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Making European Policies Work Multilevel Administration and Policy Integration

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Abstract

Better implementation of EU policies depends not only on the capacity and commitment of individual Member States, but also on the adequacy of the overall arrangements for 'multilevel administration' through which these policies are managed. These arrangements have been evolving, in a few cases towards stronger EU roles in enforcement, but more through EU actions to help harmonise national implementation, deepen administrative cooperation and support capacity-building. As a result, there is increasing EU involvement in shaping public administration, traditionally a sovereign preserve of the Member States, as part of deeper administrative 'integration' in some sectors, as well as through programmes of support for reform and recovery linked to recommendations. This makes it all the more important that decisions about multilevel arrangements are debated broadly and openly as a reasoned distribution of capacities and sharing of responsibilities for achieving common overarching goals.

Introduction

Policy implementation remains a challenge in the EU, whether one looks at compliance with single market rules, responses to economic policy recommendations, or practical application of common border controls. As the EU has adopted successive waves of ambitious priorities, many Member States, as well as the institutions, have been urging that creative attention should also be given to 'Making It Work'.

It is only part of the story to assess whether Member States are doing enough to ensure that commitments are respected: to assist them, persuade them or, in some cases, tell them to do it. Even where enforcement of law is the main concern, making it work goes beyond inspection and sanctions. As emphasised by the Commission with regard to better implementation of single market rules, this covers 'the entire life-span of the relevant rules, from inception to application'. Moreover, not only is it a "shared responsibility" of Member States and Commission, it requires 'collaboration at all levels of governance'.¹

This collaboration does not take place between authorities at completely independent levels of action. The EU has long moved past a simple relationship whereby EU institutions adopt rules and Member States, at a separate level of reality, apply these rules in practice. Instead, EU policy implementation takes place through a variety of 'multilevel cooperative governance structures' (Hofmann & Türk, 2007).

It is also true that it is not only public authorities that are involved in EU governance. Indeed EU policy implementation, understood as the achievement of broad EU goals in areas such as energy efficiency or waste reduction, involves almost everyone. The objectives of the European

Green Deal, for example, can only be achieved if all actors play their part ‘alongside government policies and regulation: from national, regional and local authorities to businesses, unions, civil society organisations, educational institutions, research and innovation organisations, consumer groups and individuals.’²

This paper focuses on administrations, however, since it is the structured interaction between EU actors on the one hand, and national administrations and judiciaries on the other, that generally constitutes the core of multilevel policy management within the broader framework of multilevel governance.

We therefore use the term ‘multilevel administration’ (MLA) in this perspective of ‘administrative governance’ (Benz, 2015; Trondal & Bauer, 2017), also with a view to the fruitful interaction between multilevel governance and public administration studies in the EU context (Ongaro, 2020).

The key point addressed here is that effective policy implementation depends on a) the degree to which the overall institutional capacity provided by multilevel arrangements is adequate and appropriate to the particular problems that need to be managed, as well as b) the availability of resources and commitment on the part of the individual EU, national and sub-state bodies involved.

The first section briefly reviews different approaches that have been followed to classify the mechanisms of EU governance. It outlines a loose framework for characterising different sectoral MLA arrangements in terms of their respective combinations of vertical and horizontal coordination mechanisms.

The second section looks at trends in the evolution of these arrangements. It suggests that there has been less of a (‘vertical’) shift in the attribution of formal powers of enforcement to the EU level, and more of a selective reinforcement of the modalities by which EU actors aim to harmonise national implementation, deepen (‘horizontal’) administrative cooperation and support capacity-building.

The third section addresses the importance of improving how MLA arrangements are designed and adapted. It considers whether the practice of impact assessment has proven adequate to this process as a means to secure the best match between problem-solving capacity and the challenges that can be foreseen in the policy area in question.

It concludes by drawing attention to two recent developments that may shape how MLA will develop in the EU. On the one hand, ‘policy integration’ is already being explored as a framework in which multilevel arrangements might be conceived and implemented in a broader and less politicized perspective. On the other hand, the EU is increasingly involved in shaping public administration per se in the Member States either as part of administrative ‘integration’ in some sectors, or in the context of EU support for reforms and recovery.

Multilevel administration: characterising sectoral arrangements

The merging of hard and soft law

Since its creation at Maastricht in 1992, the European Union has been experimenting with different modes of governance that have taken it beyond traditional - ‘hard’ - Community law.

In a few cases, such as monetary union, the EU has engaged in processes that constitute even deeper forms of integration than hard law. In most cases it has been a matter of coming up with other ways of operating that do not depend upon hierarchy and sanctions as steering instruments (Treib et al., 2007).

Some have been supportive mechanisms to the main policy goal, intended to help ensure that the legislative framework established by hard law can function in practice administratively, and produce concrete economic and social benefits in reality. The formal ‘completion of the internal market’ in 1992 was thus immediately followed by initiatives to help make it work in both senses. Administrative cooperation was addressed in the ‘Sutherland report’ on the operation of the internal market, requested by the Commission to assess the required adaptation of ‘administrative mechanisms’. The 1993 White Paper on Growth, Competitiveness and Employment proclaimed that the new challenges involved in achieving a more competitive knowledge-based economy did not lend themselves to command-and-control approaches: ‘Not all such initiatives will be of a legislative nature; they also include close co-operation between the Commission and the Member States, and between public authorities and the private sector.’¹³ For particular policy issues, legislation has often been followed up by Guidelines and other non-binding documents, as well as binding Commission acts.

Other cases have arisen where it has been agreed to address a new policy area in the EU but not to place this area under EU legislative competence. This has led to different forms of EU coordination of national policies, mainly economic policy, employment policy and some social policies, in the annual cycle of reporting, review and recommendation known as the European Semester. The main instrument has been the adoption of non-binding Council Recommendations, supported by various peer review mechanisms and public pressure. It is theoretically accompanied in some cases by the threat of financial penalties, but the trend has been more towards linking national policy responses to EU funding. The Recovery process has further strengthened this approach. This is well illustrated by the Commission’s 2021 Social Pillar Action Plan:

‘The effective implementation of the European Pillar of Social Rights [...] greatly depends on the resolve and action of Member States, who primarily hold responsibility for employment, skills and social policies. EU-level actions can complement national actions [...] social targets will help focus policy efforts on reaching results and constitute an important incentive for reform and investment in the Member States. They can guide policy decisions in the Member States and their regions, including in the context of national recovery and resilience plans under the Recovery and Resilience Facility (RRF) and in line with the relevant country-specific recommendations, as well as in the context of programming the 2021—2027 Cohesion policy funds.’¹⁴

A third group has been the various forms of EU public policy processes that formally involve private actors. One case is formalized in the treaty itself, namely the possibility for the European Social Partners to reach agreements at European level that can be implemented either autonomously or (as has happened in a few cases) through EU law. Notably in the field of environmental policy there has, since Maastricht, also been exploration of voluntary commitments, self-regulation and variants of ‘co-regulation’ by which economic actors could, conditionally, be entrusted with policy implementation.

Various other types can be identified, including cooperation in the Common Foreign and Security Policy (CFSP) which remains subject to unanimous agreement in the Council, but in which the

results are held to be politically binding on the Member States.

The analytical response to the emergence of all these new modes of governance has taken various forms.

One common approach has been to abandon a simple dichotomy between hard law (binding rules) and soft law (non-binding rules). Instead particular arrangements are classified in terms of how they combine the specific component dimensions of normative relationships. These studies mainly build on the seminal article on international legalisation by Abbot et al (2000) which argued that: 'Most international legalization lies between the extremes, where actors combine and invoke varying degrees of obligation, precision, and delegation to create subtle blends of politics and law.'

Saurugger and Terpan (2021) thus classify 'EU law' according to a continuum of norms reflecting different combinations of two criteria - *obligation* and *enforcement* - that are not fixed, but subject to processes of softening or hardening over time. Between the extremes of no obligation and no enforcement at one end, and hard obligation and hard enforcement at the other, various combinations of the two criteria are observable.

