

UDENRIGSMINISTERIET

EUROPAUDVALGET

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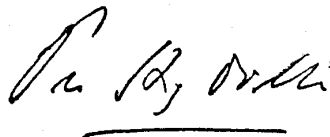
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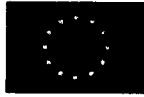
Journalnummer
400.C.2-0

Kontor
EU-sekr.

17. juni 2003

Til underretning for Folketingets Europaudvalg vedlægges i forbindelse med
Det Europæiske Råd i Thessaloniki den 19.-20. juni 2003 formandskabets
note vedrørende interinstitutionel aftale om bedre lovgivning, 10212/03.





**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 5 June 2003 (13.06)
(OR. fr)**

10212/03

**INST 118
MI 134
POLGEN 42
JUR 245**

NOTE

from : Presidency
to : Members States delegations

No. prev. doc. : 9530/1/03 REV 1

Subject : Draft interinstitutional agreement on better law-making

Delegations will find attached the text (the French version of which was the basis for negotiation) of the draft interinstitutional agreement on better law-making, on which political agreement was reached at the meeting between the President of the Council, Mr GIANNITSIS, Commission Vice-President Ms Loyola de PALACIO DEL VALLE-LERSUNDI and the Members of the European Parliament mandated to represent their institution, Mr GARGANI, Mr SWOBODA and Ms FRASSONI in Strasbourg on 3 June 2003.

This text will be presented as a "I/A" item to the Permanent Representatives Committee (Part 2)/Council at a forthcoming meeting so that, in accordance with the Presidency conclusions of the Brussels European Council meeting on 20 and 21 March 2003, the Thessaloniki European Council can confirm that the negotiations have been completed. The agreement will be adopted formally only after it has been revised by the three institutions' legal and linguistic experts, and it will be signed only when the internal procedures of each of the three institutions concerned have been completed.

**DRAFT INTERINSTITUTIONAL AGREEMENT
ON BETTER LAW-MAKING**

(following the interinstitutional policy meeting of 3 June 2003)

Having regard to the treaties and, in particular, Article 5 of the EC Treaty and the Protocol on the application of the principles of subsidiarity and proportionality,

Having regard to the Declarations annexed to the Maastricht Final Act: No 18 on the estimated costs under Commission proposals and No 19 on the implementation of Community law,

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

Having noted the conclusions of the 21 and 22 June 2002 Seville and 20 and 21 March 2003 Brussels European Council meetings;

Emphasising that this agreement is concluded without prejudice to the outcome of the Intergovernmental Conference to be held subsequent to the Convention on the Future of Europe;

Common commitments and objectives

1. The European Parliament, the Council of the European Union and the European Commission jointly agree to improve the quality of law-making by means of a series of initiatives and procedures set out in this interinstitutional agreement.
2. The institutions agree, in exercising the powers and following the procedures laid down in the Treaty, and in recalling the importance which they attach to the Community method, to abide by general principles such as democratic legitimacy, the principles of subsidiarity and proportionality, the principle of legal certainty, the promotion of simplicity, clarity and consistency in the drafting of law and the utmost transparency of the legislative process. They call on the Member States to ensure proper, speedy transposition into national law within the time limits laid down in Community law, pursuant to the Stockholm, Barcelona and Seville European Council presidency conclusions.

Better coordination of the legislative process

3. The institutions agree to ensure that general coordination of their legislative activity is improved, as an essential foundation to 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 notify 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 one another their respective annual legislative timetables with a view to agreeing on common annual programming.

In particular, 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.

To the extent that multiannual programming has an interinstitutional impact, the three institutions will initiate cooperation through appropriate channels.

As far as possible the Commission's annual work programme will contain guidance on the choice of legislative instrument and proposed legal base of each measure to be put forward.

5. The three institutions will, in the interests of efficiency, ensure as far as possible that there is better synchronisation of the treatment of common dossiers by the preparatory bodies of each branch of the legislative authority (European Parliament committee, working party and Permanent Representatives' Committee at the Council).

