Article

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'A Governance Perspective on European Neighborhood Policy: Integration Beyond Conditionality?'

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ABSTRACT   Inspired by the experience of Eastern enlargement, much of the academic debate on EU external relations and the European neighbourhood policy conceives of external influence in terms of the Union's ability to induce third countries' adaptation to predetermined EU norms and regulations. This article introduces a more structural perspective on EU external influence that scrutinizes the institutional extension of sector-specific governance frameworks beyond EU membership. Whereas the traditional notion of influence only focuses on the shift of the EU's regulatory boundary, extended governance involves also the opening up of organizational structures within the relevant policy field. These new forms of horizontal flexible integration are made possible through the internal flexibilization of the modes of policy-making within the EU, and, in particular, the advent of network governance. Despite its integrative potential, case studies from three policy sectors also document that, under current circumstances, extended network governance is not void of hegemonic traits.

KEY WORDS   Conditionality; European neighbourhood policy; flexible integration; hegemony; network governance.

INTRODUCTION

A few years after the launch of the European neighbourhood policy (ENP) in 2004, first analyses draw relatively bleak conclusions on its potential for promoting policy diffusion and more comprehensive political change in neighbouring countries. The main reason is that 'without the membership perspective, the ENP countries may not be motivated to undertake domestic reforms' (Kelley 2006: 36, see also Schimmelfennig and Scholtz 2008; Smith 2005). Although prompted by the aim to find an alternative to European Union (EU) membership, the general set-up of the ENP has been very much influenced by the politics of eastern enlargement (Kelley 2006). Yet, it is evident that, without the prospect of membership, it lacks 'the Union's most successful foreign policy instrument' (Commission 2003: 5): accession conditionality.

What does the absence of the membership incentive mean for our assessment of the ENP and its external influence (see also Epstein and Sedelmeier 2008)? One option would be to concur that the ENP is doomed to failure, hence not very worthwhile studying. Alternatively, we propose a different way of conceiving of the ENP, its mechanisms and targets of influence. Opting for a governance perspective, this article argues that the ENP is less a traditional 'conditionality framework' or integrated foreign policy, with a clear hierarchy of goals, strategies, and instruments, but rather a roof over an expanding system of functional regional integration that moves at different speeds and with different dynamics in different policy fields. In particular, it will be shown that the emergence of more horizontal, process-oriented modes of network governance allows for hitherto under-investigated forms of flexible integration for non-member states. Shifting the focus from the ENP's 'macro-policy' to the level of sectoral 'meso-policies' (Sedelmeier 2007), EU influence is thus examined in terms of establishing sectoral governance networks as a basis for regulatory approximation and organizational inclusion of ENP countries.

In contrast to conventional approaches to EU influence that conceive of the EU as a foreign policy actor, the governance perspective takes a more structural, institutionalist view on the expansion of the boundaries of regional integration and the continuities and disruptions between internal policies and their external dimension. EU neighbourhood relations, and herewith EU influence, are viewed in terms of a process of gradual formal and informal 'horizontal institutionalization' (Schimmelfennig and Sedelmeier 2002: 503) or as the extensions of the EU's 'boundaries of order' beyond formal membership (Lavenex 2004: 684).

Combining insights from the newer governance literature with regime analytical approaches, this article argues that the opportunities for integrating ENP countries into EU regulatory structures depend on the presence of horizontal and inclusive modes of policy-making in the sector (in contrast to the hierarchical 'Community method' of integration) as well as on the issue-specific constellation of interdependence with the third country in question. In short, the theoretical model developed argues that network governance may extend to ENP countries where interests converge and enforcement problems are low. Echoing (neo)functionalist assumptions, this is most likely to be the case in technical areas of functional co-operation. Our case studies also show, however, that network governance is demanding. In particular, it presupposes a certain degree of decentralization, resources and civil society empowerment that cannot be taken for granted in ENP countries. In politicized or 'high politics', in contrast, we expect the EU to seek influence through more hierarchical means and the use of conditionality. However, in the absence of strong leverage, it may nevertheless resort to network governance by default. In both cases, when either the third country lacks governance capacity or when networks are being used to compensate for a lack of leverage, asymmetries of influence prevail, thereby contributing to a hegemonic picture of EU neighbourhood relations.

After a brief delimitation of the notion of governance and the characterization of the ENP's macro-institutional set-up, the article develops an analytical

framework elucidating the conditions under which extended governance may take place in different policy sectors. The framework is then applied to three sectors representing different constellations of interdependence in terms of associated enforcement and distribution problems (air transport regulation, transboundary water management, immigration). We then conclude on the integrative potential of network governance in the ENP, its preconditions and its relationship with conditionality. The data used in this article include official documents plus agendas and minutes of relevant ENP sectoral subcommittees and other relevant policy networks, as well as 46 semi-structured interviews with EU and third-country representatives participating in these processes.

