

Challenges in extra-territorial policy and business implementation: EU biofuels policy

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ABSTRACT

Globalisation is changing how public policies are made and implemented. A substantial literature argues that governance, increasingly, requires active engagement between governments, the private sector, non-governmental organisations and international organisations. Less well researched are the challenges faced when public policy by government requires extra-territorial implementation by a network of trans-territorial and extra-territorial actors. In this paper, we address this lacuna through an analysis of the implementation of EU biofuels policy. This reveals that the governance of such a network offers actors new roles and opportunities. It thus sheds light on how the divide between the public and private, and between private actors' market and non-market strategies, are breaking down.

Keywords: Environmental Sustainability Criteria, EU Biofuels, Governance Network, NGOs, TNEs, WTO

Introduction

Globalisation is transforming the relationships between politics and economics around the world. The formal stages of public policy-making remain largely within national borders; founded on a particular view of the sovereignty of the nation-state. However sovereignty, understood as the capacity to act within state borders (Krasner, 1999), is diminished by the rescaling of political economic relationships: policy-makers' formal spheres of political authority (Rosenau, 2007) no longer coincide territorially with the economic geography of contemporary international business.

Transnational enterprises (TNEs) are the key to these changing relationships, for they possess control over economic resources across multiple jurisdictions that are beyond the control of nationally bounded states. If sovereignty is now a question of interdependence between a range of public and private actors, then TNEs are doing much of the actual, on-the-ground governing in the international economy, both intra-firm and through supply chain management. However, the corollary of diminished state sovereignty is not an equivalent increase in private autonomy, but rather a blurring of the boundary between the public and private, as public and private actors become increasingly interdependent. Whilst shifting patterns of business-government interdependencies are not a new development (Katsikas, 2010), the technological underpinnings of the current wave of globalisation make its subsequent reversal highly unlikely (Kobrin, 1991).

These developments are giving rise to new challenges, notably in the governance of the resulting economic structures. As a consequence, this renders problematic the analytical separation of market from non-market strategy. TNEs cannot execute their market strategies exclusively in the private domain; they have public roles required of them, via policy rather than the market, by emerging trans-boundary networks of actors, including states but also non-governmental organisations (NGOs – some of which are explicitly international; INGOs) and international organisations (IOs)¹. Firms depend on these for knowledge, capability and legitimacy in order to implement both their market and non-market strategies.

¹ In this article we use this term as synonymous to the term Intergovernmental Organisation (IGO) used by some authors in this literature. It is beyond the scope of the present paper also to consider the multitude of bilateral and regional opportunities available to states. We thus use IOs as our exemplar of inter-state relations.

This paper explores an influential case of interdependent sovereignty and its implications for firm strategy, where interdependence is driven by significant extra-jurisdiction policy ambition by, in our case study, the European Union (EU) and where the EU can only perform only part of the public element of its public policy, having instead to rely on a hybrid mixture of governance arrangements for successful implementation. This is an important case for IB scholarship to apprehend: the process of co-opting TNEs in establishing governance networks for economic spaces well beyond the EU's sovereign territorial jurisdiction, as well as its spheres of strong political and economic influence, is vital for consideration of non-market strategy. Specifically, we analyse the establishment by the EU of environmental sustainability criteria (ESC), which seek to govern the production conditions of the feedstocks, or inputs, into biofuels consumed within the EU. This case study is a critical example of non-market strategy in the extra-jurisdictional implementation of public policy in the politically contested field of sustainability in that most territorial of industries: primary commodity production.

The implementation of EU biofuels ESC represents a dilemma for public and private actors alike. The policy design has clear goals and a range of policy instruments, yet it needs the willing cooperation and participation of non-state actors to deliver. Successful implementation *requires* the active participation of TNEs, NGOs and IOs. Our primary research question, therefore, is what are the challenges in network governance when policy-makers have market ambitions that extend beyond their national (sovereign) borders, but who therefore lack the sovereign authority to compel the participation of others?

The paper proceeds as follows. In the next section we review the literature to establish the relevant actors involved in transnational economic activities and policy implementation, before exploring the literature on governance and the governance challenges which arise. In

so doing, we identify particular gaps in the current literature over transboundary policy governance. From this, we shall analyse our case study. This will inform our analysis of emerging governance structures that, currently, are under-represented in the existing literature. Conclusions and managerial implications round off the paper.

Defining the Problem – Trans-Boundary Governance in a Post-Westphalian World

The Actors Involved

The (territorially-defined) nation-state is traditionally seen as holding and exercising sovereignty, internally, within its borders: ‘Internal sovereignty defines the legitimization of the state vis-à-vis competing domestic claimants’ (Kobrin, 2009: 185). Moreover, this gives rise to an external dimension of sovereignty, whereby states are equal to each other. If there is no authority higher than the state, no state has authority over another state; although, as Strange (1996: 13) points out, towards the end of the twentieth century, asymmetries between states were becoming more clearly visible. Related to the concept of external sovereignty is that of autonomy: ‘a political idea which implies that a state can make its own decisions about how it will deal with internal and external problems’ (Kobrin, 2009: 186).

The post-war trend of economic liberalisation and globalisation – the progressive removal of barriers to trade in goods and the free movement of factors of production – is seen by many as eroding internal sovereignty. Relations between economic actors are changing with, in particular, the emergence of companies that, in some cases, are the size of medium-sized countries. They operate across national boundaries, they own and control economic and physical resources and, crucially, they possess the capacity to move these resources between countries, largely unrestricted by the control efforts of national governments (Rosenau, 1995).

