



Energy Law: EU Energy Law (2)

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EU Law

Introduction

- ❖ **1) Principles and central logic behind EU law**
- ❖ **2) Interactions of EU law with international law and national law**
- ❖ **3) Interactions of EU energy law with other areas of EU law**
- ❖ **4) EU's energy policy competence**
- ❖ **5) Legal aspects of the Energy Union**
- ❖ **6) Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action**

European Integration

- ❖ Energy has been a central area of EU law from the very beginning
- ❖ European Coal and Steel Community
- ❖ European Atomic Energy Community (EURATOM)
- ❖ European Economic Community
- ❖ European Union

Institutions of the EU

- ❖ European Parliament
- ❖ Council of the European Union
- ❖ European Council
- ❖ Court of Justice of the European Union
- ❖ European Commission
- ❖ European Central Bank
- ❖ Court of Auditors

European Parliament

- ❖ As created in 1957, the EP was not a democratic body (it consisted of representatives of MS required to be members of national parliaments).
- ❖ **The introduction of direct elections (1979) resulted in increased democracy.**
- ❖ **A direct link between the national electorates and the Union political institutions.**
- ❖ A number of MEPs is depended on the size of the MS and its population.
- ❖ **Seat:** Brussels and Strasbourg
- ❖ **Function:** Legislative and budgetary functions, political control and consultation, EP elects the President of the Commission.
- ❖ **The European Parliament's Committee on Industry, Research and Energy**

European Council

- ❖ Heads of states.
- ❖ Provides necessary impetus for EU development, **defines the general political directions and priorities.**
- ❖ It sets the EU's policy agenda, traditionally by adopting 'conclusions' during European Council meetings which identify issues of concern and actions to take.
- ❖ The European Council mostly takes its decisions by consensus. However, in certain specific cases outlined in the EU treaties, it decides by unanimity or by qualified majority.

Council of the European Union

- ❖ Council of the EU consists of **representatives of the MS** , one from each MS at **the ministerial level**
- ❖ Voting: one state, one vote
- ❖ ***“Shall, jointly with the EP, exercise legislative budgetary function. It shall carry out policy-making and coordinating functions as laid down in the Treaties.”***
- ❖ Most decisions are taken by **qualified majority (QMV)**.
- ❖ **Qualified majority voting** – more rapid and more effective decision-making than unanimity.
 - ❖ At least 55% of the Members of the Council comprising at least 15 states
 - ❖ States representing at least 65% of the population of the Union
- ❖ **Unanimity** – when explicitly required by the Treaty (societal security, fiscal issues)

Council of the European Union: Energy

- ❖ **Transport, Telecommunications and Energy Council configuration (TTE)**
 - ❖ The TTE Council works towards fulfilling EU objectives in the areas of transport, telecommunications and energy: to establish **modern, competitive and efficient markets and infrastructure**, and to create **trans-European transport, communications and energy networks**.

European Commission

- ❖ 28 members, one from each MS (Commissioners)
- ❖ In the performance of their duties, **Commissioners should remain independent of their respective appointing states.**
- ❖ Divided into directorates-generals (**DG**) responsible for certain aspects of EU policy (see DG Energy).
- ❖ **European Commissioner for energy: Kadri Simson (Estonia)**
- ❖ **DIRECTOR-GENERAL: Ditte Juul Jørgensen**
- ❖ **The Executive Vice-President for the European Green Deal, Frans Timmermans**

European Commissioner for energy Kadri Simson

- ❖ **Focus on further developing an integrated, interconnected and properly functioning European energy market, in order to help keep prices down for consumers, help increase the use of clean energy and make energy supply more reliable and secure.** This will be done whilst empowering people and regions and supporting those most affected and most exposed by the transition to a cleaner and more efficient energy system.
- ❖ To become the world's first climate-neutral continent, Europe must reduce emissions further and faster, and by at least 50% for 2030. **Given energy production and use accounts for 75% of the EU's emissions, energy will have a central role to play in the European Green Deal, which, in the words of President von der Leyen, "is a must for the health of our planet and our people – and for our economy."**
- ❖ The European Green Deal is the EU's new growth strategy. It will help cut emissions while creating jobs. It is a generational transition towards climate neutrality by mid-century. But it must serve the European people and must be just and inclusive. It will require massive investment in innovation, research, infrastructure, housing, and the training of people, and will entail large public and private investments at European and national level.

