

Can Transnational NGO Networks Impact on EU Regulatory Policy?

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Abstract

This paper analyses and evaluates how cooperation of the European Commission with a transnational NGO network has impacted on the implementation and review of an EU policy. To this end, it identifies the tasks that cooperative regulatory EU networks may perform (the mobilization of ‘users’, the promotion of coherent application, the reporting of non-compliances and the provision of input into review processes). Transnational NGO networks are more likely to be loyal to the objectives of an EU policy than transgovernmental networks, and therefore more active in performing certain tasks. However, this does not automatically translate into strong impact on enforcement and review of EU policies since member states may block network influence at the EU level.

The framework is applied to the transnational Stichting Natuur en Milieu (SNM) network which has supported the implementation of the 1990 Access to Environmental Information Directive in various EU member states and which has provided input into the policy review process. Faced with institutional constraints at the EU level, networked NGOs could set precedents for the review by participating in the negotiations of the Aarhus Convention.

INTRODUCTION

Within the last decade, attention at the global level has focused on ‘transnational networks of experts’ (Levi-Faur 2005: 32), which are increasingly cultivated by governments and international organizations for the delivery of public goods (see Stone 2004: 559; also Slaughter 2004). At the same time, the European Commission (hereafter referred to as the Commission) has been repeatedly advised to make use of cooperative networks and partnerships (Metcalf 2000 and 2001; Schout and Jordan 2005). More concretely, it has been argued that the implementation of EU regulatory policy required the establishment of ‘transnational regulatory networks’ of national and European regulators (see Majone 2002: 387).

Cooperative regulatory EU networks can be understood as arrangements (other than EU committees) consisting of actors based in various member states that receive logistical and/or financial support from the EU to pursue common goals linked to influencing the creation, the review and/or the implementation of a EU regulatory policy. A distinction can be made between transgovernmental and transnational networks (see Pollack and Shaffer (eds.) 2001): transgovernmental networks link up officials that work for regulatory institutions at the national or sub-national level. Transnational networks, by contrast, are understood in this paper as arrangements that link up private actors, with a specific focus placed on non-governmental ‘civil society’ actors.

This paper analyses and evaluates how cooperation of the European Commission with a transnational NGO network has impacted on the implementation, enforcement and review of an EU policy. In a first step, a distinction between cooperative networks and policy networks (which so far have been focused on in EU literature) is made. Second, the most important tasks of cooperative networks are identified, based on an understanding of implementation, enforcement and review of EU policy as taking place in fragmented arenas. Third, the paper juxtaposes ability and willingness of transgovernmental and of transnational NGO networks to perform these tasks. It is

argued that transnational NGO networks are more likely to be loyal to the objectives of an EU policy than transgovernmental networks, and more willing to perform certain tasks. However, significant ‘output’ of a transnational NGO network does not automatically translate into a strong impact on enforcement and review of an EU policy, given that transnational NGO networks face institutional constraints at member state and EU level. Hence, impact on EU policy review is more likely if precedents in other arenas can be set.

In light of this framework, I explore the role of the transnational Stichting Natuur en Milieu (SNM) network in the implementation of the 1990 Directive on Access to Environmental Information (hereafter referred to as 1990 AIE Directive). The directive created a clear need for a transnational NGO network, since it established a new citizen right the implementation of which took place in fragmented arenas. Network output is then analyzed with regard to the activities undertaken by the SNM network. The question of impact has to be considered separately: Was the SNM network successful in mobilizing users and in promoting a consistent application of the legislation transposing the AIE Directive? Have complaints led to changes in national transposition and application, and has the reporting of experiences resulted in improvements of the 1990 AIE Directive through a review process? How effective was the network strategy of shopping for a policy-making arena outside the EU? Last, I discuss strategies for enhancing the impact of transnational NGO networks at the EU level, and I briefly discuss some normative issues regarding the operation of networks.

LITERATURE REVIEW

Network Concepts and Network Development in EU Regulatory Policy

Analytically constructed ‘policy networks’ have often provided starting points for research into the making and implementation of EU regulatory policies (see Peterson 2001: 306), though the usefulness of the ‘policy network’ concept is disputed (Börzel 1998: 266; more positive, see Coleman and Perl 1999). The concept of ‘policy network’ has been referred to all those with an interest in an EU policy sector and ‘the capacity to determine success or failure’ (Peterson and

Bomberg 1999: 8). Actors involved in so-called policy ‘issue networks’ are often very heterogeneous (see Börzel 1998: 258), and the mode of interaction is controversial since actors tend to have ‘radically different views on the policy problem as well as on the desired outcome’ (Peterson and Bomberg 1999: 192, see also Richardson 1994). ‘Issue networks’ can be contrasted with ‘policy communities’ which consist of a more homogeneous set of actors and which function in a more consensual mode based on shared values (see Richardson 2000). It has been argued that the sheer number and diversity of actors involved in EU policy making makes it unlikely that policy communities similar to the national level will emerge at the EU level (Richardson 2000: 1015).

Following the crisis of EU governance in 1999, scholarly attention has gradually shifted to the role of more formalized cooperative networks. Metcalfe has argued that managing EU policies required ‘highly developed and reliable organizational networks’ (2001: 421). Loose policy ‘issue’ networks operating in Brussels were found unable to manage and coordinate EU policies since they could not define the roles of different organizational actors and failed to provide adequate incentives for cooperation (Metcalfe 2000: 829).