Thus states, individually, lack sovereign authority over these TNEs; indeed, TNEs are driving back state sovereignty (Vernon, 1971). This process is, increasingly, being facilitated by the development of new technologies, especially communications technologies (Vernon, 1977; Kobrin, 2009), what Strange (1996: 7) called ‘the neglected factor’ in the shifting balance of power between state and market. States and TNEs, however, represent ‘two systems...each legitimated by popular consent, each potentially useful to the other, yet each containing features antagonistic to the other’ (Vernon, 1991: 191; Eden, 2000). A fundamental challenge, therefore, is how states and TNEs can co-exist, in spite of antagonisms towards each other, given their mutual interests.

Whilst much analysis has focused on states and TNEs, other authors recognise the involvement of other types of actor in emerging governance structures. Vernon (1998) brings NGOs into the policy mix, although Charnovitz (1997) suggests NGOs have been a governance actor for two centuries. Given the aforementioned antagonisms between TNEs and states, INGOs represent informal institutions that can occupy the space created by the incompatible interests of the formal institutions of TNEs and states (see Teegen, 2003; Teegen *et al*, 2004). Here, they can ‘bridge and bond public and private sector actors’ (Teegen, 2003: 271-2). More than this, competing INGOs can improve policy outcomes, even if their efforts are framed by states (Bloodgood, 2011: 94), as they themselves represent ‘spheres of authority’ (Rosenau, 2007). They can thus pursue their own interests as *partners* of TNEs and states (Steffek, 2013), as a source of ‘global value-creation and governance’ (Teegen *et al*, 2004: 472). Indeed, as creators of value, it is possible to see ‘NGOs as [T]NEs’ (Teegen *et al*, 2004: 476).

Just as relationships between TNEs and states can be antagonistic, so too can they be seen as too cosy. This drew civil society actors into the debate (Mytelka, 2000: 313). Civil society can engage with TNEs and/or states directly, seeking changes to economic behaviour (Mytelka, 2000; Teegen *et al*, 2004). As a result, the activities of NGOs must be assessed by TNEs and states when preparing their own activities (Doh and Teegen, 2002). Given that NGOs can play different roles, different types of NGO are recognised – for example advocacy, operational, integrated and hybrid NGOs (Teegen *et al*, 2004).

In the present study, we identify two distinct types of NGO. The first conforms most closely to Teegen *et al*'s concept of advocacy NGO, as a civil society actor independent of state and business, but which engages with both. The second form of NGO we identify is one that does not conform to any of the types of NGO identified by Teegen *et al*. It is strictly non-governmental, but is distinct from a social purpose NGO as it may include business organisations in its activities. For this type of NGO, very important in our case study, we coin the term multi-actor NGO. This very different make-up reflects the different governance role the multi-actor NGO has from an advocacy NGO.

Globalisation raises a particular governance challenge, given the territorial mismatch between states and TNEs. One possible response is for states to cooperate in the regulation of TNEs (Vernon, 1971; 1977), for example via membership of an international organisation (IO). This gives states representation at the global level (Teegen *et al*, 2004: 470); yet the pace of globalisation and the changing power of states, are faster than the 'development of international institutional cooperation.' (Stone, 2008: 23).

That said, IOs can be more than simply groups of nation-states. Consider the World Trade Organisation (WTO), an important actor in our case study. On the one hand, WTO agreements may simply reflect national preferences, which emerge out of inter-governmental bargaining, but which can be influenced by non-state actors (Katsikas, 2010: 124). Here, the IO provides the institutional context for the intergovernmental agreement. On the other hand, even if an IO has no binding legal powers over its member states, the member states may choose to behave as if it did, for example in response to a negative ruling in a WTO trade dispute (Katsikas, 2010: 128). The IO is able to act against the domestic interests of a particular member state, whose acquiescence reflects intersubjective agreement over the authority of, in this case, the WTO dispute system. An IO thus is an extra-territorial sphere of authority (Rosenau, 2007. See also Symons, 2011). Even here, whilst the negotiation and the enforcement of agreements happen at the intergovernmental level, it does not result in the direct, coordinated, control of TNEs.

We thus see globalisation creating an ‘emergent epoch’ (Koehn and Rosenau, 2002) where more actors and actor-types – the state, TNEs, NGOs and IOs – are actively involved, together, in the shaping of economic relationships. This ‘deep-seated systemic transformation in the organization of international economics and politics’ (Kobrin, 2011: 7) challenges ‘virtually all of the extensive literature of the MNC’, which assumes ‘geographically defined sovereign states is the context in which international business takes place’ (Kobrin, 2011: 6). As a result, ‘MNCs are increasingly likely to find themselves part of hybrid or public–private regimes’ (Kobrin, 2011: 17). How, though, are such regimes to be governed?

The Governance Challenges

Government implies the pursuit of goals backed by formal authority, underpinned by police powers (Rosenau, 1992: 4) to ensure policy delivery. Governance, Rosenau thus argues, involves the delivery of goals where there may not be the backing of legal, formal responsibilities, nor police powers to ensure policy delivery (see also Czempiel, 1992: 250). Thus government is a form of governance linked to notions of sovereignty. Governance can include *the* government, but with different roles and functions: there will be a shift from having power over non-state actors, to sharing power with them.

