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Kaja JEDLIŃSKA¹, Tadeusz OLKUSKI²

The decision-making process in the EU in the field of energy policy

ABSTRACT: The article presents the EU legislative procedure and decision-making processes with a special emphasis on decisions regarding energy policy. It has been pointed out that most of the energy related legal acts, including the renewable energy directive and those aimed at the gradual reduction of emissions of harmful substances, are adopted according to the ordinary legislative procedure. However, special legislative procedures apply in the case of international agreements between the European Union and third countries. The trilogues, i.e. meetings of the European Commission, the European Parliament, and the Council, aimed at reaching a common position before the first reading in the EP, are of great importance in decision making. The article also discusses the problem of energy policy and its impact on the environment, recalling the relevant articles of the Treaty on the functioning of the European Union. The most important paths of influence of the Member States on new legal acts in the context of energy policy have also been shown. This is an extremely important issue from the investors' point of view, since projects related to the energy industry have a very long payback period, so the stability and predictability of the Community's energy policy is of paramount importance to them. The possibilities of shaping new laws related to energy at the stage of preparing a regulation are discussed later in the article. The work of parliamentary committees, especially those related to energy, i.e. the ITRE (The Committee on Industry, Research and Energy) Committee and ENVI (The Committee on the Environment, Public Health and Food Safety) has also been discussed. In addition, the article

¹ Graduate of Faculty of Energy and Fuels, AGH University of Science and Technology, Kraków.

² Faculty of Energy and Fuels, AGH University of Science and Technology, Kraków; ORCID: 0000-0002-6256-9628; e-mail: olkuski@agh.edu.pl

clearly shows different approaches of Western European countries and the Central and Eastern European countries (including Poland) towards energy issues.

KEYWORDS: Energy policy, European Parliament, Council of the European Union, legislation

Introduction

The European Union, as a union of 27 countries (taking the withdrawal of the United Kingdom into account) of various levels of development, different culture, history, traditions and different languages, faces many problems while making decisions affecting the day-to-day functioning of the community and its future shape. The conflicting interests of individual countries, and differences in the strength of their economies, exert enormous influence on legislative processes within the EU. Working out a compromise is a difficult and time-consuming process. Future directives and regulations require cooperation between the European Commission, the European Parliament, and the Council of the European Union. It is difficult to reconcile the often conflicting interests of individual countries and to develop a common policy, including the energy policy, although in other areas of the economy the EU faces similar problems. It is clearly visible that the priorities of Western countries include decarbonization (and more broadly – abandoning fossil fuels), combating climate change, and building a single market and stronger cross-border cooperation. Meanwhile, the energy industry in Central and Eastern European countries is largely based on conventional fuels while rapid transformation towards renewable energy sources is not possible. There is also a large dependence on energy supplies from the East, which in the case of countries of the former socialist bloc raises many fears and is overlooked or downplayed in Western countries. Fortunately, the decision-making processes in the European Union allow for negotiation and the development of a common policy, so there is hope that the decisions taken will allow to reconcile, at least in part, the conflicting interests of different countries.

1. Ordinary legislative procedure

The ordinary legislative procedure is applied in the case of most EU laws, e.g. directives related to renewable energy sources, reduction of harmful compounds emissions, etc. In this case, the legislative initiative belongs to:

- ◆ The European Commission,
- ◆ $\frac{1}{4}$ of the Member States,
- ◆ The European Central Bank,

- ◆ The European Investment Bank,
- ◆ The European Parliament (by majority),
- ◆ Citizens' initiative (1 million signatures with minimum thresholds reached in at least seven countries).

However, the European Commission plays the most important role in this process. The vast majority of proposals (regulations and directives) is submitted by the EC, since the European Commission has the monopoly on legislative initiative. The suggestions of the other bodies must be ultimately accepted by the Commission, e.g. in the case of a citizens' initiative once an initiative gathers 1 million signatures. The European Commission is examining whether the Parliament and the Council should review the proposal. After reviewing the proposal, the Commission can either take a positive or a negative decision.

