Chapter 7
The policy cycle

This chapter applies the policy cycle approach to describing and analysing EU policy processes. In so doing, it shows that even though the EU is a highly distinctive political system, the policy cycle is as much a feature of its policy processes as it is of political systems in nation-states. A key theme running through the chapter is that what happens within the policy cycle in the EU varies considerably across policy areas, both within and between policy stages. The variations occur in response to such differences as the number and nature of the policy actors, the powers of the policy actors and the policy procedures – both formal and informal – that apply.

The first section of the chapter introduces the concept of the policy cycle, while the following five sections – on agenda-setting, policy formulation, decision-making, policy implementation and evaluation – detail the stages of the cycle. The final section offers concluding comments.

While in Chapters 2 and 3 we considered theories to help explain the evolution and nature of the EU's policy portfolio, in this chapter, we focus on policymaking paradigms. Richardson (2006, p. 7) suggests 'different models of analysis may be useful at different levels within the EU and at different stages of the policy process … we might need to utilise rather different conceptual tools in order to understand fully the nature of the processes in each stage…'. He explains that given the 'messy' reality of policymaking and the absence of an empirically tested 'grand theory' to analyse it, an 'eclectic use of concepts and models' may be the best we can do. We follow Richardson's advice in our approach to this chapter. So, for example, we examine the respective merits of the applicability of the multiple streams approach (MSA), punctuated equilibrium theory and the advocacy coalition framework when examining EU agenda-setting. We also draw from policy network theory to explain its relevance throughout much of EU policymaking, but most especially with respect to the role of regulatory networks at the policy implementation stage of the policy cycle.

In federal and quasi-federal systems such as the EU and the US, the implementation and evaluation stages of the policy cycle – that is, ensuring that law agreed at the central level (the policy cycle's decision-making stage) is carried out by its agents (member states in the EU's case), and that the policies are evaluated on a regular basis to ensure they are meeting the goals and objectives set out by the authorizing decisions – are especially challenging. Indeed, the EU has struggled with these implementation and evaluation challenges since its inception. Accordingly, they are examined here at greater length then is common in comparable texts on the EU.

The concept of the policy cycle

Many policy analysts believe that a useful way of examining the processes that result in the emergence and creation of public policies is through the concept of the policy cycle. Harold Lasswell (1956) introduced the 'stages-model' to explain the different and sequential stages associated with policymaking (Ronit & Porter, 2015). He identified seven sequential stages: intelligence, promotion, prescription, invocation, application, appraisal and termination. His ideas were later taken up and popularized by Charles Jones (1970) as the 'policy cycle'. Over the years, the number of stages in the cycle has been widely debated and discussed, but with no definitive resolution on the precise number. However, typically policy studies include agenda-setting, policy formulation, decision-making, policy implementation and policy evaluation, as depicted in Figure 7.1. (See Howlett & Ramesh, 2003 for a comprehensive treatment of policy cycles.)

The policy cycle is based on the notion that policy processes can be seen as being located within 'a set of interrelated stages through which policy issues and deliberations flow in a more or less sequential fashion from "inputs" (problems) to "outputs" (policies)' (Howlett, Ramesh & Perl, 2009, p. 10). While the policy cycle concept was originally applied to US federal-level policymaking, scholars regularly use this idea to chart policy processes in democratic systems – including in the EU – earning a place as a key concept for guiding policy analysis (see, especially, Versluis, van Keulen & Stephenson, 2011).

The policy cycle is criticized from time to time for various reasons such as not addressing power asymmetries (Ronit & Porter, 2015) and grounded in (unrealistic) rational decision-making (Stone, 1988). But such criticisms imply the policy cycle approach is a theory. However, we – in common with many students of public policy – take the position that the policy cycle was not intended as a decision-making model, but rather as a heuristic representation to help us think about the different characteristics of a policy as it moves from ideation to law to implementation of that law. We also accept that the policy cycle is not actually composed of rigidly compartmentalized stages. Given the numerous comings and goings that characterize EU policy processes – with all sorts of formal and informal meetings and the circulation of many types of formal and informal papers – result in the stages not only overlapping and intertwining but often appearing to merge into one another. So, for example, it is very difficult to say when precisely the (legislative) decision-making stage begins, and even after a decision has been formally taken it may need to be followed up with 'sub-decisions' of various sorts – with, for example, EP and Council directives often requiring subsequent administrative legislation to deal with detailed and technical matters, and with implementation arrangements. We therefore do caution the reader to not think of each phase as linear, but rather circular with many opportunities for backwards, forwards and sideways interactions (as depicted in Figure 7.1).

Laswell never suggested the policy cycle was a unified theory of policymaking (or a theory at all, for that matter), but rather – as we have noted – a heuristic approach which would serve as the basis for refining our understanding of policymaking through space and time. In this vein, as Ronit and Porter (2015, p. 61) suggest, policy scholars have since developed theories to explain what happens during stages of the policy cycle, particularly agenda-setting, implementation and evaluation: 'with the risk of oversimplification implementation studies gained momentum from the 1970s, agenda-setting analyses from the 1980s, and evaluation studies from the 1990s'.

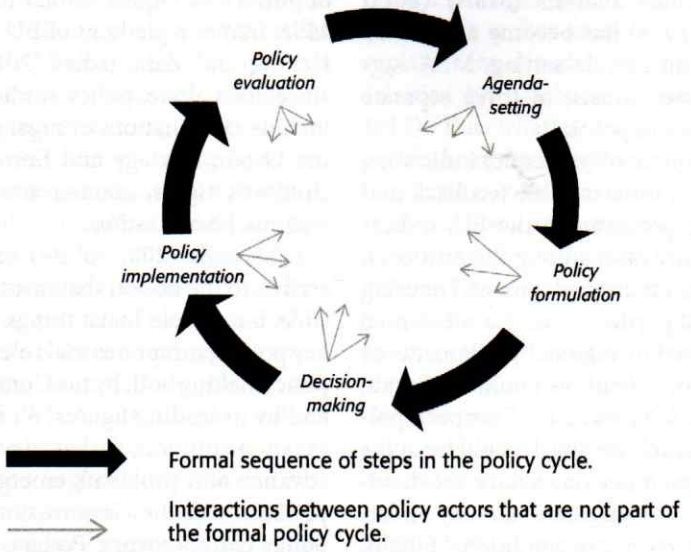
Similarly, Howlett et al. (2017, p. 67) suggest that policy analysis models may be able to 'deepen our insight into the various stages of the policy process, serving thereby to supplement rather than replace the policy cycle model'. They observe (ibid., pp. 65–6) that despite attempts to unseat the stages approach to understanding policymaking:

> it lives on as the dominant heuristic applied to public policy-making … This longevity is due at least in part to a normative preference for more logical modes of policy-making on the part of many policy scholars who support a problem-solving perspective … But it is also very much a result of other factors such as the simplicity of the framework and its capacity to deal with the multiple activities and the many tasks involved in policy-making, from problem definition to policy outcomes and evaluation.

Agenda-setting

The first stage of policy development is when an issue begins to attract attention on the policy agenda. So, agenda-setting is about policymakers coming to give an issue consideration. In the words of Princen (2009, p. 1): 'Agenda-setting is not concerned with the actual decisions that are taken, but with the issues that decision-makers devote attention to: the issues they

Figure 7.1 The policy cycle



talk about, think about, write about and take into consideration.' The manner by which an issue enters the political agenda is often crucial in determining the terms in which it is considered, who are to be the lead policy actors, and what sort of policy actions are considered to be possible.

Who are the agenda-setters?

John Kingdon (2011) makes a useful distinction between the 'governmental agenda' and the 'decision agenda'. The former consists of 'the list of subjects to which governmental officials and those around them are paying serious attention' (ibid., p. 4), while the latter consists of 'the list of subjects within the governmental agenda that are up for an active decision' (ibid., p. 4). In other words, issues on the decision agenda are further advanced in the policy process than are issues on the governmental agenda in that they 'are moving into position for some sort of authoritative decision' (ibid., p. 142). Indeed, issues normally only attain solid positions on the decision agenda after policymakers have identified possible solutions to the policy matter(s) under consideration.

