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Monitoring and Enforcement in the European Union: towards a multilevel subsidiarity-based independent governance model

The case of the Stability and Growth Pact

Whereas research has devoted considerable attention to the transposition and implementation of EU rules, literature on enforcement has been lacking. Even though studies have noted the multilevel dimension of enforcement, they have not yet arrived at a model for studying enforcement regimes in the EU's multilevel governance system. This article elaborates and tests a public administration approach to enforcement and aims to assess whether an over-arching and generalizable model of multilevel, subsidiarity-based and independent monitoring and enforcement in the EU can be formulated. As any governance system, the over-arching governance model for enforcement combines different governance tools: legislation, political mediation (persuasion) and management (capacity building). The Stability and Growth Pact (SGP) is used to test the relevance of such a systematic approach to enforcement. The Eurocrisis and doubts over mutual trust in the Eurozone highlighted concerns over enforcement of the SGP. The interdisciplinary governance models offers a tool to diagnose these weaknesses of enforcement in the SGP. The EU has so far failed to produce an effective enforcement model, even in a vital sector such as economic governance.

I Introduction

This article starts from an empirical reality: fatigue with the way in which the Commission has been enforcing is visible in some parts of the EU. One of the strongest statements has come on several occasions from the Dutch Prime Minister: “rules are rules”.¹ Banking supervision, money laundering, climate and environment,

Schengen, labour mobility and the Stability and Growth Pact (hereafter SGP) are some of the highly visible areas where discussions on enforcement have been evident.² Implementation of European rules

¹ See Churchill Speech (2019), World Economic Forum Davos (2019) and Berlin Speech (2018).

² See European Court of Auditors CC1/ 2018, van den Broek (2014), Barret (2008), Collins (2007), ‘Dijsselbloem legt bom onder Schengen’, FD (2015), Cremers (2013), Wagner and Berntsen (2016), Savage and Howarth (2018), Wyplosz (2019), Héritier and Karagiannis (2013) and Schout and Mijs (2015).

by Member States has been a problem since the beginning of Europe's integration trajectory.³ Implementation can be divided into three stages: transposition, practical implementation and enforcement.⁴ While literature has devoted considerable attention to transposition and implementation⁵, attention for enforcement has been slow to develop but is catching up due to pressing political realities.⁶ Enforcement can be defined as detecting non-compliant behaviour and forcing non-compliers to change their behaviour with a view to respecting the rules.⁷ Monitoring is the first and rather soft phase of enforcement activities, potentially generating legal action. Even though (large) discrepancies between agreements and delivery have been marked, the exact size and sources of the implementation deficit, especially beyond the transposition phase, remain largely unknown as research regarding multilevel enforcement has been lagging behind.⁸

The multilevel dimension of enforcement has been noted by many scholars. Without being exhaustive and while acknowledging the overlap between categories, we can broadly identify multidisciplinary sector-specific, legal, administrative, governance and political approaches to studying monitoring

and enforcement in the EU.⁹ Acknowledging differences between sectors such as size or level and duration of Europeanisation, the question that needs to be addressed is to what extent an agreed model can be developed to assess EU enforcement as a regime (broadly defined as encompassing norms, procedures and rules to facilitate convergence).¹⁰ There are a considerable number of studies that assess enforcement in the EU without specifying or developing a model for studying enforcement.

For example, the European Court of Auditors (ECA, 2018) presented a report on the supervision of banking rules but is light on the specifications of how a (multilevel) enforcement system could look like and what roles to expect of the EU Commission and of national institutions. Similarly, practitioners seem to operate rather pragmatically, moving from one measure to another without concepts to guide their search for effective systems. Diagnoses and analyses therefore often remain impressionistic.

In an interview about what a model of EU enforcement for the SGP should look like, a civil servant noted: "I do not mind, as long as it is effective". Comparative and cross-sectoral approaches to studying enforcement thus seem in short supply.¹¹ Yet, compliance with EU rules is essential in order to foster mutual confidence and competitiveness. This underlines the relevance to explore whether an over-arching and generalizable perspective on multilevel, subsidiarity-based and independent monitoring and enforcement in the EU can be formulated, while offering possibilities to discuss differences between sectors. Such an approach should be able to specify the related task division between national authorities and European institutions. The SGP will be used to test the relevance of such a systematic approach to enforcement.

3 Mastenbroek, E., 'EU compliance: still a black hole?' *Journal of European Public Policy* vol. 12, no. 6 (2005).

4 Schmälter, J., 'A European response to non-compliance: the Commission's enforcement efforts and the Common European Asylum System', *West European Politics* vol. 41, no. 6 (2018): pp. 1332.

5 See Siedentop and Ziller (1986, 1987), Mastenbroek (2005), Versluis (2007), Steunenberg (2007), Kaeding (2012), Dimitrova and Steunenberg (2013), Treib (2014) and Schmälter (2017).

6 Treib, O., 'Implementing and complying with EU governance outputs', *Living Reviews in European Governance* vol. 9, no. 1 (2014): pp. 15-17. And Schmälter, J., 2018: pp. 1331-1332.

7 Treib, O., 2014: pp. 17.

8 Mastenbroek, E., 2005: pp. 1104; 1115. And Scholten, M., 'Mind the trend! Enforcement of EU law has been moving to 'Brussels'', *Journal of European Public Policy* vol. 24, no. 9 (2017): pp. 1348. And Versluis, E., Polak, J., 'Het effect van internationale netwerken en agentschappen in nationale implementatie van Europees beleid', *Tijdschrift voor Toezicht* (2017): pp. 28.

9 See Mastenbroek (2005), Adriaanse et al. (2008), Ottow (2012), Scholten and Ottow (2014), de Cock Buning, Ottow and Vervaele (2014), Wissink, Duijkersloot and Widdershoven (2014), Scholten and Scholten (2017), Schmälter (2018) and Closa (2018).

10 Krasner, S.D. (ed), *International Regimes*. NY: Cornell University Press, 1983.

11 Treib, O., 2014: pp. 16-17.

Whereas one would expect that Member States are responsible for the first line of control and the EU Commission for the second line of control (controlling the controllers), in the EU's administrative reality we see a tendency of the EU taking over first line enforcement tasks. Enforcement literature has devoted little attention to generalizable notions of enforcement such as first/second (direct/indirect) line of control, independence or subsidiarity. For example, the proposal of the Juncker Commission for a “fully operational EU Border and Coast Guard”¹² may conflict with the role of national authorities' monitoring activities driven by the belief that Member States are incapable of surveying their borders. Similarly, much thought is put into changing or simplifying the EU's fiscal framework¹³, while there is little discussion on whether it is appropriate for DG ECFIN to assume and even to repeat economic control carried out at Member State level, rather than that it monitors Member States' capacities for first line control. This underlines certain confusion over who is responsible for enforcement tasks in the EU's multilevel governance system and what a multilevel model of monitoring and enforcement should look like based on the EU principle of subsidiarity. The argument that Member States are ill-equipped to respect agreement is not enough and, building on the work of Herbert Simon, complex systems (such as the EU) often need decentralized (subsidiarity-based) governance models.¹⁴

Acknowledging the multidisciplinary perspective needed to examine enforcement, this study elaborates a public administration

approach to enforcement, building on an earlier multilevel governance model.¹⁵ Section II discusses the literature on EU regulation and enforcement regimes. Section III explores the contours of a multilevel subsidiarity-based governance regime for enforcement. To examine whether it is the ambition in the EU to create a subsidiarity based system, Section IV examines the EU's attempts to tackle economic weaknesses through legal, political (persuasion) and managerial means. To what extent is the EU building a subsidiarity based system of first and second line control? So far, the SGP reforms since 1997 have been incremental and resulted in a complex regime of procedures and exceptions that has been quite unsuccessful.¹⁶ Rather than continuing to experiment with individual measures, section V assesses the added value of the suggested model for diagnosing the implementation deficit in fiscal policy.

