REPORT

on Parliament’s right of initiative
(2020/2132(INI))

Committee on Constitutional Affairs

Rapporteur: Paulo Rangel

Rapporteur for the opinion (*):
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(*) Associated committee – Rule 57 of the Rules of Procedure
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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on Parliament’s right of initiative
(2020/2132(INI))

The European Parliament,

– having regard to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU),


– having regard to its resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty3,

– having regard to its resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union4,

– having regard to its resolution of 13 February 2019 on the state of the debate on the future of Europe5,

– having regard to its resolution of 15 January 2020 on the European Parliament’s position on the Conference on the Future of Europe6,

– having regard to its resolution of 18 June 2020 on the European Parliament’s position on the Conference on the Future of Europe7,

– having regard to the political guidelines for the next European Commission 2019-2024 presented by its President, Ursula von der Leyen, on 16 July 2019 entitled ‘A Union that strives for more – My agenda for Europe’,

– having regard to the study of July 2020 commissioned by Parliament and entitled ‘The European Parliament’s right of initiative’,

– having regard to Rule 54 of its Rules of Procedure,

having regard to the opinions of the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs,

having regard to the report of the Committee on Constitutional Affairs (A9-0142/2022),

A. whereas Article 15 of the TEU specifies that the European Council must not exercise legislative functions;

B. whereas Parliament is the only EU institution democratically and directly elected by the citizens; whereas, contrary to the constitutional systems of Member States, Parliament has no general direct right of legislative initiative, which, pursuant to Article 17(2) of the TEU, lies with the Commission, except where the Treaties state otherwise;

C. whereas the Treaties grant an indirect right of legislative initiative as, pursuant to Article 225 of the 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’;

D. whereas Article 225 of the TFEU also stipulates that ‘if the Commission does not submit a proposal, it shall inform the European Parliament of the reasons’;

E. whereas Parliament’s own-initiative reports and resolutions constitute an important tool for setting the EU political agenda;

F. whereas, under the 2010 Framework Agreement, the Commission committed to reporting on the concrete follow-up on any Parliament request to submit a proposal pursuant to Article 225 of the TFEU within three months following adoption of the relevant resolution in plenary; whereas, when the Commission does not comply with this obligation, it could constitute failure to act pursuant to Article 265 of the TFEU;

G. whereas only one third of Parliament’s legislative and non-legislative initiative procedures up to 2019 can be considered successful and most legislative own-initiative reports (INLs) adopted since 2011 were not followed up by the Commission through the submission of any appropriate proposals until 2019;

H. whereas the Interinstitutional Agreement on Better Law-Making stipulates that the Commission must adopt a specific communication on the follow-up to such requests and that if it ‘decides not to submit a proposal in response to such a request, must provide, where appropriate, an analysis of possible alternatives and respond to any issues raised by the co-legislators in relation to analyses concerning “European added value” and concerning the “cost of non-Europe”’;

I. whereas the Treaties grant Parliament direct rights of initiative on its own composition, the election of its Members and their Statute, the Statute of the European Ombudsman and Parliament’s right of inquiry, for which a special procedure applies, and on

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initiating procedures related to respect for the rule of law and Treaty revisions;

J. whereas Parliament’s direct rights of initiative are far from sufficient to allow it to represent the voice of citizens, civil society and the social partners within the European institutions, effectively leaving the Commission with a monopoly on the exercise of legislative initiative;

K. whereas a more prominent role for Parliament in setting the Union’s agenda by strengthening Parliament’s right of initiative also requires an extension of the ordinary legislative procedure to other policy fields and reinforcing interinstitutional cooperation;

L. whereas Parliament produced a particularly ambitious legislative initiative on the establishment of an EU mechanism on democracy, rule of law and fundamental rights, adopted in October 2016 and 2020 by inviting the Commission and the Council to enter into negotiations with Parliament on an interinstitutional agreement in accordance with Article 295 of the TFEU; whereas the rule of law is one of the areas where Parliament’s right of initiative could be developed;

M. whereas granting Parliament a direct right of initiative would rebalance the Union's legislative process;

N. whereas empirical evidence shows that the success of Parliament’s initiatives depends essentially on the decision-making procedure followed by the Council (qualified majority or unanimity);

O. whereas in its resolution on the state of the debate on the future of Europe, Parliament recalled that ‘in the event of a possible future revision of the Treaties, the right of legislative initiative could also be attributed to Parliament as the direct representative of EU citizens’; whereas the Conference on the Future of Europe is, among other things, a historic opportunity to promote the reform of European democracy and the Treaties with the involvement of citizens;

P. whereas on the digital platform of the Conference on the Future of Europe, European democracy is one of the issues which obtains the most contributions from citizens;

Q. whereas in its resolution on possible evolutions of and adjustments to the current institutional set-up of the European Union, Parliament proposed ‘that in line with the common practice in a number of Member States, both chambers of the EU legislature, the Council and, in particular, the Parliament, as the only institution directly elected by citizens, should be given the right of legislative initiative, without prejudice to the basic legislative prerogative of the Commission’;

R. whereas Parliament’s Rules of Procedure determine the rules for drafting and adopting

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resolutions under Article 225 of the TFEU; whereas a distinction in practice exists between own-initiative (INI) and INL reports; whereas the 2010 Framework Agreement and the Interinstitutional Agreement on Better Law-Making do not make such a distinction;