This has led to a new language emerging. Many speak simply of the shift from government to governance (for example Rhodes 1996; Pierre and Peters 2000). Rhodes (1994) also spoke of the hollowed-out state. Perhaps the simplest expression of what governance involves the the government, is ‘steering’ (Larsson, 2013: 101). This is representative of the nautical theme to several of the aphorisms now used: governance as steering not rowing; making maps and navigating (Parsons, 2004); and scanning the horizon and setting strategic directions (Howlett and Lindquist 2004). Strange (1996: 14) has spoken of ‘a yawning hole of non-authority, ungovernance it might be called.’

Thus ‘governance without government’ (Rosenau and Czempiel, 1992) can be understood as referring to the absence of certain government powers, rather than the absence of the state as an actor: there is still plenty the state can do (Kooiman, 1993; Fawcett and Daugbjerg, 2012: 197-8). Indeed, Matthews (2012: 282) refers to “‘the paradox of state capacity,” which identifies a simultaneous process wherein states have sought to develop new forms of state capacity while at the same time transferring key control levers to a range of semi-independent organizational forms.’

What, however, about a state that seeks to influence economic activities beyond its territorial boundaries? By this, as we shall see with our case study, we refer to something other than the notion of TNEs representing a conduit through which one state can influence another (Vernon, 1981: 258). Instead, we refer to a situation where the state, in pursuing domestic policy interests, finds itself engaging with what we call a transnational governance chain, running parallel to a supply chain. The policy involves more than market transactions with private actors who possess Matthews' 'key control levers'. In our case study, there is policy ambition in 'weights and measures' terms, with the EU seeking to influence the production conditions of the inputs used to produce biofuels sold in the EU. But the scale of the governance challenge represents a degree of policy ambition far greater than this.

Moreover, as introduced earlier, changing modes of governance challenge our understanding of a simple state/non-state dichotomy. The notion of firms lobbying governments for policies which redistribute economic resources in their favour, is increasingly out of date (Crouch, 2010) and misleading. First, it suggests a degree of hierarchy that may overstate the ability of a government actually to deliver such a transfer of resources. Second, this view associates firms' non-market strategies with activities such as lobbying policy-makers. This ignores the complexity of the institutional context (notably within networks; Rizopoulos and Sergakis, 2010), understating the range of possible governance roles available to firms (as our case study will show).

More broadly, these developments are reflected in various paradigms of governance: markets, hierarchies and networks (Blanco, *et al*, 2011: 300, see also Fawcett and Daugbjerg, 2012). Markets reflect an organisational mechanism absent government as an active participant; whilst hierarchies, with an over-arching coordinating actor, reflect the sovereign state; and

both ‘rest upon the application of rewards and sanctions’ (Bell and Hindmoor, 2009: 97). Networks, however, are harder to pin down, although through TNEs and the internationalisation of production, networks shall emerge to replace markets and hierarchies (Kobrin, 2009: 193). Because networks can include state actors, in a setting where they lack traditional sovereign authority network participation also expands the notion of the possible non-market activities of private actors. Thus globalisation is changing the role of the state; and the roles of the other actors (the TNEs, NGOs and IOs); and how they engage with each other.

The international business (IB) and social science literatures are searching for ways to theorise these emergent structures (see, amongst many others, Strange, 1996; Fuchs, 2005; 2007.). Yet as efforts continue to understand these network structures and their governance, so new forms of network continue to emerge, with different governance challenges (Blanco, *et al*, 2011). In these efforts to theorise networks, a helpful distinction is between policy networks and governance networks. The former is defined as ‘hierarchical government subverted by the incorporation of non-governmental elites’; whilst the latter are seen ‘as a paradigm shift away from hierarchy towards more plural modes of governing’ (Blanco *et al*, 2011 299).

More fully, policy emerges from a governance network as ‘a result of *governing processes* that are no longer fully controlled by the government, but subject to negotiations between a wide range of public, semi-public and private actors, whose interactions give rise to a relatively stable pattern of policy making that constitutes a specific form of regulation, or *mode of coordination*’ (Sørensen and Torfing, 2007: 3-4, emphases in original), yet this notion of a governance network is a useful starting point for our analysis, the governance of

EU ESC faces additional challenges: it operates across national borders, attenuating still further governments' control of 'governing processes'.

Horizontal Trans-Boundary Networks: an Challenge for Policy Implementation

The foregoing introduces governance challenges of multi-actor, non-hierarchical settings, even when this setting is located within national boundaries. A particular challenge is faced where public policy is established by one sovereign state that requires, for its effective implementation, the active involvement of private sector and civil society actors well beyond its sovereign borders. Policy effectiveness demands a more consensual and non-hierarchical relationship between the state designing the policy and non-jurisdictional actors (Richardson 2012; Wolf, 2008). As Richardson (2012: 311-312) sets out, quoting the work of H eritier and Rhodes, 'in a highly complex society, with problems extending across borders, central actors are unable to muster the knowledge required to shape effective instruments of interventions. They depend on the expertise and knowledge of private and local actors. In these conditions, centralized and hierarchical steering is doomed to failure'.

Our analysis – through its analysis of TNEs in particular – seeks to emphasise a shift in the control of economic resources. This is important for defining the limits of intergovernmental economic policy coordination: it is no more likely that other states retain full sovereign control over the resources within their territory, than our focus government does within its borders. Moreover, as argued above, transnational economic activities are developing far faster than inter-state governance arrangements. These, however, are by no means the only factors which lie behind inter-governmental cooperation not always being a feasible solution to issues of transnational governance.

