



HIGHLIGHT

THE PROPOSED INTERINSTITUTIONAL AGREEMENT ON BETTER REGULATION, ARE THERE ANY ELEPHANTS IN THE ROOM?

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KEYWORDS: regulation – institutions – legislation – transparency – accountability.

On 15 December 2015, the Commission endorsed a new Interinstitutional agreement on better regulation that will enter into force once approved by all three institutions.¹ This agreement has been adopted in the framework of the Better Regulation Agenda and it will replace the 2003 Interinstitutional agreement on better law-making.²

There is a commitment towards a global evaluation of future and existing legislation during the whole policy cycle. It is especially welcome that the Commission adopted several measures aimed at enhancing *ex post* evaluation of existing legislation. An example concerns the adoption of delegated acts. The Commission commits to gathering all necessary expertise through the consultation of experts and through public consultations and to create a register of such acts. Furthermore, the agreement includes an annex with detailed rules on better regulation of delegated acts applicable to the three institutions.³

The agreement contains rules intended to increase transparency, openness and accountability. These include enhanced public and stakeholder consultations, with an express reference to the participation of SMEs and through innovative means such as internet-based consultations. It also introduces a new Regulatory Scrutiny Board that will carry out objective quality checks of the Commission's impact assessments. The crea-

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¹ Provisional text of the proposed Interinstitutional agreement on better regulation of the European Parliament, the Council of the European Union and the European Commission, 15 December 2015, www.ec.europa.eu (Proposed IIA on better regulation).

² Interinstitutional agreement on better law-making of the European Parliament, the Council of the European Union and the European Commission, 16 December 2003 (2003 IIA on better law-making).

³ Proposed IIA on better regulation, cit., Annex 1.

tion of a European Commission's Regulatory Fitness and Performance programme (REFIT) stakeholder platform also constitutes an important input to the better regulation package as it will enable stakeholders to communicate directly with the Commission. Other provisions seem to be a real declaration of intentions as regards transparency. It is stated that "the three institutions will ensure transparency of legislative procedures (...) including an appropriate handling of trilateral negotiations",⁴ that "they will improve communication to the public during the whole legislative cycle"⁵ and that they "undertake to identify, by 31 December 2016, ways of further developing platforms and tools to this end".⁶ These are important contributions to transparency although, as some authors put forward, "promises carry little weight if institutional attitudes remain unchanged".⁷

Some concerns can be raised when analysing this agreement. First, some authors fear the removal of self and co-regulation from the agreement, despite its relevance in the 2003 agreement.⁸ This could discourage stakeholders "from engaging with the Commission in otherwise welfare-enhancing forms of public-private cooperation in the design and enforcement of regulation" which is especially relevant for innovation and technological development.⁹

Second, the implementation of these measures raises some concerns. Many commitments of the Commission imply a heavier workload and additional means in terms of money and workforce. For example, taking fully into account all public consultations on delegated acts seems difficult to apply, especially that opinions are likely to be quite a technical.¹⁰

Third, it remains to be seen whether cooperation between all three institutions is applied, especially regarding impact assessments. Paras 9 to 13 refer to the possibility of the Parliament and the Council to carry out impact assessments on future legislation and the Commission commits to give support to the other institutions to achieve this task. However, the 2003 agreement and the 2005 Interinstitutional Common Approach to Impact Assessment¹¹ already included such a possibility¹² but it had little impact on the Council and the Parliament. Therefore, it could have been expected that the new

⁴ Proposed IIA on better regulation, cit., para. 28.

⁵ *Ibid.*

⁶ *Ivi*, para. 28a.

⁷ P. LAINO, *On knowledge as power: transparency of EU law-making procedures* in *EU Law Analysis*, in *EU Law Analysis*, 20 January 2016, www.eulawanalysis.blogspot.com.

⁸ 2003 IIA on better law-making, cit., paras 18-23.

⁹ A. RENDA, *Too good to be true? A quick assessment of the European Commission's new Better Regulation Package*, in *CEPS Special Report*, May 2015, p. 12.

¹⁰ *Ivi*, p. 10.

¹¹ Interinstitutional Common Approach to Impact Assessment (IA) of the European Parliament, the Council of the European Union and the European Commission, November 2005, www.ec.europa.eu.

¹² 2003 IIA on better law-making, cit., para. 30.

agreement would impose a clear obligation to those institutions but para. 10a only states that “the European Parliament and the Council will, when they consider this to be appropriate and necessary for the legislative process, carry out impact assessments in relation to their substantial amendments to the Commission’s proposal”. The European Parliament is likely to assume this task as it has been doing so since 2012; however the Council “has remained virtually silent on this issue” so far.¹³

The proposed agreement introduces many interesting features and is likely to improve the law-making process of the EU; however, the implementation of this agreement will be difficult and whether it will have a real impact remains for the moment an open question.

¹³ A. RENDA, *Too good to be true? A quick assessment of the European Commission’s new Better Regulation Package*, cit., p. 6.

