

# The EU Arctic policy and its critique: a view under Tocci's theory on foreign policy and normative power (Part 1)

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## **Abstract**

*What is the role of the European Union (EU) in the Arctic region? On what basis does it claim influence and/or authority (if any) over part of this vast area of the world? What can we learn about EU Arctic policy, tools and instruments adopted so far? Is the EU a normative foreign policy actor as described by Tocci's theory? What factors do influence the adoption and validity of EU policies in this region? This study tries to reply to all these questions casting a light over an area of great geostrategic importance and at the crossroads of historic developments. In a first part we study the current EU Arctic policy and assess its strength and weaknesses according to literature. In a second part we summarize Tocci's theory on kinds of normative policy actors and examine what kind of power is the EU exercising in the region.*

**Keywords:** Arctic, EU policy, normative foreign policies, Tocci's theory

**JEL Classification:** K32, K33

## **1. Introduction**

Global interest in the Arctic has grown in the last decade. The situation in the region is a good example of how economic globalization (or even “de-globalization”<sup>3</sup>) and climate change affects geopolitics; moreover, it is a vivid example of how rapidly the modern world is changing. Peripheral in the context of world politics, this region has -literally before our eyes- turned into one of the main objects of increased attention for its potential and geostrategic importance. Here, in the northernmost point of the planet, as in no other region, the geopolitical and economic interests of the world's leading powers collide in the most concentrated form. In fact, due to new climatic conditions, the Arctic has turned into a global issue, with clashing political interests of the main powers. Furthermore, this transformation has brought a wide array of challenges to the existing legal structures functioning in the region.<sup>4</sup>

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<sup>3</sup> See Postelnicu, C., Dinu, V., & Dabija, D. C. (2015), *Economic deglobalization—from hypothesis to reality*, „Ekonomie a Management (E&M)/Economics and Management”, Vol 18, no. 2, pp.4-14, p. 4.

<sup>4</sup> See topical issues related to Arctic law at the Thematic Network online <https://www.uarctic.org/organization/thematic-networks/arctic-law/>

With the unprecedented rapid melting of the Arctic ice there is no doubt today that it is impossible to “close” this part of the world again. One of the most important reasons for international cooperation is the complexity of natural conditions that hampers its individual economic development. In most cases, any future development of international law requires the unification of other multiple resources - financial, technological, scientific and organizational. In fact, this is an important incentive to consolidate and expand joint activities. But not only, interest in the region has also reached the international civil society. Every year, the Arctic Circle Assembly<sup>5</sup> gathers a great number of State actors and other participants from all over the world.

The opening of the Arctic Region has seen the emergency of a new system of Arctic governance where “[a]n extensive international legal framework applies to the Arctic Ocean”.<sup>6</sup> In contrast to the Antarctic which is Earth’s southernmost non-inhabited continent governed by the Antarctic Treaty System (ATS), Arctic law is generally recognized as a complex matrix of fragmented international and regional regulations combined with the historically established national legislation of the most important “Arctic five” states (since different countries have sovereignty and jurisdiction over parts of this vast territory).<sup>7</sup>

However, at the moment, the international legal status of the Arctic has not been finally settled. We do not find a proper widely accepted legal definition of the Arctic Region and no single international treaty exists which determines the unique/unified legal regime of this territory. In the system of Arctic governance, it is now widely accepted that the United Nations Convention on the Law of the Sea<sup>8</sup> (UNCLOS) is fully applicable to the seas and that the Arctic Council<sup>9</sup> (AC) is the

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<sup>5</sup> The annual Arctic Circle Assembly, founded by former President of Iceland, Ólafur Ragnar Grímsson, is the largest annual international gathering on the Arctic. In 2018 it was attended by more than 2000 participants from 60 countries. The Assembly is held every October in Reykjavík, Iceland. It is attended by top level politicians or State actors (heads of states and governments, ministers, members of parliaments, officials) and by non-State actors or civilians acting individually or organised in NGOs (experts, scientists, entrepreneurs, business leaders, indigenous representatives, environmentalists, students, activists and others). All in all, this assembly has grown into an international community of partners and participants interested in the future of the Arctic.

<sup>6</sup> The Ilulissat Declaration in May 2008 committed the Arctic Five to the existing legal framework (namely UNCLOS) and the orderly settlement of any possible overlapping claims.

<sup>7</sup> “The Arctic Five” is the group of five states that border the Arctic Ocean, namely Canada, Denmark/Greenland, Norway, Russia and the United States. These countries initiated cooperation in the 70’s and negotiated the first Arctic-specific treaty already in 1973 (Agreement on the Conservation of Polar Bears). However, due to the Cold War and a general lack of recognition of the Arctic as a political region in its own right, this cooperation did not continue formally.

<sup>8</sup> Signed on 10 December 1982 at Montego Bay (Jamaica). It became effective in 1994 and it counts more than 150 signatory countries in 2018.

