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Switzerland's Flexible Integration in the EU: A Conceptual Framework

Lavenex, Sandra

How to cite

LAVENEX, Sandra. Switzerland's Flexible Integration in the EU: A Conceptual Framework. In: Schweizerische Zeitschrift für Politikwissenschaft, 2009, vol. 15, n° 4, p. 547–575. doi: 10.1002/j.1662-6370.2009.tb00145.x

This publication URL: <https://archive-ouverte.unige.ch/unige:76478>

Publication DOI: [10.1002/j.1662-6370.2009.tb00145.x](https://doi.org/10.1002/j.1662-6370.2009.tb00145.x)

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ARTICLE · DECEMBER 2009

DOI: 10.1002/j.1662-6370.2009.tb00145.x

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Switzerland's Flexible Integration in the EU: A Conceptual Framework

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Introduction¹

Notwithstanding the recurrent affirmations by Swiss public officials and eurosceptics that Switzerland is not and has no intention of becoming a member of the European Union,² it is by now a well-established understanding among academics that Switzerland is a case of “integration without membership” (Vahl and Grolimund 2006), “differentiated” (Cottier and Liechti 2006; Varwick 2007) or “limited integration” (Kux and Sverdrup 2000: 261). This particular notion of integration is substantiated by the country's degree of economic, societal, and cultural ties with its EU neighbours,³ and, of course, the fact that it has subjected itself to consider-

¹ Acknowledgements: This introduction and the articles by Sandra Lavenex, Dirk Lehmkuhl/Olivier Siegrist and Nicole Wichmann draw on a four-year research project entitled “Inside-Out: New Modes of Governance in relations with non-member states” within the NEWGOV consortium funded under EU-contract No. CIT1-CT-2004–506392. Other cases of external governance covered in the project included Norway under the EEA and four countries under the European Neighbourhood Policy. The author would like to thank the European Commission and the Swiss State Secretariat for Research for funding this research as well as the anonymous reviewer for his precious comments on this and the other contributions to this special issue.

² Formally, the Swiss government had placed a membership application in 1992, this has however never been activated since. Notwithstanding the europhobic Swiss People's Party request to withdraw this symbolic application, its maintenance has been justified by the strategic advantages it brings in strengthening Switzerland's bargaining position in bilateral negotiations (see *Neue Zürcher Zeitung* 11.06.2009: 15).

³ Just a few snapshots: In 2007/2008, roughly 65% of Swiss exports and 80% of Swiss imports were traded with the EU, over 1 million EU-nationals are living in Switzerland (total population 7.7 million, share of foreigners approximately 21%, 62% of which are EU nationals), and more than 200'000 persons work as border commuters (statistics from the Swiss integration office, Online: www.europa.admin.ch).

able sections of the EU's *acquis communautaire* through the conclusion of various bilateral sectoral agreements.⁴

A rich academic literature analyses the negotiation processes leading to the bilateral agreements (Dupont, Lutterbeck and Sciarini 1999; Dupont and Sciarini 2007; Dupont, Eggli and Sciarini 2001), examines the contents and implications of Switzerland's association with the EU (Church 2007; Freiburghaus 2009; Schwok 2009 and, from a legal perspective, Felder and Kaddous 2001 and Kaddous and Jametti-Greiner 2006), or scrutinises the repercussions of EU rules on Swiss policies, politics and political structures (Fisher, Nicolet and Sciarini 2002; Lavenex and Uçarer 2004; Papadopoulos 2008). Yet, we know relatively little about the daily practice in the implementation of this specific form of flexible integration, the institutional forms of legal and organisational participation in EU policies, and, in particular, the substantive qualities of Switzerland's unique status as a "quasi" member state: Is Switzerland's association to the European Union – as Swiss public officials often like to put it – a form of "pragmatic bilateralism" (Stappacher 2008: 144), in which Switzerland and the EU cooperate in areas of mutual interest, but in which the former basically retains its political sovereignty? Or is it a "quasi-colonial" setting, as Alfred Toviás has characterised the European Economic Area (EEA) (Toviás 2006), and in which Switzerland has willingly marginalised itself as a passive executor of EC law (Gabriel and Hedinger 2002: 707)? For one is sure: as a non-member state, Switzerland is not represented in the EU's government bodies, the Commission, Council⁵ and Parliament. As a consequence, it has no say in the formal legislative arena in which most of the *acquis* is formulated to which it then abides.

Yet: the complex, multilevel and polyarchic system of European policy-making (Schmitter 1996) may offer other channels of influence for

⁴ In addition to the Free Trade Agreement of 1972, a total of hitherto 16 bilateral agreements have been concluded in two rounds of negotiations. The bilateral agreements I concluded in 1999 cover the free movement of persons, land transport, air transport, agriculture, research, public procurement and technical barriers to trade. The bilateral treaties II concluded in 2004 extend to processed agricultural goods, statistics, association with MEDIA, association with Schengen/Dublin, taxation of savings, the fight against fraud, association with the European Environment Agency, pensions of EU officials, education, occupational training and youth. Since March 2008 negotiations have begun on electricity and on the free trade in agricultural goods and cooperation in health matters (Integrationsbüro 2008).

⁵ The exception is the Schengen Association, which gives Switzerland observer status in all Council formations (see the contribution by Nicole Wichmann in this special issue).

non-member states outside the formal legislative arena. This special issue investigates the scope and the limits of participatory openings that have hitherto been neglected both in the academic literature and political discourse, and thereby proposes a third perspective on Swiss–EU relations. This perspective starts from the observation that the exclusive focus on the EU's central decision-making bodies dismisses the fact that the EU *acquis* arises from a variety of sources, including decentralised, functional institutions. In contrast to territorially bounded, hierarchical government, sectoral governance is often only loosely coupled with the legislative arena. With the advent of so-called new modes of horizontal governance, independent regulatory agencies, comitology committees, or policy networks have gained increasing importance in the EU polity. These new modes of “policy-making without legislating” (Héritier 2002) have become an integral part of EU governance in various sectors especially from the mid-1990s onwards (Héritier and Lehmkuhl 2008; Kohler-Koch and Rittberger 2006; Tömmel and Verdun 2009; Sabel and Zeitlin 2009). Usually referred to as “network governance”, these horizontal, process-oriented forms of policy-making in individual sectors contrast with the traditional, more hierarchical and centralised “Community method” of integration through supranational legislation.