Cooperation of the Commission with transgovernmental networks has been built up in an incremental and experimental fashion over the last 15 years. One of the earliest examples of a cooperative network is the EU Network for Implementation and Enforcement of Environmental Law IMPEL consisting of national environmental regulatory authorities. It has been founded in 1992 on initiative of the member states, with the Commission later assuming a coordinating role and housing the IMPEL Secretariat. An early example of a cooperative EU network of specialized national ombudsmen (dealing with complaints by citizens) is the ‘Art. 29 Data Protection Working Party’ established under the Data Protection Directive. Also, several of the EU-level agencies established in the nineties are supported by networks of national authorities (see Dehousse 1997; Majone 1997; Smismans 2004).

As a result of the crisis of EU governance triggered through the resignation of the Santer Commission, the White Paper on Governance set out the Commission intention to make more use of cooperative networks (see CEC 2001b

and c; Schout and Jordan 2005). The Commission has suggested in its White Paper that networks of Ombudsmen be created in member states 'capable of dealing with disputes involving citizens and EU issues' (CEC 2001c: 25). In one of the many follow-up publications of the White Paper the Commission has proposed that 'transposition and application correspondents' be appointed to facilitate the monitoring of the implementation of Community law; to improve feedback from Member States; and to exchange good practice (CEC 2002b: 18).

Following publication of the White Paper, the European Commission has sought to promote the set-up of regulatory networks composed of experts and representatives of national regulatory bodies (Eberlein and Grande 2005: 100). Recently established networks link up national competition authorities (the European Competition Network ECN), national telecommunications authorities (the European Regulators Group ERG) and national energy regulatory authorities (the European Regulators' Group for Electricity and Gas ERGEG). Moreover, member states have been obliged to establish national equality bodies with ombudsmen function under the 2000 Racial Equality Directive, and these bodies have been later linked up in the European Network of Equality Bodies EQUINET (CEC 2006b: 18). More recently, the Commission has announced its intention to create a new EU Network of national Gender Equality Bodies with ombudsmen function at the national level (CEC 2006a: 11).

These networks can be described as semi-formalized. The operation of transgovernmental networks tends to have a formal mandate either in Community legislation, in Commission decisions or in Community programmes.¹ However, decisions of these networks normally lack binding force on member states. The Commission is often seen as the 'best candidate' for becoming a 'network manager' or 'network leader' (see Jordan and Schout 2006: 18), but de facto the role of the Commission varies: in case of the ECN, the Commission chairs the network, in case of IMPEL, the Data Protection Working Party, ERG and the ERGEG the Commission provides secretarial support while it is only a source of funding for EQUINET.

Scholars have noted a tendency of NGOs to built up 'transnational advocacy networks' around the promotion of specific issues or causes, with

international organizations providing important focal points. Values or principled ideas are central for their operation (see Keck and Sikkink 1999). If a transnational advocacy network accepts funding from the Commission to pursue goals linked to influencing the creation, the review and/or the implementation of a regulatory EU policy, it may be considered as a cooperative regulatory EU network (the mandate of which is often referred to in Community programmes). Transnational NGO networks may be built up before or shortly after EU policies have been adopted (on the establishment of the Starting Line Group and the European Network Against Racism ENAR, see Bouget and Prouteau 2002). As a rule, the Commission role is confined to funding.

The Commission has traditionally provided funding to transnational NGO networks with non-economic objectives for the preparation of new policies (e.g. the European Network of Women, see Laffan 2002). One example of a transnational NGO network with implementation tasks is provided by the European Habitats Forum (EHF). This is a network of 14 international NGO networks which promotes the implementation of the Birds and the Habitats Directive (see Weber and Christopherson 2002). As part of its anti-discrimination policies, DG Employment has provided support to four transnational NGO networks representing and defending the rights of people exposed to discrimination: the European Network Against Racism (ENAR), the European Region of the International Lesbian and Gay Association (ILGA-Europe), the Older People's Platform (AGE) and the European Disability Forum (EDF) (see CEC 2006b: 20). Transnational NGO networks funded by the Commission often have a 'representative structure' similar to transgovernmental networks with each member state being represented at the EU level through a national NGO correspondent or a national coordinator of participating NGOs.

Table 1 summarizes the characteristics of issue networks, policy communities and cooperative networks.

	Policy Issue Network	Policy Community	Cooperative Regulatory EU Networks	
			<i>Transgovern-mental</i>	<i>Transnational NGO</i>
Formal Mandate	None (analytical construct)	None (analytical construct)	Legal/Programmatic	Programmatic
Access	Open	Closed	Closed	Access based on Membership criteria
Composition	Heterogeneous (public + private)	More homogeneous	Homogeneous	Homogeneous
Mode of Operation	Controversial	Cooperative (Consensual)	Cooperative	Cooperative
Role of Commission	May be considered as Member (possibly funding for selected non-economic organizations)	May be considered as Member	Varied (Chair, Secretariat, Funding)	Funding

Table 1 Characteristics of Issue Networks, Policy Communities and EU Cooperative Regulatory Networks

The increasing use of cooperative regulatory networks may be interpreted as an attempt of the Commission to create what has been termed ‘transnational policy communities’ of experts which form common patterns of understanding regarding policy through regular interaction (see Bennett 1991). However, Coleman and Perl have stressed that transnational policy communities display less agreement of basic ideas and values than national policy communities. From a multi-level governance perspective, their purpose is rather to link national policy communities to one another and to international institutions (1999: 703). The following section therefore identifies concrete tasks of cooperative regulatory networks based on multi-level governance and regulatory policy literature.

