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Play by the rules? : coordination of EU sustainable development policies and the importance of the politico-legal context

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RIES KAMPHOF

PLAY BY THE RULES?

Coordination of EU Sustainable Development Policies and the Importance of the Politico-Legal Context



Play by the Rules?
Coordination of EU Sustainable Development Policies and the Importance of the Politico-Legal Context

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Play by the Rules?

Coordination of EU Sustainable Development Policies and the Importance of the Politico-Legal Context

Ries Kamphof

Abstract

This dissertation explores the potential of legal competences as independent factors explaining the coordination of EU and Member State actors in sustainable development policies. Three case studies are selected: policy formulation on alternative fuel policies, 'Team EU' in UNFCCC climate change negotiations and EU and Member State implementation of the United Nations Agenda 2030 and the Sustainable Development Goals (SDGs). The 'legal competences' are operationalised in a broad manner, including Treaty articles, the Court's case law, the external legal multilateral context as well as regulations and directives. This approach proves to be useful as what 'legal competence' was deemed influential differed per case study. Overall, the legal competences can be said to have at least a moderate effect. The findings in this dissertation nuance and qualify some of the theories and concepts in which the role of the EU Treaties is often neglected. Moreover, while the literature often focuses on 'creeping' competences of the Commission, the case studies reveal that the Member State actors were especially protective of their fixed legal competences e.g. taxation, the energy-mix or land-use policies. As such, the aim of discretionary autonomy of Member States might be more powerful than the 'competence creep' by the European Commission, hindering coordination processes in sustainable development policies.

Notwithstanding these findings, the legal competences are also routinely *not* used and the Court of Justice of the EU (CJEU) is notably absent in the evaluation of coordination of these specific sustainable development policies. This finding is interesting as every case study provides clear examples of 'contrary to the Treaty-logic'. Examples include the peculiar negotiation mandate based on unanimity for UNFCCC negotiations, the lack of EU coordination on SDG implementation and the absence of CJEU cases on traditional combustion engines. Moreover, the category of 'shared' competences in particular proved to be a wide-ranging category in need of specific examination per policy area. Therefore, coordination of multi-faceted mixed competence arrangements, analysed in this dissertation, is becoming increasingly difficult and often based on ad-hoc decisions. As such, the interaction with intervening political-theoretical variables has provided some additional understanding. The case studies show that there is significant interaction between political and legal variables in practice for example between preference heterogeneity, supranational-intergovernmental dominance and the catalogue of competences and Treaty provisions. In that sense, the Treaty provisions itself are the result of a political trade-off in the Treaty negotiations in the 2000s, thus making it implausible to mark the legal competences as 'independent' from political processes. These findings can be valued as minimal plausibility probes, seeing the small N and peculiarities of the cases. The dissertation nevertheless contributes to theory-building and to new methodological approaches analysing the EU's and Member State's coordination on sustainable development issues, both internally as well as in a multilateral context.

Table of Contents

Abstract 5
Table of Contents 7
List of Figures 11
List of Tables 13
List of Abbreviations 15
Executive Summary 19
Samenvatting Proefschrift (Dutch executive summary) 21
Acknowledgements 23
Chapter 1: Introduction 25
1.1 Research puzzle 25
1.2 Research question, concepts, variables and methods 28
1.2.1 Research question 28
1.2.2 Research concepts 28
1.2.3 Variables and expectations 32
1.2.4 Research methods 34
1.2.5 Research focus and limitations 35
1.3 Research objectives and relevance 36
1.3.1 Academic relevance and objectives 36
1.3.2 Relevance to the EU policy debate and societal relevance 38
1.4 Introducing the cases and case selection 39
1.5 Outline of the study 43
SUMMARY CHAPTER 1 43
Chapter 2: Theoretical Framework and Literature Review 45
2.1 Introduction 45
2.2 Theories on EU and Member State cooperation (and legal competences) 46
2.2.1 Coordination and socialisation in the EU (general) 47
2.2.2 Dichotomy neofunctionalism – intergovernmentalism 48
2.2.3 Social constructivism and sociological (neo-)institutionalism 49
2.2.4 Institutionalism 50
2.2.5 EU external concepts: actorness, cohesiveness and effectiveness 51
2.3 Legal perspective on legal competences and EU - Member State cooperation 53
2.3.1 Treaty provisions 53
2.3.2 Case law Court of Justice and general principles 54
2.3.3 Statutes from (other) international organisations 56
2.4 A ‘politico-legal’ theoretical framework in practice 56

2.4.1 Confronting legal and political perspectives 56
2.4.2 Legal competences: political analysis and operationalisation 57
2.4.3 Interactions with intervening variables: an operationalisation 58
2.4.4 Limitations of this integrative approach 59
SUMMARY CHAPTER 2 60
Chapter 3: Research Design 63
3.1 Research design, methodological considerations and limitations 63
3.1.1 A comparative case study design and case-selection 63
3.1.2 Limitations and considerations case study design 66
3.1.3 How to generalise the findings? 67
3.2 Data collection 68
3.3 Data analysis 72
3.3.1 Process tracing: a step-by-step approach 72
SUMMARY CHAPTER 3 74
Chapter 4: EU and Member States Formulating Policies on Alternative Fuels for Private Vehicles 75
4.1 Introduction 75
4.2 Alternative fuels 77
4.2.1 Alternative fuels 78
4.2.2 EU and the international context: the example of bio-ethanol 79
4.3 EU coordination and policies 81
4.4 The division of competences, legal issues and policy formulation 83
4.4.1 Multilateral context 84
4.4.2 Competences EU and alternative fuels: overview and practice 85
4.4.3 Single road fuel market: legal barriers 86
4.4.4 Court of Justice: threatening with infringement proceedings 87
4.5 Political issues and policy formulation 87
4.5.1 Supranational versus intergovernmental dominance 87
4.5.2 EU's position in the international constellation of power 88
4.5.3 Preference heterogeneity 88
4.5.4 Alternative explanations 89
4.6 Discussion/conclusion 90
SUMMARY CHAPTER 4 93
Chapter 5: 'Team EU' in UNFCCC Climate Negotiations 95
5.1 Introduction 95
5.2 Multilateral environment UNFCCC (2009-2017) 97
5.2.1 UNFCCC 1992-2017 97
5.2.2 Paris Agreement: legally binding? 98

5.3 'Team EU' coordination 99
5.4 The division of competences, legal issues and EU negotiation 101
5.4.1 UN(FCCC) Statutes and (legal) documents 101
5.4.2 Competences EU: historical overview and practice 2009-2017 101
5.4.3 Negotiation mandate and external representation 103
5.4.4 Court of Justice, regulations and directives: implied powers and the duty of sincere cooperation 104
5.5 Political issues and EU negotiation 105
5.5.1 Supranational versus intergovernmental dominance 105
5.5.2 EU vs the rest of the world: the international negotiating environment 106
5.5.3 Preference heterogeneity 106
5.5.4 Alternative explanations 107
5.6 Conclusion/Discussion 108
SUMMARY CHAPTER 5 111
Chapter 6: EU and Member State Implementation of the UN Agenda 2030 and Sustainable Development Goals 113
6.1 Introduction 113
6.2 UN Agenda 2030, Sustainable Development Goals and EU negotiation 115
6.2.1 Negotiating the Agenda 2030 115
6.2.2 The Agenda 2030 and 17 Sustainable Development Goals 116
6.3 EU coordination of SDG implementation 117
6.4 The division of competences, legal issues and EU implementation 119
6.4.1 UN legal documents and Statutes: soft targets 119
6.4.2 SDGs and EU competences (Lisbon Treaty) 120
6.4.3 Regulations and directives 123
6.4.4 Court of Justice 124
6.5 Political issues and EU implementation 125
6.5.1 Supranational versus intergovernmental dominance 125
6.5.2 The EU's position in the international constellation of power 126
6.5.3 Preference heterogeneity 126
6.5.4 Other explanations: societal stakeholders, DGs and 'political will' 126
6.6 Discussion 128
SUMMARY CHAPTER 6 131
Chapter 7: Synthesis: Comparing the Cases 133
7.1 Introduction 133
7.2 EU and Member State coordination 133
7.3 The effect of legal competences 135
7.3.1 General reflections 135

7.3.2 Similarities and differences: legal competences across the cases 138
7.4 Intervening variables (political-theoretical issues) 140
7.5 Interactions 144
7.6 Methodological limitations: criticising the three case studies 148
SUMMARY CHAPTER 7 150
Chapter 8: Conclusion and Discussion 151
8.1 Main findings 151
8.1.1 Coordination 153
8.1.2 Legal competences 155
8.1.3 Interactions with intervening and other variables 156
8.2 Theoretical, conceptual and methodological reflections 158
8.2.1 Research design and methods 159
8.2.2 Conceptual and theoretical reflections 160
8.2.3 Generalisability of findings 162
8.3 Further research 163
8.4 Policy relevance and concluding remarks 164
8.4.1 Policy relevance 165
8.4.2 Concluding remarks 167
References 169
Annex 1: List of Interviews 191
Annex 2: List of Semi-structured Interview Questions and Interview Requests 197
Curriculum Vitae 201

List of Figures

Figure 1. 1 Variables and expectations of relations 33

Figure 3. 1 Process tracing: a step-by-step approach 71

Figure 4. 1 Variables and effects on EU and Member State coordination in alternative fuels policy making 90

Figure 5. 1 Variables and effects on 'Team EU' coordination in UNFCCC negotiations 107

Figure 6. 1 Variables and effects on coordination of EU and Member State actors in SDG implementation 127

Figure 7. 1 Interactions variable supranational versus intergovernmental dominance 141

Figure 7. 2 Interactions variable EU's position in the international constellation of power in case of a strong multilateral context 142

Figure 7. 3 Interactions variable EU's position in the international constellation of power in case of a weak/absent multilateral context 142

Figure 7. 4 Interactions variable preference heterogeneity 143

Figure 8. 1 Variables affecting coordination EU and Member State actors in sustainable development policies 154

List of Tables

Table 1. 1 Selection of case studies 40

Table 2. 1 Typology of competences in EU Treaties 46

Table 2. 2 Operationalisation of intervening variables 59

Table 3. 1 Semi-structured interviews per category and case study 67

Table 3. 2 Semi-structured interviews: own initiative or referral per case study 68

Table 4. 1 No of semi-structured interviews for case study alternative fuels 75

Table 5. 1 No of semi-structured interviews for case study EU in UNFCCC negotiations 95

Table 6. 1 No of semi-structured interviews for case study SDG implementation 112

Table 6. 2 Sustainable Development Goals and EU competences 121

Table 7. 1 The relevance of sources of legal competences across the cases 134

Table 7. 2 The relevance of intervening variables across the cases 136

Table 8. 1 The relevance of legal competences and intervening variables for EU and Member State coordination of sustainable development policies across the cases 149

List of Abbreviations

ACP	African, Caribbean and Pacific Group of States
AETR	Cf ERTA
AILAC	Association of Latin America and the Caribbean
Art	Article
ASEAN	Association of Southeast Asian Nations
CEO	Chief executive officer
CETA	Comprehensive Economic and Trade Agreement
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
CNG	Compressed Natural Gas
CO2	Carbon dioxide
CODEV	Council Working Party on Development Cooperation
COP	Conference of the Parties
COP21	21st annual meeting of the Conference of the Parties in Paris
CONUN	United Nations Working Party (of the Council)
CSD	United Nations Commission on Sustainable Development
CSOs	Civil Society Organisations
DEVE	European Parliament Development committee
DG	Directorate-General
DG AGRI	Directorate-General for Agriculture and rural development
DG CLIMA	Directorate-General Climate Action
DG DEVCO	Directorate-General for International cooperation and Development
DG ECFIN	Directorate-General for Economic and Financial affairs
DG ENER	Directorate-General for Energy
DG ENV	Directorate-General for Environment
DG GROW	Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
DG MOVE	Directorate-General for Mobility and Transport
DG SANTE	Directorate-General for Health and Food Safety
DG Trade	Directorate-General for Trade
ECJ	European Court of Justice, cf CJEU

ECOFIN	Economic and Financial Affairs Council configuration
EEAS	European External Action Service
ENVI	European Parliament Environment committee
ERTA	European Road Transport Agreement
ETS	Emissions Trading System (EU ETS)
EU	European Union
EU13	'New' EU Member States since 2004
FQD	Fuel Quality Directive
G20	Group of Twenty (governments and central bank governors)
G77	Group of 77 (developing countries)
GMOs	Genetically Modified Organisms
HLPF	High-level Political Forum
HM	His/her Majesty
IEA	International Energy Agency
ILUC	Indirect land use change
INDC	Intended Nationally Determined Contribution
IR	International Relations
MDGs	Millennium Development Goals
MEP	Member of European Parliament
MERCOSUR	Mercado Común del Sur, sub-regional bloc
MS	Member State of the European Union
NDC	Nationally Determined Contribution
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal
PFOS	Perfluorooctanesulfonic acid
RED	Renewable Energy Directive
Rio+20	The United Nations Conference on Sustainable Development in Rio de Janeiro (2012)
SecGen	Secretariat-General of the European Commission
SDG	Sustainable Development Goals
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom

UN	United Nations
UNECE	United Nations Economic Commission for Europe
UNFCCC	United Nations Framework Convention on Climate Change
U.S.	United States
VP	Vice-President
WLTP	Worldwide harmonized Light vehicles Test Procedure
WP.29	UNECE World Forum for Harmonization of Vehicle Regulations
WPIEI	Working Party on International Environment Issues
WTO	World Trade Organization

Executive Summary

There is an increasing amount of attention on EU and Member State contributions to worldwide sustainable development and this is expected to continue with the implementation of two landmark agreements: the Paris Climate Agreement and the UN Agenda 2030 with its 17 Sustainable Development Goals (SDGs). However, absent from the literature is an analysis of the political effect of legal competences on coordination between EU and Member State actors. By using different case studies focusing on alternative fuel policies, 'Team EU' in climate negotiations and SDG implementation, this dissertation attempts to explore the potential of including legal competences as independent variables explaining coordination of EU and Member State actors. Each case study relies on the same sources: legal documents (Treaty provisions, cases before the Court of Justice of the EU, regulations and directives), additional (policy) documents, literature and (in total) forty-seven semi-structured interviews. By means of a step-by-step approach the effect of the legal competences on coordination (and socialisation) processes are tested autonomously and in interaction with intervening variables consisting of issues provided by the theoretical literature: 'supranational or intergovernmental dominance', 'the EU's position in the international constellation of power' and 'preference heterogeneity'. The integrative politico-legal research design provides for a triangulation of findings.

The expectation beforehand was that legal competences, especially those derived from EU Treaties, would have a considerable effect on coordination of EU and Member State actors in all stages (policy formulation, negotiation and implementation). Furthermore, it was expected that there would be a considerable interaction with the issues stemming from political theories, but that legal competences would be more dominant. Regarding the 'management' of the coordination process by EU and Member State actors, it seemed likely that the legal competences would further empower the European Commission, while often restraining Member State actors from having a 'managing' role in coordination.

The findings nuance some of the theories and concepts in which the role of EU Treaties is often neglected. The legal competences by the Treaties and UN documents have at least a moderate effect. The 'legal competences' were operationalised in a broad manner, to include Treaty articles, the Court's case-law, the external legal multilateral context as well as regulations and directives. This approach proved to be useful as it differed per case study which 'legally defined power' was important. The legal competences often mark the policy areas in which coordination is supposed to be more complicated, and sketch the common path of coordination in negotiation and (to a lesser extent) policy formulation and implementation for these specific case studies. While the literature often focuses on 'competence creep' of the Commission, the case studies reveal that the Member State actors especially are protective of their fixed legal competences on e.g. taxation, energy-mix or land-use policies. Additionally, the external (UN) legal context to a certain extent amplifies the necessity of coordination, as is shown in the (UNFCCC) climate change multilateral context. In the absence of a multilateral forum, such as for alternative fuels, it proves more difficult to keep the coordination process of EU and Member State actors active.

The dissertation also shows, however, that the legal competences are sometimes *not* used habitually and that there is an overall silence of the Court of Justice in these specific sustainable development policies. The Commission in particular seems to be hesitant to start legal procedures, thereby not pushing its legal competences to the limit. This finding is all the

more fascinating as every case study provides for some clear examples of behaviours 'contrary to the Treaty-logic' or 'contrary to sustainable development objectives'. Examples include, inter alia, the peculiar negotiation mandate (unanimity) for UNFCCC negotiations, the lack of EU coordination on SDG implementation and the absence of steering policies and the absence of legal questions to the Court of Justice on traditional combustion engines in the alternative fuels case study. Moreover, the category of 'shared' competences proved to be a wide-ranging category in need of specific examination per policy area. This makes the coordination of multi-faceted mixed competence arrangements, analysed in this dissertation, increasingly difficult and often based on *ad hoc* decisions. The interaction with intervening variables provides some additional understanding. The case studies, however, show that there is a lot of interaction between these intervening variables and legal competences in practice. These findings can be valued as minimal plausibility probes, given the small number and peculiarities of the cases. Nevertheless, this study contributes to develop a new methodological approach to analyse the EU's and Member State's coordination on sustainable development issues, both within the EU as well as in a multilateral context.

The chapters of this dissertation are organised as follows. Chapter 1 introduces the research question, concepts, variables, expectations and methods, taking into account the boundaries and limitations of this dissertation. Chapter 2 reviews the existing bodies of literature with reference to the EU's and Member State's coordination (in sustainable development policies) and selects some of the main elements from both legal and political perspectives. It then explains how this dissertation constructs a theoretical framework that contributes to both these fields by focusing on competences, i.e. legal competences and the interaction with variables derived from the theories of neo-functionalism, intergovernmentalism, social constructivism and institutionalism and concepts such as actorness, cohesiveness and effectiveness. Chapter 3 outlines the research design of a comparative case study, the method of data collection and analysis as well as its methodological limitations. It also presents the process tracing a routine applied throughout all the case studies. Chapter 4, 5 and 6 then cover the case studies on policy formulation on alternative fuels for passenger cars, 'Team EU' in climate change negotiations, and the implementation of the UN Agenda 2030 in the EU and Member States. The two final chapters contain an overall analysis. More specifically, chapter 7 provides a descriptive and analytical overview of the findings in all the three cases while summarising the findings. Moreover, other specific explanations raised in the case studies are reviewed. The chapter assesses and visualises the interactions between legal and political variables and refers back to the methodological challenges, while nevertheless showing its value for future research and theory building. Finally, chapter 8 then builds on the results reached in chapter 7. It answers the central research question and provides reflections on the theoretical, methodological and conceptual aspects by focusing on advantages and limitations of the research design and methods. Following the main findings and reflections, some avenues for future research are suggested and the policy relevance of the findings is addressed, followed by concluding remarks.

Samenvatting Proefschrift (Dutch executive summary)

Volgens de Spelregels? Coördinatie van Europees Duurzaam Ontwikkelingsbeleid en het Belang van de Politiek-Juridische Context

De bijdrage van de Europese Unie en haar lidstaten aan wereldwijde duurzame ontwikkeling krijgt toenemende aandacht in de literatuur. De verwachting is dat deze aandacht toeneemt met twee belangrijke internationale akkoorden: het Klimaatakkoord van Parijs en de Agenda 2030 van de Verenigde Naties met haar zeventien Duurzame Ontwikkelingsdoelen (SDGs). In de literatuur ontbreekt nog aandacht voor het politieke effect van juridische bevoegdheden op coördinatie van EU en lidstaten in gezamenlijk duurzaam ontwikkelingsbeleid. In dit proefschrift worden verschillende casestudies gebruikt: 1) alternatieve brandstoffen, 2) 'Team EU' in klimaatonderhandelingen en 3) implementatie van de VN Agenda 2030 en de SDGs. Het proefschrift verkent het potentieel van juridische bevoegdheden als onafhankelijke variabele en verklarende factor van de afhankelijke variabele: coördinatie van EU en lidstaat actoren in (besluitvorming, onderhandelingen en implementatie van) duurzaam ontwikkelingsbeleid. Bij elke casestudie wordt gebruik gemaakt van dezelfde soort bronnen: de Verdragen van de EU, juridische documenten, arresten voor het Europese Hof van Justitie, (overige) officiële beleidsdocumenten, literatuur en zevenenveertig semigestructureerde interviews. Met behulp van een systematische benadering wordt het effect van juridische bevoegdheden getest, zowel autonoom als in interactie met 'interveniërende variabelen' geoperationaliseerd vanuit de theoretische literatuur: 'supranationale of intergouvernementele dominantie', de positie van de EU in het internationale krachtenveld, en heterogeniteit in voorkeuren tussen de lidstaten. Het integratieve politiek-juridische onderzoeksdesign zorgt voor triangulatie van bevindingen.

Vooraf werd verwacht dat de juridische bevoegdheden, vooral op basis van de EU-verdragen, een aanzienlijk effect hadden op coördinatie van EU en lidstaat-actoren in alle stadia van de besluitvorming. Bovendien was de verwachting dat er veel interactie was met de verklaringen vanuit de politiek-theoretische literatuur, maar dat de juridische bevoegdheden dominanter waren. In het krachtenveld van de actoren werd verwacht dat de juridische bevoegdheden vooral de Europese Commissie in staat zou stellen om te coördineren en de lidstaat-actoren juist zou belemmeren.

De bevindingen nuanceren en kwalificeren sommige van de theorieën en concepten, waarin de rol van EU-Verdragen vaak absent is. De juridische bevoegdheden binnen de EU en in de context van de Verenigde Naties hebben tenminste matig effect. De juridische bevoegdheden zijn in deze dissertatie breed geoperationaliseerd en omvatten Verdragsartikelen, arresten van het Hof van Justitie van de EU, de externe multilaterale juridische context en richtlijnen en verordeningen. Deze benadering was nuttig omdat het per casestudie verschilde welke juridische bevoegdheid dominant was. De juridische bevoegdheden gaven in het algemeen aan in welke beleidsvelden coördinatie moeilijker werd geacht, maar gaven ook juist het gezamenlijke pad van coördinatie aan in (vooral) onderhandelingen en (in mindere mate) besluitvorming en implementatie. In de literatuur is vooral aandacht voor de 'sluipende' overdracht van bevoegdheden naar de EU. Toch maken de casestudies juist duidelijk dat vooral de lidstaten gebruik maken van hun bevoegdheden, vooral wanneer zij hun belastingen, energie mix of landgebruik-beleid willen beschermen. De externe (VN) context geeft ook in zekere mate de grenzen van interne coördinatie aan, al

geldt dit vooral voor klimaatonderhandelingen. Wanneer er eigenlijk geen multilateraal forum is, zoals in het geval van alternatieve brandstoffen, is het erg moeilijk om EU en lidstaat-actoren op één lijn te krijgen.

Het proefschrift laat echter ook zien dat de juridische bevoegdheden soms gewoonweg niet worden gevolgd. Bovendien lijkt het Hof van Justitie absent in de evaluatie van coördinatie van duurzaam ontwikkelingsbeleid. Vooral de Europese Commissie lijkt aarzelend in het starten van juridische procedures, waarmee het haar formele juridische bevoegdheden niet volledig tot wasdom laat komen. Deze bevinding is des te opmerkelijker omdat elke casestudie duidelijke voorbeelden laat zien van gedrag dat contrair is aan het EU-Verdrag en/of de bindende doelstelling van duurzame ontwikkeling. Voorbeelden zijn bijvoorbeeld het eigenaardige onderhandelingsmandaat van 'Team EU' in de klimaatonderhandelingen, dat ten onrechte is gebaseerd op unanimiteit. Bovendien is het Voorzitterschap veel dominanter dan dit volgens het Verdrag had moeten zijn. Andere voorbeelden zijn de geringe EU-coördinatie van SDG-implementatie en het niet-starten van juridische procedures tegen de kartelvorming rond dieselbrandstoffen. Naast deze voorbeelden blijkt dat de categorie van 'gedeelde' bevoegdheden wel erg breed is en dat per beleidsgebied moet worden bezien hoe dit in de praktijk werkt. Dit maakt coördinatie van 'mixed competence arrangements' met vele facetten, zoals geanalyseerd in dit proefschrift, uitermate lastig en vaak gebaseerd op ad-hoc beslissingen. In dat verband blijkt de interactie met de 'interveniërende variabelen' duidelijk te zorgen voor extra begrip. De casestudies maken echter vooral ook duidelijk dat er veel interactie is tussen politieke en juridische variabelen in de praktijk en dat het nuttiger is om deze variabelen in gezamenlijkheid en ongewogen mee te nemen. De bevindingen in dit proefschrift kunnen worden gekenschetst als 'plausibility probes'. Additioneel onderzoek is nodig om de bevindingen te bevestigen, gezien het klein aantal cases met enkele eigenaardigheden. Desondanks draagt deze dissertatie bij aan de theorievorming en nieuwe methodologische benaderingen in het analyseren van EU en lidstaat coördinatie van duurzaam ontwikkelingsbeleid, zowel in de EU als in de multilaterale context.

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Most of all, I owe my deepest love and gratitude to my wife Iris. She has been such a tremendous supporter. Apart from the PhD journey we have experienced beautiful life moments in the last years. I was the luckiest man in the world as she said yes to my marriage proposal in 2014. We got married in the city of our studies (and University) Leiden in 2015. What is more, she gave birth to our son Otis in October 2017. He has been the 'accelerator' of my PhD dissertation in the last months of Iris' pregnancy and having time with him and seeing his development is the most rewarding in life I have ever experienced. I hope we will eventually discuss this PhD journey. I hope even more that he and his friends will enjoy the best of European integration and worldwide sustainable development in the near future.

Thank you all ☺

Ries Kamphof
The Hague, August 2018

Chapter 1: Introduction

1.1 Research puzzle

> *"Sustainable development lies at the core of European values and constitutes an overarching objective of the European Union as set out in the Treaties" (Council of the European Union, 2017)*[1]

The contribution of the European Union (EU) and its Member States to worldwide sustainable development is a topic that has received considerable scholarly attention. This attention is on the rise after two landmark international agreements were reached in 2015: the Paris Climate Agreement[2] and the United Nations 2030 Agenda for Sustainable Development with its 17 Sustainable Development Goals (SDGs)[3]. The European Union and its Member States have been keen to commit themselves to the concept of sustainable development already in the past 30 years. The concept of sustainable development means to 'ensure that development meets the needs of the present generation without compromising the ability of future generations to meet their own needs'. This concept has its origins in the report of the World Commission on Environment and Development, chaired by the then – Prime Minister of Norway, Go Harlem Brundtland, and its report Our Common Future (1987).[4] The EU has been actively involved in international sustainable development within the United Nations system since the famous Brundtland Report and especially since the Rio Conference (1992). This commitment to sustainable development is firmly anchored in the EU Treaties.[5]

An expanding body of literature focuses on the EU sustainable development policies, both within the EU and in international negotiations. Most of the authors who deal with the topic of EU sustainable development tend to focus on environmental policies, climate policies and negotiations and/or development cooperation. The EU has been described as a leader in environmental policy[6], a 'normative power'[7] , progressive[8] and a 'forerunner' in. climate negotiations[9]. Other authors are more critical and criticise the EU for its lack of policy

[1] Council of the European Union (2017), A sustainable European future: The EU response to the 2030 Agenda for Sustainable Development - Council conclusions, 10370/17, 20 June 2017, para 1.
[2] United Nations Framework Convention on Climate Change (2015) Paris Agreement, https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf, Accessed 13 December 2016.
[3] United Nations General Assembly (2015) 'Transforming Our World: The 2030 Agenda for Sustainable Development', UN Resolution A/RES/70/1, adopted on 25 September 2015, available online from <https://sustainabledevelopment.un.org/post2015/transformingourworld>, Accessed 12 January 2017.
[4] United Nations (1987) Report of the World Commission on Environment and Development: Our Common Future, A/42/427.
[5] See a.o. Article 3(5) Treaty on the European Union: In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to (..)the sustainable development of the Earth (…) free and fair trade, eradication of poverty (..) as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter. See also Art 21(2) and Art 21(3) TEU. Interestingly, sustainable development is not one of the 'foundational values' of the Union, cf Art 2 TEU. Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (OJ 2012 C 83 and C 326/47).
[6] Kelemen, R. D. (2010) 'Globalizing European union environmental policy'. *Journal of European Public Policy*, Vol. 17, No. 3, p. 335. More general on political leadership in the EU, cf Tömmel, I., & Verdun, A. (2017) 'Political leadership in the European Union: an introduction'. *Journal of European Integration*, Vol. 39, No. 2, pp. 103-112 who evaluate the literature on leadership in the EU as follows: "there is also reflection and theorizing about political leadership in international contexts, mostly referring to leaders in intergovernmental bargains. Yet the Union is much more than just an international organisation, so that these theories also do not easily fit. These difficulties may explain why there is so little research into political leadership in the EU", p. 104.
[7] Manners, I. (2002) 'Normative power Europe: a contradiction in terms?'. *JCMS: Journal of Common Market Studies*, Vol. 40, No. 2, pp. 235-258.
[8] Afionis, S. and Stringer, L. C. (2012) 'European Union leadership in biofuels regulation: Europe as a normative power?'. *Journal of Cleaner Production*, Vol. 32, pp. 114-123.
[9] Oberthür, S. and Groen, L. (2017) 'Explaining goal achievement in international negotiations: the EU and the Paris Agreement on climate change'. *Journal of European Public Policy,* pp. 1-20 (published online).

coherence for development[10] and for its 'inconsistent' environmental policies[11] that are 'merely symbolic'[12].

From the perspective of legal theory, as well as in political discussions, the issue of *legal competences and (increasing/decreasing) powers* is one of the most imperative discussions. In an 'ever closer union'[13] the EU and Member States share competences in nearly every issue of European political life, ranging from a secondary role of the Union in education and tax policy to exclusive competence of the Union in core areas including external trade policy.[14] The issue of the division of competences between EU and Member States is a delicate question, often narrowed to a choice of either diminishing of the 'creeping'[15] competences of the EU or instead supporting a 'single voice' of an exclusive competent Union as more efficient and powerful. The first category is often visible in more 'sovereignty-oriented' Member States, resulting in, for example, a 'Review on the Balance of Competences' between the United Kingdom and the EU.[16] The latter approach is often encouraged by proponents of a larger role of the EU at an international stage, from academia or from within the European Commission[17].

The issue of (the lack of) *coordination* between EU and Member State actors is subject to increasing commentary. When the issue of coordination is studied from a power perspective, it is mostly viewed from the traditional lenses of political science theories. There are scholars who argue then that the European Commission is best placed to coordinate policies and negotiations, while others see it more as a (large) Member State-driven process. This 'traditional dichotomy between supranationalism and intergovernmentalism' has dominated analyses of European integration for at least five decades.[18] Increasingly, scholars see the coordination more as a 'socialisation' process in which preferences of EU and Member State actors converge through social interaction processes. In particular, the EU and Member State actors active in climate change negotiations have been described in this way.[19] The focus on (the absence of) aligning interests, especially between Member States, which are then in a rational or institutional fashion assembled by the 'agent' (European Commission) is another method used to examine coordination.[20] Moreover, especially from an external

[10] Carbone, M. (2008) 'Mission impossible: The European Union and policy coherence for development'. *European integration*, Vol. *30*, No. 3, pp. 323-342.
[11] Afionis, S. and Stringer, L. C. (2012) 'European Union leadership in biofuels regulation: Europe as a normative power?'. *Journal of Cleaner Production*, Vol. 32, p. 116.
[12] Baker, S. (2007) 'Sustainable development as symbolic commitment: Declaratory politics and the seductive appeal of ecological modernisation in the European Union'. *Environmental Politics*, Vol.*16*, No. 2, pp. 297-317.
[13] Article 1 TEU
[14] Pollack, M. A. (2000) 'The end of creeping competence? EU policy-making since Maastricht'. *JCMS: Journal of Common Market Studies*, Vol. 38, No. 3, pp. 519-538.
[15] *Ibid*
[16] Government of the United Kingdom (2015) Review of the Balance of Competences between the United Kingdom and the European Union, available at <https://publications.parliament.uk/pa/ld201415/ldselect/ldeucom/140/140.pdf>, Accessed 12 June 2017.
[17] As Casolari sees it, a "judicial trend in which the position of the Member States completely depends on that of the EU institutions", Cf Casolari, F. (2012) 'The principle of loyal co-operation: a 'Master Key' for EU external representation', in Blockmans, S. and Wessel, R. A. (2012) 'Principles and Practices of EU External Representation'. *CLEER Working Paper Series*, 2012, Vol. 5.
[18] Billiet, S. (2009) 'Principal–agent analysis and the study of the EU: What about the EC's external relations?'. *Comparative European Politics*, Vol. *7*, No. 4, p. 437.
[19] Groenleer, M. L., & Van Schaik, L. G. (2007). United we stand? The European Union's international actorness in the cases of the International Criminal Court and the Kyoto Protocol. *JCMS: Journal of Common Market Studies,*, Vol. 45, No. 5, p. 975.
[20] Jupille, J. and Caporaso, J. A. (1999) 'Institutionalism and the European Union: Beyond international relations and comparative politics'. *Annual Review of Political Science*, Vol. 2, No. 1, pp. 429-444.

perspective, there is more and more attention being placed on EU's role in the world and in multilateral negotiations and its actorness, effectiveness and coherence.[21]

Cross-disciplinary research on competences and powers is proposed in both legal[22] and political science[23] contributions on the EU in international organisations. Absent from the literature, however, are combinations of these legal and political approaches analysing EU and Member State coordination on sustainable development policies and negotiations whereby these 'legal competences'[24] are analysed in conjunction with the aforementioned political approaches. It has been said that, 'law and politics are hardly confronted' and there is a tendency to 'discount the contributions of each discipline'.[25] As a result, little is known about the *political* effects of these mixed competences and the relationship between legal competences and EU and Member State action on sustainable development is under-theorised in both political science and law. This is problematic, because to solve the sustainable development 'global challenges' it is necessary to co-create knowledge and work together across disciplines in order to transform.[26] Therefore, especially when analysing sustainable development policies combining approaches and knowledge is vital. It is therefore important to ensure that the coordination between EU and Member States is analysed both from political as well as legal perspectives, as the EU and Member States have a 'shared responsibility' for sustainable development.[27]

This dissertation will assess the influence of legal competences on EU and Member State actors and coordination, specifically for 'sustainable development' policies, in policy formulation, negotiation and implementation. As such, this research comprises of case study research on the EU's sustainable development policies using a step-by-step approach in a politico-legal fashion. This first chapter provides an introduction to the analysis. Section 1.2 introduces the research question, concepts, variables, expectations and methods, taking into account the boundaries and limitations of this dissertation. Section 1.3 presents the objectives of the analysis and explain their relevance: what are the contributions of the analysis to current scholarly research, the empirical reality and EU policy making. Section 1.4

[21] Oberthür, S., Jørgensen, K.E. and Shahin, J. (eds) (2013) *The Performance of the EU in International institutions*, (Abingdon: Routledge). Jørgensen, K.E. (2009) *The European Union and International Organizations*, (London : Taylor & Francis)., Koops, J.A. and Macaj, G. (2014) *The European Union as a Diplomatic Actor* (Basingstoke: Palgrave Macmillan). Drieskens, E. and Van Schaik, L.G. (2014) *The EU and Effective Multilateralism: internal and external reform practices* (Routledge). Gehring, T., Oberthür, S. and Mühleck, M. (2013) 'European Union Actorness in International Institutions: Why the EU is Recognized as an Actor in Some International Institutions, but Not in Others'. *JCMS: Journal of Common Market Studies* Vol. 51, No. 5, pp. 849-865 and da Conceição-Heldt, E., and Meunier, S. (2014) 'Speaking with a single voice: internal cohesiveness and external effectiveness of the EU in global governance'. *Journal of European Public Policy*, Vol. 21, No. 7, p. 961.

[22] Jørgensen, K. E. and Wessel, R. A. (2011) 'The position of the European Union in (other) international organizations: confronting legal and political approaches'. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. (Cheltenham: Edward Elgar), pp. 261-286.

[23] Groen, L. and Niemann, A. (2013) 'The European Union at the Copenhagen climate negotiations: A case of contested EU actorness and effectiveness'. *International Relations*, Vol. 27, No. 3, p. 320: "future research should, among other things, analyse the extent to which the provisions of the Lisbon Treaty will have actually impacted the EU's actorness and effectiveness in external climate change policy-making"

[24] Cf Benz, A. (2010) 'The EU's competences: The 'vertical' perspective on the multilevel system'. *Living Reviews in European Governance – LERG*, p. 5 in which he states that '*The division of competences (i.e. legally defined powers)'* between the EU and its member states has been one of the most important issues in the discussion on the institutional reform and in the processes of Treaty amendment'. The broadening to 'legal competences' (comparable to Benz's legally defined powers) give more leeway for operationalisation, see section 2.4 and section 3.3.

[25] Jørgensen, K. E. and Wessel, R. A. (2011) 'The position of the European Union in (other) international organizations: confronting legal and political approaches'. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. (Cheltenham: Edward Elgar), p. 285 and Alter, K. J., Dehousse, R. and Vanberg, G. (2002) 'Law, Political Science and EU Legal Studies: An Interdisciplinary Project?'. *European Union Politics*, Vol. 3, No. 1, pp. 113-136.

[26] Mauser, W., Klepper, G., Rice, M., Schmalzbauer, B. S., Hackmann, H., Leemans, R. and Moore, H. (2013) 'Transdisciplinary global change research: the co-creation of knowledge for sustainability'. *Current Opinion in Environmental Sustainability*, Vol. 5, No. 3, pp. 420-431.

[27] European Commission (2016) 'Next steps for a sustainable European future: European action for sustainability', COM(2016) 739 final, Strasbourg, 22.11.2016, p. 16.

offers relevant introductory information about the case studies that were selected: policy formulation on alternative fuels, 'Team EU' in UNFCCC climate negotiations and implementation of the UN Agenda 2030 and the SDGs in EU and Member States. Finally, section 1.5 presents the outline of the dissertation.

1.2 Research question, concepts, variables and methods

1.2.1 Research question

The main question of this study is as follows: How do the legal competences, affect EU and Member State coordination in formulation, negotiation and implementation of sustainable development policies?

Taking into account the objective to contribute to the integrative academic debate there is another sub-question for this dissertation, which is formulated as follows: how do the legal competences, as an explanation for EU and Member State coordination on sustainable development policies, interact with other issues, more specifically the supranational versus intergovernmental dominance, the EU's position in the international constellation of power and preference heterogeneity?

The main question is concretised in the three case studies in three additional sub-questions, namely:

1. How do the legal competences, affect EU and Member State coordination in policy formulation on alternative fuels for passenger cars?
2. How do the legal competences, affect EU and Member State coordination in negotiations at the UNFCCC?
3. How do the legal competences, affect EU and Member State coordination in implementation of the UN Agenda 2030 and the SDGs?

Within these case studies (see chapter 4-6) also the sub-question about interaction with 'other explanations' is included in the analysis. Answering this main question and the four sub-questions allows an exploration the construction of an integrative theoretical framework applicable across sustainable development cases, which in itself provides a significant contribution to the scholarly literature.

1.2.2 Research concepts

It is necessary to first clarify some key concepts in order to answer the research question.

Legal competences

- As a legal principle the EU only has the competences conferred upon it by the Treaties.[28] The Lisbon Treaty (2009) introduced a more precise catalogue of EU competences (Art. 2 TFEU): exclusive competences, where only the EU has legislative power ;[29]

[28] Art 5 TEU.
[29] Art 3 TFEU, e.g. common commercial policy, monetary policy for Eurozone Member states, customs union.

- shared competences, in which both the Union and Member States have legislative power;[30] and
- supportive competences, where the Union can support, coordinate or supplement the actions of Member States, but cannot supersede the competence of Member States in that policy area.[31]

Alongside these three main categories 'parallel competences' (as a specific type of shared competences)[32], CFSP competences[33] and 'coordination competences'[34] are recognised in the Treaties (see chapter 2 for an overview).

To operationalise the concept of 'legal competences' this dissertation takes a broader approach than only reviewing the catalogue of legal competences in art 2-6 TFEU, by also conducting a parallel review of the legal bases in other parts of the Treaties. In addition to the 'fixed' competences in the Treaty, the EU and Member States' competences can evolve indirectly through the judicial interpretation of the Court of Justice.[35] Moreover, regulations and directives could be viewed as legally defining powers with internal and external effects. To provide comprehensive analysis, the status of the EU in an international organisation as well as the UN legal context (Statutes and documents) is used as a legally defined power. [36]

Coordination (in policy formulation, negotiation and implementation)

With regards to the operationalisation of the dependent variable coordination, a deliberate choice was made not to search for the presence or absence of coordination. Due to the the urgency of the topics, as well as the history of cooperation in these policy areas, it is inevitable that the EU and Member State actors coordinate policies with each other on these topics. Therefore, the question is not *whether* EU and Member State actors coordinate (the existence of coordination), but rather *how* the legal competences, among other factors, affect this coordination process. It is even more interesting to analyse how coordination occurs throughout the decision-making process, thus leading to a focus on (policy) formulation, negotiation and implementation.

To ensure sufficient flexibility when analysing the effect of the independent and intervening variables on the dependent variable 'coordination', this latter concept should be applied loosely. Nevertheless, it is necessary to clarify which 'dimension(s)' of coordination are analysed in this dissertation and to go beyond the simple definition of 'meetings'.[37] The focus of this research is on the coordination 'management' of the European Commission in policy areas of shared competence. Therefore, the definition of coordination is as follows: coordination is the process of contacts between diplomats and officials from EU institutions (especially the European Commission) and Member States with the purpose of discussing an

[30] Art 4 TFEU, e.g. internal market, environment, transport, energy, consumer protection.
[31] Art. 6 TFEU, e.g. industry, culture, civil protection, tourism.
[32] Art. 4(3) & 4(4) TFEU: e.g. research, space, development cooperation, humanitarian aid.
[33] Art. 24 TEU: Common Foreign and Security Policy. No competence of Court of Justice of the EU in this field.
[34] Art. 5 TFEU: employment, social policies and economic policies.
[35] Delreux, T. (2006) 'The European Union in international environmental negotiations: a legal perspective on the internal decision-making process'. *International Environmental Agreements: Politics, Law and Economic*s, Vol. 6, No. 3, p. 235.
[36] Jørgensen, K. E. and Wessel, R. A. (2011) 'The position of the European Union in (other) international organizations: confronting legal and political approaches'. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. (Cheltenham: Edward Elgar), pp. 261-286.
[37] Cf Kissack, R. (2007) 'European Union Member State coordination in the United Nations system: towards a methodology for analysis'. *European Foreign Policy Unit Working Paper 2007, Vol. 1,* p. 3 states: Coordination is the meeting of diplomats and officials from the governments of the European Union Member States (most likely with staff from the Council Secretariat and/or Commission present but this is not essential) in any location (national capitals, Brussels, New York or Geneva) with the purpose of discussing an issue on a UN agenda.

issue of common interest and working towards a common position. These coordination processes can be internal (within the EU) or external (international) and include the discussion of the 'management' of the coordination.

With this definition (and operationalisation) the dissertation hopes to add to the rich literature on coordination in the EU, but nevertheless keeps its operationalisation flexible enough to provide an essential contribution to the literature with a 'politico-legal' analysis by taking into account the effect of independent (legal) and intervening (political) variables. By including the 'management' of the coordination (by the European Commission) the dissertation adheres to the view that coordination is a 'political process' and that it is useful to look at coordination 'capacities' of EU and Member State actors.[38] However, in light of the objective of this dissertation, there is no attempt to suggest a new measure of coordination or re-evaluation of coordination 'capacities', but rather this research looks at the politico-legal drivers of the coordination (management) and enabling and restraining influences on EU and Member State actors in sustainable development policies. In addition, the 'effectiveness' of the coordination process as well as the 'coherence' of the output of the coordination process are not specifically analysed in this dissertation.[39]

The analysis of coordination includes instead what some call 'socialisation', namely the idea that Member States' representatives involved in deciding the EU position (e.g. in international institutions) first and foremost adopt a European orientation.[40] For the purposes of this research, one could see this socialisation more as a 'result' of coordination (or the absence thereof) influenced by political and legal variables, rather than a political-theoretical intervening variable affecting coordination on its own, although this latter approach has been chosen by other authors.[41]

EU and Member State actors

From a legal perspective, the distinctive profile of EU institutions and Member States is clear whereas, from a political perspective, this distinction is often not used. The EU is viewed as an international institution[42] or a political system *sui generis* [43]. Sometimes the EU and its Member States are viewed as a collective actor[44] in external relations, but this is often as a result of its normative[45] role in the world rather than its negotiating power in international organisations. However, there is growing literature on effectiveness where the EU is seen as a collective actor. Nevertheless, and especially in climate change negotiations, the EU and its Member States are often seen as an 'ensemble' that includes the Council of the EU, the

[38] Schout, A., & Jordan, A. (2005). 'Coordinated European Governance: Self-Organizing or Centrally Steered?'. Public Administration, Vol. 83. No. 1, p.211 and Jordan, A. and Schout, A. (2006) The coordination of the European Union: exploring the capacities of networked governance (Oxford University Press), p. 3-30.
[39] Cf section 2.2.5 for a literature review on effectiveness of coordination.
[40] Groenleer, M. L. and Van Schaik, L. G. (2007) 'United We Stand? The European Union's International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol'. *JCMS: Journal of Common Market Studies*, Vol. 45, No. 5, pp. 969-998. EU socialisation means that EU Member States' representatives involved in deciding on and negotiating the EU position in international institutions first and foremost adopt a European orientation, see Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan), p. 75.
[41] Cf section 2.2.1 for a literature review section on coordination and socialisation.
[42] Gavas, M., Maxwell, S. and Johnson, D. (2010) 'Consolidation or cooperation: The future of EU development cooperation'. German Development Institute/Deutsches Institut für Entwicklungspolitik (DIE) Discussion Paper, No. 6.
[43] Lavenex, S., and Schimmelfennig, F. (2009) 'EU rules beyond EU borders: theorizing external governance in European politics'. *Journal of European Public Policy*, Vol. 16, No. 6, p. 791.
[44] Kleistra, Y. and van Willigen, N. (2014). 'Evaluating the Impact of EU Diplomacy: Pitfalls and Challenges.' In Koops, J.A. and Macaj, G. (eds) *The European Union as a Diplomatic Actor* (Basingstoke: Palgrave Macmillan), p. 62.
[45] Manners, I. (2002) 'Normative power Europe: a contradiction in terms?'. *JCMS: Journal of Common Market Studies*, Vol. 40, No. 2, pp. 235-258.

European Commission, , the Presidency of the Council of the EU, the European External Action Service and the Member States.[46]

While this 'collective actor' approach in climate change negotiations is understandable (see chapter 5), it does not stem from a *legally defined* distinction. In the operationalisation of this dissertation the EU and Member State actors are dissected to analyse the coordination of these actors in greater detail. EU actors are therefore operationalised from the document 'EU statements in multilateral organisations – general arrangements' as follows: those actors competent to represent the Union as provided in the Treaties, i.e. the President of the European Council, the Commission, the High Representative & EU Delegations.[47] Member State actors are the representatives of Member States themselves, for instance in the Council of the EU, when the High Representative does not represent them. In practice, and as operationalised during the case studies, this means that the EU actor is often the European Commission representative, also when he or she is 'seconded' from the Member State.[48] Instead, an official who works for the Council is identified in this research as a 'Member State actor' alongside the easily definable officials working in the ministries in the national capitals.

Sustainable development

The concept of sustainable development means to 'ensure that development meets the needs of the present generation without compromising the ability of future generations to meet their own needs'.[49] The concept is broad and embraced by all kinds of actors including governments, multinational corporations, social reformers and environmental activists because of its inspirational value. Different actors however, have their own interpretation of what sustainable development means.[50] Academically, the concept is contested, inter alia, by social ecology, (eco)feminism, (anti-)capitalist, (anti) North-South divide and many other approaches.[51] This dissertation adheres to the belief that the ambiguity and over the 'true' meaning of sustainable development is 'inevitable'[52] and does not contribute to the debate on the concept itself. Moreover, it takes into account the European Commission's view that it is now especially about governance and implementation.[53] For the operationalisation of sustainable development, the dissertation makes use of the practical elaboration of this concept proposed in the UN 2030 Agenda for Sustainable Development and the 17 Sustainable Development Goals.[54] This conceptualisation and operationalisation implies that sustainable development' not only encompasses the 'three dimensions' (environmental, social and economic) but also those of security and human rights in the case study on SDG

[46] Cf Groen L. (2016) *The Importance of Fitting Activities to Context: The EU in Multilateral Climate and Biodiversity Negotiations*. PhD Thesis, Vrije Universiteit Brussel, p. 31.
[47] Council of the European Union (2011) General Arrangements for EU Statements in Multilateral Organizations, 16901/11, 24 October 2011. Available at << http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015901%202011%20INIT>>. Accessed 19 November 2015,, p.2.
[48] The reference to 'EU official' in the case studies hence refers also to EU actors.
[49] United Nations (1987) Report of the World Commission on Environment and Development: Our Common Future, A/42/427.
[50] Giddings, B., Hopwood, B., and O'Brien, G. (2002) 'Environment, economy and society: fitting them together into sustainable development'. *Sustainable Development*, Vol. 10, No. 4, pp.187-189.
[51] Cf Hopwood, B., Mellor, M., and O'Brien, G. (2005) 'Sustainable development: mapping different approaches'. *Sustainable development*, Vol. 13, No. 1, pp. 38-52.
[52] Connelly, S. (2007) 'Mapping sustainable development as a contested concept'. *Local Environment*, Vol. 12, No. 3, p. 260.
[53] European Commission (2016) 'Next steps for a sustainable European future: European action for sustainability', COM(2016) 739 final, Strasbourg, 22.11.2016. p. 14-15, 18.
[54] United Nations General Assembly (2015) 'Transforming Our World: The 2030 Agenda for Sustainable Development', UN Resolution A/RES/70/1, adopted on 25 September 2015, available online from <https://sustainabledevelopment.un.org/post2015/transformingourworld>, Accessed 12 January 2017.

implementation. However, the concept still has a three-dimensional image in practice, which means that the two other case studies are primarily derived from these three dimensions.[55]

Political-theoretical issues and concepts

The idea of this study is to contribute to the political science debate. The following concepts are of crucial importance to this dissertation and related to the debates within the discipline: the supranational vs intergovernmental dominance, the EU's position within the international constellation of power and preference heterogeneity. The concept of 'supranational-intergovernmental dominance' stems from the main debate in the literature on European integration according to which integration is driven either by supranational institutions or by national governments.[56] This concept is operationalised to see whether there are 'institutional turf battles' between the Council and the Commission in the specific case studies on the direction of policies. . The EU's position within the international constellation of power is operationalised through in-case variables such as CO2 emissions in the climate change case study and the amount of biofuels in the alternative fuels case study.

Preference heterogeneity means the absence of aligning substantive interests. Within the context of this dissertation, this variable is looking at homogeneity or heterogeneity in the preferences of Member States. Whether there is substantive convergence or divergence, i.e. preference homogeneity or heterogeneity is the way in which this concept is operationalised. In this sense, the 'supranational-intergovernmental' dominance variable is focused on institutional arguments, while the preference heterogeneity variable is mostly oriented on substantive arguments. The three concepts will be analysed in interaction with the legal competences, so as to contribute to the scholarly debate. Moreover, for all case studies other explanations that were often raised in the semi-structured interviews are shared. Chapter 2 will elaborate on the political and legal concepts in further detail.

1.2.3 Variables and expectations

This dissertation assesses the influence of legal competences on EU and Member State actors and coordination, with a specific focus on 'sustainable development' policies. The research conducted for this dissertation was exploratory and aimed to test the potential of 'legal competences' as an explanation for enabling or restraining coordination between EU and Member State actors with regards to sustainable development policies. The existing literature often attributes a more dominant role to political-theoretical issues in affecting the coordination process between EU and Member State actors. This dissertation tests whether 'legal competences' can have an independent effect. As the influence of different forms of mixed competences on EU and Member State action, let alone with regards to sustainable development policies, is a relatively new field, it would be overly ambitious to aim for pure causality. Therefore, this dissertation is sympathetic to methodological reflections which consider causal *mechanisms* as 'theoretical formulations, (..) that adduces properties of the relationships among phenomena with the potential to recur, which helps explain *why* x causes *y'*.[57] This research will aim to provide sufficient empirical and legal evidence to contribute to a nuanced picture of the interaction between political and legal variables and causal mechanisms in the coordination of sustainable development policies.

[55] There are also legal reasons not to include common foreign and security policies in the analysis, see section 1.2.5.
[56] Branch, A. P., and Ohrgaard, J. C. (1999) 'Trapped in the supranational-intergovernmental dichotomy: a response to Stone Sweet and Sandholtz'. *Journal of European Public Policy*, Vol. 6, No. 1, pp. 123-143.
[57] Cf Hall, P. A. (2013) 'Tracing the progress of process tracing'. *European Political Science*, Vol. 12, No. 1, pp. 20-30.

Despite taking a critical stance towards direct causality (see chapter 3 and above), this dissertation, for reasons of methodological straightforwardness, uses independent, intervening and dependent variables. As the value this dissertation adds to the literature is the fact that it tests the effect of mixed competences, 'legal competences' are considered as independent variables. The above-mentioned 'political-theoretical issues' will function as 'intervening' variables and he coordination between EU and Member State actors in sustainable development policies is the dependent variable. Besides legal competences and intervening variables, other case-specific explanations can affect the coordination between EU and Member State actors in regards to sustainable development policies. Each case study will take these 'other explanations' into account to create a more complete picture. All variables are visualised in Figure 1.1.

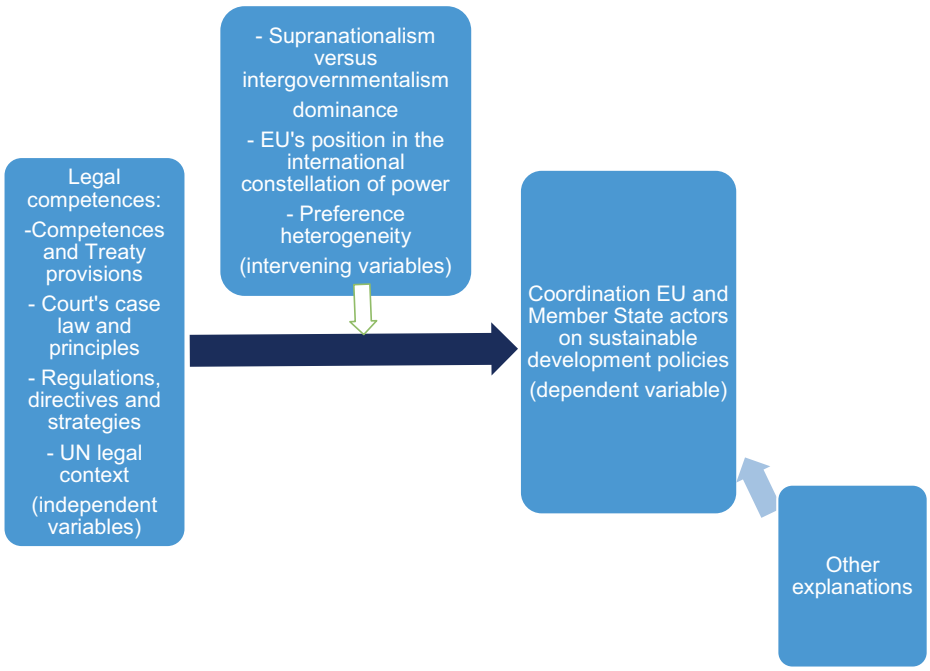

Figure 1. 1 Variables and expectations of relations

The initial hypothesis is that the broad legal powers define EU and Member State coordination on sustainable development policies. It is expected that EU actors are enabled more than they are restrained in their activities due to their legal Treaties-based orientation and with the European Court of Justice acting as the EU-friendly arbitrator on principles such as the duty of sincere cooperation. With regards to Member State actors, it is expected that they will make less use of these legal competences and see these competences as restrictive of cooperation. Chapter 7 (synthesis) and Chapter 8 (conclusion and discussion) will offer a reflection whether these expectations proved to be accurate.

1.2.4 Research methods

The research question will be assessed by means of a comparative case study design, incorporating three different cases. As the aim of this dissertation is to compare different 'mixed competence' sustainable development policies, internal and external dimensions of EU action and different stages of the policy cycle, three case-studies are analysed in depth (see 1.4). This in-depth study employs legal as well as qualitative methods and a step-by-step process tracing. The sources for each case study are EU Treaties, the Court's case law, regulations, directives, strategies, other official documents, statutes and the legal context of the international organisations, and an academic literature review. Moreover, the qualitative part of this study heavily relies on a total of forty-seven semi-structured interviews with EU and Member State officials, (former) ministers, Members of (European/national) Parliament, private sector representatives, Civil Society Organisations and experts. The literature review and even more sothe semi-structured interviews[58] serve the exploratory purpose of the case studies, while they complement the legal basis of the analysis, by indicating the practical effect of mixed competences, i.e. legal competences, and by addressing (more) political informal mechanisms. Therefore, this dissertation adheres to the appeal and complementarity of mixed-method research.[59] Combining methods has indeed the advantage of increasing the reliability of findings as well as of 'providing a glimpse into the causal mechanisms behind correlations of variables'.[60] While mixed-method research is often understood as combining quantitative and qualitative research, this design is based on the combination of legal and qualitative/empirical research. These approaches have the potential to be complementary.[61]

This dissertation makes use of process tracing for each case study (see 3.3.1). The three cases will be researched in-depth to identify the (intervening or causal) mechanisms between legal competences and the enabling/restraining influence on EU and Member State actor coordination. Process tracing is mostly used for theory testing and theory development.[62] This dissertation is primarily focused on theory development, as it does not *simply* research the causal mechanism of legal competences, but it also considers these legal competences as *one of the* explaining factors for coordination between EU and Member State actors on sustainable development policies, alongside the intervening (political-theoretical) variables and also considers other explanations. Process tracing was chosen as a method as it allows for thorough investigation in a situation where the character of the relations between the 'variables/conditions' is unclear .[63]

The three cases in this book do not form a uniform set of cases. Nonetheless, their *combined* reading provides for a unique and rich set of cases covering both internal and external dimensions of EU sustainable development policies and encompassing (external) negotiation, policy formulation, as well as policy implementation. This enables a process-

[58] See annex 1. Five of these forty-seven interviews could be considered as more 'explorative'.
[59] Lieberman, E. S. (2005) 'Nested analysis as a mixed-method strategy for comparative research'. *American Political Science Review*, Vol. *99*, No. 3, pp. 435-452.
[60] Toshkov, D. D. (2009) *Between politics and administration: Compliance with EU law in Central and Eastern Europe*. PhD Thesis Department of Public Administration, Faculty of Social and Behavioural Sciences, Leiden University.
[61] Jørgensen, K. E. and Wessel, R. A. (2011) 'The position of the European Union in (other) international organizations: confronting legal and political approaches'. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. (Cheltenham: Edward Elgar), p. 285.
[62] George, A. L. and Bennett, A. (2005) *Case studies and theory development in the social sciences* (Cambridge, Massachusetts: MIT Press), p. 224.
[63] King, G., Keohane, R. O. and Verba, S. (1994) *Designing social inquiry: Scientific inference in qualitative research* (Princeton University Press).

based' politico-legal analysis of the potential of legal competences. No other study has so far assessed the effect of legal competences on EU and Member State actors in the conduct of EU sustainable development policies, let alone oriented on both the internal and external dimension of EU policies. Chapter 3 will offer a more detailed elaboration concerning the research design, methodological considerations, data collection and data analysis.

