the EU and of its Member States (MS), respectively. Secondary goal is to examine what kind of consequences flows from EU's legal competence for the decision-making procedure within EU, in particular from the perspective of the European Parliament (EP).

The focus of the study is in both internal and external legal competences after Lisbon Treaty in so called first pillar of the EU. The areas of former second or third pillars (the common foreign and security policy and police and judicial cooperation in criminal matters) are not included in this study. Moreover, the study will also consider in each policy area the effects of the EEA Agreement, an international treaty which requires Iceland and Norway to implement many regulatory actions of the EU.

The study is structured into two parts. First part will look into the general doctrines and primary rules on how legal competence is shared between the EU and its MS's, both internally and externally (as well as in EEA area). Second part will examine the following sectoral policy areas:

1. Transport policy;
2. Environmental policy;
3. Common Fisheries Policy;
4. Common Energy Market and EU External Energy Policy;
5. Research;
6. Animal welfare;
7. Climate Change;
8. Indigenous People;
9. Forest Policy;
10. Tourism;
11. Regional Policy.

Main findings and conclusions are drawn in the Executive Summary that precedes the background report that follows.

1 LEGAL BASES FOR EU ACTION IN THE ARCTIC AFTER THE LISBON TREATY

1.1 Introduction to the sources and limits of EU competence

1.1.1 Principles framing the competence of the EU

The Principle of Conferral

Being an intergovernmental organization created on the basis of an international agreement, the competences of the EU stem from its Member States. Therefore, the EU must act within the limits of the powers that the member states have, explicitly or implicitly, accepted to delegate to it. The new wording of the principle provided by Article 5(2) Treaty on the European Union (TEU) describes this principle in stronger terms than in the pre-Lisbon treaty:

Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.¹

The Principle of Subsidiarity

The competences of the EU are further limited by the implementation of the principle of subsidiarity. First developed in relation to the EU environmental policy, the principle of subsidiarity has become a principle of general application in 1992 with its inclusion in article 5(3) TEU, which states that:

"[I]n areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

The Principle of Proportionality

As will be discussed below, the Treaty of Lisbon elevates the status of the three principles framing the competence of the EU. This principle is also provided for in article 5(4) of the TEU which states:

Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The two latter principles are further defined in Protocol 2 to the Treaty of Lisbon on the application of the principles of subsidiarity and proportionality. The provisions of the protocol reiterate the requirement for the EU institutions to give reasons supporting their legislative action (this duty is provided under article 296 Treaty on the Functioning of the European Union – TFEU), particularly in relation to the justification of the draft legislation in relation to the application of the two principles, including qualitative and possibly quantitative information supporting the reasoning that action can be better taken at the community than at the Member States level.

1.1.2 Three categories of EU competence

Some of the competences exercised by the EU in relation to certain policy fields are exclusive competences insofar that the Member States are prevented from enacted legislation with regards to these policy areas. However, in relation to most subject-matter areas, the EU shares competence with the Member States. Finally, the EU has also complementary competence in the fields of *flanking policies* such as human health, industry, culture, tourism and education. In these latter policy-areas, the EU only has the competence to *support, coordinate or supplement* the actions of its Member States. The Treaty of Lisbon is the first treaty amending the founding treaty that has established a clear distinction between the three categories of competences as articles 3, 4 and 6 of the TFEU

¹ Emphasis added.

show (see articles 3 and 4 quoted below). Since much legislation covers nevertheless more than one subject-matter area, ambiguity is likely to remain regarding whether the EU exercises exclusive, shared or complementary competence related to a specific legislation.

1.2 Consequences of the Lisbon Treaty

The treaty of Lisbon constitutes the latest step of the European integration as far as founding treaties are concerned. It entered into force on December 1, 2009. With some modifications aimed at accommodating growing opposition against European constitutionalism, most of its provisions are heavily inspired by those of the failed Treaty Establishing a Constitution for Europe.

1.2.1 Codification of competences

Prior to the entry into force of the Treaty of Lisbon, the list of the EU competences had been progressively extended. Firstly, in its case law the European Court of Justice (included the Court of Justice of the EU after the Treaty of Lisbon) had considerably extended the competences of the EU. Secondly, each of the successive agreements amending the Treaty of Rome included new provisions extending these competences, either in providing explicitly what the ECJ had already stated in its decisions or in granting competences to the EU in new policy-areas. In this context the consolidated founding treaties did not contain an exhaustive list of the EU competences but rather articles providing EU competence to a specific subject-matter in various sections of the Treaty. The Treaty of Lisbon addressed this shortcoming in codifying in its article 3, 4 and 6 respectively the exclusive, shared competences and complementary competences.

Text Box 1: Provision of the TFEU defining the scope of EU competences

Article 3

1. The Union shall have exclusive competence in the following areas:

- (a) customs union;
- (b) the establishing of the competition rules necessary for the functioning of the internal market;
- (c) monetary policy for the Member States whose currency is the euro;
- (d) the conservation of marine biological resources under the common fisheries policy;
- (e) common commercial policy.

2. The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.

Article 4

1. The Union shall share competence with the Member States where the Treaties confer on it a competence which does not relate to the areas referred to in Articles 3 and 6.

2. Shared competence between the Union and the Member States applies in the following principal areas:

- (a) internal market;
- (b) social policy, for the aspects defined in this Treaty;
- (c) economic, social and territorial cohesion;
- (d) agriculture and fisheries, excluding the conservation of marine biological resources;
- (e) environment;
- (f) consumer protection;
- (g) transport;
- (h) trans-European networks;
- (i) energy;
- (j) area of freedom, security and justice;
- (k) common safety concerns in public health matters, for the aspects defined in this Treaty.

3. [...]

While most of the previous treaties amending the Treaty of Rome have marked a significant extension of the competences of the EU such as the creation of the European Monetary Union or the inclusion of the second and third pillars, the Treaty of Lisbon does not modify the EU competences

largely: the competences listed in articles 3 and 4 TFEU are indeed very similar to the EU competences under the Treaty of Nice. The new policy area added to art. 4 is energy policy, which is defined in Title XXI of Part III of the TFEU.

1.2.2 Modification provided for in the Treaty of Lisbon

While it has been noted that the substantial scope of the EU competence has not been much affected by the entry into force of the Treaty of Lisbon (an exception to this statement can be found in section 3 on energy policy), the impact of the entry into force of the new treaty relies therefore more in institutional and procedural reforms than in the extension of the number of policy areas covered by the action of the EU.

One of the major novelties provided for in the Treaty of Lisbon consists in the additional safeguards established in order to prevent the encroachment of EU law upon the law of the Member States. These mechanisms provide additional *federalism safeguards* ensuring compliance with the principles of subsidiarity and of conferral.

For the first time in the history of European integration, the treaty now envisions a specific role for national parliaments as watchdogs of the compliance by the EU institutions of the principles defining the scope within which the EU might legislate. Thus, the protocol on the application of the principles of subsidiarity and proportionality also establishes a mechanism of consultation with national parliaments, providing them with a *yellow card* mechanism, by which national parliaments can force the review of EU draft legislation in relation to concerns with regards to the application of the principle of subsidiarity. In cases for draft legislation to be adopted under the co-decision procedure, the protocol also provides for an *orange card* mechanism, by which the national parliaments can set a process in motion that would greatly simplify the possibility for the European Parliament to reject draft legislation on subsidiary grounds.

According to the doctrine of pre-emption developed in the past by the ECJ, the Member States should refrain to take action in a specific field in which the EU has already legislated. This doctrine diminishes to some extent the concept of shared competence as it limit the authority of the member states in relation to these policy-areas. The Treaty of Lisbon softened this doctrine in article 2(2) TFEU with regards both to competences which the EU has not yet exercised and to competences in which the EU would decide to cede a competence back to its Member States:

The member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.

The protocol 25 to the Treaty of Lisbon further defines the scope of the Member States competence in relation to issue-matters covered by article 4 of the TFEU:

[W]hen the Union has taken action in a certain area, the scope of this exercise of competence only covers those elements governed by the Union act in question and therefore does not cover the whole area.

Additionally, the flexibility mechanism provided for in former article 308 TEC enabled the EU to take action in areas where it lacks competence *whenever this action should prove necessary to attain [...] one of the objectives of the Community*. In the past, this mechanism has provided the basis for extensive action of the EU outside of the scope of its competences conferred upon by the treaties. The new provisions contained in the Treaty of Lisbon, while retaining this mechanism, have constrained its use by providing for a stricter procedural requirement in its application, based on the recognition of a stronger role both for the European Parliament as well as for national parliaments (article 352 TFEU).

Finally, the Treaty of Lisbon also modifies decision-making procedures. The number of decisions for which a qualified majority voting is required has been extended. Similarly the role of the European Parliament has been increased with the co-decision making procedure being now designated as the “ordinary legislative procedure” and applying to additional policy areas.

1.3 Geographic scope of EU competence

1.3.1 Internal Competences

While most of the areas covered by the scope of this briefing fall outside of the national jurisdiction of the Member States of the EU, the EU territorial jurisdiction does apply to the Arctic with regards to the northernmost regions of both Sweden and Finland. The key principles applying to the exercise of internal competence by the Union as well as the issue-matters in which the EU has competence have been introduced in the previous paragraphs.

1.3.2 External Competences

Explicit and Implicit External Competence

While the policy areas falling within the EU internal competence are clearly listed in the TFEU, the Treaty lacks a clear listing of the EU external competences. In this context, the EU possesses explicit external competence in a few areas, when a specific provision of the TFEU provide expressly for the participation of the EU in international relations, such as in relation to trade, development or external environmental policy. However, to compensate the limited scope of explicit references to the role of the EU as an international actor, the ECJ has recognized in its rulings a second category of external competence for the EU. The EU has implicit external competence when this competence flows from other provisions of the founding treaties. In past decisions, the Court has endorsed the principle of parallelism according to which the external competence mirrors its internal competences.² It also supported the notion of a principle of complementarity, i.e. the EU having external competence when the exercise of this power is necessary for the effective implementation of its internal policies.³

Exclusive External Competence

The concept of exclusive external competence of the EU was developed in the case law of the ECJ. The principle was first taken up in the ERTA ruling in which the Court provided that *“each time the community, with a view to implementing a common policy envisaged by the treaty, adopts provisions laying down common rules, whatever form these may take, the Member States no longer have the right, acting individually or even collectively, to undertake obligations with third countries which affect those rules”*.⁴ In a later decision, the ECJ clarified its stance: the EU would possess exclusive external competence not only on the basis of an internal power which it already exercises to adopt internal measures in the view to attain a common policy, but also in the absence of such measures insofar as the conclusion of an agreement is necessary for the attainment of the common policy.⁵

Shared External Competence and Mixed Agreements

In its opinion on the conclusion of the WTO agreement, the ECJ concluded that in cases in which an international agreement, to which the EU would become a party, will cover policies laying outside the scope of the competence of the EC, the EC would not have external exclusive competence.⁶ The exercise of shared external competence by the EU and its Member States has specific consequences when it comes to the membership to international organizations. Mixed agreements can be concluded in two cases. When the Union and its Member States possess parallel competences, they might both conclude the same treaty without affecting each other’s rights and obligations under the treaty. In most cases, however, the conclusion of mixed agreements will result from the Union and its Member States sharing competences on the policies covered by the envisaged treaty. The EC shares competences with its Member States in two circumstances.

² Opinion of the Court of Justice of 26 April 1977, 1/76 (European Laying-Up Fund for Inland Waterway Vessel), [1977] ECR 741

³ Judgment of 14 July 1976 in Cases 3, 4 and 6/76 *Kramer* [1976] ECR 1279

⁴ Judgment of 31 March 1971 in Case 22/70, *Commission v. Council*, para. 17.

⁵ ECJ Opinion 1/76, para. 5.

⁶ Opinion of the Court of Justice of 15 November 1994, 1/94 *“WTO”* [1994] ECR I-5267.

Firstly, the international agreement might focus on a policy area for which the founding treaties might provide that Member States and the Union share competence. Secondly, the agreement might cover simultaneously issues falling within the attributed competences of the EC and other aspects for which the Member States remain fully competent. Some international agreements include specific provisions referring to the membership usually falling under the category of Regional Economic Integration Organization (REIO) such as the EU. These provisions might establish specific procedures for the exercise of the competence of the EU and its Member States. When specific provisions of a multilateral agreement are relevant to the exercise of the EU competence in the Arctic region, these provisions will be mentioned in the sectoral analysis provided in Section 3 of this briefing.

Participation of the EU, and its Member States, to International Forums

Article 216 provides the main legal basis for the conclusion of international agreements by the EU in relation to both explicit and implicit external competence:

The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.

The agreements concluded by the EU are then binding both for the institutions of the Union and its Member States.

The participation of both Member States and the EU in the initiatives and negotiations taking place under the frame of a mixed agreement are regulated by the general principles applying to the division of competences between the Union and its Member States. For instance, the prohibition of activities by the Member States that could impair the implementation of EU policies extends also to their participation in multilateral agreements. The ECJ found for instance that the provision of views to an international forum would breach the loyalty obligation of the Member State, now provided in article 4, para. 3 of the TEU, if these views could lead to the adoption of binding obligations impairing the implementation of an EU policy.⁷ The conditions of the participation in mixed agreements, such as the exercise of voting rights for the EU and its Member States, are often regulated by provisions included in international agreements concluded with third parties.

