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" Better Regulation and EU Lawmaking: One Year On "

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Ladies and gentlemen,

Walter Hallstein, the first President of the European Commission said once: "The European Community is a legal phenomenon. A legal phenomenon in three respects: it is a creation of the law, it is the source of the law and it is a legal order". This is the source of strength of the Union of today.

I am sure you have had an interesting debate, hearing about multiple aspects of the Better Regulation agenda, hearing from various speakers. I am afraid not much indeed can be added to further enrich your reflection. I fully support the views expressed in the context of the discussion on linguistic aspects of law making claiming that cooperation between institutions is of high relevance for a good law making. My private dream has always been that not only lawyer linguists should work together but that one day we will have one legal service.

As many of those who have spoken today and as a Member of European Parliament I am a practitioner in making law and would like to give you a view into the "cuisine interne" of the European Parliament with regard to the three aspects of the Interinstitutional Agreement on Better Law Making. I would like to comment on the process of the adoption of the Agreement, about major concerns of the Parliament and about the challenges of the implementation of the new Interinstitutional Agreement.

As you know the previous agreement on Better Law-Making dates back to 2003. It was concluded before the 2004 enlargement of the European Union and well before the entry into force of the Lisbon Treaty.

It was therefore high time for the 2003 Interinstitutional Agreement to be renegotiated to take account of the new legislative environment created by the Treaty of Lisbon, to consolidate good practices, to prevent bad practices from becoming permanent and to develop more open and transparent relationship between the institutions, with a view to delivering Better Law Making in the interest of the Union's citizens. That is why we raised this issue during Franz Timmerman's hearing in the European Parliament as he was supposed to be as commissioner in charge of this field.

Crisis influenced the work of European institutions and the way they interact. It clearly influenced their intra and interinstitutional efficiency. It shifted also the

proportions between the legislative method of EU action and the one based on soft coordination. The latter proved to be not always sufficiently effective to say the least.

Multiple crises created the need of strengthening democratic legitimacy of the legislation process. A big number of reforms have shifted policy measures up to European level. This happened often in areas traditionally belonging to national policy domain or to decisions on policy measures with far reaching political consequences to be decided through what was seen as technocratic procedure.

It was against that background that Jean-Claude Juncker, who was appointed President of the European Commission following the 2014 elections, presented his Political Guidelines for the Commission to the European Parliament on 15 July 2014, saying: "... the time has come for a new approach...I see it as my key task...to strengthen democratic legitimacy on the basis of the Community method..."

The time will show whether the community method wins.

President Juncker also marked a break with the past by creating a new post of First Vice-President, responsible for Better Regulation, Interinstitutional Relations, the Rule of Law and the Charter of Fundamental Rights, as well as transparency. He appointed Frans Timmermans to the post and gave him tasks including: "Coordinating the work on better regulation within the Commission, but also ensuring that the special partnership with the European Parliament, as laid down in the Framework Agreement of 2010, is pursued with full commitment, and coordinating, on behalf of the Commission, the Interinstitutional work on policy programming and better law-making."

In January 2015 the then newly elected 'Juncker' Commission committed to present a proposal for a new Interinstitutional Agreement, which the Commission subsequently presented on 19 May 2015 as part of its Better Regulation package.

Of course, we, in the European Parliament, were not sitting on our hands and waiting for the Commission proposal. We knew that it would come and we were intensively working on our position papers, we call them "non papers". The political groups and the two committees (Committee on Constitutional Affairs and the Committee on Legal Affairs) prepared their own "non papers".

On 11 June 2015 the Conference of Presidents of the European Parliament endorsed the proposal by Parliament's President, Martin Schulz, that Mr Guy Verhofstadt would be Parliament's lead negotiator in conducting the negotiations on this Interinstitutional Agreement, working in close cooperation with the Committee on Constitutional Affairs and the Committee on Legal Affairs and reporting regularly to the Conference of Presidents. The current political pattern of the Parliament often leads to the need of involving both, political groups and committees, leading to a sort of double track approach, with a view to achieve desirable results.

