

**ORIGINAL ARTICLE**

# Transnational executive bodies: EU policy implementation between the EU and member state level

Rik Joosen | Gijs Jan Brandsma 

School of Governance, Utrecht University,  
Utrecht, The Netherlands

**Correspondence**

Gijs Jan Brandsma, Utrecht University, School  
of Governance, Bijlhouwerstraat 6, 3511 ZC  
Utrecht, The Netherlands  
Email: g.j.brandsma@uu.nl

Existing typologies of the European administrative space locate decision-making powers with the European Commission, member state governments, and EU and national agencies, sometimes aided through regulatory networks. This article argues that those typologies are incomplete because they do not take into account the existence of transnational executive bodies. These are public authorities that are responsible for administering and implementing EU policies across multiple member states, that are part of neither domestic nor EU institutions and whose decisions are legally binding. They represent a potentially highly prevalent form of governance in a previously uncharted area of the European administrative space. We document their workings by presenting a case study of the Rhine-Alpine Corridor organization, a transnational executive body implementing parts of the EU rail freight policy.

## 1 | INTRODUCTION

The study of public administration has largely been confined within the realm of national sovereignty, but policy-making and the implementation of policies increasingly go beyond the borders of the state (Heidbreder 2015; Stone and Ladi 2015). The European Union (EU) is an important institutional manifestation of this phenomenon. Public administration scholars and lawyers have repeatedly identified challenges for implementation and enforcement with international policies. States, after all, remain sovereign in the means they choose for implementing those policies and in the effort they make.

The European Union is no exception to this. With respect to implementation and enforcement of European policies, the leading principle is that its member states have administrative authority (Heidbreder 2011). This is why the nexus between member states and European Union institutions is crucial for coordinating effective implementation. This nexus includes many different institutionalized forms of coordination and cooperation which have become known as the 'European Administrative Space' (Trondal and Peters 2013). The organizations included in this administrative space vary in the degree to which they are effectively controlled by supranational or national actors.

Many contributions over the past decade have endeavoured to map out the European administrative (or European regulatory) space by providing detailed analyses of the functioning of specific new forms of governance.

This includes analyses of their institutional and organizational dynamics (Balint et al. 2008; Coen and Thatcher 2008; Hofmann 2008; Levi-Faur 2011; Thatcher 2011; Mathieu 2016), their effects on national agency autonomy (Yesilkagit 2011; Bach and Ruffing 2013; Danielsen and Yesilkagit 2014), and typologies of significant components of the European administrative space and their relevant policy instruments (Börzel 2010; Heidbreder 2011; Levi-Faur 2011; Trondal and Peters 2013).

In this contribution, we argue that existing typologies do not cover the full spectrum of institutional configurations in the European administrative space. They overlook EU-induced forms of transnational governance, forms which are at odds with basic legal and administrative principles of administrative sovereignty underlying relations between member states and the European Commission. The EU constitutional structure is generally understood as a system in which member states are individually responsible for implementing EU law, except for a small number of policies in which those powers are located at the EU level. In such a structure, transnational governance networks or organizations dealing with EU policy cannot take decisions of their own; they merely perform advisory or coordinating functions.

We argue that the EU is in fact capable of attributing implementing powers to transnational public bodies, and thus establishing forms of transnational authority including transnational street-level bureaucrats (Stone and Ladi 2015) as an alternative to supranational or national configurations. Those bodies are not under hierarchical control of an EU institution, but nevertheless they do take legally binding decisions regarding the common implementation of EU policies. At first sight this may seem an exotic combination of features, but as we will demonstrate the number of such organizations may well be considerable.

The European administrative space therefore features an even larger variety of institutionalized mechanisms than those that have already been identified. Heidbreder (2015, p. 942) succinctly notes that 'no genuine or coherent EU administrative system – or administrative space – can be discerned after some 60 years of legal integration'. Yet, policies on European issues – or even transnational issues more generally for that matter – require some form of transnational administration or coordination, otherwise they cannot be enforced, and different institutional structures come with different enforcement regimes (Heidbreder 2015). This is why we need to specify the diversity of institutional arrangements for implementing European policies in order to understand by what institutional means they can be effective.

This study therefore further examines the institutional structures included in the European administrative space and presents a new typology to make sense of its configurations, in particular with a view to capturing EU-induced transnational executive bodies which hitherto have been overlooked in the literature on EU governance. We distinguish between two dimensions: the level of control, and the mode of implementation. On the basis of this typology, we illustrate the functioning of transnational executive bodies by providing a detailed analysis of the set-up and workings of the Rhine-Alpine Corridor organization, which has been made responsible for implementing parts of the EU's railway policy.

## 2 | MAPPING THE EUROPEAN ADMINISTRATIVE SPACE

The concept of the European administrative space is generally used for two bodies of literature addressing the development of administrative capacity in Europe. The first body, generally dubbed 'EAS 1', focuses on the convergence of national administrative systems. The second body, 'EAS 2', which is of more interest for the purposes of this study, investigates the emergence of new institutional forms of common administration, and their gradual development towards a common administrative order or even a generic EU model of administration (Trondal and Peters 2013).

