



2021/2166(INI)

18.3.2022

OPINION

of the Committee on Constitutional Affairs

for the Committee on Legal Affairs

on better regulation: Joining forces to make better laws
(2021/2166(INI))

Rapporteur for opinion: Helmut Scholz

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SUGGESTIONS

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

1. Welcomes the Commission communication's¹ intention to make the approach to better law-making more dynamic and adaptable to further developments; insists nevertheless that the communication's operational aspects will become clearer only with the revision of the Better Regulation Guidelines and toolbox, which will be thoroughly scrutinised by Parliament; underlines the need for legislation that is fit for purpose, balanced, clear, transparent and does not add unnecessary administrative and regulatory burdens;
2. Stresses that the updated toolbox on better law-making, in particular the 'do not significant harm' principle, must consider the costs that may arise from inaction, particularly on climate and the environment, as well as the social dimension and the cumulative effects arising from delayed action;
3. Welcomes the Commission's commitment to making better use of strategic foresight, since it plays a key role in helping to future-proof EU policy-making by ensuring that short-term initiatives are grounded in a longer-term perspective;
4. Acknowledges the current trend where, within the scope of the Protocols 1 and 2 of the Treaty on the Functioning of the European Union (TFEU), national parliaments aim for greater involvement through political dialogue² on Union policies in order to develop greater added value for citizens; also acknowledges requests for similar forward-looking involvement of the European Committee of the Regions in this regard through its own-initiative opinions;
5. Insists on the strong links between the implementation of the NextGenerationEU recovery package with the objective of ensuring stronger resilience of EU societies and the need for EU institutions to reach out to Union citizens in order to raise awareness about the fundamental nature of these political tasks and their implementation; believes that such outreach should ultimately contribute to more flexible and more effective interinstitutional decision-making capable of responding in a robust and decisive manner to the experiences of the pandemic;
6. Welcomes the efforts to consolidate the consultation process and the commitment to report on each public consultation within eight weeks of its conclusion; calls for improved systematic assessments of public consultations and for the Commission to increase its outreach activities and measures to promote greater participation; calls on the Commission to better engage with its representations in the Member States, with advisory bodies at the EU level and with national authorities with a view to

¹ COM(2021)0219.

² Based on the Commission's communication 'A Citizens' Agenda: Delivering Results for Europe', COM(2006)0211.

disseminating more information about public consultations;

7. Calls for greater transparency in the consultation process and calls for the publication of summary reports of the consultations, available in all EU languages and also accessible to people with disabilities;
8. Stresses that Article 10(3) of the Treaty on European Union (TEU) recognises participatory democracy as one of the EU's main democratic principles, thereby highlighting that decisions must be adopted as close to citizens as possible, as it is indispensable for increasing citizens' trust in the EU institutions; believes that EU participatory democracy requires support for all citizens and promoting their access to electoral and participatory opportunities within and outside EU channels; highlights that this bottom-up participatory agenda should be capable of complementing, not substituting, representative democracy in the EU;
9. Notes EU citizens' rapidly evolving understanding of the impact of the EU governance on their daily life and on future developments against the backdrop of an increasingly social media-driven information society, which accelerates and increases awareness about the functioning of EU decision-making and demands on EU governance; reiterates that there is a need to fully engage citizens in the EU decision-making process beyond the act of voting and in other channels and instruments in a manner which takes into account the entire policy cycle; reiterates the importance of effective participatory mechanisms and its call for the establishment of permanent participatory mechanisms in line with its resolution of 7th July 2021³, and highlights the need to establish them at the European, national, regional and local levels, including necessary tools for adequate horizontal and vertical coordination among institutions at different levels; considers that these mechanisms could build on but not be limited to online policy debate platforms, youth consultations and a continuation of Citizens' Panels; supports awareness-raising activities for these mechanisms, such as, but not limited to, Commission, Council Presidency and Parliament citizens' hours and dialogues, to further facilitate and engage citizens' participation in the EU decision-making process; considers that such mechanisms should be integrated and become a part of the interinstitutional dialogue which leads to the establishment of the Commission's annual work programme;
10. Emphasises that more in-depth information on citizens' concerns will assist the EU institutions in their efforts to be responsive to these concerns, in line with the Union's core principles of representative democracy;
11. Calls on the institutions to take all necessary measures to ensure the participation of vulnerable people, such as disabled people, in the EU decision-making process; highlights the need for better access to information for all citizens; calls for the launch of more public consultations targeted at particular groups, such as children, youth or seniors; calls on all EU decision-makers to take stakeholders' input into account and ensure effective follow-up in the ensuing decision-making processes;
12. Highlights the need for Parliament to have an oral or written translation at each stage of the legislative process and in all official languages of the EU;

³ OJ C 99, 1.3.2022, p. 9.

