

The background of the cover is a photograph of a park. In the foreground, there is a calm pond with a small splash of water in the center. Behind the pond is a large, green lawn where many people are sitting and walking. In the background, there are several trees, including a tall, thin tree on the left, and a large, multi-story building with many windows, partially obscured by the trees. The sky is a clear, bright blue.

The European Parliament and the right of initiative: Change practice, not powers

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Introduction

The Joint Declaration on the Conference on the Future of Europe was adopted on 10 March 2021, with the title ‘Engaging with Citizens for Democracy – Building a more resilient Europe’. The Declaration did not mention institutional issues as such, but the long list of possible points for discussion included ‘the Union’s democratic foundations, and how to strengthen democratic processes governing the European Union’.

These discussions will inevitably address the role of the European Parliament (EP). When the Conference was launched on 9 May, David Sassoli, President of the EP and co-Chair of the Conference, reiterated the demand that the European Parliament should be given the right of legislative initiative:

‘I believe that we should reflect on how to strengthen the European Parliament’s capacity and centrality, particularly as regards its power of initiative. Like any national parliament, the right of initiative should be conferred on the European Parliament so that our institution can make proposals to the Commission and the Council, and not just be the recipient. This would help give it a greater role.’¹

This Paper looks at legislative initiative in the EU context from the perspective of democratic governance, reviewing and bringing together the roles of the EP, the Commission and other actors.

It does not take as its starting point practices in national parliaments.² Indeed, one needs to treat such comparisons with care. On the one hand, it is not the case that most national laws originate in initiatives of the parliament as such. Practice varies considerably across countries. Members (usually individually) may propose bills, and citizens and other actors may have the right to place issues on the agenda. However, the right of initiative of parliaments often has limitations, the success rate of bills drafted by government is always higher, and often draft initiatives stem from the governing parties.

On the other hand, it should not be assumed that everything that is found in a national political system is automatically necessary or appropriate for the EU. It is more helpful to talk about how to respect general principles of democratic governance given the specific requirements and limitations of the EU context.

The first section recalls briefly why the European Commission has been given its near-monopoly of legislative initiative, as well as the ways in which this formal ‘right of initiative’ has been somewhat eroded in recent years. It then reviews recent developments in the EP’s very limited powers of direct legislative initiative, and even of legislative decision-making, which have now brought the adoption of the first-ever Parliament ‘Regulation on its own initiative’.

The second section looks at the state of play concerning the EP’s formal right to request the European Commission to submit proposals. The EP has adopted a large number of such ‘legislative own-initiative reports’ since 2019 in response to the political commitments made by Ursula von der Leyen.

The third section addresses a number of questions concerning the place and operation of EP legislative initiatives in practice, and suggests that it may be time to refocus thinking as to their role.

The Paper concludes that the most important issue to debate with regard to improving the democratic quality of EU policy-making is not to consider changing current arrangements in the direction of greater formal powers for the EP. Indeed there are several reasons why this is not only unlikely but inappropriate.

The priority is rather to discuss how the EP's formal roles as the directly representative institution can be made to interact more effectively with other forms of participation by citizens and stakeholders, as well as with the Commission's consultation processes and evolving approaches to policy-making.

The European Parliament's right of initiative: a legislative 'first' and a continuing stalemate

The Commission has a near-monopoly of legislative initiative in the EU. This power was given to it in order to ensure that the 'general interest' would be adequately taken into account in negotiations; to serve as a counterweight to differences in size between member countries; and to promote policy coherence. Today it is also associated with the ambition to ensure that the EU legislates 'only where and to the extent necessary': that EU action brings added value; that efforts are focused on agreed priorities; and – in the spirit of the 'foresight' that now goes hand in hand with 'interinstitutional relations' in the Commission's organisation - 'that short-term actions are grounded in long-term objectives'.³

There has been a certain erosion of the Commission's exclusive rights. The European Parliament has the rights outlined below. As part of the negotiations for the Lisbon Treaty it was agreed that the initiative would be shared with one-quarter of the Member States in the area of police cooperation and judicial cooperation in criminal matters; with the European Central Bank in certain specific cases; and with the Court of Justice and European Investment Bank for revision of parts of their statutes. The Commission has also seen its own shared right of initiative removed in the case of foreign and security policy, while the European Council has informally taken on an ever stronger role in shaping the EU agenda.