It is the last body of literature, in particular, that has been flourishing in recent years, mostly because of the emergence of regulatory networks that embed member state independent regulatory agencies in novel ways (e.g. Coen and Thatcher 2008; Eberlein and Newman 2008; Maggetti and Gilardi 2011; Danielsen and Yesilkagit

2014; Bach et al. 2016). The networks meet about issues of joint interest and coordinate the activities of their members. Sometimes, these networks are founded by an EU legal act, and sometimes the European Commission attends the networks' meetings as well. The networks, however, have no authority to adopt legally binding decisions other than, in some cases and to some degree, internal organizational rules (Coen and Thatcher 2008, p. 64). Therefore, their main function is providing links between national and EU administrators, which results in coordinative capacity.

But these are not the only elements that make up the European administrative space. Two examples that date back to the beginnings of the European integration project are the European Commission's administration itself, as well as comitology committees. The latter are member state policy officials who check the Commission when it adopts EU executive rules, and these committees are often seen as decision-makers in their own right (Joerges and Neyer 1997; Dehousse 2003; Brandsma 2013). More recently, we witnessed a proliferation of new forms of EU executive governance in the 1990s such as the Open Method of Coordination, EU regulatory agencies enjoying discretion (Groenleer 2009; Busuioc 2016), and the aforementioned regulatory networks (Eberlein and Newman 2008). Without exception, these modes of governance were invented because existing forms of governance could not meet the political, regulatory or technical demands of the policy to be regulated, and they all came with institutional characteristics which at that time were new forms of EU executive governance.

Some have detected a trend over time towards a 'common administrative order' in the development of the European administrative space. This argument is based on the notion that regulatory networks are created as a means to provide the European Commission with input in the regulatory process in technically complex areas where member state preferences are already quite close to each other, without creating a new EU agency or endowing the Commission with more powers. Nonetheless, in practice their creation may well be a stepping stone towards agencification at the EU level (Eberlein and Newman 2008; Bach et al. 2016). The fact that several regulatory networks were transformed into EU agencies further underscores this point (Levi-Faur 2011).

This notion of administrative convergence towards a 'common administrative order', with the EU Commission and EU agencies at the apex and national executives as subordinates, does not necessarily mean that existing administrative settings automatically and radically align to the 'new model'. Rather, the 'new order ... tends to be layered around already existing orders so that the result is an increasingly compound and accumulated executive order at the European level' (Curtin and Egeberg 2008, p. 640). Also, several studies have questioned the assumption of convergence in the European regulatory space. Thatcher (2011), for instance, notes that EU agencies in general are not particularly strong because neither the Commission nor member states are willing to relinquish power: their workings tend to resemble those of regulatory networks quite strongly. On top of this, areas in which strong regulatory networks exist do not feature a strong EU agency, and vice versa. Convergence, thus, is limited and more importantly it is not necessarily accompanied by a power shift towards the supranational level. Heidbreder (2011) focuses on policy instruments rather than organizations, and argues that there is a variety of policy instruments by which the EU affects national public administrations. This heterogeneity makes it hard to identify a single, clear-cut model of EU administrative governance.

### 3 | TOWARDS A NEW TYPOLOGY OF EU ADMINISTRATIVE ARRANGEMENTS

Much as the European administrative space has been described and its development has been explained, few typologies of its institutional configurations exist. These typologies allow, to a limited degree, mapping out the variety of governance arrangements in the European administrative space. Börzel (2010) introduced the most fine-grained typology as she distinguishes between three institutionalized rule structures (hierarchy, negotiation and competition) and three actor configurations (public, private or both). Rather than capturing the empirical variety of institutional settings, her distinction primarily serves to distinguish various ideal-types of governance. Particular institutional configurations may thus combine elements of multiple ideal-types which in the distinction may fall under multiple headings simultaneously (Börzel 2010).

Eberlein and Newman (2008) distinguish between two different dimensions: the locus of coordination (supranational or national) and the mechanism of enforcement of the policy that is eventually decided (formal enforcement or self-enforcement). Again, this typology distinguishes between various modes of governance and does not necessarily classify the institutional configuration of the component elements of the EU administrative space. Regulatory networks, for instance, do not have the power to make authoritative decisions by themselves, but Eberlein and Newman (2008) still locate them at the formal enforcement end of their enforcement dimension because the participating national agencies may in the end resort to their own formal powers for implementing joint policies. Whether this enforcement actually happens is, however, not at all certain (Maggetti and Gilardi 2011; Yesilkagit 2011; Van Boetzelaer and Princen 2012).

Other typologies only apply to subsets of the EU administrative space, or only to the policy instruments used in it. Coen and Thatcher (2008), for instance, provide a classification of regulatory networks only on the basis of their formal powers, ranging from 'soft' to 'hard' networks. But even the 'hardest' network in their analysis only has a strong role in providing policy input to the European Commission without having the power to make legally binding decisions of its own. Heidbreder (2011) classifies supranational policy instruments and distinguishes between explicit and implicit supranational rule, and between hierarchical and non-hierarchical modes of governance, and institutional configurations are not the prime focus of this distinction.

