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Reconstructing global governance networks: the case of the OECD test guidelines programme for the testing of chemicals

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TranState Working Papers

RECONSTRUCTING
GLOBAL GOVERNANCE NETWORKS:
THE CASE OF THE OECD
TEST GUIDELINES PROGRAMME
FOR THE TESTING OF CHEMICALS

MARTIN HERBERG

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ABSTRACT

Using qualitative-sociological research methodology, the article explores the phenomenon of standard-setting by transnational administrative networks. Regarding both the enormous problem-solving capacity and the occurring threats for legitimacy, it is examined whether such network-like arrangements are capable of creating their own institutional safeguards and internal mechanisms of control and accountability. As an empirical case for a more detailed reconstruction, the OECD Test Guidelines Programme for the Testing of Chemicals was chosen. As will be argued, the initiative is an almost paradigmatic example for the emergence of specific checks and balances, and the institutionalization of principles such as fairness and impartiality in a sphere beyond the constitutional state.

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Reconstructing Global Governance Networks: The Case of the OECD Test Guidelines Programme for the Testing of Chemicals¹

1 INTRODUCTION: THE SHIFT FROM WORLD POLITICS TO GLOBAL STANDARD-SETTING

Global governance increasingly takes the form of standard-setting by transnational expert systems and transgovernmental policy networks. Working alongside international organizations and international diplomacy, various sub-units of national governments are engaged in intense cooperation with their foreign counterparts, harmonizing technical standards and creating new forms of regulation (cf. Bermann 1993; Ladeur 2004; Slaughter 2005). While international treaties are normally negotiated by either the heads of states or foreign ministers, the rise of horizontal governance networks brings administrative actors and mid-level practitioners up to the stage. Often, the interactions of the latter are not strictly controlled by the policies of cabinets or chief executives of domestic governments (see, Keohane & Nye 1977, p. 43) which provides them with enormous discretion and room for manoeuvre. This semi-autonomous and decentralized character of transnational government networks goes hand in hand with a considerable problem-solving capacity and practical rationality.

In a world where “problems and contexts are changing faster than centralized authorities could ever respond to” (Slaughter 2005, p. 188) global administrative networks and expert committees prove to be an indispensable governance tool. In contrast to other, more traditional forms of regulation, their influence rests less on a delegation of power by a *demos*, instead, their authority is closely related to scientific knowledge and expertise, which is often justified with reference to the fact that “there are some people who know best” (Brunsson & Jacobsson 2000, p. 16). Simultaneously, the functional superiority of such governance arrangements raises enormous challenges under aspects of legitimacy. For example, while communication inside networks can considerably be facilitated by collectively shared perceptions, this reference to a common mindset may easily result in the suppression of third parties’ concerns. Furthermore, transborder interactions of national agencies may impair the process of interagency coordination on

¹ The following considerations are part of research project A 3 “Transnational Governance” at the Collaborative Research Center “Transformations of the State” at the University of Bremen. The empirical results were generated in a series of data evaluation sessions with cand. soc. Thomas Hafke and cand. soc. Hannes Kuenemund, to whom the text owes more than can be explicated in detail here.

the national level, leading to the often-cited “disaggregation” of the nation state (cf. Slaughter 2005, p. 254).

Along the lines of current sociological and juridical debate, the text is discussing the advantages as well as possible disadvantages of the emerging network-like governance arrangements. An important reference point here is the self-regulatory capacity of networks: cooperation goes hand in hand with the creation of trust-based relationships, and often, this trust becomes sustained by self-created rules and procedural standards. The paper combines a theoretical discussion of the relevant literature with an empirical reconstruction of one concrete initiative, where this self-regulatory potential comes to bear in an almost exemplary way.

As an analytical background for the case study, *section 2* starts with a discussion of the network concept. Until recently, networks used to be characterized primarily *ex negativo*, as opposed to the classical ideal type of hierarchical organization, focussing on their flexibility and innovation potential. However, since analysts have begun to perceive networks as “constitutional orders” (Sabel 1993, p. 70), many other aspects have come into play, e.g. their embeddedness into society as well as the evolution of an elaborated role structure and a system of checks and balances inside a given network. This constitutionalist approach displays many interconnections with current debates on an emerging Global Administrative Law (see, Kingsbury, Krisch & Stewart 2005). That is to say, many of the classical principles of administrative law like transparency, impartiality and reasoned decision-making are also present in the transnational sphere. However, most of these principles are rather vague, guiding our attention to the emergence of more concrete achievements on the practical level. It is before this background that many scholars of international law have discovered the significance of an empirical approach towards the actual characteristics of transnational governance networks.

The empirical considerations in *section 3* and *4* are applying these concepts to a concrete standard-setting initiative, namely, the OECD Test Guidelines Programme. The initiative is one of the oldest standard-setting mechanisms in the field of global chemicals regulation, dating back to the late seventies. Mid-level officials from all OECD countries, working for specialized national authorities like the German *Federal Environmental Agency*, are coming together in regular intervals in order to harmonize toxicological methods, i.e. methods to determine the carcinogenic, mutagenic and ecotoxic potential of chemicals. The legal bindingness of OECD test methods rests on the Council’s Decision on the Mutual Acceptance of Data from 1981, stating that data generated in one country in accordance with existing OECD Test Guidelines must be accepted for assessment purposes in all other OECD countries as well (cf. Warning 2009, p. 120). By providing a stock of harmonized test methods, the initiative aims at the minimization of

trade barriers, the avoidance of duplicative testing as well as the rapid diffusion of new developments in this area.

In the case under research, aspects of legitimacy are tightly interconnected with criteria of scientific validity. The envisaged test methods must be tightly tailored to the regulatory needs of modern societies, and furthermore, they must reflect the risks of different chemical substances in an objective and unbiased way. In order to reach this, the Test Guidelines Programme integrates a broad range of proposals for new test methods, while at the same time binding these proposals on the criterion of their empirical testifiability – and in this requirement, as in many other procedures to be observed, the overall rationality of the initiative becomes manifest; a rationality which might adequately be called a fallibilist logic or a logic of falsification. Many specific elements of the OECD Test Guidelines Programme, among them the requirement of detailed documentation, several obligations to give reasons as well as the supervising function of the Secretariat, draw their specific meaning from this falsificationist logic, and they are an important step towards the institutionalization of general principles like fairness, consistency, impartiality and transparency. As emphasized by different authors, applying the yardstick of democratic governance would overburden most of the cross-national initiatives (cf., Kingsbury, Krisch & Stewart 2005, with further references); and yet, the arrangement under research contains many elements of democratic and participatory relevance.

In *section 5*, the results will be summarized, extrapolating them to more general questions of the future of governance and statehood under the conditions of globalization. Admittedly, the analyzed case is representative only for a limited number of constellations, that is, of constellations where aspects of legitimacy are broadly congruent with criteria of scientific validity. In fact, this convergence might be much weaker in other initiatives, especially where experts have to build their judgement on estimates, on value judgements and/ or political preferences. However, as a general rule, it might be claimed that if an issue can be addressed on a falsificationist basis, this potential should be used as far as possible, instead of anchoring policy in rather ‘soft’ factors such as the personal experience or the reputation of experts, or shifting the responsibility on to actors from civil society.

This is where the success of the OECD Test Guidelines Programme comes from: The tasks are defined in a way that makes them manageable for participants on the basis of their professional rationality, and at the same time, the involved experts are in full responsibility for the decisions they make. In contrast to an objection often raised in the literature, this type of expert rule-making is neither indicating a global “expertocracy” nor a form of “technocratic governance” (Shapiro 2005). Rather, the term expertocracy fits to situations where political and scientific aspects merge seamlessly into each other,

where trade-offs and compromise prevail, and where societal actors are used as gap-fillers on a case-to-case.

2 GLOBALIZATION, NEW MODES OF GOVERNANCE, AND THE QUEST FOR LEGITIMACY

2.1 Making Sense of the Network Concept

Network-like forms of decision-making on all levels of governance are not of recent origin, although they seem to increase in importance. With view to the national level, it is more than thirty years ago that political scientists have started to discuss different forms of “cooperative statehood” (Ritter 1979), of “multi-organizational policy implementation” (O’Toole 1993) and of “horizontal self-coordination” (Scharpf 1993, p. 137), focussing on arrangements that cut across all forms of pre-established boundaries, be it administrative sections and divisions, ministerial departments, or different societal sectors. As the network concept indicates, these interorganizational interactions imply much more than (rather conventional) forms of consultation between one agency and another in cases where activities of the first might affect the jurisdiction of the latter (“negative coordination”, see, Scharpf 1993, p. 143). Instead, actors of different provenance define certain issues as a common goal, and they try to achieve these goals on the basis of pooled resources and intense cooperation. Just like many other phenomena of informal administrative action, such network-like arrangements are an important compensation for the shortcomings of bureaucratic organization, and often, they emerge in response to existing functional needs and practical necessities.

However, in many cases, it is a long way from identifying the need for joint action towards achieving it, and thus, much of the network literature deals with various coordination problems which might occur in multi-actor settings. To some extent, these problems are caused by opportunistic behaviour: Participants might falsely pretend to invest in the cooperation, while in effect pursuing a ‘wait and see’ strategy; they may give promises without seriously intending to keep them, and, since collective decision making often involves joint fact finding, actors may use faked information or hide important facts from each other in order to push their own interest through (on the problem of opportunism in general cf., Williamson 1975). Besides, cooperation in multi-actor settings can be affected by a variety of cognitive factors, among them disagreement about the nature of the problem concerned and various incongruities in the practitioners’ methodological and epistemological background. In the network literature, the growing awareness towards issues like these has led to several approaches of a more interpretative, deliberative and argumentative conceptualization, stating that what seems as a conflict of interests on the first glance, may very well turn out to be a clash of different pat-

terns of interpretation and/ or definitions of the situation in reality (cf., Hajer & Wagenaar 2003).

But, even if one presupposes the capacity of networks to overcome such conflicts and cognitive blockades, a severe caveat must be stated here: The formation of a common goal among the participants of a network is not necessarily identical with an orientation towards the common good – their behaviour might just as well be guided by what *Scharpf* has called the “collective selfishness” (1993, p. 157) of multi-actor arrangements. Relationships on the basis of personal trust, loyalty and a common sense of solidarity among the parties can be an important medium to overcome the dilemmas of collective action, but, simultaneously, the same factors can also seal off the experts’ discourse from the broader public and/ or third parties’ interests. For example, a climate of mutual trust can be an important precondition to admit possible knowledge gaps or uncertainties, but, while inside the expert group existing uncertainties might be discussed frankly, the same uncertainties may be kept secret from the public. Furthermore, an overeager orientation towards the maintenance of trust may also affect the argumentative climate inside the expert group, especially in cases where the already achieved consent is feared to be weakened by possible points of criticism.²

On the national level, many of these dangers are mitigated by the embeddedness of policy networks into an overarching institutional structure. To be sure, in an era of informal interagency coordination, many of the traditional forms of vertical control are executed in a much looser, steering at-arm’s-length manner. If everything which is currently accomplished by mid-level officials at the intersection of different agencies was shifted upwards, the agenda of ministers and/ or high-policy level officials would certainly become overcrowded. But, loosening control is not losing it. Even under today’s conditions, superiors still exert considerable influence, e.g. by allocating resources to actors and regulating their access to decision-making arenas, and by demanding information and imposing sanctions in cases of dissatisfactory conduct. Thus, on the national level, interagency negotiations across functional boundaries should rather be seen as a complement, not a supplement to vertical integration, and research on governance in the European Community reveals a similar picture (see, Schilleman 2008, with further references).