This way of looking at EU norms in terms of their component dimensions has been helpful in encouraging more nuanced approaches to discussion of EU policy instruments, and in thinking about the detailed dynamics of change in EU policies (Terpan, 2015). However, it may not actually seem useful to maintain the term 'law' at all in this perspective. We prefer to reserve the term 'law' for instruments that are in some way binding, that is, where there is a degree of formal obligation that can be enforced. This distinction is meaningful and does matter in EU policy debates.

It is more helpful to think in terms of hard(er) and soft(er) forms of 'governance' (Ştefan, 2017). The hard forms of governance are understood to entail obligation and can usefully be termed 'law', in contrast to the many different manifestations of soft governance that do not. These different instruments and methods generally go together in what is best referred to as 'hybridity' (De Búrca & Scott, 2006) (Trubek & Trubek, 2007), which is in fact common practice.

The emergence of harder soft governance (and vice versa)

Analysis of the dynamics (and assessment of the adequacy) of particular hybrid arrangements does require some identification and conceptualization of the individual elements that may be present. Two cases illustrate how the various instruments of supportive soft action, as well as approaches drawn from the world of policy coordination, have been used to address policy challenges where hard law is either not an available option or is politically unacceptable.

'Harder Soft Governance' in the field of energy and climate

The EU has limited competence in the field of energy. Legislation on measures primarily of a fiscal nature, and measures significantly affecting Member States' choice between different energy sources, as well as taxation, are all subject to unanimity. Moreover, the EU has been divided between countries which have insisted on national sovereignty regarding their national energy mix and focused on security of supply, and other Member States which have pressed for ambitious sustainable energy targets. The result has been that the

EU has signed up internationally to very ambitious targets that were binding on the EU, but could not agree on binding national targets in areas such as energy efficiency in order to reach those targets. The challenge was to agree on a framework that would push Member States to set and achieve national targets - national 'contributions' - that would allow the EU to meet the goals. The result, characterised by some analysts as 'Harder Soft Governance' (Knodt et al., 2020) was the 2018 Governance Regulation.⁵

The Commission would only be able to use recommendations with regard to national plans, first to assess and influence their level of ambition, and then to respond to insufficient progress. The impact of these recommendations would be reinforced (or 'hardened') by a variety of mechanisms including:

<i>Naming, blaming and shaming</i>	National Energy and Climate Plans made public to increase transparency and peer pressure on laggards.
<i>Mobilising non-state actors</i>	Publicising drafts, plans and gaps to foster civil society participation and accountability.
<i>Need for justification</i>	Governments must publicly respond to Commission recommendations concerning ambition gaps.

Other mechanisms identified include the linkage of performance to other policy issues (policy coupling) and the prospect of Commission action in the event of need (Bocquillon et al., 2020).

The threat of Union action in the event of insufficiency from national efforts was invoked. For example, 'In the area of energy efficiency, the Commission shall as appropriate, propose measures and exercise its powers at Union level in addition to those recommendations'. In the general review article (45) 'The Commission reports may be accompanied by legislative proposals where appropriate.' But those proposals can only be made on the available legal bases, which are not likely to change in the immediate future.

The Governance Regulation was partly inspired by the European Semester (Bocquillon & Maltby, 2020), but also reflected a pattern that was observable in other fields.

Alternative Fuels Infrastructure: enforcement and encouragement

The 2014 Alternative Fuels Infrastructure Directive in the end only included a 'hard' commitment to do 'something' by a certain date, thus getting a process under way. It was accompanied by a variety of 'soft' elements to provide pressure and incentives, as well as a review process, with the explicit provision for the Commission to present a new legislative proposal if required in the light of the results achieved.

The Commission had proposed setting binding absolute targets at EU level for the national deployment of recharging points for alternatively powered vehicles (i.e. not gasoline/diesel). In the face of broad resistance to this proposal among Member States, the Commission was obliged instead to make the most of the approach by which each country would set its own targets in National Policy Frameworks (NPFs).

Absolute targets set by the EU were dropped in favour of 'appropriate' numbers to be established by the Member States in NPFs, but the deadline was agreed to be the end of

2020 (as proposed by the Commission) instead of end 2030 (as in the Council’s General Approach). Moreover, national targets should take into account ‘best practices and recommendations issued by the Commission’, and the Commission would issue an assessment of the ‘coherence’ and adequacy of the NPFs in November 2017.

The Commission’s (rather pessimistic) assessment and recommendations were accompanied by other measures in a Clean Mobility Package. The AFI Action Plan not only pushed for improved implementation of NPFs but also offered financial support and capacity-building. Other measures were introduced to address pursue greater uptake of alternatively fuelled vehicles from other angles, including a proposal on CO₂ emissions addressed to car manufacturers and a revision of the rules on public procurement.

The next stage saw an evaluation of the directive itself, as well as an assessment of the National Implementation Reports. It was foreseen in the directive that the review would be ‘accompanied if appropriate by a legislative proposal’. A proposal was duly submitted in July 2021, including a new methodology for binding targets.

Vertical and horizontal dimensions of governance arrangements

Another useful approach for comparative analysis of sectoral governance arrangements is to classify the coordination mechanisms involved on two dimensions: the respective distribution of powers and tasks between levels of governance (vertical) and the degrees of intensity and commitment involved in interaction between national actors (horizontal). This to some extent follows the two main ‘types’ of multilevel governance proposed by Hooghe and Marks (2003). Type one rests on vertical relationships in which different levels of the institutional architecture are attributed exclusive authority over specific fields. Type two connects task-specific jurisdictions horizontally. However it has also been developed in subsequent studies on multilevel administration (Heidbreder, 2017) and policy integration (see below).

In the perspective of *enforcement* – that is, the set of mechanisms available to ensure compliance where there are rules – a useful framework is proposed by Börzel and Heidbreder (2017):

Table 1
Dimensions of enforcement and compliance

top-down approaches
• prosecuting non-compliance - monitoring and sanctioning by EU
• challenging non-compliance - litigation before national courts
• preventing non-compliance - capacity building and contracting
• revoking non-compliance by persuasion and learning (scoreboards..)
horizontal cooperation to remedy enforcement shortcomings
• administrative cooperation (EC as facilitator)
• mutual recognition, voluntary mutual adaptation and learning

Source: Börzel & Heidbreder, 2017

Building on this framework, one can propose a basic methodology to characterise sectoral MLA arrangements in terms of the vertical and horizontal coordination mechanisms that are involved.

Vertical dimensions

Scholten, Maggetti and Versluis (2017) propose three types of ‘**shared enforcement**’, defined in terms of the relationships and distribution of tasks between European enforcement authorities (EEA) and national enforcement authorities (NEA).

- **hierarchical**: the EEA is ‘in charge’ and the NEAs are subordinate.

So far this is only found in the *financial sector*, where the European Securities and Market Authority (ESMA) has direct powers of sanction and the European Central Bank exercises controls over national actors.

- **parallel**: both EEAs and NEAs have responsibility and powers for enforcement.

In *aviation safety*, NEAs do most of the enforcement work but the European Union Aviation Safety Agency (EASA) has specific powers (such as enforcing airworthiness standards), while NEAs can delegate enforcement tasks to EASA.

Competition policy presents a particular kind of parallel enforcement and accountability. The Commission retains powers to execute all the stages of public enforcement: monitoring, investigation and sanctioning. However, changes in 2004 ‘delegated enforcement powers to national competition authorities (NCAs) and national courts in order to relieve the Commission of its increasing administrative burden and make enforcement more effective’ (Cseres & Outhuijse, 2017). Information is exchanged and cases allocated within the European Competition Network.

- **supporting**: the core or responsibilities lies with the NEAs and the EEAs play a supporting role

Examples include the European Medicines Agency (EMA), which cannot carry out inspections itself but coordinates NEA’s inspections in cases of central authorisation, and the European Fisheries Control Agency (EFCA).

This perspective focuses on classic enforcement functions. As discussed below, however, the evolution of EU-level roles in MLA arrangements is at least as important when it comes to support for national implementation and capacities, and for administrative cooperation among Member States.

This framework can therefore be expanded to incorporate:

- a) cases in which there are no common rules to be enforced, but shared goals; and
- b) elements that are used (as in the previous examples) as incentives or pressures to bring about better results. These may be conceived as preventive (or deterrent) measures in the perspective of better ‘compliance’ and/or as supportive elements of encouragement with a view to improved ‘performance’.

