

IEEE European Public Policy Webinar 3

How is EU law implemented ?

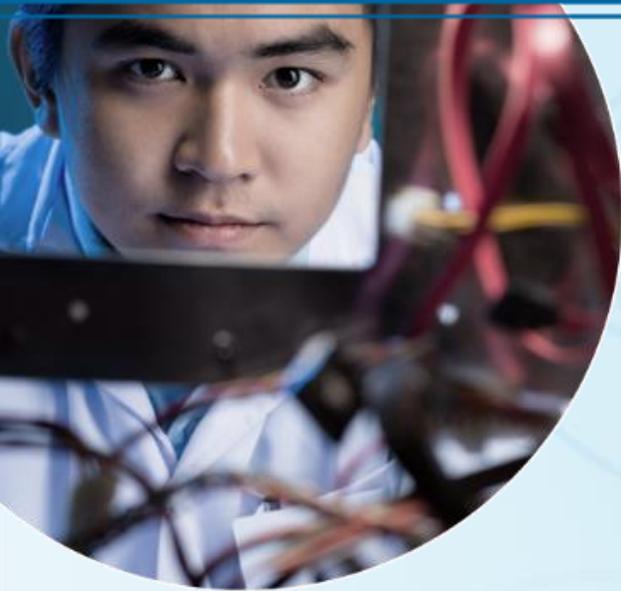
28 September 2018
4.30 pm CET



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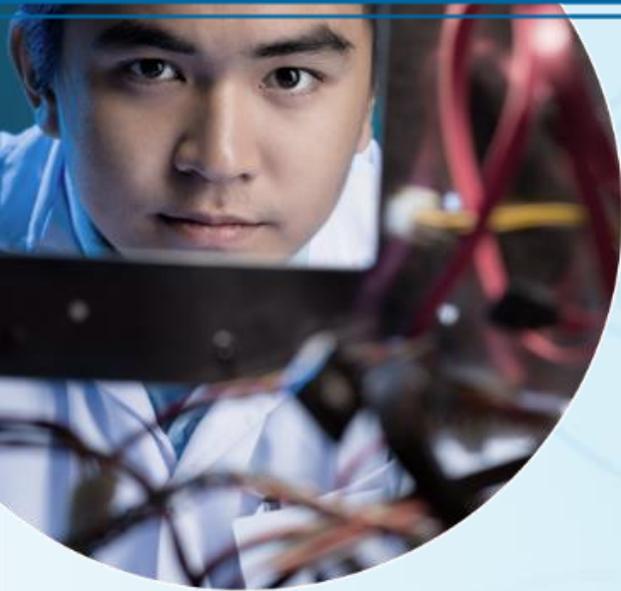


Objective and context of the webinar



Objective and context of the webinar

- The objective of the webinar is to give insight to the IEEE members on how EU law is implemented at the national level.
- We go in detail into what happens after that the European Parliament and Member States approve a piece of EU legislation.
- We will go through the competences of different EU institutions overseeing the implementation of EU legislation.
- We will illustrate the process by providing examples from current and future EU energy policies.



Recap: the EU decision-making process

The beating heart of Brussels

Adoption

European Commission

Commission consults stakeholders and drafts proposal

Commission participates in trilogues

If applicable, Commission works on delegated/implementing acts

European Parliament

Parliament drafts report on Commission proposal and votes in Committee and Plenary

Parliament participates in trilogues and adopts agreement

Parliament can veto delegated acts

Council of the EU

Council adopts position on Commission proposal at Ministers' meeting

Council participates in trilogues and adopts agreement

MS representatives discuss and adopt implementing acts



Four stages in EU law-making: from proposal to law



AGENDA SETTING



CONSULTING STAKEHOLDERS



DRAFTING and PROPOSING
LEGISLATION



EXAMINING, AMENDING
and ADOPTING LAW

EUROPEAN COMMISSION

EUROPEAN PARLIAMENT
+ COUNCIL of MEMBER
STATES

Stakeholders, like IEEE, are consulted throughout the process.