Whereas the doctrine of the unity of EC law and the “Community method” of supranational decision-making suggest few openings for the flexible, participatory integration of outsiders, the same cannot be said for network governance. On the one hand, the specialised, sectoral logic of agencies, comitology committees and policy networks may privilege functional considerations of interdependence and expertise over political considerations of EU membership in admitting non-member states. In cases where these fora are also open to non-state actors such as scientific experts or industry representatives, the relevance of EU membership diminishes even more. On the other hand, the horizontal modes of governance in these settings lower the hurdles for the participation of Swiss public officials. They reduce the scope for adaptation pressure by emphasizing voluntary forms of interaction based on consensus and mutual learning. In addition, given that EU agencies typically operate as hubs in a network of national experts (Eberlein and Newman 2008: 29), the government officials involved enjoy a larger degree of independence from their states' central administration, than other state officials subordinate to bureaucratic chains of command (Eberlein and Newman 2008: 32).

In this special issue, we explore the integrative potential of these new forms of network governance for Switzerland. The individual contributions present detailed case studies of the modes of governance and the opportunities for organisational participation in different areas of Swiss–EU relations that range from the more technocratic to the more politicised policy fields (research, environmental, energy, transport policy and justice and home affairs (JHA)). The case studies reflect variation on both main explanatory variables highlighted in the theoretical framework: the internal mode of governance (varying between the “Community method” and network governance) and the constellations of interdependence. In a nutshell, and echoing neofunctionalist assumptions, the common theoretical framework suggests that Switzerland is more likely to be part of EU network governance in cases where interdependence is strong and symmetric, and where politicisation is low. The degree to which Switzerland, as a non-member state, is able to exert influence in such networks, however, will depend on its capacity to provide expertise and, in so far as participation involves significant funding, money. The relevance of these participatory openings in the broader context of an EU policy, however, and their relationship with the more hierarchical forms of Community legislation, needs to be answered on a case by case basis.

This introductory conceptual article starts with a short characterisation of the overarching legal and organisational determinants of Swiss–EU bilateralism. It follows a brief section on the phenomenon of network governance before we introduce the conceptual and theoretical framework structuring the special issue. The article ends with a synopsis of the different contributions to this special issue and summarises the main findings.

Swiss–EU Bilateralism: A Fragmented System of Association

A distinctive feature of Swiss–EU bilateralism is the absence of an overarching framework agreement laying down the macro-institutional determinants of the association⁶. Unlike other EU neighbourhood policies that imply the extension of (parts of) the Union’s *acquis communautaire* to third countries such as the European Economic Area (EEA) or the Europe-

⁶ Legally speaking, Swiss–EU-Treaties are not EU association treaties in the strict sense. We speak nevertheless of Swiss–EU association in order to denominate the special linkage between the two political systems.

an Neighbourhood Policy (ENP), Swiss–EU relations are based on a set of sector-specific agreements and lack central coordinating institutions. The association is structured by sixteen core bilateral agreements, concluded with the EU in two packages in 1999 and 2004, and over one hundred secondary agreements. As a consequence, each bilateral sectoral agreement is the result of a negotiation process in which both sides try to minimise commitments and maximise benefits.⁷

It follows from these negotiations that, in contrast to the EEA, the EU's *acquis communautaire* is not automatically the basis of the agreements; the consensus brought about by the negotiations can be referred to as the *acquis helveto-communautaire*. With the exception of those on air transport (Lehmkuhl and Siegerist in this issue) and the Schengen Association (Wichmann in this issue) the agreements fall short of being “integration treaties”. The legal obligations arising under the bilateral agreements come closer to traditional international than to supranational EC law. The maxim underlying the relations between the two parties is not that of “legal homogeneity” as in the EEA, nor that of legal “approximation” such as in the ENP but the recognition of the “equivalence of legislation”. In addition there is no systematic monitoring, neither judicial (such as in the EEA) nor political (ENP). The monitoring of compliance with the obligations contained in the bilateral agreements is ensured by each one of the parties on their respective territory.

Notwithstanding this formally weakly legalised structure, the EU leaves little doubt about the strong emphasis on its regulatory achievements as the yardstick for cooperation. The recognition of equivalence of legislation in fact bears a strong shadow of hierarchy. In practice this recognition amounts to the incorporation of EU legal instruments into Swiss law, because the EU almost only accepts legislation modelled on the *acquis* as “equivalent”. The EU instruments that must be included in Swiss legislation are listed in the annexes to the bilateral agreements. The competence to modify these “technical” annexes has, for the most part, been delegated to the mixed committees that are composed of Swiss and European representatives. The mixed committees established under the various bilateral treaties are in charge of managing both the technical and the political aspects of the bilateral agreements through information exchange and, when necessary,

⁷ The fragmentation of association relations, the transaction costs implied in dealing with the various bilateral agreements separately and the difficulties if not impossibility to coordinate and “steer” these cooperation relations has recently led both sides, the EU and Switzerland, to consider the possibility to conclude a framework agreement.

extension of EU legislation relevant to Switzerland. They are also the place where problems with the implementation of the Agreements are discussed, and thus they fulfil a sort of ad-hoc monitoring and dispute resolution function. Another de facto source of hierarchy in Swiss–EU relations results from the doctrine of “autonomer Nachvollzug” (autonomous adaptation), the voluntary alignment practiced by the Swiss authorities since the late 1980s. This stipulates that each new piece of legislation is evaluated with respect to its compatibility with EU norms.

Beyond the formal structures established in the context of the bilateral agreements, Swiss representatives have to different degrees gained access to sector specific institutions in the EU system such as committees, agencies and policy networks. These new modes of governance are introduced in the next section and are at the core of the case studies that make up this special issue.

