



Österreichische
Akademie der
Wissenschaften



EIF Working Paper Series

The Negotiation of the Interinstitutional Declaration on Democracy, Transparency and Subsidiarity

Isabella Eiselt and Peter Slominski

Working Paper Nr: 4

**Institut für Europäische
Integrationsforschung
Institute for European
Integration Research**

Österreichische Akademie
der Wissenschaften
Prinz-Eugen-Straße 8-10
1040 Wien

fon: +43(1) 515 81-75 65
fax: +43(1) 515 81-75 66
mail: eif@oeaw.ac.at
<http://www.eif.oeaw.ac.at>

The Negotiation of the Interinstitutional Declaration on Democracy, Transparency and Subsidiarity

Abstract

The following text is a thorough description of the negotiation process which finally led to the adoption of the “Interinstitutional Declaration on democracy, subsidiarity and transparency”. It works out the different positions of the Community institutions involved as well as the most important stages of the negotiation process including its main contested issues.

1. Introduction

This working paper is an offspring of the project “Fabric of Governance: Interinstitutional Agreements in the European Union” funded by the Austrian Ministry of Education, Science and Culture.¹ The project analyses the role, format and genesis of Interinstitutional Agreements (IIAs) between the European Parliament, the European Commission and the Council of the European Union. The aims of the project are as follows: Firstly, a comprehensive list of IIAs including the pertinent rulings of the European Court of Justice will be compiled thereby filling a major gap in integration studies. Secondly, we will focus on the genesis of IIAs analysing their development from simple informal and barely written accords towards formal instruments of policy-making published in the Official Journal. Thirdly, we will examine the role of the participating institutions by asking which strategic objective each institutions follows in the conclusion of IIAs and if there is any influence on the EU’s institutional balance. Case studies will deal with those policy fields where the most IIAs have been adopted, namely legislative procedure, budgetary procedure and comitology. In the next step we will analyse how IIAs influence Intergovernmental Conferences: notably whether they constitute a ‘testing ground’ for formal Treaty reforms. Finally, the project will discuss the question in which ways a better knowledge of the “microphysics of power” in the EC changes our perception of the respective political influence of Parliament, Council and Commission.

¹ For further information see <http://www.node-research.at/englisch/index.php> (accessed 10 November 2004). Project Partners are Prof. W. Hummer (University of Innsbruck), Andreas Maurer (German Institute for International and Security Affairs, Berlin) and Prof. Francis Snyder (Université d’Aix-Marseille, London School of Economics and College de Europe, Bruges and Natolin).

The following text is a thorough description of the negotiation process which finally led to the adoption of the “Interinstitutional Declaration on democracy, subsidiarity and transparency”. It works out the different positions of the Community institutions involved as well as the most important stages of the negotiation process including its main contested issues.

2. Interinstitutional Declaration on Democracy, Transparency and Subsidiarity

The Interinstitutional Declaration is published in the Official Journal albeit as an annex to a Resolution by the European Parliament.² They also are published in the EC Bulletin.³ No. 10-1993, p. 124. Comparing the documents some inconsistencies occur. In the Bulletin the whole document is called “Interinstitutional Declaration on democracy, transparency and subsidiarity.” While the first part is in preamble-style language, the second is denominated “Interinstitutional Agreement between the EP, the Council and the Commission on Procedures for implementing the principle of subsidiarity” and the third part is called “Arrangements for the proceedings of the Conciliation Committee under Art 189b”. Contrary to the version published in the Official Journal we observe that the title of the “Draft Decision of the European Parliament” on the Ombudsman is mentioned but is not included in the text itself. Another inconsistency is that while the Bulletin speaks of an “Interinstitutional Agreement on procedures for implementing the principle of subsidiarity” the version of the Official Journal only talks about a “draft” Agreement. However, in the following, we will deal with the version found in the Bulletin.

In contrast to other interinstitutional agreements (e.g. budgetary procedure) the IIA under review covers not only a specification of primary law but also features more broad political statements on democracy and transparency. The Interinstitutional Declaration on democracy, subsidiarity and transparency begins with a preamble consisting of a general statement on the institutional commitment to democracy and transparency. In fact, only one issue directly refers to interinstitutional cooperation, which is the introduction of an interinstitutionally agreed annual legislative programme.⁴ Article two states that the Council will, as soon as Parliament has adopted its resolution on the annual legislative programme proposed by the Commission, make its position clear in a declaration and undertake to implement as soon as possible the provisions to which it attaches priority.

