

From European Law to Global Power: The Influence of EU Shared Competences on International Climate Change Negotiations

Ries Kamphof

Leiden University Dual PhD Centre The Hague

NCDO (Dutch Centre for Sustainable Development)

a.kamphof@umail.leidenuniv.nl

Rkamphof@ncdo.nl

Abstract *The Lisbon Treaty clarifies the division of competences between the EU and Member States and the notion of 'shared competences' in EU context. Along with the 'duty of sincere cooperation' and the 'doctrine of parallelism', guarded by the Court of Justice of the EU, this legal competence framework might be a relevant addition to political theories on EU external relations and negotiations in international organisations. On the basis of a case-study on environment and climate change in a United Nations (UNFCCC) framework this paper seeks to answer whether the shared legal competence framework enables or restrains EU and Member State actors in climate change negotiations and whether this awareness could add to existing political theories. Semi-structured interviews have been conducted and literature and case-law of the Court of Justice of the EU have been consulted. It is found that these legal concepts, along with its more concrete implementation in 'working arrangements', explain behavior of EU and Member State actors alongside more popular political theories. Even more important in this case-study seems to be 'internal legislation' that, once concluded, changes the external 'playing field' of EU and Member State diplomats at UNFCCC. Only when issues are becoming 'really political' this finding is contradicted. Especially institutionalist theories such as the principal-agent theory could connect with these findings, as well as the 'actorness' concept. This case-study paves the way for more interdisciplinary approaches to EU external relations and empirical research in international organisations.*

Key Words Shared Competences – Law – Politics – International Organisations – Climate – Environment – UNFCCC – Principal-agent theory – Institutionalism – Court of Justice of the EU – EU Actor - Negotiations

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1. Introduction¹

Copenhagen, December 2009. The world is looking ahead of ambitious results at a worldwide United Nations summit on climate change. Many eyes are on the European Union and its Member States. A few days earlier the high-aimed Lisbon Treaty entered into force and the EU had generally been considered an important global actor in the environmental field: a 'frontrunner'² or even 'global leader'³. Despite the high hopes, EU and Member State representatives have been largely invisible in the two-week conference and the worldwide actors did not deliver a powerful result. 'Copenhagen' has often been referred to as an EU failure at the international level⁴ and a 'political earthquake for global climate diplomacy'⁵. The EU and Member State representatives were more busy discussing about competences and representation than convincing other countries. The legal competence framework might be as relevant as other political theories in explaining successful or (above) less successful exercises of EU and Member State negotiators in climate change negotiations. The aim of this paper is to assess the influence of the 'shared' legal competence framework on EU and Member State actors in climate change negotiations and to look for possible connection with existing political theories.

The recent findings from the Intergovernmental Panel on Climate Change (IPCC) revealed that climate change is one of the most urgent topics of our timeframe. The warning of the climate system is unequivocal: the recent emissions of greenhouse gases were the largest in history, atmosphere and oceans have warmed, amounts of snow and ice have diminished and sea level has risen.⁶ Also for the EU, climate change is one of the most important topics. Climate change has even been regarded as a 'saviour'⁷ issue for the EU integration project more generally. Unless the not so successful

¹ I would like to express my sincere gratitude to Prof. Dr. Madeleine O. Hosli for her useful comments on earlier versions of this paper. Likewise, Dr. Adriaan in 't Groen, Dr. Mark Dechesne and Ms Charlotte de Roon from the Leiden University Dual PhD Centre deserve mentioning for their help in earlier stages as well as the colleagues attending the conference 'EU in the World' organized by the Johannes Gutenberg Universität in Mainz, Germany from 9 to 10 January 2015.

² Falkner, R., Stephan, H., & Vogler, J. (2010). 'International climate policy after Copenhagen: Towards a 'building blocks' approach'. *Global Policy*, 1(3), p. 259.

³ Kelemen, R. D. (2010). 'Globalizing European Union environmental policy'. *Journal of European Public Policy*, 17(3), p. 335.

⁴ See for example Groen, L., & Niemann, A. (2013). 'The European Union at the Copenhagen climate negotiations: A case of contested EU actorness and effectiveness'. *International Relations*, 27(3), 308-324.

⁵ Bäckstrand, K., & Elgström, O. (2013). 'The EU's role in climate change negotiations: from leader to 'leadiator''. *Journal of European Public Policy*, 20(10), p. 1377.

⁶ Pachauri, R.K. (2014) 'Climate Change 2014: Synthesis Report', *Intergovernmental Panel for Climate Change* via http://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_LONGERREPORT.pdf

⁷ Van Schaik, L., & Schunz, S. (2012). 'Explaining EU Activism and Impact in Global Climate Politics: Is the Union a Norm-or Interest-Driven Actor?'. *Journal of Common Market Studies JCMS*, 50(1), p. 177.

Copenhagen conference the EU has been able to 'shape global environmental governance'.⁸ With upcoming climate change conferences such as the Paris UNFCCC Conference of the Parties (2015) it is important to evaluate the EU in multilateral negotiations. Especially taking into account the general perception that the EU is hindered by third party (state) actors and by its own legal competence framework it is necessary to look at the internal legal competence framework and how it influences global environmental power of the EU actors in climate change negotiations.

Academically, climate change is widely considered as an environmental subject. However, there is growing political science literature on the international negotiations⁹, which often does not (fully) take into account a legal perspective on the decision-making process.¹⁰ Academic contributions from the legal field on the other hand tend to focus on internal decision-making, based on the Treaty and case-law from the Court of Justice of the European Union often not taking into account the political impact of the legal arrangements invented. Nevertheless, cross-disciplinary research is proposed in both legal¹¹ and political science¹² contributions on climate change negotiations and wider literature on the EU in international organisations. It could therefore be argued that there is a need to include the legal component to analyze content, power relations and legal framework in conjunction, especially in policy areas where EU and Member States 'share' legal competences, such as climate. The main question of this paper will therefore be as follows: *To what extent does the legal concept of 'shared competence' enable or restrain EU and Member State actors in climate change negotiations and would it be possible to include the legal competence framework in existing political theories?"*

The paper is structured as follows. Section 2 introduces the legal competence framework, political theories on EU external relations and negotiations and possible 'connecting' theories and concepts. Section 3 outlines sources for the study on UNFCCC COP elaborating on the method of data analysis

⁸ Delreux, T. (2014). 'EU actorness, cohesiveness and effectiveness in environmental affairs', *Journal of European Public Policy*, 21(7), p. 1017.

