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# **The European Parliament as legislator**

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This paper assesses the influence of the European Parliament on the legislative programme of the European Union. It discusses the European Parliament's legitimacy as legislator, considers the nature of the European Parliament's role within the European Union's institutional framework, in particular its relationship with the European Commission, assesses whether recent developments have enhanced the European Parliament's role and evaluates proposals for further reform. The mechanisms by which the European Parliament influences European Union legislation are outlined, with a focus on the European Parliament's ability to steer the Commission's legislative proposals, in particular by means of legislative requests under Article 225 of the Treaty on the Functioning of the European Union. A case study illustrates how such legislative requests work in practice.

## Contents

- 1 Introduction
- 2 Legislative power in the EU: the EP's toolkit
  - 2.1 The initiation of EU legislation
  - 2.2 The EP's legislative requests
  - 2.3 The outcome of the EP's legislative requests
  - 2.4 The EP's legislative function
    - 2.4.1 EP elections
    - 2.4.2 Cooperation between the EP and the Commission
  - 2.5 The limits of the Commission's legislative role
  - 2.6 Proposals for reform
- 3 Case study: EP request for a directive on the right to disconnect
- 4 Conclusion
- 5 References

## 1 Introduction

<1>

This paper assesses the influence of the European Parliament (EP) on the legislative programme of the European Union (EU). It outlines the EP's legitimacy as legislator, considers the nature of the EP's role within the EU's institutional framework, in particular the EP's relationship with the European Commission (Commission), assesses whether recent developments have enhanced the EP's role, and evaluates proposals for further reform.

The mechanisms by which the EP influences EU legislation are outlined, with a focus on the EP's ability to steer the Commission's legislative proposals, in particular by means of legislative requests under Article 225 of the Treaty on the Functioning of the European Union (TFEU). A case study illustrates how such legislative requests work in practice.

## 2 Legislative power in the EU: the EP's toolkit

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Since it first became a directly elected body in 1979, the EP's functions have evolved significantly. However, there remain substantial differences between the EP's powers and those typical of national parliaments. In particular, the EU's legislative and executive functions are not as clearly demarcated as they tend to be at national level. The EP, the Commission, the Council of the European Union (Council) and other bodies have overlapping legislative and executive roles. It is inappropriate to compare the EP and national parliaments directly without taking these constitutional differences into account.

In contrast with most national parliaments,<sup>1</sup> the EP has only limited power to initiate legislation directly. However, the TFEU confers power on the EP to request the Commission to propose legislation. The EP also frequently calls on the Commission to act in its non-legislative own initiative reports, which have no basis in the Treaties. The EP thus disposes of the power of indirect legislative initiative.

When examining the EP's power to influence the EU's legislative agenda, it is not enough to consider only the right of legislative initiative. Legislative power comprises the capacity to initiate, adopt, veto and amend legislation and includes control over the legislative agenda and procedure (KREPPPEL/OZTAS 2017: 1121). While the ability to **initiate** legislation is one indicator of legislative power, influence on the **outcome** of the legislative agenda may be a more important one.

Most EU legislation is adopted by means of the ordinary legislative procedure under Article 294 TFEU, under which the Commission proposes legislation and the EP and the Council, as co-legislators, adopt legislative acts. The EP has a substantial potential influence on the outcome of the EU's legislative programme in its role as co-legislator.

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1 Among the national parliaments of the Member States of the EU, only Malta does not have the right to initiate legislation (MAURER/WOLF 2020: 75).

## 2.1 The initiation of EU legislation

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The Commission (the EU's quasi-executive) has a near monopoly on initiating EU legislation.<sup>2</sup> In exercising its role as legislative initiator, the Commission "sift[s] through the ideas, to make a judgment between competing interests, and to apply the test of the common European interest. Then it takes its responsibility to make the final choice on whether to make a legislative initiative, and if so at what point and with what content" (HOUSE OF LORDS 2008: para. 34, citing evidence presented by the Commission). The Commission consults the co-legislators (the EP and the Council), the Member States and other stakeholders<sup>3</sup> during its preparatory work.