II Regulation and Enforcement Regimes in the EU

As summarised by amongst others Treib (2014), the literature has resulted in a classification of three overlapping approaches to enforcement: legal, political/persuasion and management.¹⁷ According to the legal enforcement approach, the Commission can increase the costs of non-compliant behaviour through legal action, e.g. infringement procedures or other punitive measures such as Article 7 or the Excessive Deficit Procedure. Although, underlining the Commission's political

12 See [Regulation on the European Border and Coast Guard, 2015/0310 \(COD\)](#).

13 See [Zsolt, D., Martin, P., Ragot, X., 'European Fiscal Rules Require a Major Overhaul', *French Council of Economic Analysis* no. 47 \(September 2018\): pp. 3-4.](#) And [Christofzik, D., Feld, L.P., Reuter, W.H., Yeter, M., 'Uniting European Fiscal Rules: How to Strengthen the Fiscal Framework', *German Council of Economic Experts* \(September 2018\): pp. 1-2.](#) And [Annual Report European Fiscal Board \(2018\)](#).

14 Herbert, A.S., *Administrative behaviour: a study of decision-making processes in administrative organization*. New York: The Free Press, 1997. And Herbert, A.S., *The Sciences of the Artificial*. Cambridge: MIT Press, 1969.

15 Schout, A., Jordan, A., 'Coordinated European governance: self-organising or centrally steered?', *Public Administration* vol. 83, no.1 (2005): pp. 201-220. And Jordan, A., Schout, A., 'The coordination of the European Union: exploring the capacities of networked governance', *Oxford Scholarship* (2007).

16 See Wyplosz, C., 'Fiscal discipline: from theory to practice', *The Graduate Institute Geneva* (February 2019). For a review on soft coordination more generally see Schout, A., Jordan, A., 'From 'old' to 'new' governance in the EU: Explaining a diagnostic deficit', *West European Politics* vol. 33, no.1 (2010): pp. 154-170.

17 See Treib, O., 2014. And Schmälder, J., 2018.

stance, the Commission prefers ‘engaging strategies’ (persuasion) and capacity-building (management) measures over legal corrective enforcement mechanisms.¹⁸ The three enforcement strategies are overlapping and mutually reinforcing.

Legal enforcement approach

Member States are primarily responsible for the correct implementation and enforcement of EU law as entrenched in several Treaty provisions, regulations and directives.¹⁹ As Guardian of the Treaties, the Commission has the obligation to supervise the application of Community law by the Member States (Article 17(1) of the TEU). This role is executed through for example conformity checks, package meetings with national authorities, occasional physical inspections, correlation tables or ex-post legislative evaluations.²⁰ These instruments are somewhat informal.²¹ If a country fails to transpose or adhere to EU law, the Commission is authorized to initiate legal action through the infringement procedure (Article 258 of the TFEU). If formal requests, the reasoned opinion, to comply do not resonate, the Commission may refer the case to the European Court of Justice (ECJ) which can impose financial penalties on the Member State. In recent years, the Commission has made less and less use of legal enforcement. The number of letters

of formal notice decreased from 1492 in 2005 to 727 in 2017. Moreover, the number of infringement procedures conferred to the ECJ dropped from 254 in 2006 to 41 in 2017.²² However, we do observe a trend towards de-centralised rights enforcement whereby private rights claims from national courts reach the ECJ through the preliminary reference procedure.²³

National law enforcement has been increasingly Europeanised through three means: hard law (secondary legislation and regulations), case law (meaning rulings from the ECJ), and soft law (norm-setting, best practises and peer evaluations).²⁴ These norms predominantly describe procedural and substantive requirements for direct national enforcement.²⁵ Moreover, European Enforcement Authorities (EEAs) have emerged with in some cases legally binding enforcement powers.²⁶ Examples of strong EU agencies are the European Central Bank (ECB) and the European Aviation Safety Authority (EASA).²⁷ EU agencies often coordinate networks of national supervisors and are generally closely linked to a particular Commission DG, meaning dependent on the Commission for resources and organisation.²⁸ This limits the agency’s independence as

18 See Closa (2018), Schmälter (2018) and Hartlapp (2007).

19 Ottow, A., ‘Europeanization of the Supervision of Competitive Markets’, *European Public Law* vol. 18, no. 1 (2012): pp. 191. And Schmälter, J., 2018: pp. 1331.

20 Adriaanse, P.C., Barkhuysen, T., Boswijk, P., Habib, K., de Kruif, C., Luchtman, M.J.J.P., den Ouden, W., Prechal, S., Steunenbergh, B., Vervaele, J.A.E., de Vries, S., Voermans, W.J.M., Widdershoven, R.J.G.M., ‘Implementation of EU enforcement provisions: between European control and national practice’, *Review of European Administrative Law* vol. 1, no. 2 (2008): pp. 86. And Hofmann, A., ‘Is the Commission levelling the playing field? Rights enforcement in the European Union’, *Journal of European Integration* vol. 40, no. 6 (2018): pp. 738.

21 Hartlapp, M., ‘On enforcement, management and persuasion: different logics of implementation policy in the EU and the ILO’, *Journal of Common Market Studies* vol. 45, no. 3 (2007): pp. 664.

22 Hofmann, A., 2018: pp. 739.

23 Hofmann, A., 2018: pp. 741.

24 De Cock Buning, M., Ottow, A., Vervaele, J., ‘Regulation and enforcement in the EU: regimes, strategies and styles’, *Utrecht Law Review* vol. 10, no. 5 (2014): pp. 6. And Adriaanse, P.C. et al., ‘Implementation of EU enforcement provisions’, 2008: pp. 88. And Scholten, M., 2017: pp. 1352-1353.

25 Scholten, M., 2017: pp. 1352-1353.

26 De Cock Buning, M. et al., 2014: pp. 6. And Scholten, M., 2017: pp. 1350.

27 Scholten, M., 2017: pp. 1352. And Schout, A., ‘Agencies and inspection powers – the case of EASA as new or more of the same?’, in Vos, E. (ed.), *European risk governance: its science, its inclusiveness and its effectiveness*. Mannheim University Press, 2008. And Schout, A., ‘Framework for assessing the added value of an EU agency’, *Journal of Public Policy* vol. 31 no. 3 (2011): pp. 363–384.

28 Egeberg, M., Trondal, J., ‘Why Strong Coordination at one level of government is incompatible with strong coordination across levels (and how to live with it): the case of the European Union’, *Public Administration* vol. 94, no. 3 (2016): pp. 584–585. And Schout, A., Pereyra, F., ‘The institutionalisation of EU agencies – agencies as ‘mini commissions’, *Public Administration* vol.89, no.2 (2011): pp. 418–432.

well as the cooperative culture in agency-networks as national supervisors sometimes “feel watched by the Commission”.²⁹

Political approach

The legal tools to ensure compliance do come at a cost. Strict legal enforcement arouses domestic opposition in the Member State and creates an “aloof and awkward” partner.³⁰ This implies that even though an issue can be highly salient³¹, political sensitivity and complexity may obstruct strict enforcement by the Commission.³² Hence, the Commission prefers dialogue and engaging strategies over coercive enforcement and uses the infringement procedure very selectively.³³ This underlines the Commission’s pragmatic and political way of enforcing EU law aimed at negotiating with the relevant Member State. Through deliberative political dialogues, the Commission hopes to change the underlying norms and values that drive their behaviour and to create ownership for agreed objectives. The EU thus tries to convince Member States of the legitimacy and appropriateness of rules in order to induce compliance (persuasion).³⁴ For example, Juncker explained in relation to climate change policy that “I’m no great fan of sanctions, as they make the conversation more difficult. Countries are like wild horses, punishing them is not the way to tame them”.³⁵

Management approach

The Commission is also more inclined to employ cooperative measures such as capacity-building and financial assistance than coercive measures. The Commission has tried to combat the implementation deficit through the provision of a large variety of financial instruments. For example, DG HOME has received a considerable increase in its budget to strengthen capacity-building at Europe’s external borders.³⁶ Moreover, the Commission has been active in supporting capacity building in the Member States by providing training and technical expertise. This is often done through network-structures whereby national regulatory authorities try to harmonize the implementation of EU law.³⁷ These networks bring expertise to the EU legislative process, align application practises across the EU, exchange best practises, and create a professional culture.³⁸ However, these agency networks vary greatly in their organisational strength and level of formalization.³⁹ Successful agency-based networks contributing to better implementation include former crisis-ridden sectors such as food safety, national statistical bureaus and aviation safety. The EU has also been able to solve many of the challenges in the internal market through multilevel capacity building, i.e. setting up EU and national agencies and creating strong networks.⁴⁰

29 Levi-Faur, D., ‘Regulatory networks and regulatory agencification: towards a Single European Regulatory Space’, *Journal of European Public Policy* vol. 18, no.6 (2011): pp. 810-829. And Schout, A., ‘EU agencies after 25 years’, 2018. And Versluis, E., Polak, J., 2017: pp. 31-32.

