

Levels of Law

Understanding the complexity of the European Union's legal Arctic presence.

The European Union (EU) holds a strong legal presence in the Arctic, with many of its legal competences being in policy fields that are important to the Arctic. The EU's legal influence is clearest in its Arctic Member States, Finland and Sweden, as well as in its European Economic Area (EEA) partners, Iceland and mainland Norway.

Influential in...

THE EUROPEAN ARCTIC

- ☀ As a regulator, the EU's *acquis communautaire** covers an extensive geographical area of the European Arctic
- ☀ Source for funding regional development
- ☀ Partnership with Greenland
- ☀ Key player focused on internal/sectoral affairs & terrestrial issues

THE CIRCUMPOLAR ARCTIC

- ☀ Co-shaping international rules
- ☀ Funding climate, environmental, & marine research
- ☀ Significant socio-economic impact
- ☀ Important Arctic partner with an emphasis on environmental protection, fisheries and research

*The cumulative body of legislation and court decisions, which constitute EU law.



Three Dimensions of Legal Presence

The various ways that the EU has legal influence in the Arctic fall within a continuum of three different 'dimensions' that describe varying degrees of EU jurisdiction and/or policy engagement.

INTERNAL

The internal dimension refers to the Arctic territory that falls directly within the EU's territorial jurisdiction—by way of its Member States Finland and Sweden.

CLOSE ASSOCIATION

The close association dimension highlights EU legislation affecting Iceland and Norway (excluding Svalbard), via the European Economic Area (EEA) agreement. In many respects, the EEA extends the geographical scope of EU legislation beyond the EU's Member States' territorial jurisdiction, creating a single market for all state parties. For Iceland and Norway, being in close association means that they are included within the *acquis communautaire's* four fundamental freedoms – the free movement of goods, services, persons, and capital.

Excludes these policy areas:

- Common Agriculture and Fisheries Policies
- Customs Union
- Common Trade Policy
- Common Foreign and Security Policy
- Justice and Home Affairs*
- Monetary coordination

EXTERNAL

The external dimension describes the third level of EU Arctic presence. In this dimension, the EU is able to either act alone—through its partnerships and relationships with non-EU Arctic states, or jointly with its Member States—through its participation in treaty regimes and international organizations that have regulatory functions in the Arctic. Further, this also includes Arctic-related economic, scientific and diplomatic relations with Canada, Russia and the United States.

In addition, the EU's relationships with the Faroe Islands and Greenland also have external characteristics. While they are both within the Danish Realm, they are self-governing— and are not part of the EU.**

*Despite Iceland and Norway being part of the Schengen area.

**Greenland is linked to the EU through the association of Overseas Countries and Territories (OCT). Thus, it is not subject to the *acquis communautaire* but has a special associate status, e.g. a Fisheries Partnership Agreement.

CORE COMPETENCES DEFINING EU PRESENCE

The EU has a distinct set of jurisdictional capacities to influence the European and Circumpolar Arctic. However, the EU has no competence to act if this has not been conferred on it by its Member States. Generally, this consent is given via primary treaties (e.g. the Lisbon Treaty). However, the EU has also acquired competences via case law and related decisions of the Court of Justice of the European Union. Competences can be of internal and external nature, exclusive, complementary, or shared.

INTERNAL COMPETENCES

EXCLUSIVE

Empower the EU to solely legislate and adopt legally binding acts in areas such as the Customs Union, the establishing of Competition Rules, the Common Commercial Policy or the conservation of marine biological resources under the Common Fisheries Policy.

SHARED

The EU and its Member States are able to legislate and adopt legally binding acts. Member States exercise their own competence where the EU does not exercise, or has decided not to exercise, its own competence. Shared competences apply in...

- ☀ Environment and Climate Change
- ☀ Energy (Directive on safety of offshore oil/gas operations)
- ☀ Maritime Transportation (act as a flag and port states)
- ☀ Fisheries
 - The EU is party to Regional Fisheries Management Organizations (RFMOs)
 - European Commission part of negotiating Central Arctic Ocean Fisheries Agreement

COMPLEMENTARY

May fall under the jurisdiction of Member States only, with allowance for the EU to support and supplement the actions of its Member States. This includes the policy fields of industry, culture, or tourism.

EXTERNAL COMPETENCES

Who is eventually authorized to act externally? Is it the EU, its Member States or together as a joint effort? Treaty of Lisbon does not clearly list the EU's external competences:

- ☀ Explicit competences in trade, development or external environmental policy
- ☀ Implicit competences: authority that derived from the EU's internal competences and related legislation that has been passed over for years and decades

References & Further Information

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