Yet the Commission's right of legislative remains a key feature of the 'Community method' that is at the heart of EU policy-making. As the European Parliament has come to acquire stronger powers in decision-making, now enjoying equal rights with the Council to adopt most laws under the 'ordinary legislative procedure', it has increasingly demanded the right to propose laws itself.

The EP does have a limited right of initiative. It shares the right of legislative initiative for the electoral procedure for the EP, as well as the (strictly speaking, not 'legislative') rights to initiate a Rule of Law procedure, treaty revision, or the European Council's decision on the composition of the EP.

There are also three cases, all concerning institutional issues rather than the adoption of general norms, in which the EP may adopt legislative 'regulations on its own initiative'. This formula was introduced by the Lisbon Treaty as part of the institutional symmetry by which 'special legislative procedures' may take the form of 'the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament'.⁴ However, the Council must give its consent.

One of these provisions, on the statute of the Members, has not been used in this post-Lisbon form.

In another case, concerning the statute of the Ombudsman, an EP proposal was adopted in February 2019. Agreement was reached on 10 May 2021, leading to adoption of the EP draft regulation on 10 June 2021. On 18 June, the Council gave its consent and the Commission its opinion. The first-ever EP ‘regulation on its own initiative’ was adopted on 23 June 2021.

On the other hand, the EP’s proposal on the exercise of the right of inquiry has been blocked, and the EP’s current position over the right of initiative may partly reflect frustration with these arrangements.

The Council and the Commission, both of which must give their consent, found unacceptable the EP’s 2014 proposal and broke off negotiations in 2018.

The EP complained in a Resolution of April 2019 that the current wording of the article concerned (Art. 226 of the Treaty on the Functioning of the European Union - TFEU) ‘does not oblige the Council and the Commission to negotiate, since they are obliged only to give or withhold their consent to Parliament’s proposal, and not to negotiate it with a view to reaching a common accord’. It also made a more pragmatic plea: it ‘invite[d] the Council and the Commission, if they are unable to give their consent to the proposal, to resume negotiations with the newly elected Parliament, acknowledging the progress made with the new wording of the proposal presented in the non-paper and based on the work carried out by the legal services of the three institutions; believes this is a more orderly and systematic text than that adopted in 2014 [...]’.

The EP has continued its pressure. The Constitutional Affairs Committee on 22 April 2021 formally submitted a question to the Council asking for reassurance that political dialogue will be restored so as ‘to establish the appropriate legal framework for implementing Parliament’s right of inquiry, which represents a cornerstone of parliamentary democracy’.

The right to request Commission proposals – political progress, but maybe time for a rethink

Under Article 225 TFEU the 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.’ This is the same right enjoyed by the Council and, since the Lisbon Treaty, by at least one million citizens (European Citizens’ Initiatives - ECI).

The EP also shapes the EU agenda in various other ways. It produces non-legislative own-initiative reports (INI) which are much more numerous (536 in the 2014-2019 term, compared to 16 INL), partly because they are much easier to adopt. These also contain requests for action on the part of the Commission.

Requests under Article 225 TFEU take the form of legislative own-initiative reports (INL). Each request has to include ‘recommendations’ concerning the content, and is accompanied by a European Added Value Assessment supporting the case for legislative action.

The EP has not been satisfied with how the Commission has responded to its requests under Article 225 TFEU. According to a 2019 EP study, out of 26 cases between 2010 and 2019, the Commission followed up the Parliament’s request to some extent with a proposal in only eight cases.⁵

The Commission has promised to be more responsive. It is already formally expected to respond in detail within three months, as now stipulated in the 2016 Interinstitutional Agreement on Better Law-Making.

‘The Commission will give prompt and detailed consideration to requests for proposals for Union acts made by the European Parliament or the Council pursuant to Article 225 or Article 241 of the Treaty on the Functioning of the European Union respectively. The Commission will reply to such requests within three months, stating the follow-up it intends to give to them by adopting a specific communication. If the Commission decides not to submit a proposal in response to such a request, it will inform the institution concerned of the detailed reasons, and will 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”.’⁶

There has been political pressure to go further in its commitment to follow up on recommendations.