1.3.3 Greenland and the Association of the Overseas Countries and Territories

Since the Greenlandic referendum of 1985, Greenland is no longer part of the European Union. Greenland remains nevertheless linked to the EU through the association of the Overseas Countries and Territories with the EU, defined under the TFEU, part IV. The Overseas Association Decision of the Council defines the general framework under which cooperation with each overseas country or territory might take place.⁸ The terms of the association are mainly addressed at Member States in order to prevent discriminatory practices and to support the economic, cultural and social development of Greenland. The main aspect of this association consists in the absence of duties for goods originating from Greenland. The exercise of this benefit is however conditioned in a specific protocol to the TFEU. Protocol 34 to the TFEU on the special arrangement for Greenland provides that Greenland can benefit from the terms of the association as long as the EU is satisfied with the access for its fishing fleet to Greenlandic fishing zones. Based on the terms of the association with Greenland, the EU also cooperates more closely in education and training. Other sectors such as environment, research and food safety are currently considered for further cooperation.

⁷ Judgment of 12 February 2009 in Case C-45/07 *Commission v Greece* [judgment of 12 February 2009]

⁸ Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community.

1.3.4 The Relevance of the EEA agreement

The Agreement on the European Economic Area (EEA Agreement), which was signed in 1992 by the Member States of both the EU and the European Free Trade Association (EFTA), contributes to further extending the geographical scope of the application of EU legislation outside of the territorial jurisdiction of its Member States. The existence of this agreement is particularly relevant to the scope of the legal competence of the EU in the Arctic since both Norway (excluding Svalbard) and Iceland are a party to the EEA Agreement (Iceland also currently being a candidate country to join the EU).

The EEA Agreement creates a single market for the 30 states. It provides for application of the *acquis communautaire* to the three EEA/EFTA countries in relation to the four fundamental freedoms (free movement of goods, services, capital and persons). The agreement also covers cooperation between the EU and the EFTA countries in relation to the flanking and horizontal policies. The Common Agriculture Policy as well as the Common Fisheries Policy are however excluded from the scope of the EEA internal market. Additionally, the content of the former second and third pillar of the EU as well as provisions of the EMU do not apply to the EFTA countries.

In order to review the proper implementation of the EEA agreement and of EU legislation in the EFTA countries, the EFTA Surveillance Authority (ESA) has been established as well as the EFTA Court. The EFTA Court is competent to give rulings on actions brought by the ESA against an EFTA Member State for non-compliance with the EEA Agreement, to hear actions in nullity brought by individuals against a decision of the ESA and to rule on the interpretation of EEA at the response of a preliminary reference by a national tribunal. The principle of homogeneity in the interpretation of EU law constitutes the key principle of EEA law and is guaranteed by specific dialogue mechanisms between the ECJ and the EFTA Court. Hence the EFTA Court is required to take due account of the decisions taken by the ECJ in cases involving similar wording between the provisions of the EU founding treaty and of the EEA Agreement. The principle of direct effect and primacy of EU legislation do not apply *stricto sensu* in the frame of the EEA agreement but the implementation of the provisions of the agreement by the EFTA Court have led to the recognition of a quasi-direct effect and a quasi-supremacy for EU law in EFTA countries leading to full state liability in case of a default of compliance.

EFTA states have only a consultative role in the decision-making process related to the adoption of EU legislation. Whenever an EU legislation is drafted by the Commission and communicated to the Council, the Commission will consult with the experts of the EFTA states. If the legislation is adopted, the EEA Joint Committee will determine in which conditions an amendment to the EEA Agreement would be required in order to maintain the development of a homogenous legal order under the agreement. The legislation is then transmitted to the comparable EEA institution that adopts it as EEA law. Finally, this legislation is integrated in the law of the EFTA states following their respective national decision-making processes.

1.4 The choice of legal basis

The following section of the report will study the different policy areas that could be invoked in relation to the EU competences applicable to the Arctic.

The determination of the legal basis plays a critical role in two regards. Firstly, the form of the EU competence, which can be exclusive, shared or complementary, will depend on this choice of legal basis for each specific action. Furthermore, this choice will also determine which type of decision-making procedure will be relevant, and therefore, the role played by the European Parliament in this procedure. In this context, the ECJ has highlighted the importance of the choice of the legal basis in the adoption of a legislative act: “[t]he choice of the appropriate legal basis has constitutional significance”.

Text Box 2: Ruling of the ECJ highlighting the importance of the choice of the legal basis, Commission v. Council, C-45/86 [ECR 1987]

- 5 Article 190 of the treaty provides that: regulations, directives and decisions of the council and of the commission shall state the reasons on which they are based". According to the case law-law of the Court (in particular the judgment of 7 July 1981 in case 1258/80 Rewe-Handelsgesellschaft Nord MBH V Hauptzollamt Kiel ((1981)) ECR 1805), in order to satisfy that requirement to state reasons, community measures must include a statement of the facts and law which led the institution in question to adopt them, so as to make possible review by the court and so that the member states and the national concerned may have knowledge of the conditions under which the community institutions have applied the Treaty.
- 8 However, those indications are not sufficient to identify the legal basis by virtue of which the Council acted. Although the recitals in the preambles to the regulations do refer to improving access for developing countries to the markets of the preference-giving countries, they merely state that adaptations to the community system of generalized preferences have proved to be necessary in the light of the experience in the first 15 years. Moreover, according to information given the court by the council itself, the wording "having regard to the treaty" was adopted as a result of differences of opinion about the choice of the appropriate legal basis. Consequently, the wording chosen was designed precisely to leave the legal basis of the regulation in question vague.
- 9 Admittedly, failure to refer to a précised provision of the treaty need not necessarily constitute an infringement of essential procedural requirements when the legal basis of the measure may be determined from other parts of the measure. However, such explicit reference is indispensable where, in its absence, the parties concerned and the court are left uncertain as to the precise legal basis.
- 11 It must be observed that in the context of the organization of the powers of the community the choice of the legal basis for a measure may not depend simply on an institution conviction as to the objective pursued but must be based on objective factors which are amenable to judicial review.
- 12 In this case, the argument with regard to the correct legal basis was not a purely formal one since article 113 and 235 of the EEC treaty entail different rules regarding the manner in which the council may arrive at its decision. The choice of the legal basis could thus affect the determination of the content of the contested regulations.

The Court also ruled in its Titanium dioxide judgment that the choice of the legal basis should rely on *objective factors which are amenable to judicial review*.⁹ This choice is relatively straightforward in the case of the existence of a unique and obvious legal basis relevant to the adoption of a particular international instrument. In relation to Arctic policies however, many EU competences could possibly be invoked.

Some policies or regulatory actions of the EU might relate to more than one of those competences. In such a case, the determination of the legal basis will rely on the identification of the most relevant competences as well as the determination whether one of those competences prevails over the others. In recent rulings related to the conclusions of international treaties which involved both trade and environmental aspects, the ECJ has provided a test in order to assess these important questions. In its opinion on the conclusion of the Cartagena Protocol to the Convention on Biological Diversity (CBD), the court emphasized that in the context of an agreement pursuing multiple purposes, the determination of the predominant purpose will be required in order to identify the appropriate legal basis. In its ruling related to the conclusion of the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade, the Court provided further guidance relative to the determination of a dual legal basis for the conclusion of international agreement.

⁹ Judgment of 26 March 1987 in Case 45/86 *Commission v Council*, paragraph 11; Judgment of 11 June 1991 in Case C-300/89 *Commission v Council*.

Text Box 3: The reasoning of the court on the dual legal basis in the case 94/03 (Rotterdam Convention)

- 35 If examination of a Community measure reveals that it pursues a twofold purpose or that it has a twofold component and if one of those is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the act must be based on a single legal basis, namely that required by the main or predominant purpose or component (see Case C-36/98 Spain v Council [2001] ECR I-779, paragraph 59; Case C-211/01 Commission v Council [2003] ECR I-8913, paragraph 39; and Case C-338/01 Commission v Council [2004] ECR I-4829, paragraph 55)
- 36 Exceptionally, if on the other hand it is established that the act simultaneously pursues a number of objectives or has several components that are indissociably linked, without one being secondary and indirect in relation to the other, such an act will have to be founded on the various corresponding legal bases (see, to that effect, Case C-336/00 Huber [2002] ECR I-7699, paragraph 31; C-281/01 Commission v Council, cited above, paragraph 35; and Case C-211/01 Commission v Council, cited above, paragraph 40).
- 51 Having regard to all the foregoing considerations, and as is also clear from the express terms of the eighth recital in the preamble to the [Rotterdam] Convention, according to which the commercial and environmental policies of the parties to the Convention should be mutually supportive with a view to achieving sustainable development, it must therefore be concluded that the Convention includes, both as regards the aims pursued and its contents, two indissociably linked components, neither of which can be regarded as secondary or indirect as compared with the other, one falling within the scope of the common commercial policy and the other within that of protection of human health and the environment. In accordance with the case-law cited in paragraph 36 of the present judgment, the decision approving that Convention on behalf of the Community should therefore have been based on the two corresponding legal bases, namely, in this case, Articles 133 EC and 175(1) EC, in conjunction with the relevant provisions of Article 300 EC.

The recourse to a dual legal basis for the adoption of an international agreement should thus only occur in exceptional cases when no single predominant competence can be identified.

1.5 Role of the European Parliament in the EU Competences related to the Arctic

1.5.1 Legislative Procedures of the EU

The Treaty of Lisbon also modifies the legislative procedures of the EU, enhancing the role of the European Parliament. Under the former TEC, the European Parliament would act as a co-legislator with the Council only in specific cases when the provisions of the Treaty would refer to this procedure (former article 251). Since the entry into force of the Lisbon Treaty, the former co-decision procedure has now become the ordinary legislative procedure and applies as the default legislative procedure for the EU (article 289 TFEU). Only those policies for which another procedure is specifically provided in the Treaty fall outside of the scope of this procedure. Special legislative procedures provided under article 289.2 TFEU include decision by the EP with participation of the Council and, more often, decision of the Council with consultation of the Parliament.

Consequently to this change, some existing EU policies have now become subject to the co-decision procedure, including the agriculture and fisheries policies which have direct relevance to this study. Additionally, many of the new policy areas for which an EU competence has been introduced in the Lisbon Treaty, also fall within the scope of the application of this procedure. In relation to the EU competences in the Arctic, policies for which the EU has now competence and which fall under the co-decision procedure include energy (considering that all policies related to the internal market energy already fall under the co-decision procedure), public health (to the extent that the EU sets high quality standards) and the implementation of the European research area.

The process of the ordinary legislative procedure is provided under article 294 TFEU. The procedure comprises of up to three readings. It also includes the creation of a Conciliation Committee in cases in which the Council and the Parliament have not adopted the same position after the second reading. In practical terms, the EP has equal footing with the Council in this procedure, the approval of both Parliament and Council being required for the adoption of a legislative act.

1.5.2 The Role of the European Parliament in relation to EU External Policy

The procedure for the conclusions of international agreements is elaborated in article 218 TFEU. This article identifies two different roles for the Parliament in relation to specific international agreements. The consent of the Parliament is required for the conclusion by the Council of the following categories of agreements (article 218.6(a)):

- (i) association agreements;
- (ii) agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- (iii) agreements establishing a specific institutional framework by organising cooperation procedures;
- (iv) agreements with important budgetary implications for the Union;
- (v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required.

Many of these cases have direct relevance in the context of the EU competence in the Arctic. The fifth case reflects the parallelism between the competences of the Parliament related to both internal and external EU policies. Except for the second case, which consists in an addition of the Treaty of Lisbon, these provisions reflect the content of former article 300 TEC. Thus, the Treaty of Lisbon mainly extends the competence of the Parliament in relation to EU external competences on the basis of the application of the parallelism between its internal and external competences and through the extension of the number of internal EU policies falling under the ordinary legislative procedure.

For cases falling outside of the scope of the list enumerated previously, the role of the Parliament is limited to a consultation (article 218.6(b) TFEU). Notwithstanding, the Parliament is to be immediately and fully informed at all stages of the procedure for the conclusion of an international agreement.

