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# The European Union and International Regime Complexes

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Editorial

# The European Union as an Actor Navigating International Regime Complexes

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## Abstract

Global governance in many domains is increasingly characterised by the existence of international regime complexes—i.e., sets of overlapping institutional fora taking up different aspects of a broader issue area. As an international actor, the EU faces a context of such international regime complexity. Yet, little is known about how the EU navigates international regime complexes and how regime complexes impact the EU's behaviour in individual fora. This thematic issue, therefore, seeks to improve our understanding of how different manifestations of international regime complexes affect the EU as an international actor and to provide empirical insight into the ways actors like the EU navigate international regime complexes. In this editorial, we situate the thematic issue within the broader academic debates on the EU's role in international regime complexity, argue for the need to study the EU as an actor therein, and provide an overview of the thematic issue's objectives and the nine articles that comprise it.

## Keywords

EU; EU external action; international organizations; regime complexity

## Issue

This editorial is part of the issue “The European Union and International Regime Complexes” edited by Tom Delreux (University of Louvain) and Joseph Earsom (University of Louvain).

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## 1. Introduction

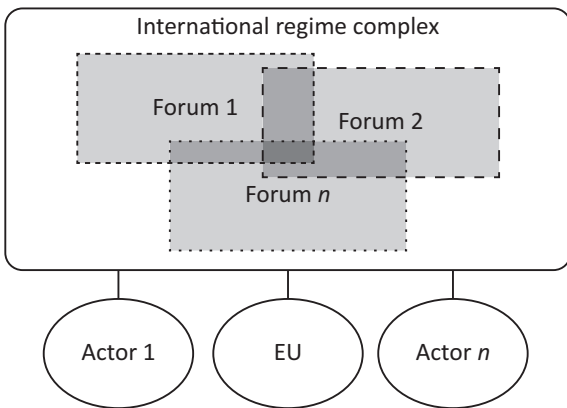
The proliferation of international institutions over the past half-century has meant that the governance of particular issue areas, such as climate change, security, and human rights, no longer falls under the purview of one single institution but is instead spread across an international regime complex—i.e., a set of overlapping institutions (which we refer to as “fora”) that take up different aspects of a broader issue. While there have been debates on the defining characteristics of an international regime complex and what precise terminology to use, the consensus in the literature points to an assortment of fora that at least partly overlap with respect to the issues they deal with and the actors that participate in them (Alter, 2022; Eilstrup-Sangiovanni & Westerwinter, 2022; Orsini et al., 2013; Raustiala & Victor, 2004).

Within an international regime complex, we distinguish between two elements: the (partially) overlapping fora, and the actors participating therein (see Figure 1). First, *fora* are institutional arenas that are the constitutive units of an international regime complex. Types of fora include, among others, formal international organisations, informal clubs, international agreements, and public-private arrangements. Second, *actors* are the participants in the fora of a regime complex. This can include governmental actors (such as states, but also actors like the EU), as well as private and transnational stakeholders. In the context of this thematic issue, the focus will be on the EU as an actor.

The fact that fora in an international regime complex at least partially overlap, for instance regarding competences or membership, creates a situation in which action by an actor in one forum can impact outcomes in another forum. Consequently, international regime



complexes carry significant implications for how actors engage at the international level and for global governance in general (Alter, 2022). This is especially the case for the EU, which has sought to portray itself as an advocate for multilateral solutions to global problems (Marx & Westerwinter, 2022).



**Figure 1.** Elements of an international regime complex (fora and actors).

This thematic issue seeks to bridge the literature on the EU as an international actor and the literature on international regime complexes. In this introduction, we briefly discuss the existing literature on the EU as an international actor and the need for incorporating an understanding of international regime complexes. Then, we present the literature on international regime complexes and argue for the added value of studying the EU as an actor therein. Finally, we provide an overview of the thematic issue’s objectives and the nine articles that comprise it.

## 2. The EU as an International Actor

The EU’s place and role as an actor in single international fora is well-established, though its actorness is more developed in some areas than others (Damro et al., 2017; Drieskens, 2017). Practically speaking, the EU’s ability to act within international fora depends on, among other things, its legal status, relevant competences, coordination mechanisms, and ability to agree on a common position (Keukeleire & Delreux, 2022).

While a rich literature exists regarding the EU’s action, performance, and effectiveness within international fora (Blavoukos & Bourantonis, 2017; da Conceição-Heldt & Meunier, 2014; Jørgensen et al., 2011), the focus has been on studying the EU in these fora in isolation from each other. The literature thereby largely ignores that these fora are now embedded in broader international regime complexes. While the work by Hofmann (2018), the edited volume of Christou and Hasselbach (2021), and particularly the special issue edited by Marx and Westerwinter (2022) are notable exceptions, EU-related literature incorporating regime

complexes has been quite sparse. Yet, even the aforementioned publications do not explicitly look at the consequences of regime complexity on the EU’s role as a global actor. Overall, our current understanding of the EU as an international actor, therefore, does not sufficiently take into account the complexity of today’s global governance architecture. There is thus a pressing need to expand the scope of analyses on the EU as an international actor beyond singular international fora towards the entirety of international regime complexes, in order to take into account important factors that might otherwise be missed.

## 3. International Regime Complexes

While the literature on international regime complexes has evolved significantly since the concept was introduced two decades ago, most work continues to take the regime complex and its constitutive fora as the units of analysis. Earlier work focused on theorising the causes, characteristics, and consequences of international regime complexes. However, scholars have increasingly acknowledged the diverse manifestations of regime complexes and sought to understand how international regime complexes affect governance outcomes (Alter, 2022; Eilstrup-Sangiovanni & Westerwinter, 2022; Gomez-Mera, 2021). The literature has to a lesser extent focused on how actors navigate international regime complexes. In other words, the literature on international regime complexes has mainly paid attention to the (interaction between the) constitutive fora and less to the participating actors.

The existing actor-focused work has provided an inventory of strategic behaviours an actor might employ in the event they seek to overcome the status quo in a constitutive forum. Such behaviour includes forum shopping (Busch, 2007), regime shifting (Helfer, 2009), contested multilateralism (Faude & Parizek, 2021), institutional use, selection, change, and creation (Jupille et al., 2013), and orchestration (Abbott & Faude, 2022). This literature has mainly focused on explaining the situations in which actors might look elsewhere in a regime complex and on the impact of such behaviour on the complex. There has been little work examining how an actor works across fora, by for instance negotiating simultaneously in several fora or connecting its diplomacy in one forum of the regime complex to negotiations in another forum.

While the aforementioned concepts of strategic behaviour are well-developed, they are insufficient for unpacking how the EU (and other actors) navigate regime complexes for two main reasons. First, they largely revolve around the strategic selection of one single forum for action, which ignores the potential for simultaneous action across multiple fora, as well as the associated challenges and opportunities. Second, the literature on actor behaviour across different fora in a regime complex often lacks empirical evidence. Since the EU possesses significant resources and technical

expertise—criteria which Drezner (2009) argues facilitate an actor’s use of a regime complex—it is a likely case of an actor linking its behaviour in the fora of the international regime complex. In that sense, case studies on the EU’s behaviour in a variety of regime complexes have the potential to provide significant insights into actor behaviour in regime complexes more generally.

#### 4. Objectives and Contributions of the Thematic Issue

Despite their potential complementarity, the literatures on the EU as an international actor and on international regime complexes have largely remained separate from one another. As we have laid out, neither of these alone provides sufficient insight into how we might expect an actor like the EU to respond to international regime complexes. A wide range of questions is therefore on the table: Is the EU an active shaper of regime complexes? What is the effect of the multitude of international fora dealing with (aspects of) the same issue on the EU’s performance or effectiveness? To what extent and how does the EU strategically use the different fora of a regime complex to achieve its objectives?

This thematic issue seeks to fill this gap and bring the two literatures together to gain a better understanding of the EU as an actor in an increasingly complex global governance landscape, while also taking part in a larger discussion on how actors navigate regime complexes. More specifically, this thematic issue has two main objectives: (a) to understand how different manifestations of international regime complexes affect the EU as an international actor, and (b) to provide empirical insight into the ways actors like the EU navigate international regime complexes and the factors influencing this.

Along those lines, most articles in the thematic issue explore the EU’s involvement in specific international regime complexes, including those dealing with climate, finance, food aid, human rights, migration, nuclear weapons, security, and transport. Together, the following contributions help explain how the EU navigates international regime complexes.

Quaglia and Spendzharova (2023) examine the influence of the EU within the global regime complex on shadow banking. They find that the EU’s internal cohesiveness is a key variable in explaining the EU’s uneven influence on how hedge funds and securitization are governed within the regime complex. Furthermore, they note that the EU generally prefers to manage regime complexity via multilateral bodies (notably international financial regulatory fora) rather than bypassing it with regional or bilateral agreements.

Kissack (2023) looks at EU efforts to shape how the issue of capital punishment has been addressed within the international regime complex on human rights. Through framing the death penalty initially as a form of cruel treatment and later as a form of torture, supporting civil society and transnational advocacy networks, and consistently challenging the legitimacy of capital punish-

ment in its foreign policy demarches, the EU contributed to incorporating capital punishment in the human rights regime complex. His findings show the EU demonstrated actorness in this UN-centred regime complex.

Focusing on the EU’s approach to negotiations in two different fora of the international regime complex on food aid, Margulius (2023) develops the concept of “backdoor bargaining” as a strategy to use negotiations in one forum to gain an advantage in negotiations in another forum. In demonstrating the EU’s successful use of the renegotiation of the Food Aid Convention to gain leverage in agriculture negotiations at the World Trade Organization, the article underscores the EU’s strategic, yet fragmented, use of overlapping fora and the consequences of this approach on the coherence of the EU’s foreign policy.

In her contribution, Dee (2023) unpacks the EU’s use of orchestration as a means of soft and indirect governance within the nuclear weapons regime complex. She finds that orchestration by the EU was facilitated by the EU’s tradition of multilateralism, its functional limitations, the political context of the regime complex, and the presence of like-minded intermediaries. Although the EU has struggled to directly influence individual nuclear negotiation forums, its use of orchestration is increasingly developed. As the EU appears particularly well suited to serve as an orchestrator, the article presents a new benchmark for evaluating the EU as an international actor.

Hoffmeyer-Zlotnik et al. (2023) examine the EU’s use of preferential trade agreements (PTAs) within the broader context of the migration regime complex. The inherent fragmentation of the migration regime complex and the EU’s shared competence on the matter limit the EU’s capacity to establish itself as a global actor in international migration. These constraints have led the EU to make use of PTAs as an alternative venue to pursue its migration policy goals. Hence, rather than sustaining multilateral commitments, most often, it uses PTAs to promote its migration policy objectives, notably in the areas of service mobility and migration control. The contribution thus highlights the potential use of bilateral venues such as PTAs as a response to regime complexity.

Dikaios and Blavoukos (2023) look at how the EU advances climate change mitigation measures in the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO)—two constitutive fora of the international transport regime complex. They find that the EU’s actions in ICAO not only contributed to an agreement on an emissions offsetting mechanism in that forum but also helped create a favourable context for the negotiations on a climate agreement in IMO. Accordingly, the findings demonstrate how the EU can learn from its action in one forum to enhance its impact on the outcome in another forum of the regime complex.

Brosig et al. (2023) investigate the EU in the Sahelian security regime complex. They note the role of the EU’s

Regional Advisory and Coordination Cell for the Sahel as a secretary and on-the-ground coordination forum for facilitating resource exchange and system complementarity amongst the different actors and initiatives in the regime complex. At the same time, they stress the importance of the actions, preferences, and receptiveness of regional and local actors in the security regime complex. In that regard, while the findings point to the added value of creating a coordination hub (forum), doing so is by no means a panacea for managing regime complexity.

In their article, Orsini and Kang (2023) study the role of European youth organizations within the international regime complex on climate change. In doing so, they examine the extent to which the EU and European youth climate activists interact within the regime complex. They find that the EU's support of youth climate activism is, in fact, relatively limited in scope and largely confined to a single forum of the regime complex, the United Nations Framework Convention on Climate Change. In other words, the EU does not (yet) appear to use European youth activism to shape the broader regime complex on climate change.

Finally, Panke and Stapel (2023) investigate how and why the EU cooperates with other regional organisations of the regional regime complex. They find that the EU has sought to actively shape the regime complex via established cooperation agreements with nearly all the regional organizations in which there is an overlap of membership and policy competences. The EU is arguably well-suited to navigate regional regime complexity because of its autonomy and capacities; as a result, it proactively tries to shape the regime complex.

Together, the nine articles make an important contribution to the literature on the EU as an international actor and the literature on international regime complexes. As for the EU as an international actor literature, the articles expand the scope of analysis beyond the EU's dyadic relationship with single fora. They shift the attention from a dyadic one-to-one relation (i.e., EU-single forum) towards a more comprehensive one-to-many relation (i.e., EU-international regime complex). Doing so not only acknowledges the realities of international governance in the 21st century but also provides opportunities to identify new strengths and weaknesses of the EU as an international actor. With respect to the literature on regime complexes, the articles provide empirical material on the ways in which an actor navigates a diverse array of regime complexes. Via the case study of the EU, they offer novel insight into how an actor approaches regime complexes, notably regarding simultaneous action in multiple fora.

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### Conflict of Interests

The authors declare no conflict of interests.

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Article

## Explaining the EU’s Uneven Influence Across the International Regime Complex in Shadow Banking

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### Abstract

This article shows that the EU has exerted uneven influence within the global regime complex in shadow banking. Why? We seek to explain the variation in the EU’s ability to exert influence across different elemental regimes—those on hedge funds and securitization—in the broader regime complex over time. In hedge funds regulation, the EU has pursued more stringent international rules, to no avail. In securitization, the EU has been more successful in promoting more lenient regulation at the international level. We focus on the EU’s internal cohesiveness (which can change over time) as the key explanatory variable.

### Keywords

Bank of England; EU cohesiveness; European Central Bank; finance; hedge funds; international regime complexity; securitization; shadow banking

### Issue

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### 1. Introduction

The EU is generally considered to be a strict regulator, for example, in food, chemicals, data privacy, environmental, and labour regulation (Bradford, 2020; Vogel, 2012; Young, 2014). However, finance is a notable exception. In some cases, such as hedge funds regulation, the EU has pursued more stringent international rules, to no avail. In other cases, such as securitization, the EU has been more successful in promoting more lenient regulation at the international level. Both the “elemental regime” on hedge funds and that on securitization are part of the broader global “regime complex” on shadow banking, which suggests that the EU has exerted uneven influence within the regime complex. What accounts for the variation in the influence of the EU across two elemental regimes in the shadow banking regime complex? We conceptualize EU influence as the ability to shape the international standards (the dependent variable) negoti-

ated in the distinctive elemental regimes of the complex according to its preferences. We observe high influence if the EU is largely able to shape the international standards according to its preferences and, conversely, low influence if the EU’s preferences are not reflected in the adopted international standards.

Our starting point to examine the influence of the EU in a regime complex is the extent of EU cohesiveness—a key variable identified in the literature on the EU as an international actor. We conceptualize EU cohesiveness (the independent variable) based on Conceição-Heldt and Meunier’s (2014, p. 966) definition of “whether the member states can formulate a common position in spite of their divergences” (see also Moschella & Quaglia, 2016; Quaglia, 2014). We expect that EU cohesiveness will be higher if the EU has exclusive policy and negotiation competences in a certain policy area. On the other hand, EU cohesiveness will be lower if the EU has mixed competences in a policy

area or if it has a coordinating role in areas where national competences prevail (Conceição-Heldt, 2014; Conceição-Heldt & Meunier, 2014). Furthermore, based on the EU external relations literature, we expect that EU cohesiveness will be shaped by the extent of member state preference homogeneity, especially regarding states with large financial sectors, as high preference heterogeneity affects the EU's ability to "speak with one voice" (Meunier & Nicolaidis, 1999, p. 478) in international negotiations. Pronounced preference heterogeneity among the member states undermines the EU's ability to "speak with one voice" and usually results in "agreements at the lowest common denominator" (Macaj & Nicolaidis, 2014, p. 1074; see also Hodson, 2011).

We aim to leverage the findings of the literature on the EU as an international actor in a novel context—that of international regime complexity in shadow banking. Furthermore, the article sheds light on how EU supranational actors seek to foster a more cohesive EU position over time and to overcome diverging member state preferences both within elemental regimes as well as across the shadow banking regime complex as a whole.

Concretely, while the EU pursued more stringent hedge funds regulation, it was not internally cohesive on this matter which, in turn, undermined its influence. By contrast, the EU prioritized more lenient global rules on securitization and it was internally cohesive, which resulted in greater EU influence. It is also worth noting that in finance the EU still sees prospects for advantageous multilateral regulatory agreements at the global level and pursues its preferences through established international bodies, such as the Basel Committee on Banking Supervision (BCBS), the International Organization of Securities Commissions (IOSCO), the Financial Stability Board (FSB), the Bank for International Settlements (BIS), and the International Monetary Fund (IMF). Moreover, our research design allows us to study changes in cohesiveness over time, which in turn leads to a different outcome in the EU's influence on the international regime complex.

This article is part of a thematic issue that brings together the literature on the EU as an actor in international fora and on international regime complexes. Our article contributes to the literature on the EU as an international actor by stressing the importance of *internal* EU cohesiveness in order to achieve *external* influence in regime complexes. While previous research on the external relations of the EU has demonstrated that EU's cohesiveness has analytical leverage in explaining the EU's impact on international negotiations, it is not a foregone conclusion that the EU will be able to "speak with a single voice" across a larger regime complex. This article also contributes to the literature on regime complexity by pointing out how institutional fragmentation in a regime complex compounds the problems for states and international actors to navigate effectively the entire regime complex. Namely, states might be pace-setters in one elemental regime, while acting as foot-draggers in another.

This is particularly challenging for multi-level jurisdictions, such as the EU, because the EU supranational actors need to forge a cohesive EU position both within each elemental regime and across the regime complex as a whole in order to exert influence at the international level.

This article is structured as follows. Section 2 presents the state of the art on international regime complexity in finance and the research design. Section 3 examines the role of EU cohesiveness in the hedge funds elemental regime, while Section 4 investigates the impact of EU cohesiveness in the securitization elemental regime and explains how EU cohesiveness increased over time. Section 5 engages with alternative explanations of the observed outcome and Section 6 summarizes the main findings.

## 2. State of the Art and Research Design

An international regime complex is present when multiple institutions and fora interact to govern a single issue, or a set of related issues (Alter & Meunier, 2009; Breen et al., 2020; Eilstrup-Sangiovanni, 2022; Heldt & Schmidtke, 2019; Keohane & Victor, 2011; Raustiala & Victor, 2004). The introduction to this thematic issue focuses on two overarching features of a regime complex: the overlapping fora and the actors participating therein (see Delreux & Earsom, 2023). In addition, relevant to the regime complex analyzed in this article, sometimes, regime complexes are marked by the existence of subsets of interlinked "elemental regimes" where the constitutive fora and actors focus on the negotiation and design of specific subsets of international standards or rules, based on their policy mandate and technical expertise. Furthermore, the "elemental regimes" form distinctive configurations of fora and actors working together within the broader regime complex (Orsini et al., 2013).

Several recent contributions have highlighted the challenges posed by international regime complexity in finance (Breen et al., 2020; Heldt & Schmidtke, 2019; Quaglia, 2020; Quaglia & Spendzharova, 2022). Yet, we still know relatively little about how multi-level actors, such as the EU, navigate different elemental regimes in the broader regime complex over time. This is a compelling area for investigation due to the augmented technical complexity of shadow banking, and the growing number of cross-sectoral issues in the elemental regimes, adding up to an over-crowded regulatory space (Quaglia, 2022).

In terms of research design, as shown in Table 1, we argue that the influence of the EU across elemental regimes in a regime complex depends on the EU's cohesiveness. We operationalize cohesiveness with two indicators: EU competences and member state preferences. First, to gauge EU competences, we examine the relevant EU legal and policy documents that stipulate which EU bodies have the mandate to negotiate at the international level on behalf of the EU (and whether such a mandate exists). Second, we measure the "revealed"

**Table 1.** Research design.

**Units of analysis**

International standards on hedge funds and securitization 2009–2018

<b>International standards (issuing body and date)</b>	<b>Hedge funds</b>	<b>Securitization, mark I</b>	<b>Securitization, mark II</b>
	Key Hedge Funds Principles (IOSCO, 2009)	Revision Basel II (BCBS, 2009)  Basel III Securitization Framework (BCBS, 2014)	Revision Basel III—Capital rules on simple transparent and comparable securitization and on short term simple transparent and comparable securitization (BCBS, 2016, 2017, 2018)  Criteria on simple transparent and comparable securitization and on short term simple transparent and comparable securitization (BCBS & IOSCO, 2015, 2018)
<b>Empirical patterns to be explained</b>			
EU influence	EU (minus UK) low	EU low (achieved some concessions)	EU high
<b>Main explanation</b>			
EU Cohesiveness	Low	Low	High

preferences of the key EU supranational and member state actors through a systematic review of the policy papers produced by the relevant international, EU, and member state actors. We triangulated this information with findings in the secondary literature about what those preferences are, and how they may have changed over time.

Based on prior research in EU external relations, we expect that in elemental regimes where member states' preferences are homogenous (hence, aligned), the EU is likely to be influential. Vice versa, in elemental regimes where member states' preferences are heterogenous (hence, misaligned), the EU is unlikely to be influential. Moreover, we consider the time dimension, which has been partly overlooked by the EU external relations literature so far. Our analysis shows that, in fact, the degree of EU cohesiveness can change over time, as it happened in the securitization elemental regime, whereas there was no change over time in EU cohesiveness on hedge funds. In addition, the literature on EU external relations, in particular, that on EU foreign and security policy points out that inter-institutional coordination can play a significant role in fostering EU's internal cohesiveness and external influence. Therefore, we also consider this variable in our analysis.

Several potential explanations for the EU's external influence have been put forward by focusing on factors at the international and at the EU level (see, for instance,

Bach & Newman, 2007; Goldbach, 2015; Mügge, 2014; Newman & Posner, 2015; Quaglia & Spendzharova, 2017; Young, 2015). At the international level, one could argue that the EU's influence depends on whether it is able to forge an alliance with the US or has similar preferences concerning international standards (Helleiner, 2014; Simmons, 2001). Similar dynamics could be at play if the EU is able to form a coalition with third countries (other than the US), especially if they have a sizable financial sector. At the EU level, one could argue that the EU's influence on an elemental regime depends on the size of its domestic market, whereby jurisdictions with large domestic markets have more influence in international negotiations (Bradford, 2020; Damro, 2015; Drezner, 2007) and its regulatory capacity, whereby jurisdictions with advanced regulatory capacity in a given sector are better able to use their domestic rules as a template to shape the international ones (Posner, 2009; Quaglia, 2014; Rixen, 2013). We discuss these alternative explanations against the empirical record in the penultimate section.

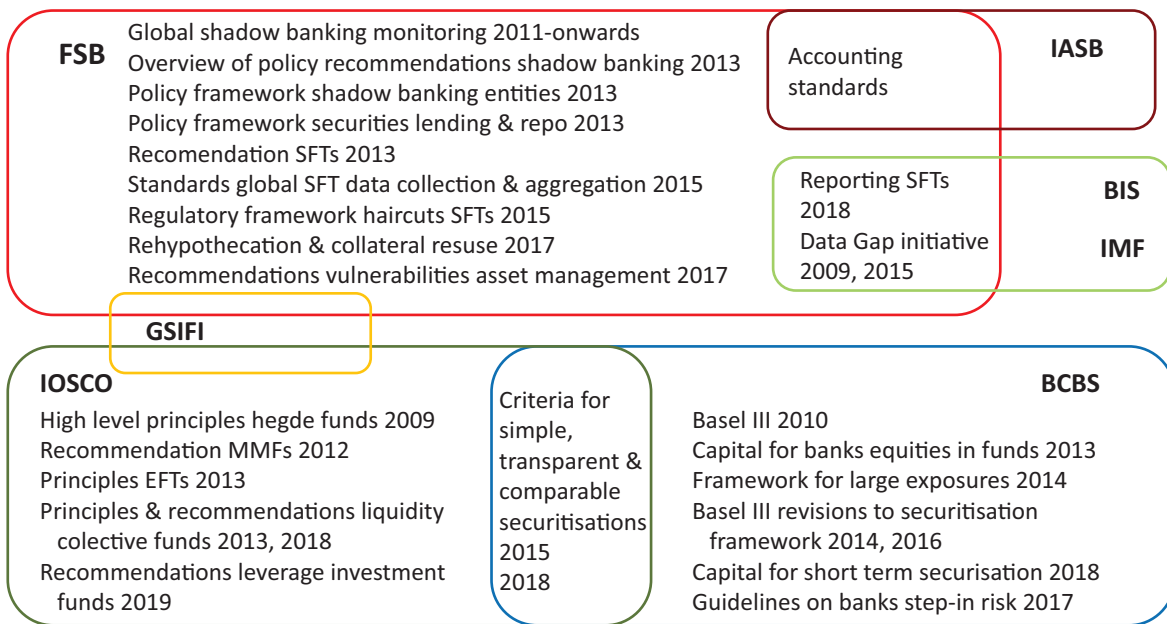
Turning to the exploratory case study design used in this article (George & Bennett, 2005), we now explain why the international governance of shadow banking can be characterized as a regime complex, comprised of fora and actors arranged in a configuration of several elemental regimes. After the 2008 crisis, various international financial institutions issued "soft law" concerning

different aspects of shadow banking as well as traditional banks that interacted with shadow banks (see Figures 1 and 2).

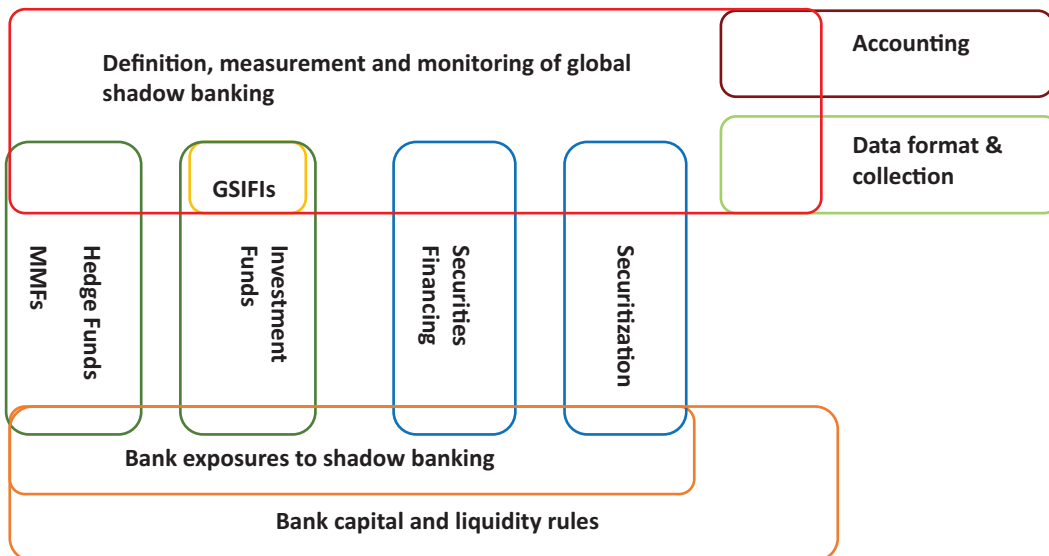
Although there is not a universally agreed definition of shadow banking, it refers to the “system of credit intermediation that involves entities and activities outside the traditional banking system” (FSB, 2011, p. 3). Shadow banking entities include “money market funds (MMFs) and investment funds that provide credit or are leveraged, such as hedge funds” (FSB, 2011, p. 3). Shadow banking activities refer to securitization and securities financing transactions. More generally, securitization is the process whereby certain types of assets (such as mortgages or credit card obligations) are pooled so that

they can be repackaged into interest-bearing securities (Jobst, 2008).

The entire regime complex on shadow banking summarized in Figure 2 is too broad for the purposes of our analysis. We conduct a comparative study of two sectoral elemental regimes on hedge funds and securitization within the larger regime complex. The adopted international standards in these two areas cover important entities in shadow banking—hedge funds—and a crucial activity—securitization. We examine these two areas in greater detail in the next section as we investigate the impact of EU cohesiveness on the EU’s ability to influence the international rules on hedge funds (Section 3) and on securitization (Section 4).



**Figure 1.** International standards on shadow banking, adapted from Quaglia (2022). Note: G-SIFIs stands for global systemically important financial institutions and IASB for international accounting standards board.



**Figure 2.** Elemental regimes in the shadow banking regime complex, adapted from Quaglia (2022).



### 3. Low Cohesiveness and Limited EU Influence Regarding Hedge Funds Regulation

The first elemental regime that we examine within the shadow banking regime complex concerns an important entity—hedge funds. Securities markets regulators led the discussions and IOSCO was the main international institution where global standards on this matter were set. The EU was represented by the European Commission and European Securities and Markets Authority (ESMA) as observers, with the member states' securities regulators also present. Notably, the EU was internally divided and lacked cohesiveness in international negotiations. Specifically, Germany, France, and other continental countries (notably, Italy and Spain) called for new post-crisis rules on hedge funds in the EU and internationally, acting as pace-setters, whereas the UK and, to a more limited extent, Ireland and Luxembourg, resisted hedge funds regulation, acting as foot-draggers (Quaglia, 2022). Eventually, new rather stringent rules were issued in the EU, but not internationally, where the UK in coalition with the US prevented meaningful international standards. As we show below, the EU had significant problems forging a cohesive position on this matter and, consequently, it had very little influence in shaping the elemental regime on hedge funds within the global shadow banking regime complex.

#### 3.1. International Standard-Setting on Hedge Funds

Prior to the international financial crisis of 2008, there were no international standards on hedge funds. To be precise, the IOSCO (1999) and the BCBS (1999) recommended regulating hedge funds indirectly by regulating the banks that did business with hedge funds—and by relying on private sector governance (Pagliari, 2013; Quaglia, 2011). In the wake of the crisis, France and Germany, in particular, advocated the adoption of more stringent rules on hedge funds both internationally and in the EU (Fioretos, 2010; Woll, 2013). By contrast, US and UK policy-makers supported an alternative approach, which focused on the disclosure of information to regulators and greater transparency (Pagliari, 2013).

After a heated debate, the Group of Twenty (G20) agreed in April 2009 that hedge funds should be subject to appropriate regulation to manage the risks they posed to the international financial system. Subsequently, the IOSCO's Task Force on Unregulated Financial Entities focused its work on hedge funds. Within the Task Force, a coalition of regulators led by the US and the UK resisted meaningful international rules on hedge funds, for instance, opposing the introduction of capital requirements for these funds. By contrast, a competing coalition, led by regulators in France, Germany, and Italy, where hedge funds were already regulated at the domestic level, promoted relatively stringent international rules, similar to those already in place for banks and other

types of investment funds. The hedge fund industry sided with the Anglo-Saxon coalition. None of the measures supported by the continental EU member states made it into the final IOSCO report, which was rather brief and general: it put forward six high-level principles for hedge fund oversight (Quaglia, 2011).

#### 3.2. Low EU Cohesiveness

In the EU, the regulation of hedge funds was very controversial both before and after the 2008 international financial crisis, pitting continental European countries against the UK. The EU did not regulate hedge funds or fund managers before the crisis, despite the fact that certain member states, first and foremost, France and Germany, had called for the adoption of EU rules on this matter (Fioretos, 2010; Quaglia, 2011). The UK, which hosted the vast majority of hedge funds managers in the EU, blocked any pre-crisis attempts to regulate hedge funds. However, the global financial crisis spurred new efforts to regulate hedge funds in the EU. France and Germany (Fioretos, 2010; Quaglia, 2011; Woll, 2013), with some support from Italy and Spain, sponsored new EU legislation on hedge funds, arguing that “Europe should play an instrumental role in shaping a global regulatory regime for hedge funds through the creation of a ‘European label’” (European Commission, 2009, p. 84).

The UK, instead, opposed the adoption of EU rules arguing that they would be detrimental to financial sector competitiveness and would trigger international regulatory arbitrage (“UK slams EU,” 2009). After a heated and protracted internal debate, the EU issued the Alternative Investment Fund Managers Directive in 2011, which also applied to hedge funds (the main category of alternative investment funds). The directive set rules for the authorisation and supervision of alternative investment fund managers, including hedge fund managers, in the EU. Alternative investment fund managers were also subject to reporting requirements, and a minimum level of capital, which indicates a more stringent regulatory approach. However, the EU was unable to include similar rules as part of the relevant international standards on hedge funds discussed in IOSCO, which we explain with its limited internal cohesiveness. We observe a different outcome in the next case regarding international rules on securitization.

### 4. High Cohesiveness and Significant Influence of the EU in Securitization

Unlike in the elemental regime on hedge funds, the EU adopted a more cohesive position and was highly influential in shaping the international rules on an important activity within the shadow banking regime complex—securitization. However, the EU only managed to achieve internal cohesiveness over time. Importantly, the main international institution in this elemental regime was the BCBS, where the EU is represented by the European

Central Bank (ECB) as the Single Supervisory Mechanism and the euro area “speaks with a single voice.” In addition, representatives of the central banks of the EU member states which are members of the G20 are also present. Thus, central bankers led the policy discussions on securitization, with significant input from IOSCO and securities markets regulators.

In the wake of the 2008 crisis, the EU was internally divided also on securitization. Some member states, notably, the UK, sided with the US in advocating higher bank capital requirements for securitized products, whereas continental member states preferred lower bank capital requirements. From 2014 onwards, the EU actively sought to relaunch “safe” securitization also by lowering bank capital requirements. As we show below, eventually, the UK aligned its position with the rest of the EU, and EU and UK central bankers were very influential in the relevant international fora that set global standards on “safe” securitization (see also Engelen & Glasmacher, 2018).

#### 4.1. International Standard Setting on Securitization

Following the 2008 financial crisis, the US, with some support from the UK, acted as a pace-setters in tightening up the international standards on securitization. Central bankers and bank regulators took the lead in setting bank capital rules for securitization. In 2009, the BCBS (2009) revised its securitization framework by issuing the so-called Basel 2.5 accord, increasing bank capital requirements for “re-securitization” (collateralized debt obligations comprised of asset-backed securities), which were more highly correlated with risk than traditional securitization. In 2014, the Basel III accord was supplemented by a revised framework for securitization that substantially increased bank capital requirements on securitized products.

Afterwards, the EU, including the UK, acted as pace-setters at the international level in an attempt to revive the securitization market. As early as 2013, ECB President Mario Draghi noted that “asset-backed securities market is dead and has been dead for a long time” (“ECB’s Draghi,” 2013) and launched an initiative to revive this market as a way to finance an economic recovery. Yet, other central bankers, notably, those in the US, where post-crisis securitization market was buoyant, warned that the industry had not yet learnt the lessons of the crisis and called for more stringent international rules (“Sliced and diced,” 2014).

Importantly, the BCBS and the IOSCO established a joint task force on securitization, which the FSB asked to identify the factors that hindered the development of securitization and to develop criteria for simple and transparent securitization. The aims of the criteria proposed by the task force were threefold. First, to assist investors, according to the “what you see is what you get” principle. Second, to assist issuers by making risk transfer more robust. Third, to assist regulators to set

risk-sensitive capital requirements for securitization on the basis of a differentiation based on criteria to identify safe securitization (Rule, 2015). The BCBS and the IOSCO issued about a dozen of criteria to identify simple, transparent, and comparable securitization. These criteria were remarkably similar to those outlined by documents previously issued by the Bank of England and the ECB (2014a, 2014b) and the European Banking Authority (EBA, 2014). Thus, the international standards for securitization were heavily informed by the regulatory discussions that had taken place within the EU.

In parallel to the work undertaken by BCBS and IOSCO concerning criteria for safe securitization, the BCBS worked on lowering bank capital requirements for safe securitization. Despite the fact that the ECB had called for these reforms for more than a year, the BCBS did not begin working on this matter until when the ECB and the Bank of England jointly urged the reduction of bank capital rules on securitised products. At a meeting of the IMF, the ECB and the Bank of England jointly intervened to make their case. Yves Mersch, a member of the ECB’s Executive Board, explained that these central banks had a “common analysis and a common suggestion” and argued that existing international standards did not take into account that European securitization performed better than US equivalents during the global financial crisis (“Europe’s top two,” 2014). This comes to show the ECB’s concern that EU asset-backed securities were treated inappropriately by the existing international rules.

The BCBS revised capital requirements for securitization exposures in 2016, aligned with EU preferences on this matter, including the regulatory capital treatment for simple, transparent, and comparable securitization and set additional criteria for differentiating the capital treatment of simple, transparent, and comparable securitization from other forms of securitization. Then, the same process was repeated, under the impulse of EU and UK regulators, with reference to short-term securitization, resulting in the BCBS and IOSCO (2018) *Criteria for Identifying Simple, Transparent and Comparable Short-Term Securitizations*. Eventually, simple, transparent, and comparable short-term securitization received the same reduction in capital requirements as simple, transparent, and comparable securitization.

#### 4.2. From Low to High EU Cohesiveness Over Time

In contrast to the hedge funds case, where EU cohesiveness was low, the securitization case is characterized by achieving higher EU cohesiveness over time and well-performing coordination mechanisms both among the main jurisdictions, including the UK and among the main EU actors in this area, such as the European Commission, the ECB, as well as ESMA and the EBA.

Approximately half of all securitization activities in Europe took place in the UK (Quaglia, 2022). In response to the 2008 crisis, British policy-makers advocated more

robust rules on securitization and higher bank capital requirements for securitised activities. More generally, during the negotiations on the Basel III accord, the first part of which was eventually signed in 2010, the UK, together with the US, called for more stringent (i.e., higher) bank capital requirements. It was widely acknowledged that the US Federal Reserve together with the Bank of England and the British Financial Services Authority were the “intellectual driving force” during the Basel negotiations (James & Quaglia, 2020). By contrast, continental EU regulators, in particular in France and Germany, wanted a broader definition of capital, lower capital requirements, less stringent liquidity rules, no leverage ratio, and a longer transition period (Howarth & Quaglia, 2016).

Following market reactions and more stringent public regulation, the level of securitization dropped significantly in the EU, also because banks preferred to tap central bank facilities for funding (“ECB’s Draghi in,” 2013). As time went by, European policy-makers looked for new ways to overcome low economic growth and the downturn caused by the sovereign debt crisis. They sought to revive securitization in an attempt to boost economic recovery while safeguarding financial stability (Montalbano, 2020). Securitization was seen as potentially advantageous for the predominantly bank-based financial system in the continental EU because it would allow banks to increase lending to the real economy without facing higher capital requirements. At the same time, the relaunch of securitization could also encourage small and medium enterprises to bypass banks and access the corporate debt markets directly (Quaglia, 2020).

In particular, European central bankers were keen to revive securitization because they partly relied on it for the conduct of their monetary policy (Braun, 2020; Braun et al., 2018). The ECB supported favorable capital treatment for safe securitization, as this was seen as necessary to restore the liquidity of this market. To name one important reason, asset-backed securities were a crucial component of the collateral framework of the eurosystem. The ECB was also keen to relaunch securitization as a way to transfer risk away from the banking sector, freeing up bank capital to extend as credit to the real economy. Like the ECB, a few years after the crisis, the Bank of England also advocated the relaunch of securitization on the ground that banks could use securitization to diversify their funding and transfer risk on the underlying loans. A senior official at the Bank of England and co-chair of the BCBS and IOSCO task force on securitization, Rule (2015) emphasized that banks and non-banks could use securitization to provide credit to the real economy.

An early intuition of the Bank of England and the ECB was that lack of transparency acted as an obstacle to the revitalization of the securitization market (Mersch, 2013). In a nutshell, the Bank of England and the ECB (2014a) argued that the potential benefits of securitization depended on its purposes: it could be used to fund

assets, to transfer risk, or both. Hence, this market had advantages, but also posed potential risks to financial stability. For these reasons, the involvement of regulators was seen as beneficial to “support its revitalization in a more robust form” (Bank of England & ECB, 2014a, p. 4). Both the Bank of England and the ECB argued in favor of lowering capital requirements for safe securitization on the grounds of its lower risk (Bank of England, 2013; Rule, 2015).

Showcasing a high degree of EU cohesiveness after 2014, the EU and the UK engaged in concerted pace-setting to reform the regulation of securitization by increasing the transparency and standardization of securitized products, while reducing bank capital requirements for less risky securitization (Quaglia, 2022). In fact, the Bank of England and the ECB published a joint paper that lamented the malfunctioning of the securitization market in the EU, whereas the EBA (2014) promoted the use of simple and transparent securitization. The ECB, the EBA, the Bank of England, and the European Commission were all eager to re-launch securitization, which had been stymied by the international financial crisis (Braun, 2020; Braun et al., 2018; Gabor & Vestergaard, 2018).

Subsequently, securitization was included in the proposals for an EU Capital Markets Union, put forward by the European Commission (2015) and supported by several member states, most notably, the UK (Quaglia et al., 2016). The European Commission was eager to “harness financial markets as macro-economic stabilization tools,” while ensuring fiscal discipline at the EU level (Braun et al., 2018, p. 104). In 2015, it prioritized two legislative proposals concerning securitization in the broader framework of the Capital Markets Union. First, a regulation on securitization set criteria to identify “simple, transparent and standardised” (European Commission, 2015, p. 21) securitization (the notion used in the EU). Second, the regulation on capital requirements for banks was amended to make the capital treatment of safe securitization more risk-sensitive (and also less stringent) for banks and investment firms (Hale, 2015). Both pieces of EU legislation were eventually adopted in 2017.

Importantly, inter-institutional coordination mechanisms are a new variable identified in this case study, fostering more cohesiveness in the EU position over time. To begin with, since 2015, the European Commission was the main “political entrepreneur” pushing ahead more integrated capital markets across the EU through the Capital Markets Union action plan, but it relied heavily on technical expertise in the realm of securitization provided by other EU institutions and agencies, such as the ECB, the ESMA, and the EBA.

For example, during the preparation of the securitization regulation, the ECB provided important technical advice to the European Commission about the criteria for simple and transparent securitization. The active institutional involvement of the ECB was in line with its new mandate in financial supervision, especially concerning

the monitoring of systemic risks in the euro area. For example, since 2015, the ECB has been collecting and publishing statistics on loans adjusted for sales and securitization, providing more complete information on loans that were granted by euro area banks but were no longer recorded on their balance sheets (ECB, 2015). The ECB's in-depth monitoring of euro area loan securitization enabled a more comprehensive view of securitized lending to the real economy originated by euro area banks, and it improved comparability across the member states, which was previously lacking. Furthermore, since 2018, the ECB has been coordinating the joint working group involving the ESMA and contributing to the implementation of safe securitization of assets, not only in the euro area but also in the EU as a whole (ECB, 2018). ESMA has also been in charge of the implementation and monitoring of the EU's securitization regulation adopted, liaising with its EU agency counterparts in banking and insurance on cross-sectoral matters in the framework of the Specific Committee on Securitisation of the Joint Committee of the European Supervisory Authorities (ESMA, 2021). At the same time, it is worth noting that this extensive inter-institutional coordination requires investment of effort and organizational resources by all EU and member state actors involved.

Highlighting the finding that in finance the EU pursues its preferences through the established global standard-setting bodies, at the time of launching the Capital Markets Union, Jonathan Hill (European Commissioner for Financial Stability, Financial Services, and Capital Markets Union) repeatedly pointed out that EU initiatives on securitization were part of a broader international effort. In fact, in parallel to the discussions on Capital Markets Union and the re-launch of securitization in the EU, the BCBS and IOSCO consulted on criteria for simple and transparent securitization and the BCBS considered how to incorporate these criteria in its revised securitization framework.

In terms of significance for the broader regime complex, less stringent securitization rules weakened the effectiveness of the shadow banking regime complex and promoted the growth of the shadow banking sector, which the ECB (2016) had identified as a potential financial vulnerability also when it came to hedge funds regulation.