² Obviously, the social phenomenon called trust is of a double-edged character here, facilitating cooperation, while at the same time bearing the danger of new restrictions, distortions and thought control. Analytically, the problem requires a somewhat higher degree of differentiation - besides trust based on personal relationships, there is also trust based on rules and institutions, and besides unconditional trust, one should take into account possible forms of “deliberate trust” (Sabel 1993, p. 90), reconciling loyalty towards each other with a climate of mutual criticism.

It is before this background that governance on the transnational level displays its particular complications. Whereas on the national level, one finds different forms of “meta-governance” (Soerensen & Torfing 2005, p. 202) with the capacity to enhance the legitimacy of network governance, the absence of strong supranational institutions in the transnational sphere makes it more difficult to define and implement standards of legitimate action and accountability. As international organizations have enormous problems to impose constraints on transnational governance networks, so too have domestic governments. To be sure, finding the right balance between formal procedures and informal practices is one of the most characteristic features of modern statehood, but, through the process of transnationalization, this balance becomes ever harder to achieve. In an ideal-typical way, three dimensions can be distinguished where these problems come to light most clearly:

- Firstly, the emergence of transnational governance networks can lead to the loss of clear-cut responsibilities. In a purely national context (as far as such contexts still exist at all), the participants of interagency networks are formally appointed as representatives of the agencies or ministries involved, and normally, their designation also includes the definition of specific rights, duties and competencies. On the transnational level, by contrast, the personal composition of networks often takes a more unstable and contingent character, which makes it more difficult to achieve accountability in the sense that the central decision-makers can be identified and held responsible for a certain policy outcome. In fact, the fear of a new “nobody’s rule” (Beck 2002, p. 102), of closed and secret clubs operating in the dark is neither fiction nor fantasy. Instead of waiting for a formal appointment from ‘above’, network actors often seem to recruit themselves, which leads to the danger of highly selective and biased patterns of representation. Whereas, in the national context, the power struggles inside networks can be mitigated by monitoring and supervision, these games can take a more dramatic form on the transnational level, resulting in the marginalization of weaker actors.
- Another threat for legitimacy is the danger of a continuous privatisation of political decisions. That the integration of private actors might help to overcome several knowledge gaps, compliance problems and many other shortcomings of more traditional forms of governance, has often been emphasized (cf., Streck 2002). However, in cases where a network is dominated by a few powerful actors, there is the danger that the policy process becomes usurped or monopolized by them. Due to their long lasting experience with corporatist self-regulation, most nation-states have developed institutional safeguards against these risks. E.g., the activities of national standards bodies such as the *Deutsches In-*

stitut fuer Normung are embedded into an elaborate system of contractual rights and duties, with specialized organs of supervision and dispute settlement and diverse possibilities for public intervention. At the same time, the institutional achievements as developed by the cooperative state are not easily transferable to the transnational sphere, and this situation is clearly mirrored by the structure of international law: Until now, international law represents a normative order where rules for actors other than states are vastly missing (cf., Zumbansen 2001).

- The third aspect leads us back to the already mentioned disaggregation of the nation-state. On the national level, each agency and ministry has its own sectoral or sub-sectoral interests and points of view, and the permanent confrontation between them helps to aggregate the multitude of dispersed interests into a generalized conception of the common will (cf., Bohne 1981; Mayntz 1979). Thus, rather than threatening democracy, the administrative fabric of interagency negotiations seems to stabilize the constitutional state. However, as soon as the administration gets involved in transnational governance networks, this arrangement tends to become destabilized: “The image of national regulators coming together of their own volition (...) raises the specter of agencies on the loose, unrestrained by democratic accountability” (Slaughter 2005, p. 48). By switching forth and back between the national and the transnational level, mid-level officials can considerably increase their room for manoeuvre. For example, by presenting their own sectoral view as their country’s national interest, they can acquire enormous influence and authority on the global level, and by withholding relevant information from their national counterparts, they may emancipate themselves from the domestic framework of mutual checks and constraints. The result is a fragmented nation-state, whose sub-units continually drift apart, and whose political integration is undermined by the power games of disembedded agencies.

To sum up, the just described tendencies, among them the loss of clear-cut responsibilities, the privatization of (world) politics and the emancipation of mid-level officials from their national context, are posing serious threats for legitimacy, and yet, this should not lead us to disapprove governance networks in a rush. That is to say, the existing problems might very well be recognized and anticipated by network members themselves, and to some extent, the lack of external control mechanisms might be compensated by the installation of adequate forms of meta-governance inside the networks. In order to enhance transparency, network actors might try to segregate their activities into separate bundles; and in order to avoid premature decision making or decisions on a distorted information basis, communication inside networks might be shaped in a way

that increases the probability that untestified or false assumptions will be detected as such. Partly, such constitutional elements are created on a case-to-case basis and rather incrementally, and partly, participants make use of institutional instruments that have already been developed in other contexts or initiatives.

As the concept of self-constitutionalization implies, legitimate and successful problem-solving is not simply an ideational topic. Undoubtedly, rational decision-making builds on a logic of interaction where “interests and identities are no longer fixed, but subject to interrogation and challenges, and thus, to change” (Risse 2000, p. 13). While principles such as fairness, honesty or equality are certainly an important driving force of the self-constitutionalization of networks, the daily operations of the latter call for more detailed rules and procedural standards. For example, even the most open-minded and trustworthy speakers debating on issues such as industrial risks will never arrive at a reasonable solution if they lack the necessary expertise; and therefore, the procedural standards of governance networks will almost always contain some specific criteria concerning participants’ qualification and professional background. Furthermore, in order to allow for frictionless discursive and argumentative processes, there should also be generalizable criteria which help to distinguish strong arguments from weak ones; and by applying these rules in a diligent and impartial way, principles such as fairness and equality are brought to bear in an operational and practical manner.

In addition, the institutionalization of procedural rules and standards is often combined with some sort of internal monitoring. As will be discussed in more detail below, the installation of some hierarchical elements does not necessarily lead to new rigidities. Rather, it can help to overcome coordination problems and discursive biases of all sorts.

2.2 The Debate on an Emerging Global Administrative Law

Many characteristics of contemporary administrative law, especially the shift from substantial law elements towards more procedural mechanisms, go hand in hand with increasing discretion on the part of the executive branch. To some degree, it is the more open structure of many of today’s statutory norms that fosters a more active role of the administration, as can be illustrated by the spread of indefinite legal terms, words like “can” or “may” or the advance of legal programmes which only define a purpose (“Zweckprogramme”, see, Luhmann 1968, p. 102). In absence of the ‘one best way’ or the one and only solution for individual cases, courts normally grant much discretion to the administration, restricting themselves to control whether the decision contains major mistakes. Besides, instead of simply imposing their own interpretation of the case, courts seek to promote a “dialogic rationality” (Stewart 2005, p. 16), asking whether the decision was made on a well-informed basis, and whether the given reasons and justifications are convincing.

Of course, judicial review is not the only prerequisite to combat possible abuses of discretion. By shaping administrative processes in an utmost participatory, deliberative or even trial-like way, modern administrative law brings different actors from civil society up to the stage, installing them as an important counterweight to the Executive's power. Concerning administrative adjudication – be it the approval of a building permit, or the enforcement of environmental law –, the holding of hearings with those affected is a matter of due process, and can be found in all modern Western societies. Concerning administrative standard-setting, authorities are normally obliged to publish the proposed rules and accept comments, and here again, this is often accompanied by hearings and public meetings including oral presentations and cross-examinations. The functions of these elements in administrative law are, firstly, to make the best use of practical knowledge that is widely distributed throughout society. Secondly, participation can help to guard against violations of citizens' rights as a result of administrative error or negligence; and besides, by seriously dealing with critical objections from the outset, public authorities help to prevent costly court procedures.

In the administrative law literature, issues of citizens' participation have attracted much attention over the last decades. However, many other, rather conventional or seemingly formalistic elements are still of utmost relevance. One of these issues is the existence of pre-defined rules which clarify the powers and competencies of each organizational unit or individual agency. That is to say, clear organizational settings and the assignment of specific tasks to different authorities are a necessary condition of administrative efficiency – which is itself an important normative goal –, as well as for public participation. Clearly arranged organizational structures help to avoid different forms of adhocism as well as the notorious “blame avoidance games” (Weaver 1986), and furthermore, they serve as a necessary precondition to hold agencies responsible for their conduct. In the legal codes of most countries, this requirement is often not stated as such. In an indirect way, however, the requirement of an unambiguous allocation of competencies can be found in almost all legal documents dealing with administrative procedures. A related aspect is the principle of written documentation, as already emphasized by Max *Weber* almost a hundred years ago (1978 [1922], p. 957), which remains just as important under today's conditions. On the basis of proper documentation, public officials can self-critically evaluate their own conduct, and in addition, these records are an indispensable prerequisite for both, public participation and judicial review. The accuracy of record-keeping can vary with the concerned field of regulation as well with the requirements as defined by different statutory norms, and to some extent, in most Western states, adequate documentation techniques and docket management systems seem to be an issue of continuous improvement and re-adjustments (see, Coglianesi 2006).

As the overview shows, the accountability relations of administrative actors are manifold. In addition to vertical relations as emphasized by the old, hierarchical view, the architecture of modern administrative law serves to integrate the individual agency into a dense web of horizontal interconnections with both, actors from civil society as well as other agencies which are concerned with adjacent and/ or conflicting tasks. For a more detailed picture, general principles such as legal certainty, transparency, accountability and the need to give reasons would deserve more attention here, and the same applies to the variety of more concrete norms which help to put these principles into action, among them different requirements of record keeping, the whole variety of appropriate techniques for inquiry and information gathering, the definition of adequate time-limits for decision-making, as well as the design of adequate channels for inter-agency coordination. On the national level, the arrangement as established by procedural administrative law has considerably contributed to the legitimacy of the modern nation state, and many of the seemingly bureaucratic and formalistic elements of administrative law have rightly resisted the changing trends of administrative reform, of deregulation and de-bureaucratization (cf., Olsen 2006).