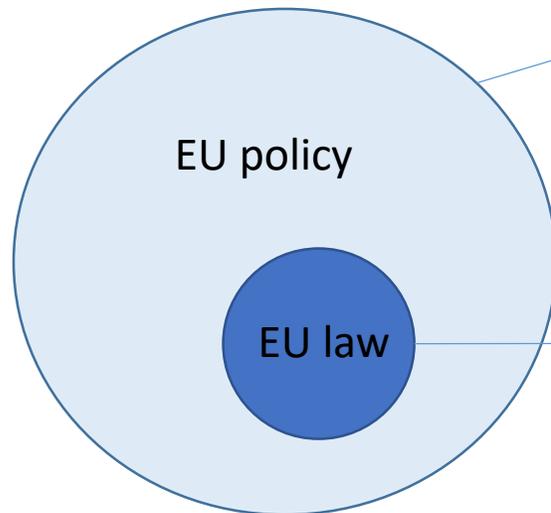


How are EU legislative acts implemented by Member States ?



Before we dive into the procedural pond...

- ... not all EU policies are EU law but all EU law is EU policy.
- The main difference between the 2 is that EU law has a binding and enforceable character.



Examples of EU policy

- Impact assessment document delivered by European Commission together with proposal of a Directive or a Regulation
- Staff working document of the European Commission
- Non-binding own-initiative report of the European Parliament

Examples of EU law

- Regulation
- Directive
- Decision, i.e. Commission decision in competition cases clearing a merger between 2 undertakings *For the purpose of this Webinar we will focus on the Regulation and Directive*

Distinction between Regulation and Directive

	Regulation	Directive
Adoption	Parliament and Council	
Application	Immediately enforceable in all Member States.	Need to be transposed by Member States to become enforceable.
Flexibility	Regulations set a fixed regulatory framework = no flexibility.	Member States can go further than what is prescribed by the Directive, but need to meet the minimum requirements set out in the Directive.
Enforceability	Vertical and horizontal direct effect: Citizens and businesses can invoke Regulation against the state and other citizens.	Vertical effect: citizens and businesses can invoke Directive only against the state.

Two channels for implementation

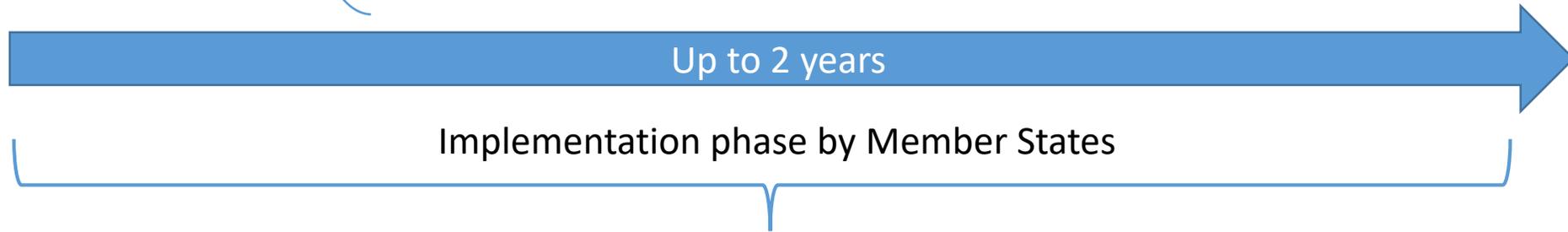
Implementation of EU rules follows 2 main channels:

- EU Member States have to transpose Directives into national laws. Rules laid down in Regulations are implemented directly by Member States.
- EU keeps working on some of the details of the legislation (Directive or Regulation) in so-called secondary legislation. These are implementing and delegated acts, dealing with more technical aspects of the legislation (Directive or Regulation) that is adopted.