In sum, the literature offers a number of conceptualizations of the European administrative space, but only few typologies of its constituent elements. These, in turn, do not directly tap into the diversity of institutional settings within the European administrative space, or they mix elements of institutional powers and those of its component individual members which leads to a biased understanding of how power is exercised in the European administrative space as well as how tangible this power really is.

In order to capture the variety of institutional configurations in the EU administrative space, we distinguish between two dimensions: the level of control and the mode of implementation. Before locating these forms in the spectrum, we first explain each dimension in turn.

### 3.1 | Dimension 1: the level of control

Our first dimension taps into the level of control, which ranges between full control by EU-level institutions or bodies at one end of the spectrum, towards full control by member state organizations at the other. This dimension resembles the 'locus of coordination' dimension in the heuristic classification proposed by Eberlein and Newman (2008, p. 31). We do not conceptualize the level of control as a dichotomy, but rather as a scale. Even though for heuristic purposes it is often helpful to make a sharp distinction between the two categories, they in fact only represent extreme ends on a continuum. In many EU governance settings, control is effectively shared between supranational and intergovernmental actors, making the location of these governance settings on this dimension depend on the balance of power between those actors.

Comitology committees, for instance, deliberate and vote on implementing measures proposed by the Commission, but they are staffed by member state administrators. However, because the committees cannot formally propose implementing measures themselves, most need qualified majorities to overturn the Commission's proposals, and because they are chaired by the Commission, the balance of power is clearly tilted towards EU-level control (see Brandsma 2013). The opposite goes for regulatory networks where in some cases the Commission has a seat at the table, and hence may be able to softly steer the discussions, but is not able to impose its will on the member states in any way (see Eberlein and Newman 2008, p. 42).

### 3.2 | Dimension 2: the mode of implementation

The second dimension distinguishes between two basic modes of implementation, namely between legally binding decisions at one extreme of the scale and softer decisions (such as recommendations, benchmarking or even informal persuasion) on the other. This dimension taps into the formal authority of governance mechanisms. Again, we

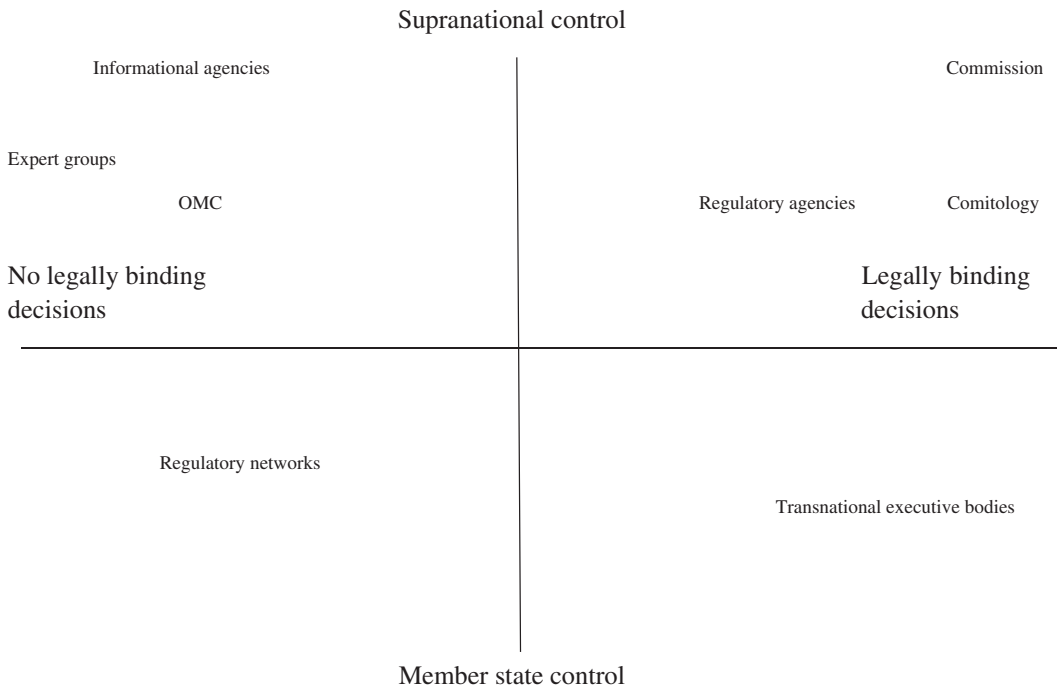
conceptualize this dimension as a scale rather than as a dichotomy, as governance structures are sometimes capable of producing both. Although the dominant mode is always easy to identify, the de facto functioning of governance mechanisms does not always neatly correspond to their formal boundaries. For example, if a governance mechanism is capable of producing legally binding decisions, it does not preclude the adoption of softer standards (Joerges and Neyer 1997).

