Institutional interplay with international organizations in the external projection of EU rules

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1. Introduction*

International institutions, including the EU, have traditionally been studied in isolation from each other. With the proliferation of international agreements and fora, however, the phenomena of regime density (Young 1996) and institutional interplay, addressing the interactions between international institutions, have gained increasing attention (Oberthür/Stocke 2011; Young 2010). The relationship between the EU as a system of regional integration covering multiple policy areas and specialized international organizations (IOs) established within these areas constitutes a particularly rich domain for research.

The progressive communitarization of sectoral policies in the EU has had an international dimension early on. In fields regulated by international norms and institutions, such as for instance trade policy, the development of EU rules has from the outset raised the question of substantive compatibility with international commitments previously undergone by the member states (Aggarwal 1998). In the absence of pre-existing international regimes in a particular sector, the development of EU norms sets a precedent potentially influencing the content of future international cooperation processes.

The institutional interplay between European integration and international institutions has gained new prominence with the emergence of an external dimension to wide sections of the EU’s acquis communautaire. The steady process of communitarization and the expansion of external relations have gone along with an intensifying projection of EU rules towards non-member states in its neighbourhood and beyond (Damro 2012; Lavenex 2014; Lavenex/Schimmelfennig 2009; Manners 2002; Van Vooren et al. 2013). The projection of EU rules occurs both indirectly, without active promotion and directly as part of a purposeful foreign policy strategy. This external face of Europeanization interferes with the domain of international norms and organizations. The questions how EU rule projection interacts with relevant international norms and organizations, what guides this interaction, and which implications this has for the international institutions in question are little understood. This article aims at chartering this new terrain of EU-IO interplay with a focus on the strategic instrumentalization of international organizations in the projection of EU rules towards non-member states.

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The article proposes an analytical framework for studying strategic inter-organizational relations in external rule projection based on and contributing to three bodies of literature: studies of EU external governance (Lavenex 2004; Lavenex/Schimmelfennig 2009); the literature on policy diffusion and the role of so-called “transfer agents” (Dobbin et al. 2007; Scott 2012) and the study of institutional interplay in international politics (Biermann et al. 2009; Gehring/Oberthür 2006; Oberthür/Stocke 2011; Young 2010). Developing this analytical framework and illustrating it through a comparative case study design, the paper seeks to provide answers to two questions: Firstly, which forms does institutional interplay take in the external projection of EU rules? Secondly, what drives this institutional interplay, or, put differently, does the involvement of international organizations respond to a pattern of strategic instrumentalization by the EU in the attempt to externalize its acquis communautaire?

The first section is conceptual. It offers a typology of institutional interplays in the realm of EU external governance. Three types of interplay are distinguished: uploading, consisting in the EU exporting its internal rule to an overarching IO, thereby extending the rule’s prescriptive scope to that IO’s wider membership; ‘subsumption’, involving the framing of an EU rule under a pre-existing international one while promoting it towards third countries, thereby enhancing its legitimacy; and outsourcing, referring to the operative mobilization of IOs in rule transfer activities, for instance by financing IO-led projects geared at the implementation of EU rules.

The second section develops an analytical framework for explaining institutional interplay. Focusing on the purposeful mobilization of other IOs on the part of the EU, this framework suggest a rational design approach. It starts with the general functionalist proposition that the extent to which the EU ‘shops’ for other IOs is a function of the difference between its own and the IOs’ resources for projecting a given EU rule. These resources depend on the extent of EU leverage, properties of the rules in question, and IO characteristics. This analytical framework is then subjected to a plausibility probe in five policy areas presenting different constellations with regard to the explanatory factors. The findings suggest that while differences regarding these functionalist incentives do affect the intensity and also the choice of institutional interplays, they do not explain the existence of these interplays per se. In fact, we find that in all policy areas under study the EU ‘nests’ its external rule projection in pertinent IOs, even when, given its leverage and the properties of the rule, we would not expect this. Given the limited empirical coverage, our findings cannot claim generalizability. They nevertheless suggest that next to strategic choices, more diffuse institutional routines and habits also guide EU interaction with its organizational environment.

The conclusions reflect on avenues for further research in this rich field of inter-institutional relations and on the potential effects of this strategic interplay on the international organizations in question.

1 For a further overview on theoretical approaches of inter-organizational relations see Franke in this Special Issue.
2. Types of institutional interplay in external rule projection

The interplay among international institutions is a relatively recent field of study and has been pioneered in the analysis of environmental cooperation (Young 1996). Studies have focused on the mapping of international institutions linked in the regulation of particular domains through regime\(^2\) complexes (Raustiala/Victor 2004; Keohane/Victor 2012); the categorization of different forms of institutional interaction (Aggarwal 1998; Stokke 2001; Young 2010); and the causal mechanisms determining the effects of particular institutions on others (Gehring/Oberthür 2006).

Quite separately from this IR agenda, research on European integration has emphasized the increasing international dimension of EU rules and regulations. The deliberate design of an external dimension to numerous EU policies (be it competition, environment, migration policy or other); the launch of new forms of association with neighboring countries whose main purpose is the extension of the EU acquis communautaire; and the diffusion of EU product regulations through market dynamics have been gaining increasing attention (i.a. Bach/Newman 2007; Bradford 2012). The notion of external governance has been devised to study this extension of the EU’s regulatory boundaries beyond the circle of member states and candidate countries (Lavenex 2004, 2011, 2014; Lavenex/Schimmelfennig 2009).

