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Networks to Enforce European Law: The Case of the Consumer Protection Cooperation Network

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Abstract Central to this paper is the aim to discuss the effectiveness of the Consumer Protection Cooperation Network (also known as "CPC Network") for consumer protection in cross-border disputes in the European Union (EU). In doing so, this paper deals with the literature about networks established by grouping the Commission and national authorities to enforce European Law. The examples of the European Competition Network and the CPC Network are interesting because they raise questions with regard to the effectiveness and the accountability of emerging network-based law enforcement. The development of the CPC Network may have relevant implications for other areas of EU law and policy, including the question whether network-based governance could be transposed in other fields of EU Law.

Keywords Networks · European Law · Enforcement networks · Consumer Protection Cooperation Network · Accountability

European Networks

The concept "network" appears in three distinct ways in the social sciences.[1] It can refer to a mathematical tool for representing and analysing social relations ("network analysis"). Moreover, the word "network" can refer to any group of actors clustered in some pattern of regular interaction, but *not* consciously organized that the author indicates as "associative clusters" (Mueller 2009). Finally, it can also be the name for an organizational form of a

[1]The term network is ubiquitous: it indicates any set of interconnected nodes. The nodes can be individuals, groups, organizations, or states (as well as cells or Internet users); the connections or links can consist of personal friendships, trade flows, or valued resources.

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certain type that actors construct (namely "network organizations"). Two clear dividing lines distinguish de facto clusters and network organizations: Network organizations have a well-defined point of access and must explicitly negotiate terms of affiliation and criteria for who is permitted and excluded. De facto associative networks lack these features.[2]

Originally, the network organization literature was concerned with the organization of economic production, but the concept quickly made its way into political science in the 1990s under the theory of "policy networks" (Boerzel 1998). The network governance school follows that experience, unless its members perceive themselves as innovators with respect to the past.[3] Political scientists have coined a set of expression to define the emergence of networks in the global arena: global public policy networks (Benner et al. 2000; Dobner 2009), transgovernmental networks (Slaughter 2004), and networked governance (Kahler 2008; Sørenson and Torfing 2007). For example, the case of Competition Law has been expressly indicated by an author to support the basic premises of his well-known theory of "transgovernmentalism" (Raustiala 2002; Before, 1–92, at 8). The author argues that the rising economic interdependence (in the 1980s and 1990s) has led to an internationalization of many competition problems: As a result, cooperation and convergence (as well as conflict) among regulators have been increased and Competition Law has expanded itself to new jurisdictions.

Evidently, the argument for "network governance" is especially applicable to transnational governance because of the weakness of simple command hierarchies or clear principal–agent relations among the actors at that level. American scholars have developed a growing literature on international links among lower-level government agencies—so-called transgovernmental networks (TGNs) (Slaughter 2004b; see also: Slaughter 1997; Raustiala 2002). It is commonly said that three core factors—technological innovation, the expansion of domestic regulation, and the rise of globalization—are promoting the development of networks in contemporary society; these factors have surprisingly long histories, but each factor appears to be intensifying in the twenty-first century, creating greater incentives for regulators to cooperate with their peers (Raustiala 2002). In this view, the world is run in large part by networks of elites who know each other, but the individuals who make up these networks are at least formally accountable to the people through elected governments and representative institutions at the domestic level: They are regulators, bureaucrats, diplomats, and judges with explicit mandates under public law. Moreover, through greater transparency about the way that these elites operate at the global level, coupled with improved accountability mechanisms, governance networks can be made more democratic in the future. Interestingly, some scholars are exploring by adopting an empirical approach the conditions under which governments do and do not adopt the network form of organization to establish international regimes around security issues (Eilstrup-Sangiovanni 2009).

Other scholars have promoted "global public policy networks" (GPPNs) as a response to contemporary transnational governance problems (Reinicke 1997). GPPNs were understood to be arranged organizations that bring stakeholders from government, business, and civil

[2] Rhodes (1997). According to the political scientist Rhodes, the concept of governance is currently used in contemporary social sciences with at least six different meanings: the minimal state, corporate governance, new public management, good governance, social-cybernetic systems, and self-organized networks. All of these definitions refer to a more cooperative way of governing in which state and non-state institutions, public and private actors, cooperate in the formulation and making of public policy.

[3] Supra at 3. The relationship of "network governance" and "governance networks" concepts, with the more traditional notion of "policy networks" studied by Boerzel, is ambiguous. See Blanco et al. (2009), discussing the relationship between the old policy network and the new governance networks.

society together in order to capitalize on the superior ability of the network form to "manage knowledge" and leverage dispersed forms of expertise. Here, the concept of networked governance overlaps directly with the concept of "multi-stakeholder" governance. In such a context, the term "policy networks" no longer denotes an analytical template for investigating de facto configurations of interest groups and policy makers in a given sector. Instead, it refers to a specific organizational form—global trisectoral networks—that are promoted as normative models for the design of global governance institutions.

Closely related to the American view of TGNs (Bignami 2005; Eberlein and Newman 2008b), but more normative in approach, is the European view of governance networks.[4] Some authors argue that the European Union (EU) is most adequately conceptualized as a form of governance *by* networks, in which the authoritative allocation of values is negotiated between state and societal actors (Kohler-Koch 1996). Others contend that the EU is a system of governance *in* networks, dominated by governmental actors (Peterson and Bomberg 1999).

Doubtless, the rise of networks in EU Law has been possible by "process of double delegation" (Coen and Thatcher 2008; for the origins, see also Dehousse 1997, pp. 246–255). The process consists of two parallel delegations of powers: the first by national governments *to supranational bodies*, such as the European Union, and the second, *to domestic independent regulatory agencies*. At the supranational level, European states have given the EU progressively greater powers to extend its regulatory activities (Majone 1996; Majone 1997). Using these powers, EU sectoral regulatory regimes have grown in major markets previously largely immune from EU action, such as telecommunications, financial services, electricity, gas, railways, postal services, and food safety.[5] While at the national level, governments have created new domestic agencies, both sectoral bodies and general authorities, and/or have strengthened existing national agencies, they are legally and organizationally separated from government departments and suppliers, are headed by appointed members who cannot be easily dismissed before the end of their terms, and have their own staff, budgets, and internal organizational rules.

However, as policy makers at these two levels of regulatory governance attempted to harmonize European single market issues in the late 1990s, pressure grew for a further round of delegations of coordinatory functions to "European regulatory networks" (ERNs) (Dehousse 1997, pp. 246–261). Since greater centralization of regulation was politically inconceivable as Member States were reluctant to transfer more powers to the Commission or to the EC level in general, networks of national authorities have been established to meet the needs of greater uniformity.[6] After such institutions were established at the national level, they were brought together in networks to foster their cooperation in the interest of an increasingly consistent implementation of EU Law.[7] Transgovernmental networks appeared

[4] A special issue of the *Journal of Public Policy* has been entirely dedicated to the topic "Networks in European Union Governance." See the *Journal of Public Policy*, 2009, no. 29 with the contributions of Kaiser, Börzel and Heard-Lauréote, Henning, Christopoulos and Lucia Quaglia and Dakowska.

[5] EU regimes involve detailed EU regulation, notably: liberalization through ending the right of member states to maintain special and exclusive rights for certain suppliers and re-regulation, for example, EU rules governing competition, ranging over a vast array of matters, such as interconnection of networks, access to infrastructure, and universal service.

[6] For a general account on law and new approaches to governance in the European Union (EU), see 13 Colum. J. Eur. L. 513 et seq. (2007). For an evolutionary analysis of European regulation, compare Thatcher and Coen (2008).

[7] The establishment of networks was motivated by the hope for greater acceptance of regulation by stakeholders in economic sectors in which policy consistency and credibility were understood as keys to effective regulation.

to the Commission to be the second-best solution. Thus, networks are a result of incomplete vertical delegation of powers by the Member States to the European Union.

Political scientists have clearly identified, described, and classified such networks (Coen and Thatcher 2008).[8] The descriptive achievement has been impressive, but the development of ERNs is still debated among scholars. According to their critics, the ERNs have been given a range of tasks and duties, without granting them adequate financial and human resources and powers (Coen and Thatcher 2008).[9] Grounding on a set of examples, some authors conclude that "in institutional terms the spread of network governance has in fact been limited" (Coen and Thatcher 2008).

