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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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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 Agreement² 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 policy⁶, a ‘normative power’⁷, progressive⁸ and a ‘forerunner’ in climate negotiations⁹. 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 the 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 development¹⁰ and for its 'inconsistent' environmental policies¹¹ 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 Commission¹⁷.

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/lddeucom/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 legal²² and political science²³ 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 of '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 competences³³ 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 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 Economics*, 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 institution⁴² or a political system *sui generis*⁴³. Sometimes the EU and its Member States are viewed as a collective actor⁴⁴ in external relations, but this is often as a result of its normative⁴⁵ 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 Gavás, 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 the 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.

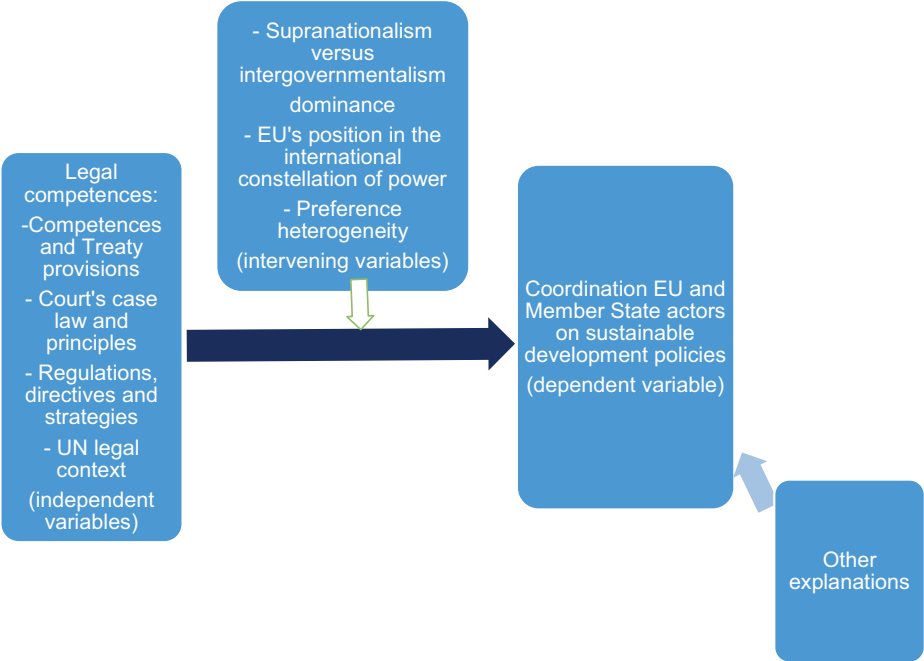


Figure 1. 1 Variables and expectations of relations

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 so the semi-structured interviews⁵⁸ 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 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 1 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 governance⁶⁷, 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 Commission⁶⁸, 'socialisation' of representatives from Member States⁶⁹, 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. Review* 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 Economics*, 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.ewlr.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 Vanhoonaeker, 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 competences⁷⁸.

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/lddeucom/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
<i>Mixed competence arrangement</i>	Yes	Yes	Yes
<i>Main policy area</i>	Transport	Climate/environment	Development cooperation
<i>Shared competence (Art 4 TFEU) ‘centre of gravity’?</i>	Yes	Yes	Yes
<i>Internal or external EU dimension</i>	(primarily) internal	(primarily) external	Internal and external
<i>Policy process</i>	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 strengths” 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 Directive⁹³ and Renewable Energy Directive⁹⁴, 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 Woffenbittel 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, O.J. 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, O.J. 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 its high 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 adopted⁹⁹ 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 led 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 negotiative 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.