Network Tasks

One of the main findings of the multi-level governance literature on the EU has been that policy development and implementation of EU policies takes place in differentiated arenas at the EU, national and sub-national level (Marks et al. 1996, Benz and Eberlein 1999; Heinelt et al. 2003). More concretely, EU policies are implemented in various sub-national arenas, which may be differentiated a) from

each other, b) from the EU implementation and c) from the EU policy-making arena (Heinelt et al. 2003). There is broad agreement in multi-level governance literature that effective implementation in various sub-national arenas and effective policy development at the EU level requires that actors and mechanisms are in place which ensure a certain level of coordination (see Jessop 2004: 73; Jordan and Schout 2006: 13). Thus it has been argued that EU multi-level governance in specific areas favored the emergence of ‘interface actors’ (Knill 2001). Other scholars have identified a need for ‘modes of informal mediation and coordination’ (Benz and Eberlein 1999: 333), ‘governance devices across multiple arenas’, ‘methods of multilevel steering’ (Bauer 2002: 773) or ‘coherence mechanisms’ (Heinelt et al. 2003: 140) .

While multi-level governance literature tends to focus on EU regional policy, the differentiation of implementation has also been identified as a problem in writings on EU regulatory policy. Agreement on common rules at the Community level does not necessarily translate into commitment by national authorities to apply those rules (Nicolaidis 2004). The practice of adopting EU-wide frameworks with nationally varied implementation may create a ‘decentralization problem’. Ultimately, asymmetries in the national implementation of European norms threaten the creation of an equal level playing field for competition in the internal market (Eberlein and Grande 2005: 99, see also Majone 2002).

Both types of literature suggest that networks may provide a solution to the problem. From a multi-level governance perspective, transgovernmental networks linking up national agencies and the Commission have been interpreted as a step towards a ‘multilevel community administration’ promoting convergence (see Egeberg 2006: 45; on networks in multi-level context more generally, see Schout and Jordan 2006). Transgovernmental networks are also advocated as a solution for the ‘decentralization problem’ of regulatory policies (Eberlein and Grande 2005: 100; also Dehousse 1997; Majone 2002; Nicolaidis 2004). Hence, Majone has urged the Commission to coordinate and to monitor networks of independent national and European regulators, to ‘ensure the coherence of regulatory policies’ (2002: 375).

The following section reviews in more detail which tasks are carried out by networks currently in operation. The task of IMPEL has been described as promoting the exchange of information and experience of environmental regulators and policy-makers with the goal of encouraging greater consistency of approach in implementation (Hattan 2003). Similarly, EQUINET seeks to develop co-operation between specialized equality bodies in Europe and ‘in that way supports a uniform implementation of EU anti-discrimination law and the leveling up of legal protection for victims of discrimination’ (CEC 2006b: 18). The purpose of the European Regulators Group ERG is to ensure the consistent application of the regulatory EU framework across member states, and to serve as a body for reflection, debate and advice for the Commission (see Nicolaidis 2004).

Transnational NGO networks involved in the implementation of EU policy have several tasks an important one of which is the provision of a channel to raise awareness of European policies and law among their member organizations and potential litigants (on NGO networks supporting anti-discrimination policies, see CEC 2006b: 20). Transnational NGO networks also have a role in learning processes for revising and adapting EU policies. The direct experience of these networks ‘helps improve the Commission’s understanding of the diverse forms and effects of discrimination, so that these are taken into account in non-discrimination policy’ (CEC 2006b: 20). Network participants also play a useful ‘watchdog’ role by informing the Commission on non-compliant implementation in member states (on the European Habitats Forum, see Weber and Christopherson 2002: 8).

THEORETICAL FRAMEWORK

This paper argues that both transgovernmental and transnational networks may become ‘interface actors’ that ensure coherence between arenas by carrying out specific mobilization and coordination tasks. Based on the preceding analysis, five different types of network tasks may be distinguished. Networks may

- make citizens, administration, economic actors and NGOs in (sub-)national arenas more aware of new rights and obligations that are based on EU policies (the mobilization of ‘users’ in (sub-)national arenas);

- contribute to the consistent transposition and application of EU directives across and within countries through agreement on common standards (coherence between (sub-)national arenas);
- report cases of doubtful compliance to the Commission which form a basis for the opening of infringement procedures and the amendment of transposition and application (coherence between (sub-) national arenas and the EU implementation arena);
- carry out peer reviews in member states to acquire information on national solutions and to critically evaluate them (coherence between (sub-) national arenas and the EU implementation arena and/or review arena);
- provide input into the policy review process at the EU level based on national experience (coherence between (sub-) national arenas and the EU review arena).