Our case study is of a governance network that has emerged in response to a specific policy challenge; a network where actors are able to join or leave the network. This fluidity is not characteristic of inter-governmental relations. Furthermore, the network has emerged to deal with a policy issue established in the context of the norms and goals of one jurisdiction – the EU. There is no basis for assuming, *a priori*, that those policy preferences are reflected in other states; and, therefore, that there is even a basis for inter-governmental cooperation. Moreover, whilst a global inter-governmental forum is already available for biofuels policy-makers – the Global Bioenergy Partnership (GBEP) – interviews conducted by the authors with senior national officials involved in GBEP, indicated that it is a fairly informal gathering. It is excellent for information exchange and discussion of various topics of mutual interest, but is not (currently) an appropriate forum for detailed inter-governmental policy-making.

Thus, perhaps the most significant governance factor of all is the sheer scale of ambition of EU biofuels policy, as manifest in the ESC. The governance of a contested policy area such as sustainability represents huge political challenges. On this point, one might argue that the EU, better than any other actor, would recognise the challenges of trans-boundary policy implementation: it was forged, and has subsequently developed, as a *sui generis* hybrid of intergovernmental and supranational governing modes in response to the dilemmas of transboundary policy-making. The conclusion is straightforward but demanding: if state actors wish to influence economic activities beyond their borders, they must cooperate with (for they cannot control directly) extra-territorial non-state actors. Importantly, our case stands in contradiction to a common argument in the literature, that the participation of non-state actors requires a shadow of hierarchy, where the state threatens legal enforcement if voluntary participation is not forthcoming (Fawcett and Daugbjerg, 2012: 197-8; see also,

inter alia, Wolf, 2006; Bell and Hindmoor, 2009). A key point from our case study is that, in the extra-territorial context, the state in question casts no such shadow.

Koehn and Rosenau (2002) identify five factors influencing when transnational networks are effective: *access and resources*, *shared interests*, *partnerships in cooperative projects*, *professional/technical skills*, and *transnational competencies*. In offering these factors Koehn and Rosenau (2002: 106), in line with other authors, emphasise that ‘as increasingly less effective national and subnational governments struggle to cope with the challenges of interdependence...the transformative efforts of civil-society networks’ become more important. Quoting the work on environmental policy of Willetts (1996: 134), they also recognise that ‘Governments retain vital catalytic roles, however, and remain “nodes of communication and decision-making, interacting with domestic NGOs, international NGOs, local and transnational companies, other governments and intergovernmental organisations”’.

They also argue (Koehn and Rosenau, 2002: 111) that ‘In transnational interactions, the ability to grasp unfamiliar settings is essential.’ Yet in our case study, with a horizontal network of actors, operating in different jurisdictions, it is not a necessary condition that all actors have a full grasp of these ‘unfamiliar settings’, so long as the actors in the network, collectively, have such a grasp, and that communication between actors at the design and implementation stages of policy is clear and robust. We therefore agree with Koehn and Rosenau (2002: 119), regarding ‘the primacy of the *exchange* of knowledge]between networked individuals’. Moreover (*ibid*), ‘Among the most critical knowledge exchanges for governance in the emergent epoch are those that link the local and the global.’

We thus argue that in a transnational network, there are certain characteristics required for the network to work successfully. Individual actors exercise sovereignty ('authority' as Katsikas, 2010), puts it) but, in contrast to the territorial use of this word, we refer here to function. Network participation relies on what actors can do, given what successful policy implementation requires. The state has a role in shaping a policy reflecting domestic, territorial preferences, but must be willing to accede aspects both of design and, especially, implementation to actors who possess local knowledge in other territories, or who can act trans-territorially, where they are themselves 'spheres of authority' (Rosenau, 2007). The state therefore remains the ultimate authority for determining policy within its territory, but this does not relate to hierarchy within the network. Rather, in terms of policy implementation via the network, the state must recognise the sovereignty or authority of the other actors over their own roles.

These transnational and extra-territorial actors can utilise not only the control they have over internal resources, but also their own trans-boundary knowledge. This can involve both informing territorially-bound actors what they should do, and playing a pro-active role in shaping preferences. To a degree this will involve seeking to shape the collective preferences of the network in line with their individual goals. But, because of the absence of hierarchy, and even of the shadow of hierarchy *within the network*, a willingness to compromise and find solutions to the functioning of the (essentially voluntary) network is required. Thus, such a network involves actors who have the scope to undertake roles quite different to other types of network in which they may participate; where both private and public actors contribute to governance, with the latter extending beyond the boundary of the sovereign territory of the state. Such 'Private contributions to governance beyond the state should be considered as

embedded self-regulation, in which public actors, private corporations, and members of civil society are involved in different arenas and functions.’ (Wolf, 2006: 223).

The Transnational Governance of EU Biofuels Policy

The Case Study – An Introduction

The European Union (EU), in 2009, set a target that, by 2020, 10% of transport fuel consumed in the EU should come from renewable sources (EU, 2009a, the Renewable Energy Directive, or RED; and 2009b, the revised Fuel Quality Directive, FQD). This is one part of a wider set of climate policy objectives (the Climate and Energy Package²), and has been developed as a means of reducing emissions of greenhouse gases (GHGs); helping address energy security concerns; and promoting rural development. Indeed, these are the three principal drivers of biofuels policies worldwide.

