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REPORT

on the conclusion of the interinstitutional agreement on 'Better Law-Making' between the European Parliament, the Council and the Commission (2003/2131(ACI))

Committee on Constitutional Affairs

Rapporteur: Monica Frassoni

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 17 June 2003 the President of the European Parliament referred to the Committee on Constitutional Affairs, pursuant to Rule 54 of the Rules of Procedure, a draft interinstitutional agreement on 'Better Law-Making' between the European Parliament, the Council and the Commission.

The Committee on Constitutional Affairs had appointed Monica Frassoni rapporteur at its meeting of 4 November 2002.

The committee considered the draft interinstitutional agreement and the draft report at its meetings of 26 August and 8 September 2003.

At the latter meeting it adopted the proposal for a decision by 11 votes to 0, with 1 abstention.

The following were present for the vote: Jo Leinen (acting chairman), Ursula Schleicher (vice-chairman), Monica Frassoni (rapporteur), Teresa Almeida Garrett, Georges Berthu, Elmar Brok (for Jean-Louis Bourlanges), Carlos Carnero González, Jean-Maurice Dehousse, Giorgos Dimitrakopoulos, Andrew Nicholas Duff, Gerhard Hager, Iñigo Méndez de Vigo, Gérard Onesta and Willi Rothley.

The opinion of the Committee on Legal Affairs and the Internal Market is attached.

The report was tabled on 25 September 2003.

PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT

on the conclusion of an interinstitutional agreement on 'Better Law-Making' between the European Parliament, the Council and the Commission (2003/2131(ACI))

The European Parliament,

– having regard to the decision of the Conference of Presidents of 5 June 2003,

– having regard to the letter from its President dated 17 June 2003,

– having regard to the interinstitutional agreement on 'Better Law-Making' between the European Parliament, the Council and the Commission,

– having regard to Rule 54(1) of its Rules of Procedure,

– having regard to the report of the Committee on Constitutional Affairs and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0313/2003),

1. Takes the view that it must undertake not to accept the adoption of legislative acts which require the application of implementing measures adopted under the co-regulation mechanism where those acts do not explicitly include the provisions relating to verification and to a call-back mechanism laid down in point 18 of the Agreement;

2. Reserves the right, in application of the second and third paragraphs of Article 230 of the EC Treaty, to bring an action before the Court of Justice against any legal rule adopted under the self-regulation procedure which might encroach upon the prerogatives of the legislative authority and, hence, call Parliament's prerogatives into question;

3. Approves the conclusion of the agreement annexed hereto;

4. Instructs its President to forward this decision, for information, to the Council and Commission.

EXPLANATORY STATEMENT

1. In its resolution of 29 November 2001[1] on the Commission White Paper on European governance[2], Parliament criticised the Commission's 'unilateral' approach to the issue. It noted in particular that the drawing up of an action plan on better law-making by a Council working party (the Mandelkern Group on Better Regulation) and, at the same time, by an equivalent Commission working party, without Parliament's having been involved therein or even informed thereof, constituted a serious breach of the Community method. It also emphasised that, with regard, for example, to co-regulation, no interinstitutional agreement existed which would guarantee that Parliament might effectively exercise its political role and responsibility. It drew the conclusion therefrom that, in particular, the alternative methods of regulation recommended by the Commission in its White Paper required in-depth consideration in Parliament and codification in the form of an interinstitutional agreement.

The current draft agreement is the outcome of this request and of work carried out at two levels: a technical level between, inter alia, the secretaries-general of the three institutions, and a political level, where Parliament was represented by four Members: Mr Gargani (Chairman), Mr Swoboda, Mr Clegg and your rapporteur. The mandate for their activities had been laid down by the Conference of Presidents on 4 September 2002.

