



Parliament's legislative initiative

SUMMARY *The European Commission has a near monopoly on legislative initiative in the European Union (EU), with special initiative rights for other institutions applying only in certain specific cases. However, the European Parliament (EP), and the Council, have the right to invite the Commission to present legislative proposals.*

Whilst this 'indirect' initiative right does not create an obligation on the Commission to propose the legislation requested, the Treaty of Lisbon codified the Commission's obligation to provide reasons for any refusal to follow a parliamentary initiative. Many argue in this context that Parliament could take the Commission to the Court of Justice of the EU if it fails to justify a negative decision.

Many see the EP's increasing participation in overall political planning, particularly through negotiations on the Commission's Work Programme (CWP), as a further channel for Parliament's influence on EU legislation.

It is argued that the increased role of Parliament in the legislative procedure should have reduced the need for its Members to make use of legislative initiatives. Notwithstanding that, there is a trend towards greater use of formal parliamentary legislative initiatives to assert greater influence on the political process.



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Article 225 TFEU

"The European Parliament may, acting by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties. If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons."

Parliament's initiative rights

In the legislative processes in EU Member States (MS), alongside governments, national parliaments too are empowered to propose legislation, either through a certain number of Members of Parliament, a political party group or even individual Members. At EU level, in contrast, the right to initiate legislation is reserved almost entirely for the European Commission (EC) ([Article 17\(2\) TFEU](#)).

It is suggested that the EC's initiative monopoly was originally rooted in the mistrust of the political process in post-war Europe. As a consequence, European integration and the identification of the "general interest" of the Communities were entrusted to a technocratic authority, whose decisions were to be legitimated by its expertise and performance.¹

Although in MS the power to propose legislation is in practice mostly used by the executive, many still do not consider the EP as a fully fledged legislator, comparable to

national ones, *inter alia* due to its limited right to initiate legislation.

The Treaty of Lisbon however reinforced Parliament's right to request the Commission to submit a legislative proposal. Moreover, in line with the evolving institutional balance, many expect Parliament's role in the EU's political and legislative agenda-setting procedures to develop further in the coming years.

The right to initiate legislation

The right of the EP to initiate legislation ([Article 225 TFEU](#)) was first enshrined in the Treaties with the Treaty of Maastricht. However, Parliament was already influencing the legislative agenda even before then, by introducing items to the [budget](#) and through its (non-legislative) 'initiative reports' issued to put political pressure on the Commission.

In [1990](#), Parliament demanded for itself a fully fledged initiative right, not dependent on the Commission, to address the alleged democratic deficit in the then Communities. This question was discussed again within the European Convention. However, under pressure to confer the same right on the Council, which, it was feared, might dilute the initiative right of the Commission and complicate the legislative procedure, EP negotiators dropped their demands for a 'direct' initiative right.

Nature of the legislative initiative right

Parliament's initiative right under Article 225 TFEU applies to any EU act within the Treaties, and not only to policy areas where legislation is adopted under the ordinary legislative procedure. The only requirement is that the EC must have the right to propose legislation in the area concerned.

'Indirect' initiative right

Parliament's right to initiate legislation is an 'indirect' one as it only gives Parliament the possibility to "invite" the Commission to submit a legislative proposal. A similar 'indirect' initiative right is also conferred upon the Council (Article 241 TFEU), which may ask the Commission to undertake pre-legislative "studies" of *inter alia* economic, social and legal circumstances and to submit to it any appropriate proposals. The Regulation on registration, evaluation and authorisation of chemicals (REACH), for instance, was adopted after a Council initiative. The Lisbon Treaty also gave the right of initiation to at least 1 000 000 EU citizens through a [European Citizens' Initiative](#) (Article 11(4) TEU).

The Lisbon Treaty strengthened Parliament's initiative right by introducing the obligation for the Commission to give **reasons** for any refusal to propose legislation following a request. However, even before this provision came into force, Parliament had managed to secure for itself a stronger position *vis-à-vis* the Commission through **inter-institutional agreements**. The

Commission, for instance, committed itself in a [1995 Code of Conduct](#) to "duly reason on a case-by-case basis" its decisions on Parliament's requests.²

EC's obligation to submit a proposal?