1.2.5 Research focus and limitations

This study focuses on aspects of EU and Member State coordination with regards to sustainable development policies; more specifically it analyses these policies' formulation, negotiation and implementation,both in their internal and external dimensions. It identifies the legal competences and examines their relation and interaction with (or autonomy from) intervening variables derived from the political science theories. The operationalisation of these variables (see chapter 2) results in the exclusion of some nuanced aspects of EU law and in the the simplification of political theories. The analysis of the three stages of the decision-making process makes the dissertation extensive and broad in its orientation on the coordination process. Nevertheless, this study cannot compare the details of I different coordination processes in the same stage of the decision-making process. Despite this shortcoming, the dissertation still manages to contribute to the existing literature by testing empirically whether claims such as 'policy-planning has never been one of the Commission's strengths' are indeed substantiated in practice.[64]

The dissertation focuses on mixed competence arrangements with a 'centre of gravity' in policy areas of shared competence. It is expected that coordination aspects are more important in these shared and mixed competence arrangements. As a result, this dissertation focuses less on sustainable development policies where the 'centre of gravity' is more lenient towards exclusive EU competences (e.g. trade), or Member States' sovereign policies (e.g. defence). As this dissertation centres on complex mixed competence arrangements, more straightforward sustainable development negotiations, such as the ones related to 'a globally binding instrument on mercury[65]', are not part of this study.

Moreover, the dissertation is focused on 'sustainable development policies', a broad category, as the UN Agenda 2030 includes therein even security aspects, besides the original three social, environmental and economic dimensions. There are, however, some limitations with the operationalisation in this dissertation. The CFSP 'shared competence' sub-category is for instance deliberately excluded from this study, due to a couple of reasons. First, the Court of Justice has no legal competence on CFSP policies, which would greatly affect the legal component of this study. Secondly, as Van Schaik (2013: 18) states, the institutional framework of CFSP differs substantially from that of other Union's (external) policies, which makes it difficult to compare the role of key actors and the division of competences and legal competences in the case studies.[66]

[64] Jordan, A. and Schout, A. (2006) The coordination of the European Union: exploring the capacities of networked governance (Oxford University Press), p. 100.
[65] De Baere, G. (2012) 'Mercury Rising: The European Union and the International Negotiations for a Globally Binding Instrument on Mercury'. *European Law Review*, Vol. 37, No. 5, pp. 640-655.
[66] Van Schaik, L.G. (2013) EU Effectiveness and Unity in Multilateral Negotiations: More than the Sum of its Parts (Palgrave Macmillan), p. 18.

Furthermore, the primary focus of the analysis is on 'EU and Member State actors', thus excluding parliaments and other societal actors such as CSOs, regional authorities and the private sector. As a result, one of the most influential theories of the last decades, namely the one of multi-level governance[67], is not operationalised in an intervening variable and is therefore not part of this dissertation. However, there is of course some room in the answers to the semi-structured interview questions to indicate the presence and importance of other actors and the answers and 'external' analysis of these 'other societal actors' is taken as a valuable external perspective.

1.3 Research objectives and relevance

The aim of this dissertation is to gain more insight into how the division of competences, i.e. legal competences, influences the coordination between EU and Member State actors in relation to sustainable development policies. Further, it attempts to examine how these legal competences interact with some selected concepts through which coordination is often analysed in political science contributions. The study contributes both to the academic and EU policy debate and the content itself provides societal relevance in the quest for tackling global challenges from the European continent.

1.3.1 Academic relevance and objectives

In relation to current research this dissertation has the objective to provide an original contribution to the literature in at least three ways. Firstly, the way in which mixed EU competences is operationalised in a politico-legal fashion and as a defining, independent factor explaining EU and Member State coordination on sustainable development policies alongside or even preceding political theoretical issues. Secondly, in the combination of analysing policy formulation, negotiation and implementation of sustainability policies. The implementation of sustainable development agreements is often under-researched, yet it is in the implementation that political and legal arguments on the division of competences take centre stage. Thirdly, the originality of this academic contribution is in the combination of analysing internal and external dimensions of EU sustainable development policies together in light of the UN Agenda 2030 and Sustainable Development Goals. In this way, the dissertation tries to combine findings from seemingly unrelated academic fields, namely EU external relations and EU internal implementation of sustainable development issues.

By bringing the legal competences into political science limelight, this dissertation aims to cross disciplines and explore analyses in a politico-legal fashion. The empirical studies that analyse the internal coordination structures of the EU and Member State actors review some specific political-theoretical issues in particular. Examples include the balance of power between (large) Member States in the Council and the Commission[68] , 'socialisation' of representatives from Member States[69] , the EU position in the international constellation of

[67] Cf Hooghe, L. and Marks, G. (2001) *Multi-level governance and European integration* (Rowman & Littlefield).
[68] Laatikainen, K. and Smith, K. (eds) (2006) *The European Union at the United Nations: Intersecting Multilateralisms* (Basingstoke: Palgrave). Cf Dykstra, H. (2009) 'Commission versus Council Secretariat: an analysis of bureaucratic rivalry in European foreign policy.' *European Foreign Affairs. Rev*iew Vol. 14, No. 3, pp. 431-450.
[69] Groenleer, M. L. and Van Schaik, L. G. (2007) 'United We Stand? The European Union's International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol'. *JCMS: Journal of Common Market Studies*, Vol. 45, No. 5, pp. 969-998. EU socialisation means that EU Member States' representatives involved in deciding on and negotiating the EU position in international institutions first and foremost adopt a European orientation, see Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan), p. 75.

power and preference heterogeneity in the sense of (the absence of) aligning interests.[70] By bringing in the competences, i.e. legal competences, empirical studies would align more with legal theories. This makes the contribution of this empirical study more aligned with practice in which legal and political considerations are often taken together. Moreover, this integrative study contributes to more academic cooperation between the disciplines, which is even more necessary in relation to analysis of sustainable development policies.[71] This integrative objective serves academic purposes as influences come not only from within the discipline but from other areas of academic interests.[72] To make it concrete, political scientists must become more aware of the legal framework, which to a certain extent defines the political options.[73] However, as political contributions in this field have shown, legal competences are only part of the authority of actors. There are other important sources of authority, including substantive expertise, or making the link with other policy dossiers.[74]

The academic relevance of this dissertation goes beyond integrative purposes and contributes to comparative case studies on sustainable development with a focus on the EU and Member States. Over the past decade, as Groen (2016: 25) has stated, studies on the EU in international affairs and on the EU's performance in global environmental governance have "slowly moved from individual case studies towards broader assessments and comparisons".[75] Despite that, a case study analysis on sustainable development issues in which the EU and Member State coordination is compared on internal and external coordination, while focusing on multiple policy areas and multiple 'chains' in the decision-making process, has not been carried out before. It therefore makes sense to analyse internal and external policies, especially since the 'universal' UN Agenda 2030 on Sustainable Development.[76] As such, the original academic contribution of analysing the legal provisions and EU competences that (could) define the implementation of the SDGs (see 6.2) bridges EU external relations with internal division of competences.

The aim of this dissertation is not to provide a full explanation of legal and political variables in the selected cases. Only three intervening variables derived from the literature are chosen and their interaction with the legal competences is analysed, which helps to characterise EU and Member State coordination so that it contributes to the current scholarship on the topic. The main focus is whether and how legal competences *affect* EU and Member State coordination, thus leading to an *exploration* into whether the legal competences could indeed contribute to theory formulation on EU and Member State coordination of sustainable

[70] Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan). Groen, L. and Niemann, A. (2013) 'The European Union at the Copenhagen climate negotiations: A case of contested EU actorness and effectiveness'. *International Relations*, Vol. 27, No. 3, pp. 308-324.
[71] Delreux, T. (2006) 'The European Union in international environmental negotiations: a legal perspective on the internal decision-making process'. *International Environmental Agreements: Politics, Law and Economic*s, Vol. 6, No. 3, pp. 231-248. Jørgensen, K. E. and Wessel, R. A. (2011) 'The position of the European Union in (other) international organizations: confronting legal and political approaches'. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. (Cheltenham: Edward Elgar), pp. 261-286. Kamphof, R., and Wessel, R.A. (2018) 'Analysing shared competences in EU external action: the case for a politico-legal framework'. Europe and the World: A law review, Vol. 2, No. 2, pp. 38-64. DOI: https://doi.org/10.14324/111.444.ewlj.2018.02.
[72] Della Porta, D. and Keating, M. (2008) *Approaches and methodologies in the social sciences: A pluralist perspective* (Cambridge University Press), p. 36.
[73] Jørgensen, K. E. and Wessel, R. A. (2011) 'The position of the European Union in (other) international organizations: confronting legal and political approaches'. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. (Cheltenham: Edward Elgar), p. 285.
[74] Vanhoonacker, S. and Pomorska, K. (2013) 'The European External Action Service and agenda-setting in European foreign policy'. *Journal of European Public Policy*, Vol. *20*, No. 9, p. 1322.
[75] Groen L. (2016) *The Importance of Fitting Activities to Context: The EU in Multilateral Climate and Biodiversity Negotiations*. PhD Thesis, Vrije Universiteit Brussel, p. 25.
[76] See chapter 6.

development policies, both internally and externally. These new findings may stimulate others to engage in the exercise of explaining and analysing the coordination of EU and Member State actors in their contribution to worldwide sustainable development. The exploration is innovative because of its focus on legal competences as well as the *interaction* with the three political-theoretical variables that it includes. The analysis contributes to the increasing demand for comparative research in order to advance more general knowledge in this area. Chapter 2 and 3 provide more information on the theoretical framework, operationalisation and methods.

1.3.2 Relevance to the EU policy debate and societal relevance

The dissertation not only serves academic integrative purposes. With regard to the EU policy debate, sustainable development, as emphasised by the Lisbon Treaty (Art 3(5) TEU), is an important objective for the EU and is increasingly 'mainstreamed' into EU policies and legislation.[77] By concretising this concept in the case studies on 'Team EU' in international climate change negotiations, alternative fuel policies and implementation of the UN Agenda 2030 and the 17 Sustainable Development Goals, this research contributes to the EU policy debate and the debate in EU Member States on the issue of competences[78].

Citizens in EU Member States make increasing use of legal rules and Treaty obligations in their quest to ensure that their governments pursue more sustainable policies. As an example, the Dutch 'Urgenda' case demonstrate that Courts can be responsive to the argument that Member States' policies are insufficient and even 'unlawful' to avoid dangerous climate change.[79] Legal uncertainty appears to have negative consequences for citizens and businesses. Recent Eurobarometer surveys illustrate that citizens value sustainable development issues like environmental protection and development cooperation highly.[80] However, within these policies, sustainable development is often the 'ball' in the political power game in which legal and political considerations take centre stage.

Moreover, this dissertation serves societal purposes, as the legal competences will become increasingly important both for the 'transitional' and transformative sustainability policies, as well as for the debate on the 'Future of Europe' after Brexit. The EU and Member States need to keep track of their climate pledges to make their 'emission pathways consistent with holding the increase in the global average temperature to well below 2 °C above pre industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre industrial levels', as stipulated in the recent Paris Agreement.[81] Without proper European

[77] As examples of mainstream policies, the European Commission DG Environment refers to e.g. the EU Sustainable Development Strategy, the EU 2020 Strategy and the EU's Better Regulation Agenda as well as sectoral programmes such as the 7th Environmental Action Programme. <<http://ec.europa.eu/environment/sustainable-development/index_en.htm>>, accessed 11 October 2017.

[78] Cf Government of the United Kingdom (2015) Review of the Balance of Competences between the United Kingdom and the European Union, available at <https://publications.parliament.uk/pa/ld201415/ldselect/ldeucom/140/140.pdf>, Accessed 12 June 2017.

[79] *Urgenda v The Netherlands*, The Hague District Court (24 June 2015) ECLI:NL: RBDHA:2015:7196 (original language: ECLI:NL:RBDHA:2015:7145). For a legal analysis cf de Graaf, K. J. and Jans, J. H. (2015) 'The Urgenda Decision: Netherlands Liable for Role in Causing Dangerous Global Climate Change'. *Journal of Environmental Law*, Vol. 27, No. 3, pp 517-527.

[80] European Commission Special Eurobarometer (2014) 'Attitudes of European citizens towards the environment', Special Eurobarometer 416, September 2014 and European Commission Special Barometer (2017) 'EU Citizen's views on development, cooperation and aid', Special Eurobarometer 455, April 2017. Cf Falkner, R. (2007) 'The political economy of 'normative power' Europe: EU environmental leadership in international biotechnology regulation'. *Journal of European Public Policy*, Vol. 14, No. 4, p. 510.

[81] United Nations Framework Convention on Climate Change (2015) Paris Agreement, https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf, Accessed 13 December 2016.

regional cooperation and implementation in strategic fields such as energy, transport and development cooperation policies, many European households could be adversely affected by climate change, and universal climate agreements may be trampled on by the EU and Member States.[82] Whether reaching these goals would entail institutional reform needs to be studied, showing the importance of this research study.

1.4 Introducing the cases and case selection

In order to maximise the analytical leverage of the case studies, they have to be carefully selected.[83] This study made a selection on the basis of expertise, to lay the foundation for a more thorough politico-legal analysis framework.[84] Due to the explorative objective of this dissertation, the case studies were purposely differentiated in the covered policy areas, the dimension of EU sustainable development policies (internal/external) and the place in the policy cycle (negotiation, formulation and implementation)), with the aim to achieve a maximum of variance alongside these dimensions. The case studies thus differ considerably and do not form a uniform set of cases.[85] Nevertheless, the *amalgamation* of these cases provides for a unique and relevant process-based analysis of the effects of legal competences and of the interaction with other variables often coined in the literature.

As will be explained later, there are some limitations in the (loose) case selection criteria applied in this study.[86] Nevertheless, three 'general' - but not mutually exclusive - selection criteria can be identified. The first criterion is the fact that a given policy arrangement is identified as a 'mixed competence' arrangement based on multiple policy areas according to the catalogue of competences (Art 2-6 of the Treaty on the Functioning of the European Union). Secondly, the 'main' (original) policy area of the broad policy arrangement, or the 'centre of gravity' of the mixed competence arrangement, is a 'shared competence' so that EU and Member States have to cooperate. Thirdly, each process has clear coordination between EU and Member State actors and defined outcomes, so that the results (or absence thereof) from the dependent variable can be ascribed to the independent and intervening variables at least to some extent.

The cases differ in their place in the policy chain (policy formulation, negotiation and implementation), as well as in the dimension of sustainable development policies (internal/external), so as to cover a broad spectrum of sustainable development policies. It is necessary to include the three stages of decision-making, as one could identify differences in the actual effect of the division of competences in practice and see whether the coordination 'management' is for instance more difficult during the implementation phase rather than during policy-making or negotiation. The existing literature on the topic of coordination tends

[82] Kamphof, R., Bonenkamp, T., Selleslaghs, J.M.H.M.R. and Hosli, M.O. (2017) 'External competences in energy and climate change' in Leal-Arcas, R. and Wouters, J. (eds) *Research Handbook on EU Energy Law and Policy (*Edward Elgar Publishing), p. 30.

[83] The question of case *selection* in comparative politics originates in the work of e.g. Lijphart (1971) in the 1970s: Lijphart, A. (1971) 'Comparative politics and the comparative method'. *American Political Science Review*, Vol. 65, No. 3, pp. 682-693. As indicated by Seawright and Gerring (2008: 295) many scholars 'continue to lean primarily on pragmatic considerations such as time, money, expertise and access' or the 'theoretical prominence of a given case'. However, this does not provide a methodological justification for the case selection. On selection of case studies, see also Seawright, J. and Gerring, J. (2008) 'Case selection techniques in case study research: A menu of qualitative and quantitative options'. *Political Research Quarterly*, Vol. 61, No. 2, pp. 294-308.

[84] Oberthür, S. and Groen, L. (2015) 'The Effectiveness Dimension of the EU's Performance in International Institutions: Toward a More Comprehensive Assessment Framework'. *JCMS: Journal of Common Market Studies*, Vol. 53, No. 6, p. 1320.

[85] See section 3.1.3 on 'generalisability' of the findings.

[86] Cf section 3.1.3 on how to generalize the findings and section 7.4.4 on methodological limitations: criticizing the three cases.

to generally be more critical towards EU and Member State coordination in 'implementation' than for example negotiation in international institutions.[87] Moreover, the research on the internal and external functioning of the Union and the research on different stages of the policy process are not well connected. Therefore, it proves helpful to compare the findings in different policy cycles and dimensions; this also makes the research more aligned to what is often defined as policy objectives, e.g. to make policies more 'integrated' and 'coherent' so as to achieve the transformative nature of the 2030 Agenda and the Paris Agreement.[88]

The three cases will be researched in-depth by means of process tracing, in order to identify the intervening and/or causal mechanisms between mixed (external) competences and the enabling/restraining influence on EU and Member State actors in their coordination process. Process tracing is used because the character of the relations between these 'variables' (or conditions) is unclear and the method allows for thorough investigation.[89] More information on the research design and the method of data collection is to be found in chapter 3.

Figure 1.2 gives an overview of the cases and the similarities and differences in the selection of the cases. Chapter 3 provides a theoretical and methodological justification for these three cases. What follows is a short overview of the three cases.

	Case study 1: EU and Member States formulating policies on alternative fuels for private vehicles	Case study 2: EU and Member States in UNFCCC negotiations	Case study 3: EU and Member State implementation of the UN Agenda 2030 and Sustainable Development Goals
Mixed competence arrangement	Yes	Yes	Yes
Main policy area	Transport	Climate/environment	Development cooperation
Shared competence (Art 4 TFEU) 'centre of gravity'?	Yes	Yes	Yes
Internal or external EU dimension	(primarily) internal	(primarily) external	Internal *and* external
Policy process	Formulation	Negotiation	Implementation

[87] Cf Jordan, A. and Schout, A. (2006) The coordination of the European Union: exploring the capacities of networked governance (Oxford University Press), p. 100: "policy planning has never been one of the Commission's strengts" when compared to e.g. literature on the EU and Member States in climate change negotiations. See for example Oberthür, S. and Roche Kelly, C. (2008) 'EU leadership in international climate policy: achievements and challenges'. *The International Spectator*, Vol. 43, No. 3, pp. 35-50.

[88] European Commission (2018) 'From commitment to action: Implementing the Sustainable Development Goals through the next Multi-Annual Financial Framework of the European Union'. Advisory report to the European Commission by the Multi-Stakeholder Platform on the Implementation of the Sustainable Development Goals in the EU, March 2018. Accessed << https://ec.europa.eu/info/sites/info/files/adopted-position-paper-on-the-mff_en.pdf>> 18 August 2018, p. 6.

[89] King, G., Keohane, R. O. and Verba, S. (1994) *Designing social inquiry: Scientific inference in qualitative research* (Princeton University Press).

Table 1. 1 Selection of case studies

Case study 1 - EU and Member States: formulating policies on alternative fuels for private vehicles

The issue of 'alternative' transportation fuels, such as electricity, hydrogen and biofuels, receives much attention in the European Union. This is not surprising, as traditional combustion engines, are under scrutiny due to recent emission scandals such as 'Dieselgate'.[90] Moreover, transport is nowadays almost totally dependent on oil products, 90 percent of which is imported.[91] In contrast with the other case studies, the 'multilateral' context on these alternative fuels is largely absent and this inquiry is primarily focused on 'internal' coordination aspects between the EU and Member State actors. While the alternative fuels have as a primary focus the shared competence 'energy' and 'transport' policy areas, these alternative fuels are a typical 'mixed competence' issue, related to aspects like taxation, agriculture, climate action and trade. There is a single market for road fuel and fuel production facilities are widely distributed throughout the EU. Therefore, this case study focuses on Treaty provisions and on the single market directives concerning these alternative fuel policies. Besides addressing these legal competences, literature, and policy review, the qualitative part of this study relies on eleven semi-structured interviews with EU and Member State officials and stakeholders from the private sector and CSOs.[92] The analysis focuses on the process from the 2009 Fuel Quality Directive[93] and Renewable Energy Directive[94], almost coinciding with the entry into force of the Lisbon Treaty, until July 2017. This case study has primarily an internal dimension and is used to analyse the decision-making process and formulation of sustainable development policies.

Case study 2 - EU and Member States in UNFCCC (climate change) negotiations

As Dee (2013: 76) puts it, the EU and Member State action in the climate change negotiation framework of the United Nations Framework Convention on Climate Change (UNFCCC) is 'perhaps the most widely cited case study employed in evaluating EU behaviour in multilateral negotiations'.[95] The European Union and its Member States have been leading

[90] Teffer, P. (2016) 'Switching off emissions filters 'within the law' says car lobby', EU Observer, 1 July 2016, https://euobserver.com/dieselgate/134138.
[91] European Commission (2015) 'Ten priorities for Europe: A new start for Europe: an EU agenda for jobs, growth, fairness and democratic change'
[92] These interviews have been conducted from July 2016 to March 2017; eight of these interviews have been conducted together with Thijs Bonenkamp, MSc graduate in International Relations & Diplomacy at Leiden
University and research assistant at Leiden University. Three of these interviews have been conducted by the author alone and notes have been shared with Thijs Bonenkamp and colleagues from Delft University (Dr Reinoud Wolffenbuttel and Delft University graduate Luke Middelburg. The interview questions have been sent to the interviewees beforehand. The interviews have not been taped. Please see chapter 3 (research design) and the annex for more information on the interviews. The interviews from July 2016-September 2016 have been conducted for the Ford Poling Challenge, which comprises of a non-technical study conducted by Thijs Bonenkamp and the author, and a technical study conducted by the researchers from Delft University of Technology, presented at a biofuel workshop in The Hague in October 2016: https://www.universiteitleiden.nl/en/events/2016/10/renewable-energy. Delft University measures the gasoline/ethanol/water composition of biofuels as part of the overarching technical study.
[93] Directive 2009/30/EC of the European Parliament of the Council on the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and the specification of fuel used by inland waterway vessels, 23 April 2009, OJ. L. 140/88.
[94] Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources, 23 April 2009, OJ L. 140/16.
[95] Dee, M.J. (2013) *Challenging Expectations: A study of European Union performance in multilateral negotiations*, PhD dissertation, University of Glasgow, p. 76.

actors in constructing the international climate policy framework since the early 1990s.[96] The topic of climate change has even been identified as a 'saviour issue' for the success of the EU integration project. [97] All Member States are a party to the UNFCCC and so is the EU itself as an autonomous actor.[98] Despite that, the EU and Member States are essentially cooperating as 'Team EU' in the climate change negotiations. The annual Conferences of the Parties (COPs) have been described by the interviewees as massive events. Interestingly, the issue of climate change, in spite of itshigh political significance, does not get much attention from the Treaties. As a matter of fact, searching for the periphrases 'climate change' or 'climate action' in the text of the Treaties only leads to one result under the 'environment' chapter. In that sense, climate change could be viewed as a 'shared competence' along the reasoning of environment policy (Art 4 TFEU, Art 191 TFEU), but the UNFCCC COP negotiations are so broad that one could speak of a mixed competence. Besides analysing legal provisions and documents and conducting a literature review, this case study relies on nineteen semi-structured interviews. This analysis focuses on the process from the Copenhagen climate conference (2009) coinciding with the entry into force of the Lisbon Treaty, until July 2017, thereby including the historic UNFCCC COP21 held in Paris (2015). The main emphasis is on these large conferences, but day-to-day climate diplomacy is also part of the analysis and the questions in the interviews. This case study has primarily an *external* dimension and is thus symptomatic for the *negotiation* of sustainable development policies by the EU and Member State actors.

Case study 3 - EU and Member States: implementation of the UN Agenda 2030 and the Sustainable Development Goals

In September 2015, the United Nations 'Agenda 2030' for Sustainable Development was adopted[99,] in the presence of many Heads of State from the Member States and the First Vice President of the Commission. A coordinated effort by the Member States of the European Union has lead to the negotiation of the 17 'SDGs' and targets from 2012 to 2015. The European Commission (DG Development and DG Environment) has been active in this negotiatiative phase and had brought together the ambitions on policy areas of environment and development cooperation. In contrast with the earlier Millennium Development Goals (2000-2015), the EU and Member States are now asked to evaluate both their 'internal' and 'external' dimensions, instead of transferring (financial) means of implementation from the 'Northern' to the 'Southern' part of the world. Implementing this broad agenda is a 'shared responsibility'[100], although the UN system preserves the 'primary responsibility' for follow-up and review at a national government level.[101] The first document that could function as an implementation strategy at the EU level followed only fourteen

[96] 'Jürgen Lefevere, Artur Runge-Metzger and Jake Werksman, 'The EU and international climate change policy' in Jos Delbeke, Peter Vis (eds), EU Climate Policy Explained (Routledge, 2015), pp. 109'.
[97] Van Schaik, L. and Schunz, S. (2012) 'Explaining EU Activism and Impact in Global Climate Politics: Is the Union a Norm-or Interest-Driven Actor?'. *JCMS: Journal of Common Market Studies*, Vol. *50*, No. 1, p. 169.
[98] UNFCCC website (2017) Parties to the Convention and Observer States' http://unfccc.int/parties_and_observers/parties/items/2352.php.
[99] United Nations General Assembly (2015) 'Transforming Our World: The 2030 Agenda for Sustainable Development', UN Resolution A/RES/70/1, adopted on 25 September 2015, available online from <https://sustainabledevelopment.un.org/post2015/transformingourworld>, Accessed 12 January 2017.
[100] European Commission (2015) 'A Global Partnership for Poverty Eradication and Sustainable Development after 2015', COM(2015) 44 final, Brussels, 5.2.2015.
[101] United Nations General Assembly (2015) 'Transforming Our World: The 2030 Agenda for Sustainable Development', UN Resolution A/RES/70/1, adopted on 25 September 2015, available online from <https://sustainabledevelopment.un.org/post2015/transformingourworld>, Accessed 12 January 2017, para. 47.

months after the adoption of the agenda.[102] In the meantime, the implementation of the Agenda in the Member States has been a mixed picture with some forerunners and some Member States waiting for guidance from the Commission. The primary focus of Agenda 2030 has been since the very beginning the 'development cooperation' which is a shared 'parallel' competence (Art 4(3) TFEU and Art 208 TFEU). However, the 17 SDGs encompass many policy areas and are therefore a typical example of a 'mixed competence' implementation necessity. This case study focuses on the implementation period - from September 2015 until July 2017, but the EU and Member State process of negotiating the agenda (2012-2015) is also covered. Besides analysing the official (legal) documents and legal provisions, this case study relies on fifteen semi-structured interviews with EU and Member State officials and a couple of 'other societal stakeholders'. The implementation has both internal and external dimensions.

1.5 Outline of the study

After this introductory chapter, the dissertation proceeds in the following way to come to an answer on the research question. Chapter 2 reviews the existing bodies of literature with reference to the EU's and Member State coordination (in sustainable development policies) and extracts some of the main elements both from legal and political perspectives. It then explains how this dissertation builds a theoretical framework that contributes to both fields by focusing on competences, i.e. legal competences and interaction with variables derived from the theories neofunctionalism, intergovernmentalism, social constructivism and institutionalism and concepts such as actorness, cohesiveness and effectiveness. Chapter 3 outlines the research design of a comparative case study, the method of data collection and analysis, as well as its methodological limitations. Chapter 4, 5 and 6 then cover the case studies formulating policies on alternative fuels for passenger cars, 'Team EU' in climate change negotiations, and the implementation of the UN Agenda 2030 in the EU and Member States. The two final chapters contain an overall analysis. Chapter 7 compares and synthesises the three case studies, focusing on similarities, differences, and general reflections across the cases on coordination processes and the use of legal competences. Moreover, the interactions with these other variables are analysed and the cases are critically evaluated for future use. The concluding chapter 8 then builds on the results of chapter 7. It paves the way for a larger politico-legal analysis of the EU and Member States shared action on sustainable development by reflecting on the difficulties in this exploration. The findings qualify and nuance some existing literature by providing new insights and highlighting the policy relevance of such an integrative analysis. Moreover, this chapter presents avenues for future research and institutional innovation.

SUMMARY CHAPTER 1

The policies and the coordination of the EU and Member States on sustainable development policies are extensively studied from both theoretical and empirical perspectives. However, the issue of the legal competences does not feature prominently in this analysis, while being critical to many legal contributions and political discussions. This dissertation focuses on the following question: how do the legal competences affect EU and Member State coordination in formulation, negotiation and implementation of sustainable development policies? By using

[102] European Commission (2016) 'Next steps for a sustainable European future: European action for sustainability', COM(2016) 739 final, Strasbourg, 22.11.2016.

different case studies, focusing on alternative fuel policies, 'Team EU' in climate negotiations and SDG implementation, the dissertation tries to explore the potential of including the broad notion of the legal competences as an independent variable explaining coordination between the EU and Member State actors. As such, interaction is analysed with intervening variables, explanations currently provided by theories such as neofunctionalism, intergovernmentalism, social constructivism and institutionalism. The integrative politico-legal research design provides for triangulation of findings.

Chapter 2: Theoretical Framework and Literature Review

2.1 Introduction

> *"Only when legal and political insights are combined, will we be able to know what to do to attain one of the main EU objectives in accordance with Article 3(5) TEU: In its relations with the wider world, the Union shall (..) contribute to the sustainable development of the Earth(..)"(Jørgensen and Wessel, 2011: 286)*[103]

The Lisbon Treaty provides a set of legal provisions outlining the different types of EU competences in Article 2-6 TFEU. These competences mark are exclusive, shared or supporting competences, whilst linking it to specific policy areas and identifying the consequences for coordination between EU and Member States. This 'catalogue of competences' has been spelled out 'for the first time ever' in the Lisbon Treaty.[104] Table 2.1 provides an overview of EU competences. As is shown, many of the sustainable development-related policy areas fall under the notion of 'shared competence' (e.g. environment, energy, social policy and development cooperation), but there are likewise some that are included in the lists of supporting competences or exclusive competences. Besides these Treaty provisions, there are also specific Treaty chapters, provisions and legal principles that should be used. The Court's case law and internal market regulation outline the broader notion of legal competences.

Main type Competence	Article in Treaty	Examples policy areas
Exclusive competence	Article 3 TFEU	Monetary policy (Eurozone), fisheries, commercial policy, competition rules internal market,
Shared competence	Article 4 TFEU	Internal market, social policy, cohesion policy, agriculture, environment, consumer protection, transport, energy, Freedom, Security, Justice,
Supporting competence	Article 6 TFEU	Industry, culture, civil protection, tourism, education, youth, sport, civil protection, administrative cooperation
Other types of competence		
Parallel competences (specific type	Article 4(3) & 4(4) TFEU	Research, technological development, space, development cooperation, humanitarian aid

[103] Jørgensen, K. E. and Wessel, R. A. (2011) 'The position of the European Union in (other) international organizations: confronting legal and political approaches'. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. (Cheltenham: Edward Elgar), p. 286.

[104] Govaere, I. (2015) '"Setting the international scene": EU external competence and procedures post-Lisbon revisited in the light of ECJ Opinion 1/13'. *Common Market Law Review*, Vol. 52, No. 5, p. 1278. Cf The European Convention (2002), Final Report of Working Group V "Complementary Competencies", CONV 275/1/02 REV 1, 4 November 2002, for an overview of the reasons why a catalogue of competences was needed according to the negotiators of the Convention. An example of this reasoning can be found at p. 2: "To meet the requirements of transparency and clarity a future Treaty should contain a short, crisp and easily understood delimitation of the competence granted to the Union in each sphere of action".

shared)		
CFSP-type of competence	Article 24 TEU	Common Foreign and Security Policy (no competence Court of Justice of the EU to give judgment).
Coordination EU	Article 5 TFEU	Employment, social policies, economic policies

Table 2. 1 Typology of competences in EU Treaties[105]

This chapter reviews the existing literature theorising EU and Member State coordination is theorised and links it with the legal perspectives on EU legal competences. While this dissertation applauds the wide diversity of theoretical approaches on EU and Member State coordination, it cannot but highlight the paucity of a more pragmatic connection with the legal competences as outlined above. Relatively few empirical studies directly address the mixed EU competences in work on sustainable development.[106] Empirical studies that are built on a systematic analysis of the effect of competences on EU and Member State coordination are even rarer and the operationalisation is unconvincing. For example, Da Conceição-Heldt and Meunier chose to use the formal rules of decision-making to operationalise the concept of internal cohesiveness, however implying that internal cohesiveness is highest in the case of 'exclusive competences' and 'medium' in the case of shared competences, without questioning this line of reasoning.[107] The real effect of competences on EU and Member State coordination is therefore not operationalised yet. To fill this gap, this chapter comes to a theoretical framework in which the interaction between the legal competences and variables from the 'grand theories' can be tested in the case studies on sustainable development policies.

The chapter is structured as follows. Section 2.2 highlights the different theories and concepts on EU and Member State coordination and their (often scant) attention for the use of legal competences. After starting with some general remarks on the literature on coordination and socialisation in the EU (2.2.1) and then the traditional neofunctionalism-intergovernmentalism dichotomy (2.2.2) the section continues with social constructivism (2.2.3) and institutionalist approaches (2.2.4). Thereafter, the concepts of actorness, effectiveness and cohesiveness, as used in empirical (sustainability) studies are covered in 2.2.5. In section 2.3 the legal perspective on competences is outlined with specific attention for the Treaty, legal principles and the Court's case law. Subsequently, section 2.4 builds on the earlier section by proposing a theoretical framework and operationalisation of the theories and concepts to analyse and assess the interactions between these issues (2.4.1-2.4.3). This section likewise raises some of the limitations of this integrative approach (2.4.4).

2.2 Theories on EU and Member State cooperation (and legal competences)

Many political theories and concepts deal with the sharing of powers and relationships between the EU institutional actors and the Member State actors. These theories often fail to fully consider the legal competences and ponder other variables to have more and

[105] The table only summarises the competences as prescribed in the Treaties (Art. 2-6 TFEU) and does not include e.g.exclusive Member State competences such as direct taxation.
[106] Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan) uses EU competence in the theoretical framework.
[107] da Conceição-Heldt, E. and Meunier, S. (2014) 'Speaking with a single voice: internal cohesiveness and external effectiveness of the EU in global governance'. *Journal of European Public Policy*, Vol. 21, No. 7, p. 969.

independent effect on EU and Member State coordination. This dissertation has chosen to operationalise these grand theories of neofunctionalism, intergovernmentalism, social constructivism and institutionalism and concepts such as actorness, cohesiveness and effectiveness into functional but basic 'intervening variables' in the case studies. This section extracts some of the main elements of these theories and concepts without aiming to provide a full overview.[108] As demonstrated later n the paper, the legal competences derived from the Treaties often only indirectly play a role and the theories seem 'inadequate to account for the differential impact of Europe on the Member States'.[109] Part of the literature could be nuanced or qualified based on insights derived from this dissertation.

2.2.1 Coordination and socialisation in the EU (general)

There has been significant amounts of literature written on coordination in the EU, although this is often not linked with the legal division of competences, but instead focused on multi-actor networks and multi-level governance. The seminal work of Jordan and Schout (2006)[110] can be seen as a child of its time when coordination capacities, networks and governance of the EU were in the limelight of the academic discussions following the 'European Governance' White Paper of the European Commission (2001)[111]. Networked governance,link between the literature on ''multi-level governance'[112] and the 'open method of co-ordination'[113] werea major driver of academic discussions on EU coordination in the late 1990s and 2000s. This academic debate shifted the attention from the interdependence between the European Commission and the Member States to the coordination capacities, networks and multiple actors.[114] It also included a focus on the more 'softer' measures of coordination.

The concept of coordination in the EU is 'ill-defined' and 'essentially contested', but it essentially comes down to the idea 'to bring different parts together to create an interrelated whole'.[115] Although inclusion of the legally binding Treaty provisions is seen as 'hugely important' in the literature because it 'completes the legal codification' of concepts like sustainable development, these works fail to include references to the division of competences and its effects on EU-Member State coordination.[116] Notwithstanding the positive connotation and definition of the concept, coordination is often identified as a problem. European Commission in particular seems from the outset disproportionately negatively evaluated in terms of coordination capacities, although this is not always backed

[108] Please see many of the quoted references for a more extensive overview of the specific theories and concepts.
[109] Börzel, T. (2003) 'How the European Union interacts with its member states'. Institut für Höhere Studien (IHS), Wien (Ed.) URN: http:// nbn-resolving.de/urn:nbn:de:0168-ssoar-246018, p. 3.
[110] Jordan, A. and Schout, A. (2006) *The coordination of the European Union: exploring the capacities of networked governance* (Oxford University Press).
[111] European Commission (2001) 'European Governance: a White Paper', COM(2001) 428 final, Brussels, 25.7.2001.
[112] Hooghe, L. and Marks, G. (2001) *Multi-level governance and European integration* (Rowman & Littlefield).
[113] Borrás, S., & Jacobsson, K. (2004). 'The open method of co-ordination and new governance patterns in the EU'. *Journal of European Public Policy,* vol. 11. No. 2, pp. 185-208.
[114] Although Radaelli (2003: 11) acknowledges that "a Constitutional article may help in demarcating the territory of the OMC. It should (then..) respect the flexible and experimental nature of the relation between open coordination and legislative competence". Cf Radaelli, C. M. (2003) *The Open Method of Coordination: A new governance architecture for the European Union?* (Swedish Institute for European Policy Studies).
[115] Jordan, A. and Schout, A. (2006) The coordination of the European Union: exploring the capacities of networked governance (Oxford University Press), p. 40.
[116] Jordan, A. and Schout, A. (2006) The coordination of the European Union: exploring the capacities of networked governance (Oxford University Press), p. 69, specifically on 'Environmental Policy Integration' (EPI).

by strong empirical evidence.[117] Definitions that are more neutral choose to apply the concept in a way to refer only very loosely to 'meetings'.[118]

There is also a strand of the 'coordination' literature that is more positive on EU coordination. This is then often referred to as 'socialisation' instead of 'coordination' where the domestic actors are 'Europeanized'.[119] Preferences of Member State and EU actors, instead of being fixed, can converge over time through social interaction processes.[120] In that way Member States' representatives involved in deciding on or negotiating an EU position adapt a European orientation attributed to the 'socialisation' in EU practices. [121] With regard to sustainable development policies, literature on climate change negotiations takes this 'socialisation' as a given, as a phenomenon affecting EU and Member State coordination in UNFCCC settings.[122] However, as has been stated earlier, the socialisation is more a 'result' of specific coordination processes rather than a variable affecting coordination. In that sense, socialisation will not be operationalised as an intervening variable in this research, but more as a process that could be part of the dependent variable in this dissertation whenever it is visible. As in the related coordination literature there is minimal attention for legal competences, often replaced by a focus on 'social' norms that would drive the coordination between EU and Member State actors.

2.2.2 Dichotomy neofunctionalism – intergovernmentalism

The tensions between the supranational and intergovernmental characteristics are visible in the two most prominent political theories on EU and Member State cooperation. According to the *neofunctionalist* theory, EU institutions acquire more powers over time within and even across (spillover) policy areas, leading to more supranational policy-making.[123] Conversely, according to the theory of *intergovernmentalism,* the progress in European integration follows the convergence of important domestic groups and governments in European Member States. [124] The two competing paradigms leave ample room for groups of scholars who reject this 'zero-sum' game conception of the coordination between EU and Member State actors.[125] The approach to see whether one of the two is 'dominant' is e.g. visible in the

[117] Ibid, p. 209 where the section on EU coordination capacities starts with the sentence 'The Commission has a poor reputation for internal and external management' without mentioning any further reference.
[118] Cf Kissack, R. (2007) 'European Union Member State coordination in the United Nations system: towards a methodology for analysis'. European Foreign Policy Unit Working Paper 2007, Vol. 1, p. 3 states: Coordination is the meeting of diplomats and officials from the governments of the European Union Member States (most likely with staff from the Council Secretariat and/or Commission present but this is not essential) in any location (national capitals, Brussels, New York or Geneva) with the purpose of discussing an issue on a UN agenda.
[119] Cf 2.2.3 social constructivism and sociological institutionalism.
[120] Groenleer, M. L. and Van Schaik, L. G. (2007) 'United We Stand? The European Union's International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol'. *JCMS: Journal of Common Market Studies*, Vol. 45, No. 5, p. 975.
[121] Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan), p. 75.
[122] E.g. Groenleer, M. L. and Van Schaik, L. G. (2007) 'United We Stand? The European Union's International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol'. *JCMS: Journal of Common Market Studies,* Vol. 45, No. 5, pp. 969-998, although this study was conducted before the entry into force of the Lisbon Treaty.
[123] Haas, E. B. (1958) *The uniting of Europe: Political, social, and economic forces, 1950-1957 (No. 42).* (Stanford University Press). Lindberg, L.N. (1963) *The Political Dynamics of European Economic Integration*, (Stanford: Stanford University Press).
[124] Moravcsik, A. (1998) *The choice for Europe: social purpose and state power from Messina to Maastricht* (Ithaca, NY: Cornell University Press), chapter 1. Cf Taylor, P. (1982) 'Intergovernmentalism in the European Communities in the 1970s: Patterns and Perspectives'. *International Organization*, Vol. 36, No. 4, pp. 741-766.
[125] Börzel, T. (2003) 'How the European Union interacts with its member states'. Institut für Höhere Studien (IHS), Wien (Ed.) URN: http:// nbn-resolving.de/urn:nbn:de:0168-ssoar-246018, p. 3.

literature on EU-Member State implementation in which non-implementation of directives is framed as either 'inability of states to comply' or 'state reluctance to conform'.[126]

Indeed, already the adapted theory of liberal *intergovernmentalism* provides for a 'two-stage' process of preference formation and intergovernmental bargaining in which the first stage is more a domestic process wherestate executives are influenced by the preferences from society interest groups. In the second stage the state executive, who negotiates on the differences in an international (EU) arena, aggregates these preferences.[127]

This dissertation adheres to the conclusion as held earlier by a.o. Billiet (2009: 435) and Pollack (1997) who state that it is neither the strictly intergovernmental, nor the strictly supranational position that holds the truth, and that instead the autonomy of the Commission varies over time and from one function to another, depending on the mix of 'control mechanisms'.[128] However, as this study shows later, this does not mean that the institutionalist principal-agent model fully covers the legal competence lacunae in the supranationalism and intergovernmentalism literature.

2.2.3 Social constructivism and sociological (neo-)institutionalism

The theory of social constructivism and the development of common norms is an equally popular theory, although the International Relations literature 'finds it hard to focus on the relationship as key unit of analysis'[129]. Originated in the broader category of international relations constructivism as a heterogeneous category, it sees international relations as dominated by cultural and ideological forces but mostly social interaction by actors.[130] In EU-Member State relations, it is especially common to use 'social' constructivism. Groenleer and Van Schaik (2007) for example find with regard to negotiations on climate change that Member State representatives appear to have been 'socialised' by the interaction during the frequent meetings taking place in Brussels and the EU coordination meetings of international conferences.[131]In comparison to some other theories the interesting contribution of these 'social' theories is that actors are not only viewed as rational/instrumental but psychological and even bound by group processes[132] and the logic of 'social' appropriateness.[133] These social norms, however, are mostly unrelated to the legal competences while these competences appear to influence the cooperation, especially in a situation of mixed or shared competences. In that sense the theories which combine sociological and institutional aspects by arguing that the institutions in Europe have a socialising role could align better

[126] Mbaye, H. A. (2001) 'Why national states comply with supranational law: Explaining implementation infringements in the European Union, 1972-1993'. *European Union Politics*, Vol. 2, No. 3, p. 259.
[127] Moravcsik, A. (1993) 'Preferences and power in the European Community: a liberal intergovernmentalist approach'. *JCMS: Journal of Common Market Studies*, Vol. 31, No.4, pp. 473-524. Cf Caporaso, J. (1998) 'Regional integration theory: understanding our past and anticipating our future'. *Journal of European Public Policy*, Vol. *5*, No.1, p.9.
[128] Billiet, S. (2009) 'Principal–agent analysis and the study of the EU: What about the EC's external relations?'. *Comparative European Politics*, Vol. *7*, No. 4, p. 439. Cf Pollack, M. A. (1997) 'Delegation, agency, and agenda setting in the European Community'. *International Organization,* Vol. 51, No. 1, pp. 99-134.
[129] Kamphof, R. and Melissen, J. (2018) 'SDGs, Foreign Ministries and the Art of Partnering with the Private Sector', *Global Policy (online, early view)* https://doi.org/10.1111/1758-5899.12563.
[130] Ruggie, J. G. (1998) 'What makes the world hang together? Neo-utilitarianism and the social constructivist challenge'. *International Organization*, Vol. 52, No. 4, pp. 855-885.
[131] Groenleer, M. L. and Van Schaik, L. G. (2007) 'United We Stand? The European Union's International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol'. *JCMS: Journal of Common Market Studies*, Vol. 45, No. 5, pp. 969-998.
[132] Hix, S. and Høyland, B. (2011) *The political system of the European Union* (Palgrave Macmillan).
[133] March, J. G. and Olsen, J. P. (2004) *The logic of appropriateness. Oxford Handbook of Political Science* online, accessed http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199604456.001.0001/oxfordhb-9780199604456-e-024?print=pdf at August 15, 2017.

with the concept of legal competences than the 'pure' social constructivists.[134] Nevertheless, these theories seem still of the opinion that the domestic actors are in the end 'socialised' into European norms and rules of appropriateness.[135]

2.2.4 Institutionalism

The attention given to institutions and institutionalisation in theory-building on international relations has increased at such pace that one could speak of a 'institutionalist turn' in IR, as states are not only viewed as 'units with largely static preferences', but the origin, evaluation and variation in state preferences is also explored.[136] Institutionalism is a common way of reflecting on European integration and takes many forms. A more historical analysis of European integration is offered by historical institutionalists.[137] This kind of historical institutional analysis sees reform in the EU as 'incremental' rather than the result of 'fundamental transformations'.[138] In the theory of 'rational institutionalism', the EU is viewed as a constraint on the behaviour of (Member State) actors with given identities and preferences. In this way, the EU is largely a 'political opportunity structure', which offers some actors political (and legal) resources to exert influence, while, it constrains the ability of others to pursue the goals.[139] Primarily, this is concretised in a 'principal-agent' relationship in which a group of principals (Member States) delegates power to the supranational agent (the European Commission).[140] Traditionally, principal-agent theory accentuates the control behaviour and mechanisms.[141] The 'sociological institutionalism' is explicated above.

The institutionalists could form a bridge between legal and political studies. The notion that 'institutions matter' is fundamental to this approach, as it is in many legal approaches.[142] An interesting example is offered by the institutionalist explanation of EU external powers, which is built upon the idea that the "modes and effects of external governance are shaped by internal EU modes of governance". [143] This resonates with the legal perspective (see section 2.3) in which EU external relations law is largely the result of the division of competences *within* the EU. However, institutionalists also tend to see legal competences as 'control mechanisms' and 'constraints' and the theory can be regarded as state-centric. In contrast, legal competences may 'enable' Member State *and* EU actors. Despite this shortcoming, institutionalists can be seen as innovative because of the methods they use and the way they

[134] Checkel, J. T. (2005) 'International institutions and socialization in Europe: Introduction and framework'. *International Organization*, Vol. 59, No. 4, pp. 801-826. See also the other contributions in this special issue.
[135] Checkel, J. T. (1999) 'Social construction and integration'. *Journal of European Public Policy*, Vol. *6*, No.4, pp. 545-560.
[136] Fioretos, O. (2011) 'Historical institutionalism in international relations'. *International Organization*, Vol. *65*, No. 2, p. 384.
[137] Pierson, P. (1996) 'The path to European integration: a historical institutionalist analysis'. *Comparative Political Studies*, Vol. 29, No. 2, pp. 123-163. Cf Meunier, S., and McNamara, K. R. (2007) *Making history: European integration and institutional change at fifty (Vol. 8)* (Oxford University Press).
[138] Fioretos, O. (2011) 'Historical institutionalism in international relations'. *International Organization*, Vol. *65*, No. 2, p. 369.
[139] Börzel, T. and Risse, T. (2000) 'When Europe hits home: Europeanization and domestic change'. *European Integration online Papers (EIoP),* Vol. 4, No. 15, p. 8.
[140] Pollack, M. A. (2001) 'International relations theory and European integration'. *JCMS: Journal of Common Market Studies*, Vol. *39*, No. 2, pp. 228-231.
[141] Delreux, T. (2009) 'Cooperation and Control in the European Union The Case of the European Union as International Environmental Negotiator'. *Cooperation and Conflict,* Vol. 44, No. 2, p. 191.
[142] Jørgensen, K. E. and Wessel, R. A. (2011) 'The position of the European Union in (other) international organizations: confronting legal and political approaches'. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. (Cheltenham: Edward Elgar), p. 275.
[143] Lavenex, S., and Schimmelfennig, F. (2009) 'EU rules beyond EU borders: theorizing external governance in European politics'. *Journal of European Public Policy*, Vol. 16, No. 6, pp. 791-812.

apply them (liberally).[144] As a result, institutionalism could indeed prove to be one of the 'nodal points' where legal and political approaches come together.[145]

2.2.5 EU external concepts: actorness, cohesiveness and effectiveness

Alongside the theoretical approaches, there are more and more *concepts* that concretise (and operationalise) the cooperation between EU and Member State actors. In the analysis of EU and Member State cooperation, particularly when in relation to the multilateral context, the following concepts are used abundantly: actorness, cohesiveness and effectiveness. As previously stated, these concepts are mostly operationalised by observing the EU and Member States as a unitary 'actor' in relation to (other) nation states.

The 'actorness' concept originates from Sjöstedt's 1977 actor capability study, which analyses the European Community's ability to function 'actively and deliberately in relation to other actors in the international system'.[146] This early conceptualisation already covered the capacity for 'autonomous' action, although in relation to external actors. Moreover, it focused on 'state-like' characteristics. Other authors thus point to a 'capability-expectations gap', meaning that the EC could deliver less than it promised due to a lack of capability.[147] When applying this concept to the cooperation between EU and Member State actors, some say that increasing supranationalism leads to 'more actorness' while more intergovernmentalism leads to less actorness.[148] Jupille and Caporaso identify four dimensions of actorness: authority, autonomy, external recognition and internal cohesiveness.[149] Interestingly, authority refers to the extent of delegated competences from the Member States to the EU, which 'can take many different shapes and varies greatly by policy area'.[150] The delegation of authority can be formal, resulting from Treaty articles, or it can be informal, resulting from practice. This way of examining authority operating 'beyond competences' is echoed in further studies. Vanhoonacker and Pomorska argue that important sources of authority are 'not only the legal competences of an actor but also the expertise in a particular issue'.[151]

The concept of internal/external 'cohesiveness' is sometimes a sub-notion of actor capacity, but can also be an autonomous concept. The concept of cohesiveness is related to the

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[144] Maher, I., Billiet, S., and Hodson, D. (2009) 'The principal-agent approach to EU studies: Apply liberally but handle with care'. *Comparative European Politics*, Vol. 7, No. 4, pp. 409-413. Cf Fioretos, O. (2011) 'Historical institutionalism in international relations'. *International Organization*, Vol. *65*, No. 2, p. 371.

[145] Kamphof, R., and Wessel, R.A. (2018) 'Analysing shared competences in EU external action: the case for a politico-legal framework'. *Europe and the World: A law review*, Vol. 2, No. 2, pp. 38-64. DOI: https://doi.org/10.14324/111.444.ewlj.2018.02.

[146] Sjöstedt, G. (1977) *The external role of the European Community* (Famborough, Saxon House).

[147] Hill, C. (1993) 'The capability-expectations gap, or conceptualizing Europe's international role'. *JCMS: Journal of Common Market Studies,*Vol. 31, No. 3, pp. 305-328.

[148] Groenleer, M. L. and Van Schaik, L. G. (2007) 'United We Stand? The European Union's International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol'. *JCMS: Journal of Common Market Studies*, Vol. 45, No. 5, p. 969.

[149] Jupille, J. and Caporaso, J.A. (1998) 'States, Agency and Rules: The European Union in Global Environment Politics' in Rhodes, C. (ed.) *The European Union in the World Community* (Lynne Rienner), pp. 213-230. Vogler and Bretherton (2006) see the EU's ability to act on the world stage to depend on the notions of presence, opportunity and capability (internal context of EU action). Vogler, J. and Bretherton, C. (2006) 'The European Union as a protagonist to the United States on climate change'. *International Studies Perspectives*, Vol. 7, No. 1, pp. 1-22. However, these broad concepts are 'rather vague' and operationalisation is difficult according to da Conceição-Heldt, E. and Meunier, S. (2014) 'Speaking with a single voice: internal cohesiveness and external effectiveness of the EU in global governance'. *Journal of European Public Policy*, Vol. 21, No. 7, p. 964.

[150] da Conceição-Heldt, E. and Meunier, S. (2014) 'Speaking with a single voice: internal cohesiveness and external effectiveness of the EU in global governance'. *Journal of European Public Policy*, Vol. 21, No. 7, pp. 961-979 and Jupille, J. and Caporaso, J.A. (1998) 'States, Agency and Rules: The European Union in Global Environment Politics' in Rhodes, C. (ed.) *The European Union in the World Community* (Lynne Rienner), pp. 213-230.

[151] Vanhoonacker, S. and Pomorska, K. (2013) 'The European External Action Service and agenda-setting in European foreign policy'. *Journal of European Public Policy*, Vol. *20*, No. 9, p. 1319.

infamous debate on the 'single voice' of the EU and Member States, but goes further by requiring authority of such voice, external recognition and autonomy from Member States.[152] The operationalisation of this concept is sometimes driven by formal competences. However, these competences are then often taken at face value and define by themselves the cohesiveness of the EU and Member States. A more thorough analysis of legal competences and its effects on cohesiveness is rarely conducted.[153]

There is growing literature on effectiveness where the EU is seen as a collective actor. The concept of effectiveness has traditionally been equated to the achievement of certain goals. This effectiveness literature traditionally focuses on either purely EU-led (such as trade) or Member State-led (such as CFSP) international processes. [154] Recent contributions focus more closely on mixed competence policy areas such as climate action. Moreover, the effectiveness literature is including input and process taken along instead of 'only' paralleling effectiveness with outcomes. Oberthür and Groen (2015) have made a strong recent contribution by proposing an assessment framework of effectiveness.[155]

The three concepts are still not fixed in their definition and operationalisation, as systematic research on the representation behaviour of EU Member States at the United Nations since the Lisbon Treaty 'is still developing'.[156] The concepts are therefore often mixed. As an example, the concept of effectiveness traditionally presumes a positive and direct correlation between the degree of internal cohesiveness and EU's external effectiveness.[157] These 'causal links' have however recently been questioned, with the text of the Lisbon Treaty used to support this line of critique.[158] In that sense, the inclusion of the political effects of competences and legal competences as operationalisation could help to bring these concepts to fruition. Oberthür and Groen (2015) for instance, already see scope for further investigation into their effectiveness 'assessment framework' by including additional internal factors including 'mixity of competences and coordination arrangements under the Lisbon Treaty'.[159] This dissertation could contribute to qualify and nuance the rich literature on EU

[152] Macaj, G. and Nicolaïdis, K. (2014) 'Beyond 'one voice'? Global Europe's engagement with its own diversity'. *Journal of European Public Policy*, Vol. *21*, No.7, p. 1069.
[153] Cf da Conceição-Heldt, E. and Meunier, S. (2014) 'Speaking with a single voice: internal cohesiveness and external effectiveness of the EU in global governance'. *Journal of European Public Policy*, Vol. 21, No. 7, p. 969.
[154] Dür, A. and Zimmermann, H. (2007) 'Introduction: The EU in international trade negotiations'. *JCMS: Journal of Common Market Studies,*Vol. *45*, No.4, pp. 771-787. Meunier, S. (2005) *Trading voices: the European Union in international commercial negotiations* (Princeton University Press). Young, A. R. (2011) 'The rise (and fall?) of the EU's performance in the multilateral trading system'. *Journal of European Integration*, Vol. *33*, No. 6, pp. 715-729. Smith, K. E. (2013) *European Union foreign policy in a changing world* (2nd Edition, Polity Press).
[155] Oberthür, S. and Groen, L. (2015) 'The Effectiveness Dimension of the EU's Performance in International Institutions: Toward a More Comprehensive Assessment Framework'. *JCMS: Journal of Common Market Studies,* Vol. 53, No. 6, pp. 1319-1335. See also Kleistra, Y. and van Willigen, N. (2014). 'Evaluating the Impact of EU Diplomacy: Pitfalls and Challenges.' In Koops, J.A. and Macaj, G. (eds) *The European Union as a Diplomatic Actor* (Basingstoke: Palgrave Macmillan), p. 52 for the suggestion of a necessary change in evaluating EU diplomacy from (formal) input and process to (formal/informal) outcome and (informal) impact.
[156] Jin, X., and Hosli, M. O. (2013) 'Pre-and Post-Lisbon: European Union Voting in the United Nations General Assembly'. *West European Politics*, Vol. 36, No. 6, p. 1288. Cf Hosli, M.O., Van Kampen, E., Meijerink, F. and Tennis, K. (2010) 'Voting Cohesion in the United Nations General Assembly: The Case of the European Union'. Porto. Portugal. Accessed 9 October 2017 via the following website: http://www.jhubc.it/ecpr-porto/virtualpaperroom/082.pdf.
[157] Laatikainen, K. and Smith, K. (eds) (2006) *The European Union at the United Nations: Intersecting Multilateralisms* (Basingstoke: Palgrave). Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan).
[158] Thomas, D. C. (2012) 'Still punching below its weight? Coherence and effectiveness in European Union foreign policy'. *JCMS: Journal of Common Market Studies*, Vol. *50*, No.3, pp. 457-474. Niemann, A. and Bretherton, C. (2013) 'EU external policy at the crossroads: the challenge of actorness and effectiveness'. *International Relations*, Vol. 27, No. 3, pp. 261-275. Delreux, T. (2014) 'EU actorness, cohesiveness and effectiveness in environmental affairs'. *Journal of European Public Policy*, Vol. *21*, No. 7, pp. 1017-1032.
[159] Oberthür, S. and Groen, L. (2015) 'The Effectiveness Dimension of the EU's Performance in International Institutions: Toward a More Comprehensive Assessment Framework'. *JCMS: Journal of Common Market Studies,* Vol. 53, No. 6, p. 1319.

and Member State coordination by focusing on the independent and interacting effect of legal competences.

2.3 Legal perspective on legal competences and EU - Member State cooperation

The above analysis already demonstrates that 'the' political theoretical perspective does not exist. A legal perspective is in that sense more concentrated on some specific sources. For legal scholars, it is clear that the sources of power come originally (and primarily) from the Treaty provisions, the case law of the Court of Justice (both internally) and (when externally) the Statute of the international organisation. As a general principle, EU actors only have the competences conferred upon them by the Treaties.[160] However, the provisions in the Treaty are sometimes unclear and leaving the Court of Justice with the job of clarification under one important condition: whenever asked for its opinion or judgment by the institutions or Member States. Moreover, the external multilateral context does occasionally make it more difficult for EU actors, especially for the European Commission, to play a significant role because the Statute of the international organisation sometimes fails to allow a regional integration organisation such as the EU to become a full member. This section focuses briefly on these three sources of legal competences and points to the relevant literature on EU and Member State cooperation and the effects of these sources.

