DRAFT REPORT

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

Committee on Constitutional Affairs

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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 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 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 (A9-0000/2021),

A. whereas pursuant to Article 17(2) of the TEU, the right of initiative lies with the Commission, except where the Treaties state otherwise;

¹ OJ L 304, 20.11.2010, p. 47.
B. whereas the Treaties award 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’;

C. 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’;

D. whereas under the 2010 Framework Agreement, the Commission committed to report on the concrete follow-up on any Parliament request to submit a proposal pursuant to Article 225 of the TFEU within 3 months following adoption of the corresponding resolution in plenary;

E. 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”’;

F. whereas the Treaties award Parliament direct rights of initiative with regard to its own composition, the election of its Members and their Statute, the Statute of the European Ombudsman and Parliament’s right of inquiry, instances where a special procedure applies, and in order to initiate procedures related to respect of the rule of law and Treaty revisions;

G. 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’;

H. 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’;

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

1. 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;

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. Recalls that in past 20 years, Parliament has consistently made use of such rights;
regrets, however, that these special legislative procedures have too seldom been successfully concluded due to the lack of agreement of the Commission and the Council;

4. Deeply regrets the lack of follow-up by the European Council on the rule of law procedure launched by Parliament and its subsequent calls for action;

5. Regrets that three Member States have not yet ratified the amended electoral law of the European Union adopted in 2018;

6. Further regrets that the Council has to date refused to negotiate with Parliament regarding its right of inquiry, despite this contradicting Article 226 of the TFEU and the principle of sincere cooperation;

7. Welcomes the adoption of the new Statute of the European Ombudsman, upon 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

8. Notes that the Council has exercised Article 121 of the TFEU as a de facto right of initiative in relation to economic and monetary policy, while demanding further accountability from Parliament as the only directly elected EU institution;

9. 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; stresses the particularly serious impact of these policies on citizens’ fundamental rights and calls for Parliament and the Council to be given this competence in equal terms in future Treaty revisions;

10. 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 in relation to cooperation on administrative law, and police and judicial cooperation in criminal matters;

11. Notes with concern the lack of transparency in the use of the indirect right of initiative of the Council laid down in Article 241 of the TFEU; calls on the Council to publish, in a user-friendly manner, all requests made on this legal basis;

The indirect right of initiative of Parliament established by the Treaties

12. 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;

13. Notes that in accordance with Article 225 of the TFEU, requests must be within the remit of competence of the Union and the sole obligation of the Commission is to

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inform Parliament of its reasons for not presenting a proposal;

14. 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;

15. Regrets that, until 2019, the follow-up on Parliament’s legislative initiative reports adopted pursuant to Article 225 of the TFEU showed that the Commission had only delivered 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 adhered to in most cases;

16. Welcomes in the strongest terms the commitment made by Commission President von der Leyen to always respond with a legislative act to Parliament requests under Article 225 of the TFEU, with full respect for the proportionality, subsidiarity and better lawmaking principles;

17. Commends the current College of Commissioners for replying to all of Parliament’s requests in a timely manner, except in one case; 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;

The future of Parliament’s right(s) of initiative

18. Strongly believes that when the Treaties are next revised, Parliament, as the only directly elected EU institution, should be granted the right to initiate legislation;

19. Is deeply convinced that a general and direct right of initiative would further strengthen the democratic legitimacy of the Union and empower Union citizens; believes that it

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7 Study entitled ‘The European Parliament’s right of initiative’, p. 54 (see footnote 7 above).
8 Replies from the Commission to the following European 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’ (texts adopted, P9_TA(2020)0265);
- resolution of 22 October 2020 with recommendations to the Commission on an EU legal framework to halt and reverse EU-driven global deforestation (texts adopted, P9_TA(2020)0285);
- 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’ (texts adopted, P9_TA(2020)0273);
- resolution of 20 October 2020 with recommendations to the Commission on entitled ‘Digital Services Act: Improving the functioning of the Single Market’ (texts adopted, P9_TA(2020)0272);
- resolution of 20 October 2020 with recommendations to the Commission on a framework of ethical aspects of artificial intelligence, robotics and related technologies (texts adopted, P9_TA(2020)0275);
- resolution of 20 October 2020 with recommendations to the Commission on a civil liability regime for artificial intelligence (texts adopted, P9_TA(2020)0275);
- resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (texts adopted, P9_TA(2021)0021).

9 Reply from the Commission to the European Parliament 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’ (texts adopted, P9_TA(2020)0065).
would reflect the evolution over time of the competences of the Union and its institutions, and is of the opinion that Parliament, as the only directly elected EU institution, should be granted the right to propose legislation, as national parliaments may, when the Treaties are next revised;

20. Reiterates the special and reinforced constitutional dignity of the issues that are currently subject to the initiative of Parliament and considers that such an exclusive right should be extended to issues where democratic legitimacy is especially relevant;

21. Notes that Parliament’s current rights of initiative encompass different special legislative procedures; 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;

22. 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 in certain areas, such as the budget; could also envisage that in exceptional areas, the Council would also have a monopoly of initiative;

23. Considers that Parliament’s internal rules should better reflect the special nature of these legislative procedures; recommends, notably, 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 to change such proposed acts following such consultations;

24. Commits to continue exploring the full potential of Parliament’s indirect right of initiative as provided for in the Treaties and further developed in interinstitutional agreements and through the commitment of President von der Leyen;

25. Considers it appropriate to review its internal rules, procedures and requirements, also with regard to the drafting of legislative initiative reports under Article 225 of the TFEU to ensure that proposals are focused and well-substantiated; 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 authorised report;

26. Notes the importance of ensuring close cooperation with the Commission throughout the life cycle of legislative initiative reports; highlights the roles of the Conference of Committee Chairs and the Conference of Presidents in this regard;

27. Believes that the Commission, when assessing the subsidiarity, proportionality and better lawmaking principles 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; believes, furthermore, that the Commission should clearly refer to Parliament’s proposals under Article 225 of the
TFEU when such proposals are followed by a legislative initiative;

28. Reiterates that accessibility and transparency are paramount and must guide the activities of all the EU institutions; calls for all the relevant information on legislative initiative reports to be made easily available online, such as internal procedural steps or follow-up by the Commission;

29. 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;

30. 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

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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).
will increase the democratic legitimacy of the Union as a matter of course.

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.