NETWORK GOVERNANCE AS AN ALTERNATIVE TO CONDITIONALITY

The notion of 'governance' has seen a fabulous spread in the social sciences; it has rapidly travelled from domestic politics to EU studies and, increasingly, EU external relations and international relations. The domestic sources of the term governance derive from its opposition to the notion of 'government' and reflect a broader transformation from the interventionist to the co-operative state (Jachtenfuchs 2001; Mayntz 2005). This transition finds its expression in the specific institutional modes through which governance is exerted, that is, its horizontal instead of hierarchical nature, its focus on process rather than output, the emphasis on voluntary instruments in contrast to legal obligations, and its inclusive character, providing open fora for the inclusion of stakeholders and, in many sectors, private actors. As pointed out by Renate Mayntz, a key characteristic of governance is the vanishing distinction between the subject and the object of political steering. In this context, the notion of network delineates the horizontal, participatory, flexible and inclusive structure of governance frameworks in contrast to the vertical, bureaucratic notion of hierarchical government.

In EU studies, this notion has been introduced to challenge the traditional 'Community model' or 'Monnet method' of integration. Whereas the latter is based on the supranational formulation of binding European Community (EC) law through the interaction between Commission, Council of Ministers and European Parliament, the governance literature underlines the importance of 'soft', weakly legalized forms of policy-making by alternative fora such as formal and informal policy networks and agencies (Héritier 2002; Tömmel 2007). The notion of the *acquis* is thus transformed: integration occurs no longer through law but rather through co-ordination.

More recently, the notion of governance has also been introduced to study EU external relations. Less than 'government', 'governance' is more than 'co-operation', as it implies a system of rules which exceeds the voluntarism implicit in the term co-operation (Lavenex 2004: 682). In extrapolating this concept from its domestic origins, however, the specificity of the notion of governance as a non-hierarchical mode of interaction *vis-à-vis* other forms of external interaction, such as the conditionality model mentioned above, has tended to be blurred.

In order to grasp this specificity this article distinguishes horizontal network governance from hierarchical policy transfer through conditionality. This distinction can be related to Michael Smith's differentiation of various boundaries of EU political order (Smith 1996), and in particular the relationship between what he calls the 'legal' and 'institutional' boundaries (see also Lavenex 2004). The legal (here: regulatory) boundary refers to the extension of the regulatory scope of EU rules or policies to non-member states, while the institutional (here: organizational) boundary refers to the inclusion of non-member states in EU policy-making organizations. Whereas it is true that under the Community model of hierarchical integration, institutional inclusion would be 'a synonym for full membership' (Filtenborg *et al.* 2002: 400), the advent of network governance and functional policy-making organizations has opened new opportunities for institutional inclusion below the level of the central legislative authorities.[1] In contrast to the conditional transfer of a predetermined legal *acquis*, which would only expand the EU's regulatory boundary, network governance, as a process-oriented mode of policy-making, amounts to a more structural mode of exerting influence since it allows in principle for the simultaneous extension of regulatory and organizational boundaries. Thereby, external governance becomes a form of extended governance or flexible horizontal integration. Table 1 summarizes the main characteristics of these two ideal-typical modes of external governance. We exclude from this typology traditional forms of loose intergovernmental co-operation and bargaining as a third mode of external reaction which, however, due to its low degree of institutionalization, does not qualify as governance.

Hierarchy describes a relationship of superiority and subordination in which one party unilaterally expands predetermined parts of its regulative boundary to the other without, however, allowing for the latter's participation in the determination of these obligations or organizational inclusion in the policy frameworks where these obligations are shaped. Although lacking the strong jurisdictional aspect inherent in national hierarchies, this constellation basically corresponds to the conditionality model that has been identified as the main mode of external governance in EU enlargement politics (e.g. Grabbe 2005; Schimmelfennig and Sedelmeier 2004). As observed by Dimitrova (2002) and Schimmelfennig and Sedelmeier (2004: 674), this model exhibits primarily characteristics associated with 'old governance' – or 'government'. It is hierarchical in the sense that it works through a vertical process of command – where the EU transfers predetermined, non-negotiable rules – and control, where the EU ensures compliance through regular monitoring mechanisms. The main actors involved are supranational ones and political, high-level representatives of the third country. Although essentially drawing on power asymmetries and the presence of incentives, this mode of interaction also presupposes high degrees of internal communitarization (that is, the existence of an *acquis* with strong supranational competences) and external institutionalization in EU–third-country relations, including monitoring mechanisms.