Text Box 4: ECJ Decision related to the consideration of the role of the European Parliament in the choice of legal basis, Case C-300/89 (Titanium Dioxide Case)

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| 17 | As the Court held in Case 165/87 Commission v Council [1988] ECR 5545, paragraph 11, where an institution's power is based on two provisions of the Treaty, it is bound to adopt the relevant measures on the basis of the two relevant provisions. However, that ruling is not applicable to the present case. |
| 18 | One of the enabling provisions at issue, Article 100a, requires recourse to the cooperation procedure provided for in Article 149(2) of the Treaty, whereas the other, Article 130s, requires the Council to act unanimously after merely consulting the European Parliament. As a result, use of both provisions as a joint legal basis would divest the cooperation procedure of its very substance. |
| 19 | Under the cooperation procedure, the Council acts by a qualified majority where it intends accepting the amendments to its common position proposed by the Parliament and included by the Commission in its re-examined proposal, whereas it must secure unanimity if it intends taking a decision after its common position has been rejected by the Parliament or if it intends modifying the Commission's re-examined proposal. That essential element of the cooperation procedure would be undermined if, as a result of simultaneous reference to Articles 100a and 130s, the Council were required, in any event, to act unanimously. |
| 20 | The very purpose of the cooperation procedure, which is to increase the involvement of the European Parliament in the legislative process of the Community, would thus be jeopardized. As the Court stated in its judgments in Case 138/79 Roquette Frères v Council [1980] ECR 3333 and Case 139/79 Maizena v Council [1980] ECR 3393, paragraph 34, that participation reflects a fundamental democratic principle that the peoples should take part in the exercise of power through the intermediary of a representative assembly. |
| 21 | It follows that in the present case recourse to the dual legal basis of Articles 100a and 130s is excluded and that it is necessary to determine which of those two provisions is the appropriate legal basis. |

The Court thus ruled that considerations should be given in the determination of the legal basis to potential consequences of this choice for the exercise of the rights of the Parliament. Although the legislative procedures have changed substantially since this decision, the conclusion reached by the Court in this case is still fully relevant in the context of different decision-making procedures, which grant different rights to the Parliament. Thus, if the conclusion of an international agreement is based on a dual legal basis, one falling under the scope of article 218.6(a) TFEU and the second under article 218.6(b) TFEU, the agreement will need to be adopted under the legal basis related to the former provision.

2 SECTORAL ANALYSIS

This section analyses basis the EU competences and policies which are relevant to the Arctic context on a sectoral basis. The analysis identifies eleven EU policy fields. We considered each of these fields subsequently according to the same frame, based on the distinction between three geographic scopes of EU action in the Arctic as identified in section 2.3 above (areas respectively falling within the territorial jurisdiction of the EU and its Member States, with the jurisdiction of EEA countries, and areas beyond the scope of these jurisdictions). The first paragraph of each section identifies and introduces the policies and regulations already adopted by the EU as well as their legal basis. The second paragraph of each section considers to which extent, if any, these competences and regulatory initiatives are relevant to the EEA. When we have concluded that these competences have an implication for the EEA, the geographic scope of EU regulation would thus be extended to cover the territorial jurisdiction of Norway and Iceland. Finally relevant Multilateral Agreements are introduced in the third subsection for each policy area and we are providing an overview of the division of the roles of Member States and the EU as parties to each of those agreements.

2.1 Transport policy

2.1.1 Existing policies and legal competence of the EU and the Parliament

Transport policy is an area where Member States and the Union enjoy shared competence under art. 4 and Title VI TFEU. This title regulates, in accordance to art. 58 TFEU, also freedom to provide services in the field of transport. The Union may lay down, *inter alia*, common rules applicable to international transport (to, from or passing across the territory of a Member State), the conditions for non-resident carriers, and measures to improve transport safety. The provisions of Title VI apply to transport by rail, road and inland waterways, and are applicable to these modes of transport within EU Arctic territories of Sweden and Finland, as well as, partly, in Norway and Iceland through EEA Agreement. The areas regulated by the Union include, for instance, public passenger transport services (Regulation EC 1370/2007); inland transport of dangerous goods (Directive 2008/68/EC); heavy goods vehicles (Directive 1999/62/EC) as well as improvement of environmental performance of the freight transport system (e.g., Regulation 1692/2006 on "Marco Polo" programme). Notably, the last document refers also to maritime transport under art. 80(2) TEC (presently 100(2) TFEU).

In the field of sea and air transport (art. 100(2) TFEU, formerly 80(2) TEC), the Union may (in accordance with the ordinary legislative procedure) adopt appropriate provisions and is not bound in its capacity by the Title VI. This competence is a new provision in comparison to TEC itself, where the procedure and scope of regulation was to be decided by the Council (and, indeed, such were established under Council Decision).

EU competence in the field of maritime transport is of particular importance in the Arctic context, due to significance of shipping for Arctic economy and environment, as well as owing to long-term perspective of opening new maritime corridors in the Arctic. The EU has not only competence to regulate shipping conducted under EU flags but also to legislate in the area of port state control and shipping utilizing Union ports. Substantial part of the EU policy in question derives from three Erika packages, various regulations of which are mentioned below. In its Arctic policy (COM(2008)763final followed by Council conclusions on Arctic issues, 2985 Foreign Affairs Council) the EU expressed the will to contribute to the development of Arctic commercial shipping as well as improving maritime

surveillance capabilities in the far North, e.g., by exploring the possibility of development of polar-orbiting satellite system and utilizing Galileo satellite navigation for better and safer navigation, maritime surveillance and emergency response. For aforementioned reasons, maritime transport is a focus of this section of the study.

Since the competence in the field of transport is shared by the Union and its Member States, competence in areas already covered by the European law, lies with the Union. Matters presently regulated by the European law (under art. 80(2) TEC, presently 100(2) TFEU) and having potential impact on the safety of Arctic shipping and its impact on Arctic environment (both in its present scope and range as well as in the future), include: maritime safety and prevention of pollution from ships, rules for ship inspection, port state control and improving performance of Member States as flag states as well as liability of carriers or vessel traffic monitoring and information system (VTMIS). The VTMIS directive (Directive 2002/59/EC) provides, *inter alia*, measures in the event of risks posed by the presence of sea-ice, making the authorities of Member States responsible for proper information on the ice conditions. Moreover, Member State authorities recommend routes and icebreaking services, and are empowered to request documents of certification for the strength and power requirements commensurate to the ice conditions in areas in which the ship operates. Importantly, aforementioned regulations may be of crucial importance if the IMO makes its Polar Code binding or in relation to the requirements for polar class vessels.

In addition, according to Title XVI of TFEU (Trans-European Networks), the Union may establish guidelines covering objectives, priorities and broad lines of measures, and support projects in the framework of those guidelines as well as implement measures necessary to ensure interoperability of the networks.

Major transport networks, governed by Title XVI of TFEU, are designed (through Decision No 1692/96/EC and EEA Agreement and its Annex XIII) for the Arctic regions both of Sweden and Finland, and Iceland and Norway.

EU interest in air and land transport in the European Arctic is focused on the development of East-West transport infrastructures, with such initiatives as Northern Dimension Partnership on Transport and Logistics supporting better land connections between the EU and North-West Russia. Moreover, the Norwegian port of Narvik is being designed as part of the "Motorway of Baltic and Barents Seas".

As described in the general part of the study, the Union has also external competence in matters listed above, examples of which are dealt with in the subsequent parts of this section. However, in line with the Lisbon treaty, in the case of the Union abstaining from exercising its competence within the field of transport, Member States can act individually respecting the principle of cooperation and refraining from taking any measures which could jeopardise the attainment of the objectives of the EU legislation. Most probably, the limits for States' flexibility to act in this context will be drawn from practice and/or newly developed case law.

EU regulatory competence within the area of Transport may also have its basis in other areas, such as competition (where the Union has exclusive competence when refers to internal market), environment (where it shares competence with Member States), or justice and home affairs, e.g., in regard to strengthening the criminal-law framework for the enforcement of the law against ship-source pollution.

Provisions for environmental policy regulate such issues applicable to Arctic transport as sulphur content of marine fuels (Directive 2005/33/EC, which replicates provisions of MARPOL 73/78 Annex VI), extent to which emissions from maritime traffic contribute to acidification, eutrophication and the formation of ground-level ozone (Directive 2001/81/EC), or control of volatile organic compound emissions connected with loading and unloading of ships (Directive 94/63/EC). In the field of road transport (applicable to EU and EEA Arctic territories) the promotion of clean and energy-efficient vehicles is also regulated by virtue of environmental title of the treaty (Directive 2009/33/EC).

EU competition legislation regulates application of the freedom to provide services to maritime transport (e.g., Council Regulation (EEC) no 4055/86 or Council Regulation no 1/2003) and state aid

to shipping and shipbuilding (e.g., Council Regulation no 1177/2002). Future development of European capacities in Arctic shipping may be affected by this scope of EU regulatory competence.

Legislation on the transport policy referring to land, rail and inland waterways as well as air and maritime transport are after Lisbon Treaty under ordinary legislative procedure (art. 91 and 100 TFEU). Role of European Parliament in establishing environmental regulations applicable to maritime transport is discussed in environmental policy section.

2.1.2 Implications through the EEA Agreement

As as non-discrimination of carriers as well as unlawful support or protection are concerned, EU transport regulations are applicable to the EEA with exception to unfair pricing (Council Regulations (EEC) no 4057/86), action to safeguard free access to cargoes in ocean trades (Council Regulation (EEC) No 4058/86) and counter-measures in the field of international merchant shipping (Council Decision 83/573/EEC). In the field of maritime transport EEA states coordinate their actions and measures towards third countries and third country companies (Protocol 19 to EEA Agreement) Legal acts of the Union with relevance for EEA are listed in Annex XIII to the Agreement. Consequently, the majority of EU regulations referring to maritime transport listed above as well as other modes of transport exercised in Arctic territories of EEA/EFTA states is applicable to the EEA. The exceptions include only provisions which exceed the scope of the EEA Agreement, such as criminalization of infringements under Framework Decision 2005/667/JHA within Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (art. 4). Furthermore, all listed acts adopted under environmental policy (art. 175) have EEA relevance.

2.1.3 Relevant Multilateral Agreements and the Status of EU membership

The main international organization providing regulatory framework for transport in the Arctic is International Maritime Organization (IMO). In its broad body of regulations, IMO has also adopted Guidelines for Ships operating in Polar waters (IMO Polar Code). A number of IMO instruments have relevance for shipping in the Arctic being simultaneously partly within the scope of EU competence, including instruments dealing with pollution from ships (especially oil, hazardous and noxious substances), ballast water management, safety of life at sea, or preventing collisions. Both the list of conventions and the EU legislation in the areas covered by discussed conventions are to be found in a separate table annexed to the study. Notwithstanding the role of IMO, the EU is also a party to the main international instrument governing maritime affairs, i.e. United Nations Convention on the Law of the Sea (UNCLOS).

Within the scope of aforementioned regulatory fields (deriving both from internal regulation and external activities) the EU has competence to pursue, through its Member States, more stringent international norms applicable to the Arctic, by, for instance, making the IMO Polar Code mandatory as well as incorporating an Arctic/polar dimension to various IMO instruments dealing with shipping safety and environmental damage caused by shipping.

The EU is not a member of the IMO, as only states are awarded membership. However, the Union has exercised its regulatory competence in certain areas within common transport policy (as pointed out above), while under the former TEC MS were not allowed to act without Community's authorization within these areas of regulation. This has however changed under the TFEU, as now, if the Community does not exercise its competence, states can act independently (under mentioned conditions, e.g., loyal cooperation).¹⁰

¹⁰ The first IMO Convention, which was open for EU signature was 1974 Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, through its Protocol 2 (2002), which opened the membership status for the regional economic integration organization (REIO). EU is yet to exercise its right to adopt this instrument, as Protocol 2 hasn't yet entered into force. However, the EU has already implemented the provisions of the Athens Convention through Regulation (EC)..

Importantly, the EU decided not to regulate (and thereby exercise its competence) greenhouse gas emissions from ships before the action is taken by the IMO, unless the organization does not reach any agreement by 2011.

In addition to IMO, also International Labour Organization regulations fall under the sphere of EU competence (e.g., Council Directive 1999/63/EC on the organisation of working time for seafarers and 2006 ILO Maritime Labour Convention). However, these instruments have only general application to the Arctic and will not be discussed.

The conclusion of international agreements relating to maritime transport, such as future binding Polar Code, if it is open for conclusion by regional economic integration organizations, under art. 100(2) TFEU would require consent of the European Parliament, as it is internally regulated through ordinary legislative procedure.

2.2 Environmental policy

2.2.1 Existing policies and legal competence of the EU and the Parliament

According to art. 4.2. (e) TFEU the European Union shares its internal and external competences in the field of environmental policy with its Member States. Art. 11 TFEU and art. 114.3. TFEU stipulate the inclusion of environmental protection requirements and sustainable development into the definition and crafting of different EU policies. This so-called integration principle is described also in art. 37 of Charter of Fundamental Rights of the European Union as follows:

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union (art. 191.2. 1st sentence TFEU). This high level of protection as a principle is also mentioned in

art. 114.3. TFEU. Art. 114.4 TFEU provides that the Members States retain their capacity to act in a field already covered by EU harmonization in if they deem

[i]t necessary to maintain national provisions on grounds of major needs referred to in Article 36, or relating to the protection of the environment or the working environment [...].

Art. 114.5 TFEU states that when the harmonization between Union and Member State policies cause problems for the Member State and when problems for the Member State arise based on new scientific evidence, after informing the Commission, new provisions for environmental protection may be introduced by the Member State. Both Protocol No. 25 to the Treaty of Lisbon on the Exercise of Shared Competences and Declaration No. 18 in Relation to the Delimitation of Competences indicate that the transfer of a higher degree of competences for the Union in the area of 'shared competence' is not endorsed by the Member States. This claim is also supported by the EU Treaty and the Protocol No. 1 on the Role of National Parliaments in the European Union, which despite the subsidiarity principle demand for closer scrutiny of EU competences through the Member States. However, since most environmental problems are transboundary in nature, this characteristic will have limited effect on environmental policy making.