The following table summarises the range of EU-level roles that can be observed in sectoral governance arrangements by comparison with the notional norm of pure EU rulemaking and pure national implementation. They may be performed by the European Commission and/or an EU Agency.

Table 2
Vertical dimensions: EU roles in implementation of sectoral governance arrangements

EU direct interaction with actors

Direct binding decisions	EU enforcement measures (EC acts)	Direct EU sanctions on actors	Direct EU inspections
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EU-Member State hierarchy

Infringement proceedings	Supervision of Member State controls	Preliminary rulings
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EU support for Member State implementation/networks

Harmonised training/capacity-building	Obligatory administrative cooperation	Compliance guidelines	Support for horizontal networks	Incentive measures
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Source: own creation

Horizontal dimensions

The horizontal dimensions of governance have been approached in different ways.

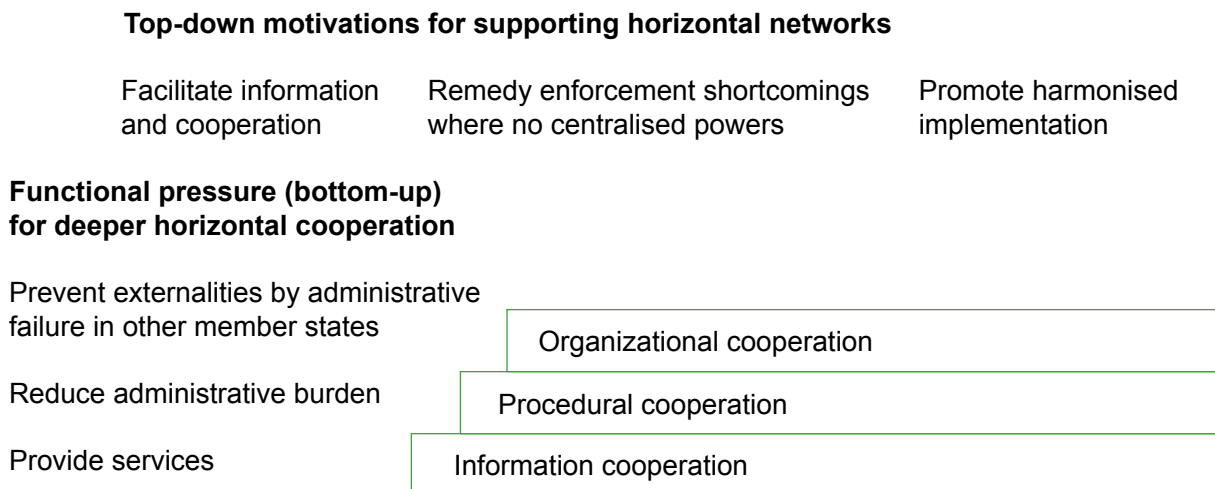
Eliantonio and Cacciatore (2021) add to ‘shared enforcement’ a second ‘halfway model’ between direct involvement by the EU and no involvement at all by the EU. This is ‘*networked enforcement*’, described as ‘more collaborative forms of enforcement between MS and the EU, which are not always formalised through legal provisions, nor do they always involve an active role for traditional EU institutions or for the agencies.’

The EU is indeed a cobweb of more or less formal *networks*. To give an idea of scale, the Joint Research Centre (JRC) of the European Commission lists 37 ‘networks and bureaux’ that support ‘JRC’s work on harmonisation and validation of methods and measurements, establishing common standards, and providing scientific and technical support for the implementation of European legislation’ as well responding ‘to European policy makers’ and EU Member States’ increasing demands to establish common scientific reference systems.’⁶

Hartlapp and Heidbreder (2018) suggest three levels of administrative cooperation that may arise in response to bottom-up functional pressures on national administrations. These levels of cooperation are cumulative. Information cooperation may exist on its own, but is a necessary prerequisite for procedural and, at a higher level, organisational cooperation. Information cooperation may be pursued by administrations on a relatively ad hoc basis to provide services and/or protection to citizens and national actors involved in cross-border activity. As the extent of transnational activity grows, formalisation of this cooperation in terms of procedures may be proposed in order to reduce transaction costs and harmonise decisions. As interdependence grows, administrations may propose deeper organisational collaboration out of recognition that they are reliant on their partners’ performance for achievement of their national responsibilities as well as possible higher-level obligations.

These bottom-up pressures interact with top-down initiatives from the EU level to support closer cooperation in accordance with assessments of the impact of national differences for effective implementation of the policy objectives, while taking into account the political sensitivity of these fields.

Figure 1
Pressures and motivations shaping administrative cooperation



Source: (Hartlapp & Heidbreder, 2018 bottom-up); own creation (top-down)

Several recent studies have compared different networks with a view to identifying conditions for success that could be shared. Key elements in all cases concern creating trust and building on trust.

Polak and Versluis (2016) ask how useful networks are for making EU directives work. They compare three cases: the Directives on General Product Safety, (GPS), Integrated Pollution Prevention and Control (IPPC) and the Safety Assessment of Foreign Aircraft (SAFA) and the related Consumer Safety Network (CSN), European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL); and the European SAFA Steering Group (SAFA). Among their conclusions are that the extent to which participants attach value to cooperation depends on the degree to which authorities feel that they are interdependent in the administration of measures; and that one key element is informality.

Martinius and Mastenbroek (2019) identify 12 ‘network conditions’ for collaborative innovation that are posited to shape the potential of networks in this respect. Again, the importance is emphasised of trust (as both ‘pre-condition’ and outcome) and of informality. The presence of a ‘network coordinator’, such as Commission representatives, is a positive driver, so long as it is supportive in nature.

Trends

‘Verticalisation’ - new EU powers in enforcement?

Most attention has been given in the literature to a supposed trend by which the EU has increasingly acquired new formal roles in enforcement and implementation through ‘verticalisation’ (Scholten, 2017). This requires some nuancing.

There are relatively few cases in which one can, over the last 20 years or so, identify a major shift in the *formal* powers that can be directly exercised by EU actors. These mainly concern financial supervision – the roles of the European Central Bank and the European Supervisory Authorities, in particular the European Securities and Markets Authority (ESMA) – which is explicable in view of the impact of the financial and economic crisis. Moreover, in one of the most important cases, competition policy, as indicated above, there has if anything been a shift in the direction of **decentralisation**.

The reinforcement of the EU's role has generally taken the form of more indirect actions:

- imposition of conditions in which Member States will come under pressure to act in a certain way (transparency and consultation exposing governments to domestic public opinion, obligations to justify policy performance exposing them to political pressure from other Member States, incentives arising from linkage to EU funding);
- requirements to maintain adequate (horizontal) administrative cooperation;
- harmonised training and organisational capacity-building in those cases in which harmonised implementation is essential for practical effectiveness.

This trend is not new. It has long been recognised that 'EU agencies can currently add most value when they refrain from using a hierarchical and centralized approach, and when they spur informal learning among national regulatory authorities.' 'By organizing workshops and trainings for national inspection professionals, agencies, as nodes in transnational networks, facilitate the diffusion of implementation practices across Europe' (Groenleer et al., 2010, pp.1226-8).

In an overall perspective, moreover, the modification in the distribution of roles between EU and national levels also needs to be seen in the context of policy areas in which classic 'enforcement' is not an option, namely the worlds of policy coordination and the European Semester, as well as the management of EU funds. In these cases, a stronger EU influence over national administrations has evolved in practice perhaps more than could have been expected in the context of the enforcement of EU law.

EU actions to harmonise national implementation and support capacity-building

EU common competency frameworks

The Commission has supported common competency frameworks in a growing number of sectors. These aim at ensuring common minimum capacities and practices while respecting national diversity.

An EU Competency Framework for the management and implementation of the European Regional Development Fund and the Cohesion Fund has existed since 2016, including a competency Self-Assessment Tool based on the Competency Framework, and a recommended training blueprint. These are expressly 'flexible and customizable, so that they apply to the different organisational structures in the Member States'.⁷

As part of internal market implementation, DG GROW (Internal Market, Industry, Entrepreneurship and SMEs) has created the European Competency Framework for public procurement professionals (*ProcurCompEU*), with a voluntary self-assessment tool and generic training curriculum to help contracting authorities, public procurement authorities and training organisations identify and address competences that require strengthening.

