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DRAFT REPORT

on the interpretation and implementation of the Interinstitutional Agreement on Better Law-Making
(2016/2018(INI))

Committee on Legal Affairs
Committee on Constitutional Affairs

Rapporteurs: Pavel Svoboda, Richard Corbett

(Joint committee procedure – Rule 55 of the Rules of Procedure)

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the interpretation and implementation of the Interinstitutional Agreement on Better Law-Making
(2016/2018(INI))

The European Parliament,

– having regard to Article 17(1) of the Treaty on European Union (TEU),

– having regard to Article 295 of the Treaty on the Functioning of the European Union (TFEU),

– having regard to the Interinstitutional Agreement on Better Law-Making of 13 April 2016[1] ('the new IIA'),

– having regard to the Framework Agreement of 20 October 2010 on relations between the European Parliament and the European Commission[2] ('the 2010 Framework Agreement'),

– having regard to the Interinstitutional Agreement on Better Law-Making of 16 December 2003[3] ('the 2003 IIA'),

– having regard to the Interinstitutional Agreement of 20 December 1994 – Accelerated working method for official codification of legislative texts[4],

– having regard to the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation[5],

– having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts[6],

– having regard to the Joint Declaration of 13 June 2007 on practical arrangements for the codecision procedure[7],

– having regard to the Joint Political Declaration of 27 October 2011 of the European Parliament, the Council and the Commission on explanatory documents[8],

– having regard to the Joint Declaration on the EU's legislative priorities for 2017[9],

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[1] OJ L 123, 12.5.2016, p. 1.
[2] OJ L 304, 20.11.2010, p. 47.
[3] OJ C 321, 31.12.2003, p. 1.
[4] OJ C 102, 4.4.1996, p. 2.
[5] OJ C 73, 17.3.1999, p. 1.
[6] OJ C 77, 28.3.2002, p. 1.
[7] OJ C 145, 30.6.2007, p. 5.
[8] OJ C 369, 17.12.2011, p. 15.
[9] OJ C 484, 24.12.2016, p. 7.

– having regard to the Joint Declaration on the EU's legislative priorities for 2018-2019[1] ,

– having regard to the judgments of the Court of Justice of the European Union of 18 March 2014 (the 'Biocides case'), 16 July 2015 (the 'Visa Reciprocity Mechanism case'), 17 March 2016 (the 'CEF delegated act case'), 14 June 2016 (the 'Tanzania case') and 24 June 2016 (the 'Mauritius case')[2] ,

– having regard to its decision of 13 December 2016 on the general revision of Parliament's Rules of Procedure[3] ,

– having regard to its resolution of 12 April 2016 on Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook[4] ,

– having regard to its resolution of 6 July 2016 on the strategic priorities for the Commission Work Programme 2017[5],

– having regard to its resolution of 9 March 2016 on the conclusion of an Interinstitutional Agreement on Better Law-Making between the European Parliament, the Council of the European Union and the European Commission[6],

– having regard to its resolution of 27 November 2014 on the revision of the Commission's impact assessment guidelines and the role of the SME test[7],

– having regard to its resolution of 25 February 2014 on follow-up on the delegation of legislative powers and control by Member States of the Commission's exercise of implementing powers[8],

– having regard to its resolution of 4 February 2014 on EU Regulatory Fitness and Subsidiarity and Proportionality – 19th report on Better Lawmaking covering the year 2011[9],

– having regard to its resolution of 13 September 2012 on the 18th report on better legislation – Application of the principles of subsidiarity and proportionality (2010)[10],

– having regard to its resolution of 14 September 2011 on better legislation, subsidiarity

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[1] OJ C 446, 29.12.2017, p. 1

[2] Judgment of the Court (Grand Chamber) of 18 March 2014, *European Commission* v *European Parliament and Council of the European Union*, Case C-427/12, EU:C:2014:170; judgment of the Court (Grand Chamber) of 16 July 2015, *European Commission* v *European Parliament and Council of the European Union*, Case C-88/14, ECLI:EU:C:2015:499: judgment of the Court of 17 March 2016, *European Parliament* v *European Commission*, Case C-286/14, EU:C:2016:183; judgment of the Court (Grand Chamber) of 14 June 2016, *Parliament* v *Council*, Case C-263/14, ECLI:EU:C:2016:435; judgment of the Court (Grand Chamber) of 24 June 2016, *Parliament* v *Council*, Case C-658/11, ECLI:EU:C:2014:2025.

[3] Texts adopted, P8_TA(2016)0484.

[4] Texts adopted, P8_TA(2016)0104.

[5] Texts adopted,P8_TA(2016)0312.

[6] Texts adopted, P8_TA(2016)0081.

[7] OJ C 289, 9.8.2016, p. 53.

[8] OJ C 285, 29.8.2017, p. 11.

[9] OJ C 93, 24.3.2017, p. 14.

[10] OJ C 353 E, 3.12.2013, p. 117.

and proportionality and smart regulation[1] ,

– having regard to its resolution of 8 June 2011 on guaranteeing independent impact assessments[2] ,

– having regard to the Commission communication of 24 October 2017 entitled ‘Completing the better regulation agenda: better solutions for better results’ (COM(2017)0651),

– having regard to the Commission staff working document of 24 October 2017 entitled ‘Overview of the Union’s Efforts to Simplify and to Reduce Regulatory Burdens’ (SWD(2017)0675),

– having regard to the Commission communication of 13 December 2016 entitled ‘EU law: Better results through better application’ (C(2016)8600),

– having regard to the Commission communication of 14 September 2016 entitled ‘Better Regulation: Delivering better results for a stronger Union’ (COM(2016)0615),

– having regard to the Commission communication of 19 May 2015 entitled ‘Better regulation for better results – An EU agenda’ (COM(2015)0215),

– having regard to the Commission staff working document of 7 July 2017 on better regulation guidelines (SWD(2017)0350),

– having regard to Rule 52 of its Rules of Procedure,

– having regard to the joint deliberations of the Committee on Legal Affairs and the Committee on Constitutional Affairs under Rule 55 of the Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the Committee on Constitutional Affairs and the opinions of the Committee on International Trade, the Committee on Economic and Monetary Affairs, the Committee on Employment and Social Affairs, the Committee on Environment, Public Health and Food Safety and the Committee on Petitions (A8-0000/2018),

A. whereas the new IIA entered into force on the day of its signature, 13 April 2016;

B. whereas, on the occasion of the adoption of the new IIA, Parliament and the Commission made a statement affirming that the new agreement ‘reflects the balance between, and respective competences of, the European Parliament, the Council and the Commission as set out in the Treaties’ and ‘is without prejudice to the Framework Agreement of 20 October 2010 on relations between the European Parliament and the European Commission’[3];

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[1] OJ C 51 E, 22.2.2013, p. 87.