After submitting the legislative proposal by the Commission, it is analyzed and adopted by two bodies. The European Parliament and the Council of the European Union. However, the EC is not excluded from the decision-making process; it presents the proposal to MEPs and members of the Council, and, during further work, actively participates in debates. The stages of the legislative process described in Article 294 of the *Treaty on the Functioning of the European Union (Treaty 2018)* (ex Article 251 of the *Treaty establishing the European Community*) are presented in Fig. 1.

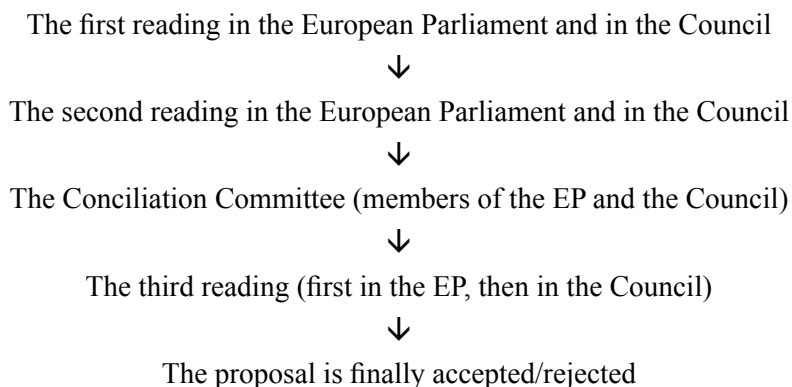


Fig. 1. The ordinary legislative procedure in the EU, the stages of legislation
Source: Own work based on (European Parliament 2018)

Rys. 1. Zwykła procedura ustawodawcza w UE – etapy legislacji

The treaty provisions provide for a theoretical path of legislation, according to which the first reading of a proposal takes place in the European Parliament. If the proposal is accepted, it is forwarded to the Council of the European Union. If the proposal is amended by a simple majority, it is returned to the Parliament for a second reading. After being examined by a relevant parliamentary committee, it is voted on the plenary session. Once adopted, a proposal is submitted to

the Council. The Council may approve or reject the proposal. If the Council is not in a position to approve all EP amendments during the second reading, the conciliation committee, composed of an equal number of members of the Parliament and Council representatives, which has to agree on a text that would be acceptable to both institutions, is convened. This is followed by a third reading in the European Parliament. If the Council rejects it, the proposal will not enter into force; if the Council approves the text, and so does the Parliament, the legislative act is adopted.

2. Special legislative procedure

The ordinary legislative procedure applies to the majority of proposals, whereas a special legislative procedure applies mainly to international agreements between the EU and “third countries”. Generally, there are two types of procedures.

2.1. The consent procedure

The Council of the European Union must obtain the Parliament’s consent before certain decisions can be made (necessary condition). However, MEPs do not have the possibility to amend the proposal. The consent procedure is used when new legislation on combating discrimination is being adopted and in the case of international agreements negotiated by the Commission, e.g. TTIP (Transatlantic Trade and Investment Partnership) and applies to the ratification of certain agreements negotiated by the EU; it is also used for the accession of new EU members or arrangements for the withdrawal from the EU. This topic is particularly important from the point of view of current Brexit negotiations with the UK.

2.2. Consultation procedure

This procedure is applicable in certain international agreements related to security and new initiatives in the field of competition law. The Council of the European Union takes a decision after consulting the Parliament. MEPs may submit their amendments and additional suggestions, but the final document forwarded to the Council by the EP is not binding.

From the point of view of the energy policy, the need for the Parliament’s approval of international agreements negotiated by the Commission is of great importance. The EC is granted an appropriate mandate before, for example, a climate summit, and then a total of two institutions,

the European Parliament and the Council, must assess whether the Commission representatives acted in accordance with the guidelines provided.

3. Trilogue meetings

The course of the ordinary legislative procedure presented in the second section does not raise any objections from the legislative point of view. However, EU lawmakers have rightly noted that, although the process seems clear on paper, it would be extremely difficult to reach agreement between the various bodies. It is, therefore, worth answering the question of how almost 85% of legal acts in the EU are adopted during the first reading (Hardcaere and Akse 2018). It would be perfectly natural for the Council or the Commission to introduce numerous amendments during the legislative process, which would not only lead to an extension of the procedure, but could even undermine the possibility of adopting some directives or regulations.