The question whether the Commission is obliged to submit a legislative proposal further to Parliament's "invitation" has been disputed in the legal literature. Some scholars argue that adoption of an initiative legislative report by the required absolute majority in the EP, as well as the political accountability of the Commission *vis-à-vis* the Parliament, places an obligation on the Commission to react. The majority of academics, however, draw an analogy with the initiative right of the Council (Article 241

Parliament's special initiative rights

Under the Treaties, the EP has a number of special initiative rights, where it can make formal proposals for legislation – mainly concerning its own organisation, functions and the European elections.

TFEU), where no absolute obligation exists, as well as to the historical origins of the provision and argue that it is of a non-binding nature.

Codification, with the Lisbon Treaty, of the Commission's **obligation to reason** its decision not to submit a proposal establishes that the Commission is not bound to Parliament's initiative. The obligation to inform Parliament about the reasons for rejecting an initiative is however seen by some as a reflection of Parliament's increasing control powers vis-à-vis the Commission.³

Follow-up of Parliament's legislative initiatives

Despite the discretion conferred upon the Commission, over the years Parliament has gained a commitment from the Commission on its follow-up to Parliament's legislative initiatives.

The Commission committed itself in the 2010 [EP-EC Interinstitutional Framework Agreement](#)⁴ to report on the concrete follow-up of any EP legislative initiative within **three months** after its adoption in plenary. Moreover, the Commission agreed to come forward with a legislative proposal at the latest within **one year** or to include the proposal in its next year's Work Programme (recital 16). This has been assessed by many commentators as a decisive restriction of the Commission's discretion regarding Parliament's legislative requests. Some stress that the Commission will no longer be able to play 'waiting games' with Parliament as far as controversial legislative initiatives are concerned. Many [recall](#) in this context the Commission's alleged delaying tactics with Parliament's 2008 proposal to regulate hedge funds.

Parliament's [European Added Value Unit](#) (EAVA) provides European Added Value [assessments](#) to set out in detail the justification for proposals made to the Commission by the EP under Article 225 TFEU. Moreover, the EAVA Unit may conduct specific follow-up research on major legislative requests (other than those subject to legislative initiative reports) made by Parliament within the negotiations with the EC on the Commission Work Programme.

The provisions of the Framework Agreement, along with the obligation to give reasons for not making a proposal, have led many commentators to conclude that the Commission is obliged to take action on a Parliamentary legislative initiative. At a minimum, the Commission has to explain its follow-up and any negative decision.⁵

Many scholars argue therefore that Parliament could lodge an action for **failure to act** pursuant to article 265 TFEU with the Court of Justice of the EU if the Commission failed to take any action upon a Parliament's request.⁶ Recourse to the Court could not result in obliging the Commission to submit the proposal requested, but would at least oblige the Commission to consider Parliament's request.⁷ It has also been argued that the political consequence of a failure by the EC to reason sufficiently the rejection of Parliament's request could be cause for a motion of censure on the Commission's activities (Article 234 TFEU).⁸

Procedure

The Treaties leave the arrangements for the exercise of the initiative right with the Parliament. According to Parliament's Rules of Procedure (RoP) ([Rule 42](#)), the right to table a legislative proposal is conferred upon any Member and can be tabled together by up to 10 Members. Rule 42(1) establishes that a resolution to request the Commission to submit a legislative proposal is always adopted on the basis of a **legislative own-initiative report**.⁹ The proposal needs to specify the legal base for the proposed draft act. It is submitted to the President of the Parliament who may refer the proposal for an opinion on the appropriateness of the legal base to the Legal Affairs Committee.

If the proposal is admissible, the President refers it to the responsible committee for further consideration. The Committee must decide whether to draft an initiative report within three months. If it decides to do so, it must then gain authorisation from the Conference of Presidents, unless more than half of all Members have signed the proposal, in which case such authorisation is deemed to have been granted.

