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# Third Country Influence on EU Law and Policy-making: Setting the Scene

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## Abstract

This introductory article conceptualizes the notion of third country influence on European Union (EU) law and policy and proposes an analytical framework theorizing the venues and means through which third countries may gain such impact, under what conditions and with which implications for the EU's legal and political order. The article first introduces the focus on outside-in influence in the context of European studies, generally, and EU privileged third country relations, specifically. Thereafter, an analytical framework is developed for mapping and explaining the outside-in dynamics on EU law and policy-making differentiating between diplomatic, governance and discursive venues; coercive versus technocratic and normative mechanisms of influence; and the legal constraints and political implications of these processes. Turning to the potential determinants of these occurrences, the article then proposes a set of hypotheses for conditions under which third countries can influence EU law and policies, before summarizing the individual contributions to this Special Issue.

**Keywords:** autonomy; differentiated integration; EU external governance; external influence; foreign policy

## Introduction

Traditionally, European studies and integration theories have focused ‘inside-in’ on the internal dynamics of political unification, the societal and political drivers of communitarization and the legal properties and judicial enforcement of the evolving *acquis* in the treaties and in secondary legislation. The shift at the beginning of the 1990s from the former European Economic Community towards the European Union (EU) coincided with the end of the Cold War and the reconfiguration of the European landscape, spurring an interest in the ‘inside-out’ dynamics of European integration. This inside-out movement was reflected in the processes of EU enlargements; the intensification of association relations with western, southern and eastern neighbouring countries, which, either willingly or unwillingly, did not join the EU; and new competences in foreign and security policy, which, alongside the EU's traditional trade role, came to boost the EU's international actorness. Three decades later, association relations with the European Economic Area (EEA)/European Free Trade Association (EFTA) countries, Switzerland, the countries of the European Neighbourhood Policy (ENP) and other privileged trade partners such as Canada, Japan and the United States have tightened mutual political, administrative and legal links. The participation of third countries in the EU's structures, programmes and policies, and their adoption of EU norms, is increasingly studied alongside the EU's internal differentiation under the notion of

‘external differentiated integration’ (Lavenex, 2011, 2015; Schimmelfennig and Winzen, 2020). The UK’s withdrawal from EU membership has moved the country into this category of deeply interdependent third countries, giving new urgency to the search for sustainable arrangements that foster association whilst preserving the autonomy, or ‘self-rule’ (Nic Shuibhne, 2019), of both parties. An increasingly challenging geopolitical context including Putin’s war against Ukraine, new East–West antagonisms and mounting transnational challenges such as the fight against climate change, migration policy and energy supply have added to the importance of exploring flexible solutions to sustain partnerships with associated countries.

This conjuncture of consolidating institutional ties and shared external challenges warrants a new step in the study of EU external relations from the ‘inside-out’ to an ‘outside-in’ perspective, that is, the ways in which third countries exert influence on EU laws and policy-making. Formally, the possibilities available to third countries to influence the making of EU law and policy are extremely limited as third countries do not enjoy access by means of participation to the EU’s main law-making institutions. This fact accentuates the importance to explore the possibilities for third countries to exert influence at other levels and via informal means, such as intergovernmental negotiations; interaction within EU secondary structures, such as agencies, committees and networks; and interaction between courts. In launching this research agenda, we share the expectation that with the deepening interdependence and institutional ties between the EU and its ‘privileged partners’ (Gstöhl and Phinnemore, 2019) and that with the multiplication of negotiations defining the terms of these associations, the opportunities and instances of third country influence should expand. At the same time, however, we also need to stay attentive to counter-movements. Whereas third country association demands openness and, therefore, potentially multiplies the points of access, Brexit and the deteriorating relations with Switzerland have shown an increasing concern on the side of the EU with the integrity of its borders and the homogeneity of its *acquis* (Schimmelfennig, 2021).

In this introductory article, we motivate the value of complementing the ‘inside-out’ with an ‘outside-in’ perspective and sketch an analytical toolbox specifying the levels, venues, mechanisms and scope conditions for analysing third country influence on EU law and policy. This toolbox inspires the contributions to this Special Issue, which are summarized in the last part of this article.

