

EU Governance: Issues in Policy Implementation

European Generation - Bocconi University

Giorgia Lombardi
Camila Sant'Anna



EU Legislative Process



- EU sources of law: Primary and Secondary legislation of the European Union
- Under primary law, the EU has only limited powers of enforcement, as EU law is usually enforced by the Member States

Adoption of an EU legislative act:

1. The European Commission submits a proposal to the Council of the EU and to the European Parliament;
2. The Council and the Parliament adopt the proposal after a 1st or 2nd reading;
3. If they do not reach an agreement, a Conciliation Committee is set up;
4. If the text agreed upon by the Conciliation Committee is acceptable to the Council and the Parliament after the 3rd reading, the legislation is adopted

(Kingdom of Belgium, 2024)

(European Council, 2024)

A Problem Within EU Governance

There are evident challenges in the implementation of EU policies, particularly focusing on the **discrepancy** between **EU legislation** and its **enforcement at the national level**.

1. The complexity of the multi-level governance system in the EU, causing delays/inconsistencies in policy implementation, given the difficulty in communication between the union and member states.
2. National governments lacking the capacity or political will to fully implement them.

This inefficiency created by the problems within the governance of the union mean that important policies are not able to be implemented promptly and homogeneously across all member states.

"Parliament is seeking to simplify the legislative process, improve the drafting quality of legal texts and ensure that more effective penalties are imposed on Member States that fail to comply with Union law."
(European Parliament, 2024)

Repercussions: Period Poverty

Period poverty "refers to the inability to afford and access menstrual products, sanitation and hygiene facilities and education and awareness to manage menstrual health." (UN Women, 2024)

It increases the economic and social vulnerability of people already in vulnerable positions, while restricting people who menstruate from their right to dignity and public health, as recognized by the UN in 2014. (de Almeida, 2024)

According to Eurostat, the risk of poverty or social exclusion in the EU in 2021 was 21%, which is strictly related to the health rights of EU citizens. For example, as released by French Institute of Public Opinion, around 39% of women in situations of vulnerability in the country do not have money to buy menstrual products.

Seeking to mitigate this issue, from 2022, the EU allows member states to sell menstrual products without VAT, which make the access to menstrual products even harder. For now, although most states have reduced taxes between 5 to 10%, Ireland is the only one taking advantage of this. Even more alarming is the fact that others taxes remain high, such as Hungary (27%) or Sweden and Denmark, both at 25%.

Why Does it Matter?



Even though the EU is committed to solving the ongoing problems they face, including period poverty and its related implications, the complications of policy implementation - from legislative proposal to the risk of fragmented interpretation - continue to hinder their actions.

If not solved, it is likely that current issues will prevail, forming a cycle of inefficiency and preventing meaningful change. It not only affects the EU as a whole, but has serious consequences to each of its members.

Hence, immediate action should be taken to preserve the European Union's reputation as a supranational entity. To reconsider the current legislative procedure should be of utmost priority of the union's bodies and members.

Their focus should be towards improving their implementation strategies to guarantee homogeneous plans of action across all EU member states.

If these issues regarding **discrepancy** between **EU legislation** and its **enforcement at the national level** persist, they will also further hinder the strategies and possibility of achieving the UN's **Sustainable Development Goals** by 2030:

SUSTAINABLE DEVELOPMENT GOALS



What is the EU doing to improve governance inefficiencies?

According to the European Parliament (2017), "the 'life cycle' of EU law – including its creation, application, interpretation and enforcement – involves various institutional actors."

The creation of EU law involves the Commission, Parliament and Council, its daily application is part of the responsibility of national courts, and the supreme authority to interpret EU law [and review the compatibility of legislation with the treaties] is vested in the European Court of Justice (ECJ).

In order to **enhance the dialogue between the EU institutions**, in particular Parliament, the Council and the Commission, and **ensure greater transparency and accountability**, Parliament's competent committees may invite the President of the Council, the Commission, the President of the European Council or the President of the Eurogroup, to discuss their respective decisions or present their activities in the context of the European Semester.

Yet, **little is being done in terms of facilitating communication and cohesion between policy creation and approval by the EU**, as well as regarding transposition and implementation in EU member states.

A Legal Approach



Despite the supposedly vital role of the European Commission in monitoring compliance, enforcement mechanisms can be slow or ineffective due to the **Commission's limited resources and reliance on member states' cooperation.**

It is recommended that the EU develops a direct or indirect mechanism - similar to that present in some countries - that enables the **legislature to regulate legal interpretation through interpretive tools or guidelines.**

Although there is the concern that **statutory regulation of legal interpretation** involves various risks, including the possibility of violating the principle of separation of powers and the rise of questions regarding how to interpret the interpretative provisions, the regulation of interpretation is **an opportunity to increase legal certainty, ensuring that countries abide to the policies created.**

Besides, research suggests that law of interpretation can increase uniformity in a preventive manner, bring reassurance by supporting means that mitigate discrepancies in judicial practice, and sustain other principles and values.

A More Efficient EU Governance

Directives are legally binding acts of the European Union that establish a set of objectives which all EU member states must fulfil. The member states are required to implement Directives but are free to choose how to fulfil the required goals. (EU Monitor)

They seek to protect the diversity of national systems, while having the member states strive for common results. Hence, Directives do not state how requirements - when applicable - are to be specifically and quantifiably achieved. Instead, they require member states to transpose Directives into national legislation before a specified date. In the case of failing to transpose Directives or failure to fulfil its objectives, member states may be brought before the ECJ.

Thus, it is suggested to prioritize the development of **Directives accompanied by Implementation Frameworks**, focusing on its objectives, guidance on procedures, flexibility, and monitoring. As of now, some Directives, such as the Directive 2014/24/EU on Public Procurement, include this framework. However, those that fall short on guidelines and recommendations are also likely to face challenges in meeting their goals.

This will increase the cohesion of policy implementation and ultimately ensure EU's effectiveness without breaching the guidelines stated in The Treaty on the Functioning of the European Union (TFEU).

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