Most of the renewable fuel is expected to be biofuels (ethanol or biodiesel), for which the EU is seeking to create a market. Given the scale of this ambition, imports are required – whether of the biofuels, or the inputs (‘feedstocks’) from which biofuels are derived. These feedstocks can be produced anywhere in the world, although most major feedstocks are produced in tropical regions of the world. The notion of biofuels as a ‘renewable’ energy is thus based on the renewability of the feedstocks. With the EU transport sector still nearly 100% dependent on fossil fuels, transport is a key target for reducing GHG emissions and promoting energy security. Specifically, biofuels can potentially reduce the emissions from transport fuels; and they, or the feedstocks, can be produced in any country. EU biofuels policy thus promotes the development of a market based on transnational supply chains (we do not refer to global

² http://ec.europa.eu/clima/policies/package/index_en.htm

supply chains because, in practice, most biofuels or feedstocks come from a relatively small number of countries).

There is a particular challenge facing policy-makers, however: EU policy is predicated on biofuels delivering reductions in GHG emissions (as detailed below). The problem is that, because of the multiplicity of feedstocks that can be used to produce biofuels, cultivation methods that can be adopted, and technology pathways that can be used to turn the feedstocks into biofuels, different biofuels can have vastly differing emissions performances. Whilst biofuels have the potential to deliver huge emissions reductions compared with fossil fuels they can also, potentially, result in considerably higher emissions. The challenge for policy-makers is to try to ensure the biofuels delivered to market are only those which deliver emissions reductions.

In this, an important distinction is between so-called first generation and advanced biofuels. First generation biofuels, which dominate current production, are based on feedstocks that can also be used as food by humans; and some can have very poor emissions performances, for reasons analysed later. Advanced biofuels can be classified as second, third and fourth generation, but we focus here on second generation. Current levels of commercial production remain very low, but they have the potential to deliver much better emissions outcomes than first generation biofuels, whilst reducing or avoiding altogether other potential negative side-effects of first generation biofuels.

Thus EU policy has two strands: to seek to ensure first generation biofuels delivered to the EU market are those with the best emissions-reduction outcomes; whilst encouraging firms to develop commercial-scale second generation biofuels. Both of these represent significant

policy challenges for the EU however as they both, in practice, involve the EU operating in the type of governance network described earlier: where a range of actors are required to participate, but over which the EU lacks the sovereign authority to force either participation or specific desired contributions and outcomes. We now explore these policy challenges, before analysing them in the context of the preceding discussion of network governance.

Containing the Downsides of First Generation Biofuels

As indicated, problems with biofuels arise from the production of the feedstocks from which they are derived. The EU solution has been to establish a series of environmental sustainability criteria (ESC), which establish constraints on where feedstocks, in particular those for first generation biofuels, can be produced. Specifically, the ESC identify land-types which cannot be used to grow feedstocks for biofuels sold in the EU, defined in terms of specific function or status before 2008. Lands excluded for biodiversity reasons are:

- primary forests and woods, undisturbed or lacking “visible” human activity;
- land protected under law, international or inter-governmental agreement (unless feedstock production does not compromise the nature-protection goals);
- highly biodiverse grassland (except, for “non-natural” grassland, if biofuel feedstock harvesting is required for grassland status to be maintained), although by the end of 2010, the Commission has still to produce a definition of highly biodiverse grassland.

Certain types of land are excluded as carbon would be released if cultivated for feedstock production:

- wetlands;

- continuously forested area;
- undrained peatland (unless feedstock production and harvesting does not require the land to be drained).

To reinforce these criteria, targets have also been set for the minimum GHG emissions reductions, relative to fossil fuels, that biofuels must deliver. Initially, biofuels must deliver at least 35% lower GHG emissions than the fossil fuels they are replacing; immediately for production facilities opened from 2008, or from 2013 for older biofuels production facilities. From 2017 this figure rises to 50% with, from 2018, biofuels produced in new facilities having to deliver GHG emissions savings of at least 60% (changes to these targets were proposed in 2012 but have not yet been agreed – as we see later). In addition, by 2020 total GHG emissions must be 6% below 2010 levels (EU, 2009b).

The ESC policy implementation challenge is ensuring the land-use criteria set out above are respected; but the EU also faced policy design challenges. Indeed, these two dimensions of EU policy are inextricably linked. The land-use criteria reflected not only emissions-related concerns but also concerns over biodiversity, both of which reflect wider EU policy goals. A major policy design challenge arose over whether or not the ESC should include mandatory compliance with social and labour standards. Within the EU, there was strong support from MEPs in the European Parliament for their inclusion (Daugbjerg and Swinbank, forthcoming). That said, others were concerned that their inclusion, as mandatory criteria, would violate WTO trade rules. This view was held by some MEPs and some member states,

and also (as our interviews revealed) by key individuals within DG-TREN.³ One interviewee, central to the policy design, argued that there was a strong belief that including labour and social criteria would cross some people's 'red lines', risking a dispute action in the WTO that could threaten the entire policy. The latter view prevailed in the legislative proposal, and was confirmed in the final agreement.

The WTO, the key IO in our case study, was not involved directly in the process of determining the ESC. It was, however, involved indirectly in two distinct ways. First, as the previous paragraph demonstrates, it cast a shadow over the discussions regarding what the ESC should include as mandatory criteria (what Lydgate, 2012, terms 'regulatory chill'). Specifically the shadow, or the threat, was that other member countries could utilise the WTO as the institutional home of the Dispute Settlement Procedure. The authority of this, as argued earlier, reflected intersubjective agreement between the member countries that it would be binding on WTO members, regardless of the presence or absence of actual, legally-binding, authority over sovereign states.