Whether these legal tools can be transposed to the field of global regulatory governance, is an open question, which has given rise to a specific branch of literature, namely, the Global Administrative Law discourse (see, Kingsbury, Krisch & Stewart 2005). It is for two reasons that the norms and standards generated by global governance networks can be perceived as administrative in character. Firstly, in their scope and substantive content, many of these norms resemble the norms and technical standards which were traditionally the product of national administrative rule-making. Secondly, most of these norms are created without following the procedures, such as ratification, required for international treaty-making – instead, they often gain practical relevance without any formal transmission from the international to the domestic level. At the same time, the legal systems of most countries provide the executive branch with great latitude in shaping their cross-border relations, and thus, global standard-setting tends to bypass the procedural safeguards of domestic administrative law.

As a remedy, authors from the transnational administrative law literature are advocating for the globalization of administrative procedural law, either “bottom up”, by an extension of domestic safeguards, or “top down”, by establishing these safeguards directly on the global level (ibid, p. 54). As for the former, strengthening national law as a tool to control the decisions of global agencies can take various forms – which all come with specific problems. For example, national authorities executing the decisions of transnational regulatory bodies might subject these norms to a final review before incorporating them into their own decisions. Since national officials often perform a two-fold role as participants in international negotiations and as national implementers of the

generated norms, the objectivity of such a review might be questionable. Besides, as *Stewart* has pointed out (2005, p. 18), the existing stock of national procedural standards might be extended to the conduct of national officials in international negotiations, requiring among others the inclusion of notice-and-comment-procedures. But, if each country defines its own requirements, this might result in a highly fragmented constellation, which endangers the very possibility of transnational decision-making.

By contrast, procedural safeguards against possible abuses of public power might also emerge directly on the global level. While the general principles of good governance remain broadly the same here, questions of legitimacy can not be addressed by simply replicating the structures of domestic administrative law. That is to say, issues such as adequate documentation, effective participation and the allocation of well-defined functions and competencies are an issue of much experimentalism inside global regulatory networks, and in many cases, the emerging mechanisms are even more ambitious and innovative than those in use domestically. It is due to the plurality of such procedural achievements, their unconventional character and subtleness that authors from the Global Administrative Law school advocate for an increased empirical effort.

In a relatively unexplored field of inquiry like this one, case studies on individual governance arrangements appear as the appropriate research strategy. While the focus is on those institutional elements that significantly contribute to legitimate and effective standard-setting, possible dysfunctions and unresolved problems are also an issue that must be addressed in an empirical way. For administrative lawyers, who are trying to develop their own proposals for an institutional reform of global governance networks, these empirical insights are of utmost importance, providing them with information on procedures which have already proven effective in practice, and which help to combine aspects of functionality with those of legitimate governance.

2.3 Methodological Remarks: A Case Study Approach towards Global Governance Networks

In the early stages of a case study, to start with, one has to think about appropriate data. According to qualitative research methodology, non-standardized data are of major importance. Besides, in order to allow for a valid reconstruction of the case under research, data should be as naturalistic and authentic as possible. One possible source of such data is the audio-recording of everyday interactions, as used by authors from Conversation Analysis (see, Drew & Heritage 1992). Such data provide for the detailed examination of the patterns, through which interactions in the concerned context are made orderly and consistent. At the same time, however, generating such data requires much effort, often combined with long-term participation in the field. Alternatively, many institutional settings can also be accessed through pre-existing documents. As long as these do-

cuments are produced by practitioners themselves, they bear the same degree of authenticity as the above mentioned recordings of talk-in-interaction. In order to avoid errors in interpretation, however, one has to be aware that the routines of real decision-making are not necessarily mirrored in such documents. Finally, the reconstruction of network-like settings can also be based on interviews with participants. While delivering pieces of information that are missing in the official documents, survey data are posing their own methodological challenges, among them the difficulty to differentiate between the level of personal views, and the level of the network as the actual unit of analysis.

Whichever data one uses, interpretation always requires the utmost openness for the structural particularities of the material. What *Glaser & Strauss* have called the “discovery of grounded theory” (1960), that is, the endeavour to generate innovative hypotheses from empirical data, lies at the heart of all reconstructive research methodologies. With view to global governance networks, it is mainly two dimensions in which important discoveries can be made; namely, the level of possible institutional achievements, as well as the dimension of the underlying problems and threats for legitimacy. As for the achievements, many innovations will only come to light if the analyst keeps on distance with his own normative expectations. Sometimes, these structural aspects are quite clearly stated in the official documents, and in some cases, they are still in their infancy, demanding extensive inquiry on the practical ground. Likewise, the underlying problems may be of different shape, size and visibility, and thus, for an in-depth analysis, the above mentioned aspects – such as the privatization of world politics or the loss of clear-defined functions and competences – are only sensitizing concepts.

For many authors, interactions in multi-actor settings are mainly a matter of negotiation and compromise, characterized by “principles of sovereign respect, live and let live, and reciprocity” (see, Slaughter 2005, p. 201). By signalling their readiness to be persuaded themselves, members increase their chance to persuade others (*ibid.*, p. 207). Put simply, deliberation in global governance arrangements is often portrayed as something weak and fluid, in contrast to rather hierarchical and/ or interest-oriented settings. Here again, reconstructive research can help to overcome some of the simplifications in current theorizing. That is to say, deliberation can take many different forms, and in some cases, contrary to much of what has been written on networks, specific mechanisms of norm enforcement can play a constitutive role for the deliberative processes taking place. Thus, for an adequate reconstruction of global governance networks, it seems indispensable to keep aware for aspects of a rather hard and durable character. Qualitative researchers’ obsession with the fluid, the processual and often highly situation-specific features of daily life has often been criticised, but this approach is certainly no end in itself, to the contrary – indeed, it is structures and structural mechanisms that one tries to

reveal through such microscopic events as turns at talk or single episodes in an interview (see, Herberg 2009, p. 740).

That global governance networks can gain a ‘life of their own’ by developing their specific and individual structural patterns, is the methodological precondition to make them the object of a case study. Thus, analyzing a given network should not be confused with aggregating or summarizing its different elements or aspects, in order to arrive at an exhaustive description, the latter being an illusionary goal in itself. Instead, the aim should be to discover the underlying pattern, logic or ‘grammar’ through a broad variety of different activities and manifestations, in which the network under research has left its mark. Or, put differently, the aim is to detect what authors from Conversation Analysis have called the “unique ‘fingerprint’” of a given institutional setting (Drew/ Heritage 1992, p. 26). While in former times, case studies of this type were limited to highly integrated entities such as organizations, the constitutionalist approach in network theory as advocated by *Sabel* (1995) encourages us to extend this logic to network-like settings as well. Admittedly, the degree of autonomy that a given network will reach might vary, and often, things might be characterized by a considerable amount of instability; yet taking this as the normal case would heavily militate against the necessary openness of the analysis.³

As a concrete case for the empirical reconstruction, the OECD Test Guidelines Programme for the Testing of Chemicals was chosen, and that for various reasons. As the name of the initiative indicates, global standard-setting is conducted under the umbrella of an international organization here, but, at the same time, key actors are almost exclusively recruited from national agencies. Besides, the initiative is of an enormous age and degree of development, and to some extent, its procedural achievements can be regarded as an institutional prototype for a series of other initiatives in the field of global risk regulation. Over the years, the initiative has undergone several changes and reforms, and through these changes, the underlying rationality of the programme has taken an ever clearer shape. Toxicological test methods as developed by the OECD Programme are an indispensable tool to assess the risks and dangers of chemical substances; and thus, the initiative is located in a field of powerful and partly competing interests, among them the economic-political interest in harmonized standards, national and transnational health and environment concerns, as well as the interest in animal welfare. As will be shown, the ability to keep on distance to such external interests is one of the most important achievements of the Test Guidelines Programme.

³ In qualitative sociological research, this search for an underlying pattern or ‘grammar’ is also known as the “documentary method of interpretation”, a term which was originally introduced by K. *Mannheim* und further developed by H. *Garfinkel* (1972), the founding father of Ethnomethodology.

As for the choice of adequate empirical data, a broad variety of official documents is available; among them descriptions of test methods as developed thus far, different protocols of meetings, as well as a number of guidance documents concerning the procedural framework of the initiative. The latter serve as the organizational blue-print of the initiative and thus are a promising point of departure for the analysis. Legally, the specifications contained in the guidance documents are of a rather weak, non-binding character, in contrast to the legal status of, for instance, international treaties and conventions. However, despite being soft law, the constitutive rules of the initiative seem to be effective. As the analysis shows, the initiative is provided with specific organs and bodies which serve as a mechanism of norm control; and by creating positive and negative incentives of different type, the programme manages to exert considerable influence on the conduct of its participants.

Having described the findings from the guidance documents, the paper will proceed to the empirical insights from different expert interviews (N = 5) with the members of the Test Guidelines Programme. As purposefully generated data, interviews do certainly not bear the same degree of authenticity as other, naturalistic data; but, as long as one manages to stimulate narrations and descriptions on the basis of actors' personal experiences, one can gain a realistic picture of how the existing rules are applied on a practical level, and which additional rules are at work here. The same applies to the issue of occurring conflicts and/ or threats for legitimacy – while in the official documents, the existing problems are addressed in a rather indirect way, expert interviews contain much richer information on the challenges which the institutional procedures are responding to.⁴

The methodological concepts and pre-adjustments as described so far are all pointing into the same direction: In the current stage of theoretical debate on global governance networks, it seems necessary to take a fresh and empirically informed look at these phenomena, and by keeping on distance with pre-defined concepts, case studies in the above discussed sense may help to enrich the ongoing discussion. For example, categories such as “technocracy” or “expertocracy” can heavily militate against the openness of the analysis, making us unaware of those elements which are, above all, new and innovative in their character. To be sure, expertocratic tendencies in the sense of abusing public trust are a latent threat for all standard-setting initiatives, but empirically, these tendencies must be captured as precisely as possible, instead of simply presuming them.

⁴ Three of the interviews were conducted on the national level, in order to explore national officials' room for manoeuvre, possible conflicts as well as existing problem-solving strategies. In addition, two interviews were made at the level of the OECD, and it is mainly issues of network governance, of internal monitoring and coordination which are of interest here.

Even a sociological concept such as that of “experts” should not be taken for granted, as authors from Ethnomethodology and Conversation Analysis continue to postulate (cf., Samra-Fredericks 2005, p. 221): Which concrete rules or requirements one has to comply with in order to be taken serious as an expert in the institutional setting concerned is an empirical question, and it is surely an indicator for institutional failure if the mere reputation and/ or social status of a scientist enable him to establish his opinion as valid.