Table 1 Ideal-types of EU external governance

Modes of governance	Instruments	Mechanism	Actors	Boundary shift
Hierarchy	EC and EU law, precise requirements, conditionality, monitoring	Policy transfer	Supranational EU institutions and Council *vis-à-vis* 3rd country	Only regulatory boundary is shifted
Networks				
Information networks	Voluntary instruments, process-oriented: Data, information, best practices	Co-ordination	Multi-level and polycentric transgovernmental and transnational; including agencies, international organizations, public and private actors	Very moderate shift of regulatory and organizational boundary
Implementation networks	Like information networks + operational co-operation, capacity-building			Moderate shift of regulatory and organizational boundary
Regulation networks	Like information networks + adoption of benchmarks, common standards			Strong shift of regulatory and organizational boundary

A *network* constellation by contrast reflects the third basic form of societal organization beyond market and hierarchy. Theoretically, network governance beyond the EU consists in the simultaneous expansion of its regulatory and organizational boundary. The process-oriented, horizontal, voluntaristic and inclusionary attributes of network governance allow for the extension of norms and rules that goes along with participatory openness in decision-making processes and practices. The inclusiveness of governance arrangements further suggests that these will usually take on 'multi-level' structures that may involve not only national, but also subnational, supranational and inter-national actors, as well as non-state ones (Héritier 2002: 3). The composition of networks may contribute to a depoliticization of co-operation since partici-pating actors are experts and technocrats specialized within the issue area but not representing a country's national interests. By omitting the legislative arena and its institutions (the Council, Parliament and Commission), this mode of interaction opens the way for functionally specific forms of organiz-ation, such as agencies (e.g. the European Environmental Agency), co-ordinating bodies (e.g. Europol), or less formalized policy networks (e.g. the DABLAS Initiative, see below). Whereas the concrete competences and degree of autonomy of these various organizations vary strongly, the possibility for third countries to become members amounts to a shift of the organizational boundary of the EU system, even if only at a 'subordinate' or specialized level.

Drawing on Slaughter's work on transgovernmentalism (Slaughter 2004: 52ff.), we distinguish between three different functions of policy networks:[2]

(a) *Information networks* are set up to diffuse policy-relevant knowledge, best practices and ideas among the members.

(b) *Implementation networks* focus primarily on enhancing co-operation among national regulators to implement/enforce existing laws and rules – be they national, international, or European. These networks can complement more hierarchical modes of interaction when adding a more co-operative implementation structure to a unilateral decision-making one.

(c) *Regulatory networks* are the most powerful ones in terms of governance since they have an implicit or explicit legislative mandate and are geared at the formulation of common rules and standards in a given policy area. Accord-ing to Slaughter, 'behind the facade of technical adjustments for improved coordination ... and uniformity of standards lie subtle adjustments' of national laws (Slaughter 2004: 59). In so far as they are inclusionary and voluntary, these networks represent the most advanced form of flexible sectoral integration in terms of shared governance.

From a governance perspective, 'EU influence' thus consists not primarily in leading third countries to adopt EU rules but rather in extending integration dynamics in the sense of creating joint regulatory structures. The questions that need to be answered are: (a) under what conditions network governance emerges – in contrast to hierarchical policy transfer, how this differs across sectors and countries; and (b) under what conditions policy networks really

work as governance arrangements and how they relate to other modes of inter-action – for example, become instrumentalized by supranational actors for more top-down forms of policy transfer. Before turning to this sectoral perspec-tive, the next section specifies the ENP's macro-institutional set-up by contrast-ing it with enlargement policy. This will allow us to better identify both the commonalities and differences with the conditionality model.