Ursula von der Leyen, nominated by the European Council as candidate for President of the European Commission, had to take into account these demands over the right of initiative in order to be elected by the European Parliament in July 2019 - and one should recall that she was elected by a margin of only nine votes. The Socialists and Democrats, the second largest group in Parliament, for example, insisted that she should ‘[e]xplore giving the European Parliament the right to initiate legislation’. The letter listed among the conditions for their support that ‘the Commission must commit to initiate legislation following the adoption of every legislative initiative report adopted by QMV [= a majority of the members]’.⁷

She said, when presenting her Political Guidelines for the next Commission, that she ‘supports a right of initiative for the EP’. However, her words specifically refer to the existing, indirect right, and there is a footnote to Article 225 in the speech itself, just in case of doubt.⁸



*I believe we should give a stronger role to the voice of the people, the European Parliament, in initiating legislation. **I support a right of initiative for the European Parliament.***

When Parliament, acting by a majority of its members, adopts resolutions requesting that the Commission submit legislative proposals¹, I commit to responding with a legislative act, in full respect of the proportionality, subsidiarity and better law making principles.

To make this process as effective as possible, I will ask my Commissioners to work hand-in-hand with the European Parliament at every stage of designing and debating resolutions.

¹ Article 225 of the Treaty on the Functioning of the European Union (TFEU)

Photographer Mathieu Cugnot
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Members of the European Parliament have reacted with enthusiasm to the Commission's apparently more open arms. Between July 2019 and May 2021, a total of 20 INL reports were proposed. As of 1 June 2021, ten were awaiting committee decision, and ten had been adopted by the plenary (compared to a total of 26 over the whole previous decade).

The Commission responded formally in all eight cases coming within the deadline in this period. The EP resolutions were, as promised, the subject of political debate in College meetings. The Commission's responses were transmitted in the form of Letters of Thanks sent by Vice-President Maroš Šefčovič to the EP President, David Sassoli, with copy to the Chair of the Conference of Committee Chairs, Antonio Tajani.

The INL reports and the Commission's responses are summarised in the table.

There has not yet been any formal assessment of the Commission's responsiveness on the part of the Parliament. Anecdotal evidence suggests that there is appreciation of the formal political attitude that is being demonstrated, but a feeling that this is still not translated into legislative proposals, this being the yardstick that is generally applied.

**Table: EP requests for Commission proposal (legislative own-initiative reports),
July 2019 – May 2021**

Reference	Subject	Lead Committee (date of referral) (+ Associated committees)	Plenary resolution date + vote (+/-/0)	Commission response (as of 1 June 2021)
2020/2073 (INL)	Challenges of sport events' organisers in the digital environment	JURI 27/05/2020 + CULT	19/05/2021 479, 171, 40	
2020/2129 (INL)	Corporate due diligence and corporate accountability	JURI 17/09/2020 + AFET + INTA	10/03/2021 504, 79, 112	
2019/2181 (INL)	The right to disconnect	EMPL 19/12/2019	21/01/2021 472, 126, 83	College 24/03/2021 The Commission will engage with the social partners, gather evidence, raise awareness, facilitate debate.
2020/2006 (INL)	EU legal framework to halt and reverse EU-driven global deforestation	ENVI 16/01/2020 + INTA	22/10/2020 377, 75, 243	College 09/12/2020 'A legislative proposal was being drawn up and would consider options going beyond the due diligence requirement requested by Parliament for companies placing products on the EU market.'
2020/2012 (INL)	Ethical aspects of artificial intelligence, robotics and related technologies	JURI 16/01/2020 + AFET + IMCO + TRAN + LIBE	20/10/2020 559, 44, 88	College 15/12/2020 'positive follow-up to these Parliament resolutions as it intended to adopt a legislative proposal in the coming months, as announced in its work programme for 2021'
2020/2014 (INL)	Civil liability regime for artificial intelligence	JURI 16/01/2020	20/10/2020 626, 25, 40	
2020/2018 (INL)	Digital Services Act: Improving the functioning of the Single Market	IMCO 16/01/2020 + ITRE + TRAN + CULT + JURI + LIBE	20/10/2020 571, 26, 94	College 15/12/2020 'The objectives pursued by these resolutions and many of their key proposals were reflected in the proposals submitted to the Commission for adoption that day.'
2020/2019 (INL)	Digital Services Act: adapting commercial and civil law rules	JURI 16/01/2020 + IMCO	20/10/2020 637, 26, 28	
2020/2034 (INL)	Digital Finance: emerging risks in crypto-assets	ECON 16/04/2020	08/10/2020 542, 63, 89	College 02/12/20 'thanks to early and sustained contact with the European Parliament, the Commission had been able to take into account Parliament's concerns regarding the digital finance strategy for the EU that it had approved on 24 September 2020.'
2020/2051 (INL)	A safety net to protect the beneficiaries of EU programmes: contingency plan for MFF	BUDG 26/03/2020	13/05/2020 616, 29, 46	College 09/09/2020 <i>[no clear conclusions in meeting report]</i>