Some of the tasks identified above do not necessarily have to be carried out by cooperative networks. For instance, individuals or single organizations can file complaints or provide input into policy processes. For the Commission, the added value of cooperating with a network lies in its ability to reduce transaction costs arising from the development of EU policies: by dealing with a network that spans multiple arenas, the Commission avoids dealing with hundreds of individual actors, and it can obtain information on the situation in various (sub-)national arenas (see Ward and Williams 1997).

Network performance is likely to depend to a large extent on the loyalties of the network participants (see Jordan and Schout 2006: 16). The Commission is aware of the fact that individuals working in networks have to manage possible conflicts between the priorities of the organization to which they belong and those of the network in which they participate (CEC 2001b: 18). The following sections analyze how loyalties within transgovernmental and transnational networks influence network output.

Output of Transgovernmental Networks

As mentioned above, while the increasing use of cooperative networks may be interpreted as an attempt of the Commission to create semi-formalized ‘policy communities’, less agreement on basic ideas and values than in national policy communities can be expected. In practice, authorities participating in transgovernmental networks may only show limited support and loyalty to the objectives of EU policies. This is because national authorities are hierarchically subordinated to ministries dominated by political actors, and political concerns other than the effective implementation of EU policy often prevail in a national context.

Performance of transgovernmental networks is therefore likely to depend on a ‘certain degree of independence and room to manoeuvre’ of the participating authorities with regard to national political actors (Eberlein and Grande 2005: 103; see also Majone 2002: 388). It has been argued by Egeberg that the building of transgovernmental networks of ‘semi-independent’ national agencies which are detached from national ministries has changed national loyalties. The argument is that these ‘semi-independent’ agencies can serve ‘two principles simultaneously’, namely the national ministry and the Commission, and can therefore be characterized as ‘double hatted’ (Egeberg 2006: 45, on the related concept of ‘dual functions’ see Slaughter 2004). However, empirical results concerning the development of new loyalties in transgovernmental networks like IMPEL, the European Competition Network ECN and the European Regulators Group ERG are mixed (see case studies in Egeberg (ed.) 2006). Moreover, the Commission has made clear that it is dissatisfied with the loyalties developed within the European Regulators' Group for Electricity and Gas ERGEG. Hence, its own involvement into a reformed ERGEG has to be reconsidered ‘to ensure that due account was taken of the Community interest’ (CEC 2007: 8).

The Commission powers of selection and influence in transgovernmental networks are currently limited. If national authorities participating in EU networks show resistance to the implementation of an EU policy, the Commission usually lacks the power to replace them with alternative national institutions – which may be unavailable in any case.

Perseverance of traditional loyalties is likely to influence the output of transgovernmental networks. In this regard, some concrete results are available for the transgovernmental network IMPEL which has shown a good output regarding the development of standards and guidelines. These are followed-up in the different member states to the extent that the implementation of legal acts is affected significantly (Martens 2006: 134).

However, IMPEL output has been less convincing with regard to the reporting of non-compliance: national officials are understandably reluctant to openly report implementation problems and failures to the European Commission, which may employ that information for the opening of infringement procedures against the member state. Hence, IMPEL reports that are based on written surveys of national environment bureaucracies have usually failed to provide negative or critical information about the implementation of EU directives in selected countries; instead they have tended to be descriptive and affirmative (Bohne and Dietze 2004; Bohne 2006: 16). More recently, IMPEL has been confronted with demands by the European Parliament and the Commission that it should 'function more like a police force, discover and report infringements', yet the participating experts reject this role as inappropriate for the network (Martens 2006: 135). Similarly, peer review processes in transgovernmental networks usually suffer from the fact that peers are at the same time controllers and under control. As a result, the IMPEL review of national inspection activities does not contain a single critical observation (Bohne 2006: 570).

As regards the development of new EU policies, an IMPEL report (2003) has suggested that the implementation network become generally involved in examining EU legislative drafts and in commenting from the point of view of enforceability and practicality. However, transgovernmental networks like IMPEL may be reluctant to propose reforms that encounter political opposition in member states even though their realization would support the objectives of the EU policy.

Output of Transnational NGO Networks

The assumption seems plausible that transnational (NGO) networks funded by the Commission are more loyal to the objectives of an EU policy than

transgovernmental networks. This is because such networks are typically built around a set of shared values. The development of common patterns of understanding (see Bennett 1991) is therefore not as difficult as for transgovernmental networks. And the Commission has the powers to fund only those NGO ‘advocacy’ networks which support the objectives of EU policies (pro-environment, anti-discrimination etc.). General support does not exclude that transnational NGO networks which receive funding from the Commission may advocate more ambitious EU policies based on the conviction that the ones that are in place do not go far enough.

Regarding the promotion of consistent application of national law implementing EU policies, transnational NGO networks are limited in their achievements, since they cannot issue guidance for sub-national authorities or ombudspersons. In this regard, transgovernmental networks have an advantage.

