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### Abstract

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# The external face of differentiated integration: third country participation in EU sectoral bodies

Sandra Lavenex

**ABSTRACT** Below the surface of its central decision-making bodies, the European integration process has developed a dense web of transgovernmental ties that reach out to foreign regulators. Insofar as the latter gain formal participation rights in European Union (EU) regulatory bodies, this results into an external form of differentiated integration. Focusing on EU regulatory agencies, this contribution shows that external differentiation follows predominantly sector-specific functionalist dynamics that are only loosely coupled to Union overarching foreign policy prerogatives. In sum, these patterns highlight centrifugal dynamics of technocratic networking beyond the political confines of the EU's regional integration project.

**KEY WORDS** Differentiated integration; EU agencies; external relations; functionalism; regulation; transgovernmentalism.

## INTRODUCTION

Instead of one Europe with recognized and contiguous boundaries, there would be many Europes. Instead of a Eurocracy accumulating organizationally distinct but politically coordinated tasks around a single center, there could be multiple regional institutions acting autonomously to solve common problems and produce different public goods. (Schmitter 1996: 136)

For most of its existence, the European integration project has been imagined as a territorially, culturally, legally and institutionally relatively bounded process of institution-building between the participating European states (Smith 1996: 5). In the last decades, these boundaries have increasingly been reconsidered, both from within and from without. Internally, member states have opted for various forms of selective participation. Externally, numerous countries have become affiliated with sections of the *acquis communautaire*. While the European Union (EU)'s regulatory outreach is increasingly acknowledged (Bradford 2012; Damro 2012; Lavenex 2004; Lavenex and Schimmelfennig 2009), the question of how far this also entails some kind of institutional opening towards the respective third countries has hardly been addressed. Indeed, the

classic ‘Community Method’ of EU policy-making suggests little flexibility for such openings. Participation in the EU’s central decision-making bodies (the Council, Parliament and Commission) still constitutes ‘a synonym for full membership’ (Filtenborg et al. 2002: 400). But is this external radiation of EU rules really decoupled from organizational integration with third countries?

Acknowledging the internal diversification of governance modes in the EU, this contribution argues that the advent of ‘policy-making without legislating’ (Héritier 2002) through transgovernmental committees and regulatory agencies offers hitherto understudied opportunities for the flexible integration of non-member states (Lavenex 2008, 2014). Focusing on the more formalized and politically independent EU regulatory agencies, the contribution pursues two aims: it provides a first mapping of third country participation in seven EU agencies and, in a second step analyses the plausibility of two distinct logics of external differentiated integration: a foreign policy and a functionalist approach.

The distinction between these logics starts from the observation that EU regulatory extension is the product of both direct foreign policy initiatives (such as the European Neighbourhood Policy [ENP]) and of indirect, sector-specific policy diffusion. The foreign policy logic is political and serves the interest of the EU as a whole. A third country’s inclusion in a specific regulatory body is not a goal in itself but is an instrument in a foreign policy that is based on the extension of the EU’s *acquis communautaire*. Organizational inclusion thus aims to prepare for EU accession, familiarize with the *acquis communautaire* or, from a more symbolic perspective, express a privileged relation with the Union. Flexible integration in transgovernmental structures hence reflects third countries’ overarching association status *vis-à-vis* the EU.

The second logic of organizational inclusion does not flow ‘top–down’ from overarching foreign policy decisions. It takes its origins in ‘bottom–up’ processes of policy diffusion owing to functional interdependence in particular policy sectors. Rather than the EU’s central foreign policy institutions, it is the transgovernmental bodies themselves which guide the co-operation with third country regulators. Flexible integration should thus reflect patterns of sectoral interdependence and bureaucratic affinity rather than overarching association relations.

Apart from underlining different drivers of external differentiation, the foreign policy and functionalist logics also imply contrasting understandings of the EU’s internal constitution and external ramifications. The foreign policy logic proposes a model of concentric circles, with a cohesive EU at the core surrounded by different layers of third countries enjoying participation opportunities by way of their territorially defined association status. The functionalist logic, in contrast, presupposes a polyarchic EU, a ‘conglomerate of sectoral regimes which . . . are only loosely coupled to the polity’s centralized foreign policy’ (Lavenex 2014: 887) and which reach out towards third country regulators in differentiated ways. While the notion of concentric circles implies centripetal effects, reinforcing the integrity of the core, the

notion of polyarchic sectoral regimes emphasizes internal fragmentation and centrifugal dynamics.