DG TAXUD has created the Customs & Tax EU Learning Portal, containing competency frameworks for customs officers (*CustCompEU*) and tax officers (*TaxComEU*). The customs dimension is less extensive, making available a EU Customs Training Curriculum and EU Customs Competency Framework for use by training providers in the Member States. The version for tax officers, introduced in 2019, goes much further, pursuing both harmonised training content and integrated administrative structures (see following section).

EU Agency programmes

A second dimension is the creation by EU Agencies of common training programmes in response to identified problems caused by different levels of competence and practice across the Member States.

- The European Maritime Safety Agency (EMSA) has created an Academy offering training for inspectors as well as guidance and best practices, and manages a Consultative Network for Technical Assistance (CNTA). In this framework, in view of growing recognition of the importance of harmonised training for Port State Control (Graziano et al., 2017), EMSA has developed a ‘harmonised Union scheme for the training and assessment of competences of port State control inspectors by Member States’.
- The European Union Aviation Safety Agency (EASA) has a Virtual Academy which provides harmonised courses for inspectors of National Aviation Authorities, in addition to technical training, as well as managing three EASA Community Networks.
- The European Railways Agency (ERA) has a Knowledge Hub including common training programmes.
- The 2019 revision of the European Fisheries Control Agency (EFCA) Regulation mandates the Agency ‘to contribute to the coordination of the training of inspectors and the exchange of experience between Member States’.
- The European Chemicals Agency (ECHA) hosts a Forum for Exchange of Information on Enforcement which organises enforcement projects and training for enforcement trainers.
- One of the tasks of the new European Labour Authority (ELA) is to ‘Support Member States with capacity building regarding the effective application and enforcement of relevant Union law.’ The creation of the agency was in part prompted by problems encountered in existing arrangements for information exchange and practical cooperation (including the Internal Market Information System (IMI)), some of which were related to a lack of trust and lack of mutual knowledge, as well as the underlying institutional diversity of national monitoring/enforcement systems (Čaněk et al., 2018).

General Food Law and the Official Controls Regulation (OCR)

The Official Controls Regulation (OCR) was revised in 2017 ‘to ensure a harmonised approach with regard to official controls and other official activities performed in view of ensuring the application of Union agri-food chain legislation’.

The 2014 horsemeat scandal (when horse DNA was found in beef lasagne in Ireland) occurred after the proposal was first presented in 2013 (as part of a package also including proposals on animal health, plant health and plant reproductive material) but had a strong impact on the legislative process.

The new OCR, however, did not in fact significantly change the formal distribution of tasks between the EU and the Member States. The Directorate for Health and Food Audits and Analysis of DG SANTE (formerly the Food and Veterinary Office) remains formally the ‘supervisor of the supervisors’ except for emergency and safeguard measures. Inspection of food and feed business operators in the EU Member States is still carried out by the national authorities; the controls conducted by the Commission inspectors are intended to check the national inspections.⁸ It is only in third countries that the direct inspection role belongs to the Commission inspectors.

As summed up by the Commission in its 2020 report, enforcement actions: ‘may range from contacts with the Member States’ authorities at appropriate levels aimed at ensuring the correct application of EU law up to the launching of EU Pilot exchanges and/or infringement proceedings in cases where there is a clear and sound legal basis, and where all other avenues to encourage compliance have been exhausted. In the food safety area, enforcement tools other than infringements also include the imposition of protective or safeguard measures. These can range from taking precautionary measures on the trade in and movements of animals, plants or food and feed products to adopting safeguard measures in accordance with the relevant legislation.’⁹

The key development in the revised OCR is the extension of the scope of harmonisation from only food law to almost the entire agri-food sector, and extending the responsibilities of competent authorities in areas such as food fraud and online enforcement (van der Meulen, 2019).

This extension made it possible to create European Union Reference Laboratories (EURLs) in these areas and to designate **European Union Reference Centres** to support capacity-building through technical expertise training courses. This has led, for example, to the creation of (as of mid-2021) three new EU Reference Centres for animal welfare (concerning pigs, poultry and ruminants/equines).

It also strengthens the formal obligations on Member States with regard to (horizontal) **administrative cooperation**, including definition of the actions that Competent Authorities are obliged to take following requests for assistance. The cases in which the Commission is required to coordinate administrative assistance and cooperation, and the actions that it can take in such circumstances, are also clarified.

The revised regulation emphasises the need for inspectors to receive appropriate **training** in order to ‘ensure that controls are carried out in a more uniform, objective and adequate manner in all Member States.’ It includes an Annex II on Training of Staff of the Competent Authorities.

Training of control staff was already foreseen in the 2004 OCR, which was the legal basis for the Better Training for Safer Food (BTSF) programme. This has since taken the form of a **BTSF Academy** which was taken over by the new European Health and Digital Executive Agency (HaDEA) on 1 April 2021.

Multilevel administration: design and evolution

The examples given in the previous section already suggest the kind of pressure that may explain why certain arrangements are chosen (in those relatively rare cases in which this starts from nothing), why they are adapted in certain directions rather than others, or how they evolve.

Comparative analysis of multilevel arrangements is not helped by the fact that the most visible form of change, namely the creation and adaptation of EU agencies, has largely been driven by specific crises, directly or indirectly, as well as by political pressures and institutional interests. The BSE (Mad Cows) episode led to the creation of the European Food Safety Authority (EFSA). The *Prestige* and *Erika* oil spill accidents brought about EMSA and also shaped the creation of EASA (which to some extent piggy-backed on EMSA given the happy absence of an air disaster). In the case of EASA, indeed, ‘policy makers were not aware of the strengths and weaknesses of different instruments nor of reforms of instruments (Schout, 2011 p.382). The SARS crisis made possible the establishment of European Centre for Disease Prevention and Control (ECDC). The primacy of crises as a driver of change has indeed continued. The economic and financial crises led to the creation of the European Supervisory Authorities (EBA, ESMA, EIOPA) and the COVID pandemic prompted the Commission to push for a strengthening of the mandates of the EMA and ECDC as well as creation of a European Health Emergency Preparedness and Response Authority (HERA).

Van Kreijl (2019) usefully summarises in three groups the various factors identified by analysts to explain choices to delegate tasks to either EU enforcement networks or EU agencies.

First, there are *functional* reasons. Delegation of powers is a means for national authorities to assure the credibility of commitments in the face of national interests that could undermine effectiveness. The choice between centralising powers in an EU actor or deepening horizontal networks can be seen to reflect the degree of heterogeneity among a policy's target actors (the supposition being that a network of national authorities would be favoured when there are a large number of locally operating actors, and an agency when there is a relatively small number of pan-European actors) as well as varying degrees of need to process information and reduce transaction costs.

Second, there are *political* rationales. Delegation of powers is an acceptable way to increase efficiency and to save money, so long as target actors are seen as pan-European. It will also be shaped by the particular character of distributional conflict among Member States.

Third, there are *contextual* factors. Institutional arrangements frequently develop on the basis of inherited structures, and are subject to incremental change. New steps are often driven by crises. Choices are also shaped by existing models or example regimes

All this has the 'potential' for a normative assessment of regimes, and could provide policy-makers with 'the opportunity to adapt their regime choice to the relevant contextual factors of a policy and its environment'. Yet, the question remains: 'when comparing multiple regimes, can we identify which rationales are necessary and sufficient conditions for a particular enforcement regime?' (Van Kreijl, 2019 p.457).

Few attempts have been made to offer systematic accounts of how to make the match between identified challenges (or 'complexities') and institutional capacities. Can one hope to provide any evidence-based arguments and advice as to 'what is most appropriate?' - or just 'what works?'

Schout and Blankesteyn (2020), defending the norm of 'administrative subsidiarity' and aiming to counter the risk of 'centralisation by default', emphasise the need for 'diagnoses of multilevel organisational structures' in order to design multilevel enforcement systems that do justice to both subsidiarity and interdependence.

Even if the reality is that decisions will continue to be shaped largely by political considerations, it is nonetheless necessary to make the attempt to give reasons in the interests of transparency. 'A methodology to evaluate and compare instruments is [...] important in view of looking beyond political fears and preferences for one type of instruments or another and to actually compare what the effects of changes have been.' (Schout, 2011 p.365).