There are many policy actors capable of influencing either agenda. This is especially so in respect of what are sometimes called 'low politics' issues – that is, issues that are not perceived as affecting national sovereignty or security concerns – because these are issues where there is often considerable room for agenda-setting to start 'from below'. In this context, among the many different forms that 'from below' can take in the EU are lobbying by non-governmental interests, the floating of ideas by member state governments, suggestions from the many expert and advisory committees that are clustered around the Commission, and own initiative reports from EP committees.

For most policy areas other than the CFSP/CSDP, the Commission is the main policy actor that formally tables proposals. This is because of its presumptive policy initiating responsibilities and its monopolistic power (apart from in a few AFSJ areas) to table legislative proposals. In the CFSP/CSDP area, the High Representative largely replaces the Commission in assuming policy-initiating responsibilities.

How, and in what ways, do issues come to be established on the policy agenda?

Most of the issues on both the governmental and decision agendas are, in one way or another, ongoing issues. That is, the EU's policy agenda is taken up mainly with developing, refining and updating existing policies because the initial political resistance that usually accompanies new policy development has already been weakened; new policy development is often cautious and very partial, and consequently is soon seen to need extending and strengthening if it is to be effective; and once a policy has been created monitoring and feedback produce ideas as to how the policy can be improved.

In the following sections, we consider three distinct conceptual approaches to study agenda-setting: multiple streams, punctuated equilibrium and the advocacy coalition framework.

Multiple streams analysis

Kingdon's multiple streams analysis (MSA) (2011, originally published in 1973) has become a standard conceptual tool to explain agenda-setting. MSA suggests that policy processes consist of three separate streams: problem, policy and politics.

Problem streams can consist of (systemic) indicators, focusing events, symbols, unfavourable feedback and budgets. Applying these problems to the EU, indicators could be rising obesity rates among the European public or high levels of youth unemployment. Focusing events could be Far Right parties winning a substantial number of seas in national or regional parliaments or the coronavirus pandemic. Symbols could be Brexit, which signals dissatisfaction among the European polity with the EU. Unfavourable feedback could be in the EU's finding that some member states have substandard reception conditions for migrants, thereby violating the EU's directive on reception conditions. Finally, budgets come into play when the Commission proposes a new revenue stream to partially replace member state GNI-based contributions in order to establish a fiscal union. *Policy streams* consist of ideas that float around policy communities in a 'policy primeval soup'. Over time, some of these ideas fade while others undergo a process of 'softening up' until the many actors involved in policymaking are ready to accept them – in a process that can take decades. Policy entrepreneurs are central characters in policy streams because they push favoured ideas – in Kingdon's much-cited phrase, solutions are advanced in search of problems. *Politics streams* are shaped by the national mood (as measured usually by public opinion polling), by organized political forces and by events within the government (for example, at the national level by an alternation in party control, and at the EU level by EP elections or the seating of a new Commission).

According to Kingdon, these streams normally operate (fairly) independently of one other but if two, or if especially all three, of them converge or 'couple', a 'window of opportunity' or a 'policy window' opens that facilitates policy action. But policy windows are normally only open for a short time, so it is crucial that policies are available that have undergone a 'softening up' period and can be 'removed from the shelf' to 'solve' a perceived problem.

While Kingdon developed this model after conducting extensive fieldwork in the US federal government (with most of it being conducted in 1979), Peters (1994) and Richardson (1996) both argued that MSA could be applied to understanding agenda-setting in the EU because the conditions that Kingdon thought supported MSA (federalism, multiple centres of power) were quite similar in EU governance. Today MSA frames a plethora of EU policy analyses. Indeed, Herwig and Zahariadias (2018, pp. 35–6) find that since 2008 alone, policy studies fully framed by MSA include examinations of sugar policy, the quality of life, the Lisbon Strategy and Europe 2020, energy policy, children's rights, counter terrorism, cohesion policy and visa liberalization.

Zahariadis (2007, p. 84) explains that MSA 'subscribes to the notion that institutions make things possible, but people make things happen'. In this context, key policy entrepreneurial roles have been played in EU policymaking both by the Commission as an institution and by its leading figures. As regards the Commission as an institution, it has devised solutions years in advance of a problem's emergence (Zahariadis, 2008, p. 522), with the Commission's leading figures being policy entrepreneurs. Perhaps the most important EU policy entrepreneur (measured in terms of successful) was Jacques Delors (Commission President 1985–95), who assumed office at a time when: European business was being seen increasingly as too uncompetitive in the progressively more globalized market (the problem stream); the European Court of Justice had, by establishing the principle of mutual recognition opened a path for deepening of the internal market (the policy stream); and there was wide support in the business community and among member state governments for the liberalization of the internal market (the political stream). Delors took advantage of this policy window to champion the Commission's programme of 'completing' the internal market by 1992.

Sebastiaan Princen (2009, 2010) has also written extensively on agenda-setting in the EU, utilizing the MSA lens to explain the EU's adoption in 2002 of the European arrest warrant. The idea of European action to ease extradition for wanted persons between member states had been discussed since at least the mid-1990s (and hence had been on the governmental agenda – though not highly placed), but the events of 9/11 served to bring the urgency of the matter to the fore and to place it prominently on the decision agenda. The problem stream (the perceived need to adopt as a matter of urgency measures dealing with the tackling of terrorism and the movement of criminals across national borders), the policy stream (the putting in place of a European arrest warrant allowing suspected criminals to be moved much more easily to the jurisdictions of other member states) and the politics stream (wide political support for such action) all fell into alignment.

Punctuated equilibrium theory

Another influential lens for understanding agenda-setting in the EU's policymaking process is offered by 'punctuated-equilibrium' theory (PET). PET is grounded in both the nature of political institutions and bounded rational decision-making (True, Jones & Baumgartner, 2007, p. 156). Extrapolating from our understanding of incremental decision-making as being based on the inability of individuals to comprehend and juggle too many ideas simultaneously to institutions ('attention spans are limited to government just as they are in people'; True et al., 2007, p. 157), some scholars ask, 'How can one explain when policy change does in fact occur?' Baumgartner and Jones (1993) introduced PET in an empirical study of several policies in the US, from which they drew several conclusions. First, they argued policymaking systems are characterized by periods of equilibrium (if not homeostasis) and disequilbrium (when actors push for an issue to be included on the 'macropolitical agenda') (True et al., 2007, p. 160). Second, policy change comes about when positive feedback (change, even if modest, can cause future changes to be quite substantial) overwhelms negative feedback (maintains stability). The positive feedback phenomenon is basically the familiar 'feeding frenzy' or 'bandwagon' effect in the political arena. Third, contributing to negative feedback is the concept of 'policy image', which are the normative views shared by the policy subsystem (acting as a policy monopoly), whether it be organized as an iron triangle or an issue network. The policy image is reinforced by system actors, who themselves share a belief system.

What systemic attributes encourage positive feedback? PET identifies these as federalism, separation of powers and jurisdictional overlaps – precisely the institutional arrangements of not only the US, but also the EU. One of the more important contributions of PET is the notion that positive feedback can be the result of serial information processing, namely that over time outsiders might chip away at a subsystem's policy image until some turning point has been reached at which time disequilibrium comes into play. To this end, the 'Comparative Agendas Project' (www.comparativeagendas.net/) collects longitudinal policy data to enable students of agenda-setting to explore the factors associated with policy change on a cross-national basis (Alexandrova, Carammia, Princen & Timmermans, 2014).