Two processes in parallel (1/2)

Adoption of Regulation or Directive by EP and Council

- Implementation can last up to 2 years for a Directive
- Regulation applies immediately, unless different application date stipulated in the Regulation
- Competent national ministry implements EU law



Regulation

Directive

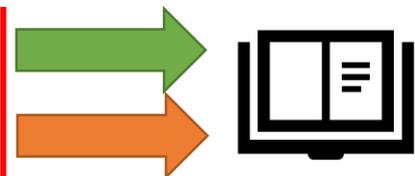
- EC sits “alone” in legislating cockpit
- Much shorter timeline
- Limited control of EP
- Strong involvement of MS in most of the secondary laws



Two processes in parallel (2/2)

Adoption by EP and Council

Regulation
Directive



Publication in EU's official journal

20 days later



Entry into force = the text produces legal effects



Regulations apply immediately in MS

Directives apply through their "spirit" in national laws

MS transpose Directive into national law

2 years later maximum



Delegated/implementing acts

Main Regulation or Directive foresees mandate for EC to draft secondary legislation, i.e. delegated / implementing acts



EC drafts guidelines for the implementation of Directive



EC delegated / implementing act adopted based on main Regulation or main Directive





What is the role of EU institutions in overseeing the implementation phase ?

3 approaches in the implementation phase

EUROPEAN COMMISSION



1 Policy approach

2 Legal approach

3 Judicial approach



Policy approach



European Commission drafts guidelines



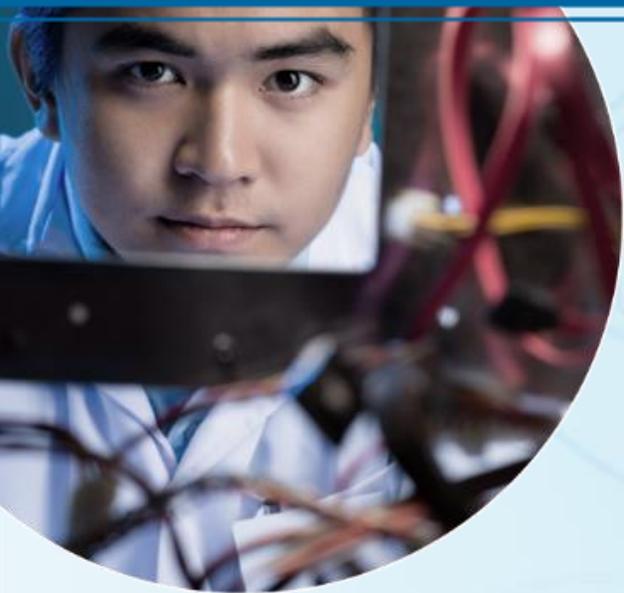
The Commission helps Member States' national authorities, i.e. ministries, to integrate EU law into national legislation. This is definitely necessary in case of Directives, as they need to be transposed into national law before becoming applicable.

The Commission drafts guidelines to:

- Educate national officials on the objectives of EU legislation;
- Explain specific –technical– provisions in EU legislation;
- Enlighten national officials on how to best comply with EU legislation.



Guidelines are non-binding and only serve as an informative tool for implementation. They however can be discussed in a “committee” ! (see below)



Legal approach



European Commission develops delegated and implementing acts

Sometimes the Commission is empowered by the Directive or Regulation to, once they have entered into force, develop sub-legal acts that are needed to work out detailed legislative provisions: these are delegated and implementing acts.



Contrary to guidelines (see previous slide) delegated and implementing acts are binding !

Example of a delegated act

Commission delegated Regulation supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to the energy labelling of space heaters, combination heaters, packages of space heater, temperature control and solar device and packages of combination heater, temperature control and solar device.



Example of an implementing act

Commission implementing Regulation renewing the approval of the active substance glyphosate in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Implementing Regulation (EU) No 540/2011.