In an institutional perspective, the members of EU networks can be private or public bodies. Networks are most apparent among regulatory officials, or private bodies delegated to this function, though they can also be found among judges and legislators. For example, the ECC-Net[10] includes both public and private actors (i.e., consumer associations) and consists of a set of European Consumer Centres, which work together to provide consumers with information on cross-border shopping and to assist them in the resolution of cross-border complaints and disputes.[11]

In contemporary society, judicial networks have been studied primarily by political scientists who elaborated the much-discussed theory of "judicial globalization" (Slaughter 1999).[12] With respect to the European experience the EU court and national courts can be considered as part of a unique enforcement network of EU Law.[13] European judges are also involved in an increasing series of initiatives, such as the European Judicial Network (EJN),[14] aiming to establish a closer cooperation, to train national judges (e.g., The European Judicial Training Network), and to exchange information among European Courts.

Networks can also be distinguished according with their functions, while recognizing that some of them may have more than one role (the "functional perspective"). In this respect, we follow Slaughter's distinction according to which it is possible to find: (a) *information networks*, aimed at the exchange of information between governmental agencies or the like, on matters as diverse as security, the environment, policing, health; (b) *harmonization networks*, designed to foster closer uniformity in regulatory standards; (c) *enforcement networks*, designed to render enforcement more efficacious across international boundaries (see the next paragraph) (Slaughter 2004c).

In the EU, there are a number of such horizontal support networks focusing on information exchange. "SOLVIT," for instance, consisting of an on-line problem-solving

[8] The authors set out a table of the main European regulatory networks.

[9] The authors discuss the logic of double delegation in European regulation in the light of the principal–agent theories.

[10] The ECC-Net was launched in 2005 (result of a merger of two previous networks—Euroguichets and Clearing Houses). For more details, see http://ec.europa.eu/consumers/ecc/index_en.htm

[11] The ECC-Net provides information on cross-border shopping and ensures that consumers are aware of their rights and gives advice and support to any individual with a problem related to a cross-border purchase. Alternatively, the ECC-Net will help the consumer reach an out-of-court agreement through the appropriate mechanism (a neutral third party). In some cases, the only solution may be taking the case to court.

[12] For a critical approach to Slaughter's idea, see: Meierhenrich (2009).

[13] P. Craig, below at 36–37. An interesting example comes from the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL). See at this regard, Martens (2005).

[14] The European Judicial Network (EJN) is a network of national contact points for the facilitation of judicial cooperation in criminal matters. The network was created by the Joint Action 98/428 JHA of 29 June 1998 in order to fulfil recommendation no. 21 of the Action Plan to Combat Organized Crime adopted by the Council on 28 April 1997. The EJN was the first practical structured mechanism of judicial cooperation to become truly operational.

network in which Member States work together to solve without legal proceedings problems caused by the misapplication of internal market law by public authorities. The Commission coordinates it, provides the database facilities and, when needed, helps to expedite resolution of problems, and it also passes formal complaints it receives on to "SOLVIT" if there is a good chance that the problem can be solved without legal action.[15]

Moreover, European standards organizations represent the most interesting example of the use of networks of various private actors working together to harmonize EU Law.[16] The size of the harmonization task is growing under the New Legislative Framework for products (NLF) adopted in 2008.[17] This broad package of measures which has the objective of removing the remaining obstacles to free circulation of products represents a major boost for trade in goods between EU Member States: It will not be an overnight change, but something gradual, unless a certain consequence of the NLF is that more and more European product legislation will rely on supporting European standards to provide the easiest means of achieving compliance with the law and, thus, it will place new demands on the European standardization system. This rapidly expanding scope has led to a new scholarly interest in standard-setting practices: legal scholars have started to devote their attention to this phenomenon only recently in the shadow of the private governance theory (Schepel 2005). There have been concerns as to the standardization process, relating to matters such as the efficiency of the standardization bodies, and the representation of consumer interests. It is however clear from a political perspective that the EU continues to regard standardization as central to the attainment of the single market and indeed for other EU policies.[18]

Networks to Enforce European Law

There is a growing awareness of the importance of the successful enforcement of European rules.[19] This obvious observation focuses our attention on the notion of effectiveness that is central for EU integration (Arnull 2011).[20]

[15] When a case is submitted to SOLVIT, the local SOLVIT Centre, known as the "Home" SOLVIT Centre, checks the application to ensure that it concerns misapplication of internal market rules and that all necessary information has been made available. It then enters the case into an on-line database, and it is forwarded automatically to the SOLVIT Centre in the Member State where the problem has occurred, known as the "Lead" SOLVIT Centre, which confirms within a week whether or not it will take the case. This depends on whether it considers that the case is well founded and can be resolved pragmatically. The two SOLVIT Centres work together to resolve the problem and the Home SOLVIT Centre keeps the complainant informed of progress.

[16] The principal bodies responsible for standardization are the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC), and the European Telecommunications Standards Institute (ETSI). These bodies are private organizations, with CEN and CENELEC being non-profit technical organizations established under Belgian law in 1961 and 1973, respectively, and ETSI being a non-profit organization set up under French law in 1986. Cafaggi (2008).

[17] The modernisation of the New Approach for marketing of products was adopted in Council on June 23, 2008 and finally published in the *Official Journal* on August 13, 2008.

[18] There have been numerous initiatives designed to increase the effectiveness of these networks, including: expediting the standardization process; improving the effective participation of all interested parties, which is recognized to be inadequate at EU level and within Member States; addressing the financing of the standardization bodies, and dealing with the relationship between EU and global standards.

[19] European Commission (2007), 1.

[20] *Van Gend en Loos v Nederlandse Administratie der Belastingen* (Case 26/62) [1963] ECR 1; *Francovich, Bonifaci and Other v Italy* (Cases C-6 & 9/90) [1991] ECR I-5357.

One specific instrument to enforce EU Law is the establishment of *networked administrative structures with national regulatory agencies* aiming to harmonize and improve implementation at the national level. This approach has been developed into a coherent theory of governance ("network-based governance in EC Law") (de Visser 2009, pp. 3–37).

"Enforcement networks" are established by EU legislative acts (usually regulations or decisions) which define their tasks, regulate their functioning, and provide for the involvement of the European level, either by making the Commission itself or a specialized European agency part of the network. The establishment of the national entities forming the network is the original responsibility of the Member States, although there might be a legal obligation stemming from EU Law to that effect (e.g., the Consumer Protection Cooperation Regulation obliges the Member States to set up enforcement authorities with minimum powers). In case the networks of national authorities were formed in network industries (telecommunications, energy), or in areas like securities, banking, the national authorities are regulatory agencies in the true sense.[21]

Most importantly, EU enforcement networks are composed of actors with domestic regulatory authority: Often empowered to reprimand non-compliance, levy fines, or bar market access, network members enter negotiations or enforcement activities with real regulatory power. They can leverage the varying degree of delegated authority across participating network members to augment their own domestic authority. Regulators that identify a problem in their home jurisdiction, but lack regulatory powers, can raise the issue in the network to motivate enforcement by those with the requisite authority (de Visser 2009, p. 41).

Two types of networks can basically be discerned. The first type includes networks consisting of *national entities which manage Community programmes*. In this case, the Commission outsourced administrative tasks to national entities according to Article 54 (2) (c) Regulation 1605/2002.[22] This type is a form of externalization where the Commission delegates implementing responsibilities to national agencies which serve as partners for implementing certain Community policies. The national entities perform their tasks on behalf of the Commission since they are integrated in the centralized, but indirect Community budget implementation.[23]

The second type of network is *national authorities responsible for the application of EU Law in certain areas of EU politics*, like free movement of services, migration, or competition and consumer policies (our case studies in this paper). EU legal acts create a network composed of relevant national authorities established under national law. The aim of the network is to create an *institutionalized platform for exchange of information, ideas, and concepts* between the respective national authorities of all the Member States and to

[21] For example, the European Competition Network, embraces all national competition authorities that are genuinely obliged like the Commission—to implement and apply EU Competition Law since the mode of applying it was decentralized by Regulation No. 1/2003 by establishing parallel executive competences of the Commission and the national competition authorities.