While the role of the EU as an actor in IOs has become a prominent field of study (Orsini 2014), the question how far EU external rule transfer actually involves and affects IOs has hitherto not been addressed. Rather than creating new international rules, the focus on rule-transfer puts the emphasis on the interplay between the EU and IOs in the implementation of existing – European and other – international norms.

The literature on institutional interplay distinguishes three basic constellations of inter-institutional relations (Aggarwal 1998; Alter/Meunier 2009): parallel regimes, where there is no formal or direct substantive overlap; overlapping regimes, where multiple institutions have authority over an issue, but agreements are not mutually exclusive or subsidiary to another; and nested regimes, where institutions are embedded within each other in concentric circles, like Russian dolls. In the case of overlap, countries are party to different regimes in separate, but partly interdependent policy areas, for instance as members of the WTO and the ILO (Alter/Meunier 2006, p. 363). In a nested constellation, in contrast, an organization with a smaller (regional) membership interacts with a larger (global) institution within the same functional policy area, for instance, the EU single market regulations and the WTO rules (Aggarwal 1998; Alter/Meunier 2006; Gehring/Oberthür 2006, p. 139).

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\(^2\) This article applies the classic definition of international regimes as social institutions involving principles, norms, rules and procedures which guide states’ interaction in a given field of international politics (Keohane/Nye 1977; Krasner 1983). The term institution is used in line with Robert Keohane (1989, p. 3) as “persistent and connected sets of rules (formal and informal) that prescribe behavioural roles, constrain activity, and shape expectations”. International regimes can include international organizations, but do not need to.
The EU’s deliberate linkage with IOs in the promotion of its internal rules can be considered as a form of nesting: EU rules are either embedded into overarching international ones or subsumed under the latter. Assuming the existence of pertinent international organizations, nesting can occur in different shapes. To start with, a basic distinction must be struck between constellations in which an EU norm co-exists with a compatible international norm on the one, and, on the other hand, constellations where EU rules have no correspondence in existing international norm(s). Depending on this basic constellation, the EU can either try to create an international equivalent by shaping an international norm in pertinent IOs which will then radiate on a broader community, or it can use existing equivalent norms and/or competent IOs in order to boost its horizontal outreach towards third countries.

The creation of an equivalent international norm in the absence of pre-existing ones can be referred to as a vertical *uploading* of internal provisions in order to multilateralize their prescriptive scope. In the case of uploading, the EU transforms an EU rule into international law whereby this rule becomes binding on the other members of the IO. Upload is the most formal and legalized form of institutional nesting. It thus presupposes that the respective IO has regulatory and not only operational functions (see also Bauer et al. in this Special Issue). Next to the absence of a pre-existing corresponding international rule, the success of this strategy depends on the decision-making procedures in the respective international organizations or negotiations. In general terms, we can assume that uploading will be easier, the more weight the EU has in the respective decision-making process, and the less autonomous (in terms of legalization and funding, see below) the IO is from its (EU) principals.

The two other constellations refer to situations in which corresponding international norms already exist or, in the third case, where international organizations can be directly mobilized for the horizontal projection of EU rules, without necessarily having to codify these rules themselves.

An existing corresponding international rule can, from a strategic perspective, act as an anchor or a frame within which the EU can export its more specific own rules. This nesting of EU rules under pre-existing international norms can be referred to as a form of subsumption. *Subsumption* does not involve a vertical upload. Instead, it works horizontally through the framing of an EU rule as a template for implementing broader international norms to which the third countries are already committed. In other words, EU rule transfer is presented as support for compliance with overarching commitments undergone by a third country. Like the mechanism of uploading, also subsumption presupposes a certain regulatory authority on the part of the IO.

Finally, the EU can nest its rules in IOs without formally linking up with international norms or without trying to codify the rule in international law. This occurs when IOs are subcontracted for promoting specifically EU rules in a third country. This type of interplay constitutes a form of *outsourcing* through which the IO acts as a prolongation of EU external policy. Outsourcing presupposes a certain overlap in substance between the IO’s sphere of competence and the EU rules, but it does not work through international norms proper. It thus refers to a
more operational rather than normative type of interplay. This operational mobilization of IOs is more likely to happen when these IOs are reliant on external funding and thus less autonomous, and when they have implementation or operational functions in contrast to regulatory ones. These three pathways of institutional nesting are illustrated in figure 1.

Figure 1: Pathways of institutional nesting

Source: own illustration.

3. Drivers of inter-institutional nesting

The literature on inter-organizational relations has hitherto followed a primarily rationalist or functionalist paradigm (Biermann et al. 2009; Mingst 1987; Oberthür/Stocke 2011; Young 2010; see also Holzscheiter; Tallberg et al. in this Special Issue). The starting point is the assumption that organizations act as rational actors when interacting with each other. The ensuing institutional design of interaction should therefore reflect the functional patterns of demand and supply for certain governance provisions (see also Korenemos et al. 2001). In our case, the basic idea is that the demanding institution, the EU, should seek the cooperation of another institution, an IO, as a function of an expected benefit. Put differently, we expect institutional nesting to be a function of the tangible and intangible resources a given IO can offer to the EU in the fulfillment of the latter’s external governance goals. IOs can offer a range of relevant resources such as personnel, money, institutionalized frameworks of interaction with third countries in the respective policy field, or, in more ideational terms, normative legitimacy, expertise, or contacts.

