

## Democratic governance and transgovernmental networks

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Transgovernmental networks (TGN) are fundamental to managing the pressures globalization brings to bear on modern governance. This paper provides a systematic empirical analysis of the democratic qualities of these networks of state executives acting below the level of central government. We enquire into whether TGN are mere technocratic bodies that insulate themselves from democratically legitimated institutions, or whether they embrace democratic governance norms in their operations. We investigate the variation in democratic quality using a differentiated measurement assessing input, throughput, and output legitimacy across seven TGN, characterised by different degrees of authority, autonomy, and democratic member composition. Our findings suggest that the legitimacy of TGN rests on more than mere technocratic output-orientation but also includes key throughput and input factors such as transparency or stakeholder involvement. While the degree of authority does not seem to matter much, networks that are autonomous from their member states, in particular if these are stable democracies, operate in a more democratic manner. Composition alone appears to have no systematic influence on the democratic quality of transgovernmental networks.

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## **Introduction**

“Competition agencies should reach out towards businesses to foster a culture of compliance and towards the civil society to muster support for their work”, Joaquín Almunia demanded at the 2013 annual conference of the International Competition Network (ICN) in Warsaw (European Commission 2013). The then Vice President of the European Commission responsible for competition policy addressed a major concern regulatory authorities and their networks are facing. Transgovernmental networks (TGN) such as the ICN have been initiated in an attempt to effectively ensure market regulation in an increasingly interdependent world; yet, the extent to which governance within TGN is in line with democratic principles is contested.

TGN are defined as networks of state executives from specialised ministerial departments or independent domestic regulatory agencies, who, acting below the level of central government, established institutionalized links to exchange information, develop common regulatory standards, and assist one another in enforcing such standards in their respective jurisdictions (Slaughter 1997, 2004; Raustiala 2002). The phenomenon of inter-administrative coordination in such networks has hitherto been predominantly studied with a focus on their proliferation and their effectiveness in promoting common principles, rules and best practices (Keohane and Nye 1974; Slaughter 2004; Raustiala 2002). However, we know little about their democratic quality. Are transgovernmental networks (TGN) just technocratic bodies shielded from democratically legitimated institutions – or do they develop and institutionalize elements of democratic governance within their own structures? If so, which understanding of democracy is reflected in these governance norms? And, how does the institutionalization of these norms vary across TGN, and why?

In this paper, we explore the democratic qualities of TGN in a systematic and theory-driven manner. Building on previous theoretical accounts, we expect variance in democratic quality of TGN to depend on network properties, namely the autonomy and authority of the network as well as its membership composition. To test for these propositions, we conduct a comparative analysis of policy-specific TGN for which a European network teaming only democracies exists in parallel to an international one, which brings together diverse political regimes. The selected TGN specialize in three policy fields (banking regulation, competition and environmental policy) and show varying degrees of independence from their member constituents. We analyse the institutional features of the selected TGN based on a differentiated conceptualization of democracy. To avoid privileging one particular understanding of democracy, we derive indicators of democratic governance from three broad

traditions of democratic thought: the republican, the liberal, and the deliberative one, and contrast it with technocratic governance.

In the next section, we summarize our key theoretical arguments and formulate testable hypotheses on the link between network properties (authority and autonomy) and the democratic governance in TGN under the condition of varying membership composition. We then describe our research design, before turning to our findings. In brief, we show that TGN bear more elements of democratic governance than is commonly assumed. At least for our limited number of cases, democratic governance seems to stem from the extent to which they possess the competencies for autonomous policy-making rather than from their (democratic) composition alone. The conclusion puts our findings in perspective.

### **Democracy and governance in the transgovernmental realm**

The reordering of the political space linked to processes of internationalization and Europeanization has been “associated with a great increase in the scale of the political system” (Dahl 1994:21; see also Blatter 2009; Grande 2000; Schimmelfennig 2010; Zürn 2000). This re-scaling is evident in the expanding jurisdiction of intergovernmental organizations, such as the United Nations bodies, and the increasing role of transgovernmental networks gathering regulators at the level of states' administrations (McGrew 2014).

The consequences of denationalized politics for democracy are subject to lively debate among normative and empirical political scientists. While sceptics moan a trade-off between “effective problem-solving through international institutions” and “democratic political processes” (Dahl 1994), others view international institutions as “sensible response to the problems facing democracy in times of societal denationalization” (Zürn 2013:414). Dahl and other sceptics associate the denationalization of state functions with a double challenge to democracy. It not only alienates the political process from the domestically constituted demoi with equal participation chances but also violates the principle of accountable decision-making and evades public control. In consequence, a fundamental dilemma emerges between “the ability of the citizens to exercise democratic control over the decisions of the polity versus the capacity of the system to respond satisfactorily to the collective preferences of its citizens” (Dahl 1994:21). Internationalization “optimists”, in contrast, emphasize that by realigning the space of social and economic activities with the political space of rule-making and regulation (Held 1995), international institutions rescue the problem-solving capacity of

the nation-state and may help to secure some of the constitutional prerequisites of a democracy (Keohane et al. 2009).

While domestic and international governance are thus increasingly inter-woven, a distinct aspect of denationalization concerns the diffusion of authority away from the traditional representative institutions towards decentred, functionally specific and non-majoritarian institutions (Hooghe and Marks 2003). Intrinsic in these transformations is a change in the nature of governance and the shift from the interventionist to the regulatory state (Majone 1994; 1996). This shift goes along with a move from value-based, politicized politics within majoritarian, elected representative bodies towards more technocratic, science- and expert-based practices in non-majoritarian, non-elected bodies such as independent regulatory agencies and, especially at the international level, transgovernmental networks (Gilardi 2008; Benz and Papadopoulos 2006; Slaughter 2004).

As pointed out by Liesbet Hooghe and Gary Marks (2003), the emergence of multilevel polities involves two –coexisting– types of governance and institutions, with each proposing different views on democracy. The first type of governance (“Type I governance”) corresponds to a federalist model and refers to the dispersion of authority to general-purpose, nonintersecting, and durable institutions. Comparable to the vertical separation of power in a federal state, internationalization would consist in system-wide transformation, in which the functions are bundled, and the levels of government are multiple but limited in number (Hooghe and Marks 2003:263). The more strongly transformative aspect of the multilevel governance approach, however, rests in the acknowledgement that denationalization does not only engender shifts in the vertical diffusion of authority across levels of government but even more so in the horizontal dispersion of authority. “Type II governance” incarnates such task-specific, intersecting and flexible jurisdictions (Kohler-Koch and Rittberger 2008:8; Hooghe and Marks 2003). While existing at all levels of government, Type II structures are typical of international institutions or regimes. They are functionally specialized within one or few policy areas and, hence, characterized by partially overlapping, intersecting memberships; they are polycentric and lack an overarching hierarchical order; and they have flexible designs, i.e. are less formally institutionalized than Type I governance systems. Transgovernmental networks are the archetype of Type II institutions and, as such, face the democratic challenges associated with the emergence of Type II governance.

### *Conflicting views on democratic governance in TGN*

In so far as scholars have addressed the challenge for democracy represented by the proliferation of TGN<sup>1</sup>, the existing literature suggests rather ambivalent views. On the one hand, advocates of transgovernmentalism praise the intrinsic democratic qualities of this horizontal mode of coordination as it draws on domestic regulatory systems and promises greater respect of state sovereignty than, for instance, supranational integration or international treaties (Slaughter 2004; Cohen and Sabel 2006). Scholars of multi-level governance, in turn, suggest that such purpose-specific Type II governance can also rely on functionally specific types of participation rather than the congruence between the political institutions and the demos, as Type I governance presupposes (Hooghe and Marks 2003:241). Most supporters argue from the point of view of output-legitimacy and emphasize TGNs' greater flexibility and professionalism in addressing specific problems (Majone 1998; Slaughter 2003). Some scholars however also highlight advantages relating to input-legitimacy such as networks' greater openness for the inclusion of new actors and ideas (Coen and Sabel 2006; H  ritier 1999:275), in particular experts and stakeholders. Adherents to deliberative understandings of democracy emphasize the superior issue-orientation and rational will-formation represented in such networks (Joerges and Neyer 1997).

These views are challenged by more classic conceptions of universal representation as basis for democracy. Papadopoulos (2010) identifies three main challenges associated with the proliferation of network governance. The first is lack of visibility; TGN participants are hardly known by the public. This is a problem for both transparency and accountability since it leads to what Bovens (1998:45–52) describes as the “paradox of shared responsibility” – the blurring of individual responsibility through the fact of sharing it. Hence, the lack of transparency and accountability in TGN – with little or no public check on this administrative action, plus the opaque institutional structures masking unequal power relationship within these networks – have been identified as major concerns for democratic standards (Kingsbury et al. 2006; Macey 2003). The second challenge rests in the potential de-coupling between TGN and the democratic circuit as institutionalized in the elected representative bodies, thereby bearing the risk of ‘post-parliamentary’ or ‘post-liberal’ governance – a problem coined as the paradox of having “more accountability, but less democracy” (Papadopoulos 2010). In other words, the eventual introduction of transparency or participatory norms in new

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<sup>1</sup> For a discussion of democracy-related questions in the context of the TGN selected for this study, see Online Appendix 1.

governance fora such as TGN should not be taken as a proxy for "democracy." The third challenge is identified in the composition of TGN: Bureaucrats are only indirectly legitimized by the citizenry through a lengthy chain of delegation. If independent "experts" are involved, their role is even more problematic because they must be unaccountable to the citizens by definition. Representatives of interest groups, when involved, may have vested interests, as may be the case with NGOs. Strikingly, the assessment of the democratic quality of TGN (as of any political forum) thus appears to depend very much on the definition of democracy the respective authors apply.

