BRIEFING

European Parliament

Understanding the European Commission's right to withdraw legislative proposals

SUMMARY

Although the European Commission exercises its right to withdraw a legislative proposal sparingly, doing so may become a contentious issue, particularly where a legislative proposal is withdrawn for reasons other than a lack of agreement between institutions or when a proposal clearly becomes obsolete – such as a perceived distortion of the purpose of the original proposal.

Closely connected with the right of legislative initiative attributed to the Commission under the current Treaty rules, the European Court of Justice issued a judgment on the matter in case C-409/13. The Court spelled out the Commission's power to withdraw a proposal relative to the power of the two co-legislators, and also indicated the limits of this power. In this sense, the Court considers the Commission's power to withdraw proposals to be a corollary of its power of legislative initiative, which must be exercised in a reasoned manner and in a way that is amenable to judicial review.

However, the Court's judgment does not solve all the issues connected to this matter. Whilst the judgment develops the Court's arguments along the lines of the current institutional setting, academia has expressed some concern as to whether the judgment is truly in line with the recently emerged push for a higher democratic character in institutional dynamics. The forthcoming Conference on the Future of Europe may provide the opportunity to rethink some of the issues surrounding the exercise of legislative initiative; which remains a matter of a constitutional and founding nature.

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Right to withdraw a legislative proposal: General remarks

The Treaties bestow the power of legislative initiative on the European Commission (Article 17(2) of the Treaty on the European Union (TEU)), which exercises this power in a state of 'monopoly' or, considering a few exceptions, in a state of 'quasi-monopoly'.[1] Although claims[2] have been made that this power has suffered a certain degree of erosion, due to several factors including the increased application of the ordinary legislative procedure (previously, the co-decision procedure), or the increased role of the Council and European Council[3] in 'suggesting' legislative initiatives as they see fit, the power of legislative initiative remains solidly in the competence of the Commission. The particular and complex interaction in law-making between the European Commission as legislative **initiator** and the two institutional co-legislators, the Council and European Parliament, form what is often referred to as the 'Community method'.

It is acknowledged[4] that the power of legislative initiative consists of at least three main activities within the realm of the Commission's competences: the power to i) **propose** legislation; ii) **amend** legislation; and iii) **withdraw legislation**. While the first two expressions of power are less contentious as they are explicitly mentioned in the treaties (Articles 17(2) TEU and 293 of the Treaty on the Functioning of the European Union (TFEU)), the third expression, the power to withdraw, has long remained, and to a certain extent is still, rather unexplored by academia, apart from being a source of interinstitutional dispute. The possibility for the Commission to withdraw a proposal is also seldom, if ever, mentioned in the treaties, one such instance being found under Article 7(3) of Protocol 2 on the application of the principles of proportionality and subsidiarity. This provision provides that, if the reasoned opinions of national parliaments on the non-compliance of a proposal with the principle of subsidiarity reach the simple majority of the votes allocated to national parliaments, the proposal must be reviewed, and after such review, the Commission may itself decide to maintain or withdraw the proposal.

Traditionally, the Council endorsed a rather restrictive notion of the power to withdraw, limited to situations of obsolescence or changes to the material situation, while the Commission viewed it as a corollary to the power to propose legislation, and therefore to be exercised at its own discretion.[5] However, it was accepted that a new Commission resulting from European elections, could dismiss the legislative proposals of its predecessor if they were not in line with the political agenda of the new Commission.

Although the right of the Commission to withdraw a proposal was (incidentally) mentioned by the European Court of Justice (hereafter 'the Court') in Case 188/85 (para. 34), it is only with the Court's judgment of 14 April 2015 in Case C-409/13 *Council* v *Commission*, that this notion and the ensuing attached boundaries were further explored.