Source: Author's compilation based on information on European Parliament, Legislative Observatory; European Commission, weekly meeting reports of the College, last accessed 8 June 2021.

Note: The Commission's responses to these resolutions have not been published on the EP's 'legislative observatory'. At the time of writing (early June 2021) four letters were available on the Commission Document Register. The notes in the table therefore refer to the written reports from the College weekly meetings available on the Commission website.

There is also some sense that it is actually less helpful, in terms of identifying the Commission's response to specific elements in the report, to have to wait until a political debate takes place, towards the end of the deadline, and then to receive a political text rather than the actual technical document that gives a point-by-point reaction. Since autumn 2020, these documents have not been transmitted or posted on the EP's Legislative Observatory as the 'Commission response to text adopted in plenary'.⁹

In only one case – in fact the first – was the response effectively to reject a request. The College report suggests that the responsible Commissioner thought that the proposed **contingency plan for MFF beneficiaries** would be counter-productive in the circumstances, and no action was taken.¹⁰

Where legislative proposals have subsequently been adopted in the policy areas concerned, the Commission has explicitly referred to the five INL reports (and other EP resolutions) respectively relating to these areas.

- The Explanatory Memorandum proposing the **Digital Services Act** in December 2020 emphasises that 'the Commission has taken account of the issues identified in the European Parliament's own initiative reports and analysed the proposals therein' and summarises the EP's points in the first section.
- The EP's legislative initiatives are referred to in the Commission's April 2021 proposal on **artificial intelligence**, together with requests made by the Council and the European Council.
- In the case of digital finance, the Commission had already adopted a proposal, but had referred to the EP's ongoing work in the presentation of its September 2020 proposal on markets in **crypto-assets**.

The INL concerning **deforestation** was adopted at a time when the Commission was engaged in an online public consultation for a forthcoming initiative in this area and may therefore be referred to when the Commission produces its proposal.

In the case of the **right to disconnect**, the nature of the response is ambiguous. The INL was accompanied by a full draft directive. The Commission could respond positively to the resolution while not taking up this draft, pointing to the statement in the EP resolution that EU legislation should only come after three years, following implementation of the autonomous agreement on digitalisation agreed in June 2020 among the European social partners.¹¹

The European Parliament's legislative initiatives – some issues and perspectives

The importance of Parliament's legislative initiatives, and the responsiveness of the Commission, are often assessed in terms of whether or not the result is a legislative proposal. This is natural given the way in which Article 225 TFEU is written, as well as Parliament's institutional interest, but prompts a number of questions.

Requests, recommendations or parallel actions?

First, this approach implies that the issue is whether or not the Commission agrees to initiate preparation of a legislative proposal in response to a request from Parliament. In many cases, this is simply not a realistic scenario.

This seems to have been the case, for example, with the proposal for the Digital Services Act (DSA). Dealing with digital challenges is one of the main shared priorities for the EU and has

been the subject of initiatives of all sorts for years. Indeed, the DSA amends the ‘e-Commerce Directive’ from the year 2000. The elaboration of this legislative initiative was already mentioned in the Political Guidelines in July 2019, and was confirmed in the Commission’s 2020 Work Programme published on 29 January 2020.