Network Governance in the EU

The broader context for the changes in the patterns of policy making in Europe is generally referred to by the shift from interventionist to regulatory policies (Majone 1996). In the EU, the expansion of governance by committees, agencies and more informal policy networks can be traced back to the second half of the 1990s. It can be seen as a reaction to the dilemmas posed by the coincidence of a widening EU agenda; the limited administrative capacities of the European Commission and, at the same time, an increased need for expertise; the wish to improve implementation through the involvement of stakeholders; and a vanishing permissive consensus towards supranational integration through the Community method on part of the member states.

Composed of national civil servants as well as, sometimes, non-governmental experts, comitology committees fulfil two basic functions in the EU system of governance: they provide expertise in policy development and decision-making, by linking member states’ governments and administrations with the EU level, and they assist the European Commission in its executive functions at the stage of policy implementation. In various guises, committees are active at every stage of the political process within the EU machinery – assisting the Commission in drafting legislation, preparing the dossiers on which the Council takes decisions and supervising the

implementation of EC law by the Commission (Larsson and Christiansen 2008).

The proliferation of semi-autonomous agencies in the EU mirrors the proliferation of regulatory authorities in domestic political systems. As explained in the EU's White Paper on European Governance adopted in 2001: "the creation of further autonomous EU regulatory agencies in clearly defined areas will improve the way rules are applied and enforced across the Union" (Commission 2001: 24). The number of EU agencies has increased from four in 1993 to 22 "first pillar" agencies in 2009, plus six agencies in the "second" (Common Foreign and Security Policy) and the "third pillar" of the EU (Police and Judicial Cooperation in Criminal Matters). The different agencies are usually networks of national regulators or competent authorities and vary greatly with regard to their respective competences. Some of them are limited to the gathering of information (e.g. European Environmental Agency) while others fulfil autonomous regulatory functions (e.g. the European Agency for the Evaluation of Medicinal Products). Apart from offering an obvious relief for the central decision-making bodies of the EU, the Commission, the Council and the Parliament, governance by agencies may provide additional benefits which Michael Shapiro sees in a kind of "neo-functionalist" logic:

If currently, direct routes to further political integration of the Union are blocked ... further growth can be achieved indirectly through the proliferation of small, limited jurisdictions, allegedly "technical agencies" that will appear politically innocent.

Secondly,

by stressing the technical and informational functions of these agencies, ..., there is undoubtedly the hope that technocrats will take over these agencies from the politicians. And the technocrats for each of these agencies, it is hoped, will create Europe-wide epistemic communities whose technical truths transcend intergovernmental politics (Shapiro 1997: 281–82).

These alleged qualities make such network organisations particularly interesting for the integration of "non member" states – in so far as political membership criteria may be superseded by functional, "technocratic" considerations about the importance of their participation.

In contrast to the EEA, which grants the member states unconditional access to these secondary EU organisations, Swiss participation has to be established in each case individually. In order to assess the importance of these decentralised opportunities for organisational inclusion, we need to

analyse in detail the modes and structures of governance in the particular policy sectors, and the conditions under which a third country such as Switzerland may participate in equal terms and shape the EU policies that result from there. The following sections introduce the common analytical framework guiding the analysis of Switzerland's patterns of regulatory and organisational inclusion in the various sectoral case studies included in this special issue.

The Governance Approach to EU External Relations

In EU studies the notion of governance has been introduced to challenge the traditional "Community" or "Monnet" method of integration. Whereas the latter is based on the supranational formulation of binding EC law through the interaction between Commission, Council of Ministers and European Parliament, the governance literature underlines the importance of "soft", weakly legalised forms of policy-making by alternative fora such as formal and informal policy networks, committees and agencies (Héritier 2002; Tömmel 2007; see also Mayntz 2005). The notion of the *acquis* is thus transformed: integration no longer occurs through law but rather through coordination of national policies, the exchange of best practices, the identification of benchmarks, and, in some cases, the adoption of "technical" regulations.

The use of the term "governance" in the analysis of EU external relations is demanding, and reflects the expanding scope of European regulations. Less than "government", "governance" is more than "co-operation", as it implies a system of rules which exceeds the voluntarism implicit in the term co-operation (Lavenex 2004: 682). This perspective takes the EU's systems of rules as its point of departure and conceptualises external governance as the expansion of the prescriptive scope of EU rules beyond EU borders (Lavenex and Schimmelfennig 2009). Generally speaking, the emergence of external governance may be triggered by intentional action on the part of the EU or it may result from the demand of the third country. Furthermore, the latter's adaptation to EU rules may occur both voluntarily or under pressure (Lavenex and Uçarer 2004: 420–21). In the absence of an EU requirement (such as accession conditionality or an association treaty), a third country may choose to emulate EU policies unilaterally because it is convinced of the superiority of the EU's rules in solving domestic problems, or it may adapt unintentionally by institutional isomorphism

(Holzinger, Knill et. al. 2008; DiMaggio and Powell 1991). A unilateral adaptation may however also occur because of the perceived negative externalities of EU policies and the incumbent costs of non-adaptation. On the other hand, the presence of an EU requirement may produce policy transfer on the basis of either opportune conditionality, if the requirement meets the interests of the third country, or by inopportune conditionality, if adaptation is not in its interest but is compensated by some other incentives.

Echoing the literature on the variety of policy modes in the EU's "internal" governance, we differentiate between more hierarchical forms of policy transfer based on asymmetric relations and conditionality, and horizontal forms of coordination through policy networks. A third type of interaction is the market, or, in the jargon of International Relations, classic intergovernmental cooperation "under anarchy" (see e.g. Eising and Kohler-Koch 1999; Lütz 2003; Ouchi 1980; Scharpf 1997; Williamson 1975). In contrast to hierarchy and networks, a market type of interaction does not produce the institutionalised regulatory impact associated with the term governance. Rather, an approximation of rules occurs through competition.