The Treaties provide the EP with a **direct** right of legislative initiative in a number of areas. However, the success of the EP's legislative proposals in those fields is dependent on the agreement or endorsement of the European Council or the Council. For example, proposals by the EP for a decision establishing its own composition (under Article 14(2) TEU (Treaty on European Union)) or for "provisions necessary for the election of its Members by direct universal suffrage with a uniform procedure in all Member State" (under Article 223(1) TFEU) are adopted, respectively, by the European Council and by the Council. In both cases, the legal acts must be adopted unanimously, thus the bar is set high.<sup>4</sup>

Article 225 TFEU provides the EP with an **indirect** right of initiative. It empowers the EP, acting by absolute majority, to ask the Commission "to submit any appropriate proposal on matters on which it considers that a Union act is required to implement the Treaties". If the Commission decides not to submit a proposal as requested by the EP, it must give reasons for not doing so. Article 241 TFEU provides the Council with a similar right.

Article 225 TFEU requests are rare because of the burdensome absolute majority requirement<sup>5</sup> and a reluctance to overuse the mechanism to avoid undermining its impact (MAURER/WOLF 2018: 67). In any event, the Commission, as principal initiator of legislation, or legislative gatekeeper, has the final say on whether to respond to EP requests with a legislative proposal.

## 2.2 The EP's legislative requests

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The EP can call on the Commission to propose legislation by means of own-initiative reports, which may be **non-legislative** or **legislative**.<sup>6</sup>

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2 See Article 17(2) of the Treaty on European Union.

3 See the [Register of Commission Expert Groups and Other Similar Entities](#) (access 12.11.2021).

4 Article 14(2) TEU and Article 223(1) TFEU both provide for the EP's consent to be given before adoption of the relevant act.

5 Article 231(1) TFEU provides for the EP to act by **simple majority** unless otherwise provided.

6 In the 2009-2014 legislative period, the EP adopted 19 INLs and 572 INIs (MAURER/WOLF 2018: 66).

**Non-legislative reports (INIs)** are not referred to in the Treaties. They are adopted by a simple majority of Members present at a plenary sitting and often contain a mixture of statements, findings and legislative and other requests inviting the Commission and others to act. They are “important tools in the early phase of the legislative cycle trying to shape the agenda” (WELLE 2016: 47). Within three months of the adoption of an INI, the Commission must “provide information to Parliament [...] on action taken in response to specific requests addressed to it in Parliament’s resolutions, including in cases where it has not been able to follow Parliament’s views.”<sup>7</sup>

**Legislative reports (INLs)** are based on Article 225 TFEU and are adopted by absolute majority. The Commission must reply within three months of adoption of an INL and must submit a legislative proposal within one year or include a proposal in its work programme for the following year.<sup>8</sup> If the Commission decides not to submit a proposal, it must provide detailed reasons, including an analysis of possible alternatives, and a response to the EP’s concerns regarding “European added value” and the “cost of non-Europe”.<sup>9</sup>

Because the timing and substance of Commission responses to INLs is poor (see Section 2.3), the EP has resolved to increase the number of its INLs, has called on the Commission to take better account of INLs and has proposed considering Treaty changes to give the EP a direct right of legislative initiative<sup>10</sup> (see Section 2.6).

INIs do not always contain proposals for legislative changes and are not only addressed to the Commission. In contrast, the sole purpose of INLs is to invite the Commission to propose legislation in a particular field. Despite the differences between INIs and INLs as to their purpose and content, there is as yet no clear evidence that the Commission gives greater weight to legislative requests made in INLs than those made in INIs (MAURER/WOLF 2018: 79, 80).<sup>11</sup>

## 2.3 The outcome of the EP’s legislative requests

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An assessment of the EP’s legislative requests in INIs and INLs, between January 2017 and May 2019, came to the unremarkable conclusion that “clear and specific instructions” on the

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7 Such inter-institutional agreements are adopted on the basis of Article 295 TFEU between the EP, the Council and the Commission to help fill gaps left by the Treaties.