**The direct right(s) of initiative of Parliament established by the Treaties**

1. Emphasises and regrets that Parliament, despite being the only directly elected EU institution, does not have a general direct right of initiative;

2. Underlines that the Treaty of Lisbon already bestows direct rights of initiative on Parliament, acknowledging its competence to self-organise, its scrutiny function and its democratic legitimacy as the only directly elected EU institution;

3. Highlights that in an institutional set-up where Parliament does not yet have a general direct right of initiative, the special legislative procedures that it initiates have special constitutional dignity and primacy over ordinary legislative procedures;

4. Recalls that in the past 20 years, Parliament has repeatedly made use of such special legislative rights, insufficient as they are; regrets, however, that these special legislative procedures have too seldom been successfully concluded due to the lack of agreement by the Commission and the Council12;

5. Highlights that Parliament made use of its right of initiative by launching a rule of law procedure under Article 7 of the TEU; condemns the Council’s lack of follow-up to this procedure and to Parliament’s subsequent, repeated calls for action and points out that the Council’s failure to make effective use of Article 7 of the TEU continues to undermine the integrity of common European values, mutual trust and the credibility of the Union as a whole; deems it essential to ensure a full and immediate implementation of Regulation 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget while respecting Parliament’s role as co-legislator; considers that the Union remains structurally unprepared to counter backsliding on democracy, the rule of law and fundamental rights and their violation in the Member States; believes that the deterioration on these issues in various Member States has shown the need for genuine interinstitutional cooperation; deeply regrets the lack of proper response to Parliament’s initiative on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights and reiterates its call on the Commission and the Council to enter without delay into negotiations with Parliament on an interinstitutional agreement;

6. Reiterates its reasoned proposal on the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded; reiterates its deep concern that the standard procedures for hearings do not ensure equal treatment of Parliament, on the one hand, and the Commission and one third of the Member States, on the other, when it comes to presenting a reasoned proposal and in terms of access to information; expresses its regret that the hearings have not yet resulted in any significant progress on addressing clear risks of a serious breach of EU values;

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12 Ibid., pp. 34-35.
7. Regrets that three Member States have not yet ratified the amended European Union electoral law adopted in 2018;

8. Regrets, further, that the Council has to date refused to negotiate with Parliament on its right of inquiry, although this contradicts Article 226 of the TFEU and the principle of sincere cooperation, leaving a provision of the Treaty unimplemented despite a duty to do so;

9. Welcomes the adoption of the new Statute of the European Ombudsman, following Parliament’s initiative, which ensures that the Statute is consistent with the Treaty of Lisbon;

The rights of initiative of the Council and the European Council established by the Treaties

10. Regrets that in the area of economic and monetary policy, Article 121 of the TFEU merely provides for Parliament to be informed; also notes that the Council has exercised Article 121 of the TFEU as a de facto right of initiative in this area, and demands further responsibilities for Parliament as the only EU institution representing the voice of the citizens;

11. Acknowledges, furthermore, that Article 68 of the TFEU has been exercised as a de facto right of initiative by the European Council in the area of freedom, security and justice; highlights the fact that the European Council is not a co-legislator, and that the adoption by the European Council of multiannual operational programmes in this area without any obligation to consult Parliament or the Commission should be revised given the particularly serious impact of these policies on citizens’ fundamental rights; calls for Parliament and the Council to be given this competence on equal terms in an upcoming Treaty revision;

12. Notes that pursuant to Article 76 of the TFEU, the Council, through a quarter of its Member States, has a right of initiative that is concurrent with that of the Commission on cooperation on administrative law and police and judicial cooperation in criminal matters;

13. Notes that these developments are part of a wider trend toward an increasing imbalance between the Council, the European Council and the Commission in decision-making power across all policy fields, to varying degrees; stresses that this practice erodes the institutional architecture of the EU as established by the Treaties; believes that the balance should be restored in favour of democratic legitimacy through equivalent rights for Parliament;

14. Notes with concern the lack of transparency in the use of Council’s indirect right of initiative laid down in Article 241 of the TFEU; calls on the Council to publish, in a user-friendly manner and in all the official languages of the European Union, all requests made using this legal basis and insists on its call for the Council to ensure the highest possible level of transparency in all its acts\(^\text{13}\), with full adherence to the EU

\(^{13}\) Resolution of 17 January 2019 on the Ombudsman’s strategic inquiry OI/2/2017 on the transparency of legislative discussions in the preparatory bodies of the Council of the EU (OJ C 411, 27.11.2020, p. 149).
rules on access to documents;

*Parliament’s indirect right of initiative established by the Treaties*

15. Recalls that since the Maastricht Treaty, Parliament, in an acknowledgement of its unique democratic legitimacy, has had the right to ask the Commission to submit legislative proposals;

16. Notes that in accordance with Article 225 of the TFEU, requests must be within the remit of competence of the Union and that currently the Commission’s sole obligation is to inform Parliament of its reasons for not presenting a proposal;

17. Recalls that Parliament and the Commission agreed to further enhance this right through the 2010 Framework Agreement; notes that the Commission committed to report on its follow-up on Parliament requests within three months and, if so decided by the college, present a legislative proposal;

18. Believes that the time has come to show more ambitious political will and therefore calls for consideration to be given to a review of the 2010 Framework Agreement with the goal of ensuring stronger rights of initiative for Parliament;

