

Diagnosing the EU's Rule of Law deficit

Towards a Public Management approach

Draft policy paper for discussion
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1 Introduction: From policy to management

Evidently, the state of the EU's rule of law is a point of concern. Rule of law in the EU is a precondition for economic and political stability and for mutual trust. One major challenge is the availability of effective instruments to ensure the rule of law and stimulate improvements. Currently, in the search for instrumentation most attention is directed at central EU control mechanisms: high-level, top-down political and legal procedures as well as monitoring via European institutions. Importantly, the most recent addition to the EU's Rule of Law toolbox is the European Parliament's proposal of a Union Pact for Democracy, the Rule of Law and Fundamental Rights. This policy paper wants to explore the relevance of a different, complementary, approach: to actively manage capacities at national and at EU level (subsidiarity-based networks). By doing so, this paper wants to apply insights from other major developments in other EU policies.¹ Although policy experts often assume their field is different, there may be some lessons to be drawn from other areas and earlier waves of European integration.

Slow maturing of a policy field, such as rule of law, is nothing new in the history of European integration. Yet, it can reinforce doubts about the EU that it is able to show results. The effectiveness that finally resulted in other policy fields depended on the quality of numerous national institutions 'on the ground' in the member states and on the functioning of the European networks that bind member states and EU institutions together in the EU's multilevel administrative system. Currently, the EU realises that a gap exists between the conditions for EU accession (formulated in 1993) and that continued respect for rule of law is an issue. Recently (October 2016), the European Parliament passed a resolution to 'end the current "crisis-driven" approach to perceived breaches of democracy, the rule of law and fundamental rights in EU member states.'²

This draft policy paper has no higher ambition than to pose the question: would a public management approach to rule of law be helpful? And if so, what are the consequences for the European Commission and European Parliament in managing the necessary networks and capacity building processes? Section 2 briefly discusses the EU's tendency towards management deficits³ and how management processes finally did emerge (successfully). This section presents a diagnostic tool and the question is whether it offers an approach to diagnose the EU's weaknesses in rule of law. Section 3 shifts the focus back to the current toolbox of the EU's rule of law agenda. The concluding Section raises questions for debate as regards the relevance of a multi-level public management agenda.

¹ Jordan, A., J.A. Schout (2006) *The coordination of European Governance: exploring the capacities for networked governance*, Oxford: Oxford University Press. (Foreword: Helen Wallace).

² European Parliament, *MEPs call for EU democracy, rule of law and fundamental rights watchdog* (accessed 20 November, 2016) <http://www.europarl.europa.eu/news/en/news-room/20161020IPR47863/meps-call-for-eu-democracy-rule-of-law-and-fundamental-rights-watchdog>

³ Metcalfe, L.M., 1996, 'Building capacities for integration; the future role of the Commission', *Eipascope*, 1996/2, pp. 2-8.

2 EU integration and multilevel capacity building: a diagnostic tool

From EU policies to EU management challenges

As it appears, EU policies seem to go through a cycle. First, policies are agreed (the EU as legal system). Secondly, the policies run in to different types of implementation problems (the EU as being prone to management deficits). Finally, and gradually, national, network and European management capacities are created (the EU as multilevel administrative system). Our assumption is that this cycle can be shortened. The first popular wave of European integration was arguably the ‘completion’ of the single market under Jacques Delors. At first, the track record of the member states concerning implementation fell behind policy activism.⁴ Naming & shaming instruments and implementation overviews were introduced⁵ successfully in some, but failed in other, policy sectors. A ‘management deficit’ became apparent: although the EU had legal competences and regulations necessary to formulated single market **policies**, it had not paid similar attention to developing the **administrative capacities** within the EU to construct, manage and enforce complex cross-national undertakings underpinning the internal market. By analysing the many institutional capacities on the ground in member states, and with the aid of various national actors and European agencies, a network approach on further implementation and national enforcement was developed that proved successful.⁶ Particularly the creation of EU network-type arrangements and their subsidiarity-based networks of national actors proved to be successful in sensitive areas such as environment policies, aviation safety and food safety.⁷

The second wave of EU integration and capacity building concerns the eurozone. Currently, economic institutional building seems to follow the slow – but gradual - capacity building in the internal market. Our **assumption** is that if lessons would have been drawn from the progress in the internal market, the eurozone would have been able to progress faster.

