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Concentric circles of flexible ‘EUropean’ integration: A typology of EU external governance relations

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Abstract The deepening of the EU’s *acquis communautaire*, transformations of the European continent, and intensifying webs of interdependence have, since the 1990s, prompted a progressing blurring of the functional boundaries of the European Union. Whereas the integration project has produced externalities early on, the EU has engaged in an active promotion of its norms and rules beyond the member states, designing concentric circles of flexible ‘EUropean’ integration. This article offers a typology of these evolving external circles of EU rule-export focusing on the European Economic Area, Swiss-EU bilateralism, the stabilization and enlargement policy towards the candidate countries of the Western Balkans, the European Neighbourhood Policy and countries beyond the neighbourhood. Drawing on the theoretical notion of external governance, it will be shown these outer circles of ‘EUropean’ integration fall into three groups. While the first group, the ‘quasi-member states’ of Western Europe, combine far-reaching regulatory alignment with limited opportunities for organizational inclusion in EU structures, the Eastern and Southern neighbours face less legalized forms of rule transfer along with the establishment of parallel regional organizational structures. Links with countries beyond the neighbourhood finally stress the functionally differentiated rather than political and territorial dynamics of EU external governance.

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Keywords: EU enlargement; external governance; European Economic Area; flexible integration; European Neighbourhood Policy; Western Balkans

Introduction

The external effects of European integration and in particular the promotion of EU norms and rules beyond EU borders have been heralded the ‘third, and latest, developmental phase in European integration scholarship’ (Magen, 2007,



p. 362).¹ Whereas regional integration has always produced externalities, inducing inter alia several rounds of enlargement, since the 1990s, the EU has engaged into the active promotion of its *acquis communautaire* to third countries and international organizations. This development is most notable in the European neighbourhood, where the EU has devised alternative forms of integration below the threshold of membership. The launch of the European Economic Area (EEA) in 1992 was to offer the members of the European Free Trade Association (EFTA) participation in the single market despite these countries' decision not to formally join the EU. After the successive accession of 15 new member states in 1995, 2004 and 2007, the approach towards the remaining candidate countries oscillates between a remote accession perspective and support for parallel regional integration based on the EU *acquis*, which can be interpreted as the institutionalization of a 'waiting room' for membership. The European Neighbourhood Policy (ENP), launched in 2004, was the first overt attempt to design a new form of association that provides 'willing' neighbouring states with an alternative to enlargement. While emulating some of the 'waiting room' characteristics of newer enlargement policies, the ENP promotes regulatory approximation for neighbouring countries, which do not seek to become member states. Finally, the EU also actively promotes rules beyond its neighbours, however, in a more punctual and sector-specific manner. Whereas in the neighbouring circles, external governance tends to replicate a territorial logic of declining intensities of political relations, institutionalized rule-transfer beyond the neighbours follows a functional logic guided by patterns of interdependence.

Although differing in their regulatory scope and organizational set-up, as well as in their degree of actual implementation, these different externalization policies have in common that they extend the prescriptive scope of EU rules beyond EU borders, thereby shifting the EU's functional boundaries beyond its territorial borders (Lavenex, 2004; Lavenex and Schimmelfennig, 2009; Lavenex *et al*, 2009). The results are concentric circles of functional 'EUropean integration'. This article provides a typology of these concentric circles based on two dimensions of political order: the regulatory boundary – that is the degree to which EU rules are extended to the third countries in question – and the organizational boundary – that is, the question how far this regulatory extension is accompanied by organizational inclusion, relating to the possibilities for third countries to participate in the determination of the relevant *acquis* (Lavenex, 2008). The comparative assessment of EU neighbourhood relations broadly substantiates the notion of concentric circles that diminish in intensity with growing distance to the EU. However, important differences exist between the western and the other neighbours with regard to the legal and organizational quality of inclusion, as well as between different sectors of cooperation. The sectoral logic of external governance is particularly salient in the countries beyond the neighbourhood where functional patterns of interdependence trump geographic criteria.

Dimensions and Scope of External Governance

By invoking the term external ‘governance’, we address frameworks of interaction between the EU and third countries that go beyond familiar notions of international ‘cooperation’. ‘Governance’ implies a system of rules that exceeds the voluntarism implicit in the term cooperation and refers to recurrent forms of coordinated action that aim at the production of collectively binding agreements (Mayntz, 2005; Benz, 2007). When applied to the field of EU foreign relations, external governance thus presupposes a relatively high degree of institutionalization and exceeds purely voluntary and unilateral decisions by third countries to emulate EU norms. Such dense institutional frameworks of interaction have been devised in particular in the relations with the neighbourhood countries of the EU. Although differing with regard to their institutional set-up, exact scope and the intensity of commitments, the EEA, EU-Swiss bilateralism, and the ENP have in common that they cover wide sections of the EU *acquis communautaire* and are based on a dense web of institutionalized relations. The projection of norms to countries beyond the neighbourhood is more issue-specific and takes less encompassing institutional forms, usually embedded in the EU’s vast net of association and cooperation agreements. Below the level of diplomatic inter-governmental relations, the vehicle of external governance are transgovernmental networks in which EU (including Member States’) administrative actors liaise with their professional counterparts in third countries, sometimes also under the roof of overarching international organizations.

The conceptualization of patterns of external governance requires disaggregating the processes of de-bordering and rebordering in various dimensions of political order. Drawing on Michael Smith (1996), governance systems can be differentiated along their regulatory and organizational boundaries (Lavenex, 2004, 2008). External governance in the sense of committing a third country to abide to EU rules implies first and foremost a shift of the EU’s regulatory boundary. This regulatory shift can reach from the full projection of the EU’s *acquis communautaire* to more selective norm-transfer. The legal quality of commitments varies between quasi-supranational harmonization, looser notions of approximation or mere dialogue and information exchange. Finally, compliance with these commitments can be backed by judicial enforcement bodies, regular political monitoring or be based on the legal principle of good faith.

