



2022/2051(INL)

10.2.2023

OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Constitutional Affairs

Proposals of the European Parliament for the amendment of the Treaties
(2022/2051(INL))

Rapporteur for opinion: Juan Fernando López Aguilar

(Initiative – Rule 47 of the Rules of Procedure)

PA_INL

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:

Civil liberties, justice and home affairs: horizontal considerations

1. Supports the proposals made by the plenary of the Conference on the Future of Europe ('the Conference') of 9 May 2022 in relation to the field of civil liberties, justice and home affairs¹; reiterates its support for a proper follow-up to the Conference, with the aim of delivering on the Conference's conclusions and on citizens' expectations; calls upon the Union to more systematically uphold the rule of law and democracy, ensure fundamental rights protection, and scrutinize respect for all the values enshrined in Article 2 TEU, both in the accession of new members and continually across all Union policies and across the Member States; recalls that full implementation of many of the measures proposed by the Conference would not require Treaty changes but legislative change and/or better implementation of existing legislation;
2. Points out that the adoption of several legislative proposals in the area of freedom, security and justice has been slow or even blocked, despite the urgent need for action; calls for the Commission to build on the various studies by the European Parliamentary Research Service examining the cost of non-action at European level in these areas²; calls for replacing unanimity requirements for adopting legislation in these areas in the Treaties, including for the use of passerelle clauses, with majority voting procedures, and for the systematic use of the ordinary legislative procedure, in order to improve the Union's capacity to act; considers that, given the particular sensitivity of these matters, any change to these voting requirements in the Council should ensure a fair balance of voting 'weights' so that smaller countries' interests are protected;
3. Considers that any changes to the division of competences between the Union and the Member States in the area of freedom, security and justice should fully respect the principles enshrined in Title I of the TEU, specifically Articles 2, 4(2), 4(3), 5 and 6;
4. Underlines that Article 68 TFEU has been exercised as a de facto right of initiative by the European Council in the area of freedom, security and justice; highlights 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;

Democracy, rule of law and fundamental rights protection

5. Points out that the Union's main political instrument to address and reverse systemic rule of law threats and breaches in the Member States, Article 7 TEU, has been so far

¹ In particular the following proposals: 22, 25, 26, 27, 28, 29, 31, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45.

² For an overview, see

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/631730/EPRS_BRI\(2019\)631730_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/631730/EPRS_BRI(2019)631730_EN.pdf).

ineffective as the rule of law situation further deteriorated since the activation of the procedure in relation to both Poland and Hungary;³ therefore, considers it necessary to reform Article 7 TEU as follows: to change the Council voting thresholds of Article 7(1) TEU from four-fifths majority to qualified majority voting, and to abolish the unanimity requirement in Article 7(2) TEU; to require the Council to invite a representative of the body that submitted the reasoned proposal to present it, to inform fully and promptly at every stage of the procedure the institution which triggers Article 7(1) TEU⁴, to organize at least two hearings for each country concerned per half year in a regular, structured and open manner and to draft country-specific recommendations and evaluate their implementation under Article 7(1) TEU; to involve the Parliament and the Commission in drafting modalities for the 7(1) TEU hearings⁵; to allow the Parliament to trigger Article 7(2) TEU; to indicate that Member States, the Commission and the Parliament shall consider triggering Article 7(2) TEU if the procedure under Article 7(1) TEU lasts more than five years; to specify further the rights deriving from the application of the Treaties which may be suspended under Article 7(3) TEU, including the right to hold the Presidency of the Council; to invite the European Union Agency for Fundamental Rights ('FRA') to give its input during the Article 7(1) hearings;

6. Notes the Commission's lack of initiative or effective action, including in the form of infringement actions, to address violations or non-application of Union law in the areas of freedom, security and justice, despite evidence of deteriorating situations in several Member States; notes that Parliament's repeated calls for action have gone unanswered; therefore, considers it necessary to strengthen the Parliament's means of scrutinising the Commission's activities regarding the monitoring and enforcement of Union law;
7. Notes that the Treaties currently do not contain a legal basis to introduce legislation to defend and promote the common values expressed in Article 2 TEU and that this absence has seriously limited the Union in creating suitable and effective mechanisms to redress national threats and breaches to the common values; considers it essential for the protection of everyone that the Union has the ability to address effectively any democratic backsliding in the Member States; calls for the inclusion of a provision that would allow the Union, through the ordinary legislative procedure, to introduce new mechanisms for the structural monitoring and assessment of the developments as regards the Article 2 TEU values in each Member State and enforcement thereof; such mechanisms should include annual reports assessing whether there were deficiencies, a risk of a serious breach or an actual breach of Article 2 TEU values in each of the Member States, country-specific recommendations accompanied by implementation deadlines, targets and concrete actions to be taken as well as benchmarks to measure progress, and how to link those to the relevant enforcement measures; considers that this provision should allow the setting up of further enforcement mechanisms,

