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Network governance and the domestic adoption of soft rules

Martino Maggetti and Fabrizio Gilardi

ABSTRACT European regulatory networks (ERNs) are in charge of producing and disseminating non-binding standards, guidelines and recommendations in a number of important domains, such as banking and finance, electricity and gas, telecommunications, and competition regulation. The goal of these soft rules is to promote ‘best practices’, achieve co-ordination among regulatory authorities and ensure the consistent application of harmonized pro-competition rules across Europe. This contribution examines the domestic adoption of the soft rules developed within the four main ERNs. Different factors are expected to influence the process of domestic adoption: the resources of regulators; the existence of a review panel; and the interdependence of the issues at stake. The empirical analysis supports hypotheses about the relevance of network-level factors: monitoring and public reporting procedures increase the final level of adoption, while soft rules concerning highly interdependent policy areas are adopted earlier.

KEY WORDS European Union; independent regulatory agencies; networks; regulation.

INTRODUCTION

Transnational networks have gained much scholarly attention over the last decade.¹ They are considered the constitutive element of a ‘new world order’ that emerged in a context of denationalization ‘upward’, ‘downward’ and ‘side-ward’ – that is, to supra-state, sub-state, and non-state actors (Hooghe and Marks 2001; Slaughter 2004). Following Slaughter, networks are ‘rapidly becoming the most widespread and effective mode of international governance’ (2004: 185). The main features of this mode of governance are the growing fragmentation of sovereignty they entail, the multi-levelness of the institutional setting and the reliance on collaborative forms of policy-making (Jensen *et al.* 2014; Torfing and Triantafillou 2011). Accordingly, the traditional attributes of nation-states are being disaggregated into distinct functional parts – regulatory agencies, executives, legislatures and courts – which interact in increasingly institutionalized transnational arenas to manage complex transborder issues. This mode of governance operates at different territorial scales, where jurisdictions are task specific and are intended to be flexible and adaptable (Hooghe and Marks 2003). However, although transnational networks are gaining sizeable policy-making power, nation-states remain the crucial locus of legitimate authority in global governance

(Drezner 2007). As a consequence, transnational regulation cannot rely on hard law but is limited to soft rule-making – involving principles of ‘best practice’, standards and guidelines – that are not directly enforceable at the domestic level. Therefore, key questions about the effectiveness of network governance remain open, such as how soft rules approved by networks spread in countries that are represented at network level and beyond.

To tackle this question, the case of the European Union (EU) is particularly helpful. The EU is considered an advanced networked polity that functions as a ‘regulatory state’ (Majone 1996); co-ordinates policies through ‘informal’ instruments of ‘soft law’ (Bache and Flinders 2005; Piattoni 2010); and advances its integration through an ‘experimentalist architecture’ (Sabel and Zeitlin 2010) based on autonomy granted to lower-level entities and learning platforms promoting reporting, peer review and deliberative procedures. New governance studies assume that European institutions encourage informal network governance for functional and instrumental reasons – that is, to enhance consensus-building capacity, harmonization and convergence in areas that are resilient to ‘hard’ integration and Europeanization (Héritier 2003). What is more, policy transfer and diffusion studies operationalize networks as catalysts of diffusion processes (Gilardi 2010, 2012), which offer horizontal channels for co-operation and exchange of information among different types of political actors who could foster innovative policies and disseminate ‘best practices’ among member states (Dolowitz and Marsh 2000; Radaelli 2000). Governance networks that emerged in the EU are more complex and more sophisticated than other intergovernmental networks. They combine bottom–up and top–down dynamics, as they were created under the concomitant impulse of European institutions and member state agencies. Therefore, while they enjoy support from the EU Commission, they also benefit from relative autonomy in their meta-regulatory activities.

Great expectations surround networks as an instrument for promoting effective soft rules in the EU. However, empirical evidence is still rather limited (Papadopoulos 2008). After decades of wide use of the network metaphor among scholars and practitioners, ‘it still remains to be systematically shown that policy networks do not only exist but are really relevant to policy-making’ (Borzel 1998: 253). In particular, the patterns of domestic adoption of the soft rules that are initiated, developed and approved by European networks require an in-depth comparative study. On the one hand, this type of study will contribute to the literature on network governance. Previous empirical studies, mostly focused on a single country or network, have shown that variations in national and sectoral factors may have an influence on decision-making processes at a transnational level (Maggetti 2014; Maggetti and Gilardi 2011; Van Boetelaer and Princen 2012; Yesilkagit 2011). However, it is crucial to understand to what extent and how network-level factors also matter with a systematic comparative perspective. On the other hand, the literature on soft law has emphasized the complex relations between hard and soft rules and has underlined the distinctive advantages of the latter in terms of lower costs,

