

## ***Building a common interinstitutional legislative working Space ?***

By **Emilio De Capitani** (\*)

*(\*)Former EP Official (1985-2011) in charge from 1987 to 1998 of the establishment of ITER and of the EP Legislative Observatory (OEIL)*

My today Contribution is focused on the legal basis for the establishment of a virtual common working space as a sort of "Interinstitutional Legislative Backbone" as it was created inside the European Parliament in the Nineties.

At the time, the main idea of such a "Backbone" was to bring together all the EP services dealing directly or indirectly with the EP participation to the EU Legislative management/planning. ITER, the informatic application which was built to make possible feeding and sharing all the relevant information emanating from the other institutions, the political groups or parliamentary committees and EP Plenary). ITER was designed, in a way, as a sort of "nervous" and "brain" system of the EP monitoring and managing the EU Political Cycle. Its main focus was, and still is, on "actors", "events" and "procedures" and not only on "documents" (even if ITER has a link with every piece of document received or used by the EP legislative preparatory bodies). Thanks to this permanent interactive space, for instance, ITER may sort out at any moment a tentative agenda of the EP plenary, not as a self standing word processed document, but simply as an informatic "report" bringing together in real time, all evolving informations feeded in the system.

But, before going more in detail, let me making reference to the overall Constitutional framework of EU legislative activity after the entry into force of the Lisbon treaty which has framed at primary law level the very notion of EU Legislative power.

It is worth recalling that EU Legislative activity (Ordinary Procedure art.289 and 294 of the TFEU) is now, as a rule, a joint endeavour of EP and Council (14.1 and 16.1 TEU) following an EC formal proposal and associating the Consultative bodies and National Parliaments. Needless to say, all these Institutions, actors and bodies are bound by the principle of loyal cooperation as defined by art.13 of the TEU, which, itself is complementing the same principle of loyal cooperation which shall frame the relation between the Member States and the EU institutions (art 4.2 TEU).

Such a loyal cooperation should cover all the activities before, along and after the adoption of an EU legislative act (as outlined in the 2016 Better law making Interinstitutional Agreement which, unfortunately has not yet been updated)

Let me stress that the Legislative decision making process is already highly formalised at the level of the Treaty (art 294 TFEU) and by the CJEU jurisprudence. The obligation of transparent Legislative debates and votes is clearly foreseen by art 15.2 of the TFEU and also by Regulation 1049/01 (even if the latter has not been updated to the new Treaty provisions). The legislative preparatory works have been also thoroughly examined in recent years by the CJEU jurisprudence (cases T-540/15 and T-163/21) and will again come to the fore next year (case T-590/23).

The Co-Legislator obligation of "jointly" work on the same legislative procedure should, in my opinion, trigger reorganization of the internal workflow of the EU in compliance

with art 42 of the Charter the art 298 of the TFEU (Open independent and efficient administration) and of the CJEU jurisprudence cited above. Thus the evolution of legislative related preparatory works should be visible along the Institutions's draft agendas (also at preparatory bodies level) as it is already foreseen for the Council by art 16.8 of TEU. Short and medium time planning of debates, votes, should be shared in a common Interinstitutional timeline mirroring the European Council Strategic agenda, the Council' trio presidency programme, and the co-legislators to "rolling programmes" covering a three months period updated on a monthly basis. It is worth recalling that such a permanent exchange of information on legislative preparatory works is already happening in the Commission / Council daily interaction (dating back to the Sixties and mirrored in the EC and Council Rules of Procedures). Therefore, since decades, the Commission has also established a monitoring activity at Coreper, EP Plenary and trilogues meetings which can feed a general monitoring system (without prejudice of the possible evaluations which may be still remain confidential).

To sum up, I am personally convinced that it would be feasible to frame a virtual interinstitutional cooperative environment covering the main information and documents to be shared at preparatory legislative activity level (EC DGs, EC Working rolling programme, EP and draft agendas at Committees and plenary level, CSL trio presidency, current presidency and Hersboll calendar at Council, Coreper and Working parties level..).

That having been said we all know that the reason why this is not happening is not because of the lack of technical tools or AI applications but because of lack of political will and our friends of the Office of Publications know very well how is difficult to build even a simple common documentary platform.

The need of feeding working communities is well known not only in the EP but also in the Council which has established a cooperative framework (COCON) since 2013. This project connect the 100/150 Council Working parties but, unfortunately, it deals with them as multiple sand boxes where information are shared only between the people which is deemed to have a "need to know" and not only a "right to know". Because of this working method, thousands of Council preparatory documents (coded as WK) are almost lacking from the Council Register of documents or appear from time to time in an hectic way (not to speak of the "no documents" or "without number" documents which are practically impossible to track..).

On the content of legislative preparatory documents and notably on interinstitutional "collaborative documents" there are already since years, very interesting examples at the level on the cooperation between translators/ jurists linguists. These people is working on Council and Parliament legislative "models" or "patterns" for each kind of documents (draft agenda, draft acts, amendments, consolidated texts, codification activity – with interinstitutional Legal service cooperation).

The space for further harmonization arise from the fact that the EU is a multilingual space where common thesaurus are also shared between translators of the different institutions along the negotiations of a given legislative preparatory text. In this perspective the role of the Office of Publication is essential as it is the need of further expanding the potential of the EURLEX and NatLex Systems.

Last but not least, the most interesting and recent example has been the establishment of a common space for authoring the “multicolumn documents” shared along the interinstitutional negotiations (Trilogues). Maybe the future will tell us if this first case of a joint interinstitutional document may trigger further cooperation between the co-legislators as it should be the case.