<sup>9</sup> The Arctic Council is a high-level intergovernmental forum that gathers together Arctic governments and the indigenous people of the Arctic region to discuss common issues and concerns together. Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden, and the United States are the eight countries with sovereignty and jurisdiction over the territories situated within the Arctic Circle. There are some observer states.

leading intergovernmental forum for cooperation among State actors (and increased stakeholders). Iceland's will lead Nordic Cooperation in 2019 and will exercise leadership of the Arctic Council for the period 2019-2021. The Government foreign policy and strategy reiterates that Arctic continues to be characterized by peace, stability, sustainability, and cooperation.<sup>10</sup>

At the same time, while the existing general international legal regime is characterized by a comprehensive and undoubted legal priority of the rights and interests of the "Arctic Five"; the *status quo* established in the region is fixed not only by the normative acts of the Arctic states, but also by international recognition, either explicit or silent<sup>11</sup>. In this sense, Non-Arctic States are "entitled to some say"<sup>12</sup> since most of the current Arctic problems are not limited-regional, but large-scale and global in nature. Many actors are now paying special attention to this region and articulating mechanisms for international cooperation with the goal of securing their direct/indirect presence in the region.

One of the main actors in this international context is the European Union (EU). It aims to have a significant role and voice in this international and multilateral order while it is also the only one supranational organisation constructed on the basis a unique framework of integration by law and guided by certain norms and values: democracy, human rights and international law. Since 2008, the EU has adopted a common European strategy based on its relevance for the Arctic region with different degrees of success and credibility.

The goal of this study is to explore the EU Arctic policy in the light of recent literature (Part 1) and to examine whether its quasi-normative power falls under Tocci's doctrine (Part 2). Nathalie Tocci is a specialist in foreign policy relations and normative actions and a special advisor to Federica Mogherini, the EU's High Representative for Foreign Affairs and Security Policy<sup>13</sup>. The first part of the study reviews the period 2008-2018: What does the EU say in its public Arctic policy? What is it doing in practice? What are the strengths and weaknesses of the current EU action so far? In the second part of the study we adopt, instead, a point of view of international relations and political science: how does the EU try

<sup>10</sup> Iceland, Ministry of Foreign Affairs, *Excerpt from the report by the Minister for Foreign Affairs to Parliament 2018*, available on internet at <https://www.government.is/library/01-Ministries/Ministry-for-Foreign-Affairs/PDF-skjol/MFA%20-%20Icelandic%20Foreign%20Affairs%202018.pdf>. See also interview with Iceland's Foreign Minister in the following special supplement of national newspaper Morgunblaðið "The World of Yesterday" from 19.10.2018, pp. 12-13 and 16 (in Icelandic and English).

<sup>11</sup> One example could be China's Arctic Policy. See China. Official Paper from The State Council Information Office of the People's Republic of China (2018).

<sup>12</sup> Rainwater, S., (2015), *International Law and the Globalization of the Arctic: Assessing the Rights of Non-Arctic States in the High North*, „Emory International Law. Review”, 30, p. 115.

<sup>13</sup> For a summary of her most important publication see : Tocci, N. (2008). *The European Union as a Normative Foreign Policy Actor* . CEPS Working Documents No. 281; Tocci, N., & Hamilton, D. S. (2009). *Who is a normative foreign policy actor?: the European Union and its global partners*. Centre for European Policy Studies. See more recently Tocci, N., *Framing the EU Global Strategy: A Stronger Europe in a Fragile World*, Basingstoke: Palgrave Macmillan, 2017.

to secure its interest in the *rea vis-à-vis* other Arctic actors? Is the EU a truly 'normative' foreign policy actor or "it is just talk"?

The outline of the work is at it follows. In the introduction we define the Arctic area for the purposes of the study as well as the international legal framework in place today. In Part 1 we make a brief description of the EU Arctic policy and some of its most important elements during the decade 2008-2018; while trying to assess its nature and justifying reasons on the basis of scholarship. In Part 2 we look at the changing EU Arctic policy from the perspective of Tocci's research model on foreign policy actors and normative rules.

As regards to the method, this brief study has an epistemology and methodology grounded in the social sciences. In the first place it can be qualified as interdisciplinary (law is viewed from a theory developed in the field of theories of political science). We look first at "the law", in this case, the soft law/policy of the EU. Analysis, that is to say, independent critical evaluation of positive/soft policy norms, is done not only on the basis of critical literature but also following a "law in context approach"<sup>14</sup>, meaning the laws are situated and interpreted in a larger economic, political and social context. In this sense, the internal question "what is the law?" makes reference to other external factor.<sup>15</sup> For that reason, "the epistemological nature of the research changes from that of internal enquiry into the meaning of the law to that of external enquiry into the law as a social entity".<sup>16</sup> In taking an external view of the EU policy through the perspective of a political science theory, this article could be described as research about Arctic law and policy in context rather than research in Arctic law/policy.

Attention must be drawn to the fact that the Arctic has received considerable academic interest in the last decade. The study does not intend to summarize a rich literature on the region coming from political science, international relations and European studies.<sup>17</sup> It mostly aims to assess the EU Arctic policy in the light of most relevant legal literature in Part 1 in order to proceed to assess in Part 2 whether it fits or not under Tocci's theory of normative foreign policy actors and draw lessons from this exercise.

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<sup>14</sup> See description of law in context approach at the European University Institute, <https://www.eui.eu/events/detail?eventid=143756>

<sup>15</sup> See Chynoweth, P (2008) 'Chapter 3 - Legal Research', in: Ruddock, L & Knight, A (eds.), *Advanced Research Methods in the Built Environment*, Wiley-Blackwell, Oxford, United Kingdom, pp.28-38, specially p. 29.

<sup>16</sup> *Ibid*, p. 30.