[2] OJ C 380 E, 11.12.2012, p. 31.

[3] See Annex II to European Parliament decision of 9 March 2016 on the conclusion of an Interinstitutional Agreement on Better Law-Making between the European Parliament, the Council of the European Union and the European Commission (Texts adopted, P8_TA(2016)0081).

C. whereas, in order to implement the provisions of the new IIA on interinstitutional programming, Parliament revised its Rules of Procedure inter alia to set out the internal processes for negotiating and adopting joint conclusions on multiannual programming and joint declarations on annual interinstitutional programming;

D. whereas, in the context of annual interinstitutional programming, the three Institutions agreed on two joint declarations on the EU's legislative priorities for the years 2017 and 2018-2019 respectively;

E. whereas, contrary to the 2003 IIA, the new IIA no longer includes a legal framework for the use of alternative methods of regulation, such as co-regulation and self-regulation, with the result that any reference to such methods is missing;

F. whereas paragraph 13 of the new IIA requires the Commission to consult as widely as possible in its impact assessment process; whereas, similarly, paragraph 19 of the new IIA requires the Commission, before adopting a proposal and not after, to conduct public consultations in an open and transparent manner, ensuring that the modalities and time limits of those public consultations allow for the widest possible participation not restricted to vested interests and their lobbyists;

G. whereas in July 2017 the Commission revised its Better Regulation guidelines so as to better explain and exploit the linkages between the various steps of policy-making within the Commission, replacing the previous stand-alone guidelines, which addressed separately impact assessment, evaluation and implementation, and so as to include new guidance on planning and stakeholder consultation;

H. whereas under paragraph 16 of the new IIA, the Commission may, on its own initiative or upon invitation by Parliament or the Council, complement its own impact assessment or undertake other analytical work it considers necessary;

I. whereas the new IIA replaces the former Impact Assessment Board with the Commission's Regulatory Scrutiny Board; whereas the latter's task is to carry out an objective quality check of the Commission's impact assessments; whereas in order for an initiative, accompanied by an impact assessment, to be tabled for adoption by the Commission, a positive opinion is needed from the Board; whereas, in the case of a negative opinion, the draft report must be reviewed and resubmitted to the Board, and, in the case of a second negative opinion, a political decision is required for the initiative to proceed further; whereas the Board's opinion is made public on the Commission's website at the same time as the report relating to the initiative concerned and, in the case of impact assessments, once the Commission has adopted the related policy initiative[1];

J. whereas at the beginning of 2017, the Regulatory Scrutiny Board completed the recruitment of its staff, including three members from outside the European Institutions; whereas in 2016 the Board reviewed 60 separate impact assessments, of which 25 (42 %) received an initial negative assessment, resulting in revision and resubmission to the Board; whereas the Board has subsequently given positive overall assessments to all

[1] Article 6(2) of the Decision of the President of the European Commission of 19 May 2015 on the establishment of an independent Regulatory Scrutiny Board (C(2015)3263).

but one of the revised impact assessments that it has received; whereas the Board has exchanged information with Parliament's services on best practices and methodologies relating to impact assessments;

K. whereas under paragraph 25 of the new IIA, if a modification of the legal basis is envisaged entailing a change from the ordinary legislative procedure to a special legislative procedure or a non-legislative procedure, the three Institutions will exchange views thereon; whereas Parliament has revised its Rules of Procedure to give effect to this provision; whereas this provision has not yet had to be applied;

L. whereas in paragraph 27 of the new IIA, the three Institutions acknowledge the need for the alignment of all existing legislation to the legal framework introduced by the Lisbon Treaty, and in particular the need to give high priority to the prompt alignment of all basic acts which still refer to the regulatory procedure with scrutiny (RPS); whereas the Commission proposed that latter alignment in December 2016[1]; whereas Parliament and the Council are currently examining this proposal in great detail;

M. whereas a new version of the Common Understanding on Delegated Acts and on the related standard clauses is annexed to the new IIA; whereas under paragraph 28 of the new IIA, the three Institutions will enter into negotiations without undue delay after the entry into force of the agreement, with a view to supplementing this Common Understanding by providing for non-binding criteria for the application of Articles 290 and 291 TFEU; whereas, after lengthy preparatory work, these negotiations finally began in September 2017;

N. whereas in paragraph 29 of the new IIA the three Institutions committed to setting up, at the latest by the end of 2017, a joint functional register of delegated acts, providing information in a well-structured and user-friendly way, in order to enhance transparency, facilitate planning and enable traceability of all the different stages in the lifecycle of a delegated act; whereas the register has now been set up and became operational in December 2017;

O. whereas in paragraph 34 of the new IIA, Parliament and the Council, in their capacity as co-legislators, underlined the importance of maintaining close contacts already in advance of interinstitutional negotiations, so as to achieve a better mutual understanding of their respective positions, and agreed, to that end, to facilitate a mutual exchange of views and information, including by inviting representatives of the other institutions to informal exchanges of views on a regular basis; whereas these provisions have not given rise to any new specific procedures or structures; whereas, while contact between the Institutions has intensified within the framework of the joint declaration on legislative priorities, the experience of the committees suggests that there is no systematic approach to facilitate such a mutual exchange of views and that it remains difficult to obtain information and feedback from the Council on issues raised within it by the Member States; whereas Parliament finds this situation highly unsatisfactory;

P. whereas, in order to further reinforce the transparency of the legislative process, Parliament revised its Rules of Procedure so as to adapt its rules on interinstitutional negotiations during the ordinary legislative procedure, building on the provisions