19. Regrets that, until 2019, in its follow-up on Parliament’s legislative initiative reports adopted pursuant to Article 225 of the TFEU the Commission had only submitted legislative proposals following Parliament requests in a minority of cases; further regrets that the deadlines for the Commission to respond to Parliament requests and to put forward legislative proposals were not met in most cases;

20. Considers that the sole obligation of the Commission to inform Parliament of its reasons not to follow up on an INL adopted by a majority of Parliament’s component Members to be far too weak, and therefore welcomes in the strongest terms Commission President von der Leyen’s support for Parliament’s right of initiative and the commitment made to always respond with a legislative act to Parliament requests under Article 225 of the TFEU, with full respect for the principles of proportionality, subsidiarity and better law-making; expects the Commission to uphold this commitment to initiate legislation following the adoption of any such request by Parliament adopted by the majority of its component Members in an INL; considers that this commitment should be enhanced and Parliament’s power to influence the EU agenda should be strengthened;

21. Commends the current College of Commissioners on replying to all of Parliament’s

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requests in a timely manner\textsuperscript{15}, except in one case\textsuperscript{16}; highlights, furthermore, that only in one case did a request not result in a legislative proposal; considers this to demonstrate that an interinstitutional precedent has been established and expects the Commission to continue to honour its commitment to reply to all requests;

22. Believes that reflection about Parliament’s right of initiative has to go hand in hand with wider reflection on political initiative in the EU decision-making process;

23. Suggests that the follow-up on European Citizens’ Initiatives (ECIs) should be improved and stresses that if the Commission has failed to publish its intentions within the given deadlines, or has set out in a communication that it intends not to take action on an ECI which has met the procedural requirements and is in line with the Treaties, in particular the core values of the Union enshrined in Article 2 of the TEU, Parliament should be able to decide to follow up the ECI with an INL;

\textit{The future of Parliament’s right(s) of initiative}

24. Is deeply convinced that a general and direct right of initiative would further strengthen the democratic legitimacy of the Union, empower Union citizens and would reflect the evolution over time of the competences of the Union and its institutions towards a stronger European democracy;

25. Is of the opinion that Parliament, as the only directly elected EU institution, should be granted the right to propose legislation;

26. Strongly believes that the Treaties should be revised so that Parliament, as the only directly elected EU institution and hence the institution that represents the voice of the citizens in the EU decision-making process, is granted a general and direct right to initiate legislation; stresses that Parliament should initiate the procedure under Article 48 of the TEU to establish such right of legislative initiative; takes the view that Parliament’s right of initiative should at least apply in those policy fields in which

\textsuperscript{15} Replies from the Commission to the following Parliament resolutions:
- resolution of 8 October 2020 with recommendations to the Commission entitled ‘Digital Finance: emerging risks in crypto-assets – regulatory and supervisory challenges in the area of financial services, institutions and markets’ (OJ C 395, 29.9.2021, p. 72);
- resolution of 22 October 2020 with recommendations to the Commission on an EU legal framework to halt and reverse EU-driven global deforestation (OJ C 404, 6.10.2021, p. 175);
- resolution of 20 October 2020 with recommendations to the Commission entitled ‘Digital Services Act: adapting commercial and civil law rules for commercial entities operating online’ (OJ C 404, 6.10.2021, p. 31);
- resolution of 20 October 2020 with recommendations to the Commission on entitled ‘Digital Services Act: Improving the functioning of the Single Market’ (OJ C 404, 6.10.2021, p. 2);
- resolution of 20 October 2020 with recommendations to the Commission on a framework of ethical aspects of artificial intelligence, robotics and related technologies (OJ C 404, 6.10.2021, p. 63);
- resolution of 20 October 2020 with recommendations to the Commission on a civil liability regime for artificial intelligence (OJ C 404, 6.10.2021, p. 107);

\textsuperscript{16} Reply from the Commission to Parliament’s resolution of 13 May 2020 with recommendations to the Commission entitled ‘A safety net to protect the beneficiaries of the EU programmes: setting up an MFF contingency plan’ (OJ C 323, 11.8.2021, p. 2).
Parliament is empowered to enact legislation as co-legislator;

27. Stresses that the Conference on the Future of Europe is an unprecedented opportunity to address current shortcomings and give new impetus to European democracy and strongly encourages the participants in the Conference to consider a genuine right of initiative for Parliament;

28. Reiterates the special and reinforced constitutional dignity of the matters which Parliament currently has the right of initiative on, and considers therefore that such an exclusive right should be extended to matters where democratic legitimacy and sovereignty of the Union are especially relevant;

29. Notes that Parliament’s current rights of initiative encompass different special legislative procedures, such as in the case of regulations relating to its own composition, the election of its Members and their Statute, the Statute of the European Ombudsman as well as Parliament’s right of inquiry;

30. Considers that the Treaties barely regulate such procedures and calls for a new interinstitutional agreement between the three institutions devoted exclusively to this matter, with full respect for its special constitutional dignity and enhancing the democratic legitimacy of the European Union; considers that this new interinstitutional agreement could contemplate measures to avoid files being institutionally blocked;

31. Believes that the extension of the ordinary legislative procedure and defining an ordinary legislative procedure where Parliament enjoys the right of initiative should be seen as complementary processes;