Impact assessments

It is perhaps surprising that few academic studies refer to how such questions are actually dealt with in practice when the European Commission proposes options for adapting the EU's sectoral arrangements.

The introduction of Impact Assessments in the course of during the 2000s was a step forward. As noted in the evaluation of EU agencies conducted in 2009: 'European agencies have been created on a case by case basis through various mixes of political pressure.' '[T]he recent practice of impact assessment has considerably improved the transparency of decisions, especially in terms of justifying why a new agency is needed instead of something else; an issue which was usually not addressed in the previous waves of agency creation.' (Rambøll Management Euréval - Matrix, 2009).

Impact Assessment did introduce a requirement to justify institutional choices based on a

match between identified problem drivers and different options for EU intervention. This was done taking into account political and financial considerations. An archetypical example can be found in the 2010 impact assessment concerning Network Information Security (NIS) and the future of the European NIS Agency (ENISA):

‘When comparing the impacts of all five policy options for the organisational format of a modernised NIS Agency, options 1 and 2 have to be discarded because neither would allow the complex NIS problem to be addressed adequately at EU level. Options 3, 4 and 5, on the other hand, would enable the EU to address future NIS policy options appropriately. Options 4 and 5 seem, for the time being, over-ambitious, both as regards the political sensitivities of the majority of Member States and as regards the budget implications. Hence, option 3 appears to be the best option to address the seven NIS problems identified in the most efficient way.’¹⁰

The consultants in 2009 indeed questioned the degree to which political considerations were included in technical evaluations: ‘Assessment criteria are sometimes questionable; one of the criteria determining the best alternative option in the recent Impact Assessment of EASO is that of “political feasibility”. The evaluation team’s view is that impact assessments should feed the policy-making process with non political information.’ (Rambøll Management Euréval - Matrix, 2009).

The Commission itself had been urging rationalisation and systematisation of the emerging universe of EU agencies since 2002. The conclusions of the Inter-institutional Working Group on regulatory agencies in 2010 led to the adoption of an interinstitutional Common Approach, followed in 2012 by a Roadmap.

However, ‘the Common Approach has not significantly changed the institutional design choices by the European legislator; partly because it merely codifies existing practice, but partly also because it has not always been followed in the adoption or amendment of founding acts’. (Vos, 2018 p.70).

The European Court of Auditors, in its Special Report on EU Agencies published in November 2020, was critical of the Commission’s approach, suggesting that: ‘when the Commission proposes to set up a new agency, it does not always clearly consider the alternatives, including the option of the Commission carrying out the tasks envisaged, the option of intergovernmental cooperation or the option of adjusting the mission of an existing EU agency (European Court of Auditors, 2020).

The Commission replied that: ‘ Under the Common Approach, the decision to create a new agency should be based on an objective impact assessment of all relevant options. In line herewith, the Commission’s first option before proposing to set up a new agency is always that the Commission or an existing agency carries out the tasks envisaged. Only when this or other possible alternatives are not deemed to be the best option, establishing a decentralised agency can be considered.’ However, the question remains as to whether or not there is a clear analytical framework in which to assess these options.

Recent agency creations have been subject to criticisms, as in the initial negative opinion of the Regulatory Scrutiny Board (February 2018) on the IA Report for the European Labour Authority:

- (1) The report does not clearly define or explain the scope of the initiative, nor does it develop the rationale for it.**
- (2) The analysis does not sufficiently explain how it arrived at the preferred option and why it discarded some measures of other options.**
- (3) The report does not differentiate between responsibilities transferred to the ELA and new competence for enforcement.**

Proposals for significant adaptations of agency powers are not always seen to be based in systematic evaluations, as in the legal assessment for the EP LIBE Committee of the European Commission's proposal of 9 December 2020 to strengthen Europol's mandate: 'this patchwork approach is neither complete nor satisfactory. The impact and efficiency of Europol and its working practices, as well as any shortcomings in Europol's mandate, ought to have been identified through a full evaluation prior to the adoption of the proposal, particularly since the reforms are so extensive.' (Vavoula & Mitsilegas, 2021).

This may be part of a broader pattern. The Regulatory Scrutiny Board reported a general trend towards a lower quality of impact assessments in 2020, partly because of time pressure. One issue highlighted was that 'Options tended to focus only on the preferred (political) choice, without including alternate ones supported by the main stakeholder groups.' (Regulatory Scrutiny Board, 2021).

Another, perhaps inherent, limitation of impact assessment is the fact that IA reports do not adequately incorporate evaluation of required capacities for implementation.

Some more comprehensive framework or methodology is therefore desirable when it comes to defining arrangements and capacities for effective multilevel management.

Towards greater policy integration?

One such avenue, already being explored, is offered by *policy integration*.

This approach is very much in the spirit of the Sustainable Development Goals (SDGs). The SDGs have themselves started to be incorporated into EU discourse as an overarching and unchallengeable framework within which to facilitate intra-EU agreement as to the EU actions that are able to achieve these goals – including building of the necessary institutional capacity.

The starting point is agreement on fundamental principles and goals. Integrated policy design means applying a logical (and partially depoliticised) framework of analysis as to what needs to be done at the different levels of governance, including both vertical and horizontal forms of coordination.

A very helpful summary of this approach for present purposes is given by Domorenok, Graziano and Polverari (Domorenok et al., 2021) based on a framework elaborated by the Netherlands Economic Institute, which has been widely used for assessing administrative capacity in cohesion policy.¹¹

Table 3
The dimensions and measure of administrative capacity for integrated policy designs

Levels	Integration criteria	Indicators
Systems and tools	Comprehensive long-term policy framework, establishing coherent policy goals and consistent policy instruments	<ul style="list-style-type: none"> • Dedicated cross-sectoral programmes, plans or other instruments establishing coherent cross-sectoral policy goals and measures. • Thematic templates operationalising the policy integration within the administration and across jurisdictions. • Interoperable systems (management/accounting/monitoring) across the administration(s) involved covering the sectors included in the strategy.
Organisational structures	Mechanisms of vertical and horizontal coordination allowing for complementarity and synergies within and between administrations concerned	<ul style="list-style-type: none"> • Coordination bodies/procedures ensuring information exchange, political and administrative support to cross-sectoral action. • Organisational charts clearly defining complementary responsibilities and functions.
Human resources	Qualified staff capable of designing and managing cross-sectoral integrated strategies	<ul style="list-style-type: none"> • Targeted training developing cross-sectoral skills and coordination techniques. • Collaborative initiatives encouraging change in mind-sets and administrative practices.

Reproduced from Ekaterina Domorenok, Paolo Graziano & Laura Polverari (2021), 'Policy integration, policy design and administrative capacities. Evidence from EU cohesion policy', *Policy and Society*, 40:1, 58-78, Figure 1. Source: Own [Domorenok et al] elaboration based on NEI Regional and Urban Development (2002)

The challenge is to move from an 'administrative gap' scenario to a situation of 'full ownership' which is in place when the administration demonstrates extensive knowledge and motivation to carry out capacity-building reforms related to the integrated policy design, being also encouraged by the high general political salience of the issue. Domorenok et al 'suggest that a mix of knowledge, political and financial resources can become a powerful driver for the creation of specific administrative capacities required by integrated policy designs, which are promoted by supranational policy agendas without involving any steering mechanism' (Domorenok et al., 2021 pp. 63,74).

Asylum and Migration Management

The integrated policy approach is rather closely followed in the 2020 proposal for a Regulation on asylum and migration management (RAMM)¹² that is the heart of the new Pact on Asylum and Migration:

'This Regulation sets out a common framework that seeks to recognise that the challenge of irregular arrivals of migrants in the Union should not have to be assumed by individual Member States alone, but by the Union as a whole. The Regulation contributes to the comprehensive approach by promoting integrated policy-making within its field of application.'