In theory, we can hypothesize that any political organization, be it the EU, a state or an IO, will seek support from pertinent IOs in the pursuit of particular governance goals, be them internal ones or external. In this sense, the institutional interplay addressed in this contribution shares commonalities with the earlier literature on two level games (Putnam 1988) or studies that have highlighted the instrumental use of the EU and IOs for the projection of domestic regulations (on member states in the EU e.g. Héritier 1996; on states in IOs e.g. Krasner 1993).
Also, the three mechanisms of nesting introduced above can in principle be applied by any international actor. The constellation of motivating factors explaining the use of inter-institutional nesting however will vary according to properties of the demanding actor in question, characteristics of the rule that is to be externalized, and features of the IO whose cooperation is thought.

Applied to the EU, the extent to which it is likely to shop for IOs as external governance resources is proposed to be a function of the following factors which, together, affect the expected benefit of institutional nesting:

- EU properties, in particular: its sectoral leverage, that is its capacity to incite third countries to align with its rules in a particular issue-area. Leverage stems from a constellation of asymmetric interdependence favoring the EU and EU regulatory capacity;
- Properties of the rules in question, which make it easier or more difficult to export. Rule exportability increases with lower degrees of complexity and higher legitimacy; and
- Properties of the respective IOs, in particular their degrees of authority to prescribe rules and their autonomy from their principals.

### 3.1 EU properties

The rationalist or functionalist approach suggests that the incentive to mobilize other IOs in rule-export is bigger, the less resources the EU has itself at its disposal. The EU’s own resources to export its rules can be summarized under the term leverage (see e.g. Levitsky/Way 2006). EU leverage in turn results from two factors: the structure of interdependence with the third country in the respective field and the EU’s regulatory capacity. The structure of interdependence varies across policy fields. Generally speaking, the EU enjoys the most favorable interdependence structure in trade relations, at least vis-à-vis the majority of states in the world (Lavenex 2014). The sheer size of its single market gives the EU an extraordinary power resource with regard to third countries willing to access this market (Rosecrance 1998; Damro 2012; Drezner 2005). Third countries’ market dependence allows the EU to exports its rules by requiring third countries to comply with EU product standards when selling on its market. The diffusion mechanism at play has been coined before as the “California effect” (Vogel 1997): the bigger an export market is, the more likely it is that foreign exporters will lobby their government to align their legislation in order to forgo competitive disadvantages.

EU leverage is much smaller if not inexistent where rule transfer is not supported by structures of interdependence. Apart from favoring the EU, as in market-relations with the majority of countries; interdependence can be either balanced or it can be to the disadvantage of the EU, i.e. favoring the third country. Environmental problems constitute normally more balanced situations of interdependence where both sides benefit from cooperation in protecting the common good (Ostrom 1990), even if one side may benefit more. Such distribution problems are typically the case in river management where downstream countries clearly rely more on the cooperation of the upstream countries than vice-versa. Situations of asymmetric interdependence with distribution problems exist for
instance in migration policies between the sending and the receiving countries of migrants. The EU policy’s emphasis on migration control and the fight against irregular flows create a dependence on countries of transit and origin in the EU’s periphery and beyond whose cooperation becomes essential for fulfilling the policy’s goals. One possible strategy to enhance leverage in such situations where interdependence works to the disadvantage of the EU is to exert conditionality, i.e. providing certain positive incentives or threats of sanctions to incite countries to take over EU rules (Schimmelfennig/Sedelmeier 2005). Conditionality is exerted towards candidate countries to EU membership and, to some extent, the countries of the European Neighbourhood Policy ENP. For the former it is the EU accession, for the latter preferential access to the single market that is made conditional on certain reforms, for instance regarding migration. Empirical analyses show that leverage has hitherto worked well for candidate countries. Beyond this circle, however, the exercise of conditionality is weak or inefficient (Schimmelfennig/Scholtz 2010). Although theoretically, the EU could make market access conditional on compliance with certain rules, studies have also shown that in fields such as immigration policy the EU does not create strong issue-linkages in its trade agreements (Jurje/Lavenex 2014).

An advantageous structure of interdependence alone does however not assure leverage. A second necessary condition is the possession of the regulatory capacity needed to detect and, where necessary, sanction third countries’ breach of EU rules (Bach/Newman 2007; Damro 2012). Again, regulatory capacity in the EU varies between different sectors. The EU’s regulatory capacity is defined by the extent of communitarization in a given policy field and the size and expertise of pertinent regulatory authorities. Given the supranational nature of single market regulations, we can expect that regulations regarding tradable goods normally go along with a strong regulatory capacity on the part of the European Commission and other relevant EU bodies such as regulatory agencies or the Court. In the fields of energy or migration, EU competence is mixed: the EU member states retain strong powers and the EU’s regulatory capacity is therefore much lower. In such a constellation, cooperation with IOs becomes attractive because it may mobilize the latters’ own regulatory capacities involving authority (see below), personnel, contacts, and other.

