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The power of functionalist extension: how EU rules travel

Sandra Lavenex

ABSTRACT This contribution proposes a decentred conceptualization of European Union (EU) international influence based on the external ramifications of its internal policies. It views the EU's international role less as that of an emerging unitary actor than as conglomerate of loosely coupled sectoral regimes expanding their prescriptive scope towards third countries in differentiated ways. Combining conceptual approaches to (EU) power with empirical–analytical research on external governance and policy diffusion, the contribution defines the mechanisms of regulatory extension, specifies their scope conditions, and highlights the role of transgovernmental networks, often involving international organizations, in ‘co-opting’ third country regulators into EU policies.

KEY WORDS EU external relations; functionalism; global governance; policy diffusion; regulation; transgovernmentalism.

INTRODUCTION

Much has already been written on the nature of the European Union's (EU's) power. Whereas sceptics continue to moan a persisting ‘capabilities–expectations gap’ (Hill 1993) and the EU's failure to ‘speak with one voice’ (Conceicao-Heldt and Meunier 2014; Smith 2006), others have highlighted the more structural, ‘normative’ or ‘market-based’ fundamentals of EU influence (Damro 2012; Manners 2002).

Somewhat disconnected from these debates, policy-oriented research highlights the growing external impact of EU sectoral rules on third countries and international organizations (e.g., Bradford 2012; Falkner and Müller 2014; Lavenex and Schimmelfennig 2010; Van Vooren *et al.* 2013; Zeitlin 2015). This phenomenon points at a layer of international influence quite distinct from the traditional sphere of foreign policy which consists in the extension of functionalist integration beyond EU membership.

In order to study functionalist extension, this contribution draws a distinction between, on the one hand, the EU as a nascent foreign policy actor and, on the other hand, its constitution as a conglomerate of sectoral regimes. A comprehensive framework is proposed that distinguishes direct, political-administrative mechanisms of external governance from indirect, socio-economic mechanisms of rule diffusion and specifies the different types of power involved. The

mapping of these mechanisms across sectors and countries points at three constellations of EU regulatory outreach. In the periphery, the extension of sectoral regimes is embedded in territorially framed comprehensive foreign policies based on legal authority (e.g., European Economic Area [EEA]) or soft conditionality (European Neighbourhood Policy [ENP]). Beyond the periphery, the territorial frame is weaker. Apart from formal trade negotiations, which provide a forum for potentially more comprehensive EU actorness, EU rule projection follows predominantly a sector-specific, functionalist logic. This logic emphasizes the role of socio-economic interdependence as well as transgovernmental ties among regulators rather than formal diplomacy. Embedding the EU's internal working structures into the broader sites of global governance, this subtle and allegedly technocratic outreach plays a pivotal role in promoting EU rules around the world.

The contribution concludes on the relationship between the inherently fragmented and decentred notion of functionalist extension and more traditional conceptions of foreign policy actorness and power.

EUROPE'S POWERS

'EU power' debates have their origins in the ambition to 'loosen the core assumptions of state-centered traditions of foreign policy analysis' (Rosamond 2005: 469) and to turn the attention away from the focus on the limits to EU actorness towards what distinguishes the EU as an international force (see also Bretherton and Vogler 2002).¹

In a radical critique of agency-based approaches to EU foreign policy and 'their unhealthy concentration on how much like a state the EU looks', Ian Manners argued that 'the most important factor shaping the international role of the EU is not what it does or what it says, but what it is' (Manners 2002: 238, 252). Accordingly, the EU's distinctive power stems from its identity base in universal values such as freedom, democracy and human rights (Manners 2008: 41). At its core, normative power is 'the ability to define what passes for "normal" in world politics' (Manners 2002: 253). Normative power thus emphasizes influence based on ideational factors and persuasion, while the possibility of material support sustaining these changes is not ruled out (*ibid.*: 244ff). In Barnett and Duvall's typology, this corresponds to the notion of productive power as 'socially diffuse production of subjectivity in systems of meaning and signification' (Barnett and Duvall 2005: 43). The main channels of normative power are transnational actors as members of a community of values (Manners 2002: 251) who are linked by 'systems of knowledge and discursive practices' (Barnett and Duvall 2005: 55). In accordance with this focus on universal norms, empirical studies applying the normative power approach have concentrated on human rights issues.