flexibility and benefits of co-operation (Skjærseth *et al.* 2006). The use of soft law instruments in the international realm is 'considered valuable on its own, not just as a stepping-stone to hard law' (Abbott and Snidal 2000: 456). Therefore, instead of strictly opposing hard and soft law, it is fruitful to recognize that a combination of these two approaches may be essential to accomplish specific goals (Trubek *et al.* 2005). In this context, however, the specific processes through which soft rules developed in transnational arenas can spread and be adopted as binding regulations at the domestic level are not well understood.

To explore these issues, this contribution offers an empirical analysis of the domestic adoption of soft rules approved by the four major European regulatory networks (ERNs) in charge of regulating finance, energy, telecommunications and competition. The main findings point to the relevance of network-level factors. On the one hand, monitoring and public reporting procedures increase the final level of adoption of soft rules. On the other hand, soft rules are adopted earlier in highly interdependent policy areas. This distinction between the extent and the timing of adoption was unanticipated and emerged quite inductively from our empirical analysis. It is, however, theoretically important, as it indicates that the process of adoption should be studied diachronically, whereas focusing on snapshots (e.g., the rate of adoption on early stages of the diffusion process) may induce inferential errors.

The structure of the contribution is as follows. The next section introduces European regulatory networks. After discussing our theoretical expectations, data and methods are presented. The empirical analysis focuses on the patterns of diffusion, with a quantitative analysis of rule adoption and a qualitative analysis based on interviews with network key players. The concluding section summarizes the findings and discusses their implications.

EUROPEAN REGULATORY NETWORKS

ERNs are transnational organizations that federate the regulatory authorities of EU member states, as well as some non-member states such as Iceland, Norway and Switzerland. There are four main ERNs in charge of the regulation of finance, energy, telecommunications and competition. The Committee of European Securities Regulators (CESR) constitutes the leading network of the Lamfalussy process, the stage devoted to the implementation of the new system of regulation of the European financial markets (and was replaced by the European Securities and Markets Authority [ESMA] on 1 January 2011). The energy network brings together the bottom-up and top-down groups of national regulators of electricity and gas – that is, the Council of European Energy Regulators (CEER) and the European Regulators' Group for Electricity and Gas (ERGEG, now ACER [Agency for the Cooperation of Energy Regulators]). The Independent Regulators Group of telecommunications (IRG) is closely related to the European Regulators Group (ERG, now BEREC [Body of European Regulators for Electronic Communications]), which was set up as an advisory group from a decision of the European Commission. The European

Competition Network (ECN) consists of national competition authorities and the EU Commission. The first two top-down networks (CESR and ERGEG) have recently acquired the legal status of European agencies, becoming thus more institutionalized and resourceful, but they still rely on national regulatory authorities for participation and implementation and are organized in a network-based way (Levi-Faur 2011). It is also worth noting that, although bottom-up and top-down networks such as CEER/ERGEG-ACER and IRG/ERG-BEREC are formally decoupled, each pair is made of organizations that largely overlap in practice and can be considered as a single governance network in charge of meta-regulating a given policy area.²

ERNs were established following two parallel processes through which member states and the European Commission interact to deal with the regulatory gap in European governance Eberlein and Grande 2005; (Eberlein and Newman 2008). A single European regulatory space is needed to ensure the coherent and consistent implementation of rules. However, regulatory powers are still mainly located at the domestic level because member state governments have resisted shifts of authority to the EU level (Van Boetzelaer and Princen 2012). Then, national regulatory authorities – namely, independent regulatory agencies (IRAs) – decided to establish transnational groups to exchange information and co-ordinate their operations at the international level. These agencies were looking for partners and allies to improve their regulatory co-operation, solve common problems and to protect their common interests. At the same time, in the eyes of the European Commission, networks represented a second-best solution to favour the harmonization of European regulation, provide expert-based advice, and promote pro-competition rules given member states' unwillingness to dismiss their domestic authorities (Coen and Thatcher 2005, 2008; Thatcher and Coen 2008). This means that the European Commission is at the same time a 'principal' and a partner of agencies in ERNs.