32. Considers that the recognition of a direct right of initiative of Parliament would not exclude the possibility of the Commission retaining a concurrent right or keeping a monopoly of initiative such as in the area of the budget; could also envisage that the Council would have a direct right of initiative in strictly defined areas; calls on the three institutions to reflect on how concurrent rights of initiative could effectively co-exist and be implemented in practice;

33. Considers that Parliament’s internal rules should better reflect the special nature of these legislative procedures; recommends, in particular, that where the adoption of an act by Parliament requires the approval or consent of the Council and the opinion or consent of the Commission, Parliament should, following the vote on the proposed act, enter into a consultation procedure with these institutions; is also of the opinion that Parliament should streamline the procedures for changing these proposed acts following such consultations;

34. Commits to fully use, develop and further strengthen the potential of Parliament’s indirect right of initiative as provided for in the Treaties and further developed in interinstitutional agreements and through Commission President von der Leyen’s commitment;

35. Considers that the Interinstitutional Agreement on Better Law-Making plays an essential role in securing sincere and transparent cooperation throughout the entire legislative cycle and allows for a better and mutual understanding to be achieved on the
respective positions of the different institutions;

36. Calls for a joint assessment of the functioning of the 2010 Framework Agreement and the need for a targeted revision to ensure that its provisions and timeframes related to Parliament’s indirect right of initiative can be effectively upheld; also calls on the Council and the Commission to assess jointly with Parliament the extent to which the Interinstitutional Agreement on Better Law-Making should be revised with the purpose of eliminating possible barriers to Parliament’s powers to propose legislative initiatives;

37. Considers it appropriate to review its internal rules, procedures and requirements, including with regard to the drafting of legislative initiative reports under Article 225 of the TFEU to ensure that proposals are focused and well-substantiated; suggests streamlining the procedures outlined in Parliament’s Rules of Procedure for drafting and adopting resolutions under Article 225 of the TFEU to ensure that any request to the Commission for a legislative initiative is adequately taken into account, always respecting the Interinstitutional Agreement on Better Law-Making, regardless of the parliamentary resolution that includes the request;

38. Commits to favouring these instruments as the primary means to request the submission of legislative proposals by the Commission; points, in this regard, to the need to address requests to the Commission alone and to ensure that the content of legislative initiative reports remains within the scope of the subject matter of the report as decided; underlines that the adoption of focused and well-substantiated reports under Article 225 of the TFEU by Parliament requires that the necessary technical and administrative capacity is ensured;

39. Stresses the importance of ensuring close cooperation with the Commission throughout the life cycle of legislative initiative reports so as to ensure that the process is as effective, transparent and inclusive as possible; highlights the roles of the Conference of Committee Chairs and the Conference of Presidents in this regard;

40. Emphasises that Parliament fully respects the Interinstitutional Agreement on Better Law-Making, which stresses the necessity of a prior European added value analysis, as well as a cost of non-Europe assessment, and that it has a structure for impact assessment activities to be undertaken, to the extent that it is possible to do so, before presenting an INL report in order to enhance the European added value assessment provided for in the Interinstitutional Agreement on Better Law-Making;

41. Believes that the Commission, when assessing the principles of subsidiarity, proportionality and better law-making as part of its follow-up on Parliament requests for legislative proposals under Article 225 of the TFEU, should take due account of the accompanying analyses concerning European added value and the cost of non-Europe produced by Parliament; points out that under the Interinstitutional Agreement on Better Law-Making, the Commission is already obliged to respond to any issues raised by the co-legislators in relation to such analyses;

42. Believes, furthermore, that the Commission should clearly link draft proposals adopted following a proposal by Parliament pursuant to Article 225 of the TFEU to relevant INL reports, providing a clear ‘legislative influence footprint’;
43. Commits to fostering stronger coordination with the Committee of the Regions and with the Economic and Social Committee by taking due account of their opinions within the framework of Article 225 of the TFEU;

44. Reiterates that accessibility, ethics and transparency are paramount and must guide the activities of all the EU institutions; calls for all the relevant information on legislative initiative reports, such as internal procedural steps or the Commission’s follow-up, to be made easily available online in all the official languages of the European Union;

45. Reiterates the importance of the pre-legislative phase and recalls the role of Parliament as provided for in the Interinstitutional Agreement on Better Law-Making and the 2010 Framework Agreement; calls for work on the establishment of a joint legislative database to be sped up, as stipulated in the Interinstitutional Agreement on Better Law-Making;

46. Recalls the importance of citizens’ and civil society participation for the democratic legitimacy of the EU; calls on all EU institutions to involve them in a meaningful way in decision-making at all stages of the policy cycle;

47. Instructs its President to forward this resolution to the European Council, the Council, the Commission and the governments and parliaments of the Member States.
EXPLANATORY STATEMENT

THE CONSTITUTIONAL TRADITION OF THE MEMBER STATES

1. The constitutional tradition of the Member States, as well as of Europe and the Americas, is to confer on parliaments, given their direct democratic legitimacy, a general right of legislative initiative. Even in the middle ages, one of the historical demands of parliaments, or their equivalents, was to transform their right to petition the king (indirect right of initiative) into a true right of legislative initiative.

Parliaments, therefore, not only have a general legislative competence, but also a general right of legislative initiative.

This right of initiative frequently coincides with an analogous right of governments. In systems with chambers, it can be available to both or shared between them according to subject matter.