Figure 2 shows the actual course of the ordinary legislative procedure, taking the participation of Member States into account.

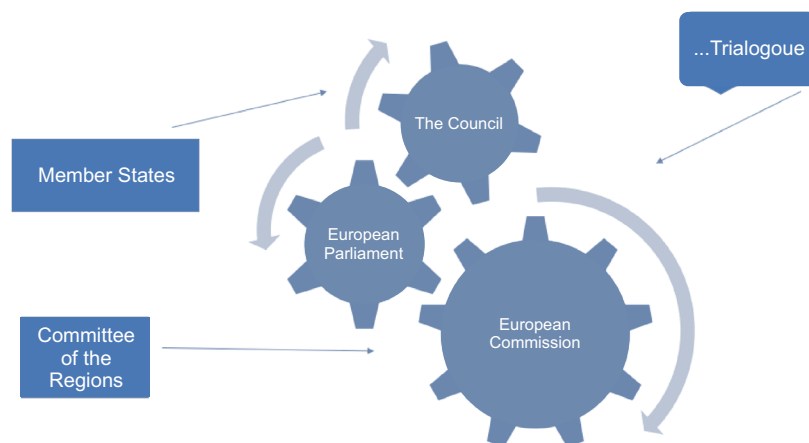


Fig. 2. The course of the ordinary legislative procedure in the EU

Source: own work

Rys. 2. Rzeczywisty przebieg zwykłej procedury ustawodawczej w UE

According to the above scheme, in addition to the above-mentioned cooperation between EU institutions at particular stages of the process, including the opinion of, among others, the Committee of the Regions, the so-called *trilogue* is also of great importance. Trilogues are meetings on legislative proposals, for example a regulation on security of gas supply, between representatives of the Parliament, the Council and the Commission. They are aimed at reaching a common position

before the first reading in the EP. In fact, if a compromise is reached during a trilogue, the Parliament's approval of the draft and subsequent approval by the Council is a formality. First of all, it should be noted that trilogues are informal meetings. However, this does not diminish their significance; instead, the discussed formula has a significant impact on the legislative process in the EU.

Technical trilogues are focused on detailed solutions contained in documents. However, key decisions are made during trilogue meetings, where the EC is represented most often by the chairman of the Directorate General for energy, the Council – by the ambassador, and Parliament – by the chairman of the relevant committee, e.g. the head of the ITRE (The Committee on Industry, Research and Energy), MEP rapporteurs, and shadow rapporteurs. All parties are working on the so-called “fourth column” of the legal act. The first column is dedicated to the position of the EC at the first reading, the second one to the position of the EP, the third one to the position of the Council, while the fourth is the compromised text.

4. Energy or environmental policy?

While determining the wording of the “fourth column” of new energy related proposals, technical, economic, and legal arguments are mentioned (in political interpretation). From the point of view of the different needs and interests of the Member States, the distinction between Article 191 and 194 of the *Treaty on the functioning of the European Union (The Treaty-2 2018)* is of great importance. Table 1 presents selected fragments of Articles 191 and 192 of the Treaty on the functioning of the European Union.

Article 191, also known as “environmental”, lists EU objectives related to environmental protection (rational utilisation of natural resources, improving the quality of the environment, protecting human health). Paragraph 2, according to which environmental damage should as a priority be rectified at the source and that the polluter should pay, is of special importance. Article 191 allows representatives of countries that are focused on the development of the renewable energy industry to broaden their ideas when negotiating new proposals. The arguments related to health protection and ensuring adequate living conditions for EU citizens are being raised. Article 191 gives clear political and financial instruments to limit the use of high-emission fuels, such as hard coal or lignite.

In contrast, according to Article 194 of the Treaty (also known as “energy article”), Member States retain competence to determine their own energy mix. Central and Eastern European countries (including Poland), which are still heavily dependent on conventional fuels, whereas heavy industry is an important branch of the economy, usually refer to Article 194.