## 5. Alternative Explanations

This section considers several alternative explanations for the variation in the EU's influence across the shadow banking regime complex to consider at the international and at the EU level. First, at the international level, one could argue that the EU's influence depends on whether it is able to forge an alliance with the US or has similar preferences concerning international standards. Whereas the EU (excluding the UK) and the US had different preferences on the regulation of hedge funds (which undoubtedly weakened the EU's ability to influence inter-

national standards), the EU and the US also had different preferences concerning the relaunch of securitization. Yet, the EU succeeded in influencing these standards from 2015 onwards. Second, one could argue that the EU's influence depends on its ability to forge an alliance with third countries other than the US. Yet, both in the case of hedge funds and securitization, there were weak preferences and limited mobilization by third countries on these matters because the majority of hedge funds and securitized products are located in the US and in the EU.

At the EU level, one could argue that the EU's influence on an elemental regime depends on its domestic market size and/or regulatory capacity. Regarding both hedge funds and securitization, the EU market size was smaller than that of the US, hence it cannot account for the different outcomes of interest in these two elemental regimes. Likewise, both in the cases of hedge funds and securitization, EU (and US) regulatory capacity was in the making and almost proceed in parallel to the activity of international standard setting bodies, hence it cannot account for the different outcomes of interest.

With that said, the two varying elements of the shadow banking regime complex—one being an entity (hedge funds) and the other one being an activity (securitization)—display different market configurations within the EU. Securitization activities tend to be evenly distributed across the EU, at least amongst the member states with substantial financial sectors, whereas the hedge funds sector is heavily concentrated in the UK. It is also worth noting that the EU is represented by different institutions in two studied elemental regimes, and central banks were more in the lead in the securitization one. In this respect, the alliance between the ECB and the Bank of England in favor of lower capital requirements (to foster securitization) played a crucial role in forging a more cohesive EU position on this matter. By contrast, we did not find evidence of a similar alliance among regulators in the hedge funds' elemental regime. Furthermore, our case studies confirm previous findings that central bankers and securities regulators form two distinct professional communities in international financial regulation (see James & Quaglia, 2022; Quaglia & Spendzharova, 2019).

To sum up, considering plausible alternative explanations, one could argue that the EU's influence on an elemental regime depends on its domestic market size and/or regulatory capacity. Yet, both in hedge funds and in securitization, the EU market size was smaller than that of the US, hence it cannot account for the different outcomes of interest in these two elemental regimes. Likewise, in both cases, EU (and US) regulatory capacity was in the making and proceeded almost parallel to the activity of the international standard-setting bodies, hence it cannot account for the different outcomes.

## 6. Conclusions

This article set out to explain the influence of the EU in the shadow banking regime complex by focusing on two



elemental regimes within this complex—those on hedge funds and securitization. We argue that the EU’s internal cohesiveness to a large extent determines its external influence across elemental regimes in the regime complex. At the same time, EU cohesiveness is costly. It requires the alignment of the preferences of the main EU financial jurisdictions as well as an investment of effort and resources by the main EU supranational actors in the policy area, such as the ECB and the European Commission. In this regard, our analysis shows that the leading EU supranational actors are rather selective in investing finite institutional resources to achieve greater cohesiveness, taking into account the main priority areas for joint EU action, which can also change over time.

Our findings about the importance of EU cohesiveness and internal preference alignment among the member states with large financial sectors can travel to other regime complexes within and outside finance, with the caveat that they are based on a limited number of observations. Although, for reasons of space, we examined only two elemental regimes in the shadow banking complex, we are also able to tease out several broader implications. First, the EU’s influence is uneven across the regime complex and varies over time, depending, *inter alia*, on the EU’s internal cohesiveness and its ability to speak with one voice. Second, there is no clear evidence about the EU engaging in forum shopping or venue shifting, but that might also be the case because the EU and its member states are well represented across all elemental regimes in the shadow banking regime complex. Third, in finance, the EU pursues its global regulatory preferences through the established international institutions rather than through bilateral agreements with other jurisdictions or regional actors, as is increasingly the case in trade. In sum, the EU pursues strategies to manage regime complexity in finance rather than to bypass it.

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### Conflict of Interests

The authors declare no conflict of interests.

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Article

# Does the EU Benefit From Increased Complexity? Capital Punishment in the Human Rights Regime

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## Abstract

This article questions how the EU has acted to increase the complexity of the human rights regime through the process of incorporating a new issue area into its scope and to what extent has it benefitted from that process. By examining the breadth of the regime complex, between 1991–2021, this research shows how UN bodies, regional organisations, and civil society associations increasingly consider the death penalty a human rights issue instead of an exclusively domestic legal one. The article draws on a comprehensive archival review tracing the process of reframing capital punishment, the actions undertaken by the EU contributing to this process, and the benefits it receives from increased regime complexity. This leads to an affirmative answer to the previous questions, arguing that the EU's actions in its foreign policy, anti-death penalty stance, and promotion of civil society, facilitated a reconfiguration of the human rights regime complex towards the rejection of capital punishment. It also provides important insights into the limitations of the literature on EU actorship in the UN system, which trains its eye primarily on legal representation and member-state cooperation. While this applies to formal international organisations, characterising the post-1945 multilateral order, utilising the study of regime complexity provides a more precise assessment of EU action in the fragmented and increasingly informal institutions constituting global governance today.

## Keywords

death penalty; EU; foreign policy; human rights; regime complexity; UN

## Issue

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## 1. Does the EU Win or Lose When Complexity Increases?

The study of regime complexity (Alter & Meunier, 2009; Eilstrup-Sangiovanni & Westerwinter, 2021; Raustiala & Victor, 2004) is part of an emerging literature explaining changes to the architecture of global governance, alongside transnational networks (Slaughter, 2004), “transnational new governance” (Abbott & Snidal, 2010), the rise of informality (Roger, 2019; Vabulas & Snidal, 2013), and hierarchy and power (Barnett et al., 2021). In regimes based on formal intergovernmental organisations, such as the UN, that characterise “old international governance” (Abbott & Snidal, 2010, p. 315), the EU experiences barriers to participation including (a) formal mem-

bership rules permitting only sovereign states, (b) reluctance of some EU member-states to concede international standing and voice, and (c) other IO members scepticism about EU membership (Kissack, 2010; Laatikainen, 2010; Laatikainen & Smith, 2006; Wouters et al., 2007). Therefore, creating institutions with different membership rules will potentially benefit the EU. When complexity intensifies because the number of informal intergovernmental organisations grows, the EU stands to gain if membership rules are changed. Conversely, if informality entails the absence of secretariats that prevent the EU from developing inter-institutional cooperation, or if new institutions reject EU participation, the EU could be worse off (Koops, 2016). Determining whether the EU benefits or not from complexity must be assessed



case-by-case and the purpose of this article is to develop a theoretically informed explanation of why variation is likely to exist.

Regime complexity increases when new actors are incorporated and power relations are altered, accepted rules of appropriate behaviour become ambiguous, alternative sources of authority emerge, or competing institutions claim legitimacy. Weaker actors benefit from establishing new institutions that follow alternative agendas, have more accommodating power structures, or propose alternative rules and norms of cooperation (Morse & Keohane, 2014). The relative weakness of new institutions in comparison to established ones representing the interests of the powerful is not a hindrance to mobilising support for change and questioning the status quo. Is the EU an advocate of change, or a beneficiary of existing power relations? While it sees itself as progressive in terms of promoting human rights, sustainability, democracy and the rule of law, international development, and an open trade regime, critics note the Eurocentricity of these values and the structures that perpetuate the wealth and power of the advanced industrial economies (Diez, 2005; Keukeleire & Lecocq, 2018; Onar & Nicolaidis, 2013).

Greater regime complexity arising from challenges to European norms and values is potentially disadvantageous to the EU. Alternatively, if the EU can gain access to the institutions that seek change, it may be able to leverage its legal, bureaucratic, and diplomatic resources to work across multiple institutions in parallel, capitalising on forum shopping, rule ambiguity, as well as bargaining and side payments, thus demonstrating the opportunities for powerful actors to gain from complexity (Drezner, 2009).

This article asks two questions centred on this puzzle. Firstly, what role does the EU play in expanding a regime complex? To answer this question, this research shows how the EU altered the framing of the death penalty, supported advocacy groups, and promoted normative contestation. The second question is: To what extent does the EU win or lose from increased complexity? To answer this, it proposes differentiating between “institutional-architectural” benefits, consisting of enhanced access to governance institutions (e.g., those created by increased informality), and “output-outcome” benefits materialising from policy changes as a consequence of the new agenda, alternative sources of legitimacy, and power dynamics engendered by increased complexity.

Synthesising the answers to both questions yields four potential outcomes, ranging from maximally identifying the EU as an actor that shapes complexity to its advantage, to minimally seeing the EU as a passive observer of changing regime complexity that is driven by others and renders it worse off. In between, it either advances complexity but does not benefit from it or it cannot impact on a regime but the actions of others make it better off.

This article proceeds in four sections. It begins by establishing why the abolitionist movement is an impor-

tant case to study the process of increasing regime complexity. The next identifies EU action in three areas that have driven capital punishment’s insertion into the human rights regime complex. Afterwards, it examines whether the EU wins or loses from these changes. The final section presents the conclusions of the previous ones.

## 2. How Has the Abolitionist Movement Increased the Complexity of the Human Rights Regime?

How and why is the transnational effort to frame the death penalty as a human rights issue an example of international regime complexity? The “starting insight of international regime complexity literature is that global governance today seldom starts with a blank slate,” complexes develop when new policy areas emerge, and “existing institutions convene sub-groups of policy-makers to figure out whether existing policies or something new is needed” (Alter, 2021, p. 3). By contrast, the human rights implications of capital punishment were first raised in the UN in 1984, in a Economic and Social Council Resolution guaranteeing the rights of those facing execution (United Nations, 1984). These rights were addressed at the regional level by optional protocols in the European Convention on Human Rights (Protocol 6 adopted in 1983 and entered into force in 1985) and the American Convention on Human Rights (Protocol to the American Convention on Human Rights to Abolish the Death Penalty adopted in 1990 and entered into force in 1991).

What makes the case worth studying is how efforts to make the death penalty a human rights issue reconfigured the regime, forcing the inclusion of new actors and institutions, and forging links between existing components. Within the context of the thematic issue, it is an important case because of the EU’s stated ambition to be a leading advocate for the abolition of capital punishment globally (Council of the European Union, 2013) and was a demonstrative example chosen for “normative power Europe” (Manners, 2002). Given this long-standing goal, it is selected as a likely case demonstrating the impact of EU action on the process of increasing regime complexity to assess the extent to which changes further EU goals.

The use of the death penalty is regulated in international law by article 6 of the International Covenant on Civil and Political Rights (ICCPR) and limits its application to only the most serious crimes, demanding that the correct judicial processes are followed and provisions for appeal are provided. How exactly these obligations are fulfilled is decided by national laws and, frequently, retaining the right to execute is aligned with the staunch assertion of state sovereignty and defending the principle of non-interference in domestic politics. Retentionist states argue that ICCPR’s article 6 permits capital punishment and abolitionists may take the additional step of ratifying the Second Optional Protocol (committing a

state to abolition) if they so choose. However, in 2018, the UN Human Rights Committee published General Comment 36 pertaining to article 6 and opined a strongly abolitionist reading.

The study begins in July 1991, when the Second Optional Protocol entered into force and the human rights regime established a legal authority (as of December 2022, 90 UN members have ratified it), and ends with the analysis of reports issued in 2021. However, for a considerable period of this time, retentionist states sought to silence efforts to discuss capital punishment by claiming that it remained a domestic legal issue and not a human rights one in institutions across the human rights regime, including the Human Rights Council (HRC), Commission on Human Rights, and the General Assembly of the United Nations (UNGA) Third Committee (cultural, social, and human rights).

In 1994, the Italian government failed in its attempt to pass a resolution calling for the abolition of the death penalty in the UNGA Third Committee. The draft text was withdrawn before the final committee vote for fear of being passed with amended text that strengthened the retentionist position (Bantekas & Hodgkinson, 2000). Italy, Finland, and Austria (the latter two in the capacity of rotating EU presidency) succeeded in having the UN Commission on Human Rights adopting resolutions calling for the abolition of the death penalty in 1997, 1998, and 1999 respectively, building on a more concerted effort to promote human rights through EU foreign policy and specifically advocating against the use of capital punishment (Smith, 2006).

While the justification for presenting capital punishment as a human rights issue drew in part on regional conventions, UN-level action inspired regional-level action too, such as the African Commission on Human and Peoples' Rights Resolution urging states to envisage a moratorium on the death penalty in 1999 (Resolution 42/XXVI/99), and more recently the 2014 Cotonou Declaration aspiring to make Africa an abolitionist continent. In the non-governmental sphere, the transnational World Coalition Against the Death Penalty was founded in 2002 by bringing together over 160 civil society groups (including long-term campaigners such as Amnesty International) to lobby for change. There are also hybrid governance institutions such as the International Commission Against the Death Penalty (ICDP) which is "an independent body of politically influential people with international standing—supported by a diverse group of 23 governments from all world regions—working to free the world from the death penalty" (ICDP, n.d.).

The creation of the HRC, in 2006, sets back EU efforts with consecutive failures to secure sufficient support for abolitionist resolutions due to reweighted regional representation (Smith, 2010), which led to a forum shift to the UNGA Third Committee. While ultimately less ambitious (calling for a moratorium instead of abolition), resolutions in the UNGA were passed in 2007, 2008,

and biennially since then. Rule ambiguity has therefore increased because the majority of UN member-states accept that capital punishment is a human rights issue. More recently, the HRC and the Office of the High Commissioner for Human Rights (OHCHR) have convened high-level panels (HLPs) to discuss the death penalty (2014, 2015, and biennially thereafter), and have actively sought the inclusion of abolitionists from national parliaments, the judiciary, civil society, and epistemic communities to address meetings. The HLPs have increased the heterogeneity of actors advocating abolition, as well as consolidating capital punishment in the human rights regime by arguing its use constitutes torture (discussed in detail afterwards). As evidence of how far the death penalty has moved from the periphery to the centre of the human rights regime, one can compare the arguments presented in the UNGA Third Committee against accepting it as a human rights issue (United Nations, 2007) and UNGA plenary statements by retentionists, such as Papua New Guinea from 2016 onwards, conceding that they "accept that the death penalty is primarily a human rights issue" (United Nations, 2016b, p. 30).

In summary, over around 25 years, capital punishment moved into the human rights regime to become a central issue within the regime. Four indicators of complexity noted in the literature are present in this case: (a) regional rules on application overlap with efforts to establish international rules; (b) increased number of institutions; (c) memberships overlap and different elemental institutions refer to the decisions and actions of other institutions to elaborate their positions; and (d) retentionist arguments about the legality of the death penalty are refuted, evidencing the weakening of a legal hierarchical order (Eilstrup-Sangiovanni & Westerwinter, 2021).

### **3. What Has the EU Done to Increase Human Rights Regime Complexity?**

This section focuses on the first research question concerning the death penalty shifting from outside to inside the human rights regime and what role the EU played in it. The process of incorporating new actors into the complex created ambiguity in previous rules regarding capital punishment by framing it as aligned with cruel treatment and torture. It also drew on regional organisations and their efforts to restrict the use of the death penalty, which simultaneously emphasised new authoritative institutions regarding rule interpretation. While the EU played a significant role in its own region, the CoE and its European Court of Human Rights have historically been the primary institutions in this field, with robust legal provisions outlawing the death penalty in the European Convention on Human Rights (Protocols 6 and 13). Although there was a period of mutual suspicion between the EU and the CoE in the early 2000s, when the latter's preeminent position protecting human rights

across Europe appeared under threat, national governments intervened to ensure the CoE's position was not challenged (Schumacher, 2012).

This article utilises a qualitative analysis of five series of authoritative texts spanning the period from 2006 (creation of HRC) to 2021 to identify and map the presence of new actors within the human rights regime and measure their contribution to the process of redefining the rules governing capital punishment. The first texts were the annual reports on the "question of the death penalty" of the Secretary-General to the HRC (16 documents from 2006–2021).

The second set was the *Moratorium on the Use of the Death Penalty: Report of the Secretary-General* to the UNGA (seven documents from 2008–2020). Although these are UN-authored reports, the submissions received are from states, regional organisations, civil society groups, and experts, and document the spectrum of activities undertaken by all actors contributing to the regime. These were used to identify regional and international actors discussing rules applied to the death penalty, facilitating its insertion into the human rights regime.

The third set was the HLP's discussions organised by the OHCHR on behalf of the HRC, which reported proceedings of meetings at which national, regional, and international representatives, from governments, civil society, advocacy groups, and legal and criminology experts, argued for greater restrictions on the use of the death penalty (five documents from 2014, 2015, 2017, 2019, and 2021).

The fourth set was the annual *Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* reports to both the HRC and UNGA (32 documents from 2006–2021).

Finally, the fifth set was the annual *Special Rapporteur on the Extrajudicial, Summary, or Arbitrary Executions* reports to both the HRC and UNGA (32 documents from 2006–2021).

The latter two sources document the increased interest special rapporteurs showed in capital punishment as it was incorporated into their mandates. It also surveyed EU documents related to abolitionist activities to identify the scope of EU actions and their impact, authored by the Council of Ministers, the European Union External Action Service (EEAS), the European Parliamentary, and the European Court of Auditors. Verification and triangulation were conducted to ensure information was accurate, either by visiting websites or using secondary literature.

Three EU actions were identified and examined: (a) framing capital punishment as closely aligned with prohibited human rights violations such as torture; (b) funding national and regional advocacy against capital punishment; (c) normative challenges to the legitimacy of capital punishment. Each type of action is an example of an established strategy used by social movements, norm entrepreneurs, or other actors recognised in the literature. A brief theoretical contextualisation is

provided for each one, followed by empirical evidence of EU action.

### 3.1. Death Penalty as a Form of Torture

The study of social movements has observed how activists try to capture motivated supporters of one political issue (known as a "sentiment group") to strengthen support of another position through the action of "framing" (Snow et al., 1986). Four distinct modes of framing exist—bridging, amplification, extension, and transformation—capturing the strategies necessary to link issues of varying similarity. The linkage of the death penalty to other grave violations of human rights took place through frame amplification, namely the "identification, idealization, and elevation of one or more values presumed basic to prospective constituents but which have not inspired collective action for any number of reasons" (Snow et al., 1986, p. 469).

The report of the special rapporteur for torture and other cruel, inhuman, or degrading treatment or punishment explicitly details how the framing of capital punishment and cruel or degrading punishment (later extended to torture) emanated from an intervention by the EU in 2007:

During the interactive dialogue on the report of the special rapporteur (A/63/175) before the General Assembly, the representative of France, on behalf of the EU, asked whether or not the death penalty was compatible with the prohibition of cruel, inhuman or degrading punishment under international law. (United Nations, 2008, §29)

The intervention by the EU was extremely significant because it pinpoints the first effort to mobilise opposition to cruel, inhuman, or degrading punishment into opposition to the death penalty through a framing strategy, and later by amplification, to frame the death penalty as torture.

This was institutionalised by incumbent special rapporteurs in the following years. In direct response to the EU question, special rapporteur Manfred Nowak wrote a long and wide-ranging discussion of legal trends and jurisprudence addressing the question because no one has asked him this before (United Nations, 2018, pp. 7–13). Nowak's replacement, Juan E. Méndez, said that considering "whether the death penalty...constitute[s] per se cruel, inhuman or degrading treatment or punishment" would be an objective during his tenure (United Nations, 2011, §70). In 2018, Nils Melzer wrote in his report to the UNGA that "it is the considered view of the special rapporteur that the circumstances accompanying the practice of the death penalty...cannot be reconciled with the prohibition of torture" (United Nations, 2018, §44).

The framing of the death penalty as torture first appeared in the 2016 report of the *Special Rapporteur*

on *Extrajudicial, Summary, or Arbitrary Executions*, when Christof Heyns stated that “the death penalty constitutes torture, cruel, or inhuman treatment” (United Nations, 2016a, §40), and again in 2021 when Morris Tidball-Binz warned of the “impact of the death penalty on the dignity and rights of human beings, including the right not to suffer torture or other cruel, inhuman or degrading treatment” (United Nations, 2021, §58). These statements demonstrate that the frame initially proposed by the EU in 2008 has been accepted and legitimised at the UN level.

How has the EU contributed to consolidating this framing process? Most important is the fact that the EU began the process of framing capital punishment as incompatible with the prohibition of cruel treatment and torture in 2007. Its own guidelines for external action on matters related to capital punishment set out in 2013 repeatedly refer to the issue of torture, and, similarly, the EU’s guidelines on responding to torture (published in 2012 and updated in 2019) should be read in conjunction with each those of the death penalty (Council of the European Union, 2019).

In 2017, a joint EU, Argentina, and Mongolia initiative established the Alliance for Torture-Free Trade (<https://torturefreetrade.org>) alongside 57 co-signatories committed to placing controls on the export of goods that could be used for torture or the death penalty. This builds on the action taken by the EU in 2005 to restrict the manufacture by European pharmaceutical firms of drugs used in lethal injection executions (Council of the European Union, 2013). This ban resulted in alternative methods of execution being used which were deemed crueller (such as firing squad), thereby making it harder for retentionist states to justify their continued use of capital punishment.

In summary, the consolidation of the death penalty within the human rights regime complex was aided by framing the death penalty as incompatible with the prohibition of torture. The uncontested nature of the torture prohibition simultaneously drew capital punishment closer to human rights monitoring bodies and led to the two special rapporteurs taking an ongoing interest in the issue. All the while, retentionist critics found it harder to defend their use of the death penalty because it implied defending the practice of torture. The EU was instrumental in this change occurring. Consequently, complexity increased through greater ambiguity over the previously established legality of capital punishment and new actors crowded the space that was previously limited by the prerogative of non-intervention in the domestic legal affairs of states.

### *3.2. Funding National and Regional Advocacy Against Capital Punishment*

Civil society advocacy groups operate transnationally to promote policy change in a wide range of issues, including opposing capital punishment. They can either

work in a bottom-up manner, as described by Keck and Sikkink (1997/2014) in their study of transnational advocacy networks. Alternatively, they can work in a top-down manner upon receiving an invitation from formal international organisations to enter meetings, allowing them to lobby states on issues such as legislation or compliance verification and monitoring. The EU boosted civil society activism against the use of the death penalty through funds allocated using the (now replaced) European Instrument for Democracy and Human Rights (EIDHR), which, in 2014, became aligned with key EU foreign policy objectives, including combatting torture and the death penalty. Between 2014 and 2017, the EU awarded over €17M to 33 competitively awarded grants (European Court of Auditors, 2015). In the opinion of the external evaluation of the EIDHR, “almost all projects under the EIDHR contain at least some elements of awareness-raising, advocacy, and lobbying—both at the global level...and at the national and local levels” (Moran et al., 2017, p. 47).

One example of EU funding to a civil society advocacy group is the Ensemble Contre la Peine de Mort (ECPM), the organiser of seven World Congresses Against the Death Penalty and three regional conferences (Rabat in 2012, Kuala Lumpur in 2015, and Abidjan in 2018). In 2021, the EU contributed €248,901 to the organisation, amounting to nearly 18% of the operating budget. In both 2019 and 2020, the EU, the European Parliament, and the OIF contributed a total of around €900,000 (50% of the total income), the increase reflecting the hosting of the seventh World Congress at the European Parliament, in Brussels. Between 2009 and 2018, the EU and the Organisation internationale de la francophonie (OIF) contributed between €100,000 and €500,000 annually (publicly available data does not disaggregate between international organisations), in addition to EU member-states’ direct contributions (Ensemble Contre la Peine de Mort, 2020). This example is significant because the ECPM is one of the most important single-issue advocacy groups addressing the death penalty and its world congresses serve as important platforms for pressing national and regional actors for change. At the level of the member-states, the Community of Portuguese-Speaking Countries passed their first resolution to abolish the death penalty in 2003 (United Nations, 2014, §50) and formed the basis of the ten-state cross-regional group of authors for the 2007 UNGA resolution (Kissack, 2010). Spain was instrumental in founding the ICDP in 2010. These examples illustrate the EU mobilisation of political support for generating local advocacy promoting regional-level institutional change.

### *3.3. Normative Challenges to the Legitimacy of Capital Punishment*

After the initial framing steps tying the death penalty to human rights, followed by catalytic funding of civil



society activism to consolidate the position, the third EU action promoted arguments against the death penalty in diplomatic communications. The EU has consistently taken the stance in its official documents that capital punishment is not compatible with respect for international human rights law.

The EU uses highly consistent language in its demarches condemning executions in retentionist states, as well as in praising steps taken towards moratoriums or abolition. Between 2013 and 2021, demarches deviate only slightly from the accepted text stating that they:

Consider the death penalty to be a cruel and inhumane punishment, which is not a deterrent to criminal behaviour and which represents an unacceptable denial of human dignity. With capital punishment any miscarriage of justice—which can happen in any legal system—is irreversible. (European Union External Action, 2014)

This example is from a 2014 demarche against Bangladesh and can be compared to examples of other statements. The EU praised Mongolia's abolition of capital punishment in 2015 stating that "capital punishment is a cruel and inhuman punishment which fails to deter criminal behaviour and which represents a grave denial of human dignity and integrity" (European Union External Action, 2015). Five years on, in response to the hanging of a 29-year-old man convicted of murder in Botswana, the EU issued a joint statement with Australia and Canada declaring that the "death penalty is a cruel and inhumane punishment, which fails to deter criminal behaviour and which represents a grave denial of human dignity and integrity. Any miscarriage of justice—which is an inherent risk in any legal system—is irreversible" (European Union External Action, 2020). The language is consistently used when addressing Japan (European Union External Action, 2016) or the US (European Union External Action, 2018), demonstrating minimal variation between Global North and Global South retentionist states. While there was consistency over time in terms of the framing, the EU also incorporated some arguments taken from the central themes of the HLP discussions, including the repeated focus on the lack of the deterrent effect, the risk of irreversible miscarriages of justice, and the denial of dignity.

EU statements on the death penalty in third states drew on heightened ambiguity in the rules governing capital punishment and the composition of authoritative actors making normative statements about its use. Widely recognised mechanisms linking individuals to changing state behaviour such as norm entrepreneurship (Finnemore & Sikkink, 1998) and epistemic community consultation (Haas, 1992) were evidenced. The HLP discussions were an important forum for abolitionist advocates to give a platform in a UN institution to legal experts, civil society groups, regional organisations, and national government officials to discuss the specific

human rights dimensions related to capital punishment, such as considering the impact on minors or protection of minorities.

More widely across the regime complex, legal expert opinion has been instrumental in reframing the relationship between sovereignty and rights, arguing that respecting human rights in domestic law is an affirmation of sovereignty expressed as a freely chosen commitment to comply (United Nations, 2017). This argument is expressed most clearly in the amendments to the UNGA resolutions passed in 2016, 2018, and 2020, that frame respecting sovereignty as integral to successful multilateralism rather than previous efforts, between 2007 and 2014, which sought to include references to sovereignty as the antithesis of human rights universalism.

Recently, the EU's position has been echoed by the 2018 General Comment 36 of the Human Rights Committee, reflecting contemporary legal opinion about article 6 of the ICCPR. This article was previously interpreted by retentionist states as justifying the continuation of capital punishment in the absence of an affirmative decision to ratify the Second Optional Protocol. General Comment 36 concludes that the spirit of the article is that abolition is the long-term objective and that sovereigntist objections were foreseen as being transitory and not permanently valid (Méndez, 2012). The superiority of rules governing the death penalty emanating from sovereign statehood was placed in doubt as the inviolability of the right to life was more forcefully associated with capital punishment.

#### 4. Has the EU Benefitted From Increased Regime Complexity?

This section focuses on the second research question asking to what extent the EU wins or loses from increased complexity. Figure 1 shows the increased complexity of the human rights regime complex as the death penalty, in part through its framing as a cruel punishment and also through global advocacy, has drawn in more institutions. The global abolition of the death penalty has been a major foreign policy objective of the EU for two decades. It is still far from being realised, with around 20–30 states resolutely retaining their right to execute, with China, Iran, Iraq, Egypt, and Saudi Arabia conducting over 90% of annual executions. However, the global trend undoubtedly favours the abolitionist movement, with Amnesty International reporting 483 executions in 2020, significantly reduced from 2148 in 2005. Likewise, in 2020, 144 states are deemed abolitionists in law or practice, up from the 130 reported in 2007 (Amnesty International, 2021).

To this end, bringing the death penalty into the human rights regime has coincided with a drastic reduction in the use of capital punishment and the EU's policy goal has been advanced. While the previous section set out three EU actions that facilitated increased regime complexity, it is important to acknowledge possible

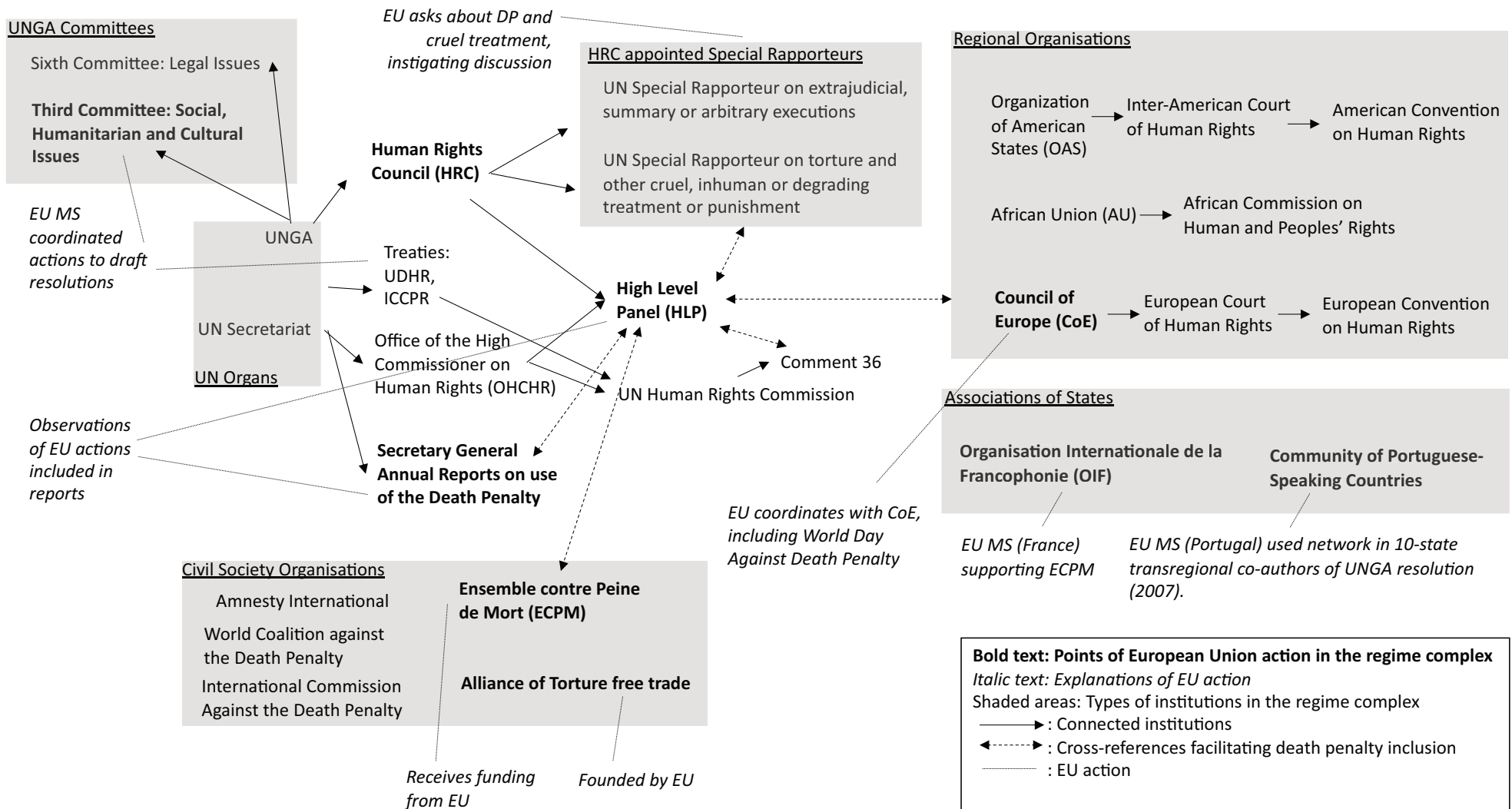


Figure 1. Human rights regime complex with death penalty included.

exogenous factors beyond the scope of this study that also contributed to the abolitionist trend, such as economic development and rising income, democratisation, or domestic activism (Kim, 2016; McGann & Sandholtz, 2012; Neumayer, 2008). An analytical framework to measure the benefits accrued to the EU and determine the extent to which it is a “winner” is therefore necessary.

The first issue to consider is whether increased regime complexity yields “institutional-architectural” benefits (is the EU able to politically participate in the regime complex?) or “output-outcome” benefits (are the EU’s foreign policy goals furthered by the regime complex?). The two types are not a priori assumed to be mutually exclusive. The second issue draws on theories of international cooperation and considers whether benefits are public or private and if public, either excludible or non-excludible. A third, and related consideration, is that framing the death penalty as a human rights issue and furthering its abolition, may be considered a public “good” to actors sharing the same normative standards as the EU; to retentionist states, these actions likely constitute a public “bad.” The liberal orientation of EU foreign policy aims that they are non-excludable and provide public goods (from the EU’s perspective), echoing Smith’s (2014) analysis of the EU’s external action through the lens of Wolfers’ possessive versus milieu goals.

In Section 2, four indicators of complexity were identified: (a) overlapping rules creating ambiguity; (b) increased number of institutions; (c) membership overlap and institutions referencing the positions of others; and (d) weakening legal hierarchical order. This article now considers examples of each in turn.

Rule ambiguity increased as more institutions sought to bind their members to rules that differ from rules previously regarded as authoritative. In this case, regional organisations (including the EU and CoE) with stricter rules on capital punishment catalysed increased ambiguity. Another mechanism observed was the incorporation of new actors into the regime complex that contested the legitimacy of established rules, such as special rapporteurs, HLP discussions, and the legal experts’ reasoning in General Opinion 36 regarding article 6 of the ICCPR. Collectively, these sources claimed an abolitionist trend was emerging within the international community. The EU is one of many like-minded actors that benefited from ambiguous rules through the policy outcomes made possible.

The increased number of institutions in the regime complex provided more opportunities for a diverse range of actors to either engage directly through participation or indirectly by informing discussion points. Activist data gathering and legal experts’ opinions informed the reports written by the special rapporteurs, who have become more prominent in the debate. The EU benefited from architectural changes, such as the HLP, offering the EU direct participation in the abolitionist conversation after 2014. These benefits are non-excludible to

other actors, meaning the EU is not alone in receiving increased access opportunities.

Closely linked to the rise in the number of institutions was the increased tendency for institutions to refer to the decisions and actions of others within the complex to justify their positions, creating feedback loops and transferring norm entrepreneurship from one part of the complex to another. The text of UNGA resolutions elaborated biennially, the advancements elsewhere in the complex, and recommendations by special rapporteurs were incorporated into HLP discussions, which in turn referenced regional organisations’ legal frameworks regulating capital punishment and civil society organisation advocacy. These routes into formal resolutions and UN reports, while not binding on UN members, served the EU and like-minded abolitionists’ interests by making opposition to the human rights-based arguments against the death penalty systematically more difficult to ignore.

Finally, there was a clear process of weakening the hierarchy within the legal order that placed the sovereign state’s right to use capital punishment for the most serious crimes above the right to life. Throughout the study, retentionist states’ acceptance of the human rights dimension was documented (e.g., UNGA statements) and the wider human rights violations implicit in capital punishment were articulated. The EU, in its foreign policy position towards abolition, the language of its demarches and press statements, and through the criteria for awarding EIDHR grants, treated capital punishment as a human rights issue, that was often mentioned in association with cruel punishment or torture. The EU’s actions contributed to these outcomes and its policy preference gained legitimacy from UN authority, benefitting it considerably.

In summary, all four mechanisms through which regime complexity increased yielded benefits to the EU. Two were examples of institutional-architectural benefits (number of institutions and membership overlap) and two were examples of output-outcome (rule ambiguity and weakening legal hierarchy). Yet in all four cases, the benefits were not exclusively for the EU, with other abolitionist-favouring actors—be they states, regional organisations, or civil society groups—benefitting too. Also significant was the observation that the EU’s increased actorship and improved influence came about in a manner that the existing literature on EU actorship would have difficulty identifying. There the focus is on the willingness (or not) of EU member-states to pool sovereignty and accept collective representation, coupled with legal obstacles presented by UN bodies and agencies that limit membership to sovereign states. There is a tendency to regard EU “wins” in a zero-sum relationship with its own member-states or other members of international organisations forced to concede a voice, a vote, or a chair, echoing the distinction between possessive and milieu goals. Using the lens of regime complexity to observe the process of regime change, a more nuanced understanding is developed of

how the EU exerted influence across several different institutions, thus yielding benefits that were not won from concessions.

### 5. Conclusion

This article examines the process by which abolitionists incorporated capital punishment into the global human rights regime between 1991 and 2021, thereby ending its treatment as an exclusively domestic legal issue. The case was chosen because the EU has long advocated for the complete abolition of the death penalty as a central goal of its foreign policy, increasing the likelihood of obtaining positive results in order to develop a more general theoretical contribution.

Two questions guided this study. How has the EU acted to increase the complexity of the human rights regime and to what extent has it benefitted from that process? Through the analysis of primary and secondary sources, three EU actions were identified as contributing to heightening complexity.

First, the EU questioned the UN special rapporteur on torture about whether capital punishment constituted cruel punishment, thus initiating a powerful framing process binding the regulation of the death penalty with the prohibition of torture.

The second was the EU’s funding of civil society organisations working toward global abolition (including €17M between 2014–2017), serving to promote transnational advocacy networks driving domestic (bottom-up) pressure to reform, as well as gaining representation in UN-level activities such as HLP.

Third, demarches and statements to third states promoted new normative thinking developed across the regime complex, doubting the compatibility of capital punishment and the right to life. Examples of EU benefits from these actions were given and, in all cases, the benefits did not accrue exclusively to the EU, but also to other actors engaged in abolition advocacy.

By simplifying the first answer to say whether or not the EU significantly acted upon the regime to affect its complexity and the second question to a binary assessment of winning or losing, a two-by-two matrix is developed with question one represented in rows and question two in columns. The four outcomes are (NW) both affirmative, (NE) affirmative-negative, (SW) negative-affirmative, and (SE) both negative. The first outcome results in an assessment of actorness as high, while the fourth, by contrast, is low. The mixed results point to a compromised actorness—either a failure to

achieve the desired outcome or a favourable outcome attributable to the work of other actors. Table 1 takes on actorness and is done for illustrative purposes—for a detailed analysis see Jupille and Caporaso (1998), Bretherton and Vogler (2006), and Drieskens (2017).

The results identified in this article show the EU exhibiting notable actorness in the UN-centred human rights regime, but what is the wider significance of this result to other regimes? The study of EU actorness in formal institutions like the UN has tended to focus on legal and political representation (Gerhing et al., 2013). International organisation is becoming more complicated in design due to the rise of informal institutions (Roger, 2019; Vabulas & Snidal, 2013), the overlapping of mandates and memberships (Alter & Meunier, 2009), and “transnational new governance” (Abbott & Snidal, 2010).

Much of the literature studying the EU in the multilateral system has focused on formal IOs using the established toolbox of coordination, representation, and legal personality. Another direction has been the comprehensive study of regional organisations in the multilateral system as a type of actor in their own right (Panke et al., 2018).

The direction proposed in this thematic issue and operationalised in this article is to analyse processes of regime complexity change and assess the impact of the EU, and the outcome of its actions. As global governance institutions become denser and more varied, regime complexity will become an increasingly important field of study. Future lines of investigation are suggested to go beyond this article. Firstly, one could expand the analysis to other regimes. Secondly, to study issue areas previously outside of the human rights regime and their processes of incorporation (both successful and unsuccessful). A third would be a deeper dive into the agency of the EU by looking at the EEAS or the human rights working group of the Council. All three demonstrate the relevance of this research to the wider study of EU actorness in the global governance of the present day.

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**Table 1.** EU actorness across regime complexes.

Do EU actions cause increase in complexity? (Q1)	Does the EU benefit from increased complexity? (Q2)	
	Yes	No
Yes	High degree of actorness	Compromised actorness
No	Compromised actorness	Low degree of actorness

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### Conflict of Interests

The author declares no conflict of interests.

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Article

# Backdoor Bargaining: How the European Union Navigates the Food Aid Regime Complex

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## Abstract

Scholars have long observed that states play off overlapping international institutions against one another in an effort to advance their policy objectives. This article identifies a strategy utilized by the EU in response to regime complexity that I term “backdoor bargaining.” Unlike forum-shopping, regime-shifting, and competitive-regime creation strategies, which states use to move multilateral negotiations to an institution that they expect will produce a more favorable outcome, backdoor bargaining involves a state using negotiations within one institution to gain an advantage in negotiations taking place at another distinct institution in a regime complex. I demonstrate the plausibility of backdoor bargaining by showing that the EU used the renegotiation of the Food Aid Convention as a strategy to gain bargaining leverage in the agriculture negotiations at the World Trade Organization. The article also offers insights into the potential consequences of international regime complexity for the EU as a global actor and the coherence of its foreign policies.

## Keywords

European Union; Food Aid Convention; international negotiation; policy coherence; regime complexes; trade; World Trade Organization

## Issue

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## 1. Introduction

Scholars of regime complexes have long argued that actors play off overlapping international institutions against one another in an effort to advance their interests (Alter & Meunier, 2009; Morin & Orsini, 2014; Morse & Keohane, 2014; Oberthür & Stokke, 2011; Orsini, 2013; Raustalia & Victor, 2004; Rosenau, 2007). Yet empirical knowledge of how the EU as an actor advances its interests in regime complexes remains scant. In line with the objective of this thematic issue (see Delreux & Earsom, 2023), this article seeks to advance our understanding of how the EU navigates international regime complexity. I do so by analyzing the EU’s actions in the regime complex for food aid. This regime complex provides a good case for analyzing the EU’s approach to regime complexity as it is a long-standing site of inter-state political conflict due to the linkages between the international trade,

agriculture, and development regimes (Clapp, 2012). It is also a regime complex where the EU has full membership in each of the relevant focal institutions and where it is a key player and has significant economic and political interests due to its status as a leading global agricultural producer and the second-largest food aid donor (Cathie, 1997; Young & Peterson, 2013).

Drawing on an analysis of a contentious episode in the food aid regime complex, I show that the EU pursued a multi-forum negotiating strategy termed here “backdoor bargaining.” While exhibiting some similarities to strategies such as “forum-shopping” (Busch, 2007), “regime-shifting” (Helfer, 2004), and “competitive-regime creation” (Morse & Keohane, 2014), in which states seek to gain bargaining power by moving negotiations to an institution in a regime complex they expect will produce a more favorable outcome, backdoor bargaining also involves states playing off overlapping institutions

to increase their bargaining leverage but without permanently moving negotiations. As will be shown in the analysis that follows, the EU used concurrent negotiations at one institution in the food aid regime complex, the Food Aid Convention (FAC), as part of an effort to increase its bargaining leverage in negotiations taking place at another overlapping institution in the regime complex, the World Trade Organization (WTO). More specifically, the EU utilized negotiations at the FAC to obtain commitments from other states that could be leveraged to press the US to offer greater concessions at the WTO.