30 Closa, C., ‘The politics of guarding the treaties: Commission scrutiny of rule of law compliance’, *Journal of European Public Policy* (2018): pp. 13.

31 Versluis (2003, 2004, 2007).

32 Schmälter, J., 2018: pp. 1333.

33 See amongst others Steunenbergh, B., ‘Is big brother watching? Commission oversight of the national implementation of EU directives’, *European Union Politics* vol. 11, no. 3 (2010): pp. 359-380. And Closa, C., 2018: pp. 7. And Schmälter, J., 2018: pp. 1339. And Hofmann, A., 2018: pp. 739.

34 Schmälter, J., 2018: pp. 1338.

35 <https://www.bild.de/politik/ausland/politik-ausland/eu-chief-juncker-more-women-in-top-position-fewer-commissioners-62339074.bild.html>.

36 Schmälter, J., 2018: pp. 1342-1343.

37 Schmälter, J., 2018: pp. 1337.

38 Ottow, A., 2012: pp. 203. Versluis, E., Polak, J., 2017: pp. 28.

39 For a review see Schout, A., ‘EU agencies after 25 years’, *Publication Clingendael Institute* (December 2018).

40 Kassim, H., ‘Revisiting the Management Deficit’, in Ongaro, E., *Multi-Level Governance: The Missing Linkages*. Bingley: Emerald, 2015. Vos, E., ‘EU Food Safety Regulation in the Aftermath of the BSE Crisis’, *Journal of Consumer Policy* Vol. 23, no. 3 (2000): pp. 227-255. And Sverdrup, U., ‘Administering Information: Eurostat and Statistical Integration’, in M. Egeberg (ed.) *Multilevel Union Administration*. Palgrave, 2006. Schout, A., ‘Framework for assessing the added value of an EU agency’ *Journal of Public Policy* vol. 31, no.3 (2015): pp. 363-384. And Kassim, H., Stevens, H. *Air transport and the European Union*. Palgrave Macmillan, 2010.

Although over the years the Commission's strategy has helped to improve Member States' implementation activities, success has been uneven in several areas. Inconsistent application of EU law across the EU has thus persisted due to differences in national capacities, legal-administrative cultures, vested power positions, differences in resources and political will. Amongst others, Mastenbroek (2005) therefore concluded the existence of an implementation deficit.⁴¹ Since then, a great number of (sector-specific) measures have been taken and an increasing Europeanization of enforcement measures and regulatory authority has been concluded.⁴² Scholten and Scholten (2017) interpret this latter development as a new type of functional spill-over, since enforcement powers have followed the transfer of regulatory authority to the EU level out of functional necessity.⁴³ These authors thus suggest that Europeanization leads to centralization, meaning that the Commission increasingly acquires direct enforcement powers.

III A Multilevel Governance Model of Enforcement: General principles for elaborating First and Second Control

Enforcement literature has advanced considerably over the past two decades by among other things distinguishing between phases of, and approaches to, enforcement. Yet, this has not resulted in the development of a broad set of essential characteristics of EU enforcement that can be used as an analytical tool to examine or diagnose EU enforcement regimes. Devising an effective model should address working judicial and administrative mechanisms that ensure that non-compliant behaviour is detected

and changed.⁴⁴ More specifically, rather than taking every sector as *suis general* and aiming at some level of cross-sectoral generalizability where applicable, such a model should be able to specify the different roles and capacities required at Member State and EU level and incorporate principles of subsidiarity and proportionality. Scholten and Ottow (2014) have attempted to establish four institutional models of enforcement.⁴⁵ However, their models do not add up to an administrative model that interconnects national and EU level roles into a multilevel regime. Due to its pragmatic nature to respond to events, the EU has over and over again been reinventing new enforcement structures and provisions in path-dependent ways specific to the policy sector and challenges at hand, thereby missing an integrated and horizontal approach to enforcement.⁴⁶ Building on earlier work⁴⁷, this article explores the relevance of a multilevel model focusing on European and national agencies that mutually reinforce each other through subsidiarity-based networks and starts from the basis of some general principles. Firstly, although the literature is specific on the role of the EU Commission as Guardian of the Treaties, we seldom see a clear identification of the role perception that goes with it. In essence, 'guardian of the Treaty' involves a role allocation: a separation between first and second line of control. Although differences per sector have to be kept in mind, Member States are generally responsible for monitoring and enforcement (first-line of direct control). The Commission, possibly aided by EU agencies, monitors the monitoring capacities and activities of the Member States (second-line control – controlling

41 Mastenbroek, E., 2005: pp. 1104.

42 De Cock Buning, et al., 2014: pp. 5.

43 Scholten, M., Scholten, D., 'From regulation to enforcement in the EU policy cycle: a new type of functional spill over?' *Journal of Common Market Studies* vol. 55, no. 4 (2017): pp. 925.

44 Treib, O., 2014: pp. 17.

45 See Scholten, M., Ottow, A., 'Institutional design of enforcement in the EU: the case of financial markets', *Utrecht Law Review* vol. 10, no. 5 (2014): pp. 80-91.

46 Adriaanse, P.C. et al., 2008: pp. 90.

47 See Schout, A., Jordan, A., 'Coordinated European governance: self-organising or centrally steered?' *Public Administration* vol. 83, no. 1 (2015): pp. 201-220. And Luining, M., Schout, A., 'Rule of law policy: ambitions without strong networks', *Clingendael State of the Union Report* (2018): pp. 78.

the controllers – or indirect control). Useful as it is, the distinction between first and second line of control raises some practical questions. What activities are involved in terms of tasks and for whom? What entails ‘controlling the controllers’? Does it refer to legal or organisational control? What kinds of multilevel capacities are required? Moreover, a multilevel model is bound to question the above-mentioned tendency of the Commission to centralize control by initiatives to take over first-line monitoring tasks. Apart from administrative science concerns for centralisation, it undermines Member States’ responsibility and related feeling of national ownership for responsible policies.⁴⁸ As argued here, a clear division between roles according to first and second-line control respects the heterogeneous reality of the EU and discredits the “one size fits all approach”.⁴⁹

Secondly, related to the distinction between first and second line control are the principles of subsidiarity and proportionality. Regarding subsidiarity, mirror the legal principle, we posit that the EU may only act where action of individual countries is insufficient (Article 5 TEU). Hence, tasks should in principle be executed to the national level. This includes the expectation that Member States create the appropriate administrative capacities to operate as loyal Member States (Article 4.3 of the TEU). Yet, the proportionality principle reminds us to be aware of the fact that some tasks may be less appropriate for networks in which all Member States participate. For example, it is imaginable that Member States in the EU with only smaller airports do not need a National Aviation Authority. However, as a starting point, national independent agencies seem preferable as building blocks for networks supported by an independent EU agency. This leads to networked-based agency structures.⁵⁰

Thirdly, since the EU is largely a legal system⁵¹, enforcement involves a judge-like activity that imposes a considerable independence on the part of the monitoring authority. Hence, particularly with the EU Commission’s (explicit) profile as “very political Commission”⁵² and with the absence of a view concerning an appropriate separation of powers, independence of fact-finding and legal redress needs to be warranted.⁵³ Relevant in this respect is that the Commission has been adamantly opposed to locating independent control outside the Commission, such as in the case of ex ante impact assessments (regulatory scrutiny board).⁵⁴ With a view to the perceived credibility of the Commission, fact finding and reporting tasks could be organised via independent authorities (agencies)⁵⁵, something the Commission has also not been in favour of.⁵⁶ An EU agency-type body can have the authority to supervise a specific field, even though the Commission may reserve the responsibility for taking correcting measures. The set of tasks can be broad or narrow and a specific field can be supervised by different agencies with specific tasks. These EU-level agencies need to have sufficient independence in terms of programming, management of on-site inspections, design of methodologies and personnel.⁵⁷ Such independence counters political short-termism in decision-

48 Ottow, A., 2012: pp. 193.

49 Versluis, E., Polak, J., 2017: pp. 34.

50 Hofmann, H.C.H., ‘Mapping the European administrative space’, *West European Politics* vol. 31, no. 4 (2008): pp. 667.