[1] See COM(2016)0798 and COM(2016)0799.

introduced in 2012; whereas, while all of Parliament's negotiating mandates are public, the same does not hold true of the Council's mandates;

Q. whereas in paragraph 39 of the new IIA, in order to facilitate traceability of the various steps in the legislative process, the three Institutions undertook to identify, by 31 December 2016, ways of further developing platforms and tools to that end, with a view to establishing a dedicated joint database on the state of play of legislative files; whereas no such joint database has been created to date;

R. whereas in paragraph 40 of the new IIA, regarding the negotiation and conclusion of international agreements, the three Institutions committed to meeting within six months after the entry into force of the new IIA in order to negotiate improved practical arrangements for cooperation and information-sharing within the framework of the Treaties, as interpreted by the Court of Justice of the European Union; whereas such negotiations began in November 2016 and are still ongoing;

S. whereas in paragraph 46 of the new IIA, the three Institutions confirm their commitment to using the legislative technique of recasting for the modification of existing legislation more frequently and in full respect of the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts[1];

T. whereas under paragraph 48 of the new IIA, by way of contribution to its regulatory fitness and performance programme (REFIT), the Commission undertakes to present annually an overview, including an annual burden survey, of the results of the Union's efforts to simplify legislation and to avoid overregulation and reduce administrative burdens; whereas the results of the first annual burden survey were presented on 24 October 2017 as part of the Commission Work Programme for 2018;

U. whereas under paragraph 50 of the new IIA, the three Institutions will monitor the implementation of the new IIA jointly and regularly, at both the political level through annual discussions and the technical level in the Interinstitutional Coordination Group; whereas monitoring at the political level includes regular discussions in the Conference of Committee Chairs and the annual high-level stocktaking meeting; whereas, furthermore, specific monitoring arrangements were laid down in the context of the joint declarations on the EU's legislative priorities for 2017 and 2018-2019 respectively; whereas, moreover, the experience gained by committees so far is an invaluable tool for assessing the implementation of the new IIA; whereas the the Committee on Legal Affairs has specific competence for better law-making and simplification of Union law;

Common commitments and objectives

1. Welcomes the progress achieved and the experience gained in the first year and a half of the application of the new IIA and encourages the Institutions to undertake further efforts to fully implement the agreement, in particular with regard to the interinstitutional negotiations on non-binding criteria for the application of Articles 290 and 291 TFEU, the alignment of all basic acts that still refer to the regulatory procedure

[1] OJ C 77, 28.3.2002, p.1.

with scrutiny (RPS), the interinstitutional negotiations on practical arrangements for cooperation and information-sharing regarding the negotiation and conclusion of international agreements, and the establishment of a dedicated joint database on the state of play of legislative files;

2. Recalls that the new IIA aims to develop a more open and transparent relationship between the three Institutions with a view to delivering high-quality legislation in the interest of EU citizens; considers that, although the principle of sincere cooperation among Institutions is only mentioned in paragraphs 9 and 32 in relation to specific areas covered by the new IIA, it should be observed throughout the legislative cycle as one of the principles enshrined in Article 13 TEU;

Programming

3. Welcomes the three Institutions' agreement to reinforce the Union's annual and multiannual programming in accordance with Article 17(1) TEU by means of a more structured procedure with a precise timeline; notes with satisfaction that the first exercise of interinstitutional annual programming under the new IIA saw the active participation of the three Institutions, participation that led to a joint declaration on the EU's legislative priorities for 2017, with 59 key legislative proposals identified as priorities for 2017 and, further to a joint declaration on legislative priorities for 2018-2019, 31 key legislative proposals identified as priorities until the end of the current term; particularly welcomes, in this context, the active involvement of the Council and trusts that it will continue in the future, including as regards multiannual programming for the new term; considers, however, that priority treatment for certain legislative files agreed upon in joint declarations should not be used to exert undue pressure on the co-legislators and that greater speed should not be prioritised at the expense of legislative quality;

4. Considers it of the utmost importance that parliamentary committees are fully consulted throughout the joint declaration preparation and implementation process;

5. Points out that the new IIA is without prejudice to the mutual undertakings agreed between Parliament and the Commission in the 2010 Framework Agreement; recalls, in particular, that the arrangements relating to the timetable for the Commission Work Programme set out in Annex 4 to the 2010 Framework Agreement must be complied with when implementing paragraphs 6-11 of the new IIA;

6. Considers that the Commission should, when presenting its Work Programme, in addition to the elements referred to in paragraph 8 of the new IIA, indicate how the envisaged legislation is justifiable in the light of the principles of subsidiarity and proportionality and specify its European added value;

7. Calls on the Commission to present more inclusive, more detailed and more reliable Work Programmes; requests, in particular, that the Commission Work Programmes clearly indicate the legal nature of each proposal with accurate and realistic timeframes; calls on the Commission to ensure that forthcoming legislative proposals – especially key legislative packages – arrive well before the end of this legislative term, namely early in 2018, thereby giving the co-legislators enough time to exercise their prerogatives in full;

8. Welcomes the fact that the Commission replied to Parliament's requests for proposals for Union acts under Article 225 TFEU, for the most part within the three-month deadline referred to in paragraph 10 of the new IIA; points out, however, that the Commission failed to adopt specific communications as foreseen in that provision; calls on the Commission to adopt such communications with a view to ensuring full transparency and providing a political response to requests made by Parliament in its resolutions, and with due regard for Parliament's relevant European Added Value and Cost of Non-Europe analyses;

9. Considers that the deletion of all references to the use of alternative methods of regulation in the new IIA is without prejudice to Parliament's position that soft law should be applied only with the greatest of care and on a duly justified basis, without undermining legal certainty and the clarity of existing legislation, and after consultation of Parliament[1]; is concerned, furthermore, that a lack of clear boundaries on the use of soft law may even encourage recourse to it, with no guarantee that Parliament would be able to carry out scrutiny;

10. Invites the Council and the Commission to agree that alternative methods of regulation, provided that they are strictly necessary, should be included in the multiannual and annual programming documents, so as to allow proper identification and scrutiny by the legislators;