Acknowledging the fact that the EU's internal constitution predisposes it to act in a particular way, Chad Damro has emphasized the single market rather

than human right norms as the core identity of the European integration project (Damro 2012). Reminiscent of earlier notions such as ‘trading state’ (Rosenkrance 1998) or ‘trade power’ (Meunier and Nicolaidis 2006), Damro argues that ‘the single market provides the material existence of the EU as a market power Europe that externalizes its economic and social market-related policies and regulatory measures’ (Damro 2012: 683). The size of the internal market and the EU’s internal regulatory capacity are the crucial determinants of EU influence (see also Bach and Newman 2007; Bradford 2012), together with pressure by interest groups (Damro 2012: 686ff). Damro understands market power as ‘primarily intentional behavior’ of the EU ‘via persuasive and often coercive means’ (*ibid.*: 690f). While persuasion is reminiscent of normative power, coercion suggests more strategic leverage through conditionality (*ibid.*); that is, a compulsory kind of power (Barnett and Duvall 2005: 49). The external leverage of EU market rules can, however, also be a function of structural power. In this case, third countries adopt rules not because the EU asks them to but because they fear costs from not doing so; for instance, for accessing the single market. Power consists not in active leverage but in the indirect externalities of the single market on outsiders’ ‘social capacities and interests’ (Barnett and Duvall 2005: 53).

In sum, the normative and market power approaches privilege different faces of what the EU’s core identity is and emphasize different mechanisms through which European rules radiate beyond EU borders. Combining both approaches with the literature on policy diffusion and external governance, the following section offers a differentiated conceptualization of the various mechanisms of regulatory extension, their scope conditions and underlying power conceptions. The starting point is the suggestion to decouple the *procedural* analysis of *how* the EU engages in rule projection from the more *essentialist* discussions of what the EU’s core identity substantively *is*.

THE DUAL BASE OF EU EXTERNAL RELATIONS

The EU is usually depicted as a hybrid polity, referring to the vertical or multi-level interlocking of member states’ and EU competences. Hybridity can, however, also be conceptualized horizontally in terms of multicentricity. This perspective highlights the tension between the effort to develop the EU into a unified polity or international actor and its constitution as conglomerate of sectoral regimes which carry different ‘identities’ (human rights, market, or other), occupy different functional spaces, and are only loosely coupled to the polity’s centralized foreign policy.

The fact that sectoral dynamics would not necessarily coincide with the EU’s political boundaries was anticipated in early functionalist writings. For instance, in the field of transportation, David Mitrany maintained that ‘A European union could not solve the problem of maritime coordination without the cooperation of America and of certain other overseas states ... while “aviation”

could be organized effectively only on a universal scale, with perhaps subsidiary regional arrangements for more local services’ (Mitrany [1943] 1966: 70–1). Fifty years later, and under the impression of the growing role of differentiated integration under the Maastricht Treaty, Philippe Schmitter asked a similar question: ‘What if either the functional or the territorial domains (and even more if both) were not congruent with the same authority?’ (Schmitter 1996: 132). With his notion of a ‘condominio’ he suggested such a fragmented political order in which territorial units and functional tasks vary to create multiple specialized, flexible and overlapping regimes.

The distinction between the EU’s common external actorness and the external relations of specific sectoral regimes is akin to Liesbet Hooghe’s and Gary Mark’s differentiation between Type I and Type II governance in multilevel politics (Hooghe and Marks 2003; see also Leuffen *et al.* 2013) and Ulrich Sedelmeier’s understanding of EU enlargement and neighbourhood policies as ‘composite policies’ (Sedelmeier 2007). Whereas Type I refers to an encompassing political and primarily territorial reordering of the polity, which would, in the external realm, correspond to the integrated foreign policy of an essentially unitary actor, Type II describes flexible and functionally specific governance systems within particular policy areas that, lacking a proper political constituency and being only loosely coupled to the broader political unit, develop their own external dimensions. The actors promoting Type II functionalist extension are, accordingly, not official state (or EU) representatives but technocrats in national, European and international bureaucracies who liaise in transgovernmental networks (Slaughter 2004), as well as private transnational actors lobbying for certain regulations on economic or normative grounds.

Table 1 summarizes the characteristics of ‘Type I’ versus ‘Type II’ external relations.

Table 1 Two types of EU external relations

	Type I: Foreign policy	Type II: Functionalist extension
Level of interaction	Intergovernmental / diplomatic	Transgovernmental / technocratic and transnational / societal
Scope of interaction	Unitary / Encompassing / Coordinated	Decentred / Sectoral / Differentiated
Logic of interaction	Territorial	Functional
Actors	Official representatives, top executive bodies (Commission, EEAS, Council)	Sectoral bureaucracies in the Commission, Member States’ administrations, regulatory agencies, and international organizations; non-state actors

Source: Adapted from Hooghe and Marks (2003).