Although they differ in their institutionalization and in their relation with the EU (see next section), ERNs are in many respects remarkably similar organizations (Maggetti 2013). Their organizational model usually includes a secretariat; a management board, which is ultimately responsible for decision-making; and a number of permanent committees and *ad hoc* working groups, wherein members interact on a regular basis. The members of the network – domestic independent regulatory agencies (IRAs) – are distinct organizations with uneven resources, but they constitute a relatively uniform type of actor. They have comparable organizational models and similar competencies. They also share common understandings regarding regulatory policies. In addition, because IRAs are unelected and isolated from the electoral cycle, the interaction among their representatives is expected to follow a less strategic and short-term game than negotiations among other types of political actors, such as representatives of political parties and interest groups. Network goals are also roughly the same. The representatives of national authorities convene to exchange information, produce expertise, improve co-ordination and harmonize rules in the common market. To do so, their tasks mostly consist of the development and

dissemination of 'pro-competition' soft rules to meta-regulate European markets, in the form of non-binding standards, guidelines and recommendations.

EXPLANATIONS OF DOMESTIC ADOPTION

Traditional explanations of compliance – based on veto players, misfits and politico-administrative culture – do not seem to work in the case of soft rules produced by ERNs. Instead, previous empirical studies found that actors' properties such as network centrality are related to the timing and the extent of domestic adoption (Maggetti and Gilardi 2011). In this contribution, we shift our analytical focus to the 'meso level' – to (network) structures that cannot be entirely reduced to individual members alone. This perspective allows us not only to broaden our glance to key explanatory factors of adoption patterns beyond traditional actor-based explanations, but also to offer an informed outlook on the possible reforms of the architecture of network governance. To this aim, we selected the main features that can be manipulated by policy-makers (the resources of agencies and the presence of network structures that could favour the spread of soft rules) and the structural conditions with which policy-makers have to cope (namely those related to the degree of policy interdependence), while keeping actor-level factors constant.

To begin with, it is possible that the *resources of network members* shape their capacity to promote the domestic adoption of soft rules, regardless of network-level factors. This can be somewhat considered the 'null hypothesis'. Following resource mobilization theory (Jenkins 1983; McCarthy and Zald 1977), organizational resources affect the activism of public sector agencies in local resource exchange networks (Boje and Whetten 1981). By analogy, we can expect that resources provide agencies with the means to ensure the domestic implementation of the rules that they have initiated, co-produced and agreed upon at transnational level. Resourceful independent regulatory agencies have indeed the organizational capacity to transpose transnational soft rules into domestic regulations that are directly enforceable by the agency itself. What is more, more resources allow them to have an indirect impact on domestic adoption by initiating law-making procedures and by lobbying the parliament and the government to support regulatory reform in line with the soft rules established at the network level (Abney 1988; Maggetti 2009). There are two counterarguments to be considered. First, resourceful regulators are also well equipped to resist compliance with transnational rules. However, the case of ERNs' rules is different from that of international standards that are externally imposed to domestic regulators. Indeed, agencies are expected to be more compliant with the rules that have been developed and agreed upon by themselves at the network level. Second, resources can be associated with the stringency of the regulatory framework and thereby be at odds with the need for soft rules. In the case of ERNs, however, as anticipated in the introduction, soft law is expected not to challenge but rather to supplement hard law. These limitations reduce the scope of application of this hypothesis to soft rules endogenously

produced by the organizations that should then adopt them at the domestic level. In this case, resources are expected to favour the domestic adoption of soft rules as binding regulations.³

H1: The higher the resources of network members, the likelier that the soft rules developed at the network level are adopted at the domestic level.

Furthermore, a crucial assumption of policy network theories (Rhodes 1990; Wonka and Rittberger 2010) is that formal *network structures* have an impact on policy outcomes (Egeberg 1999; Kogut 2000; Waarden 1992). As anticipated above, in the case of ERNs, networks have comparable structures corresponding to ‘network administrative organization’ (NAO)-governed networks – that is, groups with a separate administrative entity set up specifically to manage and co-ordinate the network (Kenis and Provan 2009; Provan and Kenis 2008). However, some ERNs have established more sophisticated procedures than others to support the diffusion of soft rules. The most important organizational element dedicated to this task is the so-called review panel (or review group), which is a permanent working group in charge of monitoring the spread and the implementation of soft rules approved by the network. The explicit goal of review panels is to exert ‘peer pressures’ for compliance through regular appraisals and reporting procedures that generate publicly available reports. It is assumed that these pressures will create reputational incentives for national regulatory authorities to enforce soft rules in order to fulfil the expectations of other members and to avoid public blame. In that regard, it is important to acknowledge that review panels did not emerge randomly. Instead, they were created as a by-product of the ‘top–down’ or ‘bottom–up’ nature of the network, to be used as an instrument of ‘convergence’ and ‘soft harmonization’ actively promoted by the European Commission. However, their function can be appraised independently from their origin.