Tools for better law-making

11. Welcomes the new IIA's provisions on impact assessments, notably the principle that they may inform but never be a substitute for political decisions or cause undue delays to the legislative process; recalls that the Commission, in the Small Business Act, made a commitment to implementing the 'think small first' principle in its policymaking, and that this includes the SME test to assess the impact of forthcoming legislation and administrative initiatives on SMEs[2]; recalls that in its decision of 9 March 2016 on the new IIA Parliament stated that the wording of the new IIA does not sufficiently commit the three Institutions to include SME and competitiveness tests in their impact assessments[3]; underlines that, throughout the legislative procedure and in all assessments of the impact of proposed legislation, particular attention must be paid to the potential impacts on those who have least opportunity to present their concerns to decision takers, including SMEs and others who do not have the advantage of easy access to the Institutions; stresses the importance of taking into account and paying attention to the needs of SMEs at all stages of the legislative cycle and expresses satisfaction that the Commission's Better Regulation Guidelines prescribe that potential impacts on SMEs and competitiveness should be considered and reported systematically in all impact assessments; encourages the Commission to consider how

[1] See Parliament's resolution of 9 September 2010 on Better lawmaking - 15th annual report from the Commission pursuant to Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality (OJ C 308E, 20.10.2011, p. 66), paragraph 47.
[2] See Parliament's resolution of 27 November 2014 on the revision of the Commission's impact assessment guidelines and the role of the SME test (OJ C 289, 9.8.2016, p. 53), paragraph 16.
[3] See Parliament's resolution of 9 March 2016 on the conclusion of an Interinstitutional Agreement on Better Law-Making between the European Parliament, the Council of the European Union and the European Commission (Texts adopted, P8_TA(2016)0081), paragraph 4.

the impact on SMEs can be taken into account even better, including in connection with the European added value of a proposal, and intends to follow this issue closely in the years to come;

12. Recalls that the idea of a supplementary ad hoc technical independent panel contained in the Commission's initial proposal for the new IIA was not further pursued in the course of the negotiations; points out that the aim of the creation of such a panel was to enhance the independence, transparency and objectiveness of impact assessments; recalls that it was agreed in paragraph 15 of the new IIA that Parliament and the Council, where and when they consider it appropriate and necessary, would carry out impact assessments in relation to their own substantial amendments to the Commission proposal; reminds its committees of the importance of availing themselves of this tool wherever needed;

13. Welcomes the inclusion of the principles of subsidiarity and proportionality in the scope of impact assessments; stresses, in this regard, that 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;

14. Expresses disappointment at the fact that many Commission proposals, including politically sensitive proposals, were not accompanied by impact assessments, in spite of the commitment made by the Commission in paragraph 13 of the new IIA; points out that experience from committees so far suggests that the quality and level of detail of impact assessments varies from the comprehensive to the rather superficial; points out that in the first phase of application of the new IIA, 20 of the 59 Commission proposals included in the 2017 joint declaration were not accompanied by impact assessments; recalls in this regard that, while it is in any case foreseen that initiatives which are expected to have a significant social, economic or environmental impact should be accompanied by an impact assessment, the initiatives included in the Commission Work Programme or in the joint declaration should, as a general rule, be accompanied by an impact assessment;

15. Calls on the Commission to further clarify how it intends to assess the cost of non-Europe – inter alia the cost for producers, consumers, workers, administrations and the environment of not having harmonised legislation at European level and where divergent national rules cause extra cost and render policies less effective - (as referred to in paragraphs 10 and 12 of the new IIA); points out that such an assessment should not only be conducted in the event of sunset clauses, towards the end of a programme, or when a repeal is envisaged, but should also be considered in cases where action or legislation at EU level is not yet in place or under review;

16. Recalls that replacing the former Impact Assessment Board with the new Regulatory Scrutiny Board is a welcome first step to achieving an independent board; reiterates 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 political control[1]; stresses the importance of ensuring that all of the Board's

[1] See Parliament's resolution of 27 November 2014, cited above, paragraph 12; Parliament decision of 9 March 2016, cited above, paragraph 6.

opinions, including negative ones, are made public and accessible at the same time as the relevant impact assessments are published;

17. Points out that Parliament's Directorate for Impact Assessment and European Added Value, established within its administration, assists parliamentary committees and offers them a variety of services, for which sufficient resources must be available so as to ensure that Members and committees receive the best possible support available; notes with appreciation the fact that the Conference of Committee Chairs adopted an updated version of the 'Impact Assessment Handbook – Guidelines for Committees' on 12 September 2017;

18. Recalls that under paragraph 14 of the new IIA, upon considering Commission legislative proposals, Parliament will take full account of the Commission's impact assessments; recalls in this context that parliamentary committees may invite the Commission to present its impact assessment at a full committee meeting and invites its committees to avail themselves of this opportunity more regularly, and of the possibility to see a presentation of the initial appraisal of the Commission's impact assessment by Parliament's own services;

19. Welcomes the possibility that the Commission complements its own impact assessments during the legislative process; considers that paragraph 16 of the new IIA should be interpreted to the effect that, when requested by Parliament or the Council, the Commission should as a rule promptly provide such complementary impact assessments;

20. Welcomes the fact that in paragraph 17 of the new IIA the three Institutions committed to exchanging information on best practices and methodologies relating to impact assessments; is of the opinion that this should include the sharing of raw data underpinning the Commission's impact assessment wherever possible, and notably whenever Parliament decides to complement the Commission's impact assessment with its own further work; encourages, to that end, the services of the three Institutions to cooperate to the maximum possible extent, including with regard to joint training sessions on impact assessment methodologies, with a view, moreover, to achieving a future, common interinstitutional methodology;

21. Repeats its position that stakeholders should be able to provide effective input to the impact assessment process as early as possible in the consultation phase and encourages the Commission to that end to make a more systematic use of roadmaps and inception impact assessments and publish them in due time at the beginning of the impact assessment process;

22. Welcomes the commitment made by the Commission, before adopting a proposal, to consult widely and encourage, in particular, the direct participation of SMEs and other end-users in consultations; notes with satisfaction that the Commission's revised Better Regulation Guidelines take such a direction;