The extension of EU rules may involve different intensities of organizational inclusion into EU decision-making structures. Full organizational inclusion would consist in third countries participating in EU central legislative structures, and thus amount to membership. A specific instance of nearly full organizational inclusion exists with Norway and Switzerland under the respective Schengen association agreements, which grant these states access to the Council of Ministers at all levels of hierarchy, however, without the right



to vote (Wichmann, 2009). Secondary avenues for organizational inclusion exist in the vast array of EU (comitology) committees and agencies that are engaged with 'decision-making without legislating' (Héritier, 2002). Inclusion at this level can reach from full membership (such as for example of Norway and Switzerland in the European Aviation Safety Agency, EASA) and far-reaching participation on the basis of an 'observer status' to looser cooperation agreements. An alternative – and less inclusive – organizational venue for external governance consists in the promotion of EU rules through non-EU bodies. These can be either multilateral, often regional fora specifically set up by the EU with the purpose of sustaining external governance (for example the South-East European Energy Community or the Police Cooperation Convention for South East Europe, see below) or other, pre-existing multilateral organizations into which EU rules enter more indirectly in the guise of 'best practices' or the like (for example the Black Sea Economic Council (BSEC) or the International Commission for the Protection of the Danube, see below). The third relevant organizational dimension concerns the relative weight of technocratic, expert-based or transgovernmental networking. The greater the leeway of transgovernmental contacts from overarching political and diplomatic relations, the closer a third country's administrative connection with the EU (Slaughter, 2004). In contrast, the predominance of governmental contacts speaks for looser, mainly diplomatic relations.

The regulatory and organizational set-up of association relations can be differentiated in a four-point scale reaching from very intensive to weaker forms of external governance (Table 1). This typology provides a heuristic device for enhancing our comparative understanding of the EU's patterns of external rule promotion; it says nothing on actual rule adoption on the part of the third countries. Another caveat rests in the insight that the macro-institutional configuration of EU external governance modes gives only a very partial and sometimes also misleading picture. This is because the scope and modes of external governance in individual sectors vary relatively independently from overall macro-institutional foreign policy relations (Lavenex *et al*, 2009), and because the focus on macro-institutional frameworks disguises the heterogeneity of the countries to which they apply.

In what follows, we briefly introduce the five circles of EU external governance on the basis of this categorization, before concluding with a comparative assessment.

'Quasi-colonialism?': The EEA

This agreement expresses the closest relation between the EU and a group of third countries. The EEA agreement was signed in 1992 and today constitutes

Table 1: Dimensions and circles of EU external governance

| | <i>First circle (1)</i> | <i>Second circle (2)</i> | <i>Third circle (3)</i> | <i>No external governance (4)</i> |
|------------------------------------|---------------------------------------|---|--|--|
| <i>Regulatory boundary</i> | | | | |
| Scope of EU <i>acquis</i> promoted | Full EU <i>acquis</i> | Partial EU <i>acquis</i> | Punctual EU <i>acquis</i> | No <i>acquis</i> promotion |
| Legal quality | Harmonization | Approximation | Information | No commitment |
| Supervision | Judicial | Political | Good faith | No supervision |
| <i>Organizational boundary</i> | | | | |
| Inclusion in EU structures | Participation in EU legislative arena | Membership/observer status in committees and agencies | Cooperation agreements with agencies | No inclusion |
| Inclusion in parallel structures | No parallel structures | Inclusion in EU-sponsored regional structures | Inclusion in independent regional and/or multilateral structures | No EU involvement in parallel structures |
| Main level of interaction | Transgovernmental | Mixed inter- and transgovernmental | Intergovernmental | No institutionalized interaction |

the contractual basis for the relations between the EU and the EEA EFTA countries, Iceland,² Liechtenstein and Norway. The scope and legal quality of commitments relating to the EU *acquis communautaire* justify the qualification of the EEA EFTA countries as ‘quasi-EU members’ (Egeberg and Trondal, 1999; Sitter and Eliassen, 2004). Despite the possibility of various forms of organizational association, in particular at the secondary level of comitology committees and agencies, the asymmetry of legal obligations and opportunities for legislative participation have led scholars to characterize the EEA’s macro-institutional set-up as a form of ‘quasi-colonialism’ (Tovias, 2006).³

Extending the single market and beyond: The regulatory boundary

The EEA is the most extensive form of external governance both with regard to the regulatory scope and the legal quality of obligations resulting from the contractual relations. It covers the Single Market *acquis* and a number of additional policy fields. On the basis of the notion of legal homogeneity, the Agreement requires full adoption of the relevant EU *acquis* by the associated EEA EFTA countries, including new legal acts, adopted by the EU subsequently to the conclusion of the agreement. The EEA EFTA countries



are also bound to align with the case law of the European Court of Justice (ECJ), which constitutes a second source of dynamism of the *acquis*. The principle of legal homogeneity in the EEA Agreement implies that EU rules have nearly supranational qualities in relation with the EEA EFTA states, and enforcement mechanisms resemble the EU's internal judicial system (Lazowski, 2006). Monitoring of implementation is ensured by the Surveillance Authority, that can launch infringement procedures against non-compliant Member States, and the EFTA Court that is responsible for enforcing legal homogeneity across the EEA, while respecting the jurisdiction of the ECJ.

Allowing for limited decision-shaping: The organizational boundary

The significant scope of regulatory adaptation implied in the EEA goes along with the establishment of parallel governance structures and a partial opening of EU bodies and fora. The parallel structures consist in the joint 'EFTA-EC institutions' composed of an intergovernmental EEA Council at the top of the institutional hierarchy and the EEA Joint Committee at the ambassador level and a dense transgovernmental structure of specialized Sub-Committees and working groups. In sum, the parallel EEA institutions fulfil a rather passive role of 'adjusting the EEA Agreement and its annexes to developments in EC law' (Lazowski, 2006, p. 113).

A more active role of EEA EFTA states in EU decision-shaping is provided by formal and informal access to the EU's own policymaking bodies. As a general rule, with the exception of the area of Justice and Home Affairs, where the EEA EFTA states as well as Switzerland have negotiated participation rights in the Council of Ministers, the EEA EFTA countries do not have direct access to the EU's central legislative bodies. Sometimes, the EEA EFTA states are invited to attend informal Council meetings, but this remains a discretionary decision of the Presidency.

