

European Energy Law and Policy – An Overview



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I. Status quo of EU Energy Policy

- Complexity of Energy Law
- Development of EU Energy Law

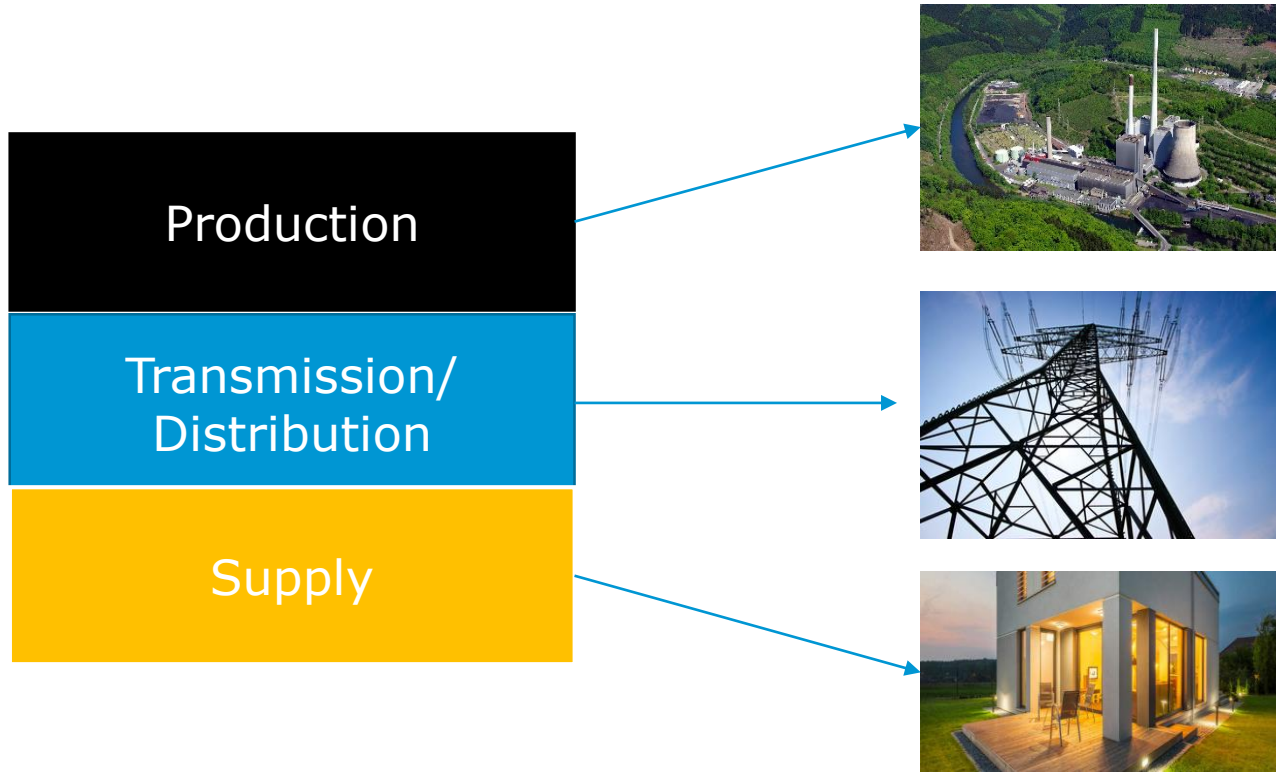
II. Competences of the EU to regulate the Energy sector

- Art 194 TEU
- Art 191, 192 TFEU

III. New Approaches

- Clean Energy Package
- Green Deal

Vertically integrated undertaking



Specificity of the Product 'Electricity':

- Electric current and electric voltage are neither a “good” nor a “service”
- Almost no possibilities to store electricity
- Windmills and photovoltaic power plants are inconstant and unstable electricity producing facilities.
- The power-frequency of a grid must be constantly the same (approx. 50 Hz)
- Grid dependency

Reasons for the Complexity of Energy Law:

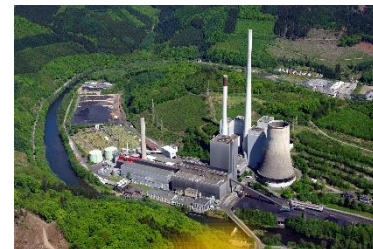
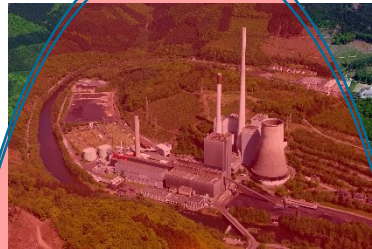
- the specificity of the product 'electricity' and the requirements for transmitting electricity;
- the regulated access to the grid as a precondition for competition;
- liberalization by unbundling vertically integrated electricity undertakings;
- the obligation of the transmission system operator for maintenance, development and operation;
- the expectations of the public and the economy towards the supply of electricity;
- the different energy policies of the EU Member States;
- environmental protection;
- the integration of 27 national electricity markets in one single European electricity market.