[22] Council Regulation 1605/2002 on the financial regulation applicable to the general budget of the European Communities, 2002 O.J. (L 248) 1 (as amended). Communication from the Commission, Management of Community Programmes by Networks of National Agencies, COM (2001) 648 final.

[23] To this first type of networks, one can also count the possibility to delegate parts of the implementation of the EU budget to national authorities as provided in Articles 53 and followings of the Regulation 1605/2002. Although the implementation task in this case is delegated to the Member States, the Commission assumes final responsibility for sound budget implementation.

ease and foster their *mutual cooperation*. In this case, the national authorities do not act on behalf of the Commission because they exercise administrative functions within a given Member State, as part of the Member State's obligation and competence to implement EU Law.

The national authorities are institutions of decentralized application of EU Law: They do not act as agents for the Commission, but fulfil their genuine administrative responsibilities in their own capacity as executive institutions under national law. They are, however, bound together in a network so that the uniform and consistent application of EU Law in a certain policy area is ensured everywhere in the EU by their cooperation and exchange.

The establishment of a Common Market not only requires harmonized or even unified legal frameworks but also a coherent implementation and application of those common rules in each and every Member State. Furthermore, since the Commission usually forms part of the network, the exchange and cooperation in the network enhances the Commission's capacity to supervise and monitor the national authorities' implementation and application of EC law. In the EU, the Commission often remains the principal institutional catalyst for change, by keeping a watchful eye on the way a particular network operates, and will not hesitate to strengthen its powers where it feels that this is needed for efficacious enforcement of EU Law.[24]

With respect to their functions, such bodies were established for a more consistent, mutually concerted implementation and application of EU Law. The networks review the implementation and application of EU Law in the Member States and develop effective cooperational links. In this regard, they may issue soft law (as do agencies). They also have an advisory role to the Commission, in particular, in the preparation of implementing measures in their relevant field. Thus, they constitute an alternative type of law enforcement to both markets (i.e., private enforcement) and hierarchies (government enforcement) with their distinct characteristics of resource exchange (Börzel 1998; Van Waarden 1992).[25]

Enforcement networks abound, particularly, in policy sectors involving competition and consumer protection: the European Competition Network (ECN) (Cengiz 2009b; before at 5) was adopted as an innovative tool to "govern" European Competition Law (Maher 2008) and the Consumer Protection Cooperation Network (CPC Network).[26]

Both are very different from the European regulatory networks examined in the existing literature (Cohen and Sabel 2003; Sabel and Simon 2004): while regulatory networks have limited competences, these enforcement networks wield significant powers in fundamental areas of European integration and are innovative solutions to overcome the existing problems in enforcing EU Law.[27]

[24] Craig (2009). In his seminal paper, Craig examines, *inter alia*, the case of comitology and, in discussing enforcement networks, includes the early case provided for by the Council Regulation (EC) 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, OJ 1997 L82/1, replacing earlier provisions dating from 1981.

[25] For reviews of and comparisons between these different models see Börzel (1998) and Van Warden (1992).

[26] Regulation (EC) No. 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, OJ L 364, December 9, 2004, 1.

[27] On the Institutional design for the enforcement of Competition Law and Consumer Law, see the interesting note written by K.J. Cseres and accessed on June 6, 2011 at http://www.side-isle.it/ocs/viewpaper.php?id=212&print=1&cf=2

The Consumer Protection Cooperation Network

In its 2001 Green Paper on EU Consumer Protection,[28] the European Commission argued that to create a more robust enforcement network across the European Union, a legal framework was required for cooperation between public authorities. The Regulation on Consumer Protection Cooperation[29] was formally adopted with the aim of improving and formalizing cooperation between Member States on cross-border infringements of EU Consumer Law.[30]

It is clear that the Regulation only deals with public/private enforcement in transnational scenarios,[31] leaving it up to each Member State how to deal with purely internal situations.[32] It also operates to protect the "collective interest of consumers," not individual consumers, and also provides an enhanced role for the Commission in facilitating administrative cooperation and common projects designed to inform, educate, and empower consumers.[33]

The said Regulation requires Member States to set up enforcement authorities and a Single Liaison Office across the Union—where they do not yet exist—and to lay down a minimum of common investigation and enforcement powers for these watchdogs.[34] All Member States had to make substantial efforts to adapt their national legislative framework to meet the Regulation's demands, in particular to set up the required structure to handle cross-border cooperation.[35] New for a number of Member States (Germany, the Netherlands) is that they must now designate a specific public body responsible for the enforcement of EC consumer law; in others, they already exist such as the Office of Fair Trading (UK) or the Konsumentenverket (Sweden).[36]

In addition to public authorities, Member States are empowered, not obliged, to designate non-governmental bodies as enforcers (Art 4). Normally, these would be non-governmental consumer associations or the like, including business/trade organizations as well as self-regulatory bodies such as those supervising advertising standards or providers of alternative dispute resolution services. Importantly, where they are so designated by a

[28] European Commission (2001).

[29] Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation); OJ L 364, 9.12.2004, p. 1.

[30] Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on Injunctions for the Protection of Consumers' Interests, OJ 1998 L 166/51.

[31] A separate European enforcement network to remain in place even after the 2004 Regulation was created by the General Product Safety Directive. Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, OJ 2002 L 11/4.

[32] Article 3 ("Definitions"): "(b) 'intra-Community infringement' means any act or omission contrary to the laws that protect consumers' interests, as defined in (a), that harms, or is likely to harm, the collective interests of consumers residing in a Member State or Member States other than the Member State where the act or omission originated or took place; or where the responsible seller or supplier is established; or where evidence or assets pertaining to the act or omission are to be found."

[33] With respect to the harmonization of European Consumer Law: Smits (2010).

[34] To form the network, the Regulation requires Member States to designate public enforcement authorities (the "competent authorities") and a Single Liaison Office to coordinate the application of the Regulation at national level.

[35] There are no restrictions on the number of competent authorities a Member State can designate. It would therefore be preferable to limit the number of authorities involved to avoid the risk of an excessive fragmentation.

[36] Article 3(c) defines competent authorities as "any public authority established at national, regional or local level with specific responsibilities to enforce the laws that protect consumers' interests" (these laws are specified in the Annex to the Regulation).

Member State, the cited Art 8(3) of the Regulation contemplates that they may be entrusted with the task of taking action against a trader on behalf of a watchdog, who, in turn, was requested to act by a watchdog of another Member State.[37]

The Regulation expressly provides for an exchange of information on request (Art. 6).[38] Moreover, when a competent authority becomes aware of an intra-Community infringement, or reasonably suspects that such an infringement may occur, it shall notify the competent authorities of other Member States and the Commission, supplying all necessary information, without delay (Art. 7).[39]

A key element of the measure at issue is the delineation of the minimum powers that all enforcement authorities must possess in order to carry out their functions effectively, and thus deliver a viable EU-wide network.[40] Thus, all Member States had to make substantial efforts to adapt their national legislative framework to meet the Regulation's demands, in particular to set up the required structure to handle cross-border cooperation.[41] It is up to each Member State to decide whether the watchdog will be able to exercise these powers directly (possibly subject to judicial supervision) or indirectly by applying to competent courts to seek the necessary judicial orders. The changes mostly concerned modifications to the investigative and enforcement powers conferred to national consumer authorities in order to comply with the minimum powers requirements set out in Article 4 of the Regulation (Gerrit 2007).[42]

The national authorities should carry on mutual assistance, including the possible exercise of investigative and/or enforcement powers, applies when there are intra-Community infringements of the national laws transposing the EU Consumer Acquis and as listed in the Annex of the Regulation (cumulative requirements).[43]

The assessment of the CPC Network's first years of operation shows that this instrument has not reached its potential. It represents a less centralized model with respect to the ECN, unless the Commission plays a role in monitoring the notification of the authorities and implementing the provisions of the Regulation. In particular, under Article 19 of the Regulation, the Commission is assisted in its implementation tasks by a Committee composed of representatives from the Member States ("the Consumer Cooperation Committee"). One of the Committee's first tasks was to establish a set of rules for the Network's operations, which

[37] Commission Explanatory Memorandum, COM (2003) 443, No 3.