⁹ Groen, L., & Niemann, A. (2013). 'The European Union at the Copenhagen climate negotiations: A case of contested EU actorness and effectiveness'. *International Relations*, 27(3), 308-324, 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'. *Journal of Common Market Studies*, 45(5), 969-998 and Delreux, T. (2009). 'Cooperation and Control in the European Union The Case of the European Union as International Environmental Negotiator', *Cooperation and Conflict: Journal of the Nordic International Studies Association*, 44(2), 189-208.

¹⁰ One of the examples: 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*, 6(3), 231-248.

¹¹ Jørgensen, K. E., & Wessel, R. A. (2011). 'The position of the European Union in (other) international organisations: confronting legal and political approaches'. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. Cheltenham: Edward Elgar 2011.

¹² Groen, L., & Niemann, A. (2013). 'The European Union at the Copenhagen climate negotiations: A case of contested EU actorness and effectiveness'. *International Relations*, 27(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"

and methodological challenges. This then leads to a section 4 with the findings and a preliminary answer on the above question. The paper concludes in section 5 by suggesting venues for future research, in comparative case-studies as well as methodology.

2. Analytical Framework: Legal and Political Theory on EU Shared Competences

“Lawyers know the rules, political scientists know the practice; but rules and practices are hardly confronted” (Jørgensen & Wessel; 2011, p. 286)

This section will start with a descriptive part explaining the legal perspective on EU shared competences (2.1) and political theories on EU external negotiations (2.2), resulting in the preliminary conclusion that ‘law and politics are hardly confronted’ in contributions analyzing EU performance in international climate change conferences (2.3). It will then zoom in on possible theories and concepts that have potential to take effects of the legal competence framework on board (2.4).

2.1 Legal perspective on EU (external) Shared Competences

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 such as external trade policy.¹⁴ Since the entry into force of the Lisbon Treaty (2009) the division of competences between the European Union (EU) and its Member States is more clear. The Treaty introduces a precise classification of types of competences, for the first time in EU history.¹⁵ Three main types of competences of the EU are distinguished:

- Exclusive competences, where only the Union has legislative power¹⁶
- Shared competences, where the Union and the Member States both have legislative power¹⁷
- Supporting 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 area¹⁸

Alongside these three main categories also ‘parallel competences’ (specific type shared competences)¹⁹, CFSP-type of competence²⁰ and ‘coordination of EU’²¹ recognized in the Treaty (see

¹³ Article 1 TEU Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Charter of Fundamental Rights of the European Union (OJ 2010 C 83).

¹⁴ Pollack, M. A. (2000). ‘The end of creeping competence? EU policy-making since Maastricht’, *Journal of Common Market Studies*, 38(3), 519-538

¹⁵ http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0020_en.htm

¹⁶ Art 3 TFEU, e.g. common commercial policy, monetary policy for Eurozone Member states, customs union.

¹⁷ Art 4 TFEU, e.g. internal market, environment, transport, energy, consumer protection

¹⁸ Art. 6 TFEU, e.g. industry, culture, civil protection, tourism

Table 1). Under the EU Treaties, competences in the areas of environment and climate change are shared between the Member States and the EU.²²

The EU and its Member States “complement and reinforce” each other in a framework of shared competences, according to the Treaty on the Functioning of the European Union.²³ The adjudicator of the use of competences in the EU is the Court of Justice of the European Union. The Court has been a noteworthy but often overlooked actor in EU external relations. The Court of Justice favors the participation of the EU in international organisations as a means to exercise its competence.²⁴ Academic authors are even of the opinion that the Court of Justice may ‘accelerate the process’ of the EU becoming a respected actor in international organisations.²⁵ Next to the ‘fixed’ competences in the Treaty, the EU’s external environmental competences can also grow in a more indirect way, namely by the case law of the Court of Justice.²⁶ Further, the legal competences are the basis for ‘working arrangements’ between EU and Member State actors in international climate change negotiations.²⁷ This is how the legal competence framework manifests itself in three ways.

2.2 Political Theories and fundamental concepts in EU external (environmental) relations

The EU external relations and policies mirror the inherent tensions between the supranational and intergovernmental characteristics within the European Union.²⁸ This supranationalism vs intergovernmentalism paradigm is also visible in two prominent political theories on EU external relations. According to the *neofunctionalist* theory EU institutions over time acquire more competence within and across issue areas, thereby leading to more supranational policy-making.²⁹ Conversely, in *liberal intergovernmentalism* the progress in European integration follows the

¹⁹ Art. 4(3) & 4(4) TFEU: e.g. research, space, development cooperation, humanitarian aid

²⁰ Art. 24 TEU: Common Foreign and Security Policy. No competence of Court of Justice of the EU in this field.

²¹ Art. 5 TFEU: employment, social policies and economic policies.

²² Art. 4(2) TFEU

²³ See e.g. Art. 208 TFEU

²⁴ Wouters, J., Odermatt, J., & Ramopoulos, T. (2013), ‘The EU in the World of International Organisations: Diplomatic Aspirations, Legal Hurdles and Political Realities. Legal Hurdles and Political Realities’ (September 1, 2013). P. 4. And see cases Opinion 1/76 *Draft Agreement establishing a European laying-up fund for inland waterway vessels* [1977], ECR 741, para 5 & opinion 1/94 *Agreement establishing the World Trade Organization* [1994] ECR I-5267.

²⁵ Hoffmeister, F. (2007). ‘Outsider or frontrunner? Recent developments under international and European law on the status of the European Union in international organisations and treaty bodies’. *Common Market Law Review*, 44(1), 41. p. 68.

²⁶ 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*, 6(3), p. 235.

²⁷ Interview 2 April 2014.

²⁸ Van Schaik, L.G. (2013) ‘EU Effectiveness and Unity in Multilateral Negotiations: More than the Sum of its Parts?’, Palgrave Macmillan, p. 19.

