European Union Competences Cheat Sheet

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The Legislative Competence of the EU

Competences of EU are defined in EU Treaties; defined in Articles 2-6 of the TFEU after Lisbon Treaty. **Competences not conferred on the EU by the Treaties remain with the EU Member States.**
Article 5(2) TEU of Lisbon Treaty states that the EU can only act within the limits of powers assigned to it.

Motivation for Reform

Clarity:	There were concerns that the Treaty provisions on competences were unclear and created a space for confusion.
Conferral:	Brought the idea that while EU should act within it's limits, it was important to give it certain power to allow it to complete tasks given to it by treaties.
Containment:	Members were worried that EU had too much power; the EU's power should be limited.
Consideration:	Questioned whether EU should keep having the powers it had been given or whether the powers should be changed.

Lisbon Strategy: Categories and Consequences

1st Category:	where the EU's competence is exclusive
2nd Category:	where competence is shared with member states
3rd Category:	where EU is limited to supporting/co-ordinating action

Lisbon Treaty repeats minor amendments to provisions of the Constitutional Treaty. TFEU contains main provisions on competence (where it is specified in certain subjects and legal consequences).

Expressed vs Implied Power

Expressed Power:	are clearly defined and written in the Treaties
Implied Power:	where the EU has explicit powers in one area, it must have similar powers to conclude international agreements with non-EU countries and international organisations.

Principles of Subsidiarity and Proportionality

Subsidiarity	EU does not take action (except in it's areas of exclusive competence) unless EU action is more effective than action taken at national, regional or local level.
Proportionality	action of the EU must be limited to what is needed to achieve the objectives of the Treaties. The action must be in line with the aim pursued.

Exclusive Competence: places where only EU can act

Art. 2(1) TFEU	only EU can legislate and adopt legally binding acts. Member states may only do so if empowered by the Union.
Art. 3(1) TFEU	areas that fall within exclusive competence; they are limited and Member States have no say with legislation in these areas.

Exclusive Competence: places where only EU can act (cont)

Art. 3(2) TEFU	EU has exclusive competence for the conclusion of international agreements when it is provided for in any legislative act of the union (conditional exclusivity since certain conditions must be met).

When EU has Exclusive External Competence

1. Art. 3(2) TFEU does not state that EU shall have external exclusive competence where a legislative act says so. **Express External Empowerment to conclude an international agreement prohibits Member States from concluding such agreement independently.**

2. **EU has exclusive external competence to conclude an international agreement that is necessary to enable EU to exercise internal competence.**

3. **Where EU has exercised power internally, it will be held to have an exclusive external competence.**

Shared Competence

Art. 2(2) TFEU	Member states can act only if the EU has chosen not to do so or has decided to cease to exercise competence in that area.
Art. 4(2) TFEU	Shared competence applies in the 'principal areas' listed (implies list is not exactly exhaustive).

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Shared Competence in a Nutshell

1. **Member states will lose their competence within the regime of shared power only to the extent that the Union has exercised it's own competence.**

2. **Member states will have room for action in the relevant area of concern where the Union's competence in that area only covers elements governed by the Union act and not the whole area.**

3. **If EU ceases competence in a specific area, that competence will go to the member states.**

4. **Articles 4(3) and 4(4) TFEU make it clear that Member States can continue to exercise power even if EU has exercised its power in those areas.**

Supporting, Co-ordinating, or Supplementary Action

The EU has competence to support, co-ordinate, or supplement member state - legally binding EU acts n these areas cannot imply harmonisation of national laws/regulations.
The EU can do this without superseding their competence in these areas. EU can pass legally binding acts on the basis of the provisions specific to them.

Economic, Employment, and Social Policy

EU may adopt guidelines to co-ordinate member state approaches in; **economic policy, employment policy and social policies.**
The Lisbon Treaty created a separate category for these matters since there would have been significant opposition to the inclusion of these areas within shared competence, with the consequence of pre-emption of state action when EU had power in this area.

Art. 2 TFEU is about the attribution of legal consequences for EU and member state power as the f coming within a particular category.

Common Foreign and Security Policy and Defence

TEU gives EU competence to define and implement a common foreign and security policy (incl. progressive framing of a common defence policy).
3 Pillar structure was not kept in Lisbon treaty but there are still distinct rules that apply in this area. Decision making in this sector is intergovernmental.

Germany v. European Parliament and Council

The Tobacco Advertising Case
The EU adopted a directive on the approximation of laws relating to the prohibition of advertising and sponsorship of tobacco. This aimed to eliminate obstacles to the functioning of the internal market and difficulties of competition resulting from the differences in national rules of member states.
Germany started proceedings to try dissolve the directive as it's real aim was to protect public health. The protection of public health is not an area for harmonisation.

EU institutions may claim that certain treaty articles contain an implied power to make certain regulations. Given powers imply the existence of other powers needed in that area.

Germany v. Commission [ECR 3203]

Commission made a decision (according to Article 118) establishing prior communication and consultation process relating to migration policies affecting workers from non-EU countries. **This was challenged by some Member States as being beyond the powers of the Commission.**
ECJ held that this migration policy falls within Article 118 and these implicit powers are thus, recognised.

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