The next section introduces the layer of transgovernmental co-operation in the EU as opportunity structure for the flexible integration of non-member states. Linking up with the literature on EU regulatory extension, the foreign policy and functionalist logic of external differentiated integration are then proposed. The remainder of the contribution maps third country participation in seven EU regulatory agencies and explores the respective importance of both differentiation dynamics.

## THE PERMEABILITY OF TRANSGOVERNMENTALISM

When announcing the EU's strategy towards its future neighbours, Romano Prodi, former President of the European Commission, declared that the ENP would encompass 'everything', that is, the *acquis communautaire*, 'but institutions' (Prodi 2002). Also, other encompassing association treaties such as the European Economic Area (EEA) preclude access to the central decision-making bodies, the Commission, Council and Parliament. Over the last two decades, however, the policy-making system of the EU has diversified considerably, and transgovernmental bodies composed of national and European technocrats have come to complement the traditional legislative actors. Involved to different extents in the policy cycle, sector-specific executive committees and regulatory agencies are more permeable towards the inclusion of third country regulators, thereby opening up new avenues for flexible organizational integration.

The permeability of transgovernmental structures stems from their organizational features. They tend to be organized as networks based on horizontal ties between their members (Keohane and Nye 1974; Newman and Zaring 2013; Raustiala 2002; Slaughter 2004). Policy-making usually consists in the co-ordination of national regulations and frequently 'soft law' rather than the production of 'hard law'. This emphasis on co-ordination, consensus and mutual learning lowers the hurdles for the participation of non-EU public officials and reduces the scope for adaptation pressure. The fact that EU agencies typically operate as hubs in a network of national experts (Eberlein and Newman 2008: 29) implies that the government officials involved enjoy a larger degree of independence from their states' central administration and are less subject to bureaucratic chains of command (Buess 2015; Eberlein and Newman 2008: 32). This independence allows member regulators to develop their own web of external relations and also empowers third country regulators to join, thereby blurring the distinction between insiders and outsiders.

As will be shown below, third country regulators can be integrated to different extents in EU agencies. Current arrangements reach from full membership to association without voting rights, observer status and punctual participation in particular functions and fora. This allows contributions to the agencies' basic functions; they may provide expertise in policy development and

decision-making and assist the European Commission in its executive functions at the stage of policy implementation. Theoretically, transgovernmental bodies are therefore open for mutual influence in regulatory co-ordination (Zeitlin forthcoming). This does not preclude that in practice domination by individual EU/member states' regulators prevails and that for some countries participation is more geared towards capacity-building and rule transfer than genuine collaboration.

Summing up, while the EU's central decision-making bodies exclude third countries' participation, the EU's transgovernmental layer is more open for (sector-specific) forms of organizational inclusion. In contrast to an EU based solely on the 'Community Method' of European integration, which would promote regulatory extension without opportunities for organizational inclusion, transgovernmental politics theoretically allow for the simultaneous extension of the EU's regulatory and organizational boundaries, thereby yielding hitherto understudied forms of external flexible integration (see Figure 1).

### DRIVERS OF EXTERNAL DIFFERENTIATION

The EU's internal differentiation of governance modes is a precondition for the flexible integration of non-member states. The decision to involve third country regulators in transgovernmental structures can, however, be motivated by either foreign policy prerogatives and/or sector specific, functional considerations.

From the first perspective, third country participation in sectoral bodies constitutes an instrument in a *foreign policy* based on the extension of the EU's regulatory boundary. This perspective views external relations through a territorial

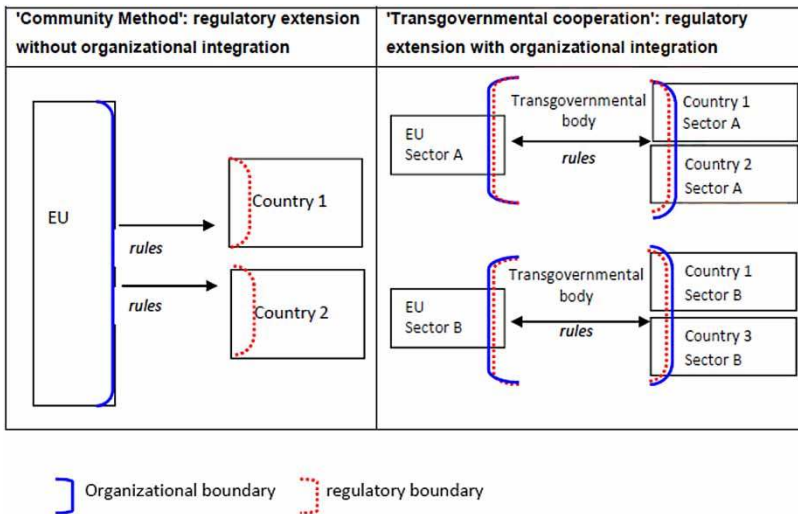


Figure 1 Modes of governance and potential for flexible integration (stylized)