Repeating the previous two examples, comitology is clearly located towards the side of legally binding decisions (see Brandsma 2013, albeit that the eventual decisions are formally adopted by the Commission, and not by the comitology committee itself), whereas regulatory networks rely on voluntary adoption by member state regulators of standards previously discussed in the networks (Eberlein and Newman 2008; Maggetti and Gilardi 2011).

Figure 1 depicts where various governance structures can be located in this two-dimensional landscape. In the top left corner, we find forms of governance that are controlled by EU institutions, but do not take any legally binding decisions. These include the Commission's expert groups (Gornitzka and Sverdrup 2011) and non-regulatory agencies (Groenleer 2009, pp. 118–19). These governance settings primarily serve to provide input to the EU policy process, with the eventual decision being taken by the EU Commission or by the EU legislative institutions. The Open Method of Coordination also fits into this category, since it relies on soft processes such as benchmarking rather than on legally binding supranational decisions (Regent 2003).

The top right cell features supranational executive rule-making with legally binding effect. Nearly all executive policies in this cell are formally adopted by the Commission, often supplemented by a comitology procedure (Brandsma 2013). For several policies, regulatory agencies provide the Commission with draft decisions, or even adopt those decisions themselves (Groenleer 2009, pp. 118–19).

The bottom left cell includes all forms of governance that do not take legally binding decisions, and in which the member states are in the driving seat. Regulatory networks are the most prominent example of this category. The term is slightly elusive: they are networks of national regulators, but nevertheless the networks are not equipped with powers to adopt regulatory policies. Instead, they rely on the participating national regulators to



**FIGURE 1** Typology of institutional configurations in the European administrative space

adopt the policies that are coordinated in the network (Eberlein and Newman 2008). This, in turn, implies that national regulators often have considerable leeway in deciding whether or not to implement the networks' policies, and recent empirical research has shown that the degree to which domestic principals are triggered varies (Maggetti and Gilardi 2011; Yesilkagit 2011; Van Boetzelaer and Princen 2012). In some cases, the Commission participates in network meetings, or even decides on the organizational structure of the networks (Levi-Faur 2011, p. 823). Even though regulatory networks are considered powerful instruments in coordinating EU policies (sometimes even the most powerful, see Maggetti and Gilardi 2011), they wield almost no powers of their own. Even the regulatory networks that are considered to be most powerful rely exclusively on soft forms of governance: advising the Commission and adopting recommendations for national governments, but not adopting any legally binding decisions themselves (Coen and Thatcher 2008).

The bottom right cell has so far received remarkably little attention in the literature on EU governance, and includes transnational executive bodies. Transnational executive bodies display organizational features that diverge sharply from other forms of EU governance that are more well known in the literature, such as committees or agencies. Whereas transnationalism features prominently in the literature on global or international governance (e.g. Djelic and Sahlin-Andersson 2006; Hale and Held 2011), it has been discussed in the EU literature mostly in the context of the above-mentioned regulatory networks (see Bach et al. 2016). In this article, we examine how transnational executive bodies are used for implementing EU policies. Their functions go well beyond merely coordinating or advising on EU regulation. Rather, they implement EU policies themselves as they are public authorities in their own right. We define them as:

- public authorities;
- that are governed by a subset of EU member states rather than by EU institutions;
- that have been created for the purpose of implementing EU policies;
- and actively do so without relying on domestic hierarchies.

In the literature on the EU administrative space, this combination of features has hitherto been overlooked. Yet, it is not a redundant category in a theoretical sense as many such organizations exist. They can be created in multiple ways. One variety emerges through the conclusion of specialized intergovernmental treaties aimed at implementing EU policies transnationally. The Single European Sky, for example, aims at defragmenting the European airspace, and hence promotes the integration of air navigation services. While the sovereignty over airspace remains a nation state matter, several member states created transnational air navigation service organizations for nine so-called 'Functional Airspace Blocks' over the last decade by concluding specialized treaties (Franklin 2007; Schubert 2010; Varone et al. 2013).

A second variety are European Groupings of Territorial Cooperation (EGTC), which are an important element of the EU's regional policy (Nadalutti 2013). EGTCs are public authorities set up by subnational or national authorities of at least two member states or neighbouring countries. Their objectives and powers are defined by the founding countries of the according EGTC, and they may prohibit certain activities of the EGTCs if these violate vital interests or policies of member states. However, to assure the independence of EGTCs, such prohibitions are subject to judicial review (European Parliament and Council Regulation 1082/2006/EC). Since EGTCs do not neatly correspond to the EU's constitutional system in which member states implement EU law independently, the EU regulation that establishes EGTCs does not explicitly lay out how appropriate legal accountability is ensured: 'Community legislation on jurisdiction shall apply to disputes involving an EGTC', but 'In any case which is not provided for in Community legislation, the competent courts for the resolution of disputes shall be the courts of the member state where the EGTC has its registered office'. Nonetheless, when citizens wish to appeal an EGTC's decision, they are entitled to do so in the member state 'under whose constitution the right of appeal arises', which could well be a different member state again (European Parliament and Council Regulation 1082/2006/EC, Article 15). EGTCs are mostly

used for implementing the EU's Interreg programme for regional cooperation, and currently 57 EGTCs exist (Committee of the Regions 2016).