H2: The existence of a review panel increases the probability of adopting soft rules at the domestic level.

The last hypothesis relates to the degree of *interdependence* of the issues at stake in networks. Interdependence exists when network members (believe that they) are strongly affected by the domestic policies of other members (Chisholm 1992). When (perceived) interdependence is high, the need for co-ordinating policies at the transnational level will be considered more pressing. The soft rules approved at the network level represent a solution for co-ordination problems and for avoiding a race to the bottom in regulatory standards, which could produce undesirable negative externalities. Therefore, the adoption of harmonized soft rules can be more likely when interdependence is high. Interdependence might result from a number of factors, such as the level of market integration, and is likely to vary over time. Therefore, it should not be considered an absolute property, but rather as the anticipation of the consequences of the decisions of others in a given issue area and in a certain context (Van Boetzelaer and Princen 2012).

H3. The adoption of soft rules is more likely when the issues at stake are highly interdependent.

DATA AND METHODS

Data

The empirical analysis covers the 118 agencies that populated the CESR, CEER/ERGEG, IRG/ERG and ECN between 2000 and 2011. These four organizations are those that best match the definition of ERNs as governance networks, which are in charge of developing and approving soft rules to be adopted by their members at the domestic level. The investigated soft rules are the most important and most implemented standards, principles and guidelines developed within each network. It is worth noting that although other international organizations and standard-setting bodies can have an indirect impact on soft rules, we focus on those that were produced within the networks by their members. This way, it becomes possible to draw a direct link between decision-making at the network level and adoption at the domestic level.

- The CESR standard 1 on financial information represents a contribution to the task of developing and implementing a common approach to the enforcement of International Financial Reporting Standards (IFRS) in Europe. It provides principles by which harmonization of the institutional oversight systems in Europe may be achieved. Sources regarding domestic adoption are official documents of the CESR review panel – namely, ‘CESR Review Panel Reports’ of various years.
- The Guidelines for Information Management and Transparency in Electricity Markets represent the most important rules among a small number of existing CEER/ERGEG standards, and there are only two rules for which there is full data on their implementation. The goal of these soft rules is to establish a consistent approach across Europe for the provision of market-related information to market participants (suppliers, generators, energy traders, large customers and demand-side participants). Sources regarding domestic adoption are official CEER documents – ‘CEER Compliance Monitoring Reports’ of various years.
- IRG/ERG guidelines on accounting separation consist of the ‘principles of implementation and best practices’ (PIBs), which are detailed guidelines on the principles of transparency and cost orientation for interconnection charges. Sources for domestic adoption are European Competitive Telecommunications Association Scorecards for various years.
- Finally, the ECN developed a ‘leniency model’ to promote convergence and harmonization on ‘leniency programmes’ in member states – that is, regulatory tools designed to incite companies to disclose information to detect and identify national cartels. Sources of domestic adoption are official ECN documents: ‘Reports on the Assessment of the State of Convergence’ for various years.⁴

Data collection was based on the abovementioned official documents and was validated and completed with our own survey inquiry and 20 semi-structured interviews with key network actors (see Appendix for more details). The dependent variable is measured as the cumulative level of adoption of the investigated soft rule in each member state. For instance, 0.6 means that the soft rule is adopted in 60 per cent of the jurisdictions. Concretely, adoption means that soft rules are embraced by domestic agencies as binding regulations; afterwards, they might also be incorporated into higher-level legislation. Finally, it may happen that ERNs recommend soft rules that are inspired by regulations that already exist in some member countries. However, typically, the networks first collect domestic ‘best practices’ and then develop more specific soft rules that all members should adopt, usually within a year. In fact, as we will show, the initial level of adoption is always zero, which rules out a ‘reverse relationship’ between the uploading and downloading of soft rules (see [Figure 1](#)).

Methods

As we focus on the meso level, we are looking at the aggregate outcome of adoption. In other words, we are comparing agencies across networks, taking advantage of the high comparability among ERNs. Because each ERN is populated by similar agencies coming from the same member states, we are able to control for national factors – e.g., procedures for adoption, which are held constant so that we can exclude the fact that the differences in adoption patterns (if any) are related to domestic variables. Moreover, the nature of the investigated soft rules is similar, as they all consist of pro-competition principles aiming to promote the convergence and harmonization of national regulations with equivalent distributional effects in the various member states.