2. Since the most recent revision of the Rules of Procedure, this committee has been responsible for reviewing any draft interinstitutional agreement (IIA) before its approval by the House and signature by the President. If such an agreement has an impact on the way in which Parliament works, it is for this committee to propose the requisite changes to the Rules of Procedure at the same time, in an attempt to avoid any disparity between Parliament's external obligations and its internal operating rules. Your rapporteur takes the view that care must be taken to ensure that, in future, the Committee on Constitutional Affairs is involved in such work, with some of its members being appointed to serve on the appropriate body from as early as the stage when an IIA is being negotiated. That should ensure consistency and continuity between the negotiation and approval stages and any consequent changes to the Rules of Procedure.

3. While this work was being carried out, it was important not to lose sight of three aspects:

(i) What may be regulated in an interinstitutional agreement? In this connection, Rule 54 of the Rules of Procedure lays down that such agreements must be concluded 'in the context of the application of the Treaties or in order to improve or clarify procedures.'

(ii) What must remain the province of a revision of the Treaties, for example in the light of the work of the Convention on the Future of Europe? That applies, for example, to a total reform of the 'comitology' system based on Article 202 of the EC Treaty.

(iii) What seems to be inoperative or superfluous, given that the matter falls within the remit of a single institution or is already covered by another IIA? That applies, for example, to improvements in the quality of drafting of Community legislation, the

[1] Based on the report (A5-0399/2001) drawn up by Mrs Kaufmann for the Committee on Constitutional Affairs.
[2] COM(2001) 428, OJ C 287, 12.10.2001, p. 1.

subject of an IIA dated 22 December 1998.

The draft agreement referred to this committee broadly meets those criteria, although occasional repetitions might have been avoided. It does not have such an impact on internal procedures that immediate changes are required to the Rules of Procedure. Nevertheless, it does include aspects which would merit consideration when the Rules are revised at some future date.

Accordingly, provision is made for improving coordination during the legislative process. In that connection, it is agreed (in point 4) that, with regard to each legislative proposal, Parliament and the Council will seek to establish an indicative timetable for the various stages leading to the final adoption of a proposal. The agreement also seeks to ensure better synchronisation for the treatment of common dossiers by the preparatory bodies of each arm of the legislative authority (European Parliament committees, on the one hand, and Council working parties and COREPER, on the other). Who will take on those duties in Parliament - the Conference of Presidents, the committees responsible, their rapporteurs?

In this connection, the draft IIA also includes commitments which seem almost improbable and which would constitute a minor revolution in institutional practice. Under point 8, the Commission will ensure that, as a general rule, Commissioners are present for discussion at European Parliament committee meetings, and the Council will endeavour to participate regularly in the work of the parliamentary committees, preferably at ministerial level or at some other appropriate level.

With regard to impact assessments, it is stated in point 30 that, where the codecision procedure applies, the European Parliament and Council may, on the basis of jointly defined criteria and procedures, have impact assessments carried out prior to the adoption of any substantive amendment, either at first reading or at the conciliation stage. Although, in this instance, the draft agreement is laying down a guideline rather than an obligation, it is clear that the implementation of this point in the IIA will be anything but easy, since it will entail procedural complications. Who will decide, and when, whether an amendment is substantive or not and therefore requires an impact assessment? What will be the effect of a request for an impact assessment on the course of the legislative procedure? How will such a request be dealt with during the conciliation stage? At all events, our objective during the negotiations on this aspect was to avoid becoming too committed along the path leading to an obligation on the legislative authority to become involved in complicated impact assessments, since that might result in our legislative powers being restricted. The idea of the establishment of an interinstitutional impact assessment body was mooted but quickly dismissed as being premature.

4. Parliament pursued a limited objective in the negotiations which culminated in the draft agreement. What was most important was to avoid a ‘drift towards dominance by the executive’ which underpins the White Paper. Any regression from the status quo with regard to democracy must be avoided, more specifically a regression with regard to democratic legitimacy, of which Parliament is the principal guarantor. That objective was attained. It was, and will be, specifically in danger in the field covered by the ‘use of

alternative methods of regulation' (points 16 to 23). Point 17 of the draft agreement lays down that 'these mechanisms will not be applicable where fundamental rights or important political options are at stake or in situations where the rules have to be applied in a uniform fashion in all Member States. They must ensure swift and flexible regulation which does not affect the principles of competition or the unity of the internal market.'