EU competences for environmental policy are furthermore linked with the shared competence in energy as art. 194 TFEU states that EU energy policy is to be set in "the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment". Notwithstanding, this shared competence is constrained to the internal market, as a conferred external competence for energy environment policy remains unclear. It can be argued that it can be conducted on the basis of art. 192 TFEU, as it does not entail a restriction to the internal market.

In Title XX „Environment“ TFEU, i.e. Art. 191-193, the EU prime objectives are manifested. The Union is required to preserve, protect and improve the quality of the environment, protect human health,

to rationally and prudently utilize natural resources and to promote measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change. Art. 191.4 TFEU confers competence to the EU and its Member States to conclude agreements with third parties or relevant organizations.

Competences in environmental policy have been fulfilled with the creation of numerous policies and directives in various fields of environmental governance. These are air, chemicals, enlargement and neighbouring countries, industry, international issues, land use, nature and biodiversity, noise, soil, sustainable development, waste and water. The MS's implement usually the environmental directives with the level of minimum harmonization. In principle, the protective measures adopted pursuant to Article 192 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties. They shall be notified to the Commission. (193 TFEU.) Without hard empirical data the strong impression is that MS's hardly make any use of these powers in the article 193 TFEU.¹¹

Regulations concerning: Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH) as well as classification, labeling and packaging of substances and mixtures (CLP Regulation) form the legislative framework of chemical policies in Europe, relevant for the European Arctic and due to pollution reduction of relevance for the Arctic as a whole. Moreover, EU legislation on persistent organic pollutants, restriction on marketing of mercury, the disposal of polychlorinated biphenyls and polychlorinated terphenyls, integrated pollution prevention and control, as well as the limitation of emissions of certain pollutants into the air from large combustion plants directly affect the Arctic environment.

Birds Directive (2009/147/EC) and Habitat Directive (92/43/EEC) are the legislative basis for biodiversity protection in the EU. While not applicable in the EEA or wider Arctic, they affect Arctic territory within EU Member States. Directive 2001/42/EC on Strategic Environmental Assessment as well as Directives 85/337/EEC, 97/11/EC and 2003/35/EC as the legislative framework for Environmental Impact Assessment are relevant for all territories within the European Union and due to the fragility of the Arctic environment of particular importance.

In regard to implementation of existing regulation the Union has competence over the technical, scientific and administrative aspects of chemicals regulation of chemical legislation through the European Chemicals Agency (ECHA). Compliance control for the implementation of REACH according to art. 125 and 126 lies with the Member States. Similar to REACH, CLP Regulation places enforcement competences with the Member States. Yet, through ECHA, the European Parliament oversees the Regulation.

Competences in biodiversity protection are split between the Union and the Member States, whereas action taken on the community level primarily consists of assessments, evaluations and provision of guidance (cf. Biodiversity Action Plan). The Natura 2000 network constitutes the central policy instrument for the implementation of the Birds and Habitats Directive. While the Member States according to art. 4.1. Habitats Directive designate sites for protection under Natura 2000, the Commission, together with the Member States, establishes a draft list of sites of Community importance. The Commission adopts the list of designated sites. Large areas in Sweden and Finland above the Arctic Circle are designated as Natura 2000 sites under the Birds and Habitats Directives.

Environmental policy legislation falls under ordinary legislative procedure (art. 191 and 192 TFEU), which includes also the adoption of general action programmes. There are, however, a number of exceptions, all of which may be of relevance to the Arctic significance of the EU policies. Special legislative procedure is applied for provisions primarily of fiscal nature (here, unanimous decision of the Council may move fiscal provisions under ordinary legislative procedure), town and country planning, water resources, and land use (apart from waste management) (art. 192.2 TFEU).

¹¹ Jans J. 2008, European Environmental Law.

2.2.2 Implications through the EEA Agreement

Art. 1 (f) EEA Agreement demands close cooperation with EEA countries in the field of environment. Environmental protection in the EEA is based on the same principles as EU environmental policies (art. 73 EEA Agreement) while the production and dissemination of statistical data between the Contracting Parties shall be harmonized (art. 76.1 and 76.2 EEA Agreement). Art. 78 EEA Agreement states that outside the four freedoms and in areas not covered by the Agreement, cooperation between the Contracting Parties is to be strengthened and broadened. If an environmental situation requires immediate action, art. 112, 113 EEA Agreement require EEA member to be informed through the EEA Joint Committee to take collective action.

Mercury poses one of the greatest environmental challenges in the Arctic and it is still not covered by a specific international treaty (even if a process for such an international convention has been ongoing for a while). Through its Directive 2007/51/EC on the Restriction on Marketing of Mercury and its Regulation (EC) No. 1102/2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury, the EU has likely assumed exclusive competence over some parts as economic issues of the mercury policy, which need to be taken into account if an international treaty is concluded at some point in future. Yet, it is too early to conclude anything on this, given that the evaluation of EU's and its MS's legal competences in this case depends on the content of the possible agreement, if any.

Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) sets out measures to protect and preserve the marine environment in the maritime areas under national sovereignty in the EEZ, stretching out to the North-East Atlantic. While the means to achieve this goal go beyond the capabilities of the Member States, actions need to be carried out on the union level, yet under the subsidiarity and proportionality principle (Preamble (43)). EU competence for action under art. 15 is therefore based on the notification of the Member States and shall not go beyond measures to achieve the objective.

2.2.3 Relevant Multilateral Agreements and the Status of EU membership

Various multilateral environmental agreements are relevant for the Arctic and have been ratified by the European Union. For the purpose of this study, EU competencies under the Stockholm Convention on Persistent Organic Pollutants, the Convention on Biological Diversity and the Convention for the protection of the marine environment of the north-east Atlantic (OSPAR) will be examined.

Stockholm Convention on Persistent Organic Pollutants

Under art. 2 (b) of the Stockholm Convention, the European Union is regarded a "Regional economic integration organization" (REIO) (cf. National Implementation Plan¹²). Art. 23.2 sets out that the EU as a "regional economic integration organization" is eligible to vote as long as its Member States have not abstained from voting.

The European National Implementation Plan requires that in spite of the shared competences as set out by art. 4 TFEU, most issues under the Stockholm Convention need "close and constructive cooperation between the Commission and the Member States". Exclusive competence for the Union are related to the internal market and international trade, i.e. prohibitions and restrictions of production, export, import etc. of POP substances, then the initiation of enacting relevant legislation lies with the Union, while final enforcement lies within each Member State.

EU internally, Regulation (EC) No 850/2004 on Persistent Organic Pollutants sets out implementation measures for the provisions under the Stockholm Convention, including POPs, polychlorinated

¹² National Implementation Plans, available at the website of Stockholm Convention at: <http://chm.pops.int/Countries/NationalImplementation/tabid/253/language/en-US/Default.aspx> (viewed 22 September 2010).

biphenyls (PCBs) and DDT, assessing and controlling chemicals in use, prevention of the production and use of new chemicals exhibiting characteristics of POPs as well as the import of POPs. Export of POPs and all Annex A and B chemicals is explicitly prohibited under Regulation (EC) No 304/2003 concerning the export and import of dangerous chemicals.

Convention on Biological Diversity

Under art. 31.2 the EU as a Party to the Convention is recognized as a "Regional economical integration organization" (REIO). REIOs "in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member states which are Contracting Parties to this Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their member states exercise theirs and vice versa.

As mentioned above, competences in biodiversity protection are equal between the Member States and the Union. Implementation occurs through Directive 2009/147/EC (Birds Directive) and Directive 92/43/EEC (Habitat Directive) and the associated Natura 2000 Network.

OSPAR Convention

Art. 1 (s) of the OSPAR Convention states that the EU as a "regional economic integration organisation" is entitled, to sign, ratify, accept, approve or accede to the Convention" as well as to vote as long as its Member States have not done so (art. 20.2.).

Council Decision 98/249/EC on the conclusion of the Convention for the protection of the marine environment of the north-east Atlantic clarifies that the

"Community's action is a necessary complement to that of the Member States directly concerned and its participation in the Convention would appear to comply with the principle of subsidiarity".

The EU has incorporated the legislative acts resulting from the OSPAR Convention into several EU Directives, i.e. the Nitrates Directive (91/676/EEC), the Urban Waste Water Treatment Directive (91/271/EEC), the Water Framework Directive (2000/60/EEC) and the Marine Strategy Framework Directive (2008/56/EC). Therefore, shared external competences apply to the EU in the regime.

Furthermore, the Water Framework Directive (2000/60/EEC) as well as Regulation No. 1907/2006 of the European Parliament and of the Council, concerning Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH) serve as the basis for the OSPAR chemicals sector, as OSPAR work on selection and prioritisation of substances has been put on hold. Recent developments under REACH for offshore chemicals contribute to the development of measures under OSPAR to prevent and eliminate pollution from offshore sources, also facilitated by the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention, 1972).

Apart from international agreements regarding town and country planning, water resources, and land use (apart from waste management), where EP would be only consulted, in all other fields of environmental policy, the EP has to express its consent to the conclusion of such an agreement by the Union. However, the consent of the Parliament would be required in the cases when agreement results in important budgetary implications or the establishment of specific institutional framework.

2.3 Common Fisheries Policy

2.3.1 Existing policies and legal competence of the EU and the Parliament

Fisheries policy was already mentioned in the Treaty of Rome, but is now based on Title III (art. 38-44) TFEU (formerly Articles 32-37 EC Treaty). While art. 38 TFEU stipulates that "'Agricultural products' means the products of the soil, of stockfarming and of fisheries [...]", fisheries policies have become increasingly independent from agriculture, especially after the reform of 2002, which introduced Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.

Union competences in its Common Fisheries Policy are twofold: exclusive competence is conferred to the Union in conservation of marine biological resources according to art. 3(d) TFEU, whereas according to art. 4(d) TFEU agriculture and fisheries fall under shared competences.

Competence for the crafting and implementation of a Common Fisheries Policy lies with the Union (art. 38.1 TFEU). According to art. 38 and 39 TFEU the Union has competence in the establishment of a functioning and stable internal market, while except for the provisions of art. 39-44 TFEU the rules for the establishment of the internal market also apply to agriculture and fisheries. While fostering the maintenance of the internal market, the provision of art. 39 (d) to assure the availability of supplies, grants the EU competence with an external dimension, also applicable to the EEA and thus Arctic waters, implemented in particular through the northern agreements with Iceland, Norway and the Faroe Islands.

Altogether, under the Common Fisheries Policy 692 pieces of legislation are in force, 564 of which related to the conservation of resources.

Council Regulation (EC) No 2371/2002 forms the basic regulation of the Common Fisheries Policy and is based on art. 43 TFEU. Various other policy instruments frame the Common Fisheries Policy, e.g. Council Regulation (EC) No 861/2006 establishing Community financial measures for the implementation of the common fisheries policy and in the area of the Law of the Sea, based on art. 43 TFEU, Council Regulation (EC) No 1006/2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, based on art. 43 TFEU.

Conservation policies under the exclusive competence of the Union as set out under art. 3 (d) TFEU are related to the environment, management and monitoring of certain species and areas under the jurisdiction of the Union as well as control and management of vessels fishing outside the area of the Union. Art. 43.3 TFEU forms the legal basis for these measures.

A provision introduced by the Treaty of Lisbon is art. 43.2. (former art. 37 TEC), based on which the European Parliament exercises its involvement after the "ordinary legislative procedure", making it co-legislator, except for the adoption of measures "on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities", done by the Council exclusively (art. 43.3. TFEU). However, the exclusive decision does not mean in practise that EU parliament is without any role. For example in proposal for a Council Regulation establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (COM/2008/0721 final) the Council took into consideration the statement of PA .

2.3.2 Implications through the EEA Agreement

The EEA is not affected by competences of the Union in respect to TFEU, as the fishing quotas and allocation of fishing licences in EFTA waters are done by the respective EFTA state and the fishing agreements are of bilateral and not of EEA character. According to art. 5 Protocol 9 EEA Agreement, equal access to ports of the Contracting Parties is ensured, unless the fish was taken from stocks over which disagreement over management practices exists between the Contracting Parties.

Trade-related issues in the fisheries sector fall under the shared competences as provided by art. 4 (d) and also extent to the EEA under the provisions of an internal market (art. 4 (a) TFEU; art. 38-44 TFEU; Chapter 2 EEA Agreement).

2.3.3 Relevant Multilateral Agreements and the Status of EU membership

On the international level with relevance for the Arctic are in particular the Northern Fisheries Agreements between the EU, Norway, Iceland and the Faroe Islands. Cooperation with Norway and the Faroe Islands was already manifested in Council Regulations (EEC) No 2214/80 of 27 June 1980 and Council Regulation (EEC) No 2211/80 respectively, and with Iceland in Council Regulation (EEC) No 1737/93 of 24 June 1993. The renewed legal basis can be found in Title V (art. 216-219) TFEU.

The Northern Agreement with the Faroe Islands which has been renewed until 2012 grants access to fishing areas under the jurisdiction of the respective party. Since according to art. 355.5 (a) TFEU the Treaty does not apply to the Faroe Islands, in particular art. 39 (d) and Title V (art. 216-219) TFEU serve as a legal basis for the fisheries agreement with the Faroes.