<sup>17</sup> Overview of literature is offered by the University of Tromsø (Norway) in a project called "Arctic Futures": <https://site.uit.no/arcticfutures/arctic-futures/3-an-overview-of-the-literature/>. Literature reviews are available at <https://site.uit.no/arcticfutures/arctic-futures/7-references/>. A more concrete example of survey of literature is given by Mikkel Runge Olesen in the paper "Cooperation or conflict in the Arctic: A Literature Review". DIIS Working Paper 2014:08 available at [http://pure.diis.dk/ws/files/70921/wp2014\\_08\\_Runge\\_Olesen\\_for\\_web.pdf](http://pure.diis.dk/ws/files/70921/wp2014_08_Runge_Olesen_for_web.pdf).

## 2. The EU Arctic policy and its critique

### 2.1 The European Arctic. Preliminary questions

There is no universally agreed definition of the Arctic, nor is there an agreed definition of the European part of the Arctic. For the purpose of this research, the European Arctic is defined as the zone between Greenland in the west and the Ural Mountains in Russia in the east, as was defined in EEA Report: *The Arctic environment European perspectives on a changing Arctic*.<sup>18</sup>



Figure 1.1: European Arctic as Defined in the Strategic Assessment of Development of the Arctic.  
Source: Arctic Portal, 2014.

**Figure 1: The European Arctic (marked with blue) as defined in SADA**

Source: Arctic Portal<sup>19</sup>

While various definitions on the Arctic exist, the EU uses a flexible one in its official statements. For instance, Federica Mogherini said in her keynote address on 27 April 2016, presenting the new Communication entitled “An integrated European Union policy for the Arctic”:

<sup>18</sup> EEA Report No 7/2017 *The Arctic environment European perspectives on a changing Arctic*, pp 15.

<sup>19</sup> Koivurova, Timo and Stepien, Adam and Kankaanpaa, Paula (2014) *Strategic Assessment of Development of the Arctic - Assessment conducted for the European Union*. Project Report. Strategic Environmental Impact Assessment of development of the Arctic, chapter 2 p. 3. See also Koivurova, T., Kokko, K., Duyck, S., Sellheim, N., Stepien, A. (2010), *Study EU Competencies Affecting the Arctic*, Brussels, European Parliament, pp. 1-51, at p. 21.

*[The Arctic] is not a frontier any longer, but a gateway for Europe and a crossroads between continents. It is a common good, and we have a common responsibility to preserve it – for its people and for the world,*<sup>20</sup>

In the EU Joint Communication from 2016 the notion “Arctic region” covers the area around the North Pole and north of the Arctic Circle (that is to say above latitude 66 degrees, 32 minutes North). It includes the Arctic Ocean and territories of the following States (Arctic “Eight”): Canada, Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, the Russian Federation, Sweden and the United States of America.

## 2.2 The Arctic: international legal framework in force

There is an extensive international legal framework that already applies to the Arctic. It is based on the following instruments (some signed by the EU):

- The UN Convention on the Law of the Sea (UNCLOS) on national jurisdictional rights on different sort of maritime zones. The EU is a signatory of UNCLOS;

- The International Maritime Organization (IMO), a United Nations specialized agency trusted with the international standards of safety and security of shipping and the prevention of maritime pollution caused by ships. All EU Member States are IMO Members while the European Commission (not the EU as such) has an observer status;

- The Arctic Council (AC) which is an international and intergovernmental forum directly dealing with issues of sustainable development and environmental protection over the region and excluding of its scope all matters relating to boundary, security or resource disputes. The EU is an *ad hoc* observer to Arctic Council proceedings on a case to case bases. Three EU Member States are members of the AC (Denmark, Finland and Sweden), while other seven EU Member States have been given the status of permanent observers (France, Germany, Italy, the Netherlands, Poland, Spain and the UK);

- The Barents Euro Arctic Council (BEAC) which is the forum for intergovernmental and interregional cooperation in the Barents Region. The European Commission (not the EU) is a full member of this organization;

- The Convention for the Protection of the Marine Environment of the North-East Atlantic (so called OSPAR Convention) aims to protect the marine environment and ecosystems against recent threats linked to pollution, maritime activities as well as those due to climate change and increased human presence.

Furthermore, it must be noted that there is a joint policy between the EU, Russia, Norway and Iceland called “The Northern Dimension”. Initiated in 1999

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<sup>20</sup> EEAS homepage: EU Arctic Policy Arctic: Cooperation and innovation to tackle climate change key to future of region and planet Arctic: Cooperation and innovation to tackle climate change key to future of region and planet Available at [https://eeas.europa.eu/arctic-policy/eu-arctic-policy/28322/arctic-cooperation-and-innovation-tackle-climate-change-key-future-region-and-planet\\_en](https://eeas.europa.eu/arctic-policy/eu-arctic-policy/28322/arctic-cooperation-and-innovation-tackle-climate-change-key-future-region-and-planet_en)

and renewed in 2006, its goal is to provide a framework to promote dialogue and concrete cooperation in areas such as economy, culture, environment and transport<sup>21</sup>.

### 2.3 The EU Arctic policy and its critique

The EU, as it could be seen in the map above, has no direct coastline with the Arctic Ocean. However, Europe is inevitably linked to this area and the EU has a strategic interest in playing a key role in the Arctic region. Historical events, economic relations, trade and geographical factors influence the north of the EU, while a number of existing EU policies and activities are already having an impact on the region (especially from the perspective of its sustainable development). Other countries such as Canada and the United States are strategic partners of the EU and the role of Russia in the Arctic cannot be neglected either. As Mogherini said in 2016, presenting the EU policy, “*The Arctic must remain a safe, stable, sustainable and prosperous not just for the region itself, but for the world*”<sup>22</sup>.

