

The European Parliament's right of initiative ¹

ABSTRACT

The European Parliament is the only democratically elected body in the EU. Yet, unlike most parliaments, it has no formal right of legislative initiative. Initiating legislation lies almost solely with the EU's executive bodies, the Commission, and – to a limited but increasing extend – the European Council and the Council. This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the AFCO Committee, reveals that Parliament's „own-initiative-reports“ form a widely underestimated and unrecognized tool to informally shape the EU's policy agenda. The study provides for a comprehensive analysis of non-legislative and legislative own-initiative reports. We argue that Parliament is able to create a cooperative environment in order to bring the Commission in line with its own legislative priorities and sometimes very specific legislative requests. Building on the empirical evidence of Parliament's practice since 1993, we finally discuss means and ways for pragmatic reform and Treaty revision.

Background

Within the EU Member States, parliaments are empowered to propose legislation, alongside the national governments. At EU level, however, the right to initiate legislation is reserved almost entirely for the European Commission (Article 17(2) TFEU). Both the Council of the European Union (Article 241 TFEU) and the European Parliament (Art 225 TFEU) have an indirect right of initiative: they can request the Commission to come forward with a legislative proposal and the Commission needs to justify if it refuses to do so. In addition, Parliament has a pro-active role in pursuing political influence on overall legislative planning and agenda setting. Under the Framework Agreement on relations between the European Parliament and the European Commission, the Commission must take into account the priorities expressed by Parliament and justify any departure from the proposals set out in the Commission annual work programme. The agreement also envisages a structured dialogue between the Commission and the corresponding parliamentary committees. In addition, the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making contains further commitments on a dialogue between the Commission, Parliament and Council, both before and after the adoption of the Commission annual work programme.

¹ Full study in English:

[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655134/IPOL_STU\(2020\)655134_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655134/IPOL_STU(2020)655134_EN.pdf)



Only in very specific cases, the Treaties grant Parliament the direct right of initiative. This right applies to the regulations concerning its own composition, the election of its Members and the general conditions governing the performance of the duties of its Member. It also applies to setting up a temporary committee on inquiry and the regulations and general conditions governing the performance of the Ombudsman.

Aim

The aim of this study is to analyse the implementation of Parliament's rights for direct and indirect initiative, and to examine if and what changes are necessary in order to provide the European Parliament with a full right of legislative initiative. Building on existing data and respective analysis of the European Parliament's Research Service, original data drawn from the EUR-Lex gateway to EU law, and the Legislative Observatory (OEIL) of Parliament, as well as the replies to a survey that the Policy Department for Citizens' Rights and Constitutional Affairs of the European Parliament sent to the Member States' parliaments in November 2019 with the help of the European Centre for Parliamentary Research and Documentation (ECPRD), we analyse how Parliament can fully exploit the potential of the current treaties, which treaty changes might be necessary and what best practices already exist.

Key findings

The development of EU policy will remain a complex process. Within the Union's fabric of multi-level and –actor governance, the policy-cycle can roughly be divided into five stages, namely (a) the deliberation on and definition of joint problems and setting the agenda, (b) the specification of the alternatives from which a choice is made, (c) the authoritative choice among alternatives, (d) the implementation of the decision, and (e) the political and judicial control of the decision's implementation. The ability to intervene in the first stages is of paramount importance. Agenda-makers determine the arenas of political discourse and establish the very contours of the legislative debate. Second, the possibility of defining and shaping the agenda constitutes an ultimate veto power, given that the proposals which are not subject of the later decision-making process and are unlikely to be adopted. Finally, agenda-setters and –shapers can, through strategically targeted proposals, maximise their interests. Due to the virtual monopoly of the Commission's legislative initiative, Parliament does not have "direct" legislative initiative in most areas of EU policy-making.

Despite the gradual increase in its legislative powers, Parliament is still considered to have been excluded, at least formally, from the direct definition of the legislative agenda. Some observers perceive Parliament therefore as a "weak" institution which does not meet the definitions of an "ordinary" or a "real" parliament in the common sense of the term. The lack of direct legislative agenda-setting power of Parliament is thus considered to be an anomaly among legislative assemblies of democratic systems. The analogy with national parliaments seems to be obvious: the institution which most resembles a national parliament, namely a representative body elected directly by the citizens, is naturally the European Parliament. However, such simplistic, state-centered mirroring with national parliaments raises the question why to confer a power of direct legislative initiative to Parliament in an institutional system that is less characterised by the structural fusion of legislative and executive powers than by inter-institutional balance and a hybrid variation of separation of powers. On the other hand, today's fabric of supranational and intergovernmental governance has effectively led to an erosion of the Commission's monopoly for legislative initiative. It therefore seems appropriate to question the traditional – outdated – reasons for depriving Parliament with a power of legislative initiative.

The study provides a comprehensive account of Parliament's right for direct initiative and its implementation during the last 20 years, the inter- and intra-institutional framework and practice of its non-legislative (INI) and legislative initiative (INL) requests since the entry into force of the Maastricht Treaty in 1993, and a comparative overview and synthesis of different practices in the national parliaments of the Member States.