## I. From EU Studies Inside-out to the Outside-in

External influences have not figured prominently in the study of European law and policy-making. Older theories of integration, such as neofunctionalism and intergovernmentalism, and newer approaches, such as postfunctionalism, focus on the internal drivers and spoilers of integration. The Barcelona process designed in 1995 to foster regional ties in the EU’s southern neighbourhood (Cardwell, 2011), the EU’s historic enlargements in 2004/2007 and the launch of the ENP in 2005 spurred new interest in EU external relations in terms of expanding the boundaries of integration or, put differently, EU ‘external governance’. In line with these policies’ objectives, scholarship has focused on the EU’s role as a global actor (i.a., Bretherton and Vogler, 1999; Cremona, 2004); its efforts and strategies to export its norms, values and

policies, and the conditions under which this succeeds (i.a., Freyburg et al., 2016; Lavenex, 2004; Lavenex and Schimmelfennig, 2009; Schimmelfennig and Sedelmeier, 2004); and the legal conditions for integrating third countries into the EU's internal market (Öberg, 2020; Van Elsuwege, 2019). The consolidation of these external ties has led to various forms of third country inclusion in EU law and policies and is captured by the notion of external differentiated integration (Lavenex, 2011, 2015; Pedreschi and Scott, 2020; Schimmelfennig and Winzen, 2020). Whereas the notion of external differentiated integration concentrates on European and Mediterranean countries enjoying candidate or association status with the EU, the latter's performance as rule exporter has also been stated beyond the neighbourhood. The notions of 'normative' (Manners, 2002) and 'market' power (Damro, 2012; see also Bradford, 2020; Cremona, 2004; Lavenex, 2014) capture the global reach of EU norms and regulations.

Whereas the early writings on EU external rule-projection concentrated on the EU's objectives and strategies, the maturing of this research agenda has motivated greater attention to the targets of the EU's outreach. This shift has benefited from country and area specialists engaging with the notion of EU external governance and highlighting the crucial role played by third countries' own priorities, structures and opportunities in confronting EU law and policies (i.a., Burlyuk, 2017; Delcour, 2013; Delcour and Wolczuk, 2015; Delputte and Orbie, 2020; Dimitrova and Dragneva, 2009; Keukeleire and Lecocq, 2018; Korosteleva, 2020; Petrova and Delcour, 2020; Schumacher, 2018). In a similar vein, scholars have underlined the EU's rising reliance on co-operation with third countries in certain sectors. The control of migration flows is a case in point illustrating how third countries have gained leverage vis-à-vis the EU and have engaged in 'reverse conditionality', that is, extracting material and immaterial concessions in exchange for co-operation with the EU (i.a., Carrera et al., 2019; Cassarino, 2007; Guérin and Rittberger, 2020; Laube, 2019; Okyay et al., 2020). A similar development can be witnessed with regard to the EEA EFTA countries and Switzerland where studies have started to examine how these countries seek to tailor their EU commitments towards their own needs (Haugevik, 2017; Hofmann et al., 2019; Jónsdóttir, 2013; Korkea-aho, 2016).

This shift in perspective finds additional support in global developments. In particular, the dramatic transitions in the international division of power have put into question the regulatory hegemony that the EU and the United States used to share after the end of the Cold War. The potentially competing role played by emerging economies in the setting of global standards has been gaining increased attention (Economy, 2022; Lavenex et al., 2017, 2021; Nye, 2011) – and herewith also the impact that overarching power transitions have on the EU's regional hegemony. A distinct but equally global impetus for decentering the field of EU studies comes from critical and post-colonial approaches. Questioning the lenses through which EU studies have been operating, this literature argues that the EU's relations with the rest of the world cannot be understood short of engaging with its members' colonial legacies and the echoes these produce in relations with external partners. Whilst pointing at the Eurocentrism of EU foreign policies and EU scholarship, these authors underline the partner countries' agency in their relations with the EU (i.a., Bechev and Nicolaïdis, 2010; Bhambra, 2022; Fisher-Onar and Nicolaïdis, 2013; Keukeleire and Lecocq, 2018; Sadiki and Saleh, 2021; Staeger, 2016, 2023; Táiwò, 2022).

The gradual decentring in EU studies and the greater attention to external actors yield a new research field, which – following up to the ‘inside-in’ and the ‘inside-out’ perspectives – examines EU developments from the ‘outside-in’. This Special Issue embraces the ‘outside-in’ perspective and, drawing on this rich literature on EU external relations, sketches the contours of a new research agenda addressing the venues and mechanisms of external influence on EU law and policy-making as well as its implications for the EU’s legal and political order. Whilst acknowledging that external influences can stem from states, international organizations and other factors worldwide, this collection focuses specifically on influence exerted by third countries enjoying an institutionalized commitment towards regulatory approximation to the EU. Our framework thus seeks to capture the reverse effects of EU external governance but is less suited to account for general geopolitical factors.

## II. Conceptualizing Third Country Influence

In international relations, ‘influence’ is a ubiquitous term that can take different forms. In this section, we define a toolbox for detecting, differentiating and explaining third country influence on the EU.