2.3.1 Treaty provisions

The Treaties on the European Union (TEU) and on the Functioning of the European Union (TFEU) are the 'alpha and omega' from a legal perspective: they started the process of European integration and define its limits in terms of legal competences.[161] As the result of an 'ever closer union'[162] the EU and Member States nowadays divide competences on 'nearly every issue of political life'[163] summarised in the catalogue of competences (Art 2-6 TFEU). The legal principle of the conferral of powers (Art 5 TEU) entails that the Union can only act once a competence has been created. In parallel, one should keep in mind the principles of proportionality and subsidiarity. These principles mean that the Union shall act only in so far as 'the objectives of the proposed action cannot be sufficiently achieved by the Member State (..) but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level' (Art 5(3) TEU) for all policy areas besides exclusive EU competences.[164].

Overall, however, the EU and Member States need each other in cooperation and this is legally prescribed by the principle of sincere cooperation (Art 4(3) TEU): the Union and Member States shall 'in full mutual respect, assist each other in carrying out tasks which flow

[160] Craig, P. and De Búrca, G. (2011) *EU law: text, cases, and materials* (Oxford University Press), p. 73.
[161] Jørgensen, K. E. and Wessel, R. A. (2011) 'The position of the European Union in (other) international organizations: confronting legal and political approaches'. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. (Cheltenham: Edward Elgar), p. 264.
[162] Article 1 TEU.
[163] Pollack, M. A. (2000) 'The end of creeping competence? EU policy-making since Maastricht'. *JCMS: Journal of Common Market Studies*, Vol. 38, No. 3, pp. 519-538.
[164] Art 5(3) TEU.

from the Treaties'.[165] This principle interestingly continues with the following sentences thereby leaving out the role of EU actors:

> *"The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives."*

The Lisbon Treaty has strengthened the EU's actorness by confirming its separate legal status according to Art 47 TEU. Therefore, from a legal perspective the EU is a different entity than a collection of 28 Member States. Several Treaty articles provide a solid basis for the Union to establish a formal, substantive presence at international organisations.[166] Since the Lisbon Treaty this physical presence is often taken care of by 'Union Delegations in third countries and at international organisations (that) shall represent the Union" instead of earlier Commission Delegations or diplomats from the Member State holding the rotating Presidency.[167]

While the EU internal division of competences is quite straightforward, some parts of the Treaties have however been rather difficult to decode in the sense of delimitation of competences. The EU's external competences in particular suffer from this shortcoming. Legal scholars have marked the external relations arrangement of the Lisbon Treaty as 'rather unsatisfactorily'[168], 'fuzzy'[169] or even a 'failure'[170]. The case law of the Court of Justice can thus be viewed as another source of competence (and power).

2.3.2 Case law Court of Justice and general principles

The final adjudicator of the use of competences in the EU is the Court of Justice of the European Union. As previously stated it is important that the Court is 'asked' for their legal opinion. There are most notably three ways in which the Court is asked to reflect on coordination between EU and Member State actors: in preliminary rulings, infringement proceedings and annulment actions. In *preliminary rulings* the Court is asked to interpret and ensure whether EU law is properly applied by national courts.[171] *Infringement proceedings* are mostly taken against national governments that fail to comply with EU law. Only the European Commission or another EU Member State can start them.[172] With *annulment actions* the Court can be asked to annul EU acts that are believed to violate the EU treaties or fundamental rights on grounds like 'lack of competence', 'infringement of the Treaties' or

[165] Art 4(3) TEU continues with the following sentences: "The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives."
[166] Articles 220 and 221 TFEU. Articles 3(5) and 21(1) TEU.
[167] But see the EEAS document Council of the European Union (2012) 'EU Diplomatic Representation in third countries – First half of 2012', Doc. 18975/1/11, REV 1, 11 January 2012 which reveals that in some countries the EU is still represented by a Member State.
[168] Van Vooren, B. and Wessel, R. A. (2014) *EU external relations law: text, cases and materials* (Cambridge: Cambridge University Press), p. 110.
[169] Hillion, C. and Wessel, R. A. (2009) 'Competence Distribution in EU External Relations after ECOWAS: Clarification or Continued Fuzziness?'. *Common Market Law Review*, Vol. 46, No. 2, p. 586.
[170] Klamert, M. (2011) 'New conferral or old confusion? The perils of making implied competences explicit and the example of the external competence for environmental policy'. CLEER Working Paper, No. 6, p. 3.
[171] Art 267 TFEU.
[172] Art 258-260 TFEU.

'misuse of powers'.[173] The questions for annulment can come from EU Member States or EU institutions such as the Council, the European Commission and (in some cases) the European Parliament. An institution can also be brought to Court for the 'failure to act' contrary to the Treaties.[174]

The Court is often perceived as 'helpful' in the participation of EU actors at international institutions as a means to exercise (internal) competences. [175] Some even state that the Court 'accelerates' the process of the EU actorness at e.g. international institutions.[176] The Court uses the logic of the Treaty but comes up with its own principles when interpreting the law. As an example, on more than one occasion the Court has referred to the 'principle of sincere cooperation' to underline how Member States were no longer completely free to engage in international activities as they see fit even *before* that principle was codified in the Treaty. [177] The Court of Justice seems to consider this principle as very important, not only in terms of the final results, but also in relation to the conduct of international negotiations.[178] Moreover, it has been suggested that this principle manifests itself more as a strict duty to 'refrain from acting' for Member State actors.[179]

An even stronger principle stemming from the Court's case law, and which could affect the conduct of sustainable development policies, is the principle of implied powers. This 'ERTA effect' means that EU external competences exist because there are internal rules. These internal rules, such as regulations and directives, form the basis for the external competences for EU actors.[180] As a result, Member States and EU actors need to cooperate when entering international agreements or international negotiations by themselves, as some elements of such negotiations may fall within the competences of the Union. These implied powers find their sources both in the general competences, as prescribed by the Treaty, as well as in (secondary) legislation. It would then appear that the Dutch Foreign Service is right in expressing the opinion that the EU external competence framework is a dynamic process rather than a static one.[181] The combined reading of this principle and that of sincere cooperation creates some (practical) difficulties and the 'fluidity' of competences results in a

[173] Art 263-264 TFEU.
[174] Art 266 TFEU.
[175] Wouters, J., Odermatt, J. and Ramopoulos, T. (2013) 'The EU in the World of International Organizations: Diplomatic Aspirations, Legal Hurdles and Political Realities. Legal Hurdles and Political Realities.' Leuven Centre for Global Governance Studies Working Paper, No. 121, p. 4. And see cases Opinion 1/76 *Draft Agreement establishing a European laying-up fund for inland waterway vessels [*1977], ECR 741, para 5 *& opinion 1/94 Agreement establishing the World Trade Organization [1994]* ECR I-5267.
[176] Hoffmeister, F. (2007) 'Outsider or frontrunner? Recent developments under international and European law on the status of the European Union in international organizations and treaty bodies'. *Common Market Law Review*, Vol. 44, No. 1, p. 68.
[177] See Van Vooren, B. and Wessel, R. A. (2014) *EU external relations law: text, cases and materials* (Cambridge: Cambridge University Press), chapter 6. Particularly illustrative is Case C-246/07, Commission v. Sweden (PFOS) [2010] ECR 3317. See also Cremona, M. (2011). 'Case C-246/07, *Commission v. Sweden (PFOS)*, Judgment of the Court of Justice (Grand Chamber) of 20 April 2010'. *Common Market Law Review*, Vol. 48, No. 5, pp. 1639-1665.
[178] Case C-246/07, Commission v. Sweden (PFOS) [2010] ECR 3317. Cf Cremona, M. (2011). 'Case C-246/07, *Commission v. Sweden (PFOS)*, Judgment of the Court of Justice (Grand Chamber) of 20 April 2010'. *Common Market Law Review*, Vol. 48, No. 5, pp. 1639-1665.
[179] Casteleiro, A. D. and Larik, J. (2011) 'The Duty to Remain Silent: Limitless Loyalty in EU External Relations?'. *European Law Review,* Vol. *36*, p. 522.
[180] See Case 22/70, Commission v. Council, [1971] ECR 263 (ERTA) and more extensively Van Vooren, B. and Wessel, R. A. (2014) *EU external relations law: text, cases and materials* (Cambridge: Cambridge University Press), p. 105.
[181] Original text: "de bevoegdheidsverdeling op het terrein van de externe betrekkingen is niet statisch, maar dynamisch". See < http://www.minbuza.nl/ecer/dossiers/externe-betrekkingen/exclusieve-en-gedeelde-externe-bevoegdheden-van-de-eu.html> . Accessed 3 April 2016.

field of 'ingenious legal arguments' and extensive case law, especially on EU external relations.[182]

2.3.3 Statutes from (other) international organisations

The Court of Justice has been keen on preventing other international courts and tribunals from affecting its autonomy on the interpretation and application of EU law.[183] The EU now possesses its own legal personality[184] and the Treaty requires consistency and coherence in the EU's external relations[185]. Despite this, the different legal roles of the EU in international organisations have legal effects with possible consequences on cooperation. The EU is, for example, a full member of the World Trade Organisation and many fisheries organisations, which coincidentally or not corresponds to its exclusive competences on these policy areas.[186] In the case of shared competences, the picture is more blurred. The EU is for instance a full member of the Food and Agriculture Organization (FAO), but it is not a member of the International Maritime Organization (IMO).

The EU's position at the United Nations should receive some specific attention. While the EU actively engages with numerous UN specialised agencies and aims for 'effective multilateralism',[187] it is not a full member of the UN. In order for the EU to achieve full membership, an amendment of one of the key articles of the UN Charter (art 4(1)) would be required. However, this is not on the UN (state-led) political agenda. After a first failed attempt in 2010, the Union received an extended status of participation in the General Assembly from 2011.[188] Nevertheless, this 'membership saga' at the United Nations General Assembly makes it clear that the EU and Member States are not only dependent on their own cooperation agreements, but also (and crucially) on the recognition of other states and international organisations. This means that the role of EU actors, alongside Member State actors, depends on the policy area (and internal competences), as well as its position within international organisations.

2.4 A 'politico-legal' theoretical framework in practice

2.4.1 Confronting legal and political perspectives

The above analysis demonstrates that both legal and political theoretical perspectives on cooperation of EU and Member State actors contain helpful insights. Nevertheless, these insights are rarely challenged or pooled together.[189] There is of course a 'bridging'

[182] Vogler, J. (1999). The European Union 1 as an actor in international environmental politics. Environmental Politics, 8(3), p. 30. For an overview of these cases cf Van Vooren, B. and Wessel, R. A. (2014) *EU external relations law: text, cases and materials* (Cambridge: Cambridge University Press).
[183] Cremona, M., Thies A. and Wessel, R.A. (2017) *The European Union and International Dispute Settlement* (Oxford: Hart Publishing).
[184] Art 47 TEU.
[185] Art 21(3) TEU.
[186] See Wessel, R. A. (2011) 'The legal framework for the participation of the European Union in international institutions'. *Journal of European Integration*, Vol. *33*, No. 6, pp. 621-635.
[187] Cf Council of the European Union (2003), 'A Secure Europe in a Better World – European Security Strategy', 12 December 2003. Interestingly, effective multilateralism does not feature in the EU Global Strategy 2016, Cf European External Action Service (2016) 'Shared Vision, Common Action: A Stronger Europe, A Global Strategy for the European Union's Foreign And Security Policy', June 2016, accessed http://www.eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf.
[188] Sixty-fifth session, Agenda item 120, Strengthening of the United Nations system, Resolution A/65/276.
[189] Delreux, T. (2006) 'The European Union in international environmental negotiations: a legal perspective on the internal decision-making process'. *International Environmental Agreements: Politics, Law and Economic*s, Vol. 6, No. 3, pp. 231-248. Jørgensen, K. E. and Wessel, R. A. (2011) 'The position of the European Union in (other) international organizations:

community working on e.g. the 'political role' of the Court[190] or legal approaches such as critical legal theory and constitutionalism linking back to concerns in political science and sociology[191]. However, in general, legal scholars do have a tendency to focus on 'formal' Treaty provisions and case law while the political theories are tested empirically, mostly in an 'informal' context. Certain scholars claim that the formal rules play an 'inferior role' in actor capability[192] and that the 'legal division of labour is seldom strictly followed in practice'[193].Others state that legal scholarship is 'fatally flawed' because the influences of non-legal factors are not seriously explored.[194] The difference in focus becomes clear when examining the attention for the Court of Justice of the EU. As the final adjudicator of the use of competences, the Court is the central institution for legal scholars while it is often overlooked by political scientists.

At the same time, the literature review on theoretical and conceptual debates (concerning for instance the role of institutions, actorness, cohesiveness and effectiveness) reveals that there are some underlying invisible links between these approaches.[195] In analyses of actorness and cohesiveness, the division of competences is sometimes included as an empirical factor. This inclusion was proposed in an assessment framework on effectiveness and these competence empiric studies could become one of innovative method institutionalism is famous for. The notion according to which 'institutions matter' is fundamental to the approach in both (institutionalist) political theory and legal approaches. Moreover, from a legal perspective, the 'in-between' category of shared competences in particular is often disregarded while factual legal answers fall short of what happens in practice. As the sustainable development policies mostly fall in these (mixed) shared competence categories, it is problematic that the debate is now often concentrated on academic silos. Because they both consider specific factors, it is imperative that the disciplines are bridged and not merged.[196]

2.4.2 Legal competences: political analysis and operationalisation

Political science has been influential in its empirical quest to know 'which explanatory factors matter most (and which not at all)'.[197] It is in that sense that a 'political' analysis of legal competences could deliver significant empirical results. The current study contributes to the accumulation of interpreting the legal, political and policy implications of the EU treaties. This

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confronting legal and political approaches'. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. (Cheltenham: Edward Elgar), pp. 261-286.

[190] There are of course notable examples of political analysis that do focus on the Court of Justice. Cf Burley, A. M. and Mattli, W. (1993) 'Europe before the Court: a political theory of legal integration'. *International Organization*, Vol. 47, No. 1, pp 41-76. Alter, K. J. (1998) 'Who are the "masters of the treaty"? European governments and the European Court of Justice'. *International Organization*, Vol. 52, No.1, pp. 121-147. Stone Sweet, A. (2010) 'The European Court of Justice and the Judicialization of EU Governance'. *Living Reviews in EU Governance*, Available at SSRN: https://ssrn.com/abstract=1583345. and Wasserfallen, F. (2010) 'The judiciary as legislator? How the European Court of Justice shapes policy-making in the European Union?'. *Journal of European Public Policy*, Vol. 17, No. 8, pp. 1128-1146.

[191] Della Porta, D. and Keating, M. (2008) *Approaches and methodologies in the social sciences: A pluralist perspective* (Cambridge University Press), p. 36.

[192] Gehring, T., Oberthür, S. and Mühleck, M. (2013) 'European Union Actorness in International Institutions: Why the EU is Recognized as an Actor in Some International Institutions, but Not in Others'. *JCMS: Journal of Common Market Studies,* Vol. 51, No. 5, pp. 849-865.

[193] Delreux, T. (2009) 'Cooperation and Control in the European Union The Case of the European Union as International Environmental Negotiator'. *Cooperation and Conflict,* Vol. 44, No. 2, p. 190.

[194] Alter, K. J., Dehousse, R. and Vanberg, G. (2002) 'Law, Political Science and EU Legal Studies: An Interdisciplinary Project?'. *European Union Politics*, Vol. 3, No. 1, p. 114.

[195] Cf Kamphof, R., and Wessel, R.A. (2018) 'Analysing shared competences in EU external action: the case for a politico-legal framework'. *Europe and the World: A law review*, Vol. 2, No. 2, pp. 38-64. DOI: https://doi.org/10.14324/111.444.ewlj.2018.02.

[196] Alter, K. J., Dehousse, R. and Vanberg, G. (2002) 'Law, Political Science and EU Legal Studies: An Interdisciplinary Project?'. *European Union Politics*, Vol. 3, No. 1, p. 120.

[197] Ibid, p. 116.

is done by means of a step-by-step empirical test of the effect of 'legal competences on the formulation, negotiation and implementation of sustainable development policies and essentially on the EU and Member State *cooperation* in the conduct of these policies. In this sense, and following, among others, Jin (2014), this dissertation 'steers the discussions surrounding the Treaty of Lisbon away from theoretical and legal perspectives to real-world-evidence'.[198]

For the operationalisation of the concept of 'legal competences' this dissertation adopts a broad approach. In every case study, this study examines the following legal sources: the catalogue of competences set down in art 2-6 TFEU,and the legal basis in other parts of the Treaties. In addition to the 'fixed' competences in the Treaty, this study also considers the Court of Justice case law, regulations and directives. To complete the picture, this dissertation finally evaluates the status of the EU in international organisations as a legally defined power; this evaluation is based on the statute of the specific international institution.[199] This analysis in fact bridges with political approaches by using semi-structured interviews to focus on the (perceived) effect of legal competences in practice. Part of this empirical quest is to answer questions such as why is the logic of the Treaty not being used or for instance why is the Court not (asked to be) involved. Therefore, other (intervening) variables may play a role.

2.4.3 Interactions with intervening variables: an operationalisation

This dissertation focuses on the effect of legal competences on political practice. Therefore, the effects that work the other way around, i.e. political effects on legal decisions, are not part of this analysis, even though the allocation of competences could indeed be the result of a 'specific constitutional and political bargain'.[200] Nevertheless, this dissertation also assesses the effects of other variables operationalised from political theories to examine their effect on formulation, negotiation and implementation of sustainable development policies, as well as to explore their interactions with legal competences in practice.

The following 'variables' derive from theoretical debates within the discipline: supranational versus intergovernmental dominance, the EU's position in the international constellation of power and preference heterogeneity (see Table 2.2). The 'variable' socialization is deliberately chosen as part of the dependent 'coordination' variable, rather than as a separate 'intervening' variable. The variable 'supranational versus intergovernmental dominance' stems from the main debate in the literature on European integration between neofunctionalism and intergovernmentalism. This concept is operationalised in the specific case studies on the direction of policies, in order to see whether there are 'institutional turf battles' between EU actors and Member State actors. Is it more EU- or Member State focused? The variable 'EU's position in the international constellation of power' is heavily influenced by conceptual debates on EU's external relations and by the concepts actorness, cohesiveness and effectiveness. While these concepts certainly have an internal dimension,

[198] Jin. X. (2014) *European Union representation at the United Nations: towards more coherence after the Treaty of Lisbon*, PhD Thesis, Leiden University, accessed https://openaccess.leidenuniv.nl/handle/1887/22977. Cf Hosli, M.O., Van Kampen, E., Meijerink, F. and Tennis, K. (2010) 'Voting Cohesion in the United Nations General Assembly: The Case of the European Union'. Porto. Portugal. Accessed 9 October 2017 via the following website: http://www.jhubc.it/ecpr-porto/virtualpaperroom/082.pdf.

[199] Jørgensen, K. E. and Wessel, R. A. (2011) 'The position of the European Union in (other) international organizations: confronting legal and political approaches'. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. (Cheltenham: Edward Elgar), pp. 261-286.

[200] Hix, S. and Høyland, B. (2011) *The political system of the European Union* (Palgrave Macmillan), p. 19.

the latter is mostly covered by the other variables, as well as by legal competences. This variable is therefore operationalised through in-case variables such as CO2 emissions in the climate change case study and the amount of biofuels in the alternative fuels case study. Thus, both the external political context and the external 'legal' context are covered(see 2.4.2).

As is clear from the theories of social constructivism and sociological institutionalism preferences of Member State and EU actors are not fixed, and can converge over time through social interaction processes.[201] Member States' representatives involved in deciding or negotiating an EU position thus adopt a European orientation, due to the 'socialisation' in EU practices. [202] This concept is part of the operationalisation of the dependent variable 'coordination' by means of questions on the frequency of contacts as well as the question whether EU and Member State officials feel being part of a 'team' or a shared context. Preference heterogeneity means that there are no aligning interests. Whether there is substantive convergence or divergence, i.e. preference homogeneity or heterogeneity is the way in which this concept is operationalised. This variable is used to account for a 'rational' institutionalist perspective. Moreover, even though there is no specific 'historical institutionalist' variable, this perspective is still operationalised through a historical institutional overview of all the case studies, which indeed also coincide with the overview of legal competences. These three 'variables' will be analysed in thier interaction with legal competences within the case studies and, above all, in the synthesis (chapter 7).

Theory	Operationalisation in intervening variable
Neofunctionalism	Supranational versus intergovernmental dominance
Intergovernmentalism	Supranational versus intergovernmental dominance
Social constructivism and sociological institutionalism	Socialisation (part of coordination/dependent variable. No autonomous intervening variable)
Institutionalism	Preference heterogeneity
Concepts	
Actorness, cohesiveness, effectiveness	EU's position in the international constellation of power

Table 2. 2 Operationalisation of intervening variables

2.4.4 Limitations of this integrative approach

While this approach certainly brings some new empirical insights on the political effect of legal competences, there are of course other sources of authority, such as expertise or the link with other policy dossiers, which are not covered in detail in this combination. [203] More importantly, there are some methodological limitations to this integrative approach which

[201] Groenleer, M. L. and Van Schaik, L. G. (2007) 'United We Stand? The European Union's International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol'. *JCMS: Journal of Common Market Studies*, Vol. 45, No. 5, p. 975.
[202] Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan), p. 75.
[203] Vanhoonacker, S. and Pomorska, K. (2013) 'The European External Action Service and agenda-setting in European foreign policy'. *Journal of European Public Policy*, Vol. *20*, No. 9, p. 1322.

need to be addressed. First, the methodologies used in political and legal approaches may well be complementary, but they are also difficult to combine and weighed against each other in practice. Empirical evidence, backed by secondary literature and document analysis[204] is combined with a focus on legal texts and case law of the Court of Justice. The combination of these methods has great potential, but prioritising the information is a challenge that cannot be covered in this exploratory exercise.

Secondly, while aiming for an integrative approach, this examination does only cover parts of the scholarship of both disciplines. Legal approaches, despite their variety, share a focus on interpretation of Treaties and case law. Political theoretical approaches are however more diverse. It is therefore necessary to select specific theories and concepts and in its operationalisation choices are made to make these theories and concepts more detailed to allow for a workable construction.

Thirdly, by focusing on 'competences', one should be aware that this question might be 'fundamentally also one of national constitutional norms'.[205] As a result, some Member State actors, entities, or even specific *fonctionnaires* in EU institutions might lean more on the division of competences purely because of their national background.[206] For example, for federal states like Germany, Austria or Belgium, a clear-cut division of competences is part of their national constitution, while the more unitary United Kingdom does not even have a single constitutional document. Moreover, and logically, people with a legal background might respond differently to the importance of legal competences in interviews than persons without a legal background.

Fourthly, another methodological challenge is related to the fact that the work of the preferred study objects in the empirical part of this study (EU and Member State diplomats and officials) is surrounded with 'secrecy' and anonymity. [207] Therefore, it becomes necessary to hear different sides, to keep the interviews confidential and to combine multiple sources. At least in relation to using multiple sources, one could without a doubt say that such an integrative approach provides for triangulation of the findings. The next part of this dissertation focuses more in detail on the research design.

SUMMARY CHAPTER 2

This chapter reviewed the wide diversity of theoretical approaches and empirical concepts on EU and Member State coordination, both internally as well in a multilateral context. It found that there is only scant and often indirect attention paid to the division of legal competences in empirical studies. When there is empirical notion, the operationalisation is often uncritical or incomplete. This is problematic, especially when analysing sustainable development policies, as these policies are often about (mixed) shared competences and both empirical and legal sources could assist in painting a fuller picture. Therefore, this dissertation chooses a 'politico-legal' theoretical framework in which the division of competences is broadly operationalised to include Treaty provisions, the Court's case law, principles and secondary legislation. The political effect of this 'variable' on the coordination (and socialisation) of

[204] Ibid, p. 1329.
[205] Weiler, J. H. (2002) 'A constitution for Europe? Some hard choices'. *JCMS: Journal of Common Market Studies*, Vol. 40, No. 4, pp. 563-580.
[206] For an overview of the effect of national background on EU officials cf Hooghe, L. (2012) 'Images of Europe: How Commission officials conceive their institution's role'. *JCMS: Journal of Common Market Studies,* Vol. 50, No. 1, pp 87–111 and Bes, B. J. (2016) 'Europe's executive in stormy weather: How does politicization affect commission officials' attitudes?' *Comparative European Politics*, Vol. 15, No. 4, pp. 533-556.
[207] Duquet, S. and Wouters, J. (2015) 'Diplomacy, Secrecy and the Law'. Leuven Working Paper no 151.

sustainable development policies is tested alongside three variables operationalised from the theoretical approaches and empirical concepts: the supranational versus intergovernmental dominance, the EU's position in the international constellation of power and preference heterogeneity. Thus, the dissertation tests the political effects of the division of competences as well as the interaction with the other foremost explanations from the literature.

Chapter 3: Research Design

> *"A case study is more than a type of qualitative research. It is a ticket that allows us to enter a research field in which we discover the unknown within well-known borders while continually monitoring our own performance" (Starman, 2013: p. 42)*[208].

The dissertation assesses the influence of legal competences on EU and Member State actors and coordination, specifically for 'sustainable development' policies. This assessment is conducted by means of employing legal as well as qualitative methods in comparative case studies. This section discusses the research strategy adopted for the investigations addressing the 'puzzle' of the effect of the legal competences on EU and Member State coordination in formulation, negotiation, implementation of sustainable development policies. The research design chapter is structured as follows. Section 3.1 presents the design itself, the methodological considerations, limitations and the way in which the findings can be generalised. Section 3.2 then outlines the methods of data collection as conducted for the case studies. To ensure reliability and comparability of the findings in these case studies the method of 'process tracing' is used. There are general questions that are asked in each case to guide and standardise the data collection. This makes comparison and accumulation of the findings possible. Section 3.3 presents the process of tracing routine that will be applied throughout all the case studies.

3.1 Research design, methodological considerations and limitations

This research comprises of comparative case study research on the EU's sustainable development policies using a process tracing approach in a politico-legal fashion. The legal competences are operationalised in such a manner that they encompass specific Treaty provisions, the Court's case law, the external (UN) legal context as well as secondary legislation. This explorative study is conducted with the aim of examining the interaction with the political 'conditions', operationalised as intervening variables.[209]

Based on the variables, broad sustainable development case studies are picked in which different empirical findings and settings are combined. In that respect, it makes sense to focus on cases in which negotiations are *extensive* and relate to different elements of competences and legal competences. As the purpose of this study is mainly to illustrate the usefulness of an empirical politico-legal analysis of EU and Member State coordination in sustainable development policies in a theory-generating context, the cases are selected from areas of empirical expertise.[210] These empirical findings should nevertheless be based on multiple sources of information, which are brought together through triangulation.

3.1.1 A comparative case study design and case-selection

The research question as formulated in chapter 1 will be assessed by means of a comparative case study design incorporating three different cases. The main purpose of the case studies is to 'illuminate the political mechanisms' of legal competences by looking

[208] Starman, A. B. (2013) 'The case study as a type of qualitative research'. *Journal of Contemporary Educational Studies/Sodobna Pedagogika*, Vol. 64, No. 1, p. 42.
[209] See chapter 2 for a more extensive explanation of the operationalisation.
[210] Oberthür, S. and Groen, L. (2015) 'The Effectiveness Dimension of the EU's Performance in International Institutions: Toward a More Comprehensive Assessment Framework'. *JCMS: Journal of Common Market Studies,* Vol. 53, No. 6, p. 1320.

beyond the formal Treaties and case law, and by triangulating the findings.[211] This dissertation makes use of three case studies that are studied as if they were one.[212] These case studies can be viewed as 'parallel' studies as the cases/policies are all still ongoing and have been studied concurrently.[213] The individual case studies are compared to the other cases in the synthesis (see chapter 7).

The key term 'case study' has been used ambiguously referring to a whole set of heterogeneous research designs and with a 'definitional morass' of confusing definitions.[214] While debate exists regarding a precise definition of a case study, this dissertation follows the definition of Simons (2009: 21) who states that a case study is "an in-depth exploration from multiple perspectives of the complexity and uniqueness of a particular (..) policy (..) in a 'real life' context".[215] By using this definition, case studies can be based on multiple methods and 'analytical eclecticism' thereby merging different views and findings.[216]

The efficacy of case studies may be 'more powerful' in the domain of discovery 'in which these same different bits of evidence must be fully integrated to create an exploratory account with internal validity'.[217] As such, case studies help in theory development.[218] As the relationship between legal competences and EU and Member State action on sustainable development is heavily under-theorised, the case studies serve the objective of theory development.

There are several advantages of case studies, in comparison with quantitative methods for example. Firstly, case studies are useful for 'serving the heuristic purpose of inductively identifying additional variables and new hypotheses'.[219] By placing legal competences at the centre case study design offer the possibility to analyse complex events and take into account (and centralise) specific variables. Secondly, concepts such as 'coordination' are difficult to measure and are in need of a detailed consideration of contextual factors, which is difficult in a quantitative context.[220] Thirdly, case studies can accommodate complex (causal) relations.[221] The relation between legal competences, 'political' intervening variables and coordination of policies can definitely qualify for such a complex relationship. Moreover, case studies are better 'connected to everyday life' and do therefore include the awareness that

[211] Toshkov, D. D. (2009) *Between politics and administration: Compliance with EU law in Central and Eastern Europe*. PhD Thesis Department of Public Administration, Faculty of Social and Behavioural Sciences, Leiden University.
[212] Starman, A. B. (2013) 'The case study as a type of qualitative research'. *Journal of Contemporary Educational Studies/Sodobna Pedagogika*, Vol. 64, No. 1, p. 33.
[213] As compared to e.g. sequential studies that happen consecutively. Cf Starman, A. B. (2013) 'The case study as a type of qualitative research'. *Journal of Contemporary Educational Studies/Sodobna Pedagogika*, Vol. 64, No. 1, p. 34.
[214] Gerring, J. (2004) 'What is a case study and what is it good for?'. *American Political Science Review*, Vol. 98, No. 2, pp. 341-342.
[215] Simons, H. (2009) *Case study research in practice* (SAGE publications), p. 21.
[216] Starman, A. B. (2013) 'The case study as a type of qualitative research'. *Journal of Contemporary Educational Studies/Sodobna Pedagogika*, Vol. 64, No. 1, p. 32.
[217] Morgan, M. S. (2012) 'Case studies: One observation or many? Justification or discovery?'. *Philosophy of Science*, Vol. *79*, No. 5, p. 671.
[218] George, A. L. and Bennett, A. (2005) *Case studies and theory development in the social sciences* (Cambridge, Massachusetts: MIT Press). Cf Eisenhardt, K. M. (1989) 'Building theories from case study research'. *Academy of Management Review*, Vol. 14, No. 4, pp. 532-550.
[219] Starman, A. B. (2013) 'The case study as a type of qualitative research'. *Journal of Contemporary Educational Studies/Sodobna Pedagogika*, Vol. 64, No. 1, p. 37.
[220] George, A. L. and Bennett, A. (2005) *Case studies and theory development in the social sciences* (Cambridge, Massachusetts: MIT Press), p. 19. Cf Starman, A. B. (2013) 'The case study as a type of qualitative research'. *Journal of Contemporary Educational Studies/Sodobna Pedagogika*, Vol. 64, No. 1, p. 36.
[221] George, A. L. and Bennett, A. (2005) *Case studies and theory development in the social sciences* (Cambridge, Massachusetts: MIT Press), p. 22. Cf Starman, A. B. (2013) 'The case study as a type of qualitative research'. *Journal of Contemporary Educational Studies/Sodobna Pedagogika*, Vol. 64, No. 1, p. 37.

human behaviour is not essentially driven by a theory or rules.[222] Due to importance of this human behaviour in coordination, taking into account new variables including legal competences could qualify or nuance some of the more dogmatic theories on EU and Member State coordination (of sustainable development policies).

The three cases are selected to achieve a maximum of variance along relevant dimensions, referred to as a 'diverse case method' understood to be exploratory (hypothesis seeking) with a minimum of two cases required.[223] As has been stated by King et al. (1994) a case-selection strategy on the basis of an *intentional* selection on the dependent variable presents problems.[224] This dissertation sees its central aim to explore how legal competences independently affect Member State and EU actors in EU sustainable development policies in different places of the policy cycle and both in internal and external EU dimensions. Accordingly, these differences cannot qualify as real 'selection on the dependent variable' as the dependent variable is the coordination process on sustainable development policies. Negotiation, implementation and formulation are no more than different *stages* in the policy process. As such, individual cases are selected in such a way that the analysis has the 'most diverse information' that the author is able to collect on the effect of the independent and intervening variables on the coordination by EU and Member State actors.[225]

The research design differs substantially from other attempts that analyse EU external action on sustainable development issues and the few that take into account the catalogue of competences. First, others such as Van Schaik (2013) use the categories of exclusive, shared and complementary competences as 'ideal types' of competence in defining the selection of their case studies.[226] However, as this dissertation is primarily focused on the broad effect of legal competences and interaction with intervening variables it does not make sense to focus on these categories only. As previously indicated cases do almost necessarily 'not fall neatly within these ideal types since international agendas often combine topics where the competence division varies'.[227] Therefore, the dissertation choses to combine the legal competences with intervening political variables.

Secondly, the cases include both 'internal' and 'external' dimensions of the policy areas as well as the presence of absence of an international treaty-based forum. Thirdly, the case studies in this dissertation have a different location in the policy cycle, by focusing on negotiation (UNFCCC), implementation (SDGs) and policy formulation (transport and alternative fuels).

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[222] Cf Starman, A. B. (2013) 'The case study as a type of qualitative research'. *Journal of Contemporary Educational Studies/Sodobna Pedagogika*, Vol. 64, No. 1, p. 38.
[223] Seawright, J. and Gerring, J. (2008) 'Case selection techniques in case study research: A menu of qualitative and quantitative options'. *Political Research Quarterly*, Vol. 61, No. 2, p. 300.
[224] King, G., Keohane, R. O. and Verba, S. (1994) *Designing social inquiry: Scientific inference in qualitative research* (Princeton University Press). Cf George, A. L. and Bennett, A. (2005) *Case studies and theory development in the social sciences* (Cambridge, Massachusetts: MIT Press), pp. 43-45.
[225] Starman, A. B. (2013) 'The case study as a type of qualitative research'. *Journal of Contemporary Educational Studies/Sodobna Pedagogika*, Vol. 64, No. 1, p. 35.
[226] Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan), pp. 16-34. Cf Eeckhout, P. (2004) *External relations of the European Union: legal and constitutional foundations* (Oxford University Press), for outlining 'ideal types' of competences.
[227] *Ibid,* p. 23.

3.1.2 Limitations and considerations case study design

There are some limitations of the 'broad' approach of analysing policy formulation, negotiation and implementation in a comparative case study design. One of the most obvious limitations is that it is difficult,or even almost impossible, to make general conclusions on the basis of individual cases. Therefore, one should be cautious. Nevertheless, case studies are useful for a 'falsification' test of earlier (political) theories that could possibly be refuted (or qualified) in sustainable development policies.[228] The case studies cannot be repeated as each case is then already different. This problem is mitigated by using a step-by-step approach and by sharing the data and findings.[229] Nevertheless, these case studies are conducted with specific background knowledge and by a specific approach of interviewing, which makes replication and repetition difficult.

Another limitation of this broad and diverse case study design might be the selection of cases. While the cases are large and complex there is a focus established by dealing only with certain aspects of the case and by selecting the cases on certain aspects of the independent variables.[230] As previously stated, the cases examine essentially different parts of the policy making chain and compare these outcomes. Furthermore, the cases are different in their internal and/or external dimension. While it might be more difficult to generalise the findings (see below 3.1.3) this approach takes a broad view on the coordination process of EU and Member State actors in sustainable development policies.

A more problematic limitation of this selection approach might be that the cases are selected on the basis of the legal aspects of the independent variables instead of e.g. intervening political-theoretical variables. Nevertheless, these selection criteria are more 'objective' than subjective identifications whether EU and Member State actors are, for instance, more or less socialised or whether there is a greater intergovernmental or supranational reflex in the coordination process. Therefore, while the selection criteria on the basis of legal aspects could indeed be considered as a limitation, alternative approaches might be even more problematic and subjective.

Taking into account the internal and external dimension of EU sustainable development policies in one dissertation also has limitations, especially from a legal perspective. As has been held earlier (see chapter 2) the internal division of competences is much more demarcated in the Treaties than the external competences. Therefore, it appears that the internal and external dimensions of EU sustainable development policies differ too much in their legal competences to generalise the findings. While this argument makes sense, external legal competences could be identified by means of consideration of the Court's case law. [231] This limitation is one of the reasons why the dissertation prefers to speak of 'legal competences' instead of the narrower Treaty-based competences to take into account both crucial dimensions of EU sustainable development policies.

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[228] Flyvbjerg, B. (2006) 'Five misunderstandings about case-study research'. *Qualitative Inquiry*, Vol. *12,* No. 2, pp. 227-228. Cf for the original falsification approach Popper, K. (1959) *The logic of scientific discovery* (New York: Basic Books).

[229] While taking into account the anonymity of the interviewees.

[230] George, A. L. and Bennett, A. (2005) *Case studies and theory development in the social sciences* (Cambridge, Massachusetts: MIT Press), p. 67. Cf Groen L. (2016) *The Importance of Fitting Activities to Context: The EU in Multilateral Climate and Biodiversity Negotiations*. PhD Thesis, Vrije Universiteit Brussel, p. 83.

[231] Wouters, J., Odermatt, J. and Ramopoulos, T. (2013) 'The EU in the World of International Organizations: Diplomatic Aspirations, Legal Hurdles and Political Realities. Legal Hurdles and Political Realities.' Leuven Centre for Global Governance Studies Working Paper, No. 121, p. 4.

3.1.3 How to generalise the findings?

As previously mentioned, some methodological scholars criticise case studies for poor generalisability of findings.[232] Some even state that when there is any reason to doubt whether the case stands for a whole population, the 'utility of the case study is brought severely into question'.[233] The same has been said about process tracing which 'supplies a narrative account of the cases without providing a clear basis for generalising beyond them'.[234] It was also held that case studies account for 'methodologically unreflective' research.[235]

The methodological caveats, however, should not stand in the way of theory development or theory building.[236] As Lakatos (1970) argued, science is a project that entails formulating theories and examining them in the light of empirical observations.[237] These findings may be of greater or lesser generality. The overarching idea of this thesis is to select cases from different contexts (policy context, international-EU context, different historical circumstances) and different places within the policy chain, and analyse them by means of the same operationalisation, in order to achieve a large degree of theoretical relevance.[238] These case studies can thus be appraised as 'quasi experiments' that can lead to valid analytical generalisations.[239] The methodological process tracing approach adopted in this study follows a step-by-step approach and is perhaps more realistic by not having the ambition to prove exact causality. With a congruence analysis a 'broad set of empirical observations is compared to different sets of expectations that are derived from distinct comprehensive theories', according to Blatter, Haverland and Van Hulst (2016: 5-6).[240]

Having the methodological limitations and case study considerations in mind, there will be some scope to generalise the research findings. The findings should be characterised as 'plausibility probes', providing avenues for future research. These plausibility probes need in fact to be further tested in other cases to become more robust.[241] The reflection on commonalities and differences between the cases included in the synthesis chapter of this dissertation is therefore of utmost importance.[242] The case-specific situation will be taken into account in this comparative analysis.[243] Moreover, besides the chosen legal and political variables, the semi-structured interviews leave open space 'other explanations'. These

[232] Toshkov, D. D. (2009) *Between politics and administration: Compliance with EU law in Central and Eastern Europe*. PhD Thesis Department of Public Administration, Faculty of Social and Behavioural Sciences, Leiden University. Yin, R. (1998), 'The Abridged Version of Case Study Research: Design and Method', in: L. Bickman and D.J. Rog (eds.) *Handbook of Applied Social Research Methods* (Thousand Oaks: Sage Publications), pp. 229-260.
[233] Seawright, J. and Gerring, J. (2008) 'Case selection techniques in case study research: A menu of qualitative and quantitative options'. *Political Research Quarterly*, Vol. 61, No. 2, pp. 306-307.
[234] Hall, P. A. (2013) 'Tracing the progress of process tracing'. *European Political Science*, Vol. 12, No. 1, p. 22.
[235] Blatter, J. and Haverland, M. (2014) 'Case Studies and (Causal-) Process Tracing'. In Engeli, I and Rothmayr, C. (eds) *Comparative Policy Studies. Conceptual and Methodological Challenges* (Basingstoke: Palgrave Macmillan), p. 64.
[236] Beach, D. and Pedersen, R. B. (2013) *Process-tracing Methods: Foundations and Guidelines* (University of Michigan Press), pp. 60-63.
[237] Lakatos, I. (1970) 'Falsification and the Methodology of Scientific Research Programmes', in I. Lakatos and A. Musgrave (eds.) *Criticism and the Growth of Knowledge* (Cambridge: Cambridge University Press) pp. 91–196. Cf Hall, P. A. (2013) 'Tracing the progress of process tracing'. *European Political Science*, Vol. 12, No. 1, pp. 20-30.
[238] Vukovic, S. (2012) *Analysis of multiparty mediation processes*. Doctoral dissertation, Universiteit Leiden, p. 78.
[239] Cf Van Schaik, L..G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan), p. 34.
[240] Blatter, J., Haverland, M., and van Hulst, M. (2016). *Qualitative research in political science* (Sage Publications), pp. 5-6.
[241] George, A. L. and Bennett, A. (2005) *Case studies and theory development in the social sciences* (Cambridge, Massachusetts: MIT Press).
[242] See chapter 7.
[243] George, A. L. and Bennett, A. (2005) *Case studies and theory development in the social sciences* (Cambridge, Massachusetts: MIT Press).

explanations can be case-specific and incidental, and need additional further testing as they were not originally foreseen.

3.2 Data collection

This dissertation makes use of multiple, corresponding methods in its investigation of how legal competences affect EU and Member State coordination in sustainable development policies. The combination of approaches helps to better *explore* all the different aspects of the research question. Mixed-method approaches are particularly suitable in cases when little is known about the topic of investigation, as in the case of the effect of mixed competences, because the different methods allow one to gain multiple complementary perspectives. The (legal and qualitative/empirical) parts of the case studies address different portions of the empirical puzzle, as they operating on different levels of abstraction. The absence of statistical analysis in this dissertation may be seen as a limitation. However, being this a theory-*developing* study, it is argued that it paves the way for statistical analysis that can reveal (more) causal relationships, by generating hypotheses for example.[244] The next paragraphs elaborate further on the methods used in the analysis.

The step-by-step legal analysis includes EU Treaties, the Court's case law, the EU's position in the multilateral legal context and (internal) regulations and directives. Furthermore, literature review considers both academic literature and official policy documents. The aim is to make a comparison with the findings of other political and/or legal (case-) studies on the topic. The literature review and even more the semi-structured interviews serve the exploratory purpose of the case studies, while also complementing the legal basis of the analysis by indicating the practical effect of legal competences and by addressing informal mechanisms. As far as the timeframe is concerned, the case studies take the entry into force of the Lisbon Treaty (December 2009) as their starting point and finish in July 2017. The UN Agenda 2030 was only adopted in September 2015 and implementation started from that date. The negotiation process is therefore also described from 2012, to provide more clarity.[245] The interviews took place primarily in Brussels and The Hague from January 2014 to July 2017. Some of the interviews were conducted via phone or Skype, as can be seen in the annex.

The qualitative part of this study heavily relies on forty-seven semi-structured interviews with EU and Member State officials, (former) ministers, Members of the (European/national) Parliament, private sector representatives, Civil Society Organisations as well as academic experts. As the potential 'political' consequences of the division of competences are relatively unexplored, the interviews provide a first step to explore potential causal mechanisms. Not only do the interviews help to identify empirical patterns, but they also provide an input for theorizing this relationship. The in-depth semi-structured interviews are not only used to develop the theory on the effect of legal competences, but also to test alternative paths, as indicated by the literature.[246] The in-depth interviews furthermore help to gain insight into the actual negotiation process and implementation. The difficulty with the interviews, especially among negotiators, is the 'secrecy' and anonymity that the most

[244] Lijphart, A. (1971) 'Comparative politics and the comparative method'. *American Political Science Review*, Vol. 65, No. 3, pp. 682-693.
[245] See chapter 6.
[246] See chapter 2.

relevant objects of the study are surrounded with (EU and Member State actors) .[247] Furthermore, in both the internal as well as the external dimension of EU policies, one could argue that these policies are not the exclusive preserve of state-to-state activity. On the contrary, increasingly large numbers of actors, such as civil society, businesses and other international organisations, take part in the negotiation and implementation of these policies.[248]

As can be seen in appendix 1, the interviews have been used for a general overview of the history of shared competences in EU environmental, climate and development policies and for the specific case studies. Some of the interviews qualify for both 'general' and 'case-specific' information. This is indicated in the annex. The interviews are anonymised and the interviewees are categorised as 'EU officials', 'Member State officials' or 'other societal stakeholders'. The category of 'EU official' includes all experts working at the European Commission, European External Action Service, Committee of the Regions and EESC, even if they are seconded by the Member State. The 'Member State officials' work in national capitals at the central government, at the Council of the European Union or at Permanent Representations to the EU in Brussels. In some cases, experts are double counted as 'EU official' and 'Member State official', but only if they have served both functions within the timeframe considered by the study. The category of 'other societal stakeholder' is rather broad and includes private sector representatives, Civil Society Organisations, United Nations officials and Members of European Parliament. MEPs are not counted as 'EU official' because they do not work for the EU as such, but serve as popular representatives. The division of categories per case study is summarised below.

	EU official	Member State official	Other societal stakeholder
Case study alternative fuels	2	3	7
Case study climate change	7	10	3
Case study SDG implementation	8	4	4
General on competences and/or sustainable development	2	4	0
Total	19	21	14

Table 3. 1 Semi-structured interviews per category and case study[249]

The interviews are planned by taking into account a stakeholder analysis, organigrams of the EU institutions and Member States and snowball sampling[250]. Before the 'real' semi-structured interviews took place, there have been some explorative interviews. These

[247] Raube, K. (2008) 'The Construction of the European External Action Service'. RECON Seminar Paper, ARENA: University of Oslo.
[248] Carbone, M. (2008) 'Mission impossible: The European Union and policy coherence for development'. *European integration*, Vol. *30*, No. 3, p. 327.
[249] See annex 1 for more information. There has been some but limited 'double counting' in category as well as the case study. However, these are only clear examples of (former) Ministers having also worked for the European Commission and/or for the double-counted case studies: experts who have worked on both dossiers for a fair amount of time.
[250] For methodological reflections on this approach cf Biernacki, P., & Waldorf, D. (1981) 'Snowball sampling: Problems and techniques of chain referral sampling'. *Sociological Methods & Research*, Vol. *10*, No. 2, pp. 141-163.

explorative but structured interviews have been mostly conducted with academic researchers (not indicated in the interview list), but also with EU and Member State officials or other societal stakeholders. These interviews are indicated in the annex. Some 'general' interviews on the use of competences, especially the ones with former Ministers and EU and Member State officials, were sometimes counted and used for the case studies (see appendix). The interviews have been conducted with 'elite' officials such as lead negotiators and (former) Ministers, lower-level officials and other societal stakeholders.

	Own initiative	Referral
Case study alternative fuels	10	2
Case study climate change	10	8
Case study SDG implementation	8	8
General on competences and/or sustainable development	3	2

Table 3. 2 Semi-structured interviews: own initiative or referral per case study[251]

The annex includes a 'nonresponse' rate indicating that the author has approached some actors, but they either declined the interview or could not be reached, or the author himself could not make it to speak to the actor during the interview stay. This 'nonresponse' rate is often not recorded by scholars, but seeing how many elite interviews were conducted by means of 'snowball sampling' the author finds it necessary to include this cathegory.[252] With regards to the 'snowball sampling' technique, it means that actors can be approached through the referral of someone else. This is not the case for all interviews, as some are just actors approached because of their function in the organigram or at their website. Seventeen out of the forty-seven interviewees were approached due to referral by other interviewees. The rest (thirty) of the interviewees were approached by own initiative, based on the stakeholder analysis and organigrams or websites. The modality of approach with the different actors is recorded in the annex. An overview per case study is also included in Table 3.2. A possible shortcoming of using the snowball technique is to 'become trapped in a network of interlinked respondents who see the world through the same lenses'.[253] This flaw is however overcome by combining the snowball sampling technique with 'own initiative' interview invitations by function, as well as by interviewing EU and Member State actors themselves in combination with other societal actors. The weaknesses of interview data are moreover mitigated by using the interviews in conjunction with other forms of evidence.[254]

The interviews were semi-structured and lasted approximately 45-60 minutes on average. The respondents received the general semi-structured questions at the latest 12 hours before the meeting.[255] The author chose to send the semi-structured questions in advance to prepare the interviewees and to gain the most of their experience. One of the disadvantages of sending the semi-structured interview questions beforehand could be that respondents

[251] See annex 1 for more information.There has been some but limited 'double counting' in category. However, these are only experts who have worked on both dossiers for a fair amount of time.
[252] Martin, C.J. (2013) 'Crafting interview to capture cause and effect' in Mosley, L. (Ed.). (2013). *Interview research in political science* (Cornell University Press), pp. 109-124.
[253] Bleich, E. & Pekkanen, R. (2013) 'How to report interview data' in Mosley, L. (Ed.). (2013) *Interview research in political science* (Cornell University Press), pp. 84-108.
[254] Lynch, J.F. (2013) 'Aligning sampling strategies with analytical goals' in Mosley, L. (Ed.). (2013) *Interview research in political science* (Cornell University Press), pp. 31-44.
[255] Please see appendix II for an overview of the invitations for the interviews (in English and Dutch) and an overview of semi-structured questions as sent to the interviewees for the different parts of the analysis.

study the material too much and come up with (overly) prepared and 'official' answers. However, this risk is pre-empted by interviewing actors with different backgrounds, different roles in the negotiations and different 'stature' (from policy officials to (former) Ministers) about the same process. Interviews have been used for the three case studies and for a general grasp of the historical institutionalisation of competences and/or the history of EU policies on sustainable development and international agreements.

The list of semi-structured interviews (see annex 2) included direct and indirect questions on the most important variables, but also left open some room for background information as well as other explanations beyond the 'politico-legal' variables. The interviews were most often taped and always at least loosely transcribed in around four A4 pages with the most important quotes and answers to the questions. The interviews were coded on the basis of different 'legal competences' (competences, case law, regulations and directives, UN legal context), 'intervening variables' (supranational versus intergovernmental dominance, the EU's position in the international constellation of power, preference heterogeneity) as well as 'other explanations'. The interviews were also useful to understand the practical process of coordination and, especially in the case of UNFCCC negotiations, socialisation. All interviews and codes have been saved with reference to the category (EU official, MS official, other societal stakeholder) and the date of the interview. Where appropriate, reference to these anonymised interviews is made in the footnotes of this dissertation. Given the confidential nature of the information provided in the interviews, as well as the promise to anonymise the findings, the interviews themselves are not included in this dissertation but transcripts have been made available to the supervisors of the study. [256]

Concerning the 'ethical aspects' of interviewing, the majority of the interviews has been recorded (see annex). Only the 'alternative fuels' case study a couple of interviews was been conducted with a research assistant, the rest were done alone. Semi-structured interviews by only one 'interviewer' has the advantage that the interviews, elaboration, transcription and analysis are being done by the same person. However, elite interviews contain the risk of being overwhelmed by both information and stature of the respondents. In addition, the researcher brings subjective elements into the knowledge-gathering process. This is definitely an asset to the research process as the author has been professionally involved in the subject of the study. However, they make specific 'truth claims' or even 'causal claims' almost impossible.[257]

There are a couple of potential limitations and criticisms of this kind of semi-structured interview approach. First, as for every research based on interviews, it must be questioned whether this amount of interviews is sufficient for a substantiated base of findings. As this research is based on triangulation of findings, of which interviews comprise one of the sources, and the interviews themselves are planned after a stakeholder analysis, the amount of interviews is at least moderately sufficient. Secondly, one could criticise the 'snowball sampling' of this approach. This limitation is partly addressed by not taking over all references by interviewees and by starting some new 'chains' by means of organigrams and stakeholder analysis. A third limitation is the inclusion of elite interviews. The academic

[256] Cf Wester, A. M. C. (2016) 'Promise and pitfalls of the responsibility to protect and lessons to be learned from the case of Libya', PhD Thesis, Universiteit van Amsterdam, p. 28 who used a similar kind of anonymised coding approach in her PhD Thesis.
[257] Mosley, L. (Ed.). (2013) *Interview research in political science* (Cornell University Press), p. 10.

debate on this source is still unfinished with some pointing to it as 'critical sources of information about the political processes of interest'[258] others state that 'lower level officials' may be better sources given their day-to-day involvement with these processes[259]. This dissertation argues that the combination of these 'lower' and 'higher' level officials as well as the inclusion of other societal stakeholders helps in triangulating the findings. Nevertheless, especially for elite interviews, the context is quite overwhelming when compared with the other interviews and therefore it might be advisable to do these kind of interviews with two persons to focus on content. Fourthly, the sending of interview topics in advance could be criticised because it could make the answers more 'preconditioned'. A fifth and real limitation of the approach in this dissertation is that not all interviews were recorded due to a number of reasons, such as refusal by some interviewees.

Some scholars have been particularly successful in gaining access to the negotiations, for example on climate change, and have become 'participant-observers'.[260] While this is a particularly attractive source of information, it has in addition negative effects on the individual researchers' ability to zoom out and critically evaluate the conduct of negotiations of (former) colleagues. Moreover, it makes it extremely difficult to replicate research, which is one of the cornerstones of academic research. With that in mind, the author has chosen not to actively participate in negotiations and or visit the large conferences of e.g. the UNFCCC.

3.3 Data analysis

The three cases will be researched in-depth by means of process tracing to identify the intervening causal mechanisms between shared (external) competences and the enabling/restraining influence on EU and Member State actors. Process tracing is used because the character of the relations between these 'variables/conditions' is unclear and the method allows for thorough investigation.[261] Interviews make particularly good evidence for process tracing research.[262] Negative aspects of process tracing include the difficulty of choosing the right amount of empirical and legal material for one case, overestimation of causal mechanisms, and the difficulty of replication of research.[263] To limit these shortcomings this research makes use of a clear simple operationalisation and by being firm but modest in its conclusions, paving the way for future research.

3.3.1 Process tracing: a step-by-step approach

Process tracing is a specific method in which the researcher examines histories, documents, interview transcripts and other material to 'see whether the causal process a theory (..) implies in a case is in fact evident in the values of the intervening variables in that case' as

[258] Tansey, O. (2007) 'Process tracing and elite interviewing: a case for non-probability sampling'. *PS: Political Science & Politics*, Vol. *40*, No. 4, p. 771.
[259] George, A. L. and Bennett, A. (2005) *Case studies and theory development in the social sciences* (Cambridge, Massachusetts: MIT Press), p. 103.
[260] Cf Groen L. (2016) *The Importance of Fitting Activities to Context: The EU in Multilateral Climate and Biodiversity Negotiations.* PhD Thesis, Vrije Universiteit Brussel.
[261] King, G., Keohane, R. O. and Verba, S. (1994) *Designing social inquiry: Scientific inference in qualitative research* (Princeton University Press).
[262] Tansey, O. (2007) 'Process tracing and elite interviewing: a case for non-probability sampling'. *PS: Political Science & Politics*, Vol. *40*, No. 4, pp. 765-772. Cf Mosley, L. (Ed.). (2013) *Interview research in political science* (Cornell University Press).
[263]Vennesson, P. (2008) 'Case studies and process tracing: theories and practices'. In DellaPorta, D., & Keating, M. (Eds.). *Approaches and methodologies in the social sciences: A pluralist perspective* (Cambridge University Press), pp. 236-239.

George and Bennett (2005:6) held.[264] For every case study, a logical step-by-step approach is followed. This includes the following steps and is visualised in Figure 3.1:

1) *Legal inventory*: assembling Treaty provisions, the Court's case law, the external (multilateral) legal context as well as secondary legislation related to the case.

2) Review *and policy documents*, searching EU websites and academic archives based on keywords related to the case.

3) Review (primarily empirical based) academic *literature*

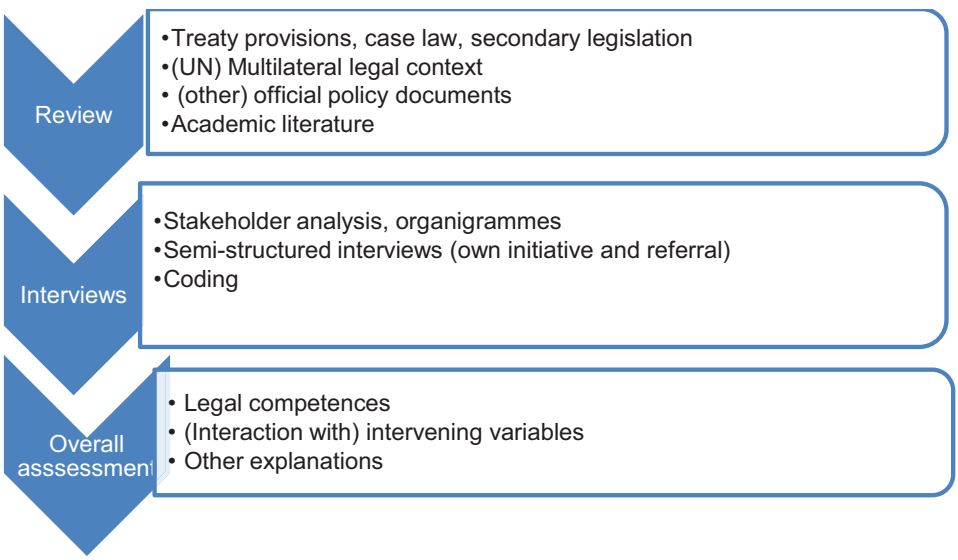
4) A *stakeholder analysis*, listing the stakeholders in a particular policy area/case study. These stakeholders were contacted for semi-structured interviews using organigrams (own initiative) and/or referral (snowball sampling).

5) Conduct and work out *semi-structured interviews* with stakeholders, preferring to record the interview, but as a minimum make a 3-4 page summary of the interview;

6) On the basis of the materials, *identifying how legal competences* affect EU and Member State actors in specific mixed competence policy arrangements;

7) Identifying how intervening variables affect EU and Member State coordination, taking into account the (non-) interaction with legal competences. These intervening variables are 'supranational versus intergovernmental dominance', 'the EU's position in the international constellation of power' and 'preference heterogeneity'. Moreover, this sixth step includes analysis of 'other explanations' that could affect EU and Member State coordination and that has been brought up in the interviews.

8) Overall *assessment potential influence legal competences and interaction with/autonomy from other intervening variables and other explanations for the specific case*.



[264] George, A. L. and Bennett, A. (2005) *Case studies and theory development in the social sciences* (Cambridge, Massachusetts: MIT Press), p. 6.