The proliferation of new modes of governance and the increasing importance of transgovernmental governance by committees, programmes, agencies and networks has, however, opened new avenues for decision-shaping outside the formal legislative arena. Commission expert committees set up in the agenda setting stage and comitology committees assisting the Commission are particularly open and grant EEA EFTA members equal participation rights. These rights are not negligible as comitology committees do sometimes take-up quasi-legislative functions in concretizing EC law (Christiansen and Kirchner, 2000). In addition, the EEA grants participation in EU programmes and the respective programme committees. Finally, the EEA EFTA states can participate in EU regulatory agencies. To date, the EEA EFTA states have concluded association agreements with seven agencies.⁴ Furthermore, Norway cooperates



with the European Community Fisheries Control Agency and it has concluded association agreements with the former third pillar coordinating bodies, the European Police Office (Europol), the European Judicial Cooperation Unit (Eurojust) and the European Police College. The rights granted to the EEA EFTA member reach from full membership (for example EASA) to observer status with full participation rights though without voting right (European Commission, 2006). As voting hardly takes place in EU committees or agencies, this limitation is of little practical relevance. This dense organizational interaction illustrates the progressed nature of transgovernmental networking between administrations in the EU and EEA EFTA states that operates with a wide degree of autonomy from intergovernmental diplomatic channels (Lavenex *et al.*, 2009).

Summing up, the EEA provides for the strongest form of external governance and consists in a *de facto* shift in the EU's regulatory boundary, at least with regard to the matters relating to the Single Market and adjacent policy areas. Although formally lacking the qualities associated with supranational EC law, this association is equivalent in terms of the range of issues covered, the legal intensity of obligations and the monitoring system. At the same time, this effective transfer of sovereignty goes along with the establishment of a parallel structure of joint EU/EEA institutions and limited possibilities for the EEA countries' organizational participation in EU bodies. Participation is particularly salient at the transgovernmental level in committees and agencies that are working with or alongside the European Commission in the preparation and implementation of EU law.

Pragmatic Bilateralism: Relations with Switzerland

After the rejection of EEA accession by the majority of the Swiss citizens in a popular referendum in 1992, relations with the EU have been based on a series of bilateral sectoral agreements. Despite their apparent intergovernmental and technical nature, these bilateral agreements constitute a deep form of external governance that comes close to the status of quasi-membership observed for the EEA/EFTA countries (Grolimund and Vahl, 2006, Lavenex and Lehmkuhl, 2009).

Dynamic association by default: The regulatory boundary

Formally, the horizontal scope of pragmatic bilateralism is limited to the issue areas in which bilateral agreements have been concluded. This stands in contrast to the 'global' nature of the EEA. In addition to the Free Trade Agreement of 1972, a total of hitherto 16 bilateral agreements have been



concluded in two rounds of negotiations. These bilateral agreements differ strongly with regard to their thematic width and hence horizontal scope; whereas some, such as the agreement on the Free Movement of Persons, cover significant sections of the EU *acquis*, others are much more specific.⁵

In contrast to the dynamic nature of the EEA, providing for steady adaptation to the evolving EU *acquis*, the agreements concluded with Switzerland are, as a general rule, static as they lay down the scope of necessary regulatory adaptation at the time of their conclusion. There are two exceptions: the bilateral agreement on air transport and the agreement on Switzerland's association with Schengen/Dublin provide for dynamic alignment with future EU regulations and directives. Formally, the bilateral agreements are based on the mutual recognition of the 'equivalence of legislation'. This means that the 'equivalent' Swiss laws are explicitly listed in the annexes to the sectoral agreements. In practice, however, this requirement of 'equivalence of legislation' has led to far ranging adaptations of Swiss legislation to European standards (Honegger, 2004, pp. 43–44).

Adaptation to evolving EU law occurs on the one hand at the instigation of the so-called joint committees established under each sectoral Agreement (Honegger, 2004, pp. 85–86; Grolimund and Vahl, 2006). On the other hand, dynamic adaptation occurs also 'voluntarily' through the practice of unilateral adaptation to the EU *acquis*, which exists since 1992 (called 'autonomer Nachvollzug') and by which each new legislative act in Switzerland is being checked upon its 'euro-compatibility' before adoption (Church, 2000).

An important difference with the EEA is the informality of the monitoring procedure. The bilateral agreements provide neither for a judicial nor for coordinated political supervision. Rather, the contracting parties are responsible for ensuring implementation on their respective territories based on the international law principle of 'good faith'. To ensure the good functioning of the agreements the joint committees have been endowed with the power to manage the implementation and to settle arising disputes (Honegger, 2004, p. 72).

Sectoral fragmentation and hesitant openings: The organizational boundary

Given the sectoral approach of Swiss association, and in contrast to other neighbourhood policies, DG Relex, which is normally responsible for managing relations with third countries, does not have the lead role in the relations with Switzerland. In practice the sectoral DGs manage the everyday implementation of the bilateral agreements. This fragmentation yields a particular degree of complexity of organizational structures and a certain lack of political leadership. In the absence of overarching institutions, the main fora to discuss regulatory approximation and eventual problems of implementation are the



transgovernmental joint committees established under each bilateral agreement. This high level of functional specialization translates into close ties between the Swiss officials and those in charge of relations with Switzerland in the sectoral DGs. It seems as if most problems are solved in direct 'informal' contacts at administrative level, but some difficulties have arisen in recent times, leading the European Commission to call for more judicial enforcement mechanisms (Tobler, 2008).

