

# Interinstitutional Agreement on Better Law-Making

## Introduction

The new Interinstitutional Agreement on Better Law-Making, adopted by the European Parliament on 9 March 2016, replaces the 2003 Interinstitutional Agreement with the same name.

The Commission initially presented its proposal on 19 May 2015. Part of its better regulation agenda, the proposal was announced as one of the ten priorities of the Juncker Commission at the start of its term, with the aim to design EU policies and laws so that they achieve their objectives in the most efficient and effective way possible.

Negotiations between the three institutions were opened in June, starting in earnest in September, and were concluded after seven political level meetings on 8 December 2015. The discussions were conducted by Mr Guy Verhofstadt, Leader of the ALDE Group, on behalf of the European Parliament; Mr Nicolas Schmit, Minister of Labour, Employment and Social Economy, on behalf of the Luxembourg Council Presidency and Mr Frans Timmermans, First Vice-President, on behalf of the European Commission.

The negotiations took place in a constructive atmosphere. Whilst each institution had its specific priorities, there was a shared sense of the relevance and purpose of the exercise, which was also reflected in the relatively quick progress of the talks, and the items to be addressed.

One immediately noticeable feature of the new Interinstitutional Agreement (IIA) is that its title was changed back from 'better regulation', as originally proposed by the Commission, to 'better law-making' (thereby preserving the title of the 2003 IIA).

A separate declaration, to be signed by the Presidents of the European Parliament and the European Commission, ensures that this agreement will not replace the 2010 Framework Agreement between Parliament and the Commission, and does not affect the privileged bilateral working relations established therein.

## Content of the agreement

### *Programming (chapter II)*

Parliament, Council and the Commission will, under the new IIA, engage together in annual and multiannual legislative programming, thus implementing Article 17 of the Treaty on European Union. At the beginning of the legislature, the three institutions will agree on **multi-annual priorities**, and every year, based on the Commission's Annual Work Programme, they will adopt a joint declaration on **annual interinstitutional priorities**.

The IIA sets out **precise information requirements** that the Commission should cover in its annual Work Programme, thus facilitating the follow-up by the legislators, and the Commission commits to providing regular updates throughout the year.

Parliament and Council will also be consulted on **withdrawals**, and the follow-up to **legislative initiative requests** pursuant to Article 225 or 241 of the Treaty on the Functioning of the European Union will be improved.

### *Better Law-Making Tools (chapter III)*

The IIA clarifies the use of **impact assessments** (IA). To begin with, it is made clear that IA are a tool for well-informed political decisions, but should not be a replacement for them. Furthermore, the IIA sets out the elements that impact assessments should cover: economic, environmental and social impacts; the 'cost of non-Europe', potential impacts on competitiveness and administrative burdens, with particular regard for SMEs, digital aspects and territorial impact.

Parliament and Council will perform IA on their own **substantial amendments**, where they consider this appropriate and necessary in the legislative process. There is no automatic trigger for impact assessment, as this would restrict the prerogatives of the legislators. Thus it is up to each institution to decide what is a 'substantial' amendment, and each remains fully responsible and in control of the organisation of its IA work, whilst exchanging best practices and methodologies.

The Commission will make use of a **Regulatory Scrutiny Board** (RSB) composed of six full-time experts, three of them external. This replaces the existing Impact Assessment Board. The RSB is to carry out an objective quality check of the Commission's IA. Its opinion will be published, along with the Commission's initiative and its respective IA.

As to **public and stakeholder consultations**, these need to be conducted in an open and transparent way, allowing for the widest possible participation, and encouraging in particular the participation of SMEs and other end-users.

The importance of **ex-post evaluations** was also considered: the Commission is to provide more information on its evaluation planning and will, to the extent possible, include the co-legislators' requests for in-depth evaluation. It was agreed to include provisions on monitoring, evaluation and reporting requirements in legislation, and to systematically consider the use of review clauses and sunset clauses.

### *Legislative instruments (chapter IV)*

The IIA clarifies that the Commission will continue to provide full justification for its **choice of legal basis and legislative instrument**, and will take due account of the difference between using regulations and directives.

Furthermore, when a modification of the **legal basis** entailing a change from the ordinary legislative procedure to a special procedure occurs, there is an obligation for the three Institutions to hold an exchange of views.

