Modes of external governance: a cross-national and cross-sectoral comparison

Sandra Lavenex, Dirk Lehmkuhl, Nicole Wichmann

Paper presented at the EUSA Biannual Conference, Los Angeles, 2009

Professur für Internationale Politik

Politikwissenschaftliches Seminar

Universität Luzern

Hirschmattstr. 25

Postfach 7992

CH-6000 Luzern 7

Abstract

Contrary to the wide majority of studies that try to characterise EU external governance by looking at the macro structures of association relations, our comparative analysis shows that overarching foreign policy initiatives such as the EEA, Swiss-EU Bilateralism or the ENP have little impact on the modes how the EU seeks to expand its policy boundaries in individual sectors. In contrast, modes of external governance follow sectoral dynamics which are astonishingly stable across countries. These findings highlight the importance of institutional path-dependencies in projecting governance modes from the internal to the external constellation, and question the capacity to steer these functionalist patterns of external governance through rationally planned foreign policy initiatives.

Keyword: External governance, foreign policy, composite policy, European Neighbourhood Policy, Norway, Switzerland, research policy, transport policy, environment policy, Justice and Home Affairs

Introduction

The study of EU association relations cuts across the division between studies of foreign policy and policy analyses that investigate the external dimension of EU sectoral policies. Although the topic of external governance has started to be studied from both perspectives, the relationship between the two has rarely been addressed. Taking a comparative view on three macro-institutional frameworks of EU neighbourhood relations and the modes of

external governance within five policy sectors, we seek to shed light on the relevance of differing macro-institutional frameworks of association for the sectoral dynamics of external governance. Echoing the literature on the variety of policy modes in the EU's "internal" governance (Wallace 2000; Verdun and Tömmel 2008), we question the accuracy of generalising characterisation of neighbourhood policies as being "quasi-colonial" (Tovias 2006 with regard to the EEA) or relying on a conditionality framework (Cremona & Hillion 2006; Kelley 2006; Magen 2006 with regard to the ENP). In contrast, our argument is that EU external governance is less a product of high-level foreign policy initiatives such as the European Economic Area (EEA) or the European Neighbourhood Policy (ENP). Rather than mirroring the properties of the overarching association frameworks, sectoral modes of external governance reflect quite consistent legal and institutional shapes that derive from the ways the EU deals internally with these policies.

We substantiate the thesis of EU external governance as a decentralised, functionally driven and differentiated process of expanding sectoral integration with a most-dissimilar-systems design (Przeworski and Teune 1970) by comparing three macro-institutional models applying to six heterogeneous countries in terms of size, wealth, and region (Moldova, Morocco, Norway, Switzerland, Tunisia, Ukraine) and five policy sectors with varying degrees of interdependence and politicisation (research, transport/aviation, environment/water, asylum policy, police cooperation). By so doing, we are able to show that the external modes of sectoral governance mainly reflect internal modes of sectoral governance, quite independently from macro-institutional structures. This continuation of internal modes of governance is relatively stable even if we account for alternative explanations such as power constellations, situations of interdependence, or domestic factors. Whereas these factors cannot account for the institutional modes of sectoral governance, they do account for differences across countries.

After a short theoretical reflection on modes of governance in "composite" neighbourhood policies we start with delineating a typology of external governance structures that forms the basis of the macro-institutional (section three) and sectoral (section four) comparison. We then scrutinize the links and discontinuities between these two levels of external governance and close with some conclusions on the relationship between the functionalist and the more political dynamics of EU external governance.

Modes of governance in composite policies

The notion of European external governance is indebted to an institutionalist agenda that directs attention at institutionalised patterns in which interdependence between political units – in the present case the EU and respective third countries – are coordinated. Comparable to the case of EU enlargement, EU neighbourhood policies are characterised by a dual structure composed of, on the one hand, the overarching "macro policy", laying down overall the goals and instruments of these privileged relations, and the "meso policies", relating to the sectoral modes of interaction (Sedelmeier 2005, 2007). Whereas the "macro policies" such as the EEA, Swiss-EU Bilateral Treaties or the ENP result from coordinated, political processes of foreign policy-making, the "meso policies" reflect the external dimension of internal sectoral integration. These external dimensions have usually been motivated as functionally-driven anwers to situations of interdependence and to the externalities produced within the individual sectors such as the environment, energy, migration management, or the fight against organised crime and others. They thus follow primarily internal, sectoral or functional dynamics, rather than overarching foreign policy goals (see e.g. Bauer et al. 2007; Lavenex 2004; Wolff, Wichmann, Mounier 2009). The tension that arises is that from the "macro" foreign policy perspective, EU neighbourhood relations must draw on these decentralised "meso" policies in order to fulfill their goals (Sedelmeier 2007: 280). Conversely, this also means that from a foreign policy perspective, the "meso" policies should be "steerable" and follow the macro structures.

Our analysis of governance modes at the macro and meso levels is inspired by the governance-turn in comparative politics and draws on the typologies of governance developed therein (Scharpf 1997; Williamson 1975). On this basis, we distinguish between hierarchy, network and market modes of governance (Lavenex et al. 2007; Lavenex & Schimmelfennig 2009). Each mode of governance is composed of two dimensions: on the one hand, the regulatory level of rule expansion (here: legalisation) and, on the other hand, the organisational level of rule-making (here: institutionalisation).