Case C-409/13 *Council* v *Commission*

Facts of the case

Case C-409/13 concerned the Macro Financial Assistance (MFA) extended by the EU to third countries. This is an extraordinary mechanism aimed at granting financial assistance to third countries in the form of medium or long-term loans or grants (or both) in order to face a temporary balance of payments crisis. The MFA is conceived as a complementary tool to International Monetary Fund financing and is intended to assist neighbouring countries that are culturally and politically close to the EU. As a result of the Lisbon Treaty, the mechanism ceased to be granted under the consultation procedure, but is granted under the ordinary legislative procedure (OLP) (Article 212 TFEU) instead. Since the OLP entailed inevitable delays and complexities, which is undesirable when third countries are struck by crisis, the Commission, in an attempt to increase the efficiency of this tool's adoption, proposed a framework regulation empowering the adoption of implementing acts under the comitology procedure. Implementing acts (Article 291 TFEU) are adopted through the comitology procedure, which allows the Commission to submit drafts for

approval to a committee of national experts, without the European Parliament playing a role in the procedure. Taking account of the consequence of the choice of the type of procedure proposed, Parliament put forward amendments to the effect that MFA could be granted through delegated acts (Article 290 TFEU). The adoption of delegated acts requires a higher degree of Council and Parliament involvement than implementing acts, as both institutions have the power to object their adoption and to revoke the delegation. Although implementing acts and delegated acts differ in nature, a grey zone exists between the two.

The Council, afraid to lose its control of the procedure, proposed to adopt those acts using the OLP. During the negotiations in trilogue,[6] Parliament and Council reached an agreement whereby the OLP would apply, contrary to the original Commission proposal. This decision prompted the College of Commissioners, by letter to the Council and Parliament, to withdraw the proposal. In consequence, Council (C-409/13) initiated an action for annulment of the Commission's decision to withdraw,[7] supported by some Member States, while Parliament did not take part in the procedure.

Commission and Council arguments

During the procedure before the Court, the position of the parties differed considerably as to their arguments. The Commission argued that it enjoys a quite large power to withdraw legislation based on several circumstances: scientific or other external evolutions that render the proposal obsolete; a risk that amendments in the course of the legislative procedure go beyond the object of the original proposal; or a risk that the proposal is 'denatured', or that the purpose of the original proposal is somehow defeated. In this respect, commentators[8] differentiate those grounds between **technical** and **political** withdrawals. Technical withdrawals refer to the obsolescence of a proposal, whilst political withdrawals refer to the intention not to distort or defeat the original proposal.

Conversely, Council disagreed with this approach, as the recognition of an unfettered right to withdraw for the Commission would undermine the exercise of the legislative power that Council enjoys. A discretionary right to withdraw a legislative proposal would in fact exert pressure on the exercise of legislative work, and thereby influence the exercise of the right of amendment (Article 293 TFEU). In the Council's opinion, such an outcome would violate the principle of democracy (Article 10 TEU). The power to withdraw a legislative proposal should therefore be limited to situations of obsolescence and blockage of a proposal, or where there is agreement among the EU institutions to withdraw. Council adduced the infringement of the institutional balance, the principle of sincere cooperation and the obligation to state reasons.

Judgment of the Court

In the judgment of 14 April 2015 given in case C-409/13, the Court recognised the power to withdraw on the basis of Article 17(2) TEU, read in conjunction with Articles 289 and 293 TFEU, and saw the right to withdraw a legislative proposal as a natural corollary to the Commission's power of legislative initiative, rather than linked to the power to amend its own proposals, as Article 293 provides. The Court, however, attached some constraints to the exercise of that power, excluding a generalised power of veto, which would in practice defeat the principle of conferral of powers and disrupt the institutional balance.

In the merits of the case, the Court decided that the amendments agreed by Parliament and Council introducing the OLP would have defeated the objectives of the proposal as they would have allowed the introduction of a less efficient procedure than that originally envisaged by the Commission's proposal and therefore would have deprived this latter of its *raison d'être.* The Court also identified the need for grounds to be stated that would enable the decision to withdraw to be subject to judicial review. In the Court's findings, the power to withdraw must be based on legitimate grounds, which should be supported by cogent evidence and arguments.

The Court also found that no infringement to the principle of sincere cooperation, which is codified in the treaty as a principle applicable to interinstitutional relations (Article 13(2) TEU), had been

committed. The reason for this finding is that the Commission had already manifested, in several meetings during trilogue negotiations, its intention to withdraw the proposal should Parliament and Council reach agreement – whereby the OLP would be set in motion.

