

Rule-Making Procedures

Procedures for the preparation of Commission proposals?

Presentation for the
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Towards an EU administrative procedure law ?

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Procedures for executive rule-making

- Articles 290 and 291 TFEU:
 - Are the main forms of binding EU non-legislative acts.
 - Define modes of *control and supervision* by the EP, Council and Member States.
- The *procedures for drafting* such acts are increasingly regulated e.g. in:
 - Policy-specific legislation on EU agencies preparing rule-making (e.g. EASA, ESMA, ERA, EMA)
 - Soft law by the Commission's self-obligation to conduct Impact Assessment (IA) procedures.
- **Observation: There is an increasing convergence towards a common set of basic procedural steps to be pursued in preparation of rule-making**

Procedural steps include:

- **Identification and formulation of rule-making topics in**
 - 'Work programmes' and
 - 'Terms of reference' of individual rule-making projects.
- **Impact assessment (IA) and/or cost-benefit analysis (CBA).**
- **Consultation (either as part of, follow-up to, or preparation of an IA) of:**
 - Member States;
 - Scientific expertise;
 - Stakeholders and interested general public.
 - Possible reformulation of initial drafts on this basis and re-consultation if necessary.
- **Publication of a reasoned draft rule**
 - with documentation about the prior steps and their impact on the draft rule.

Some issues to consider:

■ Impact assessment (IA) procedures:

- Whether and how much IA given limited administrative resources and timing?
- Definitions:
 - Would IA cover all preparatory phases or should IA be limited to developing initial 'terms of reference'?
 - What is the relation between IA and CBA and how to quantify risks or benefits?

■ Individual rights and judicial review:

- Judicial review will lead to strengthening of rule of law?
 - Protection of procedural rules giving subjective individual rights (e.g. on consultation and reasoning).
 - Annulment in case of violation of 'essential procedural steps'.
 - Use of IA results in proportionality review.
- Would this lead to delays and 'ossification' of rule-making?

■ Circumvention of procedures:

- Application of formalised rule-making procedures only for binding acts or also for 'soft-law' guidelines, notices etc?

Potential advantages of a generalised approach to EU executive rule-making procedures:

- **Increasing legitimacy, intelligibility and compliance with the rule of law** through:
 - Transparency and openness
 - By improving general understanding of EU rule-making procedures
 - By defining rights and procedures of participants.
 - Ensuring publication and consultation of intended policies.
 - Good administration and impartiality
 - By ensuring systematic taking into account all relevant factors prior to decision-making (including expertise).
 - Designing procedures which ensure best quality of output through impartial review of input.
 - Accountability
 - Democratic accountability through allowing for better public participation and scrutiny as well as parliamentary supervision.
 - Judicial accountability by clarifying rights and obligations as well as preparing information base for effective judicial review.