Hierarchy is a critical terminology in the international arena given the fact that its antonym, anarchy, is the central tenet of traditional International Relations theorising. Hierarchy serves as a descriptor for a mode of coordination characterised by a strongly legalised and institutionalised asymmetric interconnection between the EU and a third country. According to the literature, the degree of legalisation may vary in three dimensions: obligation, i.e. the

degree to which actors are bound by a rule or a set of rules; precision, i.e. the degree to which rules define the respective conduct they require or authorise; and delegation, i.e. the delegation of the authority to implement, interpret and apply the rules to a third party (Abbott et al. 2000). Adapting the distinction to the present context, we talk about a hierarchical mode of external governance when the role of European (i.e. supranational) law is strong, when the conduct of a non-member state is bound by the predetermined obligations of the *acquis communautaire* and when there is an independent judicial review of the conduct of the non-member state. With respect to the institutionalisation, a hierarchical type of coordination is characterised by a profound asymmetry between the "rulers" and the "ruled" as well as formal and centralised macro-institutions with dense interactions and little room for third countries to negotiate on their commitments (exclusiveness).

In contrast, *market* describes a mode of coordination characterised by the relative weakness of formal relationships. A market constellation corresponds to different but generally much lower degrees of legalisation and institutionalisation. The ideal-type market corresponds to what International Relations scholars traditionally describe as anarchy. With regard to EU external relations, there is no overarching legal commitment to cooperation, and approximation to the *acquis* is not the point of reference. The contents of cooperation is thus not predetermined but subject to negotiations, and no systematic monitoring of compliance occurs. Even if there is an asymmetry between the EU and a third country in terms of power or resources, relations are formally horizontal and non-exclusive. Rather than being governed by a centralised macro-institutional structure and joint institutions, interaction occurs more ad-hoc and on a decentralised basis (i.e. within policy fields).

These informal processes of coordination still differ from *networks* as our third type of coordination. Parties in network constellation also act in a formally symmetrical relationship. This implies that despite a dominance of the EU's agenda, third countries have to agree with the selection of topics of cooperation and can bring in their own priorities. The coordination of interdependence in a network type of interactions requires a certain degree of institutionalisation and the existence of central coordination structures goes along with decentralised units of interaction; while ties can be formal and informal. The basis for interaction in networks are international law and voluntary agreements, and the norms used are inspired by the *acquis* but not precisely pre-determined. This goes along with a shared political rather than judicial monitoring of the implementation of agreed commitments.

The following table summarises these considerations.

Table 1: Summary of Analytical Dimensions

Dimension of governance	Criteria	Indicators
Legalisation	Obligation	Supranational law (++)
		International law and voluntary agreements (+)
		no legally binding obligation (–)
	Precision	same precision as *acquis* (++)
		acquis but with flexibility (+)
		subject to negotiation (–)
	Delegation	judicial control (++)
		political monitoring (+)
		no monitoring (–)
Institutionalisation	Centralisation	tight centralised (++)
		lose centralised (+)
		Decentralised (–)
	Density	high (++)
		medium (+)
		ad hoc (–)
	Exclusiveness	EU agenda (++)
		EU agenda but consensus required (+)
		Common agenda (–)

Table 2: Summary of ideal-types

		Hierarchy	Market	Network
Legalisation.	Obligation	++	_	+
	Precision	++	_	+
	Delegation	++	_	+
Institutionalisation.	Centralisation	++	_	+
	Density	++	_	+
	Exclusiveness	++	_	_

These ideal types are heuristic devices and shall not be confounded with the complexity of the empirical reality. One empirical observation that we need to bear in mind when studying these modes of governance and their interaction is for instance that the shadow of hierarchy may impact upon other governance forms such as networks or markets (Scharpf 1997: 197-205; Héritier & Lehmkuhl 2008). Notwithstanding this caveat, the following sections use these ideal types to characterise first the macro-level configurations of external governance, in order to contrast them in a second step with the sectoral modes of governance.

Macro-structures of external governance

European Economic Area

The European Economic Area (EEA) combines high levels of legalisation with a centralised, dense and exclusive format of institutionalisation and thus comes close to a hierarchical structure. The asymmetry of obligations was compensated by various forms of participation, yet at subordinate, technical levels of influence.

The "legal homogeneity" maxim requires from the EEA EFTA states (Norway, Iceland and Liechtenstein) a constant alignment with the EU *acquis* in the areas covered by the Agreement. The intensity of the obligations arising from EEA law is comparable to that of Community law. This was confirmed in a ruling by the EFTA Court according to which the EEA legal order is to be situated at a half way position between supranational Community law and classic international law (Lazowski 2006: 131). Control is exerted by the EFTA Surveillance Authority with the power to launch infringement procedures and a juridical monitoring body, the EFTA Court. Although both institutions are not EU organs, their point of reference clearly is the EU jurisprudence. The compliance record demonstrated by the EEA EFTA states is similar to that of the EU member states (Jónsdóttir 2008).

While formally speaking the EEA agreement allows for country-specific derogations or adaptations to EU instruments, the EEA EFTA countries have rarely used these possibilities (van Stiphout 2007: 437). The only condition under which the EEA EFTA countries can insert exceptions into the agreement is when they demonstrate that objective criteria (e.g. size, sparsely populated territory) are at odds with an implementation. Also, individual EEA EFTA states may exercise the right of reservation to avert the inclusion of predetermined norms into the EEA *acquis.* However, the EU axiomatic insistence on the legal homogeneity within the EEA territory requires the proposition of an equivalent solution by the responsible Joint Committee which is made up of ambassadors of the EEA EFTA States, representatives from the European Commission and EU Member States. Given the complexity of and interdependence between policies the EEA EFTA states have so far always agreed to include the contested measures into the EEA *acquis* sooner or later.