In addition to illustrating the concept of backdoor bargaining, analysis of how the EU navigates the food aid regime complex reveals the important effects of international regime complexity on the EU's efforts to act as a unitary actor and the coherence of its foreign policies. One insight from the analysis is that regime complexity may rescale authority relations among administrative units of the EU. As will be shown, the EU's backdoor bargaining strategy resulted in the Directorate General for Trade (DG Trade) supplanting the European Civil Protection and Humanitarian Aid Operations (ECHO) as the lead negotiator at the FAC. In addition, the analysis suggests that navigating regime complexity may, at times, exacerbate the EU's external policy incoherence. The EU's approach in the food aid regime complex privileged its trade interests over development considerations, thereby reviving debate and criticism about the coherence of the EU's trade and development policies.

## **2. Backdoor Bargaining, European Union Actorness, and Foreign Policy Coherence**

In this section, I develop the concept of backdoor bargaining and situate the contributions of the article to the literature on international regime complexity, the EU as a global actor, and the coherence of the EU's foreign policy.

### *2.1. Navigating Regime Complexity Via Backdoor Bargaining*

A defining feature of regime complexity is increased overlap between international institutions with authority for a given policy issue and thus a greater choice of venues at which states may pursue their interests (Alter & Raustalia, 2018; Hofmann, 2019; Raustalia & Victor, 2004). The extant literature generally predicts that actors will select the institution that they expect to be most favorable for achieving their objectives. This behavior may take different forms depending on the institutional context and actors' goals. Among the more well-known strategies utilized by states are forum-shopping, when states select one international institution among alternatives with similar jurisdictions to negotiate, implement, or adjudicate an international agreement (Busch, 2007; Murphy & Kellow, 2013); regime-shifting, where states move negotiations from an existing focal international institution to another

institution (Helfer, 2009); and competitive-regime creation, a situation where a group of dissatisfied states seeks to challenge an existing international agreement by creating a rival institution and/or agreement (Morse & Keohane, 2014). States may also engage in the strategy of "hostage-taking" when functional overlap among international institutions enables states to "exploit their position to attain influence in an organization where they are not [a] member" (Hofmann, 2019, p. 884).

This article contributes to our understanding of how states navigate regime complexity by identifying a strategy termed here backdoor bargaining. Backdoor bargaining can be conceived as part of a continuum of multi-forum strategies utilized by states in contexts where authority for an issue area is diffused among partially overlapping international institutions. A key difference between backdoor bargaining and other existing concepts, such as forum-shopping, regime-shifting, and competitive-regime creation, is that, with backdoor bargaining, states are not pursuing outside options by moving negotiations from one institution to another where they have greater bargaining leverage. In other words, backdoor bargaining is not characterized by states selecting one institution over another and/or threatening to exit from a focal institution, as is the case for forum-shopping, regime-shifting, and competitive-regime creation strategies (Clark, 2022; Lipsky, 2015). Instead, backdoor bargaining occurs when states seek to use negotiations at one institution to improve their bargaining position at another, such as by securing provisions in one agreement intended to strengthen their hand in another, concurrent negotiation. States can play off negotiations at overlapping institutions because, in regime complexes, "changes within one institution could reverberate across parallel institutions" (Alter & Meunier, 2009, p. 20), and thus, developments in one negotiation can influence the course of negotiations at another institution (see also Keohane & Victor, 2011).

Backdoor bargaining is most likely to occur in dense regime complexes, which are characterized by a greater number of partially overlapping international institutions and agreements and more extensive linkages among them. Many established regime complexes exhibit high levels of density and are characterized by a non-hierarchical division of labor among their constituent institutions and agreements (Gehring & Faude, 2014; Keohane & Victor, 2011). In dense regime complexes, it is more likely that, at any given point in time, multiple overlapping international agreements will come up for renegotiation concurrently. Most international agreements have automatic expiry and/or renegotiation clauses, which require states to return to the bargaining table. A situation where overlapping agreements are opened for negotiation at the same time creates an opportunity for states to secure commitments in one negotiation to enhance their bargaining position in another.

I demonstrate the plausibility of backdoor bargaining with an illustrative case study of the EU's approach to

negotiating in the regime complex for food aid. I show that the EU sought to use renegotiation of the FAC to increase its bargaining leverage in negotiations at the WTO. The EU's primary goal was to use the FAC negotiations to strengthen its hand at the WTO and weaken the US's bargaining position, thereby better positioning itself to extract greater economic concessions in the WTO agriculture negotiations. As will be demonstrated, the EU sought to secure commitments in the FAC negotiations that it could, in turn, leverage in the WTO negotiations.

## *2.2. The European Union as a "Fragmented" Global Actor*

The EU's ability to act as a unitary actor and to speak with one voice in global affairs is highly debated (Bretherton & Vogler, 2005; da Conceição-Heldt & Meunier, 2014; Smith, 2003). This article starts from the assumption that the EU can be a unitary and global actor but recognizes that the EU's ability to act varies across international institutions and across time due to differences in the degree of delegation, capabilities, and salience of issues to member states (da Conceição-Heldt & Meunier, 2014; Dür & Elsig, 2011). A key obstacle for the EU to act as a unitary actor is the fragmented structure of its foreign policymaking apparatus, which is composed of both supranational and intergovernmental bodies, and that requires formal or implicit agreement among all member states (Smith, 2003). This complex structure, in turn, may undermine the EU's ability to develop a common foreign policy position, particularly when there are strongly diverging or potentially conflicting interests among constituent actors. The challenge of aggregating these diverse interests is especially acute in formulating and implementing foreign policy, where conflicts play out along multiple axes, including between the European Commission (hereafter referred to as the Commission) and member states, the Commission and the European Parliament, and the European Parliament and member states (Bretherton & Vogler, 2005; da Conceição-Heldt & Meunier, 2014; Dijkstra, 2009).

Where existing research has focused on conflicts between EU constituent actors at different scales (e.g., the Commission versus the Council), this article focuses on supranational-level conflicts between distinct Commission departments and bureaucratic units (often referred to as "directorates"). Scholars have long noted the existence of bureaucratic politics in the Commission, with directorates competing over agenda-setting, mandates, and resources (Candel et al., 2021; Carbone, 2008; Hartlapp et al., 2013). However, the nature of regime complexes may engender new sources of conflict among directorates.

A contention of this article is that regime complexity may increase policy and goal conflicts between distinct Commission directorates. The Commission has an internal division of labor with different directorates delegated authority to represent EU interests at particular multilat-

eral institutions. This division of labor is typically based on some set of specialized competencies and expertise. However, in regime complexes, where, by definition, multiple partially-overlapping international institutions share authority for a policy area, the traditional dividing line between where the responsibility of one directorate ends and another begins may become blurred or disappear altogether. Regime complexity may increase the likelihood of directorates coming into tension in situations where directorates with distinct interests/policy preferences find themselves sharing authority for an issue when the governance of that issue becomes linked across the elemental regimes constituting the regime complex. Given that the EU is more likely to have global policy influence when it speaks with one voice, this may result in one directorate being supplanted (temporarily or permanently) as the lead negotiator at a global governance institution by another directorate to ensure a single EU voice. This dynamic will be shown in the case study, where DG Trade supplanted ECHO as the lead negotiator at the FAC. This swap at the FAC was not the result of EU members formally changing DG Trade or ECHO's mandates, nor due to dissatisfaction with the ECHO's performance at the FAC. Instead, this shift in status and authority occurred because the FAC negotiations are linked to the WTO negotiations. Since European trade interests are accorded a higher priority than international development, DG Trade took charge of the EU's negotiating team at the FAC. While ECHO went along in recognition that trade interests were more salient to EU states and business actors than foreign aid, this was not without inter-directorate tensions. With DG Trade supplanting ECHO at the FAC negotiations, ECHO's goals for progressive reform of international food aid no longer drove the EU's bargaining strategy at the FAC.

## *2.3. European Union Foreign Policy Coherence: Trade and Development*

Related to the EU's fragmented policymaking structure is the challenge of achieving the coherence of external policies. The EU is widely criticized by scholars and practitioners for lacking coherence across its foreign policies (da Conceição-Heldt & Meunier, 2014; Gebhard, 2017). External policy coherence (or the lack of it) by the EU is highly debated, but policy incoherence can be described as situations where distinct elements or structures of the EU pursue policy goals that are inconsistent and potentially work at cross-purposes to one another. While policy incoherence is not unique to the EU, Gebhard (2017) argues that this tendency is exacerbated by the EU's complex, multi-level structure.

The nexus between trade and development, which includes international food aid, is a policy domain where the EU has long struggled for external coherence (Carbone & Orbie, 2014; Hannah, 2016; Siles-Brügge, 2014). The EU presents its external trade and development policies as a "force for good." However, scholars



have observed a paradox: Whereas the EU's overseas assistance targets the populations most in need, its trade policy often produces adverse consequences for these same groups (Young & Peterson, 2013). To date, studies on EU (in)coherence in trade and development policy have exclusively focused on bilateral, preferential, or regional trade agreements with developing countries—a space where the EU, due to its large market size, wields disproportionate bargaining power (Hannah, 2016; Siles-Brügge, 2014). How (in)coherence in the EU's trade and development policies plays out at the multilateral level is far less understood and studied. This article contributes to our understanding of EU (in)coherence in trade and development at the multilateral level by analyzing its approach to partially overlapping multilateral institutions and agreements.

As the analysis will show, the EU's backdoor bargaining approach in the food aid regime complex was expected by other actors to have negative development implications. Achieving its trade objectives—changes to US food aid policies that the EU claimed distorted trade—was anticipated to drastically reduce the international supply of food aid available to feed vulnerable populations. The case study therefore suggests that the manner in which the EU navigated the food aid regime complex intensified the incoherence between its trade and development policies.

### **3. Case Study: The European Union Navigating the Regime Complex for Food Aid**

In this section, I demonstrate the plausibility of the concept of backdoor bargaining with an illustrative case study of the EU's approach to negotiating reform of international food aid at the WTO and the FAC. I focus on a specific temporal period, 2003 to 2005, which is the period when both WTO and FAC agreements governing international food aid were opened for renegotiation and in which the EU's backdoor bargaining strategy may be clearly observed. The case study draws on extensive documentary analysis of publicly available WTO, FAC, and EU reports, meeting records, bargaining proposals, statements, press releases, and other official documents, as well as media reporting and confidential elite interviews with member state representatives and other relevant stakeholders.

#### *3.1. Global Trade Politics and the Emergence of a Food Aid Regime Complex*

The provision of international food aid for development and humanitarian assistance is a long-standing practice going back to the Second World War. However, international food aid has been a frequent source of trade conflict among the major food exporting countries, such as the US, EU, Canada, and Australia, which are also the main food aid donors (Shaw, 2007). Trade conflicts arise due to the multiple goals of food aid that cut across the trade

and development spheres. In addition to serving foreign policy, development, and humanitarian objectives, food aid has also been an instrument of agriculture and trade policy and historically provided a non-market mechanism for countries to dispose of surplus agriculture production in an orderly manner (Clapp, 2012). While food aid provided as relief in humanitarian emergencies does not generally produce trade conflicts, other types of food aid transactions, such as “concessional” food aid (i.e., government-to-government loan sales of food at below market rates) and “monetized” food aid (i.e., food aid sold in the recipient country to generate hard currency), have been criticized for displacing normal commercial food trade and depressing local prices (Zhang, 2004).

States have created numerous international institutions to prevent and resolve trade-related conflicts over food aid, as well as to improve its development effectiveness. Combined, these international institutions constitute a regime complex for food aid that cuts across the elemental regimes for trade, agriculture, development, humanitarian, and human rights (Hoddinott et al., 2008).

The origins of the food aid regime complex trace back to the 1950s, when donor and recipient governments negotiated the Principles on Surplus Disposal—a voluntary code of conduct that sought to ensure international food aid did not adversely affect commercial food trade and world price stability. The next major development was when the donors agreed in 1965 to the FAC, a burden-sharing system intended to guarantee a predictable supply of international food aid, which also committed donors to minimize distortions to international trade. While the food aid regime complex subsequently came to include many other institutions—including the World Food Programme (WFP), the United Nations High Commissioner for Refugees, the United Nations Office for the Coordination of Humanitarian Affairs, and the Group of Seven (G7)—perhaps the most significant development was the establishment of the WTO in 1995 and its Agreement on Agriculture (AoA), which brought international food aid partially under the authority of the multilateral trade regime (Zhang, 2004).

The trade impacts of food aid were an important concern for states heading into the Uruguay Round (1986–1994) of multilateral trade negotiations that created the WTO and the AoA. These negotiations took place in the context of a US–EU farm war, in which governments had turned to export subsidies and food aid to dispose of mounting surpluses. These policies depressed world farm prices and caused trade friction with other exporting countries. This is why a key objective of the Uruguay Round was to reduce agricultural export subsidies and establish stricter rules to ensure that donors provided only “bona fide food aid” (General Agreement on Tariffs and Trade, 1989, p. 6).

States were successful in achieving these objectives in the negotiations. The AoA established stricter international food aid rules that prohibit donors from tying food aid to purchases of other products by recipients and

require donations to be carried out in accordance with the Principles on Surplus Disposal, provided in fully grant form (i.e., free) or on concessional terms consistent with the FAC, and that all transactions be reported to the WTO Committee on Agriculture (WTO, 1994, pp. 9–10). Food aid transactions that do not meet WTO criteria are considered potential agricultural export subsidies, which are subject to strict quantitative and financial limits. The creation of the AoA was thus highly significant because it expanded the authority of the WTO—with its hard, binding rules—in the global governance of international food aid (Zhang, 2004). It also linked WTO and FAC agreements in the regime complex for food aid.

### *3.2. The European Union Makes Food Aid a Key Bargaining Issue in the World Trade Organization Doha Round*

International food aid was not expected to be a significant issue in the WTO Doha Round negotiations launched in 2001. At the time, most WTO members believed that the reforms under the AoA had generally severed the link between surplus disposal and food aid. Indeed, by the early 2000s, the US and EU no longer held major surplus stocks (Daugbjerg & Swinbank, 2009). It was the EU that decided to put food aid at the top of the agenda of the Doha Round agriculture negotiations. The EU's 2003 bargaining proposal on agriculture identified food aid as a key issue. DG Trade expressed its position as follows:

Food aid in kind should be provided only for well-defined vulnerable groups or in response to well-recognized emergencies and humanitarian crisis and not, as is often the case today by some members, as a surplus disposal mechanism. WTO members should provide whenever possible direct cash contribution for the purchase of food within the recipient country, or from other developing countries. (EU, 2003)

Moreover, in May 2004, the EU chief negotiator tabled an offer to eliminate Europe's agricultural export subsidy program (EU, 2004). The EU made clear the price to eliminate its export subsidies would be for the US to make major reforms to its international food aid and, in particular, to shift to a "cash-only" food aid model (Clapp, 2012).

The EU's offer to eliminate its agricultural export subsidies was a significant development in the WTO agriculture negotiations. Eliminating agricultural export subsidies was a key stated goal of the Doha Round negotiations, as such subsidies are considered among the most trade-distorting (Hoekman & Messerlin, 2006). The EU was the main target for reform since it provided over 80% of all agricultural export subsidies by WTO members. If WTO members achieved the elimination of export subsidies, they would thus have met a key Doha Round objective.

Why did the EU offer in 2004 to eliminate its agricultural subsidies at the WTO? Its offer can be understood

as a strategic move to show leadership and support multilateralism by seeking to restart the stalled WTO negotiations. The EU has generally been viewed at the WTO as one of the most highly protectionist members and most opposed to agricultural trade liberalization. This reputation has been largely due to the Common Agricultural Policy, which was created to rebuild European food self-sufficiency after the Second World War and provided high levels of trade protection to the agricultural sector (Daugbjerg & Swinbank, 2009; Garcia-Duran et al., 2014). As the primary users of agricultural export subsidies, EU negotiators knew that this was its Achilles' heel in the agriculture negotiations and a major source of criticism from nearly all other WTO members. Agricultural export subsidies helped to maintain the competitiveness of European agricultural exporters and were thus a sensitive political and economic issue. Indeed, at the start of the Doha Round in 2001, the EU had partially dug its heel in on the issue, stating it was open to negotiating reductions but not elimination altogether (EU, 2000, p. 2).

At the WTO, the EU's 2004 offer was seen as a major change in its bargaining position. It also positioned the EU to change how it was perceived by other members—from blocking to leading in international agriculture trade liberalization. The EU's offer was also intended to bring WTO members back to the negotiating table. The WTO agriculture negotiations had been deadlocked since the 2003 Cancun WTO ministerial due to growing South–North tensions over agricultural trade reform (Hopewell, 2016). Since eliminating agricultural export subsidies was a major prize for WTO members, the EU's offer was a strong inducement for other members to resume the agriculture negotiations, which indeed was what occurred.

Key to explaining DG Trade's shift in bargaining position at the WTO was that the EU had already initiated Common Agricultural Policy reforms that paved the way to phase out export subsidies over the medium term (Garcia-Duran et al., 2019). Yet DG Trade's offer at the WTO agriculture negotiations was controversial among some powerful EU member states, including Germany and France, which called the Commission's offer a "massive tactical mistake" since the EU was perceived to be giving up too much without being offered concrete concessions from other WTO members ("EU offers to end farm export aid," 2004). The EU's offer was reported to have provoked a tense exchange between DG Trade's chief negotiator, Pascal Lamy, and the French finance minister, Nicolas Sarkozy. While dissatisfaction among powerful EU members did not alter DG Trade's approach to the WTO agriculture negotiations (since it is delegated exclusive authority to formulate EU trade policy), it did increase the political pressure on DG Trade to obtain a significant concession in return.

DG Trade identified US food aid as its key target in the WTO agriculture negotiations, and specifically that the US should only be allowed to provide food aid as cash grants. At the time, the US was the only major

donor that provided most of its food aid “in-kind,” in the form of domestically sourced agricultural commodities. Most donors, including the EU, provided a mix of cash and in-kind food aid but were gradually moving towards cash-only models since cash is widely believed to be more cost-effective and efficient (Clapp, 2012; Hoddinott et al., 2008).

Targeting US food aid was also a logical choice for DG Trade. The EU had long claimed that the US “abused” and “misused” food aid for the benefit of US producers and exporters. The critique of the US misusing food aid for commercial objectives and distorting trade fit with the common sense thinking at the WTO and provided a justificatory discourse for DG Trade in targeting US food aid. Selecting US food aid also made sense because agricultural export subsidies and food aid, alongside agricultural export credits and state trading enterprises, were linked issues that fell under the “export competition” pillar of the WTO agriculture negotiations (the other two pillars being “domestic support” and “market access”). The design of the WTO agriculture negotiations is such that members are encouraged to seek trade-offs within pillars. Only a few WTO members—the EU, the US, Canada, and Australia—had direct interests in the export competition pillar, and so it was expected that the EU would demand concessions on food aid in return for eliminating agriculture export subsidies. Indeed, EU negotiators repeatedly stated that eliminating their agricultural export subsidies was conditional on “strict parallelism” in the export competition pillar, and they expected other members to “fully match the EU on the forms of export support they use” (EU, 2004, p. 1), by which they meant US food aid.

In targeting US food aid, DG Trade selected an issue it knew would be politically contentious for US negotiators. Indeed, in an interview, a senior manager from the WFP familiar with the negotiations stated that the EU’s demand for cash-only food aid was a “political position just to upset the US” and to “obtain benefits in other parts of the [WTO] negotiations.” Any major reform of US food aid was likely to be difficult since food aid programs enjoy high levels of support from both sides of Congress, NGOs, the US farm lobby, and the public. Even efforts by then US President Bush and USAID to further shift US food aid towards more of a cash-only model were rejected by both sides of Congress. While obtaining the elimination of the EU’s agricultural export subsidies was the US’ top priority in the WTO agriculture negotiations, US negotiators informed other members that they faced an uphill battle in getting the necessary domestic political buy-in needed to make concessions on food aid (Clapp, 2004, pp. 1443–1444).

### *3.3. Spillover of Trade Politics Into the Food Aid Convention*

Events at the WTO were not confined to that institution but would eventually spill into and alter the trajectory of

bargaining at the FAC. Earlier in June 2003, FAC members, which comprised all international food aid donors, including the EU, reached a consensus to launch negotiations for a new convention. This included the establishment of a working group to set out a negotiating timetable, with negotiations expected to be concluded by the end of 2005.

Initial discussions for a new convention took place in the context of and were shaped by major shifts in development policy, most notably the growing focus on aid effectiveness and the 2000 Millennium Development Goals, which had committed the international community to halve hunger by 2015 (Hoddinott et al., 2008). For FAC members, increasing the quantity, quality, and effectiveness of food aid to reduce food insecurity was a priority. In addition, the talks occurred as all donors were experimenting with policy changes to increase the proportion of donations provided in cash. Some of the most controversial food aid practices, such as concessional sales, had been almost phased out by this point.

Talks at the FAC were generally led by representatives of each member’s development agency (e.g., ECHO in the case of the EU, USAID in the case of the US, and so on), which formed an epistemic community. They shared a belief that negotiating a new convention was a once-in-a-generation opportunity to overhaul the convention and make fighting world food insecurity and malnutrition its driving goal. Among FAC members, many indicated a sense of optimism around the negotiations, given what appeared to be growing political momentum for international food aid reform, with donors already unilaterally shifting towards providing cash-only food aid.

However, just as FAC members were moving to the negotiation preparation phase, the political dynamics shifted as trade politics spilled over from the WTO into the FAC. FAC members had initially started talks for a new convention with a focus on rewriting the rules to incentivize donors to provide greater volumes of micronutrient-enriched foods (in order to address chronic malnutrition) and make use of local or triangular purchases (where food is sourced in countries or regions in closer physical proximity to the emergency site to hasten delivery). By mid-2004, the dynamics at the FAC began to change when EU representatives demanded that any new convention would have to prohibit the use of in-kind food aid and only permit food aid donations in cash. Yet, EU negotiators did not threaten to exit the FAC negotiation or propose moving negotiations to the WTO. Instead, EU negotiators signaled that they might not support a new FAC agreement without a commitment to cash-only food aid. This outcome meant that the existing FAC agreement from 1999—that is, the status quo—would remain in place. As a result, cash-only vs. in-kind food aid became the central negotiating issue at the FAC, just as it was in the WTO agriculture negotiations.

EU negotiators’ backdoor bargaining approach included consistent negotiating positions at the FAC and WTO, which was logical given that the two institutions

were linked and shared authority in the governance of food aid. Yet the EU's demands were puzzling to other FAC members. The EU's position was seen by other members as extreme, given that, despite recent efforts, the largest donors—including the EU—still continued to provide the majority of their food aid in-kind. Indeed, in interviews, other FAC members labeled the EU's position as “ridiculous” and “not related to donor reality.” Most food aid experts, including FAC member representatives, agreed in principle that shifting to cash-only food aid was desirable, but that reform should be gradual since such a shift required legislative and administrative changes to how donors financed, sourced, and distributed food aid. FAC members ranged in their views of how much reform was required and how quickly it should occur, but, with the exception of the US, were generally supportive of moving towards cash-only food aid.

### *3.4. The Dynamics and Consequences of the European Union's Backdoor Bargaining*

The EU's approach and position at the FAC are best understood as a backdoor bargaining strategy, with it using the renegotiation of the FAC to gain bargaining leverage in the WTO agriculture negotiations. The EU's decision to demand cash-only food aid at the FAC was initiated by DG trade, not ECHO. DG Trade had sent representatives to the FAC talks to lead the negotiations, given the primacy of trade to EU interests and thus supplanting ECHO as the traditional leading voice on food aid at the FAC.

EU trade officials recognized that the FAC talks could strengthen or weaken their hand at the WTO, depending on how the negotiations for a new convention proceeded. It was generally accepted that the FAC negotiations, due to the limited number of issues and players compared to the larger and more complex negotiating agenda of the WTO, would conclude far more quickly and well before the WTO Doha Round. Given this, it was assumed that a new convention would have spillover effects at the WTO. In light of this assumption, DG Trade officials expected that obtaining a commitment by donors in a new FAC agreement to shift towards cash-only food aid would strengthen the EU's bargaining position vis-à-vis the US at the WTO. If the US agreed to cash-only food aid in the new FAC agreement, it would also have to do so at the WTO, where it would be bound by legally enforceable commitments. This was the favored scenario by DG Trade, as it would ensure it exacted the major concession it demanded in exchange for eliminating agricultural export subsidies and thus prevent backlash from dissatisfied EU member states. In an interview, one WTO negotiator noted that such an approach would “lock in a commitment” but still ensure “flexibility for each agreement to develop independently in the future.”

On the other hand, DG Trade recognized that the FAC negotiations could undermine its position at the WTO if the convention resulted in minimal, partial cash-only

commitments and/or exceptions waiving donors such as the US from committing to shifting towards cash-only food aid, hence the EU's threat to not support a new agreement without a commitment to cash-only food aid. In short, the EU's approach to the FAC became less about international food aid reform writ large, which was desired by ECHO and many other FAC members, and instead narrowed to ensuring that the FAC negotiations could be leveraged to increase the pressure on the US at the WTO to obtain concessions in exchange for eliminating its export subsidies.

Ultimately, the EU's backdoor bargaining approach had mixed results. On the one hand, its demand for cash-only food aid at the FAC did increase its bargaining leverage in the WTO agriculture negotiations. The FAC negotiations enabled the EU to clearly signal that cash-only food aid was a red line. By 2005, there was a general consensus emerging among WTO members to ban in-kind food aid and only permit cash-only food aid in order to lock in the EU's offer to eliminate its agricultural export subsidies (WTO, 2005). On the other hand, the EU's strategy made other FAC members, whose delegations were generally led by development rather than trade officials, express in interviews concerns about the “politicization of international food aid” by the EU at the FAC to achieve its trade objectives at the WTO. This led to tensions among FAC members and, eventually, the suspension of the negotiations in 2005. The decision to suspend the FAC negotiations due to trade politics was widely criticized by food aid practitioners and experts alike, who feared that trade had trumped development objectives and states had missed a vital opportunity to improve food aid effectiveness (Hoddinott et al., 2008).

Most notably, the EU's success in moving the WTO towards a decision to abandon in-kind food aid and require cash-only food aid drew severe criticism from the WFP, the world's largest humanitarian agency, which delivers the majority of international food aid. The WFP criticized the incoherence of the EU's trade and development policies and argued that the EU's demands would cause a massive decline in food aid supply and thus threatened the food security of millions of people. This criticism provoked a highly public and heated dispute between the head of the WFP, James T. Morris, and the EU trade commissioner, Peter Mandelson, at the 2005 WTO Ministerial in Hong Kong over the proposal to ban in-kind food aid (Clapp, 2012). The WFP's criticism eventually spurred the EU and other WTO members to roll back the ban on in-kind food aid at the WTO (Margulis, 2021). The collapse of the WTO Doha Round in 2008 due to North–South tensions on agriculture that were unrelated to food aid meant no new agreement on agriculture or other trade issues were reached. Whereas export competition issues, including export subsidies and food aid, were taken up again by WTO members in 2015, by this time, the negotiating dynamics and agenda had significantly evolved from the earlier events analyzed in this article (Wilkinson et al., 2016).



The episode of backdoor bargaining analyzed in this article suggests that the manner in which the EU navigated the food aid regime complex created friction between distinct Commission directorates. DG Trade and ECHO disagreed about both policy and strategy. ECHO and other EU development officials were uncomfortable with DG Trade's maximalist position on cash-only food aid, which they acknowledged did not even match the EU's own development practices. In an interview, a New Zealand negotiator confirmed that other states were aware that distinct EU directorates had "different interests," and this led to tensions in the negotiations. ECHO officials were not only frustrated at being supplanted by DG Trade as the lead voice at the FAC but believed that suspending the FAC negotiations meant they could not lock in reforms that were seen to benefit EU food aid policy and help achieve wider EU development policy objectives. In addition, widespread criticism that the EU was letting trade interests trump the needs of aid recipients was seen as undermining the reputation of the EU as a responsible international development actor, a reputation that ECHO and other EU development actors had worked hard over many years to build. In this case, DG Trade's supplanting of ECHO as the lead at the FAC was temporary in nature, and the EU managed to speak a single voice despite diverging policy preferences among its directorates. Nevertheless, DG Trade's backdoor bargaining strategy at the FAC to enhance its leverage at the WTO engendered tensions with ECHO.

#### 4. Conclusion

This article has contributed to deepening understanding of how the EU navigates international regime complexity by demonstrating its use of a backdoor bargaining strategy. Drawing on the case of the EU's approach to the regime complex for food aid, it was shown that the EU played off overlapping negotiations at the FAC and WTO by seeking a commitment from states at the former to lock in its bargaining objectives at the latter. Unlike other strategies such as forum-shopping, regime-shifting, or competitive-regime creation, the EU did not block negotiations at the FAC or WTO, nor did it attempt to permanently move negotiations from one institution to the other. Faced with uncertainty over whether it would be able to secure an agreement at the WTO for all donors to provide cash-only food aid in exchange for giving up its agricultural export subsidy program, the EU utilized the negotiations at the FAC in an effort to lock in agreement there on cash-only food aid, which it expected would weaken the US position at the WTO. The EU's backdoor bargaining strategy was indeed effective in weakening the US's bargaining position and moving WTO members closer to agreeing to its bargaining demand for a ban on in-kind food aid. It is not possible, however, to determine if the EU's backdoor bargaining strategy was ultimately successful due to the collapse of the Doha Round

negotiations in 2008, which was precipitated by events and political dynamics completely unrelated to the specific international food aid issues under consideration at the WTO. While the purpose of this article is to demonstrate the EU's use of backdoor bargaining in the food aid regime complex, future research examining other actors and cases would be needed to determine how often this strategy is utilized and to refine our understanding of how states select to use backdoor bargaining instead of other alternative multi-forum strategies.

The analysis suggests that the manner in which the EU navigates regime complexity may potentially increase the fragmentary pressures on the Commission. As illustrated in the case study, the pursuit of the EU's trade interests resulted in a reshuffling of the division of labor and representation among bureaucratic units, with DG Trade supplanting ECHO as the lead voice at the FAC. This change occurred not due to redelegation among directorates but simply due to the spillover of WTO trade politics into the FAC, a move promoted by DG Trade. DG Trade and ECHO had distinct priorities and objectives for the FAC negotiations, with the former seeking to increase its bargaining leverage at the WTO, whereas the latter prioritized improving the effectiveness of international food aid. In being supplanted by DG Trade at the FAC, ECHO was forced to put its objectives for major international food aid reform on hold. In this case, regime complexity and institutional overlap impacted the ability of one directorate to pursue its goals by empowering some actors while disempowering others.

The EU's backdoor bargaining strategy in the food aid regime complex had an impact on the perceived (in)coherence of its foreign policies. In particular, the EU's demand to eliminate in-kind food aid was widely expected to sharply reduce the international supply of food aid for use in humanitarian emergencies and for addressing world food insecurity. The EU's prioritization of its trade policy goals was seen as being pursued at the expense of its development commitments to reduce global hunger and malnutrition. The perceived incoherence of the EU's trade and development policies elicited widespread criticism from both inside and outside. Analysis of the EU's backdoor bargaining strategy sheds light on some of the challenges faced by the EU in navigating regime complexes, some of which are unique to its decision-making architecture and character as a supranational actor, whereas others, such as ensuring external policy coherence, are made potentially more difficult by rising institutional density and overlapping authority in global governance.

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Article

## EU Orchestration in the Nuclear Weapons Regime Complex

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### Abstract

While often recognised as a difficult actor in global efforts addressing the proliferation, control, and disarmament of nuclear weapons, the EU is also assumed to have the potential to play a more cohesive “state-like” role, especially in multilateral forum such as the Treaty on the Non-Proliferation of Nuclear Weapons review cycle. Such assumptions raise expectations of EU external action and influence, which the EU then invariably fails to meet. This article offers a reframing of how we understand the EU as an actor, focusing on its role in the nuclear weapons regime complex. Specifically, the article considers how, and under what conditions, the EU orchestrates within and across the nuclear weapons regime complex. Drawing on the orchestration and regime complex scholarship, alongside empirical data of EU external action from 2003 to 2019, the article shows how the EU’s natural proclivity for effective multilateralism, coupled with its functional limitations, the political cleavages impeding both the EU and multilateral progress within the regime complex, and the presence of like-minded intermediaries, create ripe conditions for EU orchestration in this field. It further argues that while the EU has struggled to inject agency within individual nuclear negotiation forums, its use of orchestration as a soft and indirect mode of governance is not only well-established but advancing. Orchestration is therefore found to serve as an important metric for understanding and evaluating the scope of EU agency in the nuclear weapons regime complex.

### Keywords

EU; international organisation; nuclear weapons; orchestration; performance; regime complex

### Issue

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### 1. Introduction

Most scholars would agree that the EU is a “difficult actor” (Kienzle & Vestergaard, 2012) that often struggles to find its voice (Erästö et al., 2021, p. 3) in global nuclear politics. Much of the existing scholarship focuses on EU performance in multilateral nuclear non-proliferation and disarmament forums, particularly the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) review cycle, with the EU’s performance then broadly lamented for its lowest common denominator positioning, lack of cohesion, and limited impact (Dee, 2015; Potter, 2005; Smetana, 2016; Soltanieh, 2020; Tertrais, 2005). While the EU receives some recognition of its external support for international organisations (IO) such as the International Atomic Energy Agency (IAEA) or the Comprehensive Nuclear-Test-Ban Treaty

Organization (CTBTO; Kienzle, 2013; Portela, 2021), the scholarship tends not to advance much beyond this point. Two problems then emerge in understanding the EU as an actor in this area of global governance. First, the metric typically used when evaluating the EU as an actor in individual nuclear weapons forums takes as its starting point the fact that the EU has the potential to play a more supranational “state-like” role, noticeably raising expectations that the EU invariably fails to meet. Second, there has been little concerted effort to trace the EU’s external action within and across what is identified as the nuclear weapons regime complex—a myriad network of institutions and treaties designed to govern the testing, spread, use, and eventual disarmament of nuclear weapons—nor does the existing scholarship consider how the regime complex has shaped the EU’s capacity to act. This article addresses these gaps.

Specifically, this article presents the EU as an actor and its impact on governance within the nuclear weapons regime complex through the lenses of a thus far under-studied role in the “EU as global actor” scholarship—orchestration. Orchestration is a “process whereby states or international organizations initiate, guide, broaden, and strengthen transnational governance by non-state and/or sub-state actors (Hale & Roger, 2014, pp. 60–61). An orchestrator will utilise ideational or material inducements to pursue shared governance goals (Abbott et al., 2015b, p. 4), working with and through intermediaries, such as IOs, or non-state actors, to initiate or shape transnational collective action (Hale & Roger, 2014, p. 69). Orchestration is closely cognizant of the regime complex scholarship, being not only a process of regime complexity in and of itself but also a strategy for overcoming the transnational governance problems that regime complexes can generate.

Specifically, this article asks: How, and under what conditions, does the EU orchestrate within the nuclear weapons regime complex? It argues that while the EU has struggled to inject agency within individual negotiation forums in the nuclear weapons regime complex, its use of orchestration as a soft and indirect mode of governance across the regime complex is not only well-established but advancing. The conditions for EU orchestration include both the political cleavages and multilateral stalemate within the regime complex itself, and the EU’s own lack of capability, internal political cleavages, and culture that favours “effective multilateralism” (Council of the European Union, 2003). How the EU orchestrates is through the pursuit of shared governance goals with numerous intermediaries, including the IAEA and CTBTO, but also the EU Non-Proliferation and Disarmament Consortium (EUNPDC) and the UN Office of Disarmament Affairs (UNODA). EU orchestration has moreover evolved from purely capacity-building orchestration to now include epistemic and convening practices, which, if continued to be developed, could enable the EU to inject greater agency into the regime complex.

To present this case the article first considers the nuclear weapons regime complex in context with the existing literature focused on the EU and its capacity to act in nuclear politics. Drawing then on theoretical insights from the regime complex and orchestration scholarship, triangulated with empirical data from interviews with EU and UN officials, alongside primary documentation drawing on the EU’s own Council Decisions, Conclusions, and Joint Actions from the timeframe 2003 to 2019, section three outlines the conditions and attributes for EU orchestration within the nuclear weapons regime complex. In section four, focus is then paid to a specific case of EU orchestration—addressing Council Decision 2019/615 on the EU’s actions to support the 10th NPT review conference—which serves to highlight the EU’s advancing orchestration role. Section five, then, concludes.

## 2. The Nuclear Weapons Regime Complex and the EU

The nuclear weapons regime complex is an array of partially overlapping treaties, treaty bodies, and institutions (Raustiala & Victor, 2004, p. 333) that govern the possession and renunciation of nuclear weapons, nuclear weapons technology, and their testing. The nuclear weapons regime complex forms part of a far wider international non-proliferation regime complex that encapsulates everything from the security, proliferation, testing, and delivery systems of nuclear weapons, biological and chemical weapons, as well as small arms and light weapons.

Within the nuclear weapons regime complex, the NPT, with its review cycles comprising preparatory committees and quinquennial review conferences, is often discussed as the “cornerstone” of the regime complex and tends to warrant special focus. Entered into force in 1970, the NPT is grounded in three pillars representing the commitment by all 191 of its states parties to prevent the proliferation of nuclear weapons, take steps towards achieving general and complete nuclear disarmament, and recognises the inalienable right of states parties to the peaceful uses of nuclear energy. The NPT operates in synergy with the IAEA, which monitors the use of nuclear energy and oversees states parties’ non-proliferation obligations. The regime complex also comprises the CTBTO Preparatory Commission, which monitors the Comprehensive Nuclear Test-Ban Treaty (CTBT). The CTBT, while not entered into force, is still observed by most states. The IAEA and CTBTO, therefore, serve important technical functions within the regime complex, monitoring the implementation of states parties’ commitments and obligations under the CTBT and NPT, and providing technical and capacity-building support directly to states.

In addition to the NPT, the nuclear weapons regime complex is made up of an extensive array of negotiating and deliberative bodies that fall under the UN’s broad umbrella of connecting regimes, including the UN First Committee, the UN Disarmament Commission, and the Conference on Disarmament (CD), which provides the only permanent multilateral disarmament treaty negotiating body within the regime complex. In 2017 the UN General Assembly also negotiated the Treaty on the Prohibition of Nuclear Weapons (TPNW). The TPNW states parties—who at the time of writing numbered 68 with 27 signatories still to ratify—also meet regularly for meetings of the states parties, the first of which was held in Geneva in June 2022.

The negotiation and entry into force of the TPNW serve to highlight what Morse and Keohane (2014) describe as “contested multilateralism” in the case of the nuclear weapons regime complex. Stark political cleavages exist across the regime complex not only between the nuclear-armed states but between the nuclear and non-nuclear-armed states as well. Cleavages are most apparent between states favouring deterrence

in national security doctrines, and those who favour banning nuclear weapons as a humanitarian and human security concern. These cleavages have generated significant transnational collective action problems for the regime complex, only exacerbated by the consensus decision-making rule commonplace within most of its forums. The result has not only been competitive regime formation, as in the case of the TPNW, but multilateral gridlock within forums such as the CD, as well as the NPT, and a shift towards non-political, technical, and technological collaborations that serve more as a sticking plaster than a solution to the political cleavages that hinder substantive progress.

Within the nuclear weapons regime complex, the EU has been identified as an actor since the launch of its Common Foreign and Security Policy (CFSP) in 1993, with the EU's first CFSP Joint Action approaching the NPT in 1995 (Fischer & Müller, 1995). The EU is a complex actor in nuclear matters, however. In 2005 Annalisa Giannella, the EU's then-personal representative on Nonproliferation of Weapons of Mass Destruction (WMD) remarked that "the EU is a very strange animal. It's something more and better than an international organization, something more comprehensive and more powerful" (Meier, 2005). Her remarks echo a long-held view of the EU as a *sui generis* global actor, one that is less than a state, yet seemingly more than an IO, with such "betweenness" intrinsic to the EU's very DNA (Drieskens, 2021, p. 33). When it concerns nuclear politics and diplomacy, however, the EU closely mirrors the political cleavages present within the wider regime complex which weakens its ability to act as "something more and better" than an IO.

On nuclear disarmament, France—the EU's sole nuclear-weapon state after the UK left the EU—advocates nuclear deterrence and has, alongside the 20 other EU-NATO members, rejected the TPNW (NATO, 2020). By contrast, EU-non-NATO member states (Ireland, Malta, and Austria) have all signed the TPNW and advocate for immediate nuclear disarmament. Cyprus and Sweden also voted in favour of the TPNW but did not then sign the treaty. While all EU member states are party to the NPT and negotiate EU Council Conclusions going into review negotiations, many also individually align with more active political groups during negotiations, particularly where these groups take a stronger stance on the divisive issues of nuclear deterrence and disarmament (Dee, 2015). The EU is also divided over the use of nuclear energy for civilian purposes. Many EU member states rely on nuclear energy and are building or planning on building new nuclear power plants (i.e., France, Slovakia, Finland, Romania), while others have renounced the use of nuclear energy (i.e., Denmark, Ireland, Germany, Austria). Factions have further formed over the labelling of nuclear energy as a "green" energy source, with EU member states divided between pro (France, Poland, Hungary, Czech Republic, Bulgaria, Slovakia, and Finland)

and anti (Germany, Denmark, Austria, Luxembourg) positions (Strauss, 2022).

Within the regime complex, the EU's unique functional and political make-up has also presented challenges to its institutional access and capacity to act within various multilateral forums. The EU is not a signatory to any of the treaties within the regime complex but participates in meetings and negotiations as an observer. EU member states are party to most treaties and institutions within the regime complex—the TPNW being the clear exception. However, under the CFSP, EU member states agree to coordinate over matters related to nuclear non-proliferation and disarmament as an area of "special competence." Prior to 2009/2010, EU member states negotiated ad hoc EU Council Conclusions approaching various forums within the regime complex, with EU positions then represented by whichever member state held the rotating Council Presidency. Since 2009, the entry into force of the Lisbon Treaty saw the formation of the new European External Action Service (EEAS) and the redefined role of personal advisor and special envoy for non-proliferation and disarmament. The EU has since gone on to participate with greater frequency in most multilateral forums within the regime complex and with prepared statements delivered by the special envoy or members of the EEAS Non-Proliferation and Disarmament Unit.

Since 2011, UNGA Resolution 65/276 has also enabled the EEAS to present EU statements, participate in debates, have EU communications circulated as formal documents, make oral amendments, and exercise a right of reply with the UNGA, UN committees, and associated conferences. However, the resolution is only variably applicable across the nuclear weapons regime complex. Within the NPT and the CD, for example, different rules apply. The EU has no official status in the CD. EU statements are delivered by whichever member state holds the rotating Council Presidency. The EEAS may request to join the delegation, but statements are given from behind the flag of the member state (Dee, 2017). Within the NPT's rules of procedure, EU representatives have the right to present EU statements during review conferences plenary sessions and in main committees and to circulate EU positions. The EU is nevertheless treated as an observer alongside other specialised agencies and intergovernmental regional organisations, such as the ICRC and Arab League. As such, the EU is prevented from attending "designated closed meetings" during NPT negotiations (UNODA, 2014, p. 11), relying instead on any EU member states involved in closed room "friends of the chair" negotiations in a national capacity due to their more prominent roles in other groupings, such as the P5 (France), Non-Proliferation and Disarmament Initiative (the Netherlands, Germany, Poland), and New Agenda Coalition (Ireland).