Prior to the economic crisis, Europe’s economic governance was predominantly based on the Stability & Growth Pact (SGP) rules and on open coordination (the Lisbon Process).⁸ The latter proved to be informal and with limited success because criticising each other’s institutions has remained a taboo, because countries have had little interest in being disciplined, and because there has been no approach for multilevel capacity building. The crisis prompted new European control mechanisms such as the European Semester and the intergovernmental Fiscal Treaty imposing new requirements on member states. Yet, difficulties to implement and enforce effective national reforms based on a top-down approach remained. Gradually, discussions about the EU’s multilevel capacity building instruments seem to be developing. Discussions are progressing about a better European Statistical network, the (not independent) position of DG Ecfm in the Commission, national fiscal authorities, etc.⁹ The related setting-up the banking union has – once again - recently been confronted with national differences, deficiencies, and supervision gaps in the member states. As

⁴ Siedentopf, H., J. Ziller, 1988, *Making European policies work; the implementation of Community legislation in the Member States*, vol. 1, London: Sage.

⁵ Schout, J.A. (1999) *The internal management of external relations - The adaptation process of an economic affairs ministry to European integration*, Maastricht: European Institute of Public Administration.

⁶ Kassim, H. (2015), ‘Revisiting the management deficit’, in: E. Ongaro, *Multi-Level Governance: The Missing Linkages*, Bingley: Emerald.

⁷ Everson, M., G. Majone, L. Metcalfe and A. Schout (1999) *The Role of Specialised Agencies in Decentralising EU Governance*, Commission of the European Commission. Background document to the Commission White Paper on Governance, Brussels, March 2001 (http://ec.europa.eu/governance/areas/group6/contribution_en.pdf). E. Vos (ed.), *European Risk Governance: its Science, its Inclusiveness and its Effectiveness*, Connex Book Series: Mannheim University Press.

⁸ Schout, A., A. Jordan, (2005) *Coordinated European Governance*, p202. Schout, A., A. Jordan (2011) ‘The ‘Old’ and the ‘New’ Governance in the EU: Different Instruments, but the same administrative capacities?’, in: P. Le Gales and H. Kassim (eds) *Governing the EU: Policy Instruments in a Multi-Level Polity*, Palgrave. Zito, A, A. Schout (2010) ‘Learning theory reconsidered: EU integration theories and learning’, in: Zito, T. (ed.) *The European Union, Learning Theories and the Study of Integration*, Routledge. Schout, A. (2009) ‘Organisational learning in a multilevel governance system’, in: Zito, T. (ed.) *The European Union, Learning Theories and the Study of Integration*, Routledge.

⁹ European Commission, *European System of Competitiveness Authorities*, (accessed 21 November 2016)

https://ec.europa.eu/epsc/events/european-system-competitiveness-authorities_en. Eurostat, *European Statistical System*, (accessed 21 November 2016)<http://ec.europa.eu/eurostat/web/european-statistical-system>

concluded in the Financial Times (5 August 2016): “the European banking system appears to be too fragmented to co-ordinate ... *something* is still missing from the banking union, in terms of either the institutions being developed or the way in which the framework is being implemented” (emphasis added).¹⁰

The Rule of Law might be the third major EU policy wave¹¹ and we might be witnessing the same cycle of defining the legislation, looking for instruments, and, hopefully, building the appropriate multilevel management capacities.

Diagnosing capacities.

Addressing EU policy and the related (multilevel!) management challenges implies first of all a model to diagnose/audit:¹²

1) national capacities.

Independent position of the national bodies, independence in the appointment of the directors of the national bodies, sufficient resources and human resources, quality systems based on self-assessments and external expert reviews, transparency of policy and assessments, professional rules of procedures, independent complaint procedures, etc.

2) the European network (with an independent secretariat or agency).

To ensure effective exchange and to ensure mutual quality control a network can vary from a **weak network** with a limited role for a secretariat and highly informal exchange of best practices, to a **strong network** with formalized meeting schedules, leadership and quality review systems, learning teams (including a ‘bite’ in the form of openness of quality reviews, exclusion of the network in case of lack of follow-up from recommendations, exclusion from EU programmes, fines). By way of footnote: a step-function of sanctions in a network is technocratic and more or less automatic – compared to the highly political and visible Article 7 procedure or conflictual infringement procedure

* As a general rule: EU networks start often informal and weak and tend to develop, over time, towards formalisation and strengthening.