At its basis, influence can be defined in terms equivalent to ‘power’, that is, as a process through which an actor gets another actor to do or to want what the latter would otherwise not have done or wanted (Nye, 2011). Whereas the two terms cannot be easily distinguished, the term ‘influence’ is usually employed in more institutionalized and rule-based contexts and can, therefore, be applied to a sub-set of power relations (Barnett and Duvall, 2018). Influence can thereby be more overt and intentional, or also covert and indirect; it can be exerted by the political and administrative actors themselves or result from more structural economic or ideational contexts; and it can take more coercive and more consensual forms (Barnett and Duvall, 2018). Third country influence on EU law and policy-making can be studied at the diplomatic level of negotiations between more or less independent units; at the governance level of day-to-day interwoven interaction; within markets in terms of structural interdependencies; and at the discursive level of ideas and norms. Drawing on earlier conceptualizations of EU external regulatory influence (Lavenex, 2014), we distinguish four types of influence depending on whether it is exerted directly via political and administrative venues or indirectly via socio-economic and ideational structures (Table 1).

In the following, we introduce these four types of influence and discuss their scope conditions and indicators on the side of third countries and of the EU. The venues, mechanisms, conditions and indicators of third country influence vary across these levels and are summarized in Table 2. Most contributions in this Special Issue focus on the direct

Table 1: Typology of Influence.

Form	Level	Venue	Type
Direct	Political	Negotiations	Compulsory influence
	Administrative	Governance	Co-optive influence
Indirect	Economic/material	Markets	Structural influence
	Cultural/ideational	Discourses	Productive influence

Table 2: Venues, Mechanisms and Implications of External Influence.

Venues	Mechanisms			Implications	
	Means	Indicators	Scope conditions	Political order	Legal order
Intergovernmental negotiations	Positive and negative incentives and rewards or sanctions	EU concessions to 3rd countries in intergovernmental agreements Derogations from EU legal/policy standards in intergovernmental agreements Precedents for future EU negotiations	EU political dependence EU vertical (member states) and horizontal (policy sectors) incoherence 3rd country negotiation strategy, resources and credibility Institutional and international contexts	EU actorness	EU integrity
Transgovernmental and transnational governance fora	Learning and socialization	Adoption of or adaptation to 3rd country standards in EU law, policies or practices (in policy substance, policy implementation or enforcement) 3rd country access to relevant EU fora Lobbying for 3rd country regulatory standards in EU law and policies	EU regulatory dependence Scope and form of legal commitments 3rd country regulatory capabilities and capacity EU economic dependence Enforcement capacity Interest groups	Centralization versus differentiation	Decision-making autonomy
Market interactions	Competition			Regulated versus open market	
Normative discourses	Emulation and persuasion	Reflection of 3rd country norms and standards in EU law, policies and discourses	EU ideational openness Resonance of norms Transfer agents	Eurocentrism versus cosmopolitanism	

forms of influence via intergovernmental negotiations and/or administrative interaction whereas one article addresses the discursive, ideational venue (see below).

*Direct political influence* typically takes place in the sphere of intergovernmental relations and negotiations. Assuming rational actors, this type of interaction is characterized by both sides trying to maximize their preferences. The EU will seek to act as unitary actor in addressing its counterpart's diplomatic representatives. It will seek co-ordination vertically with its member states and horizontally across relevant EU policies, thereby maximizing leverage (Veuthey, 2023). As we concentrate on institutionalized settings, the focus of analysis is on a delimited period within which a new type of association/co-operation/trade agreement is negotiated. The mode of interaction is a bargaining modus in which both sides try to achieve their negotiation objectives. In the literature, the type of influence typically associated with bargaining situations is based on coercive power through 'command' (Nye, 2011, pp. 21f); 'compulsion' (Barnett and Duvall, 2005, pp. 48f); or, in the terms of EU external governance literature, 'conditionality' via threats and promises or positive and negative incentives (Schimmelfennig and Sedelmeier, 2004). This can involve various negotiation strategies such as multilevel games, issue linkages and the offer of package deals. Actors change their preference or behaviour not because of learning or persuasion but because they fear material or immaterial losses from non-agreement. The exercise of compulsory influence requires both a material base and the capacity to mobilize resources strategically. It can however also flow from a constellation in which the EU's position is weakened due to institutional (e.g., interdependence with other issue areas) or international (e.g., geopolitical considerations) context factors that boost the costs of non-agreement.

From an outside-in perspective, direct political influence would show in the extent to which third countries extract concessions from the EU in intergovernmental negotiations that have an impact on EU law and policy. Indicators of third country compulsory influence can be the following: reaching an association/co-operation/trade agreement that includes provisions initially opposed by the EU and that are relevant for EU law and policy-making more generally; obtaining derogations from otherwise standard EU requests in comparable relations with third countries; and setting a precedent for the EU's future relations with third countries.