Management of fish stocks in certain regions is largely done by regional fisheries management organizations (RFMOs). Three RFMOs are of relevance for competences of the EU in the Arctic, i.e. the North-East Atlantic Fisheries Commission (NEAFC), the Northwest Atlantic Fisheries Organization (NAFO) and the North Atlantic Salmon Conservation Organization (NASCO). In line with its conferred exclusive competences for conservation of marine resources (art. 3 (d)), the EU, and not its Member States, is a party to these RFMOs.

Multilaterally, the EU is party to the United Nations Convention on the Law of the Sea (UNCLOS) and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement). Title IV (art. 216-219) TFEU constitutes the legal basis.

The consent of the European Parliament is needed when the EU concludes an international agreement relating to fisheries. However, if such an agreement has an impact on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities, the EP would be consulted regarding the decision made by the Council.

2.4 Common Energy Market & EU External Energy Policy

2.4.1 Existing policies and legal competence of the EU and the Parliament

Up to the entry into force of the Lisbon Treaty, European primary law did not provide explicitly a competence to the Union in the field of energy. Nevertheless, the Union has taken legislative action in this field on the basis of its environmental, and thus shared, competence. Legislative acts adopted on this basis include Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources in the internal electricity market, and Directive 2009/28/EC on the promotion of the use of energy from renewable sources.

Prior to the entry into force of the Lisbon Treaty, the EU had already adopted non-legally binding instruments addressing specifically the field of energy. For example, the Commission adopted in March 2006 its Green Paper on *A European Strategy for Sustainable Competitive and Secure Energy*.¹³ This strategy highlights the need for a new initiative in relation to Russia. Relations with Russia are particularly relevant to this briefing as it is the biggest oil and gas exporter to the EU. Important amounts of imported oil and gas are extracted from the Arctic. The Green Paper also calls for a new energy partnership with Russia. This issue is now included in the negotiations launched in 2008 on a new Partnership and Co-operation Agreement. On the basis of the Strategy, the European Council adopted in 2007 an Energy Policy for Europe. The three objectives of this Policy are increasing the security of supply, ensuring the competitiveness of European economies and the availability of affordable energy and the promotion of environmental sustainability.¹⁴

The provision of a new explicit competence for the EU in relation to energy policy constitutes one of the very few modifications to the substantive competences of the EU (see above, section 2.2.1 of this briefing). Article 194 is now included in the text of the TFEU under Part III, Title XXI dedicated to *Energy*. The EU competence on energy is provided in article 4.2(i) and therefore falls within the scope of the shared competence. Article 194 defines the objectives of the Union policy on energy in the context of the internal market and of environmental protection. The four objectives identified are to:

¹³ COM(2006) 105 Final.

¹⁴ Brussels European Council, 8/9 March 2007, Presidency Conclusions.

- (a) ensure the functioning of the energy market;*
- (b) ensure security of energy supply in the Union;*
- (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and*
- (d) promote the interconnection of energy networks.*

Energy supply is referred to in article 122 TFEU as a specific field upon which the Council might exceptionally adopt measures appropriate to the economic situation in the frame of the EU economic policy. The content of this article does not provide any role for the European Parliament in relation to this particular action taken by the Council. Finally, Article 170 provides that the Union shall contribute to the establishment of trans-European networks in energy infrastructure, among other types of networks. This competence is included in article 4.2(h) of the TFEU and therefore is shared between the Union and its Member States. Exception are such measures which affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, They must do without prejudice to Article 192(2)(c). In practice, this mean that the Council acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions (192(2) TFEU).

Prior to the entry into force of the Treaty of Lisbon, decisions related to the regulation of the internal energy market fall under the co-decision procedure provided in former article 251 TEC. The new energy competence of the EU falls mainly within the scope of the ordinary legislative procedure and therefore extended the role of the Parliament in this new field of EU policy.

2.4.2 Implications through the EEA Agreement

The EEA energy market is regulated by the provisions relating to free movement of goods and therefore, the Union regulations apply to the EEA (art. 24 EEA Agreement). All restrictions or administrative and technical regulations which would form, in trade between the EEA Contracting Parties, an impediment to the trade in coal (Protocol 14 to the EEA Agreement) and other products (EEA Agreement). The exceptions to these provisions are, for example, crude oil imports and deliveries, which is not applicable to Iceland and Lichtenstein (as long as these States do not import or deliver crude oil, Annex IV to EEA Agreement, Council Regulation (EC) No 2964/95), energy performance of buildings and the promotion of cogeneration (not applicable to Iceland, Annex IV, Directive 2002/91/EC, Directive 2004/8/EC).

The scope of the EEA Agreement in the case of coal trade is limited by Free Trade Agreements concluded between the European Coal and Steel Community, so that the EEA Agreement applies only in matters not covered in mentioned trade agreements (Protocol 14 to EEA Agreement).

The EEA Agreement is applicable also to External Energy Policy as far as the policy affects internal energy market. Therefore, European Strategy for Sustainable, Competitive and Secure Energy has EEA relevance.

2.4.3 Relevant Multilateral Agreements and the Status of EU membership

The European Union, jointly with its Member States, is a party to the Energy Charter Treaty and is a member to the Energy Charter Conference. Other non-EU states are also party to this agreement, such as Russia, Iceland and Norway; while Canada and the United States are only observers to the Energy Charter Conference, having signed the Energy Charter Treaty.

The European Union is also a party to other regional agreements on energy with no relevance for the Arctic such as the Treaty establishing an Energy Community which associates the EU and its Member States as well as many countries from the Balkan Region.

2.5 Research policy

2.5.1 Existing policies and legal competence of the EU and the Parliament

Within the EU Arctic policy, the Arctic is declared as a priority area for EU research activities (especially regarding assessment of anthropogenic impacts). The EU has proved its interest in and commitment to Arctic research. For instance, Arctic-related budget of Sixth Framework Programme amounted to 86 million Euro and EU project Damocles turned out to be the largest contribution to the International Polar Year 2007-2008.

EU activities in the field of research and technological development are governed by Title XIX TFEU. The competence of the Union and of the Member States in the field of research is defined by art. 4(3) which provides a specific regime for the exercise of shared competence in this policy area:

In the areas of research [...], the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

Both the EU and its Member States are obliged to coordinate their activities in order for the national and Union policies to be mutually consistent (art 181(1)). A novelty of the TFEU is the elaboration of possible initiatives by the Commission to promote such coordination (art. 181(2)).

The Union's main objective in the field of research is the free circulation of researchers, knowledge and technology, promoting research activities deemed necessary for development of other policy areas, removing legal and fiscal obstacles to cooperation as well as defining common standards. In TFEU, this compilation of various measures is presented as the *European research area*.

EU competence in the field of research is exercised primarily by establishing and implementing multiannual programmes (Framework Programmes) and supplementary programmes, determining the rules for participation of various entities, dissemination of research results (art. 183), as well as setting up structures for the effective execution of the Union research programmes (art. 187). The EU has exercised the provisions of art. 187, for example, by establishing the European Research Infrastructure Consortium.

Flexibility of the Union's research policy and provisions on cooperation with third countries and international organizations (art. 186) are particularly important for the development of Arctic research capacities.

Research activities within the EU are also subject to state aid regulations. In Commission Regulation no 800/2008, certain categories of aid are declared compatible with the common market, and this refers also to various research activities (art. 31, 34).

In relation to the specific situation of Arctic peoples and environment, potential EU competence (by the Council under TEU) to draw up standards for the proper conduct of research, may prove important. A research framework funded by the EU could, for example, include respect for the identity of indigenous local people, their intellectual property rights, as well as proper application of their traditional environmental knowledge. Particular fragility of Arctic environment poses various challenges to research and its impacts make it potentially more vulnerable (than in other parts of the globe) to environmental damage or invasive species, for instance. The example of such an activity is the Code of conduct for responsible nanosciences and nanotechnologies research, adopted by Council Conclusions (RECH 290). Other standards, relevant for the Arctic, may be thus also introduced.

Multiannual framework programmes are adopted through ordinary legislative procedure and the Council adopts the specific programmes with special legislative procedure, EP being consulted (art. 182 TFEU). The latter applies also when Council regulates provision of state aid relevant for research activities, however, the EP does not participate in the Council decision (unanimous) on the compatibility of state aid with the internal market. Moreover, ordinary procedure applies for

measures and provisions necessary for the implementation of the European Research Area or the creation of abovementioned joint undertakings (arts, 182.5 and 187 TFEU).

The European Parliament shall be fully informed when the Commission takes initiative to coordinate Member States' and Union's research and development actions (art. 181 TFEU). In addition, the EP is to receive annual report from the Commission on Union's research and technical development activities.

2.5.2 Implications through the EEA Agreement

Research and development are among the areas where the EEA Agreement envisages closer cooperation and participation of EEA/EFTA states in framework programmes or specific programmes or projects (EEA, art. 1; Protocol 31 to EEA, art. 1). Therefore, only a part of legislation referring to research has EEA relevance, as for example, the rules for participation of various entities in programme activities (Regulation (EC) no 1906/2006) as well as aforementioned state aid exemptions. In addition, EEA/EFTA states participate in EU committees (of consultative nature, e.g., Committee for scientific and technical research - CREST) dealing with research and development as well as in the work of the European Institute for Innovation and Technology (Protocol 31). EEA states also participate in the work of Supervisory Authority for the European Navigation Satellite System, which is considered potentially important for Arctic research and navigation (Protocol 31, art. 1).

2.5.3 Relevant Multilateral Agreements and the Status of EU membership

The Union may cooperate in implementing the multiannual programme with third countries and international organizations (art. 186 TFEU). This may be subject to agreements between the Union and third parties. Certain agreements with Canada, US and Russia (where, for instance two major programmes are implemented: INCO-NET EECA and incrEAST, which support respectively networking and capacity building as well as various research projects respectively) may become substantial for EU action in the support of Arctic research, as cooperation with these Arctic states. Also, the Commission has released a communication on Strategic European Framework for International Science and Technology Cooperation, suggesting greater activity of the Union in this field.

The consent of European Parliament is needed for the international agreements connected with EU multiannual framework programmes and the implementation of the European Research Area.

2.6 Animal welfare

2.6.1 Existing policies and legal competence of the EU and the Parliament

The Protocol on the protection of welfare of animals (annexed to the former TEC) to the Treaty of Amsterdam, for the first time declared animals sentient beings and called for inclusion of animal welfare into various EU policies. This provision has been directly incorporated (for the first time in the founding treaty) into TFEU in art. 13, which states that animal welfare will be taken into account in agriculture, fisheries, transport, internal market, research and technological development and space policies, with due respect to legislative and administrative provisions as well as customs of the Member States. The animal welfare integration principle is addressed both to the Union and its Member States. It is yet to be seen whether direct inclusion in the body of the founding treaties will have major consequences for EU regulations.

In the Arctic, animal welfare issues of interest to the EU include seal and whale hunting and, to lesser extend, reindeer husbandry. Many issues related to animal welfare in the Arctic fall within the environmental or agriculture policies of the EU. Consequently, these issues fall under the scope of shared competence of the EU and its Member States.

Reindeer husbandry is regulated through agriculture policy on the community level by, for example, Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations.

Seal welfare is regulated through the trade policy (internal market being competence shared between the Union and Member States) and has been regulated already through Council Directive 83/129/EEC concerning the importation into Member States of skins of certain seal pups and products derived therefrom with later extension and amendments (85/444/EEC, 89/370/EEC, the directive is still in force). Recently, the regulatory framework concerning seal products has been expanded by the Regulation 1007/2009 on trade in seal products (Seal regulation) together with the Commission Regulation no 737/2010, which lays down detailed rules for its implementation. The Union exercised its competence through banning import of all seal products apart of those originating from indigenous subsistence hunt.

Text Box 5: Legal disputes regarding EU Regulation on trade in seal products and their possible consequences

The Regulation 1007/2009 on trade in seal products (Seal regulation) triggered various controversies and legal action by both Inuit and non-indigenous hunters before the EU's General Court (GC) and by Canada before the World Trade Organization (WTO). The Regulation was adopted by the EU due to public concerns about the welfare of seals and cruel hunting methods used in order to obtain seal products.

In the case before the GC, the Inuit Tapiriit Kanatami and others (ITK e.a., as natural and legal persons bringing action against the acts of EU institutions and against regulatory acts)¹⁵ primarily question the legal basis chosen for the adoption of the Seal regulation, i.e. art 95 TEC (art. 114 TFEU), as applicants consider the objective of the improvement of the conditions for the establishment and functioning of the internal market not applicable to seal products. Moreover, the applicants stated that the Regulation infringes the principles of subsidiarity and proportionality (art. 5 TEU and the Protocol) as the intervention on EU level is considered as not properly justified and other, less intrusive measures could have been applied instead of near total ban. Eventually, ITK e.a. claim that the Regulation undermines traditional economic activities and the regulator did not weigh the interest of Inuit communities against certain moral convictions.¹⁶ If the Court rules in favor of applicants' claim, the Regulation or part of it may be declared void *ab initio*, and the Parliament and the Council may be required to take necessary measures to comply with Court's judgment, for example, by eradicating the effects of the measure. The decision may be subject to the review of the Court of Justice of the European Union.

