Interpretation and implementation of the interinstitutional agreement on better law-making

2016/2018(INI) - 15/05/2018 - Committee report tabled for plenary, single reading

The Committee on Legal Affairs, together with the Committee on Constitutional Affairs, adopted an own-initiative report prepared by Pavel SVOBODA (EPP, CZ) and Richard CORBETT (S&D, UK) on the interpretation and implementation of the Interinstitutional Agreement on better law-making.

Members welcomed the progress achieved and the experience gained in the first year and a half of the application of the new Interinstitutional Agreement which entered into force on 13 April 2016 and encouraged the Institutions to undertake **further efforts** to fully implement the agreement, which is an interinstitutional exercise to improve the quality of EU legislation.

Programming: Members welcomed the three Institutions' agreement to reinforce the Union's annual and multiannual programming by means of a more structured procedure with a precise timeline. They considered that priority treatment for certain legislative files agreed upon in joint declarations should not be used to exert undue pressure on the colegislators and that greater speed should not be prioritised at the expense of legislative quality.

Members called on the Commission to present more inclusive, more detailed and more reliable Work Programmes and impact assessments should always encompass a thorough and rigorous analysis of the compliance of a proposal with the principles of subsidiarity and proportionality and specify its European added value. They encouraged developing efficient legislation geared to developing employment protection and European competitiveness with a particular focus on small and medium-sized enterprises, across all sectors of the economy.

Members considered it essential that parliamentary committees are fully consulted throughout the joint declaration preparation and implementation process.

Tools for better law-making: the report underlined that **impact assessments** may inform but must never be a substitute for political decisions or cause undue delays to the legislative process. Particular attention must be paid to the potential impacts on those stakeholders who have least opportunity to present their concerns to decision-makers, including **SMEs, civil society, trade unions** and others who do not have the advantage of easy access to the Institutions. Members considered that impact assessments must pay equal attention to the evaluation of **social, health and environmental consequences** in particular, and that the impact on the fundamental rights of citizens and on equality between women and men must be assessed.

Members recalled that the independence, transparency and objectiveness of the **Regulatory Scrutiny Board** and its work must be safeguarded and that the members of the Board should not be subjected to any political control. All of the Board's opinions, including negative ones, shall be made public. In addition, the Commission should clarify how it intends to assess the **cost of non-Europe**, including the cost to producers, consumers, workers, administrations and the environment of the lack of harmonised legislation at EU level.

Better regulation tools: the report stressed that impact assessments should never replace political decisions or delay the legislative process. They should pay particular attention to the potential effects on stakeholders, including SMEs, civil society, trade unions and others who do not have easy access to

institutions. They should pay equal attention to the assessment of social, health and environmental consequences, in particular, and assess the impact on the fundamental rights of citizens and on equality between men and women.

Members reiterated the need to protect the independence, transparency and objectivity of the regulatory review committee and its work, and that its members should not be subject to political control. All opinions of the Committee, including negative assessments, should be made public. In addition, the Commission should clarify how it intends to assess the cost of non-Europe, including the cost to producers, consumers, workers, administrations and the environment of the lack of harmonised legislation at EU level.

Delegated and implementing acts: Members reiterated that it is the competence of the legislator to decide, within the limits of the Treaties, and in the light of the case law of the Court of Justice of the European Union, whether and to what extent to use delegated acts and whether and to what extent to use implementing acts. They welcomed the Commission's effort to comply with the deadline for proposing the alignment of all basic acts which still refer to the regulatory procedure with scrutiny (RPS).

However, they expressed concern that the Council is trying almost systematically to replace delegated acts with implementing acts.

Members recalled that politically significant elements, such as Union lists or registers of products or substances, should remain an integral part of a basic act and should therefore only be amended by means of delegated acts.

Transparency and coordination of the legislative process: Members called on the Commission to make available and, when feasible, public, all relevant documents relating to legislative proposals, including non-papers, to both legislators at the same time. The **flow of information from the Council** should also be improved.

The Council should, as a general rule, hold all its meetings in public, as does the European Parliament.

The report proposed that the Council meets Parliament at least once during the consultation procedure to allow Parliament to present and explain the reasons for the approved amendments, and the Council to state its position on each of them.

The three EU institutions are reminded that further progress is needed in establishing a dedicated joint **database** on the state of play of legislative files.

Members called on the other institutions to comply with the Treaties and regulations and to observe the relevant jurisprudence in order to ensure that Parliament is immediately, fully and accurately informed **during the whole life-cycle of international agreements**, without undermining the EU's negotiation position, and is accurately informed and involved in the implementation stage of the agreements. They also called for the establishment and formalisation of a financial dialogue on the adoption and coherence of European positions in the run-up to major international negotiations.

Implementation and application of EU law: the report underlined the importance of the principle that when the Member States, in the context of transposing directives into national law, choose to add elements that are in no way related to that Union legislation, such additions should be made identifiable either through the transposing act(s) or through associated documents. In order to **reduce the problems related to 'gold-plating'**, the three Institutions should commit to adopting EU legislation which is clear and easily transposable.

Simplification: Members welcomed the commitment for a more frequent use of the legislative technique of **recasting**. They considered that this technique should constitute the ordinary legislative technique as an invaluable tool to achieve simplification.

However, in the event of a complete policy overhaul, the Commission should, instead of using the recasting technique, put forward a proposal for an entirely new legal act repealing existing legislation, so that the co-legislators can engage in broad and effective political discussions and see their prerogatives as enshrined in the Treaties fully preserved.

Members also stressed that the **reduction of administrative burdens** does not necessarily mean deregulation and that, in any event, it must not compromise fundamental rights and environmental, social, labour, health and safety, consumer protection, gender-equality or animal welfare standards.