The analysis consists of two steps. The first is the quantitative analysis of domestic adoption. We estimate logistic regression models in which adoption is coded dichotomously and units are dropped after adoption, consistent with standard practice in event-history models. We account for time dependence by including a polynomial of time since the adoption of the standard at the network level. This factor is of substantive interest for our purposes because it informs us on the shape of the adoption curve. In combination with the qualitative part of our analysis, this allows us to make certain inferences regarding the ways in which network governance shapes domestic adoption. As we will see shortly, the key variables for hypotheses referring to cross-network differences are measured categorically. Their inclusion is problematic because we have just four networks, which makes it difficult to isolate statistically their impact from that of more general differences between the networks. Consequently, our strategy is to estimate the models separately for each network and then interpret the differences qualitatively based on the information gained in our interviews. The comparative analysis is thus validated with case-specific evidence. This approach implies the inclusion of only a limited number of variables in our empirical analysis.

Our first hypothesis refers to differences in the resources of regulators. We measure this variable by the average number of full-time employees per agency in the time period under consideration. This information is mainly available from agencies' annual reports and was completed with our own inquiry. Because the distribution of this variable is highly skewed, we include in the analysis its logged value.

Our second hypothesis focuses on the governance structure of networks – specifically, the presence of a review panel. Their establishment is mentioned in official documents available on network web sites.⁵ The CESR created a review panel with monitoring competencies in the early stages of its development. The ECN set up a review group in 2006 to supervise the enforcement of the leniency model. In the CEER/ERGEG, there is no proper review panel, but working groups follow so-called compliance monitoring reporting procedures. Finally, no monitoring of soft rules exists in the case of IRG/ERG.

Our third hypothesis pertains to the extent of interdependence of issues at stake. We distinguish between networks dealing with highly interdependent issues, such as finance and energy, and networks where the degree of interdependence is lower, such as competition and telecommunication. This categorization has been developed *ex ante* with the help of secondary literature and then confirmed with our interviews. It is worth noting that it has proven to be pertinent for the present study, but may require to be modified in other contexts. Accordingly, the regulation of European financial markets is shaped by distributional struggles and competition among financial industries. National regulatory policies are strategic for the promotion of national financial sectors (Mügge 2006; Posner 2010; Quaglia 2007). In energy policy, domestic regulators need to deal with highly interconnected power systems, grids and operators, and have to regulate cross-border markets that are functionally integrated (Eberlein and Newman 2008; Glachant and Lévêque 2009). Conversely, regulatory competition remains limited in the EU (Radaelli 2004), and the decisions of individual national competition authorities do not significantly affect the behaviour of their counterparts in other countries (Jordana and Levi-Faur 2004). Telecommunication regulation in Europe is considered quite interdependent, but less so than finance and energy. Regulatory authorities need to ensure international technical co-ordination and regulatory co-operation at the European level (Schneider 2001), but national telecom policies involve fewer strategic concerns and fewer spillovers than finance and energy (Levi-Faur 1999), in which a higher degree of supranationalism and partnership between member states is also apparent (Coen and Thatcher 2008). To conclude, it is worth adding that interaction modes within networks may vary. Although this may have an impact on the quality of the decision output at network level, no direct implications are expected for the patterns of adoption at the domestic level.

EMPIRICAL ANALYSIS

Table 1 displays the results of the quantitative analysis. We can see that the resources of domestic agencies do not play an important role in the domestic adoption of soft rules. Regulators with more staff tend to adopt standards more quickly only in the CESR, and even in this case the coefficient is only borderline statistically significant. Our interviews confirm that the resources of independent regulatory agencies do not matter very much. According to the perception of interviewees, the organizational age and expertise of regulators might affect the adoption of soft rules at the domestic level, but resources do not necessarily give regulators more ‘weight’ (Interview 18). On the other hand, the coefficients of time since adoption at the network level indicate that domestic adoption follows systematic patterns that vary across networks. (Preliminary analyses showed that the best fit is provided by a second-order polynomial for the CEER/EREG, CESR, and ECN, and simply by a linear effect of time in the IRG/ERG.)

The most intuitive way to present this finding is simply through the distribution of the cumulative share of adoptions over time (Figure 1).