²⁹ Gavvas, M. (2010). ‘Consolidation or cooperation: The future of EU development cooperation’. German Development Institute/Deutsches Institut für Entwicklungspolitik (DIE).

convergence of economic interests of important domestic groups in major European countries.³⁰ In a similar vein, the *material-functionalist* perspective is based on the assumption that larger Member States enjoy individual membership of international organisations and only use the EU channel as a potential and sometimes convenient add-on mechanism³¹

Equally important and popular is the theory of *social constructivism* and the development of common norms. Groenleer and Van Schaik (2007) for example find with regard to negotiations on climate change that Member State representatives appear to have been 'socialized' by the interaction during the frequent meetings taking place in Brussels and the EU coordination meetings of international conferences.³²

Some political studies are informed by the generic new *institutionalist* argument: especially the *principal-agent* institutionalist theory "transcends the extremities of more traditional international theories by stressing the crucial role of states but without ignoring the role of institutions" and takes over the notion from historical and sociological institutionalism that the Member States are central in building and amending EU institutions³³. Principal-agent analysts take departure in the formal (e.g. legal) settings and then prioritize formal relations between principals (usually Member States) and agents (usually EU institutions). Traditionally, principal-agent theory accentuates the control behavior and mechanisms by principles.³⁴

Apart from the theories two fundamental concepts are often coined in contributions on EU external relations and international organisations: 'representation' and 'actorness'. Representation is defined as the capability of the Union to deliver common positions towards the outside world.³⁵ Actorness is the capacity of the EU to behave actively and deliberately in relation to others in the international system.³⁶ It has been widely acknowledged that a unified and strong EU representation is a crucial precondition for EU actorness, however also 'autonomy', 'volition', 'negotiating capability' and the 'ability to deploy instruments' have been identified as important characteristics of actorness by

³⁰ Moravcsik, A. (1998): 'The choice for Europe: social purpose and state power from Messina to Maastricht', Ithaca, NY: Cornell University Press, chapter 1

³¹ Jørgensen, K. E., & Wessel, R. A. (2011), p. 275.

³² 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'. *Journal of Common Market Studies*, 45(5), 969-998.

³³ Jin, X., & Hosli, M. O. (2011). 'Pre-and Post-Lisbon: European Union Voting in the United Nations General Assembly', Paper to be presented at the Workshop „Decision-making in the European Union Before and After Lisbon“, Leiden University, 3-4 November 2011

³⁴ Delreux, T. (2009). 'Cooperation and Control in the European Union The Case of the European Union as International Environmental Negotiator', *Cooperation and Conflict: Journal of the Nordic International Studies Association*, 44(2), p. 191.

³⁵ Kissack, R. (2007) 'European Union Member State Coordination in the United Nations System: Towards a Methodology for Analysis'. *European Foreign Policy Unit Working Paper*, 1.

³⁶ Sjøstedt, G. (1977). 'The External Role of the European Community'. Westmead: Saxon House. On 'representation' and 'actorness' see also Jin & Hosli (2011).

Vogler (2011)³⁷. All in all, it is not very common to see the Union as an actor in international organisations sharing competences with Member States. The theories look in particular at the balance of power between (large) Member States³⁸, ‘socialisation’ of representatives from Member States³⁹ and voting power of Member States and EU representatives⁴⁰. The EU is viewed as international institution⁴¹ or a political system *sui generis*⁴², not so much as an actor.

2.3 Law and Politics Hardly Confronted

The above makes clear what others like Wessel & Jørgensen (2011) and Delreux (2006) already found before: legal and political theories on EU and Member State actors in international (environmental) negotiations are hardly confronted. The difference between both strands is clear. Legal scholars examine Treaty provisions and the case-law of the Court of Justice of the EU.⁴³ Political theories, while less generalizable, are more oriented towards power and less towards the legal competence behind this power. However, competence is just the legal term for political powers.⁴⁴ It is therefore odd that combinations of these approaches in the field of EU external relations are quite scarce.⁴⁵

2.4 Possible ‘connecting’ theories

Some political theories really consider that institutions matter. And as law is an integral part of institutions this is one of the ‘nodal points’ where law and politics are closely intertwined.⁴⁶ Seeing the institutionalist explanation the “modes and effects of external governance are shaped by internal

³⁷ Vogler, J. (2011), ‘The European Union as a global environmental policy actor – climate change’, in Würzel, R. & Connelly, J. (eds), *The European Union as a Leader in International Climate Change Politics*, New York: Routledge pp. 21-37. See also Van Schaik, L. (2013) ‘The EU’s disappointing leadership on climate, or should we be less judgemental?’ chapter in Jørgensen, K.E. en K.V. Laatikainen (eds) (2012), *Routledge Handbook on the European Union and International Institutions: Performance, Policy, Power*, Routledge.

³⁸ Laatikainen, K. & Smith, K. (eds) (2006) ‘The European Union at the United Nations: Intersecting Multilateralisms’, Basingstoke, Palgrave.

³⁹ 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’. *Journal of Common Market Studies*, 45(5), 969-998.

⁴⁰ Jin, X., & Hosli, M. O. (2013). ‘Pre-and Post-Lisbon: European Union Voting in the United Nations General Assembly’. *West European Politics*, 36(6).

⁴¹ Gavvas, M. (2010). ‘Consolidation or cooperation: The future of EU development cooperation’. German Development Institute/Deutsches Institut für Entwicklungspolitik (DIE).

⁴² Lavenex, S., & Schimmelfennig, F. (2009). ‘EU rules beyond EU borders: theorizing external governance in European politics’. *Journal of European Public Policy*, 16(6), p. 791

⁴³ Jørgensen, K. E., & Wessel, R. A. (2011). ‘The position of the European Union in (other) international organisations: confronting legal and political approaches’. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. Cheltenham: Edward Elgar 2011, p. 285.

⁴⁴ Vogler, J. (1999). ‘The European Union as an actor in international environmental politics’. *Environmental Politics*, 8(3), p. 29

⁴⁵ Jørgensen, K. E., & Wessel, R. A. (2011). ‘The position of the European Union in (other) international organisations: confronting legal and political approaches’. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. Cheltenham: Edward Elgar 2011, p. 263.

⁴⁶ Jørgensen, K. E., & Wessel, R. A. (2011), p. 275.

EU modes of governance”.⁴⁷ Therefore, within the institutionalist theories the possibility of incorporating the legal competence framework argument is most clear.

Especially in the *principal-agent* institutionalist theory approach, the EU is ‘allowed’ to be an actor and could also pursue its own interests in world politics.⁴⁸ The principal-agent theory is also flexible utilizable, although not limitless. As Maher et al. (2009) put it: “apply liberally, but handle with care”.⁴⁹ Until now, principal-agent theory is essentially used in policy domains with exclusive EU competences such as trade policy. Furthermore, principal-agent theory seems more oriented towards control mechanisms than enabling cooperation.⁵⁰

Moreover, actorhood can be a ‘connecting’ fundamental concept. Actorhood can be defined as the capacity of the EU to behave actively and deliberately in relation to others.⁵¹ The position of the EU as an ‘actor’ has until now been viewed differently from both disciplines. For legal scholars it is widely recognized that the EU as an actor has to cope within a ‘strongly state-oriented external legal framework’⁵² in international organisations. In political theories it is not very common to see the Union as an actor in international organisations, instead Member States are the main focus

The new constellation of the EU in external (environmental) relations makes it possible to connect these viewpoints. In a recent document on EU statements⁵³ in multilateral organisations the term ‘EU Actor’ was used to denote those actors competent to represent the Union in international organisations as provided in the Treaties, i.e. the President of the European Council, the Commission, the High Representative and the EU Delegations. The EU as actor can thus in most cases not be seen as completely independent from Member States. Especially when competences are shared, the EU (and Member States) do not function as an autonomous actor.