3 SCIENCE IN THE AGE OF UNCERTAINTY: THE INSTITUTIONAL DESIGN OF THE OECD TEST GUIDELINES PROGRAMME

The OECD Test Guidelines Programme was initiated in the late 1970’s with the aim to develop and harmonize a stock of standard methods for the testing of chemicals. The result is an ever increasing collection of detailed specifications which cover the four sections physico-chemical properties, effects on biotic systems, environmental fate (like degradation and bioaccumulation) and health effects. Test methods are used by professionals in governments, in the industry and in academic institutions in order to generate risk-related information on existing and/ or new chemicals. For an effective management of chemical risks, the development of scientifically sound methodologies is an indispensable prerequisite. In fact, the administrative procedure of registration and notification of chemicals on the national level as required by the legal frameworks of most countries would be unthinkable without standardized test methods, and the same is true for most other regulatory measures. For example, test results generated on the basis of standardized methods are of utmost importance for the classification and labelling of chemicals, and even higher-policy decisions such as restrictions and bans of single substances are strongly dependent on toxicological testing (on the interaction between science and environmental policy in general, see, Jasanoff 1994).

Due to the variety of species that might be affected by a chemical, and due to the complex vulnerabilities of the human body, today’s large-scale production of chemicals creates a high level of uncertainty. Test methods as developed by the OECD Programme are an indispensable instrument to reduce this complexity, but, at the same time, toxicological testing is subject to many sources of uncertainty, too. Short of a ‘holistic’ approach which integrates the manifold interactions between species in reality, most toxicological studies are restricted to a single species strategy, and from the estimated 10 to 100 million species of the world, only a handful are used for laboratory purposes (cf., Leeuwen & Vermeine 2007, p. 282). An additional difficulty relates to the measurement of chronic toxicity – considering the cost and effort required for long-term toxicity testing, such tests are normally limited to species with a relatively short life-cycle. Furthermore, since laboratory studies with humans are the exception in modern toxicology, hu-

man risk assessment is largely dependent on tests with animals, which poses several problems concerning the transferability of results.

Yet, as recent developments in the science of toxicology illustrate, the just mentioned problems are neither leading to an attitude of relativism, nor do toxicologists seem to hide themselves behind a façade of pseudo-precision. Instead, the attempt to overcome uncertainty in its various forms is an important driving force of methodological innovations. For example, where toxicology is cultivating an intense exchange with biologists, chemists, experts from toxicokinetics, statistics, epidemiology and medicine, the substantive content of experiments with a single species can considerably be strengthened, and besides, classical *in vivo* tests can partly be replaced by innovative *in vitro* testing, which often leads to more precise results than the former. Another source of innovation is the systematic comparison of existing test methods. Even if all available methods on a certain issue or endpoint have their specific limitations, distinguishing between weaker and stronger tests might still be possible. It is this orientation towards scientific progress on the basis of deliberate self-criticism that lies at the heart of the OECD Programme, as the following passage from one of the Guidance Documents indicates:

“Test method validation is a process based on scientifically sound principles by which the reliability and relevance of a particular test (...) are established for a specific purpose. Reliability is defined as the extent of reproducibility of results from a test within and among laboratories over time, when performed using the same standardized protocol. The relevance of a test method describes the relationship between the test and the effect in the target species, and whether the test method is meaningful and useful for a defined purpose, with the limitations identified” (OECD 2005, p. 13).

The quotation stems from Guidance Document Nr. 34, titled “Guidance Document on the Validation and International Acceptance of New or Updated Test Methods for Hazard Assessment”. The high priority of the principles as defined here is also highlighted by the location of the passage in the document – in fact, one finds it in a relatively early position of the text, subsequent to some preliminary remarks stating that the principles concerned are widely accepted throughout the scientific community, and that the document aims to further elaborate on these principles and give more detailed guidance on their realization. As a closer look on the passage reveals, a paragraph like this one with its rather prosaic definitions could just as well be found in a toxicological teaching book (like the one mentioned above, by Leeuwen & Vermeine 2007). In the context of an international standard-setting initiative, however, the emphasis on quality standards such as reliability and validity proves to be highly consequential under institutional aspects. The orientation towards validity gives distinction to the overall procedural design of the

initiative, determining, amongst others, the way in which negotiations and discussions inside the expert network should be conducted.

Of utmost importance here is the aspect of standardization – test methods must be conceptualized in a way that allows for the maintenance of identical conditions in any laboratory which uses the method. In order to reach this, test methods must contain a broad range of detailed descriptions concerning the different working steps to be taken, the technical equipment in use, the purity of the substance and many other factors. In toxicology, as in the natural sciences in general, standardization serves as an important tool to protect the measurement from the influence of different context parameters, which, if not sufficiently controlled, will lead to improper test results. In some cases, like, e.g., measuring the boiling point of a substance, controlling these factors is relatively easy, while the development of adequate protocols for animal tests and ecological test methods can take many years.

Having explained reliability and related quality standards, the Guidance Document proceeds to describe the process of test method validation. Even if the test-developing laboratory may have taken much effort to ensure the accuracy of the proposed test method, formal adoption by the OECD is not possible without independent peer review, and for this purpose, a number of inter-laboratory studies must be conducted. In contrast to normal toxicological testing, where the test is taken as given, such validation studies are conducted in order to assess the performance of a test method, and therefore, one uses chemicals whose properties are already known and well-documented in the literature. As long as the method stands up to the test, it is accepted; if it does not, it is rejected, a logic well known from the writings of Karl *Popper* (see, 2002, p. 72). As becomes obvious here, an integral part of this falsificationist approach is an element of impartiality: According to its performance in the validation process, the test method will be accepted or not, irrespective by whom it was invented – and here, we have an impressive counterpoint to the above cited literature on persuasion and compromise.

In the early stage of the study, a validation manager or management team must be appointed, who are planning and overseeing the whole process. It is their responsibility to define the standards against which the results will be evaluated, including the tolerable degree of variability between laboratories. Then, the number of participating laboratories has to be determined (in most cases three or four), and in advance, laboratories are selected, considering their expertise. Furthermore, appropriate reference chemicals must be chosen, which are representative for the substances that the method is designed to address. In order to optimize the objectivity of the validation study, the identity of reference chemicals is concealed from the participating laboratories: “The substances to be tested should be independently coded with a unique code and packaged in a manner that will not reveal their identities” (OECD 2005, p. 38). As the quotation shows, sub-

stances must be handed over to the laboratories in an anonymised form, since pre-existing knowledge on these chemicals can become a source of bias. From the view of an outsider, one would hardly have expected this to be a problem; and yet, the described procedure of masking chemicals shows the enormous intelligence of the expert system, that is, its capacity to minimize, on the basis of self-created rules, the danger of premature decision-making and decisions on a distorted information basis.⁵

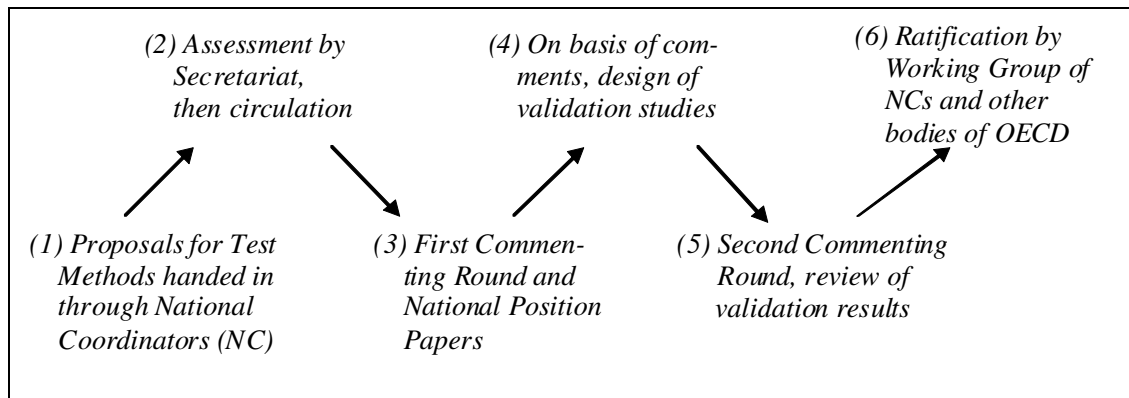
In sum, the procedural design of validation studies as described in Guidance Document 34 appears to be tailored to the maintenance and advancement of toxicological professionalism, and herein lies an important precondition for both, the effectiveness and the legitimacy of the initiative.⁶ In the overall architecture of the OECD Test Guidelines Programme, however, processing proposals for new or updated test methods is a relatively complex affair, and it is in a relatively late stage of the process that validation studies can be conducted. As for the earlier stages of the process, aspects of falsification and testifiability still play an essential role, yet accompanied by other aspects such as evaluating the regulatory need of different proposals.

The just mentioned aspects are described in Guidance Document Nr. 1, which defines, according to its own aim, “the process of Test Guidelines development, including the structure of the Test Guidelines Programme (TGP) and the responsibilities of those involved” (OECD 2006, p. 10). In brief, the process of Test Guidelines development can be portrayed as a sequence of six working steps (see figure below). To start with, member countries send their proposal for new or updated test methods to the Secretariat of the initiative, which, after a preliminary assessment, circulates the draft to all other countries. On the basis of the comments received from the member countries, an adequate design for validation studies is developed, and then, these studies are conducted by independent laboratories. Subsequently, the results of these studies become the subject of another commenting round, and then, if appropriate, the test method is ratified by an expert group called “Working Group of National Coordinators”, as well as by several other, higher-policy bodies of the OECD, such as the Council.

⁵ The mechanisms leading to such bias are not explicated in the document, but, most probably, toxicologists being familiar with the substances might unconsciously tend to compensate for possible shortcomings of the test procedure, thereby interfering with the objectivity of the whole validation procedure.

⁶ Obviously, the issue of professionalism in global governance deserves more attention than it currently receives. For some preliminary considerations on this issue, see, Herberg 2010 (forthcoming)

Figure 1: Process of Test Guidelines development



As already mentioned, key actors of the initiative are representatives from national authorities such as the German *Federal Environmental Agency*, or the US-American *Environmental Protection Agency*. By appointing only one or, in some cases, two delegates from each member country, and by charging these persons with the relevant tasks in a long-term way (normally lasting until their retirement), the initiative manages to establish an enormous degree of stability and a clear allocation of competencies. The delegates are holding the title “National Coordinator of the Test Guidelines Programme”, and they are united in the so-called “Working Group of National Coordinators of the Test Guidelines Programme”. Put shortly, they fulfil the function to intermediate between the national and the transnational context, that is, they coordinate the multiplicity of ideas and interests on the national level, synchronizing this plurality with the discussions inside the OECD:

“The National Coordinators (NCs) from the respective OECD member countries (...) have a central position in the Test Guidelines Programme. They submit national proposals for new or revised Guidelines and provide comments agreed on at the national level on proposals circulated by the Secretariat. In order to be most efficient, NCs provide a national focus point to gather input from a network of experts and thus are required to be aware of developments related to test methods in their own country” (OECD 2006, p. 13).