This construction for the negotiations managed to do some justice to the responsibilities of various bodies of Parliament under Parliament's Rules of Procedure and, probably, contributed to the final success.

According to these Rules, and specifically under Rule 140 of the Parliament's Rules of Procedure, the President may sign Interinstitutional Agreements - concluded on the basis of Article 295 TFEU - after examination by the committee for Constitutional Affairs and after approval by Parliament.

The Conference of Presidents, consisting of the President of Parliament and the Chairs of the political groups, is the authority responsible for matters concerning relations with the other institutions and bodies of the European Union (Rule 27 § 3) and on that basis decides on the composition of the negotiating team and mandate for this type of Interinstitutional negotiations. But it is the Committee on Constitutional Affairs, that among other tasks, bears responsibility for Interinstitutional relations, including - with the view of their approval by Parliament - the examination of Interinstitutional agreements (pursuant to Rule 140(2) of the Rules of Procedure).

If I were to choose one issue on which the European Parliament insisted through the Interinstitutional negotiations on Better Law Making procedure, I would pick up our conviction that revising the Interinstitutional Agreement on Better Law Making could not be only about less red tape, less regulation, withdrawing proposals on the table, alternative regulation and alleviating the bureaucratic burden of companies, in general about less law making.

These are very important goals, but Better Law Making has also a "positive" agenda which concerns providing, through a democratic and transparent procedure, the legislation necessary to improve the functioning of the internal market, enhance the protection of rights of citizens, create conditions to foster economic growth and reach more social justice. In one word it is about responding to the concerns of Europeans. This has required a renewed capacity for acting of the European institutions, both individually and in a well-coordinated effort.

We have also expected the agreement to be about guaranteeing the quality of legislation that achieves its goals in the most effective and least intrusive way.

The Interinstitutional Agreement on Better Law Making deals with issues of fundamental importance for the European Parliament as a democratically elected European Institution, representing citizens, covering a whole series of matters relevant for the whole Parliament as an European institution.

At the same time, however, Better Law Making copes with issues of great interest to individual parliamentary committees, which in practice are those who make law on a daily basis. It was clear that their experience had to be taken into account when the representatives of Parliament negotiated the revision of the Interinstitutional Agreement.

The Interinstitutional Agreement was reached with an unprecedented speed not at the expense of quality. There were several rounds of negotiations at political level between Guy Verhofstadt, the First Vice President of the Commission Frans Timmermans and Minister Nicolas Schmit for the Luxembourg Presidency. There was strong involvement of colleagues from the European Parliament's services. The agreement was reached on 8 December, 2015. On Parliament's side this agreement was endorsed by the Conference of Presidents on 16 December, 2015. On 23

February 2016, the Committee on Constitutional Affairs adopted its report on the matter with a positive recommendation to Plenary. Parliament approved the draft agreement on 9 March, Council on 15 March. On 13 April the agreement was signed by the Presidents of the three institutions and entered into force. That was a very fast tracked approach, unprecedented so far.

Let me now mention very briefly issues of particular importance to the European Parliament.

As regards the provisions on multiannual and annual programming, there is general satisfaction in Parliament that the Interinstitutional Agreement foresees the possibility of joint (Commission, EP, Council) programming conclusions (multi-annual) and joint declarations (annual) on policy objectives, priorities and where possible and appropriate their indicative timing, or as the case may be, priority treatment. This agreement reflects the objective contained in Article 17 of the TEU.

Parliament is also pleased about the way in which the Commission will give follow-up to Parliaments' legislative initiatives requests and will provide justifications for and hold consultations on envisaged withdrawals of legislative proposals.

There is a new stipulation providing for an exchange of views between the institutions in case of a proposed modification of the legal basis of a legislative proposal. It is also viewed positively, as a tool to help ensure that our legislative power in the European Parliament is not undermined by a possibly arbitrary choice of the legal basis.