If an EU policy creates new rights for citizens and/or groups, transnational NGOs can be highly motivated to mobilize these citizens and groups to avail themselves of the new right. By contrast, authorities in transgovernmental networks are not necessarily highly motivated to inform citizens of new rights the use of which may create costs for governmental or economic actors. Transnational NGO networks are also likely to have fewer inhibitions than transgovernmental networks to act as critical implementation watchdogs and to make complaints to the Commission regarding non-compliance of member states – provided that they can obtain enough information. Participation of NGOs in peer review and policy review processes is also likely to be guided by a more critical attitude than those of transgovernmental actors. Transnational NGO networks are not constrained in the same way as transgovernmental networks: they can even make proposals for reforms that encounter political opposition in member states. Table 2 summarizes the strength and weaknesses regarding the expected output of transgovernmental and transnational NGO networks.

Output	Transgovernmental Network	Transnational NGO Network
Mobilization of Citizens/NGOs	X	XX
Standards for Consistent Application across (sub-) national arenas	X	(-)
Reporting of Non-Compliant Implementation	(-)	XX
Carrying out critical Peer Reviews	X	XX
Quality Input into Policy Review Processes	X	XX

XX= strong output; X= limited output; (-) lack of output

Table 2 Expected Output of Transgovernmental versus Transnational Networks

Impact of Trans-National NGO Networks

A high degree of loyalty and policy support by a transnational NGO network does not automatically translate into strong policy impact since its influence may be blocked at the EU level. Correspondents of an NGO network who file complaints with the Commission face the same institutional constraints at the EU level as ‘normal’ complainants do. Infringement procedures have been described as ‘slow, secretive, inflexible, complex and dominated by states and the Commission’ (Jordan 1999: 79). While complainants may be able to mobilize the Commission to open infringement procedures, they are normally excluded from the following negotiations between member states and the Commission (see Williams 2002). The Commission used to have complete discretion over if and when to proceed with a case (Kelemen 2000: 156).

Moreover, transnational NGO networks cannot easily impact on the development and review of EU policies. The Commission may consult a transnational NGO network when it prepares proposals and the European Parliament may also use its input. However, transnational NGO networks are excluded from negotiations with member states. Typically, interest groups cannot

influence the ‘complex process of bargaining and the complicated trade-offs behind the closed door of a Council meeting’ (Grande 1996: 331).

Alternatively, transnational NGO networks may target institutions other than the EU which offer better participation opportunities. In scholarly literature, this strategy has been referred to as ‘shopping’. ‘Transnational advocacy networks’ which provide a central role to international and domestic non-governmental organizations have been characterized as talented shoppers (Keck and Sikkink 1999: 95; on interest groups more generally, Richardson 2000). The core idea of shopping is that strategically minded governmental or non-governmental actors which seek to promote particular policy goals will target the ‘venue’, ‘forum’ or ‘arena’ that offers the most advantageous rules of access and participation, procedures governing decision-making, constituencies etc (see Pralle 2004: 237; on the original concept developed for United States domestic policies, see Baumgartner and Jones 1993). An impact on a more restrictive arena is possible, if skilful actors are able to set a precedent within one arena and then use that progress to advance the agenda in the more restrictive arena (see Kellow and Zito 2002: 47).

THE ROLE OF STICHTING NATUUR EN MILIEU NETWORK IN THE IMPLEMENTATION OF THE 1990 AIE DIRECTIVE

The initiative for the adoption of a specific environmental information right at the Community level did not originate with any of the member states, but with the European Parliament and the Commission (Hallo 1996b). Despite the fact that only three of the then 12 member states – Denmark, France and the Netherlands - had freedom of information laws in place, the EU adopted a Directive on Access to Information on the Environment in 1990, which granted every citizen the right to request environmental information from authorities with environmental responsibilities, subject to some exemptions. This right was supposed to have an impact on policy implementation of (EU) environmental policy more generally by strengthening accountability and control mechanisms (see Kimber 2000).

Implementation of the 1990 AIE Directive was badly in need of transnational NGO network support. First, it created a new right for citizens and NGOs the implementation of which required information and mobilization.

Second, given the fragmentation of environmental responsibilities among different intergovernmental levels and specialized organizations (see Demmke 1997) the implementation of the AIE Directive created a myriad of fragmented arenas in which individuals make requests and authorities make isolated decisions. To add to this, the right of access was defined in vague and ambiguous terms and limited by a number of broad and ill-defined exemptions (see Hallo 1996b; Kimber 2000) that could be subjected to diverging interpretations by different authorities. The fact that the 1990 AIE Directive required member states to offer administrative or judicial review of negative administrative decisions may not suffice as a 'coherence mechanism'. Even if judicial review is available to NGOs, the administration may refrain from changing its general practice following court decisions on specific cases (see Hertogh 1998).

The environmental group Stichting Natuur en Milieu (SNM) is one of the larger Dutch environmental organizations, receiving funding from the Dutch government. In 1992 the organization decided to build up a network of experts across Europe to promote the implementation of the AIE Directive. The idea underlying the network was to ensure that there was one person in each country who a) collected information about the status of legislation, b) taught colleagues from other NGOs about the existence of this directive and how they could use it, and c) who could, if necessary, make complaints to the Commission or take legal action at member state level (Interview Stichting Natuur en Milieu, 2000).

The network covered the then 15 EU member states, the EFTA countries Norway and Switzerland and six Central and Eastern European accession states (Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia). Participating experts have been described as 'mostly lawyers and generally working in or closely with environmental organizations' (Stichting Natuur en Milieu 1999). The Commission facilitated the work by providing the main source of funding for events and individual network correspondents (Interview Stichting Natuur en Milieu, 2000).