Second, the WTO had an indirect role in the *process* of design and agreement of the ESC. The ESC are an example of an international standard – put in place by one WTO member and relevant to others through international trade. As such, their design must conform with the Technical Barriers to Trade Agreement (TBTA), one of the agreements negotiated between WTO member countries and which sits under the WTO umbrella. Specifically, Annex 3 of

³ The pen-holder for the draft legislation that became EU, 2009a, was the Directorate General for Transport and Energy (DG-TREN), prior to its division into two DGs, one for Energy, one for Mobility and Transport.

the TBTA advises on how to establish such rules in order to avoid them violating WTO rules and, thus, risking triggering a dispute.

A key feature is conducting an open, inclusive process, whereby the proposals are circulated, then comments received and given due consideration in determining the final policy. The EU followed this process very clearly (*citation to a reference written by the authors of the present paper*). Furthermore, a policy designed with the input of other countries being heard is less likely to violate WTO rules. That said, a policy might still trigger an action if it is implemented in a way which violates WTO rules. The importance of this was illustrated by an interview the authors conducted with a senior official in Brazil. Brazilian companies and producers were free to engage in the processes (analysed below) relating to the production and sale of feedstocks and biofuels in accordance with EU ESC. The government took no position on this; instead, they monitor the implementation of the ESC policy to ensure it is not being used as a barrier to trade.

Thus the state, the EU, designed a policy reflecting a range of domestic political preferences, recognising the shadow cast by the key IO, utilising a process that allowed the input of, but which did not necessarily adopt slavishly, the views expressed by other states, in the final policy design. So who are the private actors in this process? They feature primarily at the implementation stage of policy, although there is an important link with one set of actors at the design stage. These are the actors who actually implement the ESC, by monitoring and certifying that the production conditions of the feedstocks conform with the ESC. This is a critical dimension of the transnational policy challenge, because the feedstocks, the biofuels, or both, can come from anywhere in the world. Thus enforcement of the ESC involves on-

the-ground engagement with producers of feedstocks located thousands of miles away from the EU.

It is not the purpose of the current paper to analyse in detail the certification process (see, *inter alia*, Ponte, 2013). Rather, we focus on how the actors undertaking the certification process fit into the wider policy governance network. The EU receives and approves applications from organisations who propose certification schemes consistent with the ESC. As of Spring 2014, 15 schemes had been approved.⁴ The types of body submitting schemes vary, from those who have been engaged with the certification of production for some time, to those established specifically in response to the ESC. Moreover, certification schemes have been received and approved from both multi-actor NGOs, which commonly include TNEs; and private sector companies involved directly in the production of biofuels.

This raises questions about the robustness of such schemes, independently of the EUs approval. Taking the Ensus scheme as an example, the process of ‘farm assurance’ – the monitoring of sustainability on individual farms – is to be undertaken by one of the other EU-certified processes. Thus the Ensus scheme does not cover the full ‘governance chain’. On the other hand, some schemes go much further than others. For example, the ‘Bonsucro EU’ scheme retains Bonsucro’s full set of social and labour conditions carried over from its general standard, but it has added a series of conditions linked directly to the requirements of the RED (see, *inter alia*, German and Schoneveld, 2012; Ponte, 2013, for further discussion on differences between schemes approved by the European Commission). Given this feature of the Bonsucro scheme, why were social and labour standards excluded from the ESC?

⁴ Full details are available at: http://ec.europa.eu/energy/renewables/biofuels/sustainability_schemes_en.htm

This again relates to the shadow cast by the WTO. Had EU policy permitted the sale in the EU of only those biofuels that conform with the ESC, that would have represented, in WTO terms, a mandatory ‘technical regulation’. This would have run the considerable risk of the policy falling foul of WTO rules over ‘processing and production methods’. Instead, fiscal incentives were put in place to encourage the (TNE) fuel companies to buy and blend only ESC-compliant biofuels, rather than mandating them to do so. Thus the ESC constitute, in WTO terms, a ‘voluntary standard’, with the fiscal incentives needing to be sufficient to steer the fuel companies towards the desired EU policy outcome. This distinction is critical in trade policy terms given that, unlike for example Fairtrade coffee, consumers are not given a choice between ‘sustainable’ and ‘unsustainable’ biofuels at the point of purchase.

TNEs are, as indicated above, involved in certification processes, whether as a member of a multi-actor NGO, or as a certifier in their own right. Moreover, they also operate in the crucial space between producing the certified feedstocks, and delivering transport fuel to the EU market with certified biofuels blended in. At the latter end of the supply chain they must demonstrate, using the ‘mass balance’ method, that the biofuels blended into EU transport fuel have been derived from feedstocks certified as sustainable (see, *inter alia*, Ponte, 2014, for a broader analysis of multi-polar value chains). It is important to note that neither certification, as a process, nor the mass balance approach, are new. Thus the EU is engaging with established processes and, in some cases, established multi-actor NGOS, to implement policy. This, in turn, is extending existing roles, or developing the scope for new roles, for TNEs. Moreover, these are not passive roles; they allow and even expect TNEs to be more than mere lobbyists. We thus see the blurring of the notions of market and non-market activity for actors operating in such a network.

Advocacy NGOs seek to promote causes, ‘on behalf of others who lack the voice or access needed to promote their own interests’ (Teegen *et al*, 2004: 468). Their activities with regard to biofuels policies in general, and EU policy in particular, has been to focus on the actual and potential impacts of policies on the environment, and on the poor, in particular in developing countries. Their activities have not, in all cases however, been in direct conflict with the broad thrust of the biofuels network. Notably, several are also members of the multi-actor NGOs driving the certification process.