In order for a resolution requesting the Commission to submit a proposal to be adopted, an **absolute majority** of all Members is necessary in plenary. The resolution should include recommendations on the content of the proposal requested, and respect fundamental rights and the principle of subsidiarity. Where a proposal has financial implications, Parliament should also indicate how sufficient financial resources could be provided. It may set a deadline for the Commission to submit such a proposal.

New channels for Parliament's say on the legislative agenda

Changes in the institutional balance

Neither the Treaty of Lisbon nor previous treaties introduced formal changes to the right of the Commission to initiate legislation. However, [many](#) argue that the expanded use and consolidation of co-decision, now the ordinary legislative procedure, has in practice led to the gradual erosion of the Commission's monopoly of initiative. It has been argued that even though the Commission possesses a quasi-monopoly over the formal right of legislative initiative, it shares the right of political initiative with the European Council, the Council and the EP.¹⁰

Some commentators, however, regard the reduction of the Commission's role as the only policy developer, *inter alia* in favour of an elected institution such as the EP, as a natural evolution of the democratisation

process and as a "maturing of the Union's institutional set-up".¹¹

Role of the EP in legislative planning

The other institutions, and in particular the Parliament, often push their political initiatives within the legislative programming and agenda-setting process. Whilst the EC has a monopoly over formal legislative initiative, it "shall initiate the Union's **annual and multiannual** programming with a view to achieving **inter-institutional agreement**" (Article 17(1)5 TEU). Under the [2010 EP-EC Framework Agreement](#) the Commission must take into account the priorities expressed by Parliament and justify any departure from the proposals set out in the Commission Work Programme (CWP). In this way, Parliament's contribution towards shaping the CWP results directly in a greater political influence on the legislative initiatives to be submitted by the Commission. Calls have been voiced for further institutionalisation of this [consultative process](#).

The timetable for the CWP is set out in [Annex 4 to the EP-EC Framework Agreement](#). It envisages a dialogue between the Commission and the corresponding parliamentary committees. On the basis of a summary report by the Conference of Presidents on the implementation of the CWP, Parliament adopts a resolution at the July part-session, outlining its position and including in it particular requests based on legislative initiative reports. Annual legislative planning is based on structured dialogue, covering both the ongoing and future CWPs, aimed at ensuring a common understanding between the EP and Commission.

The role of Parliament in EU political-level agenda setting is also seen by many scholars to have increased through the new rules for the election of the Commission President, taking into account the elections to the EP (Article 17(7) TEU). Many argue that this may entail discussion not only on a candidate's

overall vision for the EU, but more detailed specification of the legislative programme for the entire mandate.¹²

Parliament's legislative initiatives in practice

More legislation, less initiatives

Many scholars see a relation between the number of initiatives (legislative and non-legislative) submitted by MEPs and the increasing legislative competences of Parliament. It is argued that at the time when Parliament lacked legislative competences, the former (non-legislative) 'initiative' reports as well as [written declarations](#) were the only possibility for Parliament to present its views to the public.¹³ The workload and the responsibility from Parliament's increasing legislative competences has led, according to many, to Parliament devoting the great part of its agenda to its participation in pending legislative procedures, so that less time and resources are left for new proposals.¹⁴

Moreover, it has been [suggested](#) that Parliament increasingly uses its political influence on legislative planning rather than resort to procedurally more cumbersome 'formal' legislative initiative reports.