The advocacy coalition framework

Sabatier and Jenkins-Smith designed the Advocacy Coalition Framework (ACF) to deal with long-standing policy issues in multi-level systems, which they argued needed a longer time frame (of about a decade) for which the policy stage-cycle was not equipped to explain (see Howlett et al., 2017; Rozbicka, 2013; Sabatier, 1991; Sabatier & Weible, 2007; Weible et al., 2011). But whether ACF can replace the rational, problem-solving orientation of policy stages or is better placed as one of several theories of policy agenda-setting is open to debate. Indeed, Howlett et al. (2017, p. 66) question whether ACF 'can offer satisfactory insights into important aspects of policymaking such as the mechanics of the ratification or rejection of policy options, or the administrative politics of policy implementation'. We agree with this assessment and have therefore included ACF alongside MSA and PE as an agenda-setting approach rather than a comprehensive model to replace the stages heuristic.

ACF (as with MSA and PET) was initially developed in the 1980s to explain US policymaking, but, as with MSA and PET, scholars soon began to see its applicability to EU policymaking. As originally formulated, ACF attempted to explain 'wicked problems', defined as especially intractable policy challenges because they involve 'substantial goal conflicts, important technical disputes, and multiple actors from several levels of government' (Sabatier & Weible, 2007, p. 189) such as air pollution, drug smuggling, health care, pandemics and poverty.

ACF consists of three 'domains': advocacy coalitions (normally, 2–5 per subsystem), policy subsystems (issue-specific networks) and policy change (a full policy cycle runs at least a decade). Actors and their beliefs are key to ACF. Actors with similar beliefs and learning form what can be likened to 'competitive teams' in policy subsystems. These teams compete to either maintain the status quo or to change policy (Howlett et al., 2017, p. 69). Sabatier and Weible (2007, p. 192) argue that OECD countries have mature policy systems that having been operating for decades. They further suggest that over these (very) long policy cycles, advocacy coalitions can become quite stable, and emerge as the only effective policymaking arena available to address wicked policy problems. These policy learning and epistemic communities are central to the ability of these advocacy coalitions to impact policymaking. Thus, the key questions for ACF are – can the existence of long-term advocacy coalitions be empirically demonstrated? Or, are such coalitions more immediate (ad hoc formation to deal with an immediate crisis or opportunity)? Naturally, whether coalitions last for an average of ten years or are short-lived has important implications for how we understand interest group behaviour and its impact on EU policymaking.

Subject specialization is central to the creation and existence of advocacy coalitions, so scientific and technical expertise is crucial to the inherent power of policy subsystems. ACF argues that actors within a policy subsystem share a strong belief system, which essentially binds the actors together regardless of whether they are members of government, industry or an interest group, and 'enables them to show a non-trivial degree of coordinated activity over time' (Sabatier & Weible, 2007). The experts are able to negotiate and bargain in a relatively stable environment, with major change occurring only when the policy subsystem is faced with 'dynamic external factors including socio-economic conditions, changes in the governing coalition, and policy decisions from other subsystems' (Sabatier & Weible, 2007, p. 193).

How applicable is ACF to policymaking in the EU? Rozbicka (2013, pp. 847–8) looked at the utility of ACF in understanding interest group behaviour in the EU, concluding findings are mixed – some studies uncover evidence of effective long-term coalitions (such as the wind power coalition) and others indicate interest groups can be more effective when they form *ad hoc* (short-term) policy coalitions (drinking water, unit pricing directives). Rozbicka (2013, p. 849) concludes, 'the opportunistic search for policy gains by EU interest groups in a fast-moving political system decreases the ACF explanatory power'.

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Agenda-setting in the EU thus takes place in many ways, and with the involvement of many different types of actors. However, a distinctive feature of all EU agenda-setting, compared with national agenda-setting, is that, as Lelieveldt and Princen (2011, pp. 205–27) have noted, it is heavily based on inside access. That is, the public agenda (what citizens regard as being important) and the media agenda (what is being focused on by the print and electronic media) tend not to 'intrude' as much on the EU political agenda as they do on national political agendas. This is because of the nature of the EU's system of governance, which, to a marked degree, isolates EU policy processes from 'the outside'. Thus, EU agenda-setting tends to arise within, and be sustained by, active EU policy players.

Policy formulation

Once an issue has come to be recognized as needing to be addressed – that is, once it has become established on the policy agenda – it then needs to be taken forward with the identification of policy goals and the formulation of specific policy proposals. These processes constitute policy formulation. Policy formulation does not decide EU policy, but it does identify options, determines which options are possible and which are not, and filters and narrows down the number of realistic policy alternatives.

Much of what happens at the agenda-setting stage can involve attempts at policy formulation, since actors who voice views that an issue needs attention do not normally confine themselves to saying 'something needs to be done'. Rather, they usually give some indication, albeit often in only rather general terms, of *what* needs to be done. So, for example, in the wake of the global financial crisis that set in during 2007/8 many interested EU policy actors were quick to say that the EU had been too lax in its monitoring and regulation of EU-based financial institutions, and proceeded from this position to argue that the EU should adopt a more interventionist and tighter regulatory approach. Attempted agenda-setting thus shaded into attempted policy formulation.

As with agenda-setting, there are many policy actors who try to become involved in policy formulation. However, nothing very much is likely to happen unless ideas for policy action are taken up and advanced by core policy actors. Outside the special area of CFSP/CSDP – where, as is shown in Chapter 18, intergovernmentalism remains the dominant policy mode and member states, the European Council President and the High Representative all have potentially significant policy-shaping capacities – the Commission is by far the most important of the core policy actors in respect of policy formulation (see Chapter 9). This is seen no more clearly than in the fact that, in any average year, it issues over 100 communications and reports of various kinds that touch directly on possible future policy ideas, a handful of Green Papers (which usually outline initial thoughts on policy actions) and between ten and twenty significant legislative proposals.

In exercising its policy formulation role, the Commission works closely with other policy actors, as other chapters of this book show. One reason for this is that most EU policies cover specialized ground, and so the Commission often needs outside technical expertise and advice if its proposals are to be credible on matters as varied as the public safety implications of authorizing the use of genetically modified organisms (GMOs) or the financial implications for businesses of strengthening waste disposal legislation. Another reason why the Commission must work closely with other policy actors when making policy and legislative proposals is that it must attempt to anticipate the likely reactions of the EU's decision-makers to its proposals.

Certainly, it is not in the Commission's interest to advance proposals that will meet with stiff resistance at the decision-making stage, because they will have little chance of being approved, at least not without being substantially amended.

So, before issuing policy or legislative proposals the Commission usually consults widely. Consultations can take many different forms, including: issuing consultation calls; producing and issuing Green Papers that set out initial ideas and invite interested parties to submit their views; listening to the opinions of subject experts – many of which are channelled via the hundreds of advisory and expert committees linked to the Commission; exchanging ideas with governmental representatives in a variety of formal and informal settings; and talking to members of relevant EP committees. This practice of extensive consultation with non-Commission actors in the period that proposals are being devised is often paralleled by a need for extensive intra-Commission consultations. A proposal 'starts life' in a particular part of the Commission – say DG Internal Market or DG Agriculture and Rural Development – but it may overlap with and have potential implications for the policy responsibilities of other parts of the Commission. So, for example, a food safety proposal is likely to originate in DG Health and Food Safety, but it may well have implications for the work of DG Agriculture and Rural Development, and perhaps also for DG Internal Market and DG Environment. So too agencies are very likely to be involved – in the food safety proposal example, this would be the European Food Safety Authority. Where there are such potential overlaps, the lead DG, and more particularly the *chef de dossier* (the Commission official in the lead DG who carries the main responsibility for the proposal), must ensure that all potentially interested and affected parts of the Commission are given the opportunity to make an input, especially where there are possible policy clashes. Such inputs can be made in various ways, but usually involve the convening of inter-service (that is, inter-departmental) meetings. Not until inter-service deliberations have resulted in an agreement is a proposal moved up the Commission system for eventual formal adoption by the College as a Commission proposal. (If agreements cannot be reached at the inter-service level, Commissioners – working largely via their *cabinets* – may have to settle issues.)

