The External Governance of EU Internal Security

LAVENEX, Sandra, WICHMANN, Nicole

Abstract

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2 AUTHORS:

Sandra Lavenex
University of Geneva
38 PUBLICATIONS 973 CITATIONS

Nicole Wichmann
Université de Neuchâtel
9 PUBLICATIONS 93 CITATIONS
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KEY WORDS: Internal security, external governance, ENP, migration, organised crime

Introduction

The emergence of an external dimension to EU internal security cooperation is part of two broader trends in contemporary Europe: first, the blurring of the distinction between internal and external security and, secondly, the gradual extension of EU policies to associated non-member states, recently coined as ‘external governance’. Whereas the first trend is a distinctive feature of the security landscape in Western Europe of the post-Cold War era (Bigo 2001; Pastore 2002; Lutterbeck 2005), the attempt to bind neighbouring countries
into common policy frameworks has been interpreted as an answer to this changed geopolitical landscape (Lavenex 2004).

Motivated and inspired by the experience of Eastern enlargement, the European Neighbourhood Policy (ENP) basically consists of promoting the EU’s Eastern and Southern neighbours’ approximation to the EU’s acquis, without, however, offering a membership perspective. In the words of Andreas Herdina (2005), one of the crafters of the ENP in the Commission, ‘the majority of agreed measures consists of projecting first pillar Community policies beyond our external borders’.

The external projection of internal policies constitutes a new kind of foreign policy, which is usually referred to as the ‘external dimension’ of a policy field. This development has been particularly prominent in the area of Justice and Home Affairs (JHA) where cooperation within the EU has, from the outset, also involved third countries (Lavenex 2006). A major motivation is the transnational character of associated threats. According to the Commission, ‘the projection of the values underpinning the area of freedom, security and justice is essential in order to safeguard the internal security of the EU. Menaces such as terrorism, organized crime and drug trafficking also originate outside the EU. It is thus crucial that the EU develop a strategy to engage with third countries worldwide’ (European Commission 2005a, 3).

Whereas these endeavours to involve third countries in the realization of Europe’s internal security project has by now raised increased scholarly attention (Lavenex and Uçarer 2002; Geddes 2006; Trauner 2007; Wichmann 2007a; Wolff 2007), the ways how the EU seeks to ensure third countries’ participation and the question whether it succeeds in doing so are not always well understood. To address these research objectives the article proposes to compare the attempts at governing the ENP countries, which is one of the outputs of the JHA external dimension, across different countries and issue areas (Wolff, Wichmann, and Mounier 2009, this issue, 9–23).

Inspired by the analyses of Eastern enlargement that highlighted the predominance of conditionality and unilateral policy transfer in involving third countries into EU policies, scholars have tended to emphasize similar patterns in the ENP (Cremona and Hillion 2006; Kelley 2006; Magen 2006; Maier and Schimmelfennig 2007). This tendency seems particularly salient in JHA, given the security interests involved for the EU and its member states. However, this policy field poses a number of challenges to the traditional external governance approach. First, in contrast to most ‘first pillar Community policies’ mentioned by Herdina, it is not fully communitarized: incomplete communitarization coexists with non-legislative and more operational modes of governance that put into question the EU’s capacity to exert policy transfer. Relating to the introduction to this volume, this means that characteristic features of the input impinge upon the resulting policy output (Wolff, Wichmann, and Mounier 2009, this issue, 9–23). Secondly, and linked to that, it is unclear how the leverage mechanism of policy transfer — conditionality — shall work in the absence of both communitarization and strong incentives for adaptation. And, finally, interdependence in relation with the ENP countries is strongly
asymmetric, with the EU having much stronger interests in cooperation with most aspects of JHA than its neighbours.

Comparing communitarized (‘1st pillar’) with intergovernmental (‘3rd pillar’) JHA policies and such with stronger and weaker asymmetry of interests, our analysis shows that three factors seriously limit the EU’s ability to engage in unilateral policy transfer. Rather than replicating the conditionality approach to external governance, the EU has developed a variety of institutional settings with ENP countries that mirror, to a certain extent, the internal modes of governance in this field, while bringing in some important modifications. After briefly introducing the internal patterns of JHA cooperation, we will show that external governance by transgovernmental networks plays a crucial role in replacing more hierarchical attempts at policy transfer. While theoretically allowing for more horizontal patterns of co-owned cooperation, however, extended network governance also presupposes some important institutional and ideational features that are not necessarily given in the external realm. The last part of our article identifies the challenges facing these hitherto under-studied forms of EU external governance and closes with a general conclusion on the chances and limits of associating third countries to internal policy goals.