Court of Justice of the EU

CJEU has jurisdiction over the acts of the institutions and MS within the Union sphere of activity.

- ❖ **Ensures consistent interpretation and application of EU law (preliminary rulings).**
- ❖ **Enforces EU law** (infringement proceedings initiated against a national government for failing to comply with EU law).
- ❖ **Annuls EU legal acts** – if an EU act violates EU treaties or fundamental rights
- ❖ **Action for failure to act** – EP, Council, Commission must make certain decisions under certain circumstances.
- ❖ **Compensation for damage** caused by the institutions or the bodies, offices or agencies of the European Union or their staff

Court of Justice of the EU

CJEU consists of 2 courts:

- a) **Court of Justice, dealing with request for preliminary rulings, actions for annulment and appeals**
- b) **General court, dealing with actions for annulment brought by individuals and companies, actions brought by the Member States against the Commission, actions brought by the Member States against the Council relating to acts adopted in the field of State aid, trade protection measures (dumping) and acts by which it exercises implementing powers, actions seeking compensation for damage caused by the institutions or the bodies, offices or agencies of the European Union or their staff; actions based on contracts made by the European Union which expressly give jurisdiction to the General Court; actions relating to intellectual property brought against the European Union Intellectual Property Office and against the Community Plant Variety Office; disputes between the institutions of the European Union and their staff concerning employment relations and the social security system. **GC's decisions can be subject to an appeal before the Court of Justice,****

https://www.youtube.com/watch?time_continue=166&v=bljylj7RH1Q&feature=emb_title

<https://www.youtube.com/watch?v=V-fNwjrvGK4>

<https://www.youtube.com/watch?v=-9FOYAKHWnw>

EU Law: Primary and Secondary Legislation

EU LAW

❖ EU PRIMARY LEGISLATION

❖ Treaty on the Functioning of the EU and Treaty on the EU

- ❖ Every action taken by the EU is founded on the treaties. These binding agreements between EU member countries set out EU objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its members.

❖ EU SECONDARY LEGISLATION

- ❖ Regulation: A "regulation" is a binding legislative act. It must be applied in its entirety across the EU. For example, when the EU wanted to make sure that there are [common safeguards on goods imported from outside the EU](#), the Council adopted a regulation.
- ❖ Directive: A "directive" is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals. One example is the [EU consumer rights directive](#), which strengthens rights for consumers across the EU, for example by eliminating hidden charges and costs on the internet, and extending the period under which consumers can withdraw from a sales contract.

Regulations

- ❖ **Regulations are of general application, binding in their entirety and directly applicable.** They must be complied with fully by those to whom they apply (private individuals, Member States, EU institutions).
- ❖ Regulations are directly applicable in all the Member States as soon as they enter into force and do not need to be transposed into national law.
- ❖ They are designed to ensure the uniform application of Union law in all the Member States. Regulations supersede national laws incompatible with their substantive provisions.

Directives

- ❖ Directives are binding, as to the result to be achieved, upon any or all of the Member States to whom they are addressed but **leave to the national authorities the choice of form and methods.**
- ❖ National legislators must adopt a transposing act or 'national implementing measure' to transpose directives and bring national law into line with their objectives.
- ❖ **Individual citizens are given rights and bound by the legal act only once the transposing act has been adopted.**
- ❖ Member States are given some discretion, in transposing directives, to take account of specific national circumstances.
- ❖ Transposition must be effected within the period laid down in the directive. In transposing directives, Member States guarantee the effectiveness of EU law, in accordance with the principle of sincere cooperation established in Article 4(3) TEU.