³ [European Parliament resolution of 16 January 2020 on ongoing hearings under Article 7\(1\) of the TEU regarding Poland and Hungary \(2020/2513\(RSP\)\)](#); [European Parliament resolution of 5 May 2022 on ongoing hearings under Article 7\(1\) TEU regarding Poland and Hungary \(2022/2647\(RSP\)\)](#).

⁴ [European Parliament resolution of 16 January 2020 on ongoing hearings under Article 7\(1\) of the TEU regarding Poland and Hungary \(2020/2513\(RSP\)\)](#).

⁵ [European Parliament resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights \(2020/2072\(INI\)\)](#).

including appropriate financial measures to be taken by the Council acting by qualified majority, such as suspension of commitments and payments, also in cases where there is no direct link with the sound financial management of the Union budget or the protection of the financial interests of the Union; highlights that the establishment of such mechanism will contribute to reinforcing mutual trust between Member States, thus enhancing the functioning of the principle of mutual recognition;

8. Calls for the inclusion of the Charter of fundamental rights as the second chapter of the Treaty on European Union in order for fundamental rights and freedoms to feature more prominently in the founding Treaties; calls for the inclusion in the Treaties of a horizontal fundamental rights provision similar to Articles 8, 9 and 10 TFEU, so as to mainstream the Union's horizontal obligation to incorporate a fundamental rights perspective in all policies at all levels and at all stages more explicitly, hence requiring the co-legislators just as all Union institutions, bodies, offices and agencies and the Member States when they are implementing Union law to respect EU fundamental rights and promote their application in all their activities; considers it necessary, in addition, to make it mandatory for Union institutions, bodies, offices and agencies to include fundamental rights monitoring mechanisms and related evaluation clauses, which should contain clear targets and benchmarks, in particular whenever legislating in fundamental rights-sensitive policy areas, including the area of freedom, security and justice (enhanced fundamental rights mainstreaming);
9. Recalls that the expectations of citizens, as expressed at the Conference, go beyond the strict interpretation of the first paragraph of Article 51 of the Charter of Fundamental Rights according to which the Charter applies to the Member States only when they are implementing Union law, and that the objective should be to render fundamental rights as effective as possible; therefore, calls for a widening of the scope of application of the Charter of Fundamental Rights of the European Union in relation to the Member States; considers that, to that effect, Article 51(1) of the Charter should be revised so as to state that the rights recognised by the Charter should protect people whenever Member States act within the scope of a Union competence, whether exclusive or shared, *even if such a competence has not yet been exercised by the Union*;⁶
10. Calls for a European Citizenship Statute to be drawn-up, providing citizen-specific rights and freedoms, which would make the European values and rights more tangible for citizens of the Union;
11. Points out that EU citizenship is granted on the basis of nationality of a Member State, which restricts access to the rights contained therein for non-EU nationals residing on EU territory, such as third country nationals with EU long-term residency status; calls for a revision of Article 20 TFEU by introducing a new paragraph 20(2a) stating that, without prejudice to the competence of Member States to grant citizenship, the enjoyment of the rights mentioned under Article 20(2) should be extended to non-EU nationals residing on EU territory, including third-country nationals with EU long-term residency status; calls for the prohibition in the Treaties of those citizenship by investment schemes whereby national citizenship, along with EU citizenship, is

⁶ In light of AG Sharpston's opinion of 30 September 2010 in Case C-34/09, *Zambrano*.