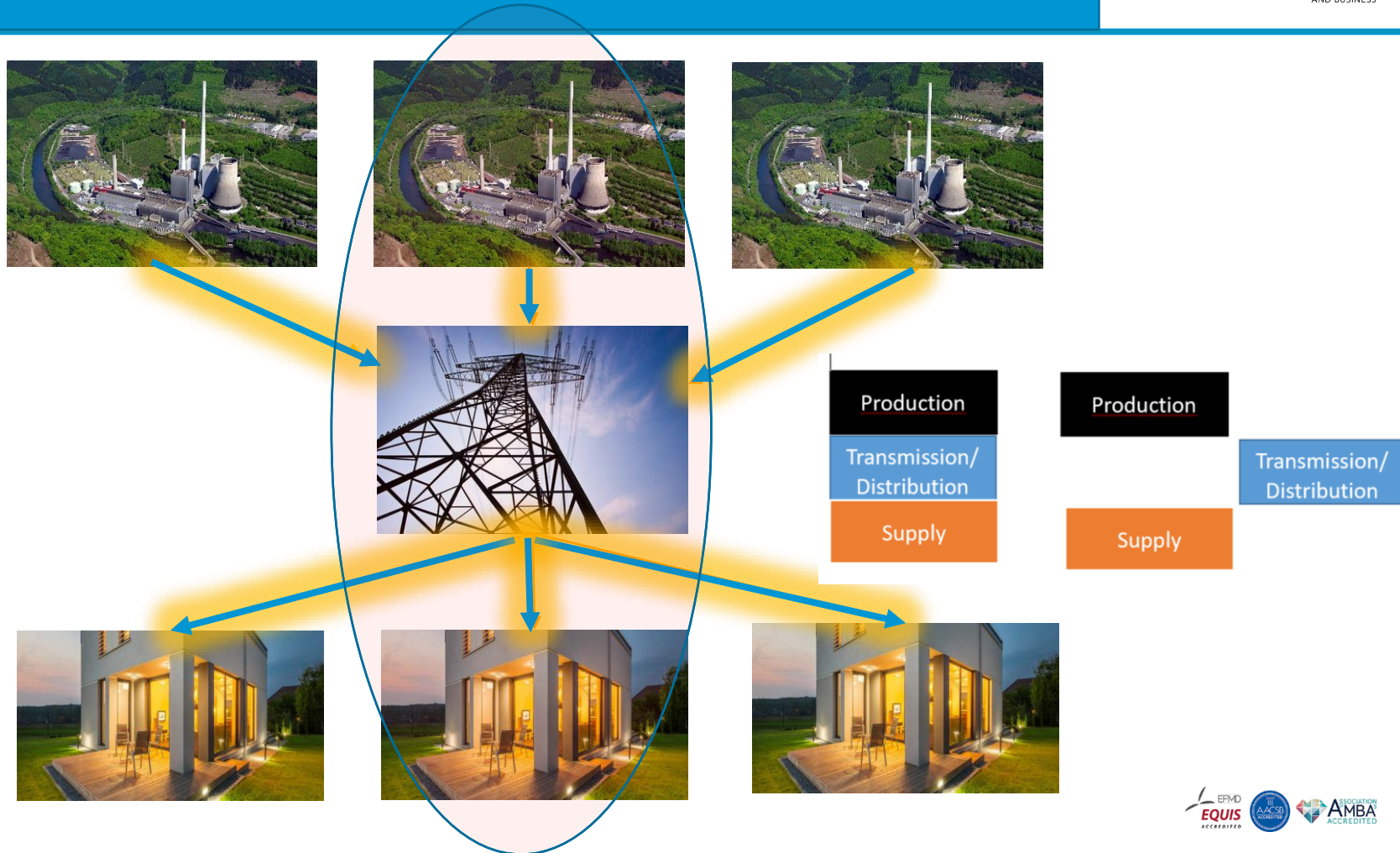
The Grid as a Bottleneck



1996/1998







The Five Steps of EU Energy Regulation

- In the 80ies/90ties: Art 85, 86 EC]
- 1996/1998: first legislative approach
- 2003: „Acceleration Directives“ (Internal Market)
- 2009: „Third Package“ (Energy-Union)
- 2018/2019: „Fourth Package“ (Clean Energy)



- Internal Market, Art 114 TFEU
- Fundamental rights, Art 34 TFEU
- Competition, Art 101, 102 TFEU
- Public enterprises, Art 106 TFEU
- State aids, Art 107 TFEU
- Environment, Art 196 TFEU
- Trans-European Networks, Art 170 TFEU

- → Energy, Art 194 TFEU

Art 4 TFEU

1. The Union shall share competence with the Member States where the Treaties confer on it a competence which does not relate to the areas referred to in Articles 3 and 6.

