



2022/2051(INL)

15.11.2022

DRAFT 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)

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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; calls upon the Union to more systematically uphold the rule of law principles and ensure fundamental rights protection, and to scrutinize respect for these values and principles, both in the accession of new members and continually across all Union policies and across the Member States;
2. Calls for the abolishment of all unanimity requirements in the Treaties for adopting legislation in the area of freedom, security and justice, including for the use of passerelle clauses;

Democracy, rule of law and fundamental rights protection

3. Points out that the Union's main political instrument to address and reverse systemic rule of law threats and violations in the Member States, Article 7 TEU, has been wholly ineffective as the rule of law situation further deteriorated since the activation of the procedure in relation to both Poland and Hungary;² 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 of Article 7(2) TEU from unanimity to a four-fifths majority; to involve the institution which triggers Article 7(1) TEU throughout the procedure;³ to require the Council to periodically organize hearings, 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 hearings;⁴ to allow the Parliament to trigger Article 7(2) TEU; to invite the European Union Agency for Fundamental Rights ('FRA') to give its input during the Article 7(1) hearings;
4. Notes that the Treaties currently do not contain a legal basis to introduce legislation to defend the common values expressed in Article 2 TEU and that this absence has seriously limited the Union in creating suitable mechanisms to redress national threats to the common values; calls for the inclusion of such a provision, which 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 common

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 [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\(RSP\)\)](#).

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

⁴ [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\(INI\)\)](#).

values in each Member State, including annual reports on the situation as regards the Article 2 TEU values in each of the Member States, and to issue country-specific recommendations and impose measures in case of lack of remedial action;

5. Calls for the inclusion of the Charter of fundamental rights as the second chapter of the EU Treaty in order for fundamental rights and freedoms to feature more prominently in the founding Treaties; calls for the inclusion in the Treaties of a fundamental rights mainstreaming provision similar to Articles 8, 9 and 10 TFEU, so as to make the Union's horizontal obligation to incorporate a fundamental rights perspective in all policies at all levels and at all stages explicit, hence reminding 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 to include fundamental rights monitoring mechanisms and related evaluation clauses whenever legislating in fundamental rights-sensitive policy areas, including the area of freedom, security and justice (enhanced fundamental rights mainstreaming);
6. 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; to that effect, Article 51(1) Charter could be revised so as to state that EU fundamental rights should protect Union citizens 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*;⁵
7. Requests giving the FRA a foundation in the Treaties, including laying down, in accordance with the UN General Assembly's Paris Principles of 1993, its status as an authority independent from both the EU institutions and the Member States, its powers and its new mandate, and introducing the ordinary legislative procedure for amending its mandate;
8. Calls for making FRA responsible for ensuring that fundamental rights and freedoms are respected by Union institutions and bodies and by the Member States when implementing Union law, including by promoting, monitoring and enforcing the Charter of fundamental rights of the European Union and by advising, on its own initiative or on request, all Union institutions and bodies on fundamental rights and freedoms in the context of EU legislative and administrative measures; calls for introducing in the Treaties an obligation for the to consult the FRA when preparing proposals for legislative acts or recommendations which have an impact on fundamental rights;
9. Points out that the 1993 Paris Principles require human rights institutions to have as broad a mandate as possible to promote and protect human rights and to function independently; requests, therefore, expanding the scope of the mandate of the FRA to cover all Union competences, including the Union's common foreign and security policy; considers it necessary to give the European Union Authority for Fundamental Rights the status of privileged applicant before the CJEU in actions for annulment where respect for fundamental rights is at stake; considers that in order to reflect its independence and the expansion of its powers and mandate, a change in name from

⁵ In light of AG Sharpston's opinion of 30 September 2010 in Case C-34/09, *Zambrano*.

European Union Agency for Fundamental Rights to European Union Authority for Fundamental Rights is appropriate;

10. Considers it necessary to give the European Data Protection Supervisor the status of privileged applicant before the CJEU in actions for annulment where the right to data protection is at stake;
11. Considers it necessary to give the CJEU full jurisdiction on the common foreign and security policy in view of the potential impact of those policy areas on Article 2 TEU values and the fundamental rights protection, which is moreover an essential requirement towards accession of the Union to the European Convention for Human Rights;
12. Calls for the introduction in the TFEU of a new shared Union competence for setting up an effective legal framework against disinformation and on holding media undertakings, social networks, and online platforms responsible to counter disinformation;
13. Notes 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 initiative due to the absence of unanimity in Council; recommends therefore that EU action to combat discriminations on the basis of Article 19 TFEU be taken in accordance with the ordinary legislative procedure;

Policies on Border checks, Asylum and Immigration

14. 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 under Articles 77 and 79(2)(b) TFEU, non-refoulement under Article 78(1) TFEU, fair treatment of third-country nationals, 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;
15. Believes these form a sound basis to respond to calls from citizens expressed at the Conference⁶ which included strengthening the EU's role on legal migration, on asylum, on addressing irregular migration, and on strengthening the protection of the European Union's external 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 improving integration policies in all Member States;
16. Stresses however that action at EU level remains incomplete 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 competences to be fully shared between the EU and the Member States, including for harmonisation of the laws and regulations of the Member

⁶ Recommendations Nos 41 to 45, see

<https://www.europarl.europa.eu/resources/library/media/20220509RES29121/20220509RES29121.pdf>

States, which at the moment excludes integration measures, even though integration is the natural end point for efforts to develop common rules from the arrival of third-country nationals into the EU and is a key part of the implementation of the Common European Asylum System;

Judicial cooperation in criminal matters

17. Calls for the introduction of a Union competence in Article 82 TFEU to establish minimum conditions for detention and custody.