6. Throughout the legislative process the three institutions will keep each other permanently informed about their work. This information will be based on appropriate procedures, including dialogue between the European Parliament's committees and plenary and the Council Presidency and the Commission.

7. The Commission will report annually on the state of play of its legislative proposals. [to be inserted elsewhere in the text]

8. The European 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 responsible¹.

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

¹ Parliament and the Commission state that this point is partly covered by the Framework Agreement concluded in July 2000.

9. The Commission will take account of requests made by the European Parliament or the Council, on the basis respectively of Articles 192 or 208 of the EC Treaty, for the submission of legislative proposals. It will respond rapidly and appropriately to the relevant European Parliament committees 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 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 retransmission 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 codecision cases, once a proposal has been finally adopted, whether after first reading, second reading or conciliation.

Choice of legislative instrument and legal base

12. The Commission will explain and justify to the European Parliament and the Council the reasons for its choice of legislative instrument, if possible in the context of its annual work programme or regular dialogue procedures and, in any event, in the explanatory memoranda of 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 realisation 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 annexed under the Treaty of Amsterdam to the EU and EC Treaties. In its proposals for directives the Commission will have regard to the need for a proper balance to be struck between general principles and detailed provisions, in a way that avoids excessive use of Community implementing measures.

14. The Commission will provide a clear and comprehensive justification for the legal basis envisaged for any individual proposal, indicating it if possible when its annual legislative and work programme is being considered. In the event of a change in the legal base after any Commission proposal has been presented, Parliament will be duly reconsulted 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 all cases, set out the legal arrangements which currently exist at EC level in the area affected by the proposal. The Commission will also explain in its explanatory memoranda how measures proposed are justified from the point of view of the subsidiarity and proportionality principles. The Commission will also account for the scope and the results of the prior consultation and the impact analyses it has undertaken.

Use of alternative modes 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 annexed under the Treaty of Amsterdam to the EU and the EC Treaties. They recognise the need to use, in suitable cases and 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 EC law and that it meets the criteria of transparency (in particular the publicising of agreements) and the representativeness of the parties involved. It must also represent value added 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 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.

- **Co-regulation**

18. Co-regulation is defined as a mechanism by means of which a Community legislative act entrusts the achievement of the objectives defined by the legislative authority to parties which are recognised in the field (e.g. economic operators, the social partners, NGOs or European associations).

This mechanism may be chosen 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.

A legislative act must abide by the proportionality principle defined in the Treaty. Agreements between social partners will 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.

In a context defined by means of 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 check whether or not those draft agreements comply with Community law (and, in particular, with the basic legislative act).

In particular at the European Parliament's or the Council's request, on a case-by-case basis and depending on the subject, the legislative act may contain provision for a two-month period following notification of the draft agreement to the European Parliament and the Council, during which 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.

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 also define in the legal act the relevant measures to be taken in order to follow up application, in the event of non-compliance by one or more parties or failure of the agreement. These measures may inter alia take the form, for example, of the regular provision of information by the Commission to the legislative authority on follow-up to application, or of a revision clause under which the Commission will report at the end of a particular period of time and, where necessary, propose amendment of the legislative act or any other appropriate legislative measure.

- **Self-regulation**

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

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 EU has not so far legislated. As one of its responsibilities the Commission will scrutinise self-regulation practices in order to check that they comply with the provisions of the Treaty.

The Commission will notify Parliament and the Council of the self-regulation practices which it regards, on the one hand, as contributing to the achievement of the Treaty objectives and as compatible with the Treaty provisions and, on the other, as satisfactory in terms of representativeness of the parties concerned, sectoral and geographical cover and the added value of the undertakings given. It will nonetheless consider the possibility of putting forward a proposal for a legislative act, in particular at the request of the relevant legislative authority or in the event of a failure to observe the above practices.