As regards Better Law Making tools, whilst underlining their importance for a well-informed inclusive and transparent decision-making process, some concerns were voiced with regard to impact assessments. These assessments should be comprehensive and balanced and take into account also the costs of not legislating. However, concern was expressed that possible impacts on SMEs may not have received the attention they deserve. The independence and objectiveness of the new Regulatory Scrutiny Board, which is to oversee the quality of the Commission's impact assessments, was also considered an issue of particular importance. It is also clear that impact assessments do not replace the political decision-making process.

Another issue of interest is 'gold-plating'. We did not call into question the freedom of Member States to apply higher standards if only minimum standards are defined by Union law. But it is important to be able to clearly identify additional national measures that are not required by Union law.

The latter issue is important also in the context of the monitoring of Union's efforts to update and simplify legislation and avoid overregulation and administrative burden for citizens, administrations and businesses, including SMEs. To that end the agreed Annual Burden Survey is to become an important new tool. At the same time the importance of the quality of legislation and the respect for relevant European standards should not be forgotten when evaluating the feasibility and desirability of establishing objectives for burden reduction.

With regard to delegated and implementing acts, let me say that it continues to be a very painful element in the relationship between the three institutions. The Commission and Parliament have shown understanding for the wish of the Council to properly involve Member States' experts in the preparation of delegated acts. Parliament welcomed the equal balance achieved between Council and Parliament as regards access to meetings and information, as well as the commitment to set up a register for delegated acts. At the same time, however, Parliament expects a swift agreement on appropriate criteria for delineating delegated acts and implementing acts and a prompt alignment of basic acts to the legal framework of the Lisbon Treaty.

With regard to the equal balance between legislators in the framework of transparency and coordination of the legislative process, some steps have been taken to improve the mutual exchange of views and information between Parliament and the Council in an informal way. This is to be welcomed but such measures need to be developed further - in the spirit of mutual sincere cooperation- to achieve a truly equal balance, since Council still enjoys much wider access to meetings and information of Parliament than vice versa.

Transparency of decision-making, although recognized as important in the agreement, needs a further follow-up in the implementation phase, in particular as regards transparency of trilogues in the framework of first reading agreements and where it concerns the establishment of a joint database on the state of play of legislative files. A subject that is linked to this, although not subject of the new Interinstitutional Agreement, is the practice of first reading agreements as such, which should be used only where a considered and explicit decision has been taken to do so.

For the Parliament, the respect of institutional balance and of the competences of the different institutions, in particular the implementation of the principle of equal treatment between Parliament and Council is of great importance. We cared strongly about constitutional principles like the principle of transparency, concerning both the legislative procedure and its output. We insisted therefore that the Agreement ensured that European regulation respected the criteria of transparency, clarity and citizen-friendliness.

For us in the European Parliament, Better Law Making means that law is elaborated via an efficient, democratic and transparent procedure that allows for different interests at stake to be publicly expressed and duly weighted by the legislator. We believed that only this way could European legislation be positively valued by citizens.

For the implementation of the Interinstitutional Agreement to proceed smoothly the three institutions have to do the needed adjustments in their internal functioning. We are doing it. The same is true for other Institutions.

In the European Parliament, there are many political actors involved in the implementation of this Interinstitutional Agreement, ranging from committees and the

Conference of Committee Chairs to the Conference of Presidents and the President, or even the Bureau plus administrative bodies, based on their respective tasks and competences. Some of the stipulations agreed in the Interinstitutional Agreement require also cooperation with other institutions, such as the setting up of joint databases or further institutional negotiations that are to take place on international agreements or delineation criteria for delegated and implementing acts.

These issues will be subject of further analysis in an initiative report on the interpretation and implementation of the new Interinstitutional Agreement that will be drafted, on request of the Conference of Presidents, by the Committee on Constitutional Affairs and the Committee on Legal Affairs jointly, drawing also on the expertise of other parliamentary committees. To that end the two committees decided to set up a joint working group, a platform providing political guidance to European Parliament's services, monitor the initial implementation of the Agreement and to serve as a platform for the exchanges with all interested Committees. The first meeting of the working group took place on 10 May in Strasbourg.