'This proposal puts in place a common framework for asylum and migration management at EU level as a key contribution to the comprehensive approach and seeks to promote mutual trust between the Member States. Based on the overarching principles of solidarity and a fair sharing of responsibility,'

Article 4 Principle of integrated policy-making

1. The Union and Member States shall ensure coherence of asylum and migration management policies, including both the internal and external components of those policies.
2. The Union and Member States acting within their respective competencies shall be responsible for the implementation of the asylum and migration management policies.
3. Member States, with the support of Union Agencies, shall ensure that they have the capacity to effectively implement asylum and migration management policies, taking into account the comprehensive approach [...], including the necessary human and financial resources and infrastructure.

The RAMM Proposal is not accompanied by an Impact Assessment but by an 'Analysis' that is emphatically based on the 'comprehensive approach'.¹³

Just as impact assessment did not end the predominance of political considerations, however, the reality here is of an inevitable clash between a principled and rational approach to integrated policy design and the fact that migration is one of the most politically sensitive and divisive policy areas for the EU.

Towards deeper multilevel administration?

There are also, of course, limitations on the ability of the EU to influence national administrative capacities. Public administration as such is formally held to be a sovereign preserve of the Member States. 'The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions...' (Art. 4(2) TFEU).

It is 'administrative cooperation', rather than the quality of national public administration as such, that is referred to in the treaty, and even that is explicitly only a supporting competence of the EU (Art. 6 TFEU).

However, the article on administrative cooperation introduced by the Lisbon Treaty does state that: 'Effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest.' It also provides that 'the Union may support the efforts of Member States to improve their administrative capacity to implement Union law' (Art. 197 TFEU). It is in this spirit that the Commission can propose the creation of integrated multilevel administrative structures when it comes to implementation of law.

TaxComEU

A far-reaching competency framework for tax officers (TaxComEU) is now offered by the Commission (DG TAXUD).¹⁴ The motivation is clearly stated in the National Adaptation guide. 'Today, the standards, skillset, and delivery approaches for the implementation of EU law and policies vary greatly across Member State (MS) Tax Administrations. Differences in people development approaches and employee performance standards make it difficult to share best practices, transfer knowledge and develop skills between Tax Administrations and their staff and amongst Tax Administrations throughout the EU. This represents a significant impediment that impacts on the overall effectiveness and efficiency of TaxComEU and highlights the need for a mechanism that supports the delivery of

consistent high performance across TaxCompeu Administrations.’

The new approach goes beyond harmonised, authoritative, compliance guidance and explicitly pursues a formal scheme of multilevel (‘integrated’) administration in practice. The aim is to secure ‘as much alignment as possible between their national frameworks and the TaxCompeu Framework’.

Sovereign sensitivities are recognised. The aim is ‘to improve the consistency of tax operating models, whilst fully respecting national competencies, legislative and administrative diversity.’ ‘The focal idea behind national adoption of the TaxCompeu is not for it to replace the existing national framework and organisational structure, but rather that the current national practices are *enriched* with materials, tools and methodologies found in the TaxCompeu, so that a new, *integrated* version of both frameworks (national and EU) results from the process’¹⁵ (emphasis added).

Strategic Partnership Agreements are to be signed between the Commission and national authorities. DG TAXUD is ‘responsible to provide implementation support via the TaxCompeu National Adoption support initiatives. Moreover, responsible to drive, oversee and perform quality evaluation on current and future relative initiatives.’ Member States formally commit themselves to introducing the agreed organisational and human resource changes in their national systems.

Public Administration, the European Semester and the national Recovery Plans

Yet the impact of the EU on public administrations in themselves has perhaps been strongest where EU goals are not primarily a matter of implementing common rules. The most important cases have been the EU structural funds and cohesion policy, and economic policy coordination in the European Semester.

These policy areas too can be seen as arrangements for multilevel administration (and governance), and can be characterised in terms of the vertical roles and relationships involved, and the patterns of horizontal cooperation. Moreover, one can observe analogous trends to those identified in the previous section as efforts have been made to adjust these arrangements in order to make them work better, in the face of limited, and declining, rates of national implementation of the Recommendations.

Some of these changes involve reinforcement of *EU roles* (although not of EU rules):

- formalising multi level *contractual relationships* between the EU and national authorities (such as the partnership agreements between the Commission and Member States introduced by the 2013 reform of cohesion policy);
- *linking EU funding* and technical assistance to implementation of policy recommendations (as very clearly stated by the European Council in July 2020).

The national Recovery Plans approved in 2021 mark a new stage in applying these ‘harder’ kinds of vertical mechanism, as well as a certain strengthening of scrutiny and political pressure from the EU level through the European Parliament.

In two other respects, national ownership and *public administration reform*, there is also a somewhat unclear trend, or ambition, in the direction of what one might call ‘*internalising*’ the multilevel nature of arrangements. There is of course nothing new in the idea that individual actors come to follow a ‘logic of appropriateness’ as a result of interaction in a particular normative context, nor in the fact that cooperation processes may produce socialisation effects

and norm diffusion. The point is whether or not there comes to be an acceptance that interests of Member States (and of national administrations) are ‘naturally’ intertwined, and partly coincident, with those of the EU.

National ownership of reforms as an EU interest

‘Ownership’ became a new theme in economic governance as the EU moved away from the first wave of attempts at ‘naming and shaming’ from above, with the 2005 reform of the Lisbon Strategy and the introduction of National Reform Programmes.

It has becoming increasingly clear that successful implementation of reforms (understood as national responses to EU policy recommendations) requires a significant degree of national ownership.

‘The incentive to reform generated by international institutions is helpful, but rarely sufficient in itself to generate political support of the government in office. International pressure might indeed facilitate the domestic decision-making process, especially in times of economic downturn, but its ability to enforce reforms upon governments without ownership is limited.’ (DG ECFIN, 2020)

Helping to promote national ownership of reforms is also in fact being seen as an EU role. One of the missions of the European Semester officers (ESOs) posted by the Commission in the Member States has indeed been that of helping to build national ownership of the European Semester (Munta, 2020).

This often seems to be understood to mean that national authorities should conclude that a certain course of action recommended by the EU is likely to produce benefits for them and is thus in their own interest. Yet in a broader perspective it also implies, and requires, acceptance that the two kinds of interests are in fact interwoven as part of a multilevel system. As formulated in the preamble to Country-Specific Recommendations, a Member State should follow these recommendations not only because of ‘their relevance for sustainable fiscal and socioeconomic policy in [...] but also the extent to which they comply with Union rules and guidance, given the need to strengthen the Union’s overall economic governance by providing Union-level input into future national decisions’.¹⁶

This leads to quite new kinds of challenge for EU governance when it comes to EU policies and goals more broadly, notably in economic policy coordination. As formulated by Brigid Laffan: ‘The goal is to make the multi-level system work in ways that will be perceived by Europe’s citizens as legitimate and accountable. This necessitates enriching the quality of politics at EU level and bringing ‘outside’ views into the domestic. These views are no longer foreign but not domestic either.’¹⁷

Public administration as a common concern

This kind of interweaving of EU and national interests as part of the evolution of multilevel arrangements has emerged, and has been promoted, with regard to public administration more generally. The introduction of new frameworks to strengthen administrative cooperation among the Member States, with a view to effective operation of the internal market, more or less coincided with the 1993 ‘Copenhagen criteria’ for accession. These included political criteria, economic criteria, and *administrative and institutional capacity* to effectively implement the *acquis* and ability to take on the obligations of membership. These forms of support then merged with the cohesion programmes that had already begun in the late 1980s.

Looking back over 20 years of cohesion policy in 2008 the Commissioner for Regional Policy herself summed up the vertical and horizontal dimensions of this effect, as well as the indirect impact on the quality of administration:

‘Cohesion Policy’s added value goes beyond investment in growth and jobs. Through its unique model of multi-level governance it involves local and regional actors in the policy design and delivery, bringing in more efficiency and local knowledge. It ‘levers-in’ and safeguards compliance with other Community policies – be it in the field of state aids, environment, transport, support for innovation or the information society. It works as a ‘Trojan horse’ to improve and modernise public administrations, to enhance transparency, and to foster good governance. Last not least, it makes people work together through numerous cross-border and transnational programmes and networks.’ (emphases added) (Hübner, 2008)

Administrative Capacity-Building has since become important, and more explicit, as part of the EU’s Structural Funds. Assistance from the European Social Fund and the European Regional Development Fund in 2014-2020 thus included a Thematic Objective on ‘enhancing institutional capacity of public authorities and stakeholders and efficient public administration’. The Commission has offered, for example, a Quality of Public Administration Toolbox,¹⁸ and a Practical Toolkit with which ‘to provide inspiration for Member State administrations seeking to develop roadmaps for building their own administrative capacities in order to facilitate the programme implementation and to encourage good practices.’¹⁹

Yet public administration reform as a value in itself has also been covered in Country-Specific Recommendations ever since these were introduced in 2011, without any explicit linkage to a country’s capacity to implement EU policies or manage EU funds.

