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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.

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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