The EP committed considerable resources, producing two legislative initiative reports, and one non-legislative report. Six committees were fully associated in the process. The Recommendations in annex to the IMCO report take up 14 pages.

The final annex attached to the Commission’s impact assessment states that the ‘Commission analysed the reports while conducting the impact assessments’, and a table ‘maps the main areas and sections in the impact assessment reports where the calls from the European Parliament are addressed.’¹²

Yet Parliament’s input was only one source among many (it comes after 200 pages of information about the results of Commission consultations) and the table is mainly an exercise in ex post comparison between two parallel processes. In his Letter of Thanks Vice-President Šefčovič writes that he was ‘glad to note a high degree of **convergence** between the main objectives set out in the resolution and the objectives of the Commission’s proposals.’¹³ (emphasis added)

The Report from the IMCO Committee (Internal Market and Consumer Affairs) was tabled on almost exactly the same day (7 October 2020) that the Commission’s draft impact assessment report was submitted (8 October) to the Regulatory Scrutiny Board (RSB). It was supported by a European Added Value Assessment carried out by the European Parliamentary Research Service. This document (328 pages) contains legal and technical analyses that present a different set of policy options and policy actions.¹⁴

The Commission’s letter continues: ‘It is also worth noting that the Commission engaged with the European Parliament from the very beginning of the development of the resolution.’ It is hard to judge how much direct interaction there may have been between the two processes in the DSA case. The Commission impact assessment does refer to two separate studies for the EP on options for reform of the e-commerce Directive that were published already in April and May 2020.¹⁵

Whatever may have been the case with the DSA, however, this is clearly the direction in which the Commission thinks that things should go, following up on the intention expressed by Mrs von der Leyen that her Commissioners should work ‘hand-in-hand’ with the EP in drawing up the resolutions.

The key point is that these are not and should not be separate processes. But in that case, does it make sense to look at this as the exercise of a Parliamentary power to request an initiative?

Where the Commission has already announced that it is going to work on a legislative initiative, and even more so if the Commission has already adopted a proposal, a report calling for the Commission to submit a proposal may be practically ineffectual because of timing (as well as conceptually confusing).

The danger of duplication and the need for coherent interaction

Moreover, if the Commission is already engaged in an Impact Assessment, it may well be asked how much value is added by a parallel European Added Value Assessment. Is there not a danger of either duplication or incoherence?

In the DSA case, the EP reports and their supporting studies were not entirely consistent in

their conclusions. This reflects differences between committees as well as the fact that INL reports tend to be shaped by the need to pool individual requests, making them overloaded and complex.¹⁶ This is not to suggest that the Commission's work is necessarily superior to what may come from the Parliament. In the DSA case, the Regulatory Scrutiny Board was in fact rather critical of the draft and required significant improvements: 'The policy options are not complete and not sufficiently developed. They lack detail and their content is not well explained. [...] The report does not clearly present the evidence that leads to the choice of the preferred policy option. The assessment of compliance costs is insufficient.'¹⁷

Studies conducted by the EP itself have pointed to the 'need to streamline procedures and working methods if necessary when revisiting the interinstitutional agreements, on the one hand, and to focus on follow up and monitoring, on the other, in order to increase the quality and homogeneity in the constructive dialogue between Parliament and the Commission.'¹⁸

It should be noted that there are different views within the European Parliament in this respect. Most MEPs to the centre/right of the EP (most EPP, ECR and most ID), as well as some Renew MEPs, tend to support the idea of evaluating each incoming idea against the backdrop of impact and added value assessments. Most MEPs on the centre/Left /Green side of the EP, on the other hand, tend to argue that there is and should be a difference between the 'scientific' and 'objective' basis for Commission proposals and the political, majoritarian grounds for Parliament initiatives.¹⁹

Expressions of political preference cannot be replaced by technical analyses if governance is to be considered democratic (and new forms of EU governance are indeed producing tensions between technocracy and democracy).²⁰ Yet they are usually subject to checks and balances, or other constitutional limitations, in national contexts, and it is a very real and topical challenge at all levels of governance to defend deliberative democracy against both technocracy and populism.²¹

The European Parliament's function in directly representing citizens and expressing political concerns has become an essential component of EU governance. Yet it remains only one of the different kinds of interests that have to be reconciled through the 'institutional balance' established by the treaties.