Principles of EU Law

Primacy of EU Law

Approach taken by the CJEU

(Judgments: Kadi, Simmenthal, Costa, Van Gend en Loos)

CJEU ruled that EU law is the highest norm in the hierarchy of Member States, even superior to their Constitutions and international agreements.

“EU Law is given preference over any other dealing with regulating internal EU relations.”

In case of any contradiction between EU law and international agreements concluded between EU member states (regardless of whether these treaties were concluded before their accession to the EU or after their accession to the EU), EU law prevails.

This principle has developed gradually over decades.

Direct effect of the EU Law

- ❖ **The principle of direct effect enables individuals to immediately invoke an EU law provision before a national or European court.**
- ❖ **This principle only relates to certain European acts.**
- ❖ **Furthermore, it is subject to several conditions.**
- ❖ **It ensures the application and effectiveness of European law in EU countries.**

Direct effect: The Judgment of Van Gend en Loos

- ❖ The direct effect of European law has been enshrined by the Court of Justice in the judgement of *Van Gend en Loos* of 5 February 1963.
- ❖ Individuals may take advantage of their EU rights and **directly invoke European acts** before national and European courts. **It is not necessary for the EU country to adopt the European act concerned into its internal legal system.**

Direct effect and EU primary legislation

- ❖ **Direct effect and primary legislation**
- ❖ As far as primary legislation is concerned, i.e. TFEU/TEU, EU law provisions have direct effect.
- ❖ However, the Court of Justice of the EU laid down the condition that the obligations must be **precise, clear and unconditional** and **that they do not call for additional measures**, either national or European.

Direct effect and EU secondary legislation

- ❖ **Direct effect and secondary legislation**

- ❖ The principle of direct effect also relates to acts from secondary legislation, that is those adopted by institutions on the basis of the founding Treaties. However, the application of direct effect depends on the type of act:

- ❖ **Regulation:**

- ❖ **Regulations have always a direct effect.** According to Article 288 of the Treaty on the Functioning of the EU regulations are directly applicable in EU countries.

- ❖ **Directive:**

- ❖ **A directive is an act addressed to EU countries and must be transposed by them into their national laws.**

- ❖ **In principle, directives are not directly applicable.** However, the Court of Justice of the European Union has ruled that certain provisions of a directive may, exceptionally, have direct effects in a Member State even if the latter has not yet adopted a transposing act in cases where: (a) the directive has not been transposed into national law or has been transposed incorrectly; (b) the provisions of the directive are imperative and sufficiently clear and precise; and (c) the provisions of the directive confer rights on individuals. However, it can only have direct vertical effect; EU countries are obliged to implement directives, but directives may not be cited by an EU country against an individual (Judgement of 5 April 1979, Ratti);

Principle of subsidiarity

- ❖ In areas in which the European Union does not have exclusive competence, the principle of subsidiarity, laid down in the Treaty on European Union, defines the circumstances in which it is preferable for action to be taken by the Union, rather than the Member States.
- ❖ ***Article 5(3) of the Treaty on European Union (TEU) and Protocol (No 2) on the application of the principles of subsidiarity and proportionality.***
- ❖ The principle of subsidiarity governs the exercise of the EU's competences. In areas in which the European Union does not have exclusive competence, **the principle of subsidiarity seeks to safeguard the ability of the Member States to take decisions and action and authorises intervention by the Union when the objectives of an action cannot be sufficiently achieved by the Member States, but can be better achieved at Union level**, 'by reason of the scale and effects of the proposed action'.
- ❖ The purpose of including a reference to the principle in the EU Treaties is also to ensure that **powers are exercised as close to the citizen as possible**, in accordance with the proximity principle referred to in Article 10(3) of the TEU.

Principle of proportionality

- ❖ Proportionality regulates how the European Union exercises its powers. It works in much the same way as the principle of subsidiarity. The proportionality principle means that, to achieve its aims, the EU will only take the action it needs to and no more.
- ❖ The principle is enshrined in **the Treaty on European Union under Article 5**, which states: *'the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties'*.