A third variety directly creates a transnational organization through EU law, leaving the specific legal form implicit. Given that the Treaty specifically allocates responsibility for implementing EU law to the member states (see Treaty on the Functioning of the European Union, Article 291(1)), it seems impossible that the European Union directly creates transnational public authorities and allocates them the power of taking legally binding decisions. Yet, the Rhine-Alpine Corridor organization is a case in point, and it forms the case study through which we illuminate the workings of transnational executive bodies in more detail. The organization was set up directly through an EU regulation (European Parliament and Council Regulation 913/2010), which also specifies its organizational structure, delegates the implementation of policy to it, and endows it with the power of adopting legally binding decisions to that effect. The EU features nine rail freight corridors, each governed by their own transnational executive body.

Since there are no public registers that exhaustively identify all transnational executive bodies, we cannot be sure about their exact numbers. Nonetheless their numbers are potentially big, and with the 75 transnational executive bodies included in the above three examples they already outnumber regulatory networks insofar as these have already been identified (e.g. Levi-Faur 2011).

## 4 | DATA AND METHODS

To prove the validity of our typology, and to demonstrate how the set-up and the operations of a transnational executive body compare to other organizations in the EU administrative space, the remainder of this article presents a case study of the Rhine-Alpine Freight Corridor organization. It implements part of the EU's transport policy by facilitating international rail freight services on the route from Genoa, via Switzerland and Germany, to the seaports of Rotterdam, Amsterdam, Zeebrugge and Antwerp, and vice versa. This route connects five countries, each having its own regulatory body that is responsible for allocating network capacity to train operators. In practical terms, this means that a cargo operator that wishes to run an international freight service normally depends on five different regulators for equipping its trains with a timetable. On long international routes, this fragmented planning may easily result in several hours of waiting time. Other incompatibilities, such as signalling systems, technical requirements for locomotives and requirements for train drivers that each differ between countries, result in similar logistical inefficiencies.

The Rhine-Alpine Corridor organization provides centralized planning for international freight trains on this route, and directly allocates network capacity to freight operators, bypassing national regulators. Similar corridor organizations exist for eight other cargo routes that link up multiple member states. For gaining insight into the legal basis of this organization, its organizational structure as well as its outputs, in total nine EU regulations, progress reports regarding the corridor, agreements between affected parties and external communications were studied. This document analysis was used to uncover how the corridor organization is formally set up. Although this is fundamental for the workings of the corridor organization, this doesn't necessarily cover the whole scope of its actual practices.

For this reason, the analysis mainly relies on interview data. A total of 11 semi-structured interviews were conducted to see how the organization operates and how it interacts with actors in its environment. Six members from the management team were interviewed, who are employed by national ministries and capacity allocators of its member states. Further, five representatives of organizations were interviewed that surround the corridor organization in its institutional environment, in order to probe more deeply into its discretionary space. These include the European Commission, the Dutch competition authority (Autoriteit Consument & Markt), the European Parliament and the Dutch sectoral association of transport companies. This strategy enabled us to interview respondents at different levels of the corridor's management as well as key stakeholders.

## 5 | THE RHINE-ALPINE RAIL FREIGHT CORRIDOR

We have defined transnational executive bodies as public authorities that are governed by a subset of EU member states rather than by EU institutions, that have been created for the purpose of implementing EU policies, and actively do so without relying on domestic hierarchies. Their nature thus departs from those of other forms of EU administration in which the level of control and/or the mode of implementation is different. Before explaining the workings of transnational executive bodies in more detail through the example of the Rhine-Alpine Corridor, we first briefly introduce this case.

### 5.1 | History of the Rhine-Alpine Corridor

The Rhine-Alpine Corridor came into being in the year 2010, but several European countries had already begun to coordinate rail freight policy a few years before. One of the first forms of this collaboration was the International Quality Corridor (IQ-C). This was a regulatory network in which the ministries of the participating countries worked together to improve the quality of the international rail freight transport (R4). To this end, a Memorandum of Understanding was signed by the participating countries: Switzerland, Italy, Germany and the Netherlands. In parallel with the IQ-C, European Rail Traffic Management System (ERTMS) Corridors were also created. The ERTMS system seeks to make the various national signalling systems interoperable, and is slowly being implemented across the EU. ERTMS Corridor A, launched in 2006, was meant to coordinate and stimulate the implementation of ERTMS on the track that is now part of the Rhine-Alpine Rail Freight Corridor.