Interestingly, despite the institutional, functional, and political challenges facing the EU on matters concerning nuclear weapons, the metric typically employed



when assessing EU performance within individual forums of the nuclear weapons regime complex, is that of the EU playing a seemingly state-like role as a negotiator and even ideational leader that offers a benchmark for others to follow. Within the NPT particularly, the EU is expected to be an actor with leadership potential (Müller, 2005, p. 43), one whose unique make-up as a polity of both nuclear and non-nuclear-armed states positions it as a “microcosm” of the wider NPT community (Jørgensen, 2009, p. 201), “a useful benchmark for the international community as a whole” (Fischer & Müller, 1995, p. 46), and a “bridge-builder” (Portela, 2021, p. 2). Performance assessments of the EU within the NPT review negotiations, however, almost always find that the EU falls short of expectations. The EU is lamented as “a complex non-coherent group of countries” (Soltanieh, 2020, p. 123), one that faces “competition” from its own member states (Tertrais, 2005), is criticised for spending more time negotiating with itself than with others (Fischer & Müller, 1995), and who avoids the most politically contentious issues under negotiation (Dee, 2015; Smetana, 2016). The EU’s lowest common denominator positions are also found to contribute to the EU’s lack of cohesion (Jørgensen, 2009; Mölling, 2010; Müller, 2005; Potter, 2005). When it comes to taking on any prominent negotiation role in addressing nuclear disarmament therefore the EU is found to be hamstrung to the point that “few expect the EU to be a serious player” (Hill, 2004, p. 154).

While scholarly attention towards the EU in global nuclear weapons governance is admittedly limited, attention so far has largely been placed on the EU qua the EU, and consequently on the political and functional limitations which prevent the EU from performing a more cohesive “state-like” role. In so doing, however, we lose sight of the agency of other actors with whom the EU is interacting and of the regime complex itself. I argue that the metric for evaluating EU performance needs to be reconsidered and reframed. Understanding the EU as an actor requires us to look at the various governance mechanisms the EU employs in interacting with others across the wider nuclear weapons regime complex. More specifically, we need to look at the EU’s performance as an orchestrator to fully understand the scope of EU agency within the nuclear weapons regime complex.

### 3. Conditions and Attributes of EU Orchestration

Orchestration is a mode of soft and indirect governance involving the use of “ideational and/or material inducements to create, integrate and maintain a multi-actor system of soft and indirect governance, geared toward shared goals that neither orchestrator nor intermediaries could achieve on their own” (Abbott et al., 2015b, p. 4). Orchestration occurs when an orchestrator enlists an intermediary who influences the behaviour of one or more targets—typically states—in pursuit of shared transnational goals. As a mode of governance, orchestration is indirect because the orchestrator has no imme-

diated link to the target but rather uses a third party to pursue its governance goals (Abbott et al., 2015b, p. 17). Orchestration is also soft as an orchestrator works with the intermediary through voluntary cooperation, rather than relying on rules, threats, or obligations as would be expected of hard forms of governance, such as delegation (Abbott et al., 2015b, p. 17).

Orchestration can be observed in various ways, including through convening, agenda-setting, assistance, endorsement, and coordination behaviours (Abbott et al., 2015b, pp. 14–15). An orchestrator may initiate transnational action, for example, aimed at “unlocking” the agency of other actors (Hale & Roger, 2014, p. 68), or by shaping existing transnational initiatives by providing material or ideational resources to certain actors. Importantly, as orchestration is a soft and indirect mode of governance, an intermediary is not commanded or coerced by the orchestrator but works with them in a voluntary cooperative relationship in pursuit of shared governance goals. An orchestrator then looks to an intermediary to provide expertise, facilitate agenda-setting and mediation, monitor compliance or verification, adjudicate disputes, and even provide legitimacy where an intermediary is found to “increase the acceptability of their policies” with targets (Abbott et al., 2015a, p. 721).

Orchestration may also be understood as a form of “interplay management” (Abbott et al., 2015b, p. 4) whereby IOs within a regime complex interact to pursue shared transnational goals. Orchestration is then found to build coherence in regime complexes (Heldt & Schmidt, 2019, p. 1162), it can help overcome institutional inertia and the dispersion of power and interests (De Burca et al., 2013), and is seen as a means by which IOs can improve their performance (Abbott & Snidal, 2010). Orchestration can be especially beneficial for an IO where they have “a broad mandate to address certain issues but has not itself been delegated the capacity or authority” by its member states (Hale & Roger, 2014, p. 66). Orchestration is not unique to IOs however and can also be pursued by states, particularly where a government seeks to show a domestic audience that they are still “doing something” even when faced with multi-lateral stalemate (Hale & Roger, 2014, p. 66).

The EU has itself received growing attention as an orchestrator in the extant scholarship. Orchestration has been associated with EU regulatory governance within the Single European Market (Blauberger & Rittberger, 2015), with development policy (Serban, 2021), crisis management (Amadio Viceré, 2021; Genschel & Jachtenfuchs, 2018), and with the EU’s counter-piracy practices (Beuger, 2016). Orchestration is then found to have benefited EU governance in its various regulatory regimes (Blauberger & Rittberger, 2015), to have boosted EU agency in international development policy (Serban, 2021), and to have helped the EU move into a core leadership role in the field of counter-piracy (Beuger, 2016, p. 418). Orchestration is also observed as a means of externalising or “outsourcing” EU responsibilities

concerning crisis management due to problems of EU internal capacity-building (Genschel & Jachtenfuchs, 2018, p. 190) or a lack of regulatory competence and reputation (Amadio Viceré, 2021, p. 498).

While orchestration is observed as a mode of governance already enacted by the EU in both its internal and external action, very little attention has yet been given to the governance structures and wider regime complexes within which the EU is seeking to inject agency, or to the specific conditions necessary for EU orchestration. Such conditions are important, however, both for understanding the structural constraints impacting the EU's capacity to act, and for distinguishing orchestration from other forms of EU external action. The existing orchestration scholarship identifies various conditions for orchestration (Abbott et al., 2015b; Hale & Roger, 2014; Kienzle, 2019) as well as specific attributes for an orchestrator to meet (Hale & Roger, 2014)—all of which are met in the case of the EU and the nuclear weapons regime complex.

In the next sections, these theoretical conditions and attributes for orchestration are discussed with reference to the EU and triangulated against empirical evidence from primary documentation associated with 24 of the EU's Joint Actions and Council Decisions tailored towards the nuclear weapons regime complex under the Framework of the European Strategy Against the Proliferation of Weapons of Mass Destruction (hereinafter WMD Strategy), alongside its associated budget comprising €88,125,845.23 over the period of 2003 to 2019 (Council of the European Union, 2022). Empirical data is further supplemented by anonymised semi-structured elite interviews conducted over a five-year period (2015 to 2020) with officials from the UNODA, the EEAS, EU delegations in New York and Geneva, and non-proliferation and disarmament officials from both nuclear and non-nuclear weapon states within the EU.

### 3.1. Orchestration Conditions

For orchestration to occur there must first be a need for it (Kienzle, 2019 p. 489). There is broad agreement within the literature that orchestration occurs when an actor lacks certain capabilities (Abbott et al., 2015b, p. 20; Hale & Roger, 2014; Kienzle, 2019). Lack of capability may be in capacity, competence, resources, expertise, reputation, or legitimacy, requiring that the actor orchestrates through an intermediary who provides the necessary capability to better reach targets and fulfil shared governance goals. IOs are particularly found to need orchestration where there is goal divergence among member states or between the member states and the IO (Abbott et al., 2015b, p. 20), which limits the IO's ability to pursue hard or direct forms of governance.

As discussed in section two, the EU's own political divisions, limited competence, and institutional access mean it has limited capability to pursue clear objectives or advance more robust common positions in forums such as the NPT review conference, the UN First

Committee, or the CD. Within these forums intergovernmental bargaining and the influence of states parties—including the EU's own member states—dominate proceedings. While the EU enters negotiations with agreed Council Conclusions, these tend to be ambiguous and say little about the core issues being negotiated, not least concerning nuclear disarmament (Dee, 2015). For EU member states, the EU's lack of visibility and limited policy role on nuclear disarmament means the EU has no role in setting the agenda of negotiations (interview, June 22, 2015) and is unable to negotiate with third countries (interviews, June 22–25, 2015). The EEAS further acknowledges the challenges of positioning the EU on nuclear disarmament particularly. As one official stated: “This is a divisive issue. By any definition we don't have a position, we must be in the middle of what member states want [but] when you have a gap like this it is never easy. And the gap is getting wider” (interview, June 25, 2015). When the EU acts within NPT review conferences it is thus seen by member states as a useful means to share information (interview, March 11, 2015) and as an important financier of side events (interview, March 11, 2015), but beyond this, the EU has very limited capacity to do more (interview, July 30, 2019).

Another driver for orchestration is that there exists a collective action problem in transnational governance that prevents multilateral progress (Hale & Roger, 2014, p. 66). When multilateral gridlock occurs within a regime complex, orchestration then serves as “a strategy through which states or IOs bring new capacities and resources to the provision of global public goods by strengthening or catalysing transnational governance schemes” (Hale & Roger, 2014, p. 63). As also discussed in section two, the EU is, like any state or observing party to the nuclear weapons regime complex, impacted by the same stagnation which impedes multilateral progress and creates demand for alternative governance modes (Hale & Roger, 2014, p. 66). Expectations of the EU not only performing as something “more and better than an IO” within the NPT, the CD, or the UN First Committee deliberations but then also influencing the agenda and outcome are therefore unrealistic (interviews, June 22–23, 2015). Orchestration then becomes an alternative governance strategy that enables the EU to be seen to be “doing something” (Hale & Roger, 2014, p. 66), while also upholding its own strategic objective of pursuing “effective multilateralism” (Council of the European Union, 2003).

Another important condition for orchestration is that like-minded intermediaries or “supply actors” exist within the regime complex (Abbott et al., 2015b; Kienzle, 2019). Intermediaries are typically highlighted in the orchestration literature as non-state actors such as NGOs, businesses, transgovernmental networks, private-public partnerships, or IOs who will share correlated values with the orchestrator (Abbott et al., 2015b, p. 6). Within the nuclear weapons regime complex, there is no shortage of available intermediaries for the EU to work with. While non-state actors tend to take a

subordinate role within the regime complex, there are a plethora of IOs and agencies at work within and across the regime complex with whom the EU shares close partnerships and common values. The EU is a strategic partner with the IAEA, for example (IAEA, n.d.). The CTBTO also highlights the EU's "unwavering multifaceted support" (CTBTO, n.d.).

Empirical evidence further demonstrates that the EU uses a wide variety of intermediaries—"implementing entity" or "implementing agency" in the EU's language (Council of the European Union, 2004, 2022, Annex I)—to action its governance goals within the nuclear weapons regime complex. Of the 24 nuclear-related joint actions and Council decisions adopted under the framework of the WMD Strategy between 2003 and 2019, a total of 15 were aimed at capacity-building projects implemented by the IAEA and CTBTO (Council of the European Union, 2022, Annex I). These technical assistance and capacity-building activities have all been based on "voluntary cooperation with other actors and use existing expertise in international organizations...in their implementation" (Kienzle, 2013, p. 1155).

To demonstrate this orchestrator-intermediary relationship, the first EU Joint Action tailored to the regime complex financed three projects under the IAEA's Nuclear Security Programme in 2004, totalling €3,329,000. According to the Joint Action, the EU's governance goals were to implement its WMD Strategy by enhancing the protection of proliferation-sensitive materials and to strengthen the detection of and response to the illicit trafficking of nuclear materials, with specific projects intended to target countries in need of nuclear security assistance (Council of the European Union, 2004). As an intermediary, the IAEA was entrusted with implementation of the three projects. The Joint Action further highlighted that the "IAEA pursues the same objectives" as the EU's WMD Strategy (Council of the European Union, 2004), and was already engaged in efforts to strengthen the Convention of the Physical Protection of Nuclear Material, thereby providing the necessary technical capability to action and outsource the EU's WMD Strategy.

Since the WMD Strategy was launched in 2003, the EU's orchestration of technical and capacity-building governance goals in nuclear security through the IAEA and CTBTO as implementing agencies has made up a significant proportion of the EU non-proliferation and disarmament budget (Portela, 2021). Between 2006 and 2018 seven EU council decisions were oriented towards the orchestration of capacity-building activities through the CTBTO totalling €16,299,694. The CTBTO implemented various projects and mechanisms ranging from enhanced gas monitoring, auxiliary seismic stations, improving the capacity of states to fulfil their verification responsibilities, providing support for integrated field exercises, and sustaining the operability of the CTBTO verification system (Council of the European Union, 2022, Annex I). In each case, the EU orchestrated by providing financial

support (material inducement) to the IAEA and CTBTO which worked in a voluntary capacity to implement shared governance goals targeting capacity-building and technical assistance support for target states to ensure nuclear security and safeguards.

The orchestration literature further highlights that while intermediaries may exist already, they can also be formed by the orchestrator, enabling states and IOs to "multiply their influence by convening multisectoral networks to tackle a governance problem" (Hale & Roger, 2014, p. 61). In addition to its long-standing orchestration of capacity-building projects within the nuclear weapons regime complex, the EU has also gone on to initiate and advance epistemic communities focused on nuclear weapons science and research. In 2010 the EU initiated "a European network of independent non-proliferation think tanks" (Council of the European Union, 2022, Annex I, pt. 65). Funded by the EU, the EUNPDC was established among six European think tanks specialising in peace and security research, with responsibility for coordinating the wider European network which, at the time of writing, constitutes 103 think tanks and university departments specialising in nuclear non-proliferation and disarmament research. Since its launch, the EUNPDC has contributed to the development of expertise and institutional capacity of the EU and third countries, with a focus on raising third-country awareness of proliferation and disarmament challenges (Council of the European Union, 2022, Annex I). The EUNPDC has also been used by the EU as an intermediary in actioning several Council Decisions aimed at supporting the establishment of a WMD free zone (WMDFFZ) in the Middle East, including the convening of dialogue mechanisms within and between civil society, experts, officials, and academics, and providing support to the facilitator of a conference on the establishment of a Middle East WMDFFZ (Council of the European Union, 2022, Annex I, pts. 59, 63). In so doing the EU has shown it can still engage with politically contentious issues within the nuclear weapons regime complex. The EU can pursue its governance goals without directly targeting the states concerned, instead using intermediaries for their convening power and "track two" diplomacy (interview, August 5, 2020)—in short, using orchestration as an indirect and soft mode of governance.

### 3.2. *Orchestrator Attributes*

In addition to the various conditions necessary for orchestration to occur, Hale and Roger (2014, p. 68) also argue that an orchestrator must possess certain attributes. These attributes are also important in highlighting the EU's capacity to utilise orchestration as a specific mode of governance in the nuclear weapons regime complex. An orchestrator must, for example, be perceived as part of a "broader and shared community," being well networked and capable of convening other transnational actors within the regime complex

and have an organisational culture that favours transnational collective action (Hale & Roger, 2014, p. 68). More specifically, an orchestrator must be focal, considered a governance leader or “anchor” (Abbott et al., 2015b, p. 24; Hale & Roger, 2014, p. 67) and thus capable of enlisting intermediaries in the relevant area. IOs are also thought to have greater attribution for orchestration where they have sufficient autonomy to act, and where there are weaker institutional mechanisms for member states to block or veto their activities (Abbott et al., 2015b, p. 20; Hale & Roger, 2014, p. 67). The EU meets all these attributes.

Since 1993 and the introduction of CFSP, the EU has been a focal point for EU member states working collectively on nuclear security, proliferation, and (to a lesser extent) disarmament issues. Euratom—the European Atomic Energy Community—is another focal point for EU governance and is perceived as important and trustworthy by EU member states and IOs within the regime complex (interview, March 12, 2015). The EU moreover shares close cross-institutional personal relationships with IOs and agencies across the regime complex (interview, June 6, 2020; see also Kienzle, 2019), further adding to its ability to both network with and subsequently convene IOs such as the IAEA, the CTBTO, and the UNODA. For example, the EU’s former special envoy for non-proliferation and disarmament, Jacek Bylica, now serves as chief of cabinet to the IAEA Secretary General Raphael Grossi (who was formally NPT president-designate during the first half of the NPT’s 10th review cycle). Frederica Mogherini, the EU’s former high representative for foreign affairs and security policy, is also now a member of the CTBTO’s Group of Eminent Persons. It is also important to highlight that the EU’s organisational culture naturally advocates multilateralism and collective action, further complemented by the 2003 WMD Strategy that champions the EU working with and strengthening key IOs within the nuclear weapons regime complex (Council of the European Union, 2003).

Concerning the EU’s autonomy to act, important also to emphasise is that the EU’s WMD Strategy, coupled with its dedicated non-proliferation and disarmament budget, gives the EEAS a broad mandate for EU external action, covering everything from the implementation and universalisation of multilateral non-proliferation and disarmament treaties to working in close cooperation with key partners to fight proliferation. The EU cannot orchestrate, however, without first having a Joint Action, Council Decision, or Council Conclusions in place, agreed by EU member states. EU member states thus oversee the EU’s mandate through regular Non-Proliferation (CONOP) working group meetings within the Council which serve to “police patrol” EEAS activities (Kostanyan, 2016). The EEAS Non-Proliferation and Disarmament Unit nevertheless chairs CONOP meetings and has some capacity to shape the agenda within the broad guiding principles of the WMD Strategy, particularly where it concerns, “safeguarding the centrality and the promotion of

the universality of the global non-proliferation and disarmament architecture, through diplomatic action and financial assistance to third countries and international organisations” (Council of the European Union, 2022, clause 2a)—a principle upon which EU member states easily agree (Portela, 2021). As one EU member state official also neatly surmised, “the EU is at its best when it speaks to the issues it puts its money into because that is its big bargaining chip” (interview, June 22, 2015). As an indirect and soft form of governance, EU orchestration thus presents itself as a politically amendable mode of external action for EU member states, enabling the EU to “do something” while not directly intervening in the political cleavages which divide not only the regime complex but EU member states themselves.

#### **4. Advancing EU Orchestration: The Case of the 2019/615 Council Decision**

In the previous section it was demonstrated how and under what conditions the EU has orchestrated within the nuclear weapons regime complex since 2003. Until now, however, the EU’s orchestration activities have largely remained under the radar, mostly being addressed in the extant scholarship as “external technical assistance” and treated as a non-political, financial function of the EU related to, yet separate from, EU performance in the more politicised NPT, CD, or UN First Committee (Kienzle, 2013; Portela, 2021). It is certainly the case that, except for the EU’s orchestration of dialogue mechanisms intended to discuss a WMD in the Middle East, EU orchestration activities since 2003 have typically been oriented towards low-salience, technical, and epistemic governance goals, thereby enabling the EU to inject agency into the regime complex without constant recourse to the cleavages that divide its states. In 2019 however, the EU noticeably advanced its orchestration activities in a way that warrants special attention.

On April 15, 2019, the EU agreed on Council Decision 2019/615. The Council Decision detailed the EU’s orchestration of a series of regional and thematic consultations intended to facilitate dialogue between practitioners, academia, and civil society, and to initiate a “road map” for producing a successful outcome at the 10th NPT review conference (Council of the European Union, 2019, Annex pt. 1.5). The EU provided finance of €1,299,883.68 to the UNODA who served as implementing agency to convene the series of consultations. Much like the Council Decisions discussed in section three, Council Decision 2019/615 involved the EU providing material inducement to an intermediary to pursue shared governance goals with target states. Unlike most of the EU’s orchestration activities under the framework of the WMD Strategy, however, Council Decision 2019/65 was directly targeted at NPT states parties to move them closer to an agreement, thereby strengthening the NPT.

As an intermediary, the UNODA used its convening power to bring together NPT states parties for



three thematic conferences focused on nuclear energy (Vienna), nuclear disarmament (Geneva), and nuclear non-proliferation (New York). In addition, four regional meetings were held covering states parties in Africa, Latin America/Caribbean, Asia-Pacific, and the Middle East. All the convened meetings were intended to gain an understanding of states parties' concerns across the three pillars of the NPT, to raise awareness of the obstacles to progress, to build trust and confidence, and to encourage flexibility in approaching the review conference (Council of the European Union, 2019).

The EU-UNODA orchestrator-intermediary relationship was not solely about utilising the UNODA's convening power, however. EU orchestration was actioned following close consultation between the EEAS and the 10th NPT review cycle's leadership (interview, June 11, 2020). The UNODA, which serves as the secretariat to the NPT, helped to provide legitimacy to the consultations (interview, June 11, 2020). This was especially important as while the EU was keen to be visible in funding the events (Council of the European Union, 2019, Annex pt. 5), and in providing a platform for states parties to meet, it did not want to be seen pushing any hidden agenda or being directly involved in the deliberations (interview, June 11, 2020).

Several of the meetings associated with Council Decision 2019/615 were impacted by Covid, which was seen to weaken its effectiveness (interview, August 5, 2020). The 10th NPT review conference—also postponed to August 2022—then failed to achieve an outcome document due to a last minute block by Russia. Nevertheless, the Council Decision remains pertinent for several reasons.

First, the Council Decision significantly “boosted” the EU's visibility within the NPT (interview, August 5, 2020). For a forum where the EU has historically struggled to exert much political influence and is often lamented for its invisibility and limited role (interview, June 23, 2015; Dee, 2015; Smetana, 2016), the EU's efforts to orchestrate rather than negotiate or facilitate directly is an interesting development. As one official noted: “We've not seen the EU do this before...it's new to see it financing events like this” (interview, August 5, 2020).

Second, interviews suggest that the consultations were beneficial in enabling some NPT states parties to move beyond entrenched national positions (interview, June 11, 2020), and for facilitating more active involvement of those states whose voices would not normally be heard in NPT review conferences (interview, August 5, 2020). Particularly important for both the EU and NPT/UNODA was that the events were inclusive, and engaged with regional perspectives, rather than just serving to entrench positions across the NPT's three thematic pillars. While the meetings did not result in a “road map” to shape the outcome of the NPT review conferences, they did serve to provide a platform for dialogue and deliberation.

Third, Council Decision 2019/615 speaks to the EU's continuing potential for more strategic orchestration

(Kienzle, 2019) within the nuclear weapon regime complex. With EU member states themselves divided by the very political cleavages that hinder progress within the nuclear weapons regime complex, the Council Decision adds further evidence to the EU's pragmatic ability to use, and increasingly flex, its governance muscle through orchestration linked to epistemic and convening practices. While its orchestration of technical capacity-building governance has given the EU limited political impact (Kienzle, 2013). The effort to utilise EU resources to initiate new dialogue mechanisms to unlock the agency of others, thereby seeking to advance multilateral progress within the NPT, is a development that could see the EU inject greater agency and enhance its political influence within the nuclear weapons regime complex.

## 5. Conclusions

This article set out to address the question: How, and under what conditions, does the EU orchestrate in the nuclear weapons regime complex? What it has highlighted is that the same political cleavages and multilateral inertia that prevent the EU from injecting agency into individual negotiation and deliberative forums within the nuclear weapons regime complex, also serve as conditions for the EU to pursue soft and indirect governance through orchestration. The EU orchestrates by advancing its governance goals with target states through the capacity-building, epistemic, and convening activities of intermediary IOs including the UNODA, the CTBTO, the IAEA, and the EUNPDC as a transnational network. Through orchestration, the EU has been able to bypass the political cleavages present across the various institutions of the nuclear weapon regime complex while actioning its WMD Strategy and “effective multilateralism” through intermediaries. In so doing the EU has been able to utilise its already close ties to IO, governmental, and non-governmental actors within the nuclear weapons regime complex to further shared transnational governance goals. As multilateral gridlock in the regime complex has persisted, so too has EU orchestration gone further than the technical capacity-building and epistemic activities which formed the mainstay of its non-proliferation and disarmament budget. Now the EU engages in orchestration as a convening practice geared towards initiating and “unlocking” the agency of other actors to advance multilateral negotiations over more politically contentious issues, most recently seen in the case of the 2019/615 Council Decision.

To conclude, I offer three main takeaways in contribution to this issue and the wider scholarship. First, focusing on EU activities within individual institutions within the nuclear weapons regime complex offers only a partial and incomplete picture of EU agency in this field. Orchestration, by contrast, offers not only a reframing of how we might evaluate EU performance but an important means by which we can fully articulate the scope of EU agency and its capacity to act across the nuclear



weapons regime complex. Second, regime complexity, and the structural conditions and political cleavages that can create transnational governance problems, also create the conditions for orchestration as an alternative mode of governance which the EU is well-suited to enact. Exploration and comparison of EU orchestration efforts across the wider international non-proliferation regime complex, as well as in other CFSP fields, would therefore be a fruitful avenue for further research. Finally, adopting an orchestration focus highlights the particular significance that intermediary IOs and transnational networks have in advancing EU external action in the nuclear weapons regime complex. More than just “outsourcing,” working with and through intermediaries highlights a pragmatic response by the EU to inject agency into a regime complex faced with stark political cleavages while remaining true to its proclivity for effective multilateralism and collective action. More research is nevertheless warranted in developing our knowledge of EU orchestrator-intermediary relationships not only for the EU as a global actor but on regime complexity itself.

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### Conflict of Interests

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Article

# Expanding, Complementing, or Substituting Multilateralism? EU Preferential Trade Agreements in the Migration Regime Complex

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## Abstract

Intense pressure for international solutions and weak support for multilateral cooperation have led the EU to increasingly rely on its strongest foreign policy tool in the pursuit of migration policy goals: preferential trade agreements (PTAs). Starting from the fragmentary architecture of the migration regime complex we examine how the relevant content of the EU PTAs relates to multilateral institutions. Depending on the constellation of policy objectives, EU competence, and international interdependence, we propose a set of hypotheses regarding the conditions under which EU bilateral outreach via PTAs expands, complements, or substitutes international norms. Based on an original dataset of migration provisions in all EU PTAs signed between 1960 and 2020, we find that the migration policy content in EU PTAs expands or complements the objectives of multilateral institutions only to a very limited extent. Instead, the predominant constellation is one of substitution in which the EU uses its PTAs to promote migration policy objectives that depart from those of existing multilateral institutions.

## Keywords

EU; migration; preferential trade agreements; regime complexity; venue-shopping

## Issue

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## 1. Introduction

Since the crisis of the Common European Asylum System (CEAS) in 2015, international migration governance has moved from a side aspect to a key priority for EU external action and a serious challenge to European integration overall. Yet, in dealing with migration flows, the EU depends on international cooperation. This is not an easy task: Contrary to other transnational flows, such as goods or capital, states have hitherto opposed the creation of strong international institutions dealing with migration, and what exists amounts at best to a fragmented and multi-layered migration regime complex (Betts, 2011; Lahav & Lavenex, 2012). The EU, in particular the European Commission, has been keen on

developing a presence in relevant international organizations such as the UNHCR and the IOM (Beqiraj et al., 2019). However, internal divides within the EU and limited competence to act have compromised EU engagement in these fora. This became evident during the negotiations for the UN Global Compact for Migration adopted in 2018. The EU was a driving force behind this initiative; however, when it concluded, several member states ended up not signing it (Melin, 2021). Against this background of high political salience and failed multilateral engagement, this article investigates how far the EU has sought preferential trade agreements (PTAs) as alternative venues for advancing migration policy objectives and how these objectives relate to the migration regime complex. Our comparative analysis of all EU PTAs

signed between 1960 and 2020 addresses the following research question: How far do migration provisions in EU PTAs expand, complement, or substitute multilateral institutions in the migration regime complex, and under what conditions?

The relevance of this focus emerges from the multifaceted and fragmented nature of the multi-layered migration regime complex and the fragile balance between different, partly contradictory, policy objectives and levels of governance. While multilateral institutions promote a rights-based approach and open select opportunities for economic mobility, the question of migration control is left to the sphere of state sovereignty or, as in the case of the EU, regional initiatives (Dauvergne, 2014; Geddes et al., 2020). The migration policy content in EU PTAs can therefore either sustain the rights-based focus of multilateral provisions by expanding or complementing them, or the EU can use its PTAs to promote self-serving migration control objectives, in which case PTAs constitute a substitute through which the EU can “venue shop” for its preferred objectives. Since migration control can come at the expense of migrant rights, such substitution may create tensions with multilateral institutions both in terms of substance—the balance between different substantive policy objectives—and in terms of levels—the balance between multilateral and regional institutions of the multi-layered regime complex.

After introducing the multidimensional migration regime complex with a focus on migrant mobility, migrant rights, and migration control we highlight the respective limits of EU leadership and zoom in on the role of PTAs. Drawing on the regime complexity literature, we conceptualise three types of the multi-layer institutional interplay between the migration policy content of PTAs and multilateral norms: expansion, complement, or substitution. Depending on the constellation of policy objectives, EU competence, and international interdependence, we then introduce an analytical framework explaining the conditions under which we may observe EU venue-shopping leading to either regime expansion, complement, or substitution. We examine our hypotheses by mobilising two original datasets on EU migration provisions in PTAs and ratification of international agreements on migration. We conclude with some reflections on the implications for the EU’s international role as a migration policy actor.

## 2. The EU in the Multi-Layered Migration Regime Complex

International migration governance takes the architecture of a regime complex in which relevant provisions figure in different institutions that are partly overlapping and partly nested, but where none is focal (Alter, 2022; Betts, 2009; Eilstrup-Sangiovanni & Westerwinter, 2021; Jupille & Snidal, 2005). Unlike other areas of international relations such as trade or the environment, where states tend to agree on key objectives such as opening

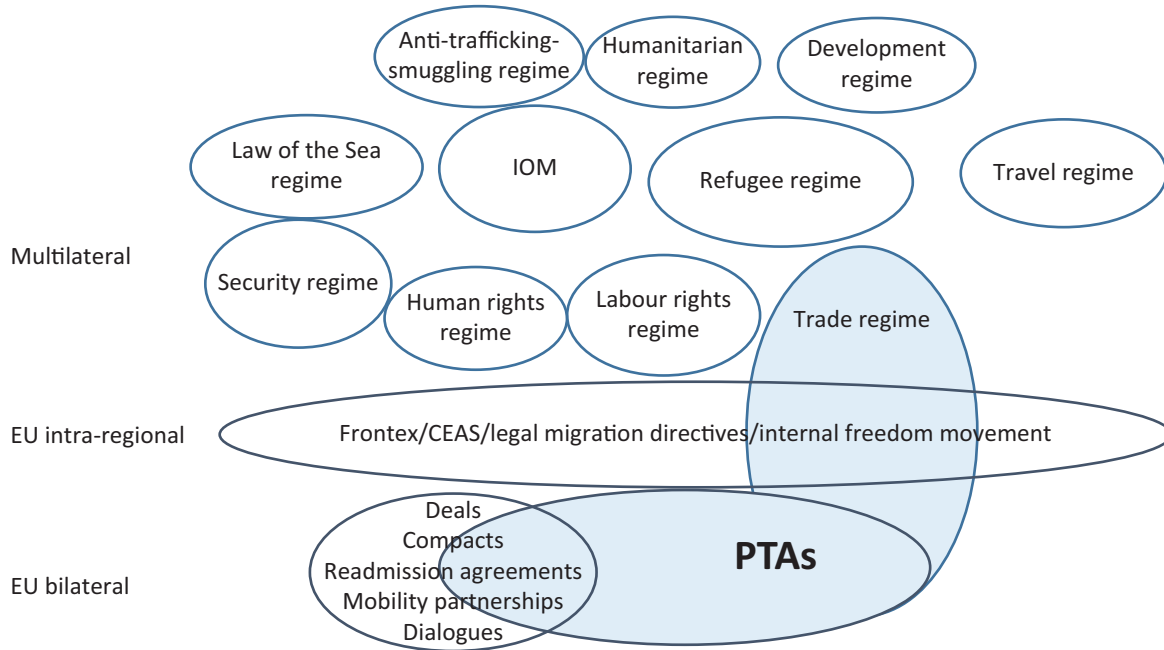
markets or saving the planet but disagree on the means, cooperation on international migration is fragmented across several partly contradictory objectives. Different institutions approach migration from different perspectives such as protecting the rights of displaced individuals fleeing violence or suffering exploitation, facilitating the allocation of labour in international markets, enforcing territorial borders, or enhancing distributive justice. These distinct objectives have been codified to different extents in different layers of international cooperation: multilateral, regional, and bilateral (Lahav & Lavenex, 2012). The multi-layered migration regime complex is illustrated in Figure 1. The shaded circles indicate the confines of the trade regime which constitute the focus of our analysis of EU venue-shopping in the multi-layered regime complex.

### 2.1. Fragmented Multilateralism: Migrant Admission, Rights, and Control

The multiple dimensions of migration policy—admitting migrants, protecting their rights, and controlling territorial borders—lead to different sub-constellations in the international migration regime complex.

Regarding the admission of migrants, multilateralism remains fairly limited. Decisions concerning who is allowed to enter and stay remain in the sovereignty of the nation-states, with only very few exceptions. The main human rights exceptions are the rule of non-refoulement enshrined in the 1951 Refugee Convention and various human rights treaties, which prohibit the return of refugees and migrants to places where they would fear for their life or liberty, and the right to family reunification preserved in human rights law (Chetail, 2019). While there is no international regime regulating the entry of labour migrants, strictly circumscribed provisions facilitating the temporary mobility of business persons (mainly managers and specialists in multinational corporations) have been negotiated in the framework of the liberalization of trade in services. These provisions figure in the WTO’s 1995 General Agreement on Trade in Services (GATS; Lavenex, 2006). Beyond these exceptions, states have omitted multilateral commitments constraining their sovereignty on the admission of migrants and have favoured cooperation at the regional and bilateral levels.

Rather than addressing the conditions under which states shall admit non-nationals on their territory, multilateral treaties and institutions have focused on the rights of migrants who have been admitted onto the territory as a subset of human rights. The 1951 Refugee Convention and its 1967 Protocol lay down the grounds for granting asylum and codify the rights of recognised refugees in the host country. The conventions of the ILO on migrant workers of 1949 and 1975 establish the rights of migrant workers and their families in the host country. This agenda culminated in the UN’s 1990 International Convention on the Rights of Migrant Workers, which only



**Figure 1.** The multi-layered migration regime complex. Notes: The circles indicate the boundaries of individual regimes attached to a specific set of institutions; the shaded circles indicate the reach of EU trade competence in terms of levels (multilateral, EU intra-regional, EU bilateral) and instruments (linking PTAs and other types of migration-specific bilateral instruments).

received a small number of ratifications—and none from the Global North. In recent years, finally, the Office of the High Commissioner for Human Rights has become more involved in the promotion of general human rights to address the needs of migrants.

The issue of migration control is the least codified migration policy objective at the multilateral level and the one that faces the strongest asymmetry of interest between countries of the Global North and countries of the Global South. This includes measures to fight irregular migration or to encourage the re-admission of irregular migrants by their countries of origin. Multilateral conventions address irregular migration only in a very indirect manner in the international travel regime—i.e., concerning visa regulations and necessary travel documents as well as the anti-trafficking-smuggling regime, which targets organized crime exploiting (irregular) migrants. Border control, return, re-admission as well as practical cooperation on deterrence have remained in the competence of sovereign states or have been addressed via regional and bilateral cooperation. Corresponding unilateral, bilateral, or plurilateral policies are in tension with multilateral norms on the rights of refugees and migrants more generally (Carrera et al., 2019). Given opposing interests between countries of origin, transit, and destination of migrants (Ellermann, 2008) and considering the human rights focus of existing multilateral institutions, cooperation to fight irregular migration or promote return and re-admission is unlikely to take shape at the multilateral level (Lahav & Lavenex, 2012; Money & Lockhart, 2018).

A special position in this context is occupied by the IOM (next to the ILO and UNHCR). Established as a logistical organization charged with the repatriation of displaced persons after World War II, the IOM has been upgraded to an UN-related organization in 2018 and has expanded its activities beyond the realm of repatriation, return, and re-admission. Lacking a base treaty and being nearly exclusively financed by earmarked voluntary funds, its activities mostly reflect donors' priorities (Pécoud, 2020) and, therefore, can not be easily attributed to a specific section of the international migration regime complex. Finally, and beyond the treaties and organizations previously mentioned, migration governance has punctually been addressed in international bodies of law primarily concerned with different issues such as the Law of the Sea (i.e., the duty to rescue), international travel, and in the 2000 Protocols to Prevent, Suppress and Punish Trafficking in Persons and Against the Smuggling of Migrants by Land, Sea, and Air signed in the framework of the UN Convention Against Transnational Organized Crime.

## 2.2. EU Embedment in the Migration Regime Complex

The EU has developed common instruments in most aspects of this fragmented migration regime complex, yet its competencies remain limited and are shared with the member states. Beyond its internal system of free movement, the EU has developed the strongest competence in the fields of migration control, followed by common asylum policies, and two directives regulating the



right to family reunification and the right of long-term third-country nationals living in the member states. The EU's competence over the admission of economic migrants from third countries has remained most limited, with fragmented policies for certain types of labour migration and clear limits codified in Art. 79(5) of the Treaty on the European Union (Geddes et al., 2020).

Paradoxically, it is in this latter area of economic immigration, in which the EU possesses the weakest level of internal competence, that it enjoys formal international actorness—albeit in a very circumscribed realm linked to trade in services. This happens in the WTO, where the EU, as a full member, has negotiated commitments regarding the admission of business persons in the framework of the GATS on behalf of the member states. This competence also applies to EU bilateral trade agreements. Thus, even though migration remains a peripheral issue in trade policy negotiations, the EU's exclusive competence on trade and its market power turn the trade regime into an attractive venue for EU migration diplomacy.

When it comes to migrant and refugee rights, the EU has hitherto not developed into a tangible collective actor in relevant multilateral institutions. EU cooperation on refugees was born out of the necessity to harmonise standards across member states given the dismantling of internal border controls in the Schengen area, but the adopted directives still leave broad discretion to the member states. The EU itself is not a party to international migration conventions and organizations but participates as an observer (Beqiraj et al., 2019). In the refugee regime, the EU participates in the UNHCR's governing bodies (UN General Assembly and ECOSOC) by way of UNGA Resolution 65/276. This upgraded its observer status to allow the EU to speak and make interventions on behalf of the member states. This also applies to the UNHCR Executive Committee. Yet member states retain a distinct voice of their own (Beqiraj et al., 2019). Although figuring among the main donors of the organization, the EU has not developed into a tangible actor within UNHCR. In contrast, UNHCR's influence on the evolving EU refugee policy has been formalised under the Strategic Partnership Agreement signed in 2005, which grants the UN far-reaching consultative rights in the EU's CEAS, including representation in the EU's external borders and asylum agencies.

The limited EU actorness in multilateral institutions also makes it vulnerable to internal divisions, further weakening its influence. The process leading up to the most recent multilateral migration policy initiative, the 2018 UN Global Compact on Migration, is illustrative. The EU was a major force behind this initiative, together with the Obama Administration (Ferris & Donato, 2019), and started negotiating as a bloc via the EU delegation to the UN. After only a few weeks, Hungary stepped out of the common position and made contradictory statements. From then on, the EU only spoke “on behalf of 27 member states” (Melin, 2021, p. 300). This common

position gradually fell apart with only 14 member states approving the UN Global Compact on Migration without reservations: five approving it with an explanatory note stressing their national sovereignty, five others abstaining, one no-show, and three members opposing.

Migration control is the field of migration policy where the EU has developed the strongest internal competence while multilateral cooperation is least developed. EU cooperation in asylum and migration matters has emerged in conjuncture with the abolition of internal border controls under the 1985 Schengen Agreement and has focused on “compensatory measures” sustaining member states' capacity to counter irregular immigration from the start (Lavenex, 2018, p. 1201). As a result, visa policies and measures applying to the control of the external borders, including via the EU borders agency Frontex, are the most integrated area of EU policy today. This cooperation agenda developed an external dimension early on and now encompasses a wide web of migration control arrangements with third countries of transit and origin of migrants. International organizations have come to play a distinct role as subcontractors in the external dimension of the EU's migration control policy via project funding (Lavenex, 2016; Spijkerboer, 2021). This constellation is particularly developed under the 2012 Framework Agreement which foresees a “strategic partnership” (IOM, 2012) between the IOM and the EU's migration, development, and humanitarian policy divisions.

Having established the fragmentary multilateral migration institutions and the evolving EU migration policy competence in broad lines, we now turn to the theoretical framework guiding our analysis of the institutional interplay between EU PTAs and multilateral settings in the multi-layered migration regime complex.

### **3. Theoretical Framework: Trade Agreements as Expansion, Complement, or Substitute to Multilateral Norms**

While acknowledging the multi-layered nature of international regime complexes, the literature on international regime complexity has tended to focus on constellations of institutional or normative interplay from a more static perspective. As such, the literature distinguishes nested, overlapping, or parallel regimes (Alter & Meunier, 2009); scale, diversity, and density (Eilstrup-Sangiovanni & Westerwinter, 2021); or, more generally, hierarchy versus differentiation (Henning & Pratt, 2021). Taking a dynamic perspective, other scholars have highlighted strategic action within regime complexes such as hostage-taking and brokering (Hofmann, 2018) and forum or venue-shopping (Alter & Meunier, 2009; Jupille et al., 2013). Strategic venue-shopping occurs “where actors select the international venues based on where they are best able to promote specific policy preferences” (Alter & Meunier, 2009, p. 16). Such a move can involve establishing issue linkage with another

field where the respective actors enjoy greater influence (Aggarwal, 1998).

In this article, we are particularly interested in how far the EU engages in venue-shopping when promoting migration policy objectives in its PTAs, and which effects this has on the migration regime complex. From this perspective, we distinguish three constellations of institutional interplay. Regime expansion occurs when changes in one sub-regime—here EU PTAs—enlarge the scope of existing multilateral rules. Regime complementarity denotes a parallelism between multilateral and sub-regimes, where the sub-regime reproduces multilateral rules and promotes these in new contexts. Finally, regime substitution takes place when the sub-regime develops norms or rules that do not figure into overarching multilateral settings.

Scholarship on EU actorness highlights several factors that make EU PTAs an interesting candidate for studying venue-shopping and institutional interplay in regime complexes. The brief overview of EU migration policy above has shown that while the EU has few tools (apart from funding) to shape migration policies at the multilateral level, the trade regime stands out as a partly overlapping regime in which the EU enjoys strong actorness. EU actorness implies that member states are encouraged to “speak with one voice” (Bretherton & Vogler, 2013, p. 381; da Conceição-Heldt & Meunier, 2014, p. 962; see also Eeckhout, 2011), thus allowing for common positions. In addition, PTAs can leverage the EU’s market power (Damro, 2012) and offer issue linkages, thereby helping to overcome interest asymmetries that hamper cooperation with countries of origin and transit of migrants in multilateral institutions. What is more, the bilateral character of PTAs allows an adaptation of venue-shopping strategies according to the partner country. In all three areas of migration governance (admission, rights, and control) PTAs allow the EU to engage in strategic venue-shopping to further its migration policy objectives.

Regarding migrant admission, EU competence in trade matters allows the Commission to negotiate bilateral commitments on labour mobility falling under the scope of GATS as part of its PTAs, thereby extending the status quo under multilateral labour mobility norms. The EU can however also leverage this market power (Damro, 2012) in PTA negotiations to promote migrant rights and migration control. The com-

mercial nature of PTAs is particularly suited to address interest asymmetries via issue linkage, that is, offering economic concessions facilitating mutually beneficial arrangements in areas where actors otherwise disagree (Axelrod & Keohane, 1985). EU competence and market power make PTAs an attractive venue for the EU to shop, especially for those policy priorities which lack multilateral support—i.e., migration control. Such a focus on EU internal priorities echoes the EU’s explicit reorientation as a strategic trade policy actor (Cremona, 2017; European Commission, 2015). Such strategic venue-shopping is also alluded to in EU migration policy documents when saying that “the full range of policies and EU external relations instruments have to be brought to bear” to achieve migration cooperation goals (European Commission, 2016, p. 6).

Depending on the type of migration provision included in PTAs, different interplay constellations may emerge within the international migration regime complex regarding relevant multilateral institutions (see Table 1). In the following, we discuss how PTAs as a bilateral venue relate to the multilateral migration regime complex on the three dimensions of admission, rights, and control. Adopting a venue-shopping perspective, we propose hypotheses addressing the scope conditions under which migration provisions in EU PTAs are likely to expand, complement, or substitute multilateral norms.