### *Conceptualizing democratic governance in TGN: The dependent variable*

Since David Held proposed his *Models of Democracy* (1987), several attempts have been made to summarize the various conceptions of democracy. The three most discussed ideal-types are the republican, liberal, and deliberative models of democracy (Coppedge et al. 2011; Habermas 1994; Lauth 2004; Zürn 2011). All three models focus on democratic procedures for political decision-making rather than on the substance of politics. In order to account for a non-democratic alternative of legitimation, we contrast them with a technocratic vision of governance.

Using the terminology introduced by David Easton (1965) and Fritz Scharpf (1999), the first three democratic models focus on the input and throughput processes of political decision-making, while the technocratic model emphasizes their output-legitimacy, as highlighted in Table 1. A model is input-oriented if it stresses the processes feeding social demands into the political system, i.e. citizens via direct democracy; elected representatives via the legislative body; or consultation of stakeholders or independent experts. The throughput dimension refers to the processes within the political system by which inputs are transformed into outputs, including their accountability and transparency. Finally, a model is output-oriented if it emphasizes the results of the decision-making process, their quality and consequences, which are commonly evaluated in terms of the extent to which they address citizens' concerns in an effective, efficient, or responsive manner.

-- Table 1 about here --

Our dependent variable then assesses the democratic quality of governance within transgovernmental networks, as evaluated on the basis of these four different models, with each prescribing a different pattern of legitimation. According to the *liberal model*, the

democratic quality of governance within a TGN is judged “by the limits” (throughput-dimension) placed on elected representatives as the rule-makers, particularly the establishment of effective checks and balances, as well as equal opportunities and individual liberties guaranteed by legally defined (constitutionalized) and transparent procedures (Coppedge et al. 2011:253; Held 2006: Ch. 3). Uncomfortable with (fully) delegating political authority to representatives, the *republican model*, in turn, prefers tight chains of delegation from the national demos to international bodies, with direct forms of participation through direct democratic instruments or stakeholder consultations (Barber 1988; Fung and Wright 2003). While thus emphasizing the input-dimension of legitimacy, the republican tradition also emphasizes accountable and transparent processes as prerequisite for democratic governance. The *deliberative model*, finally, evaluates the democratic quality of governance based in equal parts on who participates in processes of decision-making and how these decisions are reached, i.e. the input and the throughput dimensions of legitimacy (Held 2006:237). Embracing the idea of issue-specific, functional demoi, it emphasizes the importance of public reasoning and expertise, and rational decision-making focused on the common good over representation. In addition to the involvement of experts and stakeholders, political institutions with a deliberative function are key, such as consultative bodies like hearings (Dryzek 2010). While deliberativists disagree on the principle of transparency (Warren and Mansbridge 2013), the key throughput principle of deliberative theory is “reasoning”, i.e. the process by which actors evaluate all options and opinions before reaching a balanced and justified decision. In contrast, *technocratic governance* is based on instrumental reasoning and the confidence that rational, scientific analysis enables consensus (Radaelli 1999:37). Here, governance is mainly evaluated with regard to its output legitimacy in terms of its problem-solving capacity, i.e. the extent to which it produces workable and efficient solutions. The active involvement of independent experts in the production, control and validation of the knowledge-basis upon which decisions are made is considered desirable rather than problematic (Fischer 1990). While the three democratic models of democracy thus center on decision-making rules that ensure self-governance of the citizens (direct, representative, or deliberative) and respect for these rules, as well as on the procedural conditions that ensure citizens can make adequate use of them, the technocratic model evaluates governance in terms of performance, i.e. the achievement of common good objectives.

*Explaining variation in the democratic quality of TGN*

When do we expect a transgovernmental network to be more democratic? In searching an answer to this question, democratic theory reminds us that different models of (democratic) governance are different answers to the same problem, namely the (democratic) legitimacy of political order or system, as characterized by „interactions through which values are authoritatively allocated for a society“ (Easton 1979:21). Legitimacy is needed to generate the rule addressees' willingness to comply with authoritative decisions even if they disapprove their substance (Weber 1976). According to democratic thinking, in making binding decisions a system of governance intervenes massively into the lives of people, at least potentially. Therefore, the people must have a voice in the system's decision-making to assure that the decisions taken correspond to their needs. Transferred to TGN, then, the extent to which these policy-making authorities govern independently from their member state constituents should matter for the extent and nature of their democratic constitution. Albeit defined by Keohane and Nye (1974:43) “as sets of direct interactions among sub-units of different governments that are not controlled or closely guided by the policies of the cabinets or chief executives of those government”, TGN vary in their competencies of authoritative decision-making and political control. Against this, we generally expect governance to be more democratic in TGN that are more independent from their member state constituents.

Yet, the proposed relationship between a TGN's independent governance and its democratic quality should be valid only for networks that are predominantly composed of democracies. Eventually, “as state competences dwindle, [...] democratic substance seems necessarily to be draining away” (Zürn 2000:91). In consequence, the more international institutions gain authority over and autonomy from the nation-state, the larger their potential democratic deficit. In other words, there is an assumed “correlation between the integration level of an [...] institution and the public discourse about the lack of democracy and legitimacy in the institution's structure and functioning” (Stein 2001:489). If TGN are decoupled from state jurisdictions, thus removed from intrinsic democratic legitimation, such (anticipated) public discourse should drive reforms of their democratic restructuring. Against this, we expect democratic members in democratically dominated TGN to use “their resulting capacity to secure support for their polity preferences” (Tallberg et al. 2015:62), namely representative democracy. Based on the premise that a member state holds preferences regarding the design of international governance bodies that are rooted in their respective domestic political systems (Nullmeier et al. 2010; Tallberg et al. 2015; Grigorescu 2007), we expect autocratic member states to not share such preference for democratic TGN.



Summing up, we expect governance to be democratic in TGN if they (1) enjoy high levels of decision-making authority, and (2) have autonomy from predominantly democratically constituted member state jurisdictions. We argue that these factors may influence not only the degree of democratic governance but also the dominant pattern of legitimation. Our first variable *authority* acknowledges that legitimation presupposes the exercise of political authority. Drawing on Hooghe and Marks (2015), we understand by authority what they call “pooling”, namely a TGN’s competence to make authoritative decisions, that is to impose binding procedures and regulations on its addressees (see also Lake 2007; Moravcsik 1998). If now political authority calls for legitimacy, then democratically dominated TGN with competencies of authoritative policy-making should show more democratic elements. Though empirically often closely related, such pooling of competences in a governance body is analytically distinct from the delegation of competences to such body (Hooghe and Marks 2015; Lake 2007). Our second variable *autonomy* captures such difference and focuses on the transfer of decision-making powers. In delegating certain sovereign powers to TGN, states grant a network essential autonomy to perform specific tasks independently. The autonomy of a TGN is thus indicated by the extent to which it is overseen by conventional national jurisdictions, that is whether or not its competencies can be limited by a member state. Again, we expect the democratic properties of TGN to derive from its competencies of rule-making and regulation autonomously from mainly democratic member states. These theoretical considerations lead to the formulation of two hypotheses on the impact of authority and autonomy under the condition of predominantly democratic membership:

**H1:** If a transgovernmental network has authority, it establishes rules and procedures of democratic governance, but only if it is predominantly composed of democratic members.

**H2:** If a transgovernmental network enjoys autonomy, it establishes rules and procedures of democratic governance, but only if it is predominantly composed of democratic members.

Furthermore, we expect membership composition to make a difference not only with regard to the degree of democratic governance reflected in TGN but also the dominant pattern of legitimation that is followed. Gaining legitimacy is not restricted to liberal democratic states but considered a basic condition of rule. Eventually, the capacity to maintain authoritarian rule without resorting to coercion but with a certain degree of responsiveness to domestic

problems, thus generating output-oriented legitimacy, is considered key to the stability and survival of political systems, including non-democratic regimes (Croissant and Wurster 2013; Lipset and Larkin 2004). If we hence conceive patterns of non-democratically constituted systems to value output-legitimacy but not throughput- and, even less so, input- legitimacy, we would generally expect legitimation of TGN with competencies of authoritative and autonomous decision-making to become more input- and, eventually also more throughput-oriented, the more democratic their members are. Moreover, assuming that nationally relevant patterns of legitimation are transferred to transgovernmental arrangements of governance (Nullmeier et al. 2010:63), TGN that are predominantly composed of democratic member states should show elements of input legitimacy associated with the liberal (universal representation) or republican model of democracy (direct participation) as well as elements of throughput legitimacy (transparency, legality, accountability), given that most democracies in the real world are composed of combinations of the two models. In assessing this proposition, no discrimination between authority and autonomy is made as we expect this reasoning to apply to both. Our third hypothesis hence reads:

**H3:** If a transgovernmental network has authority and/or autonomy and is predominantly composed of democratic members, its dominant pattern of legitimation follows an input-and throughput- oriented model of liberal or republican democratic governance.

## **Research design**

### *Selection of transgovernmental networks*

We investigate the quality of democratic governance in seven transgovernmental settings specializing in one of three single-issue areas (“policy scope”, Hooghe and Marks, 2015) and are tasked with contributing to the creation of joint regulatory structures rather than merely coordinating national regulatory endeavours (“functional scope”, Slaughter 2004:52ff; Lavenex 2008:943). Hence, all selected transgovernmental networks possess some capacity to “govern” (as understood by Bevir 2013). At the same time, they cross-vary along their membership composition and the policy field’s degree of politicization – two characteristics that we expect to influence the extent to which they can govern independently from their member state jurisdictions and, hence, as hypothesized, the extent to which they face the normative pressure to democratize.

To measure the effect of membership composition, we juxtapose European networks

made of democratic state constituents (the EU Network for the Implementation and Enforcement of Environmental Law IMPEL; the European Competition Network ECN; the European Banking Authority EBA, and its predecessor, the Committee of European Banking Supervisors CEBS) with their global equivalents that encompass also administrations from non-democracies (the International Network for Environmental Compliance and Enforcement INECE; the International Competition Network ICN; the Basel Committee for Banking Supervision BCBS).