The EU Arctic policy is grounded on the following considerations. We, Europeans, have a global responsibility to protect the Arctic high seas taking into account factors such as climatic change and increasing human activity in the region.<sup>23</sup> A sustainable management system is needed for all international high sea areas, situated outside any national jurisdiction. Furthermore, three Arctic States are also EU Member States: Denmark; Sweden, and Finland. And, last but not least, the EU maintains close relations with Iceland and Norway as members of the European Economic Area (EEA)<sup>24</sup>.

#### 2.3.1 The EU Arctic policy

After a long period of neglect, the EU became increasingly active in Arctic affairs in 2008 which led to the application for Arctic Council membership (still not fully granted). The reasons are several internal and external factors.<sup>25</sup> Since then, a total more than ten official EU policy documents concerning the Arctic have been categorized, in the so-called three historic layers of European public policy. Along the process, all the European institutions have been invited to give

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<sup>21</sup> EEAS. More information at [https://eeas.europa.eu/diplomatic-network/northern-dimension/347/northern-dimension\\_en](https://eeas.europa.eu/diplomatic-network/northern-dimension/347/northern-dimension_en).

<sup>22</sup> EEAS. See EU Arctic Policy, all documents available at [https://eeas.europa.eu/arctic-policy/eu-arctic-policy/28322/arctic-cooperation-and-innovation-tackle-climate-change-key-future-region-and-planet\\_en](https://eeas.europa.eu/arctic-policy/eu-arctic-policy/28322/arctic-cooperation-and-innovation-tackle-climate-change-key-future-region-and-planet_en).

<sup>23</sup> European Commission (2018). Speech by Commissioner Karmenu VELLA at the Arctic Circle Assembly 2018, Reykjavik, Iceland, 19 October 2018.

<sup>24</sup> *Ibid.* See also European Commission Communications on the Arctic from 2008, 2012 and 2016.

<sup>25</sup> Wegge, N. (2012). “The EU and the Arctic: European foreign policy in the making”. *Arctic Review*, 3(1).

their views in order to ensure coherence, effectiveness and continuity in the EU's Arctic policy.<sup>26</sup>

The first layer of the EU Arctic policy refers to the years 2008-2011<sup>27</sup>, the second layer is built during the period 2012-2014<sup>28</sup> and the final third layer is set in 2016-2018.<sup>29</sup> Documents include European Parliament resolutions, Commission communications, Council conclusions and Committees' opinions. This study reflects the situation in the summer of 2018 and refers mostly to the three communications from the European Commission from 2008, 2012 and 2016. In general, EU action is based on three different pillars: environment protection, sustainability and international cooperation. After the entry into force of the Lisbon Treaty, we find joint positions adopted by Commission (representing all 28 Member States) and the new European Union External Action Service (EEAS).

### A. A first approach to the Arctic (2008-2011)

The 2008 Arctic Communication 'The European Union and the Arctic Region' was published by the Commission and was later approved by the Council in 2009.<sup>30</sup> The idea was to work out "a structured and coordinated approach to Arctic matters", setting the basis for the future Union action. A previous Resolution from October 9, 2008 from the European Parliament had advocated a much more proactive role by the EU in the Arctic, calling for the EU institutions to move forward: „a first step, taking up 'observer status' on the Arctic Council".<sup>31</sup> Moreover, it had suggested that the Commission should be prepared to pursue the opening of international negotiations designed to lead to the adoption of an international treaty for the protection of the Arctic, having as its inspiration the Antarctic Treaty<sup>32</sup>.

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<sup>26</sup> European Commission - Fact Sheet. An Integrated EU policy for the Arctic - Frequently Asked Questions Brussels, 27.4. 2016.

<sup>27</sup> Communications from the Commission to the European Parliament, Doc. COM (2008) 763. *The European Union and the Arctic Region*; Council of The European Union: *Council conclusions on Arctic issues* - Brussels, 8 December 2009; European Parliament Resolution on Arctic governance, 2010/C 9 E/07 and European Parliament, *Resolution on a sustainable EU policy for the High North*, 20 January 2011, EP Number A7-0377/2010 / P7\_TA-PROV(2011)0024.

<sup>28</sup> European Commission and High Representative of the European Union for Foreign Affairs and Security Policy. Joint Communication to the European Parliament. *Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps*, June 2012; European Parliament. Resolution on the EU strategy for the Arctic, February 2014; Council of the European Union. Council conclusions on developing a European Union Policy towards the Arctic Region, Brussels, May 2014.

<sup>29</sup> Council of the European Union. Conclusions of Foreign Affairs Council on the Arctic, 20 June 2016. See also European Parliament. Resolution of 16 March 2017 on an integrated European Union policy for the Arctic.

<sup>30</sup> European Commission (2008), *The European Union and the Arctic Region*. Doc. COM (2008) 763 final, 20.11.2008 p. 1. Council of the European Union (2009). Council conclusion on the Arctic issues, 2985<sup>th</sup> Foreign Affairs Council meeting, Brussel, 8 December 2009.