This need for extensive internal and external deliberations in the Commission before proposals are finalized inevitably means that the policy formulation stage can often last for many months, and sometimes even years. Quite what form such deliberations take depends on an array of contextual circumstances, but several quasi-formal steps may have to be taken before a specific policy proposal is formally issued: inclusion in a relevant departmental multi-annual work programme that has been approved by the Council and EP; discussion in a relevant Commission advisory and/or expert group; mention in a Commission Communication on a policy area or in a Green and/or a White Paper; and tabling in the Commission's annual work programme.

* * *

To be added to the policy formulation features just identified, are additional features when EU legislation is being considered. These features have been gradually developed over the years and have been increasingly consolidated – notably under: the Commission's (initially established in 2012) *Regulatory Fitness and Performance Programme* (REFIT) (of the many documents explaining REFIT, see, for example, European Commission, 2016) and the 2016 *Interinstitutional Agreement on Better Law-Making* (Interinstitutional Agreements, 2016).

The 'better regulation' or 'smart regulation' approach/philosophy that REFIT and the Better Law-Making agreement collectively embody, have as their general aims improving the way the EU legislates, most particularly by ensuring: that the contents of proposed laws are as readily understandable and as simple as possible; that regulatory and administrative burdens are minimized; decision-making processes are transparent; that citizens and stakeholders can fully contribute to lawmaking processes; that extensive forward planning, analysis and evaluation is undertaken; policy evaluations are ongoing; and that costs are minimized. Better regulation covers the whole policy cycle, with each phase of the cycle containing specific principles, objectives, tools and procedures. However, some features that are especially important in policy formulation merit being identified here:

- Thorough checks are undertaken to ensure that legislative proposals have the correct legal base – that is, to ensure they are based on the correct treaty article(s). Normally, this is a straightforward matter and there is little room for dispute, but, as discussed in Chapters 6 and 8, conflicts can arise when a proposal cuts across policy areas and the Commission chooses a legal base that is deemed by a policy actor to be unsatisfactory.
- Justification of legislative proposals must be given in terms of the application of the subsidiarity and proportionality principles. This requirement takes the form of a series of questions on subsidiarity and proportionality that need to be answered in the

explanatory memorandum that is attached to each proposal.
- Impact assessments of legislative proposals should be as wide-ranging as is required and should include policy-based justifications for proposals. So, for example, proposals covering transport and agriculture should normally include justifications regarding their environmental impact.
- The probable financial implications of proposals for the EU budget must be assessed.

Figure 7.2 depicts the prevalence of the different aspects of better regulation.

Decision-making

At this stage of the policy cycle, proposals formulated at the policy formulation stage are considered by the appropriate decision-makers with a view to decisions being taken, or not.

How and by whom decisions are taken in the EU is discussed extensively elsewhere in this book. Only a few key points will therefore be made here.

One of these points is that this is the most politicized policy process stage because it involves final choices being made on matters that are often of considerable public importance. Whereas earlier and later policy stages do not involve such choices, and indeed are often quite technical in the matters they cover, this stage involves policy actors entering into hard commitments. As a result, this is the stage where national politicians – in (depending on the status and nature of the decision concerned) the European Council, the Council and the EP – are most involved.

Another key point about the decision-making stage is that it takes many different forms, with the line-up of participating actors and the nature of procedures being used varying considerably both between policy areas and the types of decisions being taken. Just what determines what type or types of process apply in particular circumstances depends essentially on what member states perceive to be necessary and what they are prepared to accept. But because the member states take different views on what is necessary and what is acceptable, a complicated and pluralistic system of decision-making processes has emerged.

It might, for example, be anticipated that highly sensitive policy matters touching directly on national sovereignties would be based mainly on intergovernmental decision-making processes, with decisions being taken at the highest political level, while policy matters having a direct effect on the internal market – which has long been the EU's core policy concern – would be more supranational in character and more often subject to lower-level decision-making. But while there is something in this generalization, it is very far from capturing the whole truth. This is largely because the extent to which policies are sensitive varies between member states, as does the extent to which sovereignty issues are seen to be a concern.

As a result of the many differences that have existed, and still exist, between the member states regarding which decision-making procedures should apply in which policy areas, the EU has many significantly different decision-making procedures.

Policy implementation

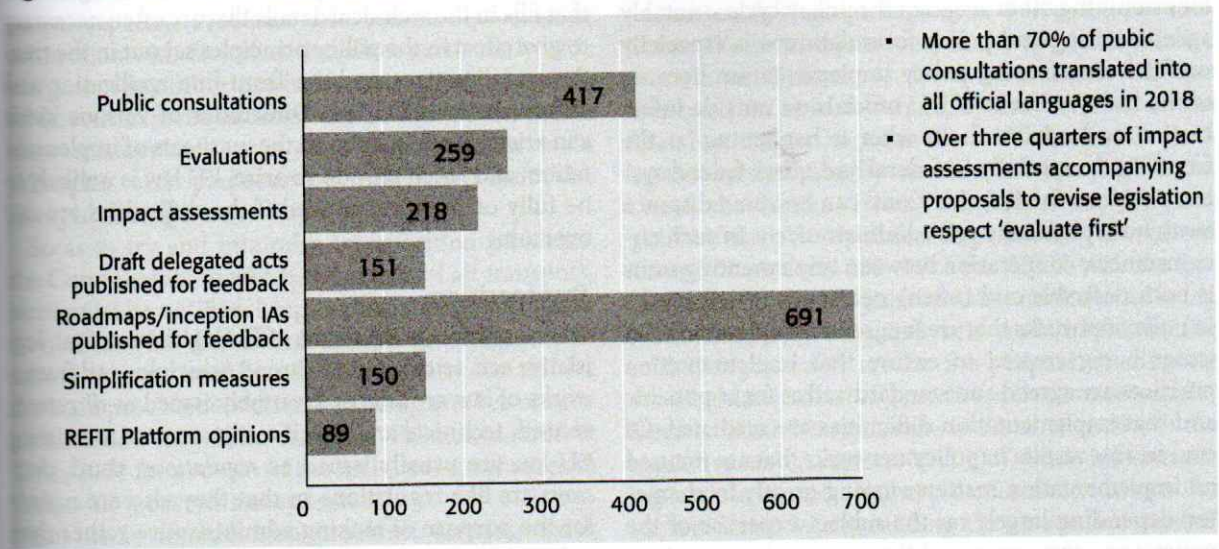
The range and multifaceted nature of the EU's implementation arrangements

Policy implementation involves the putting into effect of policy decisions, some of which are legally based and some of which are not. While policy formulation is generally the province of the executive and legislature, implementation is carried out by public administrators, typically career civil servants. Policy implementation is especially complex in quasi-federal and federal systems such as the EU, where federal-level bodies must rely on sub-levels of government to implement policies agreed at the federal level. And, in the EU, the many very different sorts of decisions that are taken, coupled with the complex and multilayered nature of the EU system, means that there are both many different sorts of policy implementation and many policy implementation actors.

So, regarding different sorts of policy implementation, there are huge differences between, for example, the implementation of: EU legislation; the semi-voluntaristic agreements aimed at meeting identified policy targets that are characteristic of much of the new modes of governance; and decisions that involve the assembling and putting into action of missions of various types under the CFSP/CSDP.

Regarding different sorts of policy implementation actors, the Commission is the pre-eminent EU-level actor. Among other important policy implementation actors at the EU level are: the Council, the High Representative and the European External Action Service, all of which have key implementing responsibilities with respect to the CFSP/CSDP; the European Central Bank, which implements eurozone monetary policy; European agencies, some of which have implementing responsibilities in particular policy areas; and the CJEU, which is the final decision-maker on whether EU law is being properly applied in the member states. As for the sub-EU level actors – where most

Figure 7.2 Overview of better regulation activities, 2015–2018



Source: (European Commission, 2019b).

front-line EU policy implementation actually occurs – a vast array of national, regional and local bodies of different types act, in effect, as EU implementing agencies.