The selected TGN specialize in three policy issues that vary with regard to their degree of politicization, banking, competition, and the environment. TGN generally operate without much publicity and relatively unaffected by the turbulence of political disputes (Pollack 2005: 906; Slaughter 2000: 200-2). They are hence often seen as a “depolicitization strategy” (Eberlein and Newman 2008:35). Still, their activities are embedded in politics and affected by political interests and power. Touching upon internally sensitive issues such as corruption, patronage and the mixing of private business with governmental responsibilities, banking and competition policies can be regarded as more politicized than environmental policy. This reasoning resonates with Hooghe and Marks, according to whom “[i]nternational trade and banking are fertile ground for politicization” (2015:313).

Our comparative analysis of democratic governance within these seven networks is primarily based on data from three separated but intertwined datasets that we compiled in 2015/2016: (1) the institutional features of democratic governance of each network, (2) their de jure authority and autonomy; and (3) the properties of their membership since creation. We mainly use primary documents, in particular information made available by the networks (see Online Appendix), the existing academic literature, and insights derived from interviews with network representatives and secretariats. Importantly, the selected seven networks are among the most prominent transgovernmental networks and commonly used as examples in pertinent scholarly work, including authoritative handbooks on (transnational) governance (e.g., Slaughter 2004; Slaughter and Hale 2011; Hale and Held 2011). In the absence of a conclusive inventory of TGN, we are hence confident that our study of the relationship between authority/autonomy and democratic quality of these seven TGN can provide crucial information about this relationship in the transgovernmental realm in general. Each network is briefly presented in the Online Appendix.

### *Operationalization of the dependent variable: (Democratic) legitimacy of TGN*

In assessing the democratic quality of the selected transgovernmental networks, our dependent variable, we operationalize the three ideal-typical models of democratic governance (liberal, republican, deliberative) plus technocratic governance based on the most characteristic feature(s) of each normative criterion for evaluating legitimacy: input, throughput, and output (Scharpf 1999; Schmidt 2013; Lord and Magnette 2004), as displayed in Table 1. We treat the interrelation of input, throughput and output dimensions as complementary.<sup>2</sup> That is, we consider all three dimensions of legitimacy as equally important and calculate the total score of democratic governance by summing up ratings on the single characteristic features. Since each model is defined by a unique combination of features (rather than by unique features) with varying emphasis, the features used to operationalize the technocratic model also appear in our measurement of a network's overall democratic quality. Appendix 1 provides the coding scheme including illustrative examples (for the exact scores see Online Appendices).

Referring to public involvement in the governance process, *input legitimacy* is operationalized by four dimensions that we take from the corresponding normative and empirical literature: participatory, representative, stakeholder-based (e.g., NGOs or business associations; stakeholder-based), and epistemic (experts) involvement (Grigorescu 2007; Archibugi et al. 2012; Dellmuth and Tallberg 2015). The *throughput* dimension of legitimacy focuses on the quality of the governance processes and includes the transparency of information; the legality of procedures; the accountability of those engaged in making the decisions; and reasoning in terms of an in-built process of inclusive and reasoned opinion-formation. Finally, *output legitimacy* is measured by effectiveness (evaluation of goal-attainment) and cost efficiency (Scharpf 1999; Dellmuth and Tallberg 2015; McLaren 2002; Anderson and Reichert 1995; Schmidt 2013; Steffek 2015).

### *Operationalization of the independent variables*

In evaluating our two main explanatory variables, *authority and autonomy* of TGN, we largely follow Hooghe and Mark's (2015) work on international organizations, and complement them with items identified in studies of EU regulatory agencies (Wonka and Rittberger 2010) and national regulatory agencies (Maggetti 2007; Hanretty and Koop 2012;

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<sup>2</sup> Herewith we depart from scholars who postulate trade-offs between the three dimensions and perceive, for instance, improving output performance through non-majoritarian institutions as negatively impacting the political input of citizens, or the reverse (Schmidt 2013; Lord and Magnette 2004).

Gilardi 2008; Maggetti and Verhoest 2014). While each TGN is unique in terms of its institutional set-up, we seek to evaluate them on a common conceptual frame based on “institutional possibilities that have similar connotations” (Hooghe and Marks 2015:314) across different TGN.

The first variable, *authority* refers to a TGN’s ability and scope to impose binding decisions on its addressees. We use a three two-dimensional conceptualization, encompassing (1) the bindingness of decisions for the network’s members (i.e. if a decision taken by the TGN is domestically binding for the participating states), (2) the dominant decision-making rule in the network’s core-decision-making organ (simple or absolute majority, supermajority or selective veto, or consensus/unanimity/ no rule), and (3) the enactment of policy-related decisions.<sup>3</sup> In line with the coding of authority of International Governmental Organizations by Hooghe and Marks (2015: Appendix A), we define a decision as nonbinding “if there is a voluntary provision or if objections by one or several countries postpone or annul the decision. A decision is partially binding if there is a procedure for an individual member state to opt out or postpone a decision, but this does not affect its binding character for other member states. A decision is binding if there is a formal legal provision to this effect or if there is no provision for a member state to opt out or postpone implementation of a decision.” Each item is assessed using a three-point scale from low to high. The final score is a simple combination of the three dimensions, as specified in Appendix 3 and Online Appendix 4.

*Autonomy*, our second explanatory variable, refers to the extent to which networks are overseen by member states<sup>4</sup> and is composed of three dimensions, as detailed in the coding scheme (Appendix 4 and Online Appendix 5): (1) Control over appointment of core offices of the TGN, (2) the decision-making competences of member states over the TGN, including discretion over the budget, and (3) the regulatory scope. The selected networks have different organizational structures. To ensure consistent coding across all seven TGN, we distinguish two situations. The first situation refers to TGN within which a body exists comprised of representatives from all member jurisdictions. If this body exerts control in any of the first two dimensions, this implies full discretion of member states on the respective dimension

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<sup>3</sup> Since the selected networks do not vary in terms of the number of addressees –for all networks the number of addressees is larger than the number of formal members – we do not weight a TGN’s score by the number of addressees of its decisions.

<sup>4</sup> In principle, the autonomy of networks is also determined by potentially constraining actors such as the European Commission for EU networks. Since, empirically, however, we find autonomy constraints to be higher from member states than from other organizations on (almost) all dimensions, we focus on autonomy from member states.

(=low). This situation applies to five out of our seven TGN, namely ICN (Annual Conference), ECN (Directors' Meeting), IMPEL (General Assembly), BCBS (Group of Governors and Heads of Supervision GHOS, also "the Committee"), and the CEBS (The Committee). The EBA is a special case. Here, the Board of Supervisors (BoS) is "the ultimate decision-making body of the EBA". It is composed of the heads of member states' banking authorities and would thus fall under the category of a body composed of all members as described above. But the EBA charter contains a specific article on independence, which prescribes that BoS members shall not take instructions from member governments. The BoS is therefore de jure not considered a member state organ. Its predecessor network CEBS, in contrast, had no such independence article. The second situation refers to TGN, within which a body exists composed of a subset of the network's member jurisdictions (and potentially other actors). If this body exerts control in any of the two dimensions, this implies partial discretion of member states (= medium), because only a subset of members exerts control. This relates to four of the seven TGN, namely the ICN (Steering Group with approx. 15-18 members); EBA (Management Board of the EBA Chairperson and 6 members elected from the BoS), INECE (Executive Committee, i.e. "group of up to 8 leaders, primarily from national governments, who serve as the governing body of INECE"), and IMPEL Board ("the Chair; the Vice-Chair; the National IMPEL Coordinators or the National IMPEL Representatives of the last, present and next country holding the presidency of the European Union; the Chairs or Co-chairs of the Clusters").

Regulatory scope, the third dimension of autonomy, refers to the extent to which the network produces collective rules and standards, monitors their diffusion and implementation, and helps members to comply with the joint rules and standards. Drawing on Slaughter's typology of functional scope<sup>5</sup> in the adapted version of Lavenex' (2008), we distinguish between three kinds of transgovernmental networks: information networks, implementation networks, and regulatory networks – and add a fourth kind, namely networks that propose regulation but rely on the national executive for enforcement. Information networks serve the diffusion of policy-relevant knowledge, best practices and ideas among the participating actors. Implementation networks are set up to enhance adoption of existing laws and rules, be them national, European, or international. They often also aim at promoting capacity building through technical assistance and training. Finally, regulatory networks possess an implicit or

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<sup>5</sup> Slaughter distinguishes between information, enforcement, and harmonization networks (2004:51-63). Importantly, one network can serve more than one function at the same time.

explicit legislative mandate in that “behind the facade of technical adjustments for improved coordination [...] and uniformity of standards lie subtle adjustments” of national laws (Slaughter 2004: 59). Since none of the selected TGN is an information network only, we concentrate on the remaining three, with implementation network coded as low, proposing network as medium, and regulatory network as high.