2. Establishing a general right of initiative, shared by a parliament and an executive branch, does not preclude the possibility of granting one of them a monopoly of initiative in specific areas. As such, for instance, one can conceive of a chamber (upper or lower) or even a government having a monopoly. Actually, it is common, in the traditions of the Member States, for the right to present a budget to be a monopoly of the government, despite budgetary competence belonging to the Parliament.

THE EVOLUTION OF THE EUROPEAN UNION

3. The EU does not yet fully honour these constitutional traditions of the Member States. The European Parliament’s role as the sole directly elected EU institution is still not completely acknowledged. It has no general direct right of initiative.

4. What is today the European Union started in 1952, with the establishment of the European Coal and Steel Community. Starting with the shared management of raw materials, the European project has evolved into a union of peoples that is part of our everyday lives. A union whose actions can no longer evade direct democratic legitimacy and the scrutiny of the representatives of the EU’s citizens. And if it is true that this house is no longer a powerless assembly, it is also true that Parliament is not able to play the institutional role it should.

The prerogatives of Parliament have evolved over time as a result of the constant tension between the so-called intergovernmental method and the community method, between the ideologues who want a union of states and those who are in favour of a federation.

5. The Treaty of Maastricht marked an important step in our democratic history. It established the European Union and vowed to create an ‘ever closer union of peoples’ going far beyond a mere economic venture. Hence, it was arguably a transformation of the role of the European Parliament too.

Firstly, the ‘right to petition the king’ was finally incorporated in the Treaties, namely in Article 225 of the Treaty on the Functioning of the European Union (TFEU). Secondly, the
European Parliament became a co-legislator (but only for the so-called community pillar). Finally, and most importantly, the TFEU recognised a series of areas, such as the Statute of the European Ombudsman, where the European Parliament has the monopoly of legislative initiative.

However, to paraphrase President Jacques Delors, the European Union remained – and still is – an unidentified political object.

FROM SPECIAL RIGHTS OF INITIATIVE TO A TRUE RIGHT OF INITIATIVE

6. The recognition of an indirect right of initiative was certainly an important step in improving the democratic legitimacy of the EU. But much like in national history, it is not enough to deliver the constitutional aspiration of giving the EU more democratic legitimacy: for that, a direct right of initiative is required.

The European Parliament must not, therefore, shy away from exercising its sovereign right as the sole direct representative of the citizens of the EU. In 1962, what was then the ‘Assembly’ changed its name to the ‘European Parliament’ without the agreement of the Council. It considered it to be its sovereign right. Today, Parliament must also affirm the recognition of its true right of initiative.

7. The idea that the European Parliament does not have any direct right of initiative is, however, a misconception. Parliament has rights, plural, of direct and exclusive initiative, precisely in areas where democratic legitimacy is particularly relevant.

On the one hand, this means that the current rights of initiative are special legislative procedures with reinforced constitutional dignity. Accordingly, Parliament must, when it is necessary to exercise those rights of initiative, also be able to change other instruments adopted under an ordinary procedure. Naturally, this encompasses respect for the role given to the other institutions involved, as provided for each special legislative procedure in the Treaties. This results not only from Parliament’s aforementioned reinforced constitutional dignity, but also the old lex specialis derogat legi generali principle of law.

On the other hand, those provisions show that the intimate, immediate, intense link between legislative initiative and democratic legitimacy is already acknowledged in and by the Treaties.

This means that a broader, more encompassing right of initiative of the European Parliament will increase the democratic legitimacy of the Union as a matter of course.

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2 The European Parliament can initiate procedures under Articles 7(1) (clear risk of a serious breach by a Member State of the values referred to in Article 2), 14(2) (composition of the European Parliament), 48(2) and 48(6) (amendment of the Treaties) of the Treaty on European Union (TEU), as well as Articles 223(1) (EU electoral law), 223(2) (the Members’ Statute), 226 (provisions governing the exercise of the right of inquiry) and 228 (regulations and general conditions governing the performance of the Ombudsman’s duties) of the TFEU. Leaving aside the procedure for Treaty change, which is particular in nature, the adoption of decisions initiated under the abovementioned procedures depends, however, on the agreement of the Council, either as the deciding institution (Articles 7(1) and 14(2) of the TEU, as well as Article 223(1) of the TFEU) or the institution that must give its consent (Articles 223(2), 226 and 228(4) of the TFEU), and, in the case of Article 226 of the TFEU, also with the agreement of the Commission (consent).
8. The Treaties are, however, limited in regulating these special legislative procedures and experience also shows that agreement in such areas is difficult. Therefore, your rapporteur proposes an interinstitutional agreement devoted solely to special legislative procedures where Parliament has the right of initiative, to clarify the applicable procedures and roles of the institutions.

9. The Treaties also recognise some direct rights of initiative of the Council, which mostly overlap with those of the Commission in the same areas, and in some instances are even exclusive. Their upgrade to a general direct right of initiative, even if it is not similar to the one proposed for Parliament, must be firmly rejected.

The role of the Council in the EU is well-defined: it represents the Member States, not their citizens; it represents national interests, not the EU’s interests. And rightly so. Hence, its fundamental role is as a legislative chamber, alongside Parliament. Conversely, though, it should not be granted a general right of initiative with regard to European Union legislative competences.

10. A general direct right of initiative must be reserved for the institutions that represent the EU as a whole: Parliament and the Commission.