Moreover, the Court found no infringement of the principle of democracy (Article 10(1) and (2) TEU) had been committed on the ground that the power of the Commission to withdraw is inseparably linked to the right of initiative, without expanding further on this point.

A crucial aspect of the Court's ruling is that concerning the time-limitation awarded to the Commission's power to withdraw. The Court[9] reiterated that according to Article 293(2) **as long as the Council has not acted**, the Commission may amend or alter its proposal at any time during the procedures leading to the adoption of an EU act. It is therefore the combined reading of Articles 17(2) TEU, 289 TFEU and 293 TFEU that leads to the conclusion that the Commission's power under the OLP is not limited to submitting a proposal and then facilitating or promoting a compromise between the two co-legislators. In the opinion of the Court, that combined reading of those articles allows the conclusion that the Commission has the power to decide whether or not to submit a legislative proposal and to determine its subject matter. However, as long as the Council has not acted, the Commission may alter, or even withdraw, the proposal. In this respect, the Court applied Article 293, which mentions only the power to amend, by analogy and in such a way as to also include the power to withdraw a proposal. The Court did not, however, expand on what it meant by the expression, contained in Article 293 'as long as the Council has not acted', leaving this aspect open to discussion and interpretation.

Reactions to the judgment in case C-409/13

The Court's judgment has been commented upon positively, although it has also been accompanied by some criticism from academia.

A first criticism[10] addresses the unclear and unspecified (in the Court's judgment) time-limit for the Commission's power to withdraw. Ritleng prefigures that such a time-limit (i.e. until the Council 'has acted') technically coincides with the Council's adoption at its first reading. Were this not to be the case, and should the Commission possess a recognised power to withdraw a proposal beyond that point, this would be tantamount to recognising a power of veto for the Commission. In Ritleng's opinion, this would constitute an infringement of the principle of democracy, since the legislative function has been entrusted to Council and Parliament, the two sources of democratic legitimacy.

Ritleng also addresses broader criticism at the outcome of the case, especially as regards the principle of democracy. Ritleng believes that the judgment did not take due account of the evolution of the institutional dynamics after the 2009 Lisbon reform, whereby the expansion of cases where the OLP applies entailed a diminished role of the Commission on the one hand, but a higher emphasis on the two co-legislators as a source of democratic legitimacy on the other. In addition, he contests that the Court did not balance the argument of efficiency (which the Commission's proposal sought) with the democratic control of the MFA. Had it done so, the Court could not have neglected to recognise that the agreement reached by Council and Parliament enhanced democratic control, which is all the more crucial in circumstances where the use of the financial mechanism is under discussion for States, such as Ukraine, where a public debate could have been necessary.

Peers[11] also expressed criticism of the judgment regarding the extent to which it emphasises 'efficiency' at the expense of democratic control over the implementation of measures deriving from the MFA. Peers also seems to consider it insufficient for the requirement of openness to be satisfied that the communication regarding withdrawal of a proposal is effected during meetings in the course of trilogue negotiations.

Chamon[12] further elaborates on the time-limit for the Commission to exercise its power to withdraw a proposal. He argues that identifying this as the conclusion of a first reading would seem rather

arbitrary, as the Commission's protection of the common interest in principle supersedes the whole legislative process. A situation could be envisaged where the proposal either fails to advance after the first reading, or is distorted after that point and Chamon questions how a withdrawal could be possible, should that be desired. In the case of a proposal being blocked after the first reading, the time constraints established by Article 294 would cause the proposal to lapse, while the *détournement* of the proposal could be avoided with a withdrawal, by interpreting that the 'acting of the Council' in fact coincides with the 'adoption of the act' by Council.

Kuijper[13] seems to acknowledge that the Court's judgment leaves the question open as to whether the Commission could, should a risk of the proposal being denatured materialise, withdraw the proposal after the first reading. Kuijper also seems to endorse the implications of the judgment whereby the intervention of the Commission could remedy a too hasty agreement by the two co-legislators during the first stage of the legislative procedure, which could distort the purpose of the initial proposal.