The most straightforward objective to be sought in a trade policy instrument such as PTAs should be trade facilitation—including mobility in the context of trade in services. The inclusion of service-related labour mobility in the WTO/GATS and EU exclusive competence over commercial policies makes PTAs a privileged venue for widening international cooperation on desired forms of economic migration. These bilateral or plurilateral instruments have the advantage to allow for both the expansion and deepening of commitments in the GATS and for tailoring commitments to the respective trade partners. Given the trade-related base of these provisions, their focus on highly skilled managers and executives, mainly moving within multinational corporations, and European countries’ general reluctance towards supranational commitments on the admission of economic migrants, we expect mobility provisions to be more frequent and expand the multilateral status quo, especially, in PTAs with close trade partners. Therefore, our first hypothesis is:

**Table 1.** Constellations of regime interplay and hypotheses.

	Type of migration provision		
	Labour mobility	Migrant rights	Migration control
Expected interplay with multilateral norms	Expansion	Complementarity	Substitution
Expected target countries	Close trade partners	Non-signatories of multilateral conventions	Migrant sending countries

H1: Mobility provisions expand multilateral mobility norms, especially, in PTAs with countries with which the EU enjoys strong trade connections.

For migrant rights and migration control, the inclusion of provisions in PTAs could follow the example of other “non-trade” issues that have found an entry into trade agreements such as environmental protection or labour rights (Lechner, 2019; Milewicz et al., 2018; Raess & Sari, 2018). Regarding migrant rights, we would expect the EU, as a normative power (Manners, 2002), to use its commercial relations to compensate for its limited actorness in international organizations and to promote overarching multilateral norms, such as those contained in migrant rights, including international refugee law. In this way, PTA provisions on migrant rights would complement existing multilateral norms in this field. Since the complementary effect of migrant rights provisions in EU PTAs is greater when the partner country has not ratified relevant multilateral conventions, we should, from a venue-shopping perspective, expect such provisions to be more frequent in PTAs with such countries than in other EU PTAs. Therefore, our second hypothesis reads as such:

H2: Migrant rights provisions complement multilateral migrant rights, especially, in PTAs with countries that have not ratified relevant multilateral conventions.

Finally, in the area of migration control, where multilateral rules are absent and EU interests are strongest, PTAs can serve as a substitute for multilateral rules by enforcing deterrence and re-admission in the bilateral setting. In this way, the EU can use its PTAs as a source of leverage and issue linkage inciting the cooperation of countries of transit and origin of migrants where multilateral initiatives would fail. The strategic interest in control provisions should be particularly high towards countries from which the EU faces significant migration pressure in the form of asylum seekers and that are located on the migration routes towards the EU. That is, EU PTAs with such countries should contain migration control provisions more frequently than other EU PTAs. Therefore, our third venue-shopping hypothesis is:

H3: Migration control provisions substitute multilateral rules, especially, in PTAs with countries from which the EU faces significant migration pressure.

#### 4. Data and Methodology

The core of our analysis is based on a novel dataset of migration provisions in trade agreements (Lavenex et al., in press) that covers 109 bilateral and plurilateral trade agreements signed by the EU (among them are 105 bilateral agreements). The dataset provides detailed coding on migration content covering mobility, control, and rights (see the Supplementary File for details and valid-

ity check). Mobility provisions facilitate the temporary mobility of specified categories of people such as independent professionals, business visitors, intra-company transferees, and contractual service suppliers (covered by the GATS), as well as other specialists, investors, installers, trainees, or non-business people (such as tourists, students, and researchers). These provisions abolish immigration barriers such as economic needs tests, quantitative limits, or skill requirements and facilitate visa procedures. Migrant rights provisions include commitments to general anti-discrimination clauses and specific economic and social rights, such as equal access to social security, the right to transfer social insurance capital, or access to the labour market for refugees. Control provisions include commitments concerning irregular migration and the re-admission of unauthorized migrants. We create dummy variables for the three types of migration provisions that measure whether the type of provision is included in a PTA as well as a continuous variable of the number of provisions of a particular type included in a PTA.

Our hypotheses mobilize some independent variables. The strength of trade connections (H1) is measured as the share of the bilateral trade volume of the signing parties' GDP, using expanded IMF trade data (Gleditsch, 2002) and GDP statistics from the World Bank. The trade volume can either be calculated based on export figures—Free on Board (FOB)—or on import figures—Cost, Insurance, and Freight (CIF). We use the FOB data for our base models and use the CIF data for a robustness check (no difference in the results). For migrant rights (H2), we code the number of migration-related UN conventions a partner country has signed at the moment of concluding each PTA. These are the ILO Migration for Employment Convention (1949), the Refugee Convention (1951), the Convention Relating to the Status of Stateless Persons (1954), the Additional Protocol to Refugee Convention (1967), the ILO Migrant Workers Convention (1975), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). Migration pressure in terms of asylum seekers is measured with Eurostat data, using the total number of asylum applications from the partner country in the six EU countries receiving the most applications throughout the study (H3). The trade and asylum variables are lagged by one year and log-transformed to adjust for their skewed distribution. In addition, we include a migration route dummy that captures whether a partner country lies along a main migratory route towards the EU, as identified by Frontex (for an overview of the routes see <https://frontex.europa.eu/what-we-do/migratory-map>). Finally, we use the GDP differential between the EU and the partner country as a proxy to control for power asymmetry (GDP per capita of the partner country in percentage of the GDP per capita of the EU). Based on these various data sources, we present descriptive analyses and regression models to test the

theoretical predictions outlined above. In the next section, we present the results with the complete model outputs presented in the Supplementary File.

**5. EU Preferential Trade Agreements in the Migration Regime Complex**

The analysis of the migration policy content in EU PTAs shows that these trade instruments have indeed become an important element of the multi-layered migration regime complex. The comparison between EU PTAs and all PTAs concluded by other non-EU countries worldwide, in the period of analysis, shows that the EU is unique in introducing all three types of migration provisions to a similar extent, whereas other countries use PTAs mainly to facilitate business mobility (see Figure 2). Put differently, the EU PTAs link up with more dimensions of the migration regime complex than PTAs by other countries.

*5.1. Mobility Provisions: Venue-Shopping as Selective GATS Expansion*

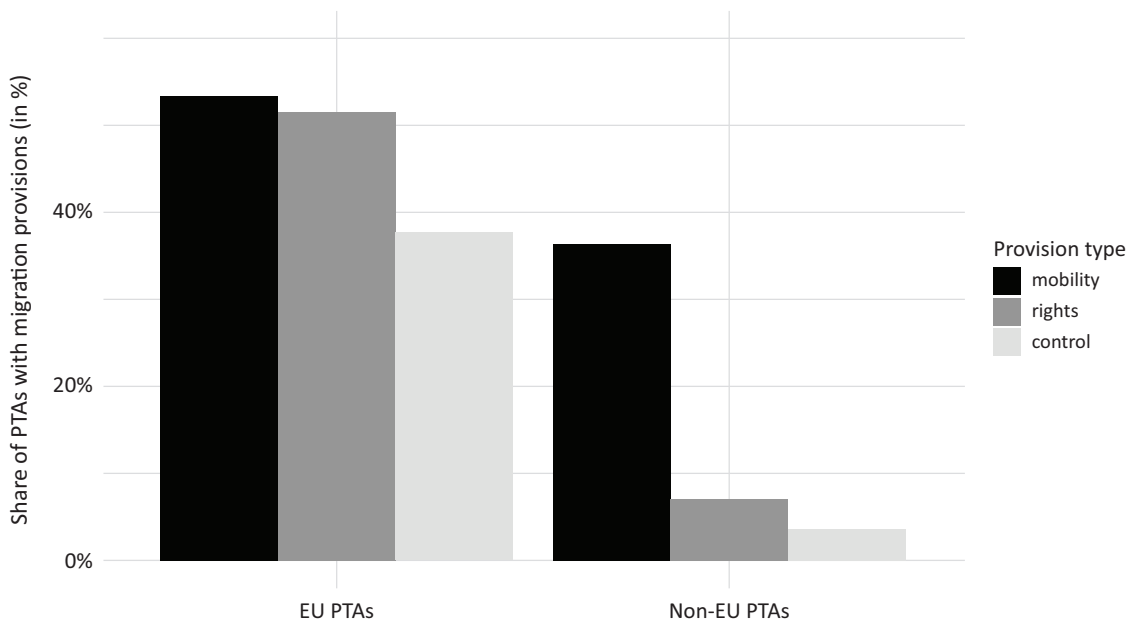
The first mobility provisions figure already in the EU’s early association agreements with Greece (1961), Turkey (1963), Morocco (1969), and Tunisia (1969; see Figure 3). These provisions were derived from the rules of the single market and were independent of the EU’s migration policy that evolved only from 1992 onwards. Interestingly, agreements after 1970 no longer include free movement provisions, which corresponds to the turn towards restrictive immigration policies at that time. A new, GATS-related type of mobility provision re-emerges and proliferates from 1990 onwards. These PTA commitments often go well beyond the EU’s obliga-

tions under the GATS, e.g., by including more categories of persons and granting extended periods of stay, visa facilitations, or recognition of qualifications. The EU has also expanded its competence to negotiate mobility provisions via its 2014 Intra-Corporate Transferees Directive that deepens its internal commitments in the matter. In sum, in the case of mobility provisions, EU PTAs expand the scope of the multilateral regime.

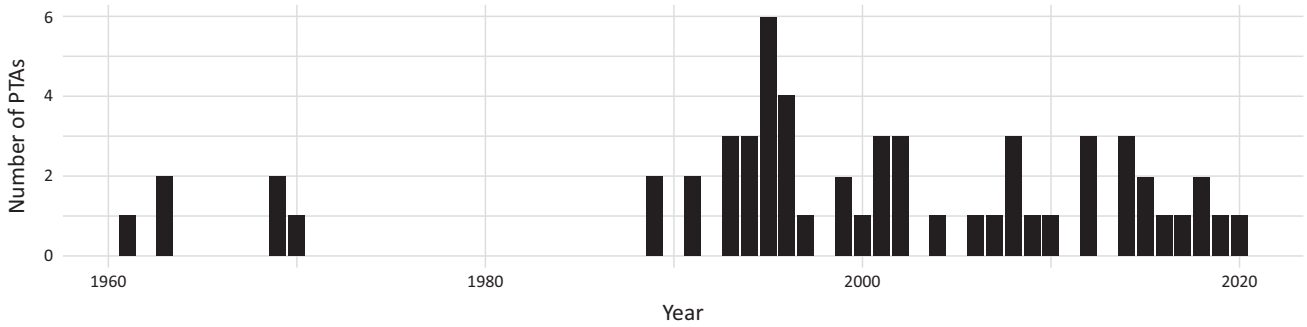
Taking a venue-shopping perspective, we hypothesized in H1 that this expansive effect of PTA provisions compared to the multilateral trade regime should concentrate on major trade partners. That is, provisions facilitating labour mobility should be more frequent in PTAs with countries with which the EU enjoys strong trade connections. Figure 4 shows the expected positive association between mobility provisions in PTAs and the EU’s trade interdependence with the partner countries. The effect is stronger for the dichotomous variable suggesting that close trade relations primarily increase the likelihood of mobility provisions in a PTA (Figure 4, left side) but less the depth of these provisions in terms of the sum of mobility provisions per PTA (Figure 4, right side). The coefficients remain largely unaltered when controlling for power asymmetry between the EU and the partner country. This result provides tentative support for our hypothesis H1 in that closer trade connections motivate the inclusion of mobility provisions as an extension of multilateral commitments.

*5.2. Migrant Rights Provisions: A Complement to Multilateral Conventions?*

The longitudinal data in Figure 5 shows, similarly to early mobility norms, that migrant rights provisions have



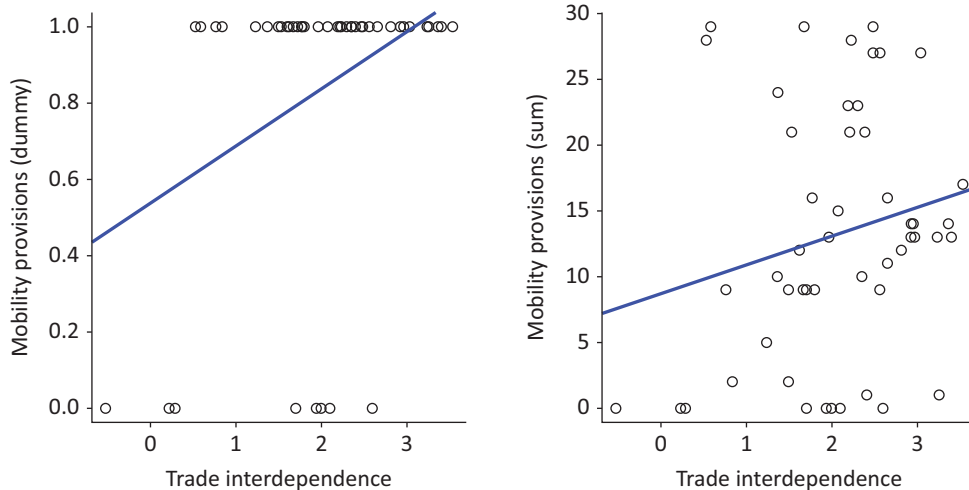
**Figure 2.** Migration content of EU and non-EU PTAs. Note: Grouped bar plot displaying the share of EU and non-EU PTAs with migration provisions ( $N = 109$  EU PTAs and  $N = 682$  non-EU PTAs between 1960 and 2020). Source: MITA database (Lavenex et al., 2023).



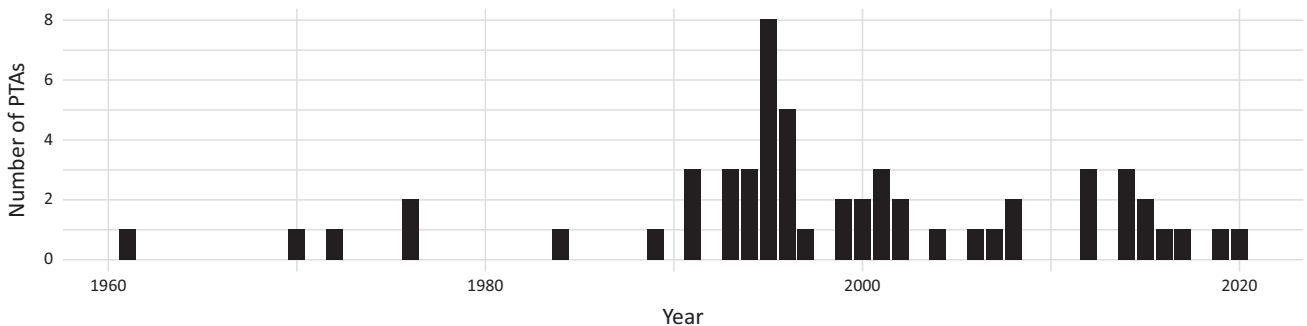
**Figure 3.** Mobility provisions in EU PTAs over time. Source: MITA database (Lavenex et al., 2023).

been included in PTAs well before the development of a common European migration policy, in association with agreements with Greece (1961) and Turkey (1970 Protocol to the 1963 Agreement), as well as Morocco and Tunisia in 1969. These rights covered the non-discrimination of migrant workers from the signatory parties in the respective labour markets as well as access to social security and the portability of pensions. Herewith they reflected issues that were also addressed in the

ILO Conventions of 1949 and 1975 and the deliberations leading up to the 1990 UN Migrant Workers Convention. Compared to these international conventions, however, EU PTAs contain only select and fairly general provisions. References to the 1951 Refugee Convention and refugee rights are even rarer. Therefore, the provisions in EU PTAs are only a weak complement to existing multilateral institutions. What is more, not all PTAs include such provisions (see Figure 2), which calls for an explanation.



**Figure 4.** Mobility provisions in PTAs and trade interdependence. Notes: Bivariate scatter plots between the bilateral trade interdependence (between the EU and the partner country) and the inclusion of mobility provision in a bilateral EU PTA; the blue line displays the linear regression estimate.



**Figure 5.** Migrant Rights content of EU PTAs over time. Source: MITA Database (Lavenex et al., 2023).

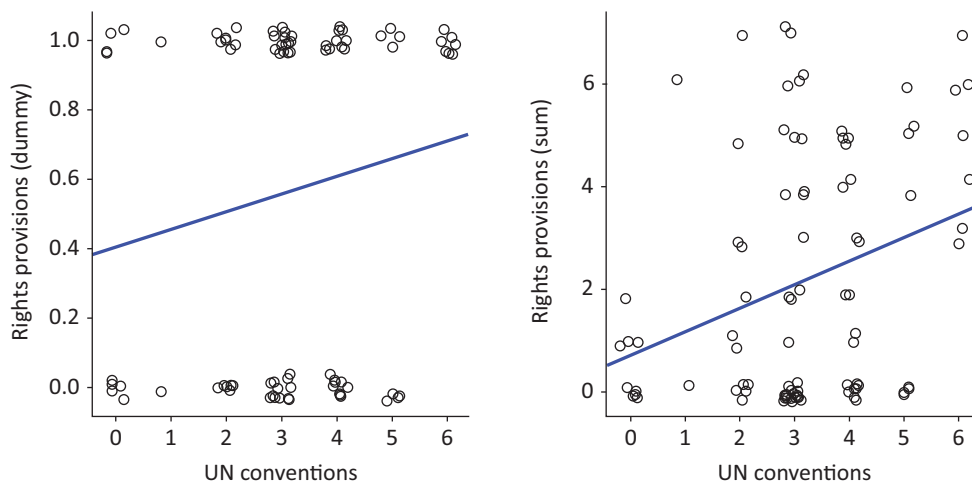


From a venue-shopping perspective, we proposed that the EU should seek complementarity to multilateral commitments when negotiating migrant rights provisions in PTAs. Hypothesis H2 hence predicts that the EU seeks to include rights provisions in PTAs to compensate for partner countries' lack of commitments under pertinent international conventions as a means to reinforce multilateral institutions. However, the empirical assessment shows that countries which have not signed relevant conventions are not more likely to have migrant rights provisions in their PTAs with the EU—both for the dichotomous and continuous variable (see Figure 6). If anything, the relationship is inverse because PTAs with partner countries who have signed one or more conventions are more likely to include rights provisions. However, the effect is statistically significant only for the continuous dependent variable. This result does not change when controlling for the GDP differential between the EU and the partner country. Thus, our theoretical expectation that the EU might include rights provisions as a complement to UN conventions cannot be corroborated.

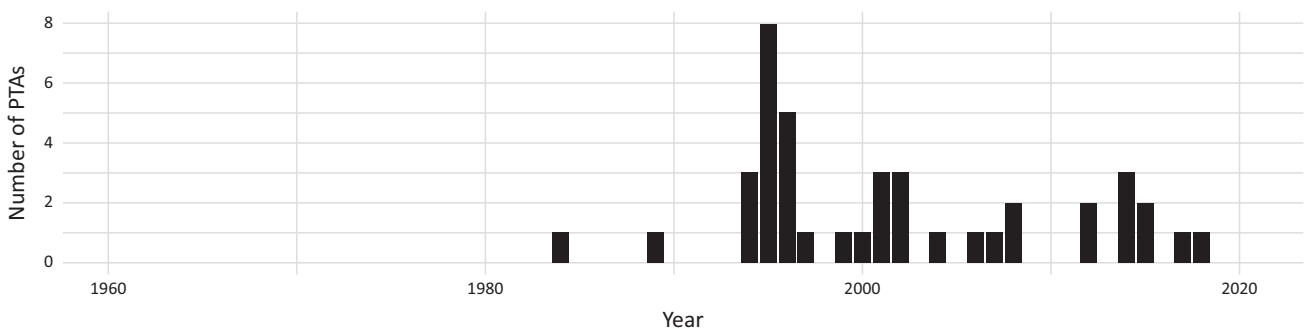
### 5.3. Migration Control: Substitute to Contested Multilateralism?

Migration control provisions appear later than rights and mobility provisions. However, PTAs containing migration control provisions were concluded before the emergence of EU competence on the matter, first in the 1984 Lomé Convention with the African, Caribbean, and Pacific countries. This indicates that PTAs were used as an external migration policy tool before the EU could officially engage in such policies. At the same time, there is no multilateral convention or regime addressing migration control. The inclusion of such clauses and their proliferation from the second half of the 1990s onwards thus situates PTAs as a substitute for a gap in the multilateral regime complex.

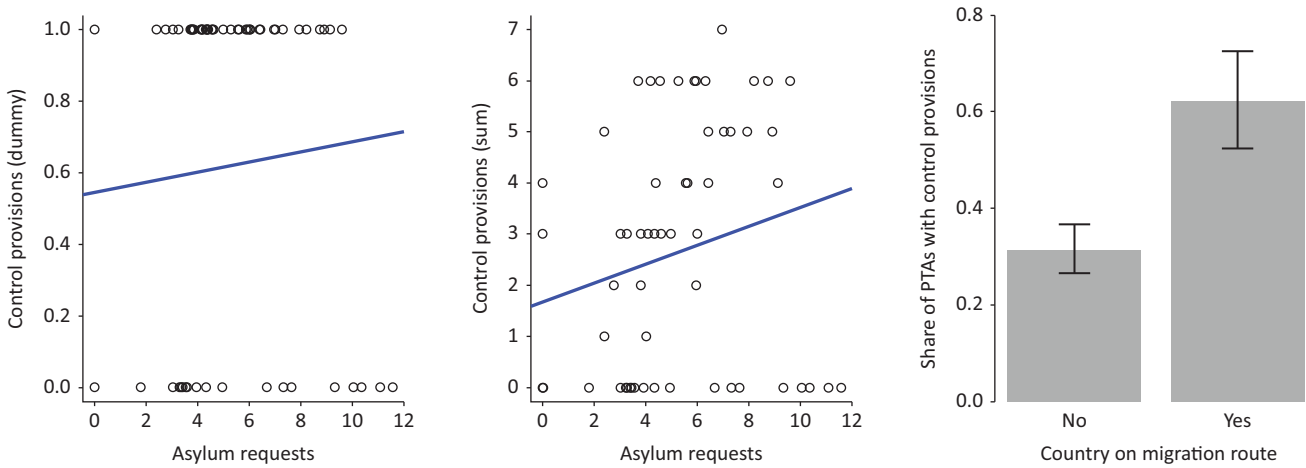
Our third venue-shopping hypothesis proposed that control clauses in PTAs are a substitute for missing multilateral provisions on the matter. They should concentrate on PTAs with countries from which the EU faces significant migration pressure. We test this expectation using two proxies for migration pressure: the number



**Figure 6.** Human rights provisions in PTAs and migration conventions. Notes: Bivariate scatter plots between the number of UN migration conventions signed by a partner country and the number of migrant rights provisions in an EU PTA with that partner country; the observations are jittered values to reduce overplotting; the blue line displays the linear regression estimate.



**Figure 7.** Migration control provisions in EU PTAs over time. Source: MITA database (Lavenex et al., 2023).



**Figure 8.** Control provisions in PTAs and migration pressure. Notes: The scatter plots on the left show the association between the number of asylum requests from a partner country and the inclusion of control provisions in a bilateral EU PTA; the blue line displays the linear regression estimate; the bar plot on the right displays the share of EU PTAs that include control provisions depending on whether the partner country lies on a main migration route or not; the error bars display the standard errors of the mean difference.

of asylum-seekers and a dummy variable of whether a country lies on a major migration route toward the EU. The results show that indeed PTAs with such countries are significantly more likely to contain control provisions (see Figure 8). This relationship also holds when we control for the level of trade interdependence and the GDP differential between the EU and the PTA partner country. The EU thus seeks to substitute the lack of multilateral norms, via the inclusion of migration control provisions in PTAs, primarily with countries from which it also faces asylum inflows.

**6. Conclusion**

International migration has become a core concern of EU policy-makers. The fragmentariness of the international migration regime complex, interest asymmetries between countries, and the EU’s shared competence in the matter pose limits to the EU’s attempts at establishing itself as an international migration policy actor. This coincidence of high demand and low opportunities for multilateral action in established international migration fora has driven EU migration diplomacy towards bilateral venues, where its institutional competence, leverage, and issue linkages bear higher prospects for strategic and tailored action.

Our analysis of the evolving EU migration policy with the migration policy content of all EU PTAs signed between 1960 and 2020 corroborates that the EU engages in venue shopping via trade agreements and shows that this has ambiguous effects on the international migration regime complex. The EU makes much broader use of PTAs for migration policy purposes than other countries. Next to provisions facilitating labour mobility, the EU is practically unique in including migration control commitments and stands out by its frequent

inclusion of migrant rights provisions. On the one hand, this underscores the priority that migration enjoys in the EU’s policy agenda. On the other hand, the fact that we find these provisions in PTAs substantiates the pre-eminence of commercial instruments in the EU’s foreign policy toolbox.

From the perspective of the international regime complex, this evolution is not without caveats. The mobilisation of trade venues for migration policy purposes can both sustain or constrain multilateral solutions. In this article, we present a conceptualisation of EU actorness in regime complexes that distinguishes between three forms of institutional interplay: expansion, complementarity, and substitution. Whereas the first two constellations sustain multilateral institutions, the third one can create tensions within the multi-layered regime complex when these regional substitutes run against the normative orientation of existing multilateral institutions.

Differentiating between the substantive interplay of migration provisions at the multilateral level and in PTAs (i.e., regulating mobility, rights, and control), EU competence in these matters, and the constellation of interdependence with PTA partners, we hypothesized the conditions under which EU PTAs expand, complement, or substitute multilateral migration rules. Our findings show that the EU expands multilateral institutions where its policy priorities converge and where it enjoys competence as an international actor. This applies to provisions facilitating the mobility and admission of business migrants with close trade partners where the relationship is seen as economically beneficial. Mobility provisions in EU PTAs with close trade partners go well beyond what the EU has committed to under the multilateral setting of the GATS. Paradoxically, the area where EU venue-shopping has led to the strongest expansion of international migration commitments is labour migration where

EU internal migration policy competence is most contested. This empowerment is also reflected in the adoption of an internal directive harmonizing the admission of this specific type of migrant, namely intra-corporate transferees, in 2014. Even though the scope of migrants benefiting from this trade-related mobility agenda is limited, in institutional terms, the case illustrates in a salient manner how international regime complexity opens avenues for strategic venue-shopping and norm expansion where this would otherwise fail.

An opportunity for complementarity opens up regarding migrant rights, where the multilateral norms are strongest but where the EU enjoys only weak actorness in relevant international organizations. In this constellation, the use of trade policy instruments could be an alternative way to promote multilateral norms in light of limited opportunities for influence in corresponding multilateral fora. Our analysis shows indeed that the EU has included migrant rights in its PTAs early on. However, these provisions have remained very limited in scope, reflecting only a fraction of what is covered by relevant international conventions, and have not expanded over time. Furthermore, and contrary to what a strategic venue-shopping perspective maximising complementarity would suggest, these provisions do not target countries that have not signed the relevant international conventions. Therefore, their inclusion in EU PTAs can be seen as a weak and patchy complement to multilateral institutions at best, showing a rather low level of ambition.

The constellation of institutional interplay for which we find the strongest evidence of strategic venue-shopping is regime substitution. This applies to the field of migration control, which has so far remained unregulated at the multilateral level and is where the EU enjoys the strongest internal competence. The objective to protect the EU's external borders and fight irregular migration has been at the top of the EU's developing migration acquis. While multilateral cooperation on deterrence and re-admission faces normative and strategic obstacles, including the human rights focus of international law and interest asymmetries between countries, the bilateral setup of PTA negotiations provides a venue in which the EU can capitalise on its market power and mitigate interest asymmetries via issue linkage. Our analysis corroborates the EU's unique role in promoting migration control cooperation via its PTAs. In line with this venue-shopping perspective, the use of PTAs as a substitute for the lack of corresponding multilateral norms concentrates on countries along migration routes and where large numbers of asylum seekers originate. While these findings are robust, detailed analyses of EU external migration policy towards countries of origin and transit of migrants also point to the limits of the EU's effectiveness in attempting to conclude such deals (Hoffmeyer-Zlotnik et al., 2023). This only shows that this cooperation is not without contention and stands in contrast to the rights-oriented focus of multilateral migration fora.

In more conceptual terms, our analysis provides an innovative framework for studying EU actorness and impact in regime complexes via the use of its strongest foreign policy tool, PTAs. Depending on how coherent EU policy priorities are with existing multilateral instruments, how much competence the EU enjoys vis-à-vis its member states in the matter, and the constellation of interdependence with third-countries, the EU can engage in strategic venue-shopping, thereby altering the architecture and contents of multi-layered regime complexes. Whereas our focus here was on PTAs, our analytical framework can also be mobilised to examine EU external action under the premise of regime complexity concerning other bilateral or plurilateral policy instruments. Next to conceptualizing EU strategic venue-shopping, our analysis contributes to the broader literature on international regime complexes by distinguishing three constellations of institutional interplay in a multi-level perspective: extension, complement, and substitution, as well as their scope conditions.

Beyond putting EU bilateral foreign policies in a broader normative context, this regime complexity approach to EU external action has allowed us to disclose strategic and structural features of EU external action that would otherwise remain concealed. As such, we showed that by shifting the action to venues where it enjoys stronger clout, the EU can expand international norms even when its internal competencies are limited. Conversely, we found that EU bilateral outreach is not necessarily in harmony with its vocation toward multilateralism. Thus, the expansion of mobility norms beyond the GATS remains selective and concentrated on business migrants from main trade partners. At the same time, migrant rights provisions, which are at the heart of multilateral conventions, are not a target in PTAs. Instead, the EU is strategically using its PTAs to foster cooperation where multilateralism (be it because of normative concerns or interest asymmetries) fails. Even without turning into a bedrock of multilateral institutions, EU bilateral action may thus have a lasting impact on the multi-layered migration regime complex and alter its substantive focus from below.

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### **Conflict of Interests**

The authors declare no conflict of interests.

## Supplementary Material

Supplementary material for this article is available online in the format provided by the authors (unedited).

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Article

# Influencing the International Transport Regime Complex: The EU's Climate Action in ICAO and IMO

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## Abstract

Regime complexes entail a variety of institutions with a degree of overlap in terms of thematic issues and participating actors. The EU is such an actor engaging with other governmental and non-governmental entities in the formation and evolution of regime complexes. In this article, we examine the role of the EU in the international transport regime complex, and more specifically in two of its core international organizations, namely ICAO and IMO. Our actor-based approach focuses on how the EU navigates between these two constitutive components of the global transport regime complex, advancing climate change mitigation measures. Our empirical material shows how the EU's active engagement in ICAO contributed to the organization's shift vis-à-vis the role of the aviation industry in greenhouse gas emissions. Besides the EU learning process that occurred and led to a more engaging and less conflictual EU approach in IMO, the ICAO achievement increased pressure and created a more conducive environment for the respective recognition of the maritime industry's share in climate deterioration. In this respect, the EU benefited from the structure of the transport regime complex to pursue its own preferences.

## Keywords

climate diplomacy; European Union; ICAO; IMO; transport regime complex

## Issue

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## 1. Introduction

International regime complexes derive from the need to address complex and multidimensional challenges that cannot be mitigated by individual actors or institutions. They entail a multitude of overlapping institutional settings and arrangements, each one dealing with different aspects of a broader issue area, from climate change and environment to security and human rights (Alter, 2022; Alter & Raustiala, 2018; Delreux & Earsom, 2023; Keohane & Victor, 2011; Raustiala & Victor, 2004). The European Union is an influential actor in such regime complexes, interacting simultaneously with its peers in these overlapping settings, following resources, legal competence, and membership statuses.

One of the least explored regime complexes is the international transport regime complex, which is structured around two core institutional pillars, namely the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO), which are both United Nations specialized agencies. The demographics of these two organizations highlight the impact the EU holds on them, with the EU 27 member states constituting 14% and 15,5% of ICAO and IMO membership respectively. In addition to membership figures, the EU has got the regulative capacity to articulate a regional sub-regime at the European level as well as the economic capacity to back it up. As a result, the EU can cast its impact on these two international organizations (Dikaios, 2022; Earsom & Delreux, 2021a; Gehring & Robb, 2018; Martinez Romera, 2018).

In this article, we adopt an EU-focused, actor-based approach across the two core international organizations of the transport regime complex. We argue that the EU interaction with ICAO had an impact on the IMO functioning as well by creating a more conducive environment for the EU to pursue its own agenda and advancing its own preferences on greenhouse gas (GHG) emissions mitigation measures. How has the EU navigated between the ICAO and the IMO? Our empirical insights answer this research question inductively by highlighting the main features of the EU strategy in both organizations. For this article, “the EU” will stand for both EU member states and EU institutions.

Our article is based on 23 interviews with key stakeholders that have been conducted in the period between 2019 and 2021, examining in essence the micro-level of the negotiating processes. The majority of the interviewees are officials of EU member states, as well as officials of the European Commission and the European Parliament. All the interviewees have at least once traveled to Montreal (ICAO headquarters) to negotiate the Carbon Offsetting and Reduction Scheme for Aviation (CORSIA) and/or London (IMO headquarters) to negotiate the Initial Strategy on the Reduction of GHG Emissions from Ships (henceforth: Initial Strategy). The period under examination begins around the time when the EU started being vocal regarding climate change towards the two organizations (in the late 2000s) and stops when the respective agreements were concluded, i.e., in 2016 for the former and in 2018 for the latter. A special focus is given in the periods before the conclusion of the agreements, as the European Commission of 2014–2019 had a special mandate to pursue rigorous actions toward GHG mitigation in the two international organizations (Juncker, 2014).

In the next section, we elaborate on the transport regime complex providing more information on the EU role and its modus operandi. Following that, we account for the EU action on climate measures in the two international organizations. Then, we highlight the interlinkages between EU actions, discussing the steep EU learning process that occurred as a result of EU engagement in the transport regime complex. We conclude by addressing the temporal and thematic generalizability of our findings.

## 2. The EU in the International Transport Regime Complex

The EU has been for long in the vanguard of international actors that call for action to mitigate the problem of GHG emissions. The EU record of actions has suffered from the ebbs and flows of international sentiment towards the problem. Broadly speaking, from 2007 to 2010, the international sentiment was not in favor of stricter climate measures due to the global financial crisis, as proven in the derailed Copenhagen climate summit, in 2009 (Skovgaard, 2014). The situation was reversed in

and after 2015 when the Paris Agreement was adopted (Falkner, 2016). Following and building on this significant development, which owed much to the EU assertiveness (Pomorska & Vanhoonacker, 2016), the EU has attempted to restore its previously battered leadership role in shaping international climate rules (Bäckstrand & Elgström, 2013; Oberthür & Dupont, 2021), advocating ambitious climate targets in a broad array of sub-regimes. This trend has been boosted by the adoption of the European Green Deal (Eckert, 2021).

The multi-faceted nature of the GHG emissions problem entails a multitude of international fora within which GHG emissions and climate change are discussed (Earsom & Delreux, 2021b). Such fora are partially overlapping and non-hierarchical in nature, which are key features of a regime complex (Raustiala & Victor, 2004). Their broad thematic spread and differentiation, from natural emissions related to agriculture and farming activities to transport-related emissions linked with combustion and transport, generate a set of sub-regimes (Earsom & Delreux, 2021b; Keohane & Victor, 2011; Martinez Romera, 2018; Rajamani, 2020). Thus, combating climate change is developed based on sectoral approaches (Rayner et al., 2021; Sawa, 2010), which adds significantly to the fragmentation of the system and accentuates the difficulties in combatting climate change (Biermann et al., 2010; Doussis, 2020). The fragmented nature of the regime necessitates closer and more robust inter-organizational ties to enhance the governance effectiveness of the regime (Abbott, 2014). Hence, inter-organizational relations (within a sub-regime) and inter-(sub)regime links become critical factors in the smooth modus operandi of the overarching regime complex.

Since the late 1990s and early 2000s, the EU has focused on the contribution of transport to climate deterioration highlighting the role of the aviation and maritime industries. In this vein, it has developed intra-EU regulatory measures with a direct effect on third parties-states and economic entities like big companies. In addition, the EU has attempted to influence both the ICAO and the IMO on acknowledging and curbing the aviation and maritime industries share, exercising pressure on these two organizations for a broader regulatory regime along the EU’s wishes. This two-edged strategy owed much to the realization that the two most relevant international organizations in the field are relatively rigid and diachronically slow in adapting to new conditions. Any decisions to tackle climate change would take much time and would most probably be too little, too late (interviews 6, 14; see also Oberthür, 2006). Without fully discrediting or considering irrelevant these international organizations, the EU rushed to the adoption of stricter climate policies and targets as a means to put pressure on them. Seen from a distance, unilateralism prevailed over the EU mantra of “effective multilateralism” and the emphasis it laid upon regulated international collaboration.

The EU has only observer status in both ICAO and IMO, which means that EU member states formally speak and vote in the working sessions of the two organizations. The EU/Commission Representative can only “take the floor” after member states have already spoken or by invitation of an EU member state. Because of that, extensive coordination among EU member states takes place in Brussels and regularly on the premises of the two international organizations prior to meetings and negotiations. The objective is to foster and ensure the necessary coherence for the EU to appear as a single block with a single voice (interviews 1, 19). These intra-EU negotiations usually strive to reconcile diverging interests, as well as opposition expressed to the EU institutions’ proposals. This can be tracked by the ambiguity that exists around the competence status regarding the GHG emissions in aviation and shipping at the European level (interviews 13, 21; see also Earsom & Delreux, 2021a). Nevertheless, the EU (as a whole) more often than not appears with a single negotiating position, making itself an impactful actor, especially recently during the negotiations concerning the reduction of GHG emissions by the two organizations (interviews 10, 23; see also Dikaios, 2022).

Regardless of internal EU arrangements, the Union has consistent aspirations and policy action towards influencing the IMO and the ICAO to adopt policies that will secure that the aviation and shipping industries are cutting down their emissions. The EU actively engages in the Committee of Aviation Environmental Protection (CAEP), an ICAO Council technical body with only a few participating members that is responsible for developing and proposing adequate measures to the organization’s Assembly. The CAEP consists of roughly 25 ICAO member states (the number varies according to the Assembly’s mandate) that have a crucial role in global aviation. The Union has an observer status in the committee’s proceedings. The same applies to the IMO’s Marine Environmental Protection Committee (MEPC), which consists of all IMO members and deals with the broad array of environmental degradation caused by ships.

### 3. The EU’s Climate Action in ICAO and IMO

Combating climate change became a distinct issue of international politics back in 1992 when, under the UN aegis, the UN Framework Convention on Climate Change (UNFCCC) was adopted. In 1997, the consequent Kyoto Protocol was adopted, explicitly mentioning that the ICAO and the IMO should act toward mitigating GHG emissions from the activities taking place under their authority. This reference was an indirect reprimand to these two organizations that they were not taking bold steps towards mitigating the contributions of international aviation and maritime activities to climate change. This statement holds by and large until today. Conversely to these two international organizations, the EU has

been developing an incremental and forward-looking climate policy since 1992 (Dupont et al., 2018). This has granted the Union a leading role in international negotiations, promoting its standards and rules on how to mitigate GHG emissions (Wurzel & Connelly, 2011). ICAO and IMO have been primary targets of the EU’s active engagement in the field.

#### 3.1. The EU in ICAO

Right after the adoption of the Kyoto Protocol in 1997, the EU began to develop the EU emissions trading system (ETS), a today-prevailing, market-based measure aiming to tackle the rise of GHG emissions among the EU member states. The direct mention of ICAO in the Kyoto Protocol opened a new chapter in EU–ICAO relations. The EU stepped up its pressure and leverage to convince ICAO that more action was needed vis-à-vis the negative environmental imprint of international aviation activity. At the same time, GHG emissions from international aviation were rising, as reported by several international organizations and agencies (Albritton et al., 1997). This led to an intra-EU decision to include all flights that arrive or depart from European airports in its ETS. Following a long period of discussions and preparations, in 2008, the EU adopted the inclusion of aviation in the ETS through Directive 2008/101/EC, thus extending its own regulatory authority in a broader policy regime that was not under its exclusive jurisdiction. The Directive would be effective from 2012. The aim was that, by that time, the EU would have successfully advocated a similar global scheme at the ICAO, along the lines of the European one. However, this intention was never realized because of the fiery reaction of the non-EU ICAO member states (Lindenthal, 2014). Even before the entry into force of the Directive, in 2012, but mostly afterward, the international opposition against it was severe. Apart from a case filed against the Court of Justice of the European Union by the Air Transport Association of America and individual US and Canadian airlines, retaliation measures were also announced from some countries (Gehring & Robb, 2018). This openly hostile and very militant reaction was not expected by the EU officials and led to the EU retreat. Instead of the Directive, EU member states agreed on regulation by the seminal title “Stop the Clock,” which reined back the implementation of the ETS in international flights (European Commission, 2012). This signaled a strategic defeat for the EU’s flagship policy in tackling climate change; nevertheless, the EU has subsequently framed this episode as the first step towards the global system of CORSIA, for which systematic negotiations started in 2013 and which we will discuss below (interviews 14, 23).

Following this setback, the approach of the EU at the ICAO negotiations altered substantially. The above-described unilateral and rather haphazard course of action gave place to a more systematic and comprehensive approach. The failed 2009 Copenhagen negotiations

also played a significant role to this direction. In them, the EU appeared with an ambitious agenda, only to end up isolated and without any meaningful outcomes (Groen & Niemann, 2013). This undermined the EU's position as a global environmental leader and brought back home the message that a new approach was required to promote EU objectives in the field (Bäckstrand & Elgström, 2013). The deriving introspection generated, after 2010, a shift in the EU's global operation regarding climate change (Biedenkopf & Petri, 2019, 2021), which eventually culminated in the successful 2015 Paris Agreement.

At ICAO, this new strategic approach meant a more assertive but engaging EU environmental diplomacy. The EU officials realized that to maximize the EU's influence on ICAO, they should be ready to listen and make compromises, be open to other viewpoints and know whom to speak to (interviews 10, 17, 22). In the words of an EU official: "We had to spend about ten years to fix" the damage caused by the unilateral inclusion by the EU of international aviation to the EU ETS as well as by the offensive EU reaction to its first failed attempt to export the ETS system at ICAO (interview 23).

In the 2013 ICAO Assembly, a mandate was given to the CAEP to prepare a global market-based scheme that would be activated in 2020. The scheme was approved by the next ICAO Assembly, in 2016, with the EU being a key player in its development and eventual adoption. Without the EU's input and action, significantly less would have happened (interviews 10, 16, 17, 19, 21, 22, 23; see also Lin, 2017; Martinez Romera, 2018). The EU used its technical expertise as a spearhead and took advantage of its strong presence at CAEP to showcase that some of the options proposed are feasible. Out of the 22 members in 2013 and 24 in 2016, eight were EU member states, namely France, Germany, Italy, the Netherlands, Poland, Spain, Sweden, and the United Kingdom. The European Commission also participated as an observer, being able though to "take the floor" by sitting together with the member state leading the discussions (interviews 13, 15). Taking advantage of its numerical lead both within the CAEP and as a block of 28 countries, the EU created an extensive network where different EU member states were outreaching different third parties, and the EU delegation was outreaching everyone. All the EU delegates were advocating the same ambitious (in terms of comparison with the others) position, appearing as a solid block in favor of cutting GHG emissions caused by international flights. It is interesting to note that several voices complained about the EU having a single voice echoed repeatedly and fine-tuned by all EU member states and more than one vote. To overcome such criticism, EU member states decided that an "on-purpose communication divergence" would be beneficial to the common cause. A division of labor occurred in which each EU member state focused on different points of the EU argumentation for the importance of the policy when outreaching or taking the floor during

the formal negotiations and informal deliberations (interviews 10, 13, 22). Characteristically, interviewee 13 said: "There are reactions from third countries that say if you are all supporting one thing, then you should get *one* vote, so we are instructed to differentiate sometimes."