Recently, following the adoption by the Commission of the implementing regulation (737/2010), the President of the GC has ordered the suspension of the operation of the conditions restricting the placing of seal products on the market, insofar as it concerns the applicants (in the case T-18/10), and pending a decision of the Court on the establishment of interim measures.¹⁷

In the second discussed challenge of the ban, Canada triggered the WTO dispute settlement mechanisms following the adoption of Seal regulation.¹⁸ Since November 2009, the case is in consultations, which means official negotiation on the topic in question between parties concerned. Canada has questioned the compliance of Seal regulation with the WTO Agreement on Agriculture (art. 4.2. regarding measures which have been required to be converted into ordinary customs duties), Agreement on Technical Barriers to Trade (art. 2.1 referring to technical regulations) as well as the General Agreement on Tariffs and Trade (GATT, art. I:1, III:4 and XI:1, containing general rules on treatment no less favorable and prohibitions and restrictions other than duties, taxes and charges).¹⁹ Iceland requested to join the consultations. The EU claims that it is fully respecting the WTO obligations as the measures adopted are not protectionist and not

¹⁵ Case T-18/10 *Inuit Tapiriit Kanatami e.a. v Parliament and Council*, (2010/C 100/64).

¹⁶ Thereby, according to applicants, violated the art. 1 of the Protocol 1 (peaceful enjoyment of possessions) to the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, the Convention is applicable to the Union's law through ECJ case law and art. 6 TEU) and art. 8 ECHR (private and family life, read in light of art. 9 and 10).

¹⁷ Order of the President of the General Court, Proceedings for interim relief – Article 105(2) of the Rules of Procedure – Regulation (EC) No 1007/2009, 19 August 2010, T-18/10 R II.

¹⁸ Earlier, Canada has commenced WTO consultation mechanism with Belgium and the Netherlands, which adopted seal products ban earlier. Presently, Canada decided to address primarily EU ban.

¹⁹ Dispute DS400 European Communities – Measures Prohibiting the Importation and Marketing of Seal Products at WTO website at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds400_e.htm (viewed 4 October 2010).

discriminatory.

Upon the entry into force of the Regulation 1007/2009, Canadian Minister of Fisheries and Oceans declared that Canada is ready to take the matter to the next stage within WTO procedure and call for establishment of the WTO Dispute Settlement Panel.²⁰ However, such action has not been taken yet.

The WTO procedure includes 60 day consultation and mediation, setting up of a dispute settlement panel, which after 6 months should present final report to the parties. The disputants can appeal to WTO Appellate Body, otherwise, the WTO Dispute Settlement Body has 60 days to adopt the report (it can be rejected only by consensus, including the complainant, in this case Canada). At any time, the parties may reach agreement between themselves and remove the case from WTO proceedings.

The matter may remain at the stage of consultations for a prolonged time (some cases remain in consultation phase since 1995), and historically, only over one third of cases had reached the full panel process. If the Dispute Settlement Panel is established and produces report supporting Canadian claim regarding seal products, either EU would repeal its legislation being in contrary to the WTO obligations or agree with Canada on a compensation scheme. If such action or agreement does not occur, Dispute Settlement Body would permit (unless there is a consensus against Canada's request) Canada to impose limited trade sanctions against the EU. Such sanctions should be imposed primarily in the same sector as the dispute. However, if that is not practical and effective, sanctions may apply to the products under the same agreement (Agriculture in seal case) or in special circumstances, under another agreement. Dispute Settlement Body would monitor how adopted rulings are implemented until the issue is fully resolved.

The issue of whaling falls, depending on the purpose of regulation in question, either under environmental policy (where competence is shared) or under conservation of marine biological resources under the common fisheries policy (exclusive EU competence) in cases when whales are treated as living aquatic resource.

In most cases, the environmental regulations will apply. Owing to the fact that whales are protected species (with minor exceptions) and are not utilized within fisheries industry, fisheries regulations may apply only indirectly, for instance, under Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under Common Fisheries Policy, management plans may include targets relating to other living aquatic resources and the maintenance or improvement of the conservation status of marine eco-systems.

Under environmental policy, whale species and their habitats are protected by virtue of Council Regulation 338/97/EC, which aims at protection of wild fauna and flora species through trade regulations, and thus, implements CITES convention (see below) provisions; Habitats Directive (Council Directive 92/43/EEC); Marine Strategy Framework Directive (Directive 2008/56/EC) drawing up a framework for marine environmental policy. All whales (as all cetacea) are listed in the Annex A to Regulation 338/97/EC and partly in the Annex IV to Habitats Directive. Habitats Directive as well as Marine Strategy Framework Directive aim at protecting also habitats of marine species, including cetacea species. Owing to these measures, the EU has acquired clear competence in the sphere of whaling.

As the question of seal welfare is presently approached through internal market regulations (establishing internal market as area without internal frontiers based on four freedoms), the approximation of laws regarding the establishment and functioning of the internal market is adopted via ordinary legislative procedure (art. 26, 114 and 116 TFEU). However, if national laws were directly affecting the establishment of internal market, the Parliament is only consulted within special legislative procedure, when the Council issues directives of approximation of such laws. Regarding the aforementioned transport of animals, art. 43 TFEU under common agricultural policy provides for ordinary legislative procedure.

Majority of legislation referring to whaling has environmental policy legal basis and thus, the role of the Parliament is identical as in the case of environmental policy discussed above. Also, in the event

²⁰ "Government of Canada Takes Further Action Against the European Union's Seal Trade Ban," the website of the Department of Fisheries and Oceans Canada at <http://www.dfo-mpo.gc.ca/media/npress-communique/2010/hq-ac41-eng.htm> (viewed 3 October 2010).

that whaling is regulated through conservation of marine biological resources, the ordinary legislative procedure would apply.

2.6.2 Implications through the EEA Agreement

EU regulation of seal trade has EEA relevance. All EU regulations based on fisheries or agricultural policy as well as regulations under environmental policy (where EEA Agreement anticipates only closer cooperation) listed above, are not applicable to the EEA Agreement. Note that Iceland is not a party to Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention/CMS, 1979).

2.6.3 Relevant Multilateral Agreements and the Status of EU membership

The Convention on International Trade in Endangered Species (CITES) presently prohibits all international trade in whale products, as all whale species are listed as endangered. The EU is not a party to CITES but has been fully implementing its provisions since 1984, currently through Council Regulation 338/97/EC and therefore the matter falls under shared competence in the field of environment (art. 175 TEC, presently art. 192 TFEU).

Of relevance to the Arctic may also be the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention, 1979, adopted by the EU by 1981 Council Decision 82/72/EEC) and the CMS. The European Union is a party to the CMS since 1983 as are presently all its Member States. CMS covers migratory cetacea species, lists them as endangered in its Appendix I and prohibits taking of animals belonging to such species apart from certain exceptional situations together with other conservation measures.

International organizations relevant to whaling or active in the field of animal welfare are International Whaling Commission (IWC), World Trade Organization (WTO), Food and Agriculture Organization (FAO) and World Organization for Animal Health (OIE).

The main emphasis on the protection of whales lies with IWC and 1946 International Convention for the Regulation of Whaling. Presently, of the EU Member States only Latvia remains outside IWC. EU has competence to act within IWC and adopt common positions binding for the Member States in all matters regulating whaling activities (Member States are, however, eligible to adopt more stringent position). The negotiations under IWC usually fall under environmental policy as the main purpose of the IWC is protection of whale species, because the ban on whaling causes whales not to be a "resource" in the meaning of EU regulations. The interpretation here may be different however. If whaling would be considered a part of the conservation of living marine resource under Common Fisheries Policy, the EU would enjoy exclusive competence and Member States would not be allowed to act in IWC without the Union's authorization (i.e. abstain from the vote, or alternatively opt for more stringent measures than in EU position). On the other hand, if whaling falls under environmental policy, Member States (under TFEU) are allowed to act independently (with respect to principle of loyal cooperation and abstaining from actions jeopardizing effectiveness of European law) as long as the Union does not exercise its competence in the form of common position, which it is eligible to do since protection of whale species lies in the scope of EU environmental policy.

The WTO, of which EU is a member, does not refer to animal welfare. Nevertheless, the Union was already putting forward proposals to include this issue in WTO negotiations exercising its competence in the area of whaling and might attempt to do so in the future. On the other hand, present action by Canada within WTO against the EU seal regulation does not refer to animal welfare issues but solely to trade obligations.

In the FAO, the EU together with Member States enjoys alternative exercise of Membership rights depending on the competence framework for particular regulatory area. FAO welfare regulations refer primarily to farm animals. However, they may be applicable in the future also to the Arctic, for example in the sphere of reindeer herding which already is within the FAO's general interest.

All Member States are OIE members and the EU (EC) has been an observer in the OIE since 2004. The EU may adopt positions both as observer as well as directing the activity of Member States in the area of EU competence.

If EU was to conclude international agreements relating to animal welfare issues discussed above, both within environmental policy and internal market regulations, the consent of the European Parliament would be required.

2.7 Climate Change

2.7.1 Existing policies and legal competence of the EU and the Parliament

Competence in the field of climate change falls under the "shared competence" between the Member States and the European Union related to environmental policy and provided under article 4.2.e TFEU.

The Treaty of Lisbon has supplemented environment policy by a reference to combating climate change. Under art. 191 TFEU, policies of the European Union are to focus inter alia on "promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change."

Art. 193 TFEU sets out that the provisions of art. 191 and 192 TFEU shall not prevent Member States from introducing stricter rules. Since environmental competences in the EU are 'shared competences', in climate change policy therefore 'exclusive competence' as set out under art. 3.2. TFEU does not apply, despite climate change being related to numerous other fields of policy, which would fall under said article. Notwithstanding, since art. 2.1 TFEU stipulates that in certain fields only the Union shall adopt legislative acts, the introduction of stricter rules for climate change policy is not to infringe with the competencies conferred to the Union by the Member States nor with Union policies.

Currently, climate change policy in Europe as based on the European Climate Change Programme (ECCP II) is divided into 5 subgroups: aviation, CO₂ and cars, carbon capture and storage, adaptation and EU Emission Trading System (ETS) review. All policies related to the subfields have EEA relevance, yet no specific Arctic focus. Due to the global implications of climate change, they nevertheless affect the European Arctic and the Arctic region as a whole.

Most important policy instrument in climate change policy is EU ETS. The scheme is based on Directive 2003/87/EC, which entered into force on 25 October 2003. Moreover, can be mentioned Aviation Legislation, e.g. with Directive 2008/101/EC, implemented through Commission Decision 2009/339/EC amending Decision 2007/589/EC, Commission Regulation No. 82/2010 and Commission Decision 2009/450/EC. The legal basis for the legislation are art. 191 and 192 TFEU. Competences within CO₂ and cars are based on art. 192 TFEU, implemented through Regulation (EC) No 443/2009. Competences for carbon capture and storage are based on art. 192.1 TFEU, implemented through Directive 2009/31/EC.

The European Parliament's role in adopting legislation relating to climate change in the Arctic is fully covered by environmental title of the TFEU and therefore, in this study is discussed in the section discussing environmental policy.

2.7.2 Implications through the EEA Agreement

Art. 73 EEA Agreement forms the legal basis of climate change policy in the EEA. Although according to art. 75 Contracting Parties can take more stringent measures, art. 3 prevents them from jeopardizing the provisions of the Agreement. To that effect, competences of the EU in climate change policy are on equal footing with the EEA/EFTA countries.

2.7.3 Relevant Multilateral Agreements and the Status of EU membership

Art. 192 TFEU and art. 216 TFEU form the legal basis for the EU to conclude international agreements in the field of climate change. Since climate change policy is a shared competence between the EU and its Member States, neither can conclude an international agreement without the consent of the other, ultimately leading to 'mixed agreements' which both are parties to. The United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol can be regarded as such 'mixed agreements'. Although the Lisbon Treaty does not exclusively refer to these agreements, the consent of the European Parliament to Council decisions in terms of multilateral agreements has to be gained (art. 218.6 a (v) TFEU).

2.8 Indigenous Peoples

2.8.1 Existing policies and legal competence of the EU and the Parliament

The EU has developed a body of principles and rules on indigenous peoples issues within development aid. As these refer partly to specific indigenous rights, they may be applied, although to a limited extent, also in the Arctic (Council Resolution of 30 November 1998 on Indigenous peoples within the framework of the development cooperation of the Union and the Member States). The principles drawn up in EU policy do not mark the scope of EU competence as such, but may be applied as integration principles. Note that not all EU competences possibly affecting Arctic indigenous peoples can be covered in this section, therefore, only the most prominent ones have been chosen and analyzed.

There are few EU measures directly applicable to indigenous peoples in the Arctic. Protocol 3 on Sámi People to the Accession Treaty of Austria, Finland and Sweden constitutes the only reference to indigenous peoples' status in primary law. This protocol exempts the Sámi reindeer herding in Finland and Sweden from the operation of internal market and thus limits the EU competence in that specific respect. The protocol also provides the States with the right to grant the Sámi people exclusive right to reindeer husbandry. To this day Finland has not exercised this right. The scope of EU competence may be further limited in the future, as the protocol may be extended to other rights linked to traditional means of livelihood of the Sámi.

Within trade policy, the EU has exclusive competence (art. 3 TFEU, common commercial policy) and may include special provisions on products of indigenous peoples. The EU has taken such an action by adopting Seal Regulation (Regulation 1007/2009, see Animal Welfare section for more information), where products of indigenous subsistence hunt are exempted from the import ban introduced by the Union.

