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Article

2009

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### How to cite

LAVENEX, Sandra, SCHIMMELFENNIG, Frank. EU rules beyond EU borders: theorizing external governance in European politics. In: Journal of European public policy, 2009, vol. 16, n° 6, p. 791–812. doi: 10.1080/13501760903087696

This publication URL: <https://archive-ouverte.unige.ch/unige:76475>

Publication DOI: [10.1080/13501760903087696](https://doi.org/10.1080/13501760903087696)

## EU rules beyond EU borders: theorizing external governance in European politics

Sandra Lavenex and Frank Schimmelfennig

### Abstract

The concept of external governance seeks to capture the expanding scope of EU rules beyond EU borders. This article elaborates the theoretical foundations of this concept, differentiates the various institutional modes through which external governance takes place and suggests a set of hypotheses addressing the conditions under which EU external governance is effective. Here, we contrast institutionalist explanations, which are the most germane to an external governance approach, with competing expectations derived from power-based theories and approaches emphasizing the role of domestic factors in the target countries.

**Keywords:** External governance, association policy, foreign policy, neighbourhood relations

### Introduction

The development of the European Union (EU) towards a political system *sui generis* has gone along with an increasing international presence. This finds expression in the Union's influence on third countries and international affairs more broadly. Apart from its attempts at coordinated external action through the Common Foreign and Security Policy, the EU has developed a wide array of external relations which reach from the traditional field of external trade to democracy promotion and cooperation in various policy areas falling under its legislative competence. Since the basis of EU external action is usually the *acquis communautaire*, the ongoing constitutionalization of European values and the deepening integration in traditional fields of domestic politics such as environmental, competition or immigration policy are also rapidly developing an external dimension, which consists in the attempt to transfer the EU's rules and policies to third countries and international organizations. It is this extension of internal rules and policies beyond formal membership that the notion of external governance seeks to capture (Lavenex 2004).

The most prominent case of external action based on the projection of the EU *acquis* is enlargement, the EU's most successful foreign policy according to the European Commission (Commission 2003:5). The experience of enlargement is illustrative of both the magnetic force of European integration and the transformative power of its norms on candidate countries (see e.g. Grabbe 2005; Schimmelfennig and Sedelmeier 2005). Yet whereas the "externalities of European integration" (Lavenex and Uçarer 2002) persist, and interdependence with the surrounding world creates the need for further external engagement, the "enlargement model" might soon reach exhaustion. Therefore, the notion of external governance is both an attempt at conceptualizing important aspects of the EU's international role and a step towards analyzing forms of integration into the European system of rules that remain below the threshold of membership.

EU external governance varies across countries, regions, and also policy fields. It is sometimes part of an overarching foreign policy initiative, such as the European Economic Area (EEA) or the European Neighbourhood Policy (ENP). It may be based on bilateral cooperation agreements such as with Switzerland. It may emerge in the context of less constraining cooperation frameworks, such as in the relations between the EU and the ACP

countries or with North America, or it may exist without overarching contractual relations at all as a function of the prescriptive qualities of the EU *acquis*, often limited to a specific area of public policy. Here, external governance can also emerge spontaneously when mutual interdependence is high and adaptation to EU templates meets the interest of third countries or international organizations.

Theoretically, the notion of external governance has been inspired by debates in International Relations (IR) and Comparative Politics and combines these with newer approaches to EU external relations. A general characteristic of the external governance literature is that it rejects the (sometimes implicit) projection of the unitary state actor model onto the EU and deviates from traditional foreign policy analysis by adopting a more institutionalist view.

In this special issue, we seek, on the one hand, to describe and compare the modes and effects of external governance in various policy fields and areas of EU external relations. On the other hand, we strive for explanations. Why do modes of governance differ across policies and third countries? Under which conditions are they effective? To answer these questions, we explore three sets of factors: institutions, power, and domestic structure. According to the institutionalist explanation, which is the most germane to the external governance approach, the modes and effects of external governance are shaped by internal EU modes of governance and rules. By contrast, the power-based explanation attributes the modes and effects of EU external governance to EU resources vis-à-vis, and interdependence with, third countries and to alternative poles of governance and influence, namely the United States and Russia. Finally, the domestic structures of third countries may condition the modes of external governance and their effectiveness. Exploring these sets of factors will help us answer the “big question” of external governance: To what extent is the EU able to integrate its external environment into common systems of rules?

This introductory article discusses the foundations of the external governance approach and elaborates the conceptual and theoretical framework structuring the different contributions to this special issue. We start with a short paragraph on the empirical dynamics behind the advent and intensification of the phenomenon and then turn to the theoretical roots of the concept. In the main part of the article, we attempt to synthesize existing analytical approaches in order to formulate hypotheses regarding the modes and effects of EU external governance. The article ends with a synopsis of the different contributions to this special issue.

### **External governance as an answer to complex interdependence**

Several developments sustain the further expansion of external governance. The first and probably most influential one is the historic enlargement of the EU to nearly twice its size in 2004 and 2007 and the likely admission of a few more new member states in the near future. The second trigger is the need to address interdependence with neighbouring countries, and a third, less purposeful dynamic results from the external effects of integration as such.

There are a number of reasons to assume that enlargement will cease to be the predominant EU mode of dealing with its neighboring countries. Firstly, enlargement is becoming a victim of its own success. With each enlargement, the number of “European” non-member

countries that qualify as potential member states decreases and the debate on where “Europe” ought to end becomes more divisive. Secondly, the massive enlargements of 2004 and 2007 have triggered strong concerns about the EU’s “integration capacity” and the fitness for membership of some new member states. Thirdly and relatedly, the remaining potential candidates for membership face more difficult problems of meeting the conditions for accession than recently admitted countries. Their transition to liberal democracy has been slower and less successful. In part, ethno-nationalist conflicts and contested statehood bear responsibility for their transition problems. In addition, their administrative and judicial capacities – crucial for effective EU governance – are weak. Fourthly and finally, there is one group of countries including Norway and Switzerland that would easily meet the conditions but failed to join because of persistent popular opposition to EU membership. For all these reasons, the policy of enlargement is likely to lose its momentum and recede in the background in the near future.