Overall, we provide evidence for arguing that the influence of Parliament regarding the political agenda-setting and agenda-shaping-process is much greater than its reputation. More specifically, the study addresses the following aspects: First, we take a closer look into and analyse the EU's constitutional, inter- and intra-

institutional, legal and political frameworks with regard to Parliament's indirect and direct right of legislative initiative. We provide an in depth overview on Parliament's non-legislative and legislative initiative requests and analyse their intermediate (Commission responses and initiatives) and final outcome (EU measures finally responding to the respective EP legislative initiatives). Next, we synthesise the formal arrangements and political practice of legislative agenda-setting in the national parliaments of the Member States. Finally, we develop recommendations on how to fully exploit the potential of the current treaties, to allow Parliament to have the right of legislative initiative; as well as on the necessity for possible treaty changes.

The study shows that Parliament was quite successful in transposing the Treaty's legal provisions into a framework of inter-institutional arrangements, and in committing the Commission into a dense network of legislative programming and joint agenda-setting. On the other hand, we also point to the constant erosion of the Commission's power of legislative initiative, and the European Council's encroachment into the respective competencies of the Commission. Any further amendment to the EU's fabric of agenda-setting should take into account of this specific kind of hollowing out of the Commission's original "raison d'être". Parliament might therefore not only consider how to reinforce its existing right for requesting legislative initiative. Given the background of the current distribution of agenda-setting power between Parliament, the European Council, the Council and the Commission, it is appropriate to think about a comprehensive rebalancing of the respective rights and obligations.

We point to Parliament's agenda-shaping potential and practice to negotiate the Commission's legislative work program in advance, to put political pressure on the Commission, and to initiate treaty interpretation and further reform by pushing other institutions into Interinstitutional agreements.

Regarding our findings on the direct right of initiative, the overall balance sheet is rather mixed. Successful cases are characterised by the fact that Parliament's proposals were subject to the Council's consent and did not lead to major disputes between the Institutions. On the other hand, we show that the implementation of Parliament's initiatives regarding provisions on the composition of Parliament, and European electoral legislation are subject to harsh conflict with the Council or the European Council. Building on a case-by-case analysis, we provide evidence to show that Parliament's success essentially depends on the decision-making modality of the Council (qualified majority versus unanimity).

Regarding our findings on the indirect right of initiative, we point to the following key findings: Whereas legislative initiatives (INL-reports) have only been constitutionalised with the Treaty of Maastricht, its non-legislative counterparts (INI-reports) have always been an available tool to express the concerns and ideas of Parliament's majority. INL reports have a legal basis in Article 225 TFEU, whereas INI reports are not explicitly mentioned in the Treaties.

Both types of indirect initiative are successful in being implemented by the Commission, at least to a certain extent. One of the key differences between INI and INL reports lies within the definition of their minimum content. While INI reports may contain legislative requests, the very nature of INL reports is characterised by the fact that they must contain legislative requests. In addition, INI reports are easier to get passed in Parliament's plenary than INL reports for two reasons: First, INI reports are adopted by a simple majority of the votes cast, while Article 225 TFEU requires a majority of Parliament's component Members. Secondly, Parliament's RoP make INL reports more difficult to draft, since their authors must attach a draft of the requested piece of secondary legislation.

The probably most salient and quantitatively measurable pattern weakening the efficiency of inter-institutional cooperation concerns the expected timeframe of INL reports. There was no single case for the last 20 years, in which the Commission followed the timetable of INL-resolutions by submitting legislative proposals right in time. A second observation concerns the tremendously growing sum of individual legislative requests, pooled in a single INL-report. During the last two parliamentary terms, INL-reports became more and more expansive a) with regard to the scope of issues addressed, and b) with regard to the range of addressees. The latter is even more surprising, given that Article 225 TFEU focuses on the Commission as the sole recipient for legislative requests.

In order to improve the process of handling INL-requests cooperatively, two possible paths could be explored. Either it is the „three-months-timeframe“ that needs to be reconsidered respectively extended. Or it is Parliament that needs to seriously consider the trend of filling more and more information and complexity in each single INL-report. A combination of both paths would make the process more time saving and focused. Hence, Parliament might consider whether the pooling of – sometimes dozens and not necessarily related – requests that it directs to various actors beyond the Commission is in its political interest to strategically gain visibility as „co-initiator“, and to strive for legislative partnership with other actors that are widely ignored by the European Council or the Council. If Parliament wants to strictly follow the opportunity structures provided for in the Treaties, it should look out for focused INL-reports that formulate legislative requests and address Parliament's ideas to the Commission only. If necessary, those demands for new or amending existing legislation could be accompanied by „normal“ i.e. (non-legislative) INI-reports. A clearer distinction between legislative INL-reports and non-legislative INI-reports would thus upgrade the significance and transparency of INL-resolutions as a whole. In addition, we propose that Parliament might invite the Commission to link its draft initiatives more clearly to INL or INI reports. Providing a clear „legislative influence footprint“ for legislative proposals would enhance both, transparency and accountability.