In a very condensed form, the passage describes a cycle of idea-gathering, of repeated review, commenting and refinement. Proposals for new Test Guidelines may be of a rather preliminary or incomplete character, and yet, they must contain sufficient information allowing for rational debate. In the context of the OECD Programme, this requirement is clearly mirrored in the provision of a so-called “Standard Project Submission Form” for new proposals (see, OECD 2006, p. 14), advising the submitter to give reasons on aspects such as the regulatory need of the method, its validation status and possible advantages over existing methods. For the analysis of the OECD initiative as a

“constitutional order” (Sabel 1993, p. 105), based on its own rationality, this qualified openness for proposals from outside is of utmost importance, allowing for both, the necessary degree of responsiveness towards the knowledge and demands coming from society, as well as the maintenance of autonomy, protecting the initiative against political pressure and unfounded critique. At the same time, it is here that a particularly egalitarian element of the initiative comes to bear – in principle, even laboratories with low reputation and weak capacities can feed their proposals into the system, as long as they are able to underpin their suggestions with relevant information and fact-based justifications.

Theoretically, comparing this arrangement with other initiatives as described in the network literature, the OECD Programme could just as well have been shaped in a way that would allow actors from academia, from private institutions and different parts of the administration to address their project submissions directly to the Secretariat, that is, without taking the way through the National Coordinator in the respective country. That this option was not chosen can have various reasons, among them, most plausibly, the attempt to organize the initiative as a ‘network of networks’, the latter being a product of rather traditional forms of interorganizational and intersectoral communication on the national level. In fact, by creating the position of a National Coordinator, the initiative is getting closer to the experts in the different countries and regions, while at the same time preserving the fabric of intra-state coordination as already existing prior to the process of transnationalization.

After the submission via one of the National Coordinators, the proposal will undergo critical appraisal on the OECD level, and then, depending on its suitability for the Test Guidelines Programme, it will be included in the official work plan of the initiative. In this early stage of the process, project submissions are normally evaluated in a rather cursory way, assessing them against the information requirements as specified in the Standard Submission Form. In some regards, looking at this arrangement from an administrative law perspective, the described procedure bears many similarities with the classical logic of licensing in national administrative law: After receiving an approval, the authority will confirm whether all relevant formalities have been complied with, leaving no doubt that this does not imply the ultimate approval of the license. Institutional elements like these are of universal applicability and can be found in most administrations, and by shaping the decision process in a stepwise fashion, an important safeguard against arbitrary behaviour and premature decision-making is established.

As soon as a proposal is included in the work plan, the Secretariat will circulate the draft to the National Coordinators in the member states, who, on their part, are expected to distribute the documents to all relevant experts in their country, in order to gain critical comments. Complementary to the submission of a new proposal, the circulation of

proposals serves as a move back to the national level, forcing experts in the member states to confront themselves with a toxicological concept stemming from a cultural and/ or national context different to theirs. Here again, just like in the stage of proposal-making, the National Coordinators serve as an important transmission belt between the Secretariat and the various actors from academia, from private institutions and administrative bodies. It is the National Coordinators' duty to identify relevant experts in the respective country and to manage these contacts in an utmost diligent way, in order to protect the discourse against possible forms of bias.

As for the comments collected at this stage, critical objections against a proposal can significantly vary in form and character, and even short of further descriptions in the Guidance Document, one could think of different versions here. Some of the objections will most probably refer to missing variables, intervening factors and context parameters (such as, for example, the diet, age and gender of test animals). Besides, possible shortcomings of a proposal will come to light only from the perspective of another discipline (e.g., data generated in epidemiology can help to check against the estimations drawn from animal testing), and partly, it is the experience with the local peculiarities of a country which leads to critical objections. It is the National Coordinator's responsibility to collect these comments and compile them in the so-called National Position Paper, which is subsequently sent to the Secretariat. Just like the test-developing laboratories, those who make objections against the proposal must do this in a well-founded manner, too – be it on the basis of insights from the literature, or by the use of their own data, observations and calculations. Often, these objections will lead to a refinement of the draft, and in some cases, the method will be rejected as ill-founded prior to the conduct of expensive validation studies.

Here again, it would be mistaken to interpret the process in terms of persuasion, of compromise or “live and let live” (Slaughter 2005, p. 201), and surely, it would be just as wrong to perceive the process as an aggregation of opinions or a voting procedure, since every single objection must be straightened out in the following. While in the course of validation studies as described above, the performance of a test method is measured directly, the discussions in this earlier stage are of a more theoretical character, and yet, they are coined by a falsificationist approach, too. An indispensable element of this is pluralism: It is only in the confrontation with perspectives from different disciplines and different regional contexts, that possible deficiencies of a proposal can be detected with some accuracy. How tightly the procedural design of the initiative is tailored to this necessity can be shown in the below-cited paragraph from the document, stating that the National Position Paper as compiled by the National Coordinators should, at least to some extent, mirror the existing diversity of perspectives and/ or opinions in the respective country:

“The National Position Paper should preferably contain a national view on each issue raised in the document under review, but could also be a compilation of alternative views when no scientific agreement on certain issues was possible within a member country. In order to allow the views of individual experts to be seen by the WNT, National Coordinators should attach comments (...), either in their original form or as summarized by the National Coordinator. The professional affiliation of the consulted experts may be indicated so that the Secretariat and other member countries can obtain an insight into how broadly the scientific community has been consulted” (2006, p. 22).

As the quotation shows, the trustworthiness of National Coordinators is not taken for granted; instead, what can be observed here, is the phenomenon of “deliberate trust” as highlighted by *Sabel* (1993, p. 80). It is the National Coordinator’s responsibility to include all agencies engaged with chemicals into the discourse, as well as all private institutions and academic actors who might be able to contribute relevant information. However, if the National Position Paper handed in by the National Coordinator does not mirror a broad opinion spectrum, this may very well lead to critical requests by the Secretariat or the Working Group of National Coordinators, although such measures are not defined in the document. However, just by establishing the duty to render an account of the agencies included, the institutional framework of the initiative is working towards transparency, and this surely serves as an important safeguard against a too selective or biased pattern of participation on the national level.

In contrast to international treaty-making and classical international regimes, where each country normally speaks with one voice, the major challenge for an initiative such as the OECD Test Guidelines Programme is to cope with pluralism. Rather than acting as representatives of an aggregated will, participants are working as coordinators and careful intermediators between both, the national and the transnational context. It is here that one finds the solution for the above mentioned problem of an increased disaggregation of the nation-state: The danger of administrative solo actions can very well be anticipated by network members themselves, and by creating appropriate rules, global governance networks allow for both, strengthening pluralistic communication between states as well as inside the nation state.

4 INSTITUTIONAL CRISES AND INSTITUTIONAL LEARNING: FURTHER INSIGHTS FROM THE EXPERT INTERVIEWS

“Traditional conceptions of global governance tend to simplify governance (...) along a vertical axis of ‘multi-level’ governance. They tend to de-emphasize transnational mechanisms of horizontally allocated authorities among and between states” (Nicolaidis &

Shaffer 2005, p. 277). In a very condensed form, the quotation accentuates one of the most important elements from the Global Administrative Law literature, namely, the growing awareness for phenomena which significantly differ from the old, state-centric model of international relations. As for the case under research, namely, the OECD Test Guidelines Programme, one might surely tend to subsume some of its features under the classical model of international relations. Regarding the legal character of the standards emanating from the initiative, their bindingness is anchored in the OECD Council's Mutual Acceptance Decision from 1981, which surely represents a rather conventional and treaty-like mechanism of international law-making. The same holds true for the obligatory formal ratification of individual Test Guidelines subsequent to the steps as described so far, which is carried out by higher policy actors and members from national governments. This element, too, is created in accordance with the traditional model of global governance as an international, or, more precisely, intergovernmental affair, where sovereign, well-integrated and individual states with their own national interests are cooperating in order to reach common goals.

On a closer look, however, the institutional design of the OECD Programme reveals many aspects which go far beyond this model, indicating a transgovernmental rather than an intergovernmental structure. Concerning the legitimation of the standards produced under the initiative, the official ratification procedure at the end of the decision-making process is of a rather marginal character in practice; instead, legitimation is achieved on the basis of procedural rules which are built into the decision-making process from the outset. As a whole, these rules deserve to be called an emerging transnational administrative law regime, bearing its own accountability mechanisms. Since these rules are created by experts themselves, the initiative shows many characteristics of a self-constitutionalizing network. In the case under research, it is the principle of falsification, which plays an important basis for this process of self-constitutionalization. That is to say, from a falsificationist point of view, it becomes possible to integrate a broad spectrum of ideas, of objections and points of criticisms, without any need for bargaining, bartering or compromise.

Thus, the emergence of transgovernmental governance arrangements does not necessarily interfere with national sovereignty, and in some regards, it is the classical differentiation between internal and external sovereignty which is at stake here (see, Mac Cormick 1999, p. 129). In an age of network governance, an overeager orientation towards external sovereignty, definable as the freedom from intervention from outside, can easily result in an erosion of the fine-grained fabric of intra-state coordination which underlies internal sovereignty. That is to say, where national delegates in international negotiations perceive themselves as representatives of a pre-defined national will, and where this goes along with the tendency to exclude possible uncertainties and intra-

state controversies from the discourse, the process tends to become decoupled from its national basis. Against this background, an institutional design such as that of the OECD initiative proves to be highly innovative. Since member states are discharged from the duty to speak with one voice, pluralism is encouraged rather than invalidated, and by instituting a continuous coordination of the discourse with different actors on the national level, the danger of a fragmented nation state is mitigated. Thus, what comes to light here is a paradigmatic shift from the classical intergovernmental model towards a more advanced model of transgovernmental governance.