Figure 3. 1 Process tracing: a step-by-step approach

This broad process tracing approach will be used for all three case studies. Seeing the explorative objective of this dissertation, no weighing in sources is applied. Notwithstanding this impartiality, the most original contribution of this study and value added to the existing literature is the use of semi-structured interviews. Therefore, in the actual description of the cases, synthesis and conclusion these interview findings receive additional attention. The overall assessment is however based on triangulation, e.g. by cross checking interview statements with official documents, which improves the validity and reliability of the findings.[265]

SUMMARY CHAPTER 3

This chapter outlines the comparative case study research design of this dissertation. The case studies are selected on broad general principles that apply to all cases: a 'mixed competence' arrangement with 'shared competence' at the centre and clear EU and Member State coordination processes and outcomes. Furthermore, to account for a broad variance of cases this dissertation concentrates on different 'stages' of the coordination process: (internal) policy formulation, (external) negotiation and (internal and external) implementation. Concerning the data collection, each case study relies on the same sources: legal documents (Treaty provisions, cases before the Court of Justice of the EU, regulations and directives) policy documents, academic literature and semi-structured interviews. For each case study, process tracing is used with similar use of legal and empirical sources. By means of a step-by-step approach the effect of the 'legal competences' on (dependent variable) coordination is tested autonomously and in interaction with intervening variables 'supranational versus intergovernmental dominance', 'the EU's position in the international constellation of power' and 'preference heterogeneity'.

[265] Golafshani, N. (2003) 'Understanding reliability and validity in qualitative research'. *The Qualitative Report*, Vol. *8*, No. 4, p. 603.

Chapter 4: EU and Member States Formulating Policies on Alternative Fuels for Private Vehicles

4.1 Introduction

> *"We need to speed up action in the decarbonisation of the transport sector and its switch to alternative fuels". (Speech European Commissioner on Climate Action and Energy Miguel Arias Cañete, 17 March 2015)*[266]

The issue of 'alternative' transportation fuels such as electricity, hydrogen and biofuels receives a lot of attention in the European Union. This increasing attention is the result of two current trends. Firstly, traditional combustion engines, especially diesel engines, are under severe criticism as a result of recent emission scandals including 'Dieselgate'.[267] Secondly, in the European Union transport is nowadays almost entirely dependent on (imported) fossil fuels, particularly petroleum based fuels like gasoline and diesel. Ninety-four percent of transport relies on oil products, of which ninety percent is imported.[268] These fuels need to be replaced by cleaner alternatives to reduce import dependency, decarbonise the economy and contribute to international agreements such as the Paris Agreement and the Sustainable Development Goals.[269] The transport sector accounts for twenty-five percent of energy-related greenhouse gas emissions in which seventy percent of the emissions and much of the air pollution comes from road transport.[270] Moreover, transport is the only sector in the EU where greenhouse gas emissions have actually increased in the last decades,[271] thus causing many EU Member States, the European Commission as well as companies to fine-tune their fuel ambitions promising the phase-out of traditional combustion engines for private vehicles in the EU.[272]

A European 'alternative fuels strategy' supports a comprehensive mix of fuels, ensuring 'technological neutrality' and diversification of energy supply.[273] The four alternative fuels most often noted are electricity, hydrogen, advanced biofuels and natural gas blended with biomethane. The policies on alternative fuels for passenger cars need to be formulated by the European Union and its Member States, sharing competences on policy areas including transport, energy and climate action.[274] European Commission President Jean-Claude Juncker recently re-committed to an ambitious 'decarbonisation' of the economy by 2025

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[266] European Commission (2015) 'Speech by Commissioner Arias Cañete: A "Renewable" Energy Union' 17 March 2015, Brussels, Accessed 7 August 2017 via http://europa.eu/rapid/press-release_SPEECH-15-4615_en.htm.

[267] Teffer, P. (2016) 'Switching off emissions filters 'within the law' says car lobby', EU Observer, 1 July 2016, https://euobserver.com/dieselgate/134138.

[268] European Commission (2015) 'Ten priorities for Europe: A new start for Europe: an EU agenda for jobs, growth, fairness and democratic change'.

[269] The Paris Climate Change Agreement of 2015 has firmly and urgently established the reduction of greenhouse gas emissions and, hence, the 'decarbonization' of the world economy as a global policy objective to be achieved in the next few decades. United Nations Framework Convention on Climate Change (2015) Paris Agreement, https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf, Accessed 13 December 2016.

[270] European Commission (2016) 'A European Strategy for Low-Emission Mobility', COM(2016) 501 final, 20.07.2016, Brussels. p. 2

[271] Egenhofer, C. (2011) 'The EU should not shy away from setting CO2-related targets for transport', *CEPS policy brief,* No 229/January 2011.

[272] See e.g. Castle, S. (2017) 'Britain to Ban New Diesel and Gas Cars by 2040', New York Times, Jul 26, 2017 where it is indicated that the United Kingdom and France announced in July 2017 that they will ban sales of new diesel and gas cars by 2040. Also Volvo announced that all models from 2019 will be either hybrids or battery-powered vehicles, phasing out the traditional combustion engine.

[273] European Commission (2013) Communication 'Clean Power for Transport: A European alternative fuels strategy', COM(2013) 17 final, 24 January 2013, Brussels.

[274] See e.g. Art 4 TFEU and Art 191 TFEU.

while pointing to the current 'mismatch' in aligning promises, expectations and delivery, e.g. in the 'car emissions scandal'.[275]

Current research tends to focus on the 'technical' and 'economic' aspects of the future of fuels, focusing on the differences between (primarily) electrical and hydrogen fuel cells when compared with traditional combustion engines.[276] Moreover, for biofuels in particular, research is oriented on related aspects such as land-use as well as more emotive topics. [277] The EU and its Member States together receives some attention but especially in comparison with larger producers like the United States and China.[278] Some authors focus on the normative aspects of the EU's fuel policies.[279] However, there is only scant attention for the decision-making processes and institutional background within the European Union and even less for the mixed legal competences underneath them. This is problematic as policies on alternative fuels are mainly driven by government policies.[280] The EU and Member State incremental process based on these competences could provide useful information about the policy formulation on more sustainable policies in practice.

The present chapter addresses whether legal competences enable or impede coordination of EU and Member State actors when formulating policies on alternative fuels. The main research question addressed by this chapter has been the following: *How do legal competences affect EU and Member State coordination in policy formulation on alternative fuels for passenger cars?* As the goal is to bring together the political and legal discourse, the effect of legal competences (independent variables) is assessed in relation to the following intervening (political-theoretical) variables: supranational versus intergovernmental dominance, the EU's position in the international constellation of power and preference heterogeneity. Moreover, this chapter addresses some other explanations that appear to hinder or enable coordination.

The findings of this chapter stem from multiple sources of information, which are brought together through triangulation. More specifically, this study makes use of a step-by-step process tracing approach revising legal documents (Treaty provisions, cases before the Court of Justice of the EU, regulations and directives), policy documents and academic literature. The qualitative part of this case study additionally relies on eleven 45-60 minutes long semi-structured interviews with leading negotiators, EU and Member State officials, (former) ministers as well as experts (see Table 4.1). These interviewees were approached after a stakeholder analysis and by means of organigrams/websites ('own initiative') and/or by referral (snowball sampling).[281] With regards to the timeframe, this analysis focuses on the

[275] European Commission (2017) 'White Paper on the Future of Europe: reflections and scenarios for the EU27 by 2025'.
[276] Offer, G. J., Howey, D., Contestabile, M., Clague, R. and Brandon, N. P. (2010) 'Comparative analysis of battery electric, hydrogen fuel cell and hybrid vehicles in a future sustainable road transport system'. *Energy Policy*, Vol. *38*, No. 1, pp. 24-29 and Shafiei, E., Davidsdottir, B., Leaver, J., Stefansson, H., and Asgeirsson, E. I. (2015) 'Comparative analysis of hydrogen, biofuels and electricity transitional pathways to sustainable transport in a renewable-based energy system'. *Energy, Vol.* 83, pp. 614-627.
[277] Cf Demirbas, A. (2009) 'Political, economic and environmental impacts of biofuels: a review'. *Applied Energy*, Vol. *86*, p. S109.
[278] Su, Y., Zhang, P. and Su, Y. (2015) 'An overview of biofuels policies and industrialization in the major biofuel producing countries'. *Renewable and Sustainable Energy Reviews*, Vol. *50*, p. 995.
[279] Afionis, S. and Stringer, L. C. (2012) 'European Union leadership in biofuels regulation: Europe as a normative power?'. *Journal of Cleaner Production*, Vol. 32, p. 114.
[280] See a.o. Su, Y., Zhang, P. and Su, Y. (2015) 'An overview of biofuels policies and industrialization in the major biofuel producing countries'. *Renewable and Sustainable Energy Reviews*, Vol. *50*, pp. 991-1003.
[281] These interviews have been conducted from July 2016 to March 2017; eight of these interviews have been conducted together with Thijs Bonenkamp, MSc graduate in International Relations & Diplomacy at Leiden
University and research assistant at Leiden University. Three of these interviews have been conducted by the author alone and notes have been shared with Thijs Bonenkamp and colleagues from Delft University (Dr Reinoud Wolffenbuttel and Delft

process from the 2009 Fuel Quality Directive until July 2017.[282] The interviews have mainly been focused on biofuel policies, but other fuels and scenarios were included in the semi-structured interviews and were analysed.[283] The organised approach leads to an overall assessment of the potential influence of legal competences, interaction with/autonomy from other intervening variables and other explanations for this specific case. The results from this study can, however, only be valued as 'plausibility probes', providing interesting avenues for future research, but still needing further testing in relation to other cases to become more robust.[284]

Category	No of interviews
EU official	2
Member State official	3
Other societal stakeholder	7

Table 4. 1 No of semi-structured interviews for case study alternative fuels

The chapter is structured as follows. Section 4.2 describes the alternative fuels and the situation in other parts of the world compared to the 'typical' EU policies. Section 4.3 describes the EU coordination process and the policies that have been formulated (dependent variable). Section 4.4 zooms in on the legal aspects, i.e. the effect of legal competences in the UN legal context, Treaty's competences, the Court's case law and the regulations and directives that are relevant in the framework of the Single Market. In the fifth section, these legal aspects are then compared with intervening variables such as 'supranational versus intergovernmental dominance', 'the EU vs the rest of the world' and preference heterogeneity. This section offers also some additional possible explanatory variables such as stakeholder interests and the emotional state of the debate. Finally, it evaluates whether the EU and its Member States are legally enabled or restrained by the division of competences or whether 'political' (or other) issues play a more prominent role. The chapter ends by providing suggestions for future research.

4.2 Alternative fuels

This section zooms in on alternative fuels such as electricity, hydrogen and biofuels. After a basic explanation of alternative fuels, the section continues with an overview of the popularity of alternative fuels outside the EU, in countries like China, Brazil and the United States. It then shows how the EU is distinctive in its appreciation of alternative fuels and that the issue

University graduate Luke Middelburg. The interview questions have been sent to the interviewees beforehand. The interviews have not been taped. Please see chapter 3 (research design) and the annex for more information on the interviews .

[282] For more information, see http://ec.europa.eu/environment/air/transport/fuel.htm. After finishing the case study (July 2017) the European Commission launched an action plan on the alternative fuels infrastructure. Cf European Commission (2017) 'Towards the broadest use of alternative fuels - an Action Plan on Alternative Fuels Infrastructure under Article 10(6) of Directive 2014/94/EU, including the assessment of national policy frameworks under Article 10(2) of Directive 2014/94/EU' (SWD(2017)365 final), 8.11.2017, Brussels.

[283] These interviews were originally part of a non-technical study funded by Ford Poling Challenge in cooperation with Delft University (The Netherlands), presented at a biofuel workshop in The Hague in October 2016: https://www.universiteitleiden.nl/en/events/2016/10/renewable-energy. Delft University measures the gasoline/ethanol/water composition of biofuels as part of the overarching technical study. This non-technical research has been conducted in close cooperation with technical experts at Delft University and with the other non-technical expert, Thijs Bonenkamp, who is focusing on legislation and underlying motives on biofuels in the European Union and specific Member States Poland, The Netherlands, France and Sweden. We continued our cooperation afterwards, aiming for a (forthcoming) cross-disciplinary article on biofuels and EU policies.

[284] George, A. L. and Bennett, A. (2005) *Case studies and theory development in the social sciences* (Cambridge, Massachusetts: MIT Press).

of alternative fuels is led by government policies and not so much by specific multilateral agreements.

4.2.1 Alternative fuels

Alternative fuels can make a useful contribution to transport decarbonisation, by means of lower greenhouse gas emissions and lesser effects on air quality than the currently used oil- and gas-based fuels. The four types alternative fuels that are often suggested as main options for passenger cars (and light duty vehicles for medium distances) are electricity, hydrogen, compressed natural gas (CNG) with biomethane and advanced biofuels.[285] These alternative fuels are often seen as a 'mix', ensuring both technological neutrality as well as diversification of energy supply. One of the most reasonable alternatives before total electrification is for example the obligation of fuel suppliers to provide a certain share of alternative fuels or blend them.[286] A small change towards more 'flexi-fuel vehicles' or 'dual-fuel technology' is then needed.

Electricity as transport fuel would decrease CO2 emissions, improve energy efficiency and could provide for innovative vehicle solutions. Electricity as a power source causes the most radical shift for passenger cars: it requires a completely different fuel infrastructure from those for liquid-fuel-powered internal combustion engines, and it changes energy supply from a single energy source (e.g. oil) to a universal energy carrier that can be produced from all primary energy sources like sun and wind. With battery-driven technologies, it could help to balance the intermittent supply of these renewable energy technologies in energy production. These battery storage facilities are one of the unique parts, and the loading phase takes longer than re-fuelling liquids. Moreover, battery-based cars are yet more for the 'shorter' range while fuel-based cars could provide for longer distances and heavier private vehicles.[287]

Like electricity, hydrogen is a universal energy carrier, which can be used as a fuel for transport. It can in fact be used in a fuel cell with an electric motor as a complementary solution to storing electricity in batteries, but it can also be used as a fuel in 'traditional' internal combustion engines. As an alternative fuel for transport, one would need to build the necessary refuelling infrastructure for hydrogen. These costs are 'comparable' to the ones of the electricity infrastructure. The CNG with biomethane can be seen as a 'transition fuel' because it can be used in established combustion engines. Additional refueling stations could 'easily be supplied' from the existing natural gas distribution network throughout Europe.[288]

Biofuels are an additive/substitute liquid fuel that can be produced from biomass resources such as plants, agricultural and forestry residues and a large portion of waste streams.[289] Biofuels have recently become attractive for transport due to their environmental benefits. Nevertheless, much (agricultural) land is needed for the production of biofuels. Agriculture, urbanization, settlement, transport infrastructure, ecosystems, preservation of wildlife, goods

[285] See e.g. Report of the European Expert Group on Future Transport Fuels: Future Transport Fuels (2011) https://ec.europa.eu/transport/sites/transport/files/themes/urban/cts/doc/2011-01-25-future-transport-fuels-report.pdf.
[286] European Commission (2016) 'A European Strategy for Low-Emission Mobility', COM(2016) 501 final, 20.07.2016, Brussels.
[287] Report of the European Expert Group on Future Transport Fuels: Future Transport Fuels (2011) https://ec.europa.eu/transport/sites/transport/files/themes/urban/cts/doc/2011-01-25-future-transport-fuels-report.pdf.
[288] Provided the quality of gas is sufficient for CNG vehicles. Cf European Commission (2013) Communication 'Clean Power for Transport: A European alternative fuels strategy', COM(2013) 17 final, 24 January 2013, Brussels. p. 6.
[289] Demirbas, A. (2009) 'Political, economic and environmental impacts of biofuels: a review'. *Applied Energy*, Vol. *86*, p. S108.

and services compete for land use increasingly, this phenomenon was caused by population growth and a rising middle class.[290] It is a hot topic of debate whether biofuels currently have to compete between food security and the fuel economy, especially with their (first-generation) food-based fuels.[291] To tackle the concerns raised by this 'first generation' biofuels, more 'advanced' generations of biofuels were developed. The 'second generation' of biofuels derive from biomass, non-food crops including woods and waste, which is already more acceptable. The 'Third-generation biofuels' are biodegradable from algae. Microalgae are considered as a feedstock for biofuels production already since the 1950s.[292]

The debate with regards to the 'sustainability' of alternative fuels concerns mostly (advanced) biofuels. Critics look at the question of sustainable land use and clean production rather than at the blend itself. An important process is therefore *indirect land use change* (ILUC). As previously noted, cropland that was originally used for (other) agriculture such as growing food or feed is now typically used for biofuels production. This means that previously non-cropland including grasslands and forests need to be displaced for biofuels production or other agriculture production. ILUC risks negating the greenhouse gas savings that result from increased biofuels, as grasslands and forests typically absorb high levels of CO2.[293] Unfortunately scientific consensus on how to monitor and control ILUC is currently lacking.[294] There is however, increasing attention on the import of raw materials necessary for the batteries of electric vehicles, e.g. lithium.[295] Remarkably, these 'sustainability considerations' are not particularly relevant for the production process of cars, thus leading to the observation that the 'greenness' of alternative fuels seems more of an ethical political question than an economic or technical question.[296]

4.2.2 EU and the international context: the example of bio-ethanol

In countries all over the world the production of alternative fuels needs to be promoted via tax exemptions, subsidies, blending mandates or other (financial) incentives. The choice of fuels depends on country characteristics such as the traditional vehicle market share (diesel/gasoline), the prominence of the domestic car industry (and e.g. agricultural industry for biofuels) and the 'drivers' of alternative fuel policies. Among these drivers are CO2 emission reduction, promotion of agricultural/rural development[297], tackling air pollution[298], fuel diversity, reducing the dependency on imported petroleum and energy security[299], foreign exchange savings[300] and employment[301].

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[290] European Academies Scientific Advisory Council EASAC (2012) 'The current status of biofuels in the European Union, their environmental impacts and future prospects', EASAC policy report 19, December 2012, p. 3.
[291] European Academies Scientific Advisory Council EASAC (2012) 'The current status of biofuels in the European Union, their environmental impacts and future prospects', EASAC policy report 19, December 2012, p. 11.
[292] *Ibid,* p. 15.
[293] European Commission DG Energy, topic 'Land use change' (2016): https://ec.europa.eu/energy/en/topics/renewable-energy/biofuels/land-use-change.
[294] Afionis, S. and Stringer, L. C. (2012) 'European Union leadership in biofuels regulation: Europe as a normative power?'. *Journal of Cleaner Production*, Vol. 32, pp. 114-123.
[295] See e.g. (in Dutch) Kamphof, R. (2013) 'Grondstoffen' (natural resources, raw materials) Nationale Commissie voor Duurzame Ontwikkeling NCDO, Amsterdam, www.kaleidosresearch.nl/download/2015/08/2013-Grondstoffen.pdf .
[296] Seeing parallel technical research by Delft University, it seems that ethanol works the same in car motors, irrespective of the feedstocks used. Remarkably in case of biofuels, also for agricultural producers the production process itself is not different and whether they produce for the food or transport market is dependent on intermediaries such as collectors who decide where the products are marketed.
[297] Su, Y., Zhang, P. and Su, Y. (2015) 'An overview of biofuels policies and industrialization in the major biofuel producing countries'. *Renewable and Sustainable Energy Reviews*, Vol. *50*, p. 995.
[298] Demirbas, A. (2009) 'Political, economic and environmental impacts of biofuels: a review'. *Applied Energy*, Vol. *86*, p. S115.
[299] *Ibid,* p. S119.
[300] *Ibid,* p. S108.

Large government programmes help to drive the production of 'alternative fuel' , as demonstrated by the example of bio-ethanol (biofuel). Brazil used to be the only country where ethanol (biofuel) production was profitable and came close to competing with gasoline.[302] More than 80 percent of the vehicles in Brazil use ethanol blended fuels[303] and flexi-fuel vehicles have become mainstream since the early 2000s[304]. Brazil started this phenomenon in the 1970s with its *ProAlcool* programme.[305] In Brazil, ethanol is produced from sugar cane, which is considered 'the most sustainable option currently in the market' according to Afionis and Stringer (2012: 116).

The United States is now the largest producer of biofuels since 2006, having overtaken Brazil.[306] American Bioethanol is mainly produced from large-scale corn growing. Ethanol produced in the U.S. is considerably more expensive than the sugar cane-based ethanol from Brazil. Nevertheless, it is less expensive than the ethanol from grain and sugar beet in Europe.[307] In the U.S., the production is largely incentivised by the government. A typical feature of american biofuel production is the close relation with security issues, promoted by the U.S. armed forces.[308] Energy independence appears to be a significant motive behind biofuel policies in the United States and Brazil, together with the promotion of their own (agricultural) industries.

For people in rural areas of oil importing developing countries biofuels such as bioethanol give 'prospects of new economic opportunities' according to Demirbas (2009: 108). Many developing countries could end their import dependence by focusing on bioethanol production, as a number of tropical countries have a productive advantage when it comes to biofuels.[309] However, experiences in other continents show that this needs to be driven by governmental policies.[310] China is already incentivising this development with large bioenergy and biopolicy programs supported by the Chinese government[311] and biofuels are subsidised in countries including Malaysia, Argentina and Indonesia. Nevertheless, the recent situation of low oil prices and the decline in gasoline and diesel prices has 'affected

[301] Afionis, S. and Stringer, L. C. (2012) 'European Union leadership in biofuels regulation: Europe as a normative power?'. *Journal of Cleaner Production*, Vol. 32, p. 116, cf Di Lucia, L. and Nilsson, L. J. (2007) 'Transport biofuels in the European Union: The state of play'. *Transport Policy*, Vol. 14, No. 6, pp. 533-543 and Banse, M., Van Meijl, H., Tabeau, A., Woltjer, G., Hellmann, F. and Verburg, P. H. (2011) 'Impact of EU biofuel policies on world agricultural production and land use'. *Biomass and Bioenergy*, Vol. *35*, No. 6, p. 2385.
[302] Sorda, G., Banse, M. and Kemfert, C. (2010) 'An overview of biofuel policies across the world'. *Energy Policy*, Vol. *38*, No. 11, p. 6977. Cf Demirbas, A. (2009) 'Political, economic and environmental impacts of biofuels: a review'. *Applied Energy*, Vol. *86*, p. S116.
[303] Soccol, C. R., Vandenberghe, L. P. D. S., Medeiros, A. B. P., Karp, S. G., Buckeridge, M., ... & Bon, E. P. D. S. (2011). 'Bioethanol from lignocelluloses-status and perspectives in Brazil', *Bioresour Technol.* Vol. 101, No. 13, p. 4820.
[304] Su, Y., Zhang, P. and Su, Y. (2015) 'An overview of biofuels policies and industrialization in the major biofuel producing countries'. *Renewable and Sustainable Energy Reviews*, Vol. *50*, p. 998.
[305] Sorda, G., Banse, M. and Kemfert, C. (2010) 'An overview of biofuel policies across the world'. *Energy Policy*, Vol. *38*, No. 11, p. 6981.
[306] Demirbas, A. (2009) 'Political, economic and environmental impacts of biofuels: a review'. *Applied Energy*, Vol. *86*, p. S110. See also http://www.afdc.energy.gov/data/10331.
[307] Demirbas, A. (2009) 'Political, economic and environmental impacts of biofuels: a review'. *Applied Energy*, Vol. *86*, p. S116.
[308] Su, Y., Zhang, P. and Su, Y. (2015) 'An overview of biofuels policies and industrialization in the major biofuel producing countries'. *Renewable and Sustainable Energy Reviews*, Vol. *50*, p. 992.
[309] Afionis, S. and Stringer, L. C. (2012) 'European Union leadership in biofuels regulation: Europe as a normative power?'. *Journal of Cleaner Production*, Vol. 32, p. 118.
[310] Sorda, G., Banse, M. and Kemfert, C. (2010) 'An overview of biofuel policies across the world'. *Energy Policy*, Vol. *38*, No. 11, pp. 6977-6988.
[311] Su, Y., Zhang, P. and Su, Y. (2015) 'An overview of biofuels policies and industrialization in the major biofuel producing countries'. *Renewable and Sustainable Energy Reviews*, Vol. *50*, p. 998.

discretionary blending economics' in certain markets leading to increased scrutiny of support policies for biofuels and structural challenges.[312]

Historically, the EU production of biofuels is biased towards billions of liters of biodiesel instead of million liters of bioethanol.[313] As compared to countries such as U.S. and Brazil, the ethanol industry is considerably less powerful and incapable of competing with 'big oil'. Biofuels still need to be imported and this is takes a much higher energy yield per hectare than biofuels produced from 'homegrown' biomass in Europa.[314] Ethanol production is thus not profitable in the EU without substantial fiscal support.[315] The 'ethanol awareness' of consumers also seems to be much lower in the EU than in other countries. This is expected to change as future legislation might obligate car producers as well as gasoline stations to inform consumers about the amount of ethanol in fuel blends. The spread of 'advanced biofuels' seems to be anew opportunity for EU leadership according to its recent Strategy for Low-emission mobility (p. 4). [316]

The example makes clear that the EU is not incentivising the bio-ethanol programme in to the same extent as other major economies. One could argue that this is different for other alternative fuels. Nevertheless, this case might only be convincing for 'electricity' where there is indeed growing consumer awareness and EU sales of electric vehicles are only topped by China.[317] However, as this research later shows, this is not the result of a large coherent government programme.

4.3 EU coordination and policies

Coordination is the process of contacts between diplomats and officials from EU institutions (especially the European Commission) and Member States with the purpose of discussing an issue of common interest and working towards a common position and adjusting different positions in multiple ways. These coordination processes can be internal (within the EU) or external (internationally) and include the discussion of the 'management' of the coordination. The coordination process of policy formulation on alternative fuels is not particularly socialised, in the sense that representatives involved in formulating EU policies do not first and foremost adopt a European orientation due to the socialisation of EU practices. Socialisation is therefore not a result of the coordination process. There is a more general tendency to meet and coordinate domestically in EU Member States.

The policies in the EU and Member States on alternative fuels are characterised by some classical 'U-turns' and quite large differences across Member States. Nevertheless, the more 'overarching' energy and climate commitments are clear and originate from high-level conclusions and strategies at EU institutions. As an example, in the February 2011 European Council agreed to reduce greenhouse gas emissions by 80-95 percent before 2050 in

[312] IEA (2015) 'Renewable Energy: Medium-Term Market Report 2015', https://www.iea.org/Textbase/npsum/MTrenew2015sum.pdf.
[313] See Demirbas, A. (2009) 'Political, economic and environmental impacts of biofuels: a review'. *Applied Energy*, Vol. *86*,,p. S109 who states that EU biofuels production amounted to around 2,9 billion liters in 2004, with bioethanol totaling 620 million liters and biodiesel the remaining 2,3 billion liters.
[314] European Academies Scientific Advisory Council EASAC (2012) 'The current status of biofuels in the European Union, their environmental impacts and future prospects', EASAC policy report 19, December 2012, p. 9 cf Thamsiriroj, T. and Murphy, J. D. (2009) 'Is it better to import palm oil from Thailand to produce biodiesel in Ireland than to produce biodiesel from indigenous Irish rape seed?' *Applied Energy*, Vol. 86, No. 5, pp. 595-604.
[315] Afionis, S. and Stringer, L. C. (2012) 'European Union leadership in biofuels regulation: Europe as a normative power?'. *Journal of Cleaner Production*, Vol. 32, p. 118.
[316] European Commission (2016) 'A European Strategy for Low-Emission Mobility', COM(2016) 501 final, 20.07.2016, Brussels.
[317] http://www.hybridcars.com/top-10-plug-in-vehicle-adopting-countries-of-2016/.

comparison to the levels in 1990.[318] In 2014 the European Council agreed to the 2030 climate and energy framework, with the aim of a 40 percent reduction by 2030 when compared to 1990 levels, a minimum 27 percent of power sourced from renewable energy as well as at least a 27 percent improvement in energy efficiency. This framework, although especially focused on the timeframe beyond 2020, asks for a 'comprehensive and technology neutral' approach to reducing greenhouse gas emissions and risks related to fossil fuel dependency.[319]

The more transport-related strategies follow smoothly on from these broad commitments and are oriented on transport 'decarbonisation'. The recent Strategy on Low-Emission Mobility (2016) and the earlier White Paper on Transport Policy (2011) make the broad commitments more applicable to transport.[320] The 2013 'Clean Power for Transport' strategy supports a comprehensive mix of alternative fuels, ensuring technological neutrality and diversification of energy supply. The strategy identified four priority fields for further EU actions to promote alternative fuels, which are still relevant: 1) the lack of fueling infrastructure; 2) the development of common technical specifications; 3) consumer acceptance and 4) the technological development, including fuel production and vehicles/vessels.[321]

The Directives that have effect on (alternative) fuels mostly originate earlier, namely in 2009. The 'Fuel Quality Directive' was adopted in that year, seeking to reduce greenhouse gas intensity in fuels and moreover create a single fuel market while regulating the sustainability of biofuels. [322] In parallel, the 'Renewable Energy Directive' in 2009 aimed for a 10 percent target of biofuels in transport. [323] The 2014 directive on 'alternative fuel infrastructure' focuses more on the deployment of infrastructure.[324] Member States could develop their own 'national policy frameworks' setting out the market development of alternative fuels and deployment of relevant infrastructure.[325] Reporting obligations on 'third countries' alternative fuels certification schemes are also an important policy measure. The EU is known for its stringent sustainability criteria for alternative fuels imported from countries outside the EU, although the certification scheme itself has lately been subject to critical scrutiny. [326]

The amendments on alternative fuels, especially biofuels, and other policies make it clear however that the policies are quite difficult to follow for stakeholders in the EU. In 2012, after the many protests over rising food prices and scientific reports,[327] the 10 percent target of

[318] European Council (2011) '4 February 2011 Conclusions' EUCO 2/1/11, Brussels, 8 March 2011, para 15.
[319] European Council (2014) '23 and 24 October 2014 Conclusions' EUCO 169/14, Brussels, 24 October 2014, para 2.13.
[320] European Commission (2011) 'Roadmap to a Single European Transport Area –Towards a Competitive and Resource Efficient Transport System', 28. 03. 2011, COM(2011) 144 final.
[321] European Commission (2013) Communication 'Clean Power for Transport: A European alternative fuels strategy', COM(2013) 17 final, 24 January 2013, Brussels.
[322] Directive 2009/30/EC of the European Parliament of the Council on the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and the specification of fuel used by inland waterway vessels, 23 April 2009, OJ. L. 140/88.
[323] Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources, 23 April 2009, OJ L. 140/16.
[324] Directive 2014/94/EU of the European Parliament and of the Council on the deployment of alternative fuels infrastructure, 22 October 2014, L307/1.
[325] An assessment of national policy frameworks is foreseen for November 2017. See European Commission (2017) Communication 'Europe on the Move: An agenda for a socially fair transition towards clean, competitive and connected mobility for all', COM (2017)283 final. Brussels, 31 May 2017, p. 17.
[326] See European Court of Auditors (2016) 'The EU system for the certification of sustainable biofuels', Special Report no 18. Luxembourg: Publications Office of the European Union and European Academies Scientific Advisory Council EASAC (2012) 'The current status of biofuels in the European Union, their environmental impacts and future prospects', EASAC policy report 19, December 2012.
[327] European Academies Scientific Advisory Council EASAC (2012) 'The current status of biofuels in the European Union, their environmental impacts and future prospects', EASAC policy report 19, December 2012.

biofuels in transport target from RED2009 was amended to 7 percent *without* food-based biofuels. In the more recent 'Strategy on Low-Emission Mobility' (2016, p. 5) the Commission suggests to phase out all subsidies to these first generation biofuels by 2020. The transition towards advanced biofuels was adopted for after long and difficult ILUC discussions in November 2015. Without regard to the drivers of these policies, the *effects* of these policies are clear: the car industry currently towards electrification and cleaner alternative fuels such as hydrogen. While originally included in the list of alternative fuels, blending biofuels with gasoline as well as solutions like CNG with bio-methane seems only to be a *transitional* phase. Symptomatically, few funds promote biofuel-related research: the DG CLIMA-managed NER-300 programmes have almost stopped and the Horizon2020 research funding on biofuels almost stopped after 2015/2016.[328] In comparison, there is much more EU attention directed towards electrification. References for alternative fuels are not yet clearly stated in transport policy documents themselves. Moreover, the responsibility is dispersed across Directorates-General in the European Commission with DG Energy and DG CLIMA responsible for Fuel Quality and Renewable Energy Directives, and DG MOVE (transport) and DG AGRI (agriculture) mostly sidelined. DG DEVCO (as well as foreign ministries in Member States) is further involved in monitoring the 'global' effect of discussions such as food versus fuel.

The 'U-turns' in policies on alternative fuels the Member States have led to fragmented initiatives, with some countries focusing on hydrogen (e.g. Germany), others on electrification and newer EU13 Member States focusing on the traditional combustion engines or instead food-based biofuels. The fragmented responsibility chain seems to be copied within Member States, with a large role for finance ministries in taxation. Different market failures show that the EU is moreover missing the opportunity to become a world leader in advanced sustainable fuel and vehicle technology. The recent Communication 'Europe on the Move' (2017) could lay the framework for more coherent action on alternative fuels, but the implementation of this strategy is beyond the timeline of this study.

One of the most dramatic 'anti-coordination' practices has been the 'collusion' between German carmakers coordinating their activities in more than a thousand meetings according to the investigative reporting of *Der Spiegel*.[329] These practices are contrary to the very idea of European coordination. There have been examples of technical coordination practices, such as the 'European Expert Group on Future Transport Fuels'.[330] However, these kinds of groups have only temporary assignments, mostly focused on technical expertise rather than decision-making processes.

4.4 The division of competences, legal issues and policy formulation

How does the division of competences in the Treaty affect the policy formulation on alternative fuels for private vehicles in the EU and the Member States? This section starts with an overview of the multilateral context that is not specifically focused on alternative fuels. Thereafter, the research briefly analyses how shared competences on transport,

[328] Horizon 2020 program possesses a total amount of 82.7 million Euros in both 2014/2015 and 2015/2016 to promote research and innovation into 2nd generation biofuels.
[329] Dohmen, F. & Hawranek, D. (2017) 'The Cartel: Collusion between Germany's biggest carmakers', *Der Spiegel,* 27 July 2017, accessed: http://www.spiegel.de/international/germany/the-cartel-collusion-between-germany-s-biggest-carmakers-a-1159471.html at 3 August 2017.
[330] Report of the European Expert Group on Future Transport Fuels: Future Transport Fuels (2011) https://ec.europa.eu/transport/sites/transport/files/themes/urban/cts/doc/2011-01-25-future-transport-fuels-report.pdf.

climate change and energy have an effect on alternative fuel policies together with exclusive competences (trade) and Member State autonomy (taxation, energy mix). Furthermore, the legal issues important to the functioning of the single market, e.g. the Emission Trading System and Effort Sharing Decision, are discussed. The section ends by analysing the effects of case law of the Court of Justice of the European Union and of the opening infringement proceedings in Member States.

4.4.1 Multilateral context

The alternative fuel market is a global market. The EU and its Member States cannot act on their own and need to follow international guidelines. There are a number of important international institutions and agreements at the United Nations level. First, the Paris Agreement, concluded in 2015 within the UNFCCC framework, is a universal, partly legally binding global climate agreement setting out a global action plan to limit global warming to well below 2°C above pre-industrial levels. [331] The Paris Agreement is set to come into effect at the latest in 2020. The EU is implementing these guidelines through the 2030 Climate and Energy Package.

Secondly, the World Trade Organization (WTO) is an important standard setter. WTO standards attribute strict rules on state aid and (non-) tariff barriers. Therefore, it is impossible for example to subsidise the agricultural sector in the EU to make biofuel production more profitable. The issue of sustainability criteria for (bio)fuels is entering the agenda of the WTO.[332]

Thirdly, the Agenda 2030 and its 17 Sustainable Development Goals (SDG) set universal goals for the future. While transport and future fuels do not have a specific overarching goal or targets, many related targets are covered within for example SDG 2 (food security), SDG 7 (energy), SDG 9 (infrastructure), SDG 11 (sustainable cities), SDG 12 (responsible production and consumption) and SDG 13 (climate action). The EU, as well as (local and national) governments of EU Member States, plays a role in facilitating cross-sector collaboration for the SDGs.[333]

Besides these three 'overarching' institutions and global commitments, the EU and its Member States are involved in international negotiations, such as the International Transport Forum (OECD), the UNECE World Forum for Harmonization of Vehicle Regulations (WP.29) and specific multilateral negotiations on guidelines, including the Worldwide Harmonized Light Vehicles Test Procedure (WLTP). The EU (and the Member States) also act bilaterally with important biofuel producing countries, such as the United States, Brazil, China and developing countries like Indonesia. The European Commission supports the 'Global Fuel Economy Initiative'[334] as well as the G20 work on the vehicle fuel economy[335]. Nonetheless, it is fair to say that the multilateral negotiations only indirectly (and often voluntarily and not universally)[336] relate to the issue of alternative fuels and therefore the fuel conditions for

[331] See chapter 5.
[332] Daugbjerg, C. and Swinbank, A. (2015) 'Globalization and new policy concerns: the WTO and the EU's sustainability criteria for biofuels'. *Journal of European Public Policy*, Vol. 22, No. 3, pp. 429-446.
[333] See chapter 6.
[334] https://www.globalfueleconomy.org/about-gfei/endorsements with an endorsement by Jos Delbeke, Director-General DG Climate Action.
[335] G20 Energy efficiency action plan: voluntary collaboration on energy efficiency (2014), https://ipeec.org/upload/publication_related_language/pdf/11.pdf.
[336] Brazil is e.g. not a member of multilateral forums such as the International Transport Forum and WP.29.

private vehicles are left within the remit of governments themselves. The issue of alternative fuels is 'barely' discussed in a multilateral context.[337] Therefore, the remainder of this section will focus on EU and Member State legal competences on alternative fuels.

4.4.2 Competences EU and alternative fuels: overview and practice

Transport is a common policy of EU and Member States. By following the logic of the Treaty, the issue of transportation fuels could be interpreted as falling under the transport policy 'shared competence', where both the Union and the Member States have legislative power.[338] The issues related to alternative fuels are however not only in the field of 'transport' policies but also connected to climate action and energy. EU action in these fields is justified on the grounds of subsidiarity as provided for in Articles 91, 191 and 194(1) TFEU. These policy areas are also 'shared competences' even though this is an highly debated issue .[339]

The large 'energy' component visible in the leading role of DG ENER could influence policy to be more lenient towards the 'energy mix autonomy' of Member States. Energy is considered as perhaps 'the only field' in which the EU has moderated its common - almost teleological - drive towards an ever closer union.[340] In its 2001 Green Paper on energy security, the Commission regrets that the Union 'suffers from having no competence (..) in energy matters'.[341] Article 194 TFEU also shows the difficulty of combining common policies and national autonomy, coined as a 'double-edged sword' by officials of the European Parliament.[342]

Alternative fuels for private vehicles are actually not limited to the domains of energy, transport and climate, they can in fact be considered as an emblematic 'mixed competence' example. In almost all policy areas related to alternative fuels (primarily transport, energy, environment, agriculture and development cooperation), the EU and Member States *share* competences, with trade and taxation as notable examples[343]. Member State governments hold the right to decide the amount of taxes that they wish to levy for different types of fuel, while there is a European minimum as stipulated in the Fuel Taxation Directive.[344] Both in internal and external forums the EU and Member State actors need to coordinate their actions. In practice, though, the interviews portray an environment in which the European Commission sets the limits and boundaries of fuels and transport policies and it is up to the governments of Member States to support and/or hinder the introduction and deployment of these alternative fuels (infrastructures). The energy mix autonomy and taxation autonomy

[337] Interview other societal stakeholder, 28-7-2016.
[338] Art 4 TFEU, e.g. internal market, environment, transport, energy, consumer protection, agriculture.
[339] Kamphof, R., Bonenkamp, T., Selleslaghs, J.M.H.M.R. and Hosli, M.O. (2017) 'External competences in energy and climate change' in Leal-Arcas, R. and Wouters, J. (eds) *Research Handbook on EU Energy Law and Policy (*Edward Elgar Publishing), pp. 30-47.
[340] Leal-Arcas, R. and Rios, J.A. (2015) 'The Creation of a European Energy Union' *European Energy Journal, Vol.* 5, No. 3, p. 27 and Andoura, S., Hancher, L. and Van der Woude, M. (2010) 'Towards a European Energy Community: A Policy Proposal by Jacques Delors'. *Notre Europe,* p. 7.
[341] Cf Lavenex, S. (2004) 'EU external governance in 'wider Europe'. *Journal of European Public Policy*, Vol. *11*, No. 4, p. 692.
[342] Braun, J.F. (2011) 'EU Energy Policy under the Treaty of Lisbon Rules: Between a new policy and business as usual', EPIN Working Paper Vol. 31, p. 7.
[343] The EU has exclusive competence on trade but Member States have autonomy on taxation issues.
[344] Directive 2003/96/EC of the Council restructuring the Community framework for the taxation of energy products and electricity, 27 October 2003, OJ L 283. See https://ec.europa.eu/transport/modes/road/road_charging/fuel_taxation_en for the overview of derogations.

are often used by Member State actors to hinder EU-wide deployment of alternative fuel infrastructure.[345]

4.4.3 Single road fuel market: legal barriers

The concept of sustainable development is directly linked to the internal market in the Treaties.[346] The internal market is encouraging EU integration and 'was and is the hard core of the EU' in the field of transport and energy policies.[347] As a result, there is a single market for road fuel and vehicles, and refineries and other fuel production facilities are widely distributed throughout the EU. Many interviews highlight the importance of directives in this area.[348] Moreover, the EU is known for its stringent sustainability criteria that apply when entering the internal market.[349] However, some legal considerations have to be kept in mind, as they affect the functioning of this 'single market' on alternative fuels. First, as indicated before, there are substantial barriers resulting from national taxation schemes, not only on transport fuels, but also on energy. This 'lack of harmonization' appears to conflict with the security of supply objectives and can lead to 'excess tax competition'.[350]

Secondly, the alternative fuels are not part of the more stringent Emissions Trading System (ETS). Instead, the division of competences (see above) shows that these are 'non-ETS' sectors most often within the discretion of Member States. This affects the necessity of emission reduction commitments and the legally binding nature of such commitments. The emission reduction effort has been differentiated in a reduction of 43 per cent for the EU ETS-sector and one of 30 per cent for the non-ETS sector by 2030 when compared to 2005. Furthermore, there is no 'sector-specific' goal for transport in the non-ETS emission reduction target, although it is noted that measures include 'a shift away from transport based on fossil fuels' in the context of the Effort Sharing Decision. These overall reduction commitments are, however, a shared burden together with e.g. buildings, agriculture, small industry and waste.[351] Moreover, while the Effort Sharing Decision from the 2030 EU Energy and Climate Package sets some national annual binding targets for emissions not covered under the EU emission trading scheme (ETS), those specifically relevant for biofuels, emissions from land use, land use change and international shipping are not included. [352] As a result, some Member States feel that the specific transport emission reduction efforts can be transferred to other Member States who do not have a large automotive sector.[353]

Thirdly, many of the policies related to alternative fuels for private vehicles are regulated through directives, such as the fuel quality directive, renewable energy directive and directive on alternative fuel infrastructure. This gives more freedom (and time) to Member States to

[345] Interview Other societal stakeholder 1, 27-3-2017, Interview other societal stakeholder 2, 27-3-2017, Interview other societal stakeholder, 28-7-2016.
[346] Cf Article 3(3) TEU: "The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection andmprovement of the quality of the environment. It shall promote scientific and technological advance."
[347] Pelkmans, J. (2016) 'Why the single market remains the EU's core business'. *West European Politics*, Vol. *39*, No. 5, p. 1095.
[348] Interview EU official, 7-9-2016, Interview other societal stakeholder, 20-7-2016, Interview MS official, 10-8-2016, Interview MS official, 7-9-2016.
[349] Interview MS official, 10-8-2016.
[350] Steenberghen, T. and Lopez, E. (2008) 'Overcoming barriers to the implementation of alternative fuels for road transport in Europe'. *Journal of Cleaner Production*, Vol. *16*, No. 5, p. 584.
[351] https://ec.europa.eu/clima/policies/effort_en.
[352] DG Climate Action (2016) http://ec.europa.eu/clima/policies/effort/index_en.htm; accessed 22-8-2016.
[353] Interview other societal stakeholder, 28-7-2016.

pursue the provisions as they see fit when compared to directly enforceable regulations. The many amendments (see section 4.2) show that this is hindering coordination in formulation of policies, thus leading to the private sector becoming hesitant in investments. While the necessary vehicle modifications, including the introduction of 'flexi-fuel vehicles', are relatively cheap and easy,[354] these activities are currently being postponed.

4.4.4 Court of Justice: threatening with infringement proceedings

The semi-structured interviews show that the issue of alternative fuels for passenger cars used to be a policy area where regulatory measures were 'softer'. These softer measures included stimulation of clean technology, deployment of infrastructure for alternative fuels, subsidies, research projects and demonstration zones. In a way, these 'softer' measures meant that the Court of Justice of the European Union was not an actor in this policy area. Nevertheless, the recent 'scandals' with traditional combustion engines, especially diesel engines, have paved the way for a harder line of sanctions, thus causing threats of fines and opening of infringement proceedings due to 'laxity on car emissions'.[355] Moreover, the directives are legally binding and therefore enforceable by the European Commission and the Court of Justice. In that sense, it is not the absence of legal competences itself but instead the absence of *using* this legal competences that explains policies on alternative fuels[356]. Therefore, the next section points to more 'political' issues that affect EU and Member State actors in their policy formulation on alternative fuels.

4.5 Political issues and policy formulation

This section zooms in on the so-called 'political' issues that affect policy formulation on alternative fuels for private vehicles in the EU and Member States. After an evaluation of the 'institutional turf battles' between the Council and the Commission and the distinctive profile of the EU against the rest of the world, the 'preference heterogeneity' of Member States is offered as an important variable explaining the level of coordination of policy formulation on alternative fuels. The remainder of the section focuses on other explanatory variables, such as the interests of 'other societal stakeholders', the emotional state of the debate, and scientific uncertainty.

4.5.1 Supranational versus intergovernmental dominance

Transport policies in general are traditional 'institutional turf battles' in which Member States are reluctant to transfer powers to the European Commission.[357] Even after the 'Dieselgate' scandal, the Commission was not put in charge with 'tougher competences', as consumer affairs Commissioner Jourouva puts it.[358] While the inclusion of transport in ETS and national 'hard targets' is often suggested as a solution, [359] this is rejected by the Council and some Member States, especially Germany. Interestingly, there is also 'intra-institutional'

[354] Interview MS official, 10-8-2016.
[355] Teffer, P. (2016) 'EU states under pressure for laxity on car emissions', 9 September 2016, <https://euobserver.com/dieselgate/135011>.
[356] After the case study has been conducted, the Commission has asked Bulgaria, Denmark, Estonia, France, Lithuania, Malta, Poland, Romania and Sweden to fully transpose EU rules on the deployment of alternative fuels infrastructure (Directive 2014/94/EU) in October 2017. It remains to be seen whether this will lead to infringement proceedings in the near future.
[357] Egenhofer, C. (2011) 'The EU should not shy away from setting CO2-related targets for transport', *CEPS policy brief,* No 229/January 2011, p. 4.
[358] Teffer, P. (2017) 'Dieselgate: EU disappointed with VW's treatment of customers', *EUObserver,* 21 February 2017.
[359] Egenhofer, C. (2011) 'The EU should not shy away from setting CO2-related targets for transport', *CEPS policy brief,* No 229/January 2011.

competition which causes many DGs (and ministries) to have different powers. Mostly, DG ENER takes the lead with policy initiatives, but competences and responsibilities are dispersed across DGs with DG MOVE (transport) and DG AGRI (agriculture) remarkably absent.[360] The European Parliament is slightly less involved due to its lack of technical expertise, but the MEPs had a louder voice in the 'emotional' debate on biofuels in the late 2000s and early 2010s.[361]

4.5.2 EU's position in the international constellation of power

A strong and difficult 'external environment' affects EU and Member State actors in policy formulation with relation to 'the rest of the world'. Many scholars blame this on the typical historical evolution, its hybrid supranational-intergovernmental polity as well as the shared competences between the EU and Member States, with the consequence that the EU is viewed as a 'normative power' in world affairs, especially in environmental diplomacy.[362] There is already large import dependence on traditional (oil-based) fuels, with the reliance 'a very sparse number of energy suppliers' meaning they could use this situation as a 'political weapon'.[363] While reducing import dependence is raised as a motivating factor in alternative fuel policies one can argue that there is a greater import dependence in the case of alternative fuels, e.g. the raw materials for electric vehicles and more 'sustainable' biofuels such as the ones based on sugarcane. This would then cause the European Commission to play a larger role and the EU could use its combination of 'aid and trade' muscle in pursuit of multiple objectives.[364] However, while there is a global market for alternative fuels, the multilateral context is weak. Moreover, as Afionis and Stringer (2012: 115) state, the EU has been 'inconsistent' in using its powers in relation biofuels. In practice, it seems as if the EU and its Member States, when acting together as a large trading entity, seeks to protect its own (agricultural, automotive) industries first rather than promoting environmental diplomacy. Thus, the external environment has only a moderate effect on EU and Member State policy formulation, reducing the call or larger Commission powers.

4.5.3 Preference heterogeneity

As indicated by the literature, 'preference heterogeneity' – in the sense of (the absence of) aligning interests – could be considered a primary cause of EU and Member State behavior in policy formulation above or alongside legal powers. This study shows a large preference heterogeneity across Member States in the choice of alternative fuels. That might be a positive development, as the 'mix' of alternative fuels could help in reaching objectives and targets. However, the preference heterogeneity present in the case of alternative fuels is hindering coordination of policy formulation, because it is a mix of divergent and often contradictory preferences. The European Commission does not have the necessary powers to coordinate this situation. The substantive divergence is largely the result of historical fuel

[360] Interview EU official, 7-9-2016, Interview MS official, 7-9-2016, Interview other societal stakeholder, 7-9-2016, Interview EU official, 31-3-2017.
[361] Interview other societal stakeholder, 3-3-2017, Interview other societal stakeholder 2, 27-3-2017, Interview EU official, 31-3-2017.
[362] Manners, I. (2002) 'Normative power Europe: a contradiction in terms?'. *JCMS: Journal of Common Market Studies*, Vol. 40, No. 2, pp. 235-258. Cf Oberthür, S. and Roche Kelly, C. (2008) 'EU leadership in international climate policy: achievements and challenges'. *The International Spectator*, Vol. 43, No. 3, pp. 35-50. For a more critical contribution, see Afionis & Stringer (2012) and Falkner (2007).
[363] Leal-Arcas, R. and Rios, J.A. (2015) 'The Creation of a European Energy Union' *European Energy Journal, Vol.* 5, No. 3, p. 24.
[364] Afionis, S. and Stringer, L. C. (2012) 'European Union leadership in biofuels regulation: Europe as a normative power?'. *Journal of Cleaner Production*, Vol. 32, p. 115, see also Van Schaik, L. and Kamphof, R. (2015) 'Now or never: using the EU's trade power as leverage for a climate deal in Paris'. Clingendael Policy Brief, November 2015.

choices, different job markets and strong stakeholder interests and lobbies in Member States. The 'imbalance' of diesel and petrol (and alternative fuels) makes it very difficult to come up with an integrated EU approach and blending is very country-specific.[365] To illustrate,Scandinavian countries are more oriented on biomass than other countries, the 'EU13' countries are focused on traditional fuels, Germany has a large car industry and France has a large agricultural industry (for food-based fuels).[366] These stakeholders and divergent interests all have powerful representatives in Brussels. Therefore, as has been stated by Falkner (2007: 508), EU 'leadership' on environmental issues needs to be analysed against the background of the (domestic) political economy of European biotechnology.[367] Until now, according to the interviews, this has resulted in 'soft' measures stimulating clean technology and alternative fuels, sometimes with intermittent subsidies.[368] This might turn into a harder line, for example with e.g. CO2 taxation[369] and 'punishing' traditional combustion engines, but this is very much dependent on national preferences.

4.5.4 Alternative explanations

While the explanations above definitely affect EU and Member State cooperation in policy formulation on alternative fuels, alongside legal considerations there are some other factors that were raised in the interviews. This section ends with two of these factors. Firstly, and especially in the case of biofuels, the 'U-turns' in EU policies have been the result of 'emotional' debates and inconclusive 'science-based' policies on food vs fuel. The ILUC debate on this matter paralyzed the implementation of biofuel policies for at least three years, until the issue was eventually solved in 2015. Earlier, the Fuel Quality Directive and Renewable Energy Directive were amended, which can be attributed to the heated 'food versus fuel' discussions. The alternative fuel discussion has been hijacked by emotive arguments according to some of the interviews. [370] In that way, these discussions on alternative fuels can be compared with other ethical discussions in the EU such as the debates on genetically modified organisms, carbon capture and storage, nuclear power and radioactive waste.[371]

The uncertainties have led some people to state that it is logical that the 'precautionary principle' is used and that, in this case of 'unknown risk', production is decreased or halted.[372] These 'precautionary' objectives could also affect EU and Member State action. However, one could argue that these 'precautionary principles' pave the way for more concrete action to decrease *fossil* fuels while the policy formulation on alternative fuels is rather slow.

Secondly, an alternative explanation for EU and Member State policy formulation on alternative fuels is the influence of 'other societal stakeholders' in this policy area This seems indeed a credible explanation. In Europe, the automotive industry has been hesitant

[365] Interview other societal stakeholder, 19-7-2016.
[366] Interview other societal stakeholder 1, 27-3-2017, Interview MS official, 7-9-2016.
[367] Falkner, R. (2007) 'The political economy of 'normative power' Europe: EU environmental leadership in international biotechnology regulation'. *Journal of European Public Policy*, Vol. 14, No. 4, p. 508.
[368] Interview EU official, 7-9-2016. Interview EU official, 31-3-2017. Interview other societal stakeholder, 20-7-2016.
[369] Egenhofer, C. (2011) 'The EU should not shy away from setting CO2-related targets for transport', *CEPS policy brief,* No 229/January 2011.
[370] Interview other societal stakeholder 1, 27-3-2017, Interview other societal stakeholder 2, 27-3-2017, Interview MS official, 7-9-2016, Interview EU official, 7-9-2016, Interview EU official, 31-3-2017, Interview other societal stakeholder, 19-7-2016.
[371] Cf Di Lucia, L. and Nilsson, L. J. (2007) 'Transport biofuels in the European Union: The state of play'. *Transport Policy*, Vol. 14, No. 6, pp. 533-543.
[372] Afionis, S. and Stringer, L. C. (2012) 'European Union leadership in biofuels regulation: Europe as a normative power?'. *Journal of Cleaner Production*, Vol. 32, p. 119.

to act in the absence of credible long-term regulatory measures from the government, even holding back in quite 'simple' moves like introducing flexi-fuel vehicles.[373] There are some more outspoken strong interests and lobbies, such as the oil industry and fuel suppliers against the large-scale introduction of bio-ethanol. On the other hand the agricultural industry also has a heavy lobbying presence in Brussels supportive of (food-based) alternative fuels. Concurrently, the agricultural lobbyists seem to be more strategically positioned to prioritise trade concerns and to hinder progress on relaxing import tariffs from outside Europe.[374] Of course, there are national equivalents of all these EU-wide interest groups with differing stakes across EU Member States. Furthermore, civil society organisations are particularly vocal on the topic of alternative fuels, aggregated by CSOs such as Transport & Environment. Among their concerns are food vs fuel, the interests of developing countries, poor working conditions in developing countries[375] (stricter) environmental standards as well as biodiversity.[376] All interests of stakeholders find their way into reports by Members of the European Parliament, who are equally keen to contribute to this debate.[377] However, as it is the case also for other politicians, they do not seem to be driven by technological neutrality, but rather by their own preferences for electricity; in this way transition (biofuels, biogas) and alternative fuels (e.g. hydrogen) end up being neglected.[378]

The drive for alternative fuels seems to be led by the European people who highly value environmental protection .[379] Conversely, consumers seem to be rather hesitant to choose flexi-fuel vehicles and high alternative fuel blends. s it has been discussed in the previous section, the EU and Member State governments and their directorates/ministries play a very powerful role in this field by means of measures, taxes and subsidies. Importantly, according to the interviewees biofuel policies with in the European Commission are especially driven by DG Energy and DG Climate Action; DG Agriculture, DG Environment, DG Mobility and Transport and DG Trade are considerably less active in this regard.[380] The same might be true for governmental stakeholders within EU Member States. Accordingly, the distinction between EU and Member States might be a bit too abstract as, in practice, it is more up to individual ministries, or, in the case of the European Commission, specific DGs. The different interests of these actors make it very difficult to coordinate policy formulation on alternative fuels across the EU.

4.6 Discussion/conclusion

The main question addressed in this chapter has been the following: *How do legal competences affect EU and Member State coordination in policy formulation on alternative*

[373] Interview MS official, 10-8-2016, Interview other societal stakeholder, 20-7-2016, Interview other societal stakeholder, 28-7-2016.
[374] Afionis, S. and Stringer, L. C. (2012) 'European Union leadership in biofuels regulation: Europe as a normative power?'. *Journal of Cleaner Production*, Vol. 32, p. 120.
[375] Cf Nuffield Council on Bioethics (2011) 'Biofuels: ethical issues' (Nuffield Press, Oxfordshire), http://nuffieldbioethics.org/wp-content/uploads/2014/07/Biofuels_ethical_issues_FULL-REPORT_0.pdf.
[376] See e.g. the website of CSO Transport & Environment (T&E) and their specific actions on fuels: https://www.transportenvironment.org/browse/transport-mode/fuels.
[377] See e.g. European Parliament resolution of 15 March 2012 on a Roadmap for moving to a competitive low carbon economy in *2050 (2011/2095(INI))*.
[378] Interview other societal stakeholder 1, 27-3-2017, interview other societal stakeholder 2, 27-3-2017, interview MS official, 22-7-2016, Interview EU official, 31-3-2017.
[379] European Commission Special Eurobarometer (2014) 'Attitudes of European citizens towards the environment', Special Eurobarometer 416, September 2014. Cf Falkner, R. (2007) 'The political economy of 'normative power' Europe: EU environmental leadership in international biotechnology regulation'. *Journal of European Public Policy*, Vol. 14, No. 4, p. 510.
[380] Interview EU official, 7-9-2016, Interview MS official, 7-9-2016, Interview other societal stakeholder, 7-9-2016, Interview EU official, 31-3-2017.

fuels for passenger cars? As the objective of this study to combine political and legal perspectives, the effect of the division of competences is analysed alongside 'political' issues, such as the supranational versus intergovernmental dominance, the EU's position in the international constellation of power and preference heterogeneity. This research is based on review and analysis of literature, policy documents, case law, legislation, and is complemented by twelve semi-structured interviews with (mainly) EU and Member State officials at policy adviser ranks, (assistants of) Members of Parliament and 'other stakeholders' in the car industry, agricultural industry as well as Civil Society Organisations.[381] The study focuses on a timeframe between the introduction of the Renewable Energy Directive and Fuel Quality Directive (2009), almost coinciding with the entry into force of the Lisbon Treaty, and July 2017.

'Legal competences' may not be considered crucial when explaining policy formulation on alternative fuels by EU and Member State actors, but reviewing the Treaty provisions, the Court's case law and legal documents like directives provides for some clarification for (the lack of) coordination. First, mixed competences on alternative fuels make it sometimes difficult to coordinate. The EU and Member States share competences in policy areas such as climate change (environment), transport and energy. Even though the Commission has exclusive competence on related fields (such as trade), there is no multilateral context in which these trade competences could be used and additionally other competences in which Member States are more autonomous, such as taxation, are deemed more important. Moreover, within the primary shared competence of energy, the 'energy mix' is within the remit of individual Member States, which negatively affects the EU cooperation on alternative fuels . Secondly, the legal context of the Single Market makes it clear that transport (and energy) is sometimes a category that is distinct from more binding procedures like the Emission Trading System. Thirdly, the Court's case law could help in bringing the EU and Member States together. However, the Commission has not started infringement proceedings on the lack of cooperation in the automotive sector. Fourthly, the directives on fuel quality, alternative fuel infrastructure and renewable energy give some guidance. However, the past few years have seen many 'U-turns' in policies which affected the directives.