The bilateral agreements also foresee Switzerland's participation in the decision-shaping process. Formally the rules are similar to those established for the EEA EFTA states, but in practice opportunities for participation are more restricted. Switzerland has the right to participate as an 'active observer' with a right to speak, but not to vote, in the areas of research, air transport, social security and the recognition of diplomas (Honegger, 2004, p. 45; Grolimund and Vahl, 2006, p. 47). Moreover, the Commission has to consult with Switzerland on legislative proposals that further develop the *acquis* in areas in which legislation is equivalent. Nonetheless, the possibilities to influence legislation, once it has passed the pre-pipeline stage, decrease markedly, in contrast to the arrangement found under the EEA. This holds in particular for the elaboration of the implementing legislation in the comitology committees. The informal practice allowing EEA EFTA experts to assist comitology meetings as observers has not been extended in a general manner to Switzerland. Whereas the sectoral DGs are usually in favour of this informal practice, and have repeatedly allowed Swiss participation on an *ad hoc* and informal basis, the Legal Service of the Commission and DG Relex are increasingly disinclined to accept these special solutions for non-members (Honegger, 2004, p. 88). Also Switzerland's participation in EU programmes is more selective than, for instance, that of Norway. The same is true for presence in EU agencies; Switzerland currently participates in the EASA and the European Environmental Agency. Association with the Schengen and Dublin Agreements in JHA has also implied the conclusion of cooperation agreements with Europol, CEPOL, Eurojust and Frontex. Although participation in agencies is still less developed than with Norway, it may be expected that more associations will be sought as the implementation of the bilateral agreements progresses and the fields of cooperation expand. As in the EEA case, association with the Schengen and Dublin Agreements in JHA involves the most far-reaching participation rights as Swiss officials have direct access to all relevant Council working parties, yet without the right to vote.

To sum up, the main characteristics of pragmatic bilateralism between the EU and Switzerland are the fluid junctions between comparatively weak levels of legalization, informal adaptation pressure and the sectoral diversity of organizational participatory arrangements, with a clear emphasis on trans-governmental ties (Lavenex, 2009).



Between Region-building and Accession: Relations with the Current Candidate Countries

In contrast to the hierarchical, mainly bilateral and conditionality-based set-up of EU eastern enlargement (Schimmelfennig and Sedelmeier, 2004), association relations with the remaining candidate countries are more differentiated.⁶ After a first phase of bilateral and development-oriented cooperation, the EU has followed a two-track strategy with the countries of the Western Balkans (WB): on the one hand, it has offered Albania, Bosnia-Herzegovina, Croatia, Kosovo, FYR Macedonia, Montenegro and Serbia a membership perspective, on the other hand, it has intensified attempts at promoting regional integration among these countries. Whereas the tension between pre-accession bilateralism and regionalism has often been commented upon, a closer look at the sponsored regional organizations underlines their focus on the EU *acquis communautaire* as a frame of reference, thus complementing bilateral relations. In this context, the new emphasis on 'ownership' of these processes, expressed most clearly in the creation of the Regional Cooperation Council (RCC) in 2008, illustrates a development comparable to that observed in the ENP (see below), namely the institutionalization of regional fora promoting regulatory membership under EU rules, yet without organizational membership in the EU system – at least until full accession.

Accession conditionality and parallel regime building: The regulatory boundary

The Stability Pact for South-Eastern Europe and the Stabilization and Accession Process (SAP), both initiated in 1999, laid the basis for the dual-track approach based on bilateral pre-accession relations and region-building. The SAP set out the bilateral contractual framework to bring the WB into the enlargement process. It involved the signature of Stability and Association Agreements (SAA) and later the European Integration Partnerships. Irrespective of the question of actual compliance with EU requirements, the scope and form of regulatory adaptation to EU norms expected in these agreements is comparable to the 2004 and 2007 enlargements (Schimmelfennig, 2009): the *acquis communautaire* has to be adopted in full, the possibilities for temporal derogations are very limited, and regulatory adaptation is being closely monitored by the Commission. The most notable difference with the earlier enlargements is that in the light of the more remote and partly also uncertain membership perspective, the use of conditionality has shifted from a pure accession conditionality to more differentiated forms of policy conditionality, involving, among other things, the grant of visa-facilitation agreements and visa-free travel as intermediary rewards (Trauner, 2009).



Notwithstanding these similarities with the earlier rounds of enlargement, the heterogeneity of the WB countries in terms of relations with the EU is much greater. At the time of writing, Croatia is the only country negotiating EU accession, FYR Macedonia is a candidate for entry but has not yet started negotiations, while the other WB countries still have the status of 'potential candidates'. The EU has signed SAAs with all these countries except Kosovo, although not all of them are yet in force.

This heterogeneity of bilateral relations with the EU has been somewhat moderated through the creation of a wide range of regional organizations focusing on regulatory adaptation in individual sectors (see below). These treaties have in common that they extend EU sectoral regulations to the WB countries on a regional basis.

The nature of regulatory commitments under these institutions vary and are also determined by the degree of legal precision and obligation of the relevant EU secondary legislation itself (see also Lavenex *et al.*, 2009). Yet, the Energy Community Treaty (TENEC), for instance, based on Art. 300 TEC, is part of Community law, and in theory it is possible that the ECJ, if it was called upon, could establish the principle of direct effect of EU law on the participating non-member states (Kuhlmann, 2009).

Building up a 'waiting room': The organizational boundary

Apart from limited openings of EU programmes and agencies, EU policies towards the WB have thus developed a particular focus on the setting up of parallel functional organizations at the regional level. As candidate and potential candidate countries, the WB countries are entitled to participate in Community programmes on the basis of Framework Agreements. Since 2007, most of them have been associated with the EU's 7th Framework Programme on research; some of them also participate in the 'Culture', 'Progress', 'Competitiveness and Innovation', 'Customs' and 'Fiscalis' programmes. The Commission has also tried to improve the conditions for participation for potential candidate countries by raising the Community co-financing rate for participation from 75 to 90 per cent.

Similar rules apply to EU agencies and preparations for participation of Croatia and FYR Macedonia are under way. In the field of justice and home affairs, several agreements have been struck with EU agencies and bodies. Strategic agreements with Europol were signed in 2007 by Albania, Bosnia and Herzegovina and FRY Macedonia, while similar agreements are being negotiated with Montenegro and Serbia. A more advanced operational agreement between Europol and Croatia has been in force since 2006. Croatia also signed a cooperation agreement with *Eurojust* in November 2007.



Cooperation agreements have also been signed with the EU's external border agency Frontex.

