

## PROJECT

EU

Foreign Policy

Environmental Law

Coastal + Marine

Ecologic Legal

## EC External Competences

The EC increasingly participates in international conferences and mixed international agreements alongside its Member States. The appearance of both EC and Member States raises questions of competences for the negotiation, conclusion and implementation of such international instruments. In particular in the field of marine environment, substantial progress is hindered by an opaque division of competences between the EC and its Member States and lack of coordination. Accordingly, the German Federal Environmental Agency commissioned Ecologic with the task of analysing the division of external competences between the EC and its Member States taking into account the OSPAR-Convention.

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The study is divided into three parts. It begins with an analysis of the general principles with respect to the division of competences in mixed environmental agreements. This part is primarily based on the jurisprudence of the [European Court of Justice](#) [2] (ECJ). In principle, external competences between the EC and the Member States in environmental matters are shared. However, the EC has the competence for those areas in which it has already implemented secondary legislation. The external competences may become

exclusive in character vis à vis those of the Member States in cases in which a certain subject has been exhaustively regulated by community secondary legislation.

The second part of the study analyses selected problems of competence delineation which are of relevance under the OSPAR regime, taking into account the criteria identified in the first part of the study. The assessment carried out for each area - in order to delineate competences - focuses primarily on the question whether and to what extent a certain area of regulation has been exhaustively regulated by the EC. To this end an exhaustive EC regulation triggers exclusive competence both on the internal and the external level for the EC. Accordingly Member States are no longer allowed to enter into agreements nor to autonomously legislate in that field. The analysis of the respective areas covers the fields of chemicals, pest management, IPPC as well as specially protected marine areas.

The final part of the study is devoted to the question of remaining competences for the Member States due to special clauses which allow for more stringent national protective measures. In addition to this, the study also analyses procedural ways of enforcing the Member State's interests and competences (decision procedures in the [Council](#) [3], procedures before the ECJ, OSPAR-arbitration). The study closes with suggestions for the preparation and conduct of negotiations of international agreements and the coordination between the EC and its Member States.

The German Federal Environmental Agency together with Ecologic, presented the preliminary report and discussed its preliminary findings in an expert seminar. It aimed at bringing together experts both negotiating and implementing obligations of the OSPAR Convention as well as legal experts in this field. Further information about this event can be found at the [event's website](#) [4].

The study has been [published as a book](#) [5].

#### **Main Link**

Book: EG-Kompetenzen bei völkerrechtlichen Verträgen im Umweltbereich unter besonderer Berücksichtigung des OSPAR-Übereinkommens

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**Links**

- [1] [https://www.ospar.org/content/content.asp?menu=0148120000000\\_000000\\_000000](https://www.ospar.org/content/content.asp?menu=0148120000000_000000_000000)
- [2] <http://www.curia.eu.int/>
- [3] <http://ue.eu.int/homepage?lang=en>
- [4] <http://ecologic.eu/about-ecologic-eventsegam/en/index.htm>
- [5] <https://www.ecologic.eu/1186>