MECHANISMS AND VENUES OF FUNCTIONALIST EXTENSION

The projection of internal rules beyond the circle of member states can be both the product of ‘Type I’ foreign policy and ‘Type II’ functionalist extension. The existence of internal rules, i.e., a certain degree of Communitarization, is a prerequisite for external projection. Combining the notions of market and normative power (see above) with the literature on external governance and policy diffusion, six mechanisms can be differentiated along two dimensions: first, whether rule extension derives from direct intentional political–administrative action or from indirect socio-economic forces; and second, whether rule reception follows an instrumental or normative rationality (see also Börzel and Risse 2012; Schimmelfennig 2012). These mechanisms entail different structures of interaction and generate different types of power (see Table 2).²

Table 2 Mechanisms of functionalist extension

Source of rule projection	Type of external relations	Structure of interaction	Mechanism of rule projection		Type of power
			Instrumental logic	Normative logic	
Direct Political-administrative	Type I	Hierarchy	Conditionality	Legal authority	Command
	Type II	Network	Learning	Socialization	Co-optive
Community			Emulation	Productive	
Market		Competition		Structural	

Direct rule imposition through conditionality and legal authority

Classical foreign policy analyses centre on the EU’s capacity to exert power through political conditionality. A second, less frequently analysed mechanism that is direct and hierarchical is legal authority (Scharpf 1997: 172f). Both mechanisms work through political–administrative settings and presuppose encompassing, ‘Type I’ actorness.

The exercise of *conditionality* consists in the threat of sanctions or the promise of rewards in exchange for compliance with a certain demand (Schimmelfennig and Sedelmeier 2005). This mechanism requires both a material base and the capacity to mobilize resources strategically. The EU’s material leverage stems from the attraction of its single market. At the same time, in order to activate this leverage, the EU must be able to co-ordinate its foreign policies, to create issue linkages between trade and non-trade matters, to enforce rules and to act consistently. In sum, conditionality presupposes the subordination of sectoral external policies under an integrated ‘Type I’ foreign policy.

Legal authority is at the heart of the EU's internal order. It is based on the supranational character of law and its juridical enforcement through the Court of Justice of the European Union (CJEU). Whereas the practice of extra-territoriality remains an exception in EU law (Scott 2014), the institutional set-up of the EEA extends the legal architecture of the *acquis communautaire* to three non-member states based on legal authority and not political conditionality (see below). The EEA European Free Trade Association (EFTA) countries voluntarily abide by the normativity of EU law. Although entailing different institutions and logics of action, both conditionality and legal authority presuppose 'Type I' unified actorness. They yield a form of direct control over non-member states that amounts to a type of coercive power through 'command' (Nye 2011: 21f) or 'compulsion' (Barnett and Duvall 2005: 48f).

Transgovernmental networking: learning and socialization

Analyses that associate EU power with its capacity to coerce neglect the layer of transgovernmental co-operation among regulators that generates a more co-optive form of influence. Direct rule promotion in transgovernmental networks is pervasive both in EU neighbourhood policies and beyond (De Burca 2013; Lavenex 2008, 2011). Within these networks, EU influence works not on the basis of rule imposition but through more subtle mechanisms of learning and socialization.

Learning occurs when actors change their beliefs or, in our case, policy preferences in the light of new evidence (Dobbin *et al.* 2007: 460). It is a process of 'rational, observational deduction' (*ibid.*: 450; Gilardi 2012). Learning can be both supply (EU teaching activities) or demand driven (at the request of third countries). *Socialization*, in contrast, follows the logic of appropriateness and is less choice driven; it is defined as 'a process of inducting actors into the norms and rules of a given community' (Checkel 2005: 804). Across the *acquis communautaire*, public officials from Commission Directorates General and EU regulatory agencies have engaged into dialogues, information exchanges, training and capacity-building exercises with third country regulators promoting approximation to EU rules.

While the policy transfer literature has been criticized for neglecting the role of organizational venues (Dolowitz and Marsh 2012: 342), analyses of policy learning and socialization underline the importance co-operative institutions (Checkel 2005: 804f). As pointed out by early functionalists, 'de-politicized' transgovernmental settings are particularly conducive to these dynamics as they 'call forth to the highest possible degree the active forces and opportunities for cooperation, while touching as little as possible the latent or active points of difference and opposition' (Keohane and Nye 1977; Mitrany [1943] 1966: 108). Transgovernmental ties thus exert a subtle 'institutional' (Barnett and Duvall 2005: 51f) and 'co-optive' (Nye 2011: 20f) influence that rests primarily in the familiarization and gradual involvement in EU policies (Freyburg 2014). While horizontal in shape, these networks give leading regulators a venue

through which ‘to push their vision of sector best practices’ (Bach and Newman 2010: 672). With their allegedly technical orientation, they sometimes promote policy approximation even in spite of overarching political antagonisms. Expertise on the part of EU regulators, capacity-building and networking resources, as well as a certain demand for policy templates on the part of the target countries, sustain this type of influence, while technocratic co-ownership and density of interaction are conducive to socialization. As illustrated below, co-ordination of transgovernmental co-operation with overarching international institutions enhances learning and socialization dynamics by mobilizing additional resources and adding legitimacy to the projected rules.