That said, their actual impact on the design of EU policy, and on its governance through the network of actors, has been modest. Indeed, it has been a feature of biofuels policies worldwide, not only with the EU, that external, international, pressures on policy have thus far had little impact on what were designed primarily as domestic policies. Even so, the efforts of advocacy NGOs have not been entirely without consequence, notably through their efforts to draw attention to particular potential downsides of biofuels.

One such is indirect land use change (ILUC). This occurs when, following the diversion of feedstocks from food uses into biofuels in one location, the price of food commodity rises. This draws land into the production of that feedstock elsewhere in the world, for food. This cultivation of land brought into agriculture (ILUC requires that this land was not already used for food production) will release GHGs. These additional emissions should then be attributable to the biofuels and biofuels policies that triggered the ILUC. When the authors interviewed a key government official in Brazil, he argued the NGOs had done Brazil a great service by bringing so much attention to bear on ILUC. He said it had forced the Brazilian

government to go back, look again at this issue and, ultimately, to confirm that Brazilian sugarcane ethanol really did perform extremely well in these terms.

In the EU, there is concern amongst some policy-makers that ILUC needs to be recognised and accommodated. In 2012 a reform was proposed that, if approved, will limit the share of the 10% renewables target that can come from first generation biofuels. It also includes 'ILUC factors', fixed GHG emissions values to be added to baseline biofuels emissions calculations. That said, it is questionable that these measures will have much of an impact. It remains uncertain how close the EU will get to the 10% target by 2020. Moreover, the existing policy already has increases in required GHG emissions thresholds built-in. Proposed changes to the timing of these increases, and the inclusion of ILUC factors, are unlikely to alter significantly the consequences of EU biofuels policy on land-use and emissions, beyond what is already accounted for. Even so, it is important to note that the agenda of advocacy NGOs in the biofuels sphere align with many MEPs in the European Parliament, providing an ongoing channel of communication and route into EU policy-making for them.

Promoting Second Generation Biofuels

Built into EU policy is a second crucial role for TNEs. Given the aforementioned potential downsides of first generation biofuels, EU policy seeks, simultaneously, to encourage the development and commercialisation of (initially) second-generation biofuels. These are, by definition, derived from non-food feedstocks, although since some are grown specifically for biofuels production, they may still generate land-use concerns. That said, not only are these concerns mitigated with second generation biofuels, the GHG emissions performance is, on average, much better. Our interviews confirmed that all major technologies required for this

to happen are known: the challenge is being able to scale them up and make them commercially viable.

What, though, about the incentives for TNEs to do this? There are clear fiscal incentives to encourage TNEs to ensure the first generation biofuels they buy and sell are ESC-compliant. With the promotion of second generation biofuels, however, the incentives are ambiguous, indirect and weaker – even though it is a key part of what policy delivery is predicated upon. Primarily, the incentive is that all advanced biofuels count double towards the 10% target. This provides little incentive in relation to the research and development required, given also that there is no obvious, significant, margin on return to be had from supplying second generation biofuels to the EU market.

The reform proposals on the table include counting some advanced biofuels four times against the 10% mandate. As senior industry representatives told one of the authors at a conference, however, they do not consider this as having any real impact as it gives no signal at all regarding possible returns to the companies. Indeed, it was suggested EU-based firms were looking more at the US market as a location for investment, as US policy offered clearer benefits for the delivery of advanced biofuels. Furthermore, the scheduled increase in GHG emissions thresholds for eligible biofuels will see large volumes of first generation ceasing to be eligible for support. It is unclear whether this is sufficient to encourage companies to develop second generation biofuels, predicated as it is on the implicit assumption that biofuels are a sufficiently important part of these companies businesses that they will wish to continue operating in this market.

It is therefore significant from a governance viewpoint that this is an area where there are close, bilateral, working ties between policy-makers and TNEs. Specifically the EU has been funding, and the European Commission actively engaged with, a series of projects which are supporting companies in their efforts to bring advanced biofuels to market. Even here, however, the scale of the EU policy ambition threatens to overshadow these efforts, given the hopes for the policy embedded in the development of advanced biofuels and the speed with which these developments must take place if the 2020 targets are to be met. The problem is the potential contradiction between the scale of consumption required to contribute to the 10% renewables target; via biofuels that, from 2017 or 2018, must deliver greater GHG emissions savings than many first generation biofuels are capable of.

EU ESC and Network Governance

EU biofuels policy has been developed by policy-makers as a domestic response to a range of domestic and global policy challenges. The nature of biofuels production means that the certification bodies may be operating thousands of miles away from the EU, whilst the policy requires companies, notably TNEs, to engage actively along the full length of the governance chain which parallels the supply chain. This system operates in a contested policy sphere, sustainability, in which INGOs are extremely active, whilst the international dimension of biofuels production and distribution raises the question of the WTO compatibility of the policies put in place to govern the transnational biofuels market. Meanwhile, TNEs are also being encouraged to develop and to deliver to market, at scale, advanced biofuels.