**Governance in External Relations**

Originally focused on the politics of Eastern enlargement studies, the emerging literature on EU external governance has a tendency to emphasize EU endeavours to ensure third countries’ cooperation through what has been detected as its ‘most successful foreign policy instrument’ (European Commission 2003, 5): governance by conditionality. This is basically a hierarchical approach in which the EU capitalizes on its superior bargaining power in order to induce third country compliance. It is hierarchical in the sense that it works through a vertical process of command — where the EU transfers predeter-

External governance by conditionality presupposes the existence of a clear supranational acquis to be exported as well as strong leverage on the part of the Union. Whereas the ENP lacks the leverage of membership incentives, in JHA large parts of the acquis consist less in transferable legal instruments than in operational cooperation. A particular feature of cooperation in JHA is its network character and the predominance of transgovernmentalism as a mode of governance (see below).

Drawing on Slaughter’s (2004, 52ff.) work on transgovernmental networks, we distinguish conceptually between three different types of networks depending on their main functions. Most EU agencies and programmes operate according to one of these models of network governance, as they are based on the coordination of responsible sections of national bureaucracies. JHA agencies are Europol (network of national police offices), Eurojust (network of national prosecutors) or Frontex
Policy networks can, however, also be fully horizontal without supranational European coordination and less formalized.

- **Information networks** — they do not produce regulatory instruments but are set up to diffuse policy-relevant knowledge and ideas among the members. Usually, this goes hand in hand with the objective of distilling this information and identifying best practices. Expertise and professional reputation play an important role in these networks.

- **Implementation networks** — they focus primarily on enhancing cooperation among national regulators to implement/enforce existing laws and rules — be they national, international or European. In EU law these networks are complementary to the hierarchical modes of governance in that they add a more cooperative implementation structure to the essentially unilateral decision-making process. Often, implementation networks also promote capacity building through technical assistance and training.

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

Table 1 summarizes two idea-typical models of external governance. It excludes modes of interaction that — because of their lesser degree of institutionalization and commitment — do not qualify as governance, such as traditional intergovernmental cooperation.

In the following sections, we first specify the internal modes of governance in JHA before analysing their reflection in JHA external relations. Drawing on the characteristics of internal modes of policy making and hypotheses derived from theories of institutional design, we will identify the conditions under which different modes of external governance prevail.

**The Governance of Internal Security in the EU**

The internal governance of JHA is marked by the co-existence of weak hierarchical legal integration through the Community method and intergovernmental procedures, as well as the dominance of network governance through intensive transgovernmentalism. Integration occurs not only or primarily through legislation but first and foremost through operational cooperation in transgovernmental networks.

**Legislative Level**

At the legislative level the interaction in JHA is structured according to two different procedures: either through the ‘communitarized’ (‘1st pillar’) or
<table>
<thead>
<tr>
<th>Modes of interaction</th>
<th>Networks</th>
<th>Instruments</th>
<th>Output</th>
<th>Actors</th>
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<tbody>
<tr>
<td></td>
<td>Hierarchy</td>
<td>EC and EU law, precise requirements</td>
<td>Policy transfer</td>
<td>Supranational EU institutions and Council vis-à-vis third country governments</td>
</tr>
<tr>
<td></td>
<td>Information networks</td>
<td>Voluntary instruments, process-orientated: Data, information, best practices</td>
<td>Coordination</td>
<td>Multilevel: transgovernmental and transnational (including supra- and subnational actors) Non-State actors: bodies, agencies Private actors</td>
</tr>
<tr>
<td></td>
<td>Implementation networks</td>
<td>Voluntary instruments, process-orientated: Data, information, operational cooperation, capacity building</td>
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<td></td>
<td>Regulation networks</td>
<td>Voluntary instruments, process-orientated: Benchmarks, common standards</td>
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through intergovernmental decision making (‘3rd pillar’). The communitarianized aspects of JHA policy making prevail in the areas of visa, asylum and some aspects of irregular migration control. The Community method assigns a central role to the Commission as the policy initiator, the formal rule of decision taking in the Council is Qualified Majority Voting, and the output of cooperation is legally binding EC norms.

The second modus of legislative interaction is the intergovernmental mode of decision making. The Commission is associated with the work in this area, but it does not have the same prerogatives as in the Community area. Both the European Parliament and the European Court of Justice (ECJ) are excluded from decision making. Decisions are adopted by unanimity in the Council, and the legislative outcome frequently reflects lowest common denominator solutions. The legislative output produced in this setting consists of framework decisions and conventions. The legal instruments pursue the double objective of approximating the substantive elements of criminal law and of simplifying the procedural aspects of cooperation in criminal and judicial matters (by, for example, introducing mutual recognition). In practice, a common feature of the legal instruments adopted in both first and third pillar JHA matters is the weakness of obligations implied. This means that the member states retain a high margin of discretion, when they transpose the adopted legal instruments in to their domestic legal system (Weyembergh 2006).