- **Implementing measures (comitology)**

20. The three institutions emphasise the important role played by the implementing measures in legislation. They note the current discussions within 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 submitted to them by the Commission on 11 December 2002 with a view to amending Council Decision 1999/469/CE of 28 June 1999.

Improving the quality of legislation

21. As each institution performs its respective tasks it will ensure that legislation is of good quality, i.e. 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 contribute to this objective. They are committed to fully applying the Interinstitutional Agreement of 22 December 1998 on the quality of drafting of EC legislation.

(a) Pre-legislative consultation

22. During the period preceding the submission of legislative proposals the Commission (having notified Parliament and the Council) will carry out the fullest possible consultations, the results of which will be made public. In certain cases, where the Commission thinks it appropriate, the Commission may submit a pre-legislative consultation document on which Parliament and the Council may choose to give an opinion.

(b) Impact analyses

22a. 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 the financial or administrative implications for the Community and the Member States in particular. Furthermore, each Institution will take into account the objective of ensuring that application in the Member States is appropriate and effective.

23. The three institutions agree on the positive contribution of impact assessments in improving the quality of Community legislation, particularly concerning the scope and content thereof.

24. The Commission will introduce an integrated advance impact assessment process for major items of draft legislation, bringing together in a single test 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 each of its proposals the Commission will state in what way the impact assessments have influenced that proposal.

25. Where the codecision procedure applies the European Parliament and Council may, on the basis of jointly defined criteria and procedures, have impact assessments undertaken prior to the adoption of any substantial 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 consider the possibility of establishing a common methodology.

(c) Consistency of texts

26. The European Parliament and the Council will make all appropriate arrangements for improving the scrutiny carried out by their respective departments with a view to preventing any inaccuracies or inconsistencies from arising in the wording of texts adopted under the codecision procedure. To this end the institutions may agree on a short deadline in order to allow legal verification of this nature to be performed before the act is finally adopted.

Better transposition, implementation and enforcement

27. The three institutions stress the need for Member States to comply with Article 10 of the EC Treaty, call upon the Member States to ensure that Community law is properly and swiftly transposed into national law within the prescribed deadlines, and consider 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.

28. The institutions will ensure that all directives include a legally-binding time limit

for the transposition of the provisions thereof into national law. They will ensure that the legal act contains a time limit for transposition that is as short as possible - generally not exceeding a period of two years. The three institutions wish the Member States to make a renewed effort as regards the transposition of directives within the time limits which they indicate. In this connection, Parliament and the Council note that the Commission is proposing to step up cooperation with the Member States.

They point out that, under the Treaty, the Commission has the power to initiate an infringement procedure in cases where a Member State fails to transpose legislation within the stipulated time limit and they note the undertakings given by the Commission on this subject².

29. The Commission will publish annual reports on implementation in individual Member States and groups of Member States, with tables showing transposition rates. These reports, which will cover all legislative acts requiring transposition by Member States, will be communicated to the European Parliament and 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 table (which will as far as possible illustrate the concordance between Community acts and implementing measures) and to publish it, and 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

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

Legislation will be updated and condensed through the repeal of acts which have become obsolete and 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 enforced.

² Commission communication of 12 December 2002 on better monitoring of the application of Community law, pp. 20 and 21

Such simplification will be carried out through the recasting of existing acts or by means of new legislative proposals, without destroying the substance of Community policies. In this connection the Commission will select the areas of law which are suitable for simplification on the basis of criteria laid down once the legislative authority has been consulted.

31. 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 legislators to adopt at the final stage the proposals for simplified acts, should modify their working methods by introducing, for example, ad hoc structures with the specific task of simplifying legislation.

Implementation and revision of the interinstitutional agreement

32. The implementation of this agreement will be followed up by the High-Level Technical Group for Interinstitutional Cooperation.

33. The institutions will take the necessary steps to ensure that their staff have the necessary means and resources for the proper implementation of the provisions of this agreement.