11. This logic is also echoed in the way the von der Leyen Commission has delivered on the commitment of its president regarding Parliament’s indirect right of initiative. All requests under Article 225 of the TFEU have been delivered on time. There was only one exception: the contingency plan for the multiannual financial framework (MFF). Even here, the exception is rather understandable as it is a means of accelerating the approval of the MFF.

It is clear that the von der Leyen praxis and doctrine have set a true precedent that will outlive this Commission.

12. Your rapporteur therefore proposes and envisages an institutional triangle where the Commission and Parliament both have a direct and general right of initiative. These would be concurrent rights which should co-exist with monopolies of initiative, as in the Member States’ constitutional traditions. The Commission might, for example, be solely and exclusively competent to present the budget and Parliament might be solely and exclusively competent in the matters it currently is.

In summary, the existing direct rights of initiative, indirect rights of initiative and monopolies demonstrate that the institutional architecture of the EU is ready for a different distribution of rights of initiative. To acknowledge a general right of initiative of Parliament is possible, desirable and will respond to the constitutional aspiration of making the EU more democratically legitimate.
22.3.2021

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Constitutional Affairs

on Parliament’s right of initiative
(2020/2132(INI))

Rapporteur for opinion (*): Pascal Durand

(*) Associated committee – Rule 57 of the Rules of Procedure

SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

A. whereas the Commission ‘shall promote the general interest of the Union and take appropriate initiatives to that end’; whereas Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise, as laid down in Article 17 of the Treaty on European Union (TEU);

B. whereas the Treaties grant Parliament the direct right of initiative only in very limited cases, namely with regard to its own composition, the election of its Members and their Statute, the Statute of the European Ombudsman, and in order to initiate a rule of law procedure, set up temporary committees of inquiry and initiate Treaty revisions; whereas Parliament has the right to request the Commission to submit any appropriate proposal on matters it considers relevant for a Union act for the purpose of implementing the Treaties, according to Article 225 of the Treaty on the Functioning of the European Union (TFEU); whereas Rule 47 of the Rules of Procedure of the European Parliament further details this indirect right of initiative;

C. whereas Article 225 of the TFEU obliges the Commission to give reasons in the event that it does not submit a legislative proposal as requested by Parliament; recalls thereby the compulsory character of this Treaty provision;

D. whereas the European Parliament is the only directly elected EU institution, which at the same time has fewer legislative initiative powers than most national parliaments;

E. whereas before she was elected President of the Commission, Ursula von der Leyen committed to responding to legislative initiatives when adopted by a majority of Parliament’s members and in full respect of the proportionality, subsidiarity and better law-making principles;
F. whereas the Conference on the Future of Europe will be an avenue for further reflection with civil society on how to best strengthen Parliament’s right of initiative with regard to better law-making;

G. whereas the existing imbalance in terms of EU agenda-setting powers between the Commission, the Council and Parliament is deplorable, notably in policy areas where the Commission does not enjoy an exclusive right of initiative and where the Council is not under any obligation to consult Parliament, namely in the areas of Economic and Monetary Union and the common foreign and security policy, where competences were transferred to the High Representative of the Union and to the European External Action Service;

1. Believes that the Commission’s right of legislative initiative, as set out in the Treaties, has been neither constructive nor productive in recent years, with a decrease in the Commission’s output over the past decade; stresses that Parliament is a democratically elected body which, unlike most national parliaments, does not have a formal right of legislative initiative and therefore the fact that the Commission has the exclusive direct right of legislative initiative creates an issue of democratic legitimacy that has to be addressed; strongly recommends therefore that the Committee on Constitutional Affairs further exploit Parliament’s powers assigned by the Treaties and that it analyse different options, including a Treaty revision to give Parliament a direct right of legislative initiative;

2. Stresses that the European Council has a de facto right of initiative within the area of freedom, security and justice in accordance with Article 68 of the TFEU, which does not reflect the legislative equality between Parliament and Council as provided for in the Interinstitutional Agreement on Better Law-Making (‘IIA BLM’)\(^1\); underlines moreover the early influence by the Member States via their participation in numerous Commission advisory bodies and urges the Commission to assure the same level of participation to Parliament;

3. Believes that Parliament should have an enhanced direct right of legislative initiative, as it directly represents European citizens and needs to counter-balance national interests; deplores therefore that this possibility has been regularly deferred to a future Treaty revision;

4. Believes that Parliament should make full use of the current Treaty provisions in order to enhance its influence on initiating legislation and to pave the way for obtaining the direct right of initiative;

5. Further stresses that changes to the IIA BLM, as well as the Framework Agreement (‘2010 FA’)\(^2\), can enhance legislative agenda-setting powers for Parliament and thereby recalibrate the institutional balance without formally changing the Treaties;

6. Proposes that Parliament consider developing political sponsorship for ideas put

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forward by the European Economic and Social Committee or the European Committee of the Regions within the framework of Article 225 of the TFEU;

7. Believes that, in accordance with Article 15 of Regulation (EU) 2019/788, in the event that the Commission, within the given deadlines, has failed to publish its intentions, or has set out in a communication that it intends not to take action on a European citizens’ initiative (ECI) which has met the procedural requirements and is in line with the Treaties, in particular the core values of the Union enshrined in Article 2 of the TEU, Parliament could decide to follow up the ECI with a legislative own-initiative report (INL); urges the Commission to commit itself to submitting a legislative proposal following Parliament’s adoption of such an INL; proposes, in this regard, to modify the 2010 FA;