3. Case-Study UNFCCC COP Climate Change negotiations: Methodology

“Although the spotlight of public attention will fall upon grand multilateral

⁴⁷ Lavenex & Schimmelfennig (2009), p. 792

⁴⁸ See Ross, S.A. (1973) ‘The Economic Theory of Agency: The Principals Problem’. *American Economic Review*, 63(2): 134–139. See also Hawkins, D.J., Lake, D.A., Nielson, D.L. and Tierney, M.J. eds (2006) ‘Delegation and Agency in International Organisations’, Cambridge; Cambridge University Press. See also Jin & Hosli, 2011 & 2013.

⁴⁹ Maher, I., Billiet, S., & Hodson, D. (2009). ‘The principal-agent approach to EU studies: Apply liberally but handle with care’. *Comparative European Politics*, 7(4), p. 409.

⁵⁰ Delreux, T., Drieskens, E., Kerremans, B., & Damro, C. (2012). ‘The External Context Matters: The EU in International Negotiations’, book chapter in Costa, O., & Jørgensen, K. E. (Eds.). (2012). ‘The influence of international institutions on the EU: when multilateralism hits Brussels’. Palgrave Macmillan.

⁵¹ Sjöstedt, G. (1977), ‘The External Role of the European Community’, Farnborough: Saxon House.

⁵² Van Vooren, B. & Wessel, R.A. (2012). ‘External Representation and the European External Action Service: Selected Legal Challenges’. In: Blockmans, S., & Wessel, R. A. (2012). *Principles and Practices of EU External Representation*. CLEER Working Paper Series, 2012(5).

⁵³ Council of the European Union (2011), ‘General Arrangements for EU Statements in Multilateral Organisations’, (Brussels, 24 October 2011), 16901/11

meetings such as UNCED or the FCCC Conference of the Parties; the reality of environmental diplomacy is the day-to-day conduct of business between the EU, 164 states and numerous other organisations” (Vogler; 1999: p. 34.)

As the above quote reveals it is difficult to measure ‘environmental diplomacy’ as it is a large concept not even limited to the Conference of the Parties (COP) of the *United Nations Framework Convention on Climate Change* (UNFCCC). This section will give the parameters of this study and the data design (3.1 and 3.2). When applying theories or concepts to pragmatic empirical research also several methodological challenges arise, which will be summarized later in this section (3.3).

3.1: Climate Change Negotiations and Shared (External) Competences

One of the main objectives of the EU in terms of environment is ‘promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change’⁵⁴. In the policy field of environment, Member States and the EU share competences according to Article 4 TFEU and Article 191 TFEU. Within their respective spheres of competence the Union and Member States ‘shall cooperate’ with third countries and with the competent international organisations, according to the Treaty.⁵⁵ The policy field of environment and climate change is a typical example of a shared competence, where the EU and Member State actors may both engage in diplomatic relations with third (state) partners and international organisations according to the Treaty.⁵⁶ The underlying idea tested is that the legal concepts related to ‘shared competence’ to a sufficient degree define the political and diplomatic options of EU and Member State actors in the channels of UNFCCC as they enable and restrain the actors in their activities.

3.2: Data & Method of Data Analysis

The empirical findings presented in this study are based on multiple sources of information, which are brought together through triangulation. By now, five sem-structured in-depth interviews have been taken place, with (leading) negotiators from both the EU and Member States and (content-wise) experts having a more ‘external perspective’. In parallel, primary research has been conducted on written academic expert sources. Besides, Treaty articles and cases before the Court of Justice in the field of environment and climate, dealing with (external) shared competences and the ‘duty of sincere cooperation’ are analyzed.

⁵⁴ Article 191(1) TFEU.

⁵⁵ Article 191(4) TFEU.

⁵⁶ Art. 191 TFEU.

As regards the timeframe, the experts are especially asked to reflect from the Copenhagen climate change conference (2009) and the 'pre-Lisbon Treaty phase' until the preparations for the UNFCCC COP21 in Paris (2015) in the framework of the Lisbon Treaty. Also in the literature and case-law this distinction is followed. The main focus is on the large international climate change conferences (COP) but also the 'real' environmental day-to-day diplomacy is part of the analysis.

3.3 Methodological Challenges

The categories of competences can be considered 'ideal types'⁵⁷ and 'shared competence' in environment and climate change is just one of these 'ideal types'. Further, only five in-depth interviews have been undertaken. Especially considering that the work of the preferred study objects (EU and Member State diplomats) is surrounded with 'secrecy'⁵⁸ and anonymity it is necessary to hear more sides and also keep the interviews confidential. With the multiple sources interviewed (diplomatic/academic) and studied (expert sources/case-law) this study is intended to allow for triangulation of findings.

Despite that, the findings from this case-study can be best characterized only as 'plausibility probes' providing interesting avenues for future research. These plausibility probes would need further testing in other cases to become more robust findings⁵⁹. The in-depth interviews and 'plausibility probes' might however be a very relevant addition to the literature. Most studies focus only on voting outcomes and/or representation statements, but these only reflect the outcome of a "longer chain of decision-making and cannot capture the essence of the process before this final decision".⁶⁰

Further, the spotlight of academic research will mostly fall on the grand multilateral meetings, but as Vogler (1999) rightly states "the reality of environmental diplomacy is the day-to-day conduct of business between the EU, 164(+) states and numerous other organisations".⁶¹ To operate effectively it is necessary to become more aware of the actor characteristics of the EU and legal ways in which this is determined on a case-by-case basis. This paper is presented as a contribution to this understanding.

4. Findings

⁵⁷ Van Schaik, L.G. (2013) 'EU Effectiveness and Unity in Multilateral Negotiations: More than the Sum of its Parts?', Palgrave Macmillan. See also Eeckhout, P. (2004) 'External Relations of the European Union: Legal and Constitutional Foundations', Oxford EC Law Library.

⁵⁸ K. Raube, 'The Construction of the European External Action Service', 2008 *Centre for European Studies*, p. 4.

⁵⁹ George, A. L., & Bennett, A. (2005). 'Case studies and theory development in the social sciences'. MIT Press.

⁶⁰ Jin, X., & Hosli, M. O. (2011). 'Pre-and Post-Lisbon: European Union Voting in the United Nations General Assembly', Paper to be presented at the Workshop „*Decision-making in the European Union Before and After Lisbon*“, Leiden University, 3-4 November 2011, p. 4.