In the case of the CESR, the rate of domestic adoption displays a sudden increase a few years after the approval of the soft rule at the network level. The pattern of adoption in the case of the CEER/EREG is similar, but the final adoption level is a bit lower. The ECN is a quite different case

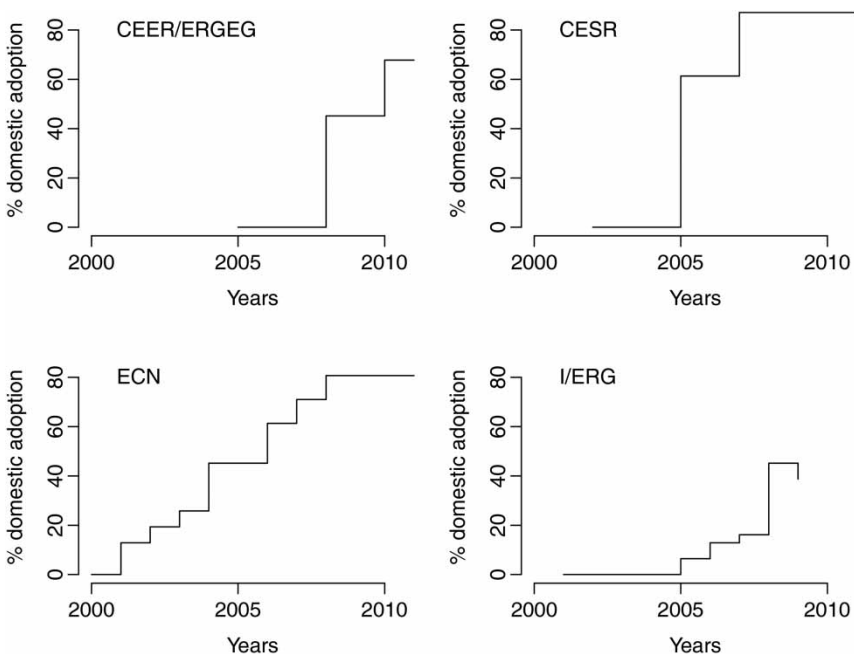


Figure 1 Patterns of domestic adoption

because the pace of domestic adoption is slower and incremental, but at the end the adoption of soft rules is even more successful than for the CESR, confirming the high performance of this network (Kassim and Wright 2010). Conversely, the IRG/ERG is clearly the least successful network in promoting the adoption of soft rules. This variation largely corresponds to our expectations about network-level explanations. However, it is also possible to qualify our hypotheses by distinguishing between the extent and the timing of diffusion.

The existence of a *review panel* is associated with a higher level of adoption of soft rules. In the CESR a review panel has been in place since an early stage, while in the ECN a working group with peer review competencies was established in 2006. Our respondents consider the existence of a review panel decisive to promote wide-ranging harmonization. Therefore, peer review systems were put in place to improve convergence through monitoring processes concerning both ‘the substance of soft rules and the procedures’ to favour harmonization at the domestic level (Interview 17). Review panels are tools that allow networks to exert pressure on the diffusion of non-binding rules in an institutionalized way. This is considered ‘very effective’ (Interview 16). The trigger of domestic adoption does not directly originate from moral pressures by other network members. Instead, the fact that the state of convergence regarding soft rules was made public ‘creates incentives for member agencies to comply in order to avoid blame’ in front of their external stakeholders – that is, elected politicians, the regulated industries and the public at large (Interview 6). More precisely, agencies anticipate that overtly visible non-compliance with the soft rules they co-produced in networks has significant consequences for their reputations,

Table 1 Logistic regression coefficients

	<i>CEER/EREG</i>	<i>CESR</i>	<i>ECN</i>	<i>I/ERG</i>
log(staff)	0.463 (0.351)	0.481* (0.292)	0.064 (0.285)	-0.232 (0.402)
Years since network adoption	4.598** (1.948)	6.354*** (2.114)	0.798** (0.364)	0.907*** (0.224)
(Years since network adoption)	-0.503** (0.250)	-0.763*** (0.279)	-0.067* (0.034)	
Constant	-12.460*** (4.196)	-15.256*** (4.330)	-3.658** (1.583)	-5.125** (2.430)
N	168	150	114	122
Log likelihood	-29.582	-31.160	-46.417	-29.337
AIC	67.164	70.320	100.833	64.675

* $p < .10$; ** $p < .05$; *** $p < .01$

Note: Dependent variable: domestic adoption of soft rule.

which is a crucial attribute of independent regulatory agencies. Significantly, CESR's executives used the concept of 'reputationally binding' to qualify soft rules accepted at the network level. Although domestic implementation is voluntary, it strongly affects the reputation of national regulatory authorities as a 'good regulator' (Interview 6).