8. Deeply regrets that only one third of Parliament’s legislative and non-legislative initiative procedures can be considered successful and that most INL reports adopted since 2011 have not been followed up by the Commission submitting any appropriate proposals; regrets also that, to date, the three-month deadline for the Commission to react to a parliamentary resolution, as laid down in paragraph 16 of the 2010 FA, and the one-year deadline for the Commission to come forward with a legislative proposal in response to a legislative initiative report have consistently not been respected;

9. Is of the opinion that INL reports in the area of the ordinary legislative procedure, with only one addressee and clearly defined proposals within the scope of the report and within realistic timeframes, have a greater chance of being translated into legislative proposals by the Commission; recommends in this respect that the Committee on Constitutional Affairs invites the Commission to the negotiating table in order to slightly extend the relevant deadlines and to accommodate alleged organisational difficulties with regard to the 2010 FA and thereby enhance the Commission’s responsiveness to Parliament’s resolutions; expects in return, however, that the Commission translate an INL report automatically into a concrete legislative proposal;

10. Considers that the IIA BLM plays an essential role in securing sincere and transparent cooperation throughout the entire legislative cycle and allows for a better and mutual understanding to be achieved of the respective positions of the different institutions; calls for an assessment of the extent to which the IIA BLM should be revised with the purpose of eliminating possible barriers to Parliament’s powers to propose legislative initiatives;

11. Emphasises that Parliament fully respects the IIA BLM which stresses the necessity of a prior ‘European added value’ analysis, as well as a ‘cost of non-Europe’ assessment;

12. Recalls that Parliament has a structure for impact assessment activities which must be undertaken, to the extent that it is possible to do so, before presenting an INL report in

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4 Study ‘The European Parliament’s right of initiative’, Andreas Maurer, University of Innsbruck, Jean Monnet Chair for European Integration Studies and Michael C. Wolf, University of Innsbruck, July 2020, pages 55 and 57.
order to enhance the European added value assessment provided for in the IIA BLM;

13. Suggests, as part of the Conference on the Future of Europe, studying the possibility of introducing mechanisms of direct participation, such as citizens’ assemblies, in order to grant EU citizens the opportunity to express themselves and thereby engage in the EU law-making process;

14. Urges the Commission, as the guardian of the Treaties, to adhere to its responsibilities and to honour its own commitments; urges the Commission to systematically involve Parliament prior to any decision being taken on the Commission Work Programme, including its prior approval by Parliament, in order to enhance Parliament’s agenda-setting powers in the meantime, before its direct right of initiative is established;

15. Is of the opinion that Article 294 of the TFEU should be revised in the sense that, if the Commission fails to implement Parliament’s request for a legislative act in the area of the ordinary legislative procedure, and within the set timeline, its resolution adopted by a majority of its component members shall form the basis for a legislative procedure to be initiated by Parliament itself;

16. Considers that, were the Commission not to submit a legislative proposal and fail to provide proper reasons as required by Article 225 of the TFEU, following Parliament’s request, this would constitute a failure to act and Parliament would reserve its right to take systematic action on the basis of Article 265 of the TFEU; furthermore considers that it might constitute a cause for Parliament to initiate a motion of censure on the activities of the Commission, in accordance with Article 234 of the TFEU.
INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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| Substitutes present for the final vote | Patrick Breyer, Andrzej Halicki, Heidi Hautala, Ilhan Kyuchyuk, Antonius Manders, Sabrina Pignedoli, Jérôme Rivière, Nacho Sánchez Amor |
## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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Key to symbols:
+ : in favour
- : against
0 : abstention
25.5.2021

OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

for the Committee on Constitutional Affairs

on Parliament’s right of initiative
(2020/2132(INI))

Rapporteur for opinion: Gwendoline Delbos-Corfield

SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Recalls that the Commission has a near monopoly on legislative initiatives, and that these should respect the principles of proportionality, subsidiarity and better law-making and be accompanied by proper impact assessment; believes that the Commission’s use of its right of legislative initiative has not always been constructive and productive in recent years, especially as it too often tailors legislative initiatives to the wishes of the Member States; believes that the same holds true of the frequent use of recast procedures and the lack of proper impact assessment, which has undermined the effectiveness of legislative acts;

2. Stresses that Parliament is the only Union institution that is directly elected by citizens, but that it does not have the formal right of legislative initiative like national parliaments; notes that Parliament forms the democratic basis of the Union and must accordingly be fully involved in all stages of the legislative process, a role that should be more proactively fulfilled; believes that the current institutional architecture represents a democratic deficit, which is difficult to justify; strongly urges, therefore, that Parliament’s powers in its crucial democratic role within the Union under the Treaties be strengthened and used more proactively, for example by putting forward an increased number of requests for new legislative proposals in order to gain a stronger role in initiating legislation;

3. Strongly recommends that a revision of Article 225 of the TFEU, which has a limited impact due to Article 17(2) of the TEU, be considered in order to give Parliament an enhanced direct right of legislative initiative, as it directly represents the European people and not just national interests, which need to be counter-balanced; strongly regrets the fact that this possibility has been regularly deferred to a future Treaty revision, undermining the representation of the public and its interests; believes that the
upcoming Conference on the Future of Europe should serve as a major democratic initiative for the discussion of possible developments for the Union’s future institutional set-up, including the strengthening of Parliament’s role in decision-making, and that it provides the right opportunity to discuss this with representatives of civil society;

