

Interinstitutional Agreement on Better Law-Making

According to Article 295 TFEU, the European Parliament, the Council and the Commission may conclude interinstitutional agreements (IIAs) setting out arrangements for their cooperation. A number of such agreements are in place, including the 2003 IIA on Better Law-Making, which is now to be replaced by a new agreement. With the aim of ensuring a high quality of legislation, the new agreement contains provisions concerning the various stages of the policy cycle, including programming, legislating and implementation.

Background

In May 2015, the Commission presented a comprehensive [Better Regulation Package](#), including a [proposal](#) for a new Interinstitutional Agreement (IIA) on Better Regulation. The current IIA on Better Law-Making dates back to [2003](#), and was considered in need of revision given the developments in the better regulation agenda. A new interinstitutional agreement also reflects the recognition of the need for a renewed commitment on the part of all three institutions involved in the legislative process (Parliament, Council and Commission) in order for better law-making efforts to succeed. The Parliament's Conference of Presidents [charged](#) the ALDE Group leader, Guy Verhofstadt, with conducting negotiations on the Parliament's behalf. Negotiations between the three institutions were [formally launched](#) on 25 June 2015 under the Luxembourg Presidency of the Council. The [text of the agreement](#) was finalised on 8 December 2015, and endorsed by the Council and Commission in the same month. Following its endorsement by the Constitutional Affairs (AFCO) Committee, it now requires the Parliament's approval in plenary.

The contents of the agreement

In its structure, the new [IIA on Better Law-Making](#) roughly follows the phases of the policy cycle. It contains provisions regarding, inter alia, common objectives, programming, better law-making tools (impact assessment, stakeholder consultation and ex-post evaluation), legislative instruments, delegated and implementing acts, transparency, implementation and simplification.

The agreement first of all sets out the **common commitment** of the three institutions to promote simplicity, clarity and consistency in Union legislation as well as 'utmost transparency' in the legislative process. The agreement envisages strengthened cooperation between the three institutions with regard to **multiannual** and **annual programming**. The latter is to encompass (early) exchanges of views both *before* and *after* the adoption of the Commission Work Programme, as well as interinstitutional consultations on Commission plans to *withdraw* any legislative proposal. The agreement requires the Commission to provide *reasons* for such withdrawals and to take due account of the co-legislators' positions when doing so. The agreement further calls upon the Commission to 'give prompt and detailed consideration' to *own-initiative* requests made by the Parliament and the Council (based on Articles 225 and 241 TFEU respectively), and to reply to such requests within *three months*, including giving reasons when it makes no subsequent proposal.

The agreement emphasises the positive contribution of **better law-making tools** to better quality legislation, including ex-ante impact assessment (IA), stakeholder consultation and ex-post evaluation of legislation. The final agreement explicitly reaffirms that impact assessment is a *tool* for taking well-informed decisions and not a substitute for political decision-making. Departing from the notion in the Commission's initial IIA proposal that all substantial amendments should be subject to impact assessment, the final text provides that the EP and Council are free to carry out impact assessments of their substantial amendments 'when they consider this to be *appropriate and necessary*'. One innovation of the final text (as well as of the better regulation package in general) is the commitment of the Commission systematically to conduct IAs on *delegated and implementing acts* with significant potential impacts. The agreement further stresses the



important role of stakeholder input in ensuring well-informed decision-making, and calls upon the Commission to encourage direct participation of 'end users' of legislation, in particular SMEs. The new agreement will replace the 2005 [common approach](#) of the institutions to impact assessment.

When proposing **legislative instruments**, the Commission is expected to explain and justify, inter alia, its choice of the legal basis and the proposal's compliance with the principles of subsidiarity and proportionality. To safeguard the Parliament's prerogatives, the IIA now also explicitly provides for a trilateral exchange of views in case there is a suggestion of *modification* of the legal basis, entailing a change from ordinary legislative procedure to special legislative procedure, or non-legislative procedure.

The provisions regarding **delegated and implementing acts** contain a few important novelties. In a move to safeguard the Council's interests, the IIA further commits the Commission to conduct *consultation of Member States' experts*, as well as *public consultations* prior to the adoption of delegated acts. The Parliament and the Council are to have equal access to information regarding such expert consultations and, importantly, *systematic access* to the meetings of such expert groups. The IIA envisages further negotiations between the institutions with a view to establishing *delineation criteria* for delegated and implementing acts and, finally, provides for establishing a *joint register* of delegated acts by the end of 2017. Moreover, the agreement calls upon the Commission to make proposals by the end of 2016 for the *alignment* of existing legislation, which still needs adapting to the new legal framework created by the Lisbon Treaty (i.e. the new hierarchy of norms, including delegated and implementing acts), in particular acts which provide for use of the 'regulatory procedure with scrutiny'. On delegated acts, the annex to the agreement sets out a revised 'common understanding' of the three institutions, replacing that of [2011](#), in particular setting some principles for the Commission's preparation of delegated acts.

The IIA reaffirms the principle of sincere cooperation between the institutions, including information-sharing and dialogue, and emphasises that the Parliament and the Council, as co-legislators, shall exercise their powers on an equal footing. The agreement contains a commitment to **enhanced transparency**, which is to include '*appropriate handling of trilateral negotiations*' (trilogues). To this end, the institutions agree to 'improve communication to the public during the whole legislative cycle', and commit to identifying, by 31 December 2016, 'ways of further developing platforms and tools' to 'facilitate the traceability of the various steps in the legislative process'. Actual improvements in this respect thus depend on further action still to be agreed.

The new IIA reflects a new emphasis on the question of how Union law is being **implemented and applied** in practice. Accordingly, the agreement stresses the need for swift and correct application of Union law at national level, and calls upon the Member States to 'communicate clearly' to their citizens when transposing Union legislation. In particular, with the aspiration to tackle '*gold-plating*', the IIA provides that, whenever Member States choose to add elements 'that are in no way related' to the said Union legislation, they should make such additions 'identifiable' through the transposing acts or associated documents. The IIA further calls for interinstitutional cooperation with the aim of updating and **simplifying** existing Union legislation, as well as the avoidance of administrative burdens without, however, compromising the objectives of the legislation in question.

Procedure and areas for further action

The conclusion of interinstitutional agreements by the Parliament is governed by **Rule 140** of the Parliament's [Rules of Procedure](#), which provides that such agreements are to be 'signed by the President after examination by the committee responsible for constitutional affairs and after approval by Parliament.'

On 23 February 2016, the AFCO Committee adopted a [report](#) on the conclusion of the IIA, drafted by its Chair, Danuta Hübner (EPP, Poland). Besides endorsing the new agreement and the improvements it brings, the report also sets out areas requiring further action. These include, inter alia, open questions on the delineation criteria for delegated and implementing acts, practical arrangements for interinstitutional cooperation, and transparency of trilateral negotiations, as well as a review of the relevant points of Parliament's Rules of Procedure with a view to possible adjustments. The agreement will enter into force upon the signature of the parties, and is binding upon those parties only.

Further analysis of the IIA has been produced by the office of Parliament's Deputy Secretary General.