Follow-up to the judgment in case C-409/13

The effects of the judgment in case C-409/13, issued on 14 April 2015, were soon implemented, being incorporated one year later in the **Interinstitutional Agreement on Better Law-Making** between Parliament, Council and the Commission of 2016 ('2016 IIA'). The Rules of Procedure of the European Parliament were also modified as a consequence of the judgment, on the occasion of the broader reform of Parliament's Rules of December 2016, which took effect in January 2017.

The 2016 IIA agreement incorporated two provisions that aim at implementing the principle of sincere cooperation between institutions on the one hand and on the other, the duty to alert the other institutions of the Commission's intention to withdraw a legislative proposal.

Point II. 9 of the 2016 IIA rather echoes the wording of the Court where it establishes that:

> *... in accordance with the principle of sincere cooperation and institutional balance … when the Commission intends to withdraw a legislative proposal, … it will provide the reasons for such withdrawal, and, if applicable, an indication of the intended subsequent steps along with a precise timetable, and will conduct proper interinstitutional consultations on that basis.*

In addition, according to point II. 8 of the 2016 IIA, withdrawals of proposals are included in the Commission work programme. That provision, beyond establishing the Commission's duty to review the pending proposals and to withdraw those which are no longer required, could also be interpreted as introducing an obligation to inform or a duty to forewarn the other institutions of such an intention.

Similarly to the 2016 IIA, the Parliament's Rules of Procedure (RoP) inserted a new provision on the power to withdraw in Rule 37. Currently, this provision is contained in Rule 38(4), which provides that where the Commission intends to withdraw a proposal, the competent Commissioner should be invited by the committee responsible to a meeting to discuss that intention. The invitation may also be extended to the Presidency of the Council. Should the committee disagree with the proposal to withdraw, the Commission may be requested to make a statement before Parliament.

The insertion of these provisions has been drawn upon as an example of the intention to **'proceduralise' or 'parliamentarise' the power of withdrawal**.[14] This latter power therefore remains solidly in the hands of the Commission, as the Court had decided, although it is acknowledged that this power should be used in full recognition of all the safeguards and constraints intended to establish loyal relations between institutions.

Overview and trends of legislative proposals withdrawn in the last 15 years

In the last 15 years, the Commission has sparingly resorted to the withdrawal of proposals or legislative proposals, as this phenomenon has remained rather limited within the EU policy cycle.

Table 1 below illustrates the number of proposals created and withdrawn in the year of reference, with a breakdown between ordinary legislative procedures (OLP) and special legislative procedures (SLP). As shown, of the 1 582 OLPs initiated between 2005 and 2020, only 133 were withdrawn, equalling 8.4 % of the OLP procedures initiated. Similarly, an even lower percentage (6 %) can be observed with respect to the SLP initiated during the same period of time. Overall, it can be observed that, of the 2 336 ordinary and special legislative procedures initiated in 2005-2020, 175 of them (i.e. 7.5 %) were withdrawn.

In terms of trends, a rather higher number of proposals withdrawn than in previous years can be observed in the year immediately following the establishment of a new Commission. This is true for both 2005 and 2010, i.e. the years following the establishment of the Barroso I and II Commission, although it is less evident for the first year of the Juncker Commission (2015), where numbers of total withdrawn proposals were quite low (4). However, Table 1 captures proposals by the year of creation (not withdrawal), therefore this phenomenon might be more visible in Table 2. It is also noteworthy that as Table 1 indicates, the number of proposals initiated per year has gradually fallen, albeit with some fluctuations since 2013, and therefore the number of proposals withdrawn has also declined.

Table 1 – Proposals withdrawn by the Commission under the ordinary or special legislative procedure, by year of creation of the parliamentary procedure

Year of initiation of the proposal	OLP	SLP	Total
2005	16 (92)*	8** (128)	24 (220)
2006	5 (113)	7 (121)	12 (234)
2007	7 (103)	6 (143)	13 (246)
2008	16 (125)	1 (84)	17 (209)
2009	13 (66)	5 (68)	18 (134)
2010	19 (109)	4 (12)	23 (121)
2011	11 (173)	7 (27)	18 (200)
2012	11 (92)	2 (10)	13 (102)
2013	13 (130)	2 (17)	15 (147)
2014	10 (73)	- (7)	10 (80)
2015	4 (50)	- (18)	4 (68)
2016	2 (125)	- (30)	2 (155)

2017	5 (76)	- (19)	5 (95)
2018	1 (136)	- (31)	1 (167)
2019	- (27)	- (19)	- (46)
2020	- (92)	- (20)	- (112)
Total	**133 (1.582)**	**42 (754)**	**175 (2.336)**

Source: EPRS based on the OEIL database

* Figures in parentheses indicate the total number of proposals under OLP or SLP initiated in the year of reference.