4. Notes that Treaty revision is a lengthy process; strongly recommends, therefore, that Parliament explore all other options to enhance its right to initiate legislation in the meantime; considers that it is worth exploring the possibility of amending the 2010 Framework Agreement on relations between the European Parliament and the European Commission\(^1\) and the 2016 Interinstitutional Agreement between the European Parliament, the Council of the EU and the Commission on Better Law-Making\(^2\) in order to strengthen Parliament’s power to influence the EU agenda;

5. Stresses that the European Council has a de facto right of initiative when defining the strategic guidelines for legislative planning within the area of freedom, security and justice, in accordance with Article 68 of the TFEU, which does not constitute a level playing field between Parliament and the Council as co-legislators, as enshrined in other acts such as the Interinstitutional Agreement on Better Law-Making; underlines moreover the early influence by the Member States via their participation in numerous Commission advisory bodies; strongly regrets the fact that the Commission withdraws legislative proposals mostly because the Council cannot manage to agree and that this effectively rewards the often obstructionist attitude of the Council to legislative initiatives; emphasises that these factors have led to the development of a large asymmetry in the legislative power held by the Council and Parliament;

6. Deeply regrets the fact that only one third of Parliament’s legislative and non-legislative initiative procedures can be considered successful, and that most legislative initiative (INL) reports adopted since 2011 have not resulted in a concrete legislative proposal as a follow-up by the Commission\(^3\); points out that it is in the spirit of democracy that the Commission should respond to parliamentary resolutions on a mandatory basis; believes that INL reports should be accompanied by impact assessments whenever possible and drafted as clearly as possible; regrets the fact that the three month deadlines for the Commission to react to parliamentary resolutions and to come forward with legislative proposals have consistently not been respected; urges the Commission to adhere to its responsibilities and to honour its commitments;

7. Believes that the Commission must take action on Parliament’s initiatives by at least outlining follow-up actions taken and offering a detailed explanation when issuing negative decisions; expects the Commission to respond to each INL report with a legislative act in full respect of the principles of EU law, as pledged by the current Commission President in the political guidelines presented to Parliament on 16 July 2019 when she sought support from Parliament for her appointment, and which have been passed on to all Commissioners via their Mission Letters; recalls that Article 225 of the TFEU and the Interinstitutional Agreement on Better Law-Making require the Commission to give detailed reasons for not following up on Parliament’s requests for

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\(^1\) OJ L 304, 20.11.2010, p. 47.
\(^3\) ‘The European Parliament’s right of initiative’, Andreas Maurer, University of Innsbruck, Jean Monnet Chair for European Integration Studies and Michael C. Wolf, University of Innsbruck, July 2020, pp. 55 and 57.
legislation; reserves its right to consider taking action against the Commission under Article 265 of the TFEU if it fails to submit a legislative proposal or to provide proper reasons for not doing so;

8. Regrets the fact that the Commission’s communication regarding the actions taken on own-initiative reports often lack a detailed response; calls on the Commission to make sure that an appropriate response is properly published and that it reaches the public; is of the opinion that if the Commission fails to implement Parliament’s call for a legislative act in the area of the ordinary legislative procedure, a resolution adopted by a majority of Members should form the basis for a legislative procedure to be initiated by Parliament itself;

9. Recommends that the Commission strengthen transparency and simplify access to documents, in particular impact assessments, and existing direct participation tools such as online public consultations available in the 24 Union languages or other feedback mechanisms on specific issues;

10. Recalls the 2016 and 2020 initiatives on the EU mechanism on democracy, the rule of law and fundamental rights; deeply regrets the consistent lack of proper response to Parliament’s initiative on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights governed by an interinstitutional agreement between the three institutions, consisting of an annual cycle of monitoring covering all aspects of Article 2 of the TEU and applying in an equal, objective and fair manner to all Member States; reiterates its call on the Commission and the Council to enter without delay into negotiations with Parliament on the interinstitutional agreement; believes that the persistent deterioration of democracy, the rule of law and fundamental rights in various Member States has shown the need for genuine interinstitutional cooperation;

11. Reiterates its reasoned proposal on the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded; reiterates its deep concern that the standard modalities for hearings do not ensure equal treatment for Parliament, on the one hand, and the Commission and one third of the Member States, on the other, for presenting the reasoned proposal and access to information; expresses its regret that the hearings have not yet resulted in any significant progress on addressing clear risks of a serious breach of EU values; considers that the Union remains structurally unprepared to counter the backsliding of democracy, fundamental rights and the rule of law and their violation in the Member States and points out that the Council’s failure to make effective use of Article 7 of the TEU continues to undermine the integrity of common European values, mutual trust, and the credibility of the Union as a whole;

12. Believes that, in case the Commission decides not to take action on a European Citizens’ Initiative (ECI) that has met the procedural requirements and that is in line with the Treaties and the core values of the Union as enshrined in Article 2 of the TEU, Parliament could assess whether to follow up with an INL report based on the ECI; considers that new mechanisms for associating EU citizens with their elected representatives in Parliament should be designed in order to improve citizens’ participation and European democracy as a whole.
INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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| Substitutes present for the final vote | Abir Al-Sahlani, Damian Boeselager, Sira Rego, Rob Rooker, Doménec Ruiz Devesa, Isabel Santos |
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