This implementation aspect of the policy cycle is increasingly studied in the context of the 'European Administrative Space' (EAS). The EAS is principally thought of as a product of Europeanization, with administrative practices and structures in the member states profoundly affected by EU membership (Bauer & Becker, 2015; Bauer & Trondal, 2015; Knill, 2001). Complicating the operation of the EAS are the various mechanisms for implementing EU law, a subject outlined in Chapter 8. Thus, the Commission's ability to require member states to comply ranges through: policy enforcement (the ability to sanction noncompliance, with competition policy being the archetypal example here); to negotiations under the 'shadow of hierarchy' (i.e. the implicit threat of state action for noncompliance among network members); to persuasion (typically in areas of shared competence) (Benz, Corcaci & Wolfgang Doser, 2016, pp. 1007–8). As policy has become increasingly Europeanized, so have the member state administrative agencies which must implement EU decisions.

The core of the EU's policy implementation system is the implementation of EU law. This implementation task is immense with, if a liberal interpretation of what constitutes EU law is taken (that is, including all secondary law and international agreements), over 40,000 legal acts being in place. The total is also immense even if a narrower interpretation of what constitutes EU law is taken and attention is restricted to what are commonly viewed as being the most significant components of EU law, namely primary law in the form of the treaties, plus secondary law in the form of directives (of which 1,842 were in place in 2015), regulations (11,547 in 2015) and decisions (18,545 in 2015) (EurLex, 2015).

However, before moving to the mechanics of the EU's arrangements for implementing this great volume of EU law, it will be useful to briefly divert into what is widely viewed as a particularly useful way of understanding a key feature of the EUs implementation arrangements as a whole: namely the considerable use of and reliance on policy networks of various kinds.

A policy networks approach to policy implementation

Policy networks are especially important to the EAS's functioning and, indeed, to EU policy implementation as a whole. A leading scholar of network governance describes policy networks as:

> structures of interdependence involving multiple organizations or part thereof, where one unit is not merely the formal subordinate of the others in some large hierarchical arrangement. Networks exhibit some structural stability but extend beyond formally established linkages and policy-legitimated ties. The notion of network excludes more formal hierarchies and perfect markets, but it includes a very wide range of structures in between. (O'Toole, 1997, p. 45)

Policy network-based analysis, which can also be used for examining other stages of the policy cycle – notably agenda-setting and policy formulation – is especially useful for examining policy implementation because of the heavy reliance of EU officials on outside information and advice about what is happening 'at the front'. And, especially in federal and quasi-federal systems such as the EU, the 'front' can be some distance away, both physically and administratively. In such circumstances, cooperation between implementing units is both desirable and (often) necessary, which results in policy networks that are focused on implementation issues being created to ensure that implementation practices are agreed and standardized as far as possible and that implementation difficulties are mediated. Of course, this results in policy networks that are focused on implementation matters varying greatly in character, depending largely on the subject expertise of the policy areas they cover and the range and depth of the policy differences they contain. So, at one end of the network integration continuum are policy communities, which tend to be highly integrated, hierarchical in structure, mutually dependent in character and with memberships that are relatively closed, whilst at the other end are issue networks, which are much looser, non-hierarchical, self-reliant, and with open and fluid memberships.

In terms of empirical work that is framed by implementation policy networks, many EU-level policy studies have taken a network approach. For example: compliance with internal market directives (Hobolth & Sindbjerg Martinsen, 2013); banking and financial regulations (Christopoulos & Quaglia, 2009); telecommunications (Kelemen & Tarrant, 2011); food safety policy (Buonanno, 2006); and security cooperation (Zwolski, 2015).

An important subset of EU policy implementation studies focus on regulatory networks, in which expert officials, often working with subject specialists in 'epistemic communities', provide forms of network governance. However, their levels of involvement and the specific tasks they are assigned varies considerably. Keleman and Tarrant (2011, p. 943, footnote 1) point out there are several categories of regulatory networks – official networks that advise the Commission, those not officially recognized, but still assist the Commission, and those which act 'independently of the Commission'. Taking these three categories together, there could be thousands of such networks.

* * *

The implementation of this system of EU law is highly complex and needs to be broken down into three different aspects: the transposition into national law of EU directives; the issuing of administrative legislation that fills in the technical details that are often necessary to give effect to the policy principles set out in the treaties and directives; and the 'front-line' application and enforcement of EU law. Difficulties of various kinds can arise with respect to all these aspects of implementation, and when they do so arise, EU law is unlikely to be fully or properly applied if the difficulties are not overcome.

Transposition

There are three main forms of EU legislation: first, legislative acts setting out the broad principles and frameworks of law are almost invariably issued as *directives*; second, technical and specific adjustments to existing EU law are usually issued as *regulations*; third, *decisions* are like regulations in that they also are mainly for the purpose of making administrative rather than political legislation, but unlike regulations (and some directives), they are normally not generally applicable but apply only to whom they are addressed.

Directives may thus be said generally to deal with 'policy', while regulations and decisions normally deal with 'administration' – though, of course, in practice the two can greatly overlap. Under Article 288, TFEU directives 'shall be binding, as to the result to be achieved, upon each Member State ... but shall leave to the national authorities the choice of form and methods'. What this means in practice is that, unlike regulation and decisions, directives are not applicable directly in the member states but must be transposed – that is, incorporated – into national legal systems by appropriate national procedures. Directives do not normally become legally binding until they have been transposed. However, transposition does not enable member states to postpone indefinitely the incorporation of unwanted EU laws into national law, since directives always include a date by which they must be transposed: a date that may be just a few weeks after the formal adoption of a directive or, as with highly complex directives or directives that may involve major capital outlays (such as with much environmental legislation), could be several years away. Non- or incorrect transposition is a breach of EU law and can lead to the Commission taking action against member states – ultimately in the CJEU. This, in turn, can result in Court rulings that directives are directly applicable in member states where they have not been incorporated or where they have been incorporated incorrectly.

Transposition problems commonly occur in member states that: opposed or expressed strong reservation in the Council about a directive; have existing legislation that is very different from the contents of a

directive; and have a weak legislative and/or administrative capacity. Problems also commonly occur in connection with directives that allow particularly wide margins of flexibility to member states to adjust aspects of directives to fit national circumstances, for while some manoeuvrability is often permitted, the main principles and purposes of directives cannot be changed during transposition.

So as to try and minimize transposition problems, the Commission, to which the details of all transpositions must be notified, keeps a close watch – via a battery of lawyers distributed around its services – to ensure that national incorporation does not involve the main provisions of directives being avoided or misunderstood. (See Falkner, 2018; Falkner, Leiber & Treib, 2004 for a review of the main reasons that result in non- or incorrect transposition.)

But while transposition problems certainly exist, their extent should not be overstated. For the most part, transposition processes work reasonably smoothly, with Commission reports and academic analyses showing that most directives are transposed on time by member states (Thomson, 2010). With respect to single market legislation, for example, the EU sets a target of 99 per cent of internal market directives being implemented on time, and most member states succeed in doing so (European Commission, 2019v).

The passing of administrative legislation

As explained above, the main principles of EU policies that are given a legislative base are set out in directives. But, for policy to be applied uniformly and consistently across the EU, many policy areas require directives to be supported by what is commonly called administrative (or secondary) legislation, which is usually issued via regulations and decisions. That is, there is a need for legislation that translates policy principles into detailed, and often highly technical, rules on such matters as product standards, health and safety conditions, inspection rules, authorizations for marketed products and practices, and import duties.

Since the passing of administrative legislation involves the making of decisions, it is, as Versluis et al. (2011) note, open to debate whether it is best regarded as the final part of the decision-making stage in the policy cycle or as an early part of the implementation stage. In fact, it contains elements of both, and in so doing serves to highlight why the policy cycle approach should not be used in too rigid a manner. On balance, it seems best to view it as being part of policy implementation, but this is admittedly a marginal judgement.