51 Majone, G., *Regulating Europe*. Routledge, 1996. And Hofmann, A., 2018: pp. 737.

52 See Speech Juncker State of the Union 9 September 2015.

53 Majone, G., *Regulating Europe*. Routledge, 1996.

54 Schout, A., Schwieter, C.H., ‘Two decades of Better Regulation in the EU Commission – towards evidence-based policymaking?’ *Policy Brief Clingendael* (2018).

55 Majone, G., ‘The credibility crisis of community regulation’, *Journal of Common Market Studies* vol. 38, no. 2 (2000): pp. 273-302.

56 Kelemen, R.D., Tarrant, D. (2011) ‘The Political Foundations of the Eurocracy’. *West European Politics* vol. 34, no.5 (2011): pp. 922-47.

57 Emerson et al 2019. Jordan and Schout 2016. Beetsma, R., Debrun, X., Fang, X., Kim, Y., Lledó, V., Mbaye, S., Zhang, X., ‘Independent Fiscal Council: Recent trends and performance’, *European Journal of Political Economy* (2018): pp. 1-17.

making and constitutes a crucial checks-and-balance mechanism.⁵⁸

Fourthly, building on the role of the Commission as European network manager as identified by Metcalfe (1992) and elaborated by Schout and Jordan (2005, 2006), we can specify an additional role for the Commission: being guardian of the Treaties also entails the responsibility to ensure an effective EU's administrative system. Effective European systems are based on suitable task descriptions (at the national level, in the networks and for EU bodies and agencies), transparency of the organisations involved, adequacy of resources, transparency of decision-making rules and cooperation with stakeholders. Additionally, the network needs operating rules that are strong enough to deal with the tasks at hand. This involves clear provisions for management tasks, inspections of national agencies and authorities and transparency of inspections and decision-making. Generally, networks can be weak or strong. Weak networks are characterised by few meetings, a largely non-formalised organisation and little or no leadership role. Strong or enduring networks include well-defined leadership roles ranging from secretarial roles (e.g. calling meetings and supporting the chair, facilitating policy planning, horizon scanning) to undertaking strategic organisational tasks (e.g. overseeing the design of the network, stimulating new parties to join, auditing its activities). Contingency theory allows for the hypothesis that complex and dynamic tasks (generally the case in sensitive EU policies) demand stronger networks and bodies.⁵⁹ As concluded by Macciò and Cristofoli (2017) managed networks perform better than informal networks.⁶⁰ Importantly, a strong network organisation includes binding quality inspections of national authorities and diagnosing the way in which national

agencies are set up. A well-designed EU network depends on national agencies with comparable tasks, resources and working methods. Collectively, these principles of enforcement can help to specify the meaning of first and second line control in legal, political and managerial respect.

IV Enforcing the Stability and Growth Pact

The history of the EMU is characterised by an incremental search for control. When the euro-project was agreed upon in 1992, the first rules to ensure sound public finances across the Eurozone were established.

The convergence criteria to participate in the third phase of the EMU encompassed the famous 3% deficit and 60% debt rules. However, as it was unclear whether these rules would ensure fiscal discipline after countries had entered the Eurozone, the German Minister of Finance (Theo Waigel) pressured for a Stability Pact.⁶¹ After insistence by the French for a 'growth' component, the Stability and Growth Pact was initiated in 1997 to ensure sustainable public finances through a set of legally binding fiscal rules.⁶² In 2000, the EMU was further strengthened with the initiation of the Lisbon Strategy that aimed to make the EU "the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion".⁶³ Although, despite mid-term reforms and 300 monitoring indicators, its results remained disappointing as concluded by the Swedish Prime Minister and chair of the EU Council, Fredrik Reinfeldt: "Even through progress has been made, the Lisbon Agenda has been a failure." Expanding the experimentations with euro governance after the crisis, the SGP became part of the European Semester in 2010,

58 Treib, O., 2014: pp. 29-30.

59 Compare Lawrence, P.R., Lorsch, J.W., *Organization and environment; managing differentiation and integration*. Boston: Harvard Business School Press, 1967.

60 See Macciò, L., Cristofoli, D., 'How to support the endurance of long-term networks: the pivotal role of the network manager', *Public Administration* vol. 95, no. 4 (2017).

61 Verdun, A., 'Het Stabiliteitspact als eeuwige belofte', in *Nederland als Europese lidstaat: eindelijk normaal?* Boom lemma uitgevers: Den Haag, 2013.

62 See regulations 1466/97 and 1467/97.

63 See Presidency Conclusions Lisbon European Council, 23 and 24 March 2000.

the annual economic policy coordination mechanism whereby national economic policies are reviewed collectively under a reinforced supervisory role of the EU Commission. Additionally, the EU adopted the Six Pack (2011), Two Pack (2013) and Fiscal Compact (2013) that extensively reformed the SGP. Following the Five Presidents Report on completing the EMU, the Commission also established a European Fiscal Board in 2015, with the mandate to monitor the Commission's implementation of the EU's fiscal framework and assess its appropriateness.⁶⁴ Yet, most prominent in the debates are the plans for increasing flexibility. In 2015, the Commission issued new guidelines for "making the best use of the flexibility within the existing rules of the Stability and Growth Pact." These emerged under considerable pressure from Prime Minister Renzi and President Hollande to exchange structure reforms for European investment and less austerity.⁶⁵ Still many argue that these measures are insufficient to ensure convergence, effective supervision and economic stability in the long-term.⁶⁶ Therefore, additional proposals to reform the Eurozone ranging from an expansion of the Structural Reform Support Service to a Eurozone budget, are currently being discussed.⁶⁷

From intentions to compliance

As concluded by Annett (2006): "Enforcement has always been the Achilles' heel of the SGP".⁶⁸ Despite the evolving governance package, a variety of Member States has persistently failed to comply with

the governance rules or to live up to the expectations of economic convergence.⁶⁹ Any state of play only offers a temporary picture, yet, the difficulties with adhering to the basic requirements are evident. The fiscal imbalances, combined with failing economic convergence and poor banking supervision across the Eurozone triggered the euro and financial crises starting in 2008. Acknowledging the importance of a careful treatment of causes of the interconnected crises and the differences between countries⁷⁰, this article can only give a broad overview of the lingering difficulties in enforcement of the SGP. The Commission assessed the Draft Budgetary Plans for 2019 of all the Eurozone members in November 2018. Despite of recent favourable economic circumstances, out of the 19 Eurozone countries, five Member States (Belgium Spain, France, Portugal and Slovenia) risked non-compliance even in 2019, and one Member State (Italy) seriously risked non-compliance.⁷¹ Hence, six countries are likely to (significantly) deviate from their adjustment paths towards the respective Medium-Term Objectives (MTO) as set out in the country-specific recommendations by the Council in July 2018. The difficulties with implementation of country-specific recommendations was underlined in 2017 when it appeared that it had decreased over the years.⁷² Furthermore, the Spring 2019 report of the European Commission affirms that the highly indebted Member States have a limited or even negative fiscal adjustment.⁷³

64 See [Commission Decision \(EU\) 2015/1937 establishing an independent advisory European Fiscal Board \(21 October 2015\)](#).

65 Manasse, P. (2015) 'The EU new fiscal flexibility guidelines: An assessment', 27 January 2015. <https://voxeu.org/article/eu-new-fiscal-flexibility-guidelines-assessment>.

66 See Bénassy-Quéré, A. et al., 'Reconciling risk sharing with market discipline: A constructive approach to euro area reform', *CEPR Policy Insights*, no. 9 (2018).