prism. It establishes a hierarchy of ties between the EU and different (groups of) third countries and thereby creates concentric circles of differentiated integration (Lavenex 2011). The focus is on the immediate neighbourhood. This comprises the Western neighbours who, unwilling to join the Union, have nevertheless committed to wide sections of the *acquis communautaire*, and it includes the candidates for membership as well as, since 2004, the countries of the ENP. At its core, this foreign policy seeks to promote stability, democracy and economic development through neighbouring countries' approximation to the *acquis communautaire* (European Commission 2003). The predominance of a foreign policy logic in external differentiation is manifest if the decision to grant third countries access is taken by the EU's central foreign policy actors, in particular the European External Action Service (EEAS) and the Council, and not by the transgovernmental bodies themselves. In addition, this decision should reflect the third countries' overall association status with the EU and not sector-specific considerations. Patterns of participation should hence discriminate primarily across (groups of) countries and less across sectors.

We expect the instrumentalization of sectoral bodies for overarching foreign policy goals to be facilitated by certain scope conditions. As a rule, organizational inclusion should follow existing formal commitments towards the EU *acquis*. Domestic differences regarding pertinent policies or administrative capacity should not matter for the decision to grant access to an EU agency since the primary goal of this inclusion is to promote approximation to the *acquis*, including, where necessary, capacity-building. More important are features of the EU transgovernmental bodies themselves. An agency's instrumentalization should be easier the less autonomous it is from the central (foreign policy) making EU bodies (in particular the Commission and the Council) and the less decision-making authority it has. An agency's *de jure* autonomy can be established on the basis of its formal-institutional independence from its political principals, the central EU institutions and member states' governments. In this contribution, we use Wonka and Rittberger's (2010) agency independence index. The second institutional dimension, authority, derives from the agencies' formal regulatory powers as described in their founding documents.

Different expectations arise from a *functionalist* perspective on EU external relations. According to this logic, organizational inclusion should reflect sectoral patterns of interdependence and prerogatives of the respective regulatory bodies themselves rather than overarching foreign policy categories. Not a third country's general status *vis-à-vis* the EU determines access to pertinent bodies, but the latter's functional quest for expertise, professional efficiency and, to some extent, also bureaucratic autonomy. Rather than contributing to an overarching foreign policy strategy, the external function of EU regulatory agencies amounts to an extension of their internal task of creating 'Europe-wide epistemic communities whose technical truths transcend intergovernmental politics' (Shapiro 1997: 281–2).



This leads us to expect EU regulatory agencies to open up to regulators sharing strong sectoral interdependence and having a compatible level of administrative capacity in the respective field. Administrative capacity is defined both on the basis of the resources available to a bureaucracy (personnel, budget, etc.) and expertise (Lodge and Wegerich 2014: 27ff.). In addition, the capacity to liaise with foreign administrations should be more pronounced for regulatory agencies that have been granted a certain decision-making authority and organizational autonomy. Since integration occurs ‘bottom–up’ on the basis of shared interdependence, a formal commitment on the part of the third country to align with the relevant EU *acquis* is not necessary. This functionalist logic resonates with the ‘new interdependence literature’ discussed by Farrell and Newman (2014) which starts from the premise that the existence of relatively independent regulatory bodies and the ‘increase in regulatory clashes between jurisdictions creates a demand for cross-national initiatives to “solve” these clashes, whether through formal or informal means’ (*ibid.*: 345).

Of course, the foreign policy and functionalist approaches are ideal types, heuristic concepts to enhance our theoretical understanding of the drivers of EU external differentiation (Goertz 2006: 83f). As the analysis below shows, in reality elements of both approaches occur simultaneously and interact in many ways. Table 1 summarizes the main expectations derived from each perspective.

