IEEE European Public Policy Webinar 3
How is EU law implemented?

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Objective and context of the webinar
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- 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

- Commission consults stakeholders and drafts proposal
- Parliament drafts report on Commission proposal and votes in Committee and Plenary
- Parliament participates in trilogues and adopts agreement
- Council adopts position on Commission proposal at Ministers' meeting
- Council participates in trilogues and adopts agreement
- If applicable, Commission works on delegated/implementing acts
- Parliament can veto delegated acts
- MS representatives discuss and adopt implementing acts
- Adoption

European Commission
European Parliament
Council of the EU
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

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

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

Up to 2 years

Implementation phase by Member States

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

EC drafts and adopts secondary legislation

6 – 12 months
Two processes in parallel (2/2)

Adoption by EP and Council

Regulation

Directive

Publication in EU’s official journal

Entry into force = the text produces legal effects

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

20 days later

Regulations apply immediately in MS

Directives apply through their “spirit” in national laws

MS transpose Directive into national law

2 years later maximum
What is the role of EU institutions in overseeing the implementation phase?
3 approaches in the implementation phase

1. Policy approach
2. Legal approach
3. Judicial approach
Policy approach
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!

<table>
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<tr>
<th>Example of a delegated act</th>
<th>Example of an implementing act</th>
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</table>
Procedure for adopting delegated acts

**Drafting**

European Commission

Drafts proposal for a delegated Regulation or Directive.

**Consulting**

European Commission

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

**Adopting**

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
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?
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

Key players

Dimitris Athanasiou
Energy efficiency unit, DG Energy, EU Commission

Nora Bednarski
Energy efficiency unit, DG Energy, EU Commission

Key developments

JUN ’18
First presentation of objectives guidelines to Member States in EPBD Committee

Q1 ‘19
Adoption and submission to national ministries

OCT + NOV ‘18
Subsequent discussions in EPBD Committee

SUMMER ‘18
Integration of Member States’ comments in separate guidance notes: e-mobility, technical building & automation systems, inspections and long-term renovation strategies

SEP ‘18
Presentation of draft guidelines to Member States in EPBD Committee

Q1 ‘19
Adoption and submission to national ministries
## Smart Readiness Indicator for buildings – delegated + implementing act

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

On-going engagement with EU policy makers and key stakeholders to provide technological expertise and politically-neutral input to EU policies!

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

EU policy makers speak and discuss EU policies at EPPC Working Groups on Energy & ICT

A new call for WG members will be launched in a few days

IEEE is represented in European Commission expert groups, e.g. High-Level Expert Group on Artificial Intelligence

IEEE engages with prominent stakeholders in Brussels to seek common ground for action, i.e. Eurelectric

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.