Article four, five and six refer to a draft Interinstitutional Agreement on procedures for implementing the principles of subsidiarity (Art 4), a draft Decision of the European Parliament laying down the regulations and general conditions governing the performance of the Ombudsman’s duties (Art 5) and an Arrangement for the proceedings of the Conciliation Committee under Art 189b (now Art 251) (Art 6). The final paragraph makes clear this Interinstitutional Declaration aims at implementing the

² Official Journal, No. C329/133-142, 6 December 1993.

³ Bulletin EC No. 10-1993, p. 124.

⁴ P.Craig/G. de Burca (1998), EU Law. Text, Cases, and Materials (Oxford: Oxford University Press), p. 148-150.

“Treaty of the European Union” as well as at strengthening democracy and transparency in the EU. Last but not least, it is stated that the IIA only can be complemented or amended by mutual consent.

The first sentences of the “Interinstitutional Agreement between the European Parliament, the Council and the Commission on procedures for implementing the principle of subsidiarity” take reference to pertinent relevant Treaty provisions as well as to the conclusions of the European Council in Edinburgh (1992). Two general provisions explicitly state that the Agreement shall implement the principle of subsidiarity as laid down in the Treaty of Maastricht but is not intended to modify the institutional balance.

All three institutions have to observe the principle of subsidiarity both as regards the choice of legal instruments and the content of a proposal. Compliance of the application of the subsidiarity principle shall be reviewed under the normal legislative process. The Commission draws up an annual report on the application of the principle, which is publicly debated by the Council and the Parliament. In the event of general difficulties concerning the application of the IIA any President of the three institutions is entitled to convene an Interinstitutional Conference for the eventual supplement or amendment of this Agreement.

Secondly, the “Arrangements for the proceedings of the Conciliation Committee under Article 189b” deals with the procedures of the conciliation committee and confirms the existing practice of contacts between the three Community institutions concerned. It agrees that the (then) current practice should be preserved and intensified within the procedural frame of the Treaty of the European Community, especially when it comes to delicate issues.

2.1 Negotiation process: 10 November 1992 – 25 October 1993

Portuguese Presidency (January-June 1992)	7 February 1992	Treaty of Maastricht (signed)
	26/27 June 1992	European Council Lisbon
British Presidency (July-December 1992)	October 1992	Commission report including draft proposal on subsidiarity
	14 October 1992	EP Resolution on the State of the EU and the ratification of the Maastricht Treaty
	16 October 1992	European Council Birmingham
	10 November 1992	Interinstitutional Conference
	18 November 1992	EP resolution on subsidiarity
	26 November 1992	Interinstitutional Conference
	10-11 December 1992	European Council Edinburgh
Danish Presidency (January-June 1993)	21-22 June 1993	European Council Copenhagen
	7 June 1993	Interinstitutional Conference in Luxembourg
Belgian Presidency (July-December 1993)	7 September 1993	Secretary General Meeting
	30 September 1993	Interinstitutional Meeting
	25 October 1993	Interinstitutional Conference
	29 October 1993	Extraordinary European Council Brussels
	6 December 1993	Council Decision on its rules procedure
	6 December 1993	Code of conduct concerning public access to Council and Commission documents
	20 December 1993	Council Decision on public access to Council documents

The EC Treaty demanded for an agreement on regulations and conditions governing the performance of the Ombudsman's duties (Art 195, ex Art 138e, para. 4 TEC) and on detailed provisions regarding the conciliation procedure (Art 251, ex Art 189b TEC). However, several other issues were added because Parliament sought to make up for the results of Maastricht with respect to democracy and transparency.⁵ Additionally, the negotiations have to be viewed within the context of the implementation and ratification of the Maastricht Treaty.