When comparing the effects of these procedural arrangements and legal competences with alternative 'political' issues, some explanations seem stronger, while others seem less important. Large 'preference heterogeneity' between and within Member States seems to affect EU and Member State actors in formulating policies more heavily than the differences between the EU and the 'rest of the world'. Moreover, the interviews and, to a lesser extent, the literature, demonstrated that there are two alternative explanations that seem to have a strong effect. First, the scientific uncertainty and emotional state of the debate on alternative fuels, primarily on biofuels, seem to have an effect on policy formulation. Secondly, the alternative fuels policy area is characterised by powerful (domestic) stakeholders with often divergent interests, such as the car industry, oil industry, CSOs and the agricultural industry. Moreover, the 'governmental' stakeholders within EU and Member State seem to have divergent interests with often (national) ministries and (European Commission) DGs having opposing views on this topic. These explanations affect EU and Member State coordination alongside and often above legal considerations, meaning that they explain EU and Member

[381] See the annex for an (anonymised) overview of the interviews and chapter 3 for the methodological justification.

State coordination more than legal coordination in this specific case study. The effect of the explanations is visualised below (see Figure 4.1).

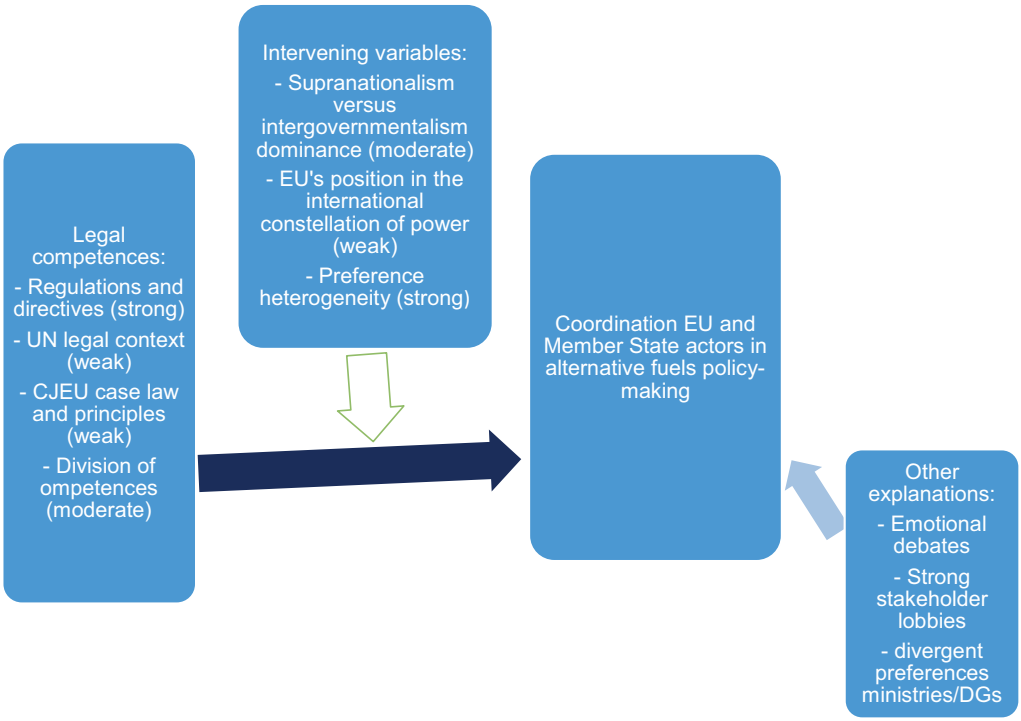

Figure 4. 1 Variables and effects on EU and Member State coordination in alternative fuels policy making

The adoption and ratification of the Paris Agreement, greater energy security concerns, concerns about traditional combustion engines and higher ambitions on alternative fuels could lead to legal and political debate on whether it would more effective, efficient and closer to the rationale of the Treaty, to grant the Commission a bigger role. Recent years have seen many U-turns in EU and Member State policies, which proved to be detrimental to mass-scale introduction of e.g. flexi fuel vehicles. Some of the stakeholders speak of a classical 'chicken and egg situation' in which stakeholders keep each other in custody on this topic before moving forwards.[382] The situation on alternative fuels in other parts of the world already makes it clear that governmental policy could really encourage this agenda. In that sense, one would expect a larger discussion on legal competences on alternative fuels in the near future, and more specifically on 'energy mix', taxation and climate action.

Further research

The European Commission appears to be right in its recent strategy on Low-Emission Mobility in which it holds that the EU could lead on the introduction of some alternative

[382] Interview other societal stakeholder, 20-7-2016, Interview other societal stakeholder 1, 27-3-2017, Interview other societal stakeholder, 28-7-2016.

fuels.[383] This leading potential could indeed be used for other transport sectors beyond the scope of this study, like aviation, shipping and (heavy-weight) freight, as there is not yet a sustainable alternative for these heavy polluting industries as it has been held in strategic visions of Member States.[384] Nevertheless, the automotive industry could in addition take the lead towards more sustainable fuels. With electrification still in its infancy, blending of fuels can contribute towards a more sustainable future, in the transitional phase and within the European Union. While the mass-scale introduction of flexi-fuel vehicles seems far-fetched, it is definitely possible to take incremental steps towards alternative fuels and increasing awareness thereof. More political and legal research on this topic could reveal the 'institutional' constraints that currently hinder the real introduction of a 'single market' on alternative fuels. This study already claims that the nature of policy change in the EU is more 'incremental' than 'radical'. A more historical institutionalist approach could therefore use these build-up of incremental steps to explain (the absence of) EU-wide policies on alternative fuels. One of the explaining factors might be the current difficulty of multilateral cooperation on this topic, which keeps EU and Member State decision-makers within their own (conservative) ambition cycle heavily influenced by domestic stakeholders.

Moreover, one could have a better appraisal of other explaining factors that this study came across. The increasing importance of other societal stakeholders like the private sector, lobbying actors and CSOs seem to have strong, but divergent, effect on technology-neutral fuel policies for private vehicles. Furthermore, the scientific uncertainty seems to have affected the cooperation rather heavily and lessons could be learned from other 'ethically loaded' topics in the EU such as GMOs or nuclear waste. Additionally, the experience of working together with technical experts and technical universities has proven refreshing, and combinations of these disciplines could work well in explaining decision-making on global challenges including emission reduction in transport.

SUMMARY CHAPTER 4

The chapter identified how the allocation of competences, i.e. legal competences, affect EU and Member State actors in their policy formulation on alternative fuels for passenger cars such as electricity, biofuels and hydrogen. The 'mixed' competences on energy, transport and climate affect coordination on alternative fuel policies. Taxation, land use policies and energy mix choices remain within the discretionary autonomy of Member States. Moreover, the related directives on topics including fuel quality have been amended due to scientific uncertainty. With regards to the UN legal context, the topic of alternative fuels is not covered by a multilateral platform. The Commission seems hesitant to start infringement proceedings against misconduct involving traditional combustion engines. Therefore, (other) political factors like large preference heterogeneity between Member States and between individual ministries/DGs seem to have important effects. This study likewise points to alternative explanations such as (domestic) stakeholder interests and the emotional/science-critical debate, which affects coordination on alternative fuel policies.

[383] European Commission (2016) 'A European Strategy for Low-Emission Mobility', COM(2016) 501 final, 20.07.2016, Brussels, p. 5.
[384] See e.g. Ministerie van Economische Zaken and Ministerie van Infrastructuur en Milieu (2016), 'Biomassa 2030: Strategische visie voor de inzet van biomassa op weg naar 2030'. Interview MS official, 22-7-2016.

Chapter 5: 'Team EU' in UNFCCC Climate Negotiations

5.1 Introduction

"The Paris Agreement is the first of its kind and it would not have been possible were it not for the European Union. Today we continued to show leadership and prove that, together, the European Union can deliver." (President of the European Commission, Jean Claude Juncker, State of the Union Speech, 14 September 2016[385])

The European Union (EU) and its Member States have been leading actors in constructing the international climate policy framework since the early 1990s.[386] The topic of climate change has been identified as a 'saviour issue' for the success of the EU integration project. [387] Internationally, the recent emissions of greenhouse gases were the largest in history; the atmosphere and oceans have warmed, the amount of snow and ice has diminished and the sea level has risen.[388] With that institutional importance and climatological urgency in mind, the EU has been committed to a multilateral response to combat climate change.[389] After the 'failure'[390] of the Copenhagen conference (2009), both from a multilateral perspective and in terms of EU conduct, the Paris Agreement has been hailed as a success of (EU) climate diplomacy.[391]

Research on the EU and Member States in international climate change negotiations tends to focus on EU actorness and effectiveness, respectively the EU's ability to function 'actively and deliberately in relation to other actors in the international system'[392] and its 'goal-attainment' in these international negotiations.[393] As such, the 'leadership' of the EU in the framework of the United Nations Framework Convention on Climate Change (UNFCCC) is evaluated more positive or negative depending on the goals set.[394] The empirical studies that analyse internal coordination structures of the EU and Member States (in climate negotiations) focus primarily on the balance of power between (large) Member States in the

[385] European Commission, 'Paris Agreement to enter into force as EU agrees ratification' [2016] , press release, Strasbourg, 4 October 2016, accessed << http://europa.eu/rapid/press-release_IP-16-3284_en.htm>> 14 June 2017.
[386] Lefevere, J.. Runge-Metzger, A. and Werksman, J. (2015) 'The EU and international climate change policy' in Jos Delbeke, Peter Vis (eds), *EU Climate Policy Explained* (Routledge), p. 109.
[387] Van Schaik, L. and Schunz, S. (2012) 'Explaining EU Activism and Impact in Global Climate Politics: Is the Union a Norm-or Interest-Driven Actor?'. *JCMS: Journal of Common Market Studies*, Vol. *50*, No. 1, p. 169.
[388] Pachauri, R.K. (2014) *Climate Change 2014 Synthesis Report* (The Intergovernmental Panel on Climate Change 2014) < https://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_FINAL_full_wcover.pdf> accessed 16 December 2016.
[389] Kamphof, R. (2018, forthcoming) 'UN Environment Programme (UN Environment) and UN Framework Convention on Climate Change (UNFCCC): EU Action Between Legal Competences and Political Power' in Odermatt, J, and Wessel, R.A. (eds) Research Handbook on the EU's Engagement with International Organisations' (Edward Elgar Publishing).
[390] Falkner, R., Stephan, H. and Vogler, J. (2010) 'International climate policy after Copenhagen: Towards a 'building blocks' approach'. *Global Policy*, Vol. 1, No. 3, pp. 252-262.
[391] Oberthür, S. (2016) 'Where to go from Paris? The European Union in climate geopolitics'. *Global Affairs*, Vol. 2, No. 2, pp. 119-130.
[392] Sjöstedt, G. (1977) *The external role of the European Community* (Famborough, Saxon House), p. 16.
[393] Groen, L. and Niemann, A. (2013) 'The European Union at the Copenhagen climate negotiations: A case of contested EU actorness and effectiveness'. *International Relations*, Vol. 27, No. 3, pp. 308-324. Oberthür, S. and Groen, L. (2015) 'The Effectiveness Dimension of the EU's Performance in International Institutions: Toward a More Comprehensive Assessment Framework'. *JCMS: Journal of Common Market Studies,* Vol. 53, No. 6, pp. 1319-1335. Oberthür, S. and Groen, L. (2017) 'Explaining goal achievement in international negotiations: the EU and the Paris Agreement on climate change'. *Journal of European Public Policy,* pp. 1-20 (published online). Delreux, T. (2014) 'EU actorness, cohesiveness and effectiveness in environmental affairs'. *Journal of European Public Policy*, Vol. *21*, No. 7, pp. 1017-1032. Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan).
[394] Oberthür, S. and Roche Kelly, C. (2008) 'EU leadership in international climate policy: achievements and challenges'. *The International Spectator*, Vol. 43, No. 3, pp. 35-50. Bäckstrand, K., and Elgström, O. (2013) 'The EU's role in climate change negotiations: from leader to 'leadiator'. *Journal of European Public Policy*, Vol. 20, No. 10, pp. 1369-1386. Parker, C. F. and Karlsson, C. (2010) 'Climate change and the European Union's leadership moment: an inconvenient truth?'. *JCMS: Journal of Common Market Studies*, Vol. 48, No. 4, pp. 923-943.

Council and the Commission[395], 'socialisation' of representatives from Member States[396], the EU position in the international negotiations concerning the environment and preference heterogeneity in the sense of (absence of) aligning interests.[397]

The EU and its Member States are often considered as an unitary actor. It is in fact not common to see the European Union sharing competences and legal competences with Member States when acting in international climate negotiations. As a result, little is known about the *political* effect of these legal competences despite calls for more cross-disciplinary research in both legal and political science contributions on the role and functioning of the EU within international institutions.[398] The division of competences between the EU and its Member States is one of the crucial issues in institutional discussions.[399] It is a delicate question, which often results in either diminishing the 'creeping' competences of the EU or supporting the idea of a 'single voice'.[400] Climate change is, however, a multifaceted issue as it includes shared, exclusive and supportive competences. By combining legal and political perspectives, i.e. formal rules and informal practices, the practical effects of 'mixed competences' could be analysed in more detail.

The present chapter identifies whether legal competences enable or impede coordination of the EU and Member State actors at UNFCCC negotiations. The main question addressed in this chapter has been the following: *How do legal competences affect EU and Member State coordination in negotiations at the UNFCCC?* As such, the effect of legal competences (independent variables) is compared and assessed alongside other more common issues (and 'intervening variables'), such as supranational versus intergovernmental dominance, the EU's position within the international constellation of power, and preference heterogeneity. Socialisation practices are seen as part of the (dependent variable) coordination of 'team EU'. This chapter also addresses 'other explanations' raised in the semi-structured interviews that could hinder or enable coordination in the negotiations of 'Team EU' at the UNFCCC.

The findings in this chapter arebased on multiple sources of information, which are considered together through the triangulation technique. The case study makes use of a step-by-step process tracing approach, revising legal documents (Treaty provisions, cases before the Court of Justice of the EU, regulations and directives), additional policy documents and academic literature. The qualitative part of this study additionally relies on

[395] Laatikainen, K. and Smith, K. (eds) (2006) *The European Union at the United Nations: Intersecting Multilateralisms* (Basingstoke: Palgrave). Cf Dykstra, H. (2009) 'Commission versus Council Secretariat: an analysis of bureaucratic rivalry in European foreign policy.' *European Foreign Affairs. Rev*iew Vol. 14, No. 3, pp. 431-450.

[396] Groenleer, M. L. and Van Schaik, L. G. (2007) 'United We Stand? The European Union's International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol'. *JCMS: Journal of Common Market Studies*, Vol. 45, No. 5, pp. 969-998. EU socialization means that EU Member States' representatives involved in deciding on and negotiating the EU position in international institutions first and foremost adopt a European orientation, see Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan), p. 75.

[397] Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan). Groen, L. and Niemann, A. (2013) 'The European Union at the Copenhagen climate negotiations: A case of contested EU actorness and effectiveness'. *International Relations*, Vol. 27, No. 3, pp. 308-324.

[398] Jørgensen, K. E. and Wessel, R. A. (2011) 'The position of the European Union in (other) international organizations: confronting legal and political approaches'. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. (Cheltenham: Edward Elgar), pp. 261-286. Groen, L. and Niemann, A. (2013) 'The European Union at the Copenhagen climate negotiations: A case of contested EU actorness and effectiveness'. *International Relations*, Vol. 27, No. 3, p. 320 and Oberthür, S. and Groen, L. (2015) 'The Effectiveness Dimension of the EU's Performance in International Institutions: Toward a More Comprehensive Assessment Framework'. *JCMS: Journal of Common Market Studies,* Vol. 53, No. 6, pp. 1319-1335.

[399] Cf Benz, A. (2010) 'The EU's competences: The 'vertical' perspective on the multilevel system'. *Living Reviews in European Governance – LERG.*

[400] Pollack, M. A. (2000) 'The end of creeping competence? EU policy-making since Maastricht'. *JCMS: Journal of Common Market Studies*, Vol. 38, No. 3, pp. 519-538.

twenty semi-structured interviews with (leading) negotiators, EU and Member State officials, (former) ministers as well as other societal stakeholders (see Table 5.1).[401] These interviewees were approached after a stakeholder analysis and found on the basis of organigrams/websites ('own initiative') and/or referral (snowball sampling technique). As previously mentioned, the findings are brought together through triangulation. With regards to the timeframe, this analysis focuses on the process starting with the Copenhagen Climate Change Conference (2009) until July 2017, and it includes the UNFCCC COP21 in Paris (2015). The main emphasis is on the large international climate change conferences (COP), but environmental day-to-day diplomacy is also part of the analysis and the questions in the semi-structured interviews. The process tracing approach leads to an overall assessment of the potential influence of legal competences, and of the interaction with/autonomy from other intervening variables and other explanations for this specific case. The results from this study can only be considered as 'plausibility probes', providing interesting avenues for future research, but it is acknowledged that they need further testing in other cases to become more robust.[402]

Category	No of interviews
EU official	7
Member State official	10
Other societal stakeholder	3

Table 5. 1 No of semi-structured interviews for case study EU in UNFCCC negotiations

The plan of this chapter is as follows. Section 5.2 describes the multilateral negotiation processes at the UNFCCC from 2009 to 2017 more extensively. After a broader UN overview, the coordination procedures of the 'Team EU' approach with EU and Member State officials is introduced in section 5.3. The following section (5.4) introduces the 'legal' issues and powers, including also the division of competences related to the climate agreement and the role of the case law and principles established by the Court of Justice of the European Union. The fifth section considers more 'political' issues and intervening variables, which might have a different effect than the legal division of competences would prescribe. This section focuses on the supranational versus intergovernmental dominance, the external negotiating context and preference heterogeneity. Other explanations that might disproportionately affect EU and Member State coordination and were raised in the interviews are identified. In the final section it is evaluated whether the EU and its Member States are legally enabled or restrained by the division of competences or whether 'political' issues play a more prominent role. The chapter ends with the suggestion of some avenues for future research.

5.2 Multilateral environment UNFCCC (2009-2017)

5.2.1 UNFCCC 1992-2017

The United Nations Framework Convention on Climate Change (UNFCCC), adopted during the 1992 Earth Summit in Rio, is the principal framework where discussions on global climate efforts take place. The most important forum is the annual Conference of the Parties (COP).

[401] See also appendix, as nine interviews have been semi-structured but exploratory.
[402] George, A. L. and Bennett, A. (2005) *Case studies and theory development in the social sciences* (Cambridge, Massachusetts: MIT Press).

The COP is the supreme decision-making body of the UNFCCC and all 195 members are invited to participate in these meetings. The EU is a party to the UNFCCC and so also are all the EU Member States individually.[403] The COPs have been described as 'incredibly gigantic' events and are the culmination of a year of time-consuming, difficult preparations and missions by officials and Ministers. EU Member States have taken part in the organisation of recent COPs, such as COP15 (Copenhagen, Denmark), COP19 (Warsaw, Poland) and COP21 (Paris, France).

The EU has been involved since the very start and has been one of the leading actors in saving the international climate regime by adhering to the Kyoto Protocol when the United States declared their opposition to such Protocol in 2001.[404] The EU has the most far-reaching emission reduction commitment of all big economies. The goal is to reduce emissions by 40 percent before 2030, when compared to 1990 levels. However, there have been rounds of failed negotiations to define a universal climate framework. The most outspoken failure for the EU in this regard was probably the Copenhagen conference in 2009.[405]

The subsequent COPs led, however, to the successful COP21 in Paris (2015). The interviews show that in 2009 there was not much hope for a renewed alignment to international climate change commitments.[406] The Mexican Presidency in Cancun (COP16) in 2010 has however been successful in starting a bottom-up process involving both developing and developed nations and asking them to come up with climate pledges. This process continued with nationally determined contributions in the years after. The Paris Agreement marks the success of a universal multilateral agreement on climate change mitigation. During COP21, the 'Team EU' delegation of the EU and its Member States built a coalition of both developed and developing nations, which resulted in securing a successful international climate agreement.[407] As stipulated in the Paris Agreement, climate pledges now need to be tracked to 'make emission pathways consistent with holding the increase in the global average temperature to well below 2 °C above preindustrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above preindustrial levels'.[408] This 'stocktake' process will begin end of 2018. The EU and all twenty-eight Member States have ratified the Paris Agreement by November 2017.[409]

5.2.2 Paris Agreement: legally binding?

The UNFCCC negotiations are very technical and have a large scope, including climate change mitigation, adaptation and the means of implementation (a.o. finance and capacity building). Substantive legal issues such as the legal form or character of a UNFCCC

[403] UNFCCC website (2017) Parties to the Convention and Observer States' http://unfccc.int/parties_and_observers/parties/items/2352.php
[404] Oberthür, S. and Roche Kelly, C. (2008) 'EU leadership in international climate policy: achievements and challenges'. *The International Spectator*, Vol. 43, No. 3, p. 36.
[405] See footnote 4. For a popular exposé see Meilstrup, P. (2010) 'The runaway summit: the background story of the Danish presidency of COP15, the UN Climate Change Conference'. *Danish Foreign Policy Yearbook 2010*, pp. 113-135.
[406] Interview EU official, 9-4-2014. Interview MS official, 7-10-2015.
[407] Oberthür, S. (2016) 'Where to go from Paris? The European Union in climate geopolitics'. *Global Affairs*, Vol. 2, No. 2, pp. 119-130 and 'How the EU helped build the ambition coalition' (EUClimateAction Storify, January 2016) <https://storify.com/EUClimateAction/how-the-eu-helped-build-the-coalition-ambition> accessed 30 November 2016.
[408] United Nations Framework Convention on Climate Change (2015) Paris Agreement, https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf, Accessed 13 December 2016.
[409] The case study was conducted until July 2017 when 26 EU Member States ratified the Paris Agreement. In August 2017 (The Netherlands) and November 2017 (Czech Republic) the remaining EU Member States ratified the agreement, cf http://unfccc.int/paris_agreement/items/9444.php, Accessed 15 November 2017.

agreement are therefore central issues to the COP negotiations.[410] The Paris Agreement is a Treaty that falls under the definition of the Vienna Convention on the Law of the Treaties. However, not every provision of the agreement creates legal obligations. The Paris Agreement is composed of both a 'binding' part, as well as of voluntary, non-binding commitments. The run-up to the Paris Agreement has been a 'bottom-up' process including 'intended' or voluntary nationally determined contributions which focus on transparency, accountability and precision. As demonstrated in a recent UNFCCC synthesis report, these aggregated INDCs will not prevent a temperature rise of more than 2°C, the overall objective for the climate deal.[411] They are, moreover, essentially voluntary and some of the commitments made by developing countries are conditional on the availability of climate finance. Therefore, a structural 'stocktake' is required to update commitments and meet the overarching goal to stay within a maximum of 1,5 to 2 degrees' temperature rise.

The bottom-up process of the Paris Agreement differs from the more 'legally binding' Kyoto Protocol, which included for instance a carbon budget and a maximum of tonnes of CO2 emissions per (EU) Member State. From a legal perspective, the Paris Agreement could be considered as a step backwards when compared to the Kyoto Protocol. However, in contrast to the Paris Agreement, the Kyoto Protocol was not a 'universal' agreement.[412] The 'political' significance of the Paris Agreement is therefore higher than the one of the Kyoto Protocol, despite its 'softer' measures. As indicated by Bodansky (2016: 142), the issue of the legal character "though important, is only one factor in assessing the significance of the Paris outcome".

5.3 'Team EU' coordination

Coordination is the process of contacts between diplomats and officials from EU institutions (especially the European Commission) and Member States with the purpose of discussing an issue of common interest and working towards a common position.. These coordination processes can be internal (within the EU) or external (international) and include the discussion of the 'management' of the coordination.

The EU and its Member States have invented a very specific institutional arrangement of coordination in their UNFCCC climate diplomacy. Within the 'Team EU', composed of representatives from the EU institutions and the Member States, one can identify 'lead negotiators' and 'issue leaders'. Lead negotiators are appointed by the Council Working Party on International Environment Issues (WPIEI). Lead negotiators have their institutional affiliation in either Member States or the European Commission and have an important 'external' representation role during COPs. In practice, most lead negotiators are from large Member States (Germany, France, and United Kingdom) or Member States with a specific interest (e.g. Sweden). The Commission lead negotiator originates from the Directorate

[410] Bodansky, D. (2016) 'The legal character of the Paris Agreement'. *Review of European, Comparative & International Environmental Law*, Vol. 25, No. 2, p. 142.
[411] UNFCCC (2015) 'Synthesis report on the aggregate effect of the intended nationally determined contributions', <https://unfccc.int/resource/docs/2015/cop21/eng/07.pdf> Accessed 26 July 2017.
[412] Cf Kamphof, R. (2018, forthcoming) UN Environment Programme (UN Environment) and UN Framework Convention on Climate Change (UNFCCC): EU Action Between Legal Competences and Political Power' in Odermatt, J, and Wessel, R.A. (eds) Research Handbook on the EU's Engagement with International Organisations' (Edward Elgar Publishing). For an overview of how the EU evolved from an actor focused on 'legally binding' international agreements towards an actor aiming for universal agreements. The 'universality' of the Agreement is nevertheless currently under pressure seeing the announced withdrawal by the United States President Donald Trump. Cf <https://www.whitehouse.gov/the-press-office/2017/06/01/statement-president-trump-paris-climate-accord.> accessed 26 July 2017.

General Climate Action (DG CLIMA). During the Paris COP21 Team EU had four 'lead negotiators'.

Apart from the lead negotiators, Team EU has many 'issue leaders' assisting lead negotiators on specific issues. Their main task is not to represent the EU internationally, but to assist lead negotiators. Additionally, there are expert groups supporting the Council working group WPIEI gaining more and more authority to develop negotiating positions.[413] Importantly, the six-month Presidency of the Council of the European Union also plays a large role in coordination of WPIEI and in representing 'The EU and the Member States' externally. The Commission, with over 80 percent representation by DG CLIMA, plays an important role in substantive expertise and continuity. While the European External Action Service (EEAS) has an important informative role in preparing the negotiations and collaborating with third countries, the thematic expertise is limited. The Members of European Parliament also have an interest in these issues and keep informed, but the UNFCCC negotiations remain an intergovernmental process.

The interviews portray the Team EU daily agenda during the COPs as very time-consuming, starting with a Presidency chaired coordination meeting of EU and Member States in the morning, and followed by the plenary. During lunch breaks, multiple bilateral meetings take place, especially with third countries or regional blocs. In the late afternoon and evening, Team EU evaluates the day and lead negotiators are usually still active with bilateral meetings.[414] This system allows for the 'pooling of expertise' of the Commission and Member States, which results in the Team being "among the best-prepared negotiators in the world at diplomatic and administrative level" according to Kaczyński (2016: 267).[415] The representatives are 'blended' into the negotiation team. Nevertheless, if one is not part of the 'core' team EU, it might prove difficult to have access to all the information. There is still some Member State autonomy when it comes to nominations to certain bodies, substantive financial questions (see later), or the organisation of the COP in the territory of the Member State.

UNFCCC negotiations could be perceived as a process of 'socialisation' in the way EU and Member State actors coordinate. Socialisation means that EU Member States' representatives involved in deciding on and negotiating the EU position in international institutions first and foremost adopt a European orientation, leading to the 'socialisation' in EU practices.[416] The interviews show that the 'Team EU' approach, with all its preparatory work before and after the COP negotiations, unequivocally affects the EU unity, cooperation and expertise in climate negotiations.[417] Lead negotiators meet in many occasions. 'Issue leaders' and other support staff have also frequent contact.[418] The European (and global) 'UNFCCC crowd' has been fairly stable up to the Paris Agreement, with many diplomats being active in this policy area for at least 5 to 10 years. This seems to contribute to a pragmatic decision-making process. One could argue that the legal 'duty of loyal cooperation' is a key driver of this process, but that would be far-fetched, as legal powers are

[413] Oberthür, S. and Roche Kelly, C. (2008) 'EU leadership in international climate policy: achievements and challenges'. *The International Spectator*, Vol. 43, No. 3, p. 38.
[414] Interview EU official, 30-5-2017, Interview MS official, 24-1-2014, Interview EU official, 13-6-2017.
[415] Kaczyński, P. M. (2012) 'A Gordian Knot or Not? EU Representation in UN Climate Negotiations' in Laursen, F. (ed) *The EU's Lisbon Treaty: Institutional Choices and Implementation* (Routledge), pp. 265-284.
[416] Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan), p. 75.
[417] Interview MS official, 24-1-2014, Interview EU official, 30-5-2017, Interview MS official, 13-6-2017.
[418] Interview MS official, 3-4-2015, Interview MS official, 8-6-2017, Interview MS official, 14-6-2017.

in general not used so often (at least directly) . The ones directly involved often hail the 'Team EU' method, but there are some disadvantages. As some authors state, socialisation can lead to 'groupthink', which could have a negative impact on effectiveness.[419] Moreover, the process depends on individual characteristics and relationships, leaving it vulnerable to different preferences.

5.4 The division of competences, legal issues and EU negotiation

How does the division of competences in the Treaty affect the conduct of UNFCCC climate negotiations by Team EU? This section focuses on internal aspects and gives an historical overview of how the role of competences on environment and climate change evolved, especially after 2009. Furthermore, the 'negotiation mandate' of the EU and the Member States is discussed, as well as the effects of case law of the Court of Justice of the European Union and regulations and directives.

5.4.1 UN(FCCC) Statutes and (legal) documents

As the previous section indicated, the UN multilateral context and Statutes have a strong effect on coordination between the EU and Member State actors. The UNFCCC arrangement is described as a peculiar arrangement within the UN system, as it differs from all other UN processes.[420] Given the large scope of the UNFCCC negotiations, numerous substantive legal questions can be raised.[421] The Kyoto Protocol is considered more legally stringent[422], but many legal questions remain. The whole process becomes very technical and legal, especially during the final stages of the negotiation of agreements and texts.[423]

5.4.2 Competences EU: historical overview and practice 2009-2017

A simple search of 'climate change' or 'climate action' in the Treaties of the European Union[424] leads to one result only: Article 191 TFEU (environment) where it is stated that (1) 'Union policy on the environment shall contribute to pursuit of the following objectives' (..) - 'promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change'. This international level is apparent in Art 191(4) TFEU: 'within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations'. Article 192 TFEU clarifies that some policy areas fall outside this scope, including provisions 'primarily of a fiscal nature', measures affecting land use and measures affecting a Member State's "choice between different energy sources and the general structure of its energy supply'. Apart from this, the 'environment' policy area is falls under the area of shared competences according to a combined reading of articles 4 and 191 TFEU.

The wording of the Treaty suggests that climate action is part of the 'environmental policy'. The environmental policy received particular attention in the Treaties starting from the entry

[419] Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan), p. 76.
[420] Interview MS official, 13-6-2017.
[421] Interview MS official, 13-6-2017, Interview EU official, 7-6-2017.
[422] Interview MS official, 10-5-2017, Interview MS official, 7-10-2015.
[423] Interview EU official, 7-6-2017, Interview EU official, 13-6-2017, Interview MS official, 7-10-2015, Interview other societal stakeholder, 26-8-2015, Interview EU official, 9-4-2014.
[424] Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (OJ 2012 C 83 and C 326/47).

into force of the Single European Act (1986) which introduced the idea of the Single Market. Some Member States were hesitant, as they feared that supranational environmental policies would result in the weakening of their own agendas in this area. However, the environmental powers were increasingly necessary and received significant attention in the 'slipstream' of trade policies[425]. The Union, or better the Community at that time, used the international attention for this topic from the Brundtlandt Commission and the concept of 'sustainable development' (1987) to become a part of the preparatory works for an international (UNFCCC) framework in 1992. It thus 'quickly developed an external dimension' [426] and 'considerably improved its leadership record' since then.[427] In parallel, the Maastricht Treaty (1992) introduced the principle of subsidiarity in the Treaties.[428] The international negotiations are clearly, 'by reason of scale', a shared competence area in which Member States are represented in UNFCCC separately, alongside the European Commission.

The absence of a clear reference to 'climate' in the catalogue of competences and the multi-faceted and all-encompassing international climate negotiations leave some room for (legal) arguments and manoeuvring. Some say that the policy field of environment and climate change constitutes a typical example of a *shared pre-emptive competence* within the sub-classification of shared competences. [429] This implies that both EU and Member State actors may engage in diplomatic relations with third (state) partners and international organisations, as long as EU action does not lead to a pre-emption of Member State initiatives and the principle of sincere cooperation (see next paragraph) is taken into account. Some are even of the opinion that climate change could be regarded as an 'exclusive' competence of the Commission.[430] The mere fact that the Commission does not conduct the negotiations by itself makes the the latter claim far-fetched. Delreux (2006:236) is probably right in holding that 'In the field of EC external environmental policy, EC competences are 'most of the time shared'[431] and primarily mixed. This is evident from the signing of the climate agreements as a 'mixed agreement'.

The issue of competences in climate change negotiations could potentially spark political debate (and conflict). However, the interviews show that competences are not a primary issue during (internal and external) negotiations.[432] This 'silence on competences' is especially the case after 2011, when a major conflict on external representation was solved.[433] Sometimes competences would seem to be back on the table, especially when

[425] Russo, E. (2017) 'Towards an Exclusive Competence of the EU to Conclude Climate Agreements?'. *European Foreign Affairs Review*, Vol. 22, No. 2, p. 203 even states that 'before the entry into force of the Single European Act the European Community concluded its international environmental agreements on the basis of an implicit external competence'.
[426] Lavenex, S. (2004) 'EU external governance in 'wider Europe'. *Journal of European Public Policy*, Vol. *11*, No. 4, p. 691.
[427] Oberthür, S. and Roche Kelly, C. (2008) 'EU leadership in international climate policy: achievements and challenges'. *The International Spectator*, Vol. 43, No. 3, pp. 35-50.
[428] Art 5(3) TEU. Cf section 2.3.
[429] However, one could argue that the EU's legislative intervention is limited to *minimum* harmonization of environmental policy. Member States can lay down stricter legal norms to protect their public goods. Consequently, "the pre-emptive effect mentioned in Art. 4 (TFEU) does not actually take place, since the Member States can continue to legislate even in the domains covered by EU legislation, as long as they comply with the minimum norms laid down by the Union", Cf Claes, M. and De Wite, B. (2016) 'Competences: codification and contestation' in: Lazowski, A. and Blockmans, S. (Eds.) (2016) *Research Handbook on EU Institutional Law* (Edward Elgar Publishing), p. 58.
[430] Russo, E. (2017) 'Towards an Exclusive Competence of the EU to Conclude Climate Agreements?'. *European Foreign Affairs Review*, Vol. 22, No. 2, pp. 197-212.
[431] Delreux, T. (2006) 'The European Union in international environmental negotiations: a legal perspective on the internal decision-making process'. *International Environmental Agreements: Politics, Law and Economic*s, Vol. 6, No. 3, pp. 231-248 DOI 10.1007/s10784-006-9015-1.
[432] Interview EU official, 30-5-2017, Interview MS official, 8-6-2017, Interview MS official, 14-6-2017.
[433] Council of the European Union (2011) General Arrangements for EU Statements in Multilateral Organizations, 16901/11, 24 October 2011. Available at << http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015901%202011%20INIT>>. Accessed 19 November 2015.

there is an issue of giving 'support' to other (developing) countries by means of e.g. finance or capacity building, as these areas are not part of shared environmental competences.[434] The habit of leaving competences aside is consequently challenged every so often, but it is not a primary issue, and Member States and the EU work together *ad-hoc* in Team EU on the highly technical and complex UNFCCC texts. While some argue that the working arrangements with 'issue leaders' and 'lead negotiators' derive from the Treaty,[435] they are so peculiar/specific for climate change that the legal origins are then not so clear anymore.

5.4.3 Negotiation mandate and external representation

While competences are not integral part of the internal discussion, the negotiation mandate for Team EU in climate negotiations could still be seen as the legal 'elephant in the room'. The Treaty is quite clear about the division of responsibilities in external representation. Article 17(1) ensures that the *European Commission* is responsible for external representation, with the exception of the Common Foreign and Security Policy (CFSP). The Council of the European Union and the Commission assisted by the High Representative of the Union for Foreign Affairs and Security Policy 'shall ensure the consistency' of EU's foreign policies and 'shall cooperate to that effect'.[436] One would thus expect the following steps to be followed in the scenario of a mixed agreement: a Recommendation by the Commission, followed by a Council Decision with negotiating directives and then European Commission (and Member State) representation.

The current 'negotiation mandate' , however, does not strictly adhere to the rationale of the Treaty and differs, as a matter of fact, from all other policy areas, as there is not even an explicit mandate, besides that for European Council conclusions where unanimity is required. The European Council conclusions and strategies then form the basis for meetings of the Council of Ministers, such as the Environment Council or ECOFIN (economic and financial affairs). The Council Working Group WPIEI plays a considerable role by leading negotiations. The most 'atypical' feature of 'Team EU' in climate negotiations is probably the important external role attributed to the six-month Presidency of the Council of the European Union. As a result, one of the smallest Member States, Luxembourg, was coordinating and representing the EU in bilateral meetings with e.g. China and the United States during COP21 in Paris, France. While the 'pooling of expertise' argument (see section 5.2) is indeed strong, there are also disadvantages related to this peculiar arrangement. For instance, the (European) Council conclusions, i.e. the so called the 'negotiation mandate', freely circulate after adoption, which makes it easier for third parties to negotiate with the EU. Some hold that the Copenhagen conference failed due to the 'transparency' of the EU negotiation mandate and differences among Member States.[437] The peculiar negotiation mandate and the upgraded role of the Presidency are symptomatic of the fact that the rationale of the Treaty is not being followed. This may cause the use of infringement proceedings, which would logically start from the desks of the European Commission. However, infringement proceedings are often considered as politically risky, since they would lead to a standstill on the arrangement in question.

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[434] Development cooperation is a 'parallel' competence and a specific shared competence in which Member States keep autonomy. Finance is also covered in Art 192 TFEU (see above).
[435] Interview EU official, 9-4-2014.
[436] Art 21(3) TEU.
[437] See Russo, E. (2017) 'Towards an Exclusive Competence of the EU to Conclude Climate Agreements?'. *European Foreign Affairs Review*, Vol. 22, No. 2, pp. 197-212 and Meilstrup, P. (2010) 'The runaway summit: the background story of the Danish presidency of COP15, the UN Climate Change Conference'. *Danish Foreign Policy Yearbook 2010*, pp. 113-135.

5.4.4 Court of Justice, regulations and directives: implied powers and the duty of sincere cooperation

The judge of the use of competences and legal competences within the EU is the Court of Justice of the European Union. While the internal division of competences is delineated in the Treaty, the *external* competences are not clearly established therein. Such identification is therefore largely based on decades of (pre-Lisbon) case law of the Court of Justice of the European Union. The Court favours the participation of the EU in international organisations as a way to exercise its competence, and the fluidity of competences in external relations has 'provided a fertile field for ingenious legal argument' over the interpretation of the Treaties.[438] With regards to climate change negotiations, the case law is relevant in relation to at least three aspects: implied powers, the principle of loyal cooperation and mixed agreements.

First, the case law on 'implied powers' provides that EU external competences exist because there are internal rules which form a legal basis to imply external competence.[439] Given the large amount of regulatory climate (and energy) packages adopted in recent years, one could infer that the Commission has the competence to represent the Union *and Member States* more substantially than in UNFCCC negotiations. For instance, the 2030 Energy and Climate package created targets in three key areas to achieve the above-mentioned goals: (1) a 40% cut in greenhouse gas emissions compared to 1990 levels; (2) at least a 27% share of renewable energy consumption and (3) at least 27% energy savings compared to the business-as-usual scenario.[440]

Secondly, even when Member States are not excluded from acting on an individual basis in international organisations due to their 'implied powers', they are still not entirely free to act as they see fit, since they have obligations, stemming from EU Law, such as the principle of loyal cooperation.[441] There is a feeling among Member State actors that they cannot 'colour outside the lines', as they have to work within the remit of Team EU in climate negotiations and cannot go below the level agreed in previous EU arrangements including the EU Climate and Energy Package.[442] Accordingly, one could argue that they use the principle of loyal cooperation, although they do not directly refer to case-law, but more to the cooperation code of conduct in Team EU.

The current procedure is definitely not following the logic of the Treaty and there are many reasons why a case could be initiated before the Court. However, the Commission may be of the opinion that the Member States in Team EU have so far been acting according to the principle of loyal cooperation and that the current (positive) cooperation in Team EU works better than the negative 'checks' of Member States in the WTO trade regime, where the EU has exclusive competences. Furthermore, climate change itself might be evaluated as too

[438] Wouters, J., Odermatt, J. and Ramopoulos, T. (2013) 'The EU in the World of International Organizations: Diplomatic Aspirations, Legal Hurdles and Political Realities. Legal Hurdles and Political Realities.' Leuven Centre for Global Governance Studies Working Paper, No. 121, p. 4.
[439] See Case 22/70, Commission v. Council, [1971] ECR 263 (ERTA) and Van Vooren, B. and Wessel, R. A. (2014) *EU external relations law: text, cases and materials* (Cambridge: Cambridge University Press), p. 105.
Case C-246/07, Commission v. Sweden (PFOS) [2010] ECR 3317. See also Cremona, M. (2011). 'Case C-246/07, *Commission v. Sweden (PFOS)*, Judgment of the Court of Justice (Grand Chamber) of 20 April 2010'. *Common Market Law Review*, Vol. 48, No. 5, pp. 1639-1665.
[440] European Commission, 'A policy framework for climate and energy in the period from 2020 to 2030' (Communication) COM (2014) 15 final.
[441] Art 4(3) TEU.
[442] Interview MS official, 3-4-2015, Interview EU official, 13-6-2017.

treacherous and too prominent of a topic to start an infringement procedure when compared to 'lighter' topics such as mercury, where the Commission dared to bring the conflict to the Court of Justice.[443] Alongside these legal reasons, there is the pragmatic argument that the procedure itself will take months of inter-service consultations. Despite having legally attributed competence to do so both in the Treaty and in case law, as suggested before there are often 'political' reasons why the Commission (or Member State(s) and the Council) do not start infringement proceedings against the atypical institutional arrangement of Team EU in climate negotiations or the use of mixed agreement. These 'political' reasons are evaluated in the following section.

5.5 Political issues and EU negotiation

The Team EU climate change regime is different from what one would expect when looking at legal competences. Indeed, the absence of legal clarity may lead to (perceived) political flexibility. Therefore, 'political' reasons might explain the conduct of EU and Member States negotiations at UNFCCC. As indicated before, the literature on actorness, cohesiveness and effectiveness points to intervening variables including the 'supranational versus intergovernmental dominance', 'preference heterogeneity' and the 'EU's position in the international constellation of power'. These explanations have been tested in the twenty interviews. The section ends with an exploration of alternative explanations such as the influence of other societal actors (e.g. private sector, CSOs), the influence of politicians and the legal background of the negotiators.

5.5.1 Supranational versus intergovernmental dominance

In the traditional institutional discussions between the Council and Commission the issue of competences and legal competences does not have a pivotal role, as indicated above. While many officials see the current state of play as 'unique' and 'peculiar', questioning the procedure from a legal perspective would be seen as a hostile act.[444] The many preparatory meetings in the Council working group WPIEI are time-consuming and lead to internal political discussions and extensive position papers, especially *before* the COP. These positions are adopted as a result of the work of lead negotiators and their institutional affiliation is, due to the 'Team EU' constellation, not questioned. The role of the Presidency within the Council is however difficult at times. However, the institutional 'turf battles' come together in Working Groups as large Member States expect a Member State-oriented Presidency while the Commission expects the Presidency to coordinate and not to be too interfering on substantial and technical UNFCCC-related issues covered by DG CLIMA. Interviews show that during the negotiations an enormous 'esprit de corps' takes place and almost every meeting is attended by both Member State and Commission representatives working together, or to be more negative, checking one another.[445] The European Parliament is less influential during the negotiations, as these are intergovernmental processes. However, in the preparatory phase the EP demands ambitious policies especially within the (leading) ENVI committee.

[443] On this case, see De Baere, G. (2012) 'Mercury Rising: The European Union and the International Negotiations for a Globally Binding Instrument on Mercury'. *European Law Review*, Vol. 37, No. 5, pp. 640-655. Interview MS official, 7-10-2015, Interview EU official, 13-6-2017.
[444] Interview EU official, 13-6-2017, Interview MS official, 13-6-2017.
[445] Interview EU official, 13-6-2017, Interview MS official, 24-1-2014.

5.5.2 EU vs the rest of the world: the international negotiating environment

As it has been held by Van Schaik (2013), among others, the international negotiating context plays a large role in the EU and Member State 'Team EU' conduct at international climate negotiations.[446] This finding is consolidated by the interviews.[447] In general, after Copenhagen, the EU and Member States can be considered a cohesive team from an external perspective, both before and during the negotiations. During the UNFCCC COP meetings, these external negotiations (with third states) are conducted mostly by lead negotiators, and at times in parallel by bilateral Member State-third country meetings. When the Ministers and Commissioners enter the final stages of negotiations, this process is sometimes a bit less structured, but they remain part of a unitary team. Since the introduction of the 'Climate Diplomacy Action Plan',[448] the EEAS, Commission and Member States are coordinating their climate diplomacy in third countries in the preparatory phase. The EU and Member States have four general instruments they use to influence others: persuasion and diplomacy, issue linkage, financial assistance (aid) and trade benefits or (the threat of) trade measures and sanctions.[449]

As argued by Oberthür and Groen (2015:1326), the EU adopted an overall centric, moderately conservative position (as compared to the outlier ambitious position in Copenhagen) which helped to team up with other countries.[450] Nevertheless, the EU's engagement with strategic partners seems to be driven by a preference for an ambitious international climate deal. The EU worked together with the 'environmental integrity group' (e.g. Mexico, Switzerland, Korea), Small Island and Developing States, (parts of) the Umbrella Group (e.g. New Zealand, United States), AILAC (Latin American countries) and (in Paris) the former colonies of EU Member States, the African, Caribbean and Pacific (ACP) countries to form a 'High Ambition Coalition'.[451] In spite of these coalitions, some argue that the China-United States climate statement was more influential than EU diplomacy as a reason why the Paris Agreement was adopted. The EU is the third largest emitter and is therefore less influential than these two countries. Moreover, critics argue that the EU has more difficulties with the topics of climate adaptation and finance issues/means of implementation than mitigation, which is making the cooperation with the G77 (developing countries) more difficult.[452] Notwithstanding the fact that the EU played a role in the adoption of the Paris Agreement, the upcoming challenge of large economies such as the United States weakening the global climate deal could change the international negotiating environment, testing EU unity.

5.5.3 Preference heterogeneity

As indicated by the existing literature, 'preference heterogeneity' – in the sense of (the absence of) aligning interests – is considered a primary cause of EU and Member State

[446] Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan).
[447] A.o. Interview EU official, 7-6-2017, Interview MS official, 14-6-2017.
[448] http://ec.europa.eu/clima/news/articles/news_2016021601_en, accessed 23 December 2016.
[449] Van Schaik, L. and Kamphof, R. (2015) 'Now or never: using the EU's trade power as leverage for a climate deal in Paris'. Clingendael Policy Brief, November 2015.
[450] Oberthür, S. and Groen, L. (2015) 'The Effectiveness Dimension of the EU's Performance in International Institutions: Toward a More Comprehensive Assessment Framework'. *JCMS: Journal of Common Market Studies,* Vol. 53, No. 6, p. 1326.
[451] This High Ambition Coalition was started by a small group of developed and developing countries, but at the end of COP21 was 'ultimately more than 100 developing and developed member states strong' according to Christoff (2016: 774) in Christoff, P. (2016) 'The promissory note: COP 21 and the Paris Climate Agreement'. *Environmental Politics*, Vol. 25, No. 5, pp. 765-787. Interview EU official, 31-5-2017, Interview EU official, 7-6-2017, Interview MS official, 24-1-2014.
[452] Interview EU official, 14-10-2015.

negotiation behaviour. The interviews portray an environment where there is a general convergence on the topic of climate change, especially on the necessity to tackle climate change internationally.[453] On sub-issues, there are often one or two outliers, which makes it sometimes difficult to come to a unanimous decision. Most notably Poland had been critical about the (ambitious) EU position before COP21,[454] but in the end ranks were closed during the negotiations. One of the often-used explanations for the general (external) tendency towards cooperation is that the EU itself has the most ambitious climate policies, which makes it in the interest of all EU Member States to aim for a global ambitious climate deal.

While preference homogeneity was clear in the run-up to the negotiation of the Paris Agreement, there are at least two upcoming challenges. First, the new UNFCCC 'stocktake'[455] monitoring and reporting mechanisms on mitigation, adaptation and finance will most likely encourage the EU and its Member States to upgrade their NDC ambitions in the coming years to contribute to the global goal to stay within the 1,5 to 2 degrees temperature rise. Secondly, Brexit might have an effect on EU unity. When compared to many other policy areas, the British were fairly positive about EU climate policies and diplomacy and contributed with ambitious policies and many seconded national experts.[456] In addition, France and Germany were positive about EU action on this topic, but the balance might be shifted with a British exit from the EU. The question is whether the 'unanimity' requirement in this peculiar institutional arrangement would then not feel as a procedural milestone. Moreover, as indicated before, there is much more preference *heterogeneity* as well as procedural autonomy for Member States on related and more actual topics, such as climate finance, land-use, effort sharing and other means of implementation.

5.5.4 Alternative explanations

While the issues analysed above definitely affect EU and Member State cooperation in climate change negotiations alongside (or beyond) legal considerations, the interviews t raised some additional factors . This section considers three of these factors.[457] First, as indicated in the literature there are many 'other societal stakeholders' that have been active in climate negotiations and EU decision-making and diplomacy in general. Among these, it is particularly relevant to mention private sector organisations and companies[458], Civil Society Organisations (CSOs) and local authorities[459]. Many interviews indeed stress the growing importance of these stakeholders for example since the 2014 Lima Paris Action Agenda[460] or the large 'parallel' process of the 'Open Tent Zone' in which companies, CSOs and

[453] Interview EU official, 7-6-2017, Interview EU official, 30-5-2017, Interview MS official, 14-6-2017.
[454] Rettman, A. (2015) '*Poland vetoes CO2 targets on the eve of Paris visit'* EU Observer, 28 October 2015. Available at <<https://euobserver.com/environment/130867>> Accessed 10 December 2015.
[455] Article 14 of the Paris Agreement refers to this 'global stocktake' as follows:" The Conference of the Parties serving as the meeting of the Parties to this Agreement shall periodically take stock of the implementation of this Agreement to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals (referred to as the "global stocktake")". While the first 'stocktake' is scheduled for 2023 there will be an 'initial stocktake' known as the 'facilitative dialogue' already in 2018. United Nations Framework Convention on Climate Change (2015) Paris Agreement, https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf, Accessed 13 December 2016.
[456] Government of the United Kingdom, 'Review of the Balance of Competences between the United Kingdom and the European Union: Environment and Climate Change', 13 February 2014. Available at <https://www.gov.uk/government/consultations/eu-and-uk-action-on-environment-and-climate-change-review> Accessed 12 May 2016.
[457] See also 'further research' for alternative paths.
[458] Andrade, J. C. S. and de Oliveira, J. A. P. (2015) 'The role of the private sector in global climate and energy governance'. *Journal of Business Ethics*, Vol. 130, No. 2, pp. 375-387.
[459] Kern, K. and Bulkeley, H. (2009) 'Cities, Europeanization and multi-level governance: governing climate change through transnational municipal networks'. *JCMS: Journal of Common Market Studies,* Vol. 47, No. 2, pp. 309-332.
[460] See e.g. UNFCCC website <http://newsroom.unfccc.int/media/509508/lpaa-primer.pdf> accessed 27 July 2017. Interview EU official, 14-10-2015, Interview MS official, 3-4-2015, Interview EU official, 30-5-2017, Interview MS official, 14-6-2017.

governments present their climate commitments and deliverables. Nevertheless, while this process helps to raise ambitions and awareness, the real UNFCCC negotiations still keep being an intergovernmental process following the UNFCCC rulebook.[461]

Secondly, the role of politicians becomes important especially during the UNFCCC COP negotiations. The Heads of State and their overwhelming presence during the negotiations in Copenhagen has been pinpointed as one of the explanations for its failure.[462] 'Team EU' has been falling apart despite a common negotiation mandate. In Paris (2015), the Heads of State were not active during the last days of the conference, but were instead mostly represented by environment ministers, aspect that to some has contributed to the result. There is considerable debate as to whether foreign affairs ministers and finance ministers could conduct the climate negotiations, but the practice is that environment ministers (and 'climate change' Commissioners) still take the lead during COP negotiations. The involvement of politicians in the final phase of the negotiations could explain why less attention is paid to legal processes.

Thirdly, while DG CLIMA is in the lead for the UNFCCC negotiations, other DGs are also interested and present. Additionally, Member States' Ministries of Foreign Affairs and Ministries of the Environment are active in UNFCCC negotiations. Interestingly, finance ministers and finance ministries are absent. These findings point to some divergence between the DGs/ministries, which seems to be more relevant than the preference heterogeneity between EU and Member States.[463]

5.6 Conclusion/Discussion

The main question addressed in this chapter has been the following: *How do legal competences affect EU and Member State coordination in negotiations at the UNFCCC?* As the objective of this study is to combine political and legal perspectives, the effect stemming from the division of legal competences is compared with recurrent 'political' issues, such as the 'supranational versus intergovernmental dominance', the EU's position within the international constellation of power and preference heterogeneity. This research is substantiated by a combination on the one hand of a review and analysis of literature, case law, legislation and additional policy documents and, on the other hand, of twenty semi-structured interviews with primarily EU and Member State officials at ranks ranging from (former) Ministers, lead negotiators and Heads of Delegation to policy officers and support staff. In addition, some other stakeholders were interviewed to add an external perspective.[464] The study focuses on the period from the adoption of the Lisbon Treaty (December 2009) to July 2017 including important UNFCCC Conferences of the Parties (COPs) such as Copenhagen (2009) and Paris (2015).

The coordination of the EU and Member State actors can be seen as a process of 'socialisation'. Team EU works a way that means that Member State officials are 'socialised' in a European manner due to the structure of cooperation with 'lead negotiators' and 'issue leaders'. This specific coordination is however not what one would expect on the basis of legal competences. The Treaties' division of competences would make one expect a large

[461] Interview EU official, 30-5-2017, Interview MS official, 8-6-2017, Interview EU official, 13-6-2017.
[462] Interview MS official, 7-10-2015, Interview MS official, 3-4-2015, Interview other societal stakeholder, 14-11-2014.
[463] Interview EU official, 14-10-2015, Interview MS official, 8-6-2017, Interview EU official, 13-6-2017.
[464] See the annex for an (anonymised) overview of the interviews and chapter 3 for the methodological justification.

coordinating role for the European Commission in mixed competence external climate negotiations. However, the 'Team EU' approach in climate negotiations portrays a different picture that is contrary to the logic of the Treaty in multiple aspects. These include the disproportionate external relations impact of the six-month Presidency of the Council of the European Union, the peculiar 'negotiation mandate' based on (unanimous) Council conclusions, as well as the inadequate use of 'implied powers' in external representation, or limited external impacts of internal policies and legislation, contradictory to ERTA case law. There are thus ample grounds to start legal procedures against the current unique but unwieldy institutional arrangement of 'Team EU' in international climate change negotiations.

Despite the procedural arrangements that have the tendency to contravene legal practice and principles, 'political' considerations prevail allow these practices to continue the 'high politics' arena of climate action. The explanations often offered in other studies indeed could explain this situation. The institutional 'turf battles' seem to be restricted to the (internal) negotiation phase before the mass COP negotiations start. Further, within the international negotiating environment, the EU and its Member States have a fairly convergent preference for binding international climate deals on mitigation. The (legal) 'duty of loyal cooperation' has been mostly used in the conduct of international negotiations from 2011 and there is a *modus vivendi* not to discuss internal legal competences alongside the already very complex technical substantive UNFCCC texts. [465] The effect of the variables and explanations is visualised below in Figure 5.1.

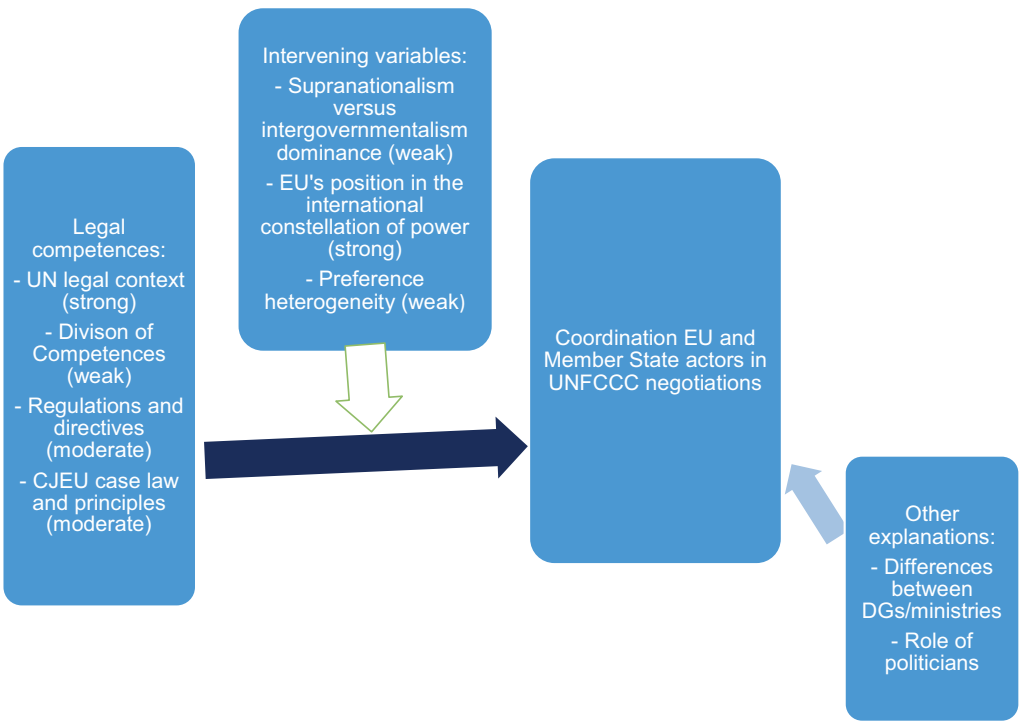

Figure 5. 1 Variables and effects on 'Team EU' coordination in UNFCCC negotiations

[465] Interview EU official, 30-5-2017, Interview MS official, 8-6-2017, Interview MS official, 14-6-2017.