3.2 Rule properties

The second set of factors determining the likelihood of inter-institutional nesting are properties of the rules being transferred. Two aspects affect a rule’s exportability: its complexity, that is the extent of administrative and civil society expertise it requires for implementation, and the rule’s legitimacy, defined as the degree of resonance it enjoys with domestic norms in the third countries in question or with relevant international norms (see Ecker-Erhardt; Dingwerth et al. in this Special Issue). Both rule complexity and a potential lack of legitimacy lowers third countries’ incentives to adapt. High rule complexity raises the need for EU administrative resources to engage in capacity-building. Weak legitimacy, conversely, raises the need for normative persuasion. Linking up with relevant IOs is
an attractive option in such constellations. On the one hand, involving an IO may mobilize additional expertise and procedural frameworks such as learning fora, trainings and exchanges of best practices as well as potentially funding which should be conducive to capacity-building in complex regulations. On the other hand, IOs are often seen as being impartial and genuinely task-oriented or technocratic, which enhances the legitimacy of the rules they promote. This legitimation effect is even stronger when the third countries in question are actually members of the IO, thereby adding a sense of ownership to the ensuing commitment.

3.3 IO properties

Thirdly, inter-institutional nesting depends on properties of the IOs active in the respective field. While the existence of an IO dealing with the issue area in question is a precondition, the likelihood that this IO is mobilized as a “transfer agent” (Stone 2012) is influenced by its authority and autonomy. Authority thereby refers to an IO’s own competence to issue rules. This competence has to be based on the IO’s mandate or charter. The mechanism of uploading introduced above presupposes a certain authority of IOs to codify international norms. Similarly the framing of EU rules as international ones under subsumption presupposes a certain degree of international codification or authority. By contrast, the mechanism of outsourcing does not require rule-making authority since it only involves IOs as sub-contracted operational agents in the implementation of EU rules.

The second relevant property is autonomy. I define autonomy in terms of an IO’s legalization and funding. Legalization comprises on the one hand the decision-making procedures within the IO and the extent to which its member states retain control over decisions, expressed for instance in unanimity rules. On the other hand, it relates to the strictness of an IO’s rules, i.e. their degree of obligation, precision and their oversight by monitoring or judicial bodies (see Bauer et al. in this Special Issue; Zürn/Zangl 2004; Abbot et al. 2000). The funding base is a second factor affecting an IO’s autonomy. The more stable the sources, and the less earmarked the funding, the more autonomous an organization is.

Summing up, on the basis of this rational design framework, we come to the following expectations:

- The benefits of inter-institutional nesting are higher, the less own leverage the EU has to transfer its rules in a particular sector or policy area. Therefore, we expect nested rule transfer to be stronger in those policy areas where the EU cannot directly capitalize on the leverage of its single market, where it is itself dependent on third countries to achieve its policy ends, and where it lacks strong regulatory capacity.
- Independently from EU leverage, rules have properties that make them easier or more difficult to transfer. We refer to this variable as rule exportability. The benefit from liaising with IOs in rule-transfer will be greater the less ‘export-

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3 For different conceptualizations see the other articles in this Special Issue, e.g. Bauer et al.
able' a rule is. Exportability decreases, the more complex a rule and the less legitimate it is in the eyes of the target state.

- Finally, the benefits of inter-institutional nesting and the strategy of nesting depend on what an IO can offer. Generally speaking, the incentive to upload a rule towards an IO will be higher, if the IO has a certain rule-making authority. At the same time, the likelihood that uploading takes place is bigger, the less autonomy the IO has vis-à-vis its principals, among which the EU. For subsumption, both strong authority and autonomy can be conducive since no active involvement of the IO is required. For outsourcing, finally, IOs without authority and with little autonomy will be particularly prone to this kind of institutional interplay, especially if they have pertinent tangible or intangible resources to offer (personnel, contacts, expertise etc.).

In the following, we illustrate the plausibility of these claims in a selected choice of five EU policies that cover representative sections of the acquis communautaire and that vary along the dimensions highlighted above. This qualitative comparative set-up is necessarily limited and does, as such, not claim generalizability.

4. Nested rule projection in practice

From a rational institutionalist perspective, the patterns of institutional nesting in EU external relations should vary according to the functional benefits associated with this move as they are influenced by the extent of EU leverage in the respective sector, rule properties and characteristics of relevant IOs.

To start with, we should expect the EU to actively mobilize of IOs in rule-transfer via uploading, subsumption or outsourcing in particular in those issue-areas in which it has less leverage, where EU rules are complex and their legitimacy is internationally contested.

In order to explore the plausibility of these claims, five policy areas have been chosen that differ in these dimensions. The first two cases are product rules (car emission standards and chemical regulations), which – being required for market access – benefit from the EU’s economic leverage. The two cases however differ with regard to the exportability of pertinent rules, with chemical regulations representing a particularly complex and therefore also contested set of provisions. The third and fourth cases are non-market related regulations where the EU has no immediate leverage. These include water management as a relatively uncontested field and migration control where EU and third country priorities diverge and where EU restrictive rules have low legitimacy. In addition, we also include a fifth case which sits somewhere in the middle: competition policy. While linked to the single market, and thus also benefiting from strong EU regulatory capacity, competition policy is not attached to tradable goods and can therefore not be directly imposed as a condition for market access. Nevertheless, as a standard clause in EU trade Agreements (Damro 2006), competition policy benefits indirectly from EU leverage. While some aspects of the policy, such as state aid, are both complex and sensitive to many third countries (Freyburg et al. 2011), other aspects, like the fight against hard-core cartels, are much more consensual and
constitute the focus of EU activities. Therefore, we treat this as a ‘mixed’ case. Table one summarizes the case selection.