The interinstitutional negotiations started on 10 November 1992 under the British presidency with an Interinstitutional Conference focusing on subsidiarity and transparency which the Presidents of the three institutions attended. In the beginning, hardly any progress was made. The *British Presidency* (July 1992 – December 1992) tried to limit the negotiations to the issue of subsidiarity, which Parliament approached with some circumspection, insisting above all on the need that the principle's application should respect the *acquis communautaire* and the institutional balance.⁶ The inclusion of the issue of transparency and democracy was initiated by the EP.⁷ Throughout 1992, the EP stressed the importance that substantial improvements of the Maastricht Treaty had to be made and “could not wait until the next intergovernmental conference.”⁸

During the *Danish Presidency* (January 1993 – June 1993) negotiations intensified. Parliament's growing political pressure for progress was met by a clear interest of the Council to obtain the explicit support of the Parliament for the Edinburgh European Council's declaration on subsidiarity, as well as a particular interest of the Presidency to make progress on the Ombudsman before the second Danish referendum on the Union Treaty.⁹

2.2 Positions of the European Parliament, the Council and Commission

European Parliament

In March 1992, within a month after the signing of the Maastricht Treaty, the Parliament started to prepare for interinstitutional talks which aimed at the conclusion of several interinstitutional agreements. There were a number of issues which were meant to be implemented with reference to a specific agreement between the institutions by provisions of the Treaty itself:

⁵ Monar, *Interinstitutional Agreements: The Phenomenon and its new dynamics after Maastricht*, *Common Market Law Review* (1994), p 704.

⁶ Monar (FN 5), 705.

⁷ Reich, *La mise en oeuvre du Traité sur l'Union européenne par les accords interinstitutionnels*, *Revue du Marché Commun et de l'Union européenne*, 1994, 81.

⁸ Monar (FN 5), 704.

⁹ Monar (FN 5), 705.

- As to the temporary inquiry committee Art 193, ex Art 138c TEC asks for the detailed regulation of its right of inquiry by mutual agreement between EP, Commission and Parliament.
- The treaty provisions regarding the European Ombudsman (Art 195, ex Art 138e TEC) foresee in paragraph 4 that the European Parliament will state the general conditions for exercising the tasks of the Ombudsman after having received the European Commission's opinion and the Council's approval by qualified majority.

Regarding the codecision procedure including the conciliation committee (Art 251, ex Art 189b) there was no treaty provision referring to a special arrangement between the institutions, and in the eyes of the EP only some technical questions were to be solved, hence these issues were meant to be included in the negotiation process of an IIA.

Other areas mentioned at the outset of negotiations in an internal EP preparation paper¹⁰ included the procedure of political cooperation, especially relations to WEU, the investiture of the Commission, determination of the number of MEPs and Commissioners, and issues in the area of EMU and CFSP.

The institutional committee of the Parliament elaborated a memorandum on the political and juridical opportunities for the conclusion of IIAs in the different areas which was sent to the presidential cabinet.¹¹ According to this assessment, IIAs were most likely to be concluded with regard to the EP inquiry right, the codecision and the conciliation procedure. The other issues mentioned above were not found as suitable subject for IIAs, either because they had to be solved by primary law (e.g. number of Members of Parliament) or because they could be or had to be solved unilaterally (e.g. Ombudsman, relation of EP to national parliaments and WEU, investiture of Commission).

The Parliament considered two possible ways of regulation: either by internal procedures or by IIAs. Whenever the second option was chosen the question remained whether there should be general agreements covering all issues or specific IIAs for each issue.

A month before the first official Interinstitutional Conference took place, on 14 October 1992 the European Parliament issued a first draft of an Interinstitutional Declaration¹² including

- Public deliberations of the Council when acting as legislator in order to improve the national and European parliamentary control mechanism.
- Council engagement for not adopting a legislative text which was first rejected by EP.
- Adoption of an annual legislative programme by the three institutions which is to be published.
- Simplification of comitology in order to improve control over national and European officials.
- Codification of Community law (supported by Commission).
- Establishment of a uniform voting mechanism for EP.

¹⁰ Dialogue interinstitutionnel pour l'application de l'accord de Maastricht, 19.3.1992.

¹¹ Vermerk an Herrn Dohmes, Direktor des Kabinetts des EP Präsidenten, 30. April 1992.

¹² Etat de l'Union européenne et de la ratification du Traité de Maastricht, PE 161.946.

- Application of treaty provisions concerning the rights of citizens and their full participation in the construction of Europe.
- Invitation of the social partners to hold collective negotiations.
- Improvement of parliamentary control of the Commission.