Legislative initiatives and their follow-up

That said, [studies](#) show some revival of Parliamentary legislative initiatives in the previous (2004-09) legislature. This development is seen by many as related to the positive trend in the Commission's follow-up of Parliament's initiatives. In its 2000 resolution on the Commission's annual legislative programme, Parliament [underlined](#) that the Commission had shown "very little diligence in following up Parliament's requests by presenting a legislative proposal". In contrast, a 2009 study reported a perception amongst Parliamentary officials

that the Commission had reacted swiftly and positively to parliamentary initiatives between 2004 and 2009.¹⁵

This positive trend is attributed to Parliament's increasingly pro-active role, not only in adopting legislative initiatives but also in pursuing greater political influence on overall legislative planning. The Commission is however said to sometimes integrate parliamentary initiatives into its own priorities and to act particularly swiftly upon such initiatives.¹⁶

Among the most prominent of Parliament's (formal) legislative initiatives are: amendment of the 2001 Regulation on [public access to documents](#), the [European private company statute](#), [trans-national succession and wills](#), and the [Statute for European political parties](#). Although not based on formal legislative initiatives, the

[1997 Directive on TV without frontiers](#) as well as the [1998 ban on tobacco advertising](#) are also said to have been adopted upon parliamentary initiatives.¹⁷

Parliament adopted 29 legislative initiatives between 1994 and 2009.¹⁸ Since the beginning of the seventh mandate in 2009, 18 legislative initiative reports seeking proposals from the Commission

have been launched (see Annex).¹⁹

The way the Commission follows up Parliament's requests differs from case to case. Generally, it does include a reference to Parliament's call for legislation in its legislative proposal, should it make one.

To date, in only one case has the Commission stated that there was no economic case for presenting a legislative proposal following Parliament's request: calling for a directive on [cross-border transfer of company seats](#). It [justified](#) this, saying that "the existing legal framework already allows for the mobility of companies". Since Parliament voted its

A 2012 EP resolution [urged](#) MEPs to use legislative own-initiative reports rather than **written declarations** for proposals calling for legislative action, noting that while written declarations are useful for raising public awareness, legislative initiatives grant a "real opportunity to influence Union legislation".

report in 2012, the European Added Value Unit (then newly established) has returned to the subject, delivering an assessment in 2013. This finds new economic, political and legal arguments in favour of the proposed measure, countering the Commission's 2007 impact assessment.

Further reading

[The Power of Initiative of the European Commission: A Progressive Erosion?](#) / P Ponzano, C Hermanin, D Corona, 2012

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Endnotes

- ¹ [The Treaty of Lisbon: A Second Look at the Institutional Innovations](#) / P Broin, P M Kaszinsky, CEPS, 2010, p. 53. Some argue that the main reason why – different from national practices – the EP was not conceived as the initiator of the legislative process, was that smaller Member States were not sufficiently represented in it to defend their interests. See e.g. [The Power of Initiative of the European Commission: A Progressive Erosion?](#) / P Ponzano, C Hermanin, D Corona, 2012, p. 7.
- ² The 1990 and 1995 Codes of Conduct have been replaced by Inter-institutional Framework Agreements between Parliament and the Commission.
- ³ [Kommentar zum Vertrag über die Europäische Union und Vertrag über die Arbeitsweise der Europäischen Union](#) / R Geiger, D-E Khan, M Kotzur, Article 225, 2010, p. 736.
- ⁴ Inter-institutional Framework Agreements have been concluded bilaterally, rather than between the three institutions, at the beginning of the new parliamentary term to govern relations between the new Commission and Parliament. See [Building Parliament: 50 years of European Parliament history: 1958-2008](#) / Y Mény, EUI, 2008, p. 196.
- ⁵ [Streinz Kommentar](#) zum Vertrag über die Europäische Union und Vertrag über die Arbeitsweise der Europäischen Union, 2012, Article 225, marginal number 4.
- ⁶ *ibidem*, marginal number 5. Parliament filed an [action](#) for failure to act against the Commission in 1993 due to the lack of proposals by the Commission for the implementation of free movement of persons in the EU. However, the complaint was not based on Parliament's initiative right. The Court suspended the action after the Commission submitted in 1994 and 1995 several proposals for directives on freedom of movement.
- ⁷ [EU-Verträge Kommentar](#) / C O Lenz, K-L Borchardt, Article 225, 2013, p. 2512.
- ⁸ [Das Recht der EU. EU Arbeitsweisevertrag](#) / Grabitz/ Hilf / Nettesheim, 2013, Article 225, marginal number 14.
- ⁹ Legislative own-initiative reports are one of several types of own-initiative reports. The procedure for authorising Committees to draft own-initiative reports are set out in a [Decision](#) of the Conference of Presidents of 12 December 2002.
- ¹⁰ [The Treaty of Lisbon: A Second Look at the Institutional Innovations](#) / op. cit., p. 52.
- ¹¹ *ibidem*, pp. 53, 54.
- ¹² [EU law : text, cases, and materials](#) / P Craig, G De Burca, 2011, p. 122. See also [Preparing for complexity. European Parliament in 2025](#) / European Parliament Secretary General, 2013, p. 192
- ¹³ [Das Initiativrecht der Europäischen Kommission](#) / C von Buttlar, 2003, p. 222.
- ¹⁴ *ibidem*. See also [The European Parliament after Lisbon: Policy-making and Control](#) / A Maurer, EU – CONSENT Constructing Europe Network, 2008, p. 17.
- ¹⁵ [Strength in numbers? An evaluation of the 2004-2009 European Parliament](#) / S Hagemann, EPC, 2009, p. 15...
- ¹⁶ [Initiation of EU Legislation](#) / UK House of Commons, 2008, p. 101.
- ¹⁷ [The European Parliament](#) / R Corbett, F Jacobs, M Shackleton, 2011, p. 267
- ¹⁸ *ibidem*, pp. 265-266.
- ¹⁹ Some of these legislative initiative reports were carried over from the previous legislature.