67 Simple Rules for Better Fiscal Policies in Europe.

68 Annett, A., 'Enforcement and the Stability and Growth Pact: How fiscal policy did and did not change under Europe's fiscal framework', *IMF Working Paper* (2006): pp. 3.

69 Schout, A., 'The EU's existential threat: demands for flexibility in an EU based on rules', in *Re-founding Europe: the responsibility to propose*. Rome: IAI, 2017.

70 Brunnermeier, M., James, H., Landau, J., *The Euro and the Battle of Ideas*. Princeton University Press, 2016.

71 European Parliament, 'Implementation of the Stability and Growth Pact – February 2019', *Economic Governance Support Unit DG Internal Policies* (February 2019): pp. 2.

72 Alcidi, C., Gros, D., 'In-depth analysis: how to further strengthen the European Semester?', *Economic Governance Support Unit* (2017): pp. 14.

73 'Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank and the Eurogroup', *COM* (27 February 2019): pp. 8.

Also the risk over overly optimistic assessments hampering compliance with the deficit rule has remained real.⁷⁴ Seven Member States significantly diverge from the reference value of 60% debt to GDP in the third quarter of 2018 (Greece 182.2%, Italy 133%, Portugal 125%, Cyprus 110.9%, Belgium 105.4%, France 99.5% and Spain 98.3%).⁷⁵ Taking a wider timeframe, it appears that the debt-to-GDP ratio has increased in 17 Member States between 2012 and 2016.⁷⁶

Enforcement framework applied

When looking into the (failing) enforcement and subsequent reform of the EU's fiscal framework, the legal, political and management approaches to enforcement can be clearly identified. Despite large scale legal adjustments, engaging dialogues with Member States and managerial attempts, compliance rates with the SGP still fall behind.⁷⁷ Connecting the approaches to enforcement as identified in the literature with our proposed model can help to systematically map and diagnose the management capacities of the SGP (Table 1). This heuristic framework acknowledges that the different approaches to enforcement are (as governance instruments more generally) complementary and overlapping.

Towards a complex rule-based legal system

Fiscal policy is a national competence. Yet, member states are responsible for adhering to the EU's fiscal rules. As regards the Commission's legal guardian role, the compliance record suggests that the EU Commission has a well-grounded base for the initiation of corrective measures against uncompliant Member States.

Like a medieval cathedral, the EU rules have been elaborated in different directions over time. It has resulted in a complex maze of rules for the SGP and for, for example, addressing excessive budget deficits (Annex). The fiscal rules originate from the Maastricht Treaty from 1993 specifying the criteria for joining the EMU. This clarified and complemented in 1997 the rules for EMU member countries (budget deficit of 3% and gross public debt of 60%). The first amendment took place in 2005, leading to the usage of cyclically adjusted budget numbers and Medium Term Objectives (MTO).⁷⁸ The fiscal imbalances that became apparent during the Eurocrisis provided a new momentum for far-reaching reform. It led to a strengthening of the fiscal surveillance process and centralized the role of the Commission.⁷⁹ The efforts materialized in the adoption of the Six Pack (2011), Two Pack (2013) and Fiscal Compact (2013). The reforms created new monitoring tools and legal obligations for Member States such as the required submission of the budget to the Commission for scrutiny, national numerical fiscal rules and national Independent Fiscal Councils. The rules were again adjusted in 2015, when the Juncker Commission adopted a commonly agreed position on "making the best use of the flexibility within the existing rules of the SGP". Member States are now allowed to deviate from the fiscal rules if they are eligible to one of the flexibility clauses (investments that can boost economic growth, major structural reforms with a long-term effect on the budget, or unfavourable cyclical conditions).⁸⁰

The core rationale of these rules seems promising: constrain the deficit bias of politicians, enhance a long-term economic perspective, decrease transnational externalities, stimulate economic reforms

74 Gilbert, N., de Jong, J., 'Does the stability and growth pact induce a bias in the EC's fiscal forecasts?', *DNB Working Paper* (9 December 2014): pp. 1-2.

75 See Statista, '[National debt in EU Countries in the 3rd quarter 2018 in relation to gross domestic product \(GDP\)](#)', *The Statistics Portal*, accessed 25 February 2019.

76 Begg, I., 'Fiscal and other rules in EU economic governance: helpful, largely irrelevant, or unenforceable?', *National Institute Economic Review* no. 239 (2017): pp. 5.

77 European Parliament, 'Implementation of the Stability and Growth Pact – February 2019'.

78 Zsolt, D., Martin, P., Ragot, X., 'European fiscal rules require a major overhaul' (2018): pp. 2.

79 Savage J.D., Howarth, D., 'Enforcing the European Semester: the politics of asymmetric information in the Excessive Deficit and Macroeconomic Imbalance Procedures', *Journal of European Public Policy* vol. 25, no. 2 (2018): pp. 216.

80 Vanheuverzwijn, P., 'How the Commission fills in the blanks of the European Semester', *Revue Politique Européenne* n. 55 (2017): pp. 17-18.

and coordinate policy.⁸¹ Moreover, the system allows for flexibilities related to external shocks and investments. However, in the case of SGP, the extensive reforms have led to an overtly complex handbook of 200 pages⁸² whereby the continuous adding of overlapping rules, numerical targets, exceptions, escape clauses and flexibility requirements has obstructed compliance.⁸³ For example, the structural reform clause in the SGP does not specify a numerical target, meaning that the Commission is allowed to interpret whether a reform produces the required “major” effect.⁸⁴ Consequently, some Member States are able to extensively (mis)use the structural reform clause in order to negotiate the right to deviate from their MTO. As Wyplosz (2019) concludes: “the border between flexibility and laxity is fuzzy”.⁸⁵ Eurozone governance now presents a highly layered set of bodies and procedures that has developed incrementally and pragmatically over time. Reviews of the SGP underline the fuzziness of rules as well as the difficulties in the measurement of key variables. For example, conclude that “while the structural budget balance is a nice theoretical concept, it is not observable and its estimation is subject to massive errors”.⁸⁶ Therefore, several important players such as Jeroen Dijsselbloem (Former Dutch Finance Minister), Wolfgang Schäuble (former German Finance Minister), Jens Weidmann, (Bundesbank President), the European Fiscal Board and French and German experts have called for a revision and simplification of the current fiscal framework.⁸⁷ These proposals

mainly built on the assumed flaws and inconsistencies of the numerical rules (reason for the proposed expenditure rule)⁸⁸, and aim to fine tune, or more radically, overhaul the existing rule-based Euro governance.

Given the major difficulties with the current legal SGP system, current discussions tend in the direction of re-instating the no-bail-out clause (e.g. Wyplosz 2019) and hoping to ensure more ownership at the level of national governments based on simple nominal expenditure rules including a eurozone budget and a European Monetary Fund.⁸⁹

Political rationale

Given allocative and distributive implications, budgetary policy is highly political. As summarised by Wyplosz (2019), governments suffer from a deficit bias for different reasons: expansionary fiscal policies are often rewarded during elections and ministries push responsibility for fiscal discipline to other ministries (common pool problem).⁹⁰ This is likely to result in an accumulation of government debt in the long term.⁹¹ We could thus frame compliance as an instance of post-decisional politics.⁹² Governments are well-inclined to respect fiscal rectitude in principle but reality can be hard. As a result, the Commission has been lacking the motivation to enforce the rules. Commission president Prodi stated that the SGP rules “stupid”⁹³ and faced with increasing doubts in 2019 over the Commission’s treatment of Italian and French reforms and cutbacks, Commissioner Moscovici stated that “for now my motto is:

81 Begg, I., 2017: pp. 4.

82 See [Vade Mecum on the SGP 2018](#).

83 Zsolt, D., Martin, P., Ragot, X., 2018: pp. 2.

84 Vanheuverzwijn, P., 2017: pp. 18.

85 Wyplosz, C., 2019: pp. 5.

86 Darvas, Z., Ph. Martin, X. Ragot (2018) *European fiscal rules require a major overhaul*, Policy Contribution No 18.

87 See full reports here [Zsolt, D., Martin, P., Ragot, X., 'European Fiscal Rules Require a Major Overhaul', French Council of Economic Analysis no. 47, \(September 2018\): pp. 3-4.](#) And [Christofzik, D., Feld, L.P., Reuter, W.H., Yeter, M., 'Uniting European Fiscal Rules: How to Strengthen the Fiscal Framework', German Council of Economic Experts \(September 2018\): pp. 1-2.](#) And [Annual Report European Fiscal Board \(2018\)](#).