The EEA's institutional set-up mirrors the legal hierarchy. It possesses strong central institutions (Joint Committee, EFTA Surveillance Authority, EFTA Court) meeting with high frequency. The most explicit institutional sign of asymmetry is the EEA EFTA states' formal

exclusion from “decision-making”. The so-called dynamic incorporation procedure consists of the quasi-automatic transfer of the relevant *acquis* to the EEA EFTA countries, by 2008, roughly 6000 acts had been incorporated into Norwegian legislation since the entry into force of the EEA (Bruzelius 2008). In Norway the EEA incorporation procedure has been described as a “fax democracy” and academics have qualified the status of the EEA EFTA countries as “semi-colonial” (Tovias 2006).

EEA EFTA countries have been compensated for their exclusion from actual decision-making in the EU by comparatively far-reaching decision-shaping rights in the agenda-setting and the policy formulation stage. On the one hand, either government representatives or experts from these countries may participate in expert working groups that are convened at regular intervals to discuss the proposed legislative proposals. On the other hand, EEA EFTA representatives may participate in comitology committees that assist the Commission in the exercise of its executive functions. Another form of organisational inclusion is participation in EU sectoral agencies. These horizontal structures are mainly limited to expert level deliberations which take place in the shadow cast by the EU legislative bodies and the EEA Joint Committee. Their potential is circumscribed by the openness of the respective *acquis* on the one and the respective competences of these bodies on the other hand. Therefore, any assessment of these opportunities needs to look at the modes of governance within the respective policy sectors. At the political stage the influence of the associate states is far more limited, and they have to rely on informal strategies, such as lobbying EU member states and building alliances with “like-minded” states instead. To conclude, the predominant macro-structure of the EEA is thus a hierarchical setting, in which EEA EFTA members have subordinated themselves to “foreign rule” by the EU.

Swiss-EU Bilateralism

It is more difficult to categorise the bilateral agreements in terms of the dominant structural mode of interaction because there is no overarching framework agreement to lay down a shared obligation for cooperation. Rather, there are sixteen core bilateral agreements, concluded with the EU in two packages in 1999 and 2004, and over one hundred secondary agreements. As a consequence, each bilateral sectoral agreement is the result of a negotiation process in which both sides try to minimise commitments and maximise benefits.

The EU's *acquis communautaire* is thus not automatically the basis of the agreements; the consensus brought about by the negotiations can be referred to as *acquis helveto-communautaire.* The obligations created by the bilateral agreements are precise although they might include specified derogations from the *acquis*, With the exception of the agreements on air transport and the Schengen Association they fall short of being "integration treaties". Rather, the legal obligations arising under the bilateral agreements come closer to traditional international than to supranational EU law. The maxim underlying the relations between the two parties is not that of "legal homogeneity" but the recognition of the "equivalence of legislation". In addition there is no systematic monitoring, neither juridical nor political. The monitoring of compliance with the obligations contained in the bilateral agreements is ensured by each one of the parties on their respective territory.

Below these formally weakly legalised structures we find a strong shadow of hierarchy concealed behind the core principle which stipulates the recognition of equivalence of legislation. In practice this recognition amounts to the incorporation of EU instruments (regulations/directives) into Swiss law, because the EU almost only accepts legislation modelled on the *acquis* as "equivalent". The EU instruments that shall be included in Swiss legislation are listed in the annexes to the bilateral agreements. The competence to modify these "technical" annexes has for the most part been delegated to the mixed committees. The main difference to the EEA setting is the punctual nature of such "updates": both the frequency of changes and the substantive reach of the changes are more limited. Another "de facto simulation" of hierarchy results from the doctrine of "autonomer Nachvollzug" (unilateral adaptation), which is a practice of voluntary alignment practiced by the Swiss authorities since the late 1980s. It stipulates that each new piece of legislation is evaluated with respect to its compatibility with EU norms.

The absence of central coordinating institutions or overarching macro structures mirrors the formally weak legalisation of Swiss-EU association. Contrary to the EEA and Association Agreements, there is no EU-Switzerland Association Council or overarching Joint Committee. Instead, relations are managed decentrally within each sectoral agreement by the respective "mixed committees". The mixed committees are in charge of managing both the technical and the political aspects of the bilateral agreements through information exchange and, when necessary, extension of EU legislation relevant for Switzerland. They are also the place where problems with the implementation of the Agreements are discussed, and thus

they fulfil a sort of ad-hoc monitoring function. Finally, the lower degree of legalisation in Swiss-EU relations goes along with more limited decision-shaping rights compared to the EEA EFTA states, although access to committees or EU agencies has evolved incrementally in a number of sectors.

In sum, Swiss-EU Bilaterlism is an interesting case of formally weakly legalised and institutionalised structures, yet infused by a strong informal shadow of hierarchy.