<sup>31</sup> European Parliament Resolution on Arctic governance (2008) Doc. 2010/C 9 E/07.para. 14

<sup>32</sup> *Ibid*, para 15.



From a geostrategic and political point of view, it was not surprising that the Arctic had appeared on the EU agenda some Arctic States were EU Member States and co-founders of the Arctic Council. However, the 2008 parliamentary resolution advocating a new international treaty for the Arctic was controversial, opposing the *status quo* defended by Arctic states (based on UNCLOS).<sup>33</sup> Following criticism, the Commission modified its approach and focused on three pillars: 1) to protect and preserve the Arctic and its population; 2) to promote the sustainable use of resources; and 3) to contribute to enhanced Arctic multilateral governance. Although the EU has modified its policy during the last decade, it is still based on three similar pillars<sup>34</sup>. Later on the need to safeguard European security interests was added.

### **B. A second layer to the EU Arctic policy (2012-2014)**

The 2012 Communication from the European Commission (common position with EEAS) develops the EU policy further. The document was a response to the Council (conclusions previously issued in 2009) where the Commission was instructed “*to take a next step towards the formulation of an overarching approach to EU policy on Arctic issues*”<sup>35</sup>; as well as a follow up to the European Parliament Resolution (adopted in 2011), where it had been stressed “*the need for a united, coordinated EU policy on the Arctic region, in which both the EU's priorities and the potential challenges and a strategy are clearly defined*”.<sup>36</sup> In its resolution, the Parliament recognized the broader framework of international law that was already in force in the Arctic region.

The Commission and the newly formed EEAS, aimed at a “*coherent, targeted EU approach towards the Arctic*” in “*an area of growing strategic importance*”. The communication was built on the objectives identified in previous documents (two working papers) that had reviewed the EU's contribution to the region since 2008, the EU viewing itself as a “*key supporter of the Arctic Region*”. The list of future actions in most cases did not take new activities but strengthened the lines of action already conducted. Furthermore, action was widely assessed as a corroboration of the nuanced and technical EU approach in comparison to its previous ambitions towards “*improving the Arctic governance*”. Although the EU initial active role and strategy were not fully upheld, the previous division remained based on three pillars: “*knowledge*”, “*responsibility*” and “*engagement*”<sup>37</sup>,

<sup>33</sup> For a commentary of EU Arctic Policy at this time see the section on criticism to the EU Arctic policy below.

<sup>34</sup> Grøne, P. (2016), *The European Union's Strategy towards the Arctic - A Normative Power in the Region?* Master Thesis in Development and International Relations, 31.5.2016. Aalborg University, Denmark.

<sup>35</sup> Council of The European Union: *Council conclusions on Arctic issues* - Brussels, 8 December 2009.

<sup>36</sup> European Parliament – January 2011 – *Resolution on a sustainable EU policy for the High North*.

<sup>37</sup> Joint staff working document - The inventory of activities in the framework of developing a European Union Arctic policy accompanying the Joint Communication to the European Parliament

and it also created a link with the Europe 2020 Agenda for a smart, sustainable and inclusive growth.<sup>38</sup>

In comparison with the 2008 Commission communication the new 2012 (joint) Communication was no longer critical of status quo for Arctic governance and expressed the EU's willingness to engage responsibly in the region through international cooperation. In this regard, the EU expressed a will to "engage" more with Arctic Partners in a "*successful international co-operation*" seeing them now as primary player in the region, with regional (Arctic Council/(AC and Barents Euro-Arctic Council/BEAC) and international organizations, local inhabitants and other partners helping each other to meet the challenges that confronted the region<sup>39</sup>. At this time the Commission expressed its full support for the UNCLOS as the main instrument for managing the Arctic matters. Nevertheless, in areas where State sovereignty is not widespread, the Commission declared that the provisions of the Convention were insufficient and required supplementation. The importance of the AC as the main forum for discussing joint actions, where the EU saw the necessity to obtain observer status for a fuller understanding of the needs and problems of the region, was recognized separately. The idea of strengthening a partnership with Greenland was also announced<sup>40</sup>.

### C. A third layer added to the Arctic policy (2016-2018)

As general EU law, EU Arctic Policy is dynamic by nature and it evolves taking into consideration the interests of the Member States as well as the new trends and challenges affecting the region. Later in 2014 the Commission and the EEAS were requested by European Parliament to formulate a "coherent strategy and concretized action plan on EU's engagement in the Arctic"<sup>41</sup> while the Council of the European Union was urged to work towards "further development of an integrated and coherent Arctic Policy"<sup>42</sup>.

A 2016 Joint Communication was therefore presented with some delay with the following title: 'An integrated European Union policy for the Arctic'<sup>43</sup>. This document stressed that the EU had an strategic interest in playing a key role in this region because "*a safe, stable, sustainable and prosperous Arctic is important not just for the region itself, but for the European Union and for the world*".<sup>44</sup> This is the first time the EU announces openly the strategic interest to become a key

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and the Council - Developing a European Union policy towards the Arctic region: progress since 2008 and next steps (Doc SWD (2012) 182 final of 26 June 2012).

<sup>38</sup> European Commission. Communication *Europe 2020. A strategy for smart, sustainable and inclusive growth*, Brussels, Doc COM (2010) 2020 from 3.3.2010 p 4.