[38] Art. 6: (1.) A requested authority shall, on request from an applicant authority, in accordance with Article 4, supply without delay any relevant information required to establish whether an intra-Community infringement has occurred or to establish whether there is a reasonable suspicion it may occur. (2.) The requested authority shall undertake, if necessary with the assistance of other public authorities, the appropriate investigations or any other necessary or appropriate measures in accordance with Article 4, in order to gather the required information. (3.) On request from the applicant authority, the requested authority may permit a competent official of the applicant authority to accompany the officials of the requested authority in the course of their investigations.

[39] When a competent authority takes further enforcement measures or receives requests for mutual assistance in relation to the intra-Community infringement, it shall notify the competent authorities of other Member States and the Commission.

[40] A non-exhaustive list of specific powers which the competent authorities (the watchdogs) must be able to exercise is given in Art 4(6) of the Regulation.

[41] For example, most are already available to UK enforcers but the exception is the on-site inspection power, which would be largely new to the OFT, some of the sectoral regulators, and TSAs for the enforcement of civil sanctions.

[42] Available at SSRN: http://ssrn.com/abstract=1465474 In particular, the powers being granted under points (a), (b), and (h) of Article 4.3 regarding access to documents and information and on-site inspections represent considerable changes to current regimes in the Member States.

[43] This acquis includes fourteen Directives and one Regulation, including the 1985 Doorstep Selling Directive and the 2004 Air Passengers Regulation. The Unfair Commercial Practices Directive has been added.

clarify some of the principles established by the Regulation[44]: Also in this case, the work and procedures of the network are determined by soft-law measures not subject to judicial review by the EU Courts.

A first issue concerns the relationship among "EU networks" in consumer protection, namely: the European Consumer Centres Network ("ECC-Net"),[45] Fin-Net, [46] and SOLVIT.[47] An excessive fragmentation of bodies to protect the consumers should be avoided so as not to create confusion and to undermine the impact of the single initiative: A sole instrument, with a series of specialized internal competencies, would be preferable in terms of effectiveness ("*external fragmentation*").

Moreover, in line with the CPC Regulation, the Member States have indicated a number of bodies as authorities, and such excessive fragmentation undermines the impact of this measure ("*internal fragmentation*"); taking the case of Italy as example, we find the following (few) bodies: Ministero dello Sviluppo Economico (Single liason office), Autorità Garante della Concorrenza e del Mercato, Autorità per le Garanzie nelle Comunicazioni, Consob—Commissione Nazionale per le Società e la Borsa, Banca d'Italia, Isvap—Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo Ministero dello Sviluppo Economico, Agenzia Italiana del Farmaco, Ministero della Salute, Ente Nazionale per l'Aviazione Civile.

Such a fragmented picture is not limited to the Italian experience, and a similar confusion also applies to the cases of France, Germany, and the United Kingdom (e.g., OFT, the Civil Aviation Authority, Ministry of Trade and Industry (Gibraltar), and the Medicines and Health Regulation Authority).[48]

A proposal to reform

We note that the presence of the Single Liaison Office may not be sufficient to coordinate the various actors and to assure the efficient implementation of the measure here discussed.[49] In the light of the above, and assuming that a network works well when it is constituted by a reasonable number of interconnected "strong" nodes, it would be advisable

[44] Principles include provisions on time limits, minimum mandatory information requirements for requests and the different rights of access to the information exchanged through the IT tool. The Commission adopted the implementing rules in December 2006 in time for the Network's launch.

[45] The ECC-Net is a European network consisting of 29 European Consumer Centres (in all 27 Member States, Iceland, and Norway), which work together to provide consumers with information on cross-border shopping and assist in the resolution of cross-border complaints and disputes.

[46] FIN-NET is a financial dispute resolution network of national out-of-court complaint schemes in the European Economic Area countries (the European Union Member States plus Iceland, Liechtenstein, and Norway). It is responsible for handling disputes between consumers and financial services providers, i.e., banks, insurance companies, investment firms, and others. This network was launched by the European Commission in 2001.

[47] SOLVIT is an *on-line* problem-solving network in which EU Member States work together to solve without legal proceedings problems caused by the misapplication of Internal Market law by public authorities.

[48] Office of Fair Trading, (2006) The EU Regulation on Consumer Protection Co-operation (the CPC)—on-site inspection powers, June 2006. See also Department of Trade and Industry (2006). Implementing the EU Regulation on consumer Protection Cooperation. A public consultation on the on-site inspection power required by competent Authorities under the Consumer Protection Cooperation Regulation URN 06/1361, June 2006.

[49] Commission communication pursuant to Article 5(2) of Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws, concerning the competent authorities and single liaison offices (2010/C 244/01).

to have *a central national node*, preferably the National Competition Authority, that will be responsible to implement the Regulation with the advice of the sectorial bodies.

The literature has shown the possible institutional designs for the enforcement of competition law and consumer law.[50] First, the enforcement of Competition Law and Consumer Law can take place in two distinct authorities.[51] Second, the enforcement of competition law can be combined with the implementation of some specific parts of consumer law related to information, such as rules against deception or misleading advertising.[52] Third and last, the national authority can have a double mission: responsibilities for the enforcement of both Competition Law and Consumer Law.[53]

Legislation of consumer protection and competition law has been developed in many jurisdictions along separate lines, while there are evident complementarities and tensions. On one hand, the goals of consumer law and competition law are not perfectly aligned and enforcement by the same public authority could avoid inconsistent decisions. For example, restricting or banning advertising in some of the markets for liberal professions remedied consumers' asymmetrical information problems but restricted competition among service providers to the detriment of consumer choice. On the other hand, certain markets, like e-commerce and markets where liberalization has taken place, show an increasing number of cases where both competition law and consumer law issues are present: in markets like energy or telecommunications, abuse of a dominant position and unfair trade practices often go hand in hand: to let these markets come to their full completion, it is necessary both to create a competitive level playing field and to prevent deception of consumers is necessary (Buttigieg 2009). An open question for researchers is, thus, to discuss if the "integrated model" could be consistent with the goals of enforcement of the two areas.

Finally, in the 2009 Commission Report on the application of such a measure, it appears that the tasks carried out within the framework of the said Regulation are generally performed by national officials in addition to their regular tasks. It is also difficult to identify the resources specifically dedicated by the enforcement authorities to this task. The lack of resources and the low level of commitment of the officials could undermine the potentialities of the measure here discussed.[54] There is also evidence of a low commitment to the networks' tasks and, actually, a relevant number of authorities notified are either not connected, or do not actively use this system, i.e., they are not issuing requests for mutual assistance, although this is a precondition for the effective functioning of the CPC Network.[55] The 2009 Report concludes that "*To maximise the impact of its work and to develop into a strong EU-wide dissuasive force, the Network needs to gain a higher profile.*"[56]

[50] On the institutional design for the enforcement of Competition Law and Consumer Law, see again note written by K. J. Cseres accessed on June 6, 2011 at http://www.side-isle.it/ocs/viewpaper.php?id=212&print=1&cf=2

[51] E.g., the Dutch Consumer Authority and the Netherlands Competition Authority.

[52] This is the case with the Hungarian Office of Economic Competition and the Autorità Garante della concorrenza e del mercato.

[53] Examples can be found in the UK, the Office of Fair Trading (OFT), the US Federal Trade Commission, or the Australian Competition and Consumer Commission.

[54] EU Commission, Report from the Commission to the European Parliament and to the Council on the application of Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation), Brussels, 2 July 2009 COM (2009) 336 final, at 7.

[55] Regulation 261/2004 on air passenger rights which is covered by the Consumer Protection Cooperation Regulation provides for the appointment of its own national enforcement authorities. These authorities are empowered to take enforcement measures against both national and non-national operators working on their territory.

[56] *Before* at 62.

Is the CPC Network Effective?