** The numbers indicated in this table refer only to withdrawn proposals. Research options available on the hyperlinked OEIL database webpage allow the aggregate of 'lapsed and withdrawn' proposals to be captured. Therefore, the number of proposals shown on the OEIL webpage might differ from that indicated in the table, as this latter considers only proposals withdrawn.

The Commission's intention to withdraw proposals of various types (legislative or non-legislative) is formalised in its work programme, which also gives an indication of the reason for which the Commission seeks to withdraw them.

In the Commission's work programme (CWP) for 2008 and 2009, withdrawals are indicated in Annex III. As of 2010, they are indicated in Annex IV (with the exception of 2012 and 2013).

Table 2 considers the proposals from the timing perspective of the year in which they are withdrawn or intended to be withdrawn and provides a breakdown into proposals *tout court* and legislative proposals, in this way differentiating between non-legislative enactment (NLE) or recommendations and true legislative proposals, for example.

Table 2 shows a very close alignment between proposals intended to be withdrawn and effectively withdrawn in the years between 2007 and 2020. Likewise, the same alignment can be observed between legislative proposals intended to be and effectively withdrawn. This alignment translates into an overlap of numbers in 2007, 2008, 2009, 2011, 2014, 2018 and 2019, as in these years the same number of proposals (and legislative proposals) intended to be withdrawn as indicated in the CWP were effectively withdrawn as announced in the Official Journal (OJ).

A similar observation to that for Table 1 can be made for Table 2, concerning a recurrent pattern that points to a higher number of either intended or effectively withdrawn proposals, including legislative proposals, in the years immediately following the establishment of a new Commission or in the first year of the new Commission's term. As Table 2 below shows, this clearly occurs in 2010, 2015, and 2020, where respectively 32, 76 and 59 proposals respectively can be observed to be effectively withdrawn as published in the OJ, for example. In all three years, the number is sharply higher than the preceding four years.

This higher peak phenomenon can be explained by the fact that the Commission has claimed the freedom to revise which of the former Commission's legislative proposals to retain or to discard, based on new political priorities. This freedom to retain or to dismiss the legislative work of the previous Commission is also referred to as a right to 'political discontinuity'. The Commission referred to this right in the recent Commission work programme for 2020 (COM(2020)37) of 29 January 2020.[15] This notion is in turn derived from Article 39 of the (2010) Framework Agreement on relations between the European Parliament and the European Commission, which states that 'the Commission shall proceed with a review of all pending proposals at the beginning of the new Commission's term of office, in order to politically confirm or withdraw them, taking due account of the views expressed by Parliament'. However, this principle of **political 'discontinuity'** applies not

only to the Commission's activity but also to unfinished parliamentary business, which identifies legislative proposals on which Parliament has not yet declared its consent or adopted its first reading. Rule 229 of Parliament's Rules of Procedure states that all Parliament's unfinished business is deemed to have lapsed at the end of the last part-session before the European elections and entrusts the Conference of Presidents with the power to resume or continue with specific legislative initiatives upon a reasoned request by the parliamentary committees.[16]

Finally, as Table 2 illustrates, it can be observed that the relatively high number of proposed withdrawals in 2014 is due to the implementation of the Regulatory Fitness and Performance Programme (REFIT) initiative. The Commission launched the REFIT initiative in 2012, intending to offer a simplified and clearer regulatory framework for businesses, workers and citizens. Accordingly, a thorough exercise of scrutiny of EU legislation took place, leading to the identification of outdated proposals or those lacking support, for which withdrawal was consequently proposed.