The question as to whether the scope of Article 191 and 194 has been properly understood is one of the main problems related to the energy policy of the European Union. Member states, depending on their own needs and interests, differently interpret or apply the provisions of EU law – this particularly applies to environmental Article 191(1) TFEU and energy article 194(2) TFEU.

TABLE 1. Article 191 and Article 194 of the Treaty on the functioning of the European Union
(Eur-lex 2018)

TABELA 1. Art. 191 i Art. 194 Traktatu o funkcjonowaniu Unii Europejskiej

Article 191:	Article 194:
<p>“1. Union policy on the environment shall contribute to pursuit of the following objectives:</p> <ul style="list-style-type: none"> ◆ preserving, protecting and improving the quality of the environment, ◆ protecting human health, ◆ prudent and rational utilisation of natural resources, ◆ promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change. <p>2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay”.</p>	<p>“Without prejudice to the application of other provisions of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary to achieve the objectives in paragraph 1. Such measures shall be adopted after consultation of the Economic and Social Committee and the Committee of the Regions. Such measures shall not affect a Member State’s right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article 192 (2) (c)”.</p>

5. The most important paths of influence of the Member States on new legal acts in the context of the energy policy

The analysis of the decision-making process in the EU structures presented in the previous paragraphs allows the for assessment of the potential impact of representatives of government bodies on the final shape of the provisions of the legislative proposals. At present, the energy sector is strongly dependent on regulations; not only specific legislative solutions, but also a large number of law changes at short intervals. For example, projects targeting renewable energy sources (both at national and EU level) stimulate the development of this industry. Projects related to the energy industry have a very long payback period and are associated with a financial risk, thus entrepreneurs strive for stability and predictability of the EU and national energy policies. The report titled “Decarbonisation Pathways” issued by Eurelectric (Eurelectric 2018), which was published in November last year, estimates that the transformation process of the Polish energy sector until 2045 (assuming a 40% share of coal in the energy mix) will cost approx. EUR 130 billion. It is clear that such high expenditures (without adequate support from EU funds) may have an adverse effect on the entire economy and on the standard of living of the society. Representatives of the Member States thus defend the interests of national companies at the EU level, so as not to lead to possible national socio-economic problems.

6. Possibilities of shaping the provisions of new legal acts related to the energy sector

The following points will present the main “instruments” of the governments of individual EU Member States, thanks to which they can influence the shape of the proposals related to energy, and thus shape the European Union’s energy policy itself:

6.1. A proposal for a Directive/Regulation

As described above, in most cases the legislative initiative belongs to the European Commission. EC staff is involved in organizing special meetings with stakeholders. These are both state-owned and private companies as well as representatives of government associations and organizations. In addition, during the preparation of new legal acts, the EC develops the so-called *impact assessment* of the regulation. At this stage, the active participation of Member States through expressing specific financial, legal, or social concern, is also of great importance.

6.2. The Early Warning Mechanism

This procedure concerns a matter which is of great importance from a national perspective. According to the Treaty of Lisbon ([The Treaty of Lisbon 2018](#)), the European Commission is required to send legislative proposals to national parliaments. Within 8 weeks, deputies and senators may pass a negative opinion if they consider the principle of subsidiarity violated. In accordance with this principle, the European Union may take initiatives in the areas defined in the treaties, but it is not entitled to propose binding solutions in areas in which it does not have exclusive competence. The principle of subsidiarity is vague and allows for different political interpretations. If at least 1/3 of the national parliaments (the threshold applies to most energy-related issues) are of the opinion that the draft legislation does not comply with the subsidiarity principle (“yellow card”), the Commission must review its proposal ([European... 2018](#)). Of course, it can reject the suggestions of national parliaments, but every decision of the EC should be accompanied by a written substantiation. If the reasoned opinion represents at least a simple majority of the total number of votes, (the “orange card”) and the EC, after an analysis, does not decide to withdraw the proposal, the Parliament and Council examine the Commission’s proposal at the first reading in parallel.