In order to investigate the predominant logic of EU external differentiation, the remainder of this contribution maps third country formal participation in

Table 1 Two logics of external organizational differentiation

		<i>Foreign policy logic</i>	<i>Functionalist logic</i>
Indicators	Key EU actors	Political representatives (EEAS, Council)	Transgovernmental technocrats in sectoral administrations
	Target countries	Reflecting overall association status with EU	Reflecting sectoral interdependence
	Pattern of differentiation	Across countries	Across sectors
Scope conditions	Third country commitment	Formal commitment to regulatory approximation	No formal requirement of regulatory approximation
	Third country administrative capacity	Low and high levels of administrative capacity	High level of administrative capacity
	Properties of EU agencies	Low autonomy and authority	High autonomy and authority

seven EU agencies that vary with regard to their authority and autonomy and which are active in sectors reflecting different patterns of interdependence: market regulations; environmental protection; and internal security. The analysis is based on primary documents of relevant agencies, EU institutions and third countries, as well as expert interviews with pertinent stakeholders. The focus is on *de jure* co-operation arrangements; the study of *de facto* interaction is beyond the scope of this study. This selection is summarized in Table 2.

## PATTERNS OF EXTERNAL INSTITUTIONAL DIFFERENTIATION

Openness for the participation of third countries is a standard provision in the constituent acts of EU agencies. The pertinent clause suggests a close connection between regulatory extension and organizational inclusion: the ‘agency shall be open to the participation of third countries which have concluded agreements with the European Community which provide for the adoption and application by these countries of Community law in the area covered by the basic act . . .’.

The review of third country participation in EU agencies, however, reveals a strong variance as to whether and how flexible integration actually materializes (see the summarizing Table 3). Does this variance reflect overarching EU foreign policy considerations or sector-specific functionalist prerogatives?

### Key EU actors

The first dimension distinguishing a foreign policy from a functionalist logic of external differentiation concerns who in the EU is entitled to grant access to the transgovernmental bodies: the central EU institutions or the regulatory agencies themselves?

A number of overarching EU foreign policy documents address the relevance of third country participation in regulatory agencies. The first group of countries having received access in a systematic manner are the European Economic Area/European Free Trade Association (EEA EFTA) members. The standard clause foresees their participation ‘in the Administrative Board . . . [with]

Table 2 Case selection

		Autonomy		
		High	Medium	Low
Authority	Yes	ECHA	EASA	EMA
	No	EFSA	Frontex	EEA, Europol

Notes: ECHA = European Chemicals Agency; EASA = European Aviation Safety Agency; EMA = European Medicine Agency; EFSA = European Food Safety Agency; Frontex = European External Borders Agency; EEA = European Environment Agency; Europol = European Police Office.

Table 3 External relations of selected EU agencies

Agency	Authority	Autonomy*	3rd country relations			
			EEA c.**	CH**	Candidate and ENP countries	Other countries
EASA	Yes	0.59	Member	Member	Potentially open Comprehensive air transport agreements: Western Balkans (including observer status on management board), Morocco, Georgia, Jordan, Moldova; installed: Israel; in negotiation: Ukraine, Lebanon; planned: Tunisia, Azerbaijan, Armenia	Bilateral comprehensive aviation agreements: Brazil, Canada, USA; planned: China, India, Russia, South Korea
ECHA	Yes	0.62	Member	Pending	Potentially open Candidate c.: specific pre-accession assistance (IPA) project of technical assistance ENP c.: <i>ad hoc</i> projects	Bilateral co-operation agreements: Australia, Canada, Japan, US <i>Ad hoc</i> exchanges: China, Korea, Russia
EMA	Yes	0.33	Member	Pending	Potentially open Co-operation agreement with Israel	Co-operation agreements with Canada, Australia, New Zealand, and US (with permanent representative from US FDA to EMA and <i>vice versa</i> )

(Continued)

Table 3 Continued

Agency	Authority	Autonomy*	3rd country relations			
			EEA c.**	CH**	Candidate and ENP countries	Other countries
EFSA	No	0.62	Member	Pending	Potentially open Technical co-op. projects with candidate countries	Co-operation agreements with Japan and the US
EEA	No	0.21	Member	Member	Potentially open Turkey full member; six West Balkan countries as co- operating countries; ENP c. capacity-building projects	No formal agreements
EURO-POL	No	0.26	Not open OCA***	Not open OCA***	Not open to membership OCA*** with Albania, Macedonia, Serbia, SCA**** with other West Balkan countries, Moldova, Ukraine, Turkey	OCA*** with Australia, Canada, Colombia, US, Monaco SCA**** with Russia
FRON-TEX	No	0.45	Member	Member	Not open to membership Working Arrangements with the West Balkan countries, Moldova, Ukraine, Georgia, Armenia and Turkey Negotiations with Libya, Morocco, Egypt, Tunisia and Azerbaijan.	Working Arrangements with Russia, US, Belarus, Canada, Cape Verde, Nigeria Negotiations with Senegal, Mauritania, Brazil

Notes: \* The autonomy score is based on Wonka's and Rittberger's (2010) independence index. The index ranges from 0 (no independence at all) to 1 (completely independent).