- offered to third-country nationals in exchange for primarily financial considerations;
12. Notes that some Member States do not grant their citizens who are residing in other Member States the right to vote in national elections; considers it contrary to European democratic values that as a consequence these EU citizens are deprived of their right to vote for exercising their fundamental right to freedom of movement under EU law; calls to enshrine in the Treaties the principle that each EU citizen has the right to vote in local, regional, national and European elections;
 13. Calls to establish the FRA as an independent human rights authority, similar to national human rights institutions and in line with the UN General Assembly's Paris Principles of 1993, to protect and promote the Charter of fundamental rights of the European Union throughout the policies and practices from Union institutions, bodies, offices and agencies, and from Member States when implementing Union law; considers that this requires a legal basis in the Treaties for the setting up of a European Union Authority for Fundamental Rights, enshrining its independence and introducing the ordinary legislative procedure for adopting and amending its mandate; calls to entitle this new Authority to bring actions under Article 263 TFEU on grounds of infringement of the Charter; calls to expand its mandate, including the power to handle complaints and mandatory consultation by the Commission of the FRA when preparing proposals for legislative acts or recommendations which have an impact on fundamental rights;
 14. Considers it necessary to entitle the European Data Protection Supervisor to bring actions under Article 263 TFEU on grounds of infringement of the right to data protection ;
 15. Calls for the introduction in the TFEU of a new shared Union competence for setting up an effective legal framework against disinformation ;
 16. Strongly regrets that horizontal EU legislation on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation has still not been adopted since the 2008 Commission proposal, due to blockage at Council level, despite repeated calls from the Parliament; therefore considers it necessary that EU action to combat discriminations on the basis of Article 19 TFEU be taken in accordance with the ordinary legislative procedure, in order to ensure a uniform minimum level of protection within the Union for people who are discriminated against; calls for Article 19 TFEU to also cover the grounds of gender, gender identity, gender expression or sex characteristics, social origin, genetic features, language, political or any other opinion, membership of a national minority, property and birth, as well as intersectional discrimination;
 17. Calls for the inclusion, in Article 8 TFEU, of a reference to gender inequalities and an obligation for the Union to aim in its different policies to combat all kinds of gender-based violence, including by taking all necessary measures to prevent and punish these criminal acts and to support and protect the victims;
 18. Calls for the introduction in Article 10 TFEU of the grounds of gender, gender identity, gender expression or sex characteristics, and all other grounds mentioned in Article 21(1) of the Charter, namely colour, genetic features, language, political or any

other opinion, membership of a national minority, property and birth, to combat discrimination when defining and implementing its policies and activities;

19. Calls for the inclusion in Article 21(1) of the Charter of gender, gender identity, gender expression and sex characteristics, in order to also prohibit discrimination on these grounds explicitly;
20. Highlights that Article 2 TEU explicitly includes the rights of persons belonging to minorities amongst the constitutional principles of the Union; calls for actions, including EU legislation, to protect persons belonging to minorities and to protect the cultures and languages of the traditional national and linguistic minorities (AM 26 EPP); further calls for the Union to accede to the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities;
21. Considers necessary to ensure the right to access to sexual and reproductive health and rights for all across the EU; calls to include, in a new Article of the Charter of Fundamental Rights, the right for everyone to bodily autonomy, to free and informed access to sexual and reproductive health and rights and to all related healthcare services without discrimination, including to a safe and legal abortion; calls to replace Article 4(2)(k) TFEU by “common safety concerns in public health matters and the protection of human health, including on sexual and reproductive health and rights”;
22. Calls for the inclusion of the climate target in Article 37 of the Charter of Fundamental Rights;
23. Calls for measures concerning family law with cross-border implications to be adopted in accordance with the ordinary legislative procedure;

Policies on Border checks, Asylum and Immigration

24. Reaffirms the objectives and general principles on which the common policies on borders, asylum and immigration are based in the Treaties, such as free movement without internal border checks and efficient common border management under Articles 67, 77 and 79(2)(b) TFEU, non-refoulement under Article 78(1) TFEU, fair treatment of third-country nationals, the fight against irregular migration and human trafficking, or the principle of solidarity and fair sharing of responsibility between the Member States under Article 80 TFEU, which should be used as a complementary legal basis for legislation under this Treaty chapter;
25. Believes these form a sound basis to respond to calls from citizens expressed at the Conference⁷ which included strengthening the EU’s role on legal migration, on asylum, on addressing irregular migration, combatting human trafficking and on proper management of the European Union's common borders, while respecting fundamental rights, as well as for reform of the common European asylum system and for applying common rules uniformly in all Member States on the reception of migrants and for

⁷ Recommendations Nos 41 to 45, see <https://www.europarl.europa.eu/resources/library/media/20220509RES29121/20220509RES29121.pdf>

improving integration policies in all Member States;