Finally, to operationalize *membership composition*, we need to establish the average democratic level of our networks' membership. For each selected TGN, we assess the democratic composition at the year of the formation of the network and of any substantial revision in its governance rules or structure with relevance for this study. We calculate a network's democratic composition by averaging the individual democracy scores of its member states at these crucial points in time. Previous studies demonstrate that it is the “combined weight of democracies” (Tallberg et al. 2016), which decisively determines the design of international institutions (see also Grigorescu 2007) – rather than alternative mechanisms, including a specific influence of “new democracies anxious to lock in domestic reforms [...] or the disproportionate] influence of democratic great powers” (Tallberg et al. 2016:61). We use the Unified Democracy Score (UDS), which synthesizes twelve different democracy indices (including the dominant Freedom House and Polity IV) to provide a composite scale of democracy for virtually every sovereign state that existed between 1946 and 2014. Non-state members such as international organizations were ignored in the calculation of democratic membership, and any missing data was excluded listwise.<sup>6</sup> The UDS ranges from -2.5 to 2.5, with higher values representing better democratic quality (Pemstein et al.: 2010). Based on Cederman et al.'s (2010) reasoning, we use 1.3 as the threshold for stable democracies. If the average democracy score of all member states of a network exceeds this threshold, we label its composition ‘democratic’, otherwise ‘non-democratic’. Note that membership composition is analytically and empirically independent from our key explanatory variables, authority and autonomy, as also shown in Table 3.<sup>7</sup>

We assess the influence of our independent variables on the democratic quality of TGN through co-variance analysis (Blatter and Blume, 2008). This technique attempts to generate inference by accounting for co-variance between independent and dependent variables, and hence to draw conclusions about the influence of causal variables in elucidating

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<sup>6</sup> Using other measures of democracy with similar spatial and temporal coverage, notably Freedom House and Polity IV, does not alter our findings; yet, these measures are less reliable and are based on a particular operationalization of the concept of democracy.

<sup>7</sup> Our datasets are organized by network-year and are available from the authors upon request.

a result within a broader population of comparable cases (in our case the 'universe' of TGN). We thus assess our hypotheses by comparing the level of authority and autonomy, respectively, with the level of democratic quality of our seven networks (e.g. do higher values for autonomy co-vary with higher values for democratic governance), while accounting for systematic patterns in membership composition. While the small-N set-up of our study paired with five independent variables has well-known limits in terms of causal inference, this procedure provides an indication on which factors play a role in shaping the democratic quality of TGN.

In our empirical analysis, we largely focus on cross-case comparison based on recent governance documents of the networks (BCBS 2012/13; EBA 2011; ICN 2012; ECN 2012/[04]; INECE 2011/12; IMPEL 2012), for two reasons. First, documents from the formation period were unavailable in several cases (IMPEL, INECE, BCBS), and second, for all variables the results show generally no variation over time – except for the transformation of CEBS into EBA in 2011. Such institutional rigidity is not surprising given that scholars have long recognized the tendency for institutions to “lock in” initial conditions, even after considerable shifts in underlying realities (e.g., Goldstone 1998; Pierson 2000). This being said, we make reference to time-relevant results where pertinent, and in particular with respect to the CEBS, which we include as an individual network-case.

### **Empirical analysis**

The selected seven transgovernmental networks vary considerably in their democratic quality. For each of the TGN, we plotted the score per dimension of our dependent variable and grouped the appearing patterns by sector. Figure 1 underlines that network properties appear to matter for a network’s democratic governance.<sup>8</sup> Overall, networks addressing the same policy issue show similar patterns of legitimation. However, contrary to our expectations, networks composed of democratic members, i.e. our European networks, do not generally score higher in overall democratic governance than their international counterparts. While the European banking network does (the EBA shows high level of democratic quality, while the BCBS is at medium level), the ECN scores somewhat below its international equivalent and the governance structures of the environmental networks are of similar democratic quality (see also Table 3).

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<sup>8</sup> The detailed score sheets are available upon request.



--- Figure 1 about here ---

On the *input dimension* (i.e. ‘participation’, ‘representation’, ‘stakeholder’, and ‘epistemic’) the financial network EBA displays the highest value (H); all other networks share moderate scores close to each other (M). While, as could be expected, none of the networks provides full participation in terms of co-decision rights for ordinary citizens, INECE and the EBA provide for the public to participate (INECE) or "present oral observations before the decision is taken" (EBA).<sup>9</sup> The criteria of representation is the only one in which the European networks tend to be more democratic, in particular the EBA and the ECN, but only slightly. This is linked to the higher frequency of meetings as compared to the global networks, and (for the ECN and EBA) to the fact that new members' accession to and involvement in the networks comes 'automatically' with EU membership. Regarding stakeholder involvement, the EBA grants extensive access to organized civil society via "open public consultations on draft implementing technical standards" (EBA 2010), while the ECN - at the other extreme - is granting no such rights at all. Finally, it is notable, that all networks -with some exception for the BCBS - are widely open to input from independent experts, who may participate for the most part when invited by one of the members.

On the *throughput dimension* (i.e. ‘transparency’, ‘legality’, ‘accountability’, and ‘reasoning’), the financial network EBA is, overall, again leading the track. The international competition network comes last together with INECE. In terms of transparency, most networks show moderate values except the EBA, which provides access to information in multiple languages, a separate communication unit, and an explicit instruction for staff to share information when requested by citizens. This is a major improvement in democratic quality of the EBA compared to its predecessor organisation, the CEBS (2004), where, for instance access to documents was limited and no separate communication unit existed. Regarding legality, the international networks are more democratic in the sense that changes to the networks' principal governance documents (e.g. statute, operational framework) require the consent of all members, with the exception of INECE where the Executive Committee, "a group of up to 8 leaders, primarily from national governments", can by majority vote introduce changes to the Operating Protocols (INECE 2012:3). Majority approval is also sufficient as regards the European networks. For the EBA and the ECN this is linked to the

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<sup>9</sup> For the EBA, this was an improvement compared to the CEBS, where such public consultations did not take place.

EU's ordinary legislative procedure, given that in the two cases the principal governance document takes the form of an EU regulation. In terms of accountability, the financial networks and IMPEL are more democratic than others, and this is especially so for the EBA, which has an autonomous budget, legal personality and a formal complaint mechanism. In addition, and in contrast to its precursor, the EBA provides for a strict monitoring mechanism of its leading staff as "the Board of Supervisors shall exercise disciplinary authority over the Chairperson and the Executive Director and may remove them from office" (EBA 2010). Finally, in terms of reasoning, all networks – with the exception of INECE – show at least moderate levels of openness to equal contribution by all members. The ICN is most advanced in this regard, followed by the EBA. Indeed, the ICN invites all members to participate in working groups, explicitly encourages diversity in the establishment of working groups, and offers (limited) funding for eligible members to facilitate the attendance of ICN events. INECE, on the other side, does not allow free participation in working groups, but "the EC [Executive Committee] members will establish subcommittees and appoint subcommittee members" (INECE 2012).

On the *output dimension* (i.e. 'efficiency' and 'effectiveness'), the financial networks show the highest values, again, as reflected in external evaluation mechanisms. Indeed, for the BCBS, there is an external audit of the Bank for international Settlements financial statement, whose report includes the BCBS finances (in 2015 provided by Ernst & Young Ltd); and, the EBA's budget is audited by the European Court of Auditors. The environmental networks INECE and IMPEL score on both dimensions moderately as they provide for internal evaluation of efficiency and effectiveness. The competition networks, in turn, both comprise mechanisms for the evaluation of effectiveness, for instance when considering the status of ongoing projects in the ICN Steering Group, but do not have dedicated efficiency evaluation systems, and therefore score lowest among the networks.

What does this tell us about the democratic quality of each network? At the highest aggregate level, the column on the outside right in Table 2, the financial networks show the highest degree of democratic governance. This predominance is mainly due to the high scores on the output legitimacy dimension and the EBA's overall higher values. The EBA sets itself apart by showing high values on all three dimensions of legitimacy, followed by the BCBS which shows a high level in one of the dimensions, output. The competition networks show moderate levels throughout, with the ICN performing somewhat worse. In light of the debate over environmental good or democratic governance, for instance in the context of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to

Justice in Environmental Matters (1998), surprisingly, the environmental networks are doing no better than the competitions networks. How do these patterns relate to the authority and autonomy of networks or their democratic composition, and how far do they corroborate a particular model of democratic governance in TGN?

--- Table 2 about here ---

Our findings generally find no support for Papadopoulos' hypothesis (2010) that network governance generally privileges a technocratic understanding of legitimacy centred on accountability and output performance (see Table 2). While, overall, all networks show high or medium values on the technocratic model, in particular the financial networks, there is no one-dimensional technocratic pattern of legitimacy. It is true that our TGN hardly provide for direct participation, which is reflected in the relatively low values for the republican model of democracy. However, liberal and in particular deliberative understandings of democracy appear to matter in transgovernmental governance. All networks have relatively high values on the deliberative dimension, and one of the financial networks also shows relatively high values associated with the liberal model of democracy.<sup>10</sup> In the following, we seek to understand the variation across our networks and examine the explanatory power of our hypotheses related to the network's political authority and autonomy, and membership composition.

### *Democratic membership*

Overall, we find supporting evidence for our general expectation that transgovernmental international networks with democratic membership tend to also include more rules and procedures of democratic governance. If we zoom into international networks and consider the precise average scores rather than the dichotomous measure only, it appears that international networks with more democratic members reflect more democratic governance

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<sup>10</sup> As the deliberative model is neatly associated with the involvement of stakeholders and experts, one might question whether the TGN's proclivity towards deliberative democracy is in reality part of technocratic knowledge gathering to improve the TGN's output performance. Though deliberative and technocratic ambitions may overlap, TGNs appear to seek the opinion not only from technocratic "expert-stakeholders" but from society more broadly when they provide for instance for public consultations (BCBS, EBA). They also tend to address the two audiences (stakeholders and experts) distinctively as in the case of the ICN whose Operational Framework (2012) states that "NGAs [Non-Governmental Advisors] will be invited to participate in the ICN either in their capacity as representatives of associations invited by the Steering Group or in a personal capacity based on their individual authority and expertise in the field of antitrust" (emphasis by the authors).

elements than international networks with less democratic members. In fact, the BCBS displays the highest level of democratic membership among international networks (1.06 at time of formation; 1.23 in 2012), and also scores highest among them in terms of democratic quality, albeit this is largely due to the high values on the output-dimension. Moreover, the European networks, composed by stable democracies, do not consistently show more democratic governance than international networks with more mixed membership. This might be due to the fact that democracy levels of all networks are generally quite high (see exact scores below), and democracies have been the major initiators of those TGN with considerable non-democratic membership (e.g., the US, supported by EU members in the case of the ICN).