**Table 1: Summary of case selection**

<table>
<thead>
<tr>
<th>EU leverage</th>
<th>Rule exportability</th>
<th>Case selection</th>
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<tbody>
<tr>
<td>High</td>
<td>High</td>
<td>Car emission standards</td>
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<td>Chemical regulations</td>
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<td>Low</td>
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<td>Water management</td>
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<td>Migration policy</td>
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**Source:** own illustration.

In all five policy fields we do have relevant IOs active on the wider European continent and beyond. For car emissions it is the UN Environmental Commission for Europe (UNECE); for chemical regulations the UN Environmental Programme UNEP and the Organization for Economic Cooperation and Development OECD; for water management in Europe it is again mainly the UNECE; for migration policy the United Nations High Commissioner for Refugees UNHCR and the International Organization for Migration IOM; and in competition policy we have relevant activities – apart from the unsuccessful attempts to codify the matter in the World Trade Organization WTO – in the United Nations Conference on Trade and Development UNCTAD, the OECD and the International Competition Network ICN, among others. Most of these IOs have some sort of decision-making authority, apart from the IOM and the ICN. The IOM is a non-UN intergovernmental organization providing services to states and migrants in the area of migration governance; the ICN is a transgovernmental network of competition authorities promoting information exchange and coordinating policy enforcement.

The review of EU-IO interplay in these various fields yields a mixed picture on the explanatory potential of the proposed rational institutionalist approach. On the one hand, the analysis confirms that nesting is particularly strong where we expect it most, i.e. in fields where it lacks leverage and where its rules are either complex or normatively contested. On the other hand, however, we find uploading also in the field where we would expect it least, i.e. the promotion of car emission standards. In fact, different forms of nesting can be found in all five policy areas. This suggests that EU inter-institutional nesting does not follow rational, functionalist motives alone. Rather, the EU’s quest for cooperation with IOs in its external rule promotion seems to follow also more diffuse institutional routines or habits.
4.1 Weak leverage – strong nesting

From a rationalist, resource-oriented perspective, we expect EU institutional nesting to be strongest where the EU’s own rule transfer capacity is low, i.e. where it cannot directly capitalize on its market power. In these fields, the benefit from mobilizing additional material or immaterial support through IOs should be strongest. Put differently, the incentives for linking up with IOs should be particularly strong for rules that are not diffused through market transactions. Such rules concern in the economic sphere for instance competition policy, where no direct reciprocity exists; environmental regulations beyond product standards, such as for instance water management; or migration policies, where the EU is particularly dependent on third country cooperation in order to achieve its protectionist goals.

Competition policy is an interesting case where no binding international norms exist so-far. At the same time, the EU and in particular DG Competition has long promoted European rules abroad (Aydin 2012; Damro 2006), and so have the US. In the absence of established international norms, the EU has tried to upload certain (minimal) competition provisions to the WTO in the so-called Uruguay Round. Herewith, it opted, as our expectations suggest, for the strongest, that is, most authoritative IO in the field. Opposition by both developing countries and the US has however, aided by the consensus principle of decision-making in the WTO, blocked this endeavor. In the absence of such binding international norms, DG Competition still seeks to upload the EU approach to other, less authoritative fora such as the International Competition Network (ICN), the OECD and UNCTAD Competition Committees. In these fora, however, as in the WTO, EU impact is shared with the sometimes differential influence of the US.

In the environmental field, the multitude of multilateral agreements offers ample opportunities for the strategy of subsumption, while we find also uploading and outsourcing, in particular at the regional level. A salient example is water policy. The 2000 Water Framework Directive stipulates that environmental institutions shall follow functional rather than political or jurisdictional lines (Article 3). It calls for the creation of transboundary water protection commissions organized along the hydrological units of rivers of lakes, regardless of the countries’ membership in the EU. The same principles were emulated in the EU’s Marine Strategy Directive. As a consequence, pre-existing regional commissions such as the International Commission for the Protection of the River Danube (ICPDR), the Black Sea Commission or, to the South, the United Nations’ Environmental Programme Mediterranean Action Plan have gradually adopted the EU template for water management. EU rules are thereby subsumed under overarching international commitments undergone by the third countries such as the 1994 Danube River Convention or the 1976/1995 Barcelona Convention for the Protection Against Pollution in the Mediterranean Sea (Lavenex 2008). DG Environment and other programs under the EU’s Neighbourhood Policy further finance a multitude of projects carried out by the UN’s Environment for Europe program, UNEP and other environmental organizations designed to implement these rules. The same can be observed in other fields such as hazardous waste where EU regu-
lations are sold as “a blueprint for a sound national or trans-national legislation” for meeting self-agreed targets under international law (Neubauer 2007, p. 28).

In sum, it appears that institutional nesting is indeed strong where the EU has little leverage to promote its rules. In the case of competition policy, where no prior international norm exists, the EU has first tried to upload its template to the WTO. The WTO’s institutional autonomy from the EU as a member or donor and its authority emanating from the production of ‘hard law’ has however allowed other states to counter this initiative. By consequence, the EU has opted for other fora with lower degrees of authority, where an upload, even if it were successful, is of lesser attractiveness given these organizations’ lack of rule-making power. The environmental field differs in so far as it is densely populated by international agreements and fora. The multitude of international agreements and norms related to environmental issues provides ample ground for strategies of uploading, where no rule existed before, and subsumption, where pertinent provisions exists. The fact that we find less strategies of outsourcing in this field may be due to the fact that cooperation in the field of water management works strongly through networks of regulators and not via IOs having strong operational mandates.