2. Shared competence between the Union and the Member States applies in the following principal areas:

...

(i) energy;

Art 194 para 1 TFEU

In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:

- (a) ensure the functioning of the energy market;
- (b) ensure security of energy supply in the Union;
- (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
- (d) promote the interconnection of energy networks.

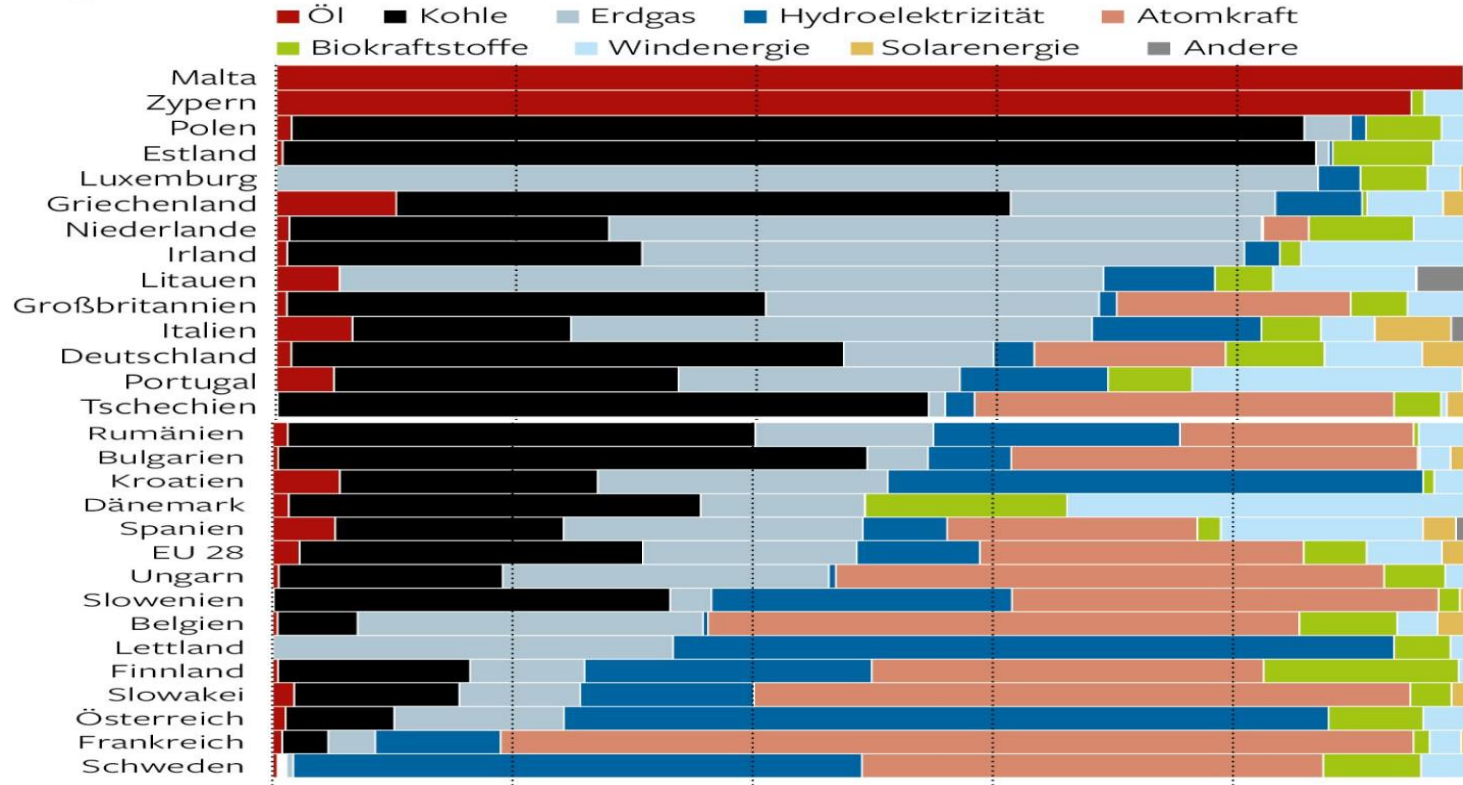
Art 194 para 2 TFEU

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).

Energy as a European Union competence

Energiemix in Prozent



JELLE: OECD / IEA

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Art 194 para 2 TFEU

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).

Art 194 para 3 TFEU

By way of derogation from paragraph 2, the Council, acting in accordance with a special legislative procedure, shall **unanimously** and after consulting the European Parliament, establish the measures referred to therein when they are primarily of a fiscal nature.

Art 122 para 1 TFEU

Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a **spirit of solidarity** between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.