8 Point 16 of the 2010 Framework Agreement on relations between the European Parliament and the European Commission.

9 Point 10 of the 2016 Interinstitutional Agreement on Better Law-Making. The EP has a dedicated European Added Value Activity (EAVA) Unit, substantiating INL requests by preparing EAVA assessments and cost of non-Europe reports.

10 [EP resolution of 16 February 2017](#) (access 12.11.2021) (P8\_TA(2017)0048), para. 62. [EP resolution of 16 February 2017](#) (access 12.11.2021) (P8\_TA(2017)0049), para.17. [EP resolution of 12 February 2019](#) (access 12.11.2021) (P8\_TA(2019)0078), paras. 12, 25 and 27. [EP resolution of 13 February 2019](#) (access 12.11.2021) (PA\_TA(2019)0098), paras. 12 and 13.

11 Only one-third of the EP’s legislative requests, whether made in the form of INIs or INLs, have been considered to be fully implemented by the Commission during the 2009-2014 legislative period.

part of the EP “may facilitate comprehension for the Commission, increase the likelihood of a tailored and unambiguous reply, and make the potential implementation of a request more plausible” (REMÁČ et al. 2020: 13).

With regard to the EP’s specific legislative requests, whether in INIs or in INLs, the study found that the Commission replied to only 66 % (REMÁČ et al. 2020: 14), complied with the requisite three-month time limit (cf. point 16 of the 2010 Framework Agreement) in only 11 % (REMÁČ et al. 2020: 14) and implemented the action promised in its replies in only 56 % of such requests (REMÁČ et al. 2020: 17).

## 2.4 The EP’s legislative function

### 2.4.1 EP elections

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EP elections suffer from a consistently low turnout. Moreover, they tend to be used as a sounding board for domestic issues. Attempts to stimulate a higher turnout and focus campaigning on EU issues have been unsuccessful to date.

Although the introduction of the EP’s *Spitzenkandidat* (‘lead candidate’) process for influencing the appointment of the Commission President<sup>12</sup> was intended to personalise EP elections, it did not result in a substantively higher turnout in 2014 or 2019. Moreover, the crises relating to sovereign debt, migration and Brexit did not stimulate the anticipated greater focus on EU issues during the campaigns preceding those elections (RUSSACK 2019: 60, 61).

The low level of harmonisation of EP elections reinforces their domestic focus. The Council adopts provisions for EP elections on the basis of a proposal by the EP. EP elections are to be held “in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States” (Article 223 TFEU), but the Council has resisted the EP’s attempts to increase the level of harmonisation of its elections. It is therefore more appropriate to describe EP elections as 27 simultaneous national elections rather than a single transnational contest. Moreover, there is a perceived lack of accountability of Members of the EP to their electorate (RUSSACK 2019: 50, 55-56).

A further Europeanisation of the electoral process, such as by means of the proposal to reserve a certain number of seats for election by European-wide rather than national lists<sup>13</sup> and a loosening of the grip of national parties on the electoral process could help distance EP elections from the domestic arena and increase the EP’s perceived legitimacy as legislator (RUSSACK 2019: 50-52; CICCHI 2021: 50).

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12 The *Spitzenkandidat* process involves the nomination by the larger EP political groups of candidates to fill the post of President of the Commission, to be put forward by the European Council for election by the EP, taking into account the result of the election (Article 17(7) TEU).

13 This is currently the subject of discussion within the EP in the context of proposals to amend the Act Concerning the Election of the Members of the European Parliament by Direct Universal Suffrage.

## 2.4.2 Cooperation between the EP and the Commission

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The relationship between the EP and the Commission has only superficial similarities with the relationship between the legislature and the executive at national level.<sup>14</sup>

Cooperation between the EP and the Commission is underpinned by the principle of “mutual sincere cooperation”, which is the basis of the relationship between all EU institutions (Article 13(2) TEU).