26. Stresses however that action at EU level remains incomplete mainly due to the institutional imbalance between the co-legislators; recommends therefore that the ordinary legislative procedure apply to all Union policies on border checks, asylum and immigration, including for the evaluation of the implementation of those policies (Article 70 TFEU); calls for more competences to be shared between the EU and the Member States to pursue the objectives set out in Chapter II of Title V of the TFEU and in full respect of the principles of subsidiarity and proportionality, including for integration measures, which are currently not covered even though integration and inclusion of third-country nationals is fundamental to the success of efforts to develop common rules regarding their arrival to and stay in the EU and is a key part of the implementation of the Common European Asylum System;

Judicial cooperation in criminal matters and police cooperation

27. Believes that legislative measures of horizontal nature instituting principles which establish minimum standards in EU criminal law would increase mutual trust between Member States thus leading to more efficient judicial cooperation while respecting the principle of subsidiarity; calls for the introduction of a Union competence in Article 82 TFEU to establish minimum standards for pre-trial detention and custody conditions, and for minimum standards on the admissibility of evidence, in full respect of the right to a fair trial in criminal proceedings; calls to amend the Treaties in order to codify the case law of the CJEU regarding the limitation, in exceptional situations, of the mutual recognition of judgments and judicial decisions issued by a Member State where there are systemic or generalised deficiencies affecting the judicial system of that Member State;
28. Calls for a stronger involvement of the Parliament under the special legislative procedure of Article 83(1) TFEU, related to the identification of new areas of particularly serious crime with a cross-border dimension; calls for the inclusion of environmental crime, hate crime and hate speech and gender-based violence in the list of 'Euro-crimes'.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	6.2.2023
Result of final vote	+: 35 -: 18 0: 0
Members present for the final vote	Konstantinos Arvanitis, Katarina Barley, Theresa Bielowski, Karolin Braunsberger-Reinhold, Patrick Breyer, Annika Bruna, Lena Düpont, Lucia Ďuriš Nicholsonová, Cornelia Ernst, Maria Grapini, Evin Incir, Sophia in 't Veld, Patryk Jaki, Fabienne Keller, Łukasz Kohut, Moritz Körner, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Lukas Mandl, Erik Marquardt, Javier Moreno Sánchez, Maite Pagazaurtundúa, Paulo Rangel, Diana Riba i Giner, Isabel Santos, Tineke Strik, Ramona Strugariu, Milan Uhrík, Tom Vandendriessche, Elena Yoncheva, Javier Zarzalejos
Substitutes present for the final vote	Susanna Ceccardi, Gwendoline Delbos-Corfield, José Gusmão, Dietmar Köster, Alessandra Mussolini, Matjaž Nemec, Janina Ochojska, Anne-Sophie Pelletier, Thijs Reuten, Axel Voss
Substitutes under Rule 209(7) present for the final vote	Aurélia Beigneux, Milan Brglez, Katalin Cseh, Marie Dauchy, Paolo De Castro, José Manuel Fernandes, Tomasz Frankowski, Vlad Gheorghe, Martin Hojsík, Max Orville, Mounir Satouri

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

35	+
S&D	Katarina Barley, Milan Brglez, Paolo De Castro, Maria Grapini, Evin Incir, Łukasz Kohut, Dietmar Köster, Juan Fernando López Aguilar, Javier Moreno Sánchez, Theresa Bielowski, Matjaž Nemeč, Thijs Reuten, Isabel Santos, Elena Yoncheva
Renew	Katalin Cseh, Lucia Ďuriš Nicholsonová, Vlad Gheorghe, Martin Hojsik, Sophia in 't Veld, Fabienne Keller, Moritz Körner, Max Orville, Maite Pagazaurtundúa, Ramona Strugariu
Verts/ALE	Patrick Breyer, Gwendoline Delbos-Corfield, Alice Kuhnke, Erik Marquardt, Diana Riba i Giner, Mounir Satouri, Tineke Strik
The Left	Konstantinos Arvanitis, Cornelia Ernst, Anne-Sophie Pelletier, Miguel Urbán Crespo

18	-
PPE	Karolin Braunsberger-Reinhold, Lena Düpont, José Manuel Fernandes, Tomasz Frankowski, Jeroen Lenaers, Lukas Mandl, Alessandra Mussolini, Janina Ochojska, Paulo Rangel, Axel Voss, Javier Zarzalejos
ID	Aurélia Beigneux, Annika Bruna, Susanna Ceccardi, Marie Dauchy, Tom Vandendriessche
ECR	Patryk Jaki
NI	Milan Uhrík

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention