

EU Competences

TITLE I TFEU: CATEGORIES AND AREAS OF
UNION COMPETENCE- ARTICLES 2-6 TFEU

Article 2

Types of competences

Article 2

Paragraphs 1,2,3, and 5 define three categories of competence, namely, exclusive, shared, and supporting (or coordinating) competence, further set out, respectively, in Article 3 (exclusive), Article 4 (shared) and Articles 5 and 6 (supporting /coordinating).

Paragraph 4 mentions the Common Foreign and Security Policy (CFSP), an area that is not further set out in this part of the Treaty and which does not fall within the categories defined in Article 2.

Article 2 (1): Exclusive competence

„ When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts”.

Article 2(1) defines exclusive Union competence as an area where „ only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts”.

This form of exclusivity can be referred to as *a priori exclusivity*. Article 3(1) TFEU lists the corresponding policy areas.

The relationship between Union and MSs powers under exclusive competence is static. The transfer to the Union of powers being „total and definitive,... a failure to act could not in any case restore to the MSs the power and freedom to act unilaterally (Case C-804/79, Commission v UK, para.20).

Article 2 (1): Exclusive competence

Exclusive EU competence also bears the MS from exercising their own retained competence inter-se, outside the Treaty structures (Joined cases C-181/91 & C-248/91, European Parliament v Council and Commission, para. 16; Case C- 316/91, European Parliament v Council, para. 26).

MSs cannot act in areas that fall under exclusive competence unless they are specifically authorized to do so. Such authorization can be contained in an act of secondary law.

Article 2 (2): Shared competence

„When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. 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”.

All shared competences of the EU for passing secondary law are explicitly conferred on the EU in the TFEU.

Shared competence is **dynamic** in the sense that, in general, as the EU takes legislative action to regulate a particular area, MSs lose their right to use their own competence to act in that area.

Article 2(2) gives MSs the right to exercise their competence „to extent the EU has not exercised its own competence”. (See: Protocol No 25 on Shared Competence annexed to the TFEU).

Article 2 (2): Shared competence

The EU can exercise its shared competence with the instruments of directives, regulations and decisions (Art. 288 TFEU).

Article 2(2) explicitly provides the right of MSs to „again exercise their competence to the extent that the Union has decided to cease exercising its competence” (See: Declaration No 18 on the delimitation of competences attached to TFEU).

Article 2 (3) and (5) : Supporting and coordinating competence

This category of competences includes all the so far called ,soft competences', according to which the EU supports and coordinates actions of the MSs.

The EU and MSs in these cases are acting by parallel measures. The action of the MSs is directed and oriented consistently with the aims of the EU (Art. 3 TEU).

Because they are of a solely supportive nature, a strict prohibition of harmonising measures applies.

Article 2 (4): Common Foreign and Security Policy

It is possible to identify a special fourth category of competence that applies as regards CFSP.

Article 2(4) refers to Title V (Articles 23-48 TEU). Competence laid out there includes , the progressive framing of a common defence policy' (Article 16(2) TEU). Article 24 TEU makes clear that the CFSP is a policy area outside the three categories of Article 2 TFEU.

Article 3

Exclusive competences

General remarks

Article 3 defines, in form of a **conclusive enumeration**, the exclusive competences mentioned in Article 2(1).

The qualification of a competence as exclusive has two important consequences:

1. The exercise of the competence **will not be a subject** to the principle of subsidiarity (through it remains subject to the principle of proportionality);
2. It **excludes the possibility** for MSs to engage in enhanced cooperation in the field concerned (Article 329(1) TFEU).

Areas of exclusive competence

1. **Customs union.** The customs union and customs cooperation are covered by Chapters 1 and 2 of Part Three Title I TFEU (Articles 30-33). The customs union „shall cover all trade in goods and shall involve the prohibition between the MSs of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries”.

2. **The establishing of competition rules necessary for the functioning of the internal market** does not comprise a competence to regulate the whole internal market (Articles 26 et seq. TFEU), but only relates to the common rules of competition for the internal market (Articles 101 et seq. TFEU).

Areas of exclusive competence

3. **Monetary policy for euro area countries** means the monetary policy including the issue of banknotes and coins and the supervision of the stability criteria for the euro currency according to the provisions laid down in the TFEU (Articles 126 et seq. And 136 et seq.).

4. **Conservation of marine biological resources under the common fisheries policy** describes a part of the common agricultural and fisheries policy (Art. 38 et seq.).

Areas of exclusive competence

5. **Common commercial policy (CCP)**. It is covered by Part Five Title II of the TFEU, with Article 207 as the main legal basis. The CCP is the set of rules comprising Treaty law and autonomous rules regulating foreign commercial relations. It comprises particularly foreign trade and foreign direct investments (See: [Opinion 2/15](#), Free Trade Agreement between the European Union and the Singapore).

6. There is an exclusive competence for the **conclusion of international agreements under public international law** in three cases: a) when its conclusion is provided for in a legislative act of the Union; b) when conclusion of an agreement is necessary to enable the Union to exercise its internal competence; c) in so far as its conclusion may affect common rules or alter their scope.

Article 4

Shared Competences

Article 4

Article 4(1) has to be understood as a **general clause**.

The EU has shared competence whenever it has neither exclusive nor supporting competence (Art. 4 (1)).

The areas of shared competence listed in Article 4 (2) are only ,principal areas', and therefore not exhaustive.

Areas of shared competence

The specific competence are largely concerned with fields dealing with the establishment and conservation of the internal market.

- The internal market particularly encompasses the market freedoms of Articles 26 et seq. TFEU;
- Social policy is covered by the Social Policy Title X of the TFEU (Articles 151-161);
- The field of economic, social and territorial cohesion relates to Articles 174 et. seq.
- Agriculture and fisheries, excluding the conservation of marine biological resources, is regulated in Articles 38-44 TFEU.
- The environmental policy is regulated by Articles 191-193 TFEU.
- The areas of consumer protection is regulated in Article 169 TFEU.

Areas of shared competence

- Title V on transport (Articles 90-100 TFEU) sets one of the three ,common' policies of the EU, together with the common agricultural policy and the common commercial policy.
- Trans-European networks are regulated in Articles 170-172 TFEU.
- Title XXI on energy policy consists of Article 194 TFEU and is complemented by Declaration 35 to the Treaty;
- The area of freedom, security and justice is regulated in Title V (Articles 67-89 TFEU)
- Common safety concerns in public health matters, for the aspects defined in this Treaty is regulated in Article 168(4) TFEU.

Article 5: Coordination of economic, employment and social policies

Article 5 deals with three distinct areas: economic policy, employment policy and social policy.

According to para. 1 the MSs, in the framework of a coordinating competence, shall coordinate their economic policies within the EU. To this end, the Council shall adopt measures, in particular broad guidelines for these policies. Specific provisions shall apply to those Member States whose currency is the euro. This refers to the area of general economic policy dealt with in Chapter 1 of Part 3 Title VIII TFEU.

According to para. 2, the EU shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies.

According to para. 3, the EU may take initiatives to ensure coordination of Member States' social policies.

Article 6

Supporting, coordinating,
supplementing competences

Article 6

The areas of competence mentioned in Article 6 foresee the EU acting in a supporting or coordinating role.

The list in Article 6 is **exhaustive**.

Areas mentioned in Article 6

The measures named in Article 6 are concerned with the following fields of EU policies: protection and improvement of human health (Article 168); industry (Article 173); culture (Article 167); tourism (Article 195); education, vocational training, youth and sport (Articles 165-166); civil protection (Article 196); administrative cooperation (Article 197).

The Open Method of Coordination (OMC)

The OMC is coordinative, non-legislative competence entailing coordination, guidelines, indicators, best practice, and monitoring and evaluation, typical for policy areas falling under supporting competence. This form of coordination relates to the coordination by the MSs of such national policies which lie outside the competences conferred to the EU. Thus, it has to be of a non-binding nature; Council and Commission may formulate non-binding guidelines.