These IQ-C and ERTMS corridors were coordinated informally, but these informal arrangements finally developed into the Rhine-Alpine Rail Freight Corridor organization. One of the reasons for constructing the rail freight corridors in 2010 was to merge all pre-existing arrangements into one organization (R2). This is also mentioned in the founding EU regulation of the rail freight corridors:

In order to stimulate coordination between the Member States and the infrastructure managers and to provide continuity along the corridor, an appropriate governance structure for each freight corridor should be established, taking into account the need to avoid duplication with already existing governance structures. (European Parliament and Council Regulation 913/2010)

This Regulation is the foundation of the Rhine-Alpine and eight other rail freight corridors in Europe. By adopting this regulation, the EU built on structures that had already been put in place by the member states (R4). What changed was that with the implementation of this regulation, the EU replaced the existing informal arrangements with a formal public authority: not an EU-level agency as in many previous cases (e.g. Levi-Faur 2011; Thatcher 2011), but a transnational executive body.

One of the most important effects of this formalization was that countries no longer had a choice of whether to participate in corridors or not: Regulation 913/2010 made it compulsory (R4), and specifies that transnational executive bodies must govern these. In terms of our typology, the implementation of this part of the EU's rail transport policy moved from the lower left cell towards the lower right cell in figure 1.

### 5.2 | The Rhine-Alpine Corridor as a transnational executive body

The organization of the rail freight corridor consists of two major boards: the executive board and the management board, supplemented by operational units (European Parliament and Council Regulation 913/2010, Article 8). The executive board is the governing body of the corridor organization. It consists of representatives of the transport ministries of the participating countries: the Netherlands, Belgium, Germany, Switzerland, and Italy. The management board exercises daily leadership over the corridor. It is composed of representatives of infrastructure managers and capacity allocators of the same countries. The composition of these boards thus reflects the



intergovernmental nature of the corridor organization, corresponding with the criterion that transnational executive bodies are governed by a subset of EU member states and are under member state control.

The most important responsibilities of the executive board are to decide on the general goals of the corridor and to implement them. Strangely, the latter responsibility is regulated in the Agreement Regarding the Executive Board, which is an agreement between the participating ministries, rather than in its founding EU regulation. The executive board also supervises the management board and approves the implementation plan drawn up by it. Further, the executive board reports to the European Commission once every three years on the process of implementing the corridor (R9, European Parliament and Council Regulation 913/2010).

The operational units of the corridor organization include a number of bodies which are all managed by the management board. The first is the Programme Management Office, which in terms of responsibilities is comparable to the board of a large association (R4). The Programme Management Office employs three full-time staff members in the corridor's main office in Frankfurt. The advantage of having this body in a separate office is that its priorities lie only with the corridor. The national actors that are represented on the executive board and the management board also have national positions to defend, which at times gets in the way of improving the performance of the corridor (see below). The Programme Management Office is not bound to particular national affiliations and therefore has less difficulty in dealing with this (R4), but it also carries out a large part of the daily operational tasks of the corridor. This strengthens the capacity of the Rhine-Alpine Corridor organization to implement policies without relying on domestic hierarchies.

The Programme Management Office is a European Economic Interest Grouping (EEIG). An EEIG is an organizational form that makes it possible for public and private organizations to organize themselves transnationally. It facilitates them in pursuing economic goals, but does not allow them to aim to make a profit. A disadvantage of an EEIG is that it can only be formed by organizations located inside EU member states, and therefore Switzerland cannot be a full member of the Programme Management Office. This is especially problematic because the Swiss alpine tunnels are a vital part of the corridor's infrastructure. The statutes therefore dictate that Switzerland is an associate member and has the same voting privileges as the other countries (R3).

Besides the Programme Management Office, working groups take care of many of the corridor's operational tasks. They mostly carry out research activities commissioned by the management board, and put together so-called 'pre arranged train paths'. The pre arranged train paths are the products that the corridor organization directly offers to the railway companies. Train paths are more or less comparable to slots used by airports: they are bits of railway capacity at a certain time that are reserved for particular trains, so that they can be equipped with a timetable. National infrastructure managers supply some of their railway capacity to the corridor organization so that the corridor organization can create international train paths and allocate these to rail freight operators. One of the working groups of the Rhine-Alpine Corridor puts these train paths together in collaboration with the Programme Implementation Managers (R5): staff working for each of the national infrastructure managers who have been assigned the task of ensuring that the corridor's decisions are implemented in their own, national context (R2, R3, R4).

Finally, the corridor organization includes a so-called One Stop Shop, which carries out street-level activities. The One Stop Shop is the office where railway companies apply for network capacity, and which allocates this capacity directly. It is specifically this function that makes the Rhine-Alpine Corridor something that has not yet been accounted for in the literature: railway companies only deal with one single transnational public authority, rather than with separate member state authorities. Through the One Stop Shop, the Rhine-Alpine Corridor organization implements EU policy directly and bypasses member states' governments, which is a defining feature of a transnational executive body.