Modes of EU External Governance

Hierarchy describes a relationship of superiority and subordination in which one part unilaterally expands pre-determined parts of its rules to the other without however allowing for the latter's participation in the determination of these obligations. Although lacking the strong jurisdictional aspect inherent in national hierarchies, this constellation basically replicates the conditionality model that has been identified as the main mode of external governance in EU enlargement politics (e.g. Grabbe 2005; Schimmelfennig and Sedelmeier 2004). Hierarchy is however also the predominant macro-institutional structure of the EEA as this form of association implies the direct and unconditional adoption of the relevant EU *acquis* by the EEA/EFTA states, enforceable through supranational juridical structures, with only minimal opportunities for the latter's participation in decision-shaping (Lavenex, Lehmkuhl and Wichmann 2009). Although essentially drawing on power asymmetries and the presence of strong legalisation (EEA) or incentives (enlargement), this mode of interaction also presupposes high degrees of internal communitarisation (that is, the existence of an *acquis* with strong supranational competences) and external institutionalisation in EU-third country relations. These two con-

ditions vary strongly at the sectoral level, that is why in practice, even if the overall setting of EU-third country relations may be hierarchical, we see a variety of modes of governance and interaction at the sectoral level (Lavenex, Lehmkuhl and Wichmann 2009).

A *network* constellation reflects a form of interaction that allows for simultaneous regulatory and organisational inclusion. The process-oriented, horizontal, voluntaristic and inclusionary attributes of network governance allow for the extension of norms and rules that goes along with participatory openness in decision-making processes and practices. The inclusiveness of governance arrangements further suggests that these will usually take on “multilevel” structures that may involve not only national, but also sub-national, supranational and international, as well as non-state actors (Héritier 2002: 3). The composition of networks may contribute to a de-politicisation of cooperation since participating actors are experts and technocrats specialised within the issue area but not acting as representatives of a country’s national interests. By omitting the legislative arena and its institutions (Council, Parliament and Commission), this mode of interaction opens the way for functionally specific forms of organisation, such as agencies (e.g. the European Aviation Safety Agency, see Lehmkuhl and Siegerist in this issue), coordinating bodies (e.g. Europol, Eurojust or Frontex, see Wichmann in this issue), or less formalised policy networks (e.g. the Florence and Madrid fora in energy regulation, see Jegen in this issue). Similar functions at the stage of policy-shaping and policy implementation can be fulfilled by comitology committees associated with the European Commission or the Council of Ministers. An additional forum for the inclusion of non-member states are the expert committees set up by the Commission in the preparation of new legislation.

The concrete competences and degree of autonomy of these various organisations vary strongly, nevertheless, the possibility for third countries to become members amounts to a shift of the organisational boundary of the EU system, even if only at a “subordinate” or specialised level. Drawing on Slaughter’s work on transgovernmentalism (Slaughter 2004: 52ff.) we distinguish between three different functions of policy networks:⁸

1. *Information Networks* are set up to diffuse policy-relevant knowledge, best practices and ideas among the members.

⁸ In order to avoid conceptual confusion with EU jargon we slightly modify Slaughter’s terminology and speak of implementation instead of enforcement networks and regulatory instead of harmonisation networks.

2. *Implementation Networks* focus primarily on enhancing cooperation among national regulators to implement/enforce existing laws and rules – be them national, international, or European. These networks can complement more hierarchical modes of interaction when adding a more cooperative implementation structure to a unilateral decision-making one.
3. *Regulatory Networks* are the most powerful ones in terms of governance since they have an implicit or explicit legislative mandate and are geared at the formulation of common rules and standards in a given policy area. According to Slaughter, “behind the facade of technical adjustments for improved coordination ... and uniformity of standards lie subtle adjustments” of national laws (Slaughter 2004: 59). In so far as they are inclusionary and voluntary, these networks represent the most advanced form of flexible sectoral integration in terms of shared governance.

In contrast to governance by hierarchy or networks, *market* describes a mode of interaction characterised by the relative weakness of formal relationships and the lack of overarching rules. The ideal-type market corresponds to what International Relations scholars traditionally describe as anarchy. With regard to EU external relations, there is no overarching legal commitment to cooperation, the contents of cooperation are not predetermined but subject to negotiations, and no systematic monitoring of compliance occurs. In this constellation, relations tend to be shaped by power relations and interests, and interaction occurs in an ad-hoc and decentralised manner. In so far as an approximation of rules takes place, this is due to cooperation and competition, not to institutionalised coordination or policy-transfer. In contrast to governance through hierarchy or networks, which leads to overlapping spheres of regulation, partners in a market relationship remain fully sovereign.

Table 1 summarises the main characteristics of these two ideal typical modes of external governance and contrasts them with the market type of interaction.

Modes of Governance and Boundary Shifts

When applied to the external realm, the different modes of governance have implications for the dimensions in which a third country becomes

Table 1: Ideal-types of EU–Third Country Interaction

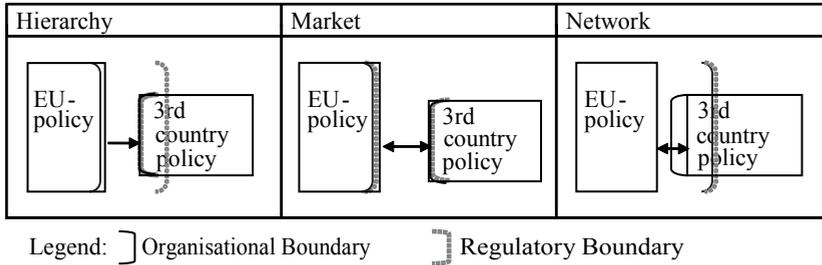
Institutional form	Instruments	Mechanism of rule expansion	Actors	Boundary-shift
Hierarchy	EC and EU law, precise requirements, conditionality, monitoring	Policy-Transfer	Intergovernmental and EU institutions	Only regulatory boundary is shifted
Information networks	Voluntary Instruments, process-oriented: Data, information, best practices		Multilevel and polycentric transgovernmental and transnational; including agencies, committees, international organisations, public and private actors	Very moderate shift of regulatory and organisational boundary
	Like Information networks + operational cooperation, capacity building	Coordination		Moderate shift of regulatory and organisational boundary
	Like Information networks + adoption of bench-marks, common standards			Strong shift of regulatory and organisational boundary
Regulation networks				
Market	International law and non-binding agreements	Competition	Intergovernmental and non-state actors, EU institutions	No boundary shifts
Governance				
Cooperation				

integrated into the EU polity. The dimensions of political integration can be related to Michael Smith's differentiation of various boundaries of EU political order (Smith 1996) and, in particular, what he calls the Union's "legal" and "institutional" boundary.⁹ Both hierarchical and network types of external governance lead to an external differentiation of the European integration process by extending the scope of European regulations to third countries, or, in other words, by shifting the EU's "legal" or, in our words, regulatory boundary. Hierarchical modes of interaction transfer unilaterally predetermined rules towards non-member states. Network governance, by contrast, also opens the "institutional" or, in our words, "organisational" boundary, they provide for organisational openings which theoretically allow for genuine co-ownership of resulting commitments.