Indirect socio-economic dynamics: competition and emulation

Direct rule transfer by coercive or co-optive means only captures the intentional, political–administrative channels of EU external regulatory influence. As highlighted in Bretherton/Vogler’s (2002) notion of EU ‘presence’, however, EU rules also travel without direct promotion via socio-economic interactions. These indirect dynamics work independently from purposeful rule projection, but can be necessary complements for its success.

The most pervasive mechanism sustaining the spread of market regulations is *competition*. Competition is defined as adaptive behaviour triggered by the negative externalities of other actors’ internal policies (Dobbin *et al.* 2007: 257f). As famously shown by David Vogel (1997), stricter product standards in large markets can unleash a ‘trading-up’ dynamic whereby export companies not only comply with a foreign market’s rule (*de facto* regulatory extension) but also lobby their home governments for legislative (*de jure*) approximation in order to forgo economic costs. This effect is well documented for both the EU and the United States (US) (see, for example, Bradford 2012; Damro 2012; Drezner 2005). The fact that European integration would create incentives for third countries to comply with its regulations was recognized by neo-functionalists early on under the label of ‘externalization’ (Schmitter 1969). The ensuing mechanism of unilateral adaptation has been described in Walter Mattli’s (1999) account of the externalities of regional economic integration. While reacting to a regulatory prescription in EU law, third countries align with EU legislation not because of a direct EU demand, legal obligation, teaching or socialization effort, but because their firms and regulators fear negative externalities from not doing so (Barnett and Duvall 2005: 53). Scope conditions for this mechanism are superior market size, regulatory enforcement capacity (Bach and Newman 2007), and the existence of interest groups who translate a functional economic pressure into a political demand (Damro 2012).

The second indirect mechanism of rule diffusion follows normative rather than utilitarian considerations. In the case of *emulation*, actors align with EU rules because they perceive them as legitimate or normatively superior. This mechanism is at the heart of Ian Manners’s argument about the EU’s model character and the driving role of transnational actors in norm diffusion

(Manners 2002: 251). As members of a community based on shared values and norms, transnational actors like non-governmental organizations (NGOs), advocacy coalitions or epistemic communities propagate rules which they perceive as being universal. The main scope conditions for this mechanism are the resonance of EU norms and the sustaining activities of transnational transfer agents.

The next section maps a (necessarily broad) picture of how EU rules travel across sectors and countries.

CONTOURS OF FUNCTIONALIST EXTENSION

Traditional theoretical approaches and the EU's External Action Service (EEAS) classify external relations according to a territorial, politically encompassing 'Type I' logic, differentiating along (groups of) states. The 'Type II' perspective, in contrast, highlights the sectorally distinctive geographies of EU influence depending on the patterns of functional interdependence.

The EU's hesitant development of 'Type I' foreign policies and 'Type II' sectoral external relations interact in complex ways. The Common Foreign and Security Policy and European Security and Defence Policy are not primarily based on the projection of the *acquis communautaire* and can be seen as attempts at 'Type I' actorness.

In the EU's neighbourhood as well as, with less intensity, the former colonies of Africa, the Caribbean and Pacific (ACP), sectoral (Type II) outreach is embedded in overarching (Type I) foreign policy initiatives. In the EEA with Iceland, Liechtenstein and Norway, as well as some plurilateral sectoral agreements, functionalist outreach coexists with legal authority. These initiatives extend the EU's *acquis* to non-member states through jointly owned institutions, allowing for CJEU or, in the case of the EEA, co-ordinated EFTA Court jurisprudence (Lavenex 2011: 382). As sectorally confined regulatory regimes, the Energy Community Treaty, the pending European Common Aviation Area Agreement and the draft Transport Community Treaty between the EU and nine south-eastern European countries have functionalist (Type II) traits. Their embedding in the territorial vision of the ENP and the juridical authority attributed to the EU, however, convey a strong hierarchical element akin to 'Type I' external relations.³

The overarching frame of the ENP and relations with the ACP countries combine the promotion of the *acquis* with (soft) conditionality in Association Agreements and Action Plans. Herewith, they emulate in different intensities the conditionality model of EU enlargement policies (Schimmelfennig and Sedelmeier 2005).

Beyond the neighbourhood, the EU can make the signature of trade agreements conditional on third countries' respect for certain market, environmental or human rights norms (Hafner-Burton 2005; Damro 2012). However, this encompassing co-ordinated approach is clearly not the main source of EU regulatory extension. Numerous studies show that either the EU fails to speak with

one voice (Conceicao-Heldt and Meunier 2014), misses to design issue linkages between trade and other policies (Jurje and Lavenex 2014) or simply lacks leverage to induce change in third countries (Schimmelfennig and Scholtz 2010).