More concretely, the appointment of the College of Commissioners is subject to the EP’s consent (Article 17(7) TEU), the EP may censure the Commission (Article 17(8) TEU and Article 234 TFEU) and the Commission is accountable to the EP (Article 17(8) TEU) and must reply to its oral and written questions (Article 230 TFEU).

The introduction of the *Spitzenkandidat* process for the 2014 elections sought to enhance the link between the outcome of the EP elections and the appointment of the Commission. Although the *Spitzenkandidat* process directly affects only the nomination of the Commission President, the effects of the process can be much broader. For example, after the appointment of Commission President Juncker in 2014, a coalition between the EP’s centre right group (EPP) and its centre left group (S&D) (joined later by the liberal group (ALDE)) was responsible for adopting the vast majority of EP acts and was instrumental in implementing the Commission’s legislative programme. Thus the “executive was winning the backing of the legislature that had helped to get its President elected; the legislature was developing a programme for government with the executive that it had chosen” (SHACKLETON 2017: 199).

## 2.5 The limits of the Commission’s legislative role

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The Commission’s role as legislative initiator includes the right to amend its proposals. The Commission can also withdraw its proposals even after they have become the subject of negotiation between the EP and the Council if “an amendment [proposed during those negotiations] distorts the proposal for a legislative act in a manner which prevents the achievement of the objectives pursued by the proposal and which, therefore, deprives it of its *raison d’être*.”<sup>15</sup>

However, the Commission’s success in achieving its policy agenda depends on the policy objectives of the EP and the Council, which tend to have a stronger influence on the outcome of their own legislative policy agendas (KREPPPEL/OZTAS 2017: 1122). Thus, the annual State of the Union speech by the Commission President together with the Commission’s annual work programme provide a blueprint for the Commission’s legislative priorities, but are reflected in only around 40 % of adopted EU legislation (MAURER/WOLF 2020: 17; KREPPPEL/OZTAS 2017: 1135, 1139).

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14 For example, in contrast with national systems, Commissioners (quasi-executive) are prohibited from membership of the EP (quasi-legislature) under Article 245 TFEU (RUSSACK 2019: 60).

15 Judgment of 14 April 2015, Case C-409/13, *Council v Commission*, ECLI:EU:C:2015:217, para. 83.

## 2.6 Proposals for reform

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The EP has called for a right of legislative initiative to be conferred upon “the direct representative of EU citizens” in the event of a future revision of the Treaties.<sup>16</sup> Bearing in mind that the Commission calls on 327 active expert groups in the preparation of legislative proposals and policy initiatives (MAURER/WOLF 2020: 16-17), the EP would need to consider carefully its ability to exercise a direct right of initiative effectively and the additional resources needed to do so.

It has been argued that since the EP may make legislative requests by means of INIs, the special procedure for making legislative requests in the form of INLs would be redundant if it did not place a greater burden on the Commission to respond positively (MAURER/WOLF 2020: 23, 2018: 69). This viewpoint is unlikely to gain traction, in any event with the Court of Justice of the European Union (Court).

In a case relating to the European Citizens Initiative (ECI),<sup>17</sup> a process which has been compared to Article 225 TFEU requests,<sup>18</sup> the Court opined that “the particular added value of the [...] mechanism resides not in certainty of outcome, but in the possibilities and opportunities that it creates [...] to initiate debate on policy within the EU institutions without having to wait for the commencement of a legislative procedure [by the Commission]”.<sup>19</sup> The Court rejected the argument that the Commission was bound to accede to the legislative request contained in the ECI, saying that, where the Commission enjoys “a broad discretion and, in particular, when [it is] required to make choices that are [...] of a political nature and to undertake complex assessments, judicial review of the assessments that underpin the exercise of that discretion must consist in determining the absence of manifest errors” (judgment, C-418/18 P, para. 95).