23. Underlines the importance of the ex-post evaluation of existing legislation, in accordance with the 'evaluate first' principle, and recommends that, whenever possible, it take the form of ex-post impact assessments applying the same methodology as in the ex-ante impact assessment relating to the same piece of legislation, so as to enable a

better evaluation of the performance of the latter;

24. Welcomes paragraph 22 of the new IIA, wherein, in order to support the evaluation process of existing legislation, the three Institutions agree to, as appropriate, establish reporting, monitoring and evaluation requirements in legislation, while avoiding overregulation and administrative burdens, in particular on the Member States; notes the challenges linked to collecting data in the Member States on the performance of legislation and encourages the Commission and the Member States to step up their efforts in this regard;

25. Welcomes paragraph 23 of the new IIA, wherein the three Institutions agree to systematically consider the use of review clauses in legislation; invites the Commission to include review clauses in its proposals whenever appropriate and, if not, to state its reasons for departing from this general rule;

26. Urges that efforts be stepped up to set up the dedicated joint database on the state of play of legislative files referred to in paragraph 39 of the new IIA; recalls that this database should include information on all steps of the legislative procedure to facilitate its traceability; suggests that this should also include information on the impact assessment process;

Legislative instruments

27. Welcomes the commitments made by the Commission as regards the scope of the explanatory memorandum accompanying each of its proposals; expresses particular satisfaction at the fact that the Commission will also explain how the measures proposed are justified in the light of the principles of subsidiarity and proportionality; underlines in this regard the importance of a strengthened and comprehensive assessment and justification regarding compliance with the principle of subsidiarity;

28. Considers that consistency between the explanatory memorandum and the impact assessment related to the same proposal is necessary; invites the Commission, therefore, to ensure such consistency and to explain the choice made where it deviates from the conclusions of the impact assessment;

29. Draws attention to the fact that in paragraph 25 of the new IIA, the Commission only committed to taking 'due account of the difference in nature and effects between regulations and directives'; reiterates its request that, pursuing the same approach as that outlined in the Monti report, greater use should be made of regulations in legislative proposals[1], in accordance with the legal requirements established by the Treaties as to their use, in order to ensure consistency, simplicity, and legal certainty across the Union;

30. Welcomes the three Institutions' commitment to exchanging views on modifications of the legal basis, as referred to in paragraph 25 of the new IIA; stresses the role and the expertise of its Committee on Legal Affairs in verifying legal bases[2]; recalls

[1] See Parliament's resolution of 14 September 2011 on better legislation, subsidiarity and proportionality and smart regulation, paragraph 5.
[2] See Rules of Procedure of the European Parliament, Annex V, point XVI.1.

Parliament's position that it will resist any attempt to undermine the legislative powers of Parliament by means of unwarranted modifications of the legal basis;

Delegated and implementing acts

31. Underlines the importance of the principle enshrined in paragraph 26 of the new IIA, whereby it is the competence of the legislator to decide whether and to what extent to use delegated or implementing acts, within the limits of the Treaties, and in the light of the case law of the Court of Justice;

32. Welcomes the Commission's effort to comply with the deadline referred to in paragraph 27 of the new IIA for proposing the alignment of all basic acts which still refer to the regulatory procedure with scrutiny (RPS); further considers that, as a rule, all cases previously dealt with under the RPS should now be aligned to Article 290 TFEU and thus be converted into delegated acts[1];

33. Warns that the inclusion of the obligation for the Commission of systematic recourse to Member States' experts in connection with the preparation of delegated acts should not amount to making the relevant procedure very similar, if not altogether identical, to that established for the preparation of implementing acts, especially as regards procedural prerogatives conferred upon those experts; considers that this may also blur the differences between the two types of acts to the extent that it could imply a *de facto* revival of the pre-Lisbon comitology mechanism;

34. Expresses dissatisfaction at the fact that, in spite of the concessions made by Parliament, the Council is still very reluctant to accept delegated acts when the criteria under Article 290 TFEU are met; recalls that, as laid down in its recital 7, the new IIA should facilitate the negotiations in the framework of the ordinary legislative procedure and improve the application of Articles 290 and 291 TFEU; points out that in several legislative files the Council, nevertheless, insisted either on the conferral of implementing powers under Article 291 TFEU or on the inclusion of all the elements *in abstracto* eligible for the delegation of powers or for the conferral of implementing powers in the basic act itself; expresses disappointment at the fact that, in those cases, the Commission did not defend its own original proposals;

35. Welcomes the start of the interinstitutional negotiations referred to in paragraph 28 of the new IIA; confirms its position on the non-binding criteria for the application of Articles 290 and 291 TFEU as established in its resolution of 25 February 2014[2]; considers that they should be the basis for those negotiations;

36. Considers that the criteria for the application of Articles 290 and 291 TFEU must take account of the rulings of the Court of Justice, such as those issued in the Biocides case, in the CEF delegated act case and in the Visa Reciprocity Mechanism case[3];

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[1] See Parliament's resolution of 25 February 2014 on follow-up on the delegation of legislative powers and control by Member States of the Commission's exercise of implementing powers, cited above, paragraph 6.
[2] *Ibid,* paragraph 1.
[3] Judgment of the Court (Grand Chamber) of 18 March 2014, *European Commission* v *European Parliament and Council of the European Union*, cited above; judgment of the Court of 17 March 2016, *European*

37. Welcomes the Commission's commitment, should broader expertise be needed for the early preparation of draft implementing acts, to make use of expert groups, consult targeted stakeholders and carry out public consultations, as appropriate; considers that, whenever any such consultation process is initiated, Parliament should be duly informed;

38. Notes with appreciation the fact that the Commission in paragraph 28 of the new IIA agreed to ensure that Parliament and the Council have equal access to all information on delegated and implementing acts, so that they will receive all documents at the same time as Member States' experts; welcomes the fact that experts from Parliament and the Council will systematically have access to the meetings of Commission expert groups to which Member States' experts are invited and which concern the preparation of delegated acts; calls on the Commission to abide by this commitment genuinely and consistently; notes that such access has already improved significantly;

