Course title	The administrative implementation of EU law by the Member States
Duration	12 teaching hours
Dates	9-13 March 2020
Instructor	Rui Lanceiro

Course objectives

The main objective of this course is to provide a comprehensive insight of the administrative implementation of EU law by the Member States, its justification, legal regime, and the problems that are associated with it.

The course will focus on the theoretical framework the administrative implementation of EU law by the Member States, as well as on the tools and mechanisms available to enforce it and to control compliance with it. The course will also focus on the problems related with this duty, namely concerning the protection of fundamental right such as the right to judicial review of administrative action. Other subjects related with its main topic will be addressed, such as the "Europeanization" of national administrative law, the principle of sincere cooperation, and the principles of institutional and procedural autonomy of the Member States.

Course Description

In a multilevel structure with the power to adopt legislative acts, such as the EU, one of the questions that need to be addressed is the distribution of implementing powers through the various entities involved. Generally, the EU relies on Member States' administrations for the administrative implementation and safeguarding of EU law. This solution was expressly enshrined in Article 291 (1) of the Treaty on the Functioning of the EU (TFEU) by the Lisbon Treaty. The same Treaty introduced the express recognition that the Member State must assure the "effective implementation of Union law", which is considered "essential for the proper functioning of the Union" (Article 197 (1) TFEU). The public administrations of the Member States are thus tasked with ensuring the administrative implementation of EU law in cooperation with the EU institutions, specially the Commission, and this administrative execution depends on them, primarily. This duty to implement EU law is a consequence of the principle of sincere cooperation (Article 4 (3) TEU), which implements and complements it. Since it is only exceptionally that the EU itself will be responsible (Article 291 (2) TFEU), it is the administrations of the Member States which constitute the "common administration" and its courts which are the "ordinary courts" of the EU. In fact, in that case, the Member States are acting indirectly as EU's agents.

In the many EU policy areas where the Member States are involved in the implementation of EU law it is necessary to designate the competent national authorities that will implement and apply EU law at the national level. The legal basis needed to assign implementation competences may vary in the Member States. In this area, one can wonder if the legal basis for the national administration to act is purely national, or dual, with EU law also playing a role.

There is also the question of which procedural law should national administrations use when implementing EU Law. In that case, national procedural law is applicable to the extent that EU law does not regulate the matter – this is called the principle of procedural autonomy of the Member States, which is subjected to the double limitation of the principles of equivalence and effectiveness. National procedural law, in this case, must also ensure respect for the fundamental rights enshrined in the Charter.

There are also cases of cases of joint implementation of EU law, both by national administrations and the EU. In this case, not only are the national administrations of the Member States still bound to implement the legislation of the supra-national level, but are also are integrated in common procedures.

This has led to a progressive structural transformation that has taken place in the legal regimes of the Member States transformations in administrative law principles, in the organization of public bodies, in administrative action and in administrative and judicial review. This phenomenon is sometimes called "Europeanisation" of Member States Administrative Law.

Course Outline

The lecture is divided into five sessions, in the morning from 11:10 to 13:00.

2 March 2020

Morning Session

Introductory Seminar

1. Enforcement of EU Law: general introduction
2. Direct, indirect, and "mixed" / "transnational" administrative implementation of EU Law.
3. Implementation by the EU
3.1. The EU's public administration
3.2. "Agencification" of the EU administration
3.2. Role played by national administrations in the direct implementation.

3 March 2020

Morning Session

Advanced Seminar

4. Implementation of EU Law by Member States – general presentation.
4.1. Duty of Member States to give full effect to EU Law
4.1.1. The principle of sincere cooperation and its consequences
4.1.2. Consistent interpretation and "Costanzo obligation"
4.2. Principle of institutional autonomy of the Member States
4.2.1. Tension with federalism and decentralization at the national level
4.2.2. Independent authorities

4 March 2020

Morning Session

Advanced Seminar

4.3. Principle of procedural autonomy of the Member States

4.3.1. Content and consequences

4.3.2. Limits: Direct regulation by EU Law

4.3.2. Limits: Principle of equivalence

4.3.3. Limits: Principle of effectivenes

4.3.4. Limits: Fundamental Rights – Article 51(1) of the Charter

4.3.5. Control by the EU: The Commission and the CJEU

5 March 2020

Morning Session

5. "Mixed" / "transnational" administrative implementation

5.1. "Mixed" procedures

5.1.1. Examples: OGM, Pesticides, Nature 2000 sites, Chemicals, Protection of designations of origin and geographical indications