⁶¹ Vogler, J. (1999). 'The European Union as an actor in international environmental politics'. *Environmental Politics*, 8(3), p. 44.

*“the distribution of competence in EU external relations is a dynamic rather than a fixed process”
(translated from website Dutch Ministry of Foreign Affairs⁶²)*

According to the Lisbon Treaty the EU and Member States share competences in the environmental (and climate change) field and thus in climate change negotiations.⁶³ In this section it is described *how* the Treaty, further delegation based on the Treaty, and (principles from) case-law affect negotiators from the EU and Member State actors in international climate change negotiations with third parties outside the EU (4.1). This will be followed by an analysis inquiring the effect of the broad legal competence framework (4.2) as compared to other possible other theories and variables (4.3). As it will be deemed plausible that the legal competence framework is important enough to integrate in existing political theories it will be argued that the ‘principal-agent theory’ and the ‘actorness’ concept would be the most promising options (4.4).

4.1 Influence shared competences on EU climate change negotiations

The ‘shared competences’ legal framework has effect on power relations in international climate negotiations in at least three ways. First, as a general basis the broad-spectrum delegation of (external) competences is fixed in the Treaties. This is already an important step. As is argued by authors such as Jørgensen and Wessel (2011) it makes a whole lot of difference whether a competence is exclusive, shared or supportive for (external) power relations. The European Commission is the actor to speak with in the World Trade Organization as this is an ‘exclusive’ EU competence. In international organizations where the EU and Member States ‘share competences’ more fine-tuning is necessary. In reality shared competences is “simply an umbrella term” with the consequence that there is significant variation as to the division of competences in different areas of EU law.⁶⁴ It is for example widely acknowledged that the power relations in policy areas of environment and development aid, while both shared competences, differ as the external powers of the Union in the latter field are less strong than the powers in the environmental field.⁶⁵ As one of the diplomats put it: sharing competences does not implicate a ‘fifty-fifty’ relationship.⁶⁶ Nevertheless, it gives a broad idea of power relations. As Delreux (2006)⁶⁷ argues: “key to understand

⁶² Original text: “de bevoegdheidsverdeling op het terrein van de externe betrekkingen is niet statisch, maar dynamisch”. See <http://www.minbuza.nl/ecer/dossiers/externe-betrekkingen/exclusieve-en-gedeelde-externe-bevoegdheden-van-de-eu.html> on 21-12-2014.

⁶³ Art 4(2) TFEU

⁶⁴ Craig, P., & De Búrca, G. (2011). ‘EU law: text, cases, and materials’. Oxford University Press, p. 85.

⁶⁵ Duke, S., & Blockmans, S. (2010). ‘The Lisbon Treaty stipulations on development cooperation and the council decision of 25 March 2010 (Draft) establishing the organisation and functioning of the European External Action Service’. *CLEER Legal Brief*, 4, p. 8.

⁶⁶ Interview 2 april 2014.

⁶⁷ 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*, 6(3), p. 232.

the negotiation behavior of the EU on the international environmental scene is the domestic (EU) decision-making process”.

Secondly, it is not only the Treaty that legally defines the conduct of power relations in international organizations, also the case-law from the Court of Justice of the EU can be considered as advice or obligation. One example is the ‘doctrine of parallelism’ between internal and external EU competences: when the European Union has elaborated measures in a particular policy area internally, it is able to conduct external relations in that domain. In that way, one of the Member State foreign services seems to be right on their website in the opinion that the EU external competence framework is more of a dynamic than static process⁶⁸.

Another example from the case-law is the ‘duty of sincere cooperation’. In the Lisbon Treaty this ‘duty’ has been codified in Article 4(3) TEU.⁶⁹ This ‘loyalty principle’ is referred to in the case-law of the Court of Justice in the European Union already since the 1970s. Traditionally this duty was only used by the Court in case of (mixed) agreements in EU external relations. Recently, also the conduct of political relations and negotiations in international organisations have been scrutinized by using this duty. For example in *Commission v Greece (2009)*⁷⁰ the Court explicitly stated that also in the adoption of positions within international organisations this duty is important and Member States have to take into account Union obligations. According to case-law of the Court there is an ‘obligation of result’ for Member States in case of exclusive competence, while there is an ‘obligation of conduct’ when competences are shared.⁷¹ Thus, especially on issues of exclusive EU competence Member States cannot act on their own if no Union position is adopted. The effect on issues of shared competences is more vague, but *Commission v Sweden (PFOS, 2010)*⁷² showed that already a ‘common strategy’ within the Council is enough to let an individual Member State (here: Sweden) refrain from action.

Thirdly, there is a more specific delegation process as part of day-to-day politics in the EU. This specific delegation process *is derived from* the delegation process of (shared) competences. How does it work in practice? The EU and Member States have invented specific types of ‘actors’ in the

⁶⁸ Original text: “de bevoegdheidsverdeling op het terrein van de externe betrekkingen is niet statisch, maar dynamisch”. See <http://www.minbuza.nl/ecer/dossiers/externe-betrekkingen/exclusieve-en-gedeelde-externe-bevoegdheden-van-de-eu.html> on 21-12-2014.

⁶⁹ Art. 4(3) TEU is stated as follows: The Union and Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives

⁷⁰ Case C-45/07, *Commission v. Greece*, [2009] ECR I-701

⁷¹ Van Elsuwege, P., & Merket, H. (2012). ‘The role of the court of justice in ensuring the unity of the EU’s external representation’. In: Blockmans, S., & Wessel, R. A. (2012). *Principles and Practices of EU External Representation*. CLEER Working Paper Series, 2012(5).

⁷² Case C-246/07, *Commission v Sweden (PFOS)* [2010] OJ C161/3.

multilateral negotiations, so-called 'lead negotiators' and 'issue leaders'. These negotiators and issue leaders are chosen among the EU and Member State representatives, independent upon their institutional origin (see figure 1). They are chosen because of their knowledge on a specific subject. As a result, the EU adopts a 'single voice through multiple mouths' arrangement, in which those multiple mouths either belong to a clearly defined set of EU negotiators (Commission, presidency, lead countries) or to EU negotiators and Member States alike.⁷³ This arrangement is an indirect consequence of the fixed 'shared competences' in the environmental field, based on the EU Treaties.

4.2 'Independent' effect from shared competences?

As the three 'effects' above reveal it seems necessary to take the legal competence framework into account while analyzing climate change negotiations and (political) power relations with the outside world. In what way is the behavior in international negotiations an 'independent' and primary effect of the legal competence framework which would not happen without a legal framework? Yet, as some authors put it the legal division of labour "is seldom strictly followed in practice".⁷⁴ Why should it then be incorporated in political theories?