Interestingly, pressure for compliance also exists in the absence of an official review panel, provided that there are monitoring procedures that allow the network to assess the diffusion of soft rules and to make public the results of appraisal. In this case, the level of adoption is a bit lower, as for the CEER/ERGEG. However, the mechanism at work is quite similar. Once a soft rule has been adopted at the network level, even if it has no binding force, it still has a significant impact because the network can use public information about adoption at the domestic level, together with the fact that the rule was approved unanimously within the network, 'to hold national regulators accountable' (Interview 4). Conversely, where the network does not assess the state of convergence, it has 'no means to increase the adoption [rate]' of soft rules (Interview 10). For instance, in the case of IRG/ERG, there is no monitoring of soft rules, so the level of adoption is much lower.

The degree of *interdependence* regarding the policy issues at stake crucially affects the process of adoption, but in different manner. When a policy area is highly interdependent – when regulators consider that others' decisions will affect theirs – as for banking and finance (CESR) and energy (CEER/ERGEG), a common solution is needed immediately. Consequently, national regulatory authorities adopt soft rules as soon as possible. All our interviews confirm that co-ordinated solutions in the form of soft rules developed and adopted at the network level are welcomed to solve common problems. In the case of highly interdependent issues, such as banking and finance, harmonized rules are timely adopted by member agencies to avoid 'detrimental regulatory competition and the risk of a race to the bottom' (Interview 6). The case of energy regulation also requires constant cross-border co-ordination to deal with problems concerning highly integrated markets. When regulators have to make decisions impacting cross-border flows, they 'need to consult' with their neighbouring regulators and with other regulatory agencies that are affected by their decisions (Interview 4). Therefore, they welcome and appreciate the establishment of common rules on which to rely.

Instead, when policy interdependence is lower, the process of adoption takes longer, but it is not necessarily less successful. For instance, the meta-regulation of competition follows a quite different logic than banking and finance and energy. Member agencies do not co-operate to find a co-ordinated solution to an interdependent issue. Rather, the main goal of ECN is 'top-down' harmonization. Independent regulatory agencies interact 'under the shadow of the EU Commission' in order to ensure that European law is being 'enforced in the same way everywhere' (Interview 16). As a consequence, the cumulative adoption rate of soft rules increases regularly, according to the progressive Europeanization of competition regulation. The process of adoption is even slower for

the IRG/ERG, a less institutionalized network mainly aiming to support the cooperation and information exchange among agencies in the area of telecommunications. In this case, harmonization is not really important, and network members share the view that ‘different markets and different regulatory solutions have to coexist’ (Interview 8).

To sum up, our first hypothesis about the positive effect of agencies’ resources on the domestic adoption of soft rules, that is, the ‘null hypothesis’, is not confirmed by empirical evidence. Instead, our empirical analysis provides considerable support for our second and third hypotheses about the relevance of network-level factors while also allowing us qualifying them. On the one hand, the existence of a review panel affects the domestic adoption of soft rules developed within European regulatory networks by increasing the final level of adoption. On the other hand, the degree of policy interdependence is associated with an increased need for adopting soft rules, which in turn leads to a quicker diffusion process.

CONCLUSION

Transnational networks are considered the constitutive element of a ‘new governance’ approach that emerged in a context of denationalization of policy making in the EU (Coen and Thatcher 2005; Héritier 2003; Hix 1998; Hooghe and Marks 2001). Great expectations surround networks as a tool to promote coherent and consistent rule-making in a multilevel polity, but empirical evidence of their effectiveness remains quite limited. To explore this question, this contribution examined the case of European regulatory networks (ERNs). The Committee of European Securities Regulators (CESR) was in charge of the implementation of the new system of regulation of the European financial markets. The energy network brings together the bottom-up and top-down groups of national regulators of electricity and gas – that is, the Council of European Energy Regulators (CEER) and the European Regulators’ Group for Electricity and Gas (ERGEG). The Independent Regulators Group (IRG) is closely associated with the European Regulators Group (ERG) to meta-regulate telecommunication markets. The European Competition Network (ECN) consists of national competition authorities and the EU Commission. The main tasks of ERNs include the development, approval and dissemination of ‘pro-competition’ soft rules to meta-regulate European markets, in the form of standards, principles and guidelines. We developed three hypotheses about the patterns of domestic adoption of these soft rules. First, the resources of member regulators could affect positively the adoption of soft rules. Second, the existence of a review panel should encourage the domestic adoption of soft rules. Third, higher policy interdependence could be associated with an increased need to adopt soft rules.