Another proposal, also requiring Treaty changes, is to provide for an Article 225 TFEU request to “mutate” into a draft legislative proposal if the Commission fails to act in response to the EP request (MAURER/WOLF 2020: 91-93). The mutated legislative proposal would be negotiated in the framework of the ordinary legislative procedure under Article 294 TFEU. Such a change would certainly place greater pressure on the Commission to react quickly and substantively to INLs in order to retain its privilege as legislative initiator. It would also require the EP systematically to include draft legislative proposals in its INLs (there is currently no such requirement<sup>20</sup>) and to ensure that these would be of sufficient quality to serve as a blueprint for negotiations with the Council. Such an arrangement would affect the cur-

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16 EP resolution of 13 February 2019 (PA\_TA(2019)0098), para. 13 (see fn. 10).

17 Article 11 TEU, Article 24 TFEU and Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative (OJ L 130, 17.5.2019, p. 55).

18 Recital 1 of Regulation (EU) 2019/788 refers to the ECI process as being “similar to the right conferred on the European Parliament under Article 225 [TFEU]”.

19 Judgment of 19 December 2019, Case C-418/18 P, *Puppink and others v Commission*, ECLI:EU:C:2019:1113, para. 70.

20 Article 225 requests are own initiative (non-legislative) reports comprising a Resolution setting out the background of and reasons for the request and an Annex containing the request. The Annex may contain a draft legislative act or a “wish list” (cf. Rules 47, 54 of the EP’s Rules of Procedure).

rent institutional balance during legislative negotiations, in which the EP and the Council defend their respective negotiating mandates and the Commission acts as “honest broker” while seeking to ensure that the objective of the proposed legislation is maintained.

It has also been proposed that the Commission be given more time to reply to INLs (MAURER/WOLF 2020: 93-94). However, the deadlines do not seem to be excessively short: the Commission must reply to an INL within three months and must submit a legislative proposal within one year or include a proposal in its work programme for the following year. Although the Commission often does not meet its deadlines (see Section 2.3), there is no evidence that the current time limits contribute to the low success rate of the EP’s legislative requests.

Disregarding possible future Treaty changes, the systematic inclusion of draft legislative acts in the EP’s INLs can only be advantageous. Such draft legislative acts, prepared with the input of the EP’s legal, drafting and impact assessment services,<sup>21</sup> would increase the likelihood of INLs being more focused and compatible with the existing legislative framework (MAURER/WOLF 2020: 72-73) and could enhance the likelihood that the Commission take them on board. As regards the Commission, its replies to INLs could be standardised (REMÁČ et al. 2020: 30; MAURER/WOLF 2018: 79-80) and the Commission could be required to acknowledge the EP’s input into its legislative initiatives by means of a “legislative footprint” (MAURER/WOLF 2020: 94). Such measures would not only enhance the transparency and accountability of the INL process but would also facilitate monitoring the success of the EP’s legislative requests.

### 3 Case study: EP request for a directive on the right to disconnect

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This section will outline the outcome of the EP’s INL on the right to disconnect.<sup>22</sup>

Digitalisation in the workplace has resulted in an increase in remote working. While remote working can benefit workers by enhancing their flexibility and autonomy and facilitating a better work-life balance, it also subjects workers to physical and mental health risks and a blurring of the boundary between work and private life. The downsides of remote working were brought into relief during the recent COVID-19-related lockdowns.

The right to disconnect is a worker’s right to refrain from engaging in work-related electronic communication outside normal working hours (MÜLLER 2020: 1). Measures implementing a right to disconnect can take the form of “hard” measures, such as connectivity shutdown outside office hours, including blocking incoming or outgoing messages, or “soft” measures, such as pop-up messages, reminding workers and stakeholders that there is no requirement to read or answer messages outside office hours, coupled with complaints procedures and procedures for monitoring connection (EUROFOUND 2021: 32, Figure 7).

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21 In any event, the EP’s services will also prepare an EAVA (European Added Value Activity) assessment and a cost of non-Europe report for each INL: see fn. 9.

22 [EP resolution of 21 January 2021](#) (access 12.11.2021). The draft legislative proposal is in the annex.