Those principles, properly applied, will constitute valid safeguards.

There is no provision for an essential or automatic right of 'call-back'. Pursuant to point 20, the basic legislative act will, where appropriate and in each individual case, define the parties affected by the act which may conclude voluntary agreements for the purpose of determining practical arrangements. Such voluntary agreements will be forwarded by the Commission to the legislative authority. The legislative act may also include a two-month period of grace following notification of the voluntary agreement to the European Parliament and the Council, during which either institution may either suggest amendments to, or object to the entry into force of, the voluntary agreement and, possibly, ask the Commission to submit a proposal for a legislative act. The draft interinstitutional agreement does not specify the degree to which the Commission is obliged to take account of the observations made or requests submitted by either institution. However, during the negotiations at political level, the Commission acknowledged that, in such an event, and unlike the situation with regard to comitology, its scope for overruling the opposition of one of the arms of the legislative authority would be limited. That issue remained unresolved until the eleventh hour and resulted n a relative success for the European Parliament, in particular to the extent that either Parliament or the Council may individually oppose a draft co-regulation agreement. At all events, it will be important, in any basic act, to define as closely as possible, as is, in principle, provided for in the draft interinstitutional agreement, the scope for co-regulation by voluntary agreement in the field concerned, together with relevant measures for monitoring the application thereof and the appropriate measures to be taken in the event of any breach thereof.

The difficulty encountered not only by the Commission but also by the Council in making broader concessions in this field with regard to Parliament's role seems to be based on the same reasoning as applies to the reform of comitology. Given that the current Treaty does not encompass delegated legislative acts, any measure other than the basic act itself falls under the heading of execution and must therefore be the sole preserve of the Commission. That excludes any form of binding intervention by Parliament. In that respect, Article 32 of the draft Constitution will offer the possibility of a new kind of law-making, including genuine call-back mechanisms.

That is why, when the negotiations were coming to an end, Parliament's delegation decided not to insist on the reopening of the comitology issue. At all events, it is clear that comitology remains a sensitive issue for the Commission and for the Council.

5. The draft agreement devotes a separate section to 'self-regulation' (points 22 and 23). Under this method, rules are agreed between private partners and subsequently 'validated' by the public authority[1]. Examples include the Commission recommendation on carbon

[1] See point 2.2.3.1 of the final report of the Mandelkern Group or the first page of the report by Working Party 2c which helped to draft the White Paper on European governance.

monoxide emissions, following a voluntary agreement between car manufacturers, and the social dialogue between management and labour at Community level, pursuant to Articles 138 and 139 of the EC Treaty.

However, the draft agreement deals not with this type of self-regulation but with 'voluntary initiatives' which 'as a general rule ..., do not imply that the Institutions have adopted any particular stance.' Nevertheless, the Commission undertakes to 'verify that they comply with the provisions of the Treaty' and to notify Parliament and the Council of the 'self-regulation practices which it regards, on the one hand, as contributing to the attainment of the Treaty objectives and as being compatible with the Treaty provisions and, on the other, as being satisfactory in terms of the representativeness of the parties concerned ...'.

It remains to be seen how that provision will be implemented. Nevertheless, we should note that the penultimate version of the draft agreement still provided that the Commission would formally consult the legislative authority when it deemed that a self-regulation agreement would be useful and sufficient.

6. Points 32 to 34 of the draft agreement also address the issue of better transposition of Community law into national law. Here, the institutions undertake to ensure that all directives include a legally-binding time-limit for their transposition. It will be as short as possible and, as a general rule, not exceed two years. Such a commitment is not without interest, given that the Treaty, while regulating the issue of the entry into force of directives (Article 254 of the EC Treaty), says nothing about time-limits for the transposition thereof, leaving it to the discretion of the legislator in each individual case.