* The argument can be made that a learning-based visitation system (based on mutual-learning) with independent experts (from e.g. the network-agency) perform best. Quality control in aviation could be used as an example (Icao/Easa – but food safety and other areas provide similar examples).

* In e.g. the environment agency and its network, EP has been particularly decisive in ensuring the strengths and independence of the network-system.

3) the role of the Commission in managing the effectiveness of the administrative system.

There are good arguments to argue in favour of independent agency-positions (although this can be unpopular within EU institutions). Moreover, the question needs to be addressed whether the Commission assumes a policy position (focussing on policies and formal implementation) or whether the Commission is actively engaged in network-building and the setting up of review and monitoring systems. In other words: to what extent does the Commission regard itself as policy-maker or policy-manager (focusing on national and network capacities and procedures)?

¹⁰ European Court of Auditors, Ensuring fully auditable, accountable and effective banking supervision arrangements following the introduction of the Single Supervisory Mechanism, (accessed November 21 2016)

http://www.eca.europa.eu/sites/cc/Lists/CCDocuments/CC_STATEMENT_2015/CC_SSM_statement_EN.pdf.

See also: 2016 EU-WIDE STRESS TEST, European Banking Authority, 29 July 2016, Financial Times.

¹¹ Enlargement is not regarded as an EU policy wave (it expanded the borders of the EU; not so much the scope).

¹² Based on Schout and Jordan 2005.

3 Managing rule of law

Rule of law as output of national institutions

The relevance of the rule of law is difficult to overestimate: the European (and hence: national) economies, the eurozone, environmental protection, the functioning of and trust in democracies, etc., all depend on rules and their implementation and enforcement. Rule of law is a prerequisite for the fundamental values listed in Article 2 TEU, for upholding the obligations as laid down in the Treaties, for respecting the famous ‘Copenhagen criteria’ etc.¹³ The EU accession process has prioritised the rule of law, particularly since 2012.¹⁴ It is an acknowledgement that it is fundamental to transform societies of the candidate member states for the better.

Rule of law builds on – and manifests itself in - numerous national institutions and organisations.¹⁵ This implies not only lower and supreme courts but also public bodies and procedures safeguarding fundamental rights, democracy and transparency under the rule of law. The quality of rule of law is defined by a host of national organisations and procedures such as:

- lower and supreme courts and their proceedings
- councils for the judiciary
- prosecutors, including guarantees of independence, professional values
- lawyer organisations including guarantees of professional values
- (well-functioning) police force
- supervisory committees on intelligence and security
- national Human Rights Institutions
- equality bodies
- customs chambers
- audit offices
- data protection
- anti-corruption and integrity bureaus
- open governance formats
- impact assessments
- independent statistics
- cadastre and public registers
- ombudsman
- media authorities and guarantees of independent media
- transparency boards,
- whistle-blower protection
- independent recruitment procedures and quality control within the various tiers of government
- electoral colleges
- transparency of party finance
- market surveillance authorities
- independent advisory councils
- representative bodies in various institutional layers

¹³ “The EU and the Rule of Law – What next?” European Commission, Vice-President of the European Commission, EU Justice Commissioner Vivianne Reding (September 4, 2013), accessed October 20, 2015, http://europa.eu/rapid/press-release_SPEECH-13-677_en.htm.

¹⁴ European Commission, Communication from the Commission to the European Parliament and the Council: Enlargement Strategy and Main Challenges 2013-2014 (accessed 20 November, 2016) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52013DC0700>

¹⁵ A functioning rule of law concerns the shape, sanctions, source and substance of rules, implying supremacy of the law that is general, prospective, clear, certain and consistently applied and in accordance to fundamental rights and constitutional democracy. The rule of law is a multidimensional concept, encompassing a variety of discrete components: e.g. economic scholars think of property rights when dealing with the rule of law, legal scholars of formal legality, political scientists of human rights and others mention public order. Thereby various concepts and organisations are relevant. See e.g. Møller J. and S. Skaanin, *The Rule of Law: Definitions, Measures, Patterns and Causes*, (Palgrave Macmillan UK: 2014), pp17-20, Haggard S.M., and Tiede, L.D., ‘The Rule of Law and Economic Growth: Where are We?’ *World Development*, Volume 39 (5) (2011), p. 673 and the World Justice project, <http://worldjusticeproject.org/what-rule-law>.

- possibilities for social dialogue (e.g. social economic councils, labour unions)
- (etc.)

Together they make up the institutional, political and legal ‘rule of law culture’ that *inter alia* ensures a separation of powers, checks and balances, legal compliance and adherence to fundamental rights and democratic standards.

