

Interinstitutional agreement on better law-making

(2003/C 321/01)

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 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⁽⁵⁾ of each branch of the legislative authority⁽⁶⁾.

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.

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(7).

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 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 subject(8).

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