Table 2 – Intended and effective withdrawals of proposals and legislative proposals contained in the CWP (2007-2021) and the Official Journal of the EU (2007-2021)

Year in which proposals are intended to be withdrawn as indicated in the CWP for the relevant (below) year	Proposals intended to be withdrawn according to the CWP	Legislative proposals intended to be withdrawn according to the CWP	Withdrawn proposals as published in the Official Journal	Withdrawn legislative proposals as published in the Official Journal
2021	14 (Annex IV CWP)	8	-	
2020	32 (Annex IV CWP)	20	31 (OJ C 321, 29.9.2020)	19
2019	10 (Annex IV CWP)	9	10 (OJ C 210, 21.6.2019)	9
2018	15 (Annex IV CWP)	10	15 (OJ C 233, 4.7.2018)	10
2017	19 (Annex IV CWP)	10	17 (OJ C 160, 20.5.2017) 1 (OJ C 64, 28.2.2017)	9
2016	20 (Annex IV CWP)	11	13 (OJ C 155, 30.4.2016) 1 (OJ C 422, 17.11.2016)	6
2015	80 (Annex IV CWP)	55	73 (OJ C 80, 7.3.2015) 2 (OJ C 257, 6.8.2015) 1 (OJ C 392, 25.11.2015)	51
2014	53 (Annex IV CWP)	53	53 (OJ C 153, 21.5.2014)	53
2013	14 (Annex III CWP)	7	15 (OJ C 109, 16.4.2013)	8
2012	17 (Annex III CWP)	15	16 (OJ C 156, 2.6.2012)	15
2011	23 (Annex IV CWP)	17	23 (OJ C 225, 30.7.2011)	17
2010	59 (Annex IV CWP)	35	59 (OJ C 252,18.9.2010)	38
2009	20 (Annex III CWP)	13	20 (OJ C 71, 5.3.2009)	13

2008	30 (Annex III CWP)	28	30 (OJ C 68, 13.3.2008)	28
2007	10 (Annex to CWP)	7	10 (OJ C 66, 22.3.2007)	7

Source: European Commission website and Eur-lex

Whilst the previous two tables give an aggregate overview of the numbers of proposals withdrawn, Table 3 below gives a granular picture of the **reasons for which legislative proposals have been withdrawn** from 2007 to 2020, according to the CWP.

Although academia[17] has identified further political motives for withdrawals of proposals (e.g. de-politicisation or policy-seeking), the reasons given by the Commission can be classified in three categories. Under the term '**obsolete**', the Commission gathers those proposals which became unnecessary when superseded by others, where the legal basis was no longer applicable, or where the Commission considered that the motivation for proposing the legislative act in question no longer existed.

With the term '**lack of agreement**', the Commission refers to those proposals which were withdrawn because of lack of agreement over several years, either in Council or in Parliament.

With the '**denaturation**' or '**distortion**' of the **original proposal** label, the Commission intends to single out those proposals with respect to which the amendments proposed by the co-legislators in the course of the legislative procedure were believed to have changed the proposal to such an extent as to defeat its original purpose.

'Obsolescence' and 'lack of agreement' embody what doctrine and practice have referred to as **technical withdrawal**, while 'denaturation' or 'distortion' equals the instance of **political withdrawal**.

Table 3 – Reasons to withdraw legislative proposals according to the CWP (2007-2021)

Year of withdrawal	Legislative proposals withdrawn	Obsolete according to CWP	Lack of agreement according to CWP	Denaturation or distortion of the original proposal according to CWP
2021*	8	5 (63 %)	3 (37 %)	-
2020	19	13 (68 %)	5 (26 %)	1 (5 %)
2019	9	9 (100 %)	-	-
2018	10	8 (80 %)	2 (20 %)	-
2017	9	9 (100 %)	-	-
2016	6	3 (50 %)	2 (33.33 %)	1 (16.6 %)
2015	51	37 (73 %)	13 (25 %)	1 (2 %)
2014	53	45 (85 %)	8 (15 %)	-
2013	8	5 (63 %)	2 (25 %)	-

2012	15	12 (80 %)	3 (20 %)	-
2011	17	17 (100 %)	-	-
2010	38	38 (100 %)	-	-
2009	13	13 (100 %)	-	-
2008	28	28 (100 %)	-	-
2007	7	7 (100 %)	-	-

Source: EPRS based on CWP available on Commission's website

* Data for 2021 refer to legislative proposals intended to be withdrawn by the Commission, not to those effectively withdrawn.