Whereas it is true that under the Community model of hierarchical integration, organisational inclusion would be "a synonym for full membership" (Filtenborg et al. 2002: 400), the advent of network governance in sectoral organisations has opened new opportunities for organisational inclusion below the level of the central legislative authorities. Thereby, external governance becomes a form of extended governance or flexible horizontal integration. In contrast, market-based patterns of interaction do neither involve a shift of the EU *acquis* nor of the involvement of third parties in EU decision making. Observations of regulatory convergence may rather be related to either voluntary adaptation, policy imitation, institu-

⁹ Several studies have elaborated on the notion of "fuzzy borders". Michael Smith distinguishes a geopolitical boundary separating zones of stability and security, an institutional-legal boundary, a transactional (predominantly economic) boundary, and a cultural boundary of the EU. Whereas these boundaries were mostly congruent during the Cold War era and produced a "politics of exclusion", the end of the Cold War division of Europe, the partial replacement of the Community method by more flexible institutional-legal solutions, and the establishment of a variety of institutional arrangements with non-member countries have opened and blurred these boundaries, and led to boundary incongruence as well as a "politics of inclusion". In a comparable attempt to reconceptualise the EU's borders, Thomas Christiansen, Fabio Petto and Ben Tonra start from the assumption that, "in the foreseeable future", the EU will not "evolve into an entity with clearly demarcated borders and a transparent distinction between 'inside' and 'outside'." Instead, they highlight the "fuzzy borders" of the EU created by "novel policy-regimes that are designed for spaces that are neither properly 'inside' nor properly 'outside' the polity" (Christiansen et al. 2000: 391-92). The metaphor of fuzzy borders has also been invoked with regard to the EU's relations with Switzerland and Norway in the same year by Stephan Kux and Ulf Sverdrup (Christiansen et al. 2000). Finally, the fuzziness of borders is also at the centre of the contributions in the Special Issue "Rethinking European Spaces: Territory, Borders, Governance" of *Comparative European Politics* 4(2/3) 2006.

Figure 1: Forms of Interaction and Flexible Integration (stylised)



tional isomorphism or negative externality. The boundary shifts associated with the different modes of interaction are visualised in Figure 1.

Given our interest in the potential contribution of network governance for the flexible sectoral integration of non-member states, we need to specify the conditions under which network governance takes place in neighbourhood relations at the level of sectoral interaction and to what extent it allows for genuine co-ownership in the sense of a simultaneous opening of regulatory and organisational boundaries. Combining insights from the governance literature with regime theories of institutional design, the next section presents an analytical approach for explaining the emergence and prevalence of different modes of external governance at the sectoral level.

Explaining Inclusion in Extended Network Governance

At the sectoral level, neighbourhood associations like Swiss–EU bilateralism can be conceptualised as the external dimension of internal EU policies or as expanding sectoral policy regimes. The external dimension will normally reflect the modes of interaction that dominate internal policy-making in this area; the extension of network governance presupposes the existence of such networks internally. Nevertheless, in the external dimension, problem constellations may take very different forms than within the EU and interaction is much less pre-structured by institutional norms, rules and routines. Approaches dealing with institutional design and international regimes developed in the discipline of International Relations can give us some indications on the interplay between the constellation of collective action problems at the sectoral level and the functional requirements for problem-solving structures (Hasenclever et al. 1997; Koremenos et al. 2001; Zürn et al. 1990).

According to this literature, two dimensions of a given situation of interdependence influence the institutional choice of cooperative arrangements: enforcement and distribution problems. Enforcement problems refer to the strength of incentives to cheat on a given institutional arrangement. Such a constellation occurs in so-called "dilemma situations", when one or both partners can draw a benefit from non-cooperative behaviour or, put differently, when compliance is costly. The greater the enforcement problems associated with a given solution, the "stricter", that is more hierarchical and formal the modes of governance should be in order to ensure compliance. This includes the threat of positive or negative sanctions, for instance through conditionality, in order to raise the costs of non-compliance (Koremenos et al. 2001: 773ff., 776f.). In such cases, we expect EU external governance to take hierarchical traits even if the internal modes of governance would allow for extended network governance.

There are, however, situations where the participating actors agree on the need for common arrangements and cannot draw meaningful advantages from non-compliance. When interest constellations are thus harmonious, cooperation should be self-enforcing, without requiring strong legalisation. A similar situation is given when partners attribute the highest utility to cooperation, but favour different solutions. In such cases, the difficulty lies in choosing between the available solutions for cooperation, although, once the choice is made, the incentives for free-riding diminish and no longer challenge the equilibrium. Such coordination problems need a lesser degree of formal institutionalisation and may be governed by more informal, legally non-binding arrangements akin to the model of network governance. Many technocratic areas of cooperation such as the coordination of transport infrastructures (Lehmkuhl and Siegrist in this issue) or the integration of research systems (Lavenex in this issue) carry the characteristics of such coordination problems. This is why they are particularly suited for international cooperation, as already pointed out by the early functionalists and neo-functionalists (Haas 1958; Mitrany 1943; Mattli and Büthe 2003; see also, from a non-neo-functionalist perspective, Eberlein and Newman 2008).

A second, analytically distinct dimension of problem constellations are the distributive effects of cooperative arrangements (Martin and Simmons 1998: 745). A common source of such distributive effects are geographic factors such as, in the case of international rivers, the unequal benefits from cooperation covered by upstream and downstream countries or in migration, the relationship between sending, transit and receiving countries. In

such situations, the institutional framework is demanding as it is difficult to find a commonly accepted solution. According to Barbara Koremenos et al. (2001: 775), distribution problems should have the opposite effect on governance arrangements: whereas difficult enforcement problems require strong institutions, difficult distribution problems are more easily tackled through soft and more decentralised, process-oriented modes of governance that do not demand from the participants to agree on specific substantive rules from the outset.