Intergovernmentalist theory suggests that the interests and relative power capabilities of the negotiating parties largely determine the outcome of the negotiations (e.g., Schimmelfennig, 2004). In general, we may expect the EU to be more sensitive to third country compulsory influence if this concerns a powerful third country in the sense that the EU depends on close co-operation with it for geopolitical or sector-specific reasons (e.g., energy or migration). EU foreign policy research also stresses the importance of 'speaking with one voice', that is, having cohesive positions on the part of the member states (e.g., da Conceição-Heldt and Meunier, 2014) – but also amongst and within the EU institutions (Veuthey, 2023). Thus, the more divided or incoherent the EU is internally, both with regard to its member states (vertically) and between policy sectors (horizontally), the more 'vulnerable' or 'open' the EU will be to external influence. The third country, conversely, may be expected to be more prone to have a compulsory impact on EU law and policy-making the more material and immaterial resources it possesses that matter for the EU. Furthermore, international influence requires credibility. That is, we expect countries with stable and democratic governments to be more likely to exert

influence than countries weakened by conflict, deficient governments or authoritarian rule. Apart from actor properties, we should also consider the possible impact of the institutional and international contexts including, in particular, path dependencies from prior interactions amongst the parties and the setting of a precedent and/or potential ‘collateral’ effects on EU relations with other third countries.

*Direct administrative influence* can be distinguished from political influence in intergovernmental negotiations. This more technocratic type of influence takes place in governance settings and operates in day-to-day interactions under existing association frameworks. Typically, this level of interaction is very much differentiated across policy sectors where the parties interact as disaggregated units. The focus is on secondary laws and policies and competent transgovernmental bodies composed of administrative and executive actors (Commission Directorates General, EU agencies, committees and networks, European External Action Service actors, and counterparts in EU member states and third countries; see Hofmann et al., 2019; Lavenex, 2011; Trondal, 2010). The analysis can also expand to non-state actors, such as sub-national units (local/regional governments) and private actors (experts, industry associations etc.; see, e.g., Korkea-aho, 2016).

Although clearly constrained, third country influence can potentially occur at all stages of the policy cycle from the agenda-setting phase to the formulation, adoption, implementation and enforcement of EU laws and policies. Under the EEA agreement, Iceland, Liechtenstein and Norway are formally associated to decision-shaping. Other countries can seek and obtain access to individual EU agencies, committees or networks to insert their policy preferences. Also, joint bodies established under association agreements between the EU and third countries can offer spaces where the latter can voice policy preferences or ask for adaptations under given commitment to EU law and policy (Dür and Gastinger, 2022; Tyushka, 2022). Whereas participation in decision-making remains limited, the stage of policy implementation again provides scope for adapting commitments to the own priorities. This leeway has recently been studied as a source for differentiated integration via ‘flexible implementation’ (Princen et al., 2022). Insofar as third countries participate in EU operations [e.g., Common Security and Defence Policy (CSDP) and Frontex missions], influence can also occur on the ground in the execution of EU policies. Finally, judicial dialogue between third country courts and the Court of Justice of the EU on the interpretation of common norms can provide a further venue of external influence on the EU *acquis*.

Drawing on the legal and political science literature on external governance and external differentiated integration, we expect sectoral properties to play a role alongside EU and third country properties when it comes to specifying under what conditions third countries can exert such co-optive influence. In terms of sectoral properties, we first expect that sectors that are less strongly legalized and governed by horizontal rather than supranational/hierarchical modes of governance are more open to third country influence than sectors that are tightly communitarized in the EU. Second, the overarching institutional set-up of EU–third country relations may open more or fewer opportunities for third countries to influence EU law and policies. In general terms, we expect that the more an institutional arrangement commits a third country to adopt EU laws and policies, the more the third country will be granted opportunities to shape their contents. On the side of the third countries, their influence is likely to hinge on the structures of



interdependence with the EU and the countries' regulatory capacity and capability. Recent work on EU and US regulatory competition vis-à-vis emerging economies shows that the more the EU/US depend on an emerging country's co-operation for effective problem-solving, and the more regulatory capacity and capability the country has in that policy area, the more likely it is to challenge EU/US regulatory dominance (Lavenex et al., 2021). 'Regulatory capacity' thereby describes the 'regulatory expertise, coherence, and ... statutory sanctioning authority' to implement and enforce (i.e., ensure compliance with) any given set of rules (Bach and Newman, 2007, p. 831). 'Regulatory capabilities' capture a country's ability to recognize one's interests and articulate regulations that advance those interests: 'In contrast [to regulatory capacity], the emphasis of regulatory capabilities is not on skills to ensure compliance with regulatory standards ... but on the ability to develop alternatives' (Cafaggi and Pistor, 2015, p. 102).