13. Underlines the need for evidence-based legislation, comprehensive impact assessment reports and in-depth analysis of all available data; calls on the Commission to ensure transparency in the decision-making process;
14. Highlights and regrets the acknowledged lack of impact assessments for several key legislative files, which can only partly be attributed to the COVID-19 pandemic; welcomes the Commission's commitment to publish a staff working document together with the proposal or within the three months of its publication; underlines the need of extensive assessment of the impact the COVID-19 pandemic and related legislation, and calls for adequate solutions and policies to limit its negative effects;
15. Calls for impact assessments to be published immediately upon their completion, and not only when a policy proposal is presented, thus ensuring greater transparency on how decisions at EU level are taken, as stated by the Court of Justice of the European Union (CJEU) in Case C 57/16P, *ClientEarth v Commission*; recalls the commitment made by all three institutions to systematically consider the use of review clauses in legislation for the purpose of carrying out ex post evaluations;
16. Insists that impact assessments should never replace political decisions nor unduly delay the legislative process; considers that impact assessments must pay equal attention to the evaluation of economic, social, health and environmental consequences, in particular of the Commission's proposals, and that where relevant the impact on the fundamental rights of citizens and on equality between women and men must be assessed;
17. Acknowledges the need for the co-legislators to conduct impact assessments when substantially amending legislative proposals, in line with paragraph 15 of the Interinstitutional Agreement on Better Law-Making⁴ (IIA on BLM); commits to establishing internal procedures to produce its own impact assessments on substantial amendments; undertakes that its committees will avail themselves fully of the possibility to request expert advice for such amendments; calls for sufficient resources to be provided to its services for supporting Members' capacity to improve their function of co-legislators, such as the its Directorate for Impact Assessment and European Added Value;
18. Stresses, furthermore, that impact assessments are a tool to help reach well-informed decisions in the legislative decision-making process and must not lead to undue delays in decision-making or hinder political decisions in a context of the green and digital transition in response to global challenges; highlights that such processes should take into account economic, environmental, gender and social impacts in an integrated and balanced way and use both qualitative and quantitative analyses, as well as address the costs of non-harmonisation at EU level; recalls that making regulation which is 'fit for the future' should entail the adoption of a 'think sustainability first' approach in the Better Regulation Guidelines;
19. Calls for development of impact markers for specific issues such as impacts on vulnerable groups; praises in this regard the UNICEF proposal for a child marker evaluating the impact of policies on children and calls for the development of similar

⁴ OJ L 123, 12.5.2016, p. 1.

mechanisms in other policy areas;

20. Emphasises the essential role of the EU's SMEs in our economy; reiterates that special attention must be given to administrative, adjustment and compliance costs for SMEs when conducting impact assessments, in particular by applying an effective SME test; regrets its insufficient application to date;
21. Is convinced that also taking account of the cost of not legislating at European level (the so-called cost of non-Europe) is an important source of narrative and understanding when dealing with the available tools for better regulation;
22. Recalls the need to apply consistent principles of legislative drafting, in particular transparency, accountability, as well as clarity and precision, in line with the principles recognised by CJEU jurisprudence;
23. Considers uniformity of linguistic versions in the official EU languages a crucial prerequisite for the reliable interpretation of current legislation by courts and EU and Member States' authorities, and believes they are thus an important contribution to the uniform application and enforcement of EU law; calls on the institutions to substantially meet these requirements in future law-making;
24. Calls on the institutions to step up efforts for establishing a dedicated and user-friendly joint register on the state of play of legislative files for which work is ongoing as agreed in the Interinstitutional Agreement on Better Law-Making;
25. Recalls the commitment of all three institutions to setting up such joint legislative register to allow for an increased transparency of the legislative process and allow the citizens and both informed and general public to follow the evolution of legislative texts in a clear and comprehensive way; insists on the need to make this joint portal fully operational and transparent by the end of 2022;
26. Deplores the persistent lack of transparency in the Council's decision-making process and the practice of over-classifying documents and applying an excessively broad interpretation of the exceptions provided for under Regulation (EU) 1049/2001, in particular with regard to the protection of decision-making process and protection of legal advice, contrary to the principle of overriding public interest in the disclosure of related documents; believes that the use of secrecy exceptions for Council documents should be applied in a coherent system with external oversight and in compliance with CJEU case-law; calls on the three institutions to ensure a forward-looking and consistent application of the above-mentioned Regulation allowing appropriate access to documents, provided they concern a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility;
27. Is of the opinion that rules on access to documents on Council activities should be as transparent as Parliament's; stresses, in this regard, that the positions already defended by Member State representatives in Council working groups should be made public in order for citizens, media and civil society to be able to know what position their government adopted on their behalf at the EU level and to contribute to the enhancement of scrutiny of EU decision-making by national parliaments, which should be applicable to all decisions, from legislative files to implementing and delegated acts;