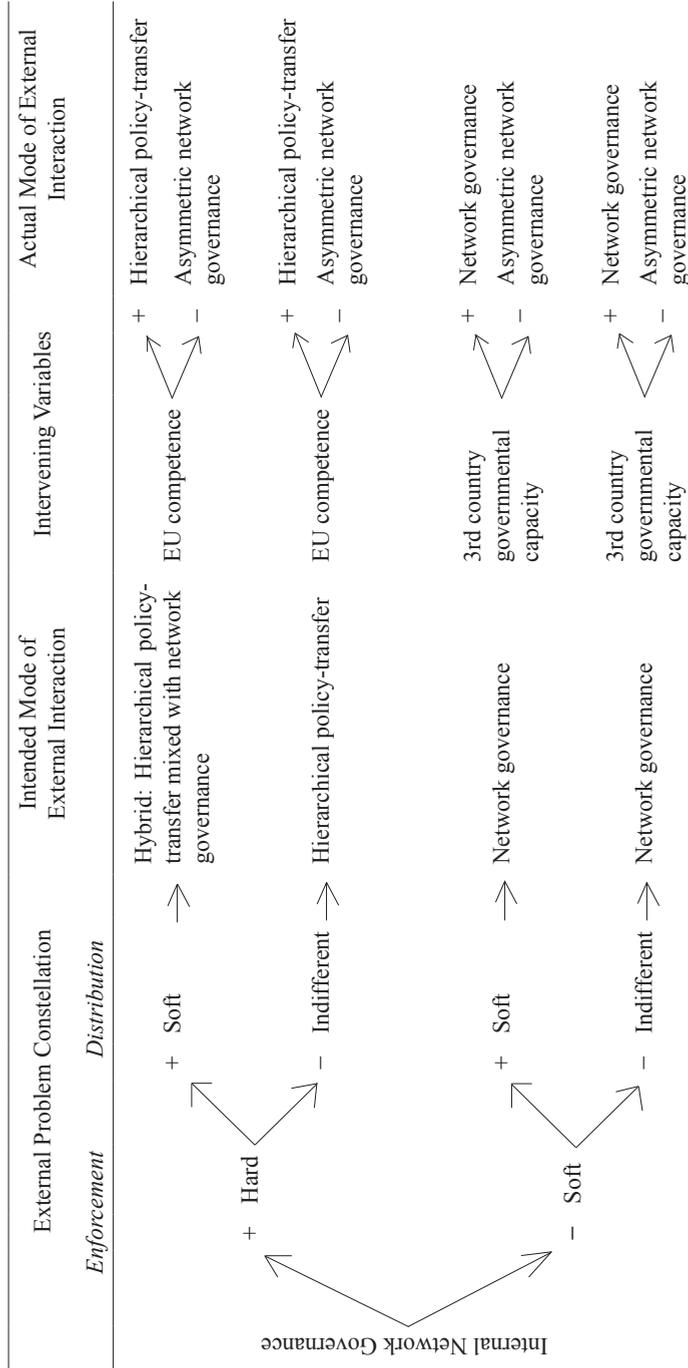
While these approaches allow us to specify the intended mode of interaction due to functional prerogatives, the viability of different modes of governance is also influenced by institutional characteristics of the third countries in question.¹⁰ In contrast to the unilateral dynamics in hierarchical policy transfer which basically hinge on communitarised competences and superior power on part of the EU, network governance is a mutual enterprise which presupposes compatible “governance capacities” on the part of the participating actors. The governance capacity can be broken down into two dimensions: a certain decentralisation of decision-making structures and civil society empowerment and expertise in the respective sector.¹¹

In sum, our theoretical model suggests that external network governance in terms of a horizontal and inclusive form of flexible integration is demanding. First of all, such new forms of regulatory and organisational expansion presuppose the existence of network governance within the Union in the respective policy sector, and the intensity of flexible integration will be stronger in the case of regulatory than in information networks. In the external realm, we expect such “pure” network governance to work only in the absence of strong enforcement problems, and when the third countries, in our case Switzerland, have the necessary capacity (institution-

¹⁰ It should be noted that in this study we do not seek to explain the effectiveness of EU external governance in terms of inducing policy adaptation in Switzerland. This theoretical model only specifies the conditions under which different institutional arrangements of external governance are likely to prevail.

¹¹ Depending on which third country one analyses, a limitation of these institutionalist and functionalist approaches stems from the fact that they are to a certain degree “power-blind”. Thus, when including Russia into the equation, our comparative analytical model needs to account for the qualitative difference implied by engaging with Russia compared to e.g. Moldova or, in this case, Switzerland. Indeed, given the persistence of power politics and the different intensities of institutionalised relations between the EU and its neighbours, it cannot be taken for granted that attempts at regulatory export will actually produce external governance.

Figure 2: Analytical model of sectoral interaction frameworks



al structures and resources) to act as equal partners. This is most likely to be the case in unpoliticised, technocratic sectors, such as research policy, or air traffic management and control, where interdependence is mutually shared and strong, and where the partner country possesses pertinent expertise or other resources. According to our model, network governance may however also be promoted as a default option in cases where the constellation of interdependence would suggest more hierarchical interaction, but where the EU lacks the necessary means to act hierarchically. This may for instance be the case in poorly communitarised policy areas, or where, due to enforcement or distribution problems, the EU cannot compensate for adaptation costs through positive incentives. In these cases, network governance is a mean to gain external influence by “softer” means. In this case it loses its horizontal features and develops a hybrid, asymmetric character. The expectation that we may find inclusive cases of extended network governance with Switzerland should thus not conceal the fact that by design or by default, EU neighbourhood policies will in many cases deploy hegemonic traits – unless the neighbouring country is powerful enough to avoid subjecting itself to EU rules.

Overview of Contributions and Main Results

The contributions to this special issue cover a range of policy areas that reflect different modes of governance within the EU, they differ with regard to the enforcement and distribution problems they pose, and include both issues which are governed by a bilateral agreement and policy areas that are not regulated by a bilateral agreement.