European Neighbourhood Policy

The European Neighbourhood Policy is different from both the EEA and the bilateral agreements with Switzerland, in that it is not a legal contract on its own.[1] Next to the hard law Association Agreements (AA) concluded with the Mediterranean neighbours and the Partnership and Cooperation Agreements (PCA) signed with the Eastern European neighbours the ENP includes a multiplicity of "soft law" instruments that have been adopted since 2003, which also differ between countries.[2] The core soft law instruments are the bilateral action plans outlining the reform menu that each partner country has committed itself to undertake in the various policy domains. The action plans are process-oriented; they do not prescribe a specific end, such as legal homogeneity, but promote the ENP countries' approximation to EU standards. To realise this "approximation" objective the EU draws on a combination of hierarchical and networks modes of governance.

The adoption of EU norms is not a legal obligation but a political commitment. With the exception of the provisions on the internal market and trade, the commitments inscribed in the Action Plans are relatively vague. This stems from the "approximation" objective according to which the EU's *acquis* can, but must not, serve as a model for guiding third countries in the conduct of domestic reforms. Notwithstanding the lower degree of obligation and precision, monitoring is assured at the political level. ENP countries' progress in fulfilling their action plan commitments is assessed every 18 months by the European Commission in "progress reports" that resemble the Commission's *avis* and the regular progress reports issued during enlargement. This unilateral assessment is complemented by a consensual monitoring structure in the joint Association Councils.

In institutional terms the ENP is relatively centralised but less dense than the EEA and Swiss-EU Bilateralism. Ministerial representatives of the ENP countries meet with the EU Troika in

yearly Association/Partnership and Cooperation Council meetings. The Cooperation and Association Committee at the ambassadorial level also meet on a yearly basis. In contrast to the EEA these bodies do not have the objective of aligning the legislation in the third country to the EU standards; instead their main function is to exchange information on the progress achieved in the realisation of the action plan commitments. The fact that the discussions in the joint Association Councils are the key monitoring instance shows that the highest political level wants to keep a grip on the development of the ENP, hence preserving the centralised characteristics of the policy.

An important innovation of the ENP compared to previously established frameworks such as the Euro-Mediterranean policy is the introduction of technical subcommittees in most policy fields. In contrast to the diplomatic macro-structure they are composed of civil servants of the ENP countries, EU member states and the Commission meeting on the expert level to discuss joint priorities and problems encountered during implementation. Theoretically, these fora are comparable to the sectoral subcommittees working under the EEA Joint Committee or the mixed committees with Switzerland, and thus they bear the potential for more horizontal or symmetrical discussions based on technical expertise rather than political considerations. Yet, in practice some ENP countries prefer to send either high-ranking officials or diplomats.[3] A further feature of the decentral set-up are the informal networking mechanisms, Taiex and Twinning, that were first introduced during EU enlargement. These instruments link civil servants from the member states with those in the ENP countries with the objective to promote "approximation" in areas in which the EU lacks a precise *acquis*.

To conclude, notwithstanding their common focus on promoting association to the EU on the basis of its *acquis communautaire*, the three macro-institutional types of neighbourhood policies vary quite strongly with regard to their modes of governance and the degree of hierarchy reflected therein. The EEA is clearly the most hierarchical setting, emulating to a far degree the legal and institutional supranationalism of the EU. Swiss-EU Bilateralism reflects a mix of formal intergovernmentalism with a strong (informal) shadow of hierarchy. This shadow mainly derives from the fact that Switzerland's "flexible integration" mainly occurs through legal adaptation to the *acquis* but less through institutions. The opposite is the case in the ENP which mainly combines a focus on institutional ties with elements of network governance in a weakly legalised setting. The first column of table 2 below summarizes these

governance characteristics and juxtaposes them with the sectoral modes of governance that we present in the following section.

Sectoral diversity in external governance[4]

Do macro-institutional modes of external governance between the EU and associated third countries have homogenising effects at the sectoral policy level, meaning that EEA countries are treated differently in research or environmental policy than Switzerland or individual ENP countries? Or do we find specific sectoral modes of governance prevailing regardless of the macro-institutional set-ups and the respective target countries instead? In order to answer these questions we analyse five sectors that vary with regard to their dominant type of internal governance; two more communitarised, hence hierarchical ones (asylum and immigration control in JHA, environmental policy), two intergovernmental ones (police and judicial cooperation, research policy) as well as one with mixed competences (air transport). This sample also reflects a mix of more technical versus more politicised sectors and thus allows controlling for competing hypotheses that stress the role of interdependence and interest constellations.

Research

Despite its recent gain in prominence as a main pillar of the EU's Lisbon agenda, research policy is not communitarised. The main output of decision-making in research are not directives, regulations or harmonisation measures, but pluri-annual research programmes defining broad research fields and an overall budget for funding research that complements national research policies (Banchoff 2002: 3). The mode of policy-making can be characterised as a form of network governance in which the relatively open-structured overall research framework programmes are jointly specified, implemented and monitored by national experts meeting under the comitology procedure in the so-called programme committees and in a special intergovernmental advisory group working both for the Commission and the Council, the Scientific and Technical Research Committee (CREST). This multilevel constellation inside the EU is complemented by independent intergovernmental research organisations such as Cost and Eureka and transnational fora

composed of self-governing science organisations (e.g. European Science Association) or industry (technology platforms).

In terms of external governance research policy is a particular case, since it does not involve an *acquis* which needs to be transferred to the associated countries. Third countries can be fully or partially integrated in this policy area without facing pressure for regulatory adaptation. Instead, integration occurs through the organisational participation in the definition of funding priorities and/or in the established funding programmes.