Whereas the relevance of enlargement may be decreasing, this does not necessarily hold true for the depth of interdependence and the intensity of EU relations with its neighborhood. This not only prompts the EU to develop policy strategies and arrangements beyond enlargement. It also requires students of EU policy to broaden the scope of their research. In the context of enlargement, and in view of the massive policy transfer and adoption required ahead of membership, studies of EU governance and “Europeanization” have already expanded from their previous focus on the member states to the accession process and the candidates for membership (Friis and Murphy 1999; Grabbe 2005; Schimmelfennig and Sedelmeier 2005). More recently, they have in addition started moving beyond the candidates for membership (see e.g. Lavenex and Uçar 2002 and 2004; Lavenex 2004 and 2008; Weber et al. 2007).

Whereas enlargement minimizes variation in the content, validity, and organizational context of European governance rules (except for transitional periods), the general study of external governance needs to take into account that there is more than one institutional solution to EU-Third Country relations. This is also true for the tools that the EU has at its disposal in dealing with third countries. Early studies that applied the notion of external governance to the context of EU enlargement emphasize the predominance of “governance by conditionality” (Schimmelfennig and Sedelmeier 2004). That is, the geographic, territorial expansion of EU rules was mainly driven by the conditional promise of EU membership. Other “models of Europeanization” such as social learning or lesson-drawing were found to be only marginally relevant in the accession process (Schimmelfennig and Sedelmeier 2005; Sedelmeier 2007). Now that accession is becoming less of an option, accession conditionality is losing its predominance and other mechanisms and conditions of governance and Europeanization require renewed and increased attention. Hence the need to analyze and explain highly differentiated relations between the EU and third countries and extremely varying sets of rules negotiated and agreed between them.

Finally, the interest in external governance is spurred by certain qualities of the *acquis communautaire* itself and the externalities it produces.<sup>1</sup> EU norms and rules may even gain prescriptive qualities towards third countries and/or their citizens by default, that is, without purposeful policy transfer on the part of the Union. The most spectacular case in point is the EU’s competition policy which not only applies to mergers, acquisitions, and cartels within the EU but also to firms like Boeing or Microsoft based outside Europe. More generally and less

visibly, however, it affects all countries and firms with an interest in exporting to the EU market (see e.g. Bach and Newman 2007; Princen 2003).

### **Theoretical foundations of external governance**

In contrast to analyses of EU external relations, which mostly adopt an agency-based perspective on the EU's performance as a foreign policy actor, the governance approach promotes a more institutional, structural view. Traditional accounts of EU foreign policy usually converge in underlining the Union's limited capacities due to the lack of formal competences, legal authority, power resources or strategic coherence (e.g. Hill 1993; Smith 2003). By contrast, from a governance perspective, the point of reference is not the (often implicit) unified state actor model of traditional foreign policy studies but institutional processes of norm diffusion and policy transfer. This change of perspective and the focus on rule expansion also imply a shift in the unit of observation. Whereas a foreign policy perspective concentrates on countries or regions as units of analysis, the governance perspective takes systems of rules as its point of departure. It addresses the external dimension of the internal process of integration and hence adopts in the first place a sectoral optic on norms, policies and regulations and their external dimension.<sup>2</sup>

The notion of governance is particularly suitable to grasp this process of rule expansion beyond formal membership in the EU polity. We understand 'governance' as institutionalized forms of coordinated action that aim at the production of collectively binding agreements (Benz 2007, Mayntz 2005, Scharpf 2000). While the term has seen a fabulous career throughout the social sciences, our understanding of governance is inspired by its origins in the fields of IR and Comparative Politics. In IR, the term governance was introduced to conceptualize the emergence of political order at the international level in the absence of a global public regime let alone a world government (Rosenau 1992). Whereas the politics of international governance may involve a variety of actors (intergovernmental, public-private, private, international), the policies produced reflect a degree of legalization (including soft law) and socialization (referring to shared understandings) that goes far beyond the absence of political order assumed under the premise of anarchy. When applied to EU external relations, the governance approach implies a high degree of institutionalization and the existence of a common system of rules beyond the borders of the EU and the scope of its formal, legal authority.

The Comparative Politics sources of the term governance derive from its opposition to the notion of 'government' and reflect a broader transformation from the interventionist to the cooperative state (Jachtenfuchs 2001, Mayntz 2005). This transition finds its expression in the specific institutional modes through which governance is exerted, i.e. its horizontal instead of hierarchical nature, its focus on process rather than output, the emphasis on voluntary instruments in contrast to legal obligations, and its inclusive character, providing open fora for the inclusion of stakeholders and, in many sectors, private actors. As pointed out by Renate Mayntz, a key characteristic of governance is the vanishing distinction between the subject and the object of political steering (Mayntz 2005). In this context, the institutional form of governance arrangements is usually associated with a network constellation which delineates the horizontal, participatory, flexible, and inclusive structure of governance frameworks in contrast to the vertical, bureaucratic notion of hierarchical government.