Since the Guidance Documents were developed by practitioners themselves (namely, by the Working Group of National Coordinators), there is a high probability that the structures of real decision-making are broadly congruent with the official provisions in the documents; and yet, due to possible inconsistencies in practice, it seems advisable to complement these findings with results from the expert interviews. The purpose of the latter is twofold. Firstly, interview data help to gain a more detailed picture of existing routines, coordination mechanisms and problem-solving strategies inside the network. Here, one has to be aware of how actors are actively shaping their roles and competencies in their daily activities, how they perceive the problems at hand, and how they coordinate their tasks with each other. Secondly, the interviews help to generate important insights into the longitudinal and/ or processual dimension of the network, that is, its transformation and re-organization in different phases of its development. Whereas a complete historiography of the system is not intended here, the analysis is focussing on some critical stages in the development of the programme, which significantly have influenced its current shape. Accordingly, besides questions on their daily routines and strategies of rule-use, participants were asked to describe the origin of these rules and techniques.⁷

The results are divided into three sections, each of which is arranged around a specific problem that the OECD Programme is confronted with. One of these problems is to intermediate between different national and sub-national views, and in some regards, this issue leads us back to the formation phase of the Programme, where the global applicability of Western toxicology was seriously called into question (section 4.1). The next section addresses tendencies towards a possible ‘privatization’ of the decision-making process. As the interviews show, members of the OECD Test Guidelines Program-

⁷ Although the interviews were based on a pre-developed interview guide, a full account of the questions asked does not seem necessary here. Frequently asked questions related to the driving forces of the initiative as well as to the interests and (power) strategies of those involved. But, as always in reconstructive qualitative research, these questions served to generate detailed descriptions and self-dynamic narrations, rather than statements on narrowly defined aspects or isolated characteristics of the initiative.

me have learned to domesticate the interests of non-state actors, and to include them into the initiative in a favourable way, while at the same time guarding against possible obstruction (section 4.2). The chapter is concluded by some considerations on the tension between the rather decentralized character of the initiative, and the existing demand for internal monitoring and network governance. To some extent, these functions are fulfilled by the Secretariat, whose competencies appear rather weak given the descriptions in the Guidance Documents, but comparatively strong on the basis of the interviews (section 4.3).

4.1 Transnational Standard Setting and ‘Glocalisation’: Dealing with Diversity, Avoiding Fragmentation

In the interviews conducted with mid-level officials on the national level, different structures of different origin become manifest; among them the structures of the OECD Programme, but also administrative cultures which already existed prior to the process of transnationalization. In general, specialized authorities such as the German *Federal Environmental Agency* have little in common with an administration that just takes orders. Instead, they enjoy a high degree of autonomy, due to their knowledge-related tasks, their expertise and the scientific skills of their members. By providing joint methods and epistemologies, this commonly shared professional background is an important catalyst for the emergence of cross-border interactions between national agencies. At the same time, however, even in an era of globalization, stocks of local knowledge still play an important role. In order to observe relevant developments, administrative actors must keep in touch with different groups of actors in their country or region, and often enough, it is individual actors at the periphery of the discourse, who initiate innovations:

“Many innovations are triggered by new regulatory needs. An example is veterinary medicals. Some time ago, at a conference, some Professor, I think he was a zoologist, was showing pictures of areas which were totally karstified. In these areas, which were used for intensive mass animal farming, the cows were treated with medicals against parasites. And the substance had a toxic effect on the dung flies, and so, the cow dung was not decomposed, instead, it sealed the soil. It is in our interest that dung flies or other species are not wiped out by chemicals, and thus, we need adequate test methods” (Interv. 13. 3. 2003).

The example was given as a response to the interviewer’s question about the driving forces of the system. As the last sentence of the passage shows, the relevancy of regulatory interests is surely not disregarded here; but, as a closer look reveals, these interests are no trigger of innovations themselves – instead, it is the discovery of new hazards which keeps the system moving. This picture matches very well with an aspect often highlighted in the network literature: Political actors and high-level officials are not

necessarily predestined to stay in touch with relevant stocks of knowledge; instead, it is rather technical units such as German *Federal Environmental Agency*, where a good portion of today's regulatory innovations comes from. In the example given, the zoologist who discovered the effect does not seem to refer to the agency by himself. Instead, it is members of the agency who try to catch up with relevant information, and this surely represents an indispensable element of their occupational role and competence. In the context of the interview, the example serves to emphasize how important these competencies are, and at the same time, one gets an impression how inadequate it would be to shift these competencies upwards or to replace them by a global 'superstructure'.

Yet another aspect becomes visible here, namely, the openness of the system for rather preliminary and incomplete information. While the procedural design of the OECD Programme calls for proposals which are advanced enough to allow for critical assessment, the work of national authorities such as the German *Environmental Agency* also embraces new, but still untestified observations, as well as (more or less) fact-based suspicions. In many cases, private institutes and actors from academia develop new toxicological test methods on the basis of assumptions and conjectures like those described in the example given, and often, this can only be achieved with the help and support of public authorities. Thus, by upholding rather strict criteria for new proposals, the OECD initiative is not indicating that work on preliminary ideas is regarded as unnecessary, on the contrary: What can be observed here, is a specific division of labour between both levels, where many functions of information gathering and research funding rest at the national level.

Looking at this division of competencies more closely, it appears as an adequate response to the fact that often, it is on the local level that the risks and dangers of modern technologies come to light most clearly, be it hazards which vary from context to context, or hazards which are global in character, but which have not been identified as such yet. Later on in the interview, the respondent touches upon one of the most famous examples for this, namely, the so-called 'TBT story'. Here, it was the observed degeneration of marine snails in the North Sea and the Baltic Sea in the early eighties, which then led to the discovery of the endocrinic effects of TBT and other chemicals, as well as to the emergence of endocrinology as an ever increasing field of research. In fact, at this point in time, the ecotoxicological importance of endocrinically active substances was strongly underestimated, and it was by accident that field biologists discovered the masculinization of female snails in coastal waters (cf., Bateson 2001). Sociologically, such cases are a good illustration for the concept of "glocalisation", as developed by Robertson (1995), stating that most aspects of global change are not recognizable directly, but only through the prism of local processes.

While the OECD Programme in its current shape is designed to cope with the existing diversity of local contexts, it was not until an international crisis that this diversity was taken seriously. In fact, it was this crisis which gave rise to the OECD Programme in the late seventies. At that time, many countries had just instituted their own national Chemicals Acts, including specific requirements on the registration, notification and restriction of chemicals. However, what caused international conflict were not the legal provisions of these statutes, but rather the more technical standards on a non-legislative level. Especially standards for the testing of chemicals were regarded as highly incommensurable, which posed a serious problem for the global tradeability of chemicals. The conflict culminated in the announcement by the Japanese government that for import purposes, none of the then existing European or US-American test methods would be accepted, requiring for each substance additional testing (for this debate, see, Schneider 1988, p. 53). With the Mutual Acceptance Decision of the OECD Council in 1981, this conflict has, at least on a political level, been brought to an end. In the context of the OECD Test Guidelines Programme, however, the confrontation between different national and regional views still plays an important role, albeit in an institutionalized and disciplined form, providing the system with its specific dynamics.⁸

According to the interviews, in addition to diverging national views, the programme must be tailored to deal with a broad variety of diverging sub-national views, too. Consequently, the discussion of proposals for new or updated test methods is organized in an utmost open and inclusive manner. For example, the German Coordinator as located at the German *Federal Environmental Agency* is routinely including the *Federal Institute for Materials Research and Testing*, the *Federal Institute for Occupational Safety and Health*, the *Federal Institute for Risk Assessment*, as well as different private associations such as the *Society for Chemical Engineering and Biotechnology* and the *German Animal Welfare Organization* into the process. Often enough, even experts from the same institution have different positions, which leads to an additional increase of complexity. Thus, compiling and synthesizing these opinions in the form of the above mentioned National Position Paper appears as a highly challenging task, and it is here that the significance of proper documentation techniques comes to light most clearly:

“Having received the comments, it is my task to write a summary, which is then sent to the OECD Secretariat. Writing this is not trivial at all. Sometimes, one

⁸ In the interviews, questions on the formation phase of the Programme were rather fruitless, since none of the participants could answer them on the basis of their own experiences. Yet, as far as this period is reconstructable from the literature, one gets the impression that the just described constellation was a conflict of different perspectives rather than a conflict of pre-defined national interests, which again confirms the importance of a more deliberative and/ or interpretative paradigm in modern governance theory, as pointed out in section 2.1.

receives a mishmash of contradictory ideas. Here, one has to find a way through this chaos. What I try to avoid is sending lots of contradictory opinions there. This is what our colleagues in the USA are doing. They are real champions of transparency. In their papers, one finds in detail what US Commentator One, Two or Three were thinking. We don't need this. If it is done properly, the key issues will be documented in the text. And the less important issues – well, we all have enough work, nobody here is an amateur” (Interview 13. 3. 2003).

Apparently, the task to compile the received comments into a concise text implies a twofold challenge: On the one hand, National Coordinators are expected not to suppress the existing diversity of opinions, while, on the other hand, they must take care that the process is not overwhelmed by a flood of details and rather marginal aspects. Normally, National Coordinators strive to keep the National Position Paper as narrow as possible, and for this purpose, they actively try to settle minor controversies on their own, often in consultation with the respective experts in their country. As the above-cited passage shows, the fashion in which the paper is written may vary from country to country, and apparently, National Coordinators from the USA use to describe the variety of opinions in broad length, which sometimes is perceived as disproportionate by actors in other members countries. Yet focussing on the essentials, as postulated by the interview partner here, does not exclude giving due regard to different opinions. Thus, the slight anger or irritation which is expressed here should not be taken as resentment against pluralism; rather, it shows how seriously the task is taken.

In sum, as both interview passages show, a high degree of responsiveness towards different national and sub-national views is an important building block of the initiative. Due to the crucial role of expert knowledge, this is only seldom taking the form of citizens' participation or public hearings, but still, coping with pluralism is of major concern here. As emphasized above (cf., section 2.2), one of the most important functions of modern administrative law is to make the best use of the knowledge spread throughout society, and this goal is also giving shape to many of the procedural standards of the OECD Test Guidelines Programme. In order to guarantee for the necessary degree of openness for impulses from society, key actors of the Test Guidelines Programme must show a specific attitude of neutrality and impartiality. With view to administrative actors in most Western countries, these attitudes can be regarded as given, and through their integration into transnational administrative networks, these competencies gain additional strength; while in less developed countries, modern administrative cultures may emerge as a positive side-effect of transnationalization.

4.2 Power Asymmetries, External Interests, and the Struggle for Autonomy

As stated in Guidance Document Nr. 34, “the most obvious reason for the development of a new test method is to address an area of toxicological concern for which tests do not yet exist” (OECD 2005, p. 21). Methods of this type are an indispensable tool for modern societies to identify new environmental dangers and risks, and accordingly, they are an important indicator for the dynamics and the success of the OECD Test Guidelines Programme. While the previous section was concentrating on proposals for new test methods, another sort of proposals deserves attention, too – namely, proposals which are intended to replace an existing test. For the programme to stay up-to-date, the continuous revision of existing Test Guidelines is just as important as the elaboration of new test methods, and this twofold goal is often emphasized in the official documents. Partly, the reason for the revision lies in the discovery of more precise test methods; partly, the revised test method allows for a reduced number of test animals, and often, the same test results can also be achieved using cheaper and/ or more basic technical equipment.