In parallel to these bilateral ties, and given the long-term perspective of the accession process for most of the WB countries, the EU has induced the creation of parallel regional organizations promoting regulatory adaptation to the *acquis*. The clearest manifestation of this development is the RCC that eventually became the Stability Pact for South Eastern Europe. Although one-third of its finances come from the EU, and its administrative board includes, apart from the WB countries as well as a few non-EU members,⁷ 16 EU member states, it claims to be 'a regionally owned and led framework' promoting integration in the region, into the EU and NATO. The RCC shall coordinate cooperation with the EU, and has put particular emphasis on issues of high priority in this context such as energy and justice and home affairs (see RCC Annual Report, 2009).

At the functional level, regional organizations have been set in place emulating the EU model within policy areas of particular EU interest. Examples include the 'Police Cooperation Convention for South East Europe' (PCC) founded in 2006 to promote Schengen standards relating to border security, information exchange and police cooperation; the Southeast European Cooperation Initiative's (SECI) Regional Centre for Combating Transborder Crime in Bucharest, modelled upon the EU's Police Office Europol (Trauner, 2009); the Migration, Asylum, and Refugees Regional Initiative (MARRI) focusing on the EU *acquis* in migration and asylum matters; or the Energy Community, which binds all contracting parties to align with the evolving EU energy legislation including matters relating to electricity, gas, environment, competition and renewables.

Parallel regional structures complement the bilateral accession frameworks in several respects. They provide for cooperation fora linking (new) EU Member States with candidate countries and potential candidates. Next to their operational focus on promoting cooperation, they are firmly based on the EU *acquis* that is spread through the exchange of best practices and information. Compared to the intense transgovernmental integration of EEA EFTA and Swiss administrators in EU structures, these regional settings constitute at best an indirect extension of EU's organizational boundary. In contrast, bilateral relations with the EU are very much dominated by the intergovernmental setting of (pre)-accession negotiations.

Stabilizing the Borders: The ENP

The ENP is an attempt to design an alternative to membership for the new neighbours to the East and to reinvigorate the dynamism of Euro-Mediterranean relations to the South.⁸ In contrast to earlier policy frameworks, the ENP overtly promotes participating countries' approximation to the *acquis communautaire* as



well as democratic norms (Freyburg *et al*, forthcoming). This includes bilateral as well as, like in the case of the WB, regional, multilateral activities, with different levels of organizational inclusion.

Approximation modelled on enlargement: The regulatory boundary

The ENP is different from both the EEA and the Agreements with Switzerland in that it is not an international agreement on its own. The ENP is a 'soft law' framework for further spelling out and prioritizing among the issues covered by the Partnership and Cooperation Agreements (PCAs) and Association Agreements (AAs), or, most recently, the Enhanced Neighbourhood Agreements.

At first sight the rhetoric of 'everything but institutions' (Prodi, 2002) with which the ENP was introduced and the wide scope of activities relating to the former three pillars of the EU suggests that the ENP is a comprehensive form of neighbourhood association. Yet, in reality, commitments are more superficial than those applying to the EEA, Switzerland or the candidate countries, and strong differences exist between the ENP countries with respect to the scope of commitments adopted.

This lesser degree of regulatory rigour is reflected in the legal quality of commitments. The Action Plans adopted under the ENP stipulate 'approximating' legislation with EU rules rather than 'adoption' or 'harmonization'. Despite this greater openness of commitments, the ENP contains a conditionality legacy that emulates elements of enlargement politics (Cremona and Hillion, 2006; Kelley, 2006). The ENP Action Plans are modelled on the 'Accession Partnerships': they indicate benchmarks for measuring success and they flag the priorities to be realized by the third country in the short, medium and long term. By applying the same methodology to the relations with all ENP countries the EU hopes to foster a 'regatta' for best performance among the ENP countries. A further analogy to the enlargement process, which at the same time clearly differentiates it from the judicial provisions under the EEA, is the political monitoring of compliance. This is based on a dual-track procedure, which includes the unilateral Progress Reports drawn up by the European Commission and the ensuing discussions in the Association and Cooperation Councils.

Hesitant openings and the regional turn: The organizational boundary

When the ENP was set up, its implementation was mainly based on the bilateral structures. The intergovernmental Association and Cooperation Councils established under the AAs and PCAs are composed of Ministerial representatives of the third country and representatives of the EU Troika. An innovation



of the ENP was the introduction of sectoral sub-committees at the trans-governmental level. Like the administrative ties existing with the EEA EFTA countries or Switzerland, these committees are meant to regroup technocratic experts who are specialized in the respective policy fields. According to our interviews conducted with EU and ENP country representative, in practice, however, some partner countries send high-level diplomatic representatives to the meetings, thus circumventing the technocratic level. Another transgovernmental channel promoting approximation to the *acquis* are the so-called Taixex and Twinning programmes, which dispatch Member State officials to the public administrations of the ENP countries in order to promote administrative and legislative reforms in line with EU rules.

The ENP also opens the possibility of organizational participation in EU agencies and programmes (European Commission, 2006). For the time being this has remained limited to Israel's participation in the Framework Programme on Research. The Commission has begun to draw up protocols for negotiating with Morocco, Ukraine and Israel on participation in agencies and programmes.

In recent years, the most dynamic organizational development has been the strengthening of cooperation within parallel regional frameworks. This greater emphasis on regionalism is backed by the diversification of the ENP into its Southern (Union for the Mediterranean UfM, launched 2008) and Eastern dimension (Eastern Partnership EP, launched 2009). Prominent sectoral examples of enhanced regionalism are the Black Sea Synergy, which links up with pre-existing organizations such as the Organization of the Black Sea Economic Cooperation (BSEC); the Transport Corridor Europe – Caucasus – Asia in the field of transport and infrastructure; the International Commission for the Protection of the Danube River and the Black Sea Commission in the field of environmental protection or the Soederkoping process in the area of migration (see European Commission, 2007; Lavenex, 2008).

This promotion of regional frameworks is comparable to the strategy of parallel regime-building observed in the case of the WBs. In many cases these regional organizational frameworks include EU member states next to candidate and ENP countries, thus providing a setting in which experiences about regulatory approximation with the EU can be exchanged. The UfM and the EP shall intensify transgovernmental sectoral cooperation especially in areas of priority for the EU perspective, such as border management and energy matters. At the same time, both initiatives also strengthen the intergovernmental, political character of the policy by introducing regular multilateral summits of heads of state and government.