**Operational Level**

A particularity of internal security governance is the important role played by operational cooperation. The operational level is characterized by ‘intensive transgovernmentalism’ (Slaughter 1997; Wallace 2000; Lavenex and Wallace 2005), i.e. by the existence of a number of networks of law enforcement officials, which are established on the basis of similar functions, tasks and levels of seniority. Transgovernmentalism is one form of ‘network governance’; it can occur both on the meso-level of law enforcement officials (e.g. magistrates) and, on the micro-level, where police officers and judicial authorities work together to enforce the law in a cross-border setting (Benyon 1996). On the meso-level, networks of law enforcement officials are created for exchanging information, for conducting joint investigations to enforce the law and for setting standards of cooperation in the form of memoranda of understanding. Network governance in horizontal networks fulfils one or several of the following objectives: information exchange, law enforcement or standard setting for future cooperation (=regulation). While regulation networks may come close to legislative functions when they produce mutually agreed standards, these outputs retain a different legal quality as ‘soft law’, which is the reason why they are not included in the analysis of legislative decision making.

These ‘bottom-up’ or horizontal-level activities of law enforcement do not stand alone in European internal security governance; they are complemented by vertical or top-down support structures, which have been
created at the European level to facilitate cooperation between national law enforcement officials. The most prominent examples of vertical coordinating structures are Europol, Eurojust and Frontex. These bodies provide a platform for the exchange of information between the member states, and they facilitate the conduct of joint operations (Schalken and Pronk 2002). The coordinating bodies help the law enforcement officials involved in international cooperation to identify the competent authorities in the other states, so that they know who to contact for formal assistance requests (Bigo 2000b). The major weakness of these vertical networks is the absence of executive policing powers, which makes them reliant upon the information provided by the member states. By and large, the top-down networks are limited to exchanging information and providing support for joint implementation.

The existence of these top-down networks is linked closely to the emergence of an EU competence in the field of criminal law. They are frequently created by European instruments (decisions, conventions) and established for the purpose of implementing European criminal law instruments. The importance of the vertical networks should not be underestimated, as their remit of activities of the coordinating bodies is expanded constantly. In sum, we find a complex maze of law enforcement institutions in the EU that cooperate with each other in a system of ‘multilevel governance’. Theoretically, this system of multilevel governance is more open to flexible forms of participation, including that of third countries, than legislative integration under supranational procedures. In the following section, we investigate the role of these networks in the external dimension of JHA in relation with ENP countries.

The External Dimension of JHA

Our analysis of external governance of JHA starts from the general assumption that the external modes of interaction will, to a large degree, reflect the internal modes of policy making in the respective fields (Longo 2003). The way EU policies are promoted or extended abroad depends on how these policies are produced internally. On the one hand, hierarchical policy transfer presupposes the existence of a clear acquis and strong EU competence to both act externally and monitor compliance. Therefore, we expect this mode of governance to prevail in the more communitarized areas (such as asylum and visa policy). In contrast, we expect network governance or intergovernmental cooperation in those areas where the EU does not have strong competence, but is dominated by transgovernmentalism.

Apart from these institutional configurations or ‘input’ factors, interest constellations between the EU and the third countries in question are likely to impact on the modes of governance prevailing. In areas in which the EU has strong interests in third country ‘compliance’, the EU will try to resort to more hegemonic or hierarchical modes of interaction. Yet, the degree to which the EU is able to exercise hegemony depends on competence, that is the existence of a clear acquis, supranational powers and monitoring mechanisms — and, in so far as conditionality presupposes positive incentives,
also the capacity to offer attractive rewards in return for costly compliance. In areas characterized by a strong asymmetry of interests, where compliance with EU demands would impose high costs and few benefits on the third country, attempts at hierarchical policy transfer are likely to involve interest-based bargaining in the definition of conditionality in terms of positive rewards. This corresponds to the case of irregular migration/readmission. The European Commission acknowledged the problem of ‘lack of incentives’, when it stated that, ‘in the field of JHA, there is little that can be offered in return …’ (European Commission 2002).

Given the attraction of hierarchy or governance by conditionality in asymmetric interest constellations, network governance is likely to predominate under two conditions: first in more technocratic or at least less politicized areas, where both sides share an interest in cooperation, such as the fight against corruption. Secondly, in those areas where the EU lacks the resources necessary for hierarchical governance by conditionality. In this case, network governance may emerge as a default option as a means to promote cooperation despite the inability to agree on binding obligations. Our empirical analysis will show that this constellation is frequent in JHA, and that extended network governance can — contrary to its proclaimed inclusiveness and voluntariness — be hegemonic.

In order to examine the impact of these variables on the choice of external governance modes, we chose cases reflecting different degrees of communitarization and constellations of interests. Our more communitarized cases are irregular migration and asylum (mainly 1st pillar), the still predominantly intergovernmental ones are drugs and corruption (mainly 3rd pillar). These cases also differ with regard to the urgency the EU attributes to them in relations with the third countries and the latter’s situation with regard to the underlying problems. We refer to this dimension as symmetry or asymmetry of interests. Asymmetry is stronger when an issue is politicized or even securitized in the EU, leading it to put strong emphasis on third country compliance. This is the case for irregular migration and drugs, which also figure in the EU’s security strategy and for which ENP countries are both countries of origin and transit. By contrast, asylum as a humanitarian concept and the fight against corruption as element of good governance do not feature as prominently in the EU external policies under the ENP and enjoy — at least rhetorically — more support also from ENP country governments. The case selection is summarized in Table 2.