In all cases, the success of hierarchical external governance is very much dependent on the existence of functionalist dynamics spurring regulatory adaptation 'from below'.⁴ These functionalist dynamics stem on the one hand from the patterns of socio-economic interdependence within the individual sectors and, on the other hand, from the decentred dynamics of regulatory, transgovernmental co-operation. It is therefore important to distinguish market regulations, which benefit from most countries' dependence on the single market, from non-market issues in which the EU is a *demandeur*. Also, it makes a difference whether the EU deals with countries which are in the process of developing pertinent rules or whether the targets are mature regulatory regimes. The analysis of countries' effective alignment with EU rules is beyond the scope of this contribution.

The EU in the driver's seat: market regulations

The requirement to comply with EU product and production standards in order to access the single market provides a powerful base for EU external influence (Bach and Newman 2007; 2010; Bradford 2012; Damro 2012). Little attention has been paid, however, to the institutional features that sustain the diffusion of EU standards. Firstly, EU directives and regulations frequently extend regulatory commitments to third-country market players and regulators (Scott 2014). Secondly, technical co-operation in transgovernmental networks, often with the involvement of international organization, complements the indirect competition dynamics of market interdependence. This horizontal form of direct rule promotion spurs learning processes and helps especially less-developed countries acquiring the regulatory capacity necessary for legislative approximation. Towards other major markets like the US, the leverage of competition dynamics is weaker. Here, the emulation of product regulations is sometimes promoted on normative grounds by civil society actors sharing common values. Transgovernmental networks then act as fora for mutual regulatory approximation rather than uni-directional policy export. The following examples illustrate these points.

Car emission standards are a case where the EU has evolved from a rule-taker to a global leader (Holzinger and Sommerer 2014). This was primarily driven by the importance of its automobile industry and market competition, the classic 'California effect' (see above). However, the EU has also actively promoted the spread of its norms by uploading them to a transgovernmental body within the UN Environmental Commission for Europe (UN-ECE), the so-called Group of Rapporteurs on Pollution and Energy (GRPE) (*ibid.*). Thereby, the EU norm became an UN-ECE standard, applying to a much wider membership. The GRPE adds learning and socialization to the indirect market dynamics of competition. It promotes regulatory capacity and generates

legitimacy for the EU template. The Commission retains the central position in this network, being responsible for the vast majority of submissions to the group.⁵ Its influence towards the US and Japan has been more limited. However, the GRPE has provided a forum for these three market leaders to work towards common standards within hitherto unregulated areas, like electric vehicles.⁶

A salient example of more complex market rules are chemicals regulations. Apart from binding EU companies, these regulations extend to imported products and hence foreign producers, including their supply chains. Given global spread of production processes, the EU's 2007 chemicals regulation REACH (Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals) has been said to have 'the potential to inspire new standards worldwide' (Commission 2008: 9). The anticipated compliance costs have induced several states under the lead of the US to lodge a complaint against REACH to the Technical Barriers to Trade Committee of the World Trade Organization (WTO) (Smith 2010: 944). Yet, these political tensions have not prevented countries from Eastern Europe to East Asia, including the US federal state of California and, although less comprehensively, the US federal government itself, to approximate their domestic legislation to the EU template (Biedenkopf 2012; Scott 2009).

Again, these diffusion processes have not worked through market competition alone. Transgovernmental networking, reaching out to international organizations and civil society actors, is an important complement. At the heart of the intensifying web of chemicals regulation is the EU's Chemical Agency ECHA, responsible for REACH's implementation. The prominence of REACH has given the Agency central presence on the international scene and, according to its website, ECHA 'aspires to become the world's leading regulatory authority on the safety of chemicals'.⁷ ECHA has extended bilateral scientific and technical co-operation, including Statements of Intent with Japan and the US and Memorandums of Understanding with Canada and Australia (Commission 2013: 110f). The UN's Environmental Programme UNEP and the Organization of Economic Co-operation and Development (OECD) have endorsed REACH's basic regulatory approach and contribute to its diffusion through the dissemination of information and the exchange of best practices. The EU and its member states are the main financial contributors to these programmes and regularly contract UNEP, as well as other pertinent organizations such as the World Health Organization (WHO) or the Food and Agriculture Organization (FAO), with projects promoting policy adaptation in third countries (Commission 2008). Diffusion is also promoted through 'information networks' (Slaughter 2004: 51f), such as the International Uniform Chemical Information Database and the Global Portal to Information on Chemical Substances. Offering free public access to information on chemical substances to citizens, industry and regulators alike, these networks sustain alignment with REACH through capacity building and transparency. Their information is also a valuable resource for civil society advocacy coalitions

pushing for stricter chemicals regulations. In California, regulatory approximation was motivated less by market pressures than by a process of emulation spurred by a civil society campaign using these information platforms (Chemsec 2008: 14; Scott 2009: 920ff).

