

# *Introduction to the Symposium on Institutional Innovations in the Enforcement of EU Law and Policies*

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Enforcement of EU laws is crucial for the successful implementation of EU policies. However, how should enforcement be organised? At which level, and by what type of institutions and what implications does the choice for a particular institutional strategy have in terms of legitimacy, organisation of controls and operation of enforcement? These questions have hardly been investigated but are highly relevant for researchers and society. The European Commission has been in search of ways to organise effective application, implementation and enforcement, which at this moment “remains a challenge”.<sup>1</sup> This special issue focuses on the institutional innovations in the field of EU law enforcement. It aims at promoting research in the so far understudied field of enforcement of EU laws and policies. Its contributions address the questions ranging from how enforcement has been organised in EU policy fields and what we could learn for future design of enforcement institutions, with a special focus on the issues of effectiveness and the rule of law. It hopes to provide some food for thought and discussion for further research and implementation practice.

Law enforcement has long been regarded an exclusive competence of the EU Member States. This has changed in recent years, partly because of major international crises and various non-compliance challenges at the national level. Today, nine EU enforcement authorities (EEAs) have received direct enforcement powers to monitor compliance with law, investigate and sanction for non-compliance.<sup>2</sup> These EEAs, including the Directorate-General for Competition, the European Central Bank and a number of EU

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<sup>1</sup> European Commission, “EU law: Better results through better application” (2017/C 18/02), 2017; Report from the Commission “Monitoring the application of European Union Law, 2016 Annual report”, COM (2017) 370 final.

<sup>2</sup> M Scholten and M Luchtman (eds), *Law Enforcement by EU Authorities. Political and Judicial Accountability in Shared Enforcement* (Edward Elgar 2017).

agencies, work together with national authorities in such sectors as finance, banking, aviation, food, fisheries, financial fraud, competition law and pharmaceuticals. Furthermore, many EU enforcement networks, such as European Competition Network and Consumer Protection Cooperation Network, have been created to promote enforcement of EU policies by national authorities. A number of additional (ad hoc) institutional configurations exist, too. These include joint supervisory teams and transnational bodies, such as the recently created European Public Prosecutor's Office (EPPO). Most of these institutional innovations have been created in the last 10–15 years without clear policy design or theory behind opting for one or another type of institutional cooperation in specific fields. How can we explain the creation of various types of institutions in different sectors? Why do specific sectors receive strong EU enforcement authorities, while this is not the case with others? How can we ensure that and measure when enforcement by specific types of institution has been effective? What challenges do specific types of enforcement institutions bring in terms of controls (accountability and protection of fundamental rights)? What can we learn for the future design of enforcement institutions in specific sectors in the EU?

This special issue gathers experts from different disciplines to contribute to building common knowledge by providing (comparative) case studies and the much-needed assessment frameworks. It aims at promoting the scarce knowledge and data, which could facilitate best practices and establishing design principles. Its articles are useful for researchers, practitioners and teachers of the courses related to EU policies, EU law, designing institutions and protection of core values of democracy and the rule of law in the EU. Ultimately, it takes a crucial step towards building a theory on enforcement of EU laws and policies.

The special issue starts with two contributions focusing on possible explanations of why and when specific types of enforcement institutions have been selected. Based on merging legal and political science studies, Laurens van Kreijl offers a framework to investigate and understand the EU legislator's choice between EU agency, EU network and a national enforcement authority. In addition to the conceptual innovation of merging explanatory prisms from different disciplines, he offers two illustrations – the cases of Consumer Protection Cooperation network and Environmental Crimes Directive – showing how this framework could be applied by researchers and practitioners assessing and designing enforcement regimes.

Martino Maggetti takes an opposite, “negative case” of enforcement to discuss the question of when certain institutions can be selected to enforce EU laws and policies, or not. He investigates the case of Energy Regulation and the power of business groups to “block” the growth of enforcement power of the Agency for the Cooperation of Energy Regulators (ACER). What is interesting with this specific agency is that, given the theoretical conditions that we expect to bring about enforcement powers (as is the case with other agencies, like the European Securities and Markets Authority), it has not been attributed such competences. Maggetti argues that the differences in the attribution of enforcement powers should depend on different underlying factors, and, as is the case with ACER, on the role of interest groups. His study is relevant insofar as it addresses, on the one hand, the little

explored issue of the relationship between interest groups and agencies, and, on the other, it considers the latter as peculiar political arenas, where different interests are in play and the scope of enforcement roles and competences may be shaped by their different negotiating powers. The paper also provides a key contribution in terms of the “spillover” effect between the regulatory and enforcement powers, as it shows that this is not always ensured even when relevant conditions are present, unless other underlying factors do not contribute to weaken the effect itself.

Interrelated with the question of the creation of an EU enforcement authority is the issue of effectiveness. As Martinius and Mastenbroek state, “European Administrative Networks are expected to strengthen the national enforcement of European legislation”. However, how is this so and how can we measure effectiveness of enforcement institutions? Martinius and Mastenbroek offer an evaluation framework to assess European administrative networks (EANs) on their potential to spur innovative collaboration. Combining the literatures on collaborative innovation and on European Administrative Networks, they develop an evaluative framework containing the conditions favourable to effective joint problem-solving in EANs. They apply this framework to the European Network of Prosecutors for the Environment (ENPE). In so doing, they incorporate their respondents’ qualitative perceptions of network effects, and provide for at least three contributions to the ongoing debate. First, they aim to provide a stepping stone for researchers intending to evaluate EAN effectiveness, which, as seen, is a key question. Second, by designing and applying an evaluative framework to a specific EAN, they provide empirical insights into EAN impact, which are still limited although much needed. Third, and drawing on such evidence, from a practical perspective they provide ENPE members with information on how to achieve collaborative innovation in enforcement practices.

Cacciatore focuses on the effectiveness and governance aspects in enforcement of the European System of Financial Supervision. Through quantitative data and qualitative surveys, and considering the case of Italian NCAs, she shows that both degrees of organisational change and perceptions of the concrete effectiveness and legitimacy of the new EU governance may vary. This is interrelated with different patterns of networked enforcement governance emerging in the subfields of financial surveillance (banking, securities and markets and insurance) and, namely, to its level of complexity and involved actors’ perceived legitimacy.

The special issues concludes with two contributions addressing the question of implications of the proliferation of EU enforcement authorities for public controls and accountability over the executive branch in the EU. Cacciatore and Eliantonio consider the innovative enforcement governance within the fisheries sector, namely networked enforcement through data sharing between Member States and the EU. They focus on the analysis of corresponding political and judicial accountability mechanisms, necessary to legitimate those enforcement activities. They find out that networked enforcement is prevalent in fisheries’ data sharing, yet the mechanisms of both political and judicial accountability have not been able to keep up with this novel institutional arrangement. The ensuing question is how this scenario can be

challenged in the future and how different mechanisms of accountability can be designed to control these forms of networked enforcement.

Scholten argues that the proliferation of the shared administration in the EU affects the organisation of controls for such a system. A number of developments – proliferation of enforcement, proliferation of mixed forms of decision-making, technological changes – require the establishment of not only shared types of decision-making procedures but also merge the systems of controls belonging to different jurisdictions, types and concepts of control. Based on merging literature streams from law and public administration, she offers her first observations on what issues could be connected in future research and legislative design. She illustrates the added value of connecting with an example of the Single Supervisory Mechanism. She argues for connecting, aligning and making interplay between relevant concepts, institutions, procedures and scopes of different types of control belonging to the many jurisdictions whose actors are involved in the executing of shared tasks in the EU.