Taken together, the move away from traditional realist or intergovernmentalist notions of “anarchy” in IR and from the hierarchical model of government in Comparative Politics provide a useful basis for conceptualizing processes of institutionalization within and around the EU. Whereas internally, the governance approach has been invoked to challenge the traditional ‘Community model’ or ‘Monnet method’ of integration (based on the quasi-hierarchical supranational formulation of binding EC law; see Héritier 2002, Kohler-Koch and Eising 1999, Tömmel 2007), externally, it has increasingly been invoked to conceptualize a deepening of EU external relations based on the widening of the prescriptive scope of EU policies and rules beyond formal membership (Friis and Murphy 1999; Lavenex 2004, 2008; Weber et al. 2007). The external modes of governance reach from more hierarchical settings that involve third countries’ adaptation to a pre-determined and legally constraining *acquis* (often by the use of conditionality) to ‘new governance’, i.e. more horizontal forms of network governance and communication in which rule expansion progresses in a more participatory manner.

This rule expansion can be conceptualized as shifts in the regulatory and organizational boundaries of European governance. The regulatory boundary refers to the extension of the regulatory scope of EU rules or policies to non-member states, while the organizational boundary refers to the inclusion of non-member states in EU policy-making organizations. Whereas it is true that under the Community model of hierarchical integration, organizational inclusion would be ‘a synonym for full membership’ (Filtenborg et al. 2002: 400), the advent of different forms of governance within the EU, in particular network governance and the proliferation of functional policy-making organizations (e.g. agencies such as the European Aviation Safety Agency or the European Agency for the Security of the External Border Frontex), has opened up new opportunities for organizational inclusion below the level of the central legislative authorities. Thus, for a basic definition, “external governance takes place when parts of the *acquis communautaire* are extended to non-member states” (Lavenex 2004: 683). This external governance can however also develop participatory elements and hence move closer towards alternative forms of integration when regulative expansion is accompanied by the opening-up of organizational structures of policy-making. This is possible especially in areas governed by horizontal, participatory and process-oriented modes of policy-making, often referred to as “network governance”. In this case, i.e. when third countries participate in the definition of relevant EU policies, we can speak of extended governance. Although we find this form of mutual influence most prominently in the relations with the western neighbours, instances of network governance can also be observed with ENP countries (Lavenex 2008)

### **Modes of EU external governance**

This special issue seeks to provide answers to two sets of questions. First, which modes of external governance prevail in various policy areas and regions, and why is this so? In addition, we seek to identify the effects of external governance and to specify the conditions under which these effects are produced.

Drawing on an analogy with ideal types of governance in political systems and previous conceptualization by Lavenex et al. (2007), we distinguish between three basic institutional forms: hierarchy, networks, and markets. These institutional forms act as opportunities and constraints on actors’ modes of interaction and hence have repercussions on the

mechanisms of rule expansion. The modes of governance are a heuristic device for analyzing the “macro-level” of EU-third country relations, referring to overarching institutional structures such as the EEA, the ENP, or negotiated bilateralism (Switzerland), and/or sectoral patterns of external governance at the “meso-level” of individual policy fields.<sup>3</sup>

*Hierarchical governance* takes place in a formalized relationship of domination and subordination and is based on the production of collectively binding prescriptions and proscriptions. In the modern state, this function is exerted through legislation, that is, the definition of authoritative, enforceable rules whose violation may be sanctioned. Both the institutionalization of domination and the authority of rules go along with the implicit acquiescence of the “ruled” (Benz 2006, Tömmel 2007: 26). The vertical relationship between the “rulers” and the “ruled” implies that influence is exerted in an asymmetric manner. At the sectoral level, hierarchical governance describes a form of steering based on formal and precise rules that are non-negotiable and legally binding as well as enforceable upon actors.

In the EU context, hierarchy is associated with the traditional “Community method” of policy-making. This mode of governance is based on the existence of supranational institutions engaged in the production of strongly legalized supranational law which can be enforced and sanctioned by the European Court of Justice. Although the EU competes with the Member States over sovereign authority and lacks a monopoly of force, the “Community method”, decision-making by qualified majority, and the prescriptive qualities of EC law come close to the hierarchical model (Börzel 2007: 70). At the sectoral level, hierarchical governance relates to those aspects of the *acquis* that are strongly integrated in the sense of precise and enforceable supranational law.

In the context of EU external relations, the term hierarchy must be qualified further since formally, non-members retain full sovereignty vis-à-vis the Union.<sup>4</sup> Informally, however, certain types of external governance come close to a hierarchical system and undermine important sections of third countries’ autonomy over their legislation. The clearest example of a quasi-hierarchical system of external governance is the European Economic Area. Although the ENP as such lacks the degree of legal formalization inherent in association relations with the western neighbours, a sectoral perspective on the structures of regulatory expansion shows a more varied picture (see Lavenex, Lehmkuhl and Wichmann in this issue). The existence of precise rules, formal procedures, monitoring and sanctioning associated with hierarchy are also necessary prerequisites for the effective exercise of conditionality as a mode of top-down policy transfer on the basis of external incentives (Schimmelfennig and Sedelmeier 2004: 664-5, Schimmelfennig and Sedelmeier 2005). Other authors have referred to such formalised forms of external impact as “compulsory impact” (Diez et al. 2006: 572-3) or “compliance” (Bauer et al. 2007).

In contrast to hierarchy, a *network* constellation delineates a relationship in which the actors are formally equal. This does not preclude the possibility of power asymmetries, but it means that in institutional terms actors have equal rights and that no party can bind the other party to a measure without the latter’s consent (Börzel 2007: 64). Whereas hierarchical systems are focused on the production of binding authoritative law, networks usually produce less constraining instruments that are based on mutual agreement and often prescribe procedural modes of interaction rather than final policy solutions (Benz 2007). Sometimes, the literature

also refers to networks as “negotiation systems” in which conflicts of interests are not solved via law and jurisdiction but through negotiations and voluntary agreement on the basis of bargaining or arguing (Börzel 2007: 65).