Council position¹³

An agreement on the application of the subsidiarity principle (Art 5 TEC, ex Art 3B, para. 2,) was in the main interest of the European Council, because this issue was regarded by most member states as appropriate to calm down their national opposition to the ratification process.¹⁴ Consequently, the European Council in Lisbon (1992) asked the Commission and the Council to “work on the procedural and practical steps to implement the principle of subsidiarity and report to European Council in Edinburgh”.¹⁵

The Edinburgh European Council (11/12 December 1992) came to a global agreement on the interpretation and implementation of the principle of subsidiarity which focussed on the limits of Community activity, the justification of Community activity, and the degree and sort of Community measures.

Moreover, in a preparatory paper¹⁶ of the Council’s general secretariat pointing out other topics of the interinstitutional dialogue with the EP the following were mentioned:

- Temporary inquiry committee (Art 193, ex Art 138c)
- Ombudsman (Art 195, ex Art 138e)
- Codecision procedure (Art 251, ex Art 189b)
- Number of EP Members

In the Council’s opinion the first two issues had to be initiated by the Parliament. With regard to the codecision procedure, the Council took the position that the pertinent Treaty provisions were already as detailed as necessary.

Commission position

The Commission prepared a report on the content of the principle of subsidiarity and drafted a proposal on an IIA aiming at its application which was published in October 1992.¹⁷ The Commission

¹³ For the purpose of the Working Paper we choose the term “Council” to describe both the European Council as well as the Council of the EU.

¹⁴ Monar (FN 5), 704.

¹⁵ Bulletin EC 6-1992, p. 11.

¹⁶ Non Paper 13 April 1992.

¹⁷ Commission report on subsidiarity in the actual legislative process, proposal of IIA on subsidiarity, Bull. EG 10-92.

relied heavily on previous parliamentary work on this issue.¹⁸ Some important topics of this report are listed below:

- A feasible IIA on subsidiarity should provide for clear definitions and for classifications of competencies without changing the institutional balance.
- Subsidiarity should be only one of the criteria which are to be revised by EP and Council. If amendments of EP and Council conflict with the principle of subsidiarity, the Commission should have the possibility within the interinstitutional cooperation to give notice or withdraw a proposal. Vice versa Council and Parliament can ask the Commission to review the proposal by submitting an explanatory statement.
- Provisions about the intensity of Community action.
- Delineation between exclusive and competing competencies.
- Primacy of supportive and coordinating programmes and recommendations over systematic legal harmonization.
- International agreements instead of community legal acts.
- If an obligatory legal act is required, the Commission prefers the least invasive legal means such as directives, framing directives, minimum prescriptions, mutual recognition.
- Clear and concise formulation of legal acts and codification.
- Submission of the Commission's work programme to Parliament, Council and national Parliaments.
- Explanatory statement is to be submitted with each proposal including a consideration of subsidiarity.
- Examination of proposal in terms of subsidiarity is a part of the whole examination process and should not be an isolated procedure.

2.3 The Negotiation Process in Greater Detail: The Three Interinstitutional Conferences

Interinstitutional Conference 10 November 1992

On 10 November 1992, the first Interinstitutional Conference took place in Brussels. Already in March 1992, the EP planned to convene an Interinstitutional Conference for the beginning of May or Mid-June 1992 in order to prepare the relevant issues for the European Council in Lisbon on 26/27 June 1992.¹⁹

Nevertheless some informal contacts occurred between the Presidents of the three institutions (informal meeting 27 March 1992) and Parliament's and Commission's representatives in order to find

¹⁸ See the statement of the then Commission President J. Delors at the first Interinstitutional Conference on 10 November 1992, see Conférence interinstitutionnelle, Mardi 10 novembre 1992, Bruxelles, Compte Rendu Analytique des Débats, PE 202.939/CI/2..

¹⁹ Dialogue interinstitutionnel pour l'application de l'accord de Maastricht, 19.3.1992.

out about possible subjects for agreement.

The minutes²⁰ taken from this first session only confirms 13 contributors comprising the three Presidents, four Council Members and six MEPs.²¹ It can be concluded from interventions of MEPs that there was not much interest in this first meeting from the Council's side.