Whereas economic capabilities favour the exercise of direct influence in intergovernmental negotiations and administrative interaction, such resources can also sustain *indirect, material/economic influence*. This indirect mechanism is at the core of Damro's notion of 'market power' and describes the process by which market actors voluntarily adapt to another jurisdiction's regulations for fear of negative externalities (Damro, 2012). This influence works in the absence of explicit demands for adaptation, teaching or socialization efforts and is driven by societal actors' fear of losing out from non-alignment (Barnett and Duvall, 2005, p. 53). Going back to Vogel's seminal analysis of 'trading up' dynamics in environmental standards, this mechanism has also been coined as policy diffusion by 'competition' (Vogel, 1995). Scope conditions for this mechanism are superior market size, regulatory enforcement capacity (Bach and Newman, 2007) and the existence of interest groups who translate functional economic pressure into political demand (Lavenex, 2014, p. 891).

In addition to material factors, ideas, norms and values, too, can act as vectors of influence. Such inter-subjective structures are at the heart of constructivist and critical approaches. These factors have gained new prominence in the post-colonial literature calling for a decentring of European studies (Fisher-Onar and Nicolaidis, 2013; Keukeleire and Lecocq, 2018; Pace and Roccu, 2020; Pace and Völkel, 2023). Shifting around the notion of normative power (Manners, 2002), the question becomes how discourses, values and ideas exert *indirect cultural/ideational influence* (Barnett and Duvall, 2005, p. 43) from the outside-in. Absent of active or material impetus, the mechanism spurring adaptation is best described as emulation and persuasion. Part of the critical literature makes a more normative case for openness to external ideas and alternative perspectives both for the EU and for EU studies. In terms of studying such inverse ideational influences empirically, our framework proposes two main scope conditions for discursive or productive influence: the resonance of norms and ideas and the existence of 'transfer agents' able to convey normative demands towards relevant decision-takers (Stone, 2004).

### III. Third Country Influence Across Levels and Mechanisms: Insights from This Special Issue

The articles in this Special Issue engage with the conceptual toolbox presented above in examining the opportunities for and the instances of third country influence on EU law

and policy. The two final articles further enrich our perspectives on third country influence by exploring its implications on the EU's political and legal order.

The collection starts with a set of contributions focusing on the intergovernmental negotiation setting.

In the first article, Dimitrova and Dragneva (2023) discuss the reverse influence of the EU–Ukraine Association Agreement/Deep and Comprehensive Free Trade Area (AA/DCFTA) on the EU. The article argues that Ukraine, as a third country, has so far not exercised any reverse influence on EU *acquis* through the negotiations or the framework of the AA/DCFTA. However, the agreement exerts influence on the EU via the institutional and international processes in which it is embedded. In particular, the provisions of the AA/DCFTA affect the power asymmetry between the parties, the politicization of the agreement weakens the EU's internal cohesiveness and the geopolitical implications of the agreement lead to its contestation in the international arena. As a result, even before the Russian–Ukrainian war of 2022, the EU has been forced to innovate on different levels, such as the institutional (assisting Ukraine's capacity of implementation), constitutional (ensuring its ratification in the Netherlands) and policy levels (addressing Russia's geopolitical moves), to save the agreement from legal and political failure. Over time, the cost of failure of the agreement has increased. A failure of the agreement would represent a threat for EU policies, values and reputation, in addition to the risk of losing statehood and democracy in Ukraine. Together, this constellation amounts to a type of political, compulsory influence on the EU that stems less from the leverage exerted by Ukraine itself and more from the wider international and institutional contexts in which this bilateral relationship is embedded.

In the second contribution, Meltem Müftüler-Baç (2023) explores the triangular relationship between Turkey, which represents a unique 'third country' in the EU association context, the EU and the UK. Turkey has long enjoyed institutionalized association with the EU with corresponding formal and informal access to the EU. These access points combined with Turkey's structural power and bilateral relations with the EU member states impact Turkey's means of influencing the EU. Turkey has been able to access the EU via EU institutions, EU agencies, bilateral relations with the member states (in particular, Germany, Greece and the Republic of Cyprus) and membership in other institutions such as North Atlantic Treaty Organization (NATO). This mix of intergovernmental and transgovernmental ties, together with EU dependence on Turkey in certain policy areas such as migration and security policy and EU internal divisions between member states, has opened up avenues for both compulsory and, to a lesser extent, co-optive influence. Whereas EU preferences have been downloaded in Turkey in the field of economic policy, Turkish influence on the EU is particularly visible in areas such as CSDP and migration policy. Here, Turkey has effectively become a rule shaper in EU external relations. Overall, the empirical evidence from different policy areas presented in the article suggests that Turkey's influence on EU policies as a third country is driven by an interplay between leverage – facilitated by the constellation of interdependence, negotiation strategies and resources – and access – based on established ties with EU institutions and individual member states. Thereby, Turkey has been setting examples for the EU's relations with other third countries.