28. Points out that bodies with even less levels of transparency such as the Eurogroup should as a first step be subject to the Council's rules of procedure, and make available to the public the voting procedures, minutes, results, and explanation of votes and its deliberations;
29. Believes that the EU needs to develop more ambitious policy on access to documents and provide for better application of current rules, including for documents related to internal, trilogue and international negotiations; recalls that according to the European Ombudsman, restrictions on access to documents, particularly legislative documents, should be exceptional and limited to what is absolutely necessary; further recalls that transparency and publicity of an ongoing legislative procedure are inherent to the legislative process and can therefore be applied to access to documents for trilogues as stated by the CJEU in its case-law, in particular in Case T540/15, *De Capitani v Parliament*; adds, furthermore, that openness and transparency confer greater legitimacy on and generate greater confidence in the European Union's democratic legislative process;
30. Calls for urgent measures to enhance the transparency of the Commission's decisions in infringement procedures;
31. Believes that EU legislation should always be fit for purpose, proportionate and aim at keeping the burden for citizens and businesses, especially SMEs, as low as possible; reiterates the need to avoid unnecessary administrative, adjustment and compliance burdens when designing, transposing and implementing EU acts;
32. Insist that the effective implementation of EU law is essential in order to enhance citizens' trust in EU policies and institutions; recalls that under Article 197 TFEU, such implementation must be regarded as a matter of common interest for the Member States and stresses the need for them to avoid gold-plating when transposing EU legislation; stresses that such gold-plating often creates additional administrative or compliance burdens, especially for SMEs; calls on Member States to increase their efforts at a national level on better regulation and to avoid practices leading to unnecessary burdens when implementing EU law; considers nevertheless that the principle of better regulation should not prevent Member States' parliaments from maintaining or taking more ambitious measures in cases where only minimum standards are set out in Union law;
33. Reiterates that effective enforcement of EU legislation is a key part of the Better Law-making agenda; points out that excessive regulatory burdens for citizens and businesses can often be attributed to Member States' compliance issues; calls on the Commission to enforce EU legislation in full and without undue delay, and to leverage all available tools; stresses that the Commission's enforcement policy must be more predictable and transparent, and reinforce legal certainty for all stakeholders;
34. Welcomes the fact that the Commission aims to offset new burdens by relieving citizens and businesses of equivalent burdens at EU level in the same policy area; takes note that the 'one in, one out' approach aims to strengthen the REFIT programme by extending it beyond the burdens due to current acts to also include burdens from new legislation as well as to manage the cumulative burden in each policy area; calls on the Commission

to thoroughly examine how new legislation overlaps with current laws and regulations; warns nevertheless that this approach should not lead to a purely mechanical application which may result in an excessive focus on regulatory burdens and may lead to the consideration of benefits being neglected or negatively impact the achievement of other legitimate policy goals; believes that this approach should take also into account the potential impact of the repeal of legislation already implemented in the Member States domestic regulatory framework; reiterates, in this context, the need for an EU-wide consultation at European, national and local level, and insists on the need for extensive evaluations of policy impact at all levels in order tackle these potential challenges;

35. Strongly believes that better regulation is necessary to enable the EU to reach the targets set out in the Green Deal; welcomes the Commission communication's commitment to work with Member States, regions and key stakeholders to remove obstacles and red tape hindering the progress of the green transition; stresses the importance of ex post evaluations of climate legislation to ensure that the EU is delivering on its commitments;
36. Recalls the importance of maintaining close contact between the co-legislators in advance of interinstitutional negotiations, including by inviting representatives of other institutions to informal exchanges of views on a regular basis, in line with the commitment outlined in paragraph 34 of the IIA on BLM; regrets that this commitment has not given rise to any new cooperation structures nor to systematic practices for facilitating these exchanges; suggests that the co-legislators agree on a code of good practice in this respect;
37. Calls for a revision of the IIA on BLM in order to integrate in order to integrate a permanent citizens' consultation mechanism in the process leading to the establishment of the Commission's annual work programme;
38. Draws the attention of the Council and the Commission to the recommendations made by Parliament's Focus Groups underlining the need to revise Rule 132 and Rule 166 of Parliament's Rules of Procedure on access to the Council and Commission so as to allow MEPs to attend or be questioned during Council working group, COREPER or Council meetings;
39. Stresses that a parliamentary right of initiative is an important feature of representative democracy at Member State level and sees the necessity to empower MEPs, as the direct representatives of EU citizens, by strengthening their right to shape the EU legislative agenda; welcomes the Commission President's commitment to support Parliament's right of initiative, and the Commission's commitment to always respond with a legislative act to requests under Article 225 TFEU; calls on the Council and the Commission to eliminate possible barriers to Parliament's ability to exercise its power to propose legislative initiatives; considers that the Framework Agreement on relations between the European Parliament and the European Commission could be revised to increase facilitation of this right; highlights the need to also clarify differences between the various types of Parliament report and clarify what action they requested of the Commission;
40. Points out that better law-making requires effective legislative procedures conducive to

concluding EU decision-making procedures within a suitable timeframe; regrets that the special legislative procedures set out in the Treaties have too seldom been successfully concluded due to the lack of commitment of the Council and in the absence of effective procedural guidelines;