With the inclusion of research policy in the EEA and the conclusion of a bilateral agreement, Norway and Switzerland have been fully associated with this policy field. The full association gives them access to the relevant policy networks and unrestricted participation rights. Although they do not have the right to vote, both EU and country representatives confirm that Norwegian and Swiss representatives participate as full members and that voting never takes place.[5] Also, both countries have established informal forms of cooperation with the EU's central legislative organ, the Council of Ministers. Likewise, their research ministers have been invited as observers to the informal meetings of EU research ministers since 2007.[6] As a consequence, for Norway and Switzerland, "external governance" may most accurately be described as "extended network governance" with a low degree of legalisation and symmetric institutional ties. Interestingly, the overarching macro-structures existing in the EEA were reported to have no relevance for this cooperation.

As a geographically determined space of privileged relations, the ENP fits uneasily with the intrinsic functional dynamics of internationalisation in research. Despite their heterogeneity, it can be said that most ENP countries are not natural partners for internationalisation in terms of compatibility of science and technology systems. Nevertheless, research policy may be "particularly suited as an integration vehicle given the apolitical nature of cooperation in science and technology and the overall absence of political obstacles to progress in cooperation" (European Commission 2008: 72), also because of its conduciveness to economic growth and modernisation. Therefore, the PCAs, AAs and ENP Action Plans all include provisions on cooperation and strengthening research infrastructures. In addition, bilateral Science and Technology Agreements have been concluded with Ukraine, Moldova, Tunisia and Egypt, and relevant provisions are included for the southern neighbours in various declarations and instruments of the Barcelona Process.

In contrast to the Western neighbours, these policy documents do prescribe policy adaptation in terms of developing R&D capacities, including raising levels of funding, and preparing for integration into the European Research Area. Commitments with the Southern neighbours also include more specific targets such as e.g. establishing independent funding institutions and promoting industrial research. These prescriptions however reflect a generally low level of legalisation given the absence of a regulatory *acquis* in the EU. Our interviews confirmed that both during the negotiation of ENP Action Plans and of the Science &Technology Agreements the ENP countries were free to set their own priorities.[7] Thus approximation to EU standards is mainly driven by the ENP countries' different degrees of interest in modernising their research systems, rather than by external influence.

The institutionalisation of research cooperation is more developed with the Southern than with the Eastern neighbours. The multilateral Monitoring Committee for Euro-Mediterranean Cooperation (MOCO) meets annually to exchange information and views on S&T policy in the Mediterranean Region; promote the coordination of national policies between its members and the EU; monitor S&T programmes and activities in the region and to propose action plans to extend the European Research Area to the whole region – some of which have found entry into relevant EU instruments such as the EU's Seventh Framework Research Programme. This fact, as well as the balanced representation in the MOCO (members are high-level officials representing the Ministers responsible for RTD from the EU member states and from the Mediterranean partner countries, as well as representatives from different Commission DGs) reflects relatively symmetrical structures of interaction, despite the fact that the Southern neighbours (and ENP countries in general) are clearly more dependent on the EU's research market than vice-versa.

Transport: Aviation

Despite the fact that transport was one of the few policy fields explicitly mentioned in the Treaty of Rome, a common air transport policy developed only from the late 1980s onwards. Three so-called liberalisation-packages between 1987 and 1992 contributed to the creation of an internal market in air services. As a consequence of market making policies, market regulations involving issues of air traffic management and safety became dominant. In 1999, the launching of the Single European Sky project signalled a new effort to communitarise the

internal dimension of air transport. Its external dimension was triggered by the so-called "open skies" judgements of the European Court of Justice (ECJ) in 2002, according to which member states cannot act in isolation when negotiating international air service agreements (Stevens 2004). The common external aviation policy is characterised by the EU's explicit objective to take the EU *acquis* with its two dimensions of market liberalisation and control and safety policies and standards as the yardstick (European Commission 2005). The more the EU seeks to communitarise internal and external air transport governance, the more it has to take into account the existence of either intergovernmentally or transgovernmentallly organized forms of pan- European cooperation with overlapping memberships.

The EEA countries and Switzerland are closely integrated in the EU's aviation policy. Annex XIII of the EEA Agreement establishes the full association with the EU's transport *acquis*. The provisions cover market making and market regulating aspects, including for instance horizontal transport issues such as social policy, consumer protection, environment, statistics and company law. The bilateral aviation agreement concluded with Switzerland is comparable in legal scope. Interestingly, the lack of judicial macro-structure in Swiss-EU relations is compensated by the allocation of oversight functions to the European Commission and the ECJ, equivalent to the judicial control applying for the EU member states. These hierarchical patterns in the legal sphere go along with intensive network governance at the operational level. Both Norwegian and Swiss experts are well integrated in relevant technical bodies. Yet, given Switzerland's location at the heart of one of the busiest aviation areas in the world Swiss representatives have successfully sought a closer incorporation also into decision shaping bodies such as high level groups and standard setting bodies, both EU and pan-European (e.g. the European Civil Aviation Conference ECAC), the Joint Aviation Authorities JAA, Eurocontrol or the European Aviation Safety Agency EASA).