At the same time as this diplomatic frenzy at ICAO was taking place, the EU continued the implementation of its ETS in intra-EU flights, illustrating the feasibility of such a system. This provided the EU with an additional argument against the practicality of any such arrangement. Simultaneously, it boosted the expertise of the European Commission, which was always very well prepared to guide the EU member states, third countries, and the ICAO Secretariat through the technical needs that the pursuit of a sustainable aviation policy would require (interviews 10, 19). Additionally, the EU funneled EUR 6.5 million in a project called Capacity Building for CO<sub>2</sub> Mitigation from International Aviation in late 2013. This project's scope was to assist 14 countries in Africa and the Caribbean to adapt to the new climate reality of aviation in five years. However, it did not pay off as expected, as only seven states succeeded in their goal (Dikaïos, 2022).

All the above, in combination with the favorable environment that the Paris Agreement had brought to international climate policy, the support of the Obama Administration (interviews 14, 15), and China's reversed position a few months before the final negotiation (Lewis, 2017) led to the adoption of CORSIA during the 2016 ICAO Assembly. It is evident, thus, that the final decision, which was also significantly watered down than initial (EU) expectations (Carpanelli, 2018), was a result of broader machinations with the EU playing an important role but not the sole one.

### 3.2. *The EU in IMO*

The IMO was much slower than ICAO in engaging with climate change after the Kyoto Protocol, even if the latter did not accomplish much. Although IMO recognized climate change as a problem in 1997 (Oberthür, 2006), it only adopted some first measures against it in 2011 (Shi & Gullet, 2018). During the same period, the European Commission took a more assertive stance on the GHG emissions from shipping activity. As a result, a number of EU documents and communications gradually underscored the need for the IMO to take substantial action (European Commission, 2011, 2013). This process resulted in an EU Regulation on monitoring, reporting, and verifying (MRV) GHG emissions from shipping in 2015. This Regulation, which is the first of its kind dealing with international shipping activity, focused on a process aiming to measure the emissions from ships. In contrast to the aggressive disposition that the EU chose to carry against the sector of aviation by including international aviation in the EU ETS, the Union adopted a milder legislation in the shipping sector, similar to what the IMO had already discussed in the previous period.

However, IMO's early actions on climate were rather sporadic without any mandatory measures being adopted (Oberthür, 2006). In addition, in 2015, the EU invested EUR 10 million in a project titled Capacity Building for Climate Mitigation in the Maritime Shipping Industry to run for four years (2016–2019). The project was implemented by (and through) the IMO and created five centers of excellence around the globe, aiming to enhance technical cooperation, capacity building, and technology transfer regarding GHG emissions reductions from shipping activities, to alleviate disagreements that arose with the Initial Strategy (Dikaios, 2022), which introduced the reduction of GHG emissions from ships by 50% by 2050.

Furthermore, the EU engaged in organized diplomatic action to convince the rest of the 146 IMO member states of the need to contribute their fair share to the GHG mitigation efforts. It was again in 2015 when another opportunity emerged for the EU to take action: The Marshall Islands formed a coalition of the willing to promote climate action within the IMO, creating an ambitious position at the final negotiation of the Initial Strategy in 2018 (Corbett et al., 2020). In preparing the field for an ambitious strategy, a month before the respective IMO meeting, the EU adopted Directive 2018/410, pinpointing the Commission's responsibility to review the progress of the strategy. The Directive implied that, if the IMO did not enact measures against GHG emissions, the EU would implement them on its own. This was an obvious warning to the IMO that the EU intended to adopt rigid unilateral regulation, which would affect maritime transport, by 2023, if IMO did not adopt an equally ambitious strategy.

In contrast to what happened in the ICAO case, the EU's approach to IMO was more structured from the beginning, without aggressive and unilateral actions. The institutional system that occurred after the 2015 Regulation was along the lines of the discussions held in IMO. Once it was established, it was easier for the EU to promote and advocate it in the IMO framework. Similar to ICAO, the EU's measures showed that "things are doable" (interview 20). To enhance this argument, the EU invested in capacity building, transferring know-how and the necessary technological experience to the rest of the world to follow a greener path in shipping activities. The EU aforementioned funded project curbed doubts, especially from developing countries, about the Initial Strategy (interviews 1, 6, 7). Moreover, during the preliminary negotiations (a couple of months before the final one), what played a significant role was the internal coordination of the EU, which kept the ambition high (interviews 2, 3, 4, 5). The EU did not want to compromise with an agreement setting low targets and having little if any impact. Hence, the EU entered the negotiations with an extremely high target of 70% to 100% emissions reduction by 2050. While the result was a 50% reduction by 2050, it was regarded as a success by the EU negotiators. The overshooting was intentional in order

to secure a very ambitious goal agreement. At the closing stage of the negotiations, the 2018/410 EU Directive put additional pressure on the still hesitant states. However, this was used only as a last-minute maneuver to improve the EU alternative in case of a non-agreement and exercise negotiating pressure on the other side by worsening their own alternatives (Best Alternative to a Negotiated Agreement). This unilateral act was not perceived as a sign of arrogance and disrespect but rather as a true indication of the EU's dedication to a meaningful agreement. As a result, and following the paradigm of the Paris Agreement and CORSIA, IMO adopted an action framework of climate change mitigation, which owed much to the EU and constituted a decisive EU victory (interviews 7, 8, 9, 11, 12). Once again, of course, the goal stated in the agreement was lower than what the EU expected. If other groups or parts of the negotiation, such as the Small Island Developing States, wouldn't have been ready to agree on an initial mitigation target, or the industry hadn't given its consent (Corbett et al., 2020; Earsom & Delreux, 2021a), the result might have been different.

Bouncing back, the deal in London contained specific targets and was perceived by some EU officials as a public notice to ICAO to become more ambitious and set the barrier higher, warning—in a way—for further and fiery EU action towards that goal (Eickhout, 2018).

### *3.3. Navigating Within the International Transport Regime Complex*

The following timeline (Figure 1) provides an overview of the EU engagement with the two international organizations of the transport regime complex, as well as some exogenous developments that had a catalytic role in the negotiations.

Although such international developments, like the Copenhagen and the Paris climate negotiations, were critical, the EU's gear shifting changed the pace and intensity of negotiations in the transport regime complex. It was only after the inclusion of international aviation in the EU ETS that the ICAO decided to develop a mechanism to contribute to the global efforts to reduce CO<sub>2</sub> emissions. This came up after the "Copenhagen failure," in a far from favorable environment towards bold climate change mitigation measures. The EU initiative eventually bore fruit and the mechanism was adopted in 2016, with much more favorable contours, one year after the adoption of the Paris Agreement. For the EU, the "ICAO saga" constituted a very useful learning experience. It had to retreat from its initial position, which was considered a great defeat by the EU officials (interviews 14, 19, 23) and had to regain the trust of its interlocutors within the ICAO. To achieve the latter, three courses of action were followed. First, it proceeded with the internal implementation of the ETS in aviation (flights within the EU) and based on this experience reverted to the ICAO with specific proposals on how such a system could work. Second,



1992	1997	2008	2009	2011	2012	2013	2015	2016	2018
Adoption of the UNFCCC	Kyoto Protocol: first mention to the GHG emissions from aviation and shipping	The EU includes all flights that depart and arrive in European airports in its ETS (to be effective in 2012)	Copenhagen climate negotiations fail	First measures concerning climate change appear in the IMO	After severe opposition, the EU freezes the implementation of the ETS in international flights	ICAO Assembly agrees to develop a global market-based scheme for mitigating GHG emissions by aviation	Adoption of the Paris Agreement	The CORSIA is adopted by the ICAO	The Initial Strategy is adopted by the IMO
						The EU funds a project to enhance the support of climate measures in ICAO	The EU funds a project to enhance the support of climate measures in IMO		
							The EU adopts the MRV Directive		The EU adopts Directive 2018/410

**Figure 1.** Timeline. Note: Exogenous developments that had a catalytic role in the negotiations in grey color.

it devised and implemented a strategy of financing a part of the green transition in third countries, which led to a favorable view of the Union for these countries’ governments. Third, EU member states realized that using their (multiple and individual) voices to advocate for the same goal would serve better the EU’s interest. Applying that, they started approaching third ICAO members in a targeted way, utilizing different arguments adapted to the respective “audience” countries or groups of countries.

In the post-2015 favorable context, the EU adopted the MRV Regulation, sending a clear message to the IMO—albeit much milder than in the case of the ICAO—that it was time to take action regarding climate change. The lessons learned from the ICAO case vastly impacted the course of action of the EU towards the IMO. At the same time, the IMO had become aware of ICAO’s course of action regarding GHG emissions and opposition was fading. Following ICAO’s acknowledgment of the role of the aviation industry, the denial of the maritime industry’s share by IMO was not sustainable in the long run (interviews 1, 6). Following EU pressure, and a revised EU strategic approach that incorporated lessons learned from ICAO, the IMO adopted the Initial Strategy in 2018. In contrast to ICAO, the EU first financed a project that promoted the green transition in shipping with beneficiaries from a multitude of countries to appease reactions and then started being more vocal about what needed to be done.

#### 4. A Tale of Two Diverging Strategies—Or Not?

What does the above story tell us about the EU and its action within an international regime complex, when it is attempting to concurrently influence two of its main pillars? The two international organizations act independently, although they share their ultimate goal of ensuring the uninterrupted transfer of goods and people. On the one hand, this creates inconsistencies in handling crises and urgent situations, such as climate change, because there are no linkages between them (Oberthür, 2006). On the other hand, this lack of interaction creates opportunities as the participant state actors can learn from their experiences in one international organization

and then adapt their policies in the other accordingly. This is clearly manifested in the EU case.

In the ICAO, the EU realized the hard way that unilateral action does not pay off and multilateral engagement is necessary in pursuit of the EU-desired outcome. This realization not only altered the way the EU approached ICAO but also led to the EU’s shift vis-à-vis the IMO. As put by one official: “Active participation is a paramount dimension. Many crucial lessons on how to approach the IMO were learned from the experience of the delegations who went to the ICAO in 2013 and 2016” (interview 14). Exhibiting a steep learning curve, the EU realized that multilateralism was the only way forward for adopting climate measures in and by the international transport regime complex and followed a different course of action within the framework of climate change mitigation adopted by the IMO. The EU learning curve is important in accounting for the effective interaction with IMO but even more so is the effect of the successful ICAO precedent and its transcendence into the second forum of the transport regime complex. In a way, the EU induced a change that falls within the existing normative framework but alters the business-as-usual operation of the regime complex (Ruggie, 1982).

By pushing forward such a change in one component of a regime complex, the EU initiated a domino process, which would have had most probably an effect on IMO, even in the absence of any further EU action. This reinstates how one actor can intervene and have an impact on components of a regime complex even without having direct control or direct interaction with them (Margulis, 2021).

The interaction between the EU and the two organizations profited a lot from the overlapping negotiating representation of the EU in both organizations. Member states and the EU are usually represented in multinational negotiations by a multitude of bureaucratic agents and diplomats. The interlinking nature of GHG emissions from ships and aircraft suggests that there are potential benefits to be harvested by closely working administrative clusters that may have otherwise worked isolated and with little or no exchange of information and know-how. Contributing to EU negotiating coherence,

the Commissioner of Transport and her directorate are responsible for both aviation and navigation. Violeta Bulc, then Commissioner, paid visits to both the ICAO and the IMO, held extensive talks with third parties, and highlighted the all-pervading will of the EU to move forward with its ambitious targets. In addition, some members of the European Parliament and key European-level officers were also involved in these missions. For example, interviewees 14 and 18 traveled to both international organizations prior to or during the negotiations of the CORSIA and the Initial Strategy respectively. In that respect, they built synergies between the two fora, advocating similar changes by use of a similar argumentation. This continuity plays well within a regime complex where different voices and interests arise. Having the same people negotiating, even in the backrooms, first, showcased the EU's firm stance and, second, contributed a lot to the steep learning curve that characterizes the EU intervention in the transport regime complex.

The EU learning process can be further seen in the similar use of financial resources in the two international organizations. Replicating the successful exercise of its "power of the purse" in other multilateral settings, the EU created a conducive environment to pursue an agenda mostly rejected or at best very lukewarmly accepted by most of the other participating states (interviews 1, 9). However, this emerged only after the failure of its unilateral action in the ICAO. The EU offered financial and technical assistance to specific recipients in an attempt to overcome their objections, targeting a number of states that perceived green regulation as an obstacle to their development (interviews 14, 18). This practice made its way to the EU strategy in IMO already at the beginning of the EU venture there, which is another demonstration of the EU learning process within the regime complex.

The "elephant in the room" of EU's interactions with the two international organizations of the transport regime complex is the heterogeneity of EU member states and their diverging interests. Although intra-EU politics do not fall within this article's scope, the EU member states did not have a common position until a couple of months before the respective negotiations in the IMO (Earsom & Delreux, 2021a). However, this divergence was overcome at the final stage of negotiations and the EU's eventual coherence contributed significantly to the successful outcome. An absence of the generated coherence would have compromised the learning effect of the negative experience in ICAO; moreover, the success of the IMO led to a rapprochement with the ICAO in pursuit of a more specific climate goal in the latter's climate policy. Hence, how the EU fares in a regime complex and whether the interlinkages between the complex's constituent components are taken advantage of depends a lot on the level of EU homogeneity in the specific regime area. Admittedly, more research is required on the effect of a regime complex on the coherence of multilateral actors, like the EU.

## 5. Conclusion

In this article, two arguments were made. First, we argue that the EU was significantly influenced by what was taking place within the ICAO and the IMO; second, that the EU substantially influenced the course of action of the two leading international organizations of the regime complex. Our analysis shows that the outcome of the negotiations with the two international organizations owes much to the EU stance which contributed to the successful conclusion of climate agreements in the international transport regime complex. Moving from one international organization to the other in this regime complex, the EU has gone through a steep learning curve, adjusting its engagement in IMO following its ICAO experience. This learning process can be seen not only in terms of the positions held and the EU's diplomatic modus operandi but also in the instruments used, especially the financial ones. The steepness of the learning curve owes much to the fact that the EU was represented in the two international organizations by largely the same EU officials, which ensured continuity but also a secure transmission belt of knowledge and know-how acquired in previous rounds of negotiations in the other international organization. The fact that the EU member states managed to bridge their differences was a *sine qua non* condition for effective EU interaction with the transport regime complex overall.

Studying the cases of the ICAO and the IMO through the spectrum of European climate diplomacy offers a clear and enlightening perspective of how the EU diplomatic apparatus has matured over time. Concurrently, it opens a few additional research paths that examine specific aspects of their relations with the EU, the broader picture of the wider regime complex function, as well as the way forward toward a new era, after the adoption of CORSIA and the Initial Strategy respectively. A number of interesting questions arise, including, for instance: What are some of the inter-organizational pressures coming from the international to the regional level, i.e., how do international organizations influence the action of the EU? In ICAO, the EU adjusted to these pressures by altering its own position vis-à-vis the inclusion of aviation emissions to the ETS. Given that the EU stated objective is to extend the EU ETS in shipping activities and pursue a new sustainable fueling policy for transport, it is interesting to monitor in the years to come to what extent the international interactions of the EU will affect the implementation of the European Green Deal. These questions, and many more, fall under the, far from simple, regime complex(es) of both transport and climate change and will surface in the coming years as the greening of the international transport sector moves forward, to become a reality. In this context, the EU's climate action will emerge as a catalyst not only between international organizations in the same complex but also among regime complexes.

The period under examination in this article was chosen for its significance for the future, since the way

rules are established defines the way the regulated system will evolve (Zhang, 2016). Since the conclusion of the CORSIA and the Initial Strategy, a series of developments have taken place, leading potentially to a greener future in international transport. On the one hand, in the ICAO, albeit the disturbances caused by the Covid-19 pandemic, in late 2022, an agreement on a long-term aspirational goal towards mitigating GHG emissions from aviation has been reached. Right after, the EU, within the framework of the Fit-for-55 package, has moved forward with revising the application of the ETS in intra-EU flights by completely phasing out free allowances in emissions by 2026. Respectively, the CORSIA will be implemented in flights that arrive and depart from the EU and its effectiveness will be evaluated to introduce legislative changes, should it not deliver the expected outcomes (Council of the European Union, 2022). On the other hand, in the IMO, the majority of the Initial Strategy's precepts were left to be decided in the following sessions of the MEPCs. Further, due to the Covid-19 pandemic and the alienation from the belief that the IMO should contribute to the mitigation of GHG emissions, very slow progress has been observed in these MEPCs (IMO Arctic Summit, 2021). This fact made the EU, again under the Fit-for-55 declarations, start paving the way for unilateral acts in shipping, by planning to include the sector in the EU ETS scheme (Peter Liese, 2022).

The latter case might lead us to consider that, after all, the EU believes in unilateral action to force other actors to follow down its path, although such action may backlash. Such a decision could also be the legacy of the unilateral experience in the ICAO. It remains to be seen how it will be received by the international community.

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### Conflict of Interests

The authors declare no conflict of interest.

### Supplementary Material

Supplementary material for this article is available online in the format provided by the authors (unedited).

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Article

## Governance Through Regime Complexity: What Role for the EU in the African Security Regime Complex?

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### Abstract

The international response to armed conflict in Africa often takes the form of a regime complex characterized by institutional proliferation, overlap, unclear hierarchies, and multiple interconnections. At the same time, the course of conflict is hardly predictable. In such an environment, how can component units (institutional fora) of a regime complex effectively govern through complexity? We explore this question by focusing on the EU as an important actor within regime complexes. Building on the regime complexity literature and complexity theory, we identify four conditions. We argue that actors who operate as resource hubs, create complementarity, support system self-organization, and practice adaptive forms of peacebuilding are best placed to manage regime complexity. Empirically we probe these assumptions in the context of the Sahelian security regime complex and the role the EU is playing in it.

### Keywords

European Union; regime complexity; Sahel; security

### Issue

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### 1. Introduction

The European Union’s position and role in global and regional governance is undergoing substantial change (Barbé et al., 2016; Santander & Vlassis, 2020). For a long time, the key to a more influential EU was seen to rest primarily in the EU’s ability to create stronger “actorhood.” Internal coherency and strategic planning leading to specific policy programs supported by Commission funding are usually considered essential for foreign policy influence (Börzel & van Hüllen, 2014; Thomas, 2012). While these conditions are sine qua non requirements to succeed, they are not sufficient in isolation from further context conditions which are placed outside the EU’s ambit. As part of this thematic issue on the EU and regime complexity, this article explores the wider institutional environment in which EU foreign and security policy is taking

place. The contextual framework is the conflict-specific security regime complex in the Sahel. It emerged around Mali’s political and security crises of 2012, which triggered a comprehensive international response involving a high number of international institutions, among them the EU, the African Union (AU), the United Nations, and African regional organizations.

The conceptual framework of the thematic issue distinguishes between three levels of analysis. Placed at the macro level is the issue-specific regime complex. It consists at the mid-level of overlapping institutional arenas, referred to as fora. These are the constitutive or component units of the regime complex. At the micro level, these institutional fora themselves consist of a range of actors (Delreux & Earsom, 2023). In this contribution, we are concentrating on the mid-level by exploring how a forum and component unit like

the EU operates within the macrostructure offered by the issue-specific security regime complex in the Sahel. We treat the EU as an important forum operating within regime complexity.

Our core interest is exploring conditions relevant to managing regime complexity. We start with the proposition that governing through regime complexity is an essential instrument of power that is transforming conventional understandings of influence. Traditionally (realist school), power and influence have been associated with actor-centrism and material capacities, especially in the field of peace and security. However, conflicts in an environment of regime complexity require a different perspective that recognizes the system-conditioned and complexity-informed context.

Analytically we will use elements from the regime complexity literature and complexity theory. We argue that four conditions are particularly relevant for mastering regime complexity. First, institutions within a regime complex are best placed to steer it if they can operate as a resource hub, supplying resources for the functioning of the regime complex instead of consuming them. Second, regime complexity is argued to work best when there is functional differentiation of its component fora, which complement rather than duplicate each other. Third, as regime complexes operate in a decentred manner without clear hierarchies, they operate under the condition of self-organization. As self-organization is a system prerequisite, we argue that supporting it is essential for maintaining regime complexity. Fourth, armed conflicts often display a high degree of non-linearity and complexity, which limits the predictability of international peace efforts. This prevents the application of simple cause-effect solutions and requires adaptive policies that accept non-linearity.

We presume that these four conditions are relevant for all fora operating within the context of regime complexity and with the ambition to actively steer it. However, only a few might actually be able to do so, and thus, the selection towards which we can apply our argument is relatively small. We find that the EU is the most likely candidate to explore these four conditions given its resource endowment, willingness to take action, and deep involvement in conflict resolution. Empirically, we examine these propositions against the EU's role within the security regime complex that emerged around the armed conflict in the Sahel. The Sahel has been selected because it is arguably the area in which we can best observe institutional complexity in the field of security and in which the EU is an active player. The focus on the Sahel is warranted for the EU because it is a strategically important area from the European perspective, given that it is home to jihadist groups, a source of mass migration, and suffers from poverty.

The nature of a regime complex with its multiple interconnected fora significantly complicates its exploration. We do not intend to mirror all possible actors with all their relations fully; such depth would over-

stretch the space available within a single article. What we are doing is probing into the plausibility of our four conditions for selecting the EU as the most fitting institution within the Sahelian security regime complex. We particularly zoom in on the role and activities of the Regional Advisory Coordination Cell (RACC), the EU's on-the-ground coordination hub. If (effective) EU governance through complexity is to be expected in the Sahel region, traces thereof should at least be observable in the RACC's activities.

## 2. Conceptual Framework

We use regime complexity and complexity theory in an eclectic manner, helping us to explore what steering opportunities actors have when confronted with regime complexes. We do not aim to provide a comprehensive discussion or application of both theories but combine selected elements and probe their plausibility in the empirical section. By doing so, we address several gaps in the literature.

The regime complexity literature tends to explore complexity primarily at the international level and among international institutions (Alter & Raustiala, 2018; Orsini et al., 2013; Raustiala & Victor, 2004). However, complexity extends into other levels of analysis, for example, the implementation side of what these international institutional aim to achieve. Furthermore, while the regime complexity literature uses the term complexity frequently, it does not substantially engage with complexity theory (Hollway, 2020). If complexity is recognized, it is mostly within the context of inter-institutional relations. Lastly, the literature has so far mostly explored what consequences regime complexity produces for international institutions (Gehring & Oberthür, 2009). Little effort has been made to explore how component fora can be influential by using regime complexity to achieve their policy goals. We are addressing these gaps in the literature first by drawing conceptual inspiration from both regime complexity and complexity theory demonstrating how both can profit from one another; second, by extending the focus of complexity analysis from only inter-institutional relations to also exploring how policies are practiced; and third, by focusing on the question of how component fora can best position themselves within a regime complex to achieve their policy goals. More recently, regime complexity and complexity theory have been related more strongly to global governance research (Eilstrup-Sangiovanni & Westerwinter, 2022; Haas & Western, 2020; Orsini et al., 2020). This trend relates to our main research endeavor, examining how best to govern through regime complexity. We develop four facilitating conditions.

First, we develop a baseline argument. For any international institution to take action, it requires resources for its operation. These can be both material or immaterial goods, such as access to funds or having certain competencies or institutional capacities in a particular

policy area. Naturally, the resource question extends into the external relations of international institutions. Institutions can acquire resources through exchange if they cannot generate them internally (Biermann & Harsch, 2017). Most explicitly, resource exchange theory addresses the issue, which has also been applied in the context of the African security regime complex and for conceptualizing interaction among international organizations (Brosig, 2015; Galaskiewicz, 1985; Gest & Grigorescu, 2010). Accordingly, the centrality of a component forum within a regime complex depends on its ability to supply resources for its functioning rather than relying on such resources. Those who supply more resources to the regime complex but demand few from others are in a more advantageous position. They can be assumed to have greater steering capabilities over how the regime complex develops than those who are reliant on these resources. Component fora that manifest themselves as a resource hub can strategically use and shape the functions of the regime complex. Following the flow of resources such as international funds easily reveals the resource supply or dependency of individual units.

Second, one stream within the regime complexity literature emphasizes that overlap will likely lead to greater cooperation and system creation. The argument is built on the assumption that dense institutional spaces exert adaptation pressure, forcing individual institutions to select functional niches (Gehring & Faude, 2013). The theoretical roots of this approach are based on population ecology (Carroll, 1984; Ries, 2017). The central assumption is that institutions move from high- to low-competition areas. Ultimately, the spaces they occupy are characterized by functional differentiation, which allows them to avoid open confrontation. Specialization in an interconnected environment of regime complexity leads to complementarity. The sum of functional niches creates a wider system, the regime complex. The literature assumes two methods through which complementarity emerges: deliberate design by involved component units or spontaneous emergence as a consequence of reiterative interactions (avoiding competition or as a consequence of it) within a regime complex (Faude & Gehring, 2017, pp. 191–192).

In this context, we propose to direct attention to component fora and their ability to actively create complementarity. While it is true that within regime complexes, no single unit dominates the system as it is primarily decentred and not formally organized, component units are not all equal or simply passive receivers (Raustiala & Victor, 2004). How well a regime complex operates can reasonably be assumed to depend on the degree of institutional “fitness.” This refers to how well component fora fit together and complement each other. Accordingly, effective system management depends on how well component units interact based on their functional specialization. This creates incentives to develop complementarity. Consequently, we argue that those units which are able

and willing to initiate complementarity have a greater chance of steering the regime complex and being more central to it than those that are not.

Third, although the literature on regime complexity refers to complexity directly, it hardly engages with its substance. Thus, we borrow from complexity theory for formulating the last two conditions. Complexity theory is classically based on four principles: non-linearity, an open-system character, emergent system properties, and self-organization (Cilliers, 1998). This means that no simple cause-effect relationship can be identified that assigns agents or systems uni-directional or ever coherent (stable) influence over outcomes. It also means that regime complexes are open systems without a pre-determined number of component units as well as forms of self-organization with emergent properties (Kavalski, 2007, p. 437).

Because the full application of complexity theory is well beyond the scope of this study, we concentrate on one essential feature, self-organization, and transfer it to the study of regime complexes. Within complex systems, component units are primarily meaningful, as they respond to external environments collectively without a vertical hierarchy initiating or imposing such action. Because component fora are interconnected, they have emergent properties. Seen from the complexity theory perspective, regime complexes are political ecosystems that provide order in the form of self-regulation but do not operate according to principal-agent or purely rational/functional logic. While complexity theory has a strong emphasis on system properties and post-positivist orientation, it stands in opposition to mainstream IR with its mostly positivist and actor-centered approaches. However, a section within complexity theory has argued for a more moderate understanding of complexity. The concept of restricted complexity understands systems as operating in a semi-open manner, acknowledges that causality can take multiple directions, and that authority is not fully non-hierarchical but decentred and dispersed among various actors (Brosig, 2020; Morin, 2007). Likewise, Eilstrup-Sangiovanni (2022) argues that governance complexes are a product of both strategic actions intending to refashion them and a result from emergent/system processes.

To answer our main research question, assuming a middle-ground position is important. If we assume that component units are more than components of a larger system but can also have agent qualities, it is not far-fetched to argue that they can have an individual influence on how self-organization emerges and operates. Thus, we argue that those actors within a regime complex that can support and shape self-organization have an advantage over others. Applying the logic of restricted complexity, we understand self-organization as being based on dispersed forms of authority in contrast to being completely non-hierarchical, as complexity theory would suggest. A component forum supporting self-organization would sustain a system with flexible

autonomy that can act mostly independently but is supported to some degree by a patron.

Fourth, the literature on regime complexes almost exclusively applies complexity thinking to the operation of component fora within the complex. In this sense, the literature is inward-looking and tends to omit the implementation environment. However, regime complexes are not self-referential entities; they are supposed to implement certain rules, programs, or policies. Leaving aside the application environment bears the risk of ignoring important conditions impacting the operation of a regime complex. Therefore, we enhance the application of complexity theory to our targeted policy field, security in the Sahel. In armed conflict, international organizations operate under great uncertainty over outcomes. Conflicts are often protracted, with limited predictability of how they proceed or when violence might dissipate (de Coning, 2016). Ending violent conflicts is not just a question of strategic planning and implementing policy programs in a top-down manner with enough resources (Day & Hunt, 2022). Because creating peace does not follow linear models of change and is marred with uncertainties, complexity approaches have gained ground. De Coning (2018) identified a number of framing conditions for complex adaptive peacebuilding that, in its essence, “embraces uncertainty, focuses on process, not end-states, and opts to invest in the resilience of local and national institutions and thereby their ability to promote change” (p. 317). Accordingly, adaptive knowledge over outcomes is inherently incomplete, policy planning is an incremental and experimental process, multiple options need to be pursued to allow learning from best-practice, and participatory and collaborative elements are needed. Naturally, these conditions are demanding and long-term oriented. Based on this logic, we argue that component fora within a regime complex and operating in an environment of complexity occupy an advantageous position if they apply adaptive practices. In other words, programs are designed in a process-oriented manner, facilitating inductive (ground-up) input leading to iterative learning, unlike a top-down means-to-end approach which mechanically implements programs.

Table 1 summarises our four conditions. We argue that component fora of a regime complex are best placed to (a) govern through complexity if they supply

more resources to the complex than they need from it, (b) actively create system complementarity by focusing on niche functionality, (c) stimulate self-organization, which manifests itself in the support for a shared authority, and (d) apply adaptive policy instruments to a complex implementation environment. After providing a short overview of the Sahelian security regime complex in the next section, we apply these four conditions to the EU in the Sahel.

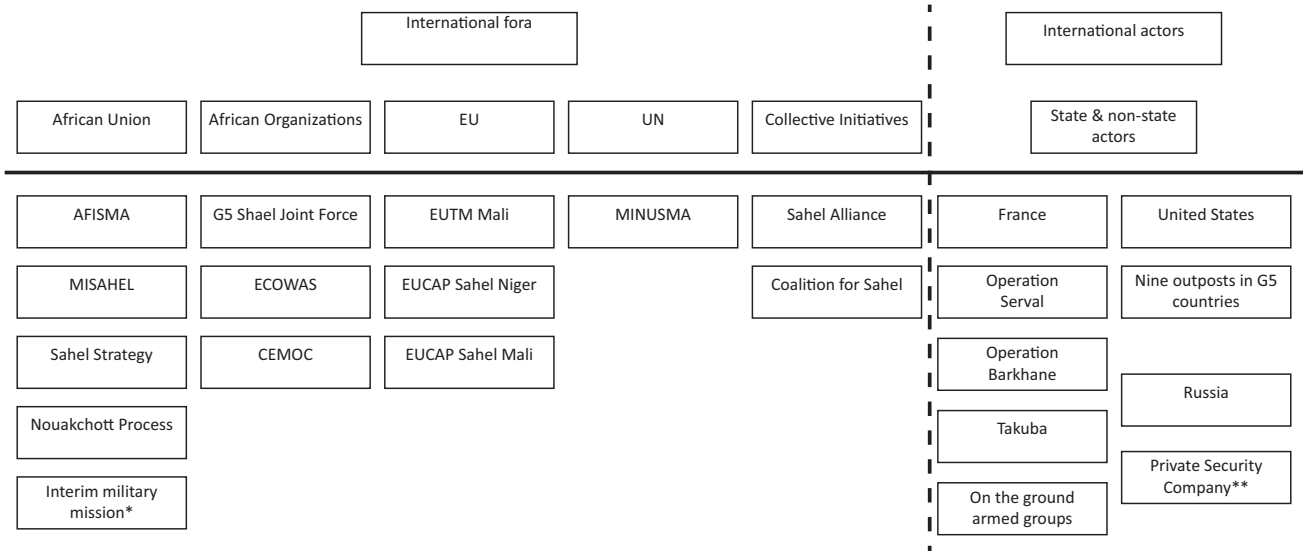
### 3. Security in Africa and Regime Complexity

The international response to armed conflicts is regularly shaped by multilateral institutions. There is hardly a conflict in which no institution is involved. Conflicts in Africa are usually characterized by the engagement of many regional and international organizations. The African Peace and Security Architecture (APSA) is a unique synthesis of regional organizations and the pan-African AU (Engel & Porto, 2010). Today, the APSA is enhanced through extensive cooperation with the UN, EU, military ad hoc coalitions, and various bilateral agreements. In effect, each security crisis creates its own specific actor constellation. Due to the high number of institutions involved, the literature refers to African conflicts as security regime complexes (Brosig, 2013). The EU’s policies towards the Sahel are a case in point since they take place within the structures of a conflict-specific regime complex.

Figure 1 maps the international institutional regime complex which has emerged in the Sahel. This encompasses institutional fora such as the EU, the UN, the AU, regional economic communities, and powerful individual actors, such as France, in addition to a multitude of armed groups on the ground. Ongoing civilian capacity-building missions, such as EUCAP Sahel Niger and EUCAP Sahel Mali, operating alongside military training missions, such as EUTM Mali, are the most visible exponents of the EU’s activities in the region. Each of these missions, however, also contributes to what has been labeled as the “security traffic jam” of the Sahel (Cold-Ravnkilde & Lindskov Jacobsen, 2020; Karlsrud et al., 2019). The bulk of the activities is (or has been) implemented either by international forces under the aegis of the UN (e.g., MINUSMA, 2013–ongoing), the AU or ECOWAS (e.g.,

**Table 1.** Governance through regime complexity.

Properties	Manifestations of complexity
Resource supply to the system	Act as a resource hub
Create system complementarity	Create niche functions Focus on system functionality
Stimulate self-organization	Support shared authority Empower other actors
Facilitate adaptive learning	Apply iterative learning Trial and error



**Figure 1.** The Sahel security regime complex: International institutions and actors. Notes: \* In planning; \*\* In 2021, the Wagner Group started operating in the region.

AFISMA, 2012–2013), or by ad hoc coalitions, such as the French-led operations Serval, Barkhane, or the Takuba Task Force (de Coning et al., 2022). Particularly when it comes to stabilization or counter-terrorism activities, there is a European tendency to rather opt for providing financial or material support to third-party operations, for example, the Joint Force of the Group of Five Sahel, launched in June 2017 by the governments of Burkina Faso, Chad, Mali, Mauritania, and Niger to fight terrorism and organized crime in the region, or the Multinational Joint Task Force (MNJTF) fighting Boko Haram. Lopez Lucia (2020) described this more pragmatic approach to supporting regional ad hoc initiatives as a “very unfamiliar situation.”

In sum, the Sahel security regime complex consists of the entirety of (often overlapping) institutional responses, of which the EU is only one among many, without having a single steering body at its top. It has been argued elsewhere that this comes with a clear risk of getting entrapped in lock-in effects and unintended consequences (Plank, 2020; Plank & Bergmann, 2021). This hence raises the question of how to effectively navigate this complexity.

#### 4. EU Coordination and Cooperation in the Sahel

##### 4.1. Data and Approach

Empirical analyses of governance in security regime complexes are inherently prone to the risk of merely scraping the surface due to the many initiatives, institutions, and relationships which characterize these complex environments and which should ideally all be considered. To overcome this empirical challenge, we recommend complementing a general assessment of governance activities in security regime complexes with a more nar-

row focus, studying one central hub of the regime complex, and later snowballing outwards. We, therefore, add a (traditional) broad focus on the EU’s governance activities in the Sahel region with a specific focus on the EU’s RACC and explore the extent to which recognition of this complexity is visible in its mandate and on-the-ground practices.

The RACC, established as the Regional Coordination Cell (RCC) in June 2017 and later, in May 2019, renamed and moved from Bamako to Nouakchott, is the EU’s central on-the-ground hub of coordination and cooperation in the Sahel with a focus on regionalizing security and defense-related activities. It is mandated “to support G5 Sahel structures and countries to enhance regional cooperation and operational capabilities in the field of defense and security,” “to reinforce international cooperation and transparency in support of the G5 Sahel structures and countries capacities,” as well as “to facilitate internal EU coordination on security and defense” (EEAS, 2022). In doing so, the cell can rely on a network of Internal Security and Defense Experts deployed to the RACC’s command structure in Nouakchott and to EU delegations in the G5 Sahel countries (Council of the European Union, 2019, Art. 1, para. 3). If EU governance through complexity is to be expected in the Sahel, traces thereof should at least be observable in the RACC’s activities.

Empirically, we, therefore, not only rely on insights from an analysis of strategic documents and Council decisions; we also build on interviews with involved officials based both in the RACC, EU delegations, and at the EEAS in Brussels (see Table 2). We will explore if traces of effective governance through complexity can be found in the EU’s governance in the Sahel as a whole since 2013, and in the mandate evolution and activities of the RACC specifically. We will do this against the background of



**Table 2.** List of interviews.

Interview	Interview information
Interview 1	Interview with EU member state official, 17 March 2017, Addis Ababa
Interview 2	Interview with ECOWAS official, 24 June 2017, Abuja
Interview 3	Interview with EU official, 12 November 2018, Brussels
Interview 4	Interview with EU official, 13 November 2018, Brussels
Interview 5	Interview with EU official, 15 November 2018, Brussels
Interview 6	Interview with EU official, 16 November 2018, Brussels
Interview 7	Interview with EU official, 17 May 2019, Addis Ababa
Interview 8	Interview with AU official, 21 May 2019, Addis Ababa
Interview 9	Interview with EU official, 4 May 2022, digital

the four aforementioned facilitating conditions for how to govern through regime complexity.

#### 4.2. Exploring EU Governance Through Complexity in the Sahel

First, and with reference to the first condition referring to resource exchange, there is considerable evidence that the EU acts as a central resource hub within the regime complex. Actors such as ECOWAS and the G5 countries have been highly dependent on external resources since the 2012 crises in Mali, large parts of which are provided by the EU. A clear indication of this is the security-related priorities in the financial envelope for the Sahel within the framework of the 11th European Development Fund for 2014–2020, through which the EU has allocated more than EUR 2.6 billion to the five Sahelian states and regional initiatives (Lopez Lucia, 2019, p. 24). Moreover, the EU supports the G5 Sahel’s Priority Investment Programme, the organization’s main vehicle for implementing its 2016 development and security strategy in defense and security, governance, resilience, human development, and infrastructure (G5 Sahel, 2018).

Overall, this resource supply materializes most prominently through the financing of deployed troops and their equipment (interviews 2, 3, 8). For instance, the EU has already supported the G5 Sahel Joint Force with EUR 235 million through the African Peace Facility and EUR 35 million through the European Peace Facility. In total, the EU has invested more than EUR 750 million in building military capacities in the countries of the G5 (Montanaro, 2022). Moreover, the introduction of the European Peace Facility increased the EU’s capacity to act as a central resource hub. This program not only created room to also provide funding to peace and security operations that operate outside the institutional frameworks of regional arrangements such as the AU or ECOWAS; it also offered a framework to supply third-country armies with arms and ammunition (International Crisis Group, 2021).

Interestingly, the role of the EU as a resource hub is generally described as adapted to the needs of the part-

ners within security complexes rather than to EU-internal dynamics (interviews 5, 6). It is argued that the RACC plays a central role in matching these needs with resources. As noted elsewhere (Goxho, 2021, p. 104), the RACC “is a mechanism which...provides an overview of the needs of the military G5 Joint Force together with the potential offers of military support from EU member states and from other donors.” Also, the EU’s reliance on Expertise France, the French public international cooperation agency, seems to be geared towards that end. The EU has cooperated with the agency as a contractor for the G5 Sahel countries after positive experiences in the Central African Republic in which the supply of food rations for the AU-led MISCA was implemented by Expertise France (Plank, 2022).

At the same time, one should be careful not to present the EU as a mere provider of resources. It is in itself also dependent on the support of several of its partners in the regime complex to implement its strategic agenda. This is most clear in the deployment of EU missions and operations, which are often heavily dependent on the logistical support of the Sahelian countries (see Plank, 2022). The resource exchange is thus clearly not a one-sided affair.

Second, zooming in on the mandate and evolution of the RACC offers some evidence of an EU ambition to contribute to complementarity and system functionality, in line with the second condition. Concretely, since 2019 we have observed a change in the RACC’s mandate towards greater recognition of its role as a facilitator of interaction between the multiple actors in the regime complex and as a strategic advisor to foster self-organization of Sahelian actors.

As one interviewee summarised: “The RACC was initially just a coordination cell to which then a strategic advisory role was added” (interview 9). On 19 June 2017, the Council adopted the decision to establish an RCC within EUCAP Sahel in Bamako (Mali) as part of the EU’s “first phase of the regionalization of CSDP missions in the Sahel” (Council of the European Union, 2017). This regionalization as a more general development of the EU’s policies in the region mirrored an extension

of the EU's mission's mandates, such as EUTM and EUCAP, beyond specific countries to the whole Sahelian region as adaptive EU policy towards the region (Plank & Bergmann, 2021). It reflects the EU's attempts to learn from the perceived failure of ECOWAS in Mali and the severe challenges of EUTM Mali, which experienced setbacks due to an inadequate provision of military hardware and insufficient adaptation to local needs (see Tull, 2019; interview 1). Against this backdrop, the RCC was tasked to, amongst others, "contribute to the Union's situational awareness of G5 Sahel countries' security and defence needs and gaps" that would "facilitate the organisation of training courses by Union CSDP missions" (Council of the European Union, 2017). In other words, from these provisions, one can conclude that it was another attempt to strengthen the EU's missions deployed in the region. On 13 May 2019, however, the Council decided to rename the RCC into the RACC and relocate it to Nouakchott (Mauritania) as part of the so-called "second phase" of the regionalization of CSDP efforts in the Sahel (Council of the European Union, 2019). In doing so, it also expanded the RCC mandate to "support the G5 Sahel structures and countries to enhance regional cooperation and operational capabilities in the field of defence and security" (Council of the European Union, 2019). This relocation and reorientation of the RACC testify to greater awareness of the need to create system complementarity. Later, in its Decision of 7 January 2021, the Council decided to replace the aforementioned RACC objectives. The RACC is now set to serve objectives to "improve the cooperation and coordination between G5 Sahel structures and G5 Sahel countries in order to enhance regional cooperation and operational capabilities," "reinforcing the national capacities of G5 Sahel countries," and "facilitate and support the organisation of information-gathering and sharing with all partners of the G5 Sahel" (Council of the European Union, 2021a). Around the same time, the High Representative for Foreign Affairs and Security Policy highlighted in a report to the Council that this regionalization process has "stepped up cooperation and coordination with international actors such as the UN, the AU, ECOWAS." At the same time, the RACC "continued to support Sahelian security forces in the development of their capacities" (Council of the European Union, 2021b, p. 121). In other words, what we see here is a gradual evolution of what used to be a focus on strengthening the EU's own activities in the Sahel, towards now seemingly embracing a coordination role and stimulating the self-organization of regional initiatives. Especially the extension of the RACC's mandate towards the needs of regional and international actors in the regime complex reflects aspirations to facilitate the ability of the regime complex to organize itself, at least at the declaratory level.

We can also find some traces of an evolution towards governance through complexity when looking beyond the RACC's mandate evolution, focusing instead on its

activities on the ground. Interviewees described the RACC's approach as a coordination role in which the EU is a "secretary" within the regime complex that manages funds or coordinates projects (interview 6). What is essential here is the emphasis of interviewees that the RACC has no operational mandate, only a coordination and strategic advisory role to actors within the regime complex as a "contribution to their thinking" (interview 9). Essential to the functioning of the RACC is, therefore, its central networked position, which allows it to act as an important coordination hub in the Sahel regime complex. Most of its activities are geared towards offering a bridge between the activities of EU delegations and missions in the region (i.e., EUCAP Sahel, Mali EUCAP Sahel Niger, and EU civilian missions in Libya), on the one hand, and the departments of security and defense of the G5 Sahel countries as well as the Coordinational National Committee on the other hand (interview 9). The deployment of RACC staff to EU delegations in the G5 states also illustrates this position. In doing so, the RACC seems to act not only as an important interlocutor for the provision of EU material resources to the G5 Sahel countries, for instance, through coordinating funding programs within the EU missions; it also actively presents itself as a source of advice and expertise for (state) actors in the regime complex, for instance through providing a database on projects of other actors (Venturi, 2019, p. 7). As one interviewee said: "We always say to them 'just pick our brain'" (interview 9). However, how much this is also wanted and used by the G5 Sahel governments should be more systematically investigated in future research.