The third article by David Phinnemore (2023) directs attention to the question of the UK's influence over EU policy-making after withdrawal from the Union. Withdrawal

meant the UK's swapped EU membership and corresponding formal influence for a policy of disintegration and minimal commitments towards the EU. The Trade and Cooperation Agreement (TCA) basis for the current EU–UK relationship is in substance relatively unambitious yet institutionally complex. Complexity also characterizes the arrangements set up to include Northern Ireland in the EU's customs territory and internal market for goods and so avoid a physical hardening of the border on the island of Ireland. If the underpinning dynamic between the UK and the EU were to change, however, then the framework would retain relevance not just for implementation but also for managing the development of the UK–EU relationship and could provide the UK with opportunities to influence the EU. Currently, dynamic regulatory alignment and a unique institutional set-up in respect of Northern Ireland offer some potential for the UK to shape EU decisions in relevant areas of EU *acquis*, primarily in terms of administrative, co-optive influence. The findings of the article show that UK political influence over the terms of both the Withdrawal Agreement (WA) and the TCA has been rather weak. However, the frameworks for UK–EU engagement established by the two agreements do provide some opportunities for the UK to shape the development of relations and influence EU policy-making, as seen already in the case of the Protocol on Ireland/Northern Ireland, notably through stakeholder input. Over time, the institutional frameworks may evolve and the UK government's engagement could increase provided that UK governments prioritize a more pragmatic and stakeholder-informed approach to managing the UK–EU relationship in day-to-day governance as opposed to the more ideologically purist approach to the negotiation of Brexit that has characterized the first post-withdrawal years.

The following five contributions of this Special Issue examine formal and informal influence at the level of administrative relations/governance settings. In the fourth article, Gstöhl and Frommelt (2023) explore the institutional venues and mechanisms for associated neighbouring countries to influence the terms of their association with the EU's law and policies. Their contribution expands on the literature of external Europeanization and governance and argues that the associated countries do not only download EU rules but are also able to exert influence at different stages of the law or policy-making process. In the first two steps of 'making' new EU rules – agenda setting and formulation – associated countries can affect new rules by uploading and cross-loading. In the subsequent two steps of adoption and implementation, a different type of influence can be exerted via the 'taking' of relevant EU rules by tweaking or rebuffing them. These mechanisms of influence are illustrated by examples from the EU's associations with countries in its western and eastern neighbourhood, based on which the authors draw some overarching conclusions.

The next, fifth, contribution by Emilia Korkea-aho (2023) looks into the borderline between third country influence and foreign interference through the lens of foreign integrity laws. Lobbying – to be understood as attempts to shape law- and policy-making – is an important way for external actors, both public and private, to influence other countries' political and legal elites. It has, however, also emerged as a global security risk leading to the adoption of foreign transparency laws across the globe to enable closer scrutiny of foreign lobbying. The article delves into the respective legal regimes in the United States, Australia and the EU and analyses their definitions of foreign actors, types of foreign lobbying and of a protected normative good. The article argues that whilst

legislative reform has frequently been driven by concerns with authoritarian governments, foreign transparency laws target a variety of foreign influence activities and actors. The foreign transparency laws can even catch unintended actors and activities, which has major implications for the EU as a polity and a foreign policy actor. Should the EU move towards securitizing third country lobbying and insulating itself from non-member states, not only will it decrease the space in which third countries and their citizens and entities can legitimately interact with the EU but it will also drive third countries to influence the EU via the member states.

In the sixth article, Jóhanna Jónsdóttir (2023) explores EEA decision-shaping during the COVID-19 pandemic. The EEA EFTA states Iceland, Liechtenstein and Norway were affected by the EU's export restrictions on personal protective equipment and, subsequently, vaccines against COVID-19 and successfully sought to reverse those decisions. This article shows that, in the case of export restrictions on personal protective equipment, the EEA EFTA states influenced EU policies via informal high-level contacts and within a very short space of time rather than via the official EEA channels. In the case of the vaccines, the time it took for the EEA EFTA states to influence EU policies was longer and also involved a larger array of methods including various official EEA channels. Some of the most important formal access points of the EEA EFTA states to the EU are participation in Commission expert groups and comitology committees. Because the cases discussed in this article, however, concerned external trade, which is not covered by the EEA agreement, the EEA EFTA states did not participate in the relevant Commission committees and were, thus, compelled to reiterate their special 'non-third-country' status in relation to the internal market. Whereas the extent to which the EEA EFTA states can influence EU law and policies generally is of limited relevance for other third countries, the examples discussed by this article stress the importance of both regulatory capacity to propose policy changes and legal frameworks to ensure specific rights and formal access to the EU's law and policy-making processes.