With the adoption and ratification of the Paris Agreement there are many upcoming challenges that could spark the legal and political debate whether it is not more effective, efficient and closer to the Treaty logic and case law to grant the Commission a bigger role in this field. These upcoming challenges might change the status quo of the political factors that are now supportive of the Team EU process. These challenges include the upcoming UNFCCC 'global stocktake' of climate pledges, which most likely encourages the EU and Member States to raise their ambition on mitigation, adaptation and finance. Other challenges constitute the announced withdrawal from the Paris Agreement by the United States, which will likely change the international negotiating environment and probably affects internal EU unity. Furthermore, the British exit from the EU might have considerable effect on 'Team EU', due the UK's disproportionate input of expertise and the (almost unique) substantive convergence with other leading Member States on this specific topic. This balance of power might change with a British exit. Furthermore, the 'post-ratification' issues such as climate finance, effort sharing, energy mix and financial aid are more in the discretionary autonomy of the Member States than earlier top priorities like climate change mitigation, where the EU and Member States have a track record of collective goal-setting. That might affect the legal competence discussions in the future.

Further research

The results from this study can only be valued as 'plausibility probes' due to the experimental and pioneering nature of a combined legal-political study and the amount of semi-structured interviews. In that way this study provides interesting avenues for future research as it is acknowledged that the results and methodology needs further testing in other cases to become more robust.[466] As indicated, climate change negotiations are unique in the UN structure and the 'Team EU' approach with the large role of the Presidency is distinct from the approaches in other policy areas where the EU and Member States work together.[467] The officials and experts working on UNFCCC issues are rather isolated from other issues, working predominantly on climate action for at least five to ten years.[468] As such, this method could nevertheless be extrapolated to other policy areas. The idea of assessing the effect of the legal competences and to compare that with (other) 'political' factors such as (the absence of) institutional turf battles, the EU's position in the international constellation of power and preference heterogeneity could indeed lead to relevant cross-disciplinary findings that are largely absent in the literature.

With regards to the methodology, one could use other tools like surveys to assess the effect of legal competences. In addition, it could help to better integrate the 'external/international' dimension by involving officials from 'third countries' and discovering how they perceive the EU and the Member States' behaviour in 'Team EU' negotiations.[469] EU climate diplomacy currently appears to be dominated by 'inward-looking' scholars focused on internal EU procedures and rules. Delreux (2006) rightly states that "key to understand the negotiation

[466] George, A. L. and Bennett, A. (2005) *Case studies and theory development in the social sciences* (Cambridge, Massachusetts: MIT Press).
[467] Interview MS official, 13-6-2017.
[468] Interview EU official, 31-5-2017, Interview MS official, 14-6-2017.
[469] Cf Parker, C. F., Karlsson, C. and Hjerpe, M. (2017) 'Assessing the European Union's global climate change leadership: from Copenhagen to the Paris Agreement'. *Journal of European Integration*, Vol. 39, No. 2, pp. 239-252. This survey "was principally focused on obtaining a strategic sample of the two largest and most important categories of COP participants, namely members of party delegations, such as negotiators and representatives of government agencies, and NGO representatives and researchers" to understand whether the EU was being perceived as a leader in climate change negotiations, p. 243.

behaviour of the EU on the international environmental scene is the domestic (EU) decision-making process'.[470] However, views and preferences of third parties such as BRICS or other Regional Integration Organisations might reveal relevant insights into the actual effects of EU and Member State negotiation behaviour during climate change negotiations.

In addition, one could conduct a more thorough assessment of other explaining factors that this study mentioned. The increasing standing of other societal stakeholders including the private sector, CSOs and local authorities is apparent during the UNFCCC COPs, but the effect on the traditional intergovernmental process, especially since the Paris Agreement and the Sustainable Development Goals (SDGs) is still under-theorised. Apart from this, the background of negotiators themselves might have an effect on the relevance of legal competences, as one would expect more attention to be paid to the division of competences by legally trained experts from federal Member States. One could in addition study the European External Action Service (EEAS), which seems to have garnered more thematic expertise after the adoption of the Global Strategy in 2016. Furthermore, 'high politics' events such as Trump's announced withdrawal from the Paris Agreement, the upcoming Brexit and President Juncker's "Scenarios on the Future of Europe"[471] might have a considerable impact, but it is most likely too early to investigate these issues.

SUMMARY CHAPTER 5

The chapter identified how the allocation of competences, i.e. legal competences, affect EU and Member State actors in international UNFCCC climate change negotiations. This study, based on the review of documents, case law and twenty semi-structured interviews finds that the 'Team EU' approach in climate change negotiations does not coincide with the logic of the Treaty and the Court's case law in many aspects. The large role of the Presidency, a 'negotiation mandate' based on unanimous Council conclusions, and inadequate parallel external powers when compared to internal competences for the European Commission give the impression that legal competences are considered less important and that the Treaty and the Court's case law is often not used. In contrast, the UN legal context and UNFCCC statutes are having a strong effect on coordination alongside issues often-cited in the literature such as the EU's position in the international constellation of power and socialisation (here identified as part of the dependent variable, coordination). The Commission seems hesitant to criticise the current coordination process, because of the importance of unified EU external action on climate change for the EU's future. However, there are many upcoming challenges that could upgrade the relevance of (internal) legal competences.

[470] Delreux, T. (2006) 'The European Union in international environmental negotiations: a legal perspective on the internal decision-making process'. *International Environmental Agreements: Politics, Law and Economic*s, Vol. 6, No. 3, p. 232.
[471] European Commission, 'White Paper on the Future of Europe: reflections and scenarios for the EU27 by 2025' [2017].

Chapter 6: EU and Member State Implementation of the UN Agenda 2030 and Sustainable Development Goals

6.1 Introduction[472]

> *"Our intention is to make the implementation of the SDGs a team effort" (First Vice-President Timmermans, European Commission, 10 May 2016)*[473]

With the new United Nations Agenda 2030 for Sustainable Development, the EU and its Member States are asked to evaluate their 'internal' and 'external' dimensions and work towards reaching 17 Sustainable Development Goals (SDGs) by 2030 at the latest.[474] The EU is 'fully committed to be a frontrunner in implementing the SDGs according to its recent Communication 'Next steps for a sustainable European future'.[475] As indicated by the European Commission itself "ultimately, sustainable development is an issue of governance".[476] This highlights the importance of evaluating implementation of the Agenda 2030 by both the EU and Member States, as implementation is a 'shared responsibility'.[477] With an absence of legally binding targets at UN level, it seems as if the actual implementation of the Agenda 2030 is a 'political choice' at EU and Member State level.[478]

Research on the 'governance' of sustainable development policies by the Union tended to focus on concepts such as (in)coherence and means of evaluating negotiation structures, e.g. the EU in international climate change (UNFCCC) negotiations.[479] In that sense, the implementation of international agreements is often examined. Moreover, the issue is of implementation is often not viewed from a combined political-legal perspective. This is problematic as the delicate (political) discussions about the (legal) division of competences is one of the often quoted difficulties that is hindering coordination, thereby specially focusing on either the issue of 'creeping competences' by the Commission[480] or instead the absence of a logical single coordination point that the European Commission could provide. Notwithstanding the fact that it is extremely difficult to change the division of competences, it is nevertheless essential to elaborate on its effects in (empirical) practice.

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[472] An amended version of this chapter has been published as UNU-CRIS Working Paper, cf Kamphof, R. (2018) 'EU and Member State Implementation of the UN Agenda 2030 and Sustainable Development Goals'. UNU-CRIS Working Paper, W-2018/1.

[473] European Commission (2016) Statement - Remarks by First Vice-President Timmermans – European Parliament Plenary Debate 10 May 2016 – Follow-up and State of Play of the Agenda 2030 and Sustainable Development Goals. Accessed via https://ec.europa.eu/commission/commissioners/2014-2019/timmermans/announcements/remarks-first-vice-president-timmermans-european-parliament-plenary-debate-10-may-2016-follow-and_en. At 14 August 2017.

[474] United Nations General Assembly (2015) 'Transforming Our World: The 2030 Agenda for Sustainable Development', UN Resolution A/RES/70/1, adopted on 25 September 2015, available online from <https://sustainabledevelopment.un.org/post2015/transformingourworld>, Accessed 12 January 2017.

[475] European Commission (2016) 'Next steps for a sustainable European future: European action for sustainability', COM(2016) 739 final, Strasbourg, 22.11.2016.

[476] *Ibid,* p. 14.

[477] Council of the European Union (2017), A sustainable European future: The EU response to the 2030 Agenda for Sustainable Development - Council conclusions, 10370/17, 20 June 2017, para 11 and 24. This 'shared responsibility' also addresses "sub national governments and public administrations at all levels, the private sector and investors, social partners, scientific community and civil society organisations (CSOs)" (ibid, para 24).

[478] Kamphof, R. and Spitz, G. repr Kaleidos Research (2016) Ready to change? European actors and their challenges and opportunities of the 2030 Agenda, in Partos, FMS, Woord en Daad (2016, eds) Ready for Change: global goals at home and abroad, Ready for Change, May 2016, retrieved from https://www.partos.nl/fileadmin/files/Documents/Partos_RFC_Publication_May_2016.pdf.

[479] Oberthür, S. and Groen, L. (2015) 'The Effectiveness Dimension of the EU's Performance in International Institutions: Toward a More Comprehensive Assessment Framework'. *JCMS: Journal of Common Market Studies,* Vol. 53, No. 6, pp. 1319-1335. Niemann, A. and Bretherton, C. (2013) 'EU external policy at the crossroads: the challenge of actorness and effectiveness'. *International Relations*, Vol. 27, No. 3, pp. 261-275 and Vogler, J. (1999) 'The European Union as an actor in international environmental politics'. *Environmental Politics*, Vol. 8. No. 3, pp. 24-48.

[480] Pollack, M. A. (2000) 'The end of creeping competence? EU policy-making since Maastricht'. *JCMS: Journal of Common Market Studies*, Vol. 38, No. 3, pp. 519-538.

There have been few investigations with regards to the political effects of legal competences, let alone for sustainable development policies and implementation of international agreements. As a result, little is known about the *political* effects of the mixed competences and the relationship between legal competences and EU and Member State coordination on sustainable development policies is under-theorised. The purpose of this chapter is to examine the influence of legal competences and see this in interaction with (other) intervening variables. The objective is to see how legal competences interact with other issues often analysed in the literature, and operationalised as 'intervening variables'. To achieve this goal, this study makes use of a step-by-step process tracing approach revising Treaty articles, official policy documents, the UN legal context, cases before the Court of Justice of the European Union, as well as academic literature. The qualitative part of this study relies primarily on sixteen semi-structured interviews with EU and Member State officials, (former) ministers, Members of the (European/national) Parliament, Civil Society Organisations, as well as experts (see Table 6.1 and appendix). The findings are brought together through triangulation. The process tracing approach leads to an overall assessment of the potential influence of legal competences, of the interaction with/autonomy from other intervening variables and other explanations for this specific case.

Category	No of interviews
EU official	8
Member State official	4
Other societal stakeholder	4

Table 6. 1 No of semi-structured interviews for case study SDG implementation

The main question addressed in this chapter is the following: *How do legal competences affect EU and Member State coordination in implementation of the UN Agenda 2030 and the SDGs?* From the outset, it was expected that the division of competences would enable the European Commission in its coordination efforts. However, as this chapter will show, the effects are much more nuanced and the 'political' factors are much more powerful than one would have expected. The effect of the legal competences (independent variables) is compared and assessed together with recurrent issues such as supranational versus intergovernmental dominance, the EU's position in the international constellation of power and preference heterogeneity ('intervening variables'). This chapter also addresses 'other explanations' that were raised during the semi-structured interviews; these could either hinder or enable EU and Member State coordination efforts to implement the UN Agenda 2030 and the 17 Sustainable Development Goals.

The outline of this chapter is the following. Section 6.2 describes the negotiation of the UN 2030 Agenda and the Sustainable Development Goals more extensively and from an EU perspective. The following section (6.3) describes the coordination of implementation plans within the EU and Member States. Section 6.4 assesses then the effects of legal competences, including the (broad) division of competences, the relevant Court's case law and the UN (soft) legal context. Thereafter, section 6.5 assesses the effect of additional intervening variables that have been raised in the semi-structured interviews and compares them with what the legal division of competences would prescribe. 'Other explanations' identified in the interviews are equally discussed in the fourth section. In the final section (discussion), it is evaluated whether the EU and its Member States are indeed legally enabled or restrained by the legal competences or whether 'political' issues play a more

prominent role. However exploratory, this study may offer some insights to develop a larger interdisciplinary 'assessment framework' on sustainable development issues, especially with regards to the implementation of international sustainability agreements.[481]

6.2 UN Agenda 2030, Sustainable Development Goals and EU negotiation

The United Nations document 'Transforming our world: the 2030 Agenda for Sustainable Development' was adopted at the UN Sustainable Development Summit on the 25th of September 2015.[482] The EU and its Member States have played an active role during the negotiation phase of the Agenda and its 17 Sustainable Development Goals (SDG), which lasted roughly from 2012 (Rio+20) to 2015. After the adoption, the EU and its Member States started to implement the Agenda. The timeframe starts with the process of negotiation 2012 to the implementation phase from September 2015 until July 2017 with a focus on the implementation phase. This section will describe the process of negotiation and implementation of the UN Agenda 2030 with a specific focus on the EU institutions and the Member States.

6.2.1 Negotiating the Agenda 2030

During the negotiation of the Agenda 2030, the formal leading role within the European Commission was with DG ENV (environment) and DG DEVCO (development). This was a logical combination, as the 'post-2015' process leading to the Agenda 2030 combines the previously separated Rio+20 process on the environment and the Millennium Development Goals.[483] The process in the Open Working Group has been open, inclusive and participatory, but also demanding in its coordination. Colombia proposed a new form of negotiations in 2012 in which there were only seventy seats and countries should cooperate in 'troikas'. As a result, EU Member States were divided in troikas together with countries that are not part of the European Union. For example, France and Germany worked together with Switzerland, while the United Kingdom and The Netherlands formed a team with Australia. This process has been set up to avoid regional bloc negotiations, as these had hindered some UN processes in the past.

The EU Member States coordinated their position in a Joint working group of the Council, combining three groups: the Working Party on International Environment Issues (WPIEI), the Working Party on Development Cooperation (CODEV) and the United Nations Working Party (CONUN).[484] The European External Action Service has assisted this joint working group and the European Commission has been part of the negotiations. During the negotiation phase, three Communications were adopted. Firstly, the Communication called 'a decent life for all'

[481] For negotiation cf Kamphof, R., and Wessel, R.A. (2018) 'Analysing shared competences in EU external action: the case for a politico-legal framework'. Europe and the World: A law review, Vol. 2, No. 2, pp. 38-64. DOI: https://doi.org/10.14324/111.444.ewlj.2018.02. Oberthür, S. and Groen, L. (2015) 'The Effectiveness Dimension of the EU's Performance in International Institutions: Toward a More Comprehensive Assessment Framework'. *JCMS: Journal of Common Market Studies,* Vol. 53, No. 6, pp. 1319-1335 and Kleistra, Y. and van Willigen, N. (2014). 'Evaluating the Impact of EU Diplomacy: Pitfalls and Challenges.' In Koops, J.A. and Macaj, G. (eds) *The European Union as a Diplomatic Actor* (Basingstoke: Palgrave Macmillan), pp. 52-69.

[482] United Nations General Assembly (2015) 'Transforming Our World: The 2030 Agenda for Sustainable Development', UN Resolution A/RES/70/1, adopted on 25 September 2015, available online from <https://sustainabledevelopment.un.org/post2015/transformingourworld>, Accessed 12 January 2017.

[483] Griggs, D., Stafford-Smith, M., Gaffney, O., Rockström, J., Öhman, M. C., Shyamsundar, P., ... and Noble, I. (2013) 'Policy: Sustainable development goals for people and planet'. *Nature*, Vol. 495, No. 7441, pp. 305-307. Interview EU official, 31-5-2017, Interview EU official, 13-6-2017.

[484] Coreper decided on 30 November 2017 to set up a specific Working Party on the 2030 Agenda for Sustainable Development, which will report to Coreper II and the General Affairs Council. The specific Agenda 2030 working party has been installed after the analysis conducted for this dissertation and has not been part of the study.

(2013), integrating poverty eradication and sustainable development.[485] This was followed by a 2014 communication outlining the EU and Member States vision of what a 'post-2015' agenda could look like. The EU proposed a 'universal' and 'transformative' agenda and indicated potential targets and priority areas.[486] The third and last Communication was released in February 2015 following Council conclusions in December 2014. This Communication was not only about the Sustainable Development Goals but also prepared the related Financing for Development conference, which was then held in Addis Ababa in July 2015.[487]

The interviews portrayed a picture of overall EU unity despite the difficult coordination process.[488] Especially in the last months of the negotiations, Vice President Timmermans, responsible for sustainable development, kept a closer eye on the negotiations. Despite that, the actual lead within the Commission stayed with DG ENV and DG DEVCO.[489] With regards to Member States, on some topics one to two 'outliers' could use their 'troika' coordination structure to work more autonomously. However, the internal process of working together in a joint working group and delivering annual Communications have led to a communal effort.[490] Moreover, the EU position as outlined in the Communications has had a large influence on the result of the Agenda 2030. The 'integrated' notions of poverty eradication and sustainable development feature prominently in the Agenda, as well as notions such as 'transformation' and 'universality'. While the EU has not been fully supportive of the number of goals, (17 goals have been called 'too many' according to multiple interviews), the EU supported a comprehensive agenda from the start. The EU has however been less positive about the 'soft' monitoring and review mechanism of the High Level Political Forum.

6.2.2 The Agenda 2030 and 17 Sustainable Development Goals

The new United Nations Agenda 2030 for Sustainable Development was adopted on 25 September 2015 and has transformed the global development agenda from a North-South agenda to a universal/ Global one. The Sustainable Development Goals (SDGs) aim to eradicate poverty, fix climate change, and reduce inequality. The 17 SDGs (see Table 6.2) are interrelated and require action both in the EU and its Member States, as well as in developing countries. Compared to their predecessors, i.e. the Millennium Development Goals (MDGs, 2001-2015), the '2030 agenda' (2016-2030) is a 'universal' agenda for various actors worldwide and devotes attention to global public goods such as energy access, resilient infrastructure, sustainable use of oceans, and inclusive economic growth.[491] Sustainability and security are given a prominent place, alongside the traditional poverty reduction targets that were already part of the MDGs. Moreover, both the Global South and the Global North are expected to contribute. Being the agenda fairly ambitious , with 17 'goals' and 169 'targets', both the implementation and the financing of the SDGs will be

[485] European Commission (2013) 'A decent life for all: Ending poverty and giving the world a sustainable future', COM(2013) 92 final, 27.2.2013.
[486] European Commission (2014) 'a decent life for all: from vision to collective action', COM(2014) 335 final, Brussels, 2.6.2014.
[487] European Commission (2015) 'A Global Partnership for Poverty Eradication and Sustainable Development after 2015', COM(2015) 44 final, Brussels, 5.2.2015.
[488] Interview EU official, 31-5-2017, Interview EU official, 13-6-2017.
[489] Interview EU official, 31-5-2017, Interview EU official, 7-6-2017.
[490] Interview EU official, 13-6-2017.
[491] United Nations (2014). The road to dignity by 2030: Ending poverty, transforming all lives and protecting the planet. *Synthesis Report of the Secretary-General On the Post-2015 Agenda*. New York, NY: United Nations. Retrieved from http://sustainabledevelopment.un.org/content/documents/5527SR_advance%20unedited_final.pdf

complex, for developed and developing countries.[492] This level of ambition is so high that even in a highly developed country like Sweden over 75 percent of the 'non-development cooperation' targets require at least some work.[493]

Leaders from all parts of the European society have shown support for the new agenda. The prominent delegation to the UN Sustainable Development Summit in September 2015 included the Vice-President of the European Commission and many Heads of State. 'SDG advocates' include prominent European figures like HM Queen Mathilde (Belgium), Mr Paul Polman (CEO Unilever), Her Royal Highness Crown Princess Victoria of Sweden. In the UN 2030 Agenda for sustainable development it is acknowledged that regional frameworks, such as the EU, 'can facilitate the effective translation of sustainable development policies into concrete actions at national level' (para 21), but that each country has 'primary responsibility for its own economic and social development' (para 41). Remarkably, the EU did not have an implementation strategy when the Agenda 2030 was adopted.

6.3 EU coordination of SDG implementation

Coordination is defined in this dissertation as the process of contacts between diplomats and officials from EU institutions (especially the European Commission) and Member States with the purpose of discussing an issue of common interest, and working towards a common position. These coordination processes can be internal (within the EU) or external (international), and they include the discussion of the 'management' of the coordination.

The coordination of the implementation of the Agenda 2030 starts from the adoption of the SDGs in September 2015. Almost fourteen months after the adoption of the UN Agenda 2030, the European Commission presented its implementation strategy in the Communication 'next steps for a Sustainable European future' dated 22 November 2016.[494] This Communication has been presented together with the renewed European Consensus on Development.[495] In the meantime, the European External Action Service presented the Global Strategy in June 2016, which touches upon the issues of the UN Agenda 2030 and the Sustainable Development Goals, but only refers to it in some parts of the Strategy.[496]

In its Communication on the implementation of the Agenda, the European Commission shares its commitments on the goals and targets. The Commission foresees two 'working streams'. The first working stream is to evaluate the current situation and identify concerns linked to sustainability, aiming to embed the SDGs into a European policy framework and among the Commission's priorities. The second work stream goes beyond the 2020 perspective and prepares a 'long term implementation of SDGs'.[497] As such, the first working stream relates to the ten priorities of the current College of Commissioners chaired by

[492] Kamphof, R., Spitz, G. and Boonstoppel, E. (2015). Financing development now and in the future: Implications for the Netherlands and beyond. Amsterdam: Kaleidos Research/Stichting NCDO. Retrieved from http://kaleidosresearch.nl/download/2015/07/2015-Financing-forDevelopment-report.pdf

[493] Weitz, N., Persson, Å., Nilsson, M. and Tenggren, S. (2015) 'Sustainable Development Goals for Sweden: Insights on Setting a National Agenda'. Stockholm Environment Institute Working Paper no 2015-10.

[494] European Commission (2016) 'Next steps for a sustainable European future: European action for sustainability', COM(2016) 739 final, Strasbourg, 22.11.2016.

[495] This has now also been adopted by the Council, 8 June 2017. See https://ec.europa.eu/europeaid/new-european-consensus-development-our-world-our-dignity-our-future_en.

[496] European External Action Service (2016) 'Shared Vision, Common Action: A Stronger Europe, A Global Strategy for the European Union's Foreign And Security Policy', June 2016. http://www.eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf.

[497] European Commission (2016) 'Next steps for a sustainable European future: European action for sustainability', COM(2016) 739 final, Strasbourg, 22.11.2016, p. 3.

President Juncker (2014-2019),[498] and many other strategies and frameworks that have 2020 as a deadline, e.g. the Europe 2020 Strategy[499] and the Multiannual Financial Framework 2014-2020[500].

Interestingly, the coordination of the Agenda 2030 is in the hands of the Secretariat-General and there is close coordination with (the Team of) the Vice President of the European Commission, Mr Frans Timmermans. The team responsible for the EU coordination in the Secretariat-General has had previous experience on economic issues including the European Semester. There is an informal structure composed by 20 Commissioners that had six informal meetings on the political implications of the Agenda 2030. The coordination involves not only DG ENV and DG DEVCO, who have been involved in the negotiation of the Agenda, but also DGs such as DG Trade, DG GROW and DG SANTE.[501]

Without a specific EU implementation strategy and action plan, at least before November 2016, EU Member States started implementation by themselves. This proved to be a 'mixed record' with some forerunners like Sweden, Finland and Germany and some Member States that have not even started the implementation. Nevertheless, by July 2017 fourteen EU Member States presented their action plans to the UN High Level Political Forum on Sustainable Development.[502] Some Member States have a similar 'centralised' structure to the one of the European Commission, meaning that coordination happens at the Prime Ministers' office level. Other Member States have coordinating structures from their ministries of Foreign Affairs, Development Cooperation or Environment.[503] The Member States have been critically following the coordination of the Commission and stated that they miss a 'gap analysis' in the Communication, in which the Commission should indicate what is currently missing in the implementation.[504]

The Presidencies have not been very active in encouraging collective implementation of the Agenda 2030.[505] Remarkably, the Heads of State in the European Council have not made any reference to the Agenda 2030 in their Conclusions until 22 June 2017, almost two years after adoption of the Agenda.[506] The European Parliament has been quiet too, despite a critical report by the ENVI rapporteur (Seb Dance).[507] Traditionally, the Agenda is primarily discussed in committees such as DEVE (development) and ENVI (environment). A more combined structure is currently absent. Within the Council, the joint working group of WPIEI, CONUN and CODEV is still active.

[498] European Commission (2015) 'Ten priorities for Europe: A new start for Europe:an EU agenda for jobs, growth, fairness and democratic change'
[499] European Commission (2010) 'EUROPE 2020: A strategy for smart, sustainable and inclusive growth', COM(2010) 2020, Brussels, 3.3.2010.
[500] 'Multiannual Financial Framework', website European Commission, retrieved from http://ec.europa.eu/budget/mff/index_en.cfm, accessed 22 August 2017.
[501] Interview EU official, 30-5-2017, Interview EU official, 12-6-2017.
[502] 4 in 2016, 10 in 2017. https://sustainabledevelopment.un.org/hlpf.
[503] Kamphof, R. and Spitz, G. repr Kaleidos Research (2016) Ready to change? European actors and their challenges and opportunities of the 2030 Agenda, in Partos, FMS, Woord en Daad (2016, eds) Ready for Change: global goals at home and abroad, Ready for Change, May 2016, retrieved from https://www.partos.nl/fileadmin/files/Documents/Partos_RFC_Publication_May_2016.pdf.
[504] Council of the European Union (2017), A sustainable European future: The EU response to the 2030 Agenda for Sustainable Development - Council conclusions, 10370/17, 20 June 2017, para 19 and 40.
[505] Interview EU official, 2-5-2017, Interview MS official, 12-6-2017.
[506] European Council Conclusions on the Paris Agreement on Climate Change, 22 June 2017, http://www.consilium.europa.eu/press-releases-pdf/2017/6/47244661588_en.pdf.
[507] European Parliament (2017) 'Draft report on EU action for sustainability (2017/2009(INI))Committee on the Environment, Public Health and Food Safety, Rapporteur: Seb Dance', 2017/2009(INI), 15.3.2017.

The 'socialisation' through which Member State officials adopt a European orientation due to the process of coordination. Strong socialisation is not identified in this specific case study due to different reasons. Firstly, the EU and Member State negotiators were mostly from DG ENV and DG DEVCO, and national development, foreign affairs and environment ministries. However, in the 'implementation' phase (also) other actors lead the coordination, and 'internal' EU and Member State action is needed alongside external action/foreign affairs. The Council still makes use of the same joint working group (WPIEI, CONUN and CODEV) as in the negotiations, but there are many differences for example in the European Commission, where the Secretariat-General is in the lead. Therefore, concepts like 'adaptation' or 'adjustment', rather than 'socialisation', seem to better describe the result of the coordination process to implement the UN Agenda 2030.

6.4 The division of competences, legal issues and EU implementation

The UN Agenda 2030 and the 17 SDGs are not considered as 'legally binding'. Nevertheless, in an 'ever closer union' the EU and its Member States share competences on nearly every issue of European political life. How does this division of competences affect the implementation of the Agenda 2030 in the EU and its Member States? This section deals with the legal issues within the EU, but starts with the 'soft' targets of the United Nations Agenda 2030 in a UN legal context.

6.4.1 UN legal documents and Statutes: soft targets

The UN 2030 Agenda for Sustainable Development is not a legally binding document. The countries that have adopted the Agenda are expected to take ownership and establish a national framework to achieve the 17 Goals. Therefore, "implementation and success will rely on countries' own sustainable development policies, plans and programmes".[508] Regional frameworks such as the EU 'can facilitate the effective translation of sustainable development policies into concrete actions at national level'.[509] Nevertheless, the primary responsibility of implementation would seem to remain at the Member State level, as the UN is an intergovernmental system.

The Sustainable Development Goals are not only 'soft' in the sense of being non-legally binding. The monitoring and review mechanisms are also 'soft', being constituted by a UN High Level Political Forum on Sustainable Development (HLPF) where countries can present their plans. This HLPF has many similarities with the above mentioned UN 'Commission on Sustainable Development' (CSD) in the Rio framework. CSD was established in 1993 as a functional commission under the UN Economic and Social Council in the aftermath of the UN Earth summit held in 1992 in Rio de Janeiro. The Commission was relatively weak; the implementation 'had been unsatisfying',[510] and has not, for example, 'enhanced, brokered, catalysed or 'orchestrated' collaborative partnerships'.[511] Despite these shortcomings, the HLPF functions in a similar manner. The EU and Member States had argued for a more effective and stringent review mechanism in the negotiation phase, but lost this battle.

[508] United Nations website http://www.un.org/sustainabledevelopment/development-agenda/.
[509] United Nations General Assembly (2015) 'Transforming Our World: The 2030 Agenda for Sustainable Development', UN Resolution A/RES/70/1, adopted on 25 September 2015, available online from <https://sustainabledevelopment.un.org/post2015/transformingourworld>, Accessed 12 January 2017, para 21.
[510] Bäckstrand, K and Kylsäter, M. (2014) 'Old wine in new bottles? The legitimation and delegitimation of UN public–private partnerships for sustainable development from the Johannesburg Summit to the Rio+ 20 Summit'. *Globalizations*, Vol. 11, No. 3, p. 338.
[511] Ibid, p. 337.

Despite their soft legal character, the SDGs are the result of an inclusive global process during which many actors and citizens were consulted, especially when compared to the Millennium Development Goals.[512] It is a structured, universal and almost all-encompassing global framework. While the UN speaks of 'national ownership' and 'not legally binding' targets, this may have a stronger legal bearing within the EU and Member State actors, as a result of the EU's commitments to sustainable development set out in the Treaty, the division of competences, as well as the far-reaching Court's case law. The remainder of the section will deal with the legal arguments from the perspective of the EU, rather than of the UN. .

6.4.2 SDGs and EU competences (Lisbon Treaty)

The UN Agenda 2030 is a broad framework encompassing many policy areas. Given the 'universal' bearing of the Agenda, the EU and its Member States are expected to achieve its goals both in developing countries, as well as 'at home'. The EU has the ambition of 'effective multilateralism'.[513] Moreover, the Treaty explicitly refers to the UN system in Art 21(1) TEU, providing that: "The Union (..) shall promote multilateral solutions to common problems, in particular in the framework of the United Nations". Therefore, it is vital to check whether and how the SDGs are linked to the catalogue of competences of the EU as clearly set out and categorised in the Lisbon Treaty.

Table 6.2, compiled by the author, gives an overview of all 17 SDGs, the main policy areas to which these are connected, what this means for EU competence on the specific policy area and where more information can be found within the Treaties. As it was demonstrated, it seems a right choice to bring the level of coordination to a 'higher' level in the Secretariat-General and in the Prime Ministers' offices in (some) EU Member States. The Agenda is extremely broad in policy areas, and competences differ per SDG from 'no competence' (SDG 11: sustainable cities and communities) to 'CFSP-type competence' (SDG 16: peace, justice and strong institutions) to 'supportive competence' (e.g. SDG3 Good Health and well-being'), 'shared competence' (e.g. SDG15 life on land) and 'exclusive competence' (e.g. SDG14 life below water). The EU implementation strategy needs to reflect these differences in competences and it needs a credible 'arbiter' in coordination.

Sustainable Development Goal	Main policy area	EU competence?	Treaty provision
1. *No poverty*	Development cooperation and humanitarian aid	Shared competence (but the exercise of EU competence 'shall not result in Member States being prevented from exercising theirs'.	Art 4(4) TFEU. See also Art 3(5) TEU, Art 21(2)d) TEU, Art 208(1) TFEU

[512] Brolan, C. E., Lee, S., Kim, D. and Hill, P. S. (2014) 'Back to the future: what would the post-2015 global development goals look like if we replicated methods used to construct the Millennium Development Goals?'. *Globalization and Health*, Vol. 10, No. 1, 19, p. 7.
[513] Drieskens, E. and Van Schaik, L.G. (2014) *The EU and Effective Multilateralism: internal and external reform practices* (Routledge).

2. *Zero hunger*	Agriculture	Shared competence	Art 4(2) TFEU. See also Art 38-44 TFEU.
3. *Good health and well-being*	Protection and improvement of human health	Supportive competence	Art 6(a) TFEU. (See also Art 4(2)k) TFEU and 168 TFEU.
4. *Quality education*	Education	Supportive competence	Art 6(e) TFEU. See also Art 165-166 TFEU.
5. *Gender equality*	Social policy	Shared competence	Art 4(2)b) TFEU. See also Art 5 TFEU, Art 8 TFEU, Art 151-161 TFEU.
6. *Clean water and sanitation*	Environment	Shared competence	Art 4(2)e) TFEU. See also Art 191-193 TFEU.
7. *Affordable and clean energy*	Energy	Shared competence	Art 4(2)i) TFEU, see also Art 194 TFEU, Art 122(1) TFEU.
8. *Decent work and economic growth*	Employment	Coordination	Art 5(2) TFEU. See also Art 145-150 TFEU, Art 151-161 TFEU.
9. *Industry, innovation and infrastructure*	Trans-European Networks, Technological Development and Industry	Shared competence (but the exercise of EU competence for technological development 'in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.) and Supportive	Art 4(2)h) TFEU and Art 4(3) TFEU and Art 6(b) TFEU. See also Art 173 TFEU, Art 179-190 TFEU

		competence	
10. *Reduced inequalities*	Development cooperation	Shared competence (but the exercise of EU competence 'shall not result in Member States being prevented from exercising theirs')	Art 4(4) TFEU, See also Art 8 TFEU, art 208 TFEU.
11. *Sustainable cities and communities*	Urban policy	No EU competence (the Union shall respect regional and local self-government)	Art 4(2) TEU.
12. *Responsible consumption and production*	Competition and Internal Market	Exclusive competence and Shared competence	Art 3(1)b) TFEU and Art 4(2)a) TFEU. See also Art 32 TFEU and Art 101 TFEU.
13. *Climate action*	Environment	Shared competence	Art 191(1) TFEU (no explicit indication 'climate change' in Art 4 TFEU)
14. *Life below water*	The conservation of marine biological resources & common fisheries policy	Exclusive competence and Shared Competence	Art 3(1)d) TFEU and Art 4(2)d) TFEU. See also Art 38 TFEU.
15. *Life on land*	Environment	Shared competence	Art 4(2)e) TFEU. See also Art 191-193 TFEU.
16. *Peace, justice and strong institutions*	Common Foreign and Security Policy	CFSP-type competence See e.g. Art 275 TFEU: The Court of Justice of the European Union shall not have jurisdiction with	See also Art 2(4) TFEU, Art 218(6) TFEU, Art 17(1) TEU, Art 18(2) TEU, Art 21-46 TEU.

		respect to the provisions relating to the common foreign and security policy	
17. *Partnerships for the goals*	Multi-stakeholder cooperation and development cooperation	No specific EU competence and shared competence (but the exercise of EU competence 'shall not result in Member States being prevented from exercising theirs')	Art 4(4) TFEU, See also Art 8 TFEU, art 208 TFEU.

Table 6. 2 Sustainable Development Goals and EU competences[514]

The interviews show that there is almost a 'reversed subsidiarity' reflex, as Member States do not necessarily agree with exclusive EU competence, while at the same time feeling that the EU is the best coordinator, given its extensive policy and legislative framework.[515] This does not necessarily stem from the division of competences, as many feel that 'shared competence' green policy areas, such as environment and climate, would qualify for this reversed subsidiarity, while other shared competences, including social areas, transport and agriculture, do not qualify.[516] This is an important subsidiarity-related finding especially due to the legalistic, bureaucratic 'culture' within the EU institutions. Especially the Commission, where there is a more top-down idea of competences as described by the Treaty which defines the boundaries of one's work. The broad field of sustainable development, combined with a 'new' universal agenda and Treaty-based action, makes it however difficult for the European Commission to play its coordinating role . This may be one of the legal reasons restraining the Commission from acting more extensively on the SDGs.

6.4.3 Regulations and directives

Being the SDGs soft legal instruments, and as such not legally binding, some turn to more stringent EU regulations and directives as instruments to achieve the targets set out in the UN Agenda.[517] Nevertheless, the approach chosen by the Commission is to 'motivate' EU Member States to contribute to the SDGs, rather than to threaten the use of infringement procedures.[518] The large amount of internal regulations and directives in the single market as

[514] Systematic compilation by the author. The main policy area has been assigned based on the text in the UN Agenda 2030 for Sustainable Development and compared with the policy areas as indicated in the Treaty (Art 2-6 TFEU). The treaty provision(s) are based on the competences as well as substantive provisions.
[515] Interview MS official, 12-6-2017, Interview MS official, 4-5-2017, Interview EU official, 13-6-2017.
[516] *Ibid.*
[517] Interview other societal stakeholder, 29-5-2017. Interview other societal stakeholder, 8-6-2017.
[518] Interview EU official, 30-5-2017, Interview MS official, 4-5-2017.

well as the legalistic top-down culture makes it difficult to start a systemic transformation from the Commission.[519]

6.4.4 Court of Justice

The Court's case law underlines that the division of competences is not clear-cut and that the Treaty may not always provide *a priori* answers. The ERTA case-law[520] is particularly relevant with regards to the EU and Member State's SDG implementation of the UN Agenda 2030. The adoption of the Agenda 2030 and the SDGs 'represent[s] a change of paradigm of the international policies on development cooperation'.[521] The EU has a commitment to implement the SDGs both in its *internal* and *external* policies. Therefore, as the Court's reasoning in ERTA and follow-up case law also suggests, internal and external policies are more and more streamlined. The internal and external dimension of the SDGs may start a new chapter in 'parallelism' of EU competences. The interviews highlight some inconsistencies, as some are of the opinion that the 'internal' competences are much stronger, while others stress the decisiveness of external action, which is not mirrored by internal action.[522] The Court's case law, combined with the Agenda 2030, provides space to 'parallelise' these dimensions in SDG implementation.

The controversies reflected in recent and pending cases on the scope of the EU's external competences relate more and more to 'sustainable development' issues. Opinion 2/15 on the EU-Singapore Free Trade Agreement (related to the scope of Foreign Direct Investment) covers a specific part of 'the commitments concerning sustainable development' in this Trade agreement. As trade is normally under the area of exclusive competence, the Court was asked to reflect on these broader 'new generation' EU trade and investment agreement, inclusive of environmental and social issues.[523] The Court comes to the far-reaching conclusion that (the free trade agreement) provisions on labour rights and environmental protection fall under the EU exclusive competence attributed to the Common Commercial Policy, as these provisions affect trade sufficiently. Therefore, the 'objective of sustainable development forms an integral part of the common commercial policy'.[524] This ruling could influence the discussion on SDG competences in the future.[525] However, as EU Trade Commissioner Malmström reflected on another Trade Agreement:

> "From a strict legal standpoint, the Commission considers this agreement to fall under exclusive EU competence. However, the political situation in the Council is clear, and we understand the need for proposing it as a 'mixed' agreement, in order to allow for a speedy signature."[526]

[519] Interview MS official, 4-5-2017, Interview MS official, 10-5-2017. Interview EU official, 2-5-2017.
[520] Cf section 2.3.
[521] Website European Commission, https://ec.europa.eu/europeaid/policies/sustainable-development-goals_en; Accessed 24 November 2017.
[522] Interview MS official, 4-5-2017, Interview other societal stakeholder, 29-5-2017. Interview EU official, 31-5-2017. Interview EU official, 7-6-2017. Interview other societal stakeholder (1) and (2), 7-6-2017.
[523] Cf Kleimann, D. and Kübek, G. (2016) 'The Signing, Provisional Application, and Conclusion of Trade and Investment Agreements in the EU. The Case of CETA and Opinion 2/15 (November 2016)'. Robert Schuman Centre for Advanced Studies Research Paper No. RSCAS 2016/58. Available at SSRN: https://ssrn.com/abstract=2869873.
[524] Court of Justice of the European Union (2017) 'The free trade agreement with Singapore cannot, in its current form, be concluded by the EU alone', press release no 52/17, Luxembourg, 16 May 2017, accessed via https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-05/cp170052en.pdf, Para 147.
[525] Interviews EU official, 12-6-2017, Interview MS official, 12-6-2017.
[526] European Commission - Press release 'European Commission proposes signature and conclusion of EU-Canada trade deal', Strasbourg, 5 July 2016; http://europa.eu/rapid/press-release_IP-16-2371_en.htm.

The next section will therefore focus on the 'political issues' that might have an effect on the EU implementation of the SDGs.

6.5 Political issues and EU implementation

This section analyses the political-institutional 'turf battles' between the Council and the Commission based on the dominant supranational versus intergovernmental dominance discussion in political analyses. The section then continues with the EU's position within the international constellation of power, which is often the primary focus in empirical analyses on EU's actorness and effectiveness. Moreover, many political theories consider the notion of homogeneity/heterogeneity of policy preferences. Therefore, these 'political issues/factors' are analysed for the specific case study of EU and Member State implementation of the Agenda 2030. This section will conclude by considering other explanations, such as the involvement of 'other societal stakeholders' and the 'political will' in EU institutions and Member States.

6.5.1 Supranational versus intergovernmental dominance

When analysing the current phase of EU implementation of the Agenda 2030 by means of supranationalism and intergovernmentalism, one could identify intra-institutional 'turf battle' taking place between the Council and the European Commission. For example, the Council's conclusions of 20 June 2017 are critical about the Communication of the European Commission 'next steps for a sustainable European future'. The Council urges the Commission "to elaborate, (by mid-2018), an implementation strategy outlining timelines, objectives and concrete measures to reflect the 2030 Agenda in all relevant EU internal and external policies".[527] However, this critical stance has nothing to do with the presupposed 'supranational' direction of EU implementation. Instead, the Commission is criticised for its lack of ambition, the absence of a 'gap analysis' and more long-term coordination that goes beyond 2020. Therefore, this implementation negotiation could not be valued as a traditional supranational versus intergovernmental debate. Nevertheless, many Member States would like to see the 'abstract' coordination of the Agenda 2030 at EU level, but some interviewees warn that the more 'concrete' implementation at Member State level would then make it more difficult, as they would like to leave the burden to 'neighbouring' states, especially when the targets are not 'legally binding'.[528]

While this *inter-institutional* debate is rather the reverse of what one would expect, one could see important *internal* debates within the European Commission. By coordinating the EU implementation of the 2030 Agenda at the level of the Secretariat-General and the First Vice-President of the European Commission, one could speak of a 'coup d'état' within the Commission. As has been identified earlier in this chapter the broad substance of the SDGs makes implementation coordination at 'SecGen' level a logical conclusion. Nevertheless, this has not been an automatic conclusion as the 14-month public silence after the adoption of the Agenda has revealed.

[527] Council of the European Union (2017), A sustainable European future: The EU response to the 2030 Agenda for Sustainable Development - Council conclusions, 10370/17, 20 June 2017, para 19.
[528] Interview EU official, 8-6-2017, Interview MS official, 4-5-2017, Interview MS official, 12-6-2017.

6.5.2 The EU's position in the international constellation of power

The EU and its Member States proved to be active and effective in the negotiation phase of the Agenda 2030 leading to a comprehensive multilateral agenda in which many of the EU's wishes were recognised. It is in this light at least remarkable that the European Commission has waited for fourteen months to follow up with the actual implementation strategy. The postponement might be connected to the EU's position in the international constellation of power as the EU and its Member States already belong to the 'forerunners' on many of the 17 SDGs and targets. Furthermore, in many other third states the implementation strategies behind schedule.[529]

6.5.3 Preference heterogeneity

With regards to preference heterogeneity, it is difficult to analyse the substantive convergence between the EU and the Member States on the 'broad' concept of sustainable development. This primarily relates to the changing perception of the concept of sustainable development as is visible in the SDGs. While there is still no 'universal' definition of sustainable development besides the 1987 Brundtland definition[530] the practical elaboration of the concept is broader than it was only a couple of years ago. Interviewees point to the 'environmental' notion of the concept that was accepted in 2010.[531] The idea that sustainable development encompasses 'three dimensions' (environmental, social, economic) and even 'security' and 'human rights' dimensions is now more influential since the SDGs. That makes the 'preference homogeneity/heterogeneity' question difficult to answer. Interviewees point to the overall EU substantive convergence on environmental and climate issues at least from a UN perspective. However, there are more worries on topics such as 'human rights' where e.g. Poland and Hungary recently worsened the overall record of accomplishment of the EU. Furthermore, the idea that economic growth should stay 'within planetary boundaries' is sometimes debated. Therefore, one could speak of general substantive convergence on the concept of sustainable development in the EU, but with some significant uncertainties. This 'heterogeneity' is increasingly visible between *ministries/DGs of the European Commission* instead of only between individual Member States or the European Commission and Member States. For example, finance ministries prove to be difficult partners in the new sustainable development paradigm.[532]

6.5.4 Other explanations: societal stakeholders, DGs and 'political will'

The previous sections have already demonstrated that there are many actors (potentially) involved in the EU implementation of the Agenda 2030 and its Sustainable Development Goals. This includes the Secretariat-General of the European Commission, most, if not all, of the Directorates-General, the Council and its joint Working Group (WPIEI, CONUN, CODEV), actors in EU Member States, the Presidency, EEAS, the European Council, the European Parliament and other societal actors such as the private sector, civil society organisations and cities and regions. The UN Agenda 2030 itself underlines that these challenges need to

[529] Interview EU official, 8-6-2017. Interview EU official, 13-6-2017.
[530] 'ensure that development meets the needs of the present generation without compromising the ability of future generations to meet their own needs'
[531] Interview other societal stakeholder, 7-6-2017. Interview MS official, 12-6-2017, Interview EU official, 7-6-2017.
[532] Interview EU official, 2-5-2017. Interview other societal stakeholder, 29-5-2017. Interview other societal stakeholder, 7-6-2017. Interview EU official, 7-6-2017. Interview MS official, 13-6-2017.

be addressed in a 'Global Partnership'[533] as well as in effective public-private partnerships[534] with a wide variety of stakeholders. The agenda has been negotiated with considerable input from civil society actors including CSOs, the private sector and municipalities.

The European Commission is taking this multi-stakeholder implementation more seriously. Normally, other societal actors are officially 'only' consulted in the drafting phase of legislation and policies. However, the Commission and specifically Vice President Timmermans started a new trend with the EU implementation of the Agenda 2030 by introducing a 'high level' multi stakeholder platform chaired by VP Timmermans.[535] This multi-stakeholder platform is set up to create a 'dynamic space' that should help 'to develop cooperation and coordination between the Commission and stakeholders on matters relating to the implementation of Sustainable Development Goals at Union level and should help to bring about an exchange of experience and best practices in the field of the Sustainable Development Goals'.[536] Thirty persons will be selected for this stakeholder platform. Moreover, other EU institutions such as the European Economic and Social Committee and the Committee of the Regions play a role in involving other societal actors. While there is growing public and academic recognition of the role of the private sector in delivering SDG implementation and in global governance,[537] many multinational corporations still have the individual Member State as their 'entry point'.

With soft targets (see section 6.4), many interviewees point to the 'political will' necessity in order to implement the Agenda.[538] As indicated previously, the adoption of the Agenda 2030 in 2015 at UN New York premises was attended by many European Heads of State and by level members of the European Commission, e.g. the First Vice President Frans Timmermans. Moreover, in some Member States such as Sweden and Germany, the coordination for the implementation is at the highest level and there is an informal meeting of around 20 Commissioners on implementation of the Agenda 2030. Notwithstanding this fact, the implementation phase itself cannot be considered as an example of long-term political leadership. Symptomatic in this regard is the absence of a reference to the Agenda 2030 in European Council conclusions until June 2017.[539] Furthermore, the 'second working stream' of the Communication 'next steps for a sustainable European future' leaves many implementation questions unanswered until the next Commission (2019-2024) will start their term of office. In that sense, the adoption of the 2030 Agenda did not change the ten

[533] United Nations General Assembly (2015) 'Transforming Our World: The 2030 Agenda for Sustainable Development', UN Resolution A/RES/70/1, adopted on 25 September 2015, available online from <https://sustainabledevelopment.un.org/post2015/transformingourworld>, Accessed 12 January 2017, para 39.

[534] SDG Target 17.17: Encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships.

[535] See European Commission (2017) 'Commission Decision on setting up the multi-stakeholder platform on the implementation of the Sustainable Development Goals in the EU', C (2017) 2941 final, Brussels, 22.5.2017. Cf European Commission (2018) 'From commitment to action: Implementing the Sustainable Development Goals through the next Multi-Annual Financial Framework of the European Union'. Advisory report to the European Commission by the Multi-Stakeholder Platform on the Implementation of the Sustainable Development Goals in the EU, March 2018. Accessed << https://ec.europa.eu/info/sites/info/files/adopted-position-paper-on-the-mff_en.pdf>> 18 August 2018.

[536] Interview EU official, 30-5-2017. Interview EU official, 7-6-2017.

[537] See e.g. Bull, B., Bøås, M. and McNeill, D. (2004) 'Private sector influence in the multilateral system: A changing structure of world governance?'. *Global Governance*, Vol. 10, No. 4, pp. 481-498. White, C. L. (2015) 'Exploring the role of private-sector corporations in public diplomacy'. *Public Relations Inquiry*, Vol. 4, No. 3, pp. 305-321. Andrade, J. C. S. and de Oliveira, J. A. P. (2015) 'The role of the private sector in global climate and energy governance'. *Journal of Business Ethics*, Vol. 130, No. 2, pp. 375-387.

[538] Interview MS official, 12-6-2017. Interview EU official, 2-5-2017. Interview EU official, 7-6-2017. Interview other societal stakeholder, 7-6-2017. Interview other societal stakeholder, 8-6-2017. Interview EU official, 13-6-2017. Interview EU official (2), 13-6-2017. Interview EU official (3), 13-6-2017. Interview MS official, 4-5-2017.

[539] Note that this reference in the European Council Conclusions 22 June 2017 is present under the title 'Paris Agreement', see http://www.consilium.europa.eu/press-releases-pdf/2017/6/47244661588_en.pdf.

'Juncker priorities' that were already present before 2015. Next to this, many other external and internal challenges like terrorism, 'Brexit' and migration occupy the European Union and its Member States. In more long-term policy documents such as the scenarios on the Future of Europe (until 2025), there is no explicit reference to implementation of the UN Agenda 2030 and the SDGs while the 'leading role' of the EU in the adoption and negotiation of the Agenda is highlighted.[540]

6.6 Discussion

The main question addressed in this chapter has been the following: *How do the legal competences affect EU and Member State coordination in implementation of the UN Agenda 2030 and the SDGs?* The division of legal competences between the EU and Member States has been raised as one of the top priority issues EU. The political elites and analysts often narrow this discussion down to either retreating the 'creeping' competences[541] of the EU or instead supporting the supranational coordination of the European Commission, in the field of external relations especially.[542] The United Nations Agenda 2030 for sustainable development and the 17 Sustainable Development Goals are not 'legally binding' but the topics relate to the competences divided between the EU and Member States. On the basis of the literature review and sixteen semi-structured interviews with EU and Member State actors and other societal stakeholders from March to June 2017, the influence of the legal competences is evaluated against other, more 'political' influences. These are operationalised in the 'intervening variables' of intergovernmentalism versus supranationalism dominance, the EU's position in the international constellation of power and preference heterogeneity. Other related explanations were found in the interviews: most notably the (absence of) political will and the involvement of other societal stakeholders.

Ministries and DGs of environment and development primarily conducted the EU and Member State negotiation of the Agenda 2030 between 2012 and 2015. The coordination of the implementation, especially at EU level, is nevertheless very much centralised at the level of the Secretariat-General and (in some Member States) at the level of the office of the Prime Ministers. The implementation phase also sees a larger role for many 'new' actors, including other societal actors such as CSOs and the private sector.

As the 17 Sustainable Development Goals concerning a broad range of topics, encompassing the internal and external dimensions of EU and Member State policies, the Secretariat-General seems to be the best-placed coordination structure with overview of the division of competences at EU and Member State level. However, the legal competences are rarely used in implementation strategies like the European Commission Communication 'next steps for a sustainable European future'. Instead, even from the Member States, the level of ambition and coordination by the Commission is criticised.[543] The catalogue of competences in the Treaties, as well as case law of the Court of Justice of the EU, such as ERTA and the Opinion 2/15 on the Singapore Agreement, enable a larger role for the European Commission in both the internal and external dimension of its sustainable development

[540] European Commission (2017) 'White Paper on the Future of Europe: reflections and scenarios for the EU27 by 2025', p. 8.
[541] Pollack, M. A. (2000) 'The end of creeping competence? EU policy-making since Maastricht'. *JCMS: Journal of Common Market Studies*, Vol. 38, No. 3, pp. 519-538.
[542] Macaj, G. and Nicolaïdis, K. (2014) 'Beyond 'one voice'? Global Europe's engagement with its own diversity'. *Journal of European Public Policy*, Vol. *21*, No.7, pp. 1067-1083.
[543] Council of the European Union (2017), A sustainable European future: The EU response to the 2030 Agenda for Sustainable Development - Council conclusions, 10370/17, 20 June 2017, para 19.

policies. Notwithstanding these legal arguments, this stronger EU coordination role is not taken up due to political reasons including 'national ownership' of the Agenda 2030 at the UN level, soft targets at the UN level, the existence of already ambitious sustainability policies at the EU level and the absence of EU targets beyond 2020. The legalistic, 'Treaty-based' culture of top-down competences seems to partly explain the hesitation of the EU in taking a larger coordination role implementing the transformative UN Agenda 2030 and its 17 Sustainable Development Goals.

The political reasons seem therefore more influential in deciding the fate of EU implementation of the Agenda 2030 and the 17 SDGs. Nevertheless, the classic 'intergovernmentalism versus supranationalism' argumentation is almost reversed with what one would expect based on previous theories, as the Council is opting instead for more EU (Commission) coordination. The EU's position in the international constellation of power seems rather detached from other countries and regional blocs. Regarding preference heterogeneity, there seems to be a significant substantive convergence on the 'narrow' environmental concept of sustainable development, but more divergence on the broader notion of sustainable development which includes topics such as 'human rights' and transformation of the economic growth paradigm. These discussions seem however to be taking place more between different ministries/DGs than between the EU and Member States. The most influential political argument enabling or restraining the implementation seems therefore to be political will.[544] Two 'political will' developments seem to restrain coordination processes. Firstly, the 'second working stream' of the Communication 'next steps for a Sustainable European future' postpones many long-term implementation actions until the start of the next College of Commissioners (2019-2024). The current Juncker Commission could then focus on its own Ten Priorities and internal discussions such as on migration, security and Brexit. Secondly, at the Head of State level there has been no explicit reference to implementation of the Agenda 2030 in European Council conclusions until June 2017. This is hindering coordination between EU and Member State actors. Therefore, while the legal competences could enable EU and Member State actors in coordinating implementation of the Agenda 2030 and SDGs, this is currently hindered by political will. The effect of the variables and explanations is visualised below in Figure 6.1.

[544] Interview MS official, 12-6-2017. Interview EU official, 2-5-2017. Interview EU official, 7-6-2017. Interview other societal stakeholder, 7-6-2017. Interview other societal stakeholder, 8-6-2017. Interview EU official, 13-6-2017. Interview EU official (2), 13-6-2017. Interview EU official (3), 13-6-2017. Interview MS official, 4-5-2017.

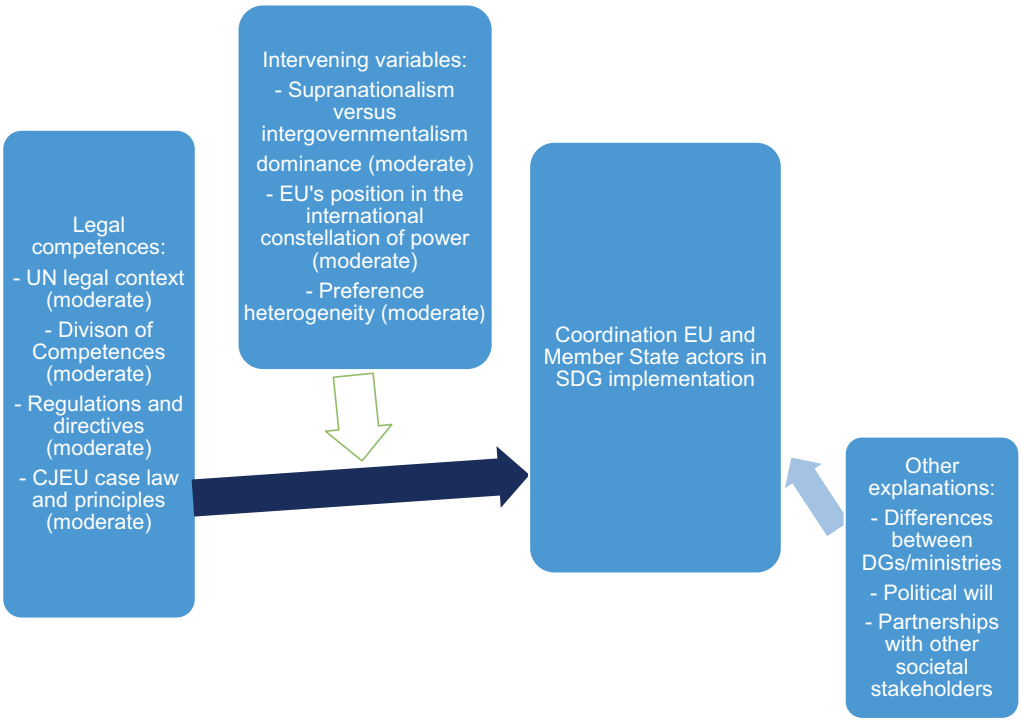

Figure 6. 1 Variables and effects on coordination of EU and Member State actors in SDG implementation

Further research

The results can only be valued as 'plausibility probes', providing interesting avenues for future research, but it is acknowledged that they need further testing over time to become more robust.[545] While research on the effects of the treaty-based division of competences in practice may be the most obvious candidate, further research could in particular review the role of the Court in EU external relations and the effects of case law on political practice.[546] Indeed, this institution is still one of the more overlooked actors, with the role of the Court and the effect of its judgments on the role of actors in areas such as environmental policy or foreign and security policy hardly acknowledged in political analyses.[547]

Furthermore, the interviews point to a couple of other topics related to the division of competence and EU implementation of the Agenda 2030 that can be worked out in more detail. This includes the concept of policy coherence for sustainable development,[548] data

[545] George, A. L. and Bennett, A. (2005) *Case studies and theory development in the social sciences* (Cambridge, Massachusetts: MIT Press).
[546] Cf Hillion, C. and Wessel, R. A. (2009) 'Competence Distribution in EU External Relations after ECOWAS: Clarification or Continued Fuzziness?'. *Common Market Law Review*, Vol. 46, No. 2, pp. 551-586.
[547] Cremona, M. & Thies, A. (eds) (2014) *The European Court of Justice and External Relations Law: Constitutional Challenges* (Oxford: Hart Publishing).
[548] See Organisation for Economic Co-operation and Development (2017) 'Policy Coherence for Sustainable Development 2017' with contributions from the author, http://www.oecd.org/publications/policy-coherence-for-sustainable-development-2017-9789264272576-en.htm.

and reporting[549], a comparison with other regional blocs like ASEAN and MERCOSUR[550], private sector involvement[551], UN system transformation with the SDGs[552] and the connection with the scenarios on the Future of Europe[553] and 'Brexit'. Overall, this analysis is to be understood as a plea to combine existing and new political and legal insights, to better understand the effects of legal choices on political practice (and *vice versa*). The present contribution has provided a number of reasons to further this new area of research.