Current focus on improving and maintaining the rule of law: central control

The existing European political and legal practice of maintaining the rule of law seem to focus primarily on systemic or specific *breaches* of rule of law while relying on **central** European control mechanisms. The quality of rule of law under the Acquis is maintained through the infringement procedure (Article 258-260 TFEU) and when it concerns the principle (Article 2 TEU) through Article 7 TEU. Both procedures have their shortcomings. The Commission may only initiate an infringement for a specific violation of EU law, thereby allowing a member state of the hook for systemic breaches (as the Hungarian case demonstrated).¹⁶ Article 7 TEU is at the same time a never activated procedure due to the ‘nuclear’ nature and (nearly) impossible threshold; unanimity must be established in the European Council to consider a breach of the values laid down in Article 2.

Various proposals (without the need for Treaty change) have been tabled and initiated to strengthen the rule of law in the EU (including some of their weaknesses):

1) Cooperation and Verification Mechanism

The mechanism is established in 2006 by the Commission and addresses specific benchmarks in the areas of judicial reform and the fight against corruption. It is only applicable to Romania and Bulgaria.¹⁷

2) European Union Agency for Fundamental Rights (FRA)

The Agency, established in 2007, set itself the ambition to capture the full depth of the fundamental rights situation in member states with various monitoring on issues related to the rule of law. However, data and technical assistance of the FRA -which is research and survey based- is used mainly on an ad-hoc basis, the opinions and conclusions adopted by the FRA are non-binding and the Agency focuses on a limited of topics.¹⁸

3) EU Anti-corruption Report

A report on anti-corruption measures, perceptions and risks in EU member states published by the Commission every two years (first published in 2014).¹⁹ The report mentions no individual countries, parties or names and stops short of ‘naming and shaming’²⁰.

4) Media Pluralism Monitor

The European Parliament decided from 2013 onwards to earmark a budget for the implementation of an annual Media Pluralism Monitor (based on a Commission funded study of 2009). It is a tool

¹⁶ A prime-example is the infringement procedure of the EU over the earlier retirement of judges in Hungary which threatened the independency of the court. Hungary was brought before the Court and lost the case. The newly appointed judges could stay however. The retired judges could be financially compensated within the legal context of the infringement procedure as it was launched on the grounds of (age)discrimination. Thereby, the real threat, the independency of the court, did not get properly addressed, see e.g. Kochenov D., and Pech L., ‘Upholding the Rule of Law in the EU: On the Commission’s ‘Pre-Article 7 Procedure’ as a Timid Step in the Right Direction,’ EU Working Paper RSCAS 2015/24 at European University Institute Robert Schuman Centre for Advanced Studies Global Governance Programme-164, San Domenico di Fiesole, 2015, http://cadmus.eui.eu/bitstream/handle/1814/35437/RSCAS_2015_24.pdf?sequence=3 (accessed January 2016), p.8.

¹⁷ Mechanism for cooperation and verification for Bulgaria and Romania, http://ec.europa.eu/cvm/progress_reports_en.htm

¹⁸ Toggenburg, G.N and J. Grimheden, ‘Upholding Shared Values in the EU: What Role for the EU Agency for Fundamental Rights?’ In JCMS 2016 Volume 54. Number 5. pp. 1093–1104.

¹⁹ European Commission, Establishing an EU Anti-corruption reporting mechanism for periodic assessment (“EU Anti-corruption Report”), June 6, 2011 http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/pdf/com_decision_2011_3673_final_en.pdf

²⁰ ‘EU anti-corruption report stops short of ‘naming and shaming’’, EUobserver (March 28,2014) <https://www.euractiv.com/section/justice-home-affairs/news/eu-anti-corruption-report-stops-short-of-naming-and-shaming/>

designed to obtain a broad understanding of the risks to media pluralism in a Member State (study based).²¹

5) EU Justice Scoreboard

The EU has an annual Justice Scoreboard since 2013 to monitor and suggest improvements of the rule of law, linked to the country-specific recommendations of the European Semester.²²

However, some member states refuse to provide (complete) openness; rule of law is approached narrowly on the effectiveness of the courts; and the national implementation rate within the European Semester is low.²³

6) Rule of Law Framework

To bridge the gap between the infringement procedure and article 7 TEU, the Commission launched a new rule of law framework in 2014.²⁴ It provides the Commission with the authority to enter into a structured dialogue with a member state and to assess the rule of law deficiencies with the help of various (judicial) bodies, such as the Venice Commission of the Council of Europe and the Fundamental Rights Agency. Hereby, a stronger case is built up that could potentially lead to triggering Article 7, pressuring the member state to resolve the outstanding issues.