39. Commends the swift progress made at interinstitutional level in the establishment of a joint functional register of delegated acts and welcomes its official launch of 12 December 2017;

Transparency and coordination of the legislative process

40. Welcomes the fact that under paragraph 32 of the new IIA, Parliament and the Council, as the co-legislators, are to exercise their powers on an equal footing, and the Commission must carry out its role as facilitator by treating the two branches of the legislative authority equally; recalls that this principle is already enshrined in the Treaty of Lisbon;

41. Deplores the fact that paragraphs 33 and 34 of the new IIA have not yet led to an improvement in the information flow from the Council, notably since there seems to be a general lack of information on the issues raised by the Member States within the Council and no systematic approach to facilitate the mutual exchange of views and information; notes with concern that the information flow usually varies greatly from Presidency to Presidency and varies between services of the Council's General Secretariat;

42. Requests that paragraphs 33 and 34 of the new IIA be fully implemented; asks the Council, in particular, that the agendas, working documents and presidency proposals of working parties and the Committee of Permanent Representatives of the Governments of the Member States (Coreper), be transmitted to Parliament in a regular and structured manner in order to allow for a matching level of information between co-legislators; considers that paragraphs 33 and 34 of the new IIA should be interpreted to the effect that, in addition to informal exchanges of views, Parliament may be invited to send a representative to the meetings of the Council's working parties and Coreper;

43. Stresses that, within the meaning of paragraphs 35 and 36 respectively of the new IIA, synchronisation and acceleration of the legislative process may only be pursued while ensuring that the prerogatives of each Institution are fully preserved; considers,

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Parliament v *European Commission*, cited above; judgment of the Court (Grand Chamber) of 14 June 2016 *Parliament* v *Council*, cited above.

therefore, that on no account may synchronisation or acceleration entail the imposition of a timetable on Parliament by other Institutions;

44. Welcomes the fact that the interinstitutional negotiations referred to in paragraph 40 of the new IIA began in November 2016; notes with disappointment that after more than one year of discussions, two rounds of negotiations at political level and a number of meetings at technical level, no agreement has yet been reached despite clear and established case law;

45. Reminds the Council and the Commission that practical arrangements in relation to international agreements must be compliant with the Treaties, notably Article 218(10) TFEU, and take account of rulings of the Court of Justice, such as those issued in the Tanzania case and the Mauritius case[1];

46. Considers that changing the legal basis of an international agreement may have the result of diminishing Parliament's role or excluding its participation altogether in its conclusion; recommends that the improved practical arrangements referred to in paragraph 40 of the new IIA include a mechanism whereby, if a modification of the legal basis is envisaged entailing a change from the consent procedure to the consultation procedure or to a procedure affecting Parliament's prerogatives in any way, the three Institutions will exchange views thereon, by analogy with paragraph 25 of the new IIA;

Implementation and application of Union legislation

47. Underlines the importance of the principle set out in paragraph 43 of the new IIA, 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; notes that this information is often still lacking; calls on the Commission and the Member States to act jointly and consistently to tackle the lack of transparency and other problems related to 'gold-plating'[2];

48. Considers that, in order to reduce the problems related to 'gold-plating', the three Institutions should commit to adopting EU legislation which is clear, easily transposable and which has a specific European added value; recalls that, while additional unnecessary administrative burdens should be avoided, this should not prevent the Member States from taking more ambitious measures in cases where only minimum standards are defined by Union law[3];

49 Recalls that, under paragraph 44 of the new IIA, Member States are called upon to cooperate with the Commission in obtaining information and data needed to monitor and evaluate implementation of Union law; calls, therefore, on the Member States to take all necessary measures to respect their commitments, including by providing

[1] Judgment of the Court (Grand Chamber) of 14 June 2016, *Parliament* v *Council*, cited above; judgment of the Court (Grand Chamber) of 24 June 2016, *Parliament* v *Council*, cited above.
[2] See Parliament's resolution of 21 November 2012 on the 28th annual report on monitoring the application of EU law (2010) (OJ C 419, 16.12.2015, p. 73), paragraph 7.
[3] See Parliament's resolution of 12 April 2016 on Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook, cited above, paragraph 44.

correlation tables containing clear and precise information on the national measures transposing directives in their domestic legal order, as agreed in the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents and in the Joint Political Declaration of 27 October 2011 of the European Parliament, the Council and the Commission on explanatory documents;

50. Considers that the commitment made by the Commission under paragraph 45 of the new IIA should be interpreted to the effect that, with due respect for confidentiality rules, Parliament's access to information relating to pre-infringement and infringement procedures will improve considerably; reiterates, to that end, its long-standing requests to the Commission as regards the data which Parliament is entitled to access[1];

51. Reiterates its appreciation for the EU Pilot problem-solving mechanism as a more informal, but nonetheless effective, way to ensure compliance with Union law on the part of the Member States[2]; disapproves of the Commission's announcement that, as a rule, it will launch infringement procedures without relying on the mechanism anymore[3];

Simplification

52. Welcomes the commitment made in paragraph 46 of the new IIA for a more frequent use of the legislative technique of recasting; reiterates that this technique should constitute the ordinary legislative technique as an invaluable tool to achieve simplification[4]; considers, however, that 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;

53. Welcomes the Commission's first annual burden survey undertaken in the context of simplification of EU legislation, for which it carried out a Flash Eurobarometer survey on business perceptions of regulation, interviewing over 10 000 businesses across the 28 Member States, mainly SMEs and reflecting the distribution of business in the EU; draws attention to the findings of the survey, which confirm that the focus on cutting unnecessary costs remains appropriate and suggest that there is a complex interplay of different factors that influence the perception of businesses, which may also be caused by variations in national administrative and legal set ups concerning the implementation of legislation; points out that gold plating and even inaccurate media coverage can also affect such perception; agrees with the Commission that the only way to identify concretely what can actually be simplified, streamlined or eliminated is to seek views from all stakeholders on specific pieces of legislation or various pieces of legislation that apply to a particular sector; calls on the Commission to refine the annual burden survey, on the basis of the lessons learnt from the first edition, to apply transparent and