THE ENP'S MACRO-INSTITUTIONAL SET-UP

Launched as a policy to avoid new dividing lines in Europe after the 2004 acces-sions, the ENP is usually compared with EU enlargement policy. The ENP's macro-policy contains both hierarchical elements, which are reminiscent of the enlargement approach, and more governance-oriented ones. In hierarchical terms, it requires legislative approximation, yet omits the terms 'harmonizatiza-tion' or 'adoption' of the EU *acquis*. It also includes monitoring mechanisms, yet political (the Commission's reporting and evaluation in the joint Association Councils) rather than juridical ones. Like enlargement, the ENP applies the notion of a conditional deepening of relations. This progressive approach is sus-tained by accompanying mechanisms first introduced in the accession process, Twinnings and the Commission's Technical Assistance Information Exchange Office (TAIEX). In contrast to enlargement, however, the application of condi-tionality is much less straightforward (Kelley 2006). Commitments anchored in the so-called Action Plans are jointly agreed rather than unilaterally imposed, reflecting the ENP countries' different degrees of interest in deeper association. The weaker regulatory scope of association and the ambiguous relationship to hierarchy and conditionality is complemented by the perspective for organiz-ational participation in sectoral governance structures, including also Commu-nity Programmes and Agencies. While it is true that such participation is part of the conditional incentives offered in the ENP Action Plans, 'prerequisites for participating in activities of Community agencies' need not necessarily be 'approximation with the Community' but instead 'the establishment of relevant national institutions with sufficient capacities' (Commission 2006d: 3). Discus-sions within ENP subcommittees document a gradual approach towards co-operation with EU agencies and bodies which may start with individual pro-jects and later lead to more formal co-operation agreements.[3] One can therefore conclude that as a macro-policy, the ENP is in principle more open to more horizontal, co-owned governance structures. How far this plays out in practice, however, must be analysed at the sectoral level within individual policy fields.

SECTORAL GOVERNANCE PATTERNS IN THE ENP

Since the ENP is a roof over a dense web of functional co-operation arrange-ments that have developed partly prior to, and only in loose co-ordination with, the macro-policy, the forms of interaction vary from sector to sector, with different inclusionary potentials. Under what conditions does network

governance take place in the ENP within individual sectors? And to what extent does it allow for horizontal forms of flexible integration? Combining insights from the governance literature with regime theories of institutional design, this section presents an analytical approach to explaining the emergence and prevalence of different modes of external governance at the sectoral level, before we substantiate this framework in three policy fields.

Explaining external patterns of interaction

At the sectoral level, the ENP can be conceptualized as the external dimension of internal EU policies or as extended sectoral policy regimes. The external dimension will normally reflect the modes of interaction that dominate internal policy-making in this area; the extension of network governance presupposes the existence of such networks internally. Nevertheless, in the external dimension, problem constellations may take very different forms from within the EU and interaction is much less pre-structured by institutional norms, rules and routines. Approaches on institutional design and international regimes can give us some indications of the interplay between the constellation of collective action problems at the sectoral level and the functional requirements for problem-solving structures (Hasenclever *et al.* 1997; Koremenos *et al.* 2001; Zürn *et al.* 1990). According to this literature, two dimensions of given problem constellations influence the institutional choice of co-operative arrangements: enforcement and distribution problems. Enforcement problems refer to the strength of incentives to cheat on a given institutional arrangement. The greater the enforcement problems associated with a given solution, the 'stricter', that is more hierarchical and formal, the governance mode should be (Koremenos *et al.* 2001: 773ff.). Enforcement problems result from the partners' disagreement on the desirability of common rules because of conflicts of interests; this is typically the case for common pool resources, such as transboundary waters where the incentives to free-ride are strong. Such situations require clear rules and monitoring as well as enforcement mechanisms in order to secure compliance. There are, however, situations where the participating actors agree on the need for common arrangements, but favour different solutions. Such co-ordination problems usually need a lesser degree of formal institutionalization and may be governed by more informal, legally non-binding arrangements such as those described in the model of network governance.

A second, analytically distinct dimension of problem constellations is the distributive effects of co-operative arrangements (Martin and Simmons 1998: 745). A common source of such distributive effects are geographic factors, such as in the case of international rivers, the unequal benefits from co-operation covered by upstream and downstream countries, or in migration the relationship between sending, transit and receiving countries. In such situations, the institutional framework is demanding as it is difficult to find a commonly accepted solution. According to Koremenos *et al.* (2001: 775), distribution

problems should have the opposite effect on governance arrangements: whereas difficult enforcement problems require strong institutions, difficult distribution problems should be easier to tackle with soft and more decentralized, process-oriented modes of governance that do not demand that the participants agree on specific substantive rules from the start.