No existing EU legislation directly addresses the right to disconnect, but six Member States have regulated the area,<sup>23</sup> with France paving the way in 2016, two Member States are in the process of amending their legislation to address the issue,<sup>24</sup> and the topic is the subject of discussion in a number of other Member States, in particular in light of the negative effects of remote working during the pandemic (EUROFOUND 2021: 20).

The EP's INL on the right to disconnect contains a draft directive and states that the proposed legislation "particularises and complements" and is "without prejudice to the requirements laid down in" (Article 1(2)) existing EU directives, in particular the Working Time Directive.<sup>25</sup> The Working Time Directive definition of "working time" is also incorporated into the EP's draft directive, providing another link with the existing legislative framework (Article 2(2)).<sup>26</sup>

An amendment to the resolution which accompanied the draft directive referred to the ongoing implementation period of the 2020 Framework Agreement on Digitalisation<sup>27</sup> and the need to respect the autonomy of the social partners.<sup>28</sup> The amendment contradicted the tenor of the EP's resolution and draft directive, both of which stressed the urgency of Commission action in the field. However, the amendment was proposed as an attempt to appease the opponents of the INL, whose vote was needed to secure an absolute majority. The amendment was adopted and an absolute majority was duly achieved.

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The amendment could be considered to have contributed to the lack of progress of the INL on the right to disconnect to date.

Although the Commission sent the EP a formal reply within the three-month deadline, it focused on the amendment, emphasising the role of the social partners in identifying and implementing measures concerning the right to disconnect, and proposed that the social partners follow up on the Framework Agreement on Digitalisation to address the issue.

In its Action Plan on the European Pillar of Social Rights (Action Plan), the Commission again ignored the overall urgency of the EP's request<sup>29</sup> and focused on the amendment,

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23 Belgium, Greece, France, Italy, Spain and Slovakia (EUROFOUND 2021: 20).

24 The Netherlands and Portugal (EUROFOUND 2021: 20).

25 Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (*OJ L* 299, 18.11.2003, p. 9).

26 The EP did not follow the recommendation of its European Added Value assessment, which was to propose a directive implementing the Working Time Directive (MÜLLER 2020: 7).

27 <https://www.etuc.org/system/files/document/file2020-06/Final%2022%2006%2020%20Agreement%20on%20Digitalisation%202020.pdf> (access 12.11.2021). The Framework Agreement on Digitalisation, adopted pursuant to Article 155(1) TFEU, includes recommendations to avoid out-of-hours contact and appropriately compensate out-of-hours work.

28 "[...] insists that any legislative initiative respects the social partners' autonomy at national level, national collective agreements, and national labour market traditions and models, and does not affect the right to negotiate, conclude and enforce collective agreements in accordance with national law and practice;" (para. 13).

29 See, for example, recital 8 of the draft directive.

maintaining that the EP had, “as a first step”, recommended that the Framework Agreement on Digitisation be implemented by the social partners.

In light of the Commission’s failure to take substantive action, the Commission’s promise in its Action Plan to be “committed to responding to the European Parliament’s own-initiative resolutions on the basis of Article 225 TFEU with a legislative act, in full respect of the proportionality, subsidiarity and better law-making principles” (EUROPEAN COMMISSION 2021: 20) rings rather hollow.

## **4 Conclusion**

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When assessing the EP’s influence on the EU’s legislative agenda, it is not enough to focus on the EP’s very limited right of legislative initiative. As co-legislator with the Council, for the vast majority of secondary EU legislation, the EP has a substantial potential influence on the outcome of EU legislative policy.

If, as has been proposed, the EP’s right of legislative initiative were enhanced, the EP’s new role as legislative initiator would risk diminishing its role as co-legislator. Moreover, for the EP to fulfil such a new role effectively, considerable additional resources would be needed.

Although the Commission’s response to the EP’s INL on the right to disconnect has been disappointing to date and fits a pattern, Member States’ recent legislative initiatives on the right to disconnect have been inspired by the EP’s proposals (EUROFOUND 2021: 20-21). Perhaps the success of the EP’s INLs should therefore not be measured by reference to the Commission’s response alone.

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