To sum up, the ENP has seen a certain evolution since its inception that, apart from the stronger differentiation across countries with different speeds of association, has moved from the original focus on bilateralism and norm



transfer modelled on the template of enlargement to a greater emphasis on regional frameworks of cooperation, with a larger degree of flexibility regarding the regulatory contents embedded therein. In terms of our typology presented above, this represents a diminution rather than an increase of intensity of association over time.

External Governance beyond the Neighbours

In the relations with the countries in the ‘outer circle’ of external relations, the EU does not pursue a systematic policy of norm-transfer. As with the other countries, adaptation to EU rules in this circle can occur ‘spontaneously’ on the basis of the countries’ own decision as a result of functional interdependence and externalities of EU regulations. In this case, that is without purposeful and institutionalized rule-transfer by the EU, we would not speak of external governance. Instances of EU external governance in the sense of institutionally backed and active regulatory export are still few. In contrast to the encompassing, territorially based and political set-up of neighbourhood relations, external governance beyond these circles follows a functional logic. It is punctual, limited to specific policies with high interdependence, and the legal quality of commitments takes weaker forms, with normally no institutionalized judicial or political enforcement mechanisms. The organizational form of norm-transfer usually involves specialized transgovernmental networks, including, where available, cooperation with EU agencies. A case in point is the EU competition policy, where the EU is promoting approximation with its rules bilaterally for example through the Cotonou Agreement with the ACP countries and new generation Economic Partnership Agreements (EPAs), plurilaterally within the International Competition Network, and multilaterally (however, hitherto without success) within the WTO. Another example is consumer protection, such as medical technology, where the EU Commission promotes bilateral cooperation with the US, Japanese, Canadian, Australian and Chinese regulatory agencies, including cooperation agreements with the EU’s Medicine’s Agency. The bilateral cooperation with Australia, Canada, Japan and the USA also feeds a multilateral framework, the Global Harmonization Task Force. We find instances of external governance as institutionalized rule-transfer also in non market-related and less communitarized areas, such as migration control. Here too, pertinent norms have been inserted in trade and cooperation agreements including the Cotonou Agreement and new generation EPAs. In addition, the EU’s border control agency Frontex has concluded or is negotiating cooperation agreements with a large number of third countries, including *inter alia* Belarus, Russia, the United States, Canada and – in negotiation – Brazil, Nigeria and Senegal. Furthermore, the EU has tapped into regional integration



frameworks such as the South African Development Community or the Economic Community Organisation of Western African States and promotes, via the International Organization for Migration, transgovernmental networks of immigration officials in Africa and Asia (Betts, 2011; Kunz *et al.*, 2011). These examples mirror the diversity of institutional settings accompanying EU rule export beyond the more encompassing neighbourhood policies. Whereas in market-related policies such as competition and environmental or industrial product standards, the EU can capitalize on its market power and regulatory capacity (Bach and Newman, 2007) in inducing third countries' approximation, in the case in which interdependence works to the EU's disadvantage, such as migration policy, it has to rely on issue-linkages and institutionalized dialogue in order overcome the lack of adaptation incentives and direct reciprocity.

Comparative Conclusion

Complex economic and political interdependence with non-member countries and the need to find alternatives to (rapid) enlargements have led to the establishment of concentric circles of external governance, which consist in the institutionalized extension of EU rules and policies beyond its borders. These circles of differentiated integration vary across regulatory and organizational dimensions. The comparative assessment of the EEA, Swiss-EU bilateralism, the association of the WB countries and the ENP illustrates the diminution of regulatory and organizational ties with the greater geographic distance of the partner countries (see Table 2 and Figure 1).

The graphic illustration of the concentric circles of EU external governance shows a discrepancy between the wide scope of postulated rule transfer and few opportunities for organizational inclusion in EU structures. The neighbourhood circles fall in two groups. The first is a quasi-hierarchical, strongly legalized structure of regulatory membership with strong technocratic or transgovernmental inclusion, represented by the EEA and, in more informal terms, Swiss-EU bilateralism. The second type are the substantively equally expansive but in legal terms weaker forms of gradual, process-oriented harmonization and approximation in the relations with the WB countries and the ENP, which involve more indirect organizational channels represented by the promotion of parallel organizational structures at the regional level.

This territorial perspective on concentric circles should not disguise the fact that this is only an imperfect approximation to the much more differentiated pattern of regulatory and organizational extension at the functional level of external governance in individual policy areas (see also Lavenex *et al.*, 2009) and between the different countries within a group. The functional differentiation

**Table 2:** Regulatory and organizational properties of EU Neighbourhood relations

| | EEA | EU-CH | WB | ENP |
|------------------------------------|--|--|--|--|
| <i>Regulatory boundary</i> | | | | |
| Scope of EU <i>acquis</i> promoted | 1 (nearly) full EU <i>acquis</i> | 2 Partial EU <i>acquis</i> | 1 Full EU <i>acquis</i> | 2 Partial EU <i>acquis</i> |
| Legal quality | 1 Harmonization | 1–2 Harmonization with flexibility | 1 Harmonization | 2 Approximation |
| Supervision | 1 Judicial | 3 Good faith | 2 Political | 2 Political |
| <i>Organizational boundary</i> | | | | |
| Inclusion in EU structures | 2 Membership/observer status in committees and agencies | 2–3 Selective membership/observer status in committees and agencies | 3 Cooperation agreements with agencies | 3 Cooperation agreements with agencies |
| Inclusion in parallel structures | 1.5 EEA parallel structures | 1 No parallel structures | 2 Inclusion in EU-sponsored regional structures | 2–3 Inclusion in EU-sponsored and independent regional structures |
| Main level of interaction | 1 Transgovernmental | 1 Transgovernmental | 2 Mixed inter- and transgovernmental | 2–3 Inter- with some transgovernmental |