4.2 Nesting in contested fields

The functional incentives for institutional nesting should be particularly strong where the EU not only has weak leverage but where rule properties further challenge the likelihood of successful rule transfer. Regulations against irregular migration and readmission clauses obliging third countries to take back persons staying irregularly in the EU, but also the promotion of asylum systems outside Europe are predominantly in the EU’s interest and less of the source and transit countries of migrants at which they are addressed. Here, the mobilization of IOs is not only a means to generate additional resources. It can also be used as a means to enhance the legitimacy of EU-centric claims by framing EU policies in terms of overarching international endeavours and shared responsibilities.

The field of international migration is marked by a lack of international rules regarding states’ admission of non-nationals, yet a relatively strong regime exists for refugee protection (Lahav/Lavenex 2012). Despite the absence of an international migration regime, the International Organization for Migration, an inter-state organization outside the system of the UN, has established itself as leading agency for cooperation except regarding asylum. The status of refugees is regulated in the 1951 Geneva Convention and its 1967 Protocol and through the work of the United Nations High Commissioner for Refugees (UNHCR).

The EU’s immigration- and asylum policy has developed an external dimension first with the prospect of eastern enlargement. The scope of this external migration policy has then subsequently moved further South- and Eastwards and now follows a “global approach” (Lavenex 2006). Faced with the difficulty to engage third countries in a protective policy that is primarily to the benefit of the EU, the latter has intensified its “endeavours to better coordinate its activities with those
of international organisations most active in this field” (European Commission 2011, p.7).

From a comparative perspective, external rule transfer and inter-institutional nesting are particularly strong in these areas. Both the IOM and the UNHCR have become major subcontractors of EU projects centering on the promotion of particular rules (outsourcing); while international refugee law provides ample scope for subsumption of EU rules under overarching international norms. Uploading has been more limited, as refugee law precedes the development of an EU competence and the UNHCR can be seen as relatively autonomous in its decision-making structure.

Outsourcing of policy transfer to IOs has started in parallel with the development of an external dimension to the EU’s asylum and migration policy. UNHCR’s involvement in the transfer of the EU’s acquis communautaire started with the policies of pre-accession towards candidate countries, where it participated in the preparations and implementation of pertinent EU programs. From then onwards, the central activities have been delegated to international organizations. Thus, the UNHCR has become responsible for implementing the EU’s Regional Protection Programmes that aim at strengthening institutional capacities in third countries in dealing with asylum seekers and refugees (European Commission 2011, p. 7). Conversely, the implementation of two other central tools of the EU’s external migration policy, the elaboration of country migration profiles and the promotion of Regional Consultation Processes on asylum and immigration (RCPs), have been delegated to IOM (ibid.).

The Söderköping process, an RCP involving a number of newly acceded eastern European EU member states and their neighbors is a good example the institutional dynamics involved in these processes. Originally launched outside the EU framework by the UNHCR and the Swedish Migration Board, the initiators turned to the European Commission in the search for a more solid basis for funding. EU funding entailed a reorientation of the process towards EU rules. Originally meant to serve a forum for dialogue where the participating countries can discuss their concerns in migration/asylum/border management area and look for solutions in addressing these concerns, the forum became more targeted towards EU policy transfer in 2004. Since, its main function is described as “transferring experience of the newly acceded EU member states and the candidate country to the WNIS [Western Newly Independent States] in aligning their migration and asylum related legislation, policies and practices with the EU acquis standards and further networking among the participants”. The aim is to “Strengthen the role of Belarus, Moldova and Ukraine as increasingly important partners of the EU in managing migration and providing protection to asylum seekers and refugees” (Cross-Border Co-operation/Söderköping Process 2003, p. 11).

Next to outsourcing, subsumption is a strategy widely used towards non-candidate countries, and in particular towards countries which are less forthcoming in this field of cooperation. While outsourcing can thus be seen as primarily a means to enhance implementation capacities by directly involving other IOs, subsumption yields more indirect benefits by enhancing the legitimacy of EU norms. This strategic use of subsumption is documented for instance in the ENP plan-

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ning documents, the so-called action plans. While the action plans concluded with Moldova and Ukraine openly invoke the EU asylum acquis as a target for approximation, those concluded with the southern neighbors do not mention EU rules but refer to international commitments. Accordingly the EU-Morocco action plan calls for the implementation of the Geneva Convention (which Morocco has signed but not implemented). It does not make any reference to EU rules and rather proposes “the exchange of experiences” in the implementation of these international provisions. It is interesting to note that this corresponds to a generally stronger contestation of asylum norms in the Southern Mediterranean context as opposed to the more complacent attitude of the EU’s eastern neighbors. In this context international institutions provide normative frameworks that blur and legitimize EU policy transfer in the guise of (quasi) universal commitments.