\*\* For the EEA countries and Switzerland membership means full participation with the exception of the right to vote.

\*\*\* OCA stands for Operational Co-operation Agreement.

\*\*\*\* SCA stands for Strategic Co-operation Agreement.

the same rights and obligations as EU Member States, except for the right to vote' (EEA 2012: §4.3).<sup>1</sup> As non-EEA EFTA member, Switzerland has had to negotiate access to EU agencies on a case-by-case basis through bilateral sectoral agreements (Schweizerische Eidgenossenschaft 2010).

Since the year 2000, agencies have also been tasked with familiarizing EU candidate countries with the EU *acquis* by offering participation opportunities. This *de facto* development has been later formalized with a Commission Communication (European Commission 2008). The launch of the ENP in 2004 has emulated many elements of the enlargement strategy, including the idea that 'the participation of neighbouring countries [in EU agencies] may be in the interests of the enlarged EU and of the neighbouring countries' (European Commission 2006: 3). This Commission Communication which elicits 'the general approach to enable ENP partner countries to participate in Community agencies and Community programmes' invokes both the functionalist and foreign policy rationales:

Some agencies may themselves be interested in the expertise of ENP partners, while for others, the European Union's goal of encouraging and supporting regulatory and administrative reform and institution building in neighbouring countries through the ENP will represent the overarching Community interest. (*ibid.*)

Notwithstanding these references to the role of regulatory agencies in foreign policy, the decision to open up towards a particular country rests with the regulatory agencies and not with the EU foreign policy apparatus. Apart from the standard provision in the founding acts quoted above, no uniform rule exists concerning the competence to conclude international agreements. From the seven agencies selected, only three have limitations on this competence. Europol,<sup>2</sup> which was converted into an EU agency in 2009, enjoys least leeway, since its founding decision requires prior Council approval for international activities. The European Aviation Safety Agency (EASA)<sup>3</sup> has obtained the obligation to receive prior approval by the Commission to international agreements five years after its creation with its amended founding regulation of 2008. In the case of Frontex,<sup>4</sup> finally, a requirement to obtain prior opinion (but not approval) from the Commission and to keep the Parliament informed was introduced in the amended founding regulation of 2011. In sum, with the exception of Europol and certain oversight limits, the competence to engage in international co-operation thus rests with the agencies' management boards.

### Target countries

Contrary to what a foreign policy logic would suggest, third country participation in EU agencies only partly reflects the countries' formal association status. To date, only the EEA countries have gained systematic access to EU agencies. The exception is Europol, which does generally not provide for third country membership. Switzerland, which hitherto lacks an overarching

political agreement with the EU, is a member in three agencies and negotiations are on the way concerning the others. From the candidate countries, only Turkey has become a member of the European Environmental Agency (EEA). Co-operation agreements with candidates are often limited to technical co-operation, thus underscoring the capacity-building function of these bodies in the context of EU enlargement policy. Potential openness for ENP countries has been established in the Commission's 2006 Communication (European Commission 2006). In practice, meaningful participation of ENP countries only exists in the European Aviation Safety Agency and in the EU's border agency, Frontex, while more limited forms of co-operation exist with Europol and the European Food Safety Agency.<sup>5</sup> Israel stands out among the ENP countries for having a co-operation agreement with the Medicine Agency.<sup>6</sup> These differentiations within the same 'foreign policy groups' reflect the importance of sector-specific patterns of interdependence, as well as of other factors such as third countries' administrative capacity and properties of the respective EU agencies.