None of the discussed instruments of the Early Warning Mechanism (both a yellow and an orange card) does not allow the for national parliaments to completely block a given legislative

initiative. However, taking the fact that legislative process in the field of energy is usually complex and time-consuming into account, the presented procedure can be treated as the first step in forming, for example, a blocking minority for a given project.

6.3. The work of parliamentary committees

While national governments often use Early Warning mechanisms, in the case in which the European Commission approves the proposal without amendments, the activity of national politicians is suspended for a while. Therefore, the activity of EU parliamentary committees during this period is of special importance; in the case of projects related to the energy sector, this applies to the ITRE (The Committee on Industry, Research and Energy) and ENVI committees (The Committee on the Environment, Public Health and Food Safety). The European Parliament is a supranational institution, which is why the legislative success of proposals depends mainly on the coalition capabilities of the largest parties. However, it should not be forgotten that members of these groups are politicians from specific countries. The future shape of the proposals depends largely on the activity of MEPs, especially *shadow rapporteurs and representatives*. Member States can therefore fulfill their needs and interests in the EU energy policy by influencing their representatives in the European Parliament.

6.4. Opinion of the Committee of the Regions

The Committee of the Regions is an advisory body, which represents the interests of regional and local authorities in the European Union providing non – binding opinions in the legislative process that can have an impact on the local level (which in practice means the majority of cases). The Committee of the Regions can also carry out an own-initiative analysis. The first option results from treaty provisions and may indirectly influence the decisions of other EU institutions as an argument during negotiations. However, the appointment of a special team and own-initiative analysis (second option) show a high degree of concern among representatives of regional structures. Such a situation took place in December 2017, when local governments from 11 Member States formed an international group on the Nord Stream 2 gas pipeline (wzp.pl 2018). The idea was initiated by the Polish side, and more specifically by Olgierd Gieblewicz – the marshal of the West Pomeranian Province. It is well known that the Nord Stream 2 project is controversial for principled (the Energy Union concept), historical, diversifying, as well as environmental reasons, which formed the basis for establishing a team at the Committee of the Regions. Although each of the opinions of the Committee of the Regions is non-binding, political actions such as those described above have a positive impact on the influence of Member States on other EU institutions.

6.5. Negotiations in the Council of the European Union

Minority and majority coalitions are usually formed in the EU Council during the trilogue meetings. Depending on the type and weight of the new legal act, a strategic alliance can be formed much earlier. There is no doubt that the Council is considered to be the most political body of the European Union. In the case of projects related to the energy sector, the approach of Western European and Central and Eastern European countries is diametrically opposed. The countries of the former Eastern Bloc postulate, inter alia, a slowdown in the liberalization of the electricity and natural gas markets, rationalization of RES investments, and a greater support for conventional fuels. Meanwhile, the priorities of Western countries include decarbonization, combating climate change, and building a single market and stronger cross-border cooperation. Needs and interests are evidently different on many levels. In the case of energy policy, a greater influence of the so-called EU core on sectoral strategies and, as a result, legislative proposals from the European Commission can be observed. The countries of the former Eastern bloc can prevent a proposal by forming the so-called blocking minority. However, this does not apply only to the geographical and economic division into the East and West. In the case of specific laws that are particularly unfavorable for a given country, very diverse coalitions can be formed. The EU Council approves proposals by a qualified majority, which means 55% of Member States (by number) representing at least 65% of the community's population. The blocking minority, i.e. the one that can prevent a proposal, requires at least 4 countries, corresponding to 35% of the EU population (European Council 2018).

6.6. Trilogues

The procedure of trilogue negotiations is described in detail in section 4. It is worth noting, however, that discussions within the Council (and interinstitutional discussions) are conducted in parallel. Representatives of the Presidency act on the basis of the mandate granted by COREPER (Committee of Permanent Representatives), and the outcome of the negotiations must be approved. In order to break the stalemate in the negotiations, it is possible to call for a re-vote on the negotiating mandate. However, Member States have limited possibilities to influence the course of trilogue negotiations – the key role is played by the Presidency of the Council of the European Union. If there are substantive differences between the Parliament and the Council, the negotiations and the text's adoption are suspended. This applies mainly to radical changes that cannot be accepted by most Member States.