The establishment of the CPC network is an attempt to overcome the limits in the effectiveness of the traditional solutions based on the government and the market (i.e., private enforcement).[57] And actually, enforcement networks may have an advantage over hierarchy and market: while deregulated markets are unable to control the production of negative externalities (problems of market failure), government hierarchies no longer control all the resources necessary to enforce EU Law. On one hand, markets lack central control, and as a result, under the framework of markets, individual bargaining determines the nature of resource exchange and the outcomes of such exchange. Compared to markets, networks appear more structured, as under the framework of networks actors get involved in regular contacts with each other. On the other hand, conventional top-down methods of hierarchical governance fail to regulate network relations since in networks, control does not correspond to "top-down" influence, but it is all about "finding and maintaining balance between different and at times opposing forces" (Cengiz 2009b, p. 4)

The CPC Network possesses a highly flexible nature, adjusting to emerging situations that cannot be tackled at all or as well by existing EU and national institutions. In this sense, such an instrument can be considered as particularly good at coping with change (Powell 1990). It combines a set of actors at national level that are asked to explore and evaluate solutions to complex problems that neither alone would have been likely to identify, much less investigate or address, without the exchanges with the others (Dorf and Sabel 1998).

In this sense, the CPC network clearly shows the "mutual interdependence" that necessarily exists between the national authorities (Cohen and Sabel 2006). For instance, under the dynamics of modern complex markets, the European Commission needs the assistance of national regulators in the collection of market-specific information in order to formulate responsive and effective policies, whereas the national level requires the cooperation of the Commission for their perceptions to be reflected in EU policies since the Commission holds the key to policy making in the EU with its right of initiative. This solution can also allow EU policy makers to mobilize resources widely dispersed among national public and private actors: In the case of the CPC network, consumer associations may offer the Commission and the national agencies information, expertise, and political support to enforce EU Consumer Law.

In political science, it has been emphasized that networks are capable to bring a "revolution in communication" (Woods 2000). In particular, an author noted that there has been "a change in the way governments interact. Modern communication systems mean the national (or event sub-national) decision makers can interact horizontally with officials in other countries."[58] For example, as a result of the creation of the European Competition Network, the gates of communication are now wide open, and case handlers from different National Competition Authorities (NCAs) across the EU openly discuss, even outside the ECN, both general policy issues and individual cases.[59] In addition to conducting formal

[57] The White Paper on European Governance and, particularly, the Report of Working Group Networking People for a Good Governance in Europe are two major manifestations of the Commission's focus on networks. Throughout that report, the Commission itself emphasizes the two key concerns explored in this paper: effectiveness and democratic legitimacy.

[58] Such experience also suggests that the "structure" of information flowing through the network is relevant: Information should be organized by clearly identifying the categories into which it falls and the goals to which it relates.

[59] It has been demonstrated in areas as diverse as central banking and the environment, regulatory agencies often share a common policy world view that promotes common agenda setting and a "cosmopolitan" rather than "local" perspective.

cooperation amongst its members, the CPC network's main goal consists in enhancing the links between national members involved in the enforcement of EU Consumer Law.

At the end, the CPC network could have repercussions on the shaping of national preferences and lead to "common and converging solutions" among national authorities, as it happened within European comitology committees (Joerges and Neyer 1997). For example, the goal to enhance convergence and cooperation in Competition Law enforcement is central in the work of the International Competition Network (ICN) (Gerber 2010), a specialized yet informal network of established and newer agencies enriched by the participation of non-governmental advisors (e.g., representatives from business, consumer groups, academics, and the legal and economic professions), with the common aim of addressing practical antitrust enforcement and policy issues. The ICN has been established to cope with these challenges grounding on the general—but still unproved—assumption that "networking facilitates convergence." Needless to say, the ICN promotes convergence about systems applying different Competition Laws.[60]

A Comparison with the European Competition Network

On 1 May 2004, the enforcement of European Competition Law has ceased to be a monopoly of the Commission and European Court. This initiative resulted in a new "Modernisation Regulation"[61] which came into force in 2004 and replaced the Regulation No. 17/62. The reform contained three main objectives. The first of these is rigorous enforcement of competition law by concentrating on the most important cases involving a real EU interest. The second main objective is effective decentralization, with the Commission, the NCAs of the Member States, and the national courts having concurrent powers to apply EC competition rules. Each of the 27 NCAs is now fully empowered to apply all elements of the above rules, including the exemption provisions of Article 101 TFE, a power previously reserved only for the Commission. The third main objective is simplification of control procedures, with the abolition of the notification and authorization system. As explained by legal scholars, the abolition of the individual exemption regime and decentralization of the enforcement of EC competition rules were significant "cultural revolution" (Ehlermann 2000, p. 540).

The introduction of the "decentralized enforcement" of European competition rules was accompanied by the establishment of the European Competition Network (ECN).[62] Before the 2004 modernization of EU competition law, EU competition law and policy acted as the "first supranational policy in the European Union" (McGowan and Wilks 1995, pp. 149), and the Commission had a central monopoly-like role in their enforcement. The ECN brings together the national competition authorities of the EU Member States and the EU Commission with the aim of cooperating closely on the enforcement of European

[60] The International Competition Network has produced a huge comparative work on a variety of topics from anti-cartel enforcement to competition advocacy. The ICN furthers cooperation and convergence through the development and implementation of soft-law measures (e.g., recommendations and other guidance documents). More details at http://www.internationalcompetitionnetwork.org

[61] Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (hereinafter "Modernisation Regulation"), 2003 OJ L 1/1.

[62] Some authors argue that a competition network existed even at the time of Regulation 17/62; this was an epistemic network comprising of irregular and ad hoc contacts between DG IV officials and officials of the strong NCAs of the time, such as the German Bundeskartellamt, but it was not a formalized enforcement network (Gerber 2004, p. 49).

competition law. While in principle the network members stand on equal footing as enforcers of EU competition law, the Commission in fact has occupied a central role in the network in order to ensure consistent application of the EU rules. The Commission is a member, and as a vertical network, it "pierces the shell of state sovereignty by making individual government institutions responsible for the implementation" of the supranational EC rules.

According to the literature, the ECN represents a centralized interactive model:[63] centralized because the Commission directs a system,[64] where, except for limited situations, the NCAs apply EU Law, and interactive in the sense that all members have to respond to each other so that information and cooperation flow through the members.[65]

The ECN's core activities are the allocation of cases and the exchange of information. The ECN is a highly juridified network with detailed cooperation mechanisms that are defined in Regulation No. 1/2003 and the Notice on Cooperation within the Network of Competition Authorities ("Network Notice").[66] These measures were supplemented by a political declaration—the Joint Statement of the Council and the Commission on the Functioning of the Network of Competition Authorities—and a separate notice that establish principles and procedures for cooperation between the Commission and national courts.[67]

A relevant result brought by the ECN is the increase in information flowing through the points of the net.[68] National authorities are formally obliged to inform the Commission of many of their activities including plans to make particular types of decisions and to transmit extensive information about their activities to each other.[69] Through these information

[63] Gerber (2004). The Evolution of a European Competition Law Network, paper presented at the 2002 Workshop "EU Competition Law and Policy", Robert Schuman Centre for Advanced Studies–European University Institute. The article has also been published in C. D. Ehlermann & I. Atanasiu (Eds.), European competition law annual 2002: Constructing the EU network of competition authorities (pp. 43–64). Oxford: Hart Publishing.

[64] The ECN is a highly regulated network, and to a certain extent, it has a hierarchical structure in which the Commission enjoys a superior managerial position both in the enforcement of EC competition rules and in the management of the network. In these respects, the ECN appears rather atypical as its structure is highly different from other European regulatory networks, and it does not fully reflect the dynamics of policy networks as determined by political science literature.

[65] Interestingly, the distinction of the spheres between EU and Member States loses its relevance because the members of the ECN deal primarily or exclusively with EU Law. Formal authority remains in the hands of the Commission given the national authorities will interpret and apply EU Law in their areas of competence, but the Commission will have the authority to override their decisions.

[66] Commission Notice on cooperation within the Network of Competition Authorities (hereinafter "Network Notice"), 2004 OJ C101/43.