<sup>39</sup> *Ibid*, p. 10

<sup>40</sup> See also Opinion of the European Economic and Social Committee on 'EU Arctic Policy to address globally emerging interests in the region - A view of civil society'. OJ 2013 C198/26.

<sup>41</sup> European Parliament - Resolution on the EU strategy for the Arctic, February 2014

<sup>42</sup> Council of the European Union: Council conclusions on developing a European Union Policy towards the Arctic Region - Brussels, May 2014.

<sup>43</sup> European Commission. Joint Communication (2016), Brussels, 27.4.2016

<sup>44</sup> *Ibid*.

actor in the region. The position of the EU is that the Arctic needs a solid framework since large parts of the high seas areas (beyond national jurisdictions) are not covered by specific arrangements for managing economic activities and there is not sufficient scientific knowledge at the time being about the sea basin.

Furthermore, the most recent communication aims to ensure coherence with increased national Arctic policies of some EU Member States issued recently adding the greatest possible value as well as to contribute to the implementation of United Nations' 2030 Agenda for Sustainable Development.<sup>45</sup> Therefore an important distinctive progress is made in “*the division between Circumpolar and European Arctic issues*”, having finally converged the priority objectives of its European Arctic States, especially Sweden and Finland.<sup>46</sup>

The 2016 communication is built upon general EU policies<sup>47</sup> but takes stock of the challenges that the region is facing. The Arctic is, first of all, in danger due to environmental factors. In the first place, it is rapidly warming up. Permafrost temperatures have increased in most regions since the early 1980s and the situation is estimated to worsen into the future. As warming continues, scientist estimate that we see total ice-free summers in the Arctic may occur even in the next 20 to 40 years. The new situation comes with other challenges as well: thinner (if all) sea ice and rapid advances in offshore technology have led to increased human economic activities in the region (i.e. shipping, mining and hydrocarbon extraction).

In this context, the Commission and the EEAS see a strong rationale and justification for the EU to exercise and implement its commitment to combat climate change and to safeguard the region's fragile environment through an approach based on sustainable development (i.e. enhancing its socio-economic resilience relying on science, research and innovation). All in all, the EU has enough legitimacy to be a qualified actor in the region.

The EU's interests in the Arctic touch upon many areas including, but not limited to, environment, energy, transport, and fisheries. As the Commission notes, the EU has long been active in Arctic cooperation, not least in the Northern Dimension policy shared with Russia, Norway, Iceland, Finland and Sweden, and in the Barents Euro-Arctic Council. The EU has also been an ad-hoc observer in the Arctic Council for many years and has contributed to the Arctic Council's work.

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<sup>45</sup> *Ibid.*

<sup>46</sup> Stępień, A., & Koivurova, T. (2017). *Arctic Europe: bringing together the EU arctic policy and Nordic cooperation.*

<sup>47</sup> The EU has a number of policies that are not specifically aimed at the Arctic or its environment, but where the implications of the policies will be felt and have an impact in the region, including: (1) the Framework for climate and energy (EC, 2014d); (2) the EU biodiversity strategy to 2020 (EC, 2011a); (3) the EU engagement on sustainable development (EC, 2016c) in the context of the UN's 2030 Agenda and Sustainable Development Goals (SDGs); the ongoing work related to (4) green sustainable and inclusive growth (EC, 2010) and blue economy (EC, 2014a); and (5) the Roadmap to a resource efficient Europe (EC, 2011b). Similarly, the EU's common fisheries policy (CFP), the international ocean governance initiative (EC, 2016d) and offshore oil and gas regulation (EU, 2013b) are relevant for marine management in the EU and with its northern partners.

The EU work on the Arctic is especially important in the fields of research, shipping and support for indigenous peoples and local population.

The new EU integrated Arctic policy contains 39 actions across three areas that are closely interlinked: climate change and environmental protection, sustainable development and international cooperation. Here below we list the most important features of the policy without going into details.

a) Climate change and environmental protection. Regarding climate change, the EU considers very important to secure the implementation of 2015 Paris climate agreement; to adopt an agenda for the region in collaboration with Arctic states and local population<sup>48</sup>; secure funds for Arctic research<sup>49</sup>, encourage the implementation of essential international environmental agreements<sup>50</sup>, and work towards a sustainable management of the Arctic Ocean, preventing unregulated fisheries and phasing out pollutants and heavy metals in the Arctic waters<sup>51</sup>.

b) Sustainable development. As for the sustainable development, the EU considers that the European part of the Arctic is suffering from underinvestment, while a number of EU funding instruments and services are ready to support innovation, infrastructure development and business<sup>52</sup> as well as provide increased maritime safety through space programs (Copernicus for surveillance and monitoring of vessel traffic and ice movements) and navigation services (Galileo).

c) International cooperation. Finally, with respect to international cooperation, the EU aims to actively participate in international fora relevant for the Arctic, cooperate with all of its Arctic partners, other third countries with increasing Arctic interests; and, last but not least, to engage with local communities and Arctic indigenous peoples in order to secure the protection of their rights and their input in current and future EU policies. In this regard, it states that: “*The EU*

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<sup>48</sup> As the 2016 Joint Communication declares, the The EU has already committed itself to reducing its greenhouse gases by 40% in 2030 and 80% by 2050, compared to 1990 levels. An estimate of 20% of the EU budget is now reserved for climate adaptation and mitigation measures. The EU promises to contribute to international measures to limit black carbon and methane emissions.