EU policy-makers are trying to deliver EU policy goals without any direct policy levers to compel these other actors to participate in this network. The different actors in the network have sovereignty, or authority, over their own skill-set and knowledge, all of which is

required for the network to deliver on EU policy. Thus control of policy design remains, primarily, with EU policy-makers; whereas governance of the network required for policy implementation is diffuse. The EU does not even cast a shadow of hierarchy over the other actors in this network. In this regard, it is an important feature of policy that the EU is involving multi-actor NGOs who, in many cases, are already in existence and whose functions extend beyond biofuels. The EU is asking these certifiers to do for EU biofuels policy what they already do for those feedstocks in other contexts. These certifiers thus exist and operate independently of biofuels, which is extremely important given the strongly divisive debates that biofuels can trigger. Engaging with existing certification networks and processes can also help the EU ‘normalise’ this element of its biofuels policy.

Teegen (2003: 280) refers to the reputation of Nature Conservancy in performing its ‘bonding’ role. Yet in our ESC example, as the foregoing shows, the multi-actor NGOs do much more than provide an interface between private and public actors: notions of bridging and bonding are useful reference points, but they understate the roles performed by the multi-actor NGOs in our case study. Indeed, bridging and bonding are built upon incompatibilities, whereas the EU biofuels policy governance network involves mutually compatible interests and complementary functions. Moreover, it is also plausible that the involvement of the EU might, in turn, lend the non-state actors in the network ‘formal authority’ (Katsikas, 2010: 126), thereby enhancing their authority.

It is also clear from the foregoing, however, that there are considerable differences between the types of body doing the certification. There are multi-actor NGOs, such as Bonsucro and the Roundtable on Sustainable Palm Oil, who draw in a wide range of actors in the process of Roundtabling (Ponte, 2013). This delivers high levels of legitimacy, but may also be so

bureaucratic that efficiency is inhibited. Indeed, as Ponte argues, one reason for the popularity of the EU-approved International Sustainability and Carbon Certification (ISCC) amongst private companies is its greater efficiency. But as well as lacking the degree of legitimacy that the Roundtables possess, it also delivers considerably less on labour and social indicators (German and Schoneveld, 2012).

Despite all these challenges faced by the EU biofuels policy governance network, and the tensions that exist between different actors with diverse interests, we have not yet seen the network fragment. In a transnational network that lacks hierarchy, different non-state actors have engaged with each other and taken on the various roles required for the network to function. Thus we see TNEs not only engaging with multi-actor NGOs, but being active members. We also see TNEs deliver ESC-compliant biofuels to the EU market, in response to economic incentives, not to hierarchy-derived orders.

On the other hand, when policy-makers have asked TNEs to deliver advanced biofuels to market, even collaborating with them on research and development, the lack of clear market or policy incentives has thus far had much less success. Underlying EU biofuels policy is the implicit idea that the policy goals can be delivered without consumers having to adapt their own behaviours. Indeed, the way the policy has been designed and implemented, consumers cannot make expressive consumption decisions over biofuels, in the way they can over choosing between, say, Fairtrade and non-Fairtrade coffee. In contrast, TNEs in particular *must* change what they do. The challenge for policy-makers is to find ways to promote this in the absence of hierarchy-based authority: the foregoing has indicated mixed success thus far. The issue for TNEs is how best to engage with this new configuration of economic actors operating in transnational networks. We conclude with further thoughts on this.

Managerial Relevance

In 2013, the UK House of Commons International Development Committee published a report on global food security (House of Commons, 2013). Several advocacy NGOs made written submissions arguing that biofuels affect food security adversely. Out of over 30 written submissions, only one came from a company that could even possibly be identified as being a private actor in the biofuels policy network. Did private companies not expect advocacy NGOs to argue that biofuels harms food security? We do not offer views either way on this debate, but we do offer this as illustrative of the changing nature of policy-making and networks in the ‘emergent epoch’ of which Koehn and Rosenau spoke.

The changes this has brought about require managers to think afresh about what this means for their companies. We are not arguing that this marks the end of, for example, traditional lobbying as we know it. After all, states still retain a significant degree of political and policy authority over their territory, and even the largest TNEs have discrete operations located within those territorial borders. The challenge is in recognising the diverging spheres of authority of firms and states – and what this means for what states and policy makers can deliver to other actors in response to lobbying: it has to be lobbying targeted at the right actor, at the right time, for services the state is able to deliver on. It is imperative that managers understand precisely what this means for firms, but especially TNEs.

First, TNEs are central to this diverging spheres of authority of state and firms. They control economic resources across multiple jurisdictions that are beyond the control of nationally bounded states. If sovereignty is now a question of interdependence between a range of

public and private actors, then TNEs are doing much of the actual, on-the-ground governing in the international economy, both intra-firm and through supply chain management.

Second, whilst this diminishes the internal sovereignty of nation states, it does not represent an equivalent increase in private autonomy. Nation states still retain considerable sovereignty, albeit not so much over this one actor-type, the TNE. Instead, the boundary is being blurred between the public and private, as public and private actors become increasingly interdependent. This renders problematic the analytical separation of market from non-market strategy. TNEs no longer execute their market strategies exclusively in the private domain.

Third, these changes open up new avenues of functional authority for TNEs, avenues that must be traversed cooperatively with other actors. Trans-boundary network governance requires participants in the network to bring their knowledge and functional sovereignty, but also requires them to recognise that delivery of a given outcome involves the participation of several, or all, of states, multi-actor NGOs, advocacy NGOs, and IOs. Increasingly, firms depend on other actors for knowledge, capability and legitimacy to implement both their market and non-market strategies. Moreover, participation in such networks is essentially voluntary; mutual interdependencies and mutual benefits must be recognised for the network to deliver on outcomes that, ultimately, will be to the benefit of all participants.

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