Interinstitutional cooperation rather than separation of powers

Indeed, the push for a more independent right of initiative for the EP goes against the trend – and the formal interinstitutional agreement – to work together as early as possible at all levels and at all stages. Following the 2016 IIA on Better Law-Making, the EU now has a formal multiannual strategic framework (the first-ever Joint Conclusions on Policy Objectives and Priorities for 2020-2024 adopted in December 2020) and an annual cycle in which the Commission receives input from Parliament and Council in shaping the Commission Work Programme – in which new legislative initiatives are announced - leading to an annual Joint Declaration on Legislative Priorities for the following year.

In this perspective, it would seem more fruitful and appropriate to pull back from the idea of strengthening the Parliament's separate power to present justified requirements for new initiatives (and even more from the possibility that Parliament could become responsible for assessing issues and drafting proposals on the same basis as the Commission). One should rather think about optimising ways to interact in practice.

EP legislative own -initiative reports and other actors

Finally, the potential of INL reports needs to be seen in the context of EP interactions with other actors and other processes of interest representation and participation.

There has been discussion of cooperation with **national parliaments**, particularly in relation to the idea of linking an EP request under Article 225 TFEU to a ‘green card’ by which a certain number of national chambers could jointly express their positive support for a Commission initiative (as compared to the ‘yellow card’ of warning to the Commission that is available to national parliaments under the subsidiarity control mechanism applicable to EU legislative initiatives). That idea, formally presented in 2015, has not been accepted by the Commission, however, and it was in the end not clear that either the EP or national parliaments would really see much benefit for themselves in joint action.²² Inter-parliamentary cooperation between the European and the national levels is indeed becoming stronger, especially with regard to newer areas in which EU and national authorities act jointly, such as the Joint Parliamentary Scrutiny Groups for Europol or the European Border and Coast Guard Agency. Yet there has been explicit concern not to confuse the distribution of competences between national and European levels when it comes specifically to EU legislative processes.²³

The relationship with the European **social partners** (the representative organisations of employers and workers at European level) raises other questions. These relate to the interaction between forms of representation in democratic governance: territorial, as in the case of the EP, and ‘functional’ as in the case of the social partners. Under the European Social Dialogue, the signatories of a European agreement may choose to implement this on an ‘autonomous’ basis – as was the case in June 2020 with the framework agreement on digitalisation – or may jointly request the Commission to submit the text as a proposal for adoption by the Council under EU law (usually as a Council directive). The EP has no formal role in this other than to be ‘informed’.²⁴ Interaction between the EP and the social partners in the promotion of legislative initiatives has been seen as one path to asserting the EP’s role in such legislative processes, while also reinforcing overall representative legitimacy.²⁵

The interaction with other actors of EP requests under Article 225 TFEU is perhaps most important with regard to **European Citizens’ Initiatives** (ECI). It is already stated in the revised ECI Regulation itself that the EP will not only organise a public hearing for a successful initiative with the presence of the co-legislators, but also ‘assess the political support for the initiative’.²⁶

The EP Rules of Procedure now foresee that the EP may use its formal right under Article 225 TFEU to take up successful initiatives that were not followed up with legislative initiatives by the Commission. The EP adopted a non-legislative resolution of 10 June 2021 supporting the requests made in the ECI *End the cage age* that had been presented to the Commission after successfully gathering over one million valid signatures. It was expected that, if the Commission were not to follow up on the legislative initiatives when it formally responded by 15 July, there could be the first case of the EP adopting a legislative initiative directly related to an ECI.

It should not be assumed that this would in itself convince the Commission. In the case of another successful ECI, *One of Us*, the Court has recently ruled that: ‘in exercising its powers of legislative initiative, the Commission must be allowed broad discretion, in so far as, through that exercise, it is called upon, pursuant to Article 17(1) TEU, to promote the general interest of the Union by carrying out, **possibly**, the difficult task of reconciling divergent interests. It follows that the Commission must be allowed broad discretion in deciding whether or not to take an action following an ECI.’²⁷ (emphasis added).