6.7. European Council

It would seem that from a legal point of view the European Council has no significant impact on the legislative process. However, according to the Treaty interpretation, the European Council is the highest institutional authority of the European Union. The two above statements are not contradictory. The aim of the European Council is not to interfere in the technical details of new projects, but to set general directions for the development of the Community. Stakeholders use the strong political mandate of this institution – for example – they call on the European Council to intervene in a given case. It is the European Council that may question the legitimacy of carrying out specific reforms, solutions (such as limiting participation in capacity mechanisms to plants emitting not more than 550g CO₂/kWh in the so-called winter package). Therefore, the European Council is a place where new, big ideas get accepted or rejected. This is a place where the political and national dimension of conducted talks and negotiations has a huge impact on the shape of the future EU energy policy.

7. Conclusions

The structure of EU institutions presented in this article and a description of the decision-making process in the general scope, specifically in the energy sector, allow for assessing the influence of Member States on the final provisions, and thus the success of their own needs and interests. All branches of the energy sector are strongly dependent on regulations. Some observers believe it is the most important “variable” in the process of planning and estimating the risk of new projects by investors. Therefore, to assess the shape of the future energy policy of the European Union, it is necessary to take the treaty provisions and EU practices related to the legislative process in the field of energy into account.

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Kaja JEDLIŃSKA, Tadeusz OLKUSKI

Proces podejmowania decyzji w Unii Europejskiej w zakresie polityki energetycznej

Streszczenie

W artykule przedstawiono mechanizmy tworzenia prawodawstwa unijnego oraz procesy podejmowania decyzji zarówno w sensie ogólnym, czyli dotyczącym wszelkich problemów pojawiających się w życiu wspólnoty, jednak w szczególności skupiono się na decyzjach dotyczących polityki energetycznej. Zwrócono uwagę, że większość aktów prawnych związanych z energią, takich jak dyrektywy dotyczące odnawialnych źródeł energii, czy też problemów związanych z ograniczeniem emisji szkodliwych substancji do środowiska, są procedowane zgodnie ze zwykłą procedurą ustawodawczą. Specjalne procedury ustawodawcze stosuje się natomiast w przypadku umów międzynarodowych pomiędzy Unią Europejską a państwami spoza jej granic. Ważne znaczenie przy podejmowaniu decyzji ma procedura trylogu oparta na negocjacjach przedstawicieli instytucji unijnych w celu uzgodnienia wspólnego stanowiska wszystkich organów UE jeszcze przed pierwszym czytaniem w Parlamencie Europejskim. W artykule poruszono również problem polityki energetycznej i jej wpływu na środowisko przywołując odpowiednie artykuły Traktatu o funkcjonowaniu Unii Europejskiej. Przedstawiono również najistotniejsze możliwości wpływu państw członkowskich na kształt nowych aktów prawnych w kontekście polityki energetycznej. Jest to niezwykle istotne zagadnienie z punktu widzenia inwestorów, gdyż projekty związane z branżą energetyczną mają bardzo długi okres zwrotu, więc stabilność i przewidywalność polityki energetycznej wspólnoty ma dla nich znaczenie pierwszorzędne. W dalszej części artykułu omówiono możliwości kształtowania nowych aktów prawnych związanych z energią na etapie przygotowywania projektu lub rozporządzenia. Omówiono także prace komisji parlamentarnych zwłaszcza tych związanych z energią, czyli komisji ITRE

(ang. *Industry, Research and Energy*) i ENVI (ang. *Committee on the Environment, Public Health and Food Safety*). Ponadto w artykule wyraźnie pokazano rozbieżność w podejściu do zagadnień energetycznych państw Europy Zachodniej oraz państw Europy Środkowo-Wschodniej, do której należy nasz kraj.

SŁOWA KLUCZOWE: polityka energetyczna, Parlament Europejski, Rada Unii Europejskiej, ustawodawstwo