Our empirical analysis, based on official documents and interviews with ERNs’ key players, rejected the first hypothesis and provided support for the second and third. The resources of domestic agencies do not play an important role in the

domestic adoption of soft rules. Instead, network-level characteristics are the main factors shaping their success. The existence of a review panel has a positive effect on the final level of adoption. Conversely, the degree of interdependence of the issues at stake is associated with an increased need for adopting soft rules, which in turn shapes the timing of diffusion. These findings show that it is possible to design network governance institutions that have an impact on domestic policies through simple arrangements of their organizational structure. The establishment of review panels assessing the state of convergence regarding the soft rules adopted at the network level exerts reputational pressure on member agencies and makes them more likely to adopt the rules at the domestic level. However, this process is also shaped by some intrinsic characteristics of the policy issues at stake that cannot be manipulated by decision-makers. What is more, peer pressure is not enough: the public availability of data on the state of convergence is the key element in the spread of soft rules developed by networks.

The broader implications of our findings are, on the one hand, that soft and hard rule-making approaches can be fruitfully combined in the European regulatory state, if an appropriate institutional setting is also established. ERNs allowed regulators to make a virtue of necessity by materializing the multilevel nature of the European policy. The existing regulatory gap at the transnational level is partially compensated by the emergence of an additional level of governance at the interface between member states and European institutions. Domestic regulators interact on this relatively autonomous level to co-produce soft rules that become extensively adopted as binding rules at the national level. Importantly, these soft rules, which are quite flexible but incorporate a number of common principles to be enforced, do not substitute or prevent but rather enable the deployment of harder regulation at a lower level. On the other hand, while the distinction between the extent and the timing of adoption was unanticipated and emerged inductively from our empirical analysis, it is theoretically important. It suggests that the final level of adoption can be successfully improved by policy-makers with the manipulation of network structures, namely with the establishment of review panels. Instead, policy interdependence as a structural feature has an impact on timing and thus may lead to optical illusions when the analysis only focuses on snapshots (e.g., the rate of adoption on early stages of the diffusion process). Thus, the adoption of soft rules should be studied in a diachronic, comprehensive way. To conclude, it is important to note that networks are evolving and – albeit differentially – enjoy a process of agencification that involves formalization, legalization and task expansion. However, these gains may come at the expense of reduced autonomy in front of European institutions. Whether this process will improve or reduce the success of soft rules is an open question for further research.

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NOTES

- 1 The expression ‘transnational networks’ comprises the following: (1) intergovernmental networks of national ministers and officials within international organizations; (2) transgovernmental top–down organizations federating non-majoritarian and/or non-governmental actors in the framework of an executive agreement, working under the shadow of the hierarchy; and (3) various open, bottom–up, public–private, multi-stakeholder networked initiatives.
- 2 IRG is formally separated from ERG (and then BEREC), so as CEER is formally separated from ERGEG (and then ACER) (even though it works under the shadow of the EU). However, these organizations largely overlap in practice, at least in the period before agencification. They are composed of the same actors, who convene on the same day in the same location when attending plenary sessions. As one of our respondents said, ‘In the morning we make the real decisions, then we drink a coffee, the Commission steps in, and the CEER becomes ERGEG’.
- 3 To what extent they also influence their actual implementation is beyond the scope of this study.
- 4 CESR documents are available at <http://www.esma.europa.eu/documents/overview>; CEER/ERGEG documents are available at http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS; IRG/ERG documents are available at <http://www.irg.eu>; and ECN documents are available at <http://ec.europa.eu/competition/ecn/documents.html> (all accessed 9 June 2014).
- 5 See <http://www.esma.europa.eu/>; <http://www.ceer.eu/>; www.irg.eu; and <http://ec.europa.eu/competition/ecn> (all accessed 9 June 2014).

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APPENDIX: LIST OF INTERVIEWS

1. Energy national regulatory authority senior manager and CEER member.
2. CEER executive.
3. Energy national regulatory authority senior manager and CEER member.
4. CEER executive.
5. CEER member.
6. Former CESR executive.
7. Former CESR member.
8. Telecom national regulatory authority senior manager and IRG member.
9. Telecom national regulatory authority senior manager and IRG member.
10. Telecom national regulatory authority senior manager and IRG member.
11. European Platform of Regulatory Authorities (EPRA) executive.
12. IRG executive.
13. Financial national regulatory authority senior manager and CESR member.
14. European Commission DG Competition senior manager and ECN member.
15. CESR executive.
16. Competition national regulatory authority senior manager and ECN member.
17. Competition national regulatory authority senior manager and ECN member.
18. Competition national regulatory authority senior manager and ECN member.
19. Telecom national regulatory authority senior manager and IRG member.
20. Energy national regulatory authority senior manager and CEER executive