Annex: Legislative initiative reports inviting proposals from the Commission launched in the seventh legislature

Date referral to Committee announced in plenary		Committee responsible
11/11/2009	Amendment of Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II) - resolution 10 May 2012	JURI
11/11/2009	Proposed interim measures for the freezing and disclosure of debtors' assets in cross-border cases - resolution 10 May 2011	JURI
21/01/2010	Cross-border crisis management in the banking sector - resolution 07 July 2010	ECON
08/07/2010	Improving the economic governance and stability framework of the Union, in particular in the euro area - resolution 20 October 2010	ECON
20/01/2011	Insolvency proceedings in the context of EU company law - resolution 15 November 2011	JURI
10/03/2011	14th company law directive on the cross-border transfer of company seats - resolution 02 February 2012	JURI
17/11/2011	Application of the principle of equal pay for male and female workers for equal work or work of equal value - resolution 24 May 2012	FEMM
15/03/2012	Access to basic banking services - resolution 04 July 2012	ECON
15/03/2012	Statute for a European mutual society - resolution 14 March 2013	JURI
15/03/2012	Law of Administrative procedure of the European Union - resolution 15 January 2013	JURI
20/04/2012	Information and consultation of workers, anticipation and management of restructuring - resolution 15 January 2013	EMPL
13/09/2012	Towards a genuine Economic and Monetary Union - resolution 20 November 2012	ECON
25/10/2012	Better governance for the single market - resolution 07 February 2013	IMCO
17/01/2013	Combating violence against women - awaits committee decision	FEMM
18/04/2013	EU donor coordination on development aid - awaits Committee decision	DEVE
10/06/2013	Parliament's rights in the appointment procedure of future Executive Directors of the European Environment Agency - amendment of Article 9 of Regulation (EC) No 401/2009 on the European Environment Agency and the European Environment Information and Observation Network - resolution 11 September 2013	ENVI
13/06/2013	Review of the European Arrest Warrant - awaits committee decision	LIBE

12/09/2013	European system of financial supervision review - awaits committee decision	ECON
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NB Work on a report on "The European Code of Private International Law" by the Legal Affairs Committee was authorised by the Conference of Presidents in 2012, but the report has since been postponed to the next legislature. Moreover, this list does not include reports by the Constitutional Affairs Committee in areas subject to Parliament's special initiative rights established by the Treaties, and following the procedure of Rule 41.