Obviously driven by the Council the main topic of the conference was the subsidiarity principle. But there were no substantial discussions about a prospective text of an IIA. This was decided to be the subject of a following meeting which should take place before the European Council in Edinburgh in December 1992. As the European Council initiated interinstitutional negotiations on subsidiarity the Council's attitude was much more open towards this issue than vis-à-vis the other subjects.²²

On transparency issues which were in the main interest of the Parliament, the then British Council President called for public access to and improved information on the work of the Council, simplification and consolidation of the community legislation as the main points the Council wanted to be included in an IIA. He did not mention the issue of the parliamentary request on publicity of the Council's work when acting as legislator. The constitutional traditions of member states served as reference points for the parliamentary argumentation on transparency. As a "Rechtsstaat" the European Union could not ignore democratic principles rooted in antique Greek traditions. A second argumentative string derived from the newly installed bicameral system: Legislation was now partly shared between Council and Parliament. It was not appropriate and created an imbalance between the two chambers, if Council debates were kept behind closed doors, whereas parliamentary debates were held in public. Both arguments relied on Art 6 TEU (ex Art F para 2). The second argument was considered to be derived implicitly from Art 251 TEC (ex Art 189 B).

The intervention of the Greek representative indicated divisions within the Council with regard to transparency measures. Divergent viewpoints within the Council on transparency measures were confirmed by the Council President in his conclusive speech²³.

Interinstitutional Conference 26.November 1992

Following the Interinstitutional Conference on 10 November 1992, the EP adopted a resolution on subsidiarity²⁴ with the following contents:

²⁰ Compte Rendu Analytique des Débats, PE 202.939/CI/2.

²¹ According to the Dialogue interinstitutionnel pour l'application de l'accord de Maastricht an Interinstitutional Conference has to consist of the three institutional presidents, 12 MEPs, 12 Council and 5 Commission members. It cannot be confirmed, if all these representatives have in fact participated in this Conference.

²² Reich, (FN 7), 85.

²³ Conférence interinstitutionnelle, Mardi 10 novembre 1992, Bruxelles, Compte Rendu Analytique des Débats, PE 202.939/CI/2.

²⁴ Official Journal No. C337/116-117, 21 December 1992.

- Control of the application of the subsidiarity principle is part of the decisional process of the Community.
- The three institutions verify systematically within the frame of their internal procedures the respect of the principle, e.g. regarding the juridical instruments used and the content.
- Each Commission proposal includes a justification based on the principle.
- Each parliamentary and Council amendment contends a similar justification, if the area of Community action is enlarged.
- The Commission establishes an annual report on the application of the principle, which is sent to the EP and Council and is discussed in a public debate with participation of the Commission and the Council.
- If difficulties in the application of the IIA occur, each of the three institutions can call for an interinstitutional conference.

This was followed by an internal document called “Draft of a Solemn Declaration of the EP, the Council and the Commission on Transparency and Democracy”. The crucial point of this text was the parliamentary request vis-à-vis the Council not to adopt a legislative text previously rejected by the Parliament - a request not accepted by the Council during the talks on the occasion of the follow-up interinstitutional conference on 26 November 1992²⁵. This demand was found to be contradictory to the procedure established in the Treaty.

Other issues were less controversial, e.g. the presentation and public debate of an annual legislative programme presented by the Commission or the codification and consolidation of Community legislative texts.

According to the session protocol the Presidents of the three institutions were present at the triologue meeting on 26 November 1992. Additionally the presence of four Council members, three permanent representatives and eight MEP is documented.

The EP President made clear that he intended to have both draft texts included in one IIA. Transparency measures included in the IIA were conceived to help the Danish government in the ratification process of the Maastricht Treaty. But the extent of openness remained controversial and the Council kept being reluctant on the parliamentary proposal. Whereas the Parliament wanted publicly held Council debates when acting as legislator, the Council President only proposed the opening of certain kinds of Council debates depending on the subject treated and the importance of the Council itself. These restricted numbers of Council meetings should be opened at least once a year or at an ad hoc base. The main problems with opening up Council debates – envisaged by the Luxembourg Minister of Foreign Affairs in – were as follows: First, transparency measures as demanded by the EP may lead to inefficiency and deadlock of the entire decision-making process. Secondly, a tendency towards treatment of complex issues outside the Council might occur (similar to the UN Security Council), which could lead to a marginalisation of smaller countries. Finally, there was a risk of transfer of the decisional power to lower levels, like the COREPER or the monetary

²⁵ Conférence interinstitutionnelle, Jeudi 26 Novembre 1992, Bruxelles, Compte Rendu Analytique des Débats, PE 202.943.

committee. Therefore, only the presentation of the problem itself and maybe the final votes should be made public.