The linkage to funding in the Recovery process has further consolidated this approach. Under the 2021 Regulation establishing the Recovery and Resilience Facility, the ‘economic, social and institutional resilience of the Member State concerned’, is effectively treated as a matter of common concern.²⁰ In order to assist in drawing up appropriate national plans, Member States were offered detailed guidance that included ‘improving the quality and effectiveness of public administration’ and templates in the ‘Component: A public administration fit for the future’.²¹

Conclusions

EU policies are implemented through a wide variety of multilevel arrangements that have long gone beyond the classic assumption of EU adoption of rules that are then applied by the Member States. Within the general setting of ‘multilevel governance’, in which public and non-state actors at all levels play their parts in EU processes, particular policy areas are managed around arrangements for structured interaction between EU and national authorities that constitute forms of ‘multilevel administration’ (MLA).

These arrangements may be characterised in terms of the different kinds and combinations of vertical and horizontal coordination mechanisms that are involved. In a few cases, EU-level actors have acquired strong and direct powers. In most cases, there is a combination of hard and soft approaches; the multilevel relationship is more one of EU support for harmonised implementation and deeper administration cooperation, as well as the creation of pressures and incentives on Member States to move in common directions.

Given the high degree of interdependence between Member States, and the extent of practical integration between EU and national levels of responsibility, the effectiveness of policy implementation in each case depends on the adequacy of the arrangements as a whole as much as on the resources, commitment and governance capacity on the part of the individual EU, national and sub-state bodies involved.

This paper has reviewed trends in the evolution of MLA arrangements in the EU, as well as the ways in which decisions are taken regarding their design and adaptation. Decisions are strongly

shaped by political considerations and particular interests, and tend not to be openly debated within an overarching analytical framework in which multilevel capacities are matched to needs.

This is not only problematic in terms of the ability to deliver results. That is, effective policy implementation depends in large part on the degree of ‘match’ between the institutional capacity of MLA arrangements and the nature of policy-management challenges that can be foreseen in the sector concerned.

It is also important for political reasons, as well as for the democratic quality of EU governance, especially since these processes of MLA impinge on domains, including public administration in itself, that are held to be the sovereign preserve of the Member States. Evolving multilevel arrangements are not always adequately addressed in terms of formal judicial and political accountability (Scholten et al., 2017).

Yet part of the issue is the way in which the evolution of multilevel arrangements is managed in practice. By way of example, the point is well made with regard to how risk analysis has been used to bring about a de facto strengthening of EU roles in arrangements for border controls. ‘Rather than articulating border control decisions as technocratic ‘self-evident’ automatism based on ‘neutral’ actuarial calculations done in Brussels, unrealistic and undemocratic control expectations might be better countered if the political choices behind regulatory applications of risk analysis were openly debated as matters of European multi-level governance.’ (Paul, 2017 p.704).

Broader frameworks are available for integrated policy design of multilevel arrangements, as well as for open debate over implementation responsibilities. These could be used more systematically and assertively (in many cases in the global perspective of the Sustainable Development Goals) as a means to help depoliticise policy debate, and to encourage public discussion of multilevel arrangements that are tailored to identified functional needs in order to achieve common goals. This will require investment in techniques of analysis and communication, as well as political leadership, at all levels.

In order to achieve greater legitimacy, MLA arrangements in the EU need first to be designed in such a way ‘that national officials see themselves as European public managers and not only as national negotiators’ (Schout & Blankesteyn, 2020). In turn, public acceptance of these arrangements will be facilitated if those national officials themselves explain and communicate this vision of their own roles, especially since the image of ‘strong Member States’ may be ambiguous in the present EU context.

Proposals to reinforce policy integration and multilevel administration can run into national sensitivities within Europe. As expressed by one politician in 2021: ‘it is high time that the people of Europe express their views: do they want to be the subjects of an empire that advances its own political agenda in the name of artificially created groups, or do they want to belong to a strong EU built on strong member states, a Union that respects the division of competencies and national identity?’²² However, multilevel administration is quite compatible with the positive view that: ‘A strong EU consists of strong Member States. These Member States bear the responsibility for the implementation and enforcement of EU law (good governance). Democratic, fair and effective public administration instils popular trust in government institutions, which is essential to the proper functioning of the Union and society as a whole.’²³ How the EU and the Member States come together is the key to making European policies work.

References

- Abbott, K. W., Keohane, R. O., Moravcsik, A., Slaughter, A.-M., & Snidal, D. (2000). The Concept of Legalization. *International Organization*, 54(3), 401–419. <https://doi.org/10.1162/002081800551271>
- Bocquillon, P., Brooks, E., & Maltby, T. (2020). Speak softly and carry a big stick: Hardening soft governance in EU energy and health policies. *Journal of Environmental Policy & Planning*, 22(6), 843–856. <https://doi.org/10.1080/1523908X.2020.1792860>
- Börzel, T. A., & Heidbreder, E. G. (2017). Enforcement and compliance. In Harlow, C., Leino-Sandberg, P. & della Cananea, G. (eds.) *Research handbook on EU administrative law* (pp. 241–262). Edward Elgar Publishing.
- Čaněk, M., Kall, K., Lillie, N., Wallace, A., & Heidinger, B. (2018). *Transnational Cooperation among Labour Regulation Enforcement Agencies in Europe: Challenges and Opportunities Related to the Posting of Workers*. https://www.researchgate.net/publication/325013247_Transnational_Cooperation_among_Labour_Regulation_Enforcement_Agencies_in_Europe_Challenges_and_Opportunities_Related_to_the_Posting_of_Workers
- Cseres, K., & Outhuijse, A. (2017). Parallel enforcement and accountability: The case of EU competition law. In M. Scholten & M. Luchtman, *Law Enforcement by EU Authorities* (pp. 82–114). Edward Elgar Publishing. <https://doi.org/10.4337/9781786434630.00010>
- De Búrca, G., & Scott, J. (2006). *Law and new governance in the EU and the US*. Hart. <http://site.ebrary.com/id/10276098>
- DG ECFIN (European Commission, DG Economic and Financial Affairs). (2020). *Understanding the Political Economy of Reforms: Evidence from the EU. Technical note for the Eurogroup*.
- Domorenok, E., Graziano, P., & Polverari, L. (2021). Policy integration, policy design and administrative capacities. Evidence from EU cohesion policy. *Policy and Society*, 40(1), 58–78. <https://doi.org/10.1080/14494035.2021.1930697>
- Eliantonio, M., & Cacciatore, F. (2021). When the EU takes the field. Innovative forms of regulatory enforcement in the fisheries sector. *Journal of European Integration*, 1–18. <https://doi.org/10.1080/07036337.2021.1910253>
- European Court of Auditors. (2020). *Future of EU agencies – Potential for more flexibility and cooperation* (Special Report No. 2020/22).
- Graziano, A., Schröder-Hinrichs, J.-U., & Ölcer, A. I. (2017). After 40 years of regional and coordinated ship safety inspections: Destination reached or new point of departure? *Ocean Engineering*, 143, 217–226. <https://doi.org/10.1016/j.oceaneng.2017.06.050>
- Groenleer, M., Kaeding, M., & Versluis, E. (2010). Regulatory governance through agencies of the European Union? The role of the European agencies for maritime and aviation safety in the implementation of European transport legislation. *Journal of European Public Policy*, 17(8), 1212–1230. <https://doi.org/10.1080/13501763.2010.513577>
- Hartlapp, M., & Heidbreder, E. G. (2018). Mending the hole in multilevel implementation: Administrative cooperation related to worker mobility. *Governance*, 31(1), 27–43. <https://doi.org/10.1111/gove.12279>
- Heidbreder, E. G. (2017). Strategies in multilevel policy implementation: Moving beyond the limited focus on compliance. *Journal of European Public Policy*, 24(9), 1367–1384. <https://doi.org/10.1080/13501763.2017.1314540>
- Hooghe, L., & Marks, G. (2003). Unraveling the Central State, but How? Types of Multi-level Governance. *American Political Science Review*, 97(02). <https://doi.org/10.1017/S0003055403000649>
- Hübner, D. (2008). Regions matter. *Inforegio Panorama*, 26, 2–5.
- Knodt, M., Ringel, M., & Müller, R. (2020). 'Harder' soft governance in the European Energy Union. *Journal of Environmental Policy & Planning*, 22(6), 787–800. <https://doi.org/10.1080/1523908X.2020.1781604>
- Munta, M. (2020). Building national ownership of the European Semester: The role of European Semester officers. *European Politics and Society*, 21(1), 36–52. <https://doi.org/10.1080/23745118.2019.1601323>
- Ongaro, E. (2020). Multi-Level Governance and Public Administration. In E. Ongaro, *Oxford Research Encyclopedia of Politics*. Oxford University Press. <https://doi.org/10.1093/acrefore/9780190228637.013.1409>
- Rambøll ManagementEuréval - Matrix. (2009). *Evaluation of the EU decentralised agencies in 2009. Final Report Volume I Synthesis and prospects*.
- Regulatory Scrutiny Board. (2021). *Annual Report 2020*.