In the EU, network governance has come to challenge the Community method of policy-making in particular in those policy fields where the lack of a permissive consensus precludes the transfer of legislative power to the supranational organs. This form of “policy-making without legislating” (Héritier 2002) is only loosely coupled to the formal legislative organs of the Union and takes place in decentralized, sectorally specialized governance institutions such as agencies, committees or policy networks. The composition of these networks is usually based on functional expertise rather than political affiliation and may include private actors or other international organizations apart from civil servants from the Member States.

Applied to the EU’s external relations, network governance at the macro-level of association relations would delineate a strongly institutionalized and unified system of ongoing horizontal coordination. Regulatory expansion here occurs through the coordination of national rules rather than the ‘top-out’ (Magen 2006: 365) implementation of EU law. In the framework of the EEA, shared central institutions such as the Joint Committee and its working parties promote such coordination. Swiss-EU relations lack such central institutions, but networked coordination can take place decentrally within the different sectoral Bilateral Agreements. Some elements of networking can also be identified in the ENP’s macro-institutional structure. These refer to the joint elaboration of ENP Action Plans, the joint evaluation of progress in the Association Councils, as well as the attempt to establish stable communication between sectoral experts in the framework of the ENP subcommittees and the possibility of such sectoral experts to participate in EU agencies and programmes (Lavenex 2008). For all three types of neighbourhood associations, however, the more fruitful level for analysing network governance is the sectoral level where internal EU networks have partly been extended to include representatives of third countries (see Lavenex et al. 2009).

Given their voluntary basis and their process-orientation, network constellations provide a favorable context for mechanisms of influence based on socialization, social learning and communication (Schimmelfennig and Sedelmeier 2005, Bauer et al. 2007). As Schimmelfennig and Sedelmeier (2005) point out, network qualities such as deliberative processes, co-ownership, and density of interaction are likely to enhance the legitimacy of rules and are thus conducive to their expansion. This contrasts with the size of incentives and the credibility of monitoring and sanctioning as conditions of rule expansion in the hierarchical context. What is more, in the hierarchical model, EU rules provide a fixed institutional template for governance. The question is whether and to what extent third countries adopt EU rules. By contrast, network governance gives the negotiating parties more room for maneuver. Here the external governance can also take place on the basis of other shared rules, such as international rules, or new jointly negotiated rules.

The *market* is the third basic mode of external governance. Here, outcomes are the result of competition between formally autonomous actors rather than the result of hierarchical harmonization or networked coordination. Whereas the political science literature usually does not regard markets as a form of governance since they lack the overarching system of

rule which is characteristic of political systems, competition is sometimes included in the newer governance approaches as an institutionalised form of political market interaction.

In the EU, the typical form of institutionalized market governance is the principle of mutual recognition, at least in its application in the Single Market. Avoiding the definition of common rules (harmonization), mutual recognition unleashes a regulatory dynamic in which, due to consumers' demand, the most competitive products and services prevail. This may lead to a voluntary de-facto approximation of legislation on the basis of the respective production and service standards (Benz 2007: 46, see also Schmidt 2007).<sup>5</sup> Regulatory adaptation may however also occur in the absence of institutionalized mutual recognition as a consequence of competitive pressure.

In the external realm, the principle of mutual recognition has been extended to the EEA via the full transfer of Single Market legislation. Bilateral Agreements with Switzerland allow only for a very limited application of mutual recognition in the economic sphere, but respect this principle in the Agreement on the Free Movement of Persons. The dynamics of regulatory approximation through competition identified for the member states should also be identifiable in relations with third countries. Yet, even in the absence of mutual recognition rules or other direct institutionalized settings for rule transfer, EU rules can lead to third country adaptation indirectly. Here, the EU's impact on third countries results from its "presence" (Allen and Smith 1990), third countries' interdependence with its system of regional governance and single market, rather than from any form of association policy.

EU rules can produce both negative and positive externalities on external actors who adopt and comply with EU rules because ignoring or violating them would create (opportunity) costs. This "governance by externalization" is most obviously produced by the EU's internal market and competition policies: firms interested in participating in the EU market need to follow the EU's rules. This is in line with the competition mode of governance described by Bauer et al. (2007). It may affect societal actors (such as firms and business associations) as well as governments (induced to change their own rules and policies in line with the EU's). Finally, the EU as such as well its processes and policies may also provide a model for other regions, states, and societal actors who may come to see these as appropriate solutions to their own problems. This kind of indirect impact has been termed "lesson-drawing" (Schimmelfennig and Sedelmeier 2005), "deliberate emulation" (Lavenex and Uçarer 2004) or "enabling impact" (Diez et al. 2006: 573) and may apply to governments as well as non-state actors. Table 1 provides a summary of the structural modes of external governance, the first core dependent variable for the study of external governance.

*Table 1: Modes of external governance*

	<i>Actor Constellation</i>	<i>Institutionalization</i>	<i>Mechanism of rule expansion</i>
Hierarchy	Vertical: domination and subordination	Tight, formal	Harmonization
Network	Horizontal: formal equality of partners	Medium-tight, formal and informal	Coordination
Market	Horizontal: formal equality of partners	Loose, informal	Competition

## **Effectiveness of EU external governance**

Effectiveness is the second core dependent variable for the study of external governance - and the explanatory focus of most articles in this volume. While reference to the EU *acquis* has become standard in EU association agreements with third countries, and several institutionalized settings have been established to promote these associations, the question how far third countries outside the circle of candidates for membership actually adapt to EU norms has remained little investigated. In this study, we define effectiveness as the extent to which EU rules are effectively transferred to third countries.<sup>6</sup> In order to pay tribute to the specific characteristics of network governance, as well as to the fact that EU rules are often embedded in overarching international norms (Lavenex and Wichmann 2009: 94-98), we also include the promotion of such “joint rules” in the analysis of external governance. We contrast the effective transfer of EU and joint rules with alternative outcomes that may involve not only third countries’ adherence to their domestic rules but also the impact of other influential states (like Russia or the US) and international norms and organizations. Effectiveness can be measured at the levels of rule selection in international negotiations and agreements, rule adoption in domestic legislation and rule application in domestic political and administrative practice (see Table 2).<sup>7</sup>