Table 3 shows that, in the Commission's view, **'obsolescence' is the main reason** for the withdrawal of the vast majority of proposals, as the percentage of withdrawals falling under this category ranges between 50 % and 100 %. In addition, in seven years of those considered in Table 3, obsolescence was the sole ground under which legislative proposals were withdrawn (2019, 2017, 2011, 2010, 2009, 2008 and 2007). **'Lack of agreement'** stands as the **second most recurrent ground** for withdrawal, being the origin of a much smaller ratio of withdrawals. This ratio, albeit not negligible, i.e. ranging from 15 % to 37 % of the withdrawals, still represents a much smaller number of withdrawals compared to those withdrawn for 'obsolescence', not least because in 7 of the 15 years considered in Table 3, 'lack of agreement' does not even appear as a ground to withdraw. **'Denaturation'** of proposal, has been **extremely sporadically claimed** as a reason for withdrawal, as it has been reported by the Commission in only 3 cases in the 15 years considered in Table 3.

Conclusions

The right to withdraw a legislative proposal may be motivated by different purposes, on the one hand to 'clean the slate' (when due to obsolescence or lack of agreement) and allow a new legislative cycle to begin, and on the other, to prevent the adoption of legislative acts (when due to distortion of the original proposal). As much as the withdrawal may be a useful tool in the first case, it can become a **politically contentious matter** in the second. In deciding how such power to withdraw may be exercised by the Commission, the judgment of the Court in case C-409/13 adds another crucial piece to the notion of legislative power and legislative initiative enjoyed by the **Commission** with respect to the two co-legislators. The judgment fortifies the Commission's position as the institution that possesses a **complete power of legislative initiative**, of which the power to withdraw is considered corollary by the Court. Such a notion, however, **is not unbound**, as it must **be exercised within the temporal window offered by a lack of a Council position**. Moreover, it **cannot translate into a veto power, but must be reasoned and amenable to judicial review.** However, as academia has highlighted, the judgment seems to leave the issue of the power of withdrawal after the first Council position unresolved.

Indeed, the safeguards identified by the Court, as reasonable as they may be, are highly influenced by the EU's particular *sui generis* institutional construction, in variance with common practice and rules in national parliaments, whereby it is these latter institutions and the chambers thereof, that usually enjoy the monopoly of the legislative initiative, which also includes the right to withdraw a proposal.

Due to historical and rational reasons, the construction of the EU followed the logic whereby the legislative initiative was bestowed upon an 'independent' institution, the European Commission, custodian of the general interest of the EU. This approach has developed in more recent times to envisage the possibility that other (democratically representative) institutions also be granted the

right of initiative. In this respect, Parliament advocates granting the right of legislative initiative to the European Parliament and to Council. The Conference on the Future of Europe, now starting in March 2021, may present the ideal opportunity for a public discussion on this and other seminal reforms of the EU architecture.

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ENDNOTES

1 N. Lupo, The Commission's Power to Withdraw Legislative Proposals and its 'Parliamentarisation', Between technical and Political Grounds, *European Constitutional Law Review*, 14, p. 311-331, 2018.
2 P. Ponzano, C. Hermanin, D. Corona, the Power of Initiative of the European Commission: A Progressive erosion? *Notre Europe*, No 89, 2012.
3 R. Drachenberg with S. Schroecker, The European Council's role in the EU policy cycle, EPRS, European Parliament, September 2019.
4 N. Lupo, op. cit. p. 316.
5 P.J. Kuijper, Commission's right of withdrawal of proposals: Curtailment of the Commission's right or acceptance by the Court of the Commission's long-standing position? *ACELG blog*, June 2015.
6 Trilogues are informal tripartite meetings on legislative proposals between representatives of the Parliament, the Council and the Commission.
7 As indicated in the Advocate's General opinion of 18 December 2014 (paragraph 15), this decision was taken by the College of Commissioners at the 2045th Commission's meeting, according to Article 293(2) TEU.
8 See N. Lupo, op. cit. p. 325.
9 Points 72-74 of the judgment.
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