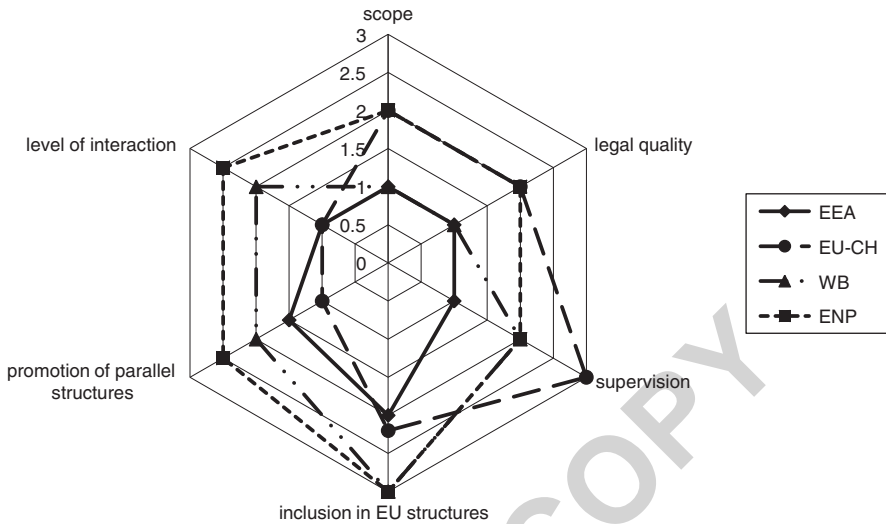


Figure 1: Concentric circles of 'European' integration.

Note: The numbers in the figure correspond to the scale of intensity of regulatory and organizational inclusion defined in Table 1. 1 corresponds to the highest intensity, 4 to the lowest.

of external governance is most salient in the relations with countries beyond the neighbourhood that lack an overarching, multi-sectoral association framework. Here, instances of regulatory rule transfer and organizational cooperation are much more scattered and issue-specific, reflecting patterns of economic or functional interdependence rather than political priorities. Therefore, an accurate illustration of the webs of 'EUropean' integration beyond the neighbourhood would need to choose a functionalist, sector-specific representation rather than a territorial one. In other words, with growing geographic distance, the webs of external governance increasingly take a functional rather than territorial shape. This is the reason why these countries are not included in the above graph of concentric circles. It can nevertheless be said that relations with countries outside the neighbourhood constitute a third type where external governance follows sector-specific rather than overarching political goals. Here, organizational links extend more strongly to wider multilateral structures of global governance, including international organization and transgovernmental networks.

This comparative analysis yields a number of questions that deserve further studying in reflecting about the future of flexible 'EUropean' integration. The first set of questions concerns the relationship between regulatory commitments and organizational openings. How far does comprehensive rule transfer

necessitate greater organizational openings? What scope do the latter offer for third countries' influence in shaping (shared) EU norms, and under what conditions are third countries influential? The second set of question relates to what has been referred to as 'waiting rooms' or parallel organizational structures in flexible integration. What is the future role of parallel organizational frameworks emulating EU rules in non-EU countries, such as the Energy Community Treaty or the MARRI in the field of migration? Will EU-sponsored regional organizations be instrumental in transferring EU rules, or will they eventually develop a life of their own, responding also to the needs of the third countries in question? Are they only transitional structures on the way to full organizational inclusion in EU fora or will they constitute more pervasive outer circles of functional integration in Europe?

Finally, the look at the countries beyond the neighbourhood underlines the functionally differentiated, sector-specific dynamics of EU external governance. Whereas the view on the EU's neighbourhood suggests the existence of territorially ordered concentric circles of integration along political external relations frameworks, the broader perspective substantiates the importance of sectorally diverse patterns of interdependence in shaping the extension of EU rules beyond borders. Whereas in the case of the EU's western neighbours, such functionalist patterns of interdependence underpin wider political associations, relations with the neighbours to the East and the South are mainly politically induced. It is the relationship between functional integration dynamics and political association structures, regulatory and organizational inclusion that will shape the extent to which flexible 'EUropean' integration becomes a true alternative to full (territorial) membership or whether it remains a transitory phenomenon.

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Notes

- 1 The first and second phase of EU studies were, accordingly, the investigation of the dynamics of integration ('Communitarization') and of the repercussions of integration onto the member states ('Europeanization'), see Magen (2007).
- 2 Iceland applied for EU membership in July 2009 and has obtained candidate status in June 2010.
- 3 For a qualification of this characterization based on the analysis of modes of governance at the level of individual policy sectors see Lavenex *et al* (2009).
- 4 These are the European Environment Agency, the European Medicines Agency, the European Maritime Safety Agency, European Aviation Safety Agency, European Centre for Disease Prevention and Control, European Railway Agency and European Network and Information Security Agency as well as Frontex, the EU's Agencies for Operational Cooperation at the EU's External Borders.
- 5 The first round of bilateral agreements 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 and education, occupational training and youth. In addition, Switzerland has signalled its willingness to conclude agreements on free trade in agricultural goods, cooperation in public health policy, electricity, cooperation with the European Defence Agency, participation in Galileo, participation in the EU's emission trading system and an agreement on cooperation in European Security and Defense Policy (ESDP) Missions.
- 6 The newest candidate, Iceland, forms an exception to this group given, among other things, its membership in the EEA. Although we do not deal specifically with Turkey in this article, this country shares similar external governance arrangements as the WB countries.
- 7 These are Moldova, Norway, Switzerland, Turkey and the United States.
- 8 The ENP countries are Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Palestinian Authority, Syria, Tunisia and Ukraine.

References

- Bach, D. and Newman, A. (2007) The European regulatory state and global public policy: Micro-institutions, macro-influence. *Journal of European Public Policy* 14(6): 827–846.
- Benz, A. (2007) Entwicklung von governance im Mehrebenensystem der EU. In: I. Tömmel (ed.) *Governance und Policy-Making in der Europäischen Union*, PVS-Sonderheft 40/2007, Opladen: Westdeutscher Verlag, pp. 36–59.
- Betts, A. (2011) The global governance of migration and the role of trans-regionalism. In: R. Kunz, S. Lavenex and M. Panizzon (eds.) *Multilayered Migration Governance. The Promise of Partnership*. London: Routledge.
- Christiansen, T. and Kirchner, E. (2000) *Europe in Change. Committee Governance in the European Union*. Manchester, UK: Manchester University Press.
- Church, C. (2000) Switzerland: An Overlooked Case of Europeanization? Belfast, Queen's Paper on Europeanization, No. 3.
- Cremona, M. and Hillion, C. (2006) *L'Union fait la force? Potential and Limitations of the European Neighbourhood Policy as an Integrated EU Foreign and Security Policy*. Florence: EUI. Working Paper LAW No. 2006/39.
- Egeberg, M. and Trondal, J. (1999) Differentiated integration in Europe: The case of EEA country, Norway. *Journal of Common Market Studies* 37(1): 133–142.