41. Recommends that the legislative process arising from the right of legislative initiative conferred on Parliament by the Treaties must include a request for the establishment of a legislative calendar for the initiatives concerned, similar to the ordinary legislative procedure; underlines, moreover, that such a special legislative procedure must respect the provisions of the IIA on BLM on the institutional obligation for all three institutions to negotiate and to do so in line with the principle of mutual sincere cooperation in Article 13(2) TEU;
42. Considers that in cases in which Parliament exercises the right of initiative, such as on the regulations relating to its own composition, the election of its Members and the general conditions for the exercise of its functions, and the statute of the Ombudsman, as well as the constitution of temporary committees of inquiry, measures should be considered in a future Interinstitutional Agreement to avoid important institutional files becoming blocked;
43. Considers that when the Treaties are revised, Parliament should be granted the right of legislative initiative, as it is the only directly elected institution;
44. Welcomes the Conference on the Future of Europe's deliberations on the participation of citizens in the EU decision-making process; highlights in particular the recommendations of Citizens' Panel No 1, in particular recommendations 35, 36, 41, 46 and 48, as well of Citizens' Panel No 2, in particular sub-stream 2.1, No 10 and No 11; sub-stream 3.1, No 16; sub-stream 4.1, No 24 and sub-stream 4.2, No 29 and No 32, and stream 5, Citizens' Participation, especially No 39 thereof; insists on the need to meaningfully engage with the recommendations made in the final report on the Conference, which will be drawn up by the Executive Board in cooperation with the Conference Plenary on the basis of the Conference Plenary's debates on the recommendations from the national and European Citizens' Panels, as well as input from the Multilingual Digital Platform; considers that the panels' recommendations clearly demonstrate that citizens are calling for more transparency in EU public debate and for more outreach and more information to be provided by the EU institutions through active use of all communication channels while emphasising the role of social media, which should accompany EU decision-making, including legislative processes; calls on the Commission, the Council and Parliament to implement the final conclusions of the Conference based on the Citizens Panels' recommendations in accordance with the principles enshrined in the Treaties;
45. Emphasises the need to consider the issue of the right of initiative at the Conference on the Future of Europe, as it would strengthen the EU's democratic legitimacy and further empower EU citizens;
46. Considers the development of new forms of digitalisation processes in the decision-making of all three institutions to be an essential challenge and an opportunity to strengthen the quality of EU law-making in the digital era; believes that the

commitments of the three institutions on such developments should be clearly identified and included in a revised IIA on BLM; calls on legislators to employ digitalisation in order to avoid over-bureaucratisation, to facilitate their legislative work as well as the democratic expression of elected officials.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	16.3.2022
Result of final vote	+: 22 -: 3 0: 3
Members present for the final vote	Gerolf Annemans, Gabriele Bischoff, Damian Boeselager, Włodzimierz Cimoszewicz, Gwendoline Delbos-Corfield, Pascal Durand, Daniel Freund, Charles Goerens, Sandro Gozi, Brice Hortefeux, Laura Huhtasaari, Victor Negrescu, Giuliano Pisapia, Paulo Rangel, Antonio Maria Rinaldi, Domènec Ruiz Devesa, Jacek Saryusz-Wolski, Helmut Scholz, Pedro Silva Pereira, Sven Simon, Antonio Tajani, László Trócsányi, Loránt Vincze, Rainer Wieland
Substitutes present for the final vote	Jorge Buxadé Villalba, Nathalie Colin-Oesterlé, Sophia in 't Veld, Nikolaj Villumsen

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

22	+
PPE	Nathalie Colin-Oesterlé, Brice Hortefeux, Paulo Rangel, Sven Simon, Antonio Tajani, Loránt Vincze, Rainer Wieland
Renew	Pascal Durand, Charles Goerens, Sandro Gozi, Sophia in 't Veld
S&D	Gabriele Bischoff, Włodzimierz Cimoszewicz, Victor Negrescu, Giuliano Pisapia, Domènec Ruiz Devesa, Pedro Silva Pereira
The Left	Helmut Scholz, Nikolaj Villumsen
Verts/ALE	Damian Boeselager, Gwendoline Delbos-Corfield, Daniel Freund

3	-
ECR	Jorge Buxadé Villalba, Jacek Saryusz-Wolski
NI	László Trócsányi

3	0
ID	Gerolf Annemans, Laura Huhtasaari, Antonio Maria Rinaldi