From a time perspective, we observe that all networks, European and international, have a decreasing level of democratic membership over time. For the European networks, especially the ECN and the EBA, this is probably linked to the fact that new network members correspond to new EU member states, which tend to be "younger" democracies (e.g. Bulgaria, Romania) that score lower on conventional measures of democracy. Except for the EBA, however, this loss of democratic membership has not impacted on the networks' level of democratic governance, which remained constant over time. The results for the EBA do *not* suggest that increasing democratic membership would yield higher democratic quality of a network. To the contrary, the transition from the CEBS to the EBA was accompanied by a loss of democratic membership (1.56 to 1.36), but an increase in the network's democratic quality (0.56 to 0.84). This puts some additional doubt on a direct the influence of democratic membership.

#### *Authority and autonomy*

With regard to the competences and independence of TGN from their constituents, we distinguish between authority and autonomy of a TGN, and expected governance of democratically dominated networks with higher values in authority and autonomy, respectively, to be of higher democratic quality (H1 and H2). Our results, summarized in Table 2, first, support Hooghe and Mark's observation that authority (or pooling) and autonomy (or delegation) of Type II governance are not only analytically but also empirically different concepts. The selected networks tend to be not only more autonomous than they have authority (with the exception of IMPEL); the ranking of the networks in terms of strengths is also different for the two dimensions.

Overall, all seven networks have rather low levels of authority. None of them can make decisions that are binding for the constituents; only the decisions of the financial networks BCBS and EBA are partially binding. For instance, the EBA's "Binding Technical Standards", which are adopted by the European Commission, "are legal acts which specify particular aspects of an EU legislative text (Directive or Regulation) and aim at ensuring consistent harmonisation in specific areas".<sup>11</sup> EBA enjoys the highest degree of authority among the selected TGN, still medium though, and is also the one in which governance operates most democratically. However, the international BCBS has somewhat more authority than the European CEBS and the international ICN but is not more "democratic". Also the comparison between competition and environmental networks does not corroborate a relationship between higher authority and degrees of democracy (H1). SDespite similar values in authority, IMPEL is evaluated no better than INECE and ECN even worse than ICN in terms of democratic governance.

We find more support for our second hypothesis: higher autonomy of TGN appears to co-vary with higher democratic governance, in particular in combination with membership composition. Hence, our "compensation" argument according to which democratic member states compensate for delegation to TGN with the latters' "democratization" works for autonomy, but not for authority. The EBA enjoys a high degree of autonomy and also shows a high degree of democratic governance, as the only one among the selected TGN. The autonomy of the two environmental networks, in turn, is the most limited and these networks also show the lowest degree of democratic governance in our sample. This general relationship however only holds if we factor in membership composition. Specifically, the CEBS composed of democracies only is characterized by medium autonomy and we coded it with medium "plus" democratic governance; while its international counterpart BCBS, which also includes non-democracies among its members has medium "plus" autonomy but only medium democratic quality. A similar trend emerges in the case of the environmental networks, where the democratic IMPEL is less autonomous than the international INECE but evaluated similarly in terms of democratic quality. In both situations, hence, networks composed of stable democracies operate in a similarly or more democratic manner than their international counterparts, even though they have somewhat less autonomy.

We further hypothesized that TGN featuring relatively high levels of authority and/or autonomy and democratic membership are more likely to follow an input- and throughput-

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<sup>11</sup> See <http://www.eba.europa.eu/about-us/missions-and-tasks> (accessed on 3 September 2016)

oriented model of liberal or republican democratic governance than networks with lower authority/autonomy and less democratic membership (H3). On the basis of our results it is not possible to really corroborate this hypothesis (see Table 2). The EBA fits this pattern with medium/high authority/autonomy and democratic composition going along with liberal and republican elements of democratic governance. However the EBA also scores high on technocratic governance, and medium on the deliberative model. Conversely, all other TGN feature medium or low scores on liberal and republican democracy traditions, irrespectively of low or medium values on authority and autonomy.

## **Conclusion**

While research into transgovernmentalism has hitherto mainly focused on the effectiveness of this cooperation in terms of political problem-solving, we explored the extent and the substance of democratic governance reflected in TGN. Our analytical framework started from the observation that debates about democratic governance beyond the state differ not only in their assessment of how much this constitutes a democratic deficit in the light of the observer but also in the way how democracy itself is assessed. Yannis Papadopoulos expresses this question most explicitly when he posits that legitimacy in network governance may relate more to aspects of "accountability" than to what he refers to as "democracy" proper, i.e. universal representation (2010). In order to grasp the existence of different understandings of democratic governance (and to avoid privileging an own conception over others) we develop a differentiated measurement assessing input, throughput and output sources of legitimacy and attribute these to three normative democratic traditions (liberal, republican, deliberative) and a technocratic model.

Examining seven TGN active in three policy areas (banking, competition, environment) and reflecting European/international memberships, our analysis shows that the democratic legitimacy of TGN draws on more factors than technocratic output-orientation or accountability alone. While it is true that procedures relating to ensuring effectiveness and efficiency take a strong place in TGN, their sources of legitimacy are more varied and feature various throughput (in particular on transparency and accountability) and input factors. The latter include practices of stakeholder involvement (characteristic of republican and deliberative democracy) such as the BCBS' policy-related consultations among relevant stakeholders, as well as the EBA's mandatory public consultations on draft technical standards. We furthermore find singular elements of what one would associate with more republican ideals of direct citizen participation, in particular the right for citizens "to present

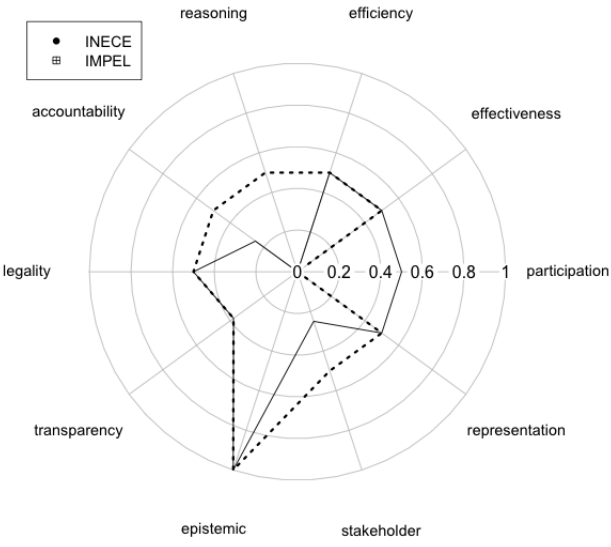
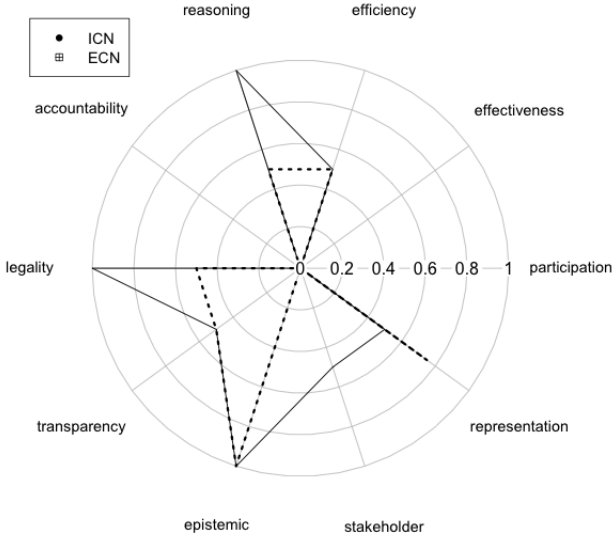
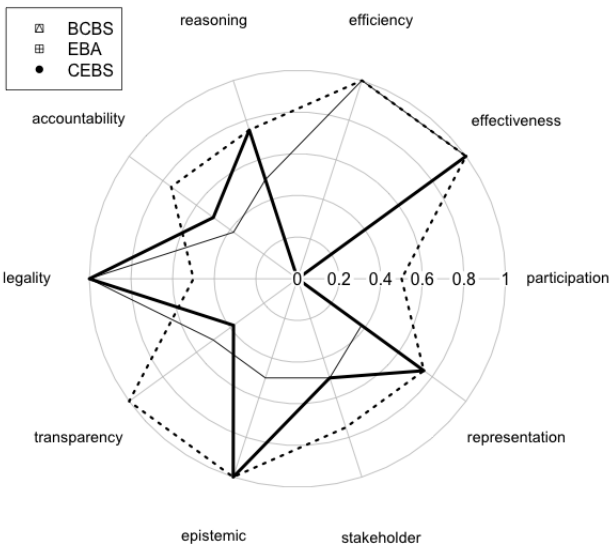
oral observations before the decision is taken" in the EBA; or to participate in conferences in INECE. Our TGNs also draw input-legitimacy from representative elements that resonate with liberal understandings of democracy. INECE stands out for having no formal requirements for membership and hence not requiring prior approval by existing members for new accessions. Legitimacy through representation is also enhanced by regular meetings of all TGN members, for instance IMPEL's General Assembly taking place "ideally twice a year", or the ICN's Annual Conference, which is attended by mostly senior representatives of competition authorities. In addition, we find in several networks notions of equal access in decision-making fora that are strongly associated with deliberative democracy.

Having established this "composite" (Héritier 2003) type of democratic governance in TGN, the explanation of both the extent and the type of democratic governance is less straight forward than our theoretical expectations suggest. We find the strongest support for the hypothesis that democratic governance correlates with the autonomy of TGN, i.e. if a network has high competencies of autonomous rule-making and regulation, it also shows high level of democratic governance. This general relationship, however, appears to hold only true if we factor in membership composition. We do not find the same relationship with regard to the authority of networks though.