Output of the SNM Network

The SNM network undertook a number of activities to make citizens, administration and economic actors more aware of their new rights and

obligations, to inform the Commission of non-compliant implementation and to provide input into the review process.

Member states did not provide a level playing field for the implementation of the 1990 AIE Directive given the diverging traditions and the differences regarding political support of the new directive (see Hallo 1996b; Kimber 2000). Although user's guides were published in all EU member countries represented in the SNM network (see Hallo 1996a), the nature and level of other mobilization initiatives taken by SNM national correspondents varied greatly. Influential factors were the potential of the AIE Directive to create a new right relative to national tradition and the correspondent's institutional affiliation. The Irish and Spanish correspondents, who were members of environmental issue groups, campaigned vigorously for the implementation of the AIE Directive, at both the policy-making and the administrative level (see Wates 1996a; Sanchis Moreno 1996). By contrast, the German correspondents, who were members of a scientific institute, tested the application of the AIE Directive in a systematic way (see Gebers 1996). Finally, the French correspondent, who had a legal-academic background, largely confined his activities to analysing French law and jurisdiction (see Pelisson and Prieur 1996).

SNM network correspondents have filed numerous complaints with the Commission on the deficient transposition and application of the AIE Directive and/or encouraged others to stage complaints (see country reports by national correspondents in Hallo (ed.) 1996). By 1996, the implementation of the AIE Directive had generated the third largest number of complaints to the European Commission relating to a single piece of environmental legislation (see evidence by Ralph Hallo in House of Lords Select Committee on the European Communities 1996).

The SNM network has managed to provide valuable information to the EU Commission, thereby making an input into the review process of the 1990 AIE Directive. The coordinator of the network published a collection of detailed country reports by the national correspondents (Hallo (ed.) 1996) and an overview report commissioned by the European Environment Agency (1997). SNM organized a series of workshops, which acted as a forum for national network

correspondents to exchange their experiences with the implementation of the AIE Directive (Interview Stichting Natuur en Milieu 2000). Following a workshop in 1998, it published a set of detailed recommendations for the review of the 1990 AIE Directive (see Annex CEC 2000a).

Another influence on the review of the directive was through the Convention on 'Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters' (commonly referred to as Aarhus Convention). By establishing a regime of access to environmental information that was more generous than the 1990 AIE Directive (together with additional rules on participation and access to justice), the Aarhus Convention was setting a precedent for its review (see Hallo 1996c; Wates 1996b). Since the Aarhus Convention concluded under the aegis of the United Nations/Economic Commission of Europe (hereafter referred to as UN/ECE) was signed both by the European Community and all its member states, it had to be translated into Community law.

In the run-up to the 1995 Ministerial Conference in Sofia that endorsed the UN/ECE guidelines on access to environmental information and participation, a broad NGO coalition (including NGOs active in the SNM network) supported by the European Parliament, the European Green Parties and national politicians campaigned for the development of a UN/ECE convention on the same issues. It is estimated that the broad support mobilized by NGOs 'helped to persuade some of the more progressive governments, notably Denmark' to support the issue in the ECE (Wates 2005: 9).

The reaching of agreement on the negotiation of a UN/ECE convention can be interpreted as a result of an arena shopping process by NGOs involved in the SNM network. While negotiations of the Aarhus Convention proved to be a forum for the very same arguments that took place around the review and possible revision of the 1990 AIE Directive (see Wates 1996b), institutional conditions in the UN/ECE arena were expected to be more favorable for NGOs than in the EU review arena. A feature typical for the negotiation of international environmental agreements is that NGOs are able to participate in negotiations and to make an input (see Yamin 2001). NGOs in the SNM network therefore expected that

negotiations of a UN/ECE convention would be subject to ‘full public scrutiny’, and this could not be expected from the review process of the 1990 AIE Directive at the EU level (see Wates 1996b: 435).

Jeremy Wates, the former Irish correspondent for the SNM network, then coordinated NGO input into the UN/ECE negotiations (see Hallo (ed.) 1996: 450). Another NGO delegate in the negotiations of the Aarhus Convention had worked previously as correspondent for the SNM network. The NGO agenda was ‘primarily driven by challenges that had previously been unsuccessfully promoted “in Brussels” (Jendroška 2005: 14).

Impact of the SNM Network

The question is whether the activities of the SNM network were successful regarding the mobilization of citizens and NGOs, the promotion of consistent transposition and application, the opening of infringement procedures and the influencing of the review process.

It is unsurprising that mobilization at the national level differs. Interest in the implementation of the AIE Directive was increased significantly among environmental organizations in Ireland and Spain where campaigns had been organized. In other member states it remained at a modest level, in particular if the state already had general freedom of information laws in place (see European Environment Agency 1997). As was to be expected, it was impossible for national NGO correspondents to make implementation across fragmented (sub-) national arenas more coherent. The UK correspondent noticed widely differing rates charged by local authorities, and the failure of the government to prescribe practical arrangements (Roderick 1996). The Belgian correspondent pointed to ‘countless interpretation problems’ for which no official guidelines had been issued (De Baere 1996: 56). Though NGOs could expose problems and differences in interpretation, they had to rely on national governmental institutions such as ministries to provide for clarification and for greater coherence.