In order to get incorporated into the official stock of OECD Test Guidelines, the proposed replacement test method must prove to be as accurate as the previous method, which calls for detailed evaluation and comparison. At the same time, however, it is here that criteria of validity, of testability and falsification reach their limits. That is to say, the validation of new or revised test methods takes much effort; and the same holds true for the spectrum of follow-up activities on the national level, including specific measures of adaptation, of readjustment and training. Thus, in order to be worth the effort, the revision of test methods must lead to significant improvements, be it under aspects of toxicological accuracy or cost savings. Supposed the initiative would attend to all proposals coming from outside, irrespective of their added value, this would surely lead to a blockage in the system, since proposals of rather slight advantage would absorb many of the resources necessarily needed for more innovative developments. As the following passage shows, it is exactly the just described situation which the initiative was confronted with some years ago:

“It was decided, when the Programme was refocused, that only National Coordinators could submit proposals, and this had to do with the decision to focus on the regulatory use of Test Guidelines. And because of this focus, it was considered that only countries should submit the proposals. So if industry wants to be involved, it should contact one of the National Coordinators, usually in the country where they are. It was also, I think, to avoid pressure from industry. Because Test Guidelines, you know, it means a lot of money, a lot of interest behind. And so it was decided to do it like that” (Interv. 13. 3. 2003).

The picture drawn by the interviewee matches very well with popular ideas on the ‘privatization’ of world politics and the usurpation of administrative activities by particularistic interests. In the case under research, however, speaking of the “pressure from industry” should not be taken at face value. That is to say, in the context of the OECD initiative, the orientation towards cheaper and user-friendlier test methods is regarded as a legitimate interest, which is also highlighted in the official documents. At the same time, an exorbitant number of proposals of this type may lead to a specific form of bias, which, however, can hardly be blamed on actors from industry who make these proposals. Instead, the quantitative mismatch between efficiency-oriented proposals and proposals of a more innovative character brings to light the asymmetric allocation of financial and personnel resources between industrial actors and other actors in society, and here, terms like pressure or capture are rather obscuring the underlying problems. Notwithstanding this, the just mentioned problem must be taken seriously as a threat for the effectiveness as well as for the legitimacy of the initiative, and without additional data such as interviews, one might hardly have expected this to be a problem. Apparently, in the formation phase of the initiative, this problem has not been sufficiently anticipated, and thus, it was in the later stages in the development of the initiative that it came to light.

The counter-measures taken against such forms of bias have already been mentioned above (see, section 3), and it is here that the relevant passages from the documents reveal their full significance. In order to get included into the official work plan of the OECD initiative, proposals for new or updated test methods must be submitted via the National Coordinators in the member countries. Hereby, the respective agencies are assigned with the task to preselect the amount of proposals, and to identify those projects which indicate significant improvements – be it under aspects of toxicological accuracy or cost efficiency. Furthermore, as the above mentioned “Standard Project Submission Form” indicates, proposal makers are committed to give detailed information on the usefulness of the proposed method and its advantages over existing methods. Criteria such as the usefulness of a method are not competing with the orientation towards testability, validity and falsification. Rather, they serve as an important supplement and an additional filter, in order to fend off proposals whose added value over existing methods seems marginal.⁹

⁹ It might be added that the large discretion which National Coordinators enjoy in pre-selecting proposals is partly counterbalanced by a mechanism called the “informal channel”: If a proposal is rejected, the test-developing institution still has the possibility to address their project directly to the Secretariat. Such proposals are not included in the official work plan of the OECD, and yet, if the proposed test method seems to bear considerable advan-

To sum up, just like most other initiatives of global standard setting, the OECD Programme is located in a field of powerful and partly competing interests, among them national and transnational health and environment concerns, interests in animal welfare as well as industry's interest in minimal testing effort. In general, these interests are an important driving force of methodological innovations, but, at the same time, they might also turn into a source of bias. Thus, in order to be processable in the context of the OECD Programme, impulses from society must take a specific form, namely, the form of detailed proposals, which then are evaluated in their substantive content and sensefulness. As discussions inside the network are conducted in a fact-oriented and depoliticized way, extensive inquiries into actors' motives and interests – as often observable in the realm of international politics and diplomacy – become unnecessary here. At the same time, as the above cited passage shows, those responsible for the initiative have a clear view of actors' interests and possible disturbances resulting from them, and this aspect is further elaborated in the following passage:

“We don't know exactly why a country proposes something. They propose something, when they think it is useful. (...) Sometimes, we have the impression that there is research in this domain and that, if it is included as an OECD project, it would help to get money. We have sometimes this impression. But I can't... it's just an impression” (Interview 13. 3. 2003).

Just as in the example analyzed above, the constellation described here comes with its own problems and pitfalls. Apparently, besides industry's interest in the reduction of testing effort, the initiative sees itself confronted with what might be called the selfishness of scientific actors, that is, their orientation towards reputation and fund raising. In any case, these interests can have the same negative effects as the former – here again, the initiative is faced with the danger to get overwhelmed by a number of proposals of rather limited practical applicability and usefulness. In principle, the strong appeal exerted by the OECD Programme on actors from academia and private research institutes can be interpreted as an indicator for its success: Apparently, placing one's ideas in the context of the initiative has become an effective way to give prominence to them. But, since scientific sophistication is not necessarily identical with practical usefulness, the success of the OECD Programme can easily result in failure, e.g., if a significant number of the proposals made are coping with risks that hardly occur in reality. Thus, this constellation again demonstrates the vulnerability of the initiative, as well as the significance of the safeguards and protective measures taken.

tages over existing methods, there is a certain probability that the Secretariat will get in contact with the respective Coordinator, inquiring about the reasons for the rejection.

From a Global Administrative Law perspective, what can be observed here is the emergence of rules and procedural standards regulating the conduct of non-state actors such as industry or private research institutes. Such rules are vastly missing in classical international law, the latter still being one-sidedly oriented towards the conduct of states and international organizations. In practice, however, such elements are of increasing importance, and it is here that rather unorthodox terms such as “transnational law” (Jes-sup 1956) or “Global Administrative Law” (Krisch, Kingsbury & Stewart 2005) show their high significance for current socio-legal research. As highlighted by concepts such as the self-constitutionalization of networks, the various governance networks of the transnational realm may reach a considerable degree of autonomy and independence, but this autonomy is not fixed or stagnant; instead, it must be re-established again and again. Only partly, private actors’ interests and/ or activities can be anticipated from the outset, which calls for constant revision and reconfiguration of the procedural framework chosen. Here, each network or governance arrangement will go through its own process of institutional learning, and empirically, this calls for detailed inquiry into both, typical problem constellations as well as innovative problem-solving strategies which emerge in the transnational sphere.

4.3 Implementing Soft Law, Monitoring Autonomy:

The Role of the Secretariat

Although the basic norms of the initiative are codified in the form of specific guidance documents, these rules are of a more informal character than, by contrast, the norms and provisions of international treaties and other forms of ‘hard’ law. Taken the para-legal status of existing network-internal rules, the enforceability of the latter deserves further examination. Even though these procedural standards are consensually created by those responsible, this does not necessarily mean that participants are in compliance in either case or situation. In principle, every procedural standard as reconstructed thus far may be bypassed in practice, and thus, in order to evaluate the self-regulatory capacity of the network under research, one must also look out for internal mechanisms of monitoring, of surveillance and sanctioning in cases of occurring violations. To some extent, controlling each other and criticizing other participants’ arguments or conduct comes as an integral part of the expert discourse, but, at the same time, the effectiveness of such decentralized and horizontal forms of control is rather limited. In fact, the self-constitutionalization of networks is unthinkable without the emergence of specialized organs exerting specific functions of meta-governance: “Constitutional orders consist of constituent units and a superintendent” (Sabel 1993, p. 73). By the installation of such specialized organs of control, the respective functions are bundled into one, and besides, a particular stock of knowledge on typical mistakes and/ or violations can be generated.

At the same time, however, reconstructing these forms of self-regulation poses manifold difficulties, since often the meta-governance of networks is exerted in a rather indirect and unspectacular way. This is also evident in the case under research. In the official documents of the initiative, much emphasis is placed on the sovereignty of member states, and a similar view becomes manifest in the interviews, e.g., in statements such as “we only do what the countries want us to do” (Interview 13. 9. 2007). To some extent, this clearly matches with the results of the present analysis, showing how much attention is paid to the maintenance of relevant competencies on the national level, and how problematic it would be to replace the latter by a global ‘superstructure’. At the same time, however, it would be mistaken to reduce the Secretariat’s position to a purely assisting and subordinate role – in fact, many functions which seem to be rather assisting on the first glance, prove to be of enormous regulatory potential in reality. Surprisingly, as the following passage shows, this even holds true for a rather ‘harmless’ activity such as hosting a conference. The quotation stems from one of the interviews conducted with representatives of the Secretariat. Here, the interviewer takes up an example that the interview partner had already touched on before:

I: The example you mentioned, when you were surprised to receive so few comments, what was that?

S: It was a Test Guideline on bees. You know, in country x, there were suspicions of some pesticides killing bees, and also in country y, it was a big issue. So, and when this test was developed, and country x was the lead country for this, and we received so few comments from country y, I said, I am quite surprised, because they had developed, they had made lots of tests.

I: Didn’t they have enough time or?

S: To do it? Yes. We even had a meeting here with country y and country x, we had a meeting and they came, yes. It was sure that they didn’t know about the project (Interview 13. 8. 2007).

As mentioned above, the procedural standards of the initiative are not immune against possible breaches and violations. In the example given, the focus is on the National Coordinators’ task to include a broad spectrum of experts into the discourse. As the last sentence shows (“it was sure that they didn’t know about the project”), relevant experts in the respective country had not even been informed at all, which surely represents a severe breach of duty. The members of the Secretariat had already suspected this due to the papers they had received, and thus, they gave particular attention to this case. In the context of the interview, the episode is characterized as an exception. Normally, as often emphasized by the members of the Secretariat, National Coordinators take their tasks seriously and fulfil them in a satisfying way, and consequently, the Secretariat has no reason to become engaged more intensively. In the case under research, however, the af-

fair seemed so dubious that the Secretariat saw it as legitimate to deviate from the existing routine.

What comes to light here is the role of the Secretariat as a superintendent: In addition to its manifold administrative and assisting functions (such as circulating proposals), the Secretariat has a critical eye on the process, and besides, it can help to compensate for occurring deficiencies and mistakes. At this, the focus is normally put on procedural aspects rather than on aspects of a more substantive character, and thus, the function of the Secretariat may be characterized as a moderating function, as opposed to more interventionist forms of control. At the same time, these activities are not limited to cases where the topic of possible breaches had already been addressed by other participants; instead, occurring breaches are often identified and criticized by the Secretariat on its own initiative. As the passage shows, this is often done in a more indirect way, which nevertheless can be highly effective.¹⁰

According to its functions as described in Guidance Document Nr. 1, the Secretariat "assists member countries in the steps necessary for developing or revising Test Guidelines, including the organization of workshops and meetings, and circulates the various Test Guideline-related documents" (OECD 2006, p. 14). Obviously, such meetings can be an important tool of information exchange, and other aspects, such as the function of awareness-raising and/ or agenda-setting, would also seem not too far-fetched. In the example given, however, the influence exerted by holding a meeting goes much farther – in fact, it serves to work against the restrictive pattern of participation as caused by the National Coordinators. Even though the Secretariat surely aims to avoid any affront to the members of the initiative, the meeting as described in the above cited passage is still a mechanism of correction and repair.