In addition to the composite nature of the sources of legitimacy, the perhaps most striking finding of our analysis is the fact that democratic governance does not reflect the democratic composition of the networks. Apart from the EBA in the banking sector, the international TGN in competition (ICN) scores higher on democratic governance than its European counterpart (ECN), while there is hardly any difference between the international environmental network INECE and its European equivalent, IMPEL. While at first surprising, this finding may stem from the 'pragmatic' position that democracies assure democracy at home and TGN are only delegated functional bodies enhancing the problem-solving capacity of the states (Moravcsik 2002). From this point of view, democracy is "saturated" and "there is no normative need for distinct mechanisms of legitimation for international organizations" (Offe and Preuss 2006: 176). This optimistic reading is also in line with our finding that more autonomous networks composed of democracies such as the EBA do in fact also reflect more democratic governance than less autonomous ones. However, the relationship between democratic governance in the transgovernmental realm and domestic democracy certainly merits stronger scrutiny than our measurement focused on de jure procedures alone would allow.

# Tables and Figures

**Figure 1.** Democratic governance of TGN – banking, competition, and the environment



*Note:* For the radial plots, we translated the low, medium, and high values into the corresponding numerical scores on a three-point scale from 0 to 1.



**Table 1:** Models of democratic and technocratic governance

	<i>Characteristic feature</i>	<b>Liberal</b>	<b>Republican</b>	<b>Deliberative</b>	<b>Technocratic</b>
<i>Input</i>					
Participatory	Direct democracy		X		
Representative	Parliament, Assembly	X			
Stakeholder-based	Consultative mechanisms		X	X	
Epistemic	Involvement of experts			X	X
<i>Throughput</i>					
Transparency	Access to information	X	X		
Legality	Constitutional basis	X			
Accountability	Monitoring / sanctioning	X	X		
Reasoning	Openness to counter-argument			X	
<i>Output</i>					
Effective	Evaluation of goal-attainment	X		X	X
Efficient	Evaluation of costs/time/effectiveness ration	X			X

*Note:* Dominant source of legitimacy for each model highlighted in grey.

**Table 2:** Network properties and democratic governance

	Membership	Authority	Autonomy	Patterns of legitimation			Models of democracy plus technocracy				Democratic governance
				input	throughput	output	liberal	republican	deliberative	technocratic	
<i>Banking</i>											
- BCBS	Nondemocratic	Medium	Medium	Medium	Medium	High	Medium	Medium	Medium	High	Medium
- EBA	Democratic	Medium	High	High	High	High	High	High	Medium	High	High
- CEBS	Democratic	Low	Medium	Medium	Medium	Medium	Medium	Medium	Medium	Medium	Medium
<i>Competition</i>											
- ICN	Nondemocratic	Low	Medium	Medium	Low	Low/Medium	Low	Medium	High	Medium	Medium
- ECN	Democratic	Low	Medium	Medium	Medium	Low/Medium	Low	Low	Medium	Low	Medium
<i>Environment</i>											
- INECE	Nondemocratic	Medium	Low	Medium	Low	Medium	Medium	Medium	Low	Medium	Medium
- IMPEL	Democratic	Medium	Low	Medium	Medium	Medium	Medium	Medium	Medium	Medium	Medium

*Note:* The results reflect the current situation de jure, based on the most recent governance documents, see inventory of primary documents. Coding details are given in the Online Appendices.

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## APPENDIX

### Appendix 1: Operationalization of de jure democratic governance in networks

Indicator	Item	Coding (Low ; Medium ; High)	Coding example (assigned value in parenthesis)
<i>Input</i>			
<b>Participatory:</b> Direct democracy	▪ Direct access/participation for individual citizens	L = no access/participation of individual citizens M = possibility to initiate measures/issues (e.g. citizens' initiatives) H = possibility to vote on policy/measures/issues by referendum	<u>EBA, Decision EBA DC 006, Art 16</u> "Every member of the public shall have the right... to present oral observations before the decision is taken." (= <b>M</b> )
	<b>Representative:</b> Parliament, Assembly	▪ Granting of membership (of states)  ▪ Conditions for membership  ▪ Assembly  ▪ Member state delegate	L = accession only by unanimity consent of members M = accession by majority vote of members or a subset of members H = accession does not require voting by members  L = discriminatory requirements M = formal requirements H = no formal requirements  L = assembly meets less than once a year M = assembly meets once a year H = assembly meets at least once a year  L = low level official or undefined M = high level official (e.g., head of a directorate/department) H = member of government (minister)
<b>Stakeholder- based*:</b> Consultative mechanisms	▪ Direct access for civil society groups (e.g. NGOs, business associations)	L = no participation of organized civil society M = civil society org. may participate as observers (without voting rights) H = civil society org. may become full members (with voting right)	<u>EBA, REGULATION (EU) No 1093/2010. Art 37.</u> "The Banking Stakeholder Group shall be composed of 30 members, representing in balanced proportions credit and investment institutions operating in the Union, their employees' representatives as well as consumers, users of banking services and representatives of SMEs. (...)"(= <b>M</b> )
	▪ Consultative mechanism	L = no formal provisions M = voluntary/optional consultation H = mandatory consultation prior to decisions	<u>BCBS Charter. 17</u> "(...) BCBS seeks input from all relevant stakeholders on policy proposals. The consultation process will include issuing a public invitation to interested parties to provide comments (...)"(= <b>H</b> )

<b>Epistemic:</b> Involvement of experts	<ul style="list-style-type: none"> <li>▪ Involvement/bringing in of independent experts?</li> </ul>	<p>L = no involvement  M = involvement needs consent of all members  H = involvement by invitation of individual members or a subset of members</p>	<p><u>ICN Operational Framework 2012</u>  “NGAs [Non-Governmental Advisors] will be invited to participate in the ICN (...) based on their individual authority and expertise in the field of antitrust.” (= <b>M</b>)</p>
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*Throughput*

<b>Transparency:</b> Access to information	<ul style="list-style-type: none"> <li>▪ Access to information (on demand) =&gt; passive</li> <li>▪ Information provision (by network) =&gt; active</li> <li>▪ Language of documents</li> <li>▪ Existence of a communication office</li> </ul>	<p>L= no access to any documents  M = limited access to documents (e.g. decisions on individual requests)  H = general and complete access</p> <p>L = no information/documents published  M = (annual) reports published  H = also internal documents (minutes/voting records) freely available</p> <p>L = documents only published in one language/one working language  M = documents published in more than one languages  H = every members’ language</p> <p>L = no such service  M = included in secretariat  H = separate unit</p>	<p><u>Decision EBA DC 006. Article 22.</u>  “Requests for information. “The agent or other servant shall, when he has responsibility for the matter concerned, provide members of the public with the information that they request.” (= <b>H</b>)</p> <p><u>BCBS Charter. 8.5.</u>  Committee decisions of public interest shall be communicated through the BCBS website. The Committee shall issue, when appropriate, press statements to communicate its decisions. (= <b>M</b>)</p> <p><u>ICN Operational Framework 2012</u>  “English is the interim working language of the Steering Group, Working Groups, ICN web-site infrastructure and the Annual Conference.” (= <b>M</b>)</p> <p><u>INECE 2012 Operating Protocol</u>  “The INECE Secretariat provides technical, administrative, and communications support for INECE.” (= <b>M</b>)</p>
<b>Legality:</b> Constitutional basis	<ul style="list-style-type: none"> <li>▪ Governance document (statute or the like)</li> </ul>	<p>L = no governance document  M = governance document needs approval by majority of members or consensus of a subset of members  H = governance document needs unanimity approval by all members/the assembly</p>	<p><u>IMPEL, Rules 2012</u>  “Amendments to the Internal Rules require a two-thirds majority of the National IMPEL Coordinators or the National IMPEL Representatives present.” (= <b>M</b>)</p>
<b>Accountability:</b> Monitoring / sanctioning	<ul style="list-style-type: none"> <li>▪ (Internal) Accountability of “leading body” (Board, executive committee, etc.)</li> </ul>	<p>L = no monitoring/sanction provisions  M = LB members can be dismissed by unanimity vote of all members/assembly  H = LB members can be dismissed by majority vote of members/assembly</p>	<p><u>EBA, REGULATION (EU) No 1093/2010. Art. 43. 8.</u>  “The Board of Supervisors shall exercise disciplinary authority over the Chairperson and the Executive Director and may remove them from office in accordance with Article 48(5) or 51(5) respectively.” (= <b>H</b>)</p>

	<ul style="list-style-type: none"> <li>▪ (External, financial) Accountability of network</li> </ul>	<p>L = independent funding (for example membership fees) / own reserve fund / no budget  M = partially external funded / long-term commitments  H = completely external funded</p>	<p><u>EBA, REGULATION (EU) No 1093/2010. (59)</u>  "(...) the Authority should be granted an autonomous budget with revenues mainly from obligatory contributions from national supervisory authorities and from the General Budget of the European Union." (= <b>M</b>)</p>
	<ul style="list-style-type: none"> <li>▪ (External, judicial) Accountability of Network</li> </ul>	<p>L = no official legal status  H = official legal status in a country</p>	<p><u>EBA, REGULATION (EU) No 1093/2010. Art. 5. 1.</u>  "The Authority shall be a Union body with legal personality. 2. In each Member State, the Authority shall enjoy the most extensive legal capacity accorded to legal persons under national law." (= <b>H</b>)</p>
	<ul style="list-style-type: none"> <li>▪ (External, civil) Complaint mechanism (e.g. Ombudsman)</li> </ul>	<p>L = no such mechanism  H = mechanism(s) present</p>	<p><u>EBA, REGULATION (EU) No 1093/2010. Art. 72. 2.</u>  "Decisions taken by the Authority pursuant to Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of proceedings before the Court of Justice of the European Union (...)" (= <b>H</b>)</p>
<b>Reasoning:</b> Openness to counter-argument	<ul style="list-style-type: none"> <li>▪ Participation in projects/clusters etc.</li> </ul>	<p>L = participation restricted  H = participation open for every interested member</p>	<p><u>ICN Operational Framework 2012</u>  "All ICN members are welcome and encouraged to participate and contribute to Working Group activities and products." (= <b>H</b>)</p>
	<ul style="list-style-type: none"> <li>▪ Measures to encourage equal participation</li> </ul>	<p>L = no such measures  M = measures to enable participation (excluding financial support, e.g., rotation system)  H = financial support</p>	<p><u>ICN Operational Framework 2012</u>  "Limited Funding is available for eligible ICN members to attend ICN events." (= <b>H</b>)</p>

