

The Fabric of Governance: Interinstitutional Agreements in the EU

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The constitutional reality of the EU is more than the ‘grand bargains’ negotiated at Intergovernmental Conferences. One of the phenomena that have emerged between amendments of primary law comprises agreements usually, albeit not always, adopted by the European Parliament, the Council and the European Commission—known as Interinstitutional Agreements (IIAs). The particular relationship between the legislative and executive branch in the EU makes it prone to (in)formal interinstitutional activities. Two characteristics can be discerned:

- The legislative branch is usually split up into Council and Parliament;
- The European Parliament is an essentially non-saturated institution permanently struggling for a greater role as a legislative body.

IIAs can be regarded as a pragmatic means to reduce tensions resulting from this situation. Thus, we need to answer the question of whether IIAs are conditioning instruments for running the EU more efficiently, more transparently, and more democratically. In other words, are IIAs important means of informal constitution building in the EU? Are they the fabric of European governance? Given the variety of denomination, form, and content, the conceptualisation of IIAs is all but easy. The broad definition of IIAs allows us to include a wide variety of existing agreements regardless of their denomination, form, and content, and to consider their potential common features.

The articles of this symposium are the results of a research project that took place within a multi-annual research programme called ‘New Orientations for Democracy in Europe’ (NODE) funded by the Austrian Ministry of Education, Science, and Culture. The project itself was conducted by researchers of the Institute of European Integration Research (EIF) at the Austrian Academy of Sciences, the University of Innsbruck, and the German Institute for International and Security Affairs, Berlin (SWP) under the supervision of EIF director Sonja Puntcher Riekmann and coordinated by Peter Slominski. EIF is an interdisciplinary research institute, which is dedicated to the analysis of the European integration process and its democratic quality. Research projects are carried out in three overlapping areas: European governance, the European public sphere and European citizenship.

Puntcher Riekmann analyses how IIAs are to be assessed in terms of democracy. Are they a means for redressing the distortions the classical model of democracy has suffered in the EU? Her results provide us with no clear-cut answer to this problem. In those cases where the European Parliament has succeeded in enhancing its institutional power, one can fairly argue that the democratic quality of the EU polity has also

increased—at least if the normative yardstick is the parliamentary-representative model of democracy. Conversely, the strengthening of the European Parliament through IIAs can also be evaluated more critically. If IIAs go beyond Treaty law, the democratic quality in terms of constitutional principles such as the rule of law may even deteriorate. Thus, although rule-specification through IIAs may be necessary in the context of vague treaty law, it may become problematic if constitutional change occurs not through foreseen procedures resulting in a formal amendment of primary law but through informal channels.

Waldemar Hummer discusses the legal foundations and effects of IIAs, including pertinent rulings of the European Court of Justice. In particular, he is concerned with the impact of IIAs on the ‘institutional balance’. While each IIA in itself may be harmless in this respect, the sum of all IIAs, he argues, has in fact had significant impact on the ‘institutional balance’. In addition to his legal analysis, Hummer compiled for the first time a comprehensive list of all IIAs. In so doing, he identified 123 IIAs concluded by Community institutions over the last 40 years. This list, including title, date of signature, source, policy field, and number of participants, is published as the last contribution of this symposium.

In order to study the different functions and impacts of IIAs, the project conducted case studies in four (policy) fields. Two of them are already published, namely A. Maurer, D. Kietz and C. Völkel, ‘Interinstitutional Agreements in CFSP: Parliamentarisation through the Backdoor’, (2005) 10 (2) *European Foreign Affairs Review*, 175, and I. Eiselt and P. Slominski, ‘Sub-Constitutional Engineering: Negotiation, Content and Legal Value of Interinstitutional Agreements in the EU’, (2006) 12 (2) *European Law Journal*, 209. The other two case studies are presented in this symposium.

Andreas Maurer and Daniela Kietz argue that the European Parliament strategically uses IIAs as an instrument to wrest competences from the Council and the Commission. The authors selected three case studies, namely comitology, legislative planning, and the establishment of rules that render the Commission accountable to the European Parliament. In line with historical institutionalism, the article also shows that there is evidence for path-dependency, that is, practices laid down in IIAs leading to codification in secondary and even primary law over time.

The contribution by Isabella Eiselt, Johannes Pollak and Peter Slominski analyses the problem-solving capacity of IIAs in budgetary politics. The interinstitutional problems in the 1970s and 1980s were mainly caused by the gap between legislative and budgetary powers of the two arms of the budgetary authority. Thus, the settlement of the conflict could not be resolved by IIAs alone, but needed the inclusion of additional actors responsible for the ‘grand bargains’. The authors argue that IIAs are not capable of fixing institutional design but can be considered as proper tools to arrange technical details.

Because IIAs displays such a variety, and because theoretical as well as empirical research is largely absent, it seems difficult to draw definite conclusions of the role of IIAs within the multi-layered framework of the EU polity. However, the project is the first of its kind that thoroughly studies IIAs and delivers theoretically as well as empirically well-founded results, which (hopefully) may be complemented by future research.

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