While these approaches allow us to specify the intended mode of interaction owing to functional prerogatives, they do not account for a range of contextual institutional factors that are likely to intervene between the intended and actual form of co-operation. In particular, our study has identified two variables that may modify either hierarchical or network models of interaction. First, hierarchical arrangements require a strong degree of EU competence in the relevant policy area: they are based on the transfer of formal rules and require strict monitoring mechanisms as well as, in the absence of means for sanction, the possibility to entice compliance through positive incentives, that is, conditional rewards. This means that even in problem constellations in which enforcement and distributive issues motivate a stricter mode of hierarchical policy transfer, we may find the emergence of other forms of interaction by default. The EU might simply lack the necessary degree of competence, including a precise *acquis*, and resources, and hence turn to network governance because of a lack of alternatives. Our second set of intervening variables affects the network governance model of interaction. This mode of interaction requires a compatible 'governance capacity' on the part of the participating actors which falls in two dimensions. The active participation from stakeholders representing either specialized levels of public administration or relevant private actors presupposes a certain decentralization of decision-making structures and civil society empowerment that do not necessarily exist in ENP countries. Their participation involves also financial costs that can be prohibitive, either as contributions to the respective programmes/organizations or just for travel to the respective meetings. In addition, such policy networks are very much based on non-legal instruments such as processes of mutual learning and exchange of best practices, where influence relies on knowledge and expertise. Qualified personnel and compatible expertise are thus key to the principle of 'co-ownership'. In both cases, that is, when EU actors exploit or instrumentalize networks to compensate for lack of leverage, and when third countries lack the capacity to participate on equal footing, network governance becomes asymmetric, giving the EU a dominant position. Figure 1 summarizes this analytical model before we turn to the four sectoral case studies.

Summing up the main expectations of this model, network governance as a horizontal mode of partnership-oriented association should prevail in particular where enforcement problems are low. Echoing (neo)functionalist assumptions, this is most likely to be the case in technical areas of functional co-operation, such as transport policy. In contrast, in politicized and even securitized 'high politics' such as Justice and Home Affairs (JHA) we expect the EU to seek hierarchical means, and to rely on network governance 'by default' if it lacks the necessary means.
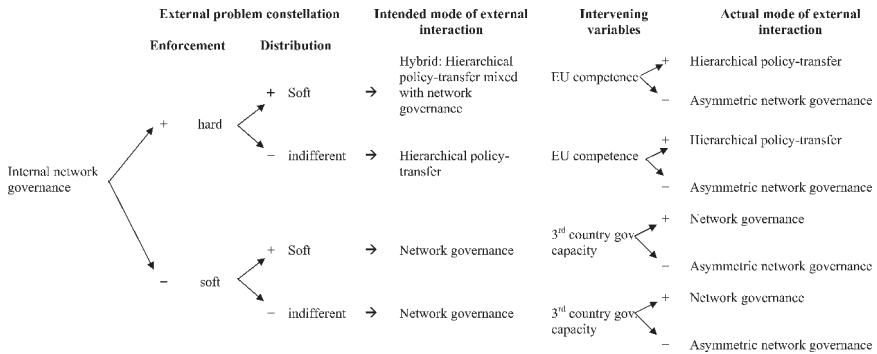
Figure 1 Analytical model of sectoral interaction frameworks

Policy networks in selected policy fields: participatory governance or policy transfer in disguise?

In this section, we review the advent and the operation of extended policy networks in three policy areas reflecting different internal modes of governance and different problem constellations. We start with two 'low politics' areas, where our theoretical model predicts higher chances of network governance, air transport regulation and transboundary waters management; and end with a politicized matter of 'high politics', immigration control.

Air transport regulation

In its White Paper on the European Transport Policy of 2001, the European Commission (2001: 98) announced the 'urgent need' for an external dimension to European air transport policy. In March 2005, it presented a Communication on external aviation relations, followed by the Conclusions of the Council of Transport Ministers. These texts set out an ambitious roadmap including developing the wider European Common Aviation Area by 2010 which will cover all neighbourhood countries of the EU. As a 'sectoral contribution to the Union's neighbourhood policy' this shall provide for 'the same market operation rules, not only from an economic point of view but also with regard to air traffic, security or air safety' in the EU and ENP countries (Commission 2005a: 8).

The regulatory landscape of European air transport consists of a complex web of bilateral agreements, the *acquis* and other pan-European regulatory organizations such as the European Civil Aviation Conference (ECAC), its associated Joint Aviation Authorities (JAA) and Eurocontrol which, since the so-called European Single Sky Initiative of 1999, are increasingly tied to the EU's aviation policy and its recently created European Aviation Safety Agency (EASA). These organizations operate mainly as networks of national civil aviation regulators; they may produce binding regulations (air transport control standards in the case of Eurocontrol, certification standards in the case of the JAA), but focus

also very much on 'soft' information instruments such as the exchange of best practices and training.