Procedure for adopting delegated acts



European Commission
Drafts proposal for a delegated Regulation or Directive.



European Commission
Consults expert group on draft proposal and launches 4-week stakeholder consultation open to public.



European Commission + EP + Council
Adopts delegated act and sends it to EP (right to object) and Council (right to revoke).

Procedure for adopting implementing acts



European Commission

Drafts proposal for an implementing Regulation or Directive.



European Commission + Member States

Commission discusses draft proposal in "Committee" with Member State representatives.



European Commission

Consults stakeholders but only for **important** implementing acts through 4-week stakeholder consultation.



European Commission + Member States

Adopts implementing act in Committee.





Judicial approach

European Commission keeps a close watch...



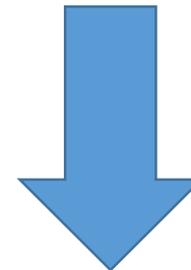
The Commission makes sure that all EU Member States properly apply EU law. In this role, the Commission is referred to as the '*guardian of the treaties*'.

The Commission will take steps if an EU Member State:

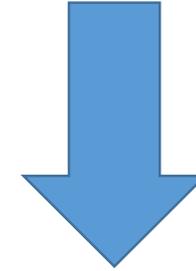
- Does not fully incorporate a Directive into its national law by the set deadline;
- Might not have applied EU law correctly (Directives or Regulations).



What happens if a Member State does not abide with by EU rules ?



...and the Court of Justice of the EU rules



The Court of Justice of the EU will “enforce the law” through so-called infringement proceedings.

- These proceedings can be engaged by the European Commission or another Member State.
- If the Member State is found to be at fault, it must remediate at once.
- If the Member State does not remediate, it will be fined.