*Table 2: Effectiveness of external governance*

	Level	Effectiveness	Alternative outcomes
Rule selection	International negotiations and agreements	EU rules (or joint rules) as focus of negotiations and agreement	Rules of other international organizations, other states, or third country rules
Rule adoption	Domestic legislation	EU rules (or joint rules) incorporated into domestic legal acts	
Rule application	Domestic political and administrative practice	EU rules (or joint rules) consistently applied	Behaviour ignoring or violating EU rules or joint rules

- (1) *Rule selection* is relevant at the level of international negotiations and agreement between the EU and third countries. It measures whether and to what extent EU rules constitute the normative reference point of EU-third country relations. Do third countries accept EU rules as the focus of their negotiations and agreements? Or do they accept joint rules that reflect EU rules embedded in international norms or jointly negotiated rules? Alternatively, they may select rules that do not conform the EU *acquis* and that are set by other international organizations (such as the UN or the OSCE), other countries (like the U.S. or Russia), or purely domestic rules. Rule selection is a relevant first step in the analysis of the effectiveness of external governance because, in contrast to the study of enlargement, it cannot be taken for granted that EU rules will necessarily dominate the negotiations and provide the focal point of EU-third country agreements.
- (2) To assess *rule adoption*, we ask whether EU rules selected for international agreements are then also transposed into the third country’s domestic legislation. Empirically, this is relevant because even though third countries may accept EU rules as the normative reference point of their negotiations with the EU, or joint rules, they may not adopt these rules domestically in the end. They may opt for alternative international rules, produce own domestic rules or just keep their earlier domestic rules. Whether and to what extent EU rules become domestic rules of third countries constitutes therefore the second level

of impact. Rule adoption is indicated by the ratification of agreements with the EU or the adoption of laws and other legal documents that incorporate EU and joint rules.

- (3) *Rule application*. Finally, rule adoption does not necessarily imply rule application. Whether and to what extent EU or joint rules are not only incorporated into domestic legislation but also acted upon in political and administrative practice is a separate question. Application constitutes the deepest impact of external governance.

Whereas rule adoption builds on rule selection, and rule implementation builds on rule adoption, the sequence of effectiveness may be interrupted at any level of impact. We therefore need to study the three levels separately.

### **Conditions of external governance**

Conceptualizing the modes and effectiveness of governance allows us to answer basic descriptive questions. On which modes is EU external governance based and how effective is it? How does the mode and effectiveness vary between third countries, regions, or policies? We may also ask whether there is a correlation between the mode of external governance and its effectiveness. Is e.g. hierarchical governance generally more effective than network governance (or is it more effective with regard to rule adoption whereas network governance is more effective with regard to application)? Or does it all depend again on the issue-area or the countries the EU is dealing with? In addition, we seek to explain this variation. What are the conditions of EU external governance in its various shapes and ramifications, and under which conditions is it more or less effective? Here we contrast an institutionalist perspective – the most germane explanation for a governance approach – with alternative or complementary power-based and (third-country) domestic explanations of external governance.

#### *Institutionalist explanation*

In the institutionalist perspective, external governance is generally shaped by existing EU institutions. They provide the template for the externalization of EU policies, rules, and modes of governance and condition their effectiveness. According to the institutionalist explanation, we thus expect the *modes* of external governance to reflect the internal structures of policy-making within a given domain. Simply put, if these are based on hierarchy, network, or market modes, so will external governance. The institutionalist perspective thus underlines the continuities between internal and external modes of governance. The reasons for the EU to orient itself toward internal modes of governance could be manifold. According to sociological institutionalism, existing institutions may either serve as a template in a highly uncertain policy context or they may be imbued with high legitimacy. In a more rationalist-institutionalist perspective they may represent efficient institutional solutions for the policy problem at hand, or EU actors may simply be legally obliged to externalize their institutional structures (and sanctioned otherwise).<sup>8</sup>

The *effectiveness* of external governance may be seen to depend on existing EU institutions as well. The general institutionalist hypothesis stipulates that effectiveness increases with legalization and/or legitimacy. On the one hand, the more precise, binding, and enforceable EU rules are (Abbott et al. 2000), the more likely they will be selected, adopted, and implemented beyond EU borders. This entails that the hierarchical mode of governance is most likely to lead to the effective transfer of EU rules, because rules are normally more

legalized in this mode than in the network or market modes. Strong monitoring and sanctioning make both rule adoption and rule application more likely. Alternatively (or in addition), the effectiveness of external governance increases with the international legitimacy of the rules in question (Franck 1990). The more an EU rule is supported and complied with within the EU (Schimmelfennig and Sedelmeier 2005: ???) and the more it is in line with international rules beyond the EU, the more likely third countries will accept it as a basis of negotiation, adopt it and apply it.

In sum, institutionalist explanations stipulate that the mode and effectiveness of EU external governance depend on the quality of existing EU institutions. We thus put forward three simple institutionalist hypotheses to be explored in the contributions to this issue:

(I1) The mode of external governance follows the mode of internal governance.

(I2) The effectiveness of external governance increases with

(a) the legalization of rules and/or

(b) the legitimacy of rules.

(I3) The hierarchical mode of external governance is the most effective one.

In the following, we contrast these hypotheses with power-based and domestic structure explanations.