The founding regulation of the corridor organization empowers the national competition agencies to oversee the workings of the One Stop Shop. They may open investigations into unfair treatment, and they may apply sanctions if necessary (European Parliament and Council Regulation 913/2010). The regulation is not very specific, however, about which of the member states' competition authorities holds prime responsibility when a railway company complains about unfair treatment regarding international train paths. To this effect, the competition authorities have

adopted a memorandum of understanding empowering the German *Bundesnetzagentur* to coordinate investigations for complaints that cannot be logically referred to competition authorities of one of the other participating countries (R11).

Despite the fact that the EU has explicitly empowered the corridor organization to take decisions, there is some controversy about the categories of decisions that are legally binding on member states. Some member states treat the decisions taken by the corridor organization as EU law because its founding regulation was enacted at the EU level. Other member states, however, treat its decisions as international rather than EU law. They argue that the executive board is at the apex of the organization and the founding EU regulation obliges member states to recognize it (R6). In particular, Belgium and France (participating in a different corridor) are of the latter view (R4, R6). The agreement regarding the executive board aims to solve this issue by empowering it to implement the corridor, but the discussion still persists (R6). Thus, interpretations differ as to how autonomous the executive board should be. For instance, France argues that the implementation plan and the framework for capacity allocation, which are agreed upon by the executive board, can only enter into force after formal adoption by their national government (R4, R6). In addition, Belgium has been hesitant to pass executive board decisions other than those mentioned in the founding regulation, the implementation plan and the framework for capacity allocation, since it questions whether any additional decisions can be legally binding under EU law (R6).

These examples show that the de facto autonomy of a transnational executive body is closely related to its specific competences, and in this case there are multiple competences that come with varying degrees of autonomy. The Rhine-Alpine Corridor organization displays all features of a transnational executive body. It is a public authority, governed by a subset of member states, and implements a part of the EU's railway policy. Through its One Stop Shop, it allocates train paths to railway companies directly without interference from domestic regulators. It is different from a regulatory network, because it has the power to implement policies directly. It is also different from EU agencies or EU committees because it is not organizationally linked to an EU institution. At the same time, the corridor organization also acts as a platform for regulatory coordination between member states, in which domestic hierarchies remain crucial for decision-making (see below). The controversy described in the previous paragraph neatly demonstrates that the participating member states have different opinions on where exactly the dividing line is between the corridor organization's autonomous competences and its role as a platform for coordination. That said, the very fact that the Rhine-Alpine Corridor organization has autonomous competences to begin with is not subject to debate.

### 5.3 | The Rhine-Alpine Corridor's coordinating activities

On top of the areas where the corridor organization adopts legally binding decisions, it also behaves as a regulatory network for additional issues that relate to the implementation of the railway corridor. These include provisional agreements and guidelines and hence are mostly efforts to work together with different parties within the institutional environment of the corridor organization, such as the European Commission and railway companies. Most of these coordinating tasks are described in Regulation 913/2010, but some are also specified in agreements between the participating member states.

The executive board coordinates its activities with the European Commission, in particular with respect to the Trans-European Network for Transport (TEN-T). The TEN-T programme is the broad, EU-wide policy on all modes of transport in the EU, including roads, railroads and waterways, both passenger and freight. The routes in TEN-T's focus are mostly the same as those of the rail freight corridors.

The European Commission attends the meetings of the executive board as an observing member (R9, R8, R11). It focuses on the progress of the rail freight corridors and can also act as a facilitator of coordination, but it has no authority over the wheelings and dealings of the corridor organization. For example, it organizes meetings with all nine rail freight corridors in the Single European Rail Area Committee (SERAC), which has a separate working group on the rail freight corridors (R3). Recently, this working group was used to coordinate a single Framework for

Capacity Allocation for six of the nine corridors (R6), a prime example of the corridors using non-legally binding measures to enhance transnational cooperation. In our typology this fits into the lower left quadrant.

Apart from the European Commission, national safety organizations and national regulatory bodies also observe the executive board. The national safety organizations are concerned with the safety issues along the corridor route. In this capacity, they focus mainly on ERTMS, the new international standard for rail traffic management systems. The regulatory bodies, on the other hand, focus on access to the corridors for the railway companies that want to use them (R11), and aim to ensure a level playing field for those companies. Through their observer status on the executive board, the corridor organization coordinates its activities with these two sets of authorities.

Through its working groups, the management board coordinates rail infrastructure management issues with national authorities. Examples include coordination of traffic management, priority rules, capacity allocation, mechanisms to resolve disturbances on the route, performance improvement programmes and the use of interoperable IT systems, all with the aim of harmonizing the handling of rail traffic between different countries (R2). The existing variety of national rules and regulations has a huge impact on railway companies, making international rail traffic a costly business (R1, R3, R7). The goal is to reach interoperability, a state in which trains can cross borders without having to adapt to a new legal or technical environment.

To this effect, the management board carries out research and issues reports. One of the most important ones is the transport market study. This study is meant to identify bottlenecks on the corridor (R2, R3). If these are identified, additional studies investigate how they can be addressed. The results are put into an indicative investment plan. Since the corridor organization has no authority over infrastructure investments, the implementation of the investment plan depends on national decision-making. Other research includes a user satisfaction survey and monitoring the performance of the corridor. The management board is also responsible for creating the Corridor Information Document, in which the process and the status of harmonization on the corridor are described (R2).