- https://ec.europa.eu/info/sites/default/files/rsb_report_2020_en_1.pdf
- Saurugger, S., & Terpan, F. (2021). Normative transformations in the European Union: On hardening and softening law. *West European Politics*, 44(1), 1–20. <https://doi.org/10.1080/01402382.2020.1762440>
- Scholten, M. (2017). Mind the trend! Enforcement of EU law has been moving to 'Brussels.' *Journal of European Public Policy*, 24(9), 1348–1366. <https://doi.org/10.1080/13501763.2017.1314538>
- Scholten, M., Maggetti, M., & Versluis, E. (2017). Political and judicial accountability in shared enforcement in the EU. In M. Scholten & M. Luchtman, *Law Enforcement by EU Authorities* (pp. 353–376). Edward Elgar Publishing. <https://doi.org/10.4337/9781786434630.00020>
- Schout, A. (2011). Assessing the Added Value of an EU Agency for Aviation Safety. *Journal of Public Policy*, 31(3), 363–384. <https://doi.org/10.1017/S0143814X11000110>
- Schout, A., & Blankesteyn, I. (2020). From legal to administrative subsidiarity. Diagnosing enforcement of EU border control (Clingendael Report).
- Ştefan, O. (2017). Soft Law and the Enforcement of EU Law. In *The Enforcement of EU Law and Values*. Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780198746560.003.0012>
- Terpan, F. (2015). Soft Law in the European Union—The Changing Nature of EU Law. *European Law Journal*, 21(1), 68–96.
- Treib, O., Bähr, H., & Falkner, G. (2007). Modes of governance: Towards a conceptual clarification. *Journal of European Public Policy*, 14(1), 1–20. <https://doi.org/10.1080/135017606061071406>
- Trondal, J., & Bauer, M. W. (2017). Conceptualizing the European multilevel administrative order: Capturing variation in the European administrative system. *European Political Science Review*, 9(1), 73–94. <https://doi.org/10.1017/S1755773915000223>
- Trubek, D. M., & Trubek, L. G. (2007). New governance &(and) legal regulation: Complementarity, rivalry, and transformation. *Columbia Journal of European Law*, 13(3), 539–564.
- Van Kreijl, L. (2019). Towards a Comprehensive Framework for Understanding EU Enforcement Regimes. *European Journal of Risk Regulation*, 10(3), 439–457. <https://doi.org/10.1017/err.2019.52>
- van der Meulen, B. M. J. (2019). Enforcement of EU agri-food law: Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products. *ERA Forum*, 19(4), 623–641. <https://doi.org/10.1007/s12027-018-0532-5>
- Vavoula, N., & Mitsilegas, V. (2021). *Strengthening Europol's mandate. A legal assessment of the Commission's proposal to amend the Europol Regulation*. European Parliament, LIBE Committee. [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694200/IPOL_STU\(2021\)694200_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694200/IPOL_STU(2021)694200_EN.pdf)
- Vos, E. (2018). *EU agencies, common approach and parliamentary scrutiny*. Publications Office. <https://data.europa.eu/doi/10.2861/656418>

Notes

- ¹ Communication from the Commission, *Long term action plan for better implementation and enforcement of single market rules* COM(2020) 94 final, 10 March 2020.
- ² European Climate Pact: https://ec.europa.eu/clima/policies/eu-climate-action/pact_en.
- ³ <https://op.europa.eu/en/publication-detail/-/publication/4e6ecfb6-471e-4108-9c7d-90cb1c3096af/language-en>.
- ⁴ https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-action-plan_en.
- ⁵ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action OJ L 328 of 21 December 2018.
- ⁶ <https://ec.europa.eu/jrc/en/networks-bureaus>. Last consulted 7 October 2021.
- ⁷ https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/competency/
- ⁸ Corini et al. (2017 pp.206, 217) point out that, ‘although the Commission’s experts’ controls are, in principle, limited to the verification of enforcement work of the Competent Authorities (indirect enforcement), de facto enforcement vis-à-vis companies (direct enforcement) may take place.’ One should distinguish between what are formally recognised as enforcement actions (and can be challenged), and ways in which the Commission can effectively overrule national Competent Authorities without having formally (legally) taken any action. This indeed raises issues with regard to accountability.
- ⁹ Report from the Commission to the European Parliament and the Council on the overall operation of official controls performed in Member States (2017-2018) to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products. COM(2020) 756 final of 24 November 2020.
- ¹⁰ Commission Staff Working Document Summary of the Impact Assessment accompanying document to the Proposal for a Regulation of the European Parliament and the Council concerning the European Network and Information Security Agency (ENISA), SEC(2010) 1127, 30 September 2010.
- ¹¹ NEI Regional and Urban Development (2002). Key indicators for candidate countries to effectively manage the structural funds. Final Report. Rotterdam.
- ¹² COM(2020) 610 final of 23 September 2020.
- ¹³ SWD(2020) 207 final of 23 September 2020. As described in Council Conclusions of 12 May 2014: ‘The comprehensive approach is both a general working method and a set of concrete measures and processes to improve how the EU, based on a common strategic vision and drawing on its wide array of existing tools and instruments, collectively can develop, embed and deliver more coherent and more effective policies, working practices, actions and results.’
- ¹⁴ https://ec.europa.eu/taxation_customs/taxation-1/eu-training-version/taxcompeu-eu-competency-frameworktaxation_en.
- ¹⁵ TaxCompeu National Adoption Guide p.5.
- ¹⁶ Council Recommendation of 13 July 2018 on the 2018 National Reform Programme of Ireland and delivering a Council opinion on the 2018 Stability Programme of Ireland. OJ C 320/27 of 10 September 2018.
- ¹⁷ Brigid Laffan, *The Fourth Pillar of a Genuine EMU Democratic Legitimacy and Accountability*. Paper presented to the Ministers of European Affairs, Dublin, January 2013.
- ¹⁸ <https://ec.europa.eu/esf/main.jsp?catId=3&langId=en&keywords=&langSel=&pubType=434>.
- ¹⁹ https://ec.europa.eu/regional_policy/en/information/publications/guides/2020/roadmaps-for-administrativecapacity-building-practical-toolkit.
- ²⁰ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57 of 18 February 2021.
- ²¹ Commission Staff Working Document, *Guidance to Member States Recovery and Resilience Plans*, SWD(2020) 205 final PART 1 / 2 , 17 September 2020.
- ²² Hungarian Justice Minister Judit Vargas in *EUObserver* 6 August 2021, Blurred lines - the case of the ‘political EU Commission’.
- ²³ <https://www.permanentrepresentations.nl/documents/publications/2019/05/01/dutch-policy-paper---eugovernance-towards-a-future-proof-eu-based-on-values-and-focused-on-results>.