It proved impossible to persuade the Council to approve a firm commitment that infringement proceedings would be immediately initiated if directives were not transposed by the time-limit laid down therein. The draft agreement refers to a relevant Commission communication published in December 2002.

Finally, the Council - and the draft agreement makes no reference to any other institution - will encourage the Member States to draw up tables to demonstrate that they have duly transposed the directives and to designate a 'transposition coordinator'. We might well wonder whether an invitation to the Member States of this nature merits inclusion in an agreement between the Community institutions. Parliament's negotiators tried constantly to have any references to a 'hope' that something might be done deleted from the text, but they were not always successful.

7. In the light of the observations set out above and of the outstanding issues resulting therefrom, your rapporteur recommends that this draft agreement be approved.

2 September 2003

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Constitutional Affairs

on the conclusion of the interinstitutional agreement on 'Better Law-Making' between the European Parliament, the Council and the Commission

Draftsman: Giuseppe Gargani

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Giuseppe Gargani draftsman at its meeting of 7 July 2003.

It considered the draft opinion at its meetings of 7 July and 1 September 2003.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote Giuseppe Gargani (chairman and draftsman), Willi Rothley and Ioannis Koukiadis (vice-chairmen), Ward Beysen, Bert Doorn, Raina A. Mercedes Echerer (for Ulla Maija Aaltonen), Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, José María Gil-Robles Gil-Delgado, Malcolm Harbour, Lord Inglewood, Hans Karlsson (for Maria Berger), Piia-Noora Kauppi (for Paolo Bartolozzi), Klaus-Heiner Lehne, Sir Neil MacCormick, Manuel Medina Ortega, Anne-Marie Schaffner, Marianne L.P. Thyssen, Diana Wallis and Joachim Wuermeling.

SHORT JUSTIFICATION

The draft interinstitutional agreement is the result of the negotiations within the high-level working party formed by representatives of Parliament, the Commission, and the Council Presidency.

The Parliament delegation, which was headed by your draftsman and on which Hannes Swoboda, Nick Clegg, and Monica Frassoni also served, operated in accordance with the brief conferred on it by the Conference of Presidents on 4 July 2002.

The goals laid down in the brief were intended to

- secure the necessary guarantees regarding Parliament's rights as a legislative authority,
- make for complete transparency during the legislative procedure, and
- encourage the choice of innovative solutions conducive to more effective and responsible law-making.

In short, Parliament's aim was to enhance the democratic legitimacy and the quality of Community legislation.

While the negotiations were taking place, the Commission adopted a series of documents on simplifying and improving Community legislation, on which our committee expressed its opinion when it adopted the report by Manuel Medina Ortega (A5-0235/2003).

The draft interinstitutional agreement is the best possible way of complying both with the brief given by the Conference of Presidents and with the guidelines set out in the Medina Ortega report.

Furthermore, although its frame of reference is the Treaty in force, it is in line with the draft Treaty establishing a Constitution for Europe, adopted by the Convention on the future of the Union.

Under the draft interinstitutional agreement

(a) the institutions are to carry on an intensive dialogue with a view to coordinating annual and multi-annual Community legislative planning more effectively;

(b) Members of the Commission and Council representatives are to attend parliamentary committee meetings;

(c) proceedings in the Council while the legislative procedure is in progress are to be made more transparent;

(d) the Commission, Council, and Parliament are to discuss the choice of legal basis and form for legislative acts, without encroaching on the Commission's right of initiative;

(e) the powers accorded to Parliament and the Council (right of call-back) are to be fully respected when use is made of alternative means of regulation (co-regulation and self-

regulation);

(f) exact transposition deadlines must be laid down in directives and, as a general rule, should be no longer than two years from entry into force of the legislative act;

(g) the Commission is to take firmer action to make Member States enforce Community law in time by instituting infringement proceedings immediately once the transposition deadline has expired;

(h) Community legislation is to be simplified and its volume reduced.

The draft agreement has, moreover, helped to bring about a constructive atmosphere in interinstitutional relations, a situation which could benefit Community decision-making in the future.

CONCLUSIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Constitutional Affairs, as the committee responsible, to endorse the draft interinstitutional agreement on the quality of legislation.

DRAFT INTERINSTITUTIONAL AGREEMENT ON BETTER LAW-MAKING

THE EUROPEAN PARLIAMENT, THE COUNCIL OF THE EUROPEAN UNION AND THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community and, in particular, to Article 5 thereof and the Protocol on the application of the principles of subsidiarity and proportionality annexed thereto,

Having regard to the Treaty on European Union,

Drawing attention to Declaration No 18 on the estimated costs under Commission proposals and to Declaration No 19 on the implementation of Community law, both of which are annexed to the Maastricht Final Act,

Drawing attention to the Interinstitutional Agreements of 25 October 1993 on the procedures for implementing the principle of subsidiarity[1], of 20 December 1994 on accelerated working method for the official codification of legislative texts[2], of 22 December 1998 on common guidelines for the quality of drafting of Community legislation[3], and of 28 November 2001 on a more structured use of the recasting technique for legal acts[4],

Noting the Presidency Conclusions of the meetings of the European Council held on 21 and 22 June 2002 in Seville and on 20 and 21 March 2003 in Brussels,

Emphasising that this Agreement is concluded without prejudice to the outcome of the Intergovernmental Conference which will be held following the Convention on the Future of Europe,

HAVE AGREED AS FOLLOWS:

Common commitments and objectives

1. The European Parliament, the Council of the European Union and the Commission of the European Communities hereby agree to improve the quality of law-making by means of a series of initiatives and procedures set out in this interinstitutional agreement.

2. In exercising the powers and in compliance with the procedures laid down in the Treaty, and recalling the importance which they attach to the Community method, the three Institutions agree to observe general principles such as democratic legitimacy, subsidiarity and proportionality, and legal certainty. They further agree to promote simplicity, clarity and consistency in the drafting of laws and the utmost transparency

1 OJ C 329, 6.12.1993, p. 135.
2 OJ C 102, 4.4.1996, p. 2.
3 OJ C 73, 17.3.1999, p. 1.
4 OJ C 77, 28.3.2002, p. 1.

of the legislative process.

They call on the Member States to ensure a proper and prompt transposition of Community law into national law within the prescribed time limits, pursuant to the Presidency Conclusions of the European Council at its Stockholm, Barcelona and Seville meetings.

Better coordination of the legislative process

3. The three Institutions agree to ensure that general coordination of their legislative activity is improved, thereby providing an essential foundation for better law-making within the European Union.

4. The three Institutions agree to improve the coordination of their preparatory and legislative work in the context of the codecision procedure and to publicise it in appropriate fashion.

   The Council will inform the European Parliament in good time of the draft multiannual strategic programme which it recommends for adoption by the European Council. The three Institutions will forward to each other their respective annual legislative timetables with a view to reaching agreement on joint annual programming.

   In particular, the European Parliament and the Council will seek to establish, for each legislative proposal, an indicative timetable for the various stages leading to the final adoption of that proposal.

   Wherever multiannual programming has an interinstitutional impact, the three Institutions will initiate cooperation through the appropriate channels.

   As far as possible, the Commission's annual law-making and work programme will include indications as to the choice of legislative instrument and the legal basis envisaged for each measure to be put forward.

5. The three Institutions will, in the interests of efficiency, ensure as far as possible a better synchronisation of the treatment of common dossiers by the preparatory bodies[1] of each branch of the legislative authority[2].

6. The three Institutions will keep each other permanently informed about their work throughout the legislative process. This information will be based on appropriate procedures, including dialogue between the European Parliament, in committee and plenary, and the Council Presidency and the Commission.

7. The Commission will submit an annual progress report on its legislative proposals.

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[1] Committee at the European Parliament; the working party and Permanent Representatives' Committee at the Council.

[2] For the purposes of this Agreement, "legislative authority" means only the European Parliament and the Council.