Because administrative legislation normally covers specialized and essentially technical matters and does not usually raise politically charged issues, it is not subject to a full legislative process. That is, it is not subject to the ordinary or one of the special legislative procedures. Rather, it is in the hands of the Commission, as is evidenced by the fact that, unlike directives, it is not issued as EP and Council or Council legislation but usually as Commission legislation. Under the Lisbon Treaty, this distinction between 'political' and 'non-political' legislation is recognized formally in Articles 289–91 of the TFEU, with the former being labelled 'legislative acts' and the latter being subdivided into 'delegated acts' and 'implementing acts'. Delegated acts are for the purpose of adopting 'non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act' (Article 290, TFEU), while implementing acts are used '(w)here uniform conditions for implementing legally binding Union acts are needed' (Article 291, TFEU). What this means is that delegated acts are usually the more broadly based of the two types of acts.

Prior to the Lisbon Treaty, there were frequent tensions and disagreements between the Commission, the Council and the EP over the issuing of administrative legislation. At the heart of the tensions and disagreements was the functioning of the comitology system, under which the Commission's use of its secondary legislation powers is monitored, and to some extent controlled, by more than 250 committees of various kinds composed of member state governmental representatives. The Council's main complaint was that Commission legislation was sometimes inappropriately channelled via a type of comitology committee that gave the member states insufficient powers, whilst the EP habitually complained – though less so after 2006 reforms that strengthened its position – that it had insufficient powers to examine and object to comitology decisions. The Lisbon Treaty reforms sought to defuse these problems (Brandsma & Blom-Hansen, 2011) by providing for clearer specifications to be laid down in advance regarding the nature of the delegated and implementing powers to be assigned to the Commission:

- Delegated acts are deemed to be of 'general application to supplement or amend non-essential elements' of the original law (Article 290 TFEU). In respect of delegated acts, the parent act should lay down explicitly the conditions to which the delegation is subject. The conditions may be as follows: 'a) the European Parliament or the Council may decide to revoke the delegation; b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the

Council within a period set by the legislative act' (Article 290, TFEU). The EP must act via an absolute majority and the Council may act via QMV.

- Implementing acts are used when 'uniform conditions for implementing binding Union acts are needed' (Article 291 TFEU). The EP and Council 'shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's implementing powers' (Article 291, TFEU).

So, for delegated acts, which are regarded as being quasi-legislative, no comitology system is used. Control over their content is exercised directly by the EP and the Council. In practice, neither the EP nor the Council have raised many objections to delegated acts. Implementing acts, which are more limited in scope and do not create new legal obligations, are controlled by the member states acting via comitology committees. (On the post-Lisbon Treaty comitology system, see Blom-Hansen, 2011; Brandsma & Blom-Hansen, 2011; Hardacre & Kaeding, 2011.)

The application and enforcement of EU policies

Variations between member states

The front-line, day-to-day application of most EU policies is undertaken not by the EU itself but by an array of authorities in the member states. It is left to the member states to determine who these authorities are and how they are organized. The EU, acting through the Commission, has to be satisfied that appropriate policy application and enforcement arrangements are in place in all member states, but it does not attempt to dictate what the precise nature of the arrangements should be. As a result, a wide variety of arrangements exist, which in large part reflect existing national arrangements for dealing with domestic policies. So, for example, in federalist and regionalist member states such as Austria, Belgium, Germany and Spain, administering authorities that in other states are organized and managed from the central level are in their cases often dealt with at the regional level. This results in differences in administrative arrangements existing not only between member states but also, in some cases, within them.

This reliance of the EU on national and sub-national authorities to undertake most of its policy application does, of course, create potential difficulties with respect to trying to ensure that EU policies are applied in a uniform and consistent manner in all member states. One difficulty is that there are very great differences in the resources, capacities and experiences of national implementing authorities. With many EU policies being multifaceted in nature, and with the wording of many EU laws being less than precise, it is thus inevitable that, even with the best will in the world, some national implementing bodies – especially those that are under-resourced and under-trained – struggle to apply EU policies and laws fully and 'properly' (see Hartlapp & Leiber, 2010). Versluis (2003) and Versluis et al. (2011, pp. 190–1) provide a good example of such a variation in national implementation, with the Seveso II Directive, which requires chemical companies that stock amounts of dangerous chemicals above specified levels to produce safety reports showing how they contain any danger and how they respond to emergencies. Comparing the Netherlands and Spain, Versluis and Versluis et al. show chemical companies in the Netherlands putting more resources into the preparation of the reports and inspectors in the Netherlands taking more time in examining the reports than their counterparts in Spain. A combination of factors are seen as explaining the differences, among which are a lack of clarity in the Directive as to precisely what the reports should contain, more detailed guidance from the Dutch government to national chemical companies regarding their obligations under the Directive, and greater prior experience and expertise in the Netherlands in regulating the policy area.

Differing national legal traditions and practices can also result in variations in and difficulties with policy application. Caranta (2011, p. 54), for example, observes of the key EU directive 2007/66/EC on improving the effectiveness of review procedures concerning awarding of public contracts:

> Member States have approached the implementation of Directive 2007/66/EC differently. At times, rules on remedies in public procurement have been rewritten almost from scrap. Other times, the new remedies have been grafted onto existing legislation … In both cases, the peculiar legal traditions of each Member State are deemed to influence the way remedies are not just implemented but applied. Harmonization by EU law is partial at best here.

Another difficulty arising from the reliance of the EU on national authorities and agencies to undertake most of its policy application is that they do not all wish to apply EU policies and laws fully and properly. A desire to protect national, regional and local interests may be one reason why this may be so with, for example, national bodies sometimes tempted to circumvent EU law on public contracting (which, for tenders above specified amounts, must be open) so that they can favour – for often quite understandable reasons (especially the protection of jobs) – the contract

bids of national and local firms. With public procurement accounting for around 15 per cent of total EU GDP, any evasion of EU law in this area clearly constitutes a very significant problem.

Sometimes a policy is applied unevenly or incorrectly because public authorities do not have complete faith in its implementation in other EU member states. The passport-free Schengen travel regime has experienced such problems, with some Schengen-member state states making use of emergency provisions by reinstating internal EU border checks and controls to, for example, combat a temporary increase in crime, control football hooliganism, and, a much-used reason during the peak years of the post-2015 migration crisis, prevent asylum seekers from entering their territory.

Minimizing national variations

Despite it creating policy application difficulties, the delegation of most EU policy implementation to national and sub-national levels is necessary. The only alternative to this delegation is for the EU to have its own administrative apparatus spread throughout all member states. Such an administration would have to be very large given the great width and depth of the EU's policy portfolio, would be very expensive to fund, and would be impossible to organize in such a way that it operated with maximum effectiveness and efficiency given the many ways in which EU and national policies overlap and intertwine with one another. In any case, member states would hardly welcome an army of EU civil servants.

However, despite the problems with delegation to national and sub-national agencies, the EU clearly needs effective monitoring and sanctioning mechanisms to try to minimize the difficulties and ensure that there is as much consistency in implementation as possible. The principal mechanisms for this are in the hands of the Commission, which, acting in a legal guardian role, monitors and exercises surveillance over national policy implementation, and when appropriate uses sanctions it has available to deal with transgressors.

Most of the monitoring and surveillance is undertaken through regular reports that national implementing authorities must submit to the Commission, but the Commission also undertakes a limited number of on-the-spot investigations that are conducted by specialist teams. These investigations can include so-called 'dawn raids' (unannounced on-site inspections), such as one carried out in several member states in October 2017 by Commission officials and their counterparts in relevant national competition authorities concerning online access to bank account information by competing service providers. However, the Commission's relatively limited resources mean that there is only so much it can itself do directly with regard to investigating and taking action against suspected transgressors – be they member states or private companies.