#### *Power-based explanation*

The power-based explanation suggests that external governance is determined by the EU's power and its interdependence with third countries as well as competing 'governance providers' in its neighborhood and at the global level – mainly the United States and Russia but also international organizations such as the UN or the Bretton Woods organizations – which may advocate alternative governance modes and rules. In this view, the *modes* of external governance do not correspond to EU-internal institutional structures but to external structures of power and interdependence. The hierarchical mode of governance requires third countries to be both strongly dependent on the EU and more strongly dependent on the EU than on alternative governance providers – just as it has been the case in Eastern enlargement. Without such high and asymmetric interdependence in its favor, the EU will not be able to impose hierarchical governance upon third countries. Market governance presupposes significant market integration but not a dominant, centralized governance provider. We thus conjecture that it is most likely to be found where interdependence is high and symmetric. By contrast, network governance is compatible with symmetric power relations and medium degrees of interdependence.<sup>9</sup> The coordination mechanisms of institutionalized communication and social learning in network governance compensate for the absence of a dominant power (required for hierarchical steering) and an integrated market (necessary for steering through competition).

In this perspective, power and interdependence also drive the *effectiveness* of external governance. Whether EU rules (rather than other rules) are selected for cooperation, and whether these rules will be adopted and applied, depends on the bargaining power of the EU. According to the power-based explanation, accession negotiations are the prototypical case of high EU bargaining power. In the accession process, the EU offers an extremely strong incentive. At the same time, the candidate countries are usually much more dependent on the EU and eager to join the Community than vice versa. This puts the EU in a position in which it can demand the full transposition of the *acquis communautaire*. It is

therefore no coincidence that accession negotiations are characterized by an extremely fast and massive adoption of EU rules. Outside the context of enlargement, EU bargaining power is weaker and varies more strongly across countries and policies. The same can be expected with regard to the effectiveness of external governance according to the power-based explanation. The institutionalist and power-based explanations agree that the hierarchical mode of governance is the most effective one. The reasoning is different, however. Whereas institutionalism attributes effectiveness to high legalization (and legitimacy), the power-based explanation stipulates superior EU power as the cause of both hierarchy and effectiveness.

In sum, power-based explanations suggest that the modes and effectiveness of EU external governance vary with international structures of power and interdependence between the EU and third countries. We thus conjecture:

- (P1) The mode of external governance varies with structures of power and interdependence.
- (a) High and asymmetrical interdependence in favor of the governance provider tends to produce a hierarchical mode of governance.
  - (b) High and symmetrical interdependence is conducive to market governance.
  - (c) Medium and symmetrical interdependence is conducive to network governance.
- (P2) The effectiveness of external governance increases with the bargaining power of the governance provider.
- (P3 = I3) The hierarchical mode of external governance is the most effective one.

#### *Domestic structure explanation*

The third explanation, finally, attributes the modes and effectiveness of external governance to the domestic structures of third countries. As for the modes, the approach assumes an affinity or compatibility between the institutional structures of domestic politics and of international governance. In this regard, it is similar to the (international) institutionalist hypothesis of corresponding modes of governance in EU internal and external governance. As a competing domestic explanation to the institutionalist hypothesis, we can thus hypothesize that the mode of external governance will follow the mode of third-country domestic governance. As with the institutionalist hypothesis, the relationship between domestic and EU external governance can be theorized as one of functional necessity or efficiency or as one of driven by legitimacy and resonance. On the one hand, whereas hierarchical governance requires functioning rule of law systems as well as strong administrative and implementation capacity, market governance does not work without a high degree of economic liberalization. In turn, network governance presupposes decentralized and sectorally differentiated state structures with access for experts and stakeholders. On the other hand, third country actors are more likely to accept modes of external governance that resonate with their domestic institutional structures – to the extent that these are seen as ‘normal’ and legitimate.

In similar ways, domestic structures will also impact on the effectiveness of external governance. First, EU rules are more likely to be selected, adopted and applied if they resonate well with domestic rules, traditions, and practices. A second condition is what one could call ‘EU compatibility’ of domestic institutions. The more similar third countries are to the type(s) of states, societies, and administration of the EU member countries and the European multi-level system, the better EU rules are likely to fit. In this vein, economic and administrative autonomy and openness should facilitate the selection and adoption of EU

rules and, together with high state capacity, they should promote rule implementation as well. In addition, in line with the literature on the Europeanization of candidate countries, we also suggest that effectiveness will decrease with the number of veto players that incur high costs from rule adoption and implementation (Schimmelfennig and Sedelmeier 2004: 664-5).

In sum, the domestic structure explanation sees the mode and effectiveness of external governance not so much driven by international institutions and power as by its compatibility with domestic institutions. We thus stipulate two final hypotheses:

(D1) The mode of external governance follows the mode of third-country domestic governance.

(D2) The effectiveness of external governance increases

- (a) with the resonance of EU rules;
- (b) with the EU-compatibility of domestic institutions;
- (c) as the number of adversely affected veto players decreases.

While we are open to the possibility that institutions, power, and domestic structures may interact, we also seek to establish the individual contribution of each of these perspectives to the explanation of external governance.

### **Overview of contributions**

The contributions to this special issue scrutinize the emergence of different modes of external governance in relations to the EU's western, eastern and southern neighbours and investigate the conditions for their effectiveness in various policy fields reaching from foreign and security, trade, energy, environmental policy as well as democracy promotion.

The first contribution by Sandra Lavenex, Dirk Lehmkuhl and Nicole Wichmann (Lavenex et al. 2009) analyzes the relationship between macro-institutional modes of external governance in the EEA, Swiss-EU Bilateralism and the ENP, and the modes of governance towards these countries at the level of individual policy sectors (research, air transport, environment, and different aspects of EU justice and home affairs). This comparative analysis offers much evidence for the validity of the institutionalist hypothesis: despite their pronounced differences, overarching macro-institutional structures have little impact on the modes of external governance in individual sectors. In contrast, the latter follow largely sectoral dynamics which are remarkably stable across this heterogeneous group of countries.