Armenia, Moldova and Ukraine are members of all three organizations, including Eurocontrol. All other eastern ENP countries are candidates for the JAA and members of ECAC. Since Eurocontrol is a member of the EU's agency EASA, some of these countries already have a sort of indirect membership there. Furthermore, since EASA took over JAA functions in January 2007, those JAA members which are not EASA members have established liaison offices with the EU agency.[4] Thus, with the launch of the Single European Sky initiative, these pan-European organizations have come to play a central role in the realization and implementation of the wider European Common Aviation Area – and so also of central parts of the EU's *acquis* on market rules and aviation security. A key implementation instrument is the Single European Sky ATM Research (SESAR) project in which Eurocontrol has the lead and which proceeds in direct consultation with stakeholders, including industry and other civil society actors. To the South, the expansion of the EU's system of air traffic regulation operates through the conclusion of a new generation of Euro-Mediterranean air transport agreements such as the 'pilot' agreement concluded with Morocco at the end of 2006. Without offering the same organizational openings as to the European non-member states, this agreement provides for a significant extension of the EU's air transport *acquis*. It includes an extensive alignment of aviation legislation with key parts of the Community rules and regulations, including safety, economic regulation and in particular competition laws, air traffic management and consumer protection. A similar agreement is currently being negotiated with Ukraine.

To sum up, aviation transport regulation is a good case of technocratic, functionally oriented low politics expanding beyond the EU's borders. The extension of network governance is stronger to the East than to the South, given the possibility of involving pre-existing pan-European aviation organizations, while the regulatory extension moves in both directions. A first evaluation of the actual operation of governance shows that the 'public good' of aviation security bears more participatory, inclusive and horizontal co-operation structures than the aspects linked to market liberalization, where distributive questions come in. In this field, the EU *acquis* is more determinate and less open to joint co-ordination and hence extended governance carries more hierarchical traits. In both areas, the Commission states good progress on meeting the ENP's goals: 'Stricter security standards have been introduced, groundhandling services have been liberalized and most countries have established civil aviation authorities' (Commission 2006a: 5).

Transboundary water management

Transboundary water management is another area where the EU is actively promoting functional rather than territorial regulatory structures. This idea is embedded in the Water Framework Directive (WFD) of 2000. This is the first instrument of Community legislation to implement the principle that

regulations should not be organized along jurisdictions but along functional lines. The basis for this is the notion of integrated river basin management that creates functional 'competent authorities' charged with the implementation of the directive. The WFD also compels the member states to bind their neighbouring countries into these co-operative frameworks. The same principle was taken over for the EU's Marine Strategy, currently under consultation. The WFD is a good example of the connection between 'old' and 'new' modes in environmental governance. It combines legally binding standards with a special co-operative structure for their implementation that functions according to the pattern of network governance.

Inspired by the workings of the International Commission for the Protection of the Rhine, the European Commission has set up parallel structures first for the Danube and then for the Black Sea region (the so-called DABLAS process; see Lavenex and Stulberg 2007). With the Marine Strategy, the same model will be realized with the Mediterranean countries. In these Commissions, DG Environment often occupies a central position by providing the secretariat. The focus of activity is the implementation of the WFD, although the Black Sea Commission, for instance, did not include any EU member states until Romania's and Bulgaria's accession.[5] As laid down by the Commission in an ENP subcommittee meeting with Ukraine in 2006, the Marine Strategy will require each member state and third country within a marine region to develop marine strategies with a view to enhancing work within existing regional seas conventions. As in the DABLAS process, this will imply mechanisms of open co-ordination such as a detailed assessment of the state of the environment, a definition of what constitutes 'good environmental status' at regional level, and the establishment of clear environmental targets and monitoring programmes.[6]

In terms of regulatory and organizational boundaries, the institutional framework of the European Water Policy combines relatively open legal obligations with participatory, horizontal, inclusive regulatory networks involving competent authorities at different levels of government as well as non-governmental organizations (NGOs) and other private actors in the specification and implementation of these general obligations (see also Lenschow 2005). According to our analytical model, transboundary water management is characterized by strong enforcement problems given the character of rivers or common seas as 'common pool resources'. Whereas the model would hence suggest the recourse to more hierarchical instruments, the distributive aspects involved mitigate their effectiveness. In particular in countries with lower levels of ecological standards where adoption of the EU *acquis* would be prohibitively costly, the extension of EU governance is thus more effectively served through less strict, more process- and learning-oriented arrangements. Nevertheless, our interviews with participants in the DABLAS initiative show that a third country's capacity to shape the policy depends strongly on its level of expertise and resources to make innovative propositions. Whereas the Commission's ENP Progress Report states that Ukraine 'participates actively' in these networks (Commission 2006b: 15), other sources argue that Ukraine's influence is limited by the fact that these forms of

co-operation require strong input from local staff, who lack funding and 'the necessary planning skills' (Economic Commission for Europe 2007: 61). For Moldova too, the Commission identifies the need to 'strengthen administrative implementation capacity' as a 'major challenge' (Commission 2006c: 13). Given the EU's leadership on these issues, and ENP countries' limited governance capacities, these networks thus develop asymmetric structures as fora for learning and capacity-building where the EU takes the lead.