Interinstitutional Conference 7 June 1993

The Interinstitutional Conference on 7 June 1992 primarily dealt with the Ombudsman and more generally with the issues transparency, democracy and subsidiarity. Concluding from the session minutes²⁶ apart from the Presidents of the three institutions ten Council members and five MEPs were present at this third meeting. There were considerable differences with regard to the secrecy/confidentiality issue, the time-limit, subsidiarity, and the struggle on the word choice of conference vs. meeting. According to a representative of the European Parliament, most of these problems could be resolved by careful editing. But the most contentious issues with regard to the Ombudsman were the time-limit for referring complaints to the Ombudsman, the refusal of access to documents on the ground of confidentiality or secrecy, the cooperation of the Ombudsman with its national colleagues, the oath of the Ombudsman and budgetary issues.

With regard to the secrecy/confidentiality issue, the Parliament – contrary to the Commission and the Council – preferred the term secrecy because most Commission documents are labelled as confidential which would exclude them from any scrutiny by the Ombudsman. Contrary to the Commission and the Parliament, the Council was strict on this issue.

The European Parliament advocated for a five year time-limit arguing that this period would perfectly fit to the Commission's term of office. The Commission insisted that it could only accept a one year time limit. But the Parliament signalled that it was flexible on the time-limit issue and that it had to be ensured that the time-limit was long enough to allow the Ombudsman reasonable interventions. During the Conference the Parliament took the position that a time-limit for a complaint of only three years instead of five would be acceptable. But the Danish Council President was very strict on this and kept insisting that he could only accept a limit of two years. A representative of the Parliament deplored the horse-trading on this issue arguing that he saw no reason why the time-limit should only be two years. He underlined his argument by emphasizing the principal support of the EP's position by the Commission in this respect. But the Council was not able to compromise on this point.

With regard to subsidiarity, transparency and democracy, the Parliament reiterated its interest for an agreement comprising all three issues. The European Parliament embedded its argument into the context of the Maastricht ratification process stating that Europe's citizens wanted a democratic and transparent Europe. Consequently, the President of the Parliament stressed the point that the difficulties in the ratification process should be met by a comprehensive agreement comprising all three issues. The Council seemed to be fully aware of the fact that it had to come to an agreement on

²⁶ Conférence interinstitutionnelle, Lundi 7 Juin 1993, Luxembourg, Compte Rendu Analytique des Débats, PE 205.271.

the politically important issue of subsidiarity but was reluctant to reach an agreement on transparency measures. The Dutch Foreign Minister acknowledging the importance of transparency and democracy argued that a compromise had to be reached on these issues independently of a similar agreement on subsidiarity. From his point of view, the issue of democracy could be discussed and resolved along the lines of the EP's resolution of 14 October 1992. Similarly, the German Minister for European Affairs wanted to deal with subsidiarity on the base of the conclusions of the Edinburgh summit. The French Minister for European Affairs argued basically in the same way and was – additionally - concerned that the IIA might have the potential to modify the Treaty. Concerning subsidiarity he obviously preferred a less formal approach arguing the *inflation législative* had to be met by self-constraint of the responsible institutions, namely the Council and the Parliament. Similarly, Portugal's State Secretary of Foreign Affairs warned to change the Treaty or to reopen the Maastricht negotiations. The Italian State Secretary of Foreign Affairs put it more bluntly and warned that the EP might enhance its role without a proper Treaty amendment. The Parliament declared that it had no intention to amend the Treaties through the IIA and kept insisting on the importance of transparency and democracy.

Another minor issue was the denomination of an institution which was supposed to solve difficulties or disagreements concerning the application of subsidiarity. While the Parliament preferred the term “conference” instead of meeting, the Council position was in favour of the term “meeting”. The conflicting interests were that the Parliament tried to upgrade the institutional encounter with the Council while the latter had an interest to downplay the importance of the talks with the European Parliament. The Foreign Minister of Luxembourg underlined the position of the Council with the argument that the term “conference” was too formal and mainly used in connection with Treaty amendments.