The sequence of interaction between Parliament and interests may be different. The EP INL report of October 2020 on deforestation was prominently referred to in the detailed NGO recommendations for the new regulation supported by over one million signatories that were submitted in December ‘together4forests’). This was not an ECI but a response to a consultation opened by the Commission with a view to possible new legislation between 03 September 2020 and 10 December 2020, building on its Communication of July 2019 and the initial online consultation (asking for feedback on what is known as the Inception Impact Assessment) in February and March 2020.

There has naturally been concern that the EP could be used as a channel for particular interests (and conversely that ECIs could be used as a vehicle for MEPs’ interests, hence the stipulation in the ECI Regulation that MEPs may not be counted among the minimum seven members of a citizens’ committee).

However, the fact that an INL has to be adopted by an absolute majority of the members of the EP may rather be seen as helping to confirm whether or not the citizens’ initiative is really of broad public concern and does enjoy widespread political support.

Conclusions

This Paper has reviewed recent developments in the European Parliament’s direct and indirect rights of legislative initiative in the perspective of strengthening democratic European governance. It concludes that it is, with one possible exception, more important to review practice and presentation, rather than change formal institutional powers.

The one exception is the need to resolve the impasse over the powers of EP committees of inquiry. This may not only help to defuse the Parliament’s concerns over the right of initiative. It is also reasonable to assume that the installation of credible arrangements for Parliamentary inquiry would be welcomed by citizens as a positive advance in one fundamental aspect of democratic governance, that of accountability. It may also be assumed that this would seem at least as important to citizens as whether or not the Parliament has the right of direct legislative initiative.

It is very unlikely, and arguably undesirable, that the Member States would change the treaty in order to give a full right of legislative initiative to the EP, understood as a parallel power to that of the Commission.

There is a strong general preference among the Member States not to be obliged to deal with proposals for new legislation that they might consider to be unnecessary and/or ill-prepared, whether they originate with citizens, social partners or the European Parliament (or the Commission, for that matter). They are, on balance, happier to urge the Commission to play the role of ensuring that new initiatives reflect priorities that are agreed across the institutions to be in the general and the long-term interest, rather than responding to short-term political or sectoral preferences; and that proposals are then duly assessed in terms of subsidiarity, proportionality and better law-making.

There is also consensus as to the need to improve the quality and efficiency of these assessments. This is not likely to be achieved by encouraging the duplication of capacities in the EP and parallel processes of technical assessment and evaluation (ex ante or ex post), as would almost inevitably be the consequence of formalising a separate right of initiative for the EP.

It is also unlikely, and perhaps inappropriate, to consider introducing changes to Article 225

TFEU that would give EP requests binding effect. It is more important to rethink the nature of the exercise; to review the nature of interaction between Parliament and Commission, including on the practical level; and to develop further the contribution than be made to democratic governance through interaction with other mechanisms of citizen participation.

Coupled with the technical and legal assessments conducted by the Commission as part of its right of initiative, this kind of interaction does represent a new and promising way in which representative and participatory mechanisms may interact in a structured way to contribute to a democratic upgrade of EU policy-making.

This is very much in the spirit of the Conference on the Future of Europe itself. As was pointed out by members of the Executive Board when adopting its Rules of Procedure on 9 May, the Conference has an 'innovative nature [...] combining representative and participatory democracy'.²⁸ It is an approach that needs to be promoted as widely as possible if citizens are to believe that the invitation to greater engagement is going to last.