<table>
<thead>
<tr>
<th>Interests constellation</th>
<th>Degree of communitarization</th>
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<tr>
<td>Strong asymmetry of interests</td>
<td>Communitarized</td>
</tr>
<tr>
<td>Stronger symmetry of interests</td>
<td>Less communitarized</td>
</tr>
<tr>
<td>Irregular migration</td>
<td>Drugs</td>
</tr>
<tr>
<td>Asylum</td>
<td>Corruption</td>
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</table>
Asylum and Immigration Cooperation

External action in the field of asylum focuses primarily on legislative aspects and, in the second instance, on operational and technical cooperation, whereas with regard to legal and irregular migration various forms of operational cooperation and networking prevail. This is partly a function of the higher level of legalization in asylum matters, with the existence of an international regime and — at least in a few respects — stronger *acquis*.

The overarching goal of asylum cooperation as stated in all ENP Action Plans is the spread of the international refugee regime through the implementation of the Geneva Convention and its 1967 Protocol. Action Plans towards Ukraine and Moldova furthermore require the approximation of legislation and of the system of state authorities responsible with EU norms and standards (European Commission 2004c; EU–Ukraine Co-operation Council 2007), whereas towards Morocco and Tunisia, the EU merely agrees to put at disposition ‘the European experience and expertise with the transposition of the 1951 Convention’ (authors’ translation), including, with Morocco, support for competent authorities and professional training for persons dealing with the asylum procedure and reception (European Commission 2004a, 2004b). With this focus on rule-transfer, asylum cooperation is dominated by a hegemonic mode of governance, where the EU tries to expand the geographical scope of European asylum traditions in an attempt to increase the number of countries sharing the ‘burden’ of refugee protection.

However, policy transfer is not really pursued in a consistent manner. The review of JHA-subcommittee meetings with Ukraine and Moldova and Social Affairs Committees established with Morocco and Tunisia shows a greater focus on irregular migration than on the implementation of asylum systems. External asylum governance has received new impetus with the decision to establish Regional Protection Programmes (RPP) in third countries in cooperation with UNHCR and involving capacity building in the area of asylum (European Commission 2005c). In parallel, regional networks have been created to promote cooperation in asylum and immigration matters, both to the East and South. Launched in 2001 on an informal basis by Sweden to address the challenges of EU eastward enlargement, the so-called Söderköping Process focuses since 2004 on transferring the experience of the newly acceded EU member states to the Western New Independent States (NIS) ‘in aligning their migration and asylum related legislation, policies and practices with the EU *acquis* standards’ (Söderköping Process 2005). The stated aim is to develop the Western NIS ‘into safe countries of asylum through alignment with EU standards’. In terms of our network typology, the Söderköping process can be seen as an information and implementation network that also aims to foster capacity building. However, as the quotation shows, the transfer of EU policies and practices is at the core. This turns an organizationally horizontal mode of governance into an instrument of hegemonic policy-export. The weaker status of asylum cooperation with the Southern Mediterranean neighbours, and the total lack of relevant clauses in agreements with
Tunisia is interesting, given the countries’ geographical location as both sending and transit countries of asylum seekers. In line with earlier Association Agreements, these countries clearly give priority to cooperation on legal migration and the rights of their nationals living in the EU, while both Action Plans and subcommittee documents reflect the lack of responsiveness on the part of the EU. With the Valencia Action Plan adopted in 2002, attention has clearly shifted to the issue of irregular migration (Presidency 2002), notwithstanding the more recent rhetorical embracement of a ‘global approach’ invoking also other forms of migration (Lavenex and Kunz 2008).

The priority attributed to irregular migration is also reflected in the European Security Strategy, which lists ‘illegal migrants’ among the ‘key threats’ facing the Union (Council of the European Union 2003, 4). Although the EU by now has a considerable acquis relating to border security, visa policy and the fight against irregular migration, the Action Plans mainly focus on three issues: improvement of information exchange on migration flows; practical operational support and capacity building to third country authorities dealing with border control and migration; and the conclusion of readmission agreements.

The modes of interaction applied are the linkage of conditionality with intergovernmental bargaining and an increasing number of operational network-activities. Conditionality and intergovernmental bargaining concentrate on the negotiation of readmission agreements with the EU. These agreements specify the obligations to take back their own and third country nationals having travelled through one of the contracting parties and who are illegally staying in the other party and, in exchange, offering visa facilitations for certain categories of persons, such as students, journalists, government officials etc. Whereas with Ukraine and Moldova, agreements could be negotiated in exchange for visa facilitations, the Mediterranean ENP countries have proved less responsive to this policy export by conditional rewards. Probably because they do not share the Eastern neighbours’ ambitions to join the Union — despite the absence of an official membership perspective — Southern Mediterranean countries have hitherto rejected any binding commitments, thereby forcing the EU to recourse to alternative modes of interaction (Lavenex 2006, 341ff.). In particular, EU member states have engaged in an ‘informalization’ strategy that focuses on a broader framework of cooperation based on administrative arrangements, bilateral deals and exchanges of letters and memoranda of understanding, including operational cooperation (e.g. police cooperation, joint border operations) (Carrera 2007; Cassarino 2007).