Interestingly, we could not find convincing evidence beyond the anecdotal level for an EU willingness to stimulate the self-organization of its partners in the regime complex, and neither could we find systematic evidence of an adaptive approach that embraces trial-and-error and non-linearity.

For instance, the RACC intends to play a proactive role in identifying gaps and needs in the capabilities of the G5 Sahel countries' security structures, as well as in the coordination of activities toward filling these gaps (interview 6). This can be read as an effort to support self-organization. Here, the example was given by one interviewee about the need for establishing a forensic capacity in the police sector of the G5 Sahel countries. As a first step, RACC officials sit with national authorities, provide advice, and create awareness of the need for such capacity. Once these authorities are convinced, the RACC reaches out to EU missions (here: EUCAP Sahel) and partners on the ground and requests that they make human and material resources available (here: forensic specialists) and provide such training. Although the RACC's role is limited to coordination and advice, it seemingly plays an important role in creating synergies between actors on the ground and empowering national authorities. Moreover, in exploring the RACC's activities, we observe an awareness of a need for an adaptive and

context-sensitive approach, which often includes ad hoc actions and a trial-and-error approach. One interviewee here referred to lessons learned from previous EU missions in East Africa, indicating that the regionalization of activities in the Sahel region should go hand in hand with tailoring priorities and actions to each of the countries individually (interview 9).

Yet, we cannot draw strong conclusions about the actual effectiveness of the ambition to support self-organization, as this is heavily determined by the receptiveness of the G5 Sahel countries' governments and their willingness to use this advice. For instance, the success of the RACC's activities is difficult to measure given that its mandate is limited to providing advice and coordination; it does not have operational authority (interview 9). Referring to interaction with the departments of defense of the G5 Sahel countries, the same interviewee, therefore, highlighted how this requires long-term engagement to get their respect and trust (interview 9). Referring to the aforementioned example of developing forensic capacity, the decision by the government of Mauritania to establish a forensic laboratory was seen as a success of the RACC's advisory action, even though it took the government two years to take this decision.

Although interviews with RACC and EEAS officials indicated an awareness of the need for an adaptive and non-linear approach, we could not trace if this has also affected its capacity to meaningfully contribute to regional stability. Rather, the most explicit example of adaptation by the EU suggests counterproductive outcomes. It seems that the adaptation of the EU's resource provision has given the G5 Sahel governments more steering capacity. The creation of the G5 Sahel Joint Force is a case in point. By supporting the new institution considerably, the EU engaged in a trial-and-error approach giving substantial leeway to the G5 countries. Although the initial creation of the G5 followed a top-down approach initiated primarily by the EU and its member states, with some demand also expressed by the Sahelian countries themselves (Bergmann, 2022, p. 144), it later adapted its approach to the expressed needs of the regional group. The conditionality applied by the EU in its funding of the G5 Sahel countries has decreased significantly, for instance, in Mali, where the government received so many funding opportunities that it was able to engage in extraversion strategies (Plank, 2020). However, as argued elsewhere, this has also reinforced the clientelist and predatory system of governance in Mali (D'Amato & Baldaro, 2022). As another example, the presence of Barkhane and MINUSMA in northern Mali enabled the Malian government to lower the pressure to act in those regions on its own while similarly creating a point of criticism of the failure of those missions (Lacher, 2021). Recent coups in the region, some of which were enforced by soldiers that the EU had trained, provide significant evidence for the limited success of this approach. The Malian government even reinforced local security

forces in Mali, whose abuses and lack of accountability have delegitimized civilian rule and paved the way for the coup government "that is intercepting and exploiting the diffused mistrust of the population vis-à-vis the international community" (D'Amato & Baldaro, 2022). While the security situation has deteriorated in many areas, the Malian government has furthermore increased its reliance on the Russian mercenary Wagner Group, with severe consequences for civilians.

On a final note, interviewees highlighted several additional challenges to the implementation of EU actions on the ground, including the activities of the RACC, because of growing complexity and actor proliferation. One major challenge in the region following actor proliferation is the risk of duplicating support by the various actors involved and the need to speed up delivery processes, such as that of military equipment (interviews 5, 7). Here, the RACC can act as an important information hub for other donors, including individual countries (interview 4) but also for other international actors, including UN agencies and ECOWAS (EEAS, 2017). Given that the RACC is restricted to providing strategic advice and coordination, translating this advice into concrete action is, however, far from simple. As a result, the RACC is confronted with both supply and demand obstacles. Translation into action depends very much on the support that the EU Missions can provide. For instance, EUTM or EUCAP do not always have sufficient human resources to organize training. Also, the willingness and capacities of the G5 countries, for instance, in terms of staff, to collaborate is critical for partners such as the EU to effectively govern through complexity (interview 4).

More fundamentally, the worsening security and political situation in the region, illustrated by recent coups in Mali or Burkina Faso, have hampered the RACC's capacity to organize coordination meetings and get access to national authorities. It not only led to growing insecurity on the ground, but it also led to a situation in which there is hardly any coordination among the G5 countries themselves. In fact, the existence of the G5 as a key actor in the regime complex and the main recipient of potential adaptive practices by the EU is under threat following Mali's withdrawal from the group ("Niger President says," 2022; Edu-Afful et al., 2022). What makes this even more worrying is that this takes place against a background of a complete rupture of military cooperation between Mali and France, subsequent tensions between MINUSMA and the Malian government culminating in severe operational limitations for the force, and the gradual withdrawal of troops from the region by France and other key troop-contributing countries.

## 5. Conclusion

Starting from the observation that the Sahelian security regime complex consists of its own unique combination of local, regional, and international fora and actors (see Figure 1) in which the EU is integrated, this article sets

out to analyze conditions relevant for managing regime complexity. Based on the literature on regime complexity and complexity theory, we have put forward four conditions relevant to mastering regime complexity: the supply rather than consumption of resources, functional differentiation, self-organization, and adaptive policies that accept non-linearity. The main theoretical novelty of our approach is that we analyzed EU foreign policy in a context located outside the EU's ambit, one shaped by the policy preferences of other actors, thus exemplifying the increased complexity in which the EU must navigate. By examining the security regime complex in the Sahel and focusing specifically on the EU's RACC, we have analyzed the EU's policies in the Sahel. Specifically, regarding the RACC, we find it constitutes a striking example of adjustments on the part of the EU. Organized as a cell that coordinates the various EU missions and provides strategic advice to other actors in the regime complex, most notably the G5 Sahel and its countries, the RACC's role as a secretary gives it the considerable ability to enable resource exchange and system complementarity. However, we could not convincingly trace that the cell enables self-organization and adaptive policies. These findings are mirrored in the EU's embeddedness in the regime complex more generally, with funding schemes adjusted, missions regionalized, and coordination and resource hubs established in Brussels. In contrast, we do not find significant evidence for self-organization and adaptive policies. While the former strongly depends on the receptiveness of partners in the regime complex, the latter has led to counterproductive results with unintended effects and severe challenges. Dependent on other actors and embedded in the complex environment of the regime complex in the Sahel, the EU's policies have been, just as those of its partners, challenged by coups, the deteriorating security situation, and the politicized setting of the engagement.

Finally, to what extent are our findings relevant and replicable for other security regime complexes? Issue and region-specific regime complexes certainly have a high degree of uniqueness in terms of actor constellations, conflict trajectories, and levels of international engagement. Despite this, we argue that the largest limitation of our study is not the question of empirical uniqueness. For the EU, the question is whether it can and is willing to leverage those conditions we explored. Being a resource hub is not a guaranteed position. Increasingly actors such as the Russian-sponsored Wagner Group, funding from oil-rich Gulf countries, or extensive Chinese investment at least has the potential to pressure the EU's position as a central resource provider. Other constraints might come from inside the EU. Despite growing awareness of the complexities of peacebuilding, the EU has not internalized complex thinking and integrated it into its standard repertoire for peacebuilding. The key constraining condition might very well be the (un)ability and (un)willingness to engage with new concepts and practices.

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## Conflict of Interests

The authors declare no conflict of interests.

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Article

# European Leadership and European Youth in the Climate Change Regime Complex

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## Abstract

Environmental degradation is one of the most significant challenges faced by humanity, yet current global politics struggle to implement collective solutions. Previous research has suggested that the EU has a leadership role in the international climate change regime complex, which refer to a set of overlapping institutions that address different aspects of climate governance. Moreover, within these regime complexes, non-state actors have been found to have an active role. Building on the literature on regime complexes and non-state actors, we study the specific role of European non-state actors in furthering the EU's agenda in the climate change regime complex. More precisely, we focus on European youth organizations. Indeed, youth have recently embraced the global climate agenda very actively while receiving limited attention from scholars. This article is based on the analysis of a database of youth organizations active in several institutions of the climate change regime complex, interviews with European officials and European youth actors, and documentary analysis. The analysis shows that EU interactions with European youth have been slow, while the need for coordination between the two is clear. On an analytical level, we contribute to the academic debate on how governmental entities such as the EU could shape international regime complexes with the support of non-state actors.

## Keywords

climate change; climate change regime complex; EU leadership; international environmental negotiations; youth

## Issue

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## 1. Introduction

The presence of youth on the international scene regarding environmental issues has significantly increased since 2018. Since Greta Thunberg, a young Swedish climate activist, became a prominent figure in global climate politics, thousands of young people have raised their voices at the international level to represent their generation's demands. Given the growing proportion of youth within the global population, their recent political visibility, their role as future policy actors, and their sensitivity to transgenerational justice, the young are now regarded as critical actors in global environmental politics. However, while current youth actions are receiving considerable attention, particularly from the mass

media, we have little academic research on youth as actors in international relations.

European youth actors, defined by the EU as people between 15–29 years (Eurostat, n.d.), are especially active in the transnational youth climate movements (de Moor et al., 2020). The global Fridays for Future (FFF) movement started in Europe, and several major climate litigation cases were initiated by the European youth (Daly et al., 2021). According to the March 2019 Eurobarometer survey, young Europeans consider environmental protection the top priority (European Commission, 2019). Held after the rise of youth climate protests (including the FFF movement), the 2019 European Parliament election showed that young people are willing to change politics for a better future.

The turnout of young people under 25 in this election was at its most, driven by youth interest in climate issues (European Parliament, 2019). Such survey results indicate that youth climate movements have a discursive influence on young Europeans that cannot be neglected in politics.

The active engagement of European youth in global climate politics coincides with the EU's efforts to become a leader in the climate change international regime complex (Earsom & Delreux, 2021; Oberthür & Kelly, 2008). This regime complex, following the definition given in this thematic issue's editorial (Delreux & Earsom, 2023), comprises a set of overlapping institutions (which we refer to as fora) that address different aspects of the climate change issue. The EU has proactively navigated this complex over the past decades. European youth's recent involvement in the climate movement resonates with the EU's engagement in the regime complex.

This article precisely questions to which extent the EU and European youth climate activism, both being noticeable in international climate politics, interact: How have European youth actors been engaged in the complex? What have the EU and its member states done concerning youth participation in the climate change regime complex? How similar or different are the EU and European youth actors' discourses on these politics within the complex? What does it tell us regarding the role of the EU in the climate change regime complex? Generally, this article contributes to the academic debate regarding how governmental entities shape international regime complexes through non-state actors' support.

The next section presents a review of the literature on youth in global environmental politics and the importance of the EU in international regime complexes, explaining how combining both brings important insights into global governance processes and the role of the EU in these processes. Section 3 presents the methods used to research the EU and European youth involvement in the climate change regime complex and justifies the case study.

Sections 4 and 5 present the results: (a) the state of youth participation in the negotiation meetings of several institutions of the climate change regime complex, with a special focus on European youth, (b) the interactions of EU policy regarding youth participation in international climate politics on financial and organizational dimensions, and (c) a comparison of the claims made by European youth organizations and the EU on recent climate politics for discursive interactions. Finally, elements for discussion are developed in the conclusion.

## 2. Youth Actors and Regime Complexes: A Literature Review

### 2.1. Youth Actors in Global Environmental Governance

Recent youth actions have encouraged preliminary academic studies on youth as participants in global environ-

mental politics, especially on climate change. From this, three groups of studies can be identified.

The first group analyzes youth climate protests, especially the FFF movement, with detailed analyses of youth claims (Knops, 2021). Terren and Soler-i-Martí (2021) analyze the social network and discourse of FFF-Barcelona presented on their Twitter account. O'Brien et al. (2018) suggest a typology of youth activism as dutiful, disruptive, and dangerous dissent actions, demonstrating the diverse ways youth use to target climate policy from the outside. Finally, some scholars concentrate on the social characteristics of climate marchers, showing that many are newcomers to the climate movement. This is especially true for young people (de Moor et al., 2020; Wahlström et al., 2019). While these studies are important, they only cover the informal politics of youth involvement and neglect their presence within formal international negotiations. Some recent studies cover activism parallel to climate COPs but concentrate on the broader climate movement rather than youth movements (de Moor, 2018, 2020).

The second group explores youth participation in climate trials (Kerns, 2021; Parker et al., 2022). Despite the strong mediatization of judicial actions, these publications identify "a worrisome trend in which youth-focused cases are dismissed due to a lack of justiciability or standing at a procedural stage" (Parker et al., 2022, p. 64). These studies confirm that youth are still neglected as a real actor in climate politics. They also show that scientific research focuses on youth as actors contesting global climate politics rather than acting within it.

The third group focuses more specifically on formal youth participation in international negotiations and therefore resonates more closely with the objectives of this study. Yunita et al. (2018) question youth participation in forest negotiations. Based on a survey, they identify the extent to which youth are invited to express their views during negotiations, finding that such opportunities are limited. In the same line, Soo Ah Kwon (2019, p. 937) demonstrates how international youth summits have been summits "on youth" rather than "by youth." A few studies also investigate youth as participants in international climate conferences, especially at UNFCCC COPs (Thew, 2018; Thew et al., 2020, 2021; Yona et al., 2020), sometimes with a specific focus on indigenous youth (MacKay et al., 2020; Ritchie, 2021). These studies represent a knowledgeable first step toward questioning the political influence of youth in formal processes. They are, however, primarily based on a qualitative account of one specific COP, missing the broader and evolutive picture of youth involvement. Moreover, they mostly focus on official youth platforms, such as YOUNGO (the official UNFCCC youth constituency), failing to picture the broad diversity of the formats of youth actors in international climate politics.

Overall, the literature confirms the rising political role of youth actors, especially in climate politics, through activism, trials, and formal involvement in

international negotiations. It also confirms the existence of research gaps. While youth have recently become very vocal, few studies give a comprehensive picture of their political role within official international processes. The strategic role of non-state actors and their potential alliances with governmental actors also need to be explored. The literature on regime complexes and its insights on non-state actors can provide elements to concretize such systematic investigation.

## 2.2. Regime Complexes and Non-State Actors

The regime complexes literature (see also Delreux & Earsom, 2023) has not yet engaged with youth actors, although it has analyzed non-state actors in general. Despite the multiplicity of intergovernmental institutions, intergovernmental politics has proven to hardly cover the scope of the issues dealt with by regime complexes (Krisch, 2017). This has led to the recognition of the importance of “polycentricity” (Jordan et al., 2018) as a new governance paradigm whereby all actors from civil society, and not just governmental ones, at all levels, can participate in governance efforts by promoting awareness and action at all scales. The literature on non-state actors within regime complexes has concentrated chiefly on two important research questions: the negotiation burden of regime complexes for non-state actors and the effects of regime complexes on power dynamics between inter-state and transnational politics.

On the first aspect, international negotiators have had to pay a “negotiation burden” (Muñoz et al., 2009) to participate in the negotiations of single international institutions. It is common for the negotiations of global agreements to take several years, require dozens of official meetings and informal preparation sessions, get subdivided into working groups, and necessitate large negotiation delegations. In addition to quantitative burdens, actors need high levels of expertise to follow the content of the negotiations (Campbell et al., 2014). For weaker actors, strategies for effective involvement in single negotiations have been proposed (Chasek & Rajamani, 2001). Issues of participation, representation, and political influence are likely to become more severe in the context of regime complexes, especially for non-state actors, who often have fewer resources on the international scene. In addition to situations in single regimes, key coordination skills are required for states to manage the fragmentation of international institutions (Morin & Orsini, 2014; Scott, 2011). Evidence from the forest regime complex (Orsini, 2017) confirms the existence of a negotiation burden for the non-state actors’ presence in regime complexes. Research is needed to evaluate the extent to which intergovernmental and non-state actors can pay such a negotiation burden.

On the second aspect, the effects of regime complexes on power dynamics within global governance are debated. On the one hand, studies of state politics in a context of regime complexity found that the

most powerful states were able to choose the direction of the negotiations while the weaker were left aside (Alter & Meunier, 2009). This tends to indicate that regime complexes “operate(s) to sabotage the evolution of a more democratic and egalitarian international regulatory system” and, in the end, yield “a regulatory order that reflects the interests of the powerful that they alone can alter” (Benvenisti & Downs, 2007, pp. 595–596, as cited in Faude & Große-Kreul, 2020, p. 433). On the other hand, fragmentation can lead to unexpected outcomes and regime complexes increase the windows of opportunity, even for usually weak actors that use regime complexes as discursive areas: “they (regime complexes) enable actors marginalized within the international institution producing negative spillovers to demand inter-institutional justifications...in doing so, they enable normative progress in global governance” (Faude & Große-Kreul, 2020, p. 433). Kuyper (2014, as cited in Faude & Große-Kreul, 2020, p. 433) argues that the democratization of global governance should occur at the level of regime complexes because they empower weaker actors and enhance the realization of the three core values of democratization: “equal participation,” “accountability,” and “institutional revisability.”

Along with this debate about power dynamics within regime complexes, research has shown how non-state actors, just as states, can reverse the usual power dynamics within regime complexes by practicing forum shopping, forum shifting, or forum linking (Orsini, 2013). Certain non-state actors, such as environmental non-governmental organizations (ENGOs), are particularly skillful in international regime complexes to the detriment of business groups that are traditionally more skilled at targeting individual international institutions (Orsini, 2017).

What is still to be researched is the potential synergies between governmental and non-state actors within regime complexes. Because the negotiation burden is high for all actors, creating synergy between their participation and claims could be an interesting strategy. One could expect governmental actors to surf on the lobbying wave created by non-state actors with similar objectives and vice-versa. This article engages in this discussion on participation and power to investigate the role of inter-governmental and non-state actors and their interactions within regime complexes, a topic so far neglected in the academic literature. More precisely, we focus on the EU and European youth within the climate change regime complex as both push for more ambition in global climate change politics. Our case is, therefore, a most-likely case (Johnson et al., 2019). We detail our methodology in the next section.

## 3. Researching European Youth Participation in the Climate Change Regime Complex

This article relies on four methodological decisions. First, we decided on the climate change regime complex as



a case study. Climate change is one of our most central environmental problems, in which the EU and many young people are actively involved. Keohane and Victor (2011) and, more recently, Earsom and Delreux (2021) provide a complete cartography of such a regime complex comprising more than 30 institutions. For this study, as we are interested in youth as actors in international relations, we zoomed in on the institutions that provide youth actors an official constituency status. As a result, we selected three institutions that are part of the climate change regime complex: the UNFCCC, the Convention on Biological Diversity (CBD), and the Commission for Sustainable Development/High-Level Political Forum (CSD/HLPF). Youth actors have been recognized as an official major group within these three fora of the climate change regime complex. These institutions were all created at the 1992 Earth Summit, where youth was recognized as a constituency in global environmental politics. It is important to recognize that these institutions exist alongside others that also engage with young people—several other fora of the complex invite youth actors, such as Youth20 summits in the G20 fora or Youth7 summits in the G7 fora. However, these invitations come in parallel to official meetings and youth are not directly integrated into the policy-making process within these institutions. Additionally, the three institutions included in this study (hereafter also referred to as Rio fora) were created simultaneously, and all deal with environmental issues. This means that they represent a coherent sub-set of institutions of the regime complex.

Second, we anchored our research on a systematic quantitative assessment of youth presence in these processes, building a database. We, therefore, compiled an inventory of youth participation in the CBD, UNFCCC COPs, and in CSD/HLPF processes from 1995 to 2021. The inventory was built in two steps: gathering relevant documentation and searching for youth actors within such documentation. We used a top-down searching method for the first step. The UNFCCC and CBD secretariats publish the lists of participants in their COPs. Participant lists are not always available for CSD/HLPF meetings, meaning that data for this platform is less robust. In addition, we included the lists of officially registered participants available through official reports and meeting programs. To complement this top-down method, we developed a bottom-up searching method by looking at non-official sources on the negotiations, such as the Earth Negotiations Bulletins published by the International Institute for Sustainable Development. For the second step of the inventory, keywords were used for data mining in the collected documents to trace youth actors' presence. These included any expression containing terms like "youth," "young," "child," "jeune," "joven," "student," "estudiant," "étudiant," "scout," "girl," "boy," and "kid" as the documents gathered were available in English, French, and Spanish. We collected the names of organizations and individuals that refer to themselves with these keywords. While

covering a broad range of youth actors, this keyword list is non-exhaustive. Moreover, youth organizations do not necessarily have these keywords in their name. To capture additional actors, we collected the lists of organizations admitted by the UNFCCC under the youth category, YOUNGO members, and accredited organizations to the Major Group for Children and Youth at the UN Environment Programme (UNEP MGCY). We then determined whether these organizations or members had attended the meetings of the Rio fora. To concentrate our study on youth as actors in international politics, we eliminated students from schools and universities based in the cities where the meetings were taking place to exclude young people present for observation and learning purposes only.

Third, we coded the types of youth actors involved in the Rio fora meetings. We distinguished youth representatives registered as NGOs, national youth delegates, UN and other intergovernmental organizations, and non-specified. To refine our understanding of NGOs, we coded them into five types: youth-led NGOs, youth-serving NGOs, ENGOs, business groups, and others. While there is no universally agreed definition of youth-led organizations, the UNEP MGCY (2021) defines them as those with a policy-making body controlled by people 30 years old or under. On the contrary, youth-serving organizations work with children and/or youth but are not led by them. We used this distinction between youth-led and youth-serving organizations as we were particularly interested in the specificity of young people as political actors. However, as it was not always easy to know the board members' age, we mobilized a more general definition of youth-led organizations, similar to the one used by the Australian Youth Affairs Coalition: "organization(s)...predominantly governed and staffed by young people" (Youth Action, 2012, p. 1).

Fourth, in addition to the database, we conducted qualitative observations and semi-structured interviews with some EU officials and European youth actors identified in our database. For observations, we registered and virtually attended the seventh and the eighth HLPF meetings (6–15 July 2021; 5–15 July 2022) and the UNFCCC COP26 (31 October–11 November 2021). In addition, we conducted 15 interviews (see Supplementary File; we refer to interviewees anonymously by allocating a random number to the different interviews). We also analyzed official documents published by the European Commission, the European Parliament, and Eurostat on young people in international climate politics.

All these methods enabled us to trace the presence and diversity of European actors representing or engaging with youth within the three fora of the climate change regime complex. Such tracing allows us to discuss potential negotiation burden-sharing and lobbying interactions between the EU and non-state youth actors. The following sections present the results of our research.

#### 4. Quantitative Assessment of European Youth in the Climate Change Regime Complex

Although varied in numbers, youth actors have attended the Rio fora since their initial phase. In the UNFCCC COPs, we found 8,906 youth attendances from COP1 to COP26 (7,492 NGO representatives, 814 national youth delegates, 483 UN and other intergovernmental organization youth representatives, and 117 non-specified participants; see Figure 1). Meanwhile, 941 youth attendances were found from CBD COP1 to COP14 (911 NGO representatives and 30 national youth delegates; see

Figure 2). Lastly, 183 youth attendances were found from the first CSD meeting to the seventh HLPF meeting (122 NGO representatives, 32 national delegates, six UN and other intergovernmental organization representatives, and 10 non-specified; see Figure 3).

Those graphs confirm the general tendency of increasing youth involvement in the climate change regime complex. We now zoom in on European youth actors engaging in the UNFCCC COPs, the core institution of the climate change regime complex, looking at NGOs (Section 4.1) and national delegates (Section 4.2).

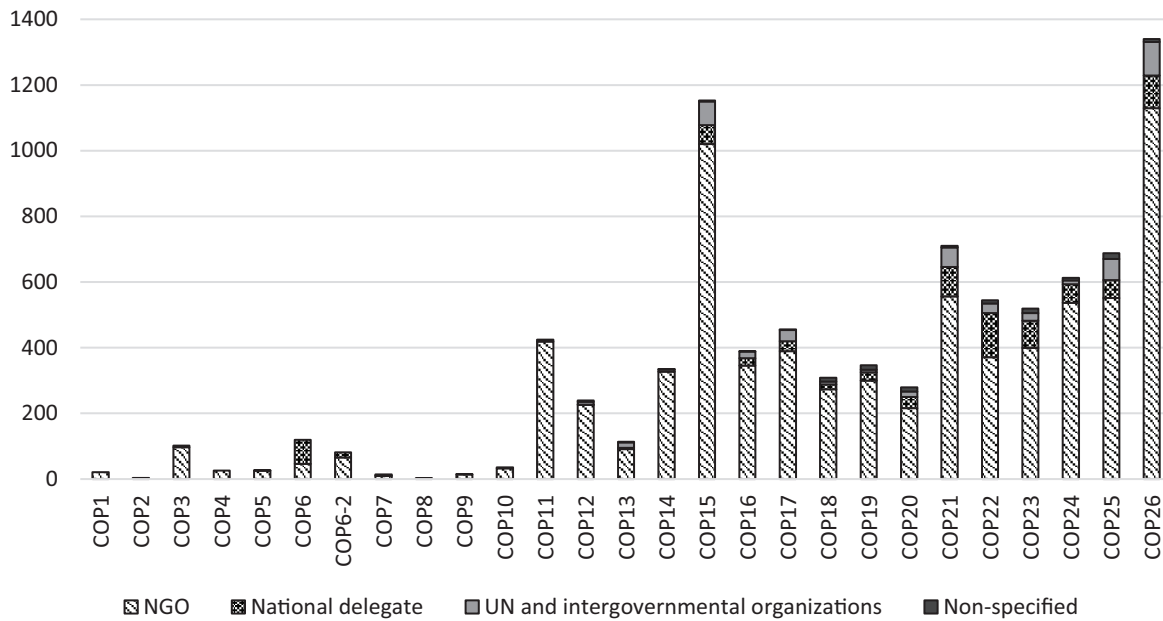


Figure 1. Youth attendance formats at UNFCCC COPs.

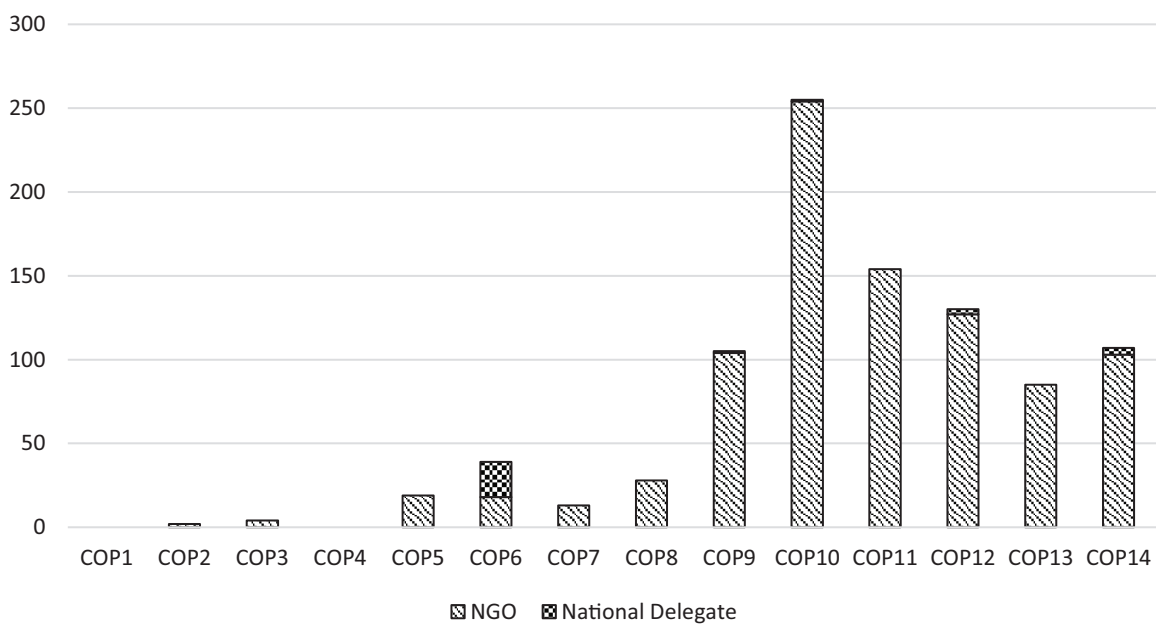
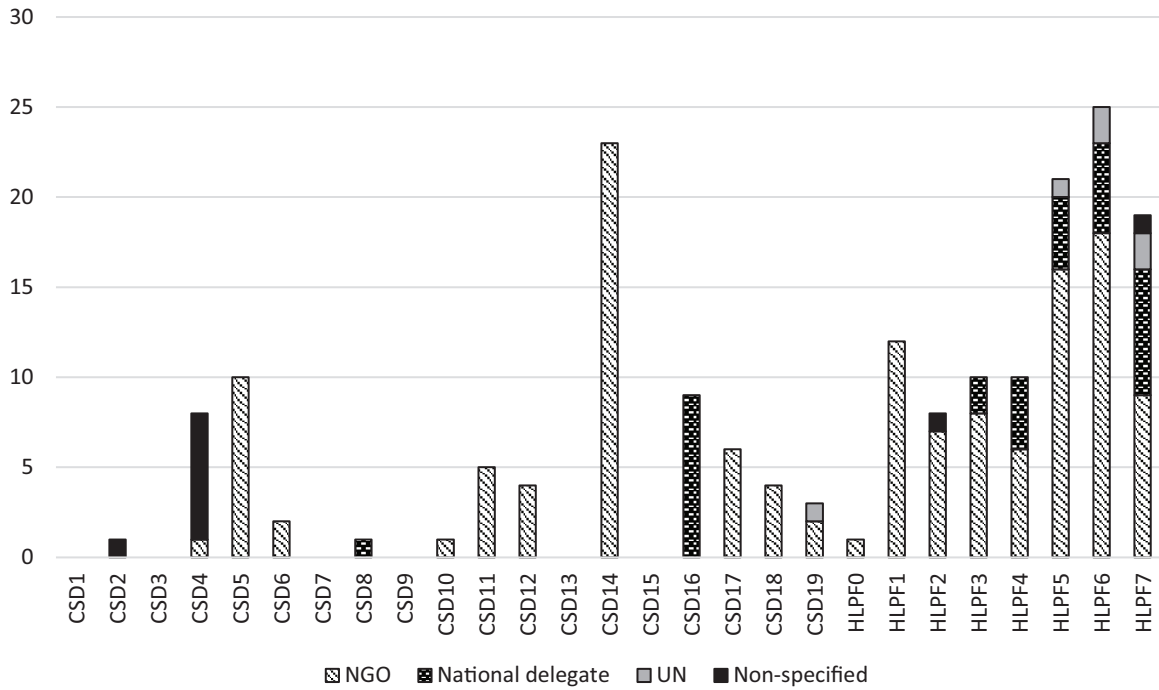


Figure 2. Youth attendance formats at CBD COPs.



**Figure 3.** Youth attendance formats at CSD/HLPF meetings.

*4.1. European Youth Organizations Within the Complex*

We searched for European NGOs (excluding organizations from individual member states) that had attended the UNFCCC COPs more than twice, with the assumption that they have a minimum political involvement in climate politics. We chose the UNFCCC as a benchmark for youth involvement in climate politics because it is recognized as the core institution of the regime complex. Out of 591 NGOs, 13 organizations were identified (Table 1).

Six of those organizations are youth-led, four are ENGOs, two are business groups, and one is a youth-serving organization, confirming the diverse and dynamic nature of youth political representation at the European level. Two have participated as sub-organizations registered with a badge from a host organization. Meanwhile, several organizations hosted other youth groups. For example, Climate Action Network Europe had participants from national or local youth NGOs such as Swiss Youth for Climate, Bundjugend, and Estonian Youth Nature Protection Association. In addition, most youth participants from the European Nuclear Society and the European Atomic Forum were affiliated with the Young Generation Network, a network of young nuclear professionals worldwide (European Nuclear Society—Young Generation Network, 2022).

Regarding the Rio fora, our database enables us to identify only one European youth organization active in the UNFCCC and the CSD/HLPF simultaneously and no European youth organization active in the three fora at the same time. For the CSD/HLPF, the European Youth Forum is the only European youth organization that has attended more than two CSD/HLPF meetings and has

also been active in the UNFCCC fora. The absence of European youth organizations from the UNFCCC in the CBD is explained by the lowest presence of youth actors in the CBD negotiations and by the fact that they tend to register under the common umbrella of one unique youth platform, the Global Youth Biodiversity Network.

Overall, our data indicate that only one European youth organization, the European Youth Forum, can monitor two of the three Rio fora of the climate change regime complex. This fact confirms that the negotiation burden is very high for youth organizations within the regime complex.

*4.2. European National Youth Delegates*

Using the UNFCCC as a starting point and the focal organization of the complex, we identified the parties that sent youth delegates to climate COPs. Among the 119 parties that sent youth delegates to climate COPs, 81 sent them to more than two meetings, and 15 of them are EU member states (Austria, Belgium, Denmark, Finland, the Netherlands, Sweden, France, Hungary, Latvia, Czech Republic, Slovenia, Poland, Germany, and Luxembourg; see Table 2).

While youth delegates’ attendance at COPs has been fragmented in most countries, their attendance frequency has increased over time. However, Table 2 also shows that most European countries have not institutionalized the youth delegate program. Moreover, there were no youth delegates at the EU level until the one-year pilot program launched by the EU delegation to the UN in September 2022 (interview 13). Youth delegates have been mostly hosted by the individual member states (interview 2).

**Table 1.** European youth organizations that attended UNFCCC COPs more than two times.

Organization Name	Type	No. of attended COPs	Total number of delegates	Attended COPs
European Youth Forum	Youth-led	11	102	COP14–17, 19, 21–26
Federation of Young European Greens	Youth-led	10	81	COP14–17, 19, 21, 23–26
Climate Action Network Europe	ENGO	9	34	COP1–3, 5–6, 19, 24–26
European Nuclear Society	Business Group	6	15	COP14, 21–24, 26
Young Friends of the Earth Europe*	Youth-led	6	60	COP14–15, 20–21, 25–26
Young European Leadership	Youth-led	4	23	COP21–24
Ecumenical Youth Council in Europe**	Youth-led	3	4	COP24–26
Alliance of European Voluntary Service Organisations	Youth-serving	3	5	COP21, 24–25
European Youth Forest Action	Youth-led	3	22	COP1, 5, 15
European Climate Foundation	ENGO	2	3	COP18, 20
European Network for Community-Led Initiatives on Climate Change and Sustainability	ENGO	2	5	COP24–25
European Atomic Forum	Business Group	2	4	COP23, 26
Women in Europe for a Common Future	ENGO	2	2	COP14, 21

Notes: Young Friends of the Earth Europe and Ecumenical Youth Council in Europe are organizations that participated as sub-organizations of other registered organizations; \* for Young Friends of the Earth Europe, the main host organization was Friends of the Earth International; \*\* for the Ecumenical Youth Council in Europe, the main host organization was Ecumenical Advocacy Alliance.

Regarding the other Rio fora, the databases show that Belgium is the only government to have included youth delegates more than twice within its delegation to CBD COPs (and interviews confirmed Belgian youth delegates' presence in the complex). Belgium, Germany,

the Netherlands, and Sweden are the only delegations to have included youth delegates for more than two CSD/HLPF meetings. The youth delegates from those four countries presented a joint statement at CSD16, urging other countries to include youth delegates in

**Table 2.** UNFCCC parties that sent youth delegates more than two times to the COPs.

Party	Number of COPs	Number of youth delegates sent	Attended COPs
Finland	10	10	COP3, 6, 17, 19–24, 26
Denmark	9	20	COP6–7, 20, 22, 24–26
Austria	8	18	COP19–26
Belgium	8	14	COP6, 9, 13, 16–17, 19–21
Sweden	8	13	COP3, 15, 21–26
Netherlands	6	7	COP3, 19–20, 23–25
France	3	5	COP21–22, 25
Hungary	3	5	COP6, 25–26
Latvia	3	5	COP15, 25–26
Czech Republic	3	4	COP6, 6–2, 26
Slovenia	3	4	COP6, 15, 24
Poland	2	3	COP6, 24
Germany	2	3	COP6, 6–2
Luxembourg	2	2	COP6, 24

their delegations to the sustainable development negotiations (Walter et al., 2008).

Data from the UNFCCC confirms that European delegations are more likely than others to nominate youth delegates. It also shows that Belgian, Dutch, and Swedish youth delegates are more likely to have effects on the climate change regime complex as a whole and not just on the UNFCCC. However, again, our data shows the poor recognition of youth as official European-level actors.

Our quantitative assessment enables us to answer our first research question: How have European youth actors been engaged in the climate change regime complex? The assessment shows that although youth actors' formal participation in the complex has occurred in various representation formats (NGOs, youth delegates, etc.), it has been limited across the regime complex. However, quantitative data does not explain the reasons for the poor involvement of European youth and the potential existing interactions between European youth and European officials. We now turn to a qualitative assessment to cover other research questions: What have the EU and its member states done concerning youth participation in the climate change regime complex? How similar or different are the EU and European youth actors' discourses on these politics within the complex?

### 5. Interactions Between the EU and European Youth Within the Climate Change Regime Complex

In this section, we discuss the interactions between the EU and European youth on material, organizational, and discursive aspects within the climate change regime complex. The objective is to understand to which extent the EU has collaborated with youth actors and to which extent synergies are visible between both.

#### 5.1. Material Interactions

To investigate their funding relations, we searched the profiles of the identified European youth organizations on the EU Transparency Register website (European Commission, 2022a). As presented in Table 3, nine of the 13 identified organizations are in this Register, meaning they are officially recognized as European interest groups.

Almost half of the identified European youth organizations have received EU grants over 2020–2021. However, except for the European Youth Forum, they are not highly dependent on them. Interestingly, youth-led organizations' dependence on EU grants is generally higher than other organizations. One explanation could be that youth-led organizations are run on smaller budgets than conventional NGOs or business groups. As explained by one EU official, “these other stakeholders have the resources and the knowledge connections to participate more actively in the policy-making process in a way that youth simply cannot” (interview 7). Dependence on funding opportunities is also visible for national youth delegates. According to our interviewees, in Belgium, the number and capacities of youth delegates usually depend on the funding situation, the capacity, and willingness of the Ministry of Foreign Affairs in organizing youth delegations, and the negotiated mandates for youth delegates (interviews 1, 3, and 8).

Lack of funding was a recurrent theme in interviews, with young people being highly active despite their involvement being voluntary. Moreover, current EU funding comes with constraints, since the application is time-consuming, EU bureaucracy is inflexible, and funding applications do not feel like a proper collaboration. Lack of funding explains the concentration of youth presence in the UNFCCC fora. For example, the European

**Table 3.** The funding sources of European youth organizations involved in global climate politics.

Organization	Total budget or estimated annual costs (2020) in euros	EU grants (2020) in euros	EU grants/budget rate (2020)
European Youth Forum	2,736,999	2,074,369	75.79%
Federation of Young European Greens	235,072	74,373	31.64%
Climate Action Network Europe	4,467,674 (2021)	530,131 (2021)	11.86% (2021)
European Nuclear Society	50,000–99,999	24,469	24.47–48.94%
Young European Leadership	6,307 (2021)	3,465 (2021)	54.94% (2021)
European Climate Foundation	126,340,369	N/A	N/A
European Network for Community-Led Initiatives on Climate Change and Sustainability	100,000–199,999	32,500	16.25–32.5%
European Atomic Forum	300,000–399,999	38,255	9.56–12.75%
Women in Europe for a Common Future	1,232,294	N/A	N/A



chapter of the Global Youth Biodiversity Network has individual members who participated in the UNFCCC meetings under other capacities, but it is financially impossible to follow UNFCCC meetings along with CBD meetings consistently. In addition to finance, organizational resources are lacking.

### 5.2. Organizational Interactions

As youth raised their voice in climate politics, the EU launched initiatives to increase European youth representation. A European Economic and Social Committee (EESC) opinion adopted in 2020 indicated the need to institutionalize youth engagement on climate and sustainability in the EU and include youth in EU delegations to international negotiations, including the UNFCCC conferences (European Economic and Social Committee, 2020). Subsequently, the EESC started to include one youth delegate in their delegation at COP26. The EU also appointed two youth delegates through a pilot project in 2022 to engage them in UN conferences such as the General Assembly, UNFCCC, and CBD COPs. Moreover, the EU began to support more youth actions in the UNFCCC COPs by hosting several youth-focused side events in the EU Pavilion program (European Commission, 2022b; European Union, 2021a). While the EU's organizational support for youth participation is growing, youth delegates' activities are often limited to subsidiary roles such as observers, learners, or communicators without negotiation mandates. Some interviewees expressed that the COP26 negotiation "exacerbated the feeling that those with observer status could serve very little" (interviews 3 and 4).

Overall, the EU's actions to include youth in climate policy are more visible in its internal policy process. After Greta Thunberg spoke in the European Parliament in 2019, the European Commission initiated several youth events attended by EU leaders (Tenti, 2019). FFF activists met with the European Commission President Ursula von der Leyen three times between 2018–2022 to discuss climate issues (Jack, 2022). The EESC hosted Youth Climate and Sustainability Round Tables twice in 2021 in cooperation with the European Youth Forum and Generation Climate Europe (a youth-led organization). Regular dialogues with young people have also been organized since 2020 as part of the European Climate Pact (Gorman, 2021), 2022 was labelled the European Year of Youth, and 305 European Climate Pact Youth Ambassadors were nominated. Even at COP26, the EU promoted its efforts to foster youth participation in its internal climate policy (rather than external) through the side event "Youth and Climate Action: European Climate Pact & Youth Sounding Board" (European Union, 2021b).

Assessments were mixed regarding the inclusion of youth delegates within national delegations. National youth delegates usually participate in COPs with party status that increases their participation opportunities. However, youth delegates are generally excluded from

closed negotiations (interviews 10 and 12). Interviewees who had participated in the Belgian youth delegate program pointed out that the youth delegates from EU member states are often well organized, and youth voices are heard in a participatory manner at the EU level (interview 2). However, here as well, the effects of youth participation are more visible at the internal rather than external level. As explained by one former Belgian youth delegate: "In the end, we have more impact on internal policies than on international policies" (interview 1).

Finally, collaboration is not always meaningful (Federation of Young European Greens, 2021; interview 5). The EU is blamed for failing to engage with what already exists, especially with established youth organizations. It seems to cherry-pick youth individuals and include them randomly. Moreover, communication tends to be biased in one direction from the EU to youth actors, as explained by one interviewee:

We had the first roundtable with the Timmermans cabinet..., and initially, they (the EU officers) were thinking "this is a good chance for us to come and tell the youth what we're doing." And I said "no, the point of this is letting the youth delegates tell you what they want." (interview 6).

EU initiatives are seen as positive, but with improvement potential: "it is quite better than other places, but it still not as good as it could be" (interview 14). This mixed evaluation of the organizational interaction's potential is also visible in discursive interactions.

### 5.3. Discursive Interactions

The EU's evaluation of COP26 was positive. The President of the European Commission Ursula von der Leyen (European Commission, 2021) referred to COP26 as "a step in the right direction" because 1.5°C remained within reach. On the contrary, European youth-led organizations were skeptical about the process. As explained by one interviewee: "we are usually seen on the more radical side of environmental organizations. In a way, we are not specialized in advocacy...It's more about creating a new narrative and calling for radical systemic change. It's also related to what we believe in" (interview 3; see also interview 7).