SUMMARY CHAPTER 6

The United Nations Agenda 2030 and the 17 Sustainable Development Goals are not 'legally binding' but the topics relate to EU internal legal rules and powers defined by the Treaty. The main question addressed in this chapter is therefore the following: How do legal competences affect EU and Member State coordination in implementation of the UN Agenda 2030 and the SDGs? Treaty provisions as well as case law of the Court of Justice of the EU theoretically enable a larger role for the European Commission in both the internal and external dimension of its sustainable development policies. However, these legal competences are rarely used in the European Commission's implementation strategy. Instead, the broad concept of sustainable development combined with a 'new' universal, transformative UN agenda seems counterintuitive to the legalistic, top-down tendency within the European Commission in which legal competences often mark the boundaries instead of the possibilities. The most influential explanation of coordination seems to be (absence of) political will to implement the UN Agenda, currently halted by internal discussions on the EU's future and ignorance of EU leaders.

[549] Interview EU official, 13-6-2017.
[550] Interview EU official, 7-6-2017.
[551] Cf Kamphof, R. and Melissen, J. (2018)'SDGs, Foreign Ministries and the Art of Partnering with the Private Sector', *Global Policy (online, early view)*https://doi.org/10.1111/1758-5899.12563. On the difficulties for governments, specifically ministries of Foreign Affairs, being in partnerships with the private sector for the SDGs.
[552] Interview other societal stakeholder, 7-6-2017.
[553] European Commission (2017) 'White Paper on the Future of Europe: reflections and scenarios for the EU27 by 2025'.

Chapter 7: Synthesis: Comparing the Cases

7.1 Introduction

> *"For too long, the expectation - at least in the Brussels bubble - was that the EU institutions would always try to do more than the treaties allowed them, while the expectation within Member States was that they would push back to make them do less. This immature behaviour has to be overcome" (Speech José Manuel Barroso, 8 May 2014)*[554]

This chapter synthesises the findings of the influence of mixed legal competences on EU and Member State coordination in three specific sustainable development contexts: policy formulation on alternative fuels for private vehicles, negotiation of 'Team EU' in UNFCCC negotiations and implementation of the UN Agenda 2030 in the EU and Member States. The cases are compared systematically to build the theory on the effect of legal competences on sustainable development policies in the EU and the Member States, as well as their interaction with other issues stemming from political theoretical literature and beyond. Thereby it turns to anotherquestion, namely: *How do legal competences affect EU and Member State coordination in negotiation, implementation and formulation of sustainable development policies?* The Conclusion/Discussion (chapter 8) reflects on the answers in detail.

This chapter provides a descriptive and analytical overview of the findings in all three cases. The chapter is structured as follows. Section 7.2 describes the coordination processes (dependent variables) in the three case studies. Section 7.3 then highlights the results with regards to the effects of legal competences: the division of competences in the Treaty, the Court's case law, regulations and directives (internally) as well as EU's powers in a multilateral context (externally). This section contains 'general reflections' on legal competences (7.3.1), as well as identification of similarities and differences across the cases, which are visualised in a matrix (7.3.2). Section 7.4 analyses the political factors that were tested in the case studies as intervening variables, namely supranational versus intergovernmental dominance, the EU's position in the international constellation of power and preference heterogeneity. In addition, other more specific explanations raised in the case studies are reviewed. Subsequently, section 7.5 analyses, assesses and visualises the interactions between these legal and political variables and refers back to the methodological challenges that were partly raised in chapter 3. This section also highlights some of the difficulties of deduction from these specific case studies, while nevertheless showing their value for future research and theory building.

7.2 EU and Member State coordination

Coordination has been defined in this dissertation as the process of contacts between diplomats and officials from EU institutions (especially the European Commission) and Member States with the purpose of discussing an issue of common interest and working towards a common position. These coordination processes can be internal (within the EU) or external (international) and include the discussion of the 'management' of the coordination. In

[554] European Commission (2014) 'On Europe Considerations on the present and the future of the European Union': A speech by José Manuel Durão Barroso, President of the European Commission Humboldt University of Berlin, 8 May 2014,

all case studies the coordination processes have been described, without marking the 'quality' of the coordination. The primary objective of this dissertation is to see whether the independent variable of legal competences has an effect on these coordination processes on sustainable development policies. What is important to note, however, is that the three coordination case studies differ with regards to their 'place' in the policy cycle as well as the internal/external dimension.

In relation to the 'discussing', 'working towards a common position' and 'adjusting different positions' parts of the coordination definition, the climate change case study has been the one where the most 'coordination' aspects could be described. This is naturally the case if one takes into account the need to work towards a common position in the external context of the UNFCCC. With less 'external pressure', such as in the case of alternative fuels, there is also less coordination to be analysed and described. It is also worth noting that many interviewees for the climate change case study refer to the 'positive' encounters with coordination when compared to the other case studies.[555]

Coordination between EU and Member State actors includes the discussion of the 'management' of the coordination.[556] It is interesting to note that these 'managing actors' differ across the case studies. In the alternative fuel case study, it appears that the ministries and societal stakeholders within the Member States are the managing force in the coordination process. In the climate change case study, one sees a specific coordination role for the Presidency of the Council of the EU, which is mostly but not only ceremonial, and a more substantive one for the European Commission (DG CLIMA). In the SDG implementation case study, the coordination lies at the EU level, and more specifically with the Secretariat-General of the European Commission. Within the Member States, the coordination 'management' differed between e.g. Ministries of Foreign Affairs, General Affairs, Development Cooperation and Environment ministries.

With regards to coordination and socialisation, one of the expectations from the literature was that preferences of Member State and EU actors, instead of being fixed, can converge over time through social interaction processes such as socialisation.[557] Member States' representatives involved in deciding on or negotiating an EU position would thus adopt a European orientation due to the 'socialisation' in EU practices. [558] It is no coincidence that socialisation often pops up in empirical research on climate change negotiations. Similarly, this case study shows an enormous coordination effort both before and during the UNFCCC negotiations and a rather coherent 'Team EU' socialisation. This socialisation process could enable the Commission to take on a leading role in coordination due to its experience in DG CLIMA. A similar though less demanding socialisation process seems to have taken place in the run-up to the Agenda 2030, especially by environment and development cooperation officials in the EU institutions and the ministries in the capitals of the Member States. However, with the SDG implementation, after the adoption of the Agenda 2030 in 2015, there

[555] Interview MS official, 24-1-2014, Interview EU official, 9-4-2014, Interview EU official, 30-5-2017, Interview EU official, 13-6-2017, Interview MS official (1) and (2), 14-6-2017 Interview former MS official, 10-5-2017.
[556] Cf Jordan, A. and Schout, A. (2006) The coordination of the European Union: exploring the capacities of networked governance (Oxford University Press).
[557] Groenleer, M. L. and Van Schaik, L. G. (2007) 'United We Stand? The European Union's International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol'. *JCMS: Journal of Common Market Studies*, Vol. 45, No. 5, p. 975.
[558] Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan), p. 75.

was a shift in coordinating actors both in the European Commission (Secretariat-General and first Vice-President) and in *some* of the Member States, where implementation coordination was transferred to interdepartmental councils or Prime Minister's offices. As a result, one can now speak of a 'transitional phase', as socialisation processes had to start once again with different actors; other stakeholders.[559]

7.3 The effect of legal competences

Each case study involved an operationalisation of 'legal competences' as independent variables in the same broad manner. Within the EU, these legal competences were divided into Treaty competences, legal principles and the Court's case law, as well as regulations and directives. Moreover, legal competences at the *external* (multilateral) stage also have an independent effect on EU and Member State coordination of sustainable development policies. This section summarises the findings in the three case studies in general reflections and analyses similarities and differences across such cases.

7.3.1 General reflections

Competences

The topics of interest in the case studies cover many policy areas from climate, energy and transport to security, trade and taxation. As a result, sustainable development policies are mostly topics of 'mixed competences'.[560] Nevertheless, the 'centre of gravity' in these case studies were the policy areas of environment/climate change (EU in UNFCCC), development cooperation (SDGs), transport, and energy (alternative fuels). These policy areas can all be subsumed under the category of 'shared competences'.[561] While the 'category' of shared competence sounds cohesive, all three case studies revealed that there is a wide divergence of policy areas and coordination arrangements within the category. When compared to e.g. environment, the policy area of energy is one of the fields in which the EU has fewer powers. With regards to the energy and electricity mix, much is kept within the discretionary autonomy of the Member States.[562] Such an autonomy is equally important in financial, and taxation issues. In addition, land-use, export promotion and efforts in 'non-ETS' sectors, such as agriculture and transport, were typical 'Member State competences' and it seemed not possible for the Commission to expand its powers. The interviews' findings in the case studies seem to suggest that Member States do everything to keep these competences safe within their own hands.[563]

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[559] European Commission (2017) 'Commission Decision on setting up the multi-stakeholder platform on the implementation of the Sustainable Development Goals in the EU', C(2017) 2941 final, Brussels, 22.5.2017. See also Kamphof, R. and Melissen, J. (2018) 'SDGs, Foreign Ministries and the Art of Partnering with the Private Sector', *Global Policy (online, early view*) https://doi.org/10.1111/1758-5899.12563. for the difficulties for governments, specifically ministries of Foreign Affairs, being in partnerships with the private sector for the SDGs.

[560] On mixed competences cf Rhinard, M. and Kaeding, M. (2006) 'The international bargaining power of the European Union in 'mixed' competence negotiations: The case of the 2000 Cartagena Protocol on Biosafety'. *JCMS: Journal of Common Market Studies*, Vol. 44, No. 5, pp. 1030-1033.

[561] See art 4 TFEU, while acknowledging that 'development cooperation' is a specific type of shared competence, see art 4(3) TFEU and Art 208 TFEU.

[562] Cf Kamphof, R., Bonenkamp, T., Selleslaghs, J.M.H.M.R. and Hosli, M.O. (2017) 'External competences in energy and climate change' in Leal-Arcas, R. and Wouters, J. (eds) *Research Handbook on EU Energy Law and Policy (*Edward Elgar Publishing), pp. 30-47.

[563] Interview Other societal stakeholder 1, 27-3-2017, Interview other societal stakeholder 2, 27-3-2017, Interview other societal stakeholder, 28-7-2016 (alternative fuels case study), interview EU official, 13-6-2017, Interview MS official, 13-6-2017, Interview MS official, 8-6-2017, Interview EU official, 30-5-2017 (climate change case study) Interview EU official, 2-5-2017. Interview other societal stakeholder, 29-5-2017. Interview other societal stakeholder, 7-6-2017. Interview EU official, 7-6-2017. Interview MS official, 13-6-2017 (SDG implementation case study).

Furthermore, one of the expectations was that the discussions around the issue of competences would have a large role in the different case studies and that the European Commission would make use of these competences. However, the interviews portray an environment in which these competences are not a primary issue, and not promoted as such by EU actors.[564] This latest finding is interesting, as in all three cases the European Commission *could* make the legal case that the Treaty provides them with more competences on the issue than it currently uses in practice. Examples include the peculiar negotiation mandate (unanimity) for UNFCCC negotiations, the lack of EU coordination on SDG implementation and the absence of steering policies on alternative fuels. Contrastingly, when financial/taxation, energy mix issues or land-use policies are at stake the Member States are more than willing to play the 'competence' autonomy card.

Court's case law and legal principles

The legal principle of the conferral of powers (Art 5 TEU) entails that the Union can only act once a competence has been created. In parallel, one should bear in mind the principle of proportionality and subsidiarity. The principle of subsidiarity proved particularly important as a guideline in EU policy formulation and implementation, within these specific case studies. This principle is often used to argue that the discretionary autonomy should stay within the hands of the Member States.

The 'referee' on the use of competences and the effect of legal principles in the EU is the Court of Justice of the European Union. However, the Court is only in position to reflect on the legal situation in practice when it is asked to do so by the EU institutions or its Member States. These legal opinions, infringement proceedings or annulment actions have however not (often) been started for these cases, despite the fact that the Treaty does not always provide clear answers and practice is at times seemingly contradictory of the Treaty.

Nevertheless, the Court's case law has an important effect. ERTA case-law[565] appears to have effect for both climate change negotiations as well as the UN Agenda 2030 as the EU has committed to implement the SDGs both in its *internal* and *external* policies. Moreover, quite recently the Court ruled that within a Free Trade Agreement the 'objective of sustainable development forms an integral part of the (exclusive) common commercial policy'.[566] This 'Singapore opinion' may prompt a more active role for the Court in the evaluation of the conduct of sustainable development.[567] As social and environmental dimensions are increasingly integrated with economic policies, the Court might be asked to reflect more on the use of competences in mixed agreements. Furthermore, the 'principle of sincere co-operation', originating from the Court's case law and now part of the Treaty[568], obliges Member States and the EU to cooperate more loyally than they sometimes seem to do in practice as shown in the case studies. Nevertheless, although not referring directly to the Treaties and the Court's case-law, it is seen as disrespectful to Member State and EU

[564] Interview EU official, 30-5-2017, Interview MS official, 8-6-2017, Interview MS official, 14-6-2017.
[565] Cf section 2.3.
[566] Para 147, opinion 2/15
[567] Interview EU official, 13-6-2017 (climate change case study), Interview EU official, 12-6-2017, Interview MS official, 12-6-2017 (SDG implementation case study).
[568] Art 4(3) TEU.

actors to 'colour outside the lines' of the Team EU approach during climate change negotiations.

Regulations, Directives and Strategies

The EU is to considered by certain commentators such as Damro (2012: 682) 'fundamentally a large single market with significant institutional features'.[569] These single market features, especially when agreed in regulations and directives, could be analysed as legally defining powers with internal (and external[570]) effects. These regulations and directives affect the distribution of competences, which make them a dynamic rather than a fixed (Treaty-based) process.[571] As an example, one would expect the Union to have more (coordinating) powers when there is a single market for road fuel agreed in a directive. Nevertheless, when looking at the different case studies in more detail it is clear that there are many 'opt-outs' for the Member States which hinder coordination (and implementation) 'management' by the European Commission. Continuing with the example of alternative fuels, they are not part of the legally binding Emission Trading System (ETS). Moreover, there are 'substantial barriers' to the single market resulting from national taxation schemes, not only on fuels, but also on energy. [572] Overall, the case studies show that there is significant internal legislation, but that the EU seems not so strict on compliance and weak in implementation. Furthermore, all case studies demonstrated a general reluctance among Member States to accuse other Member States when they do not cooperate according to the prescribed rules of coordination.

External (multilateral) legal context

Besides the significant *internally* defined powers, there are *externally* defined legal powers. However, as the case studies have demonstrated, the international context does not often prescribe legally binding rules. The Sustainable Development Goals, for example, have a non-legal binding character and the monitoring and review mechanisms in the UN High-Level Political Forum are likewise 'soft'. The UN is 'encouraging regional frameworks such as the EU' (para 21) to facilitate implementation, but national governments 'have the primary responsibility' (para 47).[573] The Paris Agreement is more binding, but composed of a 'binding' section as well as voluntary, non-binding commitments. The 'multilateral context' on alternative fuels is almost non-existent.

Despite these 'soft' externally assigned powers, there are nevertheless some internal effects of these UN documents and Statutes. As the EU as well as its Member States are a Party to the UNFCCC they need to cooperate to reach the objectives of the Paris Agreement, with an upcoming stocktake of climate pledges in which, most likely, the EU and its Member States will need to increase their work on mitigation, adaptation and finance. Moreover and vice

[569] Damro, C. (2012) 'Market power Europe'. *Journal of European Public Policy*, Vol. 19, No. 5, pp. 682-699.
[570] For external effects see ERTA case-law.
[571] Original text: "de bevoegdheidsverdeling op het terrein van de externe betrekkingen is niet statisch, maar dynamisch". See http://www.minbuza.nl/ecer/dossiers/externe-betrekkingen/exclusieve-en-gedeelde-externe-bevoegdheden-van-de-eu.html on 21-12-2014.
[572] Steenberghen, T. and Lopez, E. (2008) 'Overcoming barriers to the implementation of alternative fuels for road transport in Europe'. *Journal of Cleaner Production*, Vol. *16*, No. 5, p. 584.
[573] United Nations General Assembly (2015) 'Transforming Our World: The 2030 Agenda for Sustainable Development', UN Resolution A/RES/70/1, adopted on 25 September 2015, available online at <https://sustainabledevelopment.un.org/post2015/transformingourworld>, Accessed 12 January 2017.

versa, the Treaty and ERTA case law upgrade the external profile of the EU at e.g. the United Nations whenever EU Member States and third states are willing to accept its internal competences at an external stage. The Court's case law and, the Lisbon Treaty, combined with the Agenda 2030 and the Paris Agreement provides ample room of manoeuvre to 'parallelise' these internal and external dimensions. When, as in the case of alternative fuels, a multilateral context is missing, this seems to weaken the internally defined legal powers.

7.3.2 Similarities and differences: legal competences across the cases

The below Table (7.1) gives an overview of the relevance of legal competences for EU and Member State coordination across the cases. A 'weak' relevance indicates that the source of legal competences is not (or seldom) as such used or indicated, according to the documents and interview findings. A 'moderate' relevance indicates that there is some use of this source of legal competences; a 'strong' relevance means that this source often comes back in interview findings and/or policy and legal documents. In the alternative fuels case the 'regulations and directives' are marked as having 'strong' impact on coordination between EU and Member State actors. The 'U-turns' on biofuels in directives proved to be having an especially large effect. In contrast, with the absence of a multilateral context, the importance of UN documents and Statutes is scored as 'weak'. In the case study on 'Team EU' in UNFCCC negotiations, the UN context is 'strong' but, as indicated in many interviews, there has been almost no attention paid to 'competences' since 2010-2011. Therefore, this source of legal competences is scored as 'weak'. The case study on 'SDG implementation' has 'moderate' scores on all four sources of legal competences. With the absence of a real implementation strategy until (most likely) the next College of Commissioners from 2019, it is expected that none of the sources will be 'weak' or 'strong' until then.

	Competences and Treaty provisions	*CJEU case law and principles*	*Regulations and directives*	*Multilateral (UN) documents and Statutes*
Case Alternative Fuels	Moderate	Weak	Strong	Weak
Case UNFCCC Team EU	Weak	Moderate	Moderate	Strong
Case SDG implementation	Moderate	Moderate	Moderate	Moderate

Table 7. 1 The relevance of sources of legal competences across the cases

Similarities

The case studies point to some similarities. Firstly, the actual *claiming* of Treaty-based or case law-based competences by the European Commission appears to rarely occur in daily practice. Likewise, the Court of Justice is absent from the discussions as they are not asked to reflect on the division of powers in practice. This is remarkable as the daily practice sometimes contravenes the logic of the Treaty. The Commission for instance, does not question the peculiar procedure of Team EU in climate change negotiations while this would definitely be a relevant legal question for the Court of Justice. The recent Singapore opinion

was however noted in interviews across the cases, which indicate a potential revitalisation of legal questions on the conduct of powers in sustainable development policies (and trade).[574] Secondly, and conversely, the Member States seem in all three cases to be selective on their 'financial' and 'energy mix autonomy' national competences such as climate finance commitments, funding for SDG implementation, taxation of fuels as well as discretionary autonomy on land-use issues and export promotion.[575] Thirdly and notably, while all case studies were selected as 'mixed-competence' procedures one could see in all cases that there are strong differences between policy areas *even when* they are based on the same (shared) 'competence category'. As a result, apart from clear categories such as 'exclusive' EU competences or national competences, there is a sweeping range of policy areas where decisions are increasingly made on an ad-hoc basis. The category of 'shared' competences especially appears to be composed of different balances of power between EU and Member State actors, ranging from 50-50 to 90-10. This could be the result of the equal importance of the principle of *subsidiarity* alongside the division of competences.

Differences

There are of course also differences across the cases and the potential effect of legal competences, often largely related to the place in the chain of decision-making. While this is a small-N study and especially the climate change case seems very peculiar, one could see clear differences in the powers of the Commission in negotiation (quite strong) as compared to implementation of international agreements and powers in policy formulation (quite weak). Part of this difference could be related with the difference between external and internal competences. While the internal division of competences are delineated in the Treaty, the *external* competences are not clearly established. As a consequence, the identification of external competences is to a large extent based on decades of pre-Lisbon case law of the Court of Justice of the European Union which 'provides a fertile field for ingenious legal argument' over the interpretation of the Treaties.[576]

Besides the difference between internal and external dimensions, there is a difference in the actual notion of the topics within the Treaties. Climate change is not often distinguished in the Treaty, which leaves some creative room to manoeuvre for EU and Member State actors. One could even argue that there is a lack of legal competences on climate change in the Treaty. The less a topic is mentioned in the Treaty, the more legal creativity in the field of coordination seems necessary and other legal sources (such as case law, regulations, directives and UN Statutes) are used. However, this should be crosschecked with more research on this topic. Interestingly, some of the 'general' interviews on the history of competences point to an era (1980s and 1990s) in which the Treaty was more a 'framework', while in recent years it has become a 'tighter jacket' in which legal competences were more

[574] Interview EU official, 13-6-2017 (climate change case study), Interview EU official, 12-6-2017, Interview MS official, 12-6-2017 (SDG implementation case study).
[575] Interview Other societal stakeholder 1, 27-3-2017, Interview other societal stakeholder 2, 27-3-2017, Interview other societal stakeholder, 28-7-2016 (alternative fuels case study), interview EU official, 13-6-2017, Interview MS official, 8-6-2017, Interview EU official, 30-5-2017 (climate change case study). Interview EU official, 2-5-2017. Interview other societal stakeholder, 29-5-2017. Interview other societal stakeholder, 7-6-2017. Interview EU official, 7-6-2017. Interview MS official, 13-6-2017 (SDG implementation case study).
[576] Wouters, J., Odermatt, J. and Ramopoulos, T. (2013) 'The EU in the World of International Organizations: Diplomatic Aspirations, Legal Hurdles and Political Realities. Legal Hurdles and Political Realities.' Leuven Centre for Global Governance Studies Working Paper, No. 121, p. 4.

restrictive.[577] The mere fact that 'climate change' receives less attention in the Treaty can therefore be a positive sign for more creative use of legal competences.

7.4 Intervening variables (political-theoretical issues)

The previous section pointed to some generalities across the cases. The *potential* of legal competences is often not fully used, especially by the European Commission. There can be many *political* explanations for this phenomenon. Why would the European Commission for example dare to bring a competence discussion on mercury to the Court of Justice while it keeps the status quo climate change? [578] This section points to the political issues identified from the literature that have been part of the questioning and investigation in the case studies as intervening variables. These issues are the supranational versus intergovernmental dominance, the EU's positioning in the international constellation and preference heterogeneity. As demonstrated later, some of these 'political' issues do have a legal component that should not be neglected. Moreover, other explanations raised in the case studies will be briefly summarised.

Table 7.2 gives an overview of the relevance of the 'intervening variables' across the cases. A 'weak' relevance indicates that the political-theoretical issue is not (or seldom) as such used or indicated, according to the documents and interview findings. A 'moderate' relevance indicates that there are some references to this intervening variable; a 'strong' relevance means that this political explanation often comes back in interview findings and/or policy and legal documents. In the alternative fuels case study 'preference heterogeneity' is scored as 'strong' due to the differences in fuel choice between Member States. In contrast, 'Team EU' in UNFCCC negotiations has a 'weak' heterogeneity': climate change is generally considered a policy area in which Member States' views are aligned. For 'SDG implementation', the EU's position in the international constellation of power is considered as 'strong' as the goals can be said to correspond to 'European' values.

	Supranational versus intergovernmental dominance	*EU's positioning in the international constellation of power*	*Preference heterogeneity*
Case Alternative Fuels	Moderate	Weak	Strong
Case UNFCCC Team EU	Weak	Strong	Weak (strong homogeneity)
Case SDG implementation	Moderate	Moderate	Moderate

Table 7. 2 The relevance of intervening variables across the cases

[577] Interview 'Former MS official (general)' 19-4-2017 and Interview Former EU and MS official, 31-3-2017.
[578] On this case, cf De Baere, G. (2012) 'Mercury Rising: The European Union and the International Negotiations for a Globally Binding Instrument on Mercury'. *European Law Review*, Vol. 37, No. 5, pp. 640-655.

Below is an overview of the intervening variables and their potential effect on coordination of EU and Member State actors in sustainable development policies.

Supranational versus intergovernmental dominance

The main debate in the literature on European integration has for a long time been the supranational-intergovernmental 'dichotomy' which dictates that integration is either driven by supranational institutions or national governments.[579] As Nugent (2017: 436) suggests intergovernmentalism refers to arrangements, 'whereby nation states, in situations and conditions they can control, cooperate with one another on matters of common interest'.[580] The Member States are free to cooperate or not and are able to set the limits of this cooperation, e.g. through a veto. At the other end of the spectrum, supranationalism refers to governance arrangements where states decide to delegate responsibility for decision-making to a body that stands above (*supra)* the nation state. In this way, states lose some control, but they still have to agree to do this.

If that dichotomy also dictates EU and Member State cooperation on sustainable development issues, or lack thereof, one would expect institutional turf battles on the treacherous issues of climate change, development cooperation and fuels for private vehicles. However, this 'traditional pattern' of Member States versus European Commission, where the Member States (via the Council) ask for less EU powers fearing a 'competence creep', is only to some extent visible in the case study on alternative fuels. Interestingly, in the case of SDG implementation the Council is asking for more coordination and powers of the Commission urging for an 'implementation strategy' with 'concrete measures' in 'all relevant EU internal and external policies'. [581] The climate change negotiations are more peculiar. On the one hand, the Member States and the European Commission seem to work together coherently in 'Team EU' during the negotiations leaving these turf battles aside. On the other hand, the Member States keep their control over the process with a large role for the Presidency and the Council Working Group WPIEI both before and during the negotiations. The European Parliament, often not a part of the intergovernmental-supranational dichotomy literature, still seems to be a less influential player than the Council and the Commission in these three case studies. However, they sometimes demand ambitious policies especially in committees such as ENVI (environment) and DEVE (development cooperation). Nevertheless, the 'inter-committee coordination' in the European Parliament on sustainability issues is notably absent.[582]

EU's position in the international constellation of power

The position of the EU in the international constellation of power is also an explaining factor for EU and Member State cooperation as often found in the literature, especially in

[579] Branch, A. P., and Ohrgaard, J. C. (1999) 'Trapped in the supranational-intergovernmental dichotomy: a response to Stone Sweet and Sandholtz'. *Journal of European Public Policy*, Vol. 6, No. 1, pp. 123-143.
[580] Nugent, N. (2017) *The government and politics of the European Union* (Springer), p. 436.
[581] Council of the European Union (2017), A sustainable European future: The EU response to the 2030 Agenda for Sustainable Development - Council conclusions, 10370/17, 20 June 2017, para 19.
[582] Yesilkagit, K. (2008) 'Review - The coordination of the European Union. Exploring the capacities of networked governance – by Andrew Jordan and Adriaan Schout'. *Public Administration,* Vol. 86, No. 2., p. 615. Yesilkagit holds that "There are almost no bureaucratic procedures that systematically support inter-committee coordination of EPI (Environmental Policy Integration). EPI, moreover, depends on informal relations and the personality of the MEPs involved as well as of the rapporteurs of the Environment and other committees."

multilateral negotiations.[583] The case studies do not all have a clear external component and as such, they are difficult to compare on this specific explaining factor. Moreover, both SDG implementation and the introduction of alternative fuels are still in their early stages, not only in the EU but also in other parts of the world. Nevertheless, the finding that the international context indeed played a large role in 'Team EU' cooperation at UNFCCC negotiations was confirmed in many interviews. As the third largest CO2 emitter, the EU can be considered as important, but not as the most important player to reach global CO2 emission goals. This has a strong effect on their internal need for coordination.[584] In a less clear-cut international negotiation, such as the Open Working Group leading to the Agenda 2030 and the SDGs, one could find Member States and the EU coordinating their positions effectively. However, when it comes to SDG implementation or in the absence of a multilateral negotiating context (e.g. for alternative fuels) or the absence of a strong monitoring mechanism (e.g. the HLPF for SDGs), it proved difficult for the EU and Member States to cooperate. In that sense the international context appears to facilitate EU and Member State cooperation and use of the Treaty accordingly. Indeed, even when there is large import dependence and the EU's position of the international constellation of power on fuels is decreasing in practice, it seems as if Member States can try to work on their own 'raw material/resource strategies' despite some coordination and a soft EU raw material strategy on critical raw materials.[585] This could be related to the absence of international cooperation and the absence of a need to work together for (the EU and) Member States.[586] This would indeed explain why energy cooperation is still in its infancy despite equal 'shared competences' like climate change, although this is largely outside the remit of this study.[587]

Preference heterogeneity

'Preference heterogeneity' – meaning (the absence of) aligning interests – is a primary explaining factor of EU and Member State cooperation behaviour according to the literature. The case studies sketch a mixed picture in the different policy areas. In the case of climate change there is a general preference *homogeneity*, especially on the necessity to tackle climate change internationally. On sub-issues, there are often one or two outliers, e.g. Poland[588]. In the multilateral negotiations there seems to be a 'Team EU' preference homogeneity on climate change mitigation and adaption and more heterogeneity on the (financial) 'means of implementation', within the EU as well as externally. The homogeneity on mitigation and adaptation can be explained by the image that the EU itself has the most ambitious climate policies as tradeing bloc. That makes it in the interest of all EU Member States to aim for a global ambitious climate deal. For alternative fuels there seems to be preference heterogeneity across the EU depending on the historical fuel context

[583] Cf Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan).
[584] Cf Bäckstrand, K., and Elgström, O. (2013) 'The EU's role in climate change negotiations: from leader to 'leadiator'. *Journal of European Public Policy*, Vol. 20, No. 10, p. 1380 who consider the EU 'a bridge builder between the major emitters'.
[585] European Commission (2013) on the implementation of the Raw Materials Initiative. COM(2013) 442 final. Brussels, Belgium, 24.6.2013. Cf Lee, B., Preston, F., Kooroshy, J., Bailey, R. and Lahn, G. (2012) 'Resources futures: A Chatham House report'. London, UK: The Royal Institute of International Affairs, accessed via http://www.chathamhouse.org/publications/papers/view/187947 for a critical overview of international cooperation on natural resources.
[586] See e.g. (in Dutch) Kamphof, R. (2013) 'Grondstoffen' (natural resources, raw materials) Nationale Commissie voor Duurzame Ontwikkeling NCDO, Amsterdam, www.kaleidosresearch.nl/download/2015/08/2013-Grondstoffen.pdf, p. 43-45.
[587] Cf Kamphof, R., Bonenkamp, T., Selleslaghs, J.M.H.M.R. and Hosli, M.O. (2017) 'External competences in energy and climate change' in Leal-Arcas, R. and Wouters, J. (eds) *Research Handbook on EU Energy Law and Policy (*Edward Elgar Publishing), pp. 41-43 for differences in global climate and energy frameworks and the role of the EU.
[588] Rettman, A. (2015) '*Poland vetoes CO2 targets on the eve of Paris visit'* EU Observer, 28 October 2015. Available at <<https://euobserver.com/environment/130867>> Accessed 10 December 2015.

(diesel/gasoline), size of the automotive industry, strong domestic stakeholder lobbies and different blending and taxation policies.

For the SDGs, it is difficult to analyse the substantive divergence because of the broad scope of this agenda and the extended practical use of sustainable development. As indicated in the interviews this concept was previously especially known for the environmental dimension and to some extent poverty eradication.[589] The Agenda 2030 'on sustainable development' not only encompasses the recent 'three dimensions' (environmental, social and economic) but likewise security and human rights dimensions. The 'extended' use of the concept is increasing preference heterogeneity on e.g. human rights issues in Poland and Hungary. Additionally, the idea that economic growth should stay 'within planetary boundaries' is sometimes debated beyond the classical environmentally focused DGs and ministries. This latest finding resonates in all three case studies: there seems to be more preference heterogeneity between Directorates-General and between ministries *within* the EU and *within* Member States than between the European Commission and the Member States. For example, finance ministries proved to be difficult partners in the new sustainable development pattern.[590] This is an important finding that needs further testing.

Other explanations

Apart from the relevance of legal competences and intervening variables all three case studies pointed to case-specific alternative explanations for EU and Member State coordination in formulation, negotiation and implementation of sustainable development policies. The alternative fuels for private vehicles case study demonstrated the importance of the tone of the scientific and/or emotional debate for joint decision-making. In that sense, the UNFCCC negotiations were easier due to the 97 percent consensus in peer-reviewed climate science literature that humans are causing global warming.[591]

In all the case studies, the opinions of 'other societal stakeholders' such as the private sector and CSOs were taken into consideration. In the study on alternative fuels their views were hugely significant, in the case study of SDG implementation much is *expected* from the other societal stakeholders and in the UNFCCC negotiations, besides the parallel merchandising process of the Open Tent Zone, the other societal stakeholders appeared to have only a small role in the 'real' intergovernmental negotiations.

When considering drivers for coordination of EU and Member States on sustainable development policies, some refer to a European public that values environmental protection and development cooperation highly, as has been signposted by several recent Eurobarometer surveys.[592] On the one hand, this could be an 'alternative explanation' of EU

[589] Interview other societal stakeholder, 7-6-2017. Interview MS official, 12-6-2017. Interview EU official, 7-6-2017 (SDG implementation case study).
[590] Interview EU official, 7-9-2016, Interview MS official, 7-9-2016, Interview other societal stakeholder, 7-9-2016, Interview EU official, 31-3-2017 (alternative fuels case study), Interview EU official, 14-10-2015, Interview MS official, 8-6-2017, Interview EU official, 13-6-2017 (climate change case study), Interview EU official, 2-5-2017. Interview other societal stakeholder, 29-5-2017. Interview other societal stakeholder, 7-6-2017. Interview EU official, 7-6-2017. Interview MS official, 13-6-2017 (SDG implementation case study).
[591] Cook, J., Nuccitelli, D., Green, S. A., Richardson, M., Winkler, B., Painting, R., ... & Skuce, A. (2013) 'Quantifying the consensus on anthropogenic global warming in the scientific literature'. *Environmental Research Letters*, Vol. 8, No. 2, 024024.
[592] European Commission Special Eurobarometer (2014) 'Attitudes of European citizens towards the environment', Special Eurobarometer 416, September 2014 and European Commission Special Barometer (2017) 'EU Citizen's views on development, cooperation and aid', Special Eurobarometer 455, April 2017. Cf Falkner, R. (2007) 'The political economy of

and Member State coordination of sustainable development policies. On the other hand, consumers seem to be rather hesitant in choosing flexi-fuel vehicles and more environmentally friendly products and do not protest massively when Member States engage in practices such as reducing their aid budget.

The strong commitment to sustainable development policies seems confined to specific ministries/DGs/policy units in the EU institutions and Member States.[593] In that way, the distinction between EU and Member States might be a bit too abstract and in practice, it is more influenced by the preferences of individual ministries, or, in the case of the European Commission, specific DGs. These differences between specific DGs and ministries might provide powerful explanation, but this finding needs however further testing to become more robust.

7.5 Interactions

This section deals with the interactions between the legal competences and the other intervening variables. It shows that there is more interaction between these approaches in the empirical practice of the case studies than the literature suggests. Moreover, certain developments could enable a larger role of legal competences in the near future. The remainder of this section is focused on some methodological limitations of the approach taken in this study.[594]

The effects of the procedural arrangements and legal competences are in all three case studies assessed against intervening variables suggested from the theoretical literature. The case studies however point to the situation that it is mostly not an 'either/or', but rather an interactive context. There is much interaction between these intervening variables and legal competences in practice as described and visualised below.

Firstly, it should be noted that the supranational versus intergovernmental dominance variable proved to be relatively unimportant in the case studies. Upon consideration of the 'mixed' and often 'shared' competences underpinning these policies which more on the nature of cooperation than moving competences from Member States to EU or vice versa, this does not come as a surprise. In that sense the picture of an almost 'teleological drive towards further European integration' as suggested in many academic contributions, is not necessarily the case in these mixed competence policy fields.[595] After all, most EU external relations are not characterised by 'exclusivity' and the number of areas in which the EU can act without the Member States are in fact limited.[596] As a result, international agreements are concluded often as 'mixed' agreements even when there is a dominant exclusive

'normative power' Europe: EU environmental leadership in international biotechnology regulation'. *Journal of European Public Policy*, Vol. 14, No. 4, p. 510.

[593] Schout, A., & Jordan, A. (2005). 'Coordinated European Governance: Self-Organizing or Centrally Steered?'. *Public Administration*, Vol. 83. No. 1, p. 215 hold in the (related) context of 'Environmental Policy Integration' that "sectoral DGs continue to focus on their own sectoral objectives to the detriment of the environment. Most DGs are usually willing to consider environmental objectives, but not to the extent needed to deliver sustainability".

[594] For a more extensive methodological overview see chapter 3: research design.

[595] da Conceição-Heldt, E. and Meunier, S. (2014) 'Speaking with a single voice: internal cohesiveness and external effectiveness of the EU in global governance'. *Journal of European Public Policy*, Vol. 21, No. 7, p. 976.

[596] Van Vooren, B. and Wessel, R. A. (2014) *EU external relations law: text, cases and materials* (Cambridge: Cambridge University Press), p. 99.

competence behind the agreement. [597] Considering these legally defined shared competences, it is less odd that the Council is sometimes asking for more coordination by the Commission, in e.g. SDG implementation strategies in the EU.

Nevertheless, there are still some policy measures such as taxation and the energy mix where Member States seem less willing to coordinate, especially in cases of preference heterogeneity or supranational versus intergovernmental dominance. It is no coincidence that these policy measures in particular are often brought up in interviews, as these are based on the logic of the Treaty and specific Articles. For example, in the Treaty provisions on environment and climate change (cf Art 192 TFEU) it is already indicated that fiscal measures, land use and 'measures significantly affecting a Member State's choice between different energy sources' need unanimous support from Member States by way of derogation from the normal procedure. In that way, one could see *interaction* between the variable 'supranational versus intergovernmental dominance' and internal EU legal competences. As such, it may be better to speak of 'balance' between supranationalism and intergovernmentalism in these mixed-competence arrangements than 'dominance'.

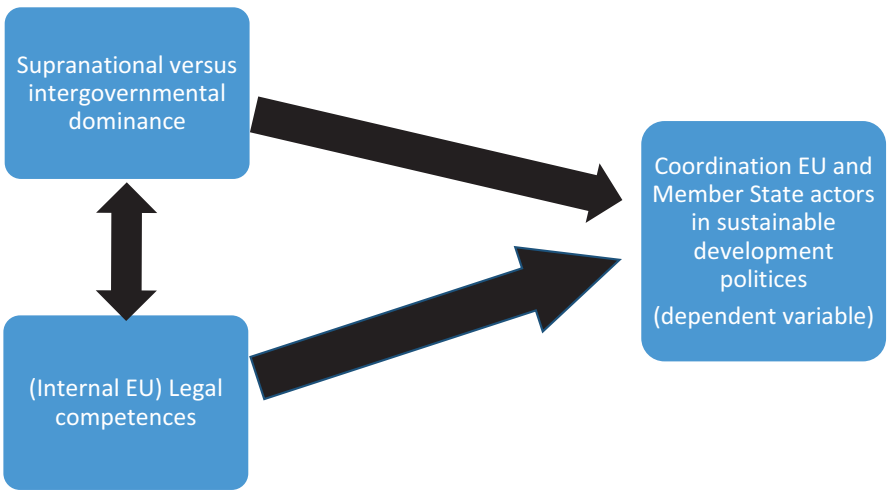

Figure 7. 1 Interactions variable supranational versus intergovernmental dominance

Secondly, the EU's position in the international constellation of power *interacts* with UN Statutes and documents (external legal competences) as well as internal EU legal competences when there is a strong multilateral context such as the UNFCCC (see Figure 7.2). However, the case studies show that there is sometimes an absence of a multilateral context, either caused by the absence of a multilateral forum (alternative fuels) or because the implementation is an EU internal issue (SDG implementation). Both the UN Statutes and documents (EU external legal competences) and the EU's position in the international

[597] European Commission - Press release 'European Commission proposes signature and conclusion of EU-Canada trade deal', Strasbourg, 5 July 2016; http://europa.eu/rapid/press-release_IP-16-2371_en.htm.

constellation of power function as 'intervening' variables in that specific context. Figure 7.3 visualises this intervening effect.

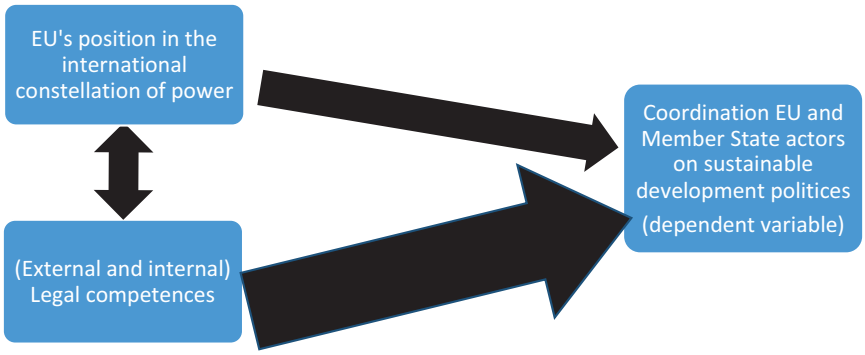

Figure 7. 2 Interactions variable EU's position in the international constellation of power in case of a strong multilateral context

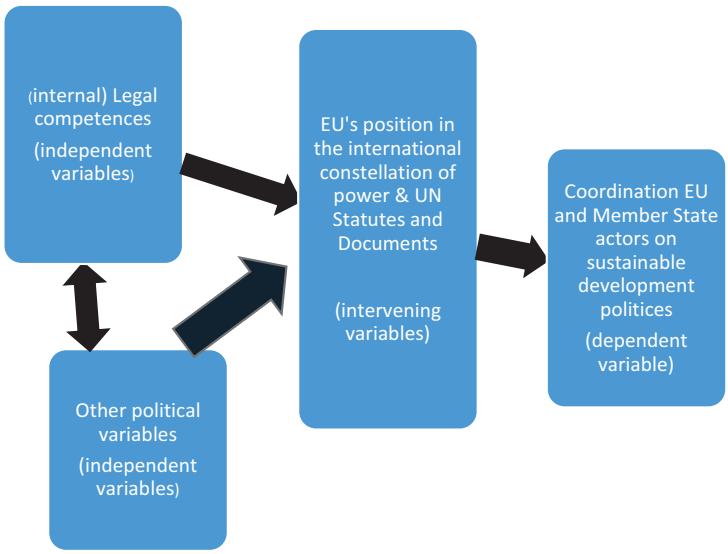

Figure 7. 3 Interactions variable EU's position in the international constellation of power in case of a weak/absent multilateral context

Thirdly, the preference heterogeneity has a clear connection with both the legal competences as well as the supranational versus intergovernmental dominance. The interaction with the legal competences has little to do with the substantive *content* of the preferences but more with the substantive *(legal) power* of the arguments. For instance, when the arguments are

more lenient towards environment and trade, notable EU policy areas, there seems to be much more substantive convergence than when the arguments are more lenient towards energy autonomy or financial issues and taxation, which are strong national competences. Even *within policy* areas like climate action there is much more convergence on environmental substance than financial substance issues such as the EU contribution to the Green Climate Fund. Interestingly, the *objective* of a policy could also be analysed taking into account legal competences. As such, CO2 reduction can be considered an objective where there are already many regulations, directives and a multilateral context that drives coordination between EU and Member State actors. In contrast, an objective like 'energy security' comes much closer to national competences such as the energy mix, which will hinder coordination between EU and Member State actors.

There is clear interaction and overlap between the variables of supranational versus intergovernmental dominance, preference heterogeneity and legal competences. They all refer to the politico-legal balance of power between EU and Member Studies (see Figure 7.1). This dissertation points however, to a specific sub-category of 'preference heterogeneity' that appears to be distinguished from the supranational versus intergovernmental dominance. This category could be named 'preference heterogeneity between DGs/ministries'. Across the case studies there is alignment between specific DGs and ministries, e.g. DG CLIMA and environment ministries. These 'coalitions' could however conflict with other coalitions, such as the economic coalitions of DG ECFIN and national ministries of economic affairs. These coalitions try to make use of legal competences. Therefore, one could say that this 'new' category of preference heterogeneity *interacts* with legal competences but can be an independent variable in itself. The interaction of this variable is visualised in Figure 7.4.

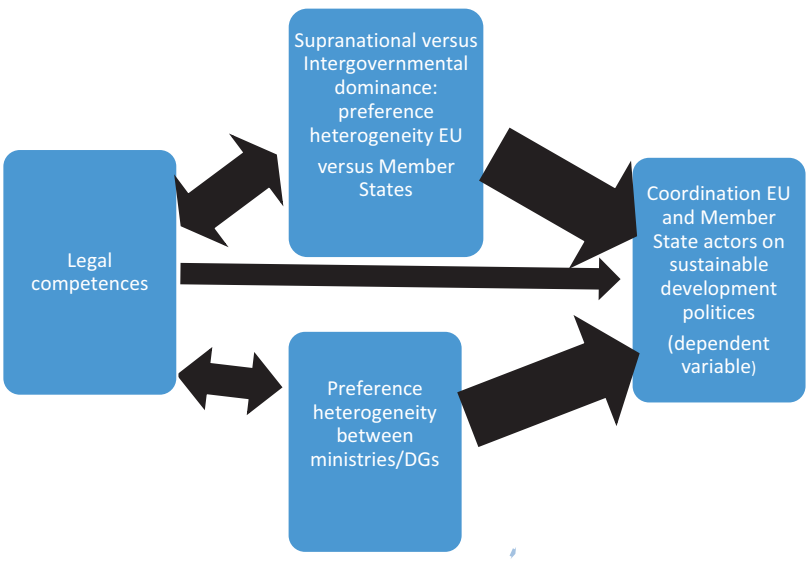

Figure 7. 4 Interactions variable preference heterogeneity

Taking these interactions and the importance of the variables into account, the mere distinction of independent legal variables and intervening political variables affecting the

dependent variable 'coordination of EU and Member State actors in sustainable development policies' proved to be difficult to hold in practice. Instead, there are many politico-legal interactions between preference heterogeneity, supranational versus intergovernmental dominance and the catalogue of competences and Treaty provisions. In that sense, the Treaty provisions themselves are the result of a political trade-off in the Treaty negotiations in the 2000s, thus making it implausible to mark the legal competences as 'independent' from political processes. Notwithstanding this fact, it is interesting to note that the logic of the Treaty is often used without political debate. Moreover, when the Treaty is deliberately not used there are frequently *political* reasons why this practice is not referred to the Court of Justice. Taking into account all these politico-legal interactions, it makes sense to combine these disciplines in analyses of EU and Member State action on sustainable development.

7.6 Methodological limitations: criticising the three case studies

As highlighted in the research design (ch 3), these selected case studies can be considered tests that can lead to valid 'analytical generalisations' or 'emergent patterns'.[598] The design with only three cases has the effect that there are more rival explanations to assess than cases to observe, 'many variables, small N'.[599] As a result, one should be careful in inferring general reflections from these three specific case studies.

As previously identified, the climate change case has a unique institutional arrangement of lead negotiators and issue leaders, a large role for the Presidency and a 'negotiation mandate' based on unanimous Council conclusions. EU action on climate change is a 'saviour issue' for the project of European integration itself.[600] Moreover, the multilateral context with massive Conferences of the Parties of the UNFCCC gives climate change a distinct profile. Hence, besides being cautious in inferring conclusions about the legal competences this study additionally makes it clear that a sole focus on climate change negotiations does not make for valid analytical generalisations.

Aside from the uniqueness of (Team EU in) the climate change negotiations, the other cases are further unsettled. For the climate change case on the one hand, one could at least limit the timeframe from Copenhagen (2009) until Paris (2015) and after Paris (from 2015) until the new global stocktake (2018-2019) which mark distinct periods. On the other hand, SDG implementation is still an ongoing process that only started less than two years ago, when this case study was conducted. Moreover, within these two years[601] the Commission has waited for fourteen months since the adoption of the Agenda 2030 'implementation strategy' in November 2016. The process of formulating policies on alternative fuels is already taking longer. However, there have been such great 'U-turns' in this area that it is difficult to speak of coherent policies on alternative fuels from 2009. Notwithstanding these limitations, it the

[598] Specifically, Groen L. (2016) *The Importance of Fitting Activities to Context: The EU in Multilateral Climate and Biodiversity Negotiations.* PhD Thesis, Vrije Universiteit Brussel and Toshkov, D. D. (2009) *Between politics and administration: Compliance with EU law in Central and Eastern Europe*. PhD Thesis Department of Public Administration, Faculty of Social and Behavioural Sciences, Leiden University.

[599] Lijphart, A. (1971) 'Comparative politics and the comparative method'. *American Political Science Review*, Vol. 65, No. 3, p. 686 and Collier, D. (1993) 'Political Science: the state of discipline II' in Finifter, A.W. (ed) *American Political Science Association*, 1993. Available at SSRN: https://ssrn.com/abstract=1540884. Mahoney (2007: 128) holds in this respect that there are 'criticisms pertaining to case-selection in small N-research'. Cf Mahoney, J. (2007) 'Qualitative methodology and comparative politics'. *Comparative Political Studies*, Vol. 40, No. 2, pp. 122-144.

[600] Van Schaik, L. and Schunz, S. (2012) 'Explaining EU Activism and Impact in Global Climate Politics: Is the Union a Norm-or Interest-Driven Actor?'. *JCMS: Journal of Common Market Studies* Vol. *50*, No. 1, p. 169.

[601] This case study focuses on the implementation of the Agenda 2030 and the 17 Sustainable Development Goals from the adoption of the Agenda (September 2015) until July 2017.

case studies analyse 'coordination' more than the coherence of the policies. In that sense, it is not too methodologically problematic that the policies themselves are disconcerted. However, especially for SDG implementation, it is the case that there are sometimes completely new actors on the stage when compared to the previous (negotiation) phase which makes it difficult to compare periods. Therefore, more structured and focused process tracing would add value and improve the causal analysis.[602] The results of this study analyse the 'interaction' of the legal competences with intervening variables more than the direct causal effect of these legal competences.

In addition, while also an asset, this methodological approach lacks a specific internal or external dimension and is focused on EU and Member State action in a multilateral context (EU in UNFCCC negotiations), decision-making in an EU context (alternative fuels) and implementation in an internal and external context (SDG implementation). Therefore, the results cannot be valued as specifically applicable to (one of) these domains. However, previously demonstrated, the internal and external dimensions are increasingly linked (cf SDGs). A sole focus on internal or external dimensions would be superficial. As Delreux stated the "key to understand the negotiation behaviour of the EU on the international (environmental) scene is the domestic (EU) decision-making process'.[603]

It could have been a better option to keep either the policy field constant or to keep the stage in the policy-making process constant. Such a choice would have negated that the differences between the cases can were a result of the to characteristics of the policy field or to the stage of the policy-making process. While this dissertation is comprehensive in the analysis of the coordination process, it could still be criticized as being too distinct in the comparison of case studies.

Due to the limitations and small-N comparison the results in these case studies, synthesised or not, cannot be more than plausibility probes, comparable to pilot studies in experimental or survey research.[604] As such, this study 'explores the suitability' of these cases as vehicle for testing a theory before starting a larger research effort.[605] They need further testing in other cases to become more robust. Researchers could additionally conduct more semi-structured interviews or use other forms such as surveys or participant observation. While this is acknowledged, the pioneering theory-building exercise of the effect of legal competences on the coordination of sustainable development policies and negotiations within the EU needs closer scrutiny with a limited number of cases to start with. In that way, the three cases are relevant, as they are based on the same kind of sources and the methodology includes both legal and political theory approaches. Moreover, interactions with many of the 'already existing' issues are tested like the supranational versus intergovernmental dominance and preference heterogeneity. It is shown that these explanations are in some way inaccurate without taking into account the legal competences in greater detail.

[602] Cf Beach, D. and Pedersen, R. B. (2013) Process-tracing Methods: Foundations and Guidelines (University of Michigan Press) for possibilities of more systematic process-tracing. The process tracing approach in this dissertation has been largely based on earlier seminal work on process tracing by e.g. George, A. L. and Bennett, A. (2005) Case studies and theory development in the social sciences (Cambridge, Massachusetts: MIT Press).
[603] Delreux, T. (2006) 'The European Union in international environmental negotiations: a legal perspective on the internal decision-making process'. *International Environmental Agreements: Politics, Law and Economic*s, Vol. 6, No. 3, p. 232.
[604] Levy, J. S. (2008) 'Case studies: Types, designs, and logics of inference'. *Conflict Management and Peace Science*, Vol. 25, No. 1, p. 6.
[605] Ibid.

SUMMARY CHAPTER 7

The chapter synthesised the findings of three case studies on the influence of mixed legal competences on EU and Member State coordination of sustainable development policies. The cross-case comparison of 'Team EU' in UNFCCC negotiations, implementation of the UN Agenda 2030 in the EU and Member States and formulation of alternative fuel policies reveals that the actual claiming of competences and involvement of the Court of rarely occurs daily practice, at least for the European Commission. Moreover, the category of shared competences proves to be especially broad and many issues are arranged on an ad-hoc basis. Nevertheless, the legal competences prove to have many interactions with issues from the literature: supranational versus intergovernmental dominance, the EU's position in the international constellation of power and preference heterogeneity. These findings can be valued as minimal plausibility probes, due to the small N and peculiarities of the cases. Regardless, this study contributes to a new methodological approach of analysing the EU's and Member State's coordination on sustainable development issues, both within the EU as well as in the multilateral context.

Chapter 8: Conclusion and Discussion

"The Union shall work for the sustainable development of Europe (…) and contribute to the sustainable development of the Earth" (Art 3(3) TEU and Art 3(5) TEU)

This final chapter builds upon the synthesised empirical findings presented in the previous chapter. The concluding chapter is split into four sections. The first section (8.1) summarises and revisits the main empirical findings of this dissertation and answers the central research question: *How do legal competences, affect EU and Member State coordination in formulation, negotiation and implementation of sustainable development policies?* By reflecting on the three case studies this section answers the following additional sub-question: *How do the legal competences, interact with other explanations of EU and Member State coordination on sustainable development policies?* This dissertation has analysed more specifically the interaction with the following issues: supranational versus intergovernmental dominance, the EU's position in the international constellation of power and preference heterogeneity.

Section 8.2 provides reflections on the theoretical, methodological and conceptual aspects by focusing on advantages and limitations of the research design and methods. This section moreover reflects on the use of operationalised concepts, theories and variables as well as generalisability of the findings. Following the main findings and reflections, some avenues for future research are suggested in section 8.3, focusing on both the analysis of EU sustainability policies as well as further inquiry into the politico-legal effects of the division of competences and Treaty logic. The chapter concludes with section 8.4 in which the policy relevance of the findings (8.4.1) is addressed, followed by concluding remarks (8.4.2).

8.1 Main findings

The EU contribution to worldwide sustainable development has been extensively studied and increased interest is expected following the implementation of two landmark agreements: the Paris Climate Agreement and the UN Agenda 2030 with its 17 Sustainable Development Goals. In the day-to-day institutional and political discussions, the division of competences is one of the most divisive issues. These two issues converge in the *coordination* of EU and Member State actors of sustainable development policies. Little is known, however, about the political effect of legal competences on this coordination process. This is especially problematic for the analysis of sustainable development policies, as this is a 'shared responsibility' of EU and Member State actors.[606] Moreover, formulation, negotiation and implementation of sustainable development policies encompass many policy areas and internal and external dimensions of EU policies. In a combined approach, many (implicit or explicit) assumptions in both approaches can be tested more extensively and possible myths can be checked. By combining legal and political insights, the conduct of coordinative action can be evaluated from input and process to outcome and impact, thereby contributing to the evaluation of EU diplomacy as well as of the effects of treaty modifications or new case law on EU and Member State relations.[607] In that way, one would become more aware of the

[606] European Commission (2016) 'Next steps for a sustainable European future: European action for sustainability', COM (2016) 739 final, Strasbourg, 22.11.2016, p. 16.
[607] Cf Kleistra, Y. and van Willigen, N. (2014). 'Evaluating the Impact of EU Diplomacy: Pitfalls and Challenges.' In Koops, J.A. and Macaj, G. (eds) *The European Union as a Diplomatic Actor* (Basingstoke: Palgrave Macmillan), pp. 52-69.

'actor characteristics' of the EU and Member State actors.[608] This dissertation has been a first attempt to assess the political influence of 'legal competences' on EU and Member State coordination of sustainable development policies.

By means of a step-by-step politico-legal process tracing approach, three case studies have been conducted. The question driving this research was how legal competences affect EU and Member State coordination in formulation, negotiation and implementation of sustainable development policies. In addition, with a view to the objective of building bridges between the fields of law and political science, the interaction with other explanations from the theoretical and empirical literature has been incorporated into the analysis. Three of these 'political-theoretical' issues have been included in the analysis as 'intervening variables'.

The expectation beforehand was that legal competences, especially those derived from EU Treaties, would have a considerable effect on coordination of EU and Member State actors in all stages of decision-making (policy formulation, negotiation and implementation). Furthermore, it was expected that there would be significant interaction with the explanations stemming from political theories, but that legal competences would be more dominant. Regarding the EU and Member State actors themselves, it was considered likely that the legal competences would empower the European Commission more, while restraining Member States actors. These latest findings would be in line with the most recent complaints from practice in which Member States seem to increasingly feel that their competences are being somewhat overtaken by the European Union.

The table below (8.1) gives an overview of the relevance of legal competences (independent variables) and the political-theoretical intervening variables for EU and Member State coordination across the cases. A 'weak' relevance indicates that the source of legal competences or intervening variables is not (or seldom) applicable, according to the documents and interview findings. A 'moderate' relevance indicates that there is some use of this source of legal competences or that the political explanation is partly applicable; a 'strong' relevance means that this source of legal competences or the political explanation often returns in interview findings and/or policy and legal documents.

	Case Alternative Fuels	Case UNFCCC Team EU	Case SDG implementation
Legal competences			
Competences and Treaty provisions	Moderate	Weak	Moderate
CJEU case law and principles	Weak	Moderate	Moderate
Regulations, directives and strategies	Strong	Moderate	Moderate

[608] See also. Vogler, J. (1999) 'The European Union as an actor in international environmental politics'. *Environmental Politics*, Vol. 8. No. 3, p. 44.

Multilateral/external (UN) documents and Statutes	Weak	Strong	Moderate
Intervening variables			
Supranational versus intergovernmental dominance	Moderate	Weak	Moderate
EU's positioning in the international constellation of power	Weak	Strong	Moderate
Preference heterogeneity	Strong	Weak (strong homogeneity)	Moderate

Table 8. 1 The relevance of legal competences and intervening variables for EU and Member State coordination of sustainable development policies across the cases

The findings presented in chapter 7 nuance some of the theories and concepts in which the role of EU Treaties is often neglected. It also shows, however, that these legal competences are sometimes habitually *not* used, which has some important consequences. In that way, the interaction with intervening variables provides additional understanding. Contrary to expectations, the legal competences were often not *per se* enhancing the powers of the European Commission in the coordination process with Member States,. Instead, the Member State actors themselves often made use of their own legal competences on e.g. tax issues, energy mix or land-use.[609] The European Commission seemed, in at least two out of the three case studies, unwilling to start legal procedures against coordination procedures where they seemed considerably weaker than prescribed by the Treaty. Moreover, in SDG implementation, the Commission could have used political and legal instruments to take a stronger coordination role.