Maya Jegen’s contribution deals with a technocratic policy area that has gained increasing political salience in Swiss–EU relations, and which is not regulated by a bilateral agreement so far: energy cooperation. This detailed case study is a salient analysis of the changing opportunities for participation in an increasingly communitarising sector. Switzerland’s geographical situation as the physical hub of liberalising European electricity markets generates symmetric patterns of interdependence that have allowed for close participation in rather informal independent networks of national regulatory agencies such as the Florence forum. With the stronger communitarisation of EU energy policies and the creation of a more formal European Regulators Group by the European Commission, these opportunities tend however to diminish. This is also the case in the gas market,

in which Switzerland plays a rather marginal role. To a certain degree, the changing scope for political participation has been compensated by private market integration. In the private sector, Swiss integration faces no constraints. Given its market power, Swiss industry plays a central role in European electricity associations and relevant market governance arrangements so that according to Maya Jegen,

not being a member of the EU has not been an impediment in the electricity sector so far because market governance and the inclusion of Swiss private actors in the relevant technical bodies ensured the flow of information and the coordination of activities across borders (Jegen in this issue, p. 595).

Nevertheless, the threat of political marginalisation in electricity governance has increased Swiss interests in a bilateral agreement which will, among other things, also regulate access to the regulatory networks such as the European Regulators Group.

A second technocratic policy area that has encountered some degree of politicisation in Switzerland and in which the country operates as a physical hub in Europe is transport policy. Dirk Lehmkuhl's and Olivier Siegrist's study on Swiss–EU relations in the areas of land and air transport highlights the interplay between EU endeavours to expand its regulatory boundaries to this central European territory and Switzerland's scope for participation in sectoral agencies and committees. Strong geographic interdependence and the predominance of coordination problems over enforcement problems have motivated cooperation early on. Whereas in the area of land transport, interaction was initially dominated by Switzerland's unilateral voluntary adaptation to EC law, different dynamics were at play in the aviation sector. Here, Switzerland has played a central role in the development of functional regulations that have inspired the recent EC acquis, in particular its Single European Sky initiative. This difference may be due to the presence of strong pan-European regulatory agencies in the aviation sector such as Eurocontrol, the European Civil Aviation Conference (ECAC) or the Joint Aviation Authorities (JAA) in which Switzerland has always played an active role and which have increasingly been dealing with EU activities. Switzerland has also become an active member of the EU's own regulatory agency, the European Aviation Safety Agency, and in the expert committees advising the European Commission in the development of the Single European Sky initiative. Integration in the corresponding land transport organisations has been more mixed. On the one hand, pre-existing pan-European organisations have lost much of their earlier

importance. And whereas Switzerland participates in the EC's Trans-European Transport Network Executive Agency and consultative comitology groups advising the European Commission, it has hitherto been excluded from the European Railway Agency. The conditionality applied by the Commission for granting access to this agency is indicative of the shadow of hierarchy in which network governance often operates: access is made conditional on the full transposition of the entire EC land transport acquis, a requirement that faces opposition in Switzerland's domestic constituency. These formal obstacles to full organisational inclusion have however not prevented Switzerland from developing a variety of alternative channels of influence outside EU fora through the bilateral and plurilateral cooperation with individual member states. Beyond the characteristics of networks and governance modes, Switzerland's central geographical location, its progressive domestic transport policy and informal factors such as personal engagement and expertise stand out as crucial factors emphasizing its voice in European transport matters.

Compared with the other policy fields in this special issue, and probably also beyond, the field of research policy, analysed by Sandra Lavenex, represents all the positive conditions for flexible sectoral integration. EU research policy occurs through networked coordination rather than through supranational legislation, its governance follows functional, scientific imperatives rather than political considerations, and interdependence is high due to the strength and international orientation of the Swiss research system. As a consequence, Swiss policy makers and semi-public research organisations have gained access to relevant coordination fora administering and implementing the European research programmes such as programme committees, expert and evaluation groups, the Scientific and Technical Research Committee (CREST) and the Joint Research Centre (JRC). Although officially lacking voting rights, Swiss public officials and EU counterparts unanimously state that given the consensus-oriented modes of interaction, Swiss representatives can be seen as fully integrated in these structures. Although lacking formal representation, informal contacts have also been established at the level of the Council of Ministers. A parallel structure of coordination has emerged at the level of the independent research organisations themselves such as the European Research Council (ERC), which reflects the autonomy of the research systems from political interference. In these fora, Switzerland's non-membership in the EU definitely loses its relevance, and Swiss scientists have repeatedly filled lead positions.

Nicole Wichmann's article analyses a puzzling area of Swiss–EU integration: the policies on immigration, asylum, police and judicial cooperation covered by the Schengen association treaty. Although these areas are highly politicised, and indeed touch the core of state sovereignty, Switzerland has received a unique status as an associated member. This gives Swiss representatives access and observer status to all levels of the Council's hierarchy under the so-called "Comix"-procedure. In explaining this particular degree of integration, Nicole Wichmann stresses the parallelism between the far-reaching regulatory obligations under the dynamic bilateral treaty and the opportunities for organisational inclusion. This parallelism is made possible through the transgovernmental modes of network governance prevailing in the sector, the strong degree of legislative approximation on the part of Switzerland already prior to the bilateral agreement, and the symmetric interdependence with the member states in most of the underlying policy challenges. These preconditions limit the "exportability" of the Schengen association model to other countries and/or policy areas, and underline the variety and idiosyncrasy of governance arrangements in Swiss–EU relations.