8. The Commission will ensure that, as a general rule, Commissioners are present for discussions at European Parliament committee meetings and plenary sittings on draft legislation for which they are responsible.

   The Council will continue the practice of maintaining intensive contact with the European Parliament by means of regular participation in plenary debates, as far as possible by the Ministers concerned. The Council will also endeavour to participate regularly in the work of the parliamentary committees and in other meetings, preferably at ministerial level or at some other appropriate level.

9. The Commission will take account of requests made by the European Parliament or the Council, on the basis respectively of Article 192 or Article 208 of the EC Treaty, for the submission of legislative proposals. It will reply rapidly and appropriately to the parliamentary committees concerned and to the Council's preparatory bodies.

Greater transparency and accessibility

10. The three Institutions confirm the importance which they attach to greater transparency and to the increased provision of information to the public at every stage of their legislative work, whilst taking into account their respective rules of procedure. They will ensure in particular that public debates at political level are broadcast as widely as possible through the systematic use of new communication technologies such as, *inter alia*, satellite broadcasting and Internet video-streaming. They will also ensure that the public has greater access to EUR-Lex.

11. The three Institutions will hold a joint press conference to announce the successful outcome of the legislative process in the codecision procedure, once they have reached agreement, whether after first reading, second reading or conciliation.

Choice of legislative instrument and legal basis

12. The Commission will explain and justify to the European Parliament and to the Council its choice of legislative instrument, where possible as part of its annual work programme or of the normal dialogue procedures and, at all events, in the explanatory memoranda attached to its initiatives. It will consider any request in this connection from the legislative authority, and it will take account of the results of any consultations which it has undertaken before tabling its proposals.

    It will ensure that the action it proposes is as simple as is compatible with the proper attainment of the objective of the measure and the need for effective implementation.

13. The three Institutions recall the definition of the term 'directive' (Article 249 of the EC Treaty) and the relevant provisions of the Protocol on the application of the principles of subsidiarity and proportionality. In its proposals for directives, the Commission will ensure that a proper balance is struck between general principles and detailed provisions, in a manner that avoids excessive use of Community implementing measures.

14. The Commission will provide a clear and comprehensive justification for the legal basis used for each proposal. In the event of a change being made to the legal basis after any Commission proposal has been presented, the European Parliament will be duly re-consulted by the Institution concerned, in full compliance with the case-law of the Court of Justice of the European Communities.

15. In the explanatory memoranda to its proposals, the Commission will, in every instance, set out the legal arrangements which currently exist at Community level in the area affected by the proposal. The Commission will also explain in its explanatory memoranda how the measures proposed are justified in the light of the principles of subsidiarity and proportionality. The Commission will also give an account of the scope and the results of the prior consultation and the impact analyses that it has undertaken.

Use of alternative methods of regulation

16. The three Institutions recall the Community's obligation to legislate only where it is necessary, in accordance with the Protocol on the application of the principles of subsidiarity and proportionality. They recognise the need to use, in suitable cases or where the Treaty does not specifically require the use of a legal instrument, alternative regulation mechanisms.

17. The Commission will ensure that any use of co-regulation or self-regulation is always consistent with Community law and that it meets the criteria of transparency (in particular the publicising of agreements) and representativeness of the parties involved. It must also represent added value for the general interest. These mechanisms will not be applicable where fundamental rights or important political options are at stake or in situations where the rules must be applied in a uniform fashion in all Member States. They must ensure swift and flexible regulation which does not affect the principles of competition or the unity of the internal market.

- **Co-regulation**

18. Co-regulation means the mechanism whereby a Community legislative act entrusts the attainment of the objectives defined by the legislative authority to parties which are recognised in the field (such as economic operators, the social partners, non-governmental organisations, or associations).

    This mechanism may be used on the basis of criteria defined in the legislative act so as to enable the legislation to be adapted to the problems and sectors concerned, to reduce the legislative burden by concentrating on essential aspects and to draw on the experience of the parties concerned.