In the seventh contribution, Lavenex and Lutz (2023) investigate the role of third countries in EU agencies between decision-taking and decision-shaping. EU decentralized agencies, whilst exercising an array of external relations, provide third countries access to varying degrees to their management boards, secondary bodies and/or operational co-operation. These venues open up opportunities to third countries to exert influence on EU law and policies. Drawing from an original dataset, the article maps the widening scope and depth of third country *de jure* access to 26 EU agencies over time and provides first explanations for variations across agencies and countries. The article presents correlation between access, and agency autonomy and international mandate, as well as third country democracy, regulatory capacity and wealth. The formal institutional scope for third country influence captured by this article by means of *de jure* provisions underlines the potential for more detailed case studies on *de facto* third country influence and its determinants.

The eighth article by Karina Shyrokykh (2023) provides an outside-in perspective on EU development co-operation by examining the power of third countries in transgovernmental networks. The article focuses on technical assistance – the provision of expertise on public administration – as a part of EU development co-operation. Development co-operation is typically a means for the EU to influence third countries but can also serve as a venue for third countries' reverse influence. The article builds on unique data on the EU's technical assistance to third countries and third countries'

requests for technical assistance from the largest EU technical assistance instrument – the Technical Assistance and Information Exchange (TAIEX). TAIEX provides technical assistance with regard to the EU's *acquis* approximation, and the application and enforcement of EU legislation, whilst also facilitating the sharing in various policy areas such as the rules of the internal market, agriculture and food safety, security and justice, and the environment, energy, transportation and telecommunications. The findings show that third countries are selective in requesting technical assistance and can, thereby, influence the extent of technical co-operation with the EU. Trade policy being a case in point, third country preferences for certain technical assistance has non-trivial policy-making implications for the planning of TAIEX activities, such as the allocation of funds to policy areas with the highest demand showing the circular interplay between EU external policies and third country influence thereon.

In the ninth article, Nicolaïdis and Youngs (2023) consider the more cultural and ideational dimension of third country influence over EU member states' democracy. Linking up with the post-colonial critique of EU external policies and EU studies, they argue that the EU's very one-way policy of supporting democratic reform in third countries stands increasingly at odds with the need for European states to incorporate democratic reform lessons from others. The article examines both the conceptual and policy dimensions of this need to reverse the democratic gaze. The authors explain how this notion relates to and goes beyond the decolonization framework. They lay out a range of democratic experiences from which the EU could and should be learning and suggest how an outside-in spirit of importing democracy might be reflected in concrete EU policy initiatives. Opening up the Special Issue's concern with outside influences on the EU to the debates in critical and post-colonial studies, this article problematizes the wider analytical implications of this research agenda and its distinctive and highly political, normative dimension.

#### **IV. Overarching Constraints and Implications for the EU's Legal and Political Order**

Third country influence on EU law and policy-making is strongly conditioned by the EU's legal and political framework. Formally, third country representatives are excluded from any possibility of participation in the Union's institutions as decision-making venues. Having been set up as a union of nation-states willing to pool a part of their sovereignty for the common EU integration project, the inclusion of third countries in the informal shaping of EU policies and laws may appear to jeopardize the established integrity of the EU order. Here, we seek to develop under what conditions, in which respects and with which consequences the integrity of the EU edifice is exposed. We also enquire whether a model of external differentiated integration could be conceived that internalizes the possibility of third country impact on the EU law and policy-making. We do this by considering the justifications for restricting third country participation in the making of EU law and policies, the consequences of such inclusion and the consequences of exclusion on the Union's legal and political order. From a legal-constitutional perspective, the question of third country influence confronts the principles of sovereignty (Bellamy, 2017; Fassbender, 2003; Pescatore, 1974; Weiler, 1991), autonomy (Koutrakos, 2019; Öberg, 2020; Odermatt, 2018) and mutual trust (Brouwer and Gerard, 2016;

Lenaerts, 2017; Nic Shuibhne, 2019). Participation in the decision-making processes is a means of compensating the EU member states for the costs of membership – the pooling of sovereignty, mutual trust and the risk of future developments of EU integration, which are beyond the control of individual member states. Because, to a certain extent, loss of sovereignty is also applicable to third countries engaging in deep regulatory co-operation with the EU (Eriksen and Fossum, 2015), it is relevant to investigate whether third countries' commitment to the EU may amount to the benefits and obligations incumbent upon the member states and, thus, justify participation in the EU's decision-making.