[67] Commission Notice on the cooperation between the Commission and the courts of the EU Member States in the application of Articles 81 and 82 EC, OJ C 101, 27.04.2004, 54–64.

[68] Article 12 of the Regulation provides for the exchange of information between the Commission and the NCAs and between the NCAs themselves. On the basis of Article 11(3) of the Regulation, any NCA acting under Articles 81 or 82 EC must inform the Commission before or just after commencing its first formal investigative measure. The Commission has also accepted an equivalent obligation to inform NCAs under Article 11(2) of the Regulation. NCAs can furthermore assist each other in various fact-finding measures by means of a standard form containing limited details of the case concerned, such as the authority dealing with the case, the product, the territories and parties concerned, the alleged infringement, the suspected duration of the infringement, and the origin of the case.

[69] For example, the NCAs are required to inform the Commission and provide factual information both before initiating proceedings under Arts. 81 or 82 EC and taking positive decisions imposing remedies in such investigations. Such information could also be shared with the other NCAs (although there is no obligation to do so) to support the work allocation regime of the network and make sure that multiple NCAs are not investigating the same suspected violation individually with the possibility of adopting conflicting decisions in the end.

exchange mechanisms, the Commission comes into full information regarding the facts before the NCAs, the enforcement strategy and legal and economic analyses they follow and the decision they intend to take. And consequently, the Commission gains the ability to intervene before the NCAs take any action which would run counter to the dynamics of EC competition policy as perceived by the Commission and the Community courts. Such intervention could take place either through individual soft communication with the NCA in question or, in extreme cases, the Commission could relieve the NCA in question from its authority of investigation by opening proceedings (Maher 2008).

Needless to say, it is relatively easy to require the transmission of information and to check the extent to which participants have fulfilled their obligations in transmitting it. It is therefore more difficult to assure that the information has the desired effect on decisional outcomes.[70] Obviously, information must affect the decisions if the network is to achieve the desired results. Accordingly, the Commission intends to exercise its formal authority in specific cases as well as by issuing extensive and detailed regulations whose purpose is to tell NCA what they must do.[71] The Commission's distinguished position is generally justified by the argument of legal uncertainty and the risk of inconsistent policy enforcement under decentralization in the lack of a previous strong network discourse. Particularly, the prerogative of the Commission to relieve the NCAs of their powers of investigation is described as the "safety valve" of the entire system.[72]

After many years of operation, the way the ECN has been functioning so far appears to be quite positive in the literature: it has certainly gained the support of its members, whose commitment and professional attitude have been of great importance: work sharing and the exchange of information contribute to the identification of best practices and also contribute to the effective and efficient solution of clearly pre-defined key issues of common interest, as in the case of leniency applications, which have proven to be efficient and successful tools in the ECN members' fight against hardcore cartels (Cengiz 2009b; Kekelekis 2009).

The ECN is, therefore, an integral part of the EU Competition Law system and, with this, needs to be viewed in its interaction with private competition law enforcement. Despite the efforts of the EU Commission, the current legal framework for private enforcement of EU Competition Law remains ineffective: There are major difficulties for victims of breaches of competition law to receive compensation; in concrete, victims of competition breaches still only rarely seek reparation of the damages suffered.[73]

[70] However, network dynamics suggest that under ordinary circumstances, the NCAs would not refuse each others' requests for cooperation either (Cengiz 2009b, p. 12) .

[71] Precisely, the Modernisation Regulation grants the Commission some exclusive powers, which are not shared by the NCAs, such as finding on its own initiative that Arts. 101 or 102 TFEU do not apply to certain practices when the Community interest so requires, even though the individual exemption regime has now been abolished. Additionally, the Commission continues to hold its enforcement monopoly in a sense as the Modernisation Regulation preserves one of the most controversial measures of the Regulation No. 17/62 and requires the NCAs to withdraw their proceedings when the Commission opens its own investigations in the same matter.

[72] Comments of Mario Monti, Panel Discussion: The Network Concept, Competition Authority Networks and Other Regulatory Networks, in Ehlermann, Atanasiu (Eds.), supra note 63, p.8.

[73] As the EU Commission has estimated in its Impact Assessment Report of 2008, the amount of compensation that these victims are forgoing ranges from 5.7 billion Euros (on the most conservative assumptions) to 23.3 billion Euros (on the least conservative assumptions) a year across the whole EU.

Conclusions

Under certain conditions, the enforcement networks such as the ECN and, potentially, the CPC Network could surpass some of the traditional approaches in terms of effectiveness.[74] Moreover, given that the Commission is involved in such process, it has access to the expertise of and within the network and the work done there. The involvement of the Commission is to ensure that the expertise and work are fed into supranational rulemaking and that the Commission may oversee the enforcement and application of EU Law in the Member States. The additional benefits of CPC Network are the institutionalization of cooperation among national actors and the participation of expert knowledge in the adoption of implementing law by the Commission, mainly by providing the Commission with advice and comments.[75]

The ECN is playing a "socialization function," (Verdun 2000) which is especially important for the political and cultural diversity arising from enlargements. As one observer puts it with respect to the ICA, "the daily interaction between [competition] agencies (…) fostered increasingly cooperative attitudes among officials on both sides of the Atlantic as they came to redefine their roles as members of a transatlantic community of professionals dealing with common problems" (Devuyst 2001, pp. 127–128). In this sense, these bodies facilitate the development of shared meanings and values among national officers which evolve via the use of common language to deliberate on particular problems or issue areas.[76] This aspect emerges while considering the experience of the ECN: Direct personal contacts may facilitate the depoliticization of issues and the creation of particular understandings of policy issues and measures to resolve them. The socialization of official in network-like contexts at the supranational level is an important mechanism for deepening the European integration process.

Interestingly, such experience also makes clear that a critical requirement for efficiency is that the national agencies must have significant domestic authority, resources, and credibility to carry out their tasks: where independent regulators are weak, the efficiency of the network will be undermined. This is the case of the CPC Network, that by including a number of weak authorities in the Member States *could not be really effective*: Its potentialities are undermined by the before said internal (at national level) and external fragmentation (the establishment of a number of networks such as SOLVIT, Fin-Net, and the ECC Centres, having different tasks and roles). In addition, the CPC Network lacks adequate financial and human resources: It has been given lofty tasks, but few power and resources. This is a crucial point: external support for Competition Law has been critical in the development of such field of EU Law, and it is likely to be important in the success of the CPC Network. Political support is important because network relationships are

[74] The "group of wise men" in the Lamfalussy report explicitly argued that such a strategy could speed up the legislative process both in rule development and implementation (European Commission 2001). By relying on national independent regulators to work out the specifics of implementing directives, the process removes much of the time-consuming back and forth among the European institutions. It also often removes the need for some national implementing legislation as independent regulators can directly enforce decisions taken in the transgovernmental network.

[75] For a parallel with the agencies, Weiß (2009).

[76] The 2004 Cooperation Regulation deals with the matter of "language" and follows in Article 12(4): The languages used for requests and for the communication of information shall be agreed by the competent authorities in question before requests have been made. If no agreement can be reached, requests shall be communicated in the official language(s) of the Member State of the applicant authority and responses in the official language(s) of the Member State of the requested authority.

influenced by the relationships around them. It also appears that officials' commitment remains quite low (or limited) with respect to the example of the ECN (Coen and Thatcher 2008; *Supra* at 67): national officers consider this as an additional task to their main responsibilities. Officials of the network are employees of separate institutions, whose policy and instruments can influence them. It is thus a matter of creating incentive for transmitting, receiving, and using information. The development of the ECN has been often driven forward by officials committed to a particular vision of the role of the market in Europe and willing to realize this vision.[77] Generally, the most important element that has come from the creation of the ECN is a "can do" attitude, and the way it has been embraced by all Member States and the willingness shown by all to attempt to accommodate each other and to share information when necessary.[78] It must also be pointed out that the Commission retains its managerial role within the ECN, thereby creating a mechanism that aims to tackle legal uncertainty and minimize the risks of inconsistent policy enforcement under decentralization in the face of a lack of previous strong network experience by the NCAs.[79] There is therefore no evidence that the assignment of a central role to the Commission is absolutely necessary to make a network of national authorities (such as the CPC) effective. The development of the CPC Network may have relevant implications for other areas of European Law, including the question whether enforcement networks could be transposed in other fields of European Law.[80]

Promoting Accountability

Both the ECN and the CPC Networks are deeply pragmatic (Cohen and Sabel 2006). This makes for efficiency in decision making (Slaughter 2000), but the delegation to them of executive power raises issues of transparency and accountability (Grant and Keohane 2005).