### ***Delegated and implementing acts (chapter V)***

The key objective of the IIA in the area of **delegated and implementing acts** was to clarify the understanding of these instruments by the three institutions, so as to facilitate (and improve) the use of delegated acts, both in existing and future Union legislation.

It has been agreed that from now on, **Member States' experts** will be consulted by the Commission in the preparation of delegated acts, and that Parliament and Council's experts will have equal access to all the related meetings and documents.

Another important point is that the three institutions committed to a **prompt alignment** of all pre-Lisbon files. The Commission will re-table a proposal to this end by the end of 2016. A further negotiation will also take place, without undue delay after the entry into force of the IIA, on non-binding **delineation criteria** for the application of Articles 290 and 291 of the Treaty on the Functioning of the European Union, to provide orientation on when to use delegated acts and implementing acts respectively.

Finally, the three Institutions commit to set up a public **register for delegated acts** by the end of 2017 (similar to the existing 'comitology register' for implementing acts).

### ***Transparency and coordination of the legislative process (chapter VI)***

The **principle of the equal footing** of Parliament and Council as co-legislators is clearly stated in the IIA. Close contacts are to be maintained between them, notably by inviting each other's representatives to **informal exchanges of views** on a regular basis. Parliament and Council will also ensure **better synchronisation** of their treatment of legislative proposals.

Furthermore, the three institutions may agree to coordinate efforts to **accelerate the legislative process**, without prejudice to the prerogatives of the co-legislators.

Several provisions in the IIA pursue the objective of **enhancing transparency**. Thus, the transparency of legislative procedures will be ensured, including appropriate handling of trilogues; communication to the public will also be improved, through the joint announcement of the successful outcome of the legislative process; and, in addition, a joint database on legislative files will be established, allowing for a clear traceability of the various steps of the legislative process.

Parliament's prerogatives in the **negotiation and conclusion of international agreements**, pursuant to Article 218(10) of the Treaty on the Functioning of the European Union, were also discussed during the negotiations. It was agreed that, due to the specific complexity of this issue, it should be negotiated separately. Negotiations will begin within six months after the entry into force of the IIA.

### ***Implementation and application of Union legislation (chapter VII)***

A particularly important issue during the negotiations was the implementation and application of EU law. The three institutions recognised the need for **more structured cooperation** in order to assess the application and effectiveness of EU law. This involves three important practical innovations.

First, Member States (who are not a party to the agreement) are called upon to **clearly communicate to the public** measures that transpose or implement Union legislation.

Second, when Member States choose to **add elements** that are in no way related to the Union legislation that they are transposing ('gold-plating') then they should identify these additions in the transposing act or in an associated document. The use of correlation tables is also stressed.

Third, in its **annual report** on the application of Union legislation, to be transmitted to the Parliament and Council, the Commission will include any 'gold-plating' information that Member States have transmitted.

These provisions constitute a genuine improvement and should provide valuable assistance to the co-legislators in their overall effort of adopting ever more effective legislation.

### ***Simplification (chapter VIII)***

During the negotiations Parliament was guided by **two basic principles** on simplification: on the one hand, that reducing burdens should not degenerate into straightforward deregulation, and, on the other hand, that burdens on SMEs should be considered in particular.

In order to facilitate the use of legislation, the Commission commits to presenting a **codification proposal** as soon as possible after the adoption of a modifying act.

The definition of what burdens should be reduced was an important part of the negotiations. It was therefore agreed to use throughout the whole text the standard expression '**avoid overregulation and administrative burdens**', in order to settle the discussion as to what specific burdens should be addressed.

The three institutions also agreed to **cooperate in order to simplify legislation and reduce burdens**, including for SMEs, while ensuring that the objectives of the legislation are met.

In this context, the Commission will undertake an **annual burden survey** as a contribution to its REFIT programme. Taking into account input from Member States and stakeholders, as well as the costs and benefits of EU legislation, the Commission will also, wherever possible, **quantify** the possible burden-reduction or savings potential of initiatives, and assess the feasibility of establishing **objectives for burden reduction** in specific sectors.

### ***Implementation and monitoring of the agreement (chapter IX)***

One of the weaknesses of the 2003 Interinstitutional Agreement on Better Law-Making was that monitoring was attributed to a High-Level Technical Group that never came into being.

It was therefore decided to entrust this task to the **Interinstitutional Coordination Group**, a body that already exists, meets regularly once a month and brings together the three institutions.

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