



## Fabric of Governance Interinstitutional Agreements in the European Union

Constitutionalisation of the European Union has to be understood as a process which has started with the founding treaties in the 1950s and included several amendments by Intergovernmental Conferences (IGCs) in 1986, 1992, 1997 and 2000. But the constitutional reality is more than the “grand bargains” negotiated at IGCs. Important constitutional developments have also occurred between amendments of primary law, notably through legislative activity by the Community institutions and the rulings of the European Court of Justice (ECJ). Apart from legislative and judicial activities, numerous institutional innovations have commenced outside formal Treaty law and have – sometimes though not always – been included into the Treaties at a later stage.

Some of these phenomena have resulted from Interinstitutional Agreements (IIAs) which have a long history in the European Union. Since the Single European Act has strengthened the role of the European Parliament (EP) the need for interinstitutional cooperation has led to an increased importance of IIAs. Due to the fact that academic literature has largely overlooked this phenomenon, it is the main objective of this project to conduct the first comprehensive analysis of the genesis, role, format, and influence of IIAs.

This project defines an IIA as an agreement between institutions of the EU. This broad definition allows us to include a variety of existing agreements regardless of their denomination, form and content and to analyse their potential common features. Against the backdrop of pluralism, the project focuses mainly on three parts:

1. Legal analysis including the first comprehensive list of IIAs
2. Analysis of the roles of IIAs in four different (policy) fields, particularly of its impact on the European Parliament
3. Democratic Implications of IIAs

(ad 1) It was one of the objectives of this study to compile for the first time a comprehensive list of all IIAs. In so doing, we found that the Community institutions concluded 117 IIAs over the last forty years. Considering its legal effect, IIAs can either contain binding or only politically functional but legally non-binding provisions depending on their respective legal basis and/or the intention of the drafting parties. The quantitative and qualitative assessment of all 117 IIAs came to the conclusions that they have had a significant impact on the institutional balance – mainly, though not exclusively, because of the substantive and continuous strengthening of the European Parliament’s position.

- (ad 2) In order to study the different functions and impacts of IIAs, case studies in four (policy) fields were conducted. These are:
- (a) Common Foreign and Security Policy
  - (b) Democracy, Transparency and Legitimacy
  - (c) Legislative Process
  - (d) Budgetary Procedure

All four case studies support the hypothesis that IIAs render the day-to-day policy process more efficient. Three out of four case studies support the view that it is the European Parliament which is most active in advocating the adoption of IIAs. Considering the outcome of IIAs, all four case studies confirm the hypothesis that a shared perception of institutional conflict seems to be a necessary condition for the successful negotiation of an IIA. However, as the study on the budgetary procedure shows a formal adoption of an IIA does not necessarily guarantee that the (preceding) interinstitutional conflict is settled. Two of the four case studies, namely on CFSP and the legislative process, unequivocally support the main hypothesis that IIAs strengthen the role of the European Parliament in the institutional arrangement of the EU. The studies on IIAs in the field of democracy, transparency and subsidiarity as well as on budgetary procedure show more scepticism arguing that IIAs per se do not always increase the role of the European Parliament. Instead, both studies emphasise the importance of taking into account the legal and political environment of the IIA concerned.

- (ad 3) Finally, we analyse how IIAs have to be assessed in terms of democracy. Are they a means for redressing the distortions the classical model of democracy has suffered in the European Union? The results of the project provide us with no clear-cut answer to this question. In those cases where the European Parliament has succeeded to enhance 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 a parliamentary-representative model of democracy. Conversely, the strengthening of the European Parliament through IIAs can also be evaluated more critically. If informal agreements such as IIAs go beyond formal 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.

Due to the fact that IIAs display such a variety and that theoretical as well as empirical research has been 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) will pave the way for future research.