The remainder of this section will focus on the main findings of the coordination process (8.1.1) in relation to sources of legal competences (8.1.2) and (interactions with) intervening variables (8.1.3). It connects the answers to the research question(s) with the existing literature by addressing each variable in turn. Apart from the legal competences and intervening variables, the forty-seven semi-structured interviews in particular have pointed to 'other explanations' that proved to be dominant in the specific case studies. These explanations often appear to be less influenced by legal competences, but need further testing. Section 8.1.2 concludes with a new visualisation of independent, interacting, intervening and dependent 'variables' based on the insights of this dissertation.

8.1.1 Coordination

Coordination has been defined as the process of contacts between diplomats and officials from EU institutions (especially the European Commission) and Member States with the

[609] Interview other societal stakeholder 1, 27-3-2017, Interview other societal stakeholder 2, 27-3-2017, Interview other societal stakeholder, 28-7-2016 (alternative fuels case study), Interview EU official, 13-6-2017, Interview MS official, 8-6-2017, Interview EU official, 30-5-2017 (climate change case study), Interview EU official, 2-5-2017. Interview other societal stakeholder, 29-5-2017. Interview other societal stakeholder, 7-6-2017. Interview EU official, 7-6-2017. Interview MS official, 13-6-2017 (SDG implementation case study).

purpose of discussing an issue of common interest and working towards a common position.These coordination processes can be internal (within the EU) or external (international) and include the discussion of the 'management' of the coordination. This process has been visible in all three case studies, although most evident in the climate change case study. With lower external pressure from outside the EU, as in the case of implementation of international agreements (SDGs case study) or in that of continent-focused policy making (alternative fuels), the coordination has been less visible.

The 'managing actors' of the coordination process have been different. In climate change negotiations, there is a clear substantive leadership from DG CLIMA (European Commission), which is most often matched by environment ministries and ministries of Foreign Affairs in Member States who have the powers to coordinate. The Presidency of the Council of the EU also has a strong coordination role within the process, although mostly, but not only, ceremonial.[610] For SDG implementation, the situation is different, with the Secretariat-General of the European Commission in the coordinating seat, while in many Member States the synchronization of action on the 17 SDGs is not centrally organised.[611] Regarding r alternative fuels, there is a combination of DG Energy, DG Transport and sometimes DG CLIMA often (mis)matched by national ministries of Economic Affairs in Member States.

The findings across the case studies also show that socialisation is a possible result of coordination, rather than an independent/intervening variable affecting it. Socialisation dynamics are very ambiguous and this explanation stops being helpful in case of an actual overhaul of actors involved, as in the case of alternative fuel policies and SDG implementation. This qualifies and criticises some of the literature that considers socialisation as a factor that can (strongly) affect EU and Member State coordination, such as literature on the EU in UNFCCC negotiations[612]. This dissertation takes a different stance and is of the opinion that socialisation (and coordination) is influenced by political and legal variables, and not the other way around.

Socialisation could be even less influential for 'Team EU' in UNFCCC negotiations if the institutional set-up would adapt to the logic of the Treaty. This might be a reason why this 'repair' was not considered in the run-up to the all-important Paris Agreement, but it could still be on the table when the implementation of the Paris Agreement is up and running and the competence-critical United Kingdom will leave the EU in 2019. The Commission might use 'political' reasons not to ruin this strong socialisation process. As the SDG implementation and alternative fuel 'socialisation processes' demonstrated, this process is much more difficult when there are new actors and an absence of a multilateral context.

[610] Interview EU official, 30-5-2017, Interview MS official, 8-6-2017, Interview MS official, 13-6-2017, Interview EU official, 13-6-2017.
[611] Cf Jordan, A. and Schout, A. (2006) The coordination of the European Union: exploring the capacities of networked governance (Oxford University Press) who hold that the secretariat-general is the 'central player in coordination process. This book is also indicating the importance of individual DGs on the coordination process.
[612] E.g. Groenleer, M. L. and Van Schaik, L. G. (2007) 'United We Stand? The European Union's International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol'. *JCMS: Journal of Common Market Studies,* Vol. 45, No. 5, pp. 969-998, although this study was conducted before the entry into force of the Lisbon Treaty.

8.1.2 Legal competences

The case studies on formulating policies on alternative fuels, Team EU in UNFCCC negotiations and implementation of the UN Agenda 2030, and Sustainable Development Goals in EU and Member States, reveal that legal competences have some clear, but often moderate, influence on coordination processes. Stakeholders (EU officials, Member State officials and other societal stakeholders) experience this influence. In most of the case studies, the sources of legal competences have a 'moderate' effect (see Table 8.1). There are, however, some exceptions. The catalogue of competences and Treaty provisions are often not part of the coordination discussions in Team EU during UNFCCC negotiations, at least since 2010/2011. The CJEU case law and principles seem to have a weak effect in the case study on alternative fuels, but the regulations, directives and strategies have a strong effect. Furthermore, the external legal context is notably absent in the alternative fuels case study and prevalent in the UNFCCC Team EU case study.

While the literature often focuses on the 'creeping' competences of the Commission, the case studies demonstrate that the Member State actors are protective of their fixed legal competences on e.g. taxation, the energy-mix or land-use policies.[613] Despite this observation, the mixed and often 'shared' competences indeed ask for 'loyal cooperation' of EU and Member State actors[614], which is mostly followed in practice. Consequentially, very few Member State actors try to 'colour outside the (team EU) lines' in international negotiations.[615] There is a general feeling that implementation of international sustainable development agreements is a shared responsibility. As such, the powers legally defined by the Treaties and UN documents often mark the policy areas in which coordination is supposed to be more difficult and sketch the common path of coordination in negotiation and (to a lesser extent) policy formulation and implementation for these specific case studies.

However, the empirical research likewise points to some important qualifications for the effect of legal competences. First, while the Lisbon Treaty was hailed because of the catalogue of competences in which powers are demarcated, it should be noted that in practice the category of 'shared' competences is wide-ranging and in need of specific examination per policy area. This is making coordination of multi-faceted mixed competence arrangements, analysed in this dissertation, increasingly difficult and often based on *ad-hoc* decisions. As an example, while in the same competence category, there are major differences between coordination of environmental (climate) policies when compared to energy or transport policies. As such, the operationalisation of Da Conceicao-Heldt and Meunier (2014), presuming a direct correlation between competences and internal cohesiveness[616], is too far-fetched from a more nuanced reality, especially in the category of shared competences. As held by the Court there are 'implied powers', which means that the adoption of internal regulations, directives and strategies has an effect on the Commission's external powers. As a result, the category of shared competences can in practice lead to either 5, 50 or 95 percent 'Commission-coordination' powers or somewhere in between

[613] Interview other societal stakeholder 1, 27-3-2017, Interview other societal stakeholder 2, 27-3-2017, Interview other societal stakeholder, 28-7-2016 (alternative fuels case study), Interview EU official, 13-6-2017, Interview MS official, 8-6-2017, Interview EU official, 30-5-2017 (climate change case study), Interview EU official, 2-5-2017. Interview other societal stakeholder, 29-5-2017. Interview other societal stakeholder, 7-6-2017. Interview EU official, 7-6-2017. Interview MS official, 13-6-2017 (SDG implementation case study).
[614] Art 4(3) TEU.
[615] Interview Member State official, 03-04-2015.
[616] da Conceição-Heldt, E. and Meunier, S. (2014) 'Speaking with a single voice: internal cohesiveness and external effectiveness of the EU in global governance'. *Journal of European Public Policy*, Vol. 21, No. 7, p. 969.

depending on the legal context. However, this is often unclear and asks for extensive legal background study and arguments.

Even when the background legal information is considered, the practice in these case studies illustrates that the Commission, due to political consideration, sometimes deliberately chooses not to start legal procedures. This points to a second essential finding related to legal competences in sustainable development policies, namely the overall absence of the Court of Justice. While every case study provides for some clear examples of 'contrary to the Treaty-logic' or 'contrary to sustainable development objective', the Court is often not asked for a legal opinion. The Court could be asked to reflect on the very peculiar 'Team EU' arrangement in UNFCCC negotiations that is contrary to the logic of the Treaty in some respects. The Court could also be used to start infringement proceedings against Member State actors and their fuel policies. Likewise, the Court could be asked (by the Council) for a legal opinion whether or not the Commission should do more in coordination of the Agenda 2030 in EU and Member States. Nevertheless, the Commission seems to be hesitant in starting these procedures, thereby failing to push its legal competences to the limit.

A third finding relates to the external legal context, which to a certain extent defines the internal coordination. Of the three case study examples, it is clear that the UNFCCC context is the most stringent, although not always legally binding. In a more binding multilateral context EU and Member State actors often have less difficulty coordinating their policies and positions. Contrastingly, in the absence of a multilateral forum, like the one that exists for alternative fuels, there seems to be less manifestation of coordination. When there is a multilateral context, but only very soft monitoring and reporting such as with the UN Agenda 2030, this appears to hamper coordination according to the logic of the EU Treaties. Therefore, while the legal theories seem to be focused on 'implied' powers, rationale of external powers having an internal effect seems equally influential in the conduct of coordination of sustainable development policies.

8.1.3 Interactions with intervening and other variables

Apart from answering the main research question, it is essential to answer the sub-questions for this dissertation, in particular how legal competences interact with other explanations of EU and Member State coordination on sustainable development policies. The following 'intervening variables', derived from the literature, have been operationalised: supranational versus intergovernmental dominance, the EU's position in the international constellation of power and preference heterogeneity. After conducting the different case studies, a more nuanced picture of the interaction between political and legal variables becomes clear.

As chapter 7 and Table 8.1 have already revealed there are weak, moderate and strong effects of these intervening variables, and these can regularly be attributed to legal competences. It is no coincidence that the supranational versus intergovernmental dominance variable has no strong effect in the three case studies, as the mixed, and often shared, competence agreements prescribe coordination instead of conflict and autonomy. The 'EU's position in the international constellation of power' affects coordination and the 'importance' of this variable mirrors the relevance of UN Statutes and documents (external legal competences) affecting coordination. To be more precise, a strong effect on coordination does not mean that the EU itself has a strong position in the international

constellation of power. For example, as the third largest emitter the EU is often positioned as having moderate power at the global stage.[617]

Preference heterogeneity is a more independent (and interacting) variable from the legal competences in these case studies. In the case of alternative fuels, historical fuel choices and domestic stakeholders often influence preference heterogeneity across the Member States. However, in that case, Member States can use their autonomous competences on tax, energy mix and land use to hinder coordination. The absence of preference heterogeneity, or instead substantive convergence, in Team EU during UNFCCC negotiations is probably related to the EU's position in the international context. The preference heterogeneity in SDG implementation is mixed per policy area and appears partly dependent on the division of competences.

For every case study, there are other, case-specific, explanations that turn out to be dominant according to the interviews. These include the involvement of other societal stakeholders, the emotional state of the debate (alternative fuels) and political will (positively in UNFCCC negotiations and negatively in SDG implementation). These explanations seem less influenced by legal competences, but need further testing. It should be noted that the interlinkage between 'political will/political support' and 'coordination' had previously been identified by e.g. Jordan and Schout (2006: 271).[618] More generally, the 'other explanation' of differences between specific DGs/ministries affecting coordination between EU and Member State actors was shown prominently in every case study.[619] This explanation could even be considered more important than the differences between (EU and) Member State actors. It seems that this 'preference heterogeneity across DGs and Ministries' has an independent and interacting relationship with legal competences. This new variable appears to be specifically important for 'sustainable development' policies. The normative debate on sustainability and economic growth 'within planetary boundaries' is, for example, differently evaluated in climate and environment ministries than in finance ministries.

Figure 8.1 visualises how the findings in these case studies would change the expected nature of the relationship between independent and intervening variables affecting the dependent variable 'coordination of EU and Member State actors in sustainable development policies'. When compared to the 'variables and expectations of relations' (see Figure 1.1), there are some differences. First, there is no longer a category of 'intervening variables' but rather independent, though interacting, political and legal variables that affect coordination. Secondly, the legal multilateral context and the EU's positioning in the international constellation of power are considered 'preceding' steps in the process. Thirdly, the category 'preference heterogeneity between DGs/ministries' is added and fourthly, 'preference heterogeneity (between EU and Member States)' and 'supranational versus intergovernmental dominance' are merged. These adaptations reflect the interaction between

[617] Bäckstrand, K., and Elgström, O. (2013) 'The EU's role in climate change negotiations: from leader to 'leadiator'. *Journal of European Public Policy*, Vol. 20, No. 10, p. 1380.
[618] "coordination capacities at network and actor level need political pressure". Jordan, A. and Schout, A. (2006) The coordination of the European Union: exploring the capacities of networked governance (Oxford University Press), p. 271.
[619] Interview EU official, 7-9-2016, Interview MS official, 7-9-2016, Interview other societal stakeholder, 7-9-2016, Interview EU official, 31-3-2017 (alternative fuels case study), Interview EU official, 14-10-2015, Interview MS official, 8-6-2017, Interview EU official, 13-6-2017 (climate change case study), Interview EU official, 2-5-2017. Interview other societal stakeholder, 29-5-2017. Interview other societal stakeholder, 7-6-2017. Interview EU official, 7-6-2017. Interview MS official, 13-6-2017 (SDG implementation case study).

legal powers and political issues to a larger extent, but need to be further tested in systematic sustainable development policy case studies.

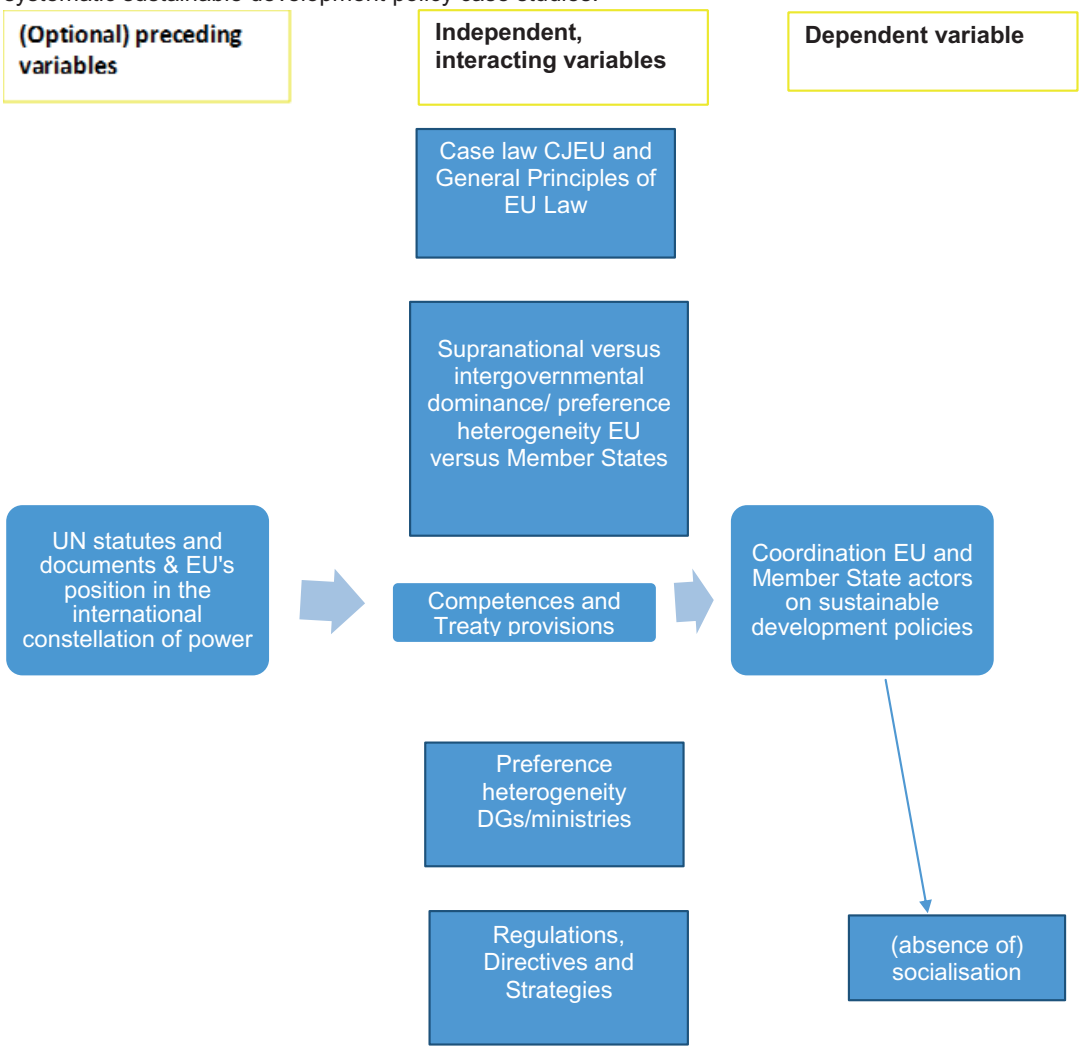

Figure 8. 1 Variables affecting coordination EU and Member State actors in sustainable development policies

8.2 Theoretical, conceptual and methodological reflections

The objective of this dissertation was to contribute to the academic literature and the integrative academic debate, by exploring interactions between political and legal descriptions of EU and Member State coordination of sustainable development policies. Legal sources such as Treaties and case law have been combined with empirical sources including forty-seven semi-structured interviews. While this innovative design and

methodology has some clear-cut advantages, there are also limitations to this approach (8.2.1). This section reflects on the potential of this integrative approach, the shortcomings, conceptual and theoretical considerations (8.2.2) as well as generalisability of the findings (8.2.3).[620]

8.2.1 Research design and methods

This framework tries to contribute to an upcoming call in the literature to combine political and legal variables and indicators to come to a comprehensive assessment framework of EU sustainable development decision-making, negotiation and implementation.[621] The innovative design of this dissertation could be seen as a kind of 'politico-legal analysis'.[622] Formal issues derived from Treaty provisions and official (legal) documents are combined with interview findings, thereby using the 'toolbox' of legal scholars and political scientists.[623] The combination of qualitative process tracing and legal documents in EU research is not often used, except for some gender-related studies.[624] By combining legal and empirical sources, this explorative study does not distinguish between 'hard' and 'soft' or primary or secondary sources.[625] That is one of the limitations of this integrative approach: a prioritisation in sources is lacking. One could argue that this dissertation places the Treaty provisions in the foreground. However, empirical information highlights some very specific political 'tipping points' where the legal provisions become less important. These tipping points might be overlooked when there is a legal prioritisation in a future research design.

The objective of this dissertation was to explore the potential of legal competences as the explaining factor for EU and Member State coordination in sustainable development policies. With this explorative objective in mind, the approach has been to operationalise the 'legal competences' in a broad manner, including Treaty articles, the Court's case law, the external legal multilateral context as well as regulations and directives. This approach proved useful as it differed per case study which 'legal competence' was the most relevant. With the broad operationalisation of legal competences, these different sources were distinguished but not prioritised. While one could argue that it all starts with the Treaties and their delineation of competences,[626] this is not *per se* how it is experienced in practice. Nevertheless, this approach already goes significantly further than the current empirical operationalisation of the division of competences in which the categories of competences are often used as 'ideal

[620] For a reflection on the limitations of the (design of the) comparative case studies see also sub-section 7.2.4.
[621] Oberthür, S. and Groen, L. (2015) 'The Effectiveness Dimension of the EU's Performance in International Institutions: Toward a More Comprehensive Assessment Framework'. *JCMS: Journal of Common Market Studies,*Vol. 53, No. 6, pp. 1319-1335. See also Kleistra, Y. and van Willigen, N. (2014). 'Evaluating the Impact of EU Diplomacy: Pitfalls and Challenges.' In Koops, J.A. and Macaj, G. (eds) *The European Union as a Diplomatic Actor* (Basingstoke: Palgrave Macmillan), p. 52 for the suggestion of a necessary change in evaluating EU diplomacy from (formal) input and process to (formal/informal) outcome and (informal) impact.
[622] Kamphof, R., and Wessel, R.A. (2018) 'Analysing shared competences in EU external action: the case for a politico-legal framework'. Europe and the World: A law review, Vol. 2, No. 2, pp. 38-64. DOI: https://doi.org/10.14324/111.444.ewlj.2018.02.
[623] Panke, D. (2014) 'The European Union in the United Nations: an effective external actor?'. *Journal of European Public Policy*, Vol. 21, No. 7, p. 1054.
[624] Cf Cichowski, R. A. (2004) 'Women's rights, the European Court, and supranational constitutionalism'. *Law & Society Review*, Vol. 38, No. 3, pp. 489-512.
[625] Wasserfallen, F. (2010) 'The judiciary as legislator? How the European Court of Justice shapes policy-making in the European Union?'. *Journal of European Public Policy*, Vol. 17, No. 8, p. 1136 says to follow Moravcsik, A. (1998) *The choice for Europe: social purpose and state power from Messina to Maastricht* (Ithaca, NY: Cornell University Press), pp. 80-82 and his 'advice to rely on 'hard primary sources', namely, Treaty Articles, Directives, European Parliament documents, European Court of Justice judgements and reports on the negotiations in the Council' although this is not so sharply put in Moravcsik's work.
[626] Jørgensen, K. E. and Wessel, R. A. (2011) 'The position of the European Union in (other) international organizations: confronting legal and political approaches'. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. (Cheltenham: Edward Elgar), p. 264.

types'. Indeed, as Van Schaik (2012:23) held, the mixed competence cases do often 'not fall within these ideal types' and 'often combine topics where the competence division varies'.[627]

This dissertation in parallel makes use of semi-structured interviews. These interviews are planned after a stakeholder analysis, reviewing organigrams of EU institutions and governments of EU Member States, and snowball sampling. Each interviewed official is anonymised (see Annex 1), the interviews take 45-60 minutes, the interviewees receive the topic list at the latest one day before the interview (see annex 2), and each expert is asked whether he/she could refer to other experts. There are a couple of limitations of the use of semi-structured interviews in this dissertation, which have been indicated before (see 3.2.1). While a critical reflection on this method is invaluable, inclusion of findings from semi-structured interviews seems complementary to a review of official (legal) documents and especially legal provisions from the Treaties. It is advisable to continue using this methodological approach in conjunction with the use of other sources.

The concept of coordination has been defined broadly in this dissertation. This proved to be useful in the description of processes in the different case studies. However, it also complicates structured comparison. Overall, this dissertation has not invested too much in dedicated questions in the research design (and semi-structured interviews) on the manifestation of this dependent variable. Instead, the bulk of the analysis was focused on independent and intervening variables. As such, future research would profit from more dedicated questions and comparative analysis on the dependent variable coordination, now that the effects of the independent, interacting politico-legal variables have proved to be promising.

The dissertation could also have benefited from clear-cut hypotheses, specifying which effect was expected from variables on coordination. It would have fit well with the positivist approach of independent, intervening and dependent variables. Moreover, this would have made the research design more robust with better justified intervening variables and their effect on the dependent variable. It has nevertheless been a deliberate choice not to work with hypotheses, so as to stay open to other arguments and to work explicitly on a combined innovative politico-legal academic formula, rather than opting for the traditional empirical way of using hypotheses. This research design has been one of 'hypothesis- seeking'. It is expected that the results pave the way for more clear-cut hypotheses to test whether the theoretical expectations raised in this dissertation could indeed be confirmed.

8.2.2 Conceptual and theoretical reflections

In this dissertation, a set of general questions has been used for each case study, to guide both the legal analysis and the semi-structured interviews. This process tracing approach was chosen for the qualitative data analysis. It is common to use process tracing to identify *causal* effects.[628] The concept of causality needs critical reflection after this research project. As it has been held by Furlong and Marsh (2010: 184-185), one's epistemological position is fundamental to how one understands causality and explanation.[629] While 'playing the game'

[627] Van Schaik, L.G. (2013) *EU Effectiveness and Unity in Multilateral Negotiations: More Than the Sum of Its Parts?* (Basingstoke: Palgrave Macmillan), p. 23.
[628] King, G., Keohane, R. O. and Verba, S. (1994) *Designing social inquiry: Scientific inference in qualitative research* (Princeton University Press). Cf Collier, D. (2011) 'Understanding process tracing'. *PS: Political Science & Politics*, Vol. 44, No. 4, pp 823-830.
[629] Furlong, P. and Marsh, D. (2010) 'A skin not a sweater: ontology and epistemology in political science' in: Marsh, D. and Stoker, G. (eds) *Theory and Methods in Political Science, 3rd edition* (Palgrave MacMillan), pp. 184-185.

of causality and variables, this dissertation is ultimately critical about pure causality. It sees the *interaction* of political and legal variables having a causal effect on the coordination of EU and Member State actors as most crucial when evaluating the conduct of EU sustainable development policies. As some other critics already argue, causal mechanisms are 'unobservable'[630] and 'social constructs' without 'real-world existence'[631]. That is one of the reasons why the main question is whether legal competences *affect* EU and Member State coordination instead of asking a more teleological question. Indeed, the legal competences affect EU and Member State coordination alongside other variables.

The concept of sustainable development also proved to be difficult to operationalise in this dissertation, which affects the generalisability of the findings.[632] The concept was previously particularly known for its environmental aspects and (to some extent) poverty eradication. However, the Agenda 2030 'on sustainable development' not only encompasses the recent 'three dimensions' (environmental, social and economic), but also the security and human rights dimensions. Apart from the SDG implementation case study, the CFSP dimension of sustainable development is almost totally excluded from this dissertation. While there are good reasons not to include CFSP[633] in this analysis, such an inclusion could be relevant, especially with upcoming themes such as 'sustainable peace' and 'planetary security'.[634]

Observing the 'extended' use of the concept of sustainable development, one could argue that almost all policies qualify as 'sustainable development' policies in the framework of the UN Agenda 2030. This appears to have negative effects on the analysis of sustainable development policies in the EU. There are many aspects on which the case studies differ, which might also offer possible explanations for the differences in outcomes between them.[635] Reflections on the use of this concept in future academic contributions are recommended, to see whether it is still useful to speak of 'sustainable development' policies. Nevertheless, the UN Agenda 2030 and the 17 Sustainable Development Goals, 169 targets and 230 indicators already 'operationalise' this concept in both qualitative and quantitative ways, which could be used in future research.

Another reflection in relation to the current literature is that the internal and external 'dimensions' of EU policies are increasingly connected. There is significant difficulty in distinguishing between these dimensions. As the UN Agenda 2030 and e.g. SDG12 on responsible consumption and production already indicated, there are many external effects of internal policies. The mirroring and parallelisation of internal and external EU dimensions

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[630] *Ibid,* p. 137.
[631] Cf Vukovic, S. (2012) *Analysis of multiparty mediation processes*. Doctoral dissertation, Universiteit Leiden.
[632] The academic history is full of difficult concepts to analyze coordination of EU and Member State actors. Cf Jordan, A. and Schout, A. (2006) The coordination of the European Union: exploring the capacities of networked governance (Oxford University Press).who analyze the coordination for 'Environmental Policy Integration' (EPI).
[633] See section 1.2.5. Reasons include a.o. the different institutional framework when compared with other (external) policies and the fact that the Court of Justice has no legal competence on CFSP policies according to the Treaty.
[634] Cf 'Building Sustainable Peace for All: Synergies between the 2030 Agenda for Sustainable Development and Sustaining Peace', Statement by H.E. Mr Peter Thomson, President of the 71st Session of the UN General Assembly, 1 April 2017, accessed http://www.un.org/pga/71/2017/04/01/building-sustainable-peace-for-all-synergies-between-the-2030-agenda-for-sustainable-development-and-sustaining-peace/, 17 October 2017. On 'planetary security' cf the Planetary Security Initiative, https://www.planetarysecurityinitiative.org/, accessed 17 October 2017.
[635] Groen L. (2016) *The Importance of Fitting Activities to Context: The EU in Multilateral Climate and Biodiversity Negotiations*. PhD Thesis, Vrije Universiteit Brussel, p. 80. Cf George, A. L. and Bennett, A. (2005) *Case studies and theory development in the social sciences* (Cambridge, Massachusetts: MIT Press) and Della Porta, D. (2008). Comparative analysis: case-oriented versus variable-oriented research. In Della Porta, D. and Keating, M. (2008) *Approaches and methodologies in the social sciences: A pluralist perspective* (Cambridge University Press), pp. 198-217.

could result in better-aligned policies and policy coherence for sustainable development.[636] While legal scholars point to the difficult EU external relations terminology and absence of legal provisions on external competences in the Treaty, the UN Agenda 2030 as well as the Court's case law give ample reasons to align the internal and external dimensions of EU sustainable development policies.

Apart from the conceptual reflections, this dissertation points to some theoretical and empirical reflections. When compared to current research, this dissertation has operationalised the concept of mixed competences in a broader and more nuanced way than previous contributions. As such, the operationalisation of Da Conceicao-Heldt and Meunier (2014), with a direct correlation between competences and internal cohesiveness, proves to be unsatisfactory, at least for EU sustainable development policies. There are at least three reasons why this framework set out by Da Conceicao-Heldt and Meunier is less useful for sustainable development policies. First, as these case studies have shown, many policy trajectories include multiple policy areas and mixed competence arrangements. Secondly, the broad legal competences encompass much more than just the catalogue of competences and include for instance the Court's case law, regulations, directives, and the UN legal context. Thirdly, as this dissertation makes clear, there is much more interaction between legal and political variables that affect internal cohesiveness than just the exclusive, shared or supportive notion of competences.

Furthermore, this dissertation has chosen to operationalise the grand theories of neo-functionalism, intergovernmentalism, social constructivism and institutionalism, and concepts such as actorness, cohesiveness and effectiveness into functional and basic 'variables' in the case studies. Of course, these 'variables' can be criticised for not representing the whole theory. Despite this, by using this 'bits and pieces' approach, one could already see the interactions with the legal competences and it proves that there is at least appetite for including more general legal notions in these theories and empirical applications. Notwithstanding its limitations, this dissertation does indeed suggest combining political and legal variables in the assessment of coordination of sustainable development policies by EU and Member State actors.

8.2.3 Generalisability of findings

As it has been argued before, this analysis has concentrated on three specific sustainable development cases, thus restricting over-generalisation of these specific patterns identified in the case studies. Overall, the study should be understood as a plea to combine existing and new legal and political insights to better understand the effects of legal choices on political practice and *vice versa*.[637] Moreover, the study intended to qualify and nuance some of the literature in which legal competences are scarcely taken into account. The results from this study can only be valued as 'plausibility probes', providing interesting avenues for future research, yet it is acknowledged that they need further testing in other cases to become more robust.[638]

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[636] Cf Organisation for Economic Co-operation and Development (2017) 'Policy Coherence for Sustainable Development 2017' with contributions from the author, available via http://www.oecd.org/publications/policy-coherence-for-sustainable-development-2017-9789264272576-en.htm.

[637] Cf Kamphof, R., and Wessel, R.A. (2018) 'Analysing shared competences in EU external action: the case for a politico-legal framework'. Europe and the World: A law review, Vol. 2, No. 2, pp. 38-64. DOI: https://doi.org/10.14324/111.444.ewlj.2018.02

[638] George, A. L. and Bennett, A. (2005) *Case studies and theory development in the social sciences* (Cambridge, Massachusetts: MIT Press). See also chapter 3 and 7.2.4.

Moreover, the research makes it clear that one should be very cautious in inducing any general pattern from the peculiar case of climate change negotiations. This UNFCCC arrangement is unique in many aspects: the multilateral context, the mass event of the COP, and officials working on UNFCCC issues rather isolated from other issues for at least five to ten years. Additionally, the 'Team EU' approach with a large role for the Presidency of the Council, 'lead negotiators' and 'issue leaders', and the negotiation mandate based on unanimous Council conclusions are all unique aspects, when compared to other policy areas and negotiation structures. While the issue itself can be viewed as a 'saviour' issue[639], and the socialising approach within Team EU is hailed as bringing a 'trend towards the emergence of a European identity among EU negotiators',[640] there are many weaknesses. These shortcomings include *inter alia* wieldy procedures, dependence on personal relations and result in legal uncertainty.

8.3 Further research

This exploration of the potential of a politico-legal analysis where 'legal competences' interact with intervening variables to analyse the EU and Member State coordination on sustainable development policies has brought some important insights which could lead to theory development and a broader assessment framework. The three case studies (chapter 4,5 and 6) have already set the scene with avenues for future research on the specific issues: 'Team EU' in UNFCCC negotiations, EU alternative fuel policies and SDG implementation across the EU and Member States. This section promotes more abstract and general ideas for further research.

In the first place, this dissertation seems to show that the legal competences often do provide guidance on EU and Member State coordination in sustainable development policies. As the operationalisation of these powers has been rather broad, one could analyse whether some legal aspects have more authority than others e.g. the role of the Court of Justice or the development and evolution of Treaty provisions in practice. In addition, and interestingly, this study sheds light on particular political events in which legal aspects do not play a role and legal competences are deliberately not pushed to the limit by (especially) the European Commission. Van Schaik (2010) found that EU competences are sometimes considered a 'legal straightjacket' by Member States that 'forces them to coordinate'.[641] Despite this understanding in the literature, this investigation lends support to the idea that competences are pushed more by Member States, especially to keep discretionary autonomy on e.g. financial (taxation) issues, the energy mix or land-use issues. These political battles on the division of competences, and more specifically the reasons why legal competences are habitually not used, could be the focus of further research. The finding that there are conditions in which the legal competences are used more stringently can be tested as a hypothesis for new cases.

For the research to become more robust, findings of larger comparative case studies beyond sustainability policies appear to be needed, especially to reflect on mixed and shared

[639] Van Schaik, L. and Schunz, S. (2012) 'Explaining EU Activism and Impact in Global Climate Politics: Is the Union a Norm-or Interest-Driven Actor?'. *JCMS: Journal of Common Market Studies*, Vol. *50*, No. 1, p. 169.
[640] Oberthür, S. (2011) 'The European Union's performance in the international climate change regime'. *Journal of European Integration*, Vol. 33, No. 6, p. 672.
[641] Van Schaik, L.G. (2010). 'Is the Sum More than its Parts? A Comparative Case Study on the Relationship between EU Unity and its Effectiveness in Multilateral Negotiations', PhD thesis, Catholic University Leuven, 2010.

competences. One could think of development aid (shared non-pre-emptive competence), social policies (shared competences in case of minimum Union standards), or military issues (shared competences in the field of foreign and security policy, no competence for the Court of Justice).[642] Furthermore, it would be relevant to assess the effects of the separate legal status of the EU, in particular international organisations on the influence of the EU in that particular policy area.

As the case study on implementation of the UN Agenda 2030 revealed, this implementation of international sustainable development agreements is often under-researched. Specifically in the implementation phase, political and legal arguments take centre stage again. As such, the original academic contribution of analysing the legal provisions and EU competences that (could) define the implementation of the SDGs (see 6.2) adds value. However, seeing that there have been many sustainable development agreements adopted in the last decade, it makes sense to focus more theoretically and empirically on the use of legal competences and political arguments in implementation of sustainable development policies.

With regards to the empirical methods used, this specific politico-legal approach of process tracing could be adjusted by including, for instance, survey interviews (for prioritisation, impact and saliency of legal competences) or participant observation (for more practical knowledge of the 'course of affairs in an (international) negotiation arena'[643]). Efforts can be devoted to including a more external third country/international organisation perspective on EU-Member State relations. Furthermore, regarding the interview sources one could try to speak to more judges to reflect on their political role. A methodical quantitative and/or qualitative content analysis of EU statements and documents could be considered, both within the EU or at United Nations organ level. These kinds of analyses could lead to firmer findings on how the EU and Member States coordinate their sustainable development policies.

Another avenue for future research on sustainable development policies is the inclusion of other societal stakeholders and their effect on the coordination of EU and Member State actors. One could think of larger multinational corporations, but also civil society organisations, interest groups, cities, and regions. As held in chapter 6, a promising area further concerns the Sustainable Development Goals as a framework to work more coherently towards sustainable development, both internally as well as in EU and Member State external relations. Furthermore, the 'high politics' events including Trump's announced withdrawal from the Paris Agreement, UN system transformation, Brexit, and President Juncker's Scenarios on the Future of Europe[644] might have considerable impact, but it is most likely too early to investigate their effects seeing the upcoming procedural (legal) issues and (political) negotiations in the coming years.

8.4 Policy relevance and concluding remarks

While the original focus of this study was to explore the academic potential of legal competences in interaction with intervening (political theoretical) variables, there were some

[642] These categories of shared (external) competences originate from Van Vooren, B. and Wessel, R. A. (2014) *EU external relations law: text, cases and materials* (Cambridge: Cambridge University Press), pp. 100-132.
[643] Groen L. (2016) *The Importance of Fitting Activities to Context: The EU in Multilateral Climate and Biodiversity Negotiations*. PhD Thesis, Vrije Universiteit Brussel, p. 387.
[644] European Commission, 'White Paper on the Future of Europe: reflections and scenarios for the EU27 by 2025' [2017].

findings that could affect the policy dimension of sustainable development policies. Therefore, this dissertation concludes with some findings relevant for policy-makers focusing on the question whether/which institutional and Treaty reform is needed to enable coordination on sustainable development policies. Furthermore, the relevance of the legal uncertainty combined with the effect of some more political variables as found in some case studies is addressed, with specific attention on citizens and companies. Thereafter, some concluding remarks are shared.

8.4.1 Policy relevance

The adoption of the Lisbon Treaty has been the result of a long, heavy inward-looking negotiation process in the EU and many are afraid to lift the lid on the political 'Pandora's box' of Treaty negotiations again soon. This strong appeal is understandable from a policy negotiator's perspective, but it should not relieve academic researchers of the obligation to consider the effects of Treaty provisions and evolved legal competences in practice. Seeing the transitions needed for sustainable development within the planetary boundaries of the Earth according to recent international agreements such as the Paris Agreement and the UN Agenda 2030, it is increasingly crucial that these Treaty provisions are checked for their flexibility. This dissertation has outlined the practicalities of these Treaty provisions in three specific complex mixed competence arrangements: alternative fuel policies, Team EU in UNFCCC climate negotiations and implementation of the UN Agenda 2030 and the Sustainable Development Goals.

Legal competences are influential in the three case studies, mostly in connection with the intervening variables. The empirical and legal material reveals that the Treaty and the principle of loyal cooperation is often used in practice. The near inevitability that Member State actors will ultimately not 'colour outside the lines' of the shared mandate, especially in multilateral negotiations, could be a soothing idea. However, the other side of the coin is that the EU and Member State actors tend to limit and control each other while forgetting to think outside of the box. This lack of innovation and ambition is harmful specifically for current sustainable development policies, as these are in dire need of transformation.

There are examples where the Treaty provisions and the Court's case law are not used and there is an apparent hesitation to ask the Court for clarity. The objectives behind this legal 'misbehaviour' are often not cutting red tape or better regulation for the 'sustainable development of the Earth'[645], but are instead the result of purely political considerations. Examples include keeping the wieldy 'Team EU' approach in climate negotiations, not starting infringement proceedings against Member States on slanted fuel policies and keeping the situation of SDG implementation and Commission coordination as indulgent as it is now.

It is expected that this situation will soon change and legal arguments will become (more) manifest in explaining the coordination between EU and Member State actors in sustainable development policies. First, with the Paris Agreement and the SDGs there is increasingly a multilateral context in which the EU could flourish as an actor, and EU and Member State coordination is needed against 'the rest of the world'. Former allies including the United States are going their own way, as the Trump administration's announced withdrawal from

[645] Art 3(5) TEU.

the Paris Agreement makes clear. This could soften or strengthen EU and Member State coordination depending on the binding nature of the 'global stocktake' of ambitions. Secondly, the Court of Justice, until now notably absent from sustainable development discussions, recently started to meddle in the debate with its opinion on the Singapore Agreement in which it stated that the objective of sustainable development could be seen as an 'integral part' of the common commercial policy, an exclusive competence. [646] This opinion, as well as a number of questions that are raised in this dissertation, might lead to a stronger involvement of the Court of Justice and more political effects of legal competences on sustainable development policies.

Moreover, with the upcoming British exit from the EU the Union loses one of its most legal competences-critical members of the club.[647] This could mean that legal competences are reinstated after Brexit, 'repairing' previously Treaty-loose procedures like the Team EU in UNFCCC negotiations on the one hand. On the other hand, as the SDG implementation process 'second working stream' already makes clear, the Commission will be internally focused in the coming years and might make some stronger decisions on legal competences only when the next College of Commissioners (2019-2024) will take office. It is expected that the Commission especially could upgrade its profile when legal issues come back to the forefront, however as always in strong interaction with the other variables. In that way, the intention of this study is to contribute to a politico-legal analysis of EU sustainability action by EU and Member State actors.

The good news is that it is not necessary to start a process of Treaty reform. The catalogue of competences has clarified which policy areas are in the exclusive coordination hands of the Commission and which policy areas are to remain within the discretionary autonomy of Member States. This division is often used in practice. However, while other authors already refer to the lack of clarity on EU external competences this dissertation pinpoints the *potpourri* of shared competences. One almost needs a legal and historical background to understand the differences between policy areas that seem to belong to the same category while working so different in practice, such as environment (climate), energy and transport policies. This uncertainty needs to be clarified, as it now has the effect of a disconnect of policies, legal and political uncertainty, and the near-necessity for new EU and Member State actors to orientate for many months before understanding the legal and political complexities of each policy area in conjunction. Moreover, the drive of Member State actors to keep all competences on financial (taxation) issues and energy mix as close to national autonomy as possible is hampering coordination of sustainable development policies as demonstrated by all the case studies. Seeing the transboundary character of sustainability challenges, one could think of more EU competences in this area, although this is likely to open up the 'black box' of Treaty reforms.

This oft-legal guidance and (sometimes) politico-legal uncertainty affects citizens and companies. For companies, legal uncertainty is difficult, especially on sustainable development policies, as they are mostly waiting for the legal framework to be set by

[646] Court of Justice of the European Union (2017) 'The free trade agreement with Singapore cannot, in its current form, be concluded by the EU alone', press release no 52/17, Luxembourg, 16 May 2017, accessed via https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-05/cp170052en.pdf.
[647] Cf Government of the United Kingdom (2015) Review of the Balance of Competences between the United Kingdom and the European Union, available at <https://publications.parliament.uk/pa/ld201415/ldselect/ldeucom/140/140.pdf>, Accessed 12 June 2017.

governments.[648] One could argue that the examples presented by this dissertation might open up 'Urgenda-like' cases[649] at EU level in which the EU and Member State coordination can be challenged by citizens and CSOs as insufficient and 'unlawful' in its quest for sustainable development. However, it is not possible for citizens to directly complain to the Court of Justice is about this situation as it does not directly infringe their rights and the Court's mandate is to settle legal disputes between national governments and EU institutions.[650] EU and Member State actors deliberately avoid these legal disputes. Citizens thus need other means to strengthen the sustainable development policies. [651] In light of the increased awareness and support for more stringent sustainability policies at EU coordination level, it can be expected that these issues will be addressed at another (political/media) level with reference to the legal situation.

8.4.2 Concluding remarks

Overall, this dissertation has explored the potential for including the legal competences from Treaty provisions in the empirical analysis of EU and Member State coordination on sustainable development policies. While the findings themselves could be seen as 'plausibility probes' there are many new avenues for further research, theory development and an integrative politico-legal assessment framework sketched. With the global sustainability challenges lying ahead of the EU and Member States in relation to the wider world, it is hoped that all possibilities are explored to work towards the 'overarching objective' of sustainable development for the Earth, as promised in the Treaty.

This dissertation has tried to build bridges between legal and empirical studies and (in the case of alternative fuel policies) between technical and political studies. By including more cases in new analyses, future research can make use of this exploration to optimise potential for both disciplines to reach sustainable development objectives. In that way the official motto of the EU, *in varietate concordia (*united in diversity*),* could be an inspiration for a concerted academic effort to address the various pressing global challenges that the EU and its citizens are currently facing.

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[648] Cf Steurer, R. (2010) 'The role of governments in corporate social responsibility: Characterising public policies on CSR in Europe'. *Policy Sciences*, Vol. 43, No. 1, p. 51 stating that "The base level of responsible behavior for any organization is legal compliance and the Government has a role to play in setting standards in areas such as environmental protection, health & safety and employment rights. The Government can also provide a policy and institutional framework that stimulates companies to raise their performance [voluntarily] beyond minimum legal standards."

[649] *Urgenda v The Netherlands*, The Hague District Court (24 June 2015) ECLI:NL: RBDHA:2015:7196 (original language: ECLI:NL: RBDHA:2015:7145). For a legal analysis cf de Graaf, K. J. and Jans, J. H. (2015) 'The Urgenda Decision: Netherlands Liable for Role in Causing Dangerous Global Climate Change'. *Journal of Environmental Law*, Vol. 27, No. 3, pp 517-527.

[650] Art 263 TFEU.

[651] European Commission Special Eurobarometer (2014) 'Climate change' Special Eurobarometer 409 / Wave EB80.2, March 2014. European Commission Special Eurobarometer (2014) 'Attitudes of European citizens towards the environment', Special Eurobarometer 416, September 2014. Cf Falkner, R. (2007) 'The political economy of 'normative power' Europe: EU environmental leadership in international biotechnology regulation'. *Journal of European Public Policy*, Vol. 14, No. 4, p. 510.

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Annex 1: List of Interviews

Anonymised version without 'name' and 'function and organisation' categories. Please contact the author whenever you might need more information about the interviews (ries.kamphof@gmail.com).

Date of the interview	Reference in text	Taped ?	Case study	Referral by other interviewee or own initiative	Location, other details
13-06-2017	EU official	Yes	SDGs	Referral	Brussels
07-06-2017	Other societal stakeholder	Yes	SDGs	Own initiative	Brussels
08-06-2017	MS official	Yes	Climate change	Referral	Brussels
07-06-2017	EU official	No	SDGs	Own initiative	Brussels
31-3-2017	Former EU official, Former MS official (elite interview)	No	Climate change & general	Own initiative	The Hague
19-07-2016	Other societal stakeholder	No	Alternative fuels	Own initiative	Amsterdam-Brussels (by phone)
29-03-2017	Former MS official	No	General	Own initiative	The Hague
07-09-2016	Other societal stakeholder	No	Alternative fuels	Own initiative	Brussels, together with Thijs Bonenkamp
27-03-2017	Other societal stakeholder	No	Alternative fuels	Own initiative	Brussels, together with Thijs Bonenkamp
07-06-2017	EU official	Yes	Climate change	Own initiative	Brussels
20-7-2016	Other societal stakeholder	No, but interview by e-mail	Alternative fuels	Own initiative	The Hague-Brussels (by e-mail)
19-04-2017	(Former) MS official	No	General	Own initiative	The Hague

14-06-2017	MS official	Yes, taped in 3 parts (stopped due to confidential phone call)	Climate change	Own initiative	The Hague
13-06-2017	EU official	Yes	SDGs	Referral	Brussels
24-01-2014	MS official	No	Climate change	Own initiative	The Hague, More explorative than semi-structured
27-03-2017	Other societal stakeholder	No	Alternative fuels	Referral	Brussels, together with Thijs Bonenkamp
09-04-2014	(Former) EU official (elite interview)	No	Climate change	Referral	Amsterdam. More explorative than semi-structured
22-07-2016	MS official	No	Alternative fuels	Own initiative	The Hague
07-09-2016	MS Official	No	Alternative fuels	Own initiative	Brussels, together with Thijs Bonenkamp
31-05-2017	EU official	Yes	SDGs	Referral	Brussels
29-05-2017	Other societal stakeholder	Yes	SDGs	Own initiative	Brussels
12-06-2017	EU official	Yes	SDGs	Referral	Brussels
13-06-2017	MS Official	No	SDGs & Climate change	Referral	Brussels
30-05-2017	EU official	Yes	Climate change	Referral	Brussels

20-04-2017	Former EU official (elite interview)	Yes	General	Referral	The Hague, at Prof Brinkhorst's office
14-10-2015	EU official	Yes	Climate change	Own initiative	Brussels, more explorative than semi-structured
07-06-2017	Other societal stakeholder	Yes	SDGs	Own initiative	Brussels
31-03-2017	EU official	No	Alternative fuels	Own initiative	The Hague-Brussels (by phone), together with Thijs Bonenkamp
13-06-2017	EU official	Yes	Climate change	Referral	Brussels, preference 'consent form' after interviews
14-11-2014	Other societal stakeholder	No	Climate change	Own initiative	The Hague-Bonn, Skype, also attended by Ms van de Sande for Interview Course Leiden University (no participation). More explorative than semi-structured

10-5-2017	Former MS official (elite interview)	Yes	SDGs, climate change & general	Referral	The Hague
14-06-2017	MS official	Yes	Climate change	Referral	The Hague, Riga (by phone)
03-04-2015	MS official	Yes	Climate change	Own initiative	The Hague
08-06-2017	Other societal stakeholder	Yes	SDGs	Referral	Brussels
12-06-2017	MS official	Yes	SDGs	Own initiative	Brussels
07-09-2016	EU Official	No	Alternative fuels	Own initiative	Brussels, together with Thijs Bonenkamp
30-05-2017	EU official	Yes	SDGs	Own initiative	Brussels
28-07-2016	Other societal stakeholder	No	Alternative fuels	Own initiative	Amsterdam
26-08-2015	Other societal stakeholder	No	Climate change	Own initiative	The Hague, More explorative than semi-structured
10-08-2016	MS official	No	Alternative fuels	Referral	The Hague, together with Thijs Bonenkamp
02-05-2017	EU official	Yes	SDGs	Own initiative	Brussels
26-08-2015 &	MS official	No	Climate change	Own initiative	The Hague, Interview

07-10-2015					conducted twice after sending report interview to replace sentences
13-06-2017	MS official	Yes	Climate change	Own initiative	Brussels, Unintentionally no e-mail with semi-structured questions sent the day before
04-05-2017	MS official	Yes	SDGs	Own initiative	The Hague, Also received (and scanned) answers questions
13-06-2017	EU official	Yes	SDGs	Referral	Brussels
31-05-2017	EU official (elite interview)	Yes	Climate change	Referral	Brussels, <45 minutes
03-03-2017	Other societal stakeholder	No	Alternative fuels	Own initiative	The Hague (by phone), together with Thijs Bonenkamp

DISCLAIMER : the views expressed by the interviewees do not (per se) represent the views and opinions of the organisations/countries they work for or represent.

Non-response rate

Despite multiple attempts by e-mail and phone the following organisations/institutions could not be interviewed for the specific case studies

- European Automobile Manufacturers' Association: ACEA (alternative fuels, other societal stakeholder)
- Former EU official (general)
- CSR Europe (SDGs, other societal stakeholder)
- European Political Strategy Centre (EPSC) (climate change, SDGs, other societal stakeholder)
- Netherlands Permanent Representation to EU (climate change & SDGs, MS official)
- Members of European Parliament (SDGs, climate change, other societal stakeholder)
- Unilever (SDGs, other societal stakeholder)

Annex 2: List of Semi-structured Interview Questions and Interview Requests

Case Study Team EU in UNFCCC Negotiations
Semi-structured interview questions PhD Thesis Ries Kamphof
'Shared EU (External) Action on Sustainable Development Issues: a Politico-Legal Analysis of Shared Competences', Case study EU negotiations at UNFCCC

*****_Interviews will be anonymised. The list of interviewed people will only be available upon request._

General questions/background:

- In what way have you been active in the *negotiation* of the Paris Agreement?
- What experience of negotiation do you have before or in the follow-up of the Paris Agreement?
- How do you/(..) relate to the *implementation* of the Paris Agreement after the Presidency?
- Do you have a legal background/education? If yes, (how) do you use this background in UNFCC negotiations? If no, do you ever miss this background in negotiations?

European Union and the UNFCCC negotiations

- According to your experience which institutions and/or Member States take the lead in the negotiations?
- What role do legal rules (e.g. Treaty, case law) play in the cooperation and conflict between EU and Member States?
- What role do political issues play in the cooperation and conflict between EU and Member States?
- How did (..) position itself in the discussion about the division of responsibilities during international negotiations?
- How important are other societal actors in climate negotiations?

EU and climate, environmental and development policies

- Do you consider the EU Member States to agree substantively on these topics? How does that affect a common stance in international negotiations?
- According to you, is the EU and effective negotiator with third countries on these topics, e.g. at the United Nations?
- To what extent do you consider the Member States to be *independent* actors on these themes?

Finally

- Are there important issues we have not discussed yet?
- Who do you recommend to get in touch with regarding this research project?

Case study SDG implementation

Semi-structured interview questions PhD Thesis Ries Kamphof
'Shared EU (External) Action on Sustainable Development Issues: a Politico-Legal Analysis of Shared Competences', Case study EU implementation SDGs/UN Agenda 2030

*****_Interviews will be anonymised. The list of interviewed people will only be available upon request._

General questions/background:

- In what way have you been active in the *negotiation* phase of the UN Agenda 2030?
- How do you/your institution relate to the *implementation* of the UN Agenda 2030 and the Sustainable Development Goals?
- Do you have a legal background/education? If yes, (how) do you use this background in SDG implementation? If no, do you ever miss this background in negotiations?

European Union and the Sustainable Development Goals

- According to your experience which institutions and/or Member States take the lead in SDG implementation?
- What role do legal rules (e.g. Treaty, case law) play in the cooperation and conflict between EU and Member States in SDG implementation?
- What role do political issues play in the cooperation and conflict between EU and Member States in SDG implementation
- How does (…) position itself in the discussion about the division of responsibilities during SDG implementation?
- How important are other societal actors in SDG implementation?

EU and climate, environment and development policies

- Do you consider the EU Member States to agree substantively on these topics? How does that affect SDG implementation?
- According to you, is the EU and effective negotiator with third countries on these topics, e.g. at the United Nations?
- To what extent do you consider the Member States to be *independent* actors on these themes?

Finally

- Are there important issues we have not discussed yet?
- Who do you recommend to get in touch with regarding this research project?

Case study alternative fuels (many interviews together with Thijs Bonenkamp)

Interview questions research project alternative fuels

- How are you related to the European transport policy in general and the automotive production and fuels in particular?

Scenario's Ethanol/methanol vs hydrogen vs electrification

- What is your opinion on the feasibility of the following scenarios in the EU for the future of transport, private vehicles:
  1. 'All electric' scenario: renewable electricity via battery to electrical motor with new distribution infrastructure and charging stations.
  2. Hydrogen-based scenario: hydrogen from renewable electricity via electrolysis, /fuel cell in every car for electricity from hydrogen from a tank and towards electrical motor, distribution infrastructure on the basis of hydrogen, could make use of the current autogas infrastructure
  3. 'All liquid' scenario: gasoline → bioethanol → methanol from renewables based on hydrogen/electrolysis/fuel cell catalytic reaction. No 'disruptive' change infrastructure/legislation.
  Could you please take into account the preferences from Member States and state whether you see any difference for short- and long-distances?
- How important is oil import dependence for the future of automotives in the EU and how would this 'priority' relate to issues such as decreasing emissions, air pollution and decarbonisation of transport?
- Did you ever consider methanol as a fuel option and why/why not?

EU decision-making

- Is there a common internal EU market on transportation fuels?
- Transport policy is a 'shared competence' between EU and Member States. How would that affect this situation?
- Which Member States would feel more inclined to introduce mass-scale introduction of E85 and flexi-fuel automotives and which ones would normally oppose such a move?
- Which parties would you consider the main stakeholders in the debate on biofuels, decarbonisation of transport and bio-ethanol? EU vs rest of the world
- Large scale introduction of ethanol production is much more common in other parts of the world (e.g. Brazil, United States). Why?

Biofuel production/innovation

- How has the transformation process from first generation biofuels production to second and third generation biofuels been proceeding?
- Are there any European funds that promote innovation in biofuel production methods?
- What measures can be taken to consolidate/enhance the success of biofuels in the (near) future?
- Are there any points of improvement?

Other

- Would you feel that certain issues need specific attention that are not covered in this interview?
- Who do you advice to speak to for this research project?

Interview requests EN

Own initiative

Dear Ms/Mr

Hopefully everything is all right in (…) at the (..)
With much interest I learned about the activities of (..) and (…). I wondered whether it is possible to speak to you for my PhD Thesis on shared competences and the EU sustainable development policies. I am particularly interested in the EU implementation of the UN Agenda 2030 and the SDGs and hope (one of) you could provide me with some answers.

Hopefully it is possible to have the meeting with you in Brussels. I am planning to be in Brussels for some days/weeks in May, June and July. Would this 45-minute short and confidential interview be possible for example at (..), (..) or (..)? I could send the interview questions in advance. I would be most grateful if you can let me know whether you or one of your colleagues is available for an exploratory meeting.

Kind regards,

Ries Kamphof
PhD Candidate, Leiden University, Faculty of Governance and Global Affairs
a.kamphof@fgga.leidenuniv.nl

Referral

Dear Ms/Mr

Hopefully everything is all right at the (..). (Point of contact) referred to you as a very relevant expert overseeing the activities of the EU and its Member States, the conduct of UNFCCC negotiations and implementing sustainable development policies. With much interest I learned about your activities (…). I wondered whether it is possible to speak to you for my PhD Thesis on shared competences and the EU sustainable development policies. I am particularly interested in the EU and its Member States at climate change negotiations, but also in general how the (shared) competences have an effect on (external) EU sustainable development policies and hope you could provide me with some answers.

I am planning to be in Brussels for some days/weeks in (..). Would this 45-minute short and confidential interview be possible for example (..), (..) or (..)? I could send the interview questions in advance. I would be most grateful if you can let me know whether you or one of your colleagues is available for an exploratory meeting.

Kind regards,

Ries Kamphof
a.kamphof@fgga.leidenuniv.nl

Curriculum Vitae

Andries (Ries) KAMPHOF was born on 15 May 1985 in Utrecht, The Netherlands. He completed secondary school at College Blaucapel in Utrecht in 2003. He studied and graduated in Political Science (Bachelor and Master of Arts) from 2003 to 2009 at Leiden University. He also completed the Master of European Law (LL.M) at Leiden University in 2010. After his studies Ries started to work as a Policy Adviser at the Dutch Senate ('Eerste Kamer der Staten-Generaal) specifically for the Committees of European Affairs and Foreign Affairs, Development Cooperation and Defence. In 2011 he moved to Platform31, and the European Metropolitan network Institute (EMI) where he was a 'Project Leader Europe' until 2013. From 2013 to the end of 2017 Ries worked as a International Relations Researcher at the Dutch National Commission for Sustainable Development (NCDO) and its research department Kaleidos Research. He has also been involved with the Clingendael Institute as an Associate Research Fellow in many projects from July 2015. He has also been a guest lecturer 'European Integration' at Leiden University College from April 2015. His professional topics of research experience were Sustainable Development Goals, climate change negotiations; natural resources; financing for development and EU external relations. He started to work as a PhD Candidate in April 2013 at the Leiden University Faculty of Governance and Global Affairs (FGGA) and, because of his professional affiliation, at the Leiden University Dual PhD Centre. Prof. Dr. Madeleine O. Hosli supervised him. His research has been published in Global Policy, Europe and the World: a Law Review. Ries also published chapters as the leading author in Research Handbooks 'EU energy law and policy' (2017) and on 'the EU's engagement with International Organisations'. Ries has been working for the Netherlands Ministry of Economic Affairs and Climate Policy from May 2018.