Similar processes have been identified in other product regulations. In cosmetics, the EU's Directorate General for Health has actively promoted EU standards in transgovernmental co-operation with regional organizations such as the Association of Southeast Asian Nations (ASEAN) (Bach and Newman 2010: 683). In food safety, third-country regulators have been included in the EU's Rapid Alert System on Food and Feed (RASFF) which, implementing EU legislation, shapes the international approach developed in the WHO Infosan network (Vos and Weimar 2015).

To sum up, the externalization of EU market regulations is not a question of conditionality-based negotiations, market size and regulatory capacity alone. It is frequently enshrined in EU laws and involves the active transfer activities of transnational (see also Damro 2012) and, especially, transgovernmental actors. These actors and their subtle forms of co-optive power are key also in policy areas beyond market regulations where the EU lacks the material leverage to influence third countries.

The EU as a *demandeur*: non-market issues

So far we have discussed regulations which, being required for market access, automatically invoke the structural leverage of the single market. There are, however, many issue areas in which the EU relies on third countries' regulatory adaptation in order to achieve its own internal policy goals and where it cannot directly capitalize on market access. Examples include non-product-related environmental protection, migration control or energy supply. In these fields, learning and socialization in transgovernmental networks, often involving overarching international organizations, is no longer only a complement to the dynamics unleashed by economic interdependence. This technocratic outreach itself promotes rule export. Influence stems from transgovernmental networks' co-optive dynamics and their ability to call forth a joint commitment based on the common professional background of the participants. The emphasis on shared functional roles and the fact that participants come from countries with different affiliations to the EU (member, candidate, neighbourhood, other states) or international organizations transcends to some extent national differences and promotes regulatory approximation through learning and socialization.⁸ This is not to say that transgovernmental co-option always works. As the case of energy co-operation shows, paramount geopolitical contestation clearly constrains the scope for such technocratic, allegedly de-politicized outreach.

Environmental protection is a non-market issue with more or less shared patterns of interdependence. While the EU interacts with third countries in a multitude of venues, EU legislation sometimes explicitly calls for the formers'

inclusion in common regulatory frameworks. The principle that environmental institutions shall follow functional rather than political or jurisdictional lines was first introduced in the EU Water Framework Directive of 2000 (Article 3). The Directive stipulates the pursuit of transboundary waters protection within transgovernmental commissions organized along the hydrological units of rivers or lakes, regardless of these countries' membership in the EU. Wherever possible, this regulatory extension links up with third countries' overarching international commitments such as the 1994 Danube Convention or the 1976/1995 Barcelona Convention for the Mediterranean Sea (Lavenex 2008). The same can be observed in other fields such as hazardous waste, where EU regulations are sold as 'a blueprint for a sound national or trans-national legislation' for meeting self-agreed targets under international law (Neubauer 2007: 28). Joint participation in transgovernmental networks such as, for example, the Dablas Commission for the Danube is not only a vehicle for the propagation of EU rules; these networks often generate the funding and build the capacity required for policy approximation.

A similar approach is applied in asymmetric constellations of interdependence where EU demands meet more resistance. EU immigration policy is indicative of a turn towards socialization and transgovernmental networking after failed attempts at devising coercive conditionality strategies (Jurje and Lavenex 2014). Towards some eastern and south-eastern neighbours, the EU has succeeded in exerting policy conditionality, signing readmission agreements in exchange for visa facilitation. Yet, the same strategy has not borne fruit with other countries (Cassarino 2007). Also, it was immediately recognized that effective implementation of readmission agreements would require ongoing administrative co-operation. Concomitantly, the EU has devised a complex web of bilateral and plurilateral transgovernmental ties. Plurilateral networks such as the Budapest Process in Eastern Europe or co-operation in Frontex operations have proved conducive to regulatory approximation. Linking border control officials of homogeneous professional background in the exchange of best practices and operational co-operation, these networks promote policy transfer even if, at the political level, immigration remains contested (Wunderlich 2010). Again, overarching organizations such as the International Organization for Migration and the UN High Commissioner for Refugees have progressively been incorporated into these networks as observers and often as contractors charged with the implementation of EU projects (Lavenex forthcoming). At the more rhetorical level, the notion of 'partnership' has been invoked to emphasize commonality over differences, as in the so-called 'Mobility Partnership' concluded with some neighbouring countries.