The sectoral logic of differentiation is most explicit beyond Europe. All agencies in our sample but one (the European Environmental Agency)<sup>7</sup> have concluded co-operation agreements with countries not targeted by neighbourhood policies. The United States has the most agreements, closely followed by Canada, while other 'strategic partners'<sup>8</sup> have gained access on a more selective basis. The strategic partnerships reflect the dominant patterns of economic interdependence. In internal security, we find different geographical priorities, as the co-operation agreements concluded by Europol with Colombia and Frontex with Belarus and different African countries show. Frontex's co-operation with Belarus is, moreover, a showcase of the potential tensions between a functionalist logic on the one hand, which incites Frontex to reach out, and the foreign policy logic on the other, which led the EU to suspend the negotiation of a Partnership and Co-operation Agreement and to impose sanctions against Alexander Lukashenko's authoritarian regime.

### **Regulatory commitment and administrative capacity**

As indicated in the standard provision found in EU agencies' constituent acts, third countries shall be given the possibility of participating in these bodies if they 'have concluded agreements . . . which provide for the adoption and application . . . of Community law' (see above). This suggests that the extension of the EU's regulatory boundary in a specific sector is closely correlated with the opening-up of the organizational boundary.

The review of co-operation arrangements with third countries only partly confirms this foreign policy perspective. Some association relations, like the EEA and the ENP, involve per definition participating countries' legal (in the case of the EEA) or more political (in the case of the ENP) commitment to the *acquis*. Co-operation with other 'peers', in particular across the Atlantic, invokes less the *acquis* as template and rather promotes co-operation based on

the principle of mutual recognition. The case of Switzerland, finally, is interesting here, because the fact that formal regulatory commitments are negotiated on a case-by-case basis allows disentangling legal from organizational co-operation. Case studies show that in the 1990s and early 2000s, Swiss regulators often participated on an informal basis in EU transgovernmental structures even without having concluded formal agreements with the EU or the respective bodies. It is only with the formalization of former regulatory networks into EU agencies and the stronger involvement of the European Commission in Swiss–EU relations that a certain congruence between formal regulatory commitment and organizational inclusion has developed (Lavenex and Lehmkuhl 2009).

The following paragraphs illustrate the distinct patterns of regulatory and organizational inclusion in individual agencies. It turns out that while all neighbourhood associations imply commitment to the EU *acquis*, some co-operation arrangements allow for more flexible forms of mutual recognition, in particular with countries sharing high levels of administrative capacity.

The most ‘internationalized’ agency in our sample, the aviation agency, EASA, has concluded comprehensive air transport agreements with candidate and neighbourhood countries in view of a wider Common Aviation Area based on a parallel process of gradual market opening and regulatory convergence towards EU rules. Neighbourhood country regulators are associated to EASA and its information system on air safety of aircraft and of air operators (SAFA) through a harmonized system of inspections, information-sharing database, standardization visits, training programmes, joint inspection operations and co-ordination on intended regulatory changes. Partner countries partake in the co-ordination meetings of the SAFA programme and have a (technical) advisory role therein. The agreements with non-European countries also have a clear institutional component, as they establish a partnership of civil aviation safety authorities with EASA. This co-operation, however, does not take the EU *acquis* as exclusive template, but rather aims at a process of mutual recognition based on the principle of reciprocal acceptance of findings and approvals (i.e., equivalence of decisions). This involves also joint certification oversight and maintenance co-ordination boards, information exchange and co-ordination on regulatory developments.

A second agency with strong international links is the European Chemicals Agency. The agency has intense interchange with third country regulators and the chemical industry by way of the registration requirements included in the EU’s chemicals regulation, REACH. Co-operation with candidate and ENP countries is geared at technical assistance and capacity-building for regulatory alignment to EU rules. In contrast, the agreements concluded with Australia, Canada, Japan and the United States (US) are motivated by the need for regulatory co-ordination among peers in the increasingly global chemicals market. These agreements focus on the exchange of information, best practice and scientific knowledge. They were concluded in 2010/11 and can be supported by rolling work plans. In institutional terms, they involve video and phone conferences between the directors of the European Chemicals Agency

(ECHA) and its peer regulatory agencies and technical dialogue sessions between experts in areas of mutual interest.

A similar pattern can be observed for the European Medicine Agency (EMA), which has stronger co-operation with major regulatory authorities elsewhere than with the candidate or ENP countries. The US agreement covers the sharing of information on advance drafts of legislation and regulatory guidance documents, as well as non-public information related to ensuring the quality, safety and efficacy of medicinal products for human and veterinary use. Since 2011, the parties have worked towards the harmonization of marketing authorization application procedures for medicines and, since 2012, have developed operational co-operation regarding inspections of manufacturing sites in each other's territories. All other agreements cover the exchange of information on pre- and post-authorization applications as well as, in the case of Australia, Israel and Switzerland, mutual recognition agreements in relation to conformity assessment. Israel's privileged position *vis-à-vis* other ENP countries underlines the importance of market integration and comparable levels of administrative capacity and regulatory expertise for stronger transgovernmental integration. For instance, EMA's agreement with Israel recognizes the country's industrial standards as equivalent to European standards. The agreement also presupposes Israel's capacity to implement EU legislation and to align so-called 'good manufacturing practice standards', thus providing the basis for mutual recognition.