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*Output*

<b>Effective:</b> Evaluation of goal-attainment	<ul style="list-style-type: none"> <li>▪ Evaluation of goal attainment</li> </ul>	<p>L = no formal provisions  M = internal evaluations by network subcommittee  H = external evaluation by independent organization such as a consultancy firm</p>	<p><u>IMPEL, rules 2012</u>  "Based on the Clusters' report the General Assembly will evaluate the implementation of the AWP fulfilled at the previous year, and advancement of the MASP." (= <b>M</b>)</p>
<b>Efficient:</b> Evaluation of costs/time/ effectiveness ratio	<ul style="list-style-type: none"> <li>▪ Evaluation of cost efficiency / Audit</li> </ul>	<p>L = no formal provisions  M = internal evaluations/approval by network subcommittee  H = external evaluation/approval by independent organization such as a consultancy firm</p>	<p><u>EBA (CEBS), Annual Report 2005, pp.40:</u>  "The statutory accounts of CEBS Secretariat Limited for the period ended 31 December 2005 have been delivered to the Registrar of Companies and CEBS Secretariat Limited has received an audit report which was unqualified." (= <b>H</b>)</p>

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*Note:* L= low, M = medium, H = high. The number of items varies per indicator in order to account for their varying relevance for democratic governance. Precisely, core indicators of democratic governance, namely representation, transparency, and accountability of the input- and throughput-dimensions (see Freyburg et al. 2015: Chapter 3) are measured with four items each and, hence, implicitly weighted when calculating the total scores. Likewise, we put less weight on the output-dimension by operationalizing the two output-indicators with only one item each. The total scores for the input-dimension and the overall democratic quality include the item scores of “consultative measures” only once.

## Appendix 2: Operationalization of authority

Indicator	Coding (Low ; Medium ; High)
<i>Bindingness of decisions of TGN</i>	L = voluntary / no decisions/regulations as such M = partially binding (e.g. opt-out) H = binding
<i>Number of addressees of TGN decisions</i>	L = Fewer than formal members or none M = Equal to formal members H = Larger than formal members
<i>Decision-making rule in core decision-making organ of TGN</i>	L = Majority (simple or absolute) M = Supermajority or selective veto H = Consensus, unanimity or no rule
<i>Enactment of policy-related decisions by the TGN</i>	L = Needs ratification by all or decisions only come into force for those who ratify/ no decisions/ regulations as such M = For all members after ratification by a subset of members H = For all members without ratification

## Appendix 3: Operationalization of autonomy

Indicator	Item	Coding (Low ; Medium ; High)
<i>Control over appointment of TGN core offices by (member) states</i>		L = full control M = partial control H = no control
<i>Decision-making competences of (member) states over the TGN</i>	• Discretion over budget	L = full discretion / no budget M = partial discretion H = none
	• Discretion over organization (constitution)	L = full discretion / no budget M = partial discretion H = none
	• Discretion over (internal) policy-making	L = full discretion / no budget M = partial discretion H = none
<i>Functional scope of TGN decisions</i>		L = Implementation M = Proposing regulation H = Regulation

## ONLINE APPENDIX 1: Brief introduction of selected networks

The *Basel Committee on Banking Supervision (BCBS)*, one of the most prominent TGN, was founded in 1974 to provide a forum for regulatory cooperation between member countries to improve global financial stability. Its mandate includes setting minimum standards for the regulation and supervision of banks; sharing supervisory issues, approaches and techniques to improve cross-border cooperation; and exchanging information to help identify current or emerging risks for the global financial system. Membership originated with the G10 (including Switzerland) plus Luxemburg and was considerably expanded to twenty-seven members in 2009. The Bank for International Settlements (BIS) hosts the BCBS, and the BCBS looks to the Group of Central Bank Governors and Heads of Supervision (GHOS), which comprises central bank governors and (non-central bank) heads of supervision from member countries for endorsement of its charter and all major decisions, meeting three to four times a year. Previous studies on the BCBS have recognized its important role as regulator, supervisor (Pan 2010:269) and “enforcer of moral principles” in the banking sector (Lawrence 1998:32). There have also been debates in the literature on the degree of autonomy and authority of the network (Coleman and Underhill 1995; Gardinis 2012), but to date no study appears to provide a thorough analysis of BCBS' patterns of democratic governance.

We contrast this “global financial architecture [...] created by informal networks” (Slaughter and Hale 2010:346), with its European equivalent, the *European Banking Authority (EBA)*. EBA was established in 2011 as an independent authority, and its objectives are to preserve financial stability in the EU and to maintain the integrity, efficiency and orderly functioning of the banking sector. The EBA grew out of the *Committee of European Banking Supervisors (CEBS)*, a similar organisation established in 2004. Both organisations had similar membership profiles, including members of the European Union as full voting members and non-EU members of the European Free Trade Association (Iceland, Norway, Liechtenstein) attending as observers (Croatia joined as a full member in 2013). The Board of Supervisors meets at least four times a year. Previous research, while acknowledging the EBA's harmonization efforts and supervisory action in Europe, denounced its limited enforcement and sanctioning powers as well as its limited authority regarding collection of information (Masciandroa 2011:210; Fahey 2011:593). Studies on the network's democratic quality are however lacking from the current literature.

Our second pair of TGN is located in the area of the environment. The *International Network for Environmental Compliance and Enforcement (INECE)* brings together

environmental regulators, investigators, prosecutors, judges, and employees of international environmental and development organizations. The INECE, originally set up in 1989, develops and implements multi-level strategies for environmental compliance and enforcement. The main bodies of INECE are the Executive Committee (the most important body in the network), the Global Council, and the Secretariat. Lacking a formal membership structure, projects are organized on an ad-hoc basis, mostly in the form of global and regional conferences where interested parties can participate. In previous literature, INECE has been hailed for its potential to bring all relevant stakeholders to the discussion (NGOs, INECE project leaders and participating countries), which may point to a good performance in terms of input legitimacy (Savasan 2015).

Its European equivalent, the *European Union Network for the Implementation and Enforcement of Environmental Law* (IMPEL) meets bi-annually. IMPEL is an association of the environmental authorities of the EU member states, acceding and candidate countries of the EU, as well as EEA and EFTA countries. Founded in 1992, it currently has fifty members, drawn from the environmental authorities of thirty-five states. Its main objective is to lobby for and support the effective application of environmental legislation in the EU. The main bodies of IMPEL are the General Assembly, which is the highest authority of the association, and the Board, which is the executive body. Existing studies provide insights on the patterns of participation and learning within the network, and debate the pros and cons of IMPEL's institutional structure (Twena 2012; Engelov and Cashman 2012).

Thirdly, we selected two networks from the competition sector, the International and the European competition networks. The *International Competition Network* (ICN) has followed a similar trajectory to INECE in the antitrust sphere. It was launched in October 2001 by 14 countries and has by now reached a membership of over 130 competition authorities, supported by a dense web of competition experts from the private and the non-profit sectors. Its mandate is to encourage dissemination of antitrust experience and best practices, promote the advocacy role of antitrust agencies, and seek to facilitate international cooperation. The Steering Group, comprised of (at least) 15 member agencies, guides the ICN work, while all members meet regularly at the Annual Conference in addition to workshops and virtual exchange through video-conferences and the like. Previous literature discussed such a soft law 'enterprise' for global competition governance (Sokol 2007, Verdier 2009) and how the ICN relates to other organisations active in the field such as the OECD and UNCTAD (Hollmann and Kovacic 2011). Democratic governance has thus far been largely eclipsed from the literature.



The *European Competition Network (ECN)*, finally, was founded in 2004, to allow member states to share competence with the European Commission over cross-border antitrust enforcement. In addition, it provides a forum for exchange of information and discussion of general issues. The ECN architecture comprises the biannual Director's General Meeting, where the heads of member agencies discuss strategic questions such as issue prioritization and future development; the ECN Plenary, composed of ECN coordinators, which meets several times a year; along with several working groups. Authors have started to analyse the power relationships between the Commission and the member state competition authorities within the ECN, coming to a rather positive conclusion about cooperation within the network (Kassim and Wright 2012). Other studies regret the lack of transparency of the ECN (Cengiz 2009:20; Wilks 2007:4), which would imply negative consequences for democratic legitimacy.