[1] See Parliament's resolution of 4 February 2014 on the 29th annual report on monitoring the application of EU law (2011) (Texts adopted, P7_TA(2014)0051), paragraphs 21 and 22.
[2] See Parliament's resolution of 6 October 2016 on monitoring the application of Union law: 2014 Annual Report (Texts adopted, P8_TA(2016)0385), paragraph 16.
[3] See Commission communication entitled 'EU law: Better results through better application', cited above, page 5.
[4] See Parliament's resolution of 14 September 2011, cited above, paragraph 41.

verifiable data collection methods, to pay particular regard to SMEs' needs, and to include both actual and perceived burdens;

54. Takes note, furthermore, of the outcome of the Commission's assessment of the feasibility, without detriment to the purpose of legislation, of establishing objectives to reduce burdens in specific sectors; encourages the Commission to set burden reduction objectives for each initiative in a flexible but evidence-based and reliable manner, and in full consultation with stakeholders, as it does already under REFIT;

Implementation and monitoring of the new IIA

55. Notes that the Conference of Presidents will receive a regular report, drawn up by the President, outlining the current state of play of implementation both internally and interinstitutionally; considers that this report should take due account of the assessment made by the Conference of Committee Chairs on the basis of the experiences of the various committees, in particular the Committee on Legal Affairs, as the committee responsible for better law-making and the simplification of Union law[1];

56. Welcomes the first annual interinstitutional high-level political stock-taking meeting on the implementation of the IIA, which took place on 12 December 2017; encourages the Conference of Committee Chairs to provide the Conference of Presidents with any recommendation it deems appropriate on the implementation of the new IIA;

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57. Instructs its President to forward this resolution to the Council and the Commission.

[1] See Rules of Procedure of the European Parliament, Annex V, point XVI.3.

EXPLANATORY STATEMENT

I. Background

On 13 April 2016, the European Parliament, the Council and the European Commission adopted the new Interinstitutional Agreement on Better Law-Making ('the new IIA') aiming at improving the way the EU legislates to ensure that EU legislation better serves citizens and businesses and that EU laws and policies are effective in achieving their objectives, with a minimum of administrative burdens.

The new IIA sets out common commitments and objectives, contains provisions on interinstitutional cooperation as regards multiannual and annual interinstitutional programming, tools for better law-making, legislative instruments, delegated and implementing acts, transparency and coordination of the legislative process, implementation and application of Union legislation and simplification. It also sets out a general framework for implementation and monitoring of the new IIA by the three Institutions. The new IIA also commits the three Institutions to further negotiations on appropriate criteria for delineating delegated and implementing acts and on improved practical arrangements for cooperation and information-sharing regarding the negotiation and conclusion of international agreements. It commits to alignment of the existing legislation to the legal framework introduced by the Lisbon Treaty, in particular with regard to measures adopted under the regulatory procedure with scrutiny (RPS). Finally, it also provides for the establishment of a dedicated joint database on the state of play of legislative files and of a register on delegated acts.

II. Parliament's decision on the conclusion of the new IIA and setting-up of a Working Group on the latter's interpretation and implementation

On a recommendation from the Committee on Constitutional Affairs, on 9 March 2016 Parliament decided, with 516 votes in favour, 92 votes against and 95 abstentions, to approve the new IIA[1]. Parliament's decision also identified a range of issues, which need further follow up at political and/or technical level[2].

The Committee on Legal Affairs and the Committee on Constitutional Affairs were asked by the Conference of Presidents to examine the implementation of the new IIA under Rule 55 of Parliament's Rules of Procedure. To that end, they set up a Working Group whose main findings served as a starting point for the two rapporteurs to draw up this draft report.

The Working Group met 9 times, between 10 May 2016 and 20 November 2017. It concluded its work by endorsing a summary of activities and its main findings were presented at the joint meeting of the Committee on Legal Affairs and the Committee on Constitutional Affairs on 28 November 2017.

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[1] Resolution of 9 March 2016 on the conclusion of an Interinstitutional Agreement on Better Law-Making between the European Parliament, the Council of the European Union and the European Commission**,** P8_TA(2016)0081.

[2] See Parliaments decision of 9 March 2016, cited above, at para. 16.

III. Rapporteurs' evaluation of the implementation of the IIA: main aspects

Common commitments and objectives

The progress achieved and the experience gained in the first year and a half of the application of the new IIA is overall positive and should encourage the three Institutions to make further efforts to implement it fully, in particular with regard to the remaining issues: a) the non-binding criteria for the application of Articles 290 and 291 TFEU and the alignment of all basic acts still referring to the RPS, b) the practical arrangements for cooperation and information-sharing regarding the negotiation and conclusion of international agreements and c) the establishment of a dedicated joint database on the state of play of legislative files.

The ultimate goal of the new IIA is to deliver high quality legislation in the interest of Union citizens. To that end, the principle of sincere cooperation among Institutions should be observed throughout the legislative cycle as one of the principles enshrined in Article 13 TEU.

Programming

The first exercise of interinstitutional annual programming under the new IIA led to a first joint declaration on the EU's legislative priorities for 2017 and a further joint declaration for the years 2018-2019. This shows the engagement of the three Institutions and is to be welcomed, it being understood that greater speed should not be prioritised at the expenses of legislative quality.

When presenting its Work Programme, the Commission should clearly indicate the legal nature of each proposal with an accurate and realistic timing.

As regards the Commission's replies to Parliament's requests for proposals for Union acts under Article 225 TFEU, the Commission failed to adopt specific communications as foreseen in paragraph 10 of the new IIA. Parliament attaches value to the adoption of such specific communications since they are meant to ensure full transparency and give a political response to Parliament's requests.

Tools for better law-making

The new IIA rightly makes it clear that impact assessments may never replace political decisions nor cause undue delays in the legislative process. Impact assessment is an important tool, which should cover in a balanced way the various aspects foreseen in the IIA, including, as Parliament insisted upon, SMEs tests. The Commission revised its Better Regulation Guidelines in July 2017.

