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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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**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
CO ₂	Carbon dioxide
CODEV	Council Working Party on Development Cooperation
COP	Conference of the Parties
COP21	21 st 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