88 See Wyplosz, C, 2019: pp. 2-36.

89 Darvas et al 2018. European Commission (2017), REFLECTION PAPER ON THE DEEPENING OF THE ECONOMIC AND MONETARY UNION, 1 March, Brussels.

90 Wyplosz, C., 2019: pp. 2.

91 Larch, M., Braendle, T., ‘Independent fiscal councils: neglected siblings of independent central banks? An EU perspective’, *Journal of Common Market Studies* vol. 56, no. 2 (2018): pp. 270-272.

92 Mastenbroek, E., 2005: pp. 1108.

93 BBC news Thursday, 17 October, 2002, Row over ‘stupid’ EU budget rules. [news.bbc.co.uk/2/hi/business/2336823.stm](https://www.bbc.com/news/business-2336823).

dialogue, dialogue, dialogue”.⁹⁴ As a result, no country has been fined so far. Already in 2002 Germany and France were led off the hook for not complying with the fiscal rules, discrediting their credibility from the outset. Although, the Commission did attempt to initiate a sanctioning process against France and Germany but was blocked by the ECOFIN Council.⁹⁵ This highlights an additional political dimension in the inter-institutional decision-making process of the SGP. The Commission is also dependent on the Council, and thus the Member States, for the adoption of its country-specific recommendations. The Council’s selective editing (weakening) of Commission evaluations can be quite pronounced, especially when powerful Member States leverage their weight. The Commission often anticipates in advance whether the Council is likely to uphold its enforcement initiative⁹⁶, suggesting that large Member States are more likely to circumvent repressive action and are “too big too fine”.⁹⁷ This explains the Commission’s inaction against France and its forecasted deficit of 3.5% of GDP, resulting from Macron’s forced appeasement of the gilets jaunes movement.⁹⁸ However, the power of national Ministers in the ECOFIN Council remains dependent on the voting regime in place and their respective share of votes (currently RQM).⁹⁹ This means that recommendations are currently largely insulated from national vetoes.¹⁰⁰ Generally, the enforcement of the SGP under the Juncker Commission has been perceived as rather flexible (the Commission’s

so-called “intelligent application of the SGP”).¹⁰¹ From the outset, the appointment of Commissioner of Economic and Financial Affairs, Pierre Moscovici, was received with some suspicion. Whereas his predecessor, Olli Rehn, tried to create a rule-based system in which the Commissioner would operate as independent Budget Tsar¹⁰², the reputation of Moscovici was political from the start. He had, as former French Finance Minister under Hollande, been a firm advocate of flexibility in the application of the EU’s budget rules. Even though Moscovici was restrained by Valdis Dombrovskis as chief budget enforcer in his role as Vice-President of Euro and Social Dialogue, Dombrovskis’ former advocacy for Austerity in Latvia did not prevent him from flexibly applying the SGP.¹⁰³ That there may have been a difference in power between the more visible Moscovici and his Vice-President is indicated by the number of references in the Financial Times: Moscovici 386 (from January 2014 to March 2019) versus 229 for Vice-President Dombrovskis. The rules were often alleviated ex-post to accommodate difficult cases, confirming the Commission’s political enforcement of the SGP. Spain and Portugal’s zero fines and Juncker’s statement ‘Parce-que c’est la France’ in 2016 reaffirm this idea.¹⁰⁴

Similarly, despite Italy’s serious risk of non-compliance with the SGP, the launch of an EDP did not materialize in December 2018. After the Commission’s opinion of 23 October 2018 requesting a revised budgetary plan from the Italian government (a first in the EU’s history), a dynamic dialogue between the Commission and Prime Minister Giuseppe Conte and Finance Minister Giovanni Tria led to a (according to some weak) compromise. A more strict posture vis-à-vis Italy was complicated by ensuring

94 <https://www.ft.com/content/9a064092-8602-11e9-97ea-05ac2431f453>.

95 Rae Baerg, N., Hallerberg, M., ‘Explaining the instability in the stability and growth pact: the contribution of Member State power and euroscepticism to the Euro crisis’, *Comparative Political Studies* vol. 49, no. 7 (2016): pp. 973.

96 Closa, C., 2018: pp. 5.

97 ‘France comes short on its budget deficit’, *Financial Times* (16 March 2015).

98 Cohen-Setton, J., Leandro, A., ‘France’s deficit tests the flexibility of the EU’s fiscal rules’, *Peterson Institute for International Economics* (18 December 2018).

99 Rae Berg, N., Hallerberg, M., 2018: pp. 1003.

100 Vanheuverzwijn, P., 2017, pp. 10.

101 ‘EU confirms no budget fines for Spain and Portugal’, *Financial Times* (9 August 2016).

102 Schout, A., Mijs, A., ‘The Independent Commissioner: An Administrative Analysis’, in *Multi-Level Governance: The Missing Linkages*. Bingley: Emerald, 2015.

103 ‘Juncker’s Economic Team’, *Financial Times* (10 September 2014).

104 ‘European Commission lambasted on policing of national budgets’, *Financial Times* (14 June 2016).

developments in France where Macron had to drop his cut-backs under pressure of the Yellow Vests. For political reasons, the Commission did not want to put Macron under even more pressure and as a result it had to show more flexibility to Italy too.¹⁰⁵ This reflects the Commission's preference for engaging (persuasion) strategies over corrective measures. Especially governments with euro critical populations behind them, such as in the Italian case, are successful in undermining strict enforcement by the Commission.¹⁰⁶ The Commission namely aims to avert the risk of eroding its already low popularity level in these countries. As Moscovici stated: "Taking into account the political context is vital" and "dialogue trumped conflict".¹⁰⁷

The initiation of the European Semester in 2010 has ensured that there exists a continuous dialogue between the Commission, Member States and technical and political stakeholders throughout the year. It aims to better coordinate national economic policies through detailed analyses of national budget plans and macroeconomic and structural reforms. Moreover, the Two Pack has obliged Member States to present their Draft Budgetary plans for the following year to the Commission in mid-October, thereby securing dialogue early in the budgetary process. The coordination mechanism under the European Semester constitutes a good example of the persuasion strategy, aiming to legitimize the EU's fiscal rules and involve relevant stakeholders.

Managing compliance

The commitment to support capacity-building in Member States is also visible in the latest reforms of the SGP as they aimed to enhance ownership and manage national resilience in view of limited financial, technical, human or administrative capacities. Yet, the approach displayed a rather legalistic preference. First of all, Member States became legally obliged to install national fiscal frameworks ('golden rule' of

balance budgets) and national Independent Fiscal Councils (IFCs).¹⁰⁸ Though, Member States that already had comprehensive national fiscal rules in place are often more fiscally disciplined because the pre-existing domestic norms have been embedded in the administrative and political culture. Domestically grown rules tend to encounter consensus among national actors and are thus better able to ensure fiscal discipline.¹⁰⁹ This alludes to the paradox of European rules: they work best where they are least needed.¹¹⁰ However, at the same time it points to the importance of creating ownership in countries where national fiscal rules are new.

Concerning the obligation to install national IFCs, these institutions acquired the mandate to monitor and enforce compliance with European fiscal rules and produce or endorse macroeconomic projections.¹¹¹

The bias in EC's forecasts tends to be much smaller in Member States where an IFC produces the national macro-economic and budgetary forecasts.¹¹² Although, the legal mandate, working methods, resources and independence of IFCs differ vastly across the Eurozone. The Commission only checks whether an IFC exists and has not legally defined their minimum standards or put a mutual visitation system in place that safeguards their quality, nor does the Commission seem to be inclined to go down that road in view of sensitivities. A clear view of what constitutes strong and effective national IFCs are the OECD's principles for Independent Fiscal Institutions.¹¹³

Currently, the essential problem boils down to the limited or non-existing binding monitoring and enforcement powers of many IFCs. A sole advisory role does not

105 'Macron's costly U-turn tests EU's Italy resolve', *Financial Times*, 12-12-2018.