4.3 Strong leverage – no nesting?

So-far, we have argued that the EU will mobilize IOs in the externalization of its internal rules in particular in those fields where it lacks leverage and where the complexity and weak legitimacy of the rules constrain its own influence. Conversely, our rationalist framework also suggests that EU institutional nesting will be weakest where the EU has strong own rule transfer capacities. This is the case where it can directly capitalize on its market power and where it has developed sufficient regulatory capacity. Such a constellation exists in product regulations. In recent years several studies have underlined the diffusion of EU product regulations around the world, be them car emission standards, cosmetics or chemicals regulations (Bach/Newman 2010; Bradford 2012; Holzinger/Sommerer 2014). This policy diffusion is primarily a function of interdependencies and market shares, i.e. indirect competition, the classic California effect. It does not presuppose active rule export and therefore can work without the intermediary of international organizations. However, a look at relevant IOs and their activities in the respective fields shows that often, EU actors – in particular the European Commission (the competent DGs) or relevant regulatory agencies – do actually promote their templates in these organizations. And this occurs irrespectively of the complexity of the underlying issues. Car emission standards are a case in point. Although not constituting a particularly complex piece of regulation, rule diffusion has not only occurred through the California effect, but it has been actively sustained by uploading EU regulations to the UN Environmental Commission for Europe (UNECE) and its responsible body, the Group of Rapporteurs on Pollution and Energy (GRPE) (Holzinger/Sommerer 2014). Thereby, the EU norm was translated into an UNECE standard, applying to a much wider membership. The European Commission retains the central position in this network, being responsible for the vast majority of submissions to the group (see the group’s list of submissions at the UNECE homepage (UNECE 2013)). This case suggests that nesting with responsible IOs may be a more general strategy of the EU and that it discriminates little across the comparative advantages this nesting bears for reaching its targets. The case of car emission standards differs little from more complex and contested environmental regulations such as the EU chemicals regu-
lation REACH. Diffusion of this costly piece of legislation has not worked through market competition alone (Scott 2009; Biedenkopf 2012). Nesting with competent to international organizations is an important complement. Cornerstones of this international scene are the chemicals programs in the UN Environmental Programme UNEP and the OECD. Having endorsed REACH’s basic regulatory approach, these programs contribute to its diffusion through the dissemination of information and the exchange of best practices. The EU and its member states are the main financial contributors to these programs (see the Directorate General Enterprise and Industry’s website on REACH and related international activities at the European Commission’s homepage (European Commission 2013)). In addition, regulatory outreach is sustained through financial contributions of the EU to projects promoting policy adaptation in third countries, usually by contracting overarching IOs such as the WHO, UNEP, the FAO or others (see list of projects in Commission 2008). In line with our theoretical expectations, it can thus be said that in the case of complex legislation, nesting with competent IOs is particularly strong. In the case of chemicals it includes, apart from uploading elements of REACH to competent bodies, also the subcontracting of relevant IOs for rule diffusion.

Summing up, we find instances of inter-institutional nesting in all fields, even where the functional incentives to do so are small given the presence of favorable conditions for EU autonomous rule transfer, such as for instance in the case of car emission standards (EU leverage, high exportability). However, differences exist between the different pathways. EU leverage seems to favor the uploading of EU rules in pertinent IOs, in particular when these IOs lack a pre-existing corresponding international rule. We observe this strategy both in the case of car emission standards and chemicals regulations and in our mixed case of competition policy. This pattern can be explained by the fact that the very properties that determine EU leverage towards third countries also facilitate its impact in IOs. Apart from the link between a given rule and market access, these properties include regulatory capacity and the communitarization of EU competence. In this sense, we can hypothesize that the attempt to generalize one’s internal rules can constitute a normal ‘reflex’ or routine for international institutions once they have already developed such an international rule internally. Beyond the attempt to internationalize the internal norm, the combination of leverage and high rule exportability does not yield other patterns of nesting in the cases under study. The case of chemicals regulations shows however, as expected, that increasing rule complexity enhances the likelihood of more nesting strategies, in this case the outsourcing of policy promotion to other IOs.

The use of outsourcing is particularly strong in the fields where the EU lacks strong leverage, i.e. water protection and immigration policy. Probably given the pre-existence of international rules in these fields, we also find ample evidence for subsumption, i.e. the framing of EU rules in terms of overarching international ones. This is particularly explicit in the field of refugee protection where the legitimacy of EU attempts at externalization is contested.

Thus, while the overall phenomenon of nesting external governance seems to reflect more general inclinations of the EU to work with relevant IOs, rational
institutionalist motives seem to matter in particular for the most active form of IO involvement, outsourcing. We observed outsourcing in particular in those policy areas where the complexity of the rules or/and their lack of legitimacy pose challenges to policy transfer (chemicals regulations and migration policies), regardless of the extent of EU leverage. In these situations, the mobilization of IOs for the promotion and implementation of EU rules constitutes both a source of expertise and additional resources and a source of legitimacy in the face of contested demands. Table two summarizes these preliminary findings.

Table 2: Summary of findings

<table>
<thead>
<tr>
<th>Rule exportability</th>
<th>EU leverage</th>
<th>Competition Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>High</td>
<td>Uploading</td>
</tr>
<tr>
<td>High</td>
<td>Car Emission Standards</td>
<td></td>
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<tr>
<td></td>
<td>Chemical Regulations</td>
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</tr>
<tr>
<td></td>
<td>Uploading</td>
<td>Outsourceing</td>
</tr>
<tr>
<td>Low</td>
<td>Water management</td>
<td>Oursourcing</td>
</tr>
<tr>
<td></td>
<td>Subsumption</td>
<td></td>
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<tr>
<td></td>
<td>Migration Policy</td>
<td>Oursourcing</td>
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<td></td>
<td>Subsumption</td>
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</tbody>
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Source: own illustration.