- European Commission. (2006) Communication from the Commission to the Council and to the European Parliament on the General Approach to Enable ENP Partner Countries to Participate in Community Agencies and Community Programmes. COM(2006) 724 final of 4 December 2006.
- European Commission. (2007) Communication from the Commission – A Strong European Neighbourhood Policy. COM(2007) 774 final of 5 December 2007.
- Freyburg, T., Lavenex, S., Schimmelfennig, F., Skripka, T. and Wetzel, A. (forthcoming) Democracy promotion through functional cooperation? The case of the European Neighbourhood Policy. *Democratization*, in press.
- Grolimund, N. and Vahl, M. (2006) *Integration without Membership – Switzerland's Bilateral Agreements with the European Union*. Brussels: CEPS.
- Héritier, A. (2002) New modes of governance in Europe: Policy-making without legislating? In: A. Héritier (ed.) *Common Goods: Reinventing European and International Governance*. Lanham, MD: Rowman & Littlefield Publishers, pp. 185–206.
- Honegger, E. (2004) *Die Gemischten Ausschüsse in den Sektoriellen Abkommen zwischen der Schweiz und der EG*. Lausanne, Switzerland: IDHEAP.
- Kelley, J. (2006) New wine in old wine skins: Policy adaptation in the European Neighbourhood Policy. *Journal of Common Market Studies* 44(1): 29–55.
- Kuhlmann, J. (2009) The energy community of South East Europe: Has another EEA been born? *Analytical* 2(1), online at http://www.analyticalmk.com/files/01-2009/Josefine_KUHLMANN.pdf, accessed 1 February 2010.
- Kunz, R., Lavenex, S. and Panizzon, M. (eds.) (2011) *Multilayered Migration Governance. The Promise of Partnership*. London: Routledge.
- Lavenex, S. (2004) EU external governance in 'Wider Europe'. *Journal of European Public Policy* 11(4): 688–708.
- Lavenex, S. (2008) A governance perspective on the European Neighbourhood Policy: Integration beyond conditionality? *Journal of European Public Policy* 15(6): 938–955.
- Lavenex, S. (2009) Switzerland's flexible integration in the EU: A conceptual framework. *Swiss Political Science Review* 15(4): 547–476.
- Lavenex, S. and Lehmkuhl, D. (eds.) (2009) Switzerland's flexible integration in the EU. *Special Issue of the Swiss Political Science Review* 15(4).
- Lavenex, S., Lehmkuhl, D. and Wichmann, N. (2009) Modes of governance in the EU Neighbourhood Associations: A cross-national and cross-sectoral comparison. *Journal of European Public Policy* 16(6): 813–833.
- Lavenex, S. and Schimmelfennig, F. (2009) EU rules beyond EU borders: Theorizing external governance in European politics. *Journal of European Public Policy* 16(6): 791–812.
- Lazowski, A. (2006) EEA countries (Iceland, Liechtenstein and Norway). In: S. Blockmans and A. Lazowski (eds.) *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*. The Hague, The Netherlands: TMC Asser Press, pp. 95–146.
- Magen, A. (2007) Transformative engagement through law: The *Acquis Communautaire* as an instrument of EU external influence. *European Journal of Law Reform* 9(3): 361–392.
- Mayntz, R. (2005) Governance theory als fortentwickelte Steuerungstheorie? In: G.F. Schuppert (ed.) *Governance-Forschung. Vergewisserung über Stand und Entwicklungslinien*. Baden-Baden, Germany: Nomos, pp. 11–20.
- Prodi, R. (2002) A wider Europe – Proximity policy as the key to stability. Paper presented at the Sixth ECSA World Conference, 5–6 December 2002, Brussels.
- Regional Cooperation Centre. (2009) Annual Report on Regional Co-operation in South East Europe 2008–2009. Sarajevo, 14 May 2009.
- Schimmelfennig, F. (2009) EU political conditionality after the 2004 enlargement: Consistency and effectiveness. *Journal of European Public Policy* 15(6): 918–937.



- Schimmelfennig, F. and Sedelmeier, U. (2004) Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe. *Journal of European Public Policy* 11(4): 661–679.
- Sitter, N. and Eliassen, K. (2004) The quiet European: Norway's Quasi-membership of the European Union. In: P. Magnette (ed.) *La grande Europe*. Bruxelles: Éditions de l'Université de Bruxelles.
- Slaughter, A.-M. (2004) *A New World Order*. Princeton, NJ: Princeton University Press.
- Smith, M. (1996) The European Union and a changing Europe: Establishing the boundaries of order. *Journal of Common Market Studies* 34(1): 5–28.
- Tobler, C. (2008) Der Acquis der rechtlichen Verbindung der Schweiz zur EG und EU – Eine unsichere Grösse? In: F. Breuss, T. Cottier and P.-C. Müller-Graff (eds.) *Die Schweiz im europäischen Integrationsprozess*. Baden-Baden, Germany/Basel: Nomos/Helbing-Lichtenhahn, pp. 11–38.
- Tovias, A. (2006) Exploring the 'Pros' and 'Cons' of Swiss and Norwegian models of relations with the European Union: What can Israel learn from the experiences of these two countries? *Cooperation and Conflict* 41(2): 203–222.
- Trauner, F. (2009) From membership conditionality to policy conditionality: EU external governance in South Eastern Europe. *Journal of European Public Policy* 16(5): 774–790.
- Wichmann, N. (2009) 'More in than out': Switzerland's Association with Schengen/Dublin cooperation. *Swiss Political Science Review* 15(4): 653–682.