In their statement released for COP26, Young Friends of the Earth Europe called for 12 actions for state negotiators, including no more fossil fuels and false climate solutions, fundamental human rights; and transparent decision-making (Young Friends of the Earth Europe, 2021a). The Federation of Young European Greens asked negotiators for innovative solutions which would redistribute wealth to the global South and repair the loss and damage occurring in the global South (Federation of Young European Greens, 2021). The European Youth Forum demanded more ambitious climate targets from the EU and argued for young people, particularly from

that area, to be included in decision-making processes (European Youth Forum, 2021).

After COP26, all three organizations expressed disappointment. The Federation of Young European Greens regretted that “the Loss and Damage Fund has been stripped down to a ‘workshop’ by huge pressure of the EU, UK, and US” (Federation of Young European Greens, 2021). Young Friends of the Earth Europe mentioned that the agreement “does not keep 1.5°C alive as the rich countries do not commit to equity, fair share, and historical responsibilities” (Young Friends of the Earth Europe, 2021b). The European Youth Forum regretted that “the commitments made by governments at COP26 are simply not ambitious enough” (European Youth Forum, 2021). However, these comments were general, and not precisely linked to actions by the EU.

The difference in discourses between the EU and European youth organizations is not surprising. A gradual increase in discursive interactions between the two is observed, but it is still at the early stage. As explained by one EU official: “for now, I would say it’s working in practice, rather than as a systemic change. But it is the beginning of a systemic change” (interview 11).

## 6. Conclusion

This article examined how the EU and European youth actors interact with each other within the climate change regime complex. The results show that EU interactions with youth are slow, although recent advancements in such efforts can be seen. The high awareness of climate change among European youth and their sensitivity to fairness and equity could be a solid political capital for the EU to promote ambitious climate policy in the regime complex. For example, in 2022, EU Ministers of Foreign Affairs agreed to emphasize the interrelationship between climate change and the realization of human rights in climate diplomacy (European Union External Action, 2022). Such policy direction aligns with European youth organizations’ emphasis on human rights and climate justice. Nevertheless, the need for coordination between the EU and European youth actors is clear. For the literature on non-state actors in regime complexes, our study demonstrates participation and power dynamics within the climate change regime complex. Looking at our finding also help us answer our final question: What does the research tell us regarding the role of the EU in the climate change regime complex?

On participation, several European youth organizations have been able to pay the negotiation burden to participate in specific institutions of the complex over time. However, nearly all of them lack the resources to follow the different institutions of the complex simultaneously. Positive developments have been seen in the few youth organizations able to follow different institutions by attending as organizations or having members participate under different statuses. However, the EU still needs to be bold in supporting their participation. Some

European countries have promoted formal participation of youth through national delegate programs, but the EU has been slow in institutionalizing youth delegates. A substantial gap exists between the internal initiatives and the EU’s external actions toward youth participation in the climate change regime complex. In our case, there is no clear evidence of strategic alliances between the EU and non-state actors. The EU does not seem to have taken the opportunity presented by the youth wave in climate politics. There is still a substantial gap between informal youth protests and the capacity of climate governmental leaders to transform these protests into formal policy synergies.

On power relations, the lack of dialogue could also be detrimental to the EU’s power within the complex. While recent EU efforts to promote youth participation in climate politics are appreciable, our study warns that greater attention to youth does not always translate into meaningful participation. This could harm overall EU legitimacy and its leadership in the climate change regime complex. On legitimacy, young Europeans’ lack of formal participation in the external political game creates opposition and criticism rather than support of the EU and its climate agenda. On leadership, the EU needs allies if it wants to foster ambitious international climate policies (Pipart, 2022). While it sometimes lacks governmental allies, engaging with youth actors could be a beneficial strategy.

Overall, this study shows that the EU would benefit from greater engagement with youth in the climate change regime complex, especially in pushing its agenda forward. The EU somewhat limits itself to treating European youth actors as ones who intervene at the national political level (internal politics) instead of capitalizing on their transnational role (external politics). On this aspect, the EU could better support youth across the different institutions of the regime complex. This appears as a missed opportunity for the EU to become a proactive shaper of the regime complex.

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## Conflict of Interests

The authors declare no conflict of interest.

## Supplementary Material

Supplementary material for this article is available online in the format provided by the authors (unedited).

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Article

# Navigating Regional Regime Complexity: How and Why Does the European Union Cooperate With Regional Organizations?

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## Abstract

The number of regional organizations in Europe has increased in the aftermaths of the Second World War and the Cold War. Whenever regional organizations share member states and are equipped with identical policy competencies at the same time, regime complexity comes into play. Unmanaged regime complexity has not only increased over time but can also bring about negative consequences that can reduce the effectiveness of regional governance. To address these challenges, regional organizations can turn into external actors and cooperate with each other. While some of these cooperation agreements are shallow, others are deep and differ in the specification of policy scopes, instruments, and designated arenas. Thus, we pursue the following research questions: (a) How frequently does the EU cooperate with other regional organizations in the regional regime complex? (b) How does the design of cooperation differ? We show that the EU is an active shaper of regime complexes, not only when it comes to constructing them in the first place, but also with respect to navigating complexity. The EU has entered formal cooperative agreements with most of the regional organizations with which it overlaps. The EU concluded many agreements because it possesses the necessary capacities and is able to speak with one voice externally. We show that the design of agreements is influenced by ideological distances with the other regional organizations.

## Keywords

European Union; inter-organizational cooperation; inter-organizational relations; overlapping regionalism; regime complexity; regional organizations

## Issue

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## 1. Introduction

In the aftermath of the Second World War and the Cold War, the number of regional organizations (ROs)—defined as international organizations (IOs) with three or more member states that cooperate on the basis of geographical membership criteria (Börzel & Risse, 2016; Jetschke et al., 2021)—has increased tremendously. Over time, ROs grew in size and were equipped with an ever-increasing number of policy competencies that entail policy fields as diverse as economy and trade, security, human rights, and governance by now. This has led to a situation of non-hierarchical overlaps in the

mandate and membership of these ROs (Panke & Stapel, 2018a), which we refer to as regional regime complexity.

Some contributions have argued that regime complexity can bring about benefits and make a positive contribution to regional and global governance. It may generate more discourses and justifications which in turn may improve the legitimacy of regional and global governance (Faude & Große-Kreul, 2020) or their problem-solving capacities (Eilstrup-Sangiovanni & Westerwinter, 2022). In other instances, regime complexity may influence the dynamics and results of international negotiations and help to overcome stalemates (Panke & Friedrichs, 2023).

The majority of contributions, however, maintain that regional regime complexity carries potential pitfalls that can endanger the very effectiveness of ROs (Hofmann, 2019; Yeo, 2018). First, it can be costly for states because the members of overlapping ROs need to invest in financial, administrative, and political capacities for operating in each of the ROs although they might cover the same issues. Second, regional regime complexity can lead to a waste of resources when the concerned ROs duplicate their efforts (Bond, 2010; Brosig, 2011). Third, should policy outputs and norms of two overlapping ROs be incompatible or even mutually exclusive (Gebhard & Galbreath, 2013; Gómez-Mera, 2015), states that are members in both ROs cannot comply with both sets of rules and norms simultaneously, thus fostering non-compliance (Panke & Stapel, 2018b).

To avoid such negative consequences and potentially benefit from regional regime complexity, ROs can turn into external actors and seek to manage overlaps in a stable and reliable manner by concluding inter-organizational cooperation agreements with each other. The agreements allow for the development of functional divisions of labor (Gehring & Faude, 2014) or forms of orchestration (Abbott et al., 2015) between overlapping organizations.

Looking at how ROs in Europe address regional regime complexity reveals considerable variation regarding whether they establish inter-organizational cooperation agreements with overlapping ROs, how many agreements they conclude, and how they design the cooperation (for a list of all European ROs and their abbreviations, see the Supplementary File). The European Union (EU) stands out in comparison to its counterparts. First, it cooperates with all but one RO with which it shares at least one member state and at least one policy competency at the same time. By contrast, others do not cooperate at all with their overlapping counterparts, such as the Central European Free Trade Area (CEFTA), the Organization for Democracy and Economic Development (GUAM), or the European Free Trade Area (EFTA). Second, ROs differ in the number of concluded inter-organizational cooperation agreements. Overall, the Council of Europe (CoE) has the highest number of such agreements (35), followed by the EU (32), the Commonwealth of Independent States (CIS; 18), and the Organization for Security and Cooperation in Europe (OSCE, 14). This suggests that some ROs are active shapers, whereas others remain passive and do not seek to systematically evade negative externalities of regional regime complexity. Third, these inter-organizational cooperation agreements vary with respect to their design in terms of form, scope, and instruments. Generally, the more demanding the inter-organizational cooperation agreements are with respect to these three elements, the better they are suited to comprehensively manage complexity and navigate its consequences. The EU frequently but not always pursues deeper designs of cooperation.

As the EU is one of the most prominent ROs in Europe and subject to considerable regional regime complexity, this article addresses the following research questions:

RQ1: Why does the EU turn into an external actor to cooperate extensively with overlapping ROs?

RQ2: Why does the design of these cooperation agreements vary?

We argue that the EU as an external actor is actively managing regime complexity. The EU's ability to speak with one voice in its external relations, due to its considerable extent of delegation as well as its financial and administrative capacities, influences how extensively it cooperates with other ROs. As the EU is well equipped in these respects, it is in a good position to navigate regional regime complexity and avoid negative externalities by cooperating with many overlapping ROs on the basis of many cooperation agreements. Moreover, analyzing the form of agreements suggests that the design of inter-organizational cooperation is influenced by ideological distances between ROs. When a pair of ROs is ideologically similar, it is more likely to opt for deep forms of cooperation (binding agreements). The closer the EU is to its partner in ideological terms, the more likely will be a deeper design of the cooperation. We conclude that, although regional regime complexity has become more pronounced over time, it does not necessarily need to reduce the effectiveness of regional governance.

To study inter-organizational cooperation under conditions of regional regime complexity, and especially the EU's efforts in this regard, this article draws on novel datasets. In Section 2, we map the emergence and development of regional regime complexity in Europe. On this basis, we examine how the EU cooperates with overlapping ROs and how such cooperation is designed in comparison to other ROs (Section 3). To account for the observed variation, Section 4 draws on approaches of the EU as an external actor and institutional design approaches. We specify theoretical expectations about why the EU concludes many inter-organizational cooperation agreements and why these agreements differ in their design. Empirically, we draw on primary and secondary sources to probe the empirical plausibility of these hypotheses and do so with pair-wise comparisons. The conclusion rounds up the study and situates the findings in a broader context.

## 2. The Emergence and Development of Regional Regime Complexity

In Europe, regional cooperation through ROs started after the end of the Second World War with the establishment of the NATO and the CoE in 1949. The EU's predecessor, the European Coal and Steel Community, was only created a few years later in 1951. While the EU is neither the oldest RO nor the only RO in Europe, it is

strongly exposed to regional regime complexity. At the same time, we show that it is also the organization that tackles the potentially negative effects of complexity the most comprehensively.

To assess regional regime complexity, we draw on new versions of the Regional Organizations Competencies (ROCO) datasets (Panke & Stapel, 2023a). The datasets cover all 73 ROs between 1945 and 2020 or since their establishment. On the one hand, the ROCO I dataset entails yearly information about the policy competencies with which ROs have been equipped. We distinguish between 11 different policy fields (agriculture, development, economy and trade, energy, environment, finance, good governance, health, migration, security and defense, and technology and infrastructure) in both the internal and external realms. For each policy field, we coded between 14 and 17 policy competencies. In total, ROs can encompass up to 344 different policy competencies. The data were retrieved from RO primary law (founding treaties, treaty changes, protocols, annexes). On the other hand, the ROCO III datasets provide information on membership in ROs. Official RO repositories and secondary literature served as the sources.

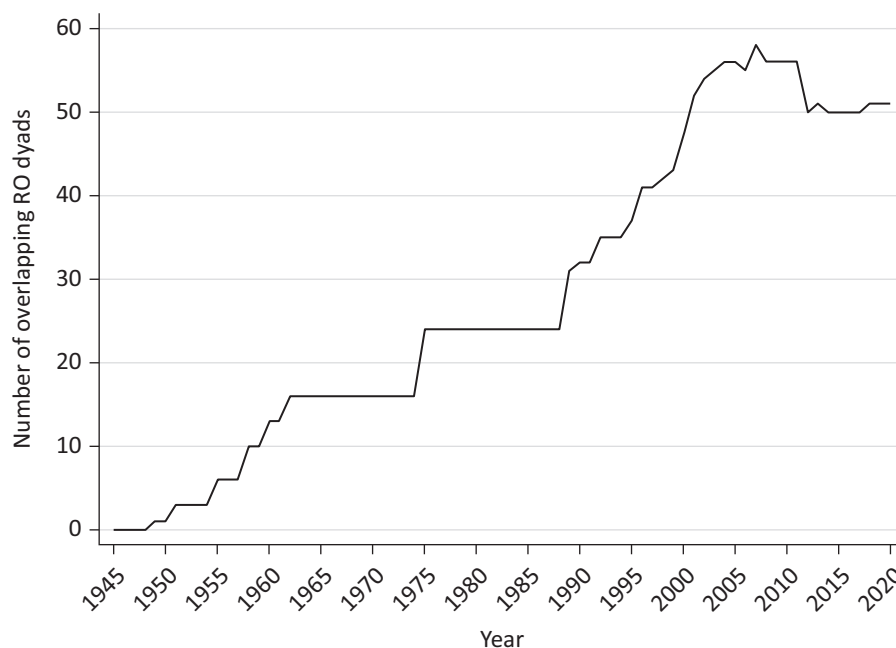
The number of ROs increased between 1945 and 2020. Of the 73 different ROs included in the ROCO 2.0 dataset, 16 have headquarters in Europe. These are the Arctic Council (AC), the Benelux Economic Union (BEU), CEFTA, the Central European Initiative (CEI), CIS, CoE, the Collective Security Treaty Organization (CSTO), the Eurasian Economic Union (EAEU), EFTA, EU, GUAM, NATO, the Nordic Council (NC), OSCE, the Western European Union (WEU), and the Warsaw Treaty Organisation (WTO).

European ROs have changed in membership size and policy scope over time (Panke et al., 2020). On the one

hand, ROs have increased their membership. The EU initially brought together the six founding members and has grown to overall 27 members through its various accession rounds. The CoE also gained new members over time and especially when Central and Eastern European countries eventually joined the organization after the end of the Cold War. Several ROs that were founded in the 1990s brought together a substantive number of members from their very beginning, including the CIS and EAEU. The average number of members increased from eight shortly after the end of the Second World War to 12 in 1990 and to 16 in 2020. On the other hand, states equipped ROs with an increasing number of policy competencies over time (Panke, 2020; Stapel, 2022). While the average European RO possessed 8.5 competencies in 1950 and 28 competencies in 1990, this number has increased considerably to 57 by 2020.

With the rise in the numbers of European ROs as well as their membership size and policy scope, overlaps between ROs have become more pronounced. More ROs share at least one member state while at the same time being equipped with at least one identical policy competence (Panke & Stapel, 2018a). These developments culminated in non-hierarchical overlaps between ROs and thus substantive regional regime complexity.

Over time, regional regime complexity in Europe has followed an incremental increase (Panke & Stapel, 2022). This started with a single overlap in 1949 between a pair of European ROs (NATO and CoE) to 16 in 1962 to 24 dyads of European ROs with at least one shared member state and at least one identical policy competency in 1975 (see Figure 1). After the end of the Cold War, the number of overlapping dyads reached a maximum of 58 in 2007. Due to the withdrawal of member states from some ROs (e.g., Austria leaving the CEI in 2018 and



**Figure 1.** Regional regime complexity in Europe, 1945–2020.

Georgia leaving the CIS in 2009) and the dissolution of the WEU in 2011, regional regime complexity declined slightly by 2020. The potential negative consequences that arise from regional regime complexity can either be reduced or even turned into assets when ROs decide to work together to address overlaps.

### 3. The European Union and Interregional Cooperation Under Conditions of Regime Complexity

To address and potentially avoid negative externalities from regional regime complexity, ROs can conclude inter-organizational cooperation agreements that detail in which policy fields and how they seek to cooperate to avoid “possible duplication and...maximize the use of the available human and financial resources in the region, ensuring that they are used in the most effective way” (EU, 2006, p. 3).

In our study of inter-organizational cooperation agreements, we draw on the Inter-Organizational Cooperation Agreements (IOCA) dataset (Panke & Stapel, 2023b). We collected information on inter-organizational cooperation agreements of all overlapping ROs between 1945 and 2020 from primary sources, such as treaties, agreements, joint statements, press releases, or other official documentation. We speak of an agreement when two ROs specified how they seek to collaborate with each other (e.g., a treaty), clarified the policy fields (e.g., trade promotion or human rights), and/or detailed an instrument (e.g., information-sharing). The primary sources were subject to computer-assisted double-blind coding with 84% inter-coder reliability and discrepancies were arbitrated by a single senior researcher.

The IOCA dataset takes a dyadic format and entails information on a total of 436 different overlapping pairs of ROs between 1945 and 2020. Taking into account only those ROs with a headquarter in Europe, there are 66 pairs of ROs (58 of which existed at the same time in 2007) and 18 of them have established cooperation agreements. The EU has established formal cooperation agreements with seven overlapping ROs (AC, CoE, CEI, NATO, NC, OSCE, and WEU). However, it has not concluded any formal cooperation agreements with the BEU. In other words, the EU is an outlier as it is more prone to cooperation than the average RO in Europe. It is puzzling why the EU enters into cooperation agreements with almost all of the ROs with which it shares at least one member state and at least one policy competency.

As Figure 2 illustrates, 18 pairs of ROs in Europe have concluded a total of 72 different cooperation agreements. Some European ROs do not share member states and policy competencies at all, such as the AC and BEU (signified by white coloring). Even when ROs overlap with each other, they may not enter any inter-organizational cooperation agreement (zero, light gray). Moreover, ROs differ in the number of cooperation agreements that they have concluded with each other (darker shades of gray depict a higher number of agreements). Overall, the CoE has entered into 35 agreements, followed by the EU (32) and the CIS (18).

Figure 2 also illustrates that ROs vary concerning the number of ROs with which they overlap. At one end of the spectrum, the OSCE (15), CoE (14), and CEI (12) have many overlaps. The WTO (three) as well as BEU and CSTO (five each) are located at the other end of the spectrum. The EU lies in-between. This information

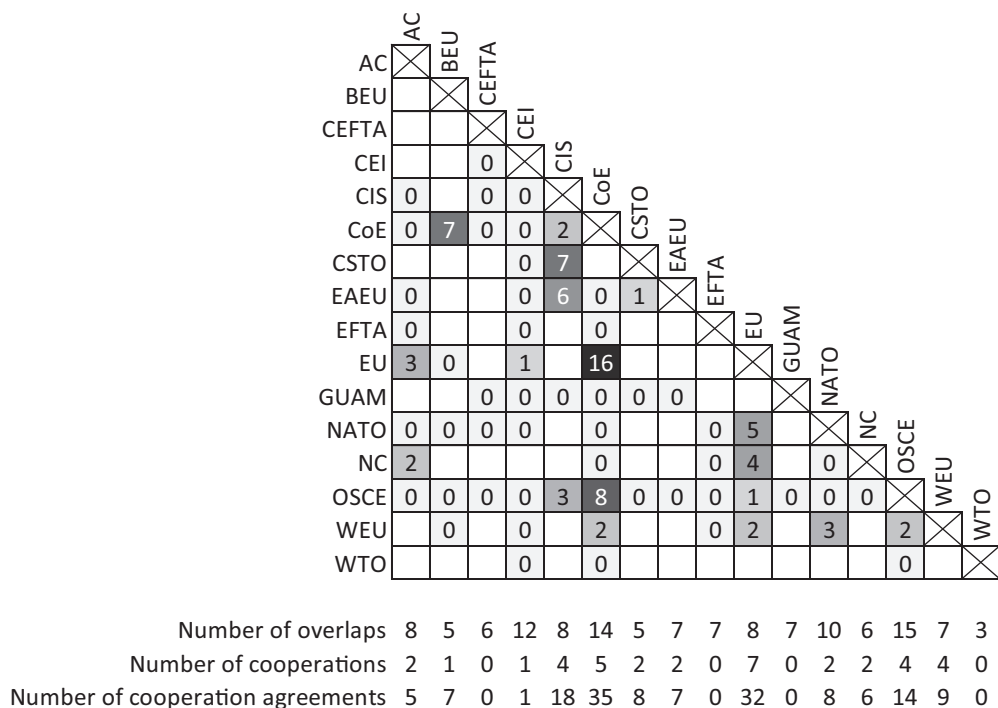


Figure 2. Patterns of inter-organizational cooperation agreements between European ROs.

allows for assessing the relative coverage of cooperation agreements, i.e., the number of established cooperation agreements with overlapping ROs measured against the overall number of overlapping ROs. In terms of relative coverage of cooperation, the EU is a remarkable outlier as it concluded inter-organizational cooperation agreements with 87.5% of ROs with which it overlaps (the BEU being the notable exception).

All in all, the high share of cooperation with overlapping ROs together with the high number of individual agreements suggests that the EU is an important actor when it comes to navigating regional regime complexity in Europe and avoiding its negative effects.

Moreover, inter-organizational cooperation agreements do not always look the same. In fact, they vary with respect to form, scope, and instruments. This is potentially important as not all agreements might be equally effective in evading the negative consequences of regional regime complexity. As the legalization and institutional design literatures suggest, those agreements that can credibly reduce future uncertainty in the behavior of participating actors across all policy fields addressed in the agreement are best suited to pursue a broad set of common interests and aims (Abbott et al., 2000; Goodin, 1995; Koremenos et al., 2001). In other words, the literature suggests that binding agreements which cover broad policy scopes and are equipped with intrusive instruments are particularly suited to address the pitfalls emanating from unmanaged regional regime complexity, such as waste of resources, duplication of efforts, non-compliance, and ineffective regional governance.

Regarding the design of inter-organizational cooperation agreements, the IOCA dataset distinguishes between form, scope, and instruments. The form captures the formality of agreements. It ranges from treaties (coded with 3), over declarations of intent/memoranda of understanding (MoU, coded as 2) to simple non-binding arrangements, such as gentlemen's agreements between two ROs (coded as 1). Scope captures how many of the 11 different policy fields coded in the ROCO dataset (see Section 2) are included in the cooperation agreement. Hence, this dimension can conceptually vary between 0 and 11 (all policy fields mentioned: agriculture, development, economy, energy, environment, finance, good governance, health, migration, security and defense, and technology and infrastructure). Finally, the IOCA dataset distinguishes between four types of cooperation instruments and ranks them by the extent to which they limit the ability of an IO to act unilaterally (Panke & Stapel, 2023b). Instruments include joint implementation and/or dispute settlement (4), joint decision-making (3), consultation (2), and information-sharing (1). If an inter-organizational cooperation agreement does not specify any instrument, it is coded as 0. In case a cooperation agreement details more than one instrument, we code the instrument with the highest value. Thus, the institutional designs of inter-organizational cooperation agreements can conceptually

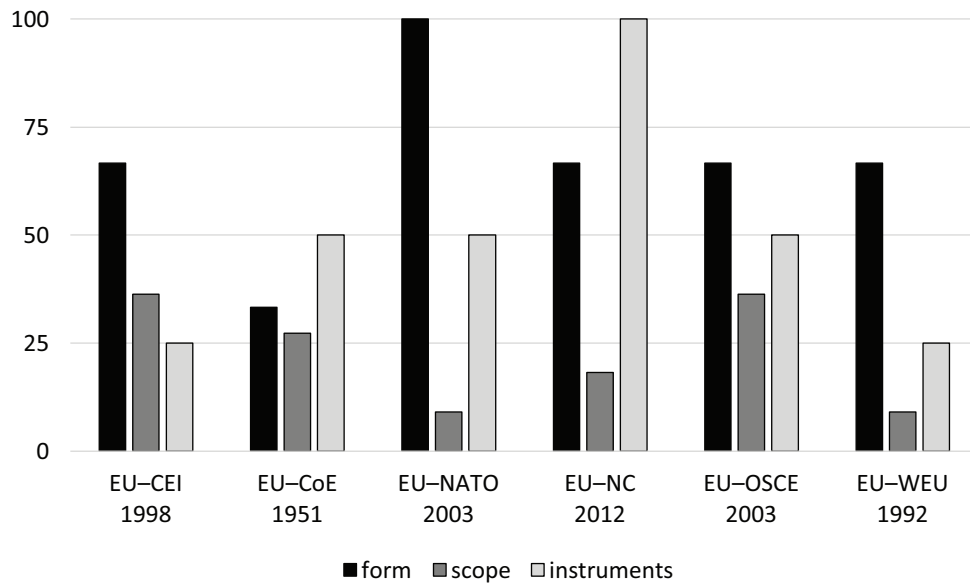
differ between deep (strongly formalized, many policy fields, intrusive instruments) and shallow (not formalized, few policy fields, non-intrusive instruments).

In total, the EU has concluded 32 different inter-organizational cooperation agreements. A declaration of intent/MoU is the most frequent form (14 instances), followed by formal treaties (10 instances) and simple non-binding arrangements (eight instances). The average scope entails 2.6 policy fields (ranging between one and 10 policy competencies). In terms of instruments, agreements mostly feature joint implementation and/or dispute settlement (11 instances), followed by consultation (nine instances), joint decision-making (seven instances), and information-sharing (five instances). Thus, the EU's preferred institutional design for cooperation agreements tends to be deep with respect to form and instruments, but shallow concerning the policy scope.

As becomes evident from Figure 3, the EU's inter-organizational cooperation agreements vary with respect to form, scope, and instruments. The EU–CEI Joint Communiqué CEI Troika Meeting with the Austrian EU Presidency and EC (Zagreb, 21 November 1998) is a declaration of intent about cooperation in the areas of energy, environment, security/defense, and technology/infrastructure and entails information-sharing. By contrast, the 1951 Protocol concerning relations between the EU's predecessor (European Coal and Steel Community) and the CoE is a non-binding arrangement with an unspecified policy scope where both organizations agreed to share information and consult each other. In the 2003 Agreement on the Security of Information, the EU and NATO agreed on a binding treaty to cooperate in the policy field of security and defense and to include two instruments (information sharing and consultation). Finally, declarations of intent are the form chosen for the 2012 MoU between the European Commission and NordForsk (of the NC), the 2003 EU–OSCE Co-Operation in Conflict Prevention, Crisis Management, and Post-Conflict Rehabilitation, and the 1992 EU–WEU Petersberg Declaration of the WEU Council of Ministers. Yet, they differ considerably with respect to scope and instruments.

Although the EU on average tends to opt for institutional cooperation designs with deep form and instruments but shallow scope, zooming into individual cooperation agreements shows that the EU does not pursue a one-size-fits-all approach when it comes to designing inter-organizational cooperation agreements with overlapping ROs. In other words, why the EU's cooperation agreements differ in their institutional designs between ROs is an empirical puzzle. However, due to limitations in the scope of this article, we subsequently focus on the dimension treaty form, which according to the legalization literature plays a crucial role for the effectiveness of agreements (e.g., Abbott et al., 2000), and we omit scope and instruments from the subsequent theoretical and empirical discussion.





**Figure 3.** The EU and selected inter-organizational cooperation agreements (in percentage of conceptual maximum possible).

#### 4. Accounting for Variation in European Union Cooperation with Overlapping Regional Organizations

Why does the EU turn into an external actor to cooperate extensively with overlapping ROs? Why does the design of these cooperation agreements vary? To answer these questions, we draw on approaches of the EU as an external actor as well as institutional design approaches to develop hypotheses.

##### 4.1. Extensive Cooperation with Overlapping Regional Organizations

A rich body of scholarship examines the EU as an actor in international negotiations (Blavoukos & Bourantonis, 2010; Delreux, 2013; Laatikainen, 2010; Smith, 2006). We use insights from these contributions to develop expectations about why the EU as an external actor enters into more inter-organizational cooperation agreements with different partner ROs compared to other European ROs. As this literature stresses, in order to engage in external activities, such as concluding inter-organizational cooperation agreements, the RO needs to have the autonomy to do so (Jupille & Caporaso, 1998) as well as the capacity to negotiate and enact agreements.

Autonomy—defined as supranational agents being designated to speak on behalf of the RO, for instance, the European Commission or RO secretariats—enables the RO to act coherently vis-à-vis third parties (Blavoukos & Bourantonis, 2011; Delreux, 2013; Drieskens & van Schaik, 2014; Smith, 2006). ROs differ in the extent to which they delegate the ability to negotiate and conclude inter-organizational agreements with their international partners to RO agents. The more pronounced the design of an RO, the easier it is for this RO to not only develop a position to be brought to the negotiation table

with the other RO when negotiating a cooperation agreement but also to speak with one voice throughout these negotiations and conclude the agreement subsequently. Based on these considerations, we expect that the higher the level of autonomy and extent of delegation in an RO, the more likely it is that this RO can speak with one voice and that it cooperates extensively with other ROs (Hypothesis 1).

In addition to autonomy, RO capacities—defined as the financial and administrative resources of ROs—are also important for the external activities of ROs (Ginsberg, 1999; Panke et al., 2018). ROs that are well equipped with financial and administrative resources are in a better position to navigate regional regime complexity. They can take the initiative for inter-organizational cooperation negotiations, provide additional policy and legal expertise, and are in a good position to support the implementation of the agreement. Hence, we expect that ROs cooperate extensively with other ROs, the better equipped they are with capacities (Hypothesis 2).

To probe the empirical plausibility of these two expectations, we rely on pair-wise comparisons and contrast the EU with other ROs that systematically differ with respect to the explanatory variables at stake. In our assessment, we draw on primary and secondary sources. For the first explanatory factor, autonomy, we compare the EU to the CEI as they differ in autonomy and the delegation of tasks to RO agents.

The EU is characterized by high levels of autonomy in general (Hooghe & Marks, 2015). Even its external affairs are characterized by elements of delegation of authority. The European Commission (concerning external trade and economic policies) as well as the High Representative for European Foreign and Security Policy (external foreign, defense, and security issues) serve as agents to the member states and have competencies to

represent EU interests in the external realm (Tocci, 2016). In addition, whenever needed, coordination between the EU member states takes place to swiftly develop collective positions that can subsequently be articulated by the designated agent. As a consequence of this setup, the EU is in a position to speak with one voice, articulated by the Commission or the High Representative for European Foreign and Security Policy, and to act coherently vis-à-vis third parties, as various case studies have illustrated (Smith, 2006). This in turn also places the EU in a good position to negotiate and conclude a high number of inter-organizational cooperation agreements (a total of 32) with a high number of different ROs (seven out of eight overlapping ROs).

By contrast, ROs with limited autonomy, such as the CEI, do not delegate the external representation of common positions to an agent (Potyka, 2019). In fact, the CEI's primary rules would allow the RO to engage in external affairs with "European organizations and institutions, especially with the European Union and the Council of Europe as well as other regional groupings" (CEI, 1995, Art. 4). Yet, these institutional possibilities are not frequently used. In its day-to-day activities, the CEI operates on a project-based and ad-hoc nature of operation in its internal affairs (Potyka, 2019), while its member states rather cooperate externally in formats such as the Visegrád cooperation (Cabada, 2018). Thus, unlike the EU, case studies have not established that the CEI is a vocal external actor. Consequently, it is not surprising that the CEI has only one inter-organizational agreement with a single RO (namely the EU), despite overlapping with a total of 12 different ROs (see Figure 2). Taken together, the EU-CEI comparison lends plausibility to Hypothesis 1.

Hypothesis 2 argues that financial and administrative capacities influence whether an RO cooperates extensively with other ROs. In order to investigate this expectation, we compare the EU and the EAEU. Both ROs entail supranational features and elements of delegation in their institutional setup but they differ with respect to capacities.

The EU maintains sufficient capacities to set up inter-organizational cooperation agreements. It is a well-funded organization. The annual budget encompasses more than a trillion euros, with 100 billion euros designated for external action (EU, 2021). In addition, the EU stands out as an RO well equipped to act externally not least due to its external action service created with the Treaty of Lisbon (Spence & Bátorá, 2015). Finally, the European Commission has considerably more personnel and in-house expertise than secretariats of other European ROs (Nugent & Rhinard, 2015). Thus, case study insights suggest that, rather than capacity limitations, the EU does not act externally when there is a lack of political will or when there is a conflict regarding its role as a civilian power, as the Libyan conflict illustrated (Koenig, 2014). When discussing inter-organizational cooperation between the EU on the one

side and the CoE or OSCE on the other, Burchill (2010, p. 60) notes:

The EU has a greater amount of financial resources in comparison to other regional organizations, resources that are used to support various regional projects and which may be used to facilitate the pursuit of various objectives. The EU also possesses an extensive permanent staff allowing it to project a greater presence than the other regional organizations.

This indicates that, in the EU's case, being well-resourced adds to the ability to engage with other ROs and to conclude inter-organizational cooperation agreements.

The EAEU has evolved into an RO with strong supranational features, even if the supranational setup does not quite match the EU's model (Likhacheva, 2018). It maintains supranational bodies, including a Commission and a court (Blockmans et al., 2012). They are designated to speak on behalf of the organization, for instance, the Eurasian Economic Commission has the mandate to conduct trade negotiations with external partners (Likhacheva, 2018). The EAEU also has the resources to act externally according to a representative survey (Libman, 2011; Vinokurov, 2010). In stark contrast to the EU, the EAEU's capacities in the form of financial and administrative resources nevertheless remain limited (Likhacheva, 2018). This severely undermines the EAEU's ability to conclude cooperation agreements. For instance, the EAEU has received:

More than 40 applications to establish an FTA...but the current seven negotiations, at this stage, are the organizational ceiling of the Commission...and there are simply no more human resources for the Commission to open similar new negotiations, let alone negotiate a more complex level. (Likhacheva, 2018, pp. 785–786)

Thus, when the EAEU engages externally, it opts for bilateral negotiations with countries instead of pursuing more complex cooperation with other ROs (Likhacheva, 2018). In sum, the plausibility probe of the EU and EAEU shows that financial and administrative capacities matter for cooperation with overlapping ROs—as expected by Hypothesis 2.

#### 4.2. Design of Inter-Organizational Cooperation Agreements

Drawing on institutional design approaches, we focus on why ROs opt for deep cooperation with respect to treaty forms with some overlapping ROs and for shallow inter-organizational cooperation agreements with others. We probe whether Hypothesis 3 is plausible by qualitatively assessing specific agreements of different RO dyads in which the EU is one partner while the other

partner varies with respect to the independent variable at stake.

Cooperation agreements can differ as to whether they are formally binding on the contracting parties. Theories of institutional design assume that actors are risk-averse and design organizations or agreements accordingly (Goodin, 1995; Koremenos et al., 2001). Ideological differences between actors—defined as differences in the orientation towards liberal democratic values, as they matter for cooperation (Risse-Kappen, 1995; Russett, 1993)—risk the failure of cooperation in the long run due to diverging preferences and problem perceptions (Clark, 2021). Thus, an RO that seeks to cooperate with an overlapping but ideologically diverging RO funnels potential future defections into the equation. It therefore opts for simple, unbinding agreements rather than binding treaties. Hence, we expect that ideologically diverging RO pairs opt for shallower cooperation agreements with respect to form (Hypothesis 3).

To probe the plausibility of this hypothesis, we examine two different dyads. First, the EU and the AC overlap, cooperate with each other, and are characterized by almost all members being liberal democratic and market-oriented. Second, since the EU does not ideologically diverge strongly from other European ROs, we contrast the EU–AC 2003 cooperation case with the Black Sea Economic Cooperation (BSEC) cooperation from 2016, although the BSEC headquarter is located in Istanbul.

In 2003, the EU and the AC shared three members (Denmark, Finland, and Sweden) and seven policy fields (agriculture, development, economy, environment, good governance, health, and technology and infrastructure). By that time, the EU and the AC were mainly composed of liberal market economies (with Russia being the exception). Considering the average democracy values for each RO in the V-Dem Liberal Democracy Indicator (Coppedge et al., 2020), the EU and AC differed by 0.07 points (on a scale from 0 to 1). In order to address regional regime complexity and avoid negative externalities, the ROs concluded the Declaration Concerning the Establishment of a Northern Dimension Partnership in Public Health and Social Wellbeing in 2003. This formal treaty resembles a strong commitment. It even outlines that future cooperation can be deepened:

The partnership is an evolving process. Based on the experience gained during an initial period, the possible further development of the partnership will be considered by the partners before the end of 2005. The CSR [Committee of Senior Representatives] will make recommendations to the PAC [Partnership Annual Conference] on those structural or operational changes it considers necessary in order to develop the full potential of the partnership. (AC & EU, 2003, p. 6)

The second dyad of this comparison, the EU and the BSEC, also shared three member states in 2016 (Bulgaria,

Greece, and Romania). The two ROs overlap in nine policy fields (agriculture, economy, energy, environment, finance, health, migration, security and defense, and technology and infrastructure). However, they differ more strongly in ideological terms than the EU and the AC. The BSEC included states that scored lower on most democracy indicators than the EU member states, such as Azerbaijan and Russia. The difference between both ROs was 0.37 in the V-Dem Liberal Democracy Indicator in 2016 (Coppedge et al., 2020). As expected by Hypothesis 3, the 2016 meeting of the BSEC PERMIS Secretary General with the European Commissioner for Environment, Maritime Affairs, and Fisheries resembled a gentleman's agreement as “both sides agreed to continue and develop their exchange of views on concrete issues of cooperation, with the view of enhancing BSEC–EU interaction in a project-orientated direction” (BSEC, n.d., p. 1). The wording of the non-binding agreement *de facto* allows each RO to act upon its own preferences, should they at any point diverge from each other.

The comparison of the two dyads indicates that ideological fit matters for the form of the agreement. In line with Hypothesis 3, pairs of ROs opt for binding cooperation when the ideological differences are limited, and for less binding agreements when the ideological distance is higher.

#### 4.3. Scope and Limitations of the Findings

The plausibility probes suggest that autonomy, capacities, and ideological differences matter for the conclusion of inter-organizational cooperation agreements and their designs. It remains to be seen whether more detailed empirical scrutiny beyond a plausibility probe yields similar results. Nevertheless, these initial findings can be generalized to ROs outside of Europe, thereby again underlining the remarkable position of the EU as an external actor because it possesses autonomy and capacities to act coherently in its external affairs. Moreover, the findings also potentially travel to global IOs.

On the one hand, we can generalize the findings from the European context to regional regime complexity found in Africa, the Americas, and Asia. Regarding autonomy, the EU is characterized by a high level of delegation while other European ROs rank below that level (Hooghe & Marks, 2015). A similar situation can be found in Africa and the Americas, as ROs show diverse levels of delegation. However, the situation is somewhat different in Asia, where most ROs rarely feature elements of delegation. Hence, we expect a similar inclination to cope with regional regime complexity through cooperation agreements in Africa and the Americas, while Asian ROs will be less likely to establish inter-organizational cooperation agreements. Second, ROs around the world showcase different levels of capacities, i.e., political and administrative resources. European and American ROs are frequently considered to have higher levels of capacities. By contrast, research has shown that the political

and administrative resources of African and Asian ROs are more limited (Engel & Mattheis, 2020), and ROs in these regions frequently rely on external funding and administrative support from donors (Stapel et al., 2023; Stapel & Söderbaum, 2020). Considering that the capacities of ROs matter for establishing cooperation agreements, it is likely that, all else being equal, more cooperation agreements will be concluded by European and American ROs compared to African and Asian ROs. Third, we can find ideological differences in all parts of the world as democratic, mixed, and autocratic ROs exist next to each other. Hence, the effect of ideological differences between ROs on the design of inter-organizational cooperation agreements found in the European context likely plays out similarly in Africa, the Americas, and Asia.

On the other hand, the findings on whether and how European ROs address regional regime complexity may also extend to global IOs with almost universal membership and international regime complexity. First, the delegation of the ability to negotiate and conclude to institutional bodies is generally higher for ROs than IOs (Hooghe & Marks, 2015). As the plausibility probe showed that ROs more often conclude inter-organizational cooperation agreements because they can act autonomously, we can expect that the number of cooperation agreements will be lower for IOs as their agents frequently lack such autonomy. Second, at the same time, we do not expect that the capacities differ systematically between ROs and global IOs and to find systematic differences between ROs and IOs for the probability of concluding cooperation agreements. Finally, IOs bring together more member states than ROs. Due to the large membership basis, internal heterogeneity is likely to be higher in IOs than in ROs. At the same time, the ideological differences are likely to be smaller between IOs than between ROs. Following from the insights for the explanatory factor of ideological differences in the European context, we expect that IOs are more likely to pursue deeper forms in their inter-organizational cooperation agreements.

## 5. Conclusions

The article has started from the premise that regional regime complexity in Europe has increased over time as ROs increasingly overlap with regard to member states and mandates. This bears the risk of reduced effectiveness. In order to manage complexity, tackle potential negative consequences, and potentially even benefit from overlaps, the concerned ROs can initiate cooperation agreements with each other and choose a particular design for their cooperation. Empirically, the article shows that inter-organizational cooperation between ROs is a widespread yet not ubiquitous phenomenon. The EU stands out in comparison to other ROs in Europe because it has established cooperation agreements with almost all ROs with which it overlaps and these agreements often follow a rather deep design, especially with

regard to the form and the instruments envisaged in these agreements.

We argue that the EU is especially well-suited to navigate regional regime complexity compared to other European ROs. Due to the EU's autonomy and sufficient capacities, the EU can speak with one voice in its external affairs. Other ROs cannot engage in equally extensive inter-regional cooperation because their autonomy and capacities are more limited. Moreover, the relation between ROs influences the design of inter-regional cooperation agreements. They design more demanding agreements, i.e., a binding form of agreement, when they are ideologically closer.

In sum, our study suggests that the rise of regional regime complexity does not pose an insurmountable obstacle to effective governance beyond the nation-state. ROs can counteract negative side effects arising from complexity through inter-organizational cooperation. As overlaps increased, so did the number of cooperating ROs and the number of cooperation agreements. Because the EU turned into a proactive actor navigating regional regime complexity through cooperation agreements, it is in lesser danger to suffer from duplication of efforts, waste of resources, non-compliance, and ineffective governance than other European ROs.

Our findings provide important insights and pose new questions for debates on regime complexity. First, regional regime complexity in Europe is likely to stay. Following these developments, many ROs in Europe have established inter-organizational cooperation agreements. The number of additional cooperating RO pairs has likely reached or will soon reach the ceiling. Yet, the design of inter-organizational cooperation agreements may be further changed over time if the right conditions are in place. How the EU as an external actor further deepens such agreements is an important question.

Second, while this article shows that inter-organizational cooperation agreements differ in their design, we currently lack empirical studies that systematically investigate which design elements are especially effective in avoiding negative implications of regime complexity on the regional and international levels. Future research can examine whether the form, scope, or instruments entailed in agreements or whether specific configurations of these three features are better suited to address negative externalities.

Third, beyond the regional level, international politics is also characterized by regime complexity in a variety of policy fields. Here again, it is more likely that inter-organizational cooperation takes place and will be extensive when the (collective) actors can operate autonomously and are equipped with sufficient capacities. The designs of cooperation between IOs will also differ. Given the vast number of international institutions, organizations, and regimes, a complex web of relationships and variable geometries of inter-organizational cooperation likely emerges. As our analysis suggests, the EU is well-positioned to actively further and shape

inter-organizational cooperation in international politics also in comparison to other organizations.

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### Conflict of Interests

The authors declare no conflict of interests.

### Supplementary Material

Supplementary material for this article is available online in the format provided by the authors (unedited).

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