This mode of external governance through transgovernmental networking also predominates in other aspects of migration and asylum policy, both bilaterally and multilaterally. It usually takes the form of information and implementation networks involving consultative, financial and expert assistance to responsible government services, including twinnings with EU countries. Operational network governance often occurs through ‘projects’ financed by the EU budget (e.g. the AENEAS and AGIS programmes in JHA), where member states, third countries or international organizations compete
for tender. Such project-based networks often involve — apart from member and non-member states — NGOs and international organizations. They may also be set up to support the implementation of international and European standards. That such projects are not void of more hegemonic forms of policy transfer is revealed when we take a closer look at their description. For instance, with regard to trafficking in Eastern Europe, Project JAI/2004/AGIS/031 (15) foresees next to the identification and exchange of best practices, the aim of ‘uniform application of international/EU law and practices’ (European Commission 2005d). Such hegemonic elements have started to figure more prominently in operational border politics recently. In 2005, the EU launched a border control mission at the Ukrainian–Moldovan border, EUBAM, giving fifty EU experts a free hand to monitor the comings and goings across the border. In July and August 2006, the first joint operations started under the coordination of the new European Frontex agency, composed of patrol boats, planes and helicopters from several member states to patrol sea borders in the Atlantic Ocean and the Mediterranean. In its 2005 Communication on priority actions for responding to the challenges of migration, the Commission also announced it would extend the newly created Mediterranean Coastal Patrols Network to the Mediterranean third countries ‘as soon as technically feasible’ (European Commission 2005b). In the meantime, joint operations are also carried out in the framework of ‘training’ activities.

Beyond official EU activities, networking on migration control cooperation has developed at a purely transgovernmental level between law and order officials both to the east and the south. Whereas eastern networks, such as the Budapest process, have focused exclusively on repressive measures, the informal 5+5 Ministerial Western Mediterranean Dialogue to the south has taken on a broader mandate, also covering legal migration. Recognizing the socialization potential of such bottom-up, horizontal transgovernmental networks, recent Commission documents declare the aim to link them more closely to ENP activities and, in particular, discussions in technical subcommittees (European Commission 2005b).

In sum, the evidence gathered so far indicates that attempts at hierarchical governance or policy transfer face strong difficulties due to the weakness of the *acquis*, the lack of incentives the EC can offer to compensate significant interest asymmetries, and the weak level of legalization in relations with third countries. The negotiations on readmission agreements show despite all difficulties that countries with membership aspirations (Moldova and Ukraine) are more prone to accept external governance by conditionality, in return for limited visa facilitations, whereas the southern Mediterranean countries have hitherto declined the (weak) incentives offered. In contrast, the resort to networks is much more frequent than the conditionality model of interaction. Yet, differences in the perception of the underlying problems and preferred solutions, as well as lack of trust between the partners, tend to replicate the asymmetry of overarching relationships, thus giving clear preference to EU concepts and priorities over those of the third countries. Enhanced dialogue within relevant subcommittees and networks

*The External Governance of EU Internal Security* 93
also opens the possibility for voicing third countries’ concerns. For instance, the EU’s ‘global approach’ to immigration launched in 2005 and aiming at a pan-African strategy of immigration management, was influenced strongly by exchanges with Moroccan officials. Pressure by Mediterranean countries has also provoked more thought on the role of mobility within the ENP and the desire to promote the ‘migration–development nexus’ in foreign policies (Lavenex and Kunz 2008). Beyond the production of policy documents, however, this awareness has given rise to few concrete actions. A precursory look at the Aeneas projects and the Country Strategy Documents reveals a bias in favour of the more traditional instruments of migration control.

**Drug Trafficking and Corruption**

External action in the field of police and judicial matters focuses on technical cooperation, operational cooperation and the transfer of legislative standards. Two issue areas were chosen for closer investigation: cooperation to fight drugs and anti-corruption. The external dimension of drugs policy is characterized by hierarchical policy transfer, which manifests itself through the insertion of cooperation clauses on drugs in international agreements, combined with technical and operational cooperation, whereas in the anti-corruption policy a ‘softer’ mode of governance is identified, which lays the emphasis on peer review, dialogue and the elaboration of national Action Plans.