Between 1992 and 2000, the Commission opened infringement procedures against eleven out of fifteen member states, all of which amended their transposing legislation or adopted new legislation in response (see discussions in

the Annual Reports on Monitoring the Application of Community Law first CEC 1996: 82 f; last CEC 2001a: 50 f.).² In particular, infringement procedures against Germany and Spain seem to have been influenced by complaints (see Hallo 1996b). However, correspondents of the SNM network faced major difficulties when they sought to influence the processing of complaints by the Commission. The coordinator of the SNM network criticized Commission rules for not providing access to information on the further processing of complaints (see evidence by Ralph Hallo in House of Lords Select Committee on the European Communities 1996: 148). Moreover, the Commission decided that it would largely abstain from investigating individual application cases unless questions of principle were involved (see Wates 1996a and references in the Annual Reports on Monitoring the Application of Community Law, first CEC 1996: 82; last CEC 2003: 36). In other words, most complaints concerning deficient application were not processed by the Commission. Other complaints were treated with significant delays or the Commission arrived at opposite conclusions concerning non-compliance of national implementation measures (see the account by the Belgian correspondent De Baere 1996). There is evidence of cases in which the Commission after negotiation with member states required fewer amendments than before (see Bugdahn 2007).

The SNM network has been more influential regarding the review process of the 1990 AIE Directive through its input into the Aarhus Convention than through its direct input into the review process. Since membership of the UN/ECE included countries from West, Central and Eastern Europe, together with Russia and the Newly Independent States, more than 40 governments negotiated the convention between June 1996 and March 1998 (Jendroška 2005). Environmental NGOs were extensively involved in the drafting process of the Aarhus Convention, being allowed to participate in the plenary sessions of working groups and in virtually every drafting committee (Morgera 2005). While the consensus of NGOs was not required for the convention to be adopted, NGOs were invited to intervene ‘on a basis more or less equal to that on which government delegations participated’. As a result, they had considerable ‘input to and influence upon the resulting text’ (Wates 2005: 10). The Commission also

recognized that ‘NGOs concerned with the environment participated actively and constructively in the negotiations on an equal footing with national delegations’ (CEC 2000a: 8).

As a representative of the Stichting Natuur en Milieu argued:

‘The Aarhus Convention also has to be considered in all this. We and the people I work with in the network were also very actively involved in the negotiations of the Aarhus Convention. And many of the battles that we would have to fight for the directive were fought in Geneva in terms of the negotiations. We convinced the governments to include a lot of the things that we felt were necessary to change in the Aarhus text already. And these we’re just taking up in the proposal for a new directive, because the Community and all its member states signed Aarhus’ (Interview Stichting Natuur en Milieu, 2000).

Direct input by the SNM network into the review process of the AIE Directive was received favorably by the Commission. An EU official charged with the review process stressed that implementation reports submitted by member states provided an insufficient basis for a review of the AIE Directive (Kremlis 1998). Furthermore, the Commission officially recognized the importance of 1998 SNM recommendations for the review of the 1990 AIE Directive by annexing them together with summaries of member state implementation reports in its own Commission report (see CEC 2000a).

However, attempts to create a new 2003 AIE Directive that went significantly beyond the Aarhus Convention proved to be largely unsuccessful. The former SNM network coordinator provided additional input into the review process via the European Environmental Bureau (2000) and the Commission took up several suggestions going beyond the Aarhus Convention in its proposal for a new AIE Directive (see CEC 2000b). While the 2003 AIE Directive faithfully implements the information provisions of the Aarhus Convention, most of the proposals going beyond it met against stiff resistance by members states and were therefore not retained in the final text (see Lee and Abbott 2003; Krämer 2005).

SUMMARY AND CONCLUSIONS

This paper has analyzed and evaluated how cooperation of the European Commission with a transnational NGO network has impacted on the implementation and review of an EU policy. In a first step, cooperative networks have been distinguished from policy networks. Second, tasks that cooperative networks can perform have been identified. Third, ability and willingness of transgovernmental and of transnational NGO networks to perform these tasks are juxtaposed. NGOs can be particularly helpful if policies have to be implemented that depend to a large extent on the mobilization of citizens and other NGOs. Moreover, transnational NGO networks are more willing than transgovernmental networks to report cases of non-compliance and to make candid suggestions for strengthening policies. Yet, the policy impact of transnational NGO networks at the EU level may be blocked.

At the same time, transnational NGO networks have some limitations. The carrying out of tasks depends vitally on whether NGO networks can obtain enough information on implementation and on whether they have the technical expertise to deal with it. Moreover, transnational NGO networks cannot provide guidance for authorities at the sub-national level.

Output of the SNM network has been analyzed with regard to the activities undertaken and network impact on the implementation, enforcement and review of the 1990 AIE Directive has been considered separately. While network correspondents in some member states mobilized users in sub-national arenas, others that were not affiliated with campaigning NGOs remained more passive. As was to be expected, national NGO correspondents could do little to make implementation across fragmented (sub-) national arenas more coherent.