The EU may also impact the situation of indigenous peoples through its regional policy, in which it shares competence with Member States (art. 4 referring economic, social and territorial cohesion, and especially art. 177), especially by conducting programmes and projects supporting various activities of indigenous organizations. Such policies has been already implemented through Interreg Programme IV A North (one of the priority axes being *Sápmi* directed at developing Sámi cultural life and industry by making use of their resources in an ecological and sustainable way) or Northern Periphery Programme 2007-2013, which includes also Greenland (e.g., Council Regulation (EC) no 1083/2006, which regulates general distribution of EU structural funds).

The EU may also support, in the spirit of art. 6 TFEU (competence to carry out action to support, coordinate or supplement the actions of the Member States), education and culture of indigenous peoples, by, *inter alia*, promoting cooperation, encouraging mobility and the development of distance education (art. 165 TFEU) as well as cultural exchanges, improving knowledge and dissemination of the culture and history of indigenous peoples, and safeguarding cultural heritage (art 167 TFEU). Also, art. 3 of the TEU provides that the Union shall ensure that Europe's cultural heritage is safeguarded and enhanced.

The Union has also competence to coordinate and supplement national policies regarding public health (art. 6 and 168 TFEU), including the cooperation with third countries together with the

improvement of complementarity of health services in the cross-border areas. The impact of persistent organic pollutants and, in the future, possible effects of the climate change on human health are particularly relevant to the Arctic indigenous peoples and may be an object to Union's actions encouraging cooperation between the Member States.

Incentive measures relating to culture and public health, leading to coordination and support of MS's efforts (without harmonization of laws and regulation of MS) are adopted under ordinary legislative procedure (art. 167 and 168). If any regulation on indigenous intellectual property rights was discussed, the decision would fall under art. 118, and thus, also ordinary legislative procedure.

European Parliament can discuss the situation of indigenous peoples around the globe, including in the Arctic, in its work on human rights, in particular within the Subcommittee on Human Rights.

For European Parliament's powers within internal market regulation (Seal regulation), see discussion in animal welfare section. For regional policy competences, see section on the regional policy.

2.8.2 Implications through the EEA Agreement

From the above-studied legislation, only trade regulations are fully applicable under the EEA Agreement. Education and social policy is included in the Agreement as a field of closer cooperation (art. 1). These policy areas are included in Protocol 31 to the EEA Agreement (art. 4) under which EEA/EFTA states may participate in EU educational programmes. These provisions may be applicable to indigenous education or support for Sámi educational exchange. EEA/EFTA states participate also in certain aspects of EU regional policy, including the aforementioned Northern Periphery Programme.

2.8.3 Relevant Multilateral Agreements and the Status of EU membership

The EU is bound by international human rights law, in particular the 1966 International Covenant on Civil and Political Rights (to which all Member States are parties), which contains provisions on protecting persons belonging to minorities (art. 27); 1995 Council of Europe's Framework Convention for the Protection of National Minorities (vast majority of Member States are parties); and foremost, the EU Charter on Fundamental Rights. Art. 21 of the Charter provides (art. 21) prohibits discrimination on the ground of race, ethnic or social origin, genetic features, religion or belief, language, and membership of a national minority, which are all applicable to indigenous persons. Moreover, art. 6 TEU acknowledges European Convention for the Protection of Human Rights and Fundamental Freedoms and other rights common to constitutional traditions of Member States as principles of the Union's law. In international law, indigenous rights are dealt more comprehensively in 1989 ILO Convention no 169 on indigenous and tribal peoples in independent countries (ratified by Denmark, Netherlands and Spain as well as Norway) and in the UN Declaration on the Rights of Indigenous Peoples. Two last documents do not affect EU competence scheme as such. They constitute, however, current international law applying to indigenous peoples and need to be taken into consideration by all international actors.

The EU is a party to the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. It is of certain relevance to indigenous peoples as it includes, inter alia, provisions on international cooperation, integration of culture in sustainable development, education and civil society participation (art. 10-13). Thus, EU has exercised its competence in the sphere of cultural diversity protection which may fall under common commercial policy (where EU has exclusive competence, art. 207 TFEU) or culture (where EU has competence to support, art. 167 TFEU), depending on the purpose of the matter negotiated (Council Decision 2005/0268).

Work on the International Whaling Commission (IWC) as well as the Convention on the Conservation of Migratory Species of Wild Animals (CMS) (see animal welfare section for details) lie within the scope of EU competence under environmental policy and in accordance with the respective EU regulations. Both regimes provide exemptions for indigenous peoples over their traditional subsistence from prohibition to take animals (CMS, art. 5). The EU may regulate this area and direct the activity of Member States within the CMS and IWC and it has exercised this competence in this

field, for example, in the case of the quota for aboriginal subsistence whaling (Council Decision 9818/2008 and Council Decision 7146/09).

For conclusion of agreements relating to environmental policy (for example regarding matters covered by IWC and CMS) and culture, the European Parliament's consent is required. In the case of cultural policy falling under common commercial policy, the conclusion of such agreements lies with the Council, with Parliament being fully informed (art. 207 TFEU).

2.9 Forest Policy

2.9.1 Existing policies and legal competence of the EU and the Parliament

The EU has no explicit internal competence in forestry policy proper according to the amended Treaty of Rome. The EU Council Resolution on a Forestry Strategy for the European Union indeed acknowledges: *"the Treaty establishing the European Community makes no provision for a specific common forestry policy and [...] responsibility for forestry policy lies with the Member States"*.²¹ Yet the EU institutions have been striving to harmonize the Member States Forestry Policies by means of informal guidance likewise by using the EU Forestry Strategy, which was enacted on the basis of the EU competence in rural development. The forest strategy is based on the commitments of the EU and of its Member States under international agreements and processes such as the Ministerial Conference for the Protection of Forests in Europe (MCPFE). The main focus of the Forest Strategy is thus on rural development and the promotion of Sustainable Forest Management in the Member States but it also includes provisions relating to other EU policies. Based on this Forest Strategy, the Commission developed in 2006 a Forest Action Plan (FAP) in close cooperation with stakeholders.

This lack of an explicit internal competence on forestry policy also means that the EU does not have external competence on forestry policy proper. However it can use other policies as legal basis or rely on the doctrine of implied powers. The EU environmental policy or common agricultural policy for example includes regulation concerning in fact forests and their sustainable management in MS. The EU has relied on its competence related to trade in order to enact external policies related to the exploitation of forest resources. Article 207 TFEU, which provides the EC with an exclusive competence in relation to the common commercial policy, has provided the legal basis for the EU to combat illegal logging. As a first step, the EU has adopted in 2003 an EU Forest Law Enforcement, Governance, and Trade (FLEGT) Action Plan, which provides the main frame within which the EU and its Member States have been able to address illegal logging. The FLEGT Action Plan addresses both the demand- and the supply side of the trade in illegal timber, thus involving aspects related to internal and external policies. Among the four key regions falling within the frame of the Action Plan, the presence of Russia is of specific relevance for the Arctic. As a second step in its external action against illegal logging, the European Parliament and the Council have paved the way this summer for the adoption of a regulation practically banning the import of illegal timber within the EU. This regulation will be based on the environmental competence of the EU as set out in article 192(1) TFEU.

When adopting measures under art. 192(1) referring to environmental policy, the Parliament participates in regulatory process under ordinary legislative procedure. Also in the case of establishing measures defining the framework for implementation of common agricultural or commercial policy ordinary legislative procedure is applied. This, however, doesn't include concluding of agreements with third countries or international organizations (art. 207 TFEU).

2.9.2 Implications through the EEA Agreement

The initiatives and secondary legislations adopted by the EU in the forestry field do not direct implication for the Norway and Iceland, the forest sector of which is affected by the EEA agreement only in relation to the matters related to competition and the organization of the internal market.

²¹ Council Resolution of 15 December 1998 on a forestry strategy for the European Union (1999/C 56/01).

Nevertheless, and as it relates to the entry of products in the common market, the EU resolution banning the import of timber from illegal logging, once adopted, will also apply to the market of EEA countries and thus also prevent the import of such timber to Norway and Iceland.

2.9.3 Relevant Multilateral Agreements and the Status of EU membership

In spite of numerous attempts, the international community has not yet succeeded in creating an intergovernmental organization having a general scope for forest exploitation and the protection of forest resources. The EU is a member to the main two international forums dealing with forest ecosystems and forestry. It has provided input, in parallel to its individual member states, to the activities of the UN Forum on Forests (UNFF). It is also a member of the International Timber Trade Organization (ITTO), which has no specific relevance in the Arctic context.

The EU is also a signatory member to the “Forest Europe” process established in the framework of the MCPFE. Through its five ministerial conferences, this process has resulted in numerous commitments being agreed upon in relation to forest exploitation and the protection of forest ecosystems in the pan-European region, thus covering boreal forests located in Norway, Sweden, Finland and Russia. The MCPFE is currently considering the relevance of the adoption of a legally binding agreement on forests. Depending on which of the MCPFE commitment are included in this process, the agreement would likely take the form of a mixed agreement with both the EU and its individual Member States becoming parties to it.

For agreements with third countries or international organizations relating to common commercial policy, where full responsibility and competence lies with the Council, European Parliament is informed by the Commission on the progress of negotiations (art. 207 TFEU).

2.10 Tourism

2.10.1 Existing policies and legal competence of the EU and the Parliament

Tourism in general combines various fields of policy, e.g. trade, transport, commerce, environment or climate change. To this end, in its MEMO/10/289 the Commission *inter alia* proposes the integration and coordination of policies impacting on tourism, such as passengers' rights, consumer protection and internal market.

In its resolution of 29 November 2007 on a renewed EU Tourism Policy: Towards a stronger partnership for European Tourism, the European Parliament states that tourism is not a EU policy area nor falls within EU competence, although EU competences lie within the area of the internal market and consumer protection (A, B). According to former TEC art. 3 (u), the Union is to set out “measures in the spheres of energy, civil protection and tourism”.

Legal competence of the EU in the field of tourism falls under art. 6 (d) TFEU, based on which the “Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States”. Art. 195 TFEU states that measures of support are based on actions to promote Union competitiveness, by promoting a good environment for tourism and fostering cooperation between the Member States in the sector. This is to be achieved through supporting actions by the Member States that aim at these issues without a harmonization of the laws of the Member States.

Under art. 26 TFEU the Union adopts measures relating to internal market that ensure the four freedoms as well as “balanced progress in all sectors concerned”. Art. 169.1 TFEU stipulates that “the health, safety and economic interests of consumers” are to be protected. National policies also relating to tourism are to be supported, supplemented and monitored (art. 169.2 (b) TFEU).

Presently, no comprehensive legislation for European tourism is in place. Rather, the European Commission has issued several communications in regards to tourism, such as COM(2007) 621 Agenda for a sustainable and competitive European tourism, COM(2006) 134 A renewed EU Tourism Policy - Towards a stronger partnership for European Tourism or ERIKA I-III packages for maritime safety, based on which several Directives have been adopted, which are extensively being dealt with in section 3.1 of this report.

Notwithstanding, several Directives relate to the field of tourism, yet without a specific Arctic direction. E.g. Council Directive 95/57/EC of 23 November 1995 on the collection of statistical information in the field of tourism requires the Member States to establish “an information system on tourism statistics at Community level.” (art. 1). Art. 338 TFEU forms the legal basis for this Directive.

While not exclusively relating to tourism, Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements, based on former art. 80.2 TEC (art. 100(2) TFEU) and art. 191.2 TFEU, the Directive lays down provisions for the protection of the marine environment from ship-source pollution, thus applicable also for European-based tourism in the Arctic. Although criminal law matters (third pillar) are not in the focus of this study can be mentioned Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution facilitates the mechanisms for the legal implications of non-compliance with Directive 2005/35/EC. Both legislations are based on the subsidiarity and proportionality principle, as set out in art. 5 TEU.

Council Directive on Package Travel, Package holidays and Package Tours (90/314/EEC), based on art. 100a TEC (presently art. 114 TFEU), gives competence to the Union on the basis of the internal market. In the same vein, Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the internal market (“Directive on Electronic Commerce”) facilitates tourism commerce as part of the internal market.

European Parliament acts within ordinary legislative procedure for all discussed fields of EU competence in tourism, that is, establishing specific measures to complements MS’s action in the tourism sector, in particular promoting the competitiveness of Union undertakings in that sector (excluding harmonization) (art. 195 TFEU), provisions for air and maritime transport (art. 100 TFEU), as well as production of statistics necessary for the performance of the Union activities (art. 338 TFEU). If regulations applicable to tourism are part of establishing internal market as area without internal frontiers based on four freedoms, the approximation of laws regarding the establishment and functioning of the internal market is adopted via ordinary legislative procedure (art. 26, and 114 TFEU).

2.10.2 Implications through the EEA Agreement

Art. 78 of the EEA Agreement establishes closer cooperation between the Contracting Parties *inter alia* in the field of tourism. Notwithstanding, tourism combines the four freedoms under the EEA Agreement, i.e. the free movement of goods, persons, services and capital. Art. 2 EEA Agreement ascribes different competences to the Union and the Member States for different provisions.