Accordingly, an author says that "networks have a Janus-faced effect on the distribution of power at the supranational level" (Eberlein and Newman 2008a); this is because the rise of EU enforcement networks may have a boomerang effect: Member States have in most areas resolutely resisted the formal delegation of regulatory powers to EU agencies in order to retain national control. Now, they may find that horizontal delegation to domestic regulators might result in a similar loss of control as national regulators collectively leverage domestic authority to advance supranational harmonization.

By implicitly delegating some rule enforcing to national regulatory agencies, the European institutions have "forfeited" direct control over a policy area: given that EU networks are not an EU institution, they are—unlike to Commission—not politically accountable at the European level at all (unless EU Parliament can call a Commissioner

[77] Gerber (2004). The author confirms that "The crucial early successes of the German Federal Cartel Office and other Member States authorities were due in large measure to the intense personal engagement of officials" (p 17).

[78] Member State officials should not believe that the Commission will attach only little value to their views and that it views them as enforcers of its decisions.

[79] Commission's Report on the functioning of Regulation No. 1/2003, COM (2009) 206 final, 29 April 2009.

[80] EU Commission, Report from the Commission to the European Parliament and to the Council on the application of Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation), Brussels, 2.7.2009, COM (2009) 336 final, 9.

before an EP committee and demand an explanation of the way in which the Commission has cooperated with the national authorities in EU networks[81]).

Moreover, the ECN and the CPC Networks often operate semi-publicly at best, leading to a transgovernmental democratic deficit: the transparency of the networks is by no means assured, given that their flexible informality makes for a number of meetings of public import outside of the public eye (Kingsbury et al. 2005). For example, the work and procedures of the ECN are determined by soft-law measures beyond Regulation No. 1/2003 and the Network Notice, in which procedures are not subject to judicial review by the EU Courts. The work in the ECN results in non-binding policy communications, but these might imply significant policy changes. However, technical expertise and professionally defined best practices and soft-law measures are not neutral: They privilege certain worldviews and interests over others. The same applies to the Consumer Cooperation Network, whose impact is undermined by the shortcomings before discussed.

Elsewhere, it has been argued that the success of the ECN is mainly to be found in its informal mechanisms of information exchange. The ECN's success could be seen in its character of a mode of governance based on consultation, negotiations and soft-law instruments instead of on command and hierarchy in the form of hard law (Cengiz 2009a). A problem in the ECN is that the deliberations between the Commission and the national authorities are not public.

We underline that this success *comes with certain costs in terms of accountability and due process*. The impression is that the informal cooperation within the ECN constitutes an important tool in the development and execution of European competition law enforcement policy.[82] The procedures of the ECN and its main output in the form of soft-law instruments marginalize judicial control by European courts, as shown by the Court of First Instance in France Télécom.[83] Actually, acting directly to the European Court of Justice against the actions of the networks is problematic because such an appeal does not meet the conditions of admissibility for various reasons: the actions of the networks do not originate from an EU institution, their decisions are not binding (thus not affecting third parties), and the much discussed in the literature interpretation of the expression "direct and individual concern" by European Courts.[84] This generates a gap in the legal protection against the policy rules, positions, and recommendations of EU networks.[85] The output of these bodies, as well as these accountability problems, also have to be evaluated by having regard to the Commission's role and by taking into consideration the fact that the informal nature of these network means they are particularly likely to mask unequal power relationships among the members.[86] On the contrary ECN members perceived it as a "joint enterprise"

[81] Article 197 EC. The National Parliaments can also summon the responsible ministers (and sometimes the national regulatory authorities) and require an explanation, but they cannot call EU Commissioner to account.

[82] For comparison to other European regulatory networks, see Coen and Thatcher (2008).

[83] C.F.I., Case T-340/03, France Télécom SA v. Commission, 2007, ECR II-107, para. 83. The ECJ will have to decide on the appeal brought by France Télécom against the judgement of the Court of First Instance of 30 January 2007 (T-340/03 France Télécom SA v Commission); in this judgement, the CFI had upheld the Commission decision of 16 July 2003 (COMP/38.233–Wanadoo Interactive), imposing a fine of € 10.35 million on Wanadoo Interactive (then a subsidiary of France Télécom) for abusing its dominant position by charging predatory prices for broadband products (mainly in the year 2001).

[84] C.F.I., Case T-340/03, France Télécom SA v. Commission, 2007, ECR II-107, para. 83.

[85] Lavrijssen and Hancher (2008). The authors suggest to "formalize" EU networks to create greater clarity regarding EU and national responsibilities.

[86] Concerning power relationships, the views expressed by NCAs about the operation of the ECN have been largely positive whether they come from large (Germany, Italy, UK) or small (Austria, Denmark, Ireland, Slovenia) Member States, from countries with long-established competition policy traditions (Germany), or those where competition policy is newer (Czech Republic, Slovenia), and embodying different approaches to competition policy (Germany and the UK).

(Kassim 2010).[87] While the Commission was seemingly decentralizing enforcement powers, in fact it has retained a central policy-making role, but without any control mechanism: the ECN and the Consumer Protection Regulation Network did not emerge at the initiative of the Member States, but they were centrally designed and established by the Commission. Thus, the new decentralized enforcement system preserved one of the most controversial elements of the previous centralized system, namely the Commission's central role in the enforcement framework.[88] However, evidence from the first 8 years of ECN operation offers little support for the view that the ECN is an instrument aimed at increasing the Commission's power.

In the light of the above, one may argue that the activities of both the ECN and the CPC Networks are not well controlled within the EU democratic and political framework, nor are their activities subject to legal review before the EU Courts. Thus, there is a need to improve both the *democratic* control by the EU Parliament and the *legal* control by European Courts.[89]

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References

Arnull, A. (2011). The principle of effective judicial protection in EU law: An unruly horse? *European Law Review, 1*, 51–71.

Benner, T., Reinicke, W. H., & Witte, J. M. (2000). Beyond multilateralism: Global public policy networks. *International Politics and Society, 2*, 176–188.

Bignami, F. (2005). Transgovernmental networks v.s democracy. The case of the European information privacy network. *Michigan Journal of International Law, 26*, 807–867.

Blanco, I., Lowndes, V., & Pratchett, L. (2009). Re-organising Babylon: On the meaning of policy networks and network governance and their democratic consequences. Paper prepared for the conference "Governance Networks: Democracy, Policy Innovation and Global Regulation, Roskilde University, December 2–4, 2009.

Boerzel, T. A. (1998). Organizing Babylon—On the different conceptions of policy networks. *Public Administration, 36*(1), 3–18.

Börzel, T. A. (1998). Organizing Babylon—On the different conceptions of policy networks. *Public Administration, 76*, 253–273.

Buttigieg, E. (2009). *Competition law: Safeguarding the consumer interest*. The Netherlands: Kluwer Law International.

Cafaggi, F. (2008). *Product safety, private standard setting and information networks*. EUI Working Papers Law No. 2008/17.

Cengiz, F. (2009a). *Regulation 1/2003 Revisited*. TILEC Discussion Paper No. 2009–042.

Cengiz F. (2009b). *The European Competition Network: Structure, management and initial experiences of policy enforcement*. EUI Max Weber Working Papers, 2009/05. Available at http://cadmus.iue.it/dspace/handle/1814/11067

[87] Paper delivered at the 32nd EGPA Annual Conference, Toulouse, France, 8-10/09/2010.

[88] Before the modernisation of EU competition law, EU competition law and policy acted as the "first supranational policy in the European Union," and the Commission had a central monopoly-like role in their enforcement. In fact, Regulation No. 1/2003 granted the Commission new enforcement powers and extended some existing ones, and has given it the prerogative to end investigations under Article 101 and 102 by NCAs by opening its own proceedings against the same violation. In the hierarchical structure of the ECN, the Commission acts as primus inter pares and as manager of the system that needs to guard uniform application of EU rules. However, the Commission escapes accountability and control mechanisms through the informal character of the ECN.