The study concludes with a discussion of three ways and respective variants for reform: We provide some proposals for the straightforward possibility of Treaty revision of Article 225 TFEU, which would possibly impact on revising Articles 17 TEU, 241 TFEU, 289 TFEU, and 294 TFEU. A softer revision would focus adjusting the existing Framework Agreement to strengthen the constraining nature of Parliament's INL.

In a nutshell, we propose to study the following paths for reform:

If Article 225 TFEU would be subject to revision, Parliament should consider first, whether the Commission should remain the key addressee of parliamentary initiatives, fully in line with Article 17 TEU. Alternatively, Parliament might opt for a direct right of legislative initiative, competing with the Commission's role. A revised wording of Article 225 TFEU that would reinforce the compulsory character of INL requests would not conflict the Commission's role as key catalyst for legislative initiative.

If Parliament opts for such a treaty revision, it should also prepare a strategic argument by stressing today's extreme asymmetry between Parliament, the European Council and the Council, and the Commission with regard to legislative agenda-setting in the day-to-practice of the Union. In this regard, Parliament might also table a revision of the de-facto right of operational initiative of the European Council in Justice and Home affairs under Article 68 TFEU. The adoption of multiannual, operational programmes in this area by the European Council, with no obligation to consult Parliament or the Commission is an outdated, undemocratic instrument and procedure. Parliament might propose a more prominent role in the formulation policy in the field of internal security and EU criminal law by referring to Article 225 TFEU for the adoption of AFSJ programmes that are more coherent with the allocation of power under the OLP.

Overall, Parliament could argue for receiving a larger or weightier power of initiative to rebalance the institutional equilibrium in those areas where the Commission does not enjoy an exclusive right of initiative.

In practice, Parliament might reconsider its proposal forwarded during the IGC that concluded on the Maastricht treaty. Accordingly, Parliament could be given the right to initiate legislative proposals in cases where the Commission fails to respond within a specified deadline to a specific request adopted by a majority of Members of Parliament to introduce proposals. Implementing this amendment in today's treaty framework would be possible through an overhaul of Article 225 TFEU or Article 294 TFEU on the OLP. Such an amendment would put Parliament under full responsibility at the early, pre-legislative stage of Article 225-requests.

If the European Council will not agree on a Treaty revision under Article 48 TEU, Parliament might explore other ways for reform. Parliament could invite the Commission to negotiate on an update of the 2010 Framework Agreement on relations between the European Parliament and the European Commission. Such a revision would be the right place to agree on a more realistic timeframe for the response of the Commission that could improve the credibility of the entire process. The same applies in principle to the proposed schedules for the submission of legislative proposals as well. In this context, Parliament might also consider and limit the practice

of pooling of – sometimes not necessarily related – requests that it directs to various actors beyond the Commission. We argue that Parliament should look out for more focused INL-reports that clearly formulate legislative requests, defend their necessity, and address Parliament's ideas to the Commission only. In addition, a revised Framework Agreement might oblige the Commission to link its draft initiatives more clearly to EP INL or INI reports. Providing a clear „legislative influence footprint“ for legislative proposals would enhance both, transparency and accountability.

Finally, we propose to evaluate the concept of sponsorship for legislative action by third parties to strengthen Parliament's request for legislative initiative. Nothing would prevent Parliament to support agreements reached between management and labour under Article 155 TFEU. A similar procedure of “reinforcing” other actors' legitimate requests for legislative action could be foreseen in relation to the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR), whenever one of the consultative institutions adopts a request for legislative initiative. In such a case of legislative sponsorship and tri-institutional requests, a revised Framework Agreement could provide for a de-facto obligation for the Commission to forward a legislative proposal. The idea of inter-institutional co-sponsorship for legislative initiative could also be applied for the framework of cooperation between Parliament and national parliaments. Here, Parliament could provide for an autonomous mechanism to include national parliaments in its legislative initiative within the framework of Article 9 of Protocol 1 of the Lisbon Treaty.

The distorted image of Parliament as an “untrue” or “unreal” assembly is likely to remain, if observers continue to perceive own-initiative reports as some kind of a traditional instrument to compensate for missing legislative rights. Nothing prevents Parliament to change such out-dated views. Building on its established procedures for structuring and managing its activity, Parliament might examine how to increase the attention of INL reports and the awareness of its respective proceedings. Practically, NL reports could be featured on the Plenary's agenda more prominently, specifically “flagged” on Parliament's website, and become subject of specific PR activities. In this context, Parliament could also discuss on how to follow on the practice of nominating Vice-Presidents with specific portfolios. Building on these positions, two Vice-Presidents in charge of legislative initiative could facilitate Parliament's agenda-setting and help to increase Parliament's profile. They could be in charge of inter-institutional negotiations and arrangements for implementing the respective provisions of the bilateral Framework Agreement and the trilateral IIA on Better Law-Making, and for organising co-sponsorship of legislative initiatives by other actors.

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This document is available on the internet at: www.europarl.europa.eu/supporting-analyses

PE 655.134

IP/C/AFCO/2020-18

Print ISBN 978-92-846-6973-8 | doi:10.2861/34395 | QA-03-20-516-EN-C

PDF ISBN 978-92-846-6972-1 | doi:10.2861/236730 | QA-03-20-516-EN-N