According to one of the interviewees there are three notable 'legal' sources relevant for climate negotiations: 1. The Treaty and competences 2. EU legal status in international organisations and 3. working arrangements. Especially the third source (working arrangements) is very content-specific. For example, the 'issue leaders' and 'lead negotiators' are defined in these arrangements, not specifically based on, but derived from the Treaty framework and case-law of the Court of Justice. The procedures and rules are the 'hunting ground', where the negotiators bases his arguments upon.⁷⁵

Sometimes, the Member States consider EU competence to be a 'legal straitjacket' that 'forces them to coordinate'; they suspect it to be merely used by the Commission to expand its powers.⁷⁶ Only then, when issues are getting 'really political', rules, procedures and legal issues are becoming less relevant⁷⁷. In the run-up to this event legal rules, under which the competence framework and the case-law of the Court of Justice, are indeed very relevant. With the 'Copenhagen' reference climate change is often portrayed as a very political, conflict-driven policy area. Nevertheless, the interviews

⁷³ Delreux, T. (2014). 'EU actorness, cohesiveness and effectiveness in environmental affairs', *Journal of European Public Policy*, 21(7), p. 1030.

⁷⁴ Delreux, T. (2009). 'Cooperation and Control in the European Union The Case of the European Union as International Environmental Negotiator', *Cooperation and Conflict: Journal of the Nordic International Studies Association*, 44(2), p. 190.

⁷⁵ Interview, 2 April 2014

⁷⁶ 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.

⁷⁷ Interview, 2 April 2014

sketch a quite friendly policy negotiating environment, especially within the EU, while negotiating a common position. It could be argued that this more friendly environment is enabled by the legal competence framework. Thus, the framework itself does have an independent and primary effect and it could be helpful to amend existing political theories taking this framework into account.

4.3 Other explanatory causes and theories

Legal competence is an important determining factor, but not the only one. In the political theories on climate change negotiations, it has often been claimed that EU socialization, preference heterogeneity and/or (large) Member State power explain whether EU and Member State actors are enabled or restrained in political and diplomatic negotiations at international organisations. These other explanatory independent variables have also been asked in the interviews.

EU socialization means that EU Member States' representatives involved in deciding on and negotiating the EU position in international organisations first and foremost adapt a European orientation.⁷⁸ According to one of the interviewees the social 'norms' are very relevant⁷⁹. Academics even observed 'groupthink' in the field⁸⁰. These social norms cannot be put aside, but it might be that legal-institutional norms and the whole procedure derived from the legal competence framework to an extent accelerates these social norms.

Preference heterogeneity and (large) Member State power are also primary causes of EU and Member State negotiation behavior according to the literature. However, environment and climate change are 'typical EU policy' fields, where of course preference heterogeneity exists, but there is a general tendency towards cooperation. One of the diplomats also sees an explanation in these cooperation tendency for the 'wait and see' approach of the European Commission as regards legal battles; the Commission would be less inclined to start legal conflicts in this policy field because of the general tendency towards cooperation. Furthermore, large Member States, such as the United Kingdom, see the overall added value of EU cooperation and EU competence in multilateral climate change negotiations⁸¹ which might also help.

Also other possible explanatory causes and effects are identified. Of course, the position of other (powerful) third state actors such as the BRICS countries or the United States could make it more effective for the EU and Member States to work together, especially when their position is

⁷⁸ 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.

⁷⁹ Interview, 24 January 2014

⁸⁰ 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.

⁸¹ Foreign & Commonwealth Office (2014) 'Review of the Balance of Competences between the United Kingdom and the European Union: Environment and Climate Change', February 2014.

contradictive or less ambitious than the EU and there is a ‘compelling’⁸² negotiating environment. Further, the academic or professional background from the negotiator itself could have an effect on the conduct of negotiations. In the run-up to the large UNFCCC COP climate change conference more environmentally oriented policy officers prepare the negotiations, sharing not only competences but also background and knowledge. Only in the final phase of the conference political leaders are setting the stage, which could have the effect of more (political) conflict.⁸³ Also, the national origin of a negotiator could have effect as the “question of competences is fundamentally also one of national constitutional norms”⁸⁴: in federal countries such as Germany it is more common to take competences into account than in more unitary nation states such as the United Kingdom. Lastly, the statute of the international organization could have the effect that negotiators should work together towards a common EU stance.⁸⁵

4.4 Application shared competences to theories and concepts: Cooperation or Conflict?

On the basis of the interviews, literature, case-law, Treaty articles and working arrangements it can be argued that the legal competence framework deserve a more prominent role in existing political theories. Especially principal-agent theory and the ‘actorness’ concept have the possibility of ‘adopting’ the competence framework.

The principal-agent theory is more oriented on control mechanisms than cooperation⁸⁶ and is more straightforward in policy areas of exclusive EU competences such as trade⁸⁷. Nevertheless, the theory is more of a heuristic tool than a fixed theory: it can be applied ‘liberally’, although it should be ‘handled with care’.⁸⁸ It is in constant evolution. More recently, principal-agent studies have for example gone beyond emphasizing the importance of internal explanatory variables (from principal to agent) arguing that the external environment also affects the EU negotiator’s discretion, for example in the WTO or in the loose settings of the G8⁸⁹. The (shared) legal competence framework

⁸² A compelling external environment is a negotiation setting with quasi-global participation, low relative bargaining power for the EU and high pressure on the Member States not to jeopardize a long and laborious international negotiation process by rejecting the agreement that their EU negotiator has reached on their behalf, see Delreux, T. (2014). ‘EU actorness, cohesiveness and effectiveness in environmental affairs’, *Journal of European Public Policy*, 21(7), p. 1020.

⁸³ Interview 21 November 2014

⁸⁴ Weiler, J. H. (2002). ‘A constitution for Europe? Some hard choices’, *Journal of Common Market Studies JCMS*, 40(4), p. 574.

⁸⁵ Blockmans, S., & Wessel, R. A. (2012). *Principles and Practices of EU External Representation*. CLEER Working Paper Series, 2012(5).

⁸⁶ Delreux, T. (2009). ‘Cooperation and Control in the European Union The Case of the European Union as International Environmental Negotiator’, *Cooperation and Conflict: Journal of the Nordic International Studies Association*, 44(2), p. 190.

⁸⁷ Dür, A., & Elsig, M. (2011). ‘Principals, agents, and the European Union’s foreign economic policies’. *Journal of European Public Policy*, 18(3), p. 325.