Regulation (EC) No. 889/2002 of the European Parliament of 13 May 2002 amending Council Regulation (EC) No. 2027/97 on Air Carrier Liability in the event of accidents is applicable to the EEA and is therefore relevant for the Arctic regions. Based on art. 100(2) TFEU (former art. 80.2 TEC), competence lies with the Union.

2.10.3 Relevant Multilateral Agreements and the Status of EU membership

Tourism combines various fields of international governance. Multilateral agreements in the fields of environment, transport, Law of the Sea or trade directly or indirectly refer to tourism or have implications for the tourism industry. The scope of this report does not allow for a detailed analysis of EU competences in tourism on the international level.

Under the Montreal Convention 1999 for the Unification of certain Rules for International Carriage by Air, EU Member States ascribe the Union “competence to take actions in certain matters governed by the Convention.”

Parliament’s consent is necessary for the conclusions of international agreements relating to air transport as well as any other area where internally ordinary legislative procedure applies.

2.11 Regional Policy

2.11.1 Existing policies and legal competence of the EU and the Parliament

The Union shares its competence in regional policy with Member States (art. 4, economic, social and territorial cohesion). The areas of EU activity include promoting overall harmonious development, strengthening of the economic, social and territorial cohesion (art. 174 TFEU), reducing disparities between the levels of development of various regions and the backwardness of the least favoured regions. The Lisbon treaty added to the focus of regional policy naturally or demographically handicapped regions and northernmost regions with low population density, which directly refers to EU Arctic territories.

Regional policy is also regulated through competition framework falling under exclusive EU competence (art. 3(1)b). Here, the EU adopted, for example, Guidelines on National Regional Aid for 2007-2013 (2006/C 54/08), which provide for eligibility of aid for regions with low population density and underemployment.

The EU conducts its regional policy mainly through various programmes funded from European Regional Development Fund, European Social Fund or Cohesion Fund (Council Regulation (EC) no 1083/2006). In the Arctic, these financial instruments are currently utilized in a number of cross-border programmes, including primarily Interreg IV North (European Territorial Cooperation Objective) between Norway, Sweden and Finland, as well as Interreg IV Northern Periphery (with participation of Finland, Ireland, Northern Ireland, Scotland, Sweden, Faroe Islands, Greenland, Iceland, and Norway). The priorities of the latter include promoting innovation and competitiveness in remote and peripheral areas, and sustainable development of natural and community resources.

For discussed policy areas, EP acts in the framework of ordinary legislative procedure when the legislation concerns definition of tasks, priority objectives and the organization of the Structural Funds and general rules applicable (art. 177 TFEU), actions outside the funds mentioned in the Treaty (art. 175 TFEU), and implementing regulations relating to European Regional Development Fund (ERDF) (art. 178 TFEU). As in the case of research policy, when the Council makes appropriate regulations for state aid compatible with the functioning of internal market, the Parliament has to be consulted (art. 107-109).

2.11.2 Implications through the EEA Agreement

EFTA/EEA states participate in various EU regional policy programmes and contribute themselves to the reduction of economic and social disparities within EEA (Protocol 38A to EEA Agreement).

In the sphere of state aid, art. 61 of EEA Agreement prohibits state aid favouring certain sectors or undertakings, making however exception, *inter alia*, for measures supporting development of areas with abnormally low standard of living or serious underemployment, which may, in certain cases, refer also to the Arctic (also Protocol 27 to EEA Agreement). Thus, aforementioned Guidelines for National Regional Aid are fully applicable in the EEA.

ANNEX

TABLE OF PRIMARY AND SECONDARY EU PROVISIONS FOR EACH SECTORAL POLICY			
POLICY FIELD	RELEVANT PROVISIONS IN THE FOUNDING TREATIES	EU LEGISLATIONS	INTERNATIONAL AGREEMENTS
Transport Policy	Title VI TFEU; art. 100(2) TFEU; art. 192 TFEU	<p>Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents</p> <p>Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organizations</p> <p>Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements</p> <p>Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims</p> <p>Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council</p> <p>Directive 2009/17/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control</p> <p>Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations</p> <p>Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods</p> <p>Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70</p> <p>Council Decision 2007/431/EC of 7 June 2007 authorising Member States to ratify, in the interests of the European Community, the Maritime Labour Convention, 2006, of the International Labour Organisation</p> <p>Regulation (EC) No 1692/2006 of the European Parliament and of the Council of 24 October 2006 establishing the second 'Marco Polo' programme for the granting of Community financial assistance to improve the environmental performance of the freight transport system (Marco Polo II) and</p>	<p>United Nations Convention on the Law of the Sea, 1982.</p> <p>Convention on the International Regulations for Preventing Collisions at Sea (COLREG), 1972.</p> <p>International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), 1973.</p> <p>International Convention for the Safety of Life at Sea (SOLAS), 1974.</p> <p>International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978.</p> <p>International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM), 2004.</p> <p>International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS), 2001.</p> <p>International Convention on Oil Pollution, Preparedness, Response and Co-operation (OPRC), 1990 and the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (HNS)</p>

	<p>repealing Regulation (EC) No 1382/2003 Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution Regulation (EC) No 417/2002 on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers Directive 2002/84/EC of the European Parliament and of the Council of 5 November 2002 amending the Directives on maritime safety and the prevention of pollution from ships Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) Council Directive 96/98/EC of 20 December 1996 on marine equipment</p> <p>Environmental regulatory framework for transport: Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles. Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants commits the Commission to report on the extent to which emissions from maritime traffic contribute to acidification, eutrophication and the formation of ground-level ozone Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer bans the marketing and use of ozone-depleting substances in the EU Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues. Directive 1999/32 relating to a reduction in the sulphur content of certain liquid fuels sets sulphur limits for marine distillate oil used in EU territorial waters Directive 94/63/EC on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations</p> <p>Competition regulatory framework for transport:</p>	<p>Protocol), 2000. International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969. International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage (FUND), 1971 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 and its 1973 Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil. International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances at Sea, 1996 and the 2010 HNS Protocol. International Convention on Maritime Search and Rescue, 1979. International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 and its 1973 Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil.</p> <p>Relevant non-binding instruments:</p> <p>IMO Guidelines for ships operating in Polar waters, 2002/2009. IMO Assembly in 2007 adopted</p>
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Environmental Policy	<p>Title XX TFEU; art. 114 TFEU; Charter of Fundamental Rights of the EU, art. 37</p>	<p>Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (Birds Directive)</p> <p>Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on the classification, labelling and packaging of substances and mixtures</p> <p>Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)</p> <p>Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control</p> <p>Directive 2007/51/EC of the European Parliament and of the Council of 25 September 2007 on the restriction on marketing of mercury</p> <p>Regulation No. 1907/2006 of the European Parliament and of the Council of 16 December 2006 concerning Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH)</p> <p>Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC</p> <p>Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice</p> <p>Regulation (EC) No. 304/2003 of the European Parliament and of the Council of 28 January 2003 concerning the export and import of dangerous chemicals</p> <p>Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (Strategic Environmental Assessment)</p> <p>Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (Water Framework Directive)</p> <p>Council Decision 98/249/EC of 7 October 1997 on the conclusion of the Convention for the protection of the marine environment of the north-east Atlantic</p> <p>Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment</p> <p>Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and</p>	<p>Stockholm Convention on Persistent Organic Pollutants, 2001</p> <p>Convention on Biological Diversity (CBD), 1992</p> <p>Convention for the protection of the marine environment of the north-east Atlantic (OSPAR), 1992</p>

		<p>control Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) Council Directive 85/337/EEC of June 1985 on the assessment of the effects of certain public and private projects on the environment Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (Nitrates Directive) Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (Urban Waste Water Treatment Directive)</p>	
<p>Common Fisheries Policy</p>	<p>Title III TFEU</p>	<p>Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, amending Regulations (EEC) No 2847/93 and (EC) No 1627/94 and repealing Regulation (EC) No 3317/94 Council Regulation (EC) No 861/2006 of 22 May 2006 establishing Community financial measures for the implementation of the common fisheries policy and in the area of the Law of the Sea Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy</p>	<p>Agreement on fisheries between the European Economic Community, of the one part, and the Government of Denmark and the Home Government of the Faeroe Islands, of the other part, 1977 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks</p> <p>Relevant international bodies:</p> <p>North-East Atlantic Fisheries Commission (NEAFC) Northwest Atlantic Fisheries Organization (NAFO) North Atlantic Salmon Conservation Organization (NASCO)</p>

Energy Policy	Title XXI TFEU; art. 122 TFEU	<p>Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources</p> <p>Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC</p> <p>Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings</p> <p>Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market</p> <p>Council Regulation (EC) No 2964/95 of 20 December 1995 introducing registration for crude oil imports and deliveries in the Community</p>	The Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects, 1994
Research Policy	Title XIX TFEU	<p>Commission Regulation no 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation)</p> <p>Regulation (EC) no 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013)</p> <p>Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013)</p> <p>Council Decision of 19 December 2006 concerning the Specific Programme Cooperation implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013)</p>	
Animal Welfare	art. 13, 114, 192 TFEU	<p>Commission Regulation (EU) No 737/2010 of 10 August 2010 laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products</p> <p>Regulation 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products</p> <p>Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations</p> <p>Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under Common Fisheries Policy</p> <p>Council Regulation No 338/97/EC of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein</p> <p>Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats (Habitats</p>	<p>Convention on International Trade in Endangered Species (CITES)</p> <p>Convention on the Conservation of European Wildlife and Natural Habitats, Bern, 1979</p> <p>International Convention for the Regulation of Whaling, 1946</p> <p>Relevant international bodies:</p> <p>World Trade Organization (WTO)</p> <p>Food and Agriculture</p>

		<p>Directive) Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 drawing up a framework for marine environmental policy (Marine Strategy Framework Directive) Council Directive 83/129/EEC of 28 March 1983 concerning the importation into Member States of skins of certain seal pups and products derived therefrom (with changes under Council Directives 85/444/EEC and 89/370/EEC) Council Decision 82/72/EEC of 3 December 1981 concerning the conclusion of the Convention on the conservation of European wildlife and natural habitats</p> <p>European Parliament resolution of 19 February 2009 on Community action in relation to whaling (2008/2101(INI))</p>	<p>Organization (FAO) World Organization for Animal Health (OIE)</p>
Climate Change	<p>art. 191-193 TFEU</p>	<p>Commission Regulation (EU) No 82/2010 of 28 January 2010 amending Regulation (EC) No 748/2009 on the list of aircraft operators which performed an aviation activity listed in Annex I to Directive 2003/87/EC on or after 1 January 2006 specifying the administering Member State for each aircraft operator Commission Decision 2009/450/EC of 8 June 2009 on the detailed interpretation of the aviation activities listed in Annex I to Directive 2003/87/EC of the European Parliament and of the Council Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO₂ emissions from light-duty vehicles Text with EEA relevance Commission Decision 2009/339/EC of 16 April 2009 amending Decision 2007/589/EC as regards the inclusion of monitoring and reporting guidelines for emissions and tonne-kilometre data from aviation activities Commission Decision 2007/589/EC of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions</p>	<p>The United Nations Framework Convention on Climate Change (UNFCCC), 1992 and the Kyoto Protocol, 1997</p>
Indigenous Peoples	<p>Protocol 3 on Sami/Sámi People to the Accession Treaty of Austria, Finland and Sweden; art. 165, 167, 168, 177 TFEU; Charter of Fundamental</p>	<p>Regulation 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products Council Decision 7146/09 of 3 March 2009 establishing the position to be adopted on behalf of the European Community Council Decision 9818/2008 establishing the position to be adopted on behalf of the European Community with regard to proposals for amendments to the International Convention on the Regulation of Whaling and its Schedule Council Regulation (EC) no 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 Council Resolution of 30 November 1998 on Indigenous peoples within the framework of the</p>	<p>International Covenant on Civil and Political Rights, 1966 Council of Europe's Framework Convention for the Protection of National Minorities, 1995 ILO Convention no 169 on indigenous and tribal peoples in independent countries, 1989 UN Declaration on the Rights of Indigenous Peoples, 2007 European Convention for the</p>

	Rights of the EU, art. 21	development cooperation of the Union and the Member States	Protection of Human Rights and Fundamental Freedoms, 1950 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005
Forest Policy	art. 192, 207 TFEU	Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (Birds Directive) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources Regulation (EC) No 2152/2003 European Parliament and of the Council of 17 November 2003 concerning monitoring of forests and environmental interactions in the EC Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy Council Resolution of 15 December 1998 on a forestry strategy for the European Union (1999/C 56/01) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats (Habitats Directive)	
Tourism	art. 26, 169, 195, 338 TFEU; Title VI TFEU	Regulation (EC) No. 889/2002 of the European Parliament of 13 May 2002 amending Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market Council Regulation (EC) No. 2027/97 on air carrier liability Council Directive 95/57/EC of 23 November 1995 on the collection of statistical information in the field of tourism Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution Council Directive 90/314/EEC of 13 June 1990 on Package Travel, Package holidays and Package Tours	Montreal Convention for the Unification of certain Rules for International Carriage by Air, 1999 See also agreements referred to in the <i>Transport</i> section
Regional Policy	Title XVIII TFEU	Guidelines on National Regional Aid for 2007-2013 (2006/C 54/08) Council Regulation (EC) no 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999	

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