Notwithstanding this revision and the commitment in paragraph 13 of the new IIA many Commission proposals, including politically sensitive proposals, are not accompanied by impact assessments. In particular, 20 out of 59 of the proposals identified as priorities in the 2017 joint declaration were not accompanied by impact assessment. It also appears that the quality and level of detail of impact assessments can vary greatly.
Setting up a dedicated joint database on the state of play of legislative files, including

information on all steps of the legislative procedure to facilitate its traceability as referred to in paragraph 39 of the new IIA is a crucial goal, which needs to be pursued without undue delay.

Legislative instruments

The explanatory memorandum accompanying each of the Commission proposals should now explain how the measures proposed are justified in the light of the principles of subsidiarity and proportionality. It is also recommendable that consistency between the explanatory memorandum and the impact assessment related to the same proposal is ensured.

The three Institutions' committed to exchange views on modifications of the legal basis in paragraph 25 of the new IIA. In this respect, the role and the expertise of its Committee on Legal Affairs in verifying legal bases is to be stressed. Parliament's position that it will resist any attempt to undermine the legislative powers of the European Parliament by means of unwarranted modification of the legal basis is also to be underlined.

Delegated and implementing acts

The Commission complied with the deadline set by the new IIA and in December 2016 it proposed the alignment of a number of basic acts which still refer to the regulatory procedure with scrutiny (RPS). These proposals are under examination by the co-legislators.

The Commission's systematic recourse to Member States' experts in connection with the preparation of delegated acts is one of the main concessions made by Parliament. Despite the concern that this could blur the differences between delegated and implementing acts to the extent that it could imply a *de facto* revival of the pre-Lisbon comitology mechanism, this concession made in the negotiations was meant to encourage the Council to accept delegated acts, when the criteria under Article 290 TFEU are met. Surprisingly, the Council proved to insist either on the conferral of implementing powers under Article 291 TFEU or on the inclusion of all the elements *in abstracto* eligible for delegation of powers or conferral of implementing powers in the basic acts itself. Even more surprisingly, in those cases the Commission chose not to defend its own proposals.

The interinstitutional negotiations on non-binding criteria for the application of Articles 290 and 291 TFEU referred to in paragraph 28 of the new IIA ('delineation criteria') started in September 2017. Parliament's mandate for those negotiations is established in Parliament's resolution of 25 February 2014[1]. Whatever criteria may be agreed, these must take account of the relevant rulings of the Court of Justice[2].

The Commission agreed to ensure that the European Parliament and Council have equal access to all information on delegated and implementing acts, so that they will receive all documents at the same time as Member States' experts. Experts from the European Parliament

[1]OJ C 285, 29.8.2017, p. 11.

[2] See for instance judgment of the Court (Grand Chamber) of 18 March 2014, *European Commission* v *European Parliament and Council of the European Union*, cited above; judgment of the Court of 17 March 2016, *European Parliament* v *European Commission*, cited above; judgment of the Court (Grand Chamber) of 14 June 2016 *Parliament* v *Council*, cited above.

and from the Council are to have systematic access to the meetings of Commission expert groups to which Member States' experts are invited and which concern the preparation of delegated acts. Evidence so far suggest that such access has improved significantly.

Swift progress was made at interinstitutional level in setting up a joint functional register of delegated acts. Its official launch took place on 12 December 2017. This is an important achievement.

Transparency and coordination of the legislative process

The principle whereby the European Parliament and the Council, as co-legislators, are to exercise their powers on an equal footing is of the utmost importance, but it tends to be undermined by the fact that there is a general lack of information from the Council. Committee meetings in the European Parliament are public, while the Council's working parties are not. It is, therefore, justified to request that working parties' and COREPER's agendas, working documents and Presidency proposals be transmitted to Parliament in a regular and structured way. In addition to informal exchanges of views, Parliament should also be invited to send representatives to the meetings of Council's working parties and of the COREPER.

The interinstitutional negotiations on practical arrangements for cooperation and information sharing regarding the negotiation and conclusion of international agreements, started in November 2016. However, after more than one year of discussions no agreement has so far been reached despite an established and clear case law.[1]

Implementation and application of Union legislation

Correct and timely transposition of Union legislation, which is clear, easily transposable and having European added value is key to better law-making. Under the new IIA, when, in the context of transposing directives into national law, Member States 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. Much progress is still to be achieved in the identification of gold-plating.

Parliament has stated on several occasions that it should be given access to information relating to pre-infringement and infringement procedures. Effective problem-solving mechanisms, such as the EU Pilot, should not be dismissed too hastily.

Simplification

Simplification is at the heart of better law-making. One way to pursue it is a systematic recourse to the legislative technique of recasting, which should therefore constitute the ordinary legislative technique. However, in case of a complete policy overhaul, the Commission should rather 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

[1] See judgment of the Court (Grand Chamber) of 14 June 2016 *Parliament* v *Council*, cited above; judgment of the Court (Grand Chamber) of 24 June 2016 *Parliament* v *Council*, cited above.

discussions and see their prerogatives as enshrined in the Treaties fully preserved.

The Commission undertook its first annual burden survey and assessed the feasibility of establishing objectives for the reduction of burdens in specific sectors as foreseen in the IIA. The findings were presented on 24 October 2017 as part of the Commission Work programme for 2018 and confirm that the focus on cutting unnecessary costs remains appropriate and suggest that there is a complex interplay of different factors that influence the perception of businesses. It is only by seeking views on specific or sectorial pieces of legislation that one may identify concretely what can actually be simplified. The Commission should refine the annual burden survey on the basis of the lessons learnt from the first survey and apply transparent and verifiable data collection methods, having particular regard to SMEs' needs and including both actual and perceived burdens while taking due account of the need for the legislation to meet its objectives. The Commission should set burden reduction objectives for each initiative in a flexible but evidence-based and reliable manner, and in full consultation with stakeholders, as it already does under REFIT.

Implementation and monitoring of the new IIA

The Conference of Committee Chairs has an important role to play in monitoring the implementation of the new IIA and should provide the Conference of Presidents with any recommendation it deems appropriate. The Committee on Legal Affairs, as the committee responsible for better law-making and the simplification of Union law[1], should greatly contribute to this exercise.

[1] See Rules of Procedure of the European Parliament, Annex V, point XVI.3.