⁸⁸ Maher, I., Billiet, S., & Hodson, D. (2009). ‘The principal-agent approach to EU studies: Apply liberally but handle with care’. *Comparative European Politics*, 7(4), p. 409.

⁸⁹ See a.o. Niemann, A., & Huigens, J. (2011). ‘The European Union’s role in the G8: a principal–agent perspective’. *Journal of European Public Policy*, 18(3), p. 420-442.

and its effects on climate change negotiations would add complexity, but it would fit within the framework of principal-agent theory as it is oriented on actors. While it is not necessary for principal-agent theory that the contract between actors is explicit or legalized⁹⁰, this would actually make the link between principal and agent more clear.

Within the policy area of climate change, defined by shared competences and in the context of grand multilateral meetings like the UNFCCC COP, the 'principal' and 'agent' roles are less clear-cut and would come in different settings. This is not a new finding in principal-agent theory. Hodson (2009:457)⁹¹ wrote before: the lucidity of the principal-agent approach is such that, for a given policy domain, a large number of principal-agent relationships may be conceivable. More problematic seems to be that the 'principal' and 'agent' imply a more hierarchical relationship.

Taking into account the 'shared' nature of competences also the concept of international 'actorness' is worth exploring in this regard. The EU and Member State actors are mostly working together. On the basis of interviews and expert sources it can be concluded that 'Copenhagen' has been an unfortunate example of climate negotiations, where the EU (and Member State) actors did "not sufficiently adjust" themselves to the new multipolar environment.⁹² This is not symptomatic for standard negotiations of EU and Member State actors at UNFCCC where information is shared and internal negotiations are mostly conducted in a friendly environment.

It would therefore be valuable to take the concept of 'EU actor' into account. As mentioned earlier the term 'EU Actor' was coined in an official document⁹³ to describe those actors competent to represent the Union in international organisations as provided in the Treaties, i.e. the President of the European Council, the Commission, the High Representative and the EU Delegations. The EU as actor can thus in most cases not be seen as completely independent from Member States. Even more important in climate change negotiations: the 'EU negotiators' and 'issue leaders' are chosen independent of institutional origin, but representing the EU and Member States together. These 'actors' based on the working arrangements are not mentioned in the Treaties, but seem to be consequential from the 'shared competences' in the environmental field.

⁹⁰ Hawkins D, Lake D, Nielson D, et al. (eds) (2006) 'Delegation and Agency in International Organizations', Cambridge: Cambridge University Press

⁹¹ Hodson, D. (2009). 'Reforming EU economic governance: A view from (and on) the principal-agent approach'. *Comparative European Politics*, 7(4), p. 457.

⁹² Van Schaik, L. (2013) 'The EU's disappointing leadership on climate, or should we be less judgemental?' chapter in Jørgensen, K.E. en K.V. Laatikainen (eds) (2012), *Routledge Handbook on the European Union and International Institutions: Performance, Policy, Power*, Routledge.

⁹³ Council of the European Union (2011), 'General Arrangements for EU Statements in Multilateral Organisations', (Brussels, 24 October 2011), 16901/11

5. Conclusion and Further Research

The main question of this paper has been as follows: *to what extent does the legal concept of 'shared competence' enable or restrain EU and Member State actors in climate change negotiations and would it be possible to include the legal competence framework in existing political theories?"* To answer this question a study has been conducted on climate change and environment negotiations in the United Nations (UNFCCC) framework. Five semi-structured in-depth interviews has been conducted, with 'lead negotiators' and 'issue leaders' from the EU and Member States as well as external (academic) experts. Further, academic expert sources, the Treaty provisions, case-law of the Court of Justice of the EU and working arrangements have been consulted. Ideally, a larger, comparative, case-study had been undertaken. Therefore, the conclusions can only be valued as 'plausibility probes', providing interesting avenues for future research, but needed further testing in other cases to become more robust findings⁹⁴

On the basis of the above analysis the legal concept of 'shared competence' does enable and restrain EU and Member State actors in climate change negotiations in three ways. First, via the fixed provisions in the Lisbon Treaty on environment and 'shared competences' . Secondly, the case-law from the Court of Justice of the EU can be considered as an advice or obligation working together via principles such as the 'duty of sincere cooperation' or the 'doctrine of parallelism'. Thirdly, there is a more specific delegation process as part of day-to-day politics in the EU via working arrangements. These working arrangements would have been different in case of exclusive competences. Only when issues becoming more 'political', the legal framework seems to be less relevant.

Until now, the effects from the shared legal competence framework have not been (fully) recognized in existing political theories. Theories focused for example on supranationalism or intergovernmentalism take either EU or Member State actors as leading study object. Further, theories such as social constructivism focus on the social norms and behavior largely independent from the legal norms behind it. Instead, institutionalist theories such as the 'principal-agent theory' could function as one of the nodal points of law and politics. However, this theory, while flexible, is more oriented on control mechanisms ('restraining' the actors) than cooperation ('enabling') mechanisms. Moreover, implying a hierarchical (causal) relationship between 'principal' and 'agent', the theory has more extensively been applied to policy areas of exclusive competences in EU external relations such as trade. Despite that, with recent theoretical contributions on more informal institutions such as the G8, taking into account the external environment, it has the potential of

⁹⁴ George, A. L., & Bennett, A. (2005). 'Case studies and theory development in the social sciences'. MIT Press.

flexible application of the legal competence framework. Also theoretical concepts such as ‘actorness’ could connect more with literature behind the (shared) legal competence framework, especially when the ‘EU actor’ is defined more broadly as ‘representing’ the EU and Member States together. This would be more connected with EU practice in climate change negotiations, where ‘lead negotiators’ and ‘issue leaders’ are chosen to represent the EU and Member States together, independent of institutional origin.

Further research

The research conducted in this paper can pave the way for further research in EU external relations, where legal and political theories are combined and confronted.⁹⁵ Regarding the influence of the legalistic framework one of the more overlooked actors in EU external environmental relations is the Court of Justice of the European Union: as adjudicator of competences and by giving Internal legislation an external effect. Most authors focus on the effect of the Lisbon Treaty on EU external relations. However, this paper makes clear that internal legislation and case-law of the Court of Justice can have a more direct effect on (external) climate change negotiations. This would then confirm that the division of competences in EU external relations is a more ‘dynamic’ than ‘fixed’ process.