Compared to the above, the European Food Safety Agency (EFSA) and the European Environment Agency (EEA) are less internationalized. EFSA has relatively weak co-operation agreements with Japan and the US and only technical co-operation projects with candidates. The EEA has formally admitted Turkey as a full member like the EFTA countries, but only has formalized relations with the six West Balkan countries and capacity-building activities in ENP countries. Despite the EU's asserted role in international environmental policy, the EEA has no formal co-operation agreements beyond the neighbourhood and co-operation occurs through other channels. For instance, the United States Environmental Protection Agency only mentions the Commission, member states and the Organization for Economic Co-operation and Development (OECD) as co-operation partners.<sup>9</sup>

The case of Frontex and Europol, finally, is interesting because these agencies operate in deeply politicized issue-areas which are close to the core of state sovereignty. The sensitivity of a policy field does not necessarily limit transgovernmental networking, as their widespread co-operation relations in the neighbourhood and beyond demonstrate. Whereas in the case of market-related agencies sectoral interdependence and administrative capacity predominate over the foreign policy logic of inclusion, in the field of internal security the foreign policy and functionalist logics largely converge. Europol, a formerly intergovernmental organization, precludes the formal admission of non-EU members, but has comprehensive operational co-operation agreements with Western partners, a number of EU candidates and Colombia, as well as more limited strategic co-operation agreements with other candidates, ENP countries



and Russia. Both kinds of agreements involve participation in key Europol activities including information exchange (in the case of operational agreements also of personal data), as well as exchange of best practices, training, and co-operation in individual criminal investigations.

Frontex, a former ‘first pillar’ agency, grants Switzerland and the EEA EFTA countries the most encompassing participation rights of all agencies: full membership with voting rights in the management board (albeit with a few limitations). This unusual inclusivity is owing to the specific arrangement negotiated for Iceland, Norway and Switzerland’s association to EU internal security co-operation which links these countries’ dynamic alignment with the relevant *acquis* with participation rights in the core legislative structures of the Council of Ministers. This link with regulatory expansion is also salient in relations with other third countries which, according to Frontex’s founding regulation, is ‘to promote European border management standards’, (Art. 14(1)), including operational and technical co-operation, trainings, and the deployment/admission of liaison officers in/from the third countries. At the same time, the geography of corresponding agreements reflects sectoral interdependence patterns. Apart from the candidate and ENP countries, which all constitute either source and/or transit countries for migrants, Frontex pursues co-operation agreements with other key countries such as Nigeria, Senegal or Mauritania. As in the case of the market-related agencies above, a clear difference exists in the substance of co-operation with these countries – where the focus is on rule transfer and capacity building – and the ‘strategic’ and ‘Western partners’ – where co-operation entails exchanging intelligence and best practices, thereby allowing for mutual vectors of influence.

### **Authority, autonomy and the flexibility of regulatory agencies**

The patterns of external differentiated integration underscore the expectation that with higher levels of authority and autonomy third countries’ participation in EU agencies will depart from overarching association policies and reflect sectoral patterns of interdependence instead. The two agencies combining decision-making authority with strong autonomy (EASA and ECHA) also have the most diversified and international co-operation patterns, while the EMA, which combines authority with low autonomy, clearly privileges extra-continental co-operation over EU neighbourhood categories. In the case of EFSA, one reason for its weak international engagement may be that the Commission itself retains much authority in this field together with its semi-autonomous Food and Veterinary Office (Vos and Weimar forthcoming). Concerning the EEA, low authority and autonomy go along with a clear capacity-building focus on the neighbourhood and no formalized co-operation beyond the western European associated countries, thereby reflecting the foreign policy logic of differentiation. The relevance of an agency’s autonomy finally also shows in Europol and Frontex’s co-operation patterns. While both agencies combine neighbourhood associations with strategic outreach reflecting patterns

of interdependence, Frontex – being more autonomous from core EU bodies – has more leeway to craft flexible integration arrangements.