The final article by Werner Schäfer closes the special issue with a look into the future and critically deals with the preconditions for EU external governance from the Swiss perspective. Like the first article by Maya Jegen, Werner Schäfer's piece analyses a policy field which lacks a bilateral agreement: climate policy. Notwithstanding the transnational nature of the climate change problem, and the centrality of the EU emissions trading system (ETS) in addressing this problem, Switzerland has hitherto not joined the ETS. This puzzle leads Werner Schäfer to question the importance of interdependence for analysing EU external governance and to point at the role of domestic interests instead. By scrutinising in detail specific emissions sources and abatement policies, he shows that there is limited interdependence between the EU and Switzerland because of their different carbon footprints and Switzerland's small presence in the covered sectors. Secondly, Swiss industry has lobbied in favour of preserving the Swiss system of voluntary agreements rather than joining the more constraining ETS system. Although Swiss public officials have signalled an interest in joining the ETS with certain exemption clauses, Werner Schäfer identifies a third reason explaining the limits of interaction in the hierarchical modes of EU governance in this matter. Notwithstanding cumulating indicators speaking against an external dimension of the EU climate policy on Switzerland, the article nevertheless closes with the hypothesis

that Switzerland will join the EU ETS in 2013 at the latest. This is due to changes to interest constellations in the Swiss business community and altered patterns of interdependence following the inclusion of aviation into the EU ETS from 2012. In sum, this case study may be read as an illustrative example of the complex dynamics that “pull” Swiss public policy into the ambit of EU regulations – and of the market forces that sustain the expansion of EU governance beyond its membership.

Conclusion

Covering only five limited sectoral case studies within the babylonian edifice of Swiss–EU relations, the contributions to this special issue can hardly claim to give a comprehensive coverage of Swiss European integration. They do however highlight opportunities for organisational participation in EU decision-making structures that have hitherto been neglected in the academic and political discourse on the matter. A number of conclusions can be drawn from our findings that could become objects of future research on Swiss–EU relations or EU external relations more broadly.

Our contributions show that policy areas which are characterised by the predominance of network governance in EU policy-making allow for the inclusion of non-member states in decentralised decision-making organisations. The scope for these specific forms of flexible integration is however circumscribed by the increasing formalisation of EU–Swiss relations, which is related to the evolution of communitarisation in the different policy areas, and by the patterns of interdependence prevailing in the various sectors.

A clear tension exists between the formalisation of interaction, which tends to favour more hierarchical, strongly legalised and non-participatory external governance, and informality, which opens a space for functionalist patterns of coordination. The case studies on energy, JHA and research policy suggest that more informal and the less communitarised cooperation within a policy area is, the more flexible it is towards the inclusion of a non-member state. In several of the sectors analysed in this special issue, EU policy has evolved dynamically from more horizontal forms of networked coordination to stronger Community competence and, herewith, a more hierarchical *acquis*. Communitarisation goes along with a tightening of the EU’s regulatory boundary and a stronger shadow of hierarchy upon decentralised sectoral organisations. In the cases of land transport, electric-

ity policy and JHA, communitarisation has progressively circumscribed the leeway of policy networks and agencies and has therefore put limits on Switzerland's flexible horizontal integration.

Apart from the internal evolution of the EU and, concomitantly, of the scope or relevance of network governance within this political system, Switzerland's opportunities for flexible horizontal integration are strongly shaped by the constellation of interdependence and domestic factors. The stronger the interdependence, and the more central the role of Switzerland is for the success of the EU policy, the more it gains access to relevant organisational fora. These patterns of interdependence may be due to geography (Switzerland as a "hub" for electricity and transport flows, as well as for migration movements) or to its reputation in a policy area (research, aspects of JHA). In such policy fields that are characterised by mutual interests in integration, private self-regulation may offer alternative channels of influence through the representation of private actors in relevant European associations and/or coordination bodies (research, electricity).

Finally, our cases also show that there is still a great deal of intergovernmental coordination outside the EU structures, where Switzerland can coordinate with like-minded member states, and thus exert more indirect forms of influence on EU developments than through direct participation in relevant fora (land transport, JHA). As in the case of policy networks, however, these forms of interaction are highly contingent, and often enough, our interview partners in Bern and Brussels have stressed the crucial importance of informal factors such as personal contacts, reputational aspects, and individual predispositions.

In conclusion, what are the future prospects for these dynamics of functional sectoral integration, how is the "shadow of hierarchy" likely to play out on Switzerland's flexible integration in the EU polity? Three developments seem particularly relevant in this reflection.

To start with, the scope for sectoral forms of flexible integration clearly depends on the future role of network governance within the EU system, and its relation to communitarisation and the "Community method" of integration. On the one hand, European integration has a fascinating history of incremental, neo-functional integration, successively empowering supranational institutions and moving towards stronger legalisation. Yet, the EU's increased and still growing internal heterogeneity and the persistence of a certain integration fatigue – in conjuncture with an enduring functional integration pressure – are likely to sustain recurrence on soft modes of integration.

The conjuncture of deepening interdependence and the search for cooperative solutions should thus perpetuate “soft” modes of governance in an increasingly politicised EU. At the same time, however, intensifying debates on the legitimacy of EU policy and its democratic accountability are likely to bind these functional forms of governance closer to the strongholds of representative government, the European Parliament and the national parliaments, as indicated in the Lisbon Treaty. These are however the arenas in which and with which Swiss interconnectedness is weakest. The more the Parliament becomes involved in decision-making, the lesser are the opportunities for third countries’ influence through network governance.

Finally, the EU’s intensifying international actorness is likely to impose limits on the flexibility of third country associations. The increased complexity of EU external relations goes along with an intensifying ambition on the part of the European Commission’s General Directorate for External Relations as well as some member states’ governments to regain political control over the EU’s “fuzzy borders”. On the one hand, these central foreign policy actors will try to limit the flexibility of sectoral arrangements. On the other hand, they will try to establish coherence and consistency between the various neighbourhood policies, thus imposing for example uniform rules on access to agencies or committees. The discussions on a framework agreement coordinating the current fragmented system of Swiss–EU relations and thereby also circumscribing their scope are first indications in this direction. Swiss foreign policy actors could be allies in this endeavour in so far as they seek internally to regain control over the centrifugal tendencies of flexible sectoral integration.

In sum, in a context of profound interdependence, functional pressure for informal participation and networked coordination are likely to coexist in creative tension with the legal and political dynamics towards more formalisation and stronger hierarchy in Swiss–EU relations. In many respects, Switzerland’s peculiar forms of flexible integration can be read as a salient illustration of the inherent tension between neofunctionalist and intergovernmentalist dynamics in the European integration project.

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