Technocratic outreach is, however, no panacea against political antagonisms. Energy governance is another politically contested field in which the EU lacks market power and where it experiments with the 'partnership approach' (Padgett 2011: 1079). Countries sharing a similar situation of energy dependence have been willing to subjugate themselves to EU legal authority via the Energy Community Treaty. This rare case of 'Type I' governance is to a large

extent, however, owing to the fact that all members are actual or potential candidates for EU accession. With energy-producing countries, the EU has devised 'more flexible partnership institutions geared to encouraging minimum legal standards and good governance' (Padgett 2011: 1066). A special focus is the Caspian region, where the EU promotes its market-based vision to energy governance through a variety of institutionalized co-operation frameworks such as the Energy Charter Treaty, the Baku Initiative and the Extractive Industry Transparency Initiative (Stoddard 2012). Like in the other cases discussed above, these initiatives are embedded in the co-operation structures established under the UN-ECE. The pre-eminence of high politics clearly constrains technocratic outreach, however. The broader geopolitical context and the rival influence exerted by Russia and increasingly China explain, together with the centrality of petroleum exports for regime survival, the obstacles to subtle, co-optive regulatory strategies.

Considering this constraining impact of high politics, the question arises how technocratic, 'Type II' regulatory outreach matters for broader foreign policy goals, such as democracy promotion. While the complex interplay between 'Type II' functionalist extension and 'Type I' foreign policy deserves to be studied more closely, the next section shows that sectoral regulatory outreach has implications that go beyond specific policies.

Democracy promotion through the functionalist lens

From a functionalist perspective, the question is not how far the EU as a foreign policy actor incites third countries to reform their political systems. Rather, the question is how far regulatory outreach entails the transfer of democratic governance norms. The basic idea is that the EU *acquis*, having been developed by liberal democracies for liberal democracies, embodies elements of democratic governance originating from basic principles such as transparency, participation, and accountability (Lavenex and Schimmelfennig 2011). This idea finds reflection in a recent EU Communication on the ENP that states:

The EU's values of respect of human rights, democracy and the rule of law ... are also reflected in the EU's laws, norms and standards. Taking over EU norms and standards *through sector co-operation* will respond to the partners' wish to come closer to the EU, and, crucially, it will promote such values (Commission 2012: 18; emphasis added)

An analysis of four ENP countries' alignment with EU legislation in various sectors has shown that this indeed often involves democratic governance norms such as transparency rules in environmental legislation or accountability provisions in asylum procedures – even if actual application lags behind. Institutionalized transgovernmental co-operation as well as the embedding of EU requests in overarching international commitments was conducive to rule transfer (Freyburg *et al.* 2011). Interestingly, this finding applies to both Moldova and Ukraine, which at least implicitly have or have had ambitions to join the

EU, and to Jordan and Morocco, where this shadow of membership conditionality is absent. This shows that EU rule transfer through functional co-operation works quite independently from overarching political relations and Type I conditionality.

This functionally conveyed form of democratic governance promotion is not limited to the neighbourhood. The EU–China Environmental Governance Programme launched in 2011 aims at no less than the ‘strengthening of environmental governance in China through enhanced administration, *public access to information, public participation, access to justice* and corporate responsibility in the environmental field’ [emphasis added].⁹ This programme links up with the UN-ECE 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters and involves transgovernmental co-operation among environmental policy officials from the federal down to local level of administration.¹⁰

CONCLUSION

The EU clearly has ambitions at foreign policy actorness, and the ‘single voice mantra’ (Nicolaïdis 2010) dominates political and academic assessments of its international influence. At the same time, as a system of regional integration, the EU consists of a multitude of more or less loosely coupled sectoral regimes. These regimes have developed external dimensions of their own, and their functional borders are not necessarily congruent with the EU’s political borders. The extension of functionalist integration to third countries and international organizations constitutes a source of international influence that is hitherto little understood and that is only loosely coupled with the EU’s evolving foreign policy actorness. Rather than focusing on high-level diplomacy and the capacity to coerce, functionalist extension works through subtle mechanisms of influence based on socio-economic interdependence and the expansive dynamics of transgovernmental networks. In the EU’s periphery, functionalist extension operates below a formal layer of encompassing (Type I) foreign policy based on legal authority (EEA) or soft conditionality (ENP, ACP). This layer of encompassing foreign policy is much weaker when we move beyond the neighbourhood, and the presence or absence of functionalist dynamics sustaining the diffusion of EU rules becomes more visible.