106 Rae Baerg, N., Hallerberg, M., 2016: pp. 989-990.

107 'The European Commission is political – it has no other choice', *Financial Times* (22 February 2019).

108 See the Six Pack (Directive 2011/85/EU), Two Pack (Regulation 473/2013) and Fiscal Compact (Treaty on Stability, Coordination and Governance).

109 Wyplosz, C., 2019. And Begg, I., 2017: pp 11.

110 Begg, I., 2017: pp. 10.

111 Beetsma, R., Debrun, X., Fang, X., Kim, Y., Lledó, V., Mbaye, S., Zhang, X., 2018: 1-17.

112 Gilbert, N., de Jong, J., 2014: pp. 2.

113 See [Recommendations of the Council on Principles for Independent Fiscal Institutions](#), *OECD Network of Parliamentary Budget Officials and Independent Fiscal Institutions (PBO)* (February 2014).

ensure compliance. More importantly, the Commission has assumed overlapping first-line control tasks, thereby undermining the benefits of a subsidiarity-based system.¹¹⁴ The European Fiscal Board (EFB) was also established in 2015, with the tasks to evaluate the Commission's monitoring of Member States, assess the appropriateness of the European fiscal framework, provide ad-hoc advice to the Commission President and liaise with national IFCs.¹¹⁵ Yet, the tasks of the EFB are focused on monitoring the role of the Commission in the EU semester and it is loosely connected to the network of IFCs. IFCs are currently connected in two network-type arrangements at the European level: the Commission's biannual EUNIFI meeting and the self-organised EU IFIs network.¹¹⁶ Although, these network-arrangements are mostly organised in a more or less informal way and operate at a distance from the EU Commission. The EU IFIs network has repeatedly called for a reinforcement and strengthening of the operative capacity and functional autonomy of IFCs. Yet, institutional differences and national impacts have remained highly differentiated. The development of a formalized network in which IFCs cooperate, foster mutual learning and create shared professional values is only slowly emerging. The EFB is also still very closely connected to the Commission: it falls directly under the Secretariat General and is dependent on the analyses and inputs from DG ECFIN. This undermines the benefits of an independent multilevel agency-based network. The EFB's current mandate is not designed and equipped to execute managerial second-line supervision.

The EU Council gave further substance to the Five President's Report in 2016 by adopting a non-binding recommendation that invites Member States to set up a National Productivity Board (NPB). These independent institutions have the task to analyse the economic productivity and competitiveness of Member States. Although, as the Council's Recommendation removed the requirements 'adequate resources' and 'grounded in national legislature' before its adoption, it remains unlikely that these institutions have sufficient staff and budget to comprehensively assess productivity developments across a range of policy areas in the EU.¹¹⁷ In addition, the EU Commission has created a Structural Reform Support Service in its Secretariat which supports Member States to build efficient institutions and governance frameworks in cooperation with the relevant Commission service. It helps countries to design and carry out structural reforms in order to induce job creation and sustainable growth. Lastly, the recently proposed Eurozone budget is also promoted in order to induce competitiveness and secure convergence and stability in the Eurozone.¹¹⁸ All in all, only rather heterogeneous and light EU networks of Fiscal Councils and Productivity Boards have emerged wherein the Commission's stance does not compare to Metcalfe's notion of the Commission as network manager. As such, the multilevel management deficit persists in economic governance.

114 Schwieter, C., Schout, A., 2018: pp. 37-38.

115 Schwieter, C., Schout, A., 2018: pp. 35-38.

116 The focus of this policy brief is on EU networks, thereby excluding the existent OECD network of PBOs & IFIs. [See here more information on the EU IFI network.](#)

117 Schwieter, C., Schout, A., 'National Fiscal Councils, the European Fiscal Board and National Productivity Boards: new EMU independent bodies without much prospect', *Clingendael State of the Union Report* (2018): pp. 36-37.

118 See [Proposal on the architecture of a Eurozone budget 2018.](#)

Table 1 Enforcement of the SGP in the EU's multilevel system

	Member States (first-line)	The EU (second-line)	Outcome
Legal	<ul style="list-style-type: none"> - National government are responsible for adhering to the EU's fiscal rules (<u>Legal first-line control</u>), even though fiscal and economic policy is a national competence 	<ul style="list-style-type: none"> - The EU Commission as 'Guardian of the Treaties' has the possibility to initiate an Excessive Deficit Procedure and impose legal sanctions in case of non-compliance with the SGP (<u>Legal second-line control</u>) - The EU Commission has the right to initiate modifications to the SGP's legal framework (e.g. Six Pack, Two Pack and Fiscal Compact) <ul style="list-style-type: none"> • The Commission has created legal obligations for Member States: IFCs and national fiscal frameworks 	Legal bite is weak for political reasons and due to the increasingly complicated governance framework
Political	<ul style="list-style-type: none"> - Compliance as post-decisional politics (<u>Political first-line control</u>) - Risk of deficit biases and poor institutional adaptations 	<ul style="list-style-type: none"> - Commission's interpretation and political enforcement of the SGP through setting up dialogues, persuasion, negotiations and patience (e.g. EU semester, benchmarking, country visits) (<u>Political second-line control</u>) 	The implementation and enforcement of the SGP is a highly political process. The political approach is the dominant approach
Management	<ul style="list-style-type: none"> - Implicit obligation that (loyal) countries create administrative capacities (e.g. IFCs with sufficient resources, legal mandate and working structure) to fulfil Treaty obligations (<u>managerial first-line control</u>) 	<ul style="list-style-type: none"> - The Commission's capacity-building efforts through the Structural Reform Support Service, network of IFCs, NPBs and the EFB (<u>managerial second-line control</u>) <ul style="list-style-type: none"> • EFB has limited mandate • Weak national IFCs (limited resources, mandate and structure) • Weak network-building efforts by the Commission. A pan-EU formal cooperative network has not emerged 	Limited effectiveness in creating strong networks with sufficient national and EU capacities

V Conclusions

Enforcement has become a major political theme as well as a topic of increasing academic interest. Yet, a generalizable model to assess enforcement capacities has not yet emerged. This article developed a multilevel, subsidiarity-based management model to assess the EU's enforcement capacities. The model interconnects basic EU governance principles of subsidiarity and proportionality and the related, but so far hardly elaborated, distinction in EU literature between first and second line control in which Member states are responsible for implementation and checking the effectiveness of their efforts (first line control) and the Commission for controlling the controllers. In addition, the model is interdisciplinary by interconnecting legal, political and administrative approaches. As the literature shows, there is a tendency

for the Commission to focus in enforcement on the political approach (persuasion). The evolving economic supervision under the SGP has been used as case to examine the relevance of the model and to examine to what extent enforcement has been developing into a system (regime) of complementary and multilevel roles. The first conclusion is that, in line with the literature on EU enforcement, current discussions on SGP reforms show that strengthening expenditure rules (legal enforcement) and persuasion have been the preferred approaches. Moreover, the SGP also shows the limited attention that has been devoted to setting up a subsidiarity based approach based on the distinction between first and second line control. Key components of economic governance are the country

assessments and related country specific recommendations that the Commission (DG ECFIN) produces and that are discussed at different administrative and political levels. As a corollary, we can conclude that the Commission has been taking over first-line enforcement. The second conclusion that emerges is that despite the Commission's all-encompassing attempts to induce compliant behaviour, fiscal discipline and economic convergence have remained problematic in countries that already had poor institutions and related track records.