[89] B. Kingsbury, N. Krisch, R.B. Stewart (2005).

Coen, D., & Thatcher, M. (2008). Network governance and multi-level delegation: European networks of regulatory agencies. *Journal of Public Policy, 28*(1), 49–71.
Cohen, J., & Sabel, C. (2003). Sovereignty and solidarity in the EU. In J. Zeitlin and D. Trubek (Eds.), *Governing work and welfare in a new economy: European and American experiments* (pp. 345–375). Oxford: Oxford University Press.
Cohen, J., & Sabel, C. (2006). *Norms and global institutions*. Paper prepared for the Normative and Empirical Evaluation of Global Governance Conference. Princeton University, 16–18 February 2006.
Craig, P. (2009). Shared administration and networks: Global and EU perspectives. In G. Anthony, J.-B. Auby, J. Morrison, & T. Zwart (Eds.), *Values in global administrative law*. Oxford Legal Studies Research Paper No. 6/2009.
de Visser, M. (2009). *Network-based governance in EC law.* Oxford, Portland: Hart Publishing.
Dehousse, R. (1997). Regulation by networks in the EC: The role of European agencies. *Journal of European Public Policy, 4*(2), 246–261.
Devuyst, Y. (2001). Transatlantic competition relations. In M. A. Pollack & G. C. Shaffer (Eds.), *Transatlantic governance in the global economy* (pp. 127–152). Oxford: Rowman & Littlefield.
Dobner, P. (2009). On the constitutionability of global public policy networks. *Indiana Journal of Global Legal Studies, 16*, 605–620.
Dorf, M. C., & Sabel, C. F. (1998). A constitution of democratic experimentalism. *Columbia Law Review, 98*, 267–371.
Eberlein, B., & Newman, A. (2008a). *Innovating EU governance modes: The rise of incorporated transgovernmental networks.* Working Paper No. 2, 1–34. Available at http://www.ces.columbia.edu/pub/papers/EberleinNewman.pdf
Eberlein, B., & Newman, A. L. (2008b). Escaping the international governance dilemma? Incorporated transgovernmental networks in the EU. *Governance, 21*, 25–52.
Ehlermann, C. D. (2000). The modernization of EC antitrust policy: A legal and cultural revolution. *Common Market Law Review, 37*, 537–590.
Eilstrup-Sangiovanni, M. (2009). Varieties of cooperation: Government networks in international security. In M. Kahler (Ed.), *Networked politics: Agency, structure and power* (pp. 194–227). Ithaca, NY: Cornell University Press.
European Commission. (2001). *Green Paper on European Union consumer protection*. Brussels: Commission of the European Communities. COM (2001) 531 final.
European Commission. (2007). *Communication from the Commission. A Europe of results: Applying community law.* Brussels: Commission of the European Communities. COM (2007) 502.
Gerber, D. J. (2004). The evolution of a European competition law network. In C.-D. Ehlermann & I. Atanasiu (Eds.), *European competition law annual 2002: Constructing the EU network of competition authorities* (pp. 43–64). Oxford: Hart Publishing.
Gerber, D. (2010). Global competition. Law, markets and globalization. Oxford: Oxford University Press.
Gerrit, B. (2007). Public and private transnational enforcement of EU consumer law. *European Business Law Review, 18*(4), 683–708.
Grant, R., & Keohane, R. (2005). Accountability and abuses of power in world politics. *American Political Science Review, 99*, 29–44.
Joerges, C., & Neyer, J. (1997). From intergovernmental bargaining to deliberative political processes: The constitutionalisation of comitology. *European Law Review, 3*, 273–299.
Kahler, M. (Ed.). (2008). *Networked politics: Agency, structure and power.* Ithaca, NY: Cornell University Press.
Kassim, H. (2010). *The European competition network: A European regulatory network with a difference.* Paper delivered at the 32nd EGPA Annual Conference, Toulouse, France, 8-10/09/2010.
Kingsbury, B., Krisch, N., & Stewart, R. B. (2005). The emergence of global administrative law. *Law and Contemporary Problems, 68*, 15–61.
Kohler-Koch, B. (1996). Catching up with change: The transformation of governance in the European Union. *Journal of European Public Policy, 3*(3), 359–380.
Lavrijssen, S., & Hancher, L. (2008). European regulators in the network sectors: Revolution or evolution? (June 2008). TILEC Discussion Paper No. 2008–024.
M. Kekelekis. (2009). The European Competition Network (ECN): It does actually work well. *EIPAScope, 2009*(1), 35–39.
Maher, I. (2008). Regulation and modes of governance in EC competition law: what's new in enforcement? *Fordham International Law Journal, 31*, 1713–1740.
Majone, G. (1996). *Regulating Europe*. London: Routledge.
Majone, G. (1997). The new European agencies: Regulation by information. *Journal of European Public Policy, 4*(2), 262–275.

Martens, M. (2005). *Double-hatted agencies on the European scene? A case study of the IMPEL network*. Arena Working Paper, No.12.
McGowan, L., & Wilks, S. (1995). The first supranational policy in the European Union: Competition policy. *European Journal of Political Research, 28*, 141–169.
Meierhenrich, J. (2009). Judicial networks. In A. J. Langolis & K. E. Soltan (Eds.), *Global democracy and its difficulties* (pp. 83–94). London: Routledge.
Mueller, M. L. (2009). *The tangled net: Unraveling the concept of "Network" in political science*. Paper presented at the Annual Convention of the International Studies Association, February 17, 2009.
Peterson, J., & Bomberg, E. (1999). *Decision making in the European Union*. Basingstoke: Palgrave.
Powell, W. (1990). Neither market nor hierarchy: Network forms of organization. *Research in Organizational Behaviour, 12*, 295–336.
Raustiala, K. (2002). The architecture of international cooperation: Transgovernmental networks and the future of international law. *Virginia Journal of International Law, 43*, 1–92.
Reinicke, W. H. (1997). Global public policy. *Foreign Affairs, 76*(6), 127–139.
Rhodes, R. (1997). *Understanding governance: Policy network governance, reflexivity and accountability.* Buckingham: Open University Press.
Sabel, C. F., & Simon, W. H. (2004). Destabilization rights: How public law litigation succeeds. *Harvard Law Review 117*, 1015–1101.
Schepel, H. (2005). *The constitution of private governance: Product standards in the regulation of integrating markets*. Oxford: Hart Publishing.
Slaughter, A.-M. (1997). The real new world order: The state strikes back. *Foreign Affairs, 76*(5), 183–197.
Slaughter, A.-M. (1999–2000). Judicial globalization. *Virginia Journal of International Law, 40*, 1103–1124.
Slaughter, A.-M. (2000). Governing the global economy through government networks. In M. Byers (Ed.), *The role of law in international politics. Essays in International Relations and International Law* (pp. 177-205). Oxford: Oxford University Press.
Slaughter, A.-M. (2004). *A new world order*. Princeton, NJ: Princeton University Press.
Smits, J. (2010). Full harmonization of consumer law? A critique of the draft directive on consumer rights. *European Review of Private Law, 18*, 5–14.
Sørenson, E., & Torfing, J. (2007). *Theories of democratic network governance*. Basingstoke, Hampshire: Palgrave McMillan.
Thatcher, M., & Coen, D. (2008). Reshaping European regulatory space: An evolutionary analysis. *West European Politics, 31,* 806–836.
Van Waarden, F. (1992). Dimensions and types of policy networks. *European Journal of Political Research, 21*, 29–52.
Verdun, A. (2000). Governing by committee—The case of monetary policy. In T. Christiansen & W. Wallace (Eds.), *Committee governance in the European Union* (pp. 132–144). Manchester: Manchester University Press.
Weiß, W. (2009). Agencies versus networks: From divide to convergence in the administrative governance in the EU. *Administrative Law Review, 61,* 45–69.
Woods, N. (Ed.). (2000). *The political economy of globalization*. London: Macmillan.