The overarching goal of the EU’s external anti-drugs policy is to assist third countries, including ENP countries, and key drug-producing and transit countries ‘to be more effective in both drugs supply and demand reduction’ (Council of the European Union 2004). The actions with which the EU intends to achieve this objective are the implementation of the UN Drugs Conventions (1961, 1971, 1988), and the UN Convention on Transnational Organised Crime, the elaboration of national drugs action plans, assistance for demand reduction measures and institution building in the law enforcement sector. The minutes of the Sub-Committee meetings with Moldova and Ukraine reveal that discussions have been limited to the presentation of the EU’s activities. With Morocco, the EU refuses to talk about drugs before the country delivers on its promise to elaborate a National Drugs Strategy. The overall external drugs policy puts a strong emphasis on supply reduction measures, as documents on the funding and the thematic distribution of EU Drug Projects confirm (Council of the European Union 2006). External drugs policy has received a further boost through the adoption of the European Security Strategy and the Strategy for the External Dimension of the Area of Freedom, Security and Justice, as both of these documents list drugs as one of the main threats to EU security (Council of the European Union 2003, 2005a).

In terms of the main mode of interaction in the drugs field, policy transfer based on the insertion of drugs cooperation clauses in international agreements prevails. All Association (AA) and Partnership and Cooperation
Agreements (PCA) contain a clause on the need to cooperate on drugs issues, and a recent EC regulation declares that preferential access to the internal market is dependent upon cooperation on drugs matters (Council of the European Union 2005b). The partner countries have committed themselves to implementing UN Conventions and to complying with the recommendations of the International Narcotics Board (INCB), the quasi-judicial monitoring body established by the UN. In other words, the EU is contributing to exporting the founding pillars of the global drugs prohibition regime to neighbouring countries hegemonically, i.e. by inserting mandatory drugs cooperation clauses and monitoring through international bodies. The promotion of the demand reduction and harm reduction, on the other hand, was delegated to development cooperation agencies. In this domain there are no binding international policy prescriptions.

In the external domain, networks are set up for training and capacity-building purposes. Training and capacity-building measures in the drugs field consist of financial, infrastructure support and the organization of training sessions. In the Eastern European ENP countries, the EU has launched a specific anti-drugs project, BUMAD (Belarus, Ukraine, Moldova Anti-Drugs programme). The latter is a joint EU/UNDP initiative that covers many activities, both in the field of capacity building for law enforcement officers and in the area of demand reduction (e.g. working with NGOs or the support of rehabilitation centres etc.). In some cases, the EU provides the country with support to conduct operations against drug trafficking, through Frontex operations in the south or the EU Border Assistance Mission (EUBAM) on the Moldovan–Ukrainian border.

The EU also hopes to attain a higher level of information exchange with the ENP countries by improving their methods of data collection, and by concluding association agreements between the ENP countries and Europol, and the European Judicial Network. Further important sources for data collection are the meetings of the Drugs Liaison Officers and the Dublin Group meetings in the neighbouring countries. These meetings bring together either the officials of member states (Liaison Officer Networks) or the authorities of member states and those of other drugs donor countries (USA, Norway, Japan and Australia). These networks are generally not accessible for representatives of the ENP countries, but, at times, the authorities of the host country are invited to meetings to provide supplementary information.

The main objective of the EU’s external anti-corruption policy is to promote a ring of well-governed countries in the neighbourhood. The actions listed to achieve the objective of ‘better governance’ are accession of the neighbouring countries to international conventions on fighting corruption, political dialogue, the elaboration of national action plans, technical cooperation with law enforcement agencies, involvement of civil society and the adoption of codes of conduct for civil servants. The Sub-Committee minutes show that the focus so far has been laid on the elaboration of National Anti-Corruption Action Plans. The relevance of the fight against corruption for security is stated in a number of documents (Council of the European Union
2003, 2005a), but, in practice, the EU has not forcefully promoted its policy outside of the enlargement context (Tivig and Maurer 2006).

The EU’s interaction with third states in the field of anti-corruption is characterized by political dialogue in the south and by intensive socialization based on ‘naming and shaming’ through implementation networks in relations with Moldova and Ukraine. The EU bases its anti-corruption dialogue with third countries on international anti-corruption agreements, such as the 2003 United Nations Convention against Corruption and the Council of Europe’s conventions. The EU has to resort to these international instruments, because it does not have an anti-corruption acquis that is exported readily to third countries.

In the area of anti-corruption the EU relies on cooperation with an implementation network, the Council of Europe’s GRECO (Groupe d’Etats contre la Corruption) in relations with eastern neighbours. GRECO has been set up to implement and monitor implementation of the Council of Europe’s anti-corruption instruments. It is open to accession by all Council of Europe member states and other countries that participated in the elaboration of the agreement, such as, for example, the USA. The GRECO plenary brings together high-level officials from Ministries of Justice, Ministries of the Interior and specialized anti-corruption bodies. In a first step, the GRECO Plenary specifies the provisions of the Council of Europe’s anti-corruption acquis on which the country evaluations will be based (e.g. financing of political parties). The evaluations are carried out by teams composed of experts designated by the member state and appointed by GRECO. Replies to questionnaires, the intensive study of legislation and implementation practices, and on-site visits feed into the evaluation reports. The reports are drawn up at the end of the on-site visit, and the results are discussed with the authorities of the evaluated country. Finally, the reports and recommendations are submitted to a GRECO plenary meeting for adoption. The compliance with GRECO’s recommendations is subject to monitoring under the compliance procedure. After adoption by the GRECO plenary, the reports and recommendations are made available on the internet.