Notes

- ¹ <https://www.europarl.europa.eu/the-president/en/newsroom/sassoli-at-the-launch-of-the-conference-on-the-future-of-europe-we-must-have-no-taboos>.
- ² For a recent overview of parliamentary initiative in national parliaments see Maurer, A. and Wolf, M., *The European Parliament's right of initiative*. Study for the European Parliament's Committee on Constitutional Affairs, 2020.
- ³ European Commission, *2020 Strategic Foresight Report*, COM(2020) 493 final 9 September 2020, p.4.
- ⁴ Art. 289(2) TFEU. The three provisions in the TFEU containing this formula are Art. 223(2) (statute of members), Art. 226 (right of inquiry) and Art. 228(4) (statute of Ombudsman).
- ⁵ Remáč, M., *Parliamentary scrutiny of the European Commission: Implementation of Treaty provisions*, European Parliamentary Research Service, July 2019 p.71.
- ⁶ European Parliament, Council of the European Union and European Commission, *Interinstitutional Agreement of 13 April 2016 on Better Law-Making*. OJ L 123/1 of 12 May 2016 para 10. This commitment was contained in the 2010 Framework Agreement between the EP and the Commission, together with a promise that the Commission would, in principle, come forward with a legislative proposal within one year. This latter point was not taken up in the 2016 IIA.
- ⁷ https://www.politico.eu/wp-content/uploads/2019/07/SD_letter_PDF.pdf.
- ⁸ https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission_en_0.pdf.
- ⁹ These 'SP' documents from the Interinstitutional Relations Group (IRG) are referred to in the College weekly meeting reports but are not publicly available from the Commission either.
- ¹⁰ The Commission's letter in this case is not publicly available.
- ¹¹ The College report for 24 March 2021 points out that the resolution 'called on the Commission to legislate [...] At the same time, the resolution made it clear that the Commission should not present any legislative proposals in these areas over the next three years in order to respect the role of the social partners laid down in the Treaty. The Commission's March 2021 European Pillar of Social Rights Action Plan thus refers to the EP resolution but states that: 'Any Commission proposal for a legislative act related to the right to disconnect must be subject under Article 154 TFEU to consultation of the EU social partners, who may decide to act by means of agreements. The Commission invites social partners to find commonly agreed solutions to address the challenges raised by telework, digitalisation and the right to disconnect.'
- ¹² Commission Impact Assessment Report, Annexes accompanying the document Proposal for a Regulation of the European Parliament and the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC {COM(2020) 825 Final} - {SEC(2020) 432 Final} - {SWD(2020) 349 Final}. SWD(2020) 348 final PART 2/2. 15 December 2020.
- ¹³ This letter can be found on the Commission's Document Register. The same sentences are included in the Letters of Thanks concerning the report from the Legal Affairs Committee and the reports on artificial intelligence.
- ¹⁴ Lomba, N. and Evas, T., *Digital Services Act*. European added value assessment, European Parliamentary Research Service, October 2020.
- ¹⁵ Smith, M., *Enforcement and cooperation between Member States* April 2020; De Streel, A. and Husovec, M., *The e-commerce Directive as the cornerstone of the Internal Market. Assessment and options for reform*. May 2020.
- ¹⁶ Maurer, A. and Wolf, M., *The European Parliament's right of initiative*. p. 12.
- ¹⁷ See the RSB Opinion on <https://digital-strategy.ec.europa.eu/en/library/impact-assessment-digital-services-act>.
- ¹⁸ Perez Guzman, A., Pasik, M., Remáč, M. with Linda Weigl and Gabriella Zana, G., *European Commission follow-up to European Parliament requests 2017-2019*. European Parliamentary Research Service, June 2020. p. 30.
- ¹⁹ The author is indebted to Andreas Maurer for this point.
- ²⁰ See, for example, Closa Montero, C., González De León, F. and Losada Fraga, F., 'Democracy vs technocracy: national parliaments and fiscal agencies in EMU governance', *RECONNECT paper*, 2020.
- ²¹ Gaus, D., Landwehr, C., and Schmalz-Bruns, R., 'Defending democracy against technocracy and populism: Deliberative democracy's strengths and challenges', *Constellations*, 2020 (27): 335–347.
- ²² Best, E., 'The EU agenda and the right of initiative'. *EIPA Paper*, June 2020, pp.11-12.
- ²³ For example, the European Parliament resolution of 19 April 2018 on the implementation of the Treaty provisions concerning national parliaments (2016/2149(INI)) para 18.
- ²⁴ Art. 155 TFEU.
- ²⁵ See the discussion in Maurer, A. and Wolf, M., *The European Parliament's right of initiative*.

²⁶ Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative. OJ L 130/55 of 17 May 2019. Art. 14(3).

²⁷ *European Citizens' Initiative One of Us v. Commission*, Judgment of the General Court in Case T 561/14, 23 April 2018, at 169. This was upheld by the Court of Justice in its Judgment on the Appeal on 19 December 2019.

²⁸ Minutes of the meeting of the Executive Board of the CFE – Council doc. 8995/21 of 20 May 2021.