

# DAY TWO

February 21, 2023

## EU Secondary Legislation, from delegated acts to implementing acts

### Introduction

- Recap from Day One class
- Q&As

### History of secondary legislation

- A fast-track procedure to supervise the Commission in the exercise of its implementing power
- Pioneering years with the CAP
- Single European Act: formal recognition of comitology
- 1999 decision: the EP steps in (timidly)
- 2006 reform: the EP gets a bigger say → Regulatory Procedure with Scrutiny (RPS)
- Lisbon Treaty: delegated acts + implementing acts

### Secondary legislation is critical

- A hidden power
- 98% of binding EU texts are adopted through secondary legislation
- Poor primary legislation = more secondary legislation
- Trilogues
- The EP takes action

### Overview of secondary legislation

- RPS still alive in spite of Lisbon Treaty
- Co-existing with delegated acts + implementing acts
  - ✓ Applies for legislative acts adopted before December 2009 and not yet aligned to post-Lisbon framework via ordinary legislative procedure
  - ✓ Delegated acts for legislative acts adopted after December 2009



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- ✓ Implementing acts for legislative acts adopted before and after December 2009 (management, regulatory and advisory committees)
- Before Lisbon: Commission vs EP
- After Lisbon: Commission + EP vs Council

## RPS

- Left-over from before Lisbon
- Similar in scope to delegated acts, but different procedures apply
- RPS in action

## Delegated acts

- A mandate is needed
- First draft delegated acts shared with Commission Expert Group
- Four-week consultation allowing public participation
- Commission adoption
- Absolute majority in EP and super QMV in Council needed to veto or revoke delegation
- Urgency procedure

## Aligning RPS to delegated acts (“Lisbonisation”)

- Member States are reluctant to let RPS move to delegated acts
- “Lisbonisation” stalled as a consequence
- “Lisbonisation” in practice – no omnibus solution
- RPS to continue for the years to come: REACH, cosmetics, etc.

## Implementing acts

- Implementing instead of complementing
- Technical and administrative measures
- Regulation 182/2011
  - ✓ Council out if negative opinion or no opinion during examination procedure
  - ✓ Appeal Committee
  - ✓ Examination and advisory procedures
- Drafting phase of implementing act
  - ✓ Opinion of relevant EU agency needed (ECHA, for example)
  - ✓ 4-week stakeholder consultation



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- Adopting the draft implementing act
  - ✓ Examination Committee
  - ✓ Adoption, rejection, “no opinion”
  - ✓ “no opinion = no adoption”: EP + Council in favor, Commission against
- Marginal role for the EP
- Special procedures:
  - ✓ Exceptional cases
  - ✓ Urgency
- Trade defense instruments adopted by implementing acts under examination procedure
- Identifying implementing acts in a legislative act



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