Art 191 para 1 TFEU

1. Union policy on the environment shall contribute to pursuit of the following objectives:

- 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.

Art 192 para 2 TFEU

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 114, the Council **acting unanimously** in accordance with a special legislative procedure and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt:

...

(c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

Renewable Energy

- Recast Renewable Energy Directive (EU) 2018/2001

Electricity Market Design

- Regulation on the internal market for electricity (EU) 2019/943
- Directive on common rules for the internal market for electricity (EU) 2019/944
- Regulation on risk-preparedness in the electricity sector (EU) 2019/941
- Regulation establishing a European Union Agency for the Cooperation of Energy Regulators (EU) 2019/942

Energy Efficiency

- Revised Energy Efficiency Directive (EU) 2018/2002

Energy Performance of Buildings

- Energy Performance of Buildings Directive 2018/844

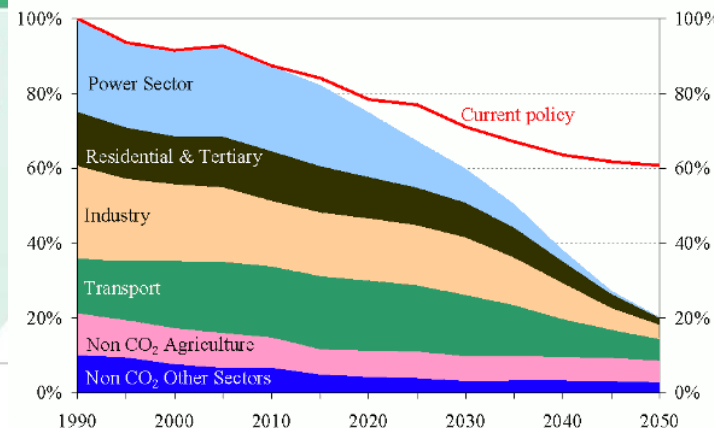
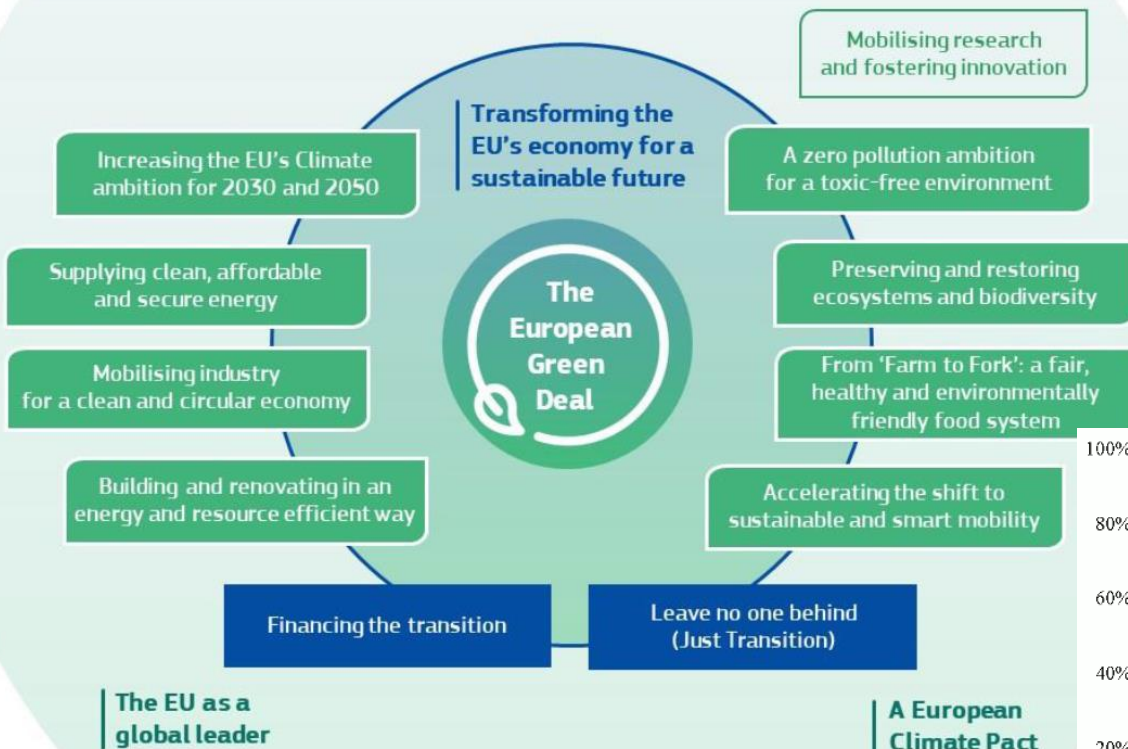
Governance Regulation

- Governance of the Energy Union and Climate Action (EU) Regulation 2018/1999



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The „Green Deal“



Thank you for your attention!

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