These dynamics vary with properties of the respective sectors and target countries. Given the central weight of the EU single market, a distinction must be made between regulations that third country exporters have to meet in order to gain market access, and other sections of the *acquis communautaire* that are not market related. For market regulations, the main mechanism of rule diffusion is competition, i.e., an indirect, structural adaptation pressure conveyed by economic players striving for market access. This structural pressure is, however, not determined by the EU’s relative market size and its regulatory capacity alone, as sometimes proposed. Rather, it involves, next to the transmission by market players, direct technocratic outreach on the part of EU

regulators, often with involvement of pertinent international organizations, and sometimes on demand of third countries. These co-optive mechanisms are a crucial complement to economic incentives, as they help generating the necessary regulatory capacity to meet EU standards and provide a forum for socialization. Towards rival regulatory powers like the US, where the leverage of the single market is much weaker, transgovernmental networks may promote approximation through mutual recognition or the development of common standards. In addition, rule diffusion may occur on the basis of shared (epistemic) views by transnational movements and emulation, as the case of REACH in California shows.

In policy areas where the EU cannot directly capitalize on market access, learning and socialization among regulators is no longer only a complement to socio-economic dynamics. Transgovernmental networks exert a co-optive power of their own which stems from the capacity to call forth a sense of (professional) commonality among participants in an allegedly de-politicized context. This is supported by framing co-operation as an endeavour to jointly implement overarching international commitments and the exercise of capacity-building. As recent studies have shown, such functional co-operation can also involve the transfer of democratic governance norms embedded in pertinent sectoral policies. In addition to transmitting norms of transparency, participation and accountability, transgovernmental networking can also reinforce certain institutional trends in third countries such as the creation of semi-autonomous regulatory agencies.

The purpose of this contribution has been to conceptualize the distinctive mechanisms, institutional venues and types of power sustaining the external radiation of EU rules. Of course, there are also limits to decentred functionalist extension. Although transgovernmental networking can be devised as a targeted strategy to circumvent political divides it cannot surmount paramount (geo)political contestations as the case of energy co-operation or EU–Russian rivalries over Ukraine show. Furthermore, while functionalist extension can entail the transfer of democratic governance norms it is not suited to engender regime change as such (Freyburg *et al.* 2011: 1047).

Nonetheless, the subtle influence exerted by socio-economic and transgovernmental ties may well be more genuine to the EU's system of regional integration than 'great power' aspirations. Persisting and increasing internal diversity in the EU and current geopolitical shifts sustain the relevance of this perspective. Firstly, internal diversity prevents the EU from being perceived as an 'imperial' block by third-country regulators (see also Macaj and Nicolaïdis 2014), it sustains the flexibility of the *acquis* and thereby its transferability. Secondly, while relative economic decline will directly impact on the structural leverage of the single market and the EU's capacity to exert political conditionality, the institutionally grounded co-optive power of transgovernmental ties is likely to be more tenacious. This is particularly the case if the turn towards regulatory politics and the quest for policy co-ordination persist also in other parts of the world.

In sum, EU strategists may try to redirect the centrifugal effects of sectoral regimes into an encompassing, genuinely 'Type I' form of international actor-ness. Yet, these attempts should remain partial at best. Instead, the power of low politics, i.e., subtle regulatory outreach of functional integration, is likely to remain the most genuine form of EU international influence, also in the foreseeable future.

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NOTES

- 1 The literature on the EU as an empire or imperial power addresses similar questions from a different angle. Owing to space restrictions, this contribution cannot address it.
- 2 Compared to the external governance approach developed by Lavenex and Schimmelfennig (2009), the notion of functionalist extension conceptualizes further the non-hierarchical, sectoral patterns of rule projection, including direct technocratic/transgovernmental outreach and indirect socio-economic interdependence.
- 3 The case of Switzerland is illustrative of the tension between decentred functionalist integration 'from below' through the conclusion of delimited bilateral sectoral agreements which exclude juridical control and EU endeavours to embed these sectoral relations into a more hierarchical framework.
- 4 From this perspective, the major 'handicap' of the ENP is less the absence of coercion than the lack of technocratic and transnational dynamics spurring approximation on the basis of functional interdependence. For a similar argument on the Union for the Mediterranean, see Gillespie (2011).
- 5 http://www.unece.org/trans/main/wp29/wp29wgs/wp29grpe/grpedoc_2013.html (accessed 3 February 2014).
- 6 <http://www.unece.org/fileadmin/DAM/trans/doc/2012/wp29grpe/GRPE-63-13e.pdf> (accessed 3 February 2014).
- 7 <http://echa.europa.eu/about-us/who-we-are/mission> (accessed 3 February 2014).
- 8 The existence of a shared professional ethos sustaining regulatory approximation was imminent in numerous interviews conducted by the author with third country regulators participating in EU-sponsored transgovernmental networks.
- 9 http://ec.europa.eu/environment/international_issues/relations_china_en.htm (accessed 3 February 2014).
- 10 http://www.ecegp.com/index_en.asp (accessed 3 February 2014).

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