Nevertheless, Poland has not responded to the Commission's recent ultimatum within the rule of law framework and Article 7 was not triggered.²⁵ General criticism on the nature of a confidential dialogue coupled with the possibility of adopting non-binding recommendations were also uttered.²⁶

7) Annual rule of law dialogue

The Council started the annual rule of law dialogues in 2014 to reflect upon and discuss possible improvements of the rule of law in the member states. Under the Dutch EU presidency, thematic themes have been chosen, asking member states to provide best practices as well as areas where there is potential for improvements (self-assessment).

As such, this network seems rather non-committal and displays the limitations that typify weak open coordination processes. It also seems to serve as a distraction for the Commission's rule of law framework; a framework which was criticized by the legal service of the Council as illegitimate.²⁷

8) Union Pact for Democracy, the Rule of Law and Fundamental Rights

Under the leadership of Sophie in 't Veld (rapporteur of the EU mechanism on democracy, rule of law and fundamental rights) the European parliament has, October 2016, proposed a Union Pact for Democracy, the Rule of Law and Fundamental Rights (DRF). It seeks to streamline the existing initiatives into an annual 'DRF Semester'. Annual Reports on democracy, the rule of law and fundamental rights (European DRF Report) will be produced by an independent expert panel and adopted by the Commission with country-specific recommendations. These reports are based on various rule of law indicators and incorporate existing reporting done by the Fundamental Rights Agency, the Council of Europe, and other relevant authorities in the field. They will lead to EU Council and inter-parliamentary debates with arrangements that will remedy possible risks and breaches of the rule of law -or ultimately lead to the activation of Article 7. The proposal also envisions a DRF policy

²¹ European Commission, Media pluralism in Member States, <https://ec.europa.eu/digital-single-market/en/news/media-pluralism-member-states-eu-funded-project-presents-new-results>

²² European Commission, EU Justice scoreboard, http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm

²³ 'EU justice scoreboard upsets some member states', EUobserver (17 March, 2014) <https://euobserver.com/justice/123507>

²⁴ European Commission, European Commission presents a framework to safeguard the rule of law in the European Union, 11 March 2014 (accessed November 21, 2016) http://europa.eu/rapid/press-release_IP-14-237_en.htm.

²⁵ Poland defies EU on rule of law, EUobserver, October 27, 2016 (accessed November 20, 2016) <https://euobserver.com/news/135698>

²⁶ Kochenov, D. and L. Pech, Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality, European Constitutional Law Review, December 2015, pp. 512-540, <https://www.cambridge.org/core/journals/european-constitutional-law-review/article/monitoring-and-enforcement-of-the-rule-of-law-in-the-eu-rhetoric-and-reality/4A1C86E2BB85C6190697702B61D27194>

²⁷ Council of the European Union, Opinion of the Legal Service Commission's Communication on a new EU Framework to strengthen the Rule of Law, May 27, 2014 (accessed November 20, 2016) <http://data.consilium.europa.eu/doc/document/ST-10296-2014-INIT/en/pdf>

cycle within the institutions of the Union and also takes into account the latest legal innovative proceedings.²⁸

Considering the prevalent policy practice of the EU to try to step in correctively and punitively on specific breaches or fundamental breaches, the EP proposal is a step forward: it is seeking to establish a structural environment in which the rule of law is monitored and improved on a continuing basis by all member states on a broad variety of topics.

Deficiencies of the EU control instruments

As this short review shows: the instrumentation of rule of law is developing – much like, earlier, the internal market processes and economic governance. Yet there are still some unresolved deficiencies²⁹: the competency to enforce, the division of monitoring responsibilities between the EU and its Member States as well as between EU bodies, the lack of effectiveness of existing enforcement mechanisms (initiatives are ultimately linked to the Article 7 TEU procedure that risks a veto in the European Council and difficulties exist with legal proceedings before the Court) and the emphasis on EU control mechanisms. Most importantly, the current mechanisms might be too much preoccupied with policies and not enough with the national institutions/organisations.