## CONCLUSION

The differentiation of governance modes in the European Union and the proliferation of transgovernmental co-ordination have opened up new opportunities for the differentiated integration of non-member states. Below the surface of the EU's central decision-making bodies, third country regulators have gained access to a plethora of committees and regulatory agencies that contribute to the development and implementation of EU policies. Combining the projection of the *acquis communautaire* with third countries' inclusion in pertinent fora, this transgovernmental outreach amounts to an external form of differentiated integration.

External differentiated integration occurs at the intersection of two distinct organizational dynamics. On the one hand, the active promotion of the *acquis communautaire* has become a central instrument of EU foreign policy, and in particular neighbourhood associations. In this context, third countries' inclusion into transgovernmental bodies has been recognized as conducive to their familiarization with the *acquis*. On the other hand, EU transgovernmental bodies have themselves developed external ties in order to tackle functional interdependence. Whereas the foreign policy perspective proposes a cohesive system of external differentiation reflecting overarching association relations, the second perspective underlines sectorally and functionally differentiated patterns of external integration.

The analysis of differentiated integration in seven EU regulatory agencies suggests only a loose coupling with foreign policy prerogatives and emphasizes the pre-eminence of functionalist dynamics instead. The competence to engage in co-operation arrangements with third countries rests primarily with the agencies and not the central EU bodies. Co-operation arrangements reflect sectoral patterns of interdependence and are particularly developed with countries sharing compatible levels of administrative capacity. In many cases, EU agencies enjoy stronger ties with transatlantic partners than with the associated ENP countries, and co-operation with the latter often focuses on capacity building rather than genuine regulatory co-operation. The comparison also shows that with higher levels of decision-making authority and organizational autonomy, EU agencies' detachment from overarching foreign policy prerogatives increases.

The decentred, centrifugal dynamics of transgovernmental networking are not without tension with the centripetal logic of supranational integration and co-ordinated foreign policy. With the EU's progressing constitutionalization towards an international actor in its own right, the relative independence of transgovernmental external relations has raised the concern of supranationalist architects. As shown above, the founding regulations for EASA, Frontex and Europol have recently introduced oversight mechanisms for the Commission

and the Council. The Joint Statement of the Parliament, Council and Commission issued in the context of a general overhaul of EU agencies further states that the latter should not only 'have a clear strategy' for co-operation with third countries but that these strategies should be co-ordinated with partner Directorates Generals in the Commission to 'ensure that the agencies operate within their mandate and the existing institutional framework' in view of the overarching aim of 'consistency of EU policy' (European Council 2012: 12).

These recent initiatives point at a greater formalization and standardization of transgovernmental bodies, potentially limiting their flexibility. With deepening interdependence beyond formal EU membership, however, functional pressure for transnational co-ordination is likely to persist. Together with regulators' strife for political autonomy, this wider geography of regulatory challenges is likely to perpetuate decentred patterns of external differentiation, eventually materializing into 'multiple regional institutions' (Schmitter 1996: 136) with varying boundaries of memberships.

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## NOTES

- 1 The EEA EFTA states have also access to the following types of Commission committees: expert groups (Article 99 EEA); comitology committees (Article 100 EEA); programme committees (Article 81 EEA); and other committees in specific areas (Article 101 EEA). In total, the EEA EFTA states have the right to participate in several hundred committees.
- 2 Europol was created as an intergovernmental organization in 1999 and converted into an EU agency in 2010. Its tasks comprise the collection, analysis and dissemination of criminal proceedings data.
- 3 EASA was created in 2003 with the goal to ensure high standards of air safety and environmental protection in European civil aviation.
- 4 Frontex was created in 2005 with the goal to co-ordinate high standards of EU external border control.
- 5 EFSA was created in 2002 with the task of risk assessment and communication on food and feed safety.

- 6 EMA (formerly EMEA) was created in 1995 with the task to prepare authorization of medicines and monitor their safety.
- 7 The EEA was created in 1990 with the task to supply information for development, decision, implementation and evaluation of environmental policy.
- 8 Over the last decade, the EU has set up 10 strategic partnerships with Brazil, Canada, China, India, Japan, Mexico, Russia, South Africa, South Korea and the United States.
- 9 Interview with EPA, 25 June 2013, and <http://www.epa.gov/international/regions/Europe/Eupriorities.html><http://www.epa.gov/international/regions/Europe/Eupriorities.html> (accessed 6 October 2014).

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