Case studies from current and future EU energy policies

Guidelines for the Energy Performance of Buildings (EPBD) Directive

Key players

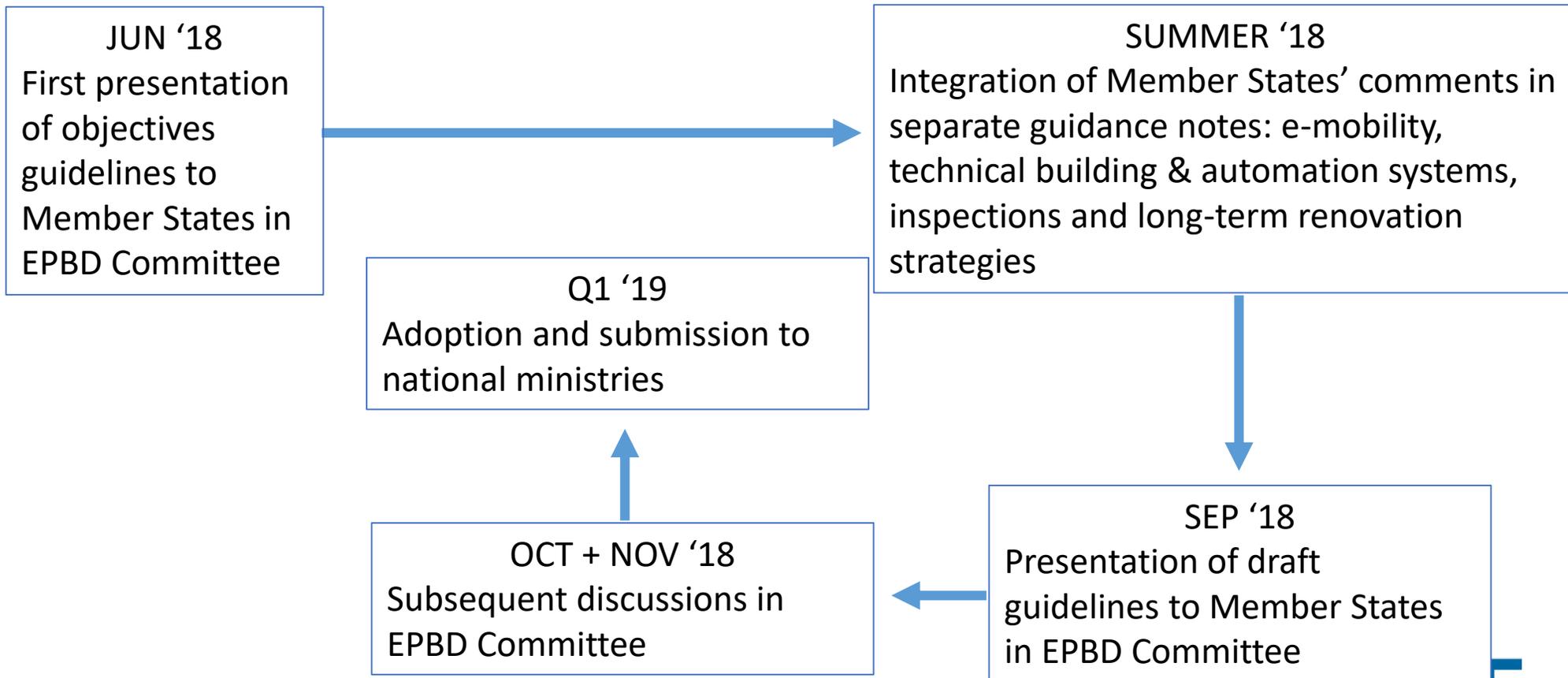


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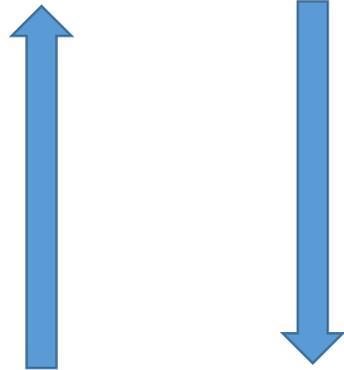
Key developments



Smart Readiness Indicator for buildings – delegated + implementing act

Type of act	Subject ?	Who decides ?	Key EC official	Timeline
Delegated act	Definition and calculation methodology of the smart readiness indicator	European Commission	 Sylvain Robert Energy efficiency unit, DG Energy, EU Commission	Adoption foreseen before end of 2019
Implementing act	Technical modalities for implementation of the smart readiness indicator	European Commission and Member States		

Court of Justice's legal action on bad implementation current Electricity Directive



In July 2018 the European Commission referred Germany to the Court of Justice for its bad implementation of the **current** Electricity Directive (Directive 2009/72).

Please note that the new Electricity Directive is currently in its final stage of discussions !

A letter of formal notice was sent to Germany in February 2015, followed by a reasoned opinion in April 2016. Since compliance with EU law is not yet in place, the Commission has to refer these matters to the Court of Justice.

Reasons:

- The Commission finds that Germany has not ensured full respect of rules concerning the powers and independence of the national regulatory authority. In particular, the regulator does not enjoy full discretion in the setting of network tariffs and other terms and conditions for access to networks and balancing services, since many elements for setting these tariffs and terms and conditions are to a large extent laid down in detailed regulations adopted by the Federal government.
- The Commission also finds that Germany has incorrectly transposed into national law several requirements concerning the independent transmission operator (ITO) unbundling model. For example, the rules on the independence of the staff and the management of the ITO do not fully respect these Directives and the definition of vertically integrated undertaking incorrectly excludes activities outside the EU.



IEEE's engagement in Brussels



IEEE's engagement in Brussels

IEEE looks forward to receiving your thoughts, scientific input, and recommended actions for the way forward on its European Public Policy activity !



Questions or Suggestions? Contact Us!

Do you have questions or feedback on today's webinar? Would you like to provide suggestions on topics for future webinars? We want to hear from you! Feel free to contact us eppc@ieee.org.