The last instrument through which the EU promotes the principles of anti-corruption in neighbouring countries is technical assistance. Many of the assistance activities are carried out jointly with the Council of Europe under the Joint Programmes formula, according to which the EC finances or co-finances projects in Moldova and Ukraine. Technical assistance activities cover study visits to the EU, training sessions on fighting corruption in various sectors, legal advice on drafting laws to protect whistle-blowers, information on how to further integrity in the public administration and the role of the press in anti-corruption. The anti-corruption activities, which are carried out in Eastern Europe have a broad focus extending to the involvement of civil society in the fight against corruption. By and large, these programmes fulfil the purpose of transferring Western rule of law standards to these countries. In the Mediterranean countries, technical assistance activities in the anti-corruption field are more limited. The EU has put in place a few MEDA technical assistance projects aimed at the modernization
of the justice system, but those projects are focused strongly on enhancing the efficiency of the judiciary and less on eradicating corruption and improving the political environment of justice reform (Wichmann 2007b).

The Limits of External Governance

The case studies above give a mixed picture of JHA external governance. Our initial assumption was confirmed that, due to the internal structure of JHA cooperation and limited capacities to offer attractive incentives in the ENP, network governance is more frequent than hierarchical policy transfer through the conditionality method. However, these transgovernmental networks are not void of hegemonic traits and frequently reflect the dominance of EU interests and actors. On the one hand, this asymmetry in networks is due to the constellations of interdependence, where the EU’s interest in cooperation is not matched by the third country. On the other hand, however, our case studies also reveal more endogenous limits to extended network governance that may apply also to other fields of external relations (Lavenex, Lehmkuhl, and Wichmann 2007; Lavenex 2008). To expand transgovernmental networks successfully the EU has to be able to rely on compatible administrative structures and expertise in the partner countries. Such networks require the existence of strong administrative actors, police officials or border guards with a certain degree of independence from central government, pertinent expertise and resources. In contrast to political actors, who must maintain national interests, technocrats and experts are apt to succumb to the functional, problem-orientated dynamics of mutual learning and adaptation that the EU seeks to unleash. Governance capacity also requires that the partner countries have an appropriate level of expertise in national administrations and that these bodies have the necessary financial resources at their disposal to ensure adequate implementation. Governance capacity does not merely refer to the resources of a third country, but it also has a ‘qualitative’ connotation. In other words, government capacity also alludes to the manner in which a third country exerts its repressive functions. Abidance to rule of law standards, compliance with international human rights standards and the absence of corruption in the state administration are crucial prerequisites for successful JHA cooperation. That these issues remain major challenges for the ENP countries is revealed, for example, in the GRECO evaluation reports on Ukraine and Moldova (Groupe d’États contre la Corruption 2006, 2007).

The two last crucial preconditions for external governance, both hierarchical and horizontal, concern the relation between the parties involved and, in particular, the high degree of legalization or institutionalization of overarching external relations and the degree to which both sides share fundamental values and trust each other. The overarching legal framework, Association Agreements and Partnership and Cooperation Agreements, need to foresee mechanisms for joint decision making, implementation and monitoring. In the absence of such provisions, the EU has to resort to softer mechanisms of interaction, such as political dialogue, which, due the voluntarism implied,
no longer qualifies as governance. Whereas legalization is particularly important for hierarchical modes of interaction, socialization, mutual trust and the existence of a shared professional ‘ethos’ are co-substantial to network governance and transgovernmentalism (Benyon 1996; Den Boer 2005; Sheptycki 2000). The absolute centrality of these two factors became apparent during Eastern enlargement, when it proved difficult to intensify JHA cooperation with the acceding countries owing to the widespread distrust prevailing in the EU member states with respect to the policing practices of the Central and Eastern European Countries (Gregory 1994; Bigo 2000a). Adherence to common values, similar legal cultures and shared problem perceptions facilitate successful law enforcement cooperation. The absence of these background conditions in relations with ENP states constitutes a structural barrier to the extension of bottom-up, inclusive and voluntary modes of interaction.

Faced with these obstacles, the EU has started devising a number of tools to tackle the deficiencies in the areas of governance capacity. These shall also contribute to fostering a shared professional ethos, similar problem perceptions and, above all, an increase in the level of trust that the EU law enforcement agencies have in the ENP countries’ authorities. The main instruments put in place to achieve this objective are the provision of technical assistance, as well as inter-administrative exchanges through twinnings and TAIEX activities (Tulmets 2007). Another tool to foster governance capacity is the extension of vertical coordination networks in relations with ENP countries. Coordinating bodies or agencies, such as Europol, Eurojust, CEPOL, are becoming involved in information exchange through the conclusion of cooperation agreements, for example (Europol 2004). They thereby operate as information networks providing partner countries with technical assistance and expertise.