ENP countries are significantly affected by the EU's objective to develop the wider European Common Aviation Area (ECAA) by 2010. The ECAA involves the twin objectives to open markets by 2010 and to initiate a process of regulatory convergence with the EU *acquis*. To achieve this objective the EU seeks to negotiate substantive aviation agreements with ENP countries that reach well beyond existing PCAs and AAs. The 2006 EU-Morocco Euro-Mediterranean Aviation Agreement has been heralded as the prototype for any other neighbouring countries wishing to harmonise their legislations with the Community. A comparable agreement is currently in negotiation with Ukraine. These special agreements

reflect high degrees of obligation and precision, yet each contracting party remains responsible for the proper implementation in its territory and disputes are to be decided by the Association Council, a political body (Art. 21 and 22 of the EU-Morocco Euro-Mediterranean Aviation Agreement). In institutional terms the agreements build on the existing bodies, i.e. the Association Councils which shall meet at least once a year as Joint Committees (or additionally upon request of one party). A more pertinent role in providing an institutional base for interaction is played by functional pan-European aviation agencies, at least for the European neighbours which are members of the ECAC, the JAA and Eurocontrol. In sofar as these organisations function on the basis of technical expertise rather than political considerations, they also open the opportunity for more horizontal patterns of cooperation.

Environment

Although strongly communitarised, environmental policy reflects an interesting mix of hierarchical and so-called "new" modes of horizontal governance, sometimes combined within one piece of legislation. Whereas Norway is fully associated to the EU's environmental *acquis* by way of the EEA, no equivalent obligations exist with Switzerland.[8] Commitments with the ENP countries mainly concern the so-called horizontal environmental *acquis* related to good governance, and regulatory adaptation is less explicit in overarching policy documents such as Action Plans.

Given the variety of governance modes in EU environmental policy, we focus a sub-field with a strong international dimension, water protection. The main policy instrument here is the EU's Water Framework Directive (WFD) of 2000. The WFD is a typical instrument of "new" environmental governance, reflecting many aspects related to the Open Method of Coordination. Its emphasis is on structuring a collaborative process in which an open-ended notion of good water status is jointly defined and promoted by policy networks. These policy networks are composed of policy-makers and stakeholders from the relevant countries who agree on common objectives and concrete activities in the respective national and regional contexts. Most interestingly, the decentralised regulatory structures implementing the WFD are organised along the natural geographical and hydrological units of rivers and lakes, and not along their administrative or political boundaries. The notion of integrated river basin districts binds the member states to involve relevant neighbouring countries into the

respective policy networks of "competent authorities". Often, this occurs through the delegation of competences to pre-existing intergovernmental water protection commissions in which both EU countries and neighbours are members.

Geographic location and membership in such long-standing intergovernmental commissions explain why third countries increasingly come under the ambit of the EU's water protection policy, even if such an obligation is missing in formal association agreements. The relevant *acquis* is the same for all countries, namely the WFD, including several other fairly precise directives that have been integrated therein and the political monitoring processes that go along (country reports and peer review). We also find relatively strong commonalities in the institutional parameters of this policy field. Whereas Norway and Switzerland are integrated in both supranational (EU Water Directors) and regional levels of policy networks (e.g. the International Commission for the Protection of the River Rhine for Switzerland), the Eastern neighbours face a comparable degree of regional institutional coupling with their participation in the Dablas Process for the protection of the Danube and the Black Sea. Although theoretically, these networks allow for symmetric, horizontal relations, we find that they operate under the shadow of hierarchy. In the case of Norway and Switzerland, this mainly refers to other directives relevant for implementing the WFD. Cooperation in the networks is recorded as being fully symmetrical and these countries are esteemed for their environmental expertise and leadership.[9] In the case of the Eastern neighbours, we find asymmetry in the networks themselves which results less from the formal characteristics of these fora but from the properties of the third countries such as absence of compatible expertise and resources. In this situation, the Eastern neighbours cannot participate on an equal basis and become passive receivers of EU templates.

Justice and Home Affairs

The internal governance of JHA is marked by the coexistence of weak hierarchical legal integration through the community method (in the first pillar) and intergovernmental procedures (in the third pillar) as well as the dominance of network governance through intensive transgovernmentalism (in both pillars). Integration occurs not only or primarily through legislation but first and foremost through operational cooperation in transgovernmental networks (Lavenex 2009).

With the Western neighbours, Justice and Home Affairs (JHA) cooperation forms a separate type of macro-institutional governance, Schengen/Dublin association. It is independent from the EEA and constitutes one of the bilateral agreements with Switzerland. The degree of obligation contained in the association agreements resembles that of the EEA; these agreements are dynamic in the sense that the associates accept to incorporate all further developments of the relevant *acquis* following the conclusion of the agreement. The pressure to align with these further developments is high, provided that non-incorporation of a norm ultimately leads to the termination of the agreement. Yet the level of delegation is lower than in the EEA since enforcement is ensured by the national authorities on their respective territories. The EFTA Court has no jurisdiction under the corresponding elements of the Agreements. Furthermore, the degree of legalisation differs strongly between the communitarised (asylum, immigration) and intergovernmental parts of the JHA acquis (police and judicial cooperation in criminal matters). In the latter area the obligations are generally weaker and less precise.

In institutional terms Schengen/Dublin association amounts to a progressed form of flexible integration into central EU structures with far ranging decision-shaping rights. The associated states have access to the Council of ministers at all levels of seniority through the so-called Comité Mixte (COMIX) procedure. Given the strong convergence of interest between the Western European associates and the EU member states, the former's participation in COMIX meetings is reported as being quite symmetrical.[10] In addition to these central legislative bodies, Norway and Switzerland are well integrated into policy-specific fora such as in asylum the so-called DubliNet system as well as the "informal" Dublin Contact Committee, or, in the field of police and judicial cooperation, Europol, the European Police College or Eurojust.