In sum: The failure of the interinstitutional conference (7 June 1993) was mainly caused by differences regarding the Ombudsman's access to confidential information of the Member states.²⁷

Interinstitutional Conference 25 October 1993

The Interinstitutional Conference on 25 October 1993 continued the talks on the Interinstitutional Agreement and tried to resolve the open issues. The presence of the Presidents of the Council and the EP, two Council members and three MEPs is documented.²⁸ Generally, the representatives of the three institutions involved praised the results of the negotiations. However, some MEPs drew a far more sceptical conclusion and demanded further improvements such as an amendment of the Council's rules of procedures. Similarly, the Chairman of the Socialist Group in the Parliament emphasised the insufficiency of the amendments of the Council's rules of procedures and advocated the adoption of a unilateral declaration of the EP concerning the publication of the voting of the Member States in the

²⁷ Reich, (FN 7), 84.

²⁸ Conférence interinstitutionnelle, Lundi 25 Octobre 1993, Luxembourg, Compte Rendu Analytique des Débats, PE 207.009.

Council and to reach a better agreement in the future. Interestingly the Danish Minister of European Affairs, was equally discontent with the agreement and declared that several delegations (of the MS), in particular his own, were of the opinion that the provisions concerning the voting in the Council should be further improved.

2.4 Summary of the Main Contested Issues

	European Council	Commission	European Parliament
Ombudsman	Refuse of access to documents on the ground of confidentiality	flexible	refuse of access to documents on the ground of secrecy
	1 year time limit for referring a complaint to the Ombudsman	Support of Council position	5 year time limit for referring a complaint to the Ombudsman
subsidiarity	main elements of the Conclusions of the Edinburgh European Council	neutral	limit the envisaged IIA to the question for implementing the principle of subsidiarity
	interinstitutional <i>meeting</i>	unclear	interinstitutional <i>conference</i>
transparency/democracy	practical measures regarding transparency decided at the Edinburgh European Council	unclear	Council is not to adopt legislative texts previously rejected by EP
	Only certain debates should be held publicly	neutral	Open up Council debates to the public

(a) Ombudsman’s access to documents: Council and Commission wanted to refuse access on the ground of confidentiality. EP argued that such a restriction would deprive the Ombudsman of any serious possibility of inquiry and preferred that restriction should only take place on the grounds of secrecy.

(b) On the issue of time limit for referring a complaint to the Ombudsman, the EP preferred to be generous thus advocating a 5 year time-limit; the Commission along with the Council wanted a deadline of 1 year for reasons of workload and practicality.

(c) On the issues of *subsidiarity*, the Council wanted to insert the main elements of the Conclusions of the Edinburgh European Council. Parliament did not want to endorse the European Council's interpretation of subsidiarity, which it considered to be harmful to the European integration process.²⁹ Its intention was to limit the envisaged IIA to the question of implementing the principle of subsidiarity.

(d) With regard to future interinstitutional meeting, there were some disagreements on the formal designation of the mutual talks. The EP favoured interinstitutional *conference*, whereas the Council preferred the term interinstitutional *meeting*.

(e) On the issues of *democracy and transparency in general*, the EP wanted a global agreement covering a broad range of substantial measures, such as a political undertaking by the Council not to adopt legislative texts previously rejected by EP, the simplification of the comitology system and the introduction of a uniform electoral procedure. On many of these points the Commission supported the demands of the EP. Additionally, the EP wanted Council's debates to be held publicly. However, the Council did not want to go beyond the practical measures regarding transparency which had already been decided at the Edinburgh European Council.³⁰

The IIA at hand deals with a considerable number of issues of a quite diverse range – from technical to political questions, e.g. application of subsidiarity, ombudsman, transparency, codecision issues etc. The EP wanted to integrate a number of additional topics into the IIA – a strategy which clearly failed. Each of the three institutions tried to include its preferences and interests into the negotiation process with the intention to convince the others to accept its respective demands qua conclusion of an IIA.

²⁹ Reich, (FN 7), 82.

³⁰ Monar (FN 5), 705 f.