The Working Group on Interinstitutional Agreement on Better Law Making was set up to facilitate the work of JURI and AFCO in preparing the INI report but its mission statement also mentions what I said above - the monitoring of the initial implementation of the Interinstitutional Agreement. Some of the issues identified in the 9 March resolution of Parliament require some time to pass by before an evaluation can be made (e.g independence of the Regulatory Scrutiny Board) or best practices can be identified. The mission statement mentions also that the WG will exchange views with other committees and the Conference of Committee Chairs.

This work related to the Interinstitutional Agreement does not start from scratch and already happens in many different ways.

Impact assessments have been carried out in and by Parliament already for more than a decade in different forms, be it through analysing the Commission's impact assessment or conducting research on its own possible amendments. In 2011, a specific Directorate for Impact Assessment and European Added Value was created, to support Members' and committees' work throughout the whole policy cycle (e.g. ex- ante impact assessment, implementation appraisals, ex-post impact assessment), looking also at what is called the "cost of non-Europe" (savings resulting from a European solution/supplementary costs arising from the absence of a European solution). There is also an Impact Assessment Handbook, with guidance to committees on how to handle their impact assessment work.

Committees have been looking already at the implementation of legislation, and Parliament's internal rules for "implementation reports" have recently been modified to encourage and facilitate their preparation and adoption.

The procedure whereby Parliament gives discharge in respect of the implementation of the general budget of the European Union has expanded over time. Parliament scrutinises the implementation of the budget of all EU institutions, bodies, offices and agencies and adopts detailed observations and recommendations.

The Conference of Presidents, as well as the Conference of Committee Chairs have dedicated agenda items and/or keep a close watch on various aspects of the Interinstitutional Agreement, e.g on the various stages in the Commission Annual Work Programme, on legislative interinstitutional negotiations and on delegated and implementing acts. Different services in the Parliament, among which the Directorate for Legislative Coordination and Conciliations provide the necessary support to Parliaments bodies.

Lawyer linguists also look at legislative texts that are being passed by the European Parliament to help improve the quality of such texts.

As regards issues relating to transparency, it may be worth mentioning that there are a couple of reports in the pipeline in Parliament in that respect, notably an initiative report in the Committee on Constitutional Affairs on "Transparency, accountability and integrity in the EU institutions". The Ombudsman started a strategic inquiry into the transparency of trilogues and opened a public consultation on the issue, and Parliament will also look closer at this issue.

Finally, the follow up negotiations will be accompanied by a monitoring at the political level by means of regular meetings involving the major decision making bodies of the European Parliament.

The last Conference of Presidents established a so called "Group of Four" namely the Chairs of the Legal Affairs and Constitutional Affairs Committees, the co-rapporteurs on the own-initiative report on the interpretation and implementation of the Inter-institutional Agreement on Better Law-Making, and Parliament's negotiator, to prepare proposals on arrangements for the follow-up, monitoring and implementation of the Agreement, including on the follow-up negotiations on international agreements and delineation criteria for delegated and implementing acts. Next week, on the 2nd of June we will therefore propose our ideas that imply, inter alia that:

- with regard to international agreements we aim at enhancing Parliament's scrutiny powers, in accordance with the Treaty and recent decisions of the European Court of Justice.
- with regard to delineation criteria for delegated and implementing acts we agreed that the negotiator shall report on a regular basis to our Working Group and the Conference of Committee Chairs.

Time is too short to enumerate the ways in which Parliament (and the other institutions, as well as the Member States) work on a daily basis towards the objective of Better Law-Making. Regular stock-taking of where institutions and Member States stand on various issues related thereto is important to evaluate the results, identify challenges and opportunities, review the objectives and means and communicate with stakeholders, always keeping in mind the interests of the citizens. I would thus wholeheartedly like to thank you for the organisation of this conference and the interesting discussions that have provided much food for thought.

We as European Parliament have never given so much attention to the process of implementation of an Interinstitutional Agreement. For the first time the relations

between the three major European institutions receive the attention and quality required by challenges we face.