Another fundamental principle that is directly affected by third country participation in EU law and decision-making processes is that of democracy. On the one hand, the lack of formal and explicit decision-making competences in the adoption of new EU laws and policies for associated non-members who nevertheless consent to follow these rules breaches the principle of representation. This constitutes a profound democratic deficit especially to countries having committed to large parts of the *acquis* in a dynamic fashion (Bártora and Fossum, 2019; Eriksen and Fossum, 2015; Official Norwegian Reports, 2012, para. 27.4.3). On the other hand, providing non-member states formal decision-making power would shake the constitutional balance of the EU and ultimately undermine its legitimacy in the eyes of those who have accepted to concede part of their sovereignty in exchange for full membership.

Two contributions in this Special Issue address the overarching constraints and implications of third country influence for the EU's legal and political order, respectively. The 10th article by Marja-Liisa Öberg (2023) explores the essence of and justifications for the EU's decision-making autonomy as a constraining concept on allowing third country participation in the formal venues of EU law and policy-making. The concept of decision-making autonomy is embedded in the expansion of the EU's regulatory sphere and the subsequent conflicts of sovereignty between the EU and its member states, and third countries lacking a possibility to participate in the making of the laws and policies that they adopt. The EU's legal and political edifice maintain the principle stringently but, as a legal concept, decision-making autonomy is ambiguous and undefined. The article analyses the meaning, use and significance of the concept and questions whether its rigid nature is appropriate in the situations of the EU expanding its regulatory sphere. The article argues that the ultimate rationale of decision-making autonomy is to ensure the effectiveness of the EU's legal order and to compensate for the member states' loss of sovereignty, investment and risk-taking. Retaining the privilege and attractiveness of membership justifies exclusion from decision-making insofar as non-member states' commitment to the EU differs significantly from that of the member states.

Turning to the implications on the EU's political order, the 11th and final contribution by John Erik Fossum (2023) discusses the democratic implications of third country influence on EU policies for the EU and for the third countries, respectively. The article focuses on conundrums and trade-offs on both sides and argues that the larger the degree to which the EU transforms sovereignty in an open and inclusive manner, the greater the scope for third country presence, participation and influence. The greater the latter, in turn, the more pressing the democratic incongruence for the EU and for third countries. The more included are third countries in the making of EU policies, the less incongruent their affiliation and the more similar they would become to EU member states. The scope for such inclusion is, however, structurally constrained by the manner in which the EU

structures its relations with third countries and the nature of the EU's political order. Given that pooling and sharing of sovereignty is the most pronounced in the EU internal market and flanking areas, and the internal market is central to the EU's constitution as a political system, there are clear structural limits to third country participation in the EU's decision-making system.

## Conclusions

The EU is facing a rapidly changing international environment that affects not only its role in the world but also the ways in which it interacts with third countries and associated privileged partners. The peaceful phase ending the Cold War has incited a multiplication of institutional ties between the EU and third countries below the threshold of membership that have intensified over time. Over the last decades, these association relations have deepened political, administrative, economic and societal interdependencies and have created venues and opportunities for reverse influence from the associated third countries on EU law and policy-making. Geopolitical rivalries, Russia's violent thrive for regional hegemony and mounting transnational challenges such as global warming, migration and energy interdependence stand for a new turning point in which the EU's dependence on and vulnerability towards external forces is increasingly coming to bear.

This article has introduced an analytical framework identifying venues and proposing mechanisms and conditions under which we may examine such influence from the 'outside-in', with a focus on associated third countries. The articles in this Special Issue introduce this research agenda at the level of diplomatic relations, governance arrangements and discursive ties and discuss the implications in terms of the EU's legal and political constitution. The analyses show that, indeed, many developments in the design of the EU's association relations or in its internal functioning cannot be fully understood without integrating this potential for external influences. At the same time, the case studies also show that, in general terms, the EU's central decision-making bodies have thought to consolidate the boundaries of the legal and political system in order to foster its autonomy. Insofar as the European project relies on deep forms of integration below the threshold of membership – also as a means to face mounting external challenges – a certain scope for external influence will necessarily be maintained. The tension between the functional need for openness and the legal and political prerogatives for closure is likely to gain in visibility and urgency in the years to come. With the contributions to this Special Issue, we hope to contribute to this emerging research agenda.

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