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Proposals for EU Treaty amendments by the Meijers Committee

May 2025

The EU Treaty reform debate has resurfaced, prompting the Meijers Committee to propose nine Treaty amendments aimed at strengthening democracy and the Rule of Law in the EU:

1. Strengthening the Article 7 procedure
2. Establishing a monitoring mechanism for respect for fundamental EU values in the acceding Member States
3. Strengthening the independence of the judges and advocates-general of the Court of Justice
4. Obligation for the Commission to submit an annual report on the rule of law in each Member State and to involve civil society in the preparation of this report
5. EU competence to ensure that elections to the European Parliament in the Member States are free and fair
6. Right of the European Parliament to initiate infringement proceedings
7. Public access to EU legislative documents and proper archiving
8. Strengthening the transparency, respect for human rights and accountability of EU agencies
9. EU competence to deal with statelessness issues

These proposals reflect the Committee's core mandate and respond to recent developments in EU governance. Before presenting its proposals, the Committee outlines two key contextual issues: (i) necessary treaty changes for future EU enlargement; and (ii) existing passerelle and flexibility clauses.



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Introduction

This comment seeks to contribute to the discussion on the reform of the EU Treaties. It contributes nine specific proposals for Treaty amendments relating to the Rule of Law, institutional matters, and migration policy and addresses the general legal ramifications of Treaty changes.

The comment comes in the context of institutional discussions on the need for EU Treaty reform. The Presidents of the EU institutions pledged to act on citizens' ideas for EU change after receiving the final report of the Conference on the Future of Europe on 30 April 2022, which was presented at a closing event for the Conference on 9 May - Europe Day 2022 - in Strasbourg. In June 2022, the European Parliament adopted a resolution calling on the European Council to agree to start the process to revise the EU Treaties.¹

Dissensus among Member States

Amidst the discussions before and after the Conference on the Future of Europe, dissension has emerged among Member States regarding EU Treaty changes. Initially, in March 2021, twelve Member States, predominantly from Northern and Eastern Europe, expressed opposition to Treaty change in a non-paper.² Other arguments emphasize that existing mechanisms, if fully utilized, are already powerful enough to bring the necessary changes. These include the well-established Rule of Law toolbox, the financial conditionality mechanism, the vital role of civil society, and the Article 7 TEU mechanism.

At the same time, in May 2022, six Member States (i.e. Germany, Italy, Spain, and the Benelux countries) presented a non-paper advocating for Treaty change.³ France, while supportive, was unable to formally sign due to its Presidency role. Notably, the Netherlands was the only Member State changing its positions from contra to pro Treaty change. This reform is mostly encouraged due to the urgent need for a stronger Rule of Law and democratic legitimacy, the necessary preparation of institutions for further enlargement, and the further increase of the capacity to act for the Union.

Consequently, a majority of smaller Member States remain opposed, while the four major Member States and the Benelux countries, representing the majority of the EU population, endorse Treaty change. The absence of a clear, substantial majority in favor of Treaty change suggests that a future Intergovernmental Conference (IGC) is likely to face challenges.

¹ European Parliament Resolution, 2022, available at https://www.europarl.europa.eu/doceo/document/TA-9-2022-0244_EN.html.

² See link to the non-paper: <https://www.affarieuropei.gov.it/media/5615/non-paper-stati-ue-23-marzo-2021.pdf>.

³ See link to the non-paper: <https://www.tweedekamer.nl/kamerstukken/detail?id=2022D20911&did=2022D20911>.

The debate around the EU Treaty changes is back on the EU's agenda, as recent developments prove.⁴

Against this background, the Meijers Committee makes suggestions for improvement of the Rule of Law within the EU. To this end the Committee drafted nine proposals for Treaty amendments in the text below. Each paragraph sets out a short proposal for an amendment including a short explanation thereof. It should be stressed that the proposals for amendments in the EU Treaties must be understood in the context of the mandate of the Meijers Committee, i.e. strengthening democracy and the rule of law in the European Union.

Before discussing the nine proposals, the Meijers Committee briefly touches