JHA issues have a high priority in the ENP, although the situation of interdependence is very different than with the Western countries given the perception of the EU's periphery as a source of soft security threats. ENP documents including Action Plans contain provisions on cooperation on asylum and immigration (i.a. readmission agreements, 1951 Geneva Convention, border control, for the Eastern Countries approximation to the *acquis*) as well as on police and judicial cooperation. Yet the degree of obligation and precision is much weaker than in the Schengen/Dublin association with the Western neighbours. The weakness of legislation undeniably constitutes a strong obstacle to efforts at policy transfer in situations

with conflicts of interests such as asylum. An additional difficult obstacle to EU hierarchical action is the lack of leverage on part of the EU in trying to impose its *acquis* on the ENP countries.

Faced with these inherent limitations to hierarchical governance, the EU has engaged into intergovernmental bargaining with ENP countries on JHA such as readmission by offering them financial aid or visa facilitation in return for cooperation. Given the difficulty to offer attractive incentives, also these market-based modes of governance have faced limitations, in particular with the Mediterranean partners. As a consequence, the EU has turned to network governance such as the Söderköping Process to the East which focuses on the exchange of best practices and information in asylum matters or operational cooperation in border control (Lavenex & Wichmann 2009).

The limits of hierarchical interaction are even more pronounced in the areas still subject to intergovernmentalism such as police and judicial cooperation. In the absence of a strong legislative EU *acquis*, the majority of obligations in these domains are international law obligations such as relevant UN Conventions. To entice the third countries to comply with these international obligations the EU has adopted a sort of "positive sanction" in a regulation stating that preferential access to the internal market will depend on compliance with the UN instruments (Council of the European Union 2005). The monitoring of compliance is also embedded in international fora such as for drugs policy the International Narcotics Control Board or, for the fight against corruption, the GRECO group of the Council of Europe. In addition to these international fora, EU agencies such as Europol and Eurojust have had first contacts with ENP countries. Yet, institutional ties are not really inclusive as the preeminence of capacity-building programmes directed by the EU shows (e.g. the Belarus, Moldova, Ukraine Anti Drugs Programme (BUMAD) and the Eurmed Justice and Police programme). Apart from asymmetric interdependence and hence often incompatible interests, inclusive network governance is hampered by political considerations such as the weakness of civil liberties standards in the ENP countries.

Sectoral versus Macro Structures of Governance

The review of cooperation at the sectoral level shows that hierarchal, market and network types of external governance prevail in neighbourhood relations, quite independently from the overarching macro-structures of an association. Table 2 summarises the sectoral modes of governance and juxtaposes them to the macro structures as well as with internal modes of governance in the sectors.

Table 3: Summary of Macro- and Sectoral Modes of Governance

EEA						
	Macro-Policy	Research	Transport: aviation	Environ-ment: WFD	Asylum*	Police Coop.*
Obligation	++	+	++	++	++	+
Precision	++	-	++	+	+	+
Delegation	++	-	++	-	-	-
Centralisation	++	-	++	-	-	-
Density	++	+	+	++	++	++
Exclusiveness	++	-	-	-	-	-
Swiss-EU Bilateralism						
Obligation	+	+	++	-	++	+
Precision	+	-	++	+	+	+
Delegation	-	-	++	-	-	-
Centralisation	-	-	+	-	-	-
Density	-	+	+	++	++	++
Exclusiveness	+	-	-	-	-	-
ENP**						
Obligation	-	+	++	+	+	+
Precision	-	-	++	-	+	+
Delegation	+	+	+	+	+	+
Centralisation	+	-	+	-	-	-
Density	+	+ (S), - (E)	+	+	-	+
Exclusiveness	+	-	+	-/+	++	+
Internal MoG						
Obligation		+	++	++	++	+
Precision		-	++	+	+	+
Delegation		-	++	-	++	+
Centralisation		-	++	-	+	-
Density		+	+	++	++	++
Exclusiveness						

* It should be noted that for the EEA countries and Switzerland, association in matters relating to asylum and police cooperation is regulated in a separate, common agreement (the Schengen-Dublin association, see above).
** The values for the ENP countries refer to the ENP countries with the strongest form of association in the sector (with the exclusion of Israel, see endnote 4)

A first important observation is that the macro structures do not reflect on the sectoral modes of governance. The clearest case of institutional de-coupling is research policy which is fully

dissociated from the macro structures and where we find exactly the same patterns of network governance across countries (with the exception of the eastern neighbours). But also in the other sectors the legal and institutional patterns share more commonalities with the internal modes of sectoral governance than with the macro-institutional set-up.