<sup>49</sup> As the 2016 Joint Communication announces, the EU is to maintain current funding levels for Arctic research under Horizon 2020 (on average 20 million per year). Around 40 million were earmarked for 2016 and 2017 for projects on observation, weather and climate change in the northern hemisphere and permafrost decrease. Furthermore, twenty-two of Europe’s leading Arctic research institutions promise to develop an integrated European polar research programme under the EU-PolarNet initiative. The EU is to support the transnational access to research infrastructures in the Arctic (research stations, scientific vessels, satellite observations) and the open access to data resources. The EU’s Copernicus space programme is to support international research on climate change in the Arctic.

<sup>50</sup> Such as the UN Convention on Biological Diversity which is highly relevant for the Arctic.

<sup>51</sup> In the 2016 Joint Communication the EU supports the development of a network of marine protected areas in the Arctic. In the long-term, the EU considers that marine biological resources need to be managed through either a Regional Fisheries Management Organisation or an international Agreement.

<sup>52</sup> In this regard, the Commission will make efforts to enhance coordination between EU funding programmes relevant for the Arctic, identify key investment and research priorities as well as facilitate capacity building of stakeholders to maximise financial support for the region.

*has a strong interest in seeing that the Arctic remains a zone of constructive international cooperation where complex issues are addressed through negotiated solutions, and where common platforms can be established in response to emerging risks” (in particular through the UNCLOS and the Arctic Council)<sup>53</sup>.*

The most recent EU communication was assessed by the European Parliament in a resolution of entitled “An integrated European Union policy for the Arctic”<sup>54</sup>. Given the region’s growing geopolitical importance, the Parliament finally acknowledged and stressed the important role of the Arctic Council for maintaining constructive cooperation, low tension, peace and stability in the region and also called this forum to continue dialogue with Russia within the framework of Arctic regional cooperation. It pointed to the need for more coherence between the EU’s internal and external policies as regards Arctic matters, underlined the importance UNCLOS and respect for international law. It also advocated a strong role for the EU in promoting effective multilateral arrangements and a global, rules-based order, suggesting the reinforcing multilateral Arctic governance through the strengthening and consistent implementation of relevant international, regional and bilateral agreements, frameworks and arrangements. Other questions were also considered essential for an EU integrated policy: preservation and environmental protection in the region, the effective implementation of international conventions, the development of a network of Arctic conservation areas and sustainable commercial fishing, a ban on the use and carriage of heavy fuel oil as ship fuel in vessels navigating the Arctic seas; a precautionary approach aiming to establish appropriate international measures to ensure the long-term conservation and sustainable use of resources in the Arctic high seas; scientific cooperation in order to improve knowledge in the Arctic the protection of local populations and prior consent as regards the extraction of natural resources.

### ***2.3.2 Academic criticism to EU Arctic policy***

Criticism to the EU Arctic policy has been constant since the start; although it is unclear whether this critique has helped the EU institutions to change paradigms and act according to expectations that other Arctic actors have (specially the Arctic Five) due to their deeper knowledge of the issues at stake.

The critique was well founded when the earlier policy papers from the EU showed a deep misunderstanding of the international legal framework already in place in the region. As stated above, the 2008 parliamentary resolution advocating a new international treaty for the Arctic was controversial, opposing the status quo defended by Arctic States (based on UNCLOS)<sup>55</sup> and the challenge of sovereignty

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<sup>53</sup> European Commission (2016). Arctic Memo, Questions and Answers. Brussels, 3 July 2016.

<sup>54</sup> European Parliament (2017). Resolution of 16 March 2017 on an integrated European Union policy for the Arctic.

<sup>55</sup> For a commentary of EU Arctic Policy at this time see Weber, S. and Romanyshyn, I. (2011), *Breaking the Ice. The European Union and the Arctic*, „International Journal” 66 (4), 849-860; Wegge, N. (2012). *The EU and the Arctic: European foreign policy in the making*, „Arctic Review”,

for partially inhabited territories under the jurisdiction of those States. Although the Commission rectified somehow this position, the early EU policy at the time was also criticized for several other reasons (apart from challenging international legal order, regulations were harmful for indigenous ways of life, failed to put forward concrete proposals to resolve problems and lacked a unified approach).<sup>56</sup>

In spite of progress during its second stage, the EU contribution to the Arctic framework was once more criticized for a lack of overarching strategy<sup>57</sup> and concrete proposals to achieve new objectives.<sup>58</sup>

The situation may have started to change not so long ago. Some scholarship has been, in general, positive about the last Arctic policy layer.<sup>59</sup> More recently, it has been argued that the EU is, indirectly, an important player in the region and should be included in the Arctic system decision making as policies implemented outside the Arctic have a strong impact on the area.<sup>60</sup> Regarding international cooperation, “the EU has been careful not to be perceived as a super-regulator or normative preacher, focusing on climate change, environmental issues and its own positive contribution to Arctic cooperation”.<sup>61</sup> However, criticism still remains since the “integration” does not hold its title when looked in depth and silence on participation of indigenous peoples in the frameworks discussed is still disturbing (to name just some few issues).<sup>62</sup>

Most importantly, although it is true that the EU Arctic Policy has progressed and evolved taking into account the specific context and needs of the region, this has not been so far sufficient to convince Arctic Council Members to grant the EU a permanent formal observer status. The EU has not achieved this

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3(1); Bak B. Anders, *EU and the Arctic* (2014) Aarhus University, Bachelor Thesis, School of Business and Social Science and Koivurova, Timo and Stepien, Adam and Kankaanpaa, Paula (2014) *Strategic Assessment of Development of the Arctic - Assessment conducted for the European Union*. Project Report. Chapter 2, pp. 5; and Tedsen, E., Cavalieri, S. and Kraemer, A. (editors) (2016) *Arctic Marine Governance*. Springer-Verlag Berlin, at p. 12.