The way in which the EU seeks to tackle the deficiencies reveals many new interesting research questions; in particular, it draws attention to the question of how network governance interacts with more hierarchical forms of steering. Indeed, one could argue that technical assistance networks are being used as a tool for ‘socializing’ third countries in to common European standards of law enforcement. Hence, in the context of JHA cooperation, networks have come to serve the purpose of domination rather than engaging the partner countries in participatory governance.

**Conclusion**

The ‘external dimension’ has become an integral part of EU JHA cooperation. New notions of security not only entail a blurring of the distinction between internal and external threats, they also lead to new forms of political cooperation that transgress the traditional division between foreign and domestic policy. It has been argued that new and hybrid forms of political interaction are emerging, which result from an incapacity to exert policy transfer through conditionality.

Given asymmetries of interests between the EU and its neighbours, we expected a tendency towards more hierarchical, hegemonic modes of
interaction, which would, however, be influenced by the consolidation of an internal *acquis* as well as supranational competence to act externally. The comparison between more and less communitarized policy fields yields a number of interesting findings. In cases where EC/EU legislation exists, we do observe a tendency for policy transfer, but the asymmetry of interests, the weakness of monitoring mechanisms and the absence of compensatory rewards limit the portent of this model of interaction.

In order to cope with these obstacles, two hitherto under-investigated strategies of interaction have developed. First, in the more intergovernmental areas of JHA, the lack of an own *acquis* does not preclude attempts at legislative approximation. In this case, the EU compensates the lack of internal templates with the mobilization of international conventions and their monitoring mechanisms. Similar to traditional policy transfer, however, and although this strategy may increase the legitimacy of EU requirements, it lacks strong leverage in cases when it does not meet the interest of the third countries.

The second strategy identified, which corresponds to the internal predominance of transgovernmentalism in JHA, is the extension of network governance. Yet, at least in the short run, without a common legal background and mutual trust, these networks lack their social fabric. Differences in problem perceptions and lack of trust undermine their effectiveness and integrative dynamics in terms of participatory structures and joint decision making. Either the third states send high-ranking officials who, rejecting the idea of functional cooperation, politicize the networks and move them closer to classic intergovernmentalism, or the third state representatives lack the necessary resources to participate on equal footing in the deliberations. Under these circumstances, transgovernmental networks are a hitherto under-investigated vehicle for policy transfer through ‘softer’ means, adding to the EU’s toolbox in extending external security governance in spite of a lack of leverage through conditionality.

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**Notes**

1. Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Palestinian Authority, Syria, Tunisia and Ukraine.
2. Under the term ‘internal security’, we understand the entirety of activities covered by the EU under the title cooperation on Justice and Home Affairs. This means that we include cooperation on asylum and irregular migration. In police and judicial cooperation, we have decided to focus on two issue areas linked to the fight against organized crime (cf. section on case selection).

3. This emphasis on quasi-hierarchical instruments in external action departs from some important elements of the original governance literature, which takes its point of departure in the broader transformation from the interventionist to the cooperative state (Mayntz 2005).

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

5. Here, we draw on Slaughter’s differentiation of networks.

6. The first ENP country to carry out a twinning ‘light’ project with the EU in the area of migration and border management is Morocco.

7. Morocco’s input on this strategy can be retraced in the documents of the subcommittee meetings on ‘social affairs and migration’ as well as the recent ‘JHA subcommittee’ and was confirmed in interviews with Commission officials, such as with DG JLS representatives on 17 April 2007 and 3 May 2007.


10. Council of Europe’s Civil and Criminal Law Conventions and the Council of Europe’s Twenty Guiding Principles on Fighting Corruption.

11. Each country presents a list of three to five available experts on a given question. For each evaluation, GRECO appoints experts for carrying out the assessment. They make sure that the teams are representative and that there is at least one country expert. Interview GRECO Secretariat, June 2007.


13. Twinning is a cooperation tool aimed at developing the capacity of the public administration in enlargement and ENP countries. It involves the longer-term secondment of an EU expert to the administration of a partner country. TAIEX assistance covers a number of short-term activities, such as seminars, study visits and workshops in the partner country on JHA issues, for example.

14. See, for example, CEPOL’s involvement in the regional Eurmed programme. At times, the agencies are also asked to provide TAIEX seminars or similar activities for third countries. Interview Europe-aid, May 2007.

15. This ‘instrumental’ reasoning was apparent in a series of interviews conducted in April–May 2007 in Brussels.

References


Council of the European Union. 2006. 9376/06, The level of funding and the geographic and thematic distribution of EU drug projects.