The procedures that apply when a member state is suspected of not applying, or only partially applying, an EU law are outlined in Box 7.1. An important feature of the procedures is that they are designed with a view to resolving matters before they become too confrontational, because there is usually no advantage to either the Commission or to member states to be in open conflict with one another over an implementation matter. The Commission's prime aim is for policies to be fully implemented, while member states – though sometimes prepared to seek an advantage by delaying the application of policies – do not usually want to build a reputation as slow implementers and therefore as unhelpful and untrustworthy member states. Accordingly, as proceedings unfold, both 'sides' search increasingly for an accommodation – in the form, for example, of the Commission granting an extension to a deadline or a member state agreeing to tighten its inspection practices. In consequence, at each of the stages in the procedure, the number of actions taken by the Commission drops progressively.

But while the Commission prefers to persuade suspected transgressors to 'fall into line' voluntarily, if they do not do so, it is willing to use the CJEU. This can result in the imposition of financial penalties and can sometimes also result in judgements that usefully strengthen implementation powers. In the public procurement area, for example, the Court has 'interpreted the law in a very dynamic manner in a number of landmark cases leading to fundamental improvements of the enforcement system both at national and supranational level' (Treumer, 2011, pp. 17–18).

Direct implementation by the Commission

There are a few policies, of which competition is by far the most important, where the Commission exercises direct implementation powers. Compared with its dealings with member states in respect of policy application, where fines are rarely issued, a striking feature of the application of competition policy is the frequency with which the Commission issues fines against private companies for breaches of competition law. Because direct implementation in the EU is almost wholly associated with competition policy, it is examined in Chapter 10.

A note on the new member states

A concern in EU-15 quarters prior to the accession of new member states from 2004, was that most of the CEECs, and especially Bulgaria and Romania which became EU members in 2007, were neither prepared

Box 7.1

Procedures that apply when a member state is suspected of being non-compliant

- The starting point is when the Commission becomes aware that there may be a problem with the application of a policy in a member state. This awareness usually comes from one of three sources: self-notification from the member state, with relevant national officials seeking clearance for certain policy application practices; information provided by the member state in a monitoring report; and – the most common source – whistle-blowing, often by people, organizations or companies who feel they are being disadvantaged by the way in which policy is being applied, or not being applied, in a part of the EU.
- Before any formal action is taken, the Commission almost invariably initiates informal contacts with the member state – usually via the state's Permanent Representation – to try to resolve matters. Around three-quarters of suspected infringements are resolved at this stage.
- The first formal stage involves the issuing by the Commission of a 'letter of formal notice', informing the member state that it is in possible breach of its obligations. More than 1,000 letters of formal notice are issued each year. These letters, and subsequent exchanges with member states in infringement cases, are channelled via the Permanent Representations – with it then being up to the member states themselves as to who is involved and how cases are managed at the national level. Member states are usually given about two months to respond to letters of formal notice and where, as is often the case, responses provide enough evidence that the state is now complying, then the Commission closes proceedings. Letters of formal notice issued by the Commission in November 2018 included: letters to seven member states for failing to correctly transpose or implement certain requirement of the Energy Efficiency Directive; a letter to Belgium for failure to comply with EU legislation on air quality; and a letter to Spain for failure to comply with legislation on waste management.
- If the problem remains unresolved, the Commission is likely to carry out an investigation.
- If, after the investigation, a breach is confirmed and continues, a formal procedure under Article 258 TFEU comes into play, under which the Commission 'shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations'. Reasoned opinions usually include deadlines by which the member state must comply fully with EU law. More than 500 reasoned opinions are issued in an average year. Reasoned opinions issued in November 2018 included a call for Ireland to respect obligations under the Habitats Directive, to Sweden to improve the quality of urban waste water and to Germany to fully open the market for vehicle services testing.
- If the state concerned fails to comply with the reasoned opinion, the Commission may, again under Article 258 TFEU, 'bring the matter before the Court of Justice of the European Union'. There are around 150 references to the Court each year.
- If the member state concerned does not comply with the judgement of the Court, the Commission may, under Article 260 TFEU, bring the case back to the Court, but this time may specify a lump sum or penalty payment which the member state must pay. The Court may reduce, increase or uphold the recommended lump sum or penalty payment (though it cannot instruct an increase in transposition cases). Only a handful of cases lead to fines on member states.

nor fully ready to apply EU policies. This concern did, perhaps, contain something of an element of hypocrisy, given that there was no shortage of implementation problems among the existing member states, but nonethe less the concern was certainly felt and was a key reason why some EU-15 policy practitioners believed the enlargement was too rushed.

In practice, some of the concern has proved to be justified because, as a number of studies have shown, while new member states generally have a good formal compliance record in terms of transposing legislation and dealing with infringement proceedings against them, their record in respect of practical implementation is, for the most part, less than satisfactory (see Falkner, Treib & Holzleitner, 2008; Schimmelfennig & Trauner, 2009; Sedelmeier, 2008). A striking example of this weak record in practical implementation is seen in the way that a number of factors – including weak

absorption capacities, the politicization of implementation processes, and changes in policy preferences – have resulted in some CEECs having difficulties in being able to use all of the funds, especially the cohesion funds, they receive from the EU (Hagemann, 2019). Moreover, some CEECs have displayed particularly poor implementation records in highly politically sensitive subject areas, including: several CEECs in respect of the Commission's plans at the height of the 2015–16 migration crisis to relocate migrants amongst Schengen states; Bulgaria and Romania in 2016–17 in respect of applying the rule of law, and also in respect of (not sufficiently) tackling corruption; Hungary in 2018–19 in respect of upholding human rights, and Poland in the same years in respect of not adequately defending the independence of the judiciary. Indeed, the perceived indiscretions of the post-2014 populist-inspired governments of Hungary and Poland have been such as to bring them into open conflict with the Commission for allegedly being in breach of EU values and standards.

Many factors have been identified to explain the relatively poor application performances of new member states, most of which are rather more intense versions of the factors that are normally cited to explain unsatisfactory application in EU-15 states: insufficient administrative capacity; high domestic adjustment costs; the incongruence of some EU policies with domestic norms; political salience; and the orientations of important domestic policy actors. These factors, which apply also to most prospective EU members, are not, it should be stressed, necessarily mutually reinforcing. Indeed, as Schimmelfennig and Trauner (2009, p. 6) observe, even if administrative structures are supportive and capable of compliance, there are likely to be implementation delays and failures when 'adjustment costs and political salience are high and governments as well as strong domestic interest groups do not agree with EU rules'.

Evaluation

In broad terms, policy evaluation involves assessing the effectiveness and efficiency of policies. This is, of course, all very general, which helps to explain why evaluation in the EU has come to be viewed in recent years in a rather more precise way and in a manner that directly ties in with broad EU objectives. As Dunlop and Radaelli (2018, p. 333) have put it, 'the regulatory paradigm pursued by the Commission has gradually become the focal point for the definition of the purpose of evaluation. In other words, the better regulation philosophy is today the dominant doctrine in the Commission's thinking about what evaluation should be and for what purpose'.

All EU policies, from the most general – such as the overall operation of the CAP – to the highly specific – such as energy research programmes – should in theory be subject to full evaluations. In practice, whether they are conducted, the extent to which they are conducted and with what vigour and effect they are conducted, varies considerably. There are several reasons for this. One is that some policy areas cannot be evaluated systematically using 'rational' tools such as cost–benefit analysis or performance-based metrics because they are driven in no small part by political considerations. The overall nature of the CAP is an obvious such example, with much of the rationale behind it being based on political considerations related to pressures from member state governments and from agri-interests. In such cases, it is difficult to set measurable goals and objectives on which rational evaluation is based. Another reason why some policy areas are difficult to evaluate is that features of the policy activity make evaluation intrinsically difficult in terms of measured outcomes. CFSP/CSDP missions and how they contribute to overall CFSP/CSDP goals are of this type. And a third reason why policy evaluation can be difficult to conduct is the multilayered nature of policy responsibilities in such policy areas as the environment, employment promotion and equal opportunities.

However, despite such barriers in the way of policy evaluation, it has been given a higher priority over the years, especially since the better regulation agenda has been prioritized. This increased prioritization of evaluation reflects the greater attention that has been given in the EU since the 1990s to best practices in policy management, particularly in achieving accountability, transparency and encouraging results-oriented decision-making based on quantitative and qualitative evidence.