Immigration control

The fight against irregular immigration has early on developed an external dimension and is characterized by a dominance of networking through intensive transgovernmentalism and operational co-operation (Lavenex and Wichmann 2009). Nevertheless, the strong asymmetry of interests between the EU's receiving countries and the would-be 'gate-keepers' at their borders entails strong enforcement and distribution problems that provoke the EU's attempt to use more hierarchical instruments. The most important hierarchical instrument has been the inclusion of conditional readmission clauses in the newer generation of Association Agreements. The conclusion of more comprehensive and binding readmission agreements has, however, met strong resistance. Whereas with Ukraine and Moldova, agreements could be negotiated in exchange for visa facilitations, the Mediterranean ENP countries have hitherto rejected any binding commitments, thereby forcing the EU to resort to alternative modes of interaction. In particular, EU member states have engaged in an 'informalization' strategy that focuses on a broader framework of co-operation based on administrative arrangements, bilateral deals and exchanges of letters and memoranda of understanding including operational co-operation (e.g. police co-operation, joint border operations) (Cassarino 2007).

In order to intensify contacts with ENP countries, the Commission has started to focus more strongly on established transgovernmental networks. To the East, this is the so-called Söderköping process that was launched in 2001 on a Swedish initiative and involves immigration officials from the would-be new member states and the Western newly independent states (NIS). Since 2004, the network has focused on transferring the experience of the newly acceded EU member states to the Western NIS 'in aligning their migration and asylum related legislation, policies and practices with the EU *acquis* standards' (Söderköping 2005: 1). In terms of our network typology, the Söderköping process can be seen as an information and implementation network implying also capacity-building. However, as the quotation and documents from ENP subcommittee meetings[7] show, the transfer of EU policies and practices is at the core. Other informal fora being increasingly mobilized are the Budapest process in eastern Europe and the informal $5 + 5$ Ministerial western Mediterranean dialogue to the South. Recognizing the potential of such bottom-up, horizontal transgovernmental networks, Commission documents declare the aim of linking them more closely to ENP activities and, in particular, discussions in technical subcommittees (Commission 2005b).

Finally, operational network governance also occurs through 'projects' financed by the EU budget (e.g. the AENEAS and AGIS programmes in JHA) where member states, third countries or international organizations compete for tender. Such project-based networks often also involve, apart from member and non-member states, NGOs and international organizations. A closer look at their description shows that such projects are not void of policy transfer. For instance, with regard to trafficking in eastern Europe, Project JAI/2004/AGIS/031(15) foresees, next to the identification and exchange of best practices, the aim of 'uniform application of international/EU law and practices'. Networking has also started to figure more prominently in operational border politics, such as joint operations started under the co-ordination of the new European Border Agency Frontex. The Agency has concluded working arrangements with Russia and Ukraine, and informal contacts have been established with Morocco, Algeria, Egypt and Lebanon (Carrera 2007). Co-operation agreements with the EU's police office Europol have been envisaged with Israel, Moldova, Morocco and Ukraine.

Although immigration is one of the most politicized and controversial themes in the ENP, analysis of subcommittee documents and interviews with Commission officials show that influence exerted through deliberative networks need not be purely unidirectional. This is the case for the (hitherto mainly rhetorical) 'global approach' to immigration launched in 2005 that takes over some ideas first developed by Morocco and proclaims a pan-African strategy of immigration management (Kunz and Lavenex 2008).[8]

In sum, in JHA, transgovernmental networks play a crucial role. Whereas to the South, co-operation with Morocco has to some degree allowed for the development of a common initiative, the overarching tendency is to replicate EU policy transfer by 'softer', non-hierarchical means. Networks are promoted by default, because the EU lacks the competence and resources to act hierarchically and because of the strong enforcement and distribution problems involved. The hierarchy in networks is further facilitated by the lack of prior domestic legislation in these countries that could counter unilateral policy export. This turns an organizationally horizontal mode of governance into an instrument of policy transfer through the one-sided exchange of 'best practices', equipment and 'training'.

CONCLUSION

This article has argued that traditional rationalist, actor-based foreign policy approaches to the ENP that stress its weakness owing to the absence of accession conditionality may miss an essential part of EU external influence. Rather than a unified foreign policy with a clear hierarchy of goals, actors, strategies and instruments, the ENP may be conceptualized as a (loosely coupled) roof over expanding structures of sectoral, functional co-operation in Europe. This expansion of a sectoral co-operation structure has been made possible through a double flexibilization of the EU since the 1990s: an internal flexibilization of

modes of governance, implying a shift away from the hierarchical Community Method of integration towards co-ordinative network governance; and an external flexibilization involving different forms of deep association towards neighbouring non-member states.