<sup>56</sup> Offerdal, K. "The EU in the Arctic: In Pursuit of Legitimacy and Influence." *International Journal* 66, no. 4 (2011): 861-77. See also Sargsyan O. (2013) The Arctic Region: Its Regional Integration and the Relationship with the EU. *European Union Foreign Affairs Journal*, Vol. 03 (04), 5-23. For a more positive review see MEP Wallis D. (2011) The Spitsbergen Treaty: Multilateral Governance in the Arctic.

<sup>57</sup> Østhagen, A. (2014), *The European Union – An Arctic Actor?*, „Journal of Military and Strategic Studies” 15 (2): 71-92.

<sup>58</sup> Grøne, P. (2016), *The European Union’s Strategy towards the Arctic- A Normative Power in the Region?*, Master Thesis in Development and International Relations, 31.5.2016. Aalborg University, Denmark, p. 43.

<sup>59</sup> *Ibid*. More recently see Stepien, A., and Koivurova, T. (2017). *Arctic Europe: bringing together the EU arctic policy and Nordic cooperation*.

<sup>60</sup> See entryblog by Ekaterina Antsygina, Miriam Czarski, Svetlana Konopleva, and Anna Jirova (2018). “The EU’s role in a changing Arctic”.

<sup>61</sup> Stepien, A., & Raspotnik, A. (2016). *The EU’s new Arctic Communication: Not-so-integrated, not so-disappointing?* Arctic Institute. University of Lapland at page 19.

<sup>62</sup> *Ibid* at page 19-20. On lack of sensitivity towards indigenous peoples see also Hossein K. (2013), *The EU ban on the import of seal products and the WTO regulations: neglected human rights of the Arctic indigenous peoples?*. „Polar Record”, Vol 49 (249), 154-166. See also Nunatsiaq Online (2014) Canada, EU strike a deal on indigenous-hunted seal products (Internet).

goal yet. This is probably for several reasons, these being the most important ones at the moment: 1) the strategy and main purpose of the policy still remain unclear and lack coherence<sup>63</sup>, as scholarship has been pointing out from the beginning; 2) Russia has blocked the petition following the crisis over Ukraine and the EU sanctions targeting Russian oil projects in the Arctic that followed<sup>64</sup>; and 3) the EU has faced other political crisis with other Arctic countries that have damaged its credibility in the Arctic (with Canada due to the EU early ban trade in seal products and with Norway due to the EU questioning the status of Svalbard Treaty and the call for an oil drilling moratorium on any offshore hydrocarbon exploration and extraction).

Due to early justified criticism, respect for the legal framework for international cooperation is very important for the Arctic. Rather than pursuing observer status in the Arctic Council, the EU could focus on being part of the multilateral agreements regulating the region, with a special focus on environmental protection and preservation of biodiversity, as well as regional regulations on related areas (shipping, port controls, etc.).<sup>65</sup>

### 3. Provisional conclusions

The kind of power and influence that the EU exercises in the Arctic region constitutes a second part of this study. For the time being, it is enough to point out that the EU Arctic policy has naturally evolved since 2008 and has rectified some of its initial elements that damaged the acceptance of the international organization as a qualified actor in the region. Lacking real decision-making power and broad competences, the EU has moved towards a humbler role and a more focused set of policies taking into consideration the status quo and interests of sovereign different State actors in the region as well as respect for the international legal framework in force (UNCLOS).

Although it has not gained observer status in the Arctic Council, this should not be an impediment for an effective EU Arctic policy focused on what the EU can do best. *De lege ferenda*, the EU policy should/could try to achieve its goals on the basis of soft power tools, instruments and mechanisms already in place (ie. investment, contribution to the research and knowledge gathering, dialogue with the indigenous communities or active participation in Arctic Council working

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<sup>63</sup> Stępień, A., & Raspotnik, A. (2016), *op. cit.*, p. 19.

<sup>64</sup> Heininen, L., Sergunin, A. and Yarovoy, G., (2014), *Russian Strategies in the Arctic: Avoiding a New Cold War*, Report for the Foundation for Development and Support of the Valdai Discussion Club; Depledge, D. and Tulupov, D. (2016), *EU-Russia relations in the Arctic on ice*, article published online on 17 May 2016; and Fralova, A. (2018), *The Arctic at the crossroads: Russia and EU policies viewed through Tocci's perspective*. Master's thesis. LL.M. in International and Environmental Law. University of Iceland. More information on Russia Arctic policy on internet at the blog: <https://www.thearcticinstitute.org/russias-arctic-strategy-aimed-conflict-cooperation-part-one/>.

<sup>65</sup> See entry blog by Antsygina, Czarski, Konopleva, and Jirova (2018), *The EU's role in a changing Arctic*.

groups). Whether this other low-profile approach means abandoning a general broad strategy for the Arctic is a question explored in the second part of the study.

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