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Slaughther and Hale 2010  
Sokol 2007  
Twena 2012  
Verdier 2009  
Wilks 2007

## ONLINE APPENDIX 2: De jure democratic governance in networks -- Items and coding

	Item (1)	Coding (1)	Items (2)	Coding (2)	Items (3)	Coding (3)	Items (4)	Coding (4)						
<b>INPUT</b>														
<b>Participatory</b> (Direct democracy)	Direct access/participation for individual citizens	BCBS	L											
		EBA	M											
		CEBS	L											
		ICN	L											
		ECN	L											
		INECE	M											
		IMPEL	L											
<b>Representative</b> (Parliament, Assembly)	Granting of membership (of states)	BCBS	L	Conditions for membership	BCBS	L	Assembly	BCBS	H	Member state delegate	BCBS	M		
		EBA	H		EBA	M		EBA	H		EBA	M		
		CEBS	H		CEBS	M		CEBS	H		CEBS	M		
		ICN	M		ICN	M		ICN	M		ICN	M		
		ECN	H		ECN	M		ECN	H		ECN	M		
		INECE	H		INECE	H		INECE	L		INECE	L		
					IMPEL	M		IMPEL	M		IMPEL	H	IMPEL	L
<b>Stakeholder- based</b> (Consultative mechanisms)	Direct access for civil society groups	BCBS	L	Consultative mechanism*	<i>BCBS</i>	<i>H</i>								
		EBA	M		<i>EBA</i>	<i>H</i>								
		CEBS	L		<i>CEBS</i>	<i>H</i>								
		ICN	M		<i>ICN</i>	<i>M</i>								
		ECN	L		<i>ECN</i>	<i>L</i>								
		INECE	M		<i>INECE</i>	<i>L</i>								
					IMPEL	M	<i>IMPEL</i>	<i>M</i>						
<b>Epistemic</b> (Involvement of experts)	Involvement/ bringing in of independent experts	BCBS	M	Consultative mechanism*	<i>BCBS</i>	<i>H</i>								
		EBA	H		<i>EBA</i>	<i>H</i>								
		CEBS	H		<i>CEBS</i>	<i>H</i>								
		ICN	H		<i>ICN</i>	<i>M</i>								
		ECN	H		<i>ECN</i>	<i>L</i>								
		INECE	H		<i>INECE</i>	<i>L</i>								
					IMPEL	H	<i>IMPEL</i>	<i>M</i>						

	Item (1)	Coding (1)		Items (2)	Coding (2)		Items (3)	Coding (3)		Items (4)	Coding (4)	
<b>THROUGHPUT</b>												
<b>Transparency</b> (Access to information)	Access to information (on demand) => passive	BCBS	M	Information provision (by network) => active	BCBS	M	Language of documents	BCBS	M	Existence of a communication office	BCBS	M
		EBA	H		EBA	H		EBA	H			
		CEBS	M		CEBS	M		CEBS	L		CEBS	M
		ICN	M		ICN	H		ICN	L		ICN	M
		ECN	M		ECN	M		ECN	M		ECN	M
		INECE	M		INECE	M		INECE	L		INECE	M
		IMPEL	M		IMPEL	M		IMPEL	L		IMPEL	M
<b>Legality</b> (Constitutional basis)	Governance document (statute or the like)	BCBS	H									
		EBA	M									
		CEBS	H									
		ICN	H									
		ECN	M									
		INECE	M									
		IMPEL	M									
<b>Accountability</b> (Monitoring / sanctioning)	(Internal) Accountability of "leading body" (e.g., Board, executive committee)	BCBS	M	(External, financial) Accountability of network	BCBS	H	(External, judicial) Accountability of Network	BCBS	L	(External, civil) Complaint mechanism (e.g. Ombudsman)	BCBS	L
		EBA	H		EBA	L		EBA	H		EBA	H
		CEBS	L		CEBS	L		CEBS	H		CEBS	H
		ICN	L		ICN	L		ICN	L		ICN	L
		ECN	L		ECN	L		ECN	L		ECN	L
		INECE	L		INECE	H		INECE	L		INECE	L
		IMPEL	H		IMPEL	L		IMPEL	H		IMPEL	L
<b>Reasoning</b> (Openness to counter-argument)	Participation in projects/clusters etc.	BCBS	H	Measures to encourage equal participation	BCBS	L						
		EBA	H		EBA	M						
		CEBS	H		CEBS	M						
		ICN	H		ICN	H						
		ECN	H		ECN	L						
		INECE	L		INECE	L						
		IMPEL	H	IMPEL	L							

	<b>Item (1)</b>	<b>Coding (1)</b>	<b>Items (2)</b>	<b>Coding (2)</b>	<b>Items (3)</b>	<b>Coding (3)</b>	<b>Items (4)</b>	<b>Coding (4)</b>
<b>OUTPUT</b>								
<b>Effective</b> (goal-attainment)	Evaluation of goal attainment	BCBS	H					
		EBA	H					
		CEBS	L					
		ICN	M					
		ECN	M					
		INECE	M					
		IMPEL	M					
<b>Efficient</b> (costs/time/ effectiveness ratio)	Evaluation of cost efficiency / Audit	BCBS	H					
		EBA	H					
		CEBS	H					
		ICN	L					
		ECN	L					
		INECE	M					
		IMPEL	M					

*Note:* L= low, M = medium, H = high.

### ONLINE APPENDIX 3: Values of the dependent variables

Democratic governance	Patterns of legitimation												Models of legitimacy																			
	<i>input</i>				<i>throughput</i>				<i>output</i>				<i>liberal</i>				<i>republican</i>				<i>deliberative</i>				<i>technocratic</i>							
	<i>L</i>	<i>M</i>	<i>H</i>		<i>L</i>	<i>M</i>	<i>H</i>		<i>L</i>	<i>M</i>	<i>H</i>		<i>L</i>	<i>M</i>	<i>H</i>		<i>L</i>	<i>M</i>	<i>H</i>		<i>L</i>	<i>M</i>	<i>H</i>		<i>L</i>	<i>M</i>	<i>H</i>		<i>L</i>	<i>M</i>	<i>H</i>	
BCBS	7	7	7	<b>M</b>	4	2	2	<b>M</b>	3	5	3	<b>M</b>	0	0	2	<b>H</b>	6	11	7	<b>M</b>	6	5	3	<b>M</b>	4	2	5	<b>M</b>	0	2	4	<b>H</b>
EBA	1	6	14	<b>H</b>	0	4	4	<b>H</b>	1	2	8	<b>H</b>	0	0	2	<b>H</b>	2	4	18	<b>H</b>	12	4	9	<b>H</b>	0	2	7	<b>M</b>	0	0	6	<b>H</b>
CEBS	6	6	9	<b>M</b>	2	2	4	<b>M</b>	3	4	4	<b>M</b>	1	0	1	<b>M</b>	7	8	9	<b>M</b>	7	3	4	<b>M</b>	3	2	6	<b>M</b>	2	0	4	<b>M</b>
ICN	7	8	6	<b>M</b>	1	5	2	<b>M</b>	5	2	4	<b>L</b>	1	1	0	<b>LM</b>	11	9	4	<b>L</b>	7	6	1	<b>M</b>	0	5	6	<b>H</b>	2	3	1	<b>M</b>
ECN	9	8	4	<b>M</b>	3	2	3	<b>M</b>	5	5	1	<b>M</b>	1	1	0	<b>LM</b>	9	13	2	<b>L</b>	10	4	0	<b>L</b>	6	1	4	<b>M</b>	3	1	1	<b>L</b>
INECE	9	8	4	<b>M</b>	3	2	3	<b>M</b>	6	4	1	<b>L</b>	0	2	0	<b>M</b>	10	20	12	<b>M</b>	6	7	1	<b>M</b>	4	3	2	<b>L</b>	1	4	1	<b>M</b>
IMPEL	6	8	5	<b>M</b>	2	4	2	<b>M</b>	4	4	3	<b>M</b>	0	2	0	<b>M</b>	7	24	5	<b>M</b>	5	7	2	<b>M</b>	2	5	4	<b>M</b>	0	5	1	<b>M</b>

*Note:* Numerical entries are frequencies of each value; L= low, M = medium, H = high. Governance within a network can be said to be more democratic the more items are positively assessed (i.e. coded as ‘high’). The ultimate score for each dependent variable is reached by summing up the individual scores of the defining items (see Online Appendix 2). To this end, we multiply medium values with the factor 2 and high values with 3, and then retranslate the sum into the three categories low/medium/high. To give an example, the BCBS score for input-legitimacy is the sum of four items rated as ‘low’, two items rated as ‘medium’, and 2 items rated as ‘high’, which makes  $4 + 2 \times 2$  plus  $2 \times 3 = 14$ . Since the input-dimension is measured with eight items, values in the range [8;13] fall into the low category, values between [13;18] into the medium category and those between [19;24] into the high category. Hence, BCBS’ level of input-legitimacy is medium (M). When calculating the sum for each model, we give count those items twice that are used to operationalize the most characteristic features, as highlighted in Table 1. This procedure allows reliable evaluation of variance without distorting meaning.

## ONLINE APPENDIX 4: Values of authority

	Bindingness of decisions	Number of addressees	Mode of decision-making organ	Enactment of policy-related decisions	Authority
<b>Banking</b>					
- BCBS	M	H	L	L	M
- EBA	M	H	H	L	M
- CEBS	L	H	L	L	L
<b>Competition</b>					
- ICN	L	H	L	L	L
- ECN	L	H	L	L	L
<b>Environment</b>					
- INECE	L	H	H	L	M
- IMPEL	L	H	H	L	M

Note: L= low, M = medium, H = high; we multiply low values with the factor 1, medium values with the factor 2 and high values with the factor 3. The sum is retranslated into the three categories, with L [4;6], M [7;9] and H [10;12].

## ONLINE APPENDIX 5: Values of autonomy

	Control over appointment of TGN core offices by (member) states	Decision-making competences of (member) states over TGN			Regulatory scope of TGN decisions	Autonomy
		Discretion over budget	Discretion over organization (constitution)	Discretion over policy-making		
<b>Banking</b>						
- BCBS	L	L	L	L	H	M
- EBA	H	H	L	H	H	H
- CEBS	L	M	M	L	M	M
<b>Competition</b>						
- ICN	M	M	L	M	M	M
- ECN	L	L	M	M	M	M
<b>Environment</b>						
- INECE	M	M	M	M	L	L
- IMPEL	L	M	L	L	L	L

Note: L= low, M = medium, H = high; we multiply low values with the factor 1, medium values with the factor 2 and high values with the factor 3. The sum is retranslated into the three categories, with L [5;7], M [8;11] and H [12;15]. The total score for a network's autonomy is calculated by single-weighting the value of the first dimension (control over appointment) as well as the average value of the second dimension (decision-making competences) but double-weighting the value on regulatory scope.