Last but not least, the representatives on the executive board all represent national ministries, and those in the management board represent national infrastructure management agencies. Hence, the two boards also serve as coordination devices between those organizations in their own right. Although these organizations are deeply involved in the corridor organization, the national representatives on the two boards often find it difficult to generate a sense of urgency within their home organizations for the changes that are proposed by the rail freight corridors. Both the ministries and the infrastructure management agencies mostly deal with domestic passenger train services, and international rail freight transport simply is not high on their agendas (R2, R3, R4).

We thus observe that the Rhine-Alpine Corridor organization, on top of its capacities for implementing EU policies directly on a transnational level, also acts as a coordination body between member states. Much like otherwise observed with regulatory networks or networks of national and European agencies, national bureaucratic autonomy and sometimes 'turf protection' impact upon the functioning of our case (Bach et al. 2016; Busuioac 2016). However, we have argued by means of our typology that it makes little sense to classify the institutional configurations in the European administrative space by means of dichotomies. The Rhine-Alpine Corridor organization is a case in point using both binding and non-binding decisions to help improve the interoperability of the EU's train networks, and thereby implementing European policy on a transnational basis. For the areas where the Rhine-Alpine Corridor organization does have autonomy, we do not observe the coordination challenges that typically characterize the workings of regulatory networks.

## 6 | CONCLUSION

By distinguishing between the level of control and the mode of implementation, the institutional diversity of the European administrative space can be mapped out in more detail than previous typologies allowed for. We have

seen that the 'empty cell', i.e. organizations adopting legally binding decisions that implement EU policies across multiple member states, without being under control of EU institutions, in fact is not empty. Transnational executive bodies share features with executive agencies as well as with regulatory networks. But other than these two, they implement policies directly on a transnational basis. On top of that, they may also act as forums for coordination between member state administrations, which resemble regulatory networks albeit with a restricted number of participating member states. Street-level implementation of EU policies is thus not necessarily limited to EU-level actors or to individual member states. Because transnational executive bodies allow for transnational implementation of European policies while involving only a subset of member states and bypassing the EU's institutions, they may prove to be a convenient alternative for joint policy implementation in times of declining trust in the European institutions and greater calls for flexibility as regards the speed and depth of integration.

Yet, we also observe potential downsides when it comes to such arrangements, in particular with a view to the democratic legitimacy of transnational executive bodies per se, and with respect to certain aspects of their accountability. Because the EU's constitutional system does not explicitly cater for executive bodies organized at the transnational level, both the member states and the EU need to cut several corners in order to erect them. The aforementioned uncertainty about the international or European legal status of the corridor organization is a case in point of the effects of this squirming. This, however, creates challenges for the democratic and legal accountability of this arrangement.

In this case, the German competition authority has been assigned as the accountability forum for complaints relating to transnational issues, on the basis of a memorandum of understanding between the member states who participate in the corridor. But which standards does this legal accountability forum apply: the German ones, or different ones? If it is not necessarily the German ones, is this competition authority capable in practice of applying standards that are different from its own? And if the transnational executive body fails to implement EU policies, is the Commission able to launch an infringement procedure, and if so, against whom? Furthermore, these transnational executive bodies present a combination of features that could prove to be problematic for their democratic legitimacy. Future research should point out whether democratic control through the evaluations by the European Parliament suffice in this respect. Previous research, however, shows that its interest is very limited in issues that are technically detailed and void of direct parliamentary scrutiny rights (Brandsma 2013).

Since no cases against the Rhine-Alpine Corridor organization have yet been lodged, it is impossible to provide any conclusive answers at this stage. But these questions are central to assessing the legitimacy of transnational institutional arrangements like the case we have presented here. Transnational executive bodies may well be convenient and effective, but only as long as no affected party complains about their workings.

It might be tempting to dismiss this particular case as 'the exception to the rule' in the current literature on regulatory governance. But as we indicated earlier there are further organizations of this kind, such as the functional airspace blocks (FABs) under the Single European Sky, which also implement EU policy through transnational executive organizations. The exact organizational structure differs between FABs, just as it does between rail freight corridor organizations. Other cases are European Groupings of Territorial Cooperation, which are created by regional and local authorities located in different member states to implement joint projects, and there may well be even more. These examples provide a picture of a more diverse European administrative space than current typologies encompass.

Transnational executive bodies offer a way out for member states to accept formal implementing powers for bodies beyond their borders without conferring these powers on supranational actors such as the Commission or its agencies. They cater for Europeanization, without formally including EU-level actors, making them a convenient alternative to EU agencies for member states that are wary of supranational involvement. In other words, they flesh out European policies, but they are not at the EU level. Against the background of growing political contestation of the European project, it is this paradoxical combination of features that makes transnational executive bodies well suited for dealing with European policy demands.

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