The following contributions deal with particular (groups of) countries or policies and analyze the degree to which the EU effectively promotes its rules beyond its borders. In their article "Which rules shape the EU's external governance?" Esther Barbé, Oriol Costa, Anna Herrantz and Michal Natorski (Barbé et al. 2009) examine rule selection in the field of foreign and security policy in relations with Morocco, Ukraine, Georgia, and Russia. Their study shows that with regard to foreign policy dialogue, control of export of dual-use goods in the context of weapons of mass destruction and crisis management, the EU promotes policy convergence on the basis of international and mutually negotiated rules rather than on the basis of the EU *acquis* alone. In conclusion, two variables are identified as both necessary and jointly sufficient for explaining the selection of EU rules: their perceived legitimacy and EU power towards the country.

The question of power is also at the heart of Antoaneta Dimitrova's and Rilka Dragneva's article "Constraining external governance" (Dimitrova and Dragneva 2009). Looking at the case of Ukraine, the article investigates the limits imposed by Russia's influence and the Commonwealth of Independent States (CIS) on EU endeavours. The comparison of trade, energy and foreign policy relations shows that the effectiveness of EU rule export varies with the patterns of interdependence in the different sectors, reaching from stronger effectiveness in trade to less impact in energy and foreign policy.

Looking at the field of environmental policy, the contribution by Christoph Knill and Jale Tosun "Hierarchy, networks or markets" (Knill and Tosun 2009) takes these different modes of governance as independent variables and examines their respective effectiveness in promoting EU environmental rules abroad. This quantitative study covering 32 European states (both EFTA, candidate and ENP countries) in the period from 1980 to 2006 documents not only that EU environmental norms have repeatedly been adopted in third countries, but also that hierarchy has been the most effective mode of external governance to date.

The final two contributions scrutinize EU democracy promotion through the lens of an external governance framework. The article "Democracy promotion as external governance" by Richard Youngs (Youngs 2009) gives a comprehensive analysis of the governance modes applied by the EU in the promotion of democracy in Ukraine, the Western Balkans and the Southern Mediterranean as well as their effectiveness. Youngs shows that a hierarchical mode of governance can only be found in the Balkans, whereas the network mode prevails in relations with Ukraine and the Mediterranean ENP countries. Moreover, the effectiveness of democracy promotion has been moderate in the Balkans and Ukraine but weak in the Middle East and Northern Africa. He explains the variation by a combination of EU power and domestic structures of the partner countries.

By contrast, Tina Freyburg, Sandra Lavenex, Frank Schimmelfennig, Tatiana Skripka and Anne Wetzel (Freyburg et al. 2009) combine the sectoral optic on EU external relations with the study of democracy promotion and ask how far elements of democratic governance may be promoted through functional cooperation in individual sectors. Comparing between more politicized and less politicized sectors (asylum, competition and environmental policy) in the relations with three countries (Moldova, Morocco, and Ukraine), the article shows that the EU is capable of inducing neighbouring countries to adopt policy-specific democratic governance provisions in the absence of hierarchy or accession conditionality. This is in particular the case when the corresponding EU rules are strongly legalized and when they are linked to overarching international norms. Although this effect can be observed at the level of rule adoption, i.e. the transposition of EU rules into domestic laws, the study also highlights its disconnection with political and administrative practice, i.e. rule application.

### **Summary of main findings**

Which conclusions can we draw beyond the individual contributions of this issue? What explains the modes and effectiveness of external governance? How relevant are the EU's institutional features, the relations of power and interdependence between the EU and its neighboring countries, and the domestic structures of third countries? And, more generally, what are the specific characteristics of EU external governance as opposed to both enlargement policy and more traditional foreign policy? The contributions to this issue

certainly do not lend themselves to a comprehensive test of the hypotheses proposed above. For that purpose, the articles are too much specialized in individual policies, third countries, and explanations. But they suggest some tentative conclusions and general patterns for further analysis.

For the modes of governance, which only Lavenex et al. (2009) made the main focus of their analysis, the findings support the institutionalist hypothesis I1 that external modes follow internal modes. The institutionalist explanations find support in other contributions as well. Barbé et al. (2009) discover that the perceived legitimacy of EU rules is one prerequisite for selecting EU rules as the basis of cooperation in EU-third country relations (I2b). Freyburg et al. (2009) show that the adoption of democratic governance rules increases with the degree of their legalization in the EU (I2a), and Knill and Tosun (2009) come to the conclusion that the hierarchical mode of governance is the most effective one (I3). Whereas this hypothesis is shared by the power-based explanation (P3), Knill and Tosun operationalize it in terms of legalization so that the effects can be attributed to the quality of institutions rather than power. Thus, all institutionalist hypotheses receive some initial support.

This, however, is true for the power-based explanations as well. Youngs (2009) argues that limited EU bargaining power in its relations with neighboring countries militates against hierarchical democracy promotion and favors network governance (P1). Barbé et al. (2009) find that EU bargaining power is as strong as legitimacy for explaining the selection of EU rules in EU-third country CFSP cooperation, and Dimitrova and Dragneva (2009) identify constellations of interdependence and bargaining power as the central conditions of governance effectiveness in EU-Ukraine relations (P2).

Finally, whilst Youngs (2009: XXX) sees bargaining power as a potential explanation of the mode of governance in democracy promotion, and concedes that the hierarchical mode governance is more effective in democracy promotion than the network mode (P3), he attributes the strongest causal relevance to domestic conditions. In this perspective, network governance fits best with the 'softly-softly' strategy of socializing third countries to democratic and human rights norms without endangering the stability of political systems (see also e.g. Gillespie and Youngs 2002 and Youngs 2002 on democracy promotion in the Mediterranean). In addition, even hierarchical democracy promotion (through political conditionality) is likely to be effective only in at least partly democratized countries.