5. Conclusion

This paper has set out to shed light into an increasingly prominent yet hitherto under-investigated field of institutional interplay in international relations: the interaction between organizations (the EU and IOs) and rules (EU and international rules) in the externalization of the European acquis communautaire. The development of an external dimension to wide sections of the EU’s acquis and the EU’s active promotion of internal rules to third countries reach out to overarching IOs and treaties. In a multitude of policy areas, the EU is actively mobilizing other IOs and international rules in the promotion of its internal policies. This institutional nesting of the acquis communautaire in the broader institutional order takes three forms: the EU seeks to upload its internal rules to IOs and to formalize them as broader international norms; it subsumes internal rules under pre-existing international ones, thereby boosting the former’s legitimacy; and it subcontracts IOs in the promotion and implementation of its internal rules towards third countries.

In order to understand these processes, the article set out with a rational institutionalist approach. This approach conceives of inter-organizational relations as an outflow of resource interdependence, both in terms of tangible (money, per-
and intangible goods (expertise, legitimacy, contacts). On this basis, conditions were proposed under which one should expect more or less mobilization of IOs on the part of the EU in its external rule projection. The conditions are: EU leverage, defined as the capacity to use market power and regulatory capacity; rule exportability, referring to the complexity of the rule that is to be exported and its legitimacy; and IO properties, in particular their authority and autonomy.

The review of EU rule projection in five policy fields representing different degrees of EU leverage, rule exportability and IO authority/autonomy provided only partial confirmation for the pertinence of rational institutionalist explanations. We found instances of institutional nesting where this would not seem necessary from a resource dependence perspective given EU economic leverage and regulatory capacity (car emission standards) or the legitimacy of EU rules (water management). We could therefore conclude on the basis of these preliminary findings that the EU has a general inclination to internationalize its acquis communautaire, be it through the uploading towards IOs that hitherto lack corresponding norms, or through the subsumption of EU rules under pre-existing international ones. This general inclination does not discriminate strongly according to functional incentives.

This contrast with the third and most intensive form of IO instrumentalization, the outsourcing of EU rule promotion. While our limited number of cases does not allow to draw general conclusions, the patterns of outsourcing reflect more strongly the functional incentives identified by the rational institutionalist approach. We find instances of outsourcing only in cases where either EU leverage (water management) or rule exportability (chemical regulations) is low, and it is most wide-spread in the field where both conditions are weak (migration).

In sum, these results point at two agendas for further research on institutional interplay. Firstly, the analysis suggests that one can distinguish two different logics of institutional nesting in EU external relations: the more general and normative inclination to internationalize internal rules through uploading or subsumption on the one hand, that seems to follow an institutionalized routine, and the more strategic, targeted instrumentalization of IOs through outsourcing where the own rule projection capabilities are low. While our rational institutionalist framework seems to capture this second form of strategic outsourcing relatively well, the more general patterns of uploading or subsumption resonate better with organizational or sociological approaches that highlight the role of organization-specific policy approaches (Tallberg et al. in this Special Issue), or, eventually, overarching “metagovernance-norms” (Holzscheiter in this Special Issue). The notion of policy-approaches refers to an institutionalized habit within an organization, in our case the EU, that prevails over time and across functional policy areas (see Tallberg et al. in this Special Issue). This interpretation would resonate with the EU’s self-depiction as an actor devoted to multilateralism and with studies that emphasize its normative insertion into the broader multilateral system (e.g. Manners 2002; Laatikainen/Smith 2006). In this sense, uploading and subsumption could be nesting strategies particular to the EU and embedded in its genuine foreign policy style. For the emerging literature on institutional interplay in the
international system it would be interesting to compare these findings with the rule projection strategies of states and IOs in order to see whether this policy approach is genuine to the EU as a specific type of political organization or whether it corresponds to a more general logic of appropriateness in the international system. The operational mobilization of IOs in the implementation of non-internationalized internal rules, here referred at outsourcing, must however be distinguished from this normative form of interplay as it clearly follows a more narrow, resource oriented logic of consequentiality.

Secondly, this article has focused on the EU side of the inter-institutional relationship. Future studies could address more prominently the characteristics of partner IOs that favour or impede different forms of interplay. As indicated above, an IO’s authority to codify international rules is a precondition for formal uploading and subsumption. Strong IO autonomy, conversely, reduces the likelihood of its instrumentalization by other international actors. As the juxtaposition of IOM and the UNHCR in asylum and migration policy shows, the extent of instrumentalization varies with the IO’s autonomy from its donors, both in terms of its mandate and budget. Future research could also address the consequences of institutional nesting for the IOs in question. While the mechanisms of uploading and subsumption may well have synergetic effects, the more intrusive mechanism of outsourcing can have more profound implications, generating, over time, a situation in which the subcontracted IO becomes dependent on the donor actor for funding and in the definition of its substantive profile. In any case, it emerges that IOs are less and less independent in their actions, not so much in terms of their autonomy from member state principals, but also, and increasingly in terms of their interdependence and interaction with other actors populating the international realm.

References