Notwithstanding its hierarchical macro-institutional setting, the EEA display no strong hierarchy in the policy fields under study. An exception is the aviation sector which clearly reflects the single market legislation and its dynamics. Furthermore, despite the very different macro-institutional relationship with the EU, sectoral governance patterns with Switzerland are nearly identical with those in the EEA. The macro-institutional distinction between integration through law and low degrees of institutionalisation in Swiss-EU bilateralism vanishes from a sectoral perspective. Here, we find in all cases dense interaction with sector-specific EU institutions, even when a formal bilateral agreement is lacking (environment). A remarkable feature of the ENP is that the sectoral commitments have always higher values of obligation and precision than those at the macro-institutional level, which only stipulate general approximation. These dimensions tend to mirror the qualities of the respective internal *acquis*, especially when sectoral association is strong, such as e.g. in the case of the Moroccan-EU aviation cooperation. The most visible impact of the ENP's macro-structures concerns the dimension of delegation with the Commission's political monitoring prevailing across sectors. In institutional terms, the proliferation of decentralised, sectoral fora of interaction also applies to the ENP countries. However, here, relations tend to be clearly more exclusive than with the Western neighbours, only with the exception of some parts of environmental cooperation and of research policy.

How can we explain this dissociation between modes of governance at the sectoral level and overarching macro-institutional association frameworks?

Our findings provide strong evidence for the preeminence of institutional continuities between the ways how the EU governs internally and its external modes of governance. This applies both to the legalisation of commitments and to the institutional qualities of interactions. Although it is true that by way of the notion of "legal homogeneity", the EEA reflects a much higher degree of obligation towards EU norms, this legal quality has little relevance in policy areas operating by other modes than legislative policy-making such as research policy or aspects of JHA. The same is true for the precision of rules which cannot be more precise than what is included in the *acquis*.

Not only the legal, also the institutional characteristics of external governance are conditioned by the internal organisational context of particular policies. The existence of decentralised sector-specific institutions such as agencies (e.g. Europol, EASA); committees (e.g. programme committees in research policy), or networks (e.g. JHA networks, international water commissions) tend to reduce the importance of the central macro-institutions responsible for implementation (EEA Joint Committee, Association Councils and even ENP subcommittees). While the agenda of these macro-level monitoring bodies tends to be perpetually overloaded,[11] the opening of sectoral fora towards associated countries allows for functional specialisation and enhances significantly the density of interaction, quite independently from existing legal obligations.

Beyond these commonalities, however, our results also show important differences in the comparison between the ENP countries and the western neighbours. The main differences are, firstly, the macro-institutional system of political monitoring in the ENP, which applies to all sectors, and, secondly, the lesser inclusivity of organisational ties. Are these differences a result of superior EU bargaining power towards these countries, or rather a consequence of the stronger heterogeneity of domestic political structures (Lavenex and Schimmelfennig 2009)? The contrast between the inclusive organisational forms of JHA cooperation with the western neighbours and the exclusiveness of corresponding ENP relations shows that asymmetric interdependence matters. In such politicised or even securitised matters, the EU does not replicate the inclusive network governance models practiced internally or in relations with the western neighbours. Without doubt, the strong compatibility of domestic structures (political, economic, social, administrative) in the western neighbours is also conducive to the extension of internal modes of governance in a non-hierarchical manner. The stronger heterogeneity of the eastern and southern neighbours not only accounts for weaker legal commitments, but also for the looser and more asymmetric forms of organisational interaction. In addition, it may be assumed that power and domestic structures will have effects on the effectiveness of external governance in terms of rule adoption and application, but this question is beyond the scope of this article. To sum up, whereas these variables do explain the differences we find between the countries, they cannot account for the variation we find across sectors, which is due to the reflection of the internal modes of governance.

Conclusion

Contrary to the wide majority of studies that try to characterise EU external governance by looking at the macro structures of association relations, our analysis has shown that overarching foreign policy initiatives such as the EEA, Swiss-EU Bilateralism or the ENP have little impact on the modes how the EU seeks to expand its policy boundaries in individual sectors. In contrast, modes of external governance follow sectoral dynamics which are astonishingly stable across countries. Even in the light of very different constellations of interdependence between the EU and its Western, Eastern and Southern neighbours, macro structures remain secondary to these sectoral patterns.

By highlighting the importance of institutional contingencies in projecting governance modes from the internal to the external constellation, these findings call into question the rational capacity to "steer" external governance in neighbourhood relations. Below these foreign policy grand designs, our analysis underlines the decentralised and incremental character of projecting EU rules beyond EU borders. Although our findings confirm the pervasiveness of power in neighbourhood relations, in sum, the dynamics and patterns of external governance reflect the expanding realms of functionalist regional integration rather than a geopolitical strategy of an emerging international actor.

NOTES

[1] The ENP countries are Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Palestinian Authority, Syria, Tunisia and Ukraine.

[2] For reasons of space, we do not deal with the multilateral dimension of association policies (e.g. the Barcelona Process and the newly launched Union for the Mediterranean and the Eastern Partnership). These multilateral initiatives supplement the bilateral relationships with the EU fora regrouping the neighbouring regions but do not open additional access to EU institutions.

[3] This information is based on a review of subcommittee documents as well as interviews with participants.

[4] In this section, we do not deal with the special case of Israel which, although part of the ENP, has many specific bilateral arrangements at the sectoral level.

[5] Interviews EU 44-47; Norway 2,4; Switzerland 8, 10.

[6] Interview Norway 2.

[7] Interview Morocco 2.

[8] Switzerland has only concluded a bilateral agreement on association to the European Environmental Agency. This covers participation in exchange of information, but no obligations of legal approximation.

[9] Interviews EU 43; Norway 2,3; Switzerland 2;4.
[10] Interviews Switzerland 12-16.
[11] For instance, the TREN-Sub Committees under the ENP are in charge of cooperation in transport, research, environment and energy questions. It is no surprise that agendas are overloaded and many question are simply not discussed at this level.

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