Institutional rules at the EU level have limited the impact of the transnational NGO networks on the enforcement and review of EU policy. The participating NGOs were very active in filing complaints, yet the Commission did not use the full amount of information. Furthermore, participants of the transnational NGO network were excluded from negotiations between member states and the Commission on the correct mode of implementing a directive. The EU review arena had similar limitations, since the SNM network was barred from

influencing the substance of the review in the intergovernmental phase of decision-making. Realizing these constraints, SNM network participants were prepared to campaign successfully for an arena change.

Institutional rules in the 'UN/ECE negotiations arena' differed significantly from rules in the EU review arena. Former participants of an NGO network were able to negotiate at UN/ECE on almost equal terms with member states. Thereby transnational non-governmental actors could set a substantive precedent for the EU review arena, in which conditions for the SNM network were less favorable, as the adoption process of the 2003 AIE Directive demonstrates.

The case study of the SNM network demonstrate that impact of an NGO network on enforcement and policy review at the EU level may be limited despite Commission funding and strong network output. This raises the question how transnational NGO networks funded by the Commission could enhance their impact on enforcement and review. Regarding the enforcement of Community law, the impact of complaints by correspondents of a trans-national NGO network could be strengthened if an arrangement under the Aarhus Convention was transferred to the EU: under the convention decisions on complaints are taken by a compliance committee composed by experts that act in a personal capacity. Some of the experts are nominated by NGOs who also have the opportunity to participate as observers in meetings of the committee (see Koester 2005; Morgera 2005).

However, the prospects for implementing such a reform at the EU level currently seem bleak. Two communications adopted by the Commission in 2002 are confined to specifying minimum standards for the handling of complaints. The complainant is now informed in writing on each step of any possible infringement procedure (see CEC 2002a). Moreover, the Commission now aims at determining the question of whether action is to be taken in response to a complaint on the basis of priority criteria (CEC 2002c: 13). However, the basic set-up of the infringements procedure has remained unchanged: it continues to be a negotiating process between member states and the Commission.

Regarding policy reviews, it also seems doubtful whether the impact of transnational NGO networks could be further enhanced. Transnational NGO networks are already consulted by the Commission regarding future policy development. Enabling transnational NGO networks to negotiate the review of directives together with representatives of EU member states does not seem to be a viable option at the EU level.

One way to enhance network impact may be to have tasks carried out by joint transnational networks of governmental and non-governmental actors rather than by separated transgovernmental and transnational NGO networks. For instance, the delegation of peer reviews to joint networks may contribute to a more critical evaluation (see Bohne 2006: 570). In this regard, more research should be carried out into the functioning of currently operating joint networks such as forums, which can provide opportunities for actors to articulate interests and to build consensus at the EU level (see Metcalfe 2001).

A more fundamental question is whether the strengthening of network impact on EU policies is to be welcomed from a normative standpoint. Two issues may be considered regarding legitimacy: the cooperation of international organizations a) with NGOs generally and b) with semi-formalized transgovernmental and transnational NGO networks. Views on whether the delegation of tasks to NGOs increases or decreases the legitimacy of international organizations differ widely (for a discussion, see Börzel and Risse 2005). The increasing reliance of the Commission on transgovernmental and transnational NGO networks may be criticized as 'informalization', a typical feature of which are procedures that are 'less rule- or law-based and mostly oriented towards outcomes on an ad hoc basis.' Traditional procedures of voting, mandating and representation under the principle of political equality are lacking. Hence, one of the typical consequences of informalization is that democratic control by the Parliament and accountability to the public is weakened (Greven 2005: 267 f.).

Cooperation of the Commission with transgovernmental/transnational NGO or joint networks is thus open to criticism. However, even if one subscribes to the argumentation advanced by Greven, it may be objected that the operation and funding of cooperative (semi-)formalized networks represents a 'lesser evil'

compared to the operation of what can be considered as completely informal ‘messy’ public-private policy networks (on the lack of democratic accountability of ‘policy networks, see Börzel 1998: 266). Cooperative networks are at least readily identifiable and hence more transparent (see Peterson and Bomberg 1999: 269 f.). Transparency of their operation can be further enhanced by publicizing details on the composition of the network and minutes of meetings. Moreover, cooperative networks may be made accountable to the European Parliament (for the strengthened role of the parliament regarding the control of committees, see Hofmann and Türk 2006: 83).

At the same time, policy issue networks can provide more ‘safety in numbers’: by providing opportunities for input for a multitude of actors, the powers of any single actor or type of actors to determine outcomes are limited (see Rosenau 2004: 46). Hence, the use of cooperative networks instead of loose policy ‘issue networks’ may render access to EU policy-making more exclusive (see Peterson and Bomberg 1999: 269 f.).

An in-depth investigation of these normative issues is beyond the scope of this paper. Suffice to say that any reforms which aim at increasing the impact of (transgovernmental, transnational NGO and/or joint) networks should pay due attention to issues of accountability and transparency.

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Endnotes

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- ¹ The operation of IMPEL is referred to in official EU documents such as the Sixth Environment Action Programme (European Parliament and Council 2002).
 - ² The concerned EU-15 member states were Austria, Belgium, France, Germany, Greece, Ireland, Italy, the Netherlands, the United Kingdom, Portugal and Spain.

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