The role of the EU, particularly the Commission and European Parliament, is active in the sense it tries to monitor the rule of law (the latest Commission's rule of law framework on a case to case basis, and the European Parliament proposal on a more structural basis). But the EU seems less active in terms of managing a network of peer reviews with different levels of bites; in terms of peer reviews that look at the each other's national systems and institutional improvements; and of mutual visitations on the basis of shared learning and independent agency-driven monitoring of the national institutions on the ground.

Despite the progress being made, the question remains whether rule of law capacities as defined in the diagnostic tool (section 2 above) are sufficiently addressed. In other words, like earlier the internal market, it might be that the EU's rule of law policies suffer from a management deficit. The suggested management approach could be complementary to the current initiatives of the EU. In fact, it might also solve the dilemma that the rule of law is not strongly rooted in the supranational legal order and difficult to control centrally.³⁰ Enforcing the rule of law lies with the member states. Yet, this need not stop a management approach as applied earlier in other areas. This approach would be based on the adequate functioning of national rule of law institutions with an investment through EU managed networks.

Some preliminary findings

To test the relevance of the management model laid down in Section 2, we looked briefly at some rule of law related networks and found that they are insufficiently if not poorly developed. They have limited ambitions and agenda's, miss the necessary vigour, have – if any – weak capacity visitation mechanisms, miss well designed secretariats (let alone that they would be supported by serious

²⁸ "on the basis of the European DRF Report the Commission may decide to launch a "systemic infringement" action under Article 2 TEU and Article 258 TFEU, bundling several infringement cases together". One example is to present a bundling of infringement procedures (to demonstrate that the sum is more than just the sum of its parts), to allow the Court to judge on Article 2 values and show that there is a systemic breach of the rule of law. A possible legal innovation to by-pass a passive Commission and politically reluctant European council is also the idea that a member state could use 'direct action' via Article 259 TFEU. See Kochenov, D., Biting Intergovernmentalism: The Case for the Reinvention of Article 259 TFEU to Make It a Viable Rule of Law Enforcement Tool, *The Hague Journal of the Rule of Law*, Vol. 7, 2015, pp. 153-174, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2672492.

²⁹ European Parliament Research Service, European Added Value Assessment accompanying the legislative initiative report, An EU mechanism on democracy, the rule of law and fundamental rights (October 2016) http://www.europarl.europa.eu/EPRS/EPRS_STUD_579328_EU_mechanism_rule_of_law.pdf

³⁰ See e.g. Chalmers D., G. Davies, G. Monti, *European Union Law* (Cambridge University Press: 2014), pp187-197, 'the execution or administration of EU law is overwhelmingly a matter for domestic authorities and national governments within member states. Administrative actors are central to securing not just enforcement but also popular awareness and acceptance of the authority of EU law'.

agency-type agencies). Officials involved in the networks can be found to state that ‘our membership does not entail much than be present once a year’ or that the network ‘has not much clout and merely best practices exchanges.’ Other statements point to the fact that the network has no real agenda or follow-ups, that some national institutional actors are either absent or uncommitted or that the wrong one is present.

4 Conclusions

The EU’s rule of law agenda has come a long way. It seems to be a third important wave following the internal market and economic governance. In these earlier waves of European integration the EU was confronted with management deficits. The positive story is that such management deficits could be addressed. The question we have to address now is whether lessons can be drawn from this for the EU’s rule of law agenda.

This leads to the following concluding questions at this stage in the debate on the EU’s instrumentation of rule of law:

- Is it relevant (or even imperative) to draw multilevel public administration lessons as suggested from the other two ‘waves’ of integration? More particularly, would a network-based model be relevant to explore?
- How strong can or should the rule of law networks be?
 - Should EU agencies be taken into the equation (cf aviation safety, etc.)?
- Which areas of national capacities have to be taken into account? I.e. which institutions and networks underpin the rule of law?
- Can better visitations of national capacities be designed?
- What could or should the role of the Commission be in any of the efforts to arrive at better managed rule of law networks? Should the Commission be more active in multilevel capacity building? Are network audits required? What do we know about the role of the Commission and (numerous?) agency-type bodies in managing the rule of law agenda?
- What could or should the role of the European Parliament be? The Parliament has been highly constructive in e.g. the EU’s environment network – does this lead to similar vistas in more specific rule of law areas?
- Are new agencies needed – compare aviation safety, etc.?
- Which comparisons should or could be made between internal market and rule of law networks? (aviation? Etc).
- Is it possible to gain the political will (at EU and at national level) in order to engage in the capacity building as suggested here?