In contrast to institutions of a supranational character, where the supervisory organs pursue their own policy goals, it is the rules and standards created by the members of the OECD initiative themselves which are implemented by the Secretariat, and which serve as the yardstick for monitoring. However, binding control on the consent of those controlled does not mean to leave the expert discourse to its own volition, and despite the great discretion granted to participants, there are effective safeguards against possible obstructions by individual actors. The following passage allows for further elaboration on this point. Other than in the example above, the episode relates to the later stages in the process of Test Guidelines development. Subsequent to validation, the *WNT Working Group of National Coordinators* comes together for a final meeting where the

¹⁰ For example, a rather unspectacular utterance such as "I am quite surprised" as reported in the above cited passage is a clear expression that the relevant case or practice is considered as deviant, creating considerable pressure of justification on those responsible – at least in a highly institutionalized context such as the one analyzed here.

draft is officially adopted. Since the decision requires consent, individual actors can significantly disturb the process:

“In some cases, I say, if there is no agreement, I will go to the Joint Meeting. For example, we have a Test Guideline on the Uterotrophic Bioassay, which was there for at least ten years. And it was submitted for approval at the last WNT meeting. And it was only for few things, it was linked to number of doses and number of animals, and country z didn’t agree. And I said, if we don’t agree at this meeting, I will take all this to the Joint Meeting. And it helped a little bit. At the Joint Meeting, people think twice, before they continue to block” (Interv. 13. 9. 2007).

In some regards, the passage leads us back to the more conventional elements of the OECD Programme, that is, elements which clearly match the structure of international law. Officially, in order to come into force, results of the expert discourse must be ratified by higher policy actors and heads of states; and in the case of the OECD, it is mainly the Council, where these actors are represented (according to Art. 7 OECD Convention; see, Warning 2009, p. 150). Below the Council, one finds several other organs where national delegates and members of national ministries are represented; among them the EPOC *Environmental Policy Committee*, the *Chemicals Committee* and the *Working Party on Chemicals, Pesticides and Biotechnology*. Together, the two last-mentioned bodies form the *Joint Meeting*, which represents the immediate superior of the WNT *Working Group of National Coordinators*. Before a toxicological test is incorporated into the stock of OECD Test Guidelines, it must pass through all these levels. Yet, in the history of the Test Guidelines Programme, none of these organs has ever rejected a draft Guideline which was approved by the *Working Group of National Coordinators*, and accordingly, the whole procedure seems rather formalistic, not the least so because members of higher-level organs do neither possess the necessary expertise to critically assess the drafts, nor are they able to develop possible alternatives on their own.¹¹

Nevertheless, as the example shows, the higher policy organs of the OECD can considerably contribute to the coordination and stabilization of the process. That is to say, in some cases, turning to the *Joint Meeting* appears as an effective way to increase the pressure of justification on dissenting members. Here again, the action taken by the Se-

¹¹ As stated in one of the interviews, members of these higher-level organs are “more policy-oriented people, who know nothing about this, or (*laughter*), they don’t know much about it” (Interview 1.10.2007). The self-correction in this utterance shows the speaker’s good will, and yet, he has enormous difficulties in making any sense of the complicated procedure. From the view of most participants, the initiative would function just as well without its multi-level superstructure.

cretariat is oriented towards procedural rather than substantive aspects: If the dissenting voter were seriously convinced that the proposed test method would function just as well on the basis of a reduced number of animals, he should have made this complaint in an earlier stage of the process. At the present stage, at any rate, integrating his idea would imply to go again through the whole process of drafting, of commenting and validation, and it is exactly cases like this one where the Secretariat turns to the Joint Meeting (or announces to do so): Face to face with heads of states and members of ministries, the dissenting voter will have enormous problems to explain whether his idea is important enough to sacrifice the work of many years, and why he failed to make his objection in an earlier stage of the process.

5 CONCLUDING REMARKS: LESSONS LEARNT FROM THE OECD TEST GUIDELINES PROGRAMME FOR THE TESTING OF CHEMICALS

In the field of global chemicals regulation, the OECD Test Guidelines Programme represents one of the oldest and, at the same time, one of the most effective mechanisms of worldwide standard-setting. Until now, a number of 148 test methods have been adopted, covering the four sections physical-chemical properties, effects on biotic systems, degradation and accumulation, and health effects (see, Leeuwen & Vermeire 2007, p. 625). To be sure, the initiative is an important step towards the creation of worldwide standardized test methods, and yet, it goes far beyond harmonization in the classical sense. That is to say, besides coordinating standards which already were in existence at the national level, the initiative has triggered off many new developments and innovations. In addition, the success of the initiative is mirrored by the fact that over the years, several test methods of an older generation were replaced by more advanced methods, that is, by standards which come with a higher level of accuracy, a reduced number of test animals and/ or less cost and effort. An important precondition for this success is the elaborated institutional design of the initiative, which guarantees for the legitimacy of the process and the acceptability of its results. As the analysis shows, aspects of legitimacy are neither an epiphenomenon nor an additional element of the initiative, but rather should be seen as an inherent aspect of rational and effective decision-making.

In general, many of the aspects as discussed in the literature on global governance networks can also be found in the case under research; among them the influential position of mid-level practitioners, their large discretion and room for manoeuvre. As the case study shows, the diverse advantages and disadvantages of network governance as described by authors such as *Slaughter* (2005) can be a useful point of departure for the analysis, although from the view of interpretative sociology, these concepts should be applied in a heuristic way rather than taking them as pre-defined categories. With regard

to possible disadvantages of governance networks – that is, occurring threats for their effectiveness and legitimacy –, many authors tend to be too fixated on a more interest-based approach, focussing on diverse power games and fraudulent strategies of those participating. Empirically, however, many of the problems related to transnational governance networks seem to be of a more cognitive and non-intentional character, among them the danger that the quality of a proposal made by an expert may be judged too optimistically due to the expert's status or reputation, or, as an ubiquitous danger in global governance networks, the tendency to underestimate the diversity of (natural as well as cultural) local conditions in different countries.

At the same time, these problems can be anticipated and, at least to some extent, be resolved by network members themselves, which leads to the constitutionalist approach in network theory as proposed by *Sabel* (1993). Analytically, it proves to be advantageous to combine this constitutionalist approach with the current debate on an emerging Global Administrative Law: Due to the increasing degree of discretion on part of administrative actors, and due to the decreasing influence of heads of states and high-level policy actors, it seems of utmost importance to look out for alternative mechanisms of legitimation, that is, forms of legitimation which go beyond the classical conception of international law. However, in many cases, network-internal regulations and safeguards against possible distortions are just as subtle and hard to detect as the impending problems. Even where an initiative has developed its own guidance documents, the existing problem-solving strategies are represented only partly in these texts, and thus, much reconstruction work must be undertaken on a more practical level. While general principles such as impartiality, objectivity and transparency surely play an important role for the self-constitutionalization of global governance networks, the empirical focus should be on more concrete norms and procedures which help to put these principles into action.

In this regard, the case under research reveals three important institutional developments, which are highly innovative, and which deserve to be interpreted as building blocks of an emerging Global Administrative Law:

- Firstly, by establishing specific obligations to give reasons, the initiative manages to decouple the discourse from all person-bound aspects. That is to say, in order to assess the quality of a proposal made by one of the members, inquiring into the proposal-maker's interests or intentions appears needless, as long as the proposal is taken seriously in its own rationality and substantive content. In the case of the OECD Programme, due to its evidence-based approach and its falsificationist logic, this becomes visible in an almost paradigmatic form, but, at the same time, similar techniques to disentangle *Geltung* from *Genesis* may also be observable in most other initiatives and standard-setting networks. Fur-

thermore, by dividing the discourse into separate phases or stages (such as assessing the testability of a proposal before testing it in more detail), the initiative manages to organize the decision-making process in an utmost rational and revisable way, thereby avoiding premature decisions.

- Another important dimension of meta-governance in transnational policy networks is the installation of safeguards against a possible capture and/ or blockage of the process by non-state actors. Whereas the simple exclusion of non-state actors does not represent a viable option under today's conditions, the solution lies in specific provisions which provide the network with the above mentioned *qualified openness* for external input, and here again, it is the installation of specific obligations to give reasons which helps to disentangle the discourse from the involved actors and their interests. The way in which this is handled in the context of the OECD initiative may be recognized as exemplary, and in some regards, the institutional structures as reconstructed thus far are a refreshing alternative to the popular idea, that the domestication of actors from industry could best be accomplished by installing nature conservation organizations and other actors from civil society as a 'counterweight'.
- In addition, meta-governance in networks calls for an effective and transparent allocation of competencies as well as for the assignment of specific organs and actors with separable tasks and duties. As often stated in the literature, governance beyond the nation state poses the problem that individual agencies might emancipate themselves from the fabric of interagency coordination on the national level, resulting in an increased fragmentation of the nation-state (see, Slaughter 2005, p. 254). In this regard, too, the OECD initiative can be seen as highly innovative: By creating the role of National Coordinators, the OECD Programme helps to strengthen interagency coordination on the national level. Besides several other tasks, National Coordinators are obliged to include all relevant actors and agencies of their country into the discourse, and to some extent, this is supported and monitored by the Secretariat.

In sum, the spread of transnational administrative networks and cross-border expert systems should be regarded as one of the most challenging tasks for modern governance research, forcing us to overcome many of the traditional patterns of political and juridical thought. While many of today's controversies still adhere to rather traditional dualisms such as the alternative between supranationalism and intergovernmentalism, an increasing number of highly innovative initiatives such as the OECD Test Guidelines Programme are following a third path, namely, the path of transgovernmentalism. Partly, each network invents its own norms and procedures, and partly, relevant procedures and/ or organizational blueprints are imported from different other institutional contexts,

such as national administrative law, science, or different other fields of professional action. At the same time, it is important to see that these elements must prove to be adequate in practice, and that often, it is critical events and processes of institutional learning through which the procedural design of an initiative is shaped and re-shaped. In order to detect such elements of meta-governance in the sphere of transnational administrative networks, one has to emancipate oneself from all associations and analogies with international diplomacy, as well as from the traditional model of international governance with its overemphasis on the well-integrated, sovereign nation-state speaking with one voice.

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