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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 8: Conclusion and Discussion

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

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

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

8.1 Main findings

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

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

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

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

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

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

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

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

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

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

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

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

8.1.1 Coordination

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

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

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

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

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

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

[610] Interview EU official, 30-5-2017, Interview MS official, 8-6-2017, Interview MS official, 13-6-2017, Interview EU official, 13-6-2017.

[611] Cf Jordan, A. and Schout, A. (2006) The coordination of the European Union: exploring the capacities of networked governance (Oxford University Press) who hold that the secretariat-general is the 'central player in coordination process. This book is also indicating the importance of individual DGs on the coordination process.

[612] E.g. Groenleer, M. L. and Van Schaik, L. G. (2007) 'United We Stand? The European Union's International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol'. *JCMS: Journal of Common Market Studies,* Vol. 45, No. 5, pp. 969-998, although this study was conducted before the entry into force of the Lisbon Treaty.

8.1.2 Legal competences

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

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

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

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

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

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

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

8.1.3 Interactions with intervening and other variables

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

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

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

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

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

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

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

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

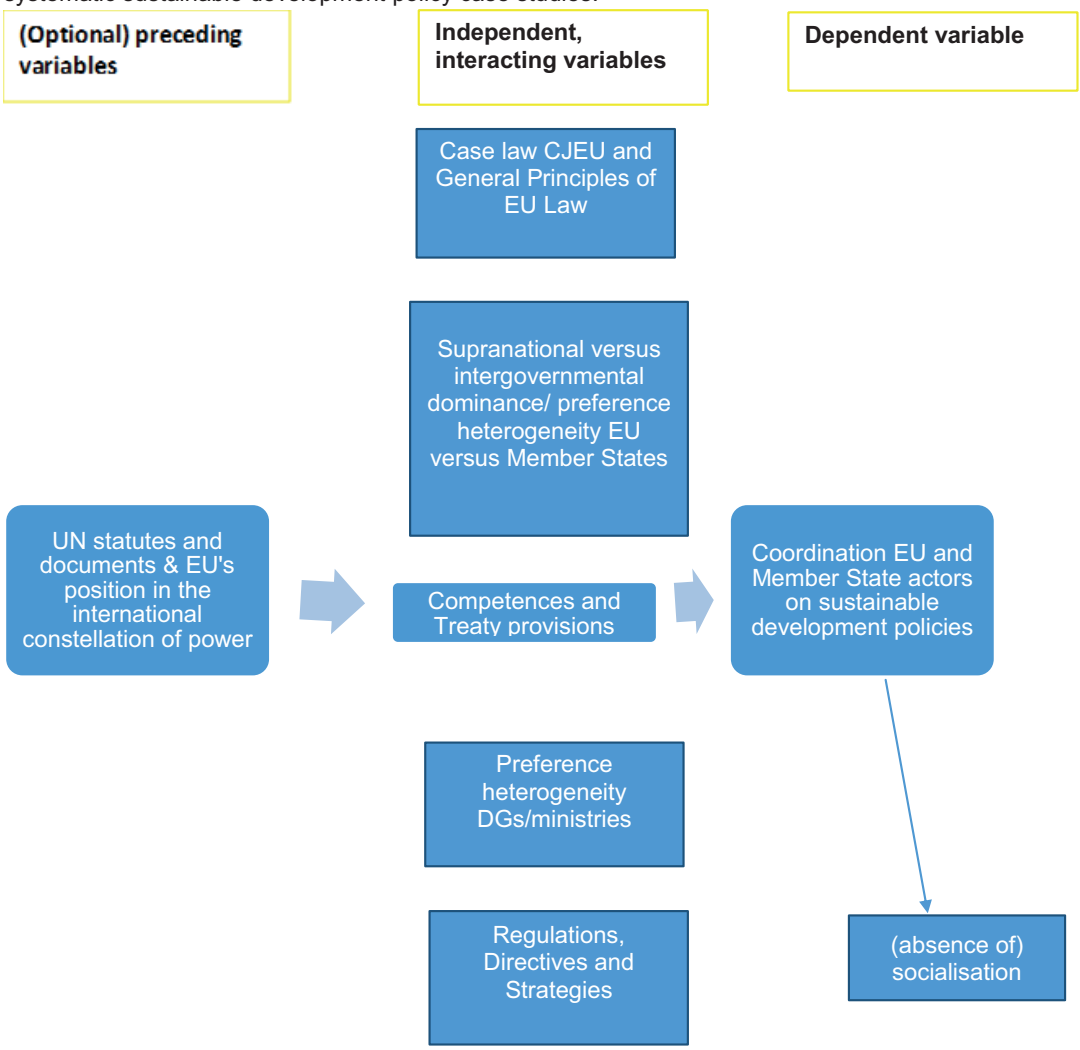

Figure 8. 1 Variables affecting coordination EU and Member State actors in sustainable development policies

8.2 Theoretical, conceptual and methodological reflections

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

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

8.2.1 Research design and methods

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

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

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[620] For a reflection on the limitations of the (design of the) comparative case studies see also sub-section 7.2.4.

[621] Oberthür, S. and Groen, L. (2015) 'The Effectiveness Dimension of the EU's Performance in International Institutions: Toward a More Comprehensive Assessment Framework'. *JCMS: Journal of Common Market Studies,*Vol. 53, No. 6, pp. 1319-1335. See also Kleistra, Y. and van Willigen, N. (2014). 'Evaluating the Impact of EU Diplomacy: Pitfalls and Challenges.' In Koops, J.A. and Macaj, G. (eds) *The European Union as a Diplomatic Actor* (Basingstoke: Palgrave Macmillan), p. 52 for the suggestion of a necessary change in evaluating EU diplomacy from (formal) input and process to (formal/informal) outcome and (informal) impact.

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

[623] Panke, D. (2014) 'The European Union in the United Nations: an effective external actor?'. *Journal of European Public Policy*, Vol. 21, No. 7, p. 1054.

[624] Cf Cichowski, R. A. (2004) 'Women's rights, the European Court, and supranational constitutionalism'. *Law & Society Review*, Vol. 38, No. 3, pp. 489-512.

[625] Wasserfallen, F. (2010) 'The judiciary as legislator? How the European Court of Justice shapes policy-making in the European Union?'. *Journal of European Public Policy*, Vol. 17, No. 8, p. 1136 says to follow Moravcsik, A. (1998) *The choice for Europe: social purpose and state power from Messina to Maastricht* (Ithaca, NY: Cornell University Press), pp. 80-82 and his 'advice to rely on 'hard primary sources', namely, Treaty Articles, Directives, European Parliament documents, European Court of Justice judgements and reports on the negotiations in the Council' although this is not so sharply put in Moravcsik's work.

[626] Jørgensen, K. E. and Wessel, R. A. (2011) 'The position of the European Union in (other) international organizations: confronting legal and political approaches'. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. (Cheltenham: Edward Elgar), p. 264.

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

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

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

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

8.2.2 Conceptual and theoretical reflections

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

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

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

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

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

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

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

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

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

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

8.2.3 Generalisability of findings

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

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

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

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

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

8.3 Further research

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

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

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

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

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

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

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

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

8.4 Policy relevance and concluding remarks

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

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

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

8.4.1 Policy relevance

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

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

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

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

[645] Art 3(5) TEU.

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

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

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

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

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

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

8.4.2 Concluding remarks

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

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

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

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

[650] Art 263 TFEU.

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