19. The legislative act must abide by the principle of proportionality defined in the EC Treaty. Agreements between social partners must comply with the provisions laid down in Articles 138 and 139 of the EC Treaty. In the explanatory memoranda to its proposals, the Commission will explain to the competent legislative authority its reasons for proposing the use of this mechanism.

20. In the context defined by the basic legislative act, the parties affected by that act may conclude voluntary agreements for the purpose of determining practical arrangements.

The draft agreements will be forwarded by the Commission to the legislative authority. In accordance with its responsibilities, the Commission will verify whether or not those draft agreements comply with Community law (and, in particular, with the basic legislative act).

At the request of *inter alia* the European Parliament or of the Council, on a case-by-case basis and depending on the subject, the basic legislative act may include a provision for a two-month period of grace following notification of a draft agreement to the European Parliament and the Council. During that period, each Institution may either suggest amendments, if it is considered that the draft agreement does not meet the objectives laid down by the legislative authority, or object to the entry into force of that agreement and, possibly, ask the Commission to submit a proposal for a legislative act.

21. A legislative act which serves as the basis for a co-regulation mechanism will indicate the possible extent of co-regulation in the area concerned. The competent legislative authority will define in the act the relevant measures to be taken in order to follow up its application, in the event of non-compliance by one or more parties or if the agreement fails. These measures may provide, for example, for the regular supply of information by the Commission to the legislative authority on follow-up to application or for a revision clause under which the Commission will report at the end of a specific period and, where necessary, propose an amendment to the legislative act or any other appropriate legislative measure.

- **Self-regulation**

22. Self-regulation is defined as the possibility for economic operators, the social partners, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines at European level (particularly codes of practice or sectoral agreements).

As a general rule, this type of voluntary initiative does not imply that the Institutions have adopted any particular stance, in particular where such initiatives are undertaken in areas which are not covered by the Treaties or in which the Union has not hitherto legislated. As one of its responsibilities, the Commission will scrutinise self-regulation practices in order to verify that they comply with the provisions of the EC Treaty.

23. The Commission will notify the European Parliament and the Council of the self-regulation practices which it regards, on the one hand, as contributing to the attainment of the EC Treaty objectives and as being compatible with its provisions and, on the other, as being satisfactory in terms of the representativeness of the parties concerned, sectoral and geographical cover and the added value of the commitments given. It will, nonetheless, consider the possibility of putting forward a proposal for a legislative act, in particular at the request of the competent legislative authority or in the

event of a failure to observe the above practices.

Implementing measures (committee procedure)

24. The three Institutions emphasise the important role played by implementing measures in legislation. They note the outcome of the Convention on the Future of Europe relating to the establishment of rules governing the exercise by the Commission of the implementing powers conferred on it.

    The European Parliament and the Council emphasise that, in accordance with their respective powers, they have begun consideration of the proposal which the Commission adopted on 11 December 2002 with a view to amending Council Decision 1999/468/EC[1].

Improving the quality of legislation

25. The three Institutions, exercising their respective powers, will ensure that legislation is of good quality, namely that it is clear, simple and effective. The Institutions consider that improvement of the pre-legislative consultation process and more frequent use of impact assessments (both ex ante and ex post) will help towards this objective. They are committed to the full application of the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation.

(a) Pre-legislative consultation

26. During the period preceding the submission of legislative proposals, the Commission will, having informed the European Parliament and the Council, conduct the widest possible consultations, the results of which will be made public. In certain cases, where the Commission deems it appropriate, the Commission may submit a pre-legislative consultation document on which the European Parliament and the Council may choose to deliver an opinion.

(b) Impact analyses

27. Pursuant to the Protocol on the application of the principles of subsidiarity and proportionality, the Commission will take due account in its legislative proposals of their financial or administrative implications, for the Union and the Member States in particular. Furthermore, each of the three Institutions will take into account the objective of ensuring that application in the Member States is appropriate and effective.

28. The three Institutions agree on the positive contribution of impact assessments in improving the quality of Community legislation, with particular regard to the scope and substance thereof.