Combining insights from regime theory with a governance approach, this article's main interest was to see how far network governance opens opportunities for the horizontal inclusion of third countries into common regulatory frameworks, and how this relates to more hierarchical modes of governance by conditionality. We scrutinized this question on the basis of three case studies in policy fields posing different problem constellations to co-operation.

While keeping in mind the limited generalizability of three case studies, the expectation that we would find an extension of network governance especially in more technocratic and unpoliticized policy areas can be confirmed. Both in the areas of air transport and transboundary water management, ENP countries have been included in network models of governance which gives them a certain access to decision-making in the respective policy fields. In these cases, the shift of the EU's regulatory boundary implied in the ENP is accompanied by an opening of its organizational boundary; that is, the structures through which the regulations are produced. Our study, however, also identified structural limits to the extension of network governance to heterogeneous contexts. Third countries' ability to participate as equal partners depends very much on their governance capacity; that is, in particular the availability of competent personnel with a certain degree of independence from central government and the expertise to be proactive in the exchange of best practices and definition of benchmarks.[9] Furthermore, the extension of EU network governance works particularly well when it can be linked to ongoing co-operation within pre-existing intergovernmental organizations, such as Eurocontrol or JAA in aviation, the Black Sea Commission in environmental matters, or the Budapest and Söderköping processes in JHA. The fact that we find more common pan-European organizations including eastern neighbours than with southern Mediterranean states is one of the reasons why extended network governance is more pronounced to the East than to the South.

Apart from the question of governance capacity, more strategic sources of asymmetry were identified in JHA. In the case of immigration control, we could show that network governance has developed as a default option because of the inherent limits on the EU's capacity to act hierarchically. These limits stem from the partly intergovernmental structure of internal governance and the lack of resources to compensate for the distribution problems implied. In these cases, policy networks become alternative fora to seek unilateral policy transfer through 'softer' means. Nevertheless, the case of Morocco and the launch of the 'global approach' also show that, even in the case of strong EU pressure, influence must not remain unidirectional.

To conclude, extended network governance represents a hitherto neglected structural dimension of the ENP. Despite their theoretically integrative potential, the opening-up of policy networks to third countries does not necessarily

mean the absence of hegemony. On the one hand, networks can be mobilized as alternative instruments of policy transfer, thus compensating for weaknesses of strategic conditionality. On the other hand, their participatory potential is currently hampered by heterogeneous political structures, unequal expertise and policy traditions in ENP countries. Nevertheless, these emerging webs of institutionalization indicate a revival of functional, sector-specific forms of organization in and around Europe, thereby pointing to the advent of flexible integration beyond formal EU membership.

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NOTES

1 Although presenting his first neighbourhood initiative as 'everything but institutions', Romano Prodi had already argued in 2002 that this 'does not exclude the possibility of developing new structures with our neighbours at a later stage, if necessary. I am thinking of innovative concepts such as institutions co-owned by the partners' (Prodi 2002).

2 In order to avoid conceptual confusion with EU jargon, we slightly modify Slaughter's terminology and speak of implementation instead of enforcement networks and regulatory instead of harmonization networks.

3 See, e.g., minutes of the EU-Ukraine Subcommittee no. 4 'Energy, Transport, Environment and Nuclear Safety', 2006 and 2007.

4 Minutes of the first meeting of the EU-Ukraine Subcommittee no. 4 'Energy, Transport, Environment and Nuclear Safety', Kyiv, 31 May and 1 June 2006.

5 The members of the Black Sea Commission are Bulgaria, Georgia, Romania, Russia, Turkey and Ukraine.

6 See note 5, pages not numbered.

7 See, e.g., minutes of the fifth meeting of the EU-Moldova Subcommittee no. 3 'Customs, Cross-Border Cooperation, Money Laundering, Drugs, Illegal Immigration', Brussels, 21 October 2005, p. 5.

8 Morocco's input on this strategy can be retraced in the documents of the subcommittee meetings on 'social affairs and migration' as well as the recent 'JHA

subcommittee', and was confirmed in interviews with Commission officials, such as with Directorate General for Justice, Liberty and Security representatives on 17 April 2007 and 3 May 2007.
 9 This finding echoes Kal Raustiala's critique of Anne-Marie Slaughter's praise of transgovernmentalism according to which, in asymmetric relations between 'Western' and 'non-Western' countries, horizontal networks quickly develop hierarchical traits (Raustiala 2002).

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