Normally, broad and overarching policy areas are only – and arguably can only be – evaluated in rather general terms. The periodic assessments the Commission issues of the impact of the internal market programme and its impact on such indicators of success as economic growth and employment fall into this category of general evaluations. More detailed and scientific evaluations tend to be directed towards narrower policy areas and activities. As Versluis et al. (2011, p. 207) observe, evaluations usually focus 'on a single piece of legislation, operational programme, or individual project, given that these are bite-sized initiatives through which policy budgets are normally channelled with the explicit aim of achieving certain policy goals. That is to say, policies are translated into

workable "courses of action" often for a fixed duration and with an estimated cost.'

The discussion of policy evaluation that now follows is organized around the three stages or points in time at which policy evaluation takes place: during policy development (known as *ex ante* evaluation); while policy is being implemented (*mid-term* evaluation); and after a policy programme has been completed (*ex post* evaluation). Typically, what are known as formative evaluations, which are aimed at improving existing programmes, are conducted at the *ex ante* and mid-term stages, while summative evaluations, which are aimed at assessing outcomes, take place at the *ex post* stage.

Ex ante evaluation

In developing policies and policy programmes the EU must, if their effectiveness and efficiency are to be maximized, seek to satisfy itself on a number of key questions, prominent among which are: are the policy goals clear?; have all possible ways of achieving the goals been fully analysed?; what are the benefits and what are the costs?; do the benefits exceed the costs?; and are sufficient resources available?

Quite how the EU goes about engaging in such *ex ante* evaluation, or appraisal as it is perhaps more accurately described, varies according to the policy type. Where, however, legislation is envisaged, a procedure has emerged that is now standard across the policy spectrum. Its main features are set out in Box 7.2.

The procedure outlined in Box 7.2 gives the impression of a wholly rational, neutral and technically driven process. In most respects, it is just that, but sometimes the Commission may have a preference for a particular course of action and may indeed even have started informal work on drafting the legislative proposal in question before the impact assessment (IA) has been completed (which, strictly speaking, should not happen). In such circumstances, IAs cannot be 'fixed', but they can lean in preferred directions. Moreover, when legislative instruments are drafted it is possible for unwanted contents of IAs to be discounted: an IA is, after all, not a scientific exercise but rather an informed judgement on the best possible way of dealing with a policy problem.

Box 7.2

Procedures within the Commission for evaluating new legislative proposals

- Impact assessments (IAs) are obligatory for all legislative instruments that are likely to have a significant impact. Most IAs are conducted in-house, with the DG that is in the lead on a legislative instrument making a judgement as to whether an IA is necessary, but if it decides that no assessment is necessary it can be overruled by the Secretariat General.
- IAs are drawn up by the DG unit and desk officers who are responsible for writing the proposal, usually with logistical and tactical assistance from a planning or evaluation unit in the same DG. Other DGs that have a potential policy interest must be consulted.
- IAs: (i) identify 'the problem' that needs to be addressed; (ii) identify the policy objectives to deal with the problem; and (iii) identify options (which must include that no action is to be taken) and their likely impacts. IAs must cover the economic, social and environmental aspects of proposals.
- When finalized, IAs are submitted to the Impact Assessment Board (IAB), which is based in the Secretariat General. Its membership consists of the Deputy Secretary General and a handful of relevant senior Directors – virtually always including Directors from the Ecofin, Employment and Environment DGs. The IAB scrutinizes the IA and, in about half of the cases, refers them back for further information, changes or strengthening.

Mid-term evaluation

Evaluating policies while they are being implemented involves following up on the policy goals and policy mechanisms that were identified in the policy development and decision-making stages and checking whether they are being translated into practice. Specific evaluation questions asked at this stage include: is the policy being implemented as was intended?; are there any management weaknesses?; are sufficient resources being made available?; are resources being used appropriately?; are policy instruments being activated on schedule?; are there any – perhaps unanticipated – implementation difficulties?; are all stakeholders being consulted?; and is feedback on implementation being used to improve delivery and/or redirect resources?

The extensive monitoring of EU policies and policy programmes undertaken by the Commission – with front-line administrators usually being obliged to

submit regular reports 'to Brussels' (as it is frequently put by such administrators) – is a form of mid-term evaluation. But, more broadly, there is a sense in which all policies are being evaluated continuously once they come into operation. This is because policy stakeholders (which can include politicians, administrators, sectional interests and the general public) – are, with degrees of interest and knowledge that vary according to how much they are affected, aware of policy activities and their consequences.

Mid-term evaluations, especially if they are on a formal footing and do not consist merely of vested interests voicing complaints, can enable policy problems to be addressed on a continuous basis.

Ex post evaluation

Strictly speaking, *ex post* evaluation occurs when a policy programme is completed. However, most specific EU policy programmes are not one-off programmes scheduled for a specified number of years and then finished. Rather, they are generally part of broad ongoing policy activities subject to continual revision and renewal. As a result, what amounts to *ex post* evaluations usually occur before a policy activity has strictly finished and can, in effect, virtually merge into mid-term evaluations. Questions asked in *ex post* evaluations include: were the policy goals achieved?; did some aspects of the policy work better than others?; was the policy implemented on time and within budget?; and where could improvements be made if the policy activity is to be continued?

Ex post evaluations take several different forms and, in consequence, are undertaken by varying types of actors. A few are undertaken by the Commission itself, although usually in collaboration with outside experts. However, the relative lack of in-house evaluation experts in the Commission, the highly specialized technical ground that many policy programmes cover, and the fact that sole control by the Commission of evaluations would mean that it would often be evaluating itself, result in some 80 per cent of *ex post* evaluations being contracted-out to subject and evaluation consultancy firms and experts (Højlund, 2015).

Under Commission President Barroso, *ex post* evaluations of EU legislation were given a much greater importance than had previously been the case. Formerly, they tended to be undertaken on a rather sporadic basis and to focus often on not much more than financial instruments. Barroso, followed even more so by President Juncker, oversaw a widening of both the number and scope of *ex post* evaluations. Under their presidencies, much more legislation than formerly included an evaluation requirement, and the administrative culture of the Commission changed – with it coming to be accepted that there should not be significant changes to existing legislation without some sort of evaluation of that legislation having been undertaken.

An important role in *ex post* evaluation is also undertaken by the European Court of Auditors (ECA), which is responsible for checking EU revenue and expenditure and for providing the Council and EP with a Statement of Assurance on the reliability of the accounts, the legality of financial transactions and whether financial management has been sound. This task is undertaken by auditing the general budget of the EU and certain non-budgetary EU financial operations (including development aid), and by conducting investigations into and issuing reports and opinions on various specific areas of expenditure. The role of the Court is not to replicate what has already been covered by internal Commission auditing, which is extensive. Rather, it is to examine the adequacy of internal auditing procedures, particularly the rigour of financial management practices and their ability to identify irregular and illegal transactions. Over the years, the ECA has continually identified weaknesses in financial administration – especially with respect to the CAP and cohesion funding (the two main areas of EU expenditure) – but it has also testified to a progressive lowering in the misuse of funds. Compared with the 10 per cent and more it used to report in errors in financial payments, the Court now regularly puts the figure for most expenditure areas at between 2 per cent and 5 per cent. In addition to undertaking financial audits, the ECA has in recent years extended its remit to also undertaking performance and effectiveness audits. In so doing, it complements the Commission-driven better law-making agenda.

Conclusions

While few would argue the policy cycle concept is a 'grand theory' of policymaking that is subject to empirical testing, it has proven to be a very useful workhorse in conceptualizing the policymaking process. In the EU, each stage of the cycle is associated with a different function of government, complete with 'leading' actors – with, for example, the Commission, plus the Council and the EP when legislation is being made – being the central actors at the decision-making stage and with the Commission, working usually in harness with thousands of public administrators based in the member states, being responsible for ensuring policy implementation.