29. The Commission will continue to implement the integrated advance impact-assessment

[1] OJ L 184, 17.7.1999, p. 23.

process for major items of draft legislation, combining in one single evaluation the impact assessments relating inter alia to social, economic and environmental aspects. The results of the assessments will be made fully and freely available to the European Parliament, the Council and the general public. In the explanatory memorandum to its proposals, the Commission will indicate the manner in which the impact assessments have influenced them.

30. Where the codecision procedure applies, the European Parliament and Council may, on the basis of jointly defined criteria and procedures, have impact assessments carried out prior to the adoption of any substantive amendment, either at first reading or at the conciliation stage. As soon as possible after this Agreement is adopted, the three Institutions will carry out an assessment of their respective experiences and will consider the possibility of establishing a common methodology.

(c) Consistency of texts

31. The European Parliament and the Council will make all appropriate arrangements for improving the scrutiny carried out by their respective departments of the wording of texts adopted under the codecision procedure, with a view to avoiding any inaccuracies or inconsistencies. To this end, the Institutions may agree on a short period of grace in order to allow such legal verification to be performed before the act is finally adopted.

Better transposition and application

32. The three Institutions emphasise the need for Member States to comply with Article 10 of the EC Treaty, they call upon the Member States to ensure that Community law is properly and promptly transposed into national law within the prescribed deadlines; and they deem such transposition to be essential to the consistent and effective application of that legislation by the courts, the administrations, members of the public and economic and social operators.

33. The three Institutions will ensure that all directives include a binding time limit for the transposition of their provisions into national law. They will insert into directives a time limit for transposition that is as short as possible and that generally does not exceed two years. The three Institutions hope that the Member States will make a renewed effort as regards the transposition of directives within the time limits which they specify. In this connection, the European Parliament and the Council note that the Commission is proposing to step up cooperation with the Member States.

The three Institutions point out that, under the EC Treaty, the Commission has the power to initiate an infringement procedure in instances where a Member State fails to transpose legislation within the stipulated time limit; and the European Parliament and Council note the commitments given by the Commission on this subject8.

34. The Commission will draw up annual reports on the transposition of directives in the

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8 Commission communication of 12 December 2002 on better monitoring of the application of Community law, COM(2002) 725 final, pp. 20 and 21.

various Member States, with tables showing transposition rates. Those reports will be communicated to the European Parliament and to the Council, and will be made public.

The Council will encourage the Member States to draw up, for themselves and in the interests of the Community, their own tables which will, as far as possible, illustrate the correlation between the directives and the transposition measures and to make them public. It calls on those Member States which have not yet done so to appoint a transposition coordinator as soon as possible.

Simplifying and reducing the volume of legislation

35. In order to make Community law easier to read and to apply, the three Institutions agree, firstly, to update and condense existing legislation and, secondly, significantly to simplify it. They will take the Commission's multiannual programme as a basis for this task.

Legislation will be updated and condensed *inter alia* through the repeal of acts which are no longer applied and through the codification or recasting of other acts.

The purpose of legislative simplification is to improve and adapt legislation by amending or replacing acts and provisions which are too unwieldy and too complex to be applied. Such simplification will be carried out through the recasting of existing acts or by means of new legislative proposals, whilst maintaining the substance of Community policies. In this connection, the Commission will select the areas of current law which are suitable for simplification, on the basis of criteria laid down once the legislative authority has been consulted.

36. Within six months of the date upon which this Agreement comes into force, the European Parliament and the Council, whose task it would be as legislative authority to adopt at the final stage the proposals for simplified acts, need to modify their working methods by introducing, for example, ad hoc structures with the specific task of simplifying legislation.

Implementation and monitoring of the Agreement

37. The implementation of this Agreement will be monitored by the High-Level Technical Group for Interinstitutional Cooperation.

38. The three Institutions will take the necessary steps to ensure that their staff have the means and resources required for the proper implementation of the provisions of this Agreement.