5.2. "Transnational" administrative acts

5.2.1. Examples: Pharma, CITES (trade of endangered species), Ecolabels, Customs Union (binding tariff information decisions, or decisions relating to binding origin information)

5.3. "Composite" procedures

5.3.1. Comitology

5.3.2. Joint execution of EU budget / shared management of EU funds

5.3.3. European System of Central Banks

6 March 2020

Morning Session

Advanced Seminar

5.4. Cooperation between national administrations: sharing of information, "horizontal" procedures, networks of national authorities

6. General Principles of EU Administrative Procedural Law

6.1. Right to be heard

6.2. Obligation to state reasons

6.3. Access to justice and review procedures

7. Advantages and disadvantages of Codification

Educational Outcomes

By the end of the Course, participants will be able to:

1. Identify the several ways in which EU law is implemented, either by its own administration, the administrations of the Member States, or by their joint action;
2. Recognize the importance of the administration of the Member States to the administrative implementation of EU Law;
3. Discuss advanced legal questions related with the "Europeanization" of national administrative law, the principle of sincere cooperation, and the principles of institutional and procedural autonomy of the Member States.
4. Identify problems associated with the current model of administrative implementation of EU Law and present possible solutions.

Assignment

To demonstrate achievement of learning outcomes, students will be required to answer the following essay question: "What are the main legal challenges of the administrative implementation of EU Law by national Administrations?"

Please check the section "General note" below for more information about the essay.

Basic Bibliography

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Case-law	Case Deutsche Milchkontor (205 to 215/82) Case Rewe (C-33/76) Case Fratelli Costanzo (103/88); Fiammiferi (C-198/01); Minister for Justice and Equality, Commissioner of An Garda Síochána v Workplace Relations Commission (C-378/17) Case SOMVAO (C-599/13)

	Case UPC Nederland (C-518/11) Case United Kingdom v. European Parliament, Council of the European Union (C-270/12) Cases Commission v France (C-263/88), Commission v Netherlands (96/81), Commission v Belgium (227-230/85 and C-423/00), Jiménez Melgar (C-438/99) Case Digibet (C-156/13) Case Campean (C-200/14) Case Steffensen (C-276/01) Cases Yoshikazu Iida (C-40/11), Ymeraga (C-87/12), Siragusa (C-206/13) Case Kühne & Heitz (C-453/00); and Case i-21 (C-392/04) Case Delena Wells (C-201/02) Case Henkel (C-218/01) Case Kingdom of Belgium v European Commission (C-16/16 P) Case Herbosch Kiere (C-2/05) and Alpenrind (C-527/16) Case Silvio Berlusconi and Fininvest (C-219/17) Case Onix Asigurari (C-559/15) Case Technische Universität München (C-269/90), Gerlach (C-44/06), Benallal (C-161/15) Case Commission v France (C-233/00) Case Oleificio Borelli (C-97/91) Case TWD Textilwerke Deggendorf (C-188/92) Case Greenpeace France (C-6/99) Case Star Storage (C-439/14 and C-488/14) Case Texdata (C 418/11) Case Berlioz Investment (C-682/15) Case Altun (C-359/16) Cases Ilmārs Rimšēvičs v Republic of Latvia (C-202/18) and European Central Bank v Republic of Latvia (C-238/18)
Course Prerequisites	*Basic knowledge of EU Law and the relations between the EU and its' Member States*
Evaluation	Full attendance and active participation during classes represent compulsory course requirements. The essay will be assessed on a pass/fail or distinction basis.
Language	English
Location	University of Lisbon School of Law

General note	**N.B.** Due to the fact that class attendance is mandatory, participants will have limited time to work on their assignment during the week. Therefore, we strongly advise students to start to prepare their essays before the start of the program. Essay should be word-processed and should be maximum 2000 words long. The texts should be presented in: Times New Roman 11pt font, 1.5 spaced, text justified. All academic work should be referenced and cited. The paper must be submitted online to cursosintensivos@fd.ulisboa.pt by 15 March 2020. For any additional assistance with the preparation of the essay, students may contact the Academy Secretariat at cursosintensivos@fd.ulisboa.pt.