To become more robust findings larger comparative case-studies are needed. Policy areas at more international organisations where the EU has different competences (and the Court different powers) can then be added, including for example trade (WTO, exclusive competence), development (post-2015 negotiations, parallel competence), social policies (ILO, coordination), culture (UNESCO, supporting competence) or military issues (NATO, CFSP competence). Also, more informal (environmental) international cooperation organs and the role of ‘EU actors’ can be evaluated as well as a comparison with ‘internal EU’ environmental negotiations. As regards methodology, in-depth interviews very much help, but it could also be that a larger ‘survey’ among EU and Member State diplomats contributes to more robust findings on the influence of the EU legal competence framework on ‘actors’ at multilateral negotiations.

Further, the EU and Member States share competences in the (external) environment and climate change policy area, but the EU and the World share a common future and share the earth. Therefore it could help to include the ‘external’ component and evaluate EU and Member State actors versus

⁹⁵ For a more extensive argument why these disciplines should be combined, see Jørgensen, K. E., & Wessel, R. A. (2011). ‘The position of the European Union in (other) international organisations: confronting legal and political approaches’. In Koutrakos, P. (ed) *European Foreign Policy: Legal and Political Perspectives*. Cheltenham: Edward Elgar 2011, p. 286.

third parties such as the BRICS countries or other Regional Integration Organizations. It might also be relevant to look at the effect of the legal position of the EU in an international organization (full membership, observer status, participation by Member States only) on the influence of the EU in that particular policy area.⁹⁶ Also, it could be helpful to look for an ‘outsider perspective’ on the negotiations of the EU and Member State actors in international organisations and their contribution to multilateralism, diplomacy and effective policy-making.

6. Tables & Figures

Table 1: Typology of Competences in Lisbon Treaty⁹⁷

Main type Competence	Article in Treaty	Examples policy areas
Exclusive competence	Article 3 TFEU	Monetary policy (Eurozone), fisheries, commercial policy, competition rules internal market,
Shared competence	Article 4 TFEU	Internal market, social policy, cohesion policy, agriculture, environment, consumer protection, transport, energy, Freedom, Security, Justice,
Supporting competence	Article 6 TFEU	Industry, culture, civil protection, tourism, education, youth, sport, civil protection, administrative cooperation
Other types of competence		
Parallel competences (specific type shared)	Article 4(3) & 4(4) TFEU	Research, technological development, space, development cooperation, humanitarian aid
CFSP-type of competence	Article 24 TEU	Common Foreign and Security Policy (no competence Court of Justice of the EU to give judgment).
Coordination EU	Article 5 TFEU	Employment, social policies, economic policies

Table 2: Typology of Theories on EU external relations and ‘incorporating’ possibilities

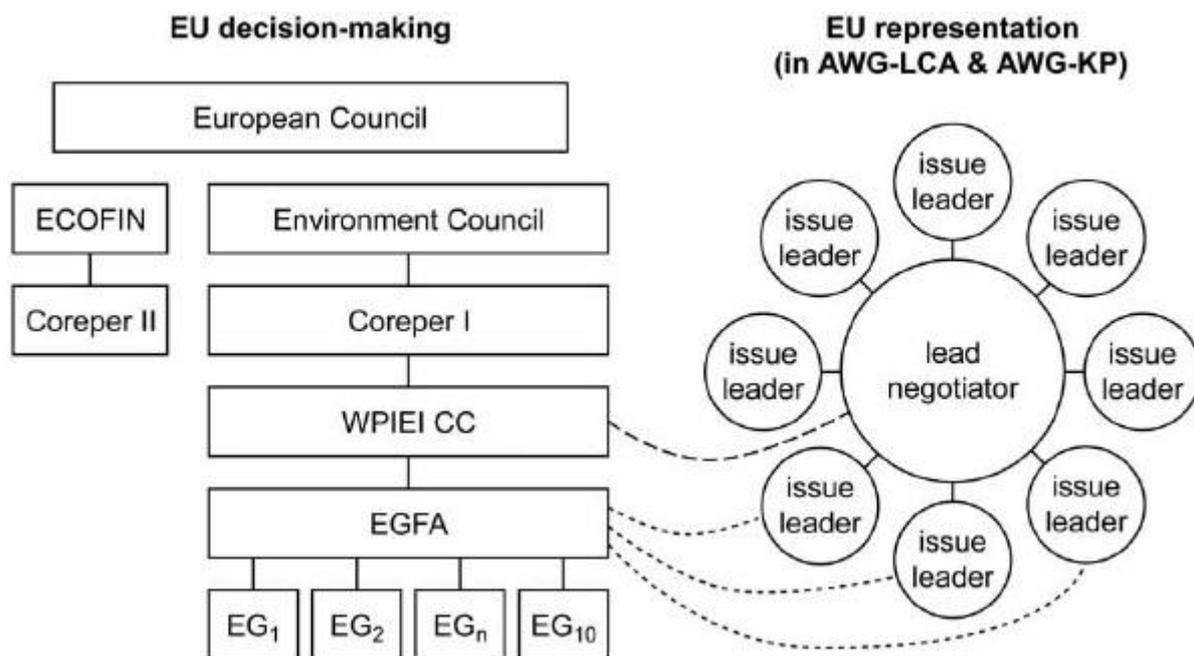
Theory	Intergovernmental	vs	Possibility incorporating legal
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⁹⁶ *Ibid.*

⁹⁷ Own compilation on the basis of Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union

	supranational?	competence framework?
Neofunctionalism	Supranational	No
Material functionalism	Intergovernmental	No
Liberal Intergovernmentalism	Intergovernmental	No
Social constructivism	Not relevant	Partly (norms)
Institutionalism	Incorporating both supranational and intergovernmental elements	Yes, especially 'principal-agent' theory

Figure 1: Lead Negotiators and Issue Leaders in EU's external climate change policy-making (Delreux/Van den Brande; 2013)⁹⁸



Nb: Coreper= Committee of Permanent (Member State) Representatives, WPIEI= Working Party on International Environmental Issues, CC= Climate Change EGFA= Expert Group on Future Action, EG=Expert Group, AWG-LCA=Ad Hoc Working Group on Long-term Cooperative Action under the Convention, AWG-KP= Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol.

⁹⁸ As taken over from Delreux, T., & Van den Brande, K. (2013) 'Taking the lead: informal division of labour in the EU's external environmental policy-making'. *Journal of European Public Policy*, 20(1), p. 124.

7. Appendix

Five semi-structured interviews have been conducted with 'EU and Member State actors', experts and diplomats. These interviews took place at:

- Friday 24th of January, 2014
- Friday 7th of March, 2014
- Friday, 14th of March, 2014
- Wednesday, 2nd of April, 2014
- Friday, 14th of November, 2014

For reasons of anonymity, necessary in diplomatic service, the names are not openly published in this paper. Whenever necessary, please contact the author for more details about the interviews at a.kamphof@umail.leidenuniv.nl.