In sum, none of our hypotheses can safely be discarded at this point. To move ahead on the theoretical front, we would need to go beyond the exploratory studies for this issue and to turn to analyses that explicitly test the hypotheses against each other and use controlled comparative designs in which the theoretical expectations for the mode and effectiveness of governance vary clearly between the explanations.

Even at this stage of research, however, the underlying rationale for studying external governance is clearly supported by the contributions to the special issue. This is most evident if we contrast external governance with enlargement as two different ways of expanding EU rules beyond EU borders. Generally, we can say that macro-institutional context, the hierarchical transposition of the entire EU acquis in a constellation of EU superiority, dominates in enlargement. By contrast, the sectoral logic, i.e. issue-specific

modes of governance and patterns of power and interdependence, shapes external governance.

First, we find a variety of modes of governance, which include more networked forms of interaction than truly hierarchical forms of policy export. The contributions by Lavenex et al. and Youngs emphasize these practices of networked coordination both in sectoral policies and in political relations geared at democracy promotion. Second, the modes of external governance follow the institutional path of internal modes of sectoral governance rather than overarching macro-policies (Lavenex et al. 2009).

Third, external governance is less fixated on the export of the precise *acquis* than on promoting approximation to EU norms and practices. In addition, whereas it is clear in enlargement that EU and only EU rules form the basis of the relationship, this is an open issue in the relations with the eastern and southern neighbors of the Union. Here, approximation may also draw on international or jointly negotiated rules (Barbé et al. 2009; Dimitrova and Dragneva 2009). Thus, whereas rule selection is not an issue in enlargement, it requires explanation in external governance.

Fourth, whereas enlargement is strongly linked to democracy at the (macro) level of the political system, with democratic consolidation being the major condition for accession negotiations with the EU, Richard Youngs shows that in the EU's relations with non-candidate countries, the EU does not even consistently seek to, let alone succeed to, promote democratization. The macro-policy of democracy promotion is incompatible with the sectoral logic of external governance. This is different for norms of sectoral democratic governance. Freyburg et al, (2009) show that the EU promotes such norms consistently and effectively in the context of external governance.

Finally, the EU's bargaining power is not guaranteed by the enlargement context and the candidates' desire to join but varies considerably across issues and relationships in external governance. As, for instance, Dimitrova and Dragneva show, EU power depends both on the patterns of sectoral interdependence with third countries and on the power of other governance providers. This is a kind of competition the EU did not have to face in enlargement.

However, whereas the macro-constellation of enlargement ensured EU rule transposition across the board, effectiveness cannot be taken for granted in external governance. Our contributions show clearly that the hierarchical mode typical for enlargement produces the best chances of effective governance (Knill and Tosun 2009; Youngs 2009). Even those countries that do not have a credible membership perspective but strive unilaterally for accession (such as Ukraine) are more likely to accept and adopt EU rules (Barbé et al. 2009).

Otherwise, effectiveness depends on the varying legitimacy or legalization of the rules in question and/or the sector-specific constellation of power (Barbé et al. 2009; Freyburg et al. 2009). Our findings suggest that the EU may be quite successful in focusing external relations on its rules and even inciting third countries to adopt EU rules into domestic legislation. Its impact is, however, much less visible at the level of rule application. This points at a possible next step in the development of the external governance approach which

may focus less on what the EU does in promoting its norms than, much akin to the research on “Europeanization” (e.g. Knill and Lehmkuhl 2002; Radaelli 2004), on the domestic conditions for effective policy implementation in third countries.

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## Endnotes

<sup>1</sup> For a general analysis of the external face of the *acquis*, see Magen (2007).

<sup>2</sup> This approach is closer to conceptualizations of the EU's international role that depart from the unitary foreign policy actor model and emphasize its “variable and multi-dimensional presence” (Allen and M. Smith 1990: 20, see also Bretherton and Vogler 2006) or its constitution as a “system of external relations” that is fragmented across pillars and levels of policy-making (Hill 1993, Ginsberg 1999). The external governance approach is one way of analyzing the effects of this fragmented multi-dimensional presence based on the projection of the *acquis communautaire*.

<sup>3</sup> For the distinction of macro and meso (or sectoral) policies in the context of EU enlargement, see Sedelmeier (2002, 2005).

<sup>4</sup> In the formal definition, sovereignty comprises the internal autonomy over legislation and enforcement institutions, external autonomy vis-à-vis other states and non-intervention, as well as territoriality.

<sup>5</sup> This regulatory dynamic is absent in political areas such as Justice and Home Affairs (JHA) where the application of mutual recognition for the interchange between courts and enforcement authorities is not backed by consumers' demands for higher standards, e.g. with regard to criminals' rights (Lavenex 2007).

<sup>6</sup> External governance can theoretically also involve other effects than rule transfer, such as for instance the involvement of third country policy-makers in joint regulatory networks (see Lavenex 2008).

<sup>7</sup> Rule selection is a dimension usually not analyzed in studies of compliance that take EU law as the given normative focus. Both adoption and application can be seen as two levels or dimensions of compliance or implementation. We prefer this terminology to ‘transposition’ and ‘enforcement’, which refer to compliance with EU law and thus imply a hierarchical mode of governance. Rule selection, adoption and rule application are open enough to be compatible with the network and market modes of governance.

<sup>8</sup> For an overview of institutional mechanisms, see [Scott \(1995\)](#).

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<sup>9</sup> Here we start from the assumption that low interdependence will not generate any demand for governance.