As regards the generalisability of the model proposed in Table 1, the multilevel approach offers further insights into how first and second line control have been elaborated in terms of legal, political and administrative approaches. This offers depth to the terminology of first and second line control. The model offers leads for a different diagnosis of the weak enforcement of the SGP. Table 1 shows an overt focus on the legal and political approaches to enforcement whereas the EU has devoted little attention to the management approach. The model also allows for a discussion on the emerging economic governance of the Eurozone. In an incremental way, the EU has extensively expanded and reformed the EU's legal fiscal framework. Yet the resulting (complicated and laborious) structure with multiple overlapping rules and flexibility clauses has impeded enforcement and caused irritation over the role of rules in the EU up to the point that mutual trust and trust in EU rules have become an issue. Political demands for 'rules are rules' deny the relevance of persuasion. Equally, continuing the pragmatic tinkering with economic governance does not lead to a balanced set of complementary roles and administrative capacities, assuming Table 1 offers an outline of a balanced package.

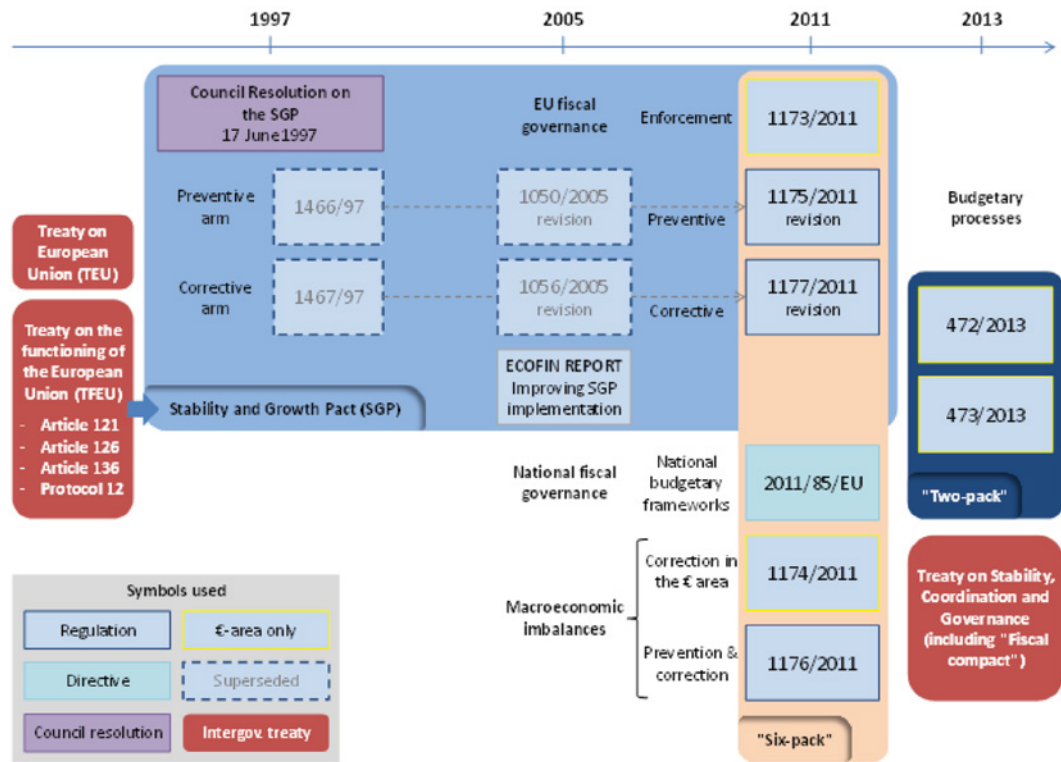
Further elaboration of the model is possible and necessary. Despite the relevance of developing general principles of enforcement, it should be acknowledged that different policy sectors imply different problems and implementation processes. Hence, this model has its limits and requires precision in relation to the contingencies of specific sectors. Enforcement regimes may be more or less effective depending on the country, sector and number of actors to be supervised. In addition, the management approach opens up a new research field concerning the organisational development of multilevel enforcement (implying rules, resources, leadership styles, norms, organisational budgets, etc.).

The EU institutions and Member States have failed to systematically develop the management approach to enforcement. For different reasons, organisational structures and qualities in the EU have remained largely unaddressed.¹¹⁹ Hence, the management deficit as outlined by Metcalfe (1992) still exists.¹²⁰ Although, albeit slowly, there is a trend towards recognising the need for strengthening national resilience and ownership and creating an EU-wide stability culture through national IFCs and the EFB. Yet, these efforts are not based on a specified administrative model of first and second line control and little effort has been devoted to creating or strengthening the required EU network. The EU Commission is inclined to take over the first-line of control out of the belief that Member States cannot do it themselves, rather than further developing ownership, responsibility and stability cultures at the national level. The current path towards economic growths is insufficient to address the multilevel management deficit.

119 Jordan, A., Schout, A., 2007.

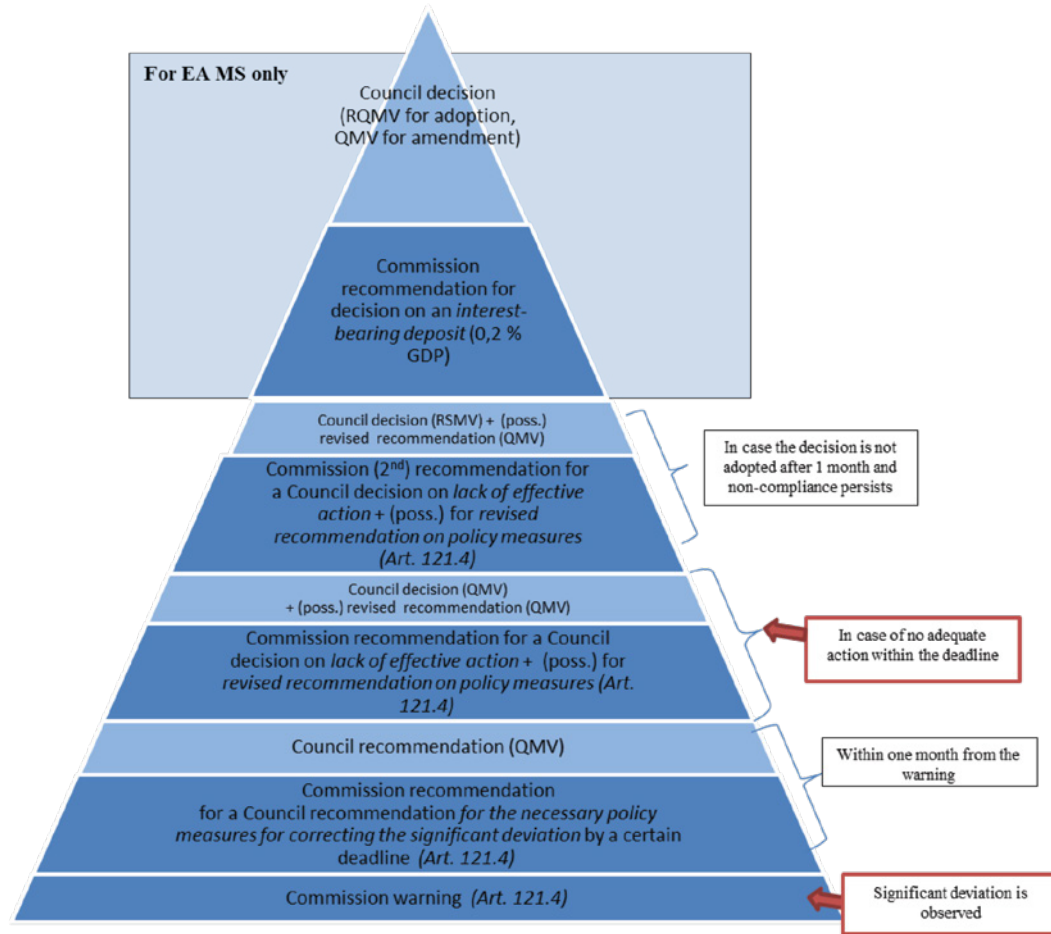
120 See Metcalfe, L, 'After 1992, can the Commission manage Europe?' (1992).

Annex: Some of the complexity in the SGP



Source: European Commission (2018) *Vade Mecum on the Stability & Growth Pact*. ISSN 2443-8014 ([online](#)).

Figure 1 Steps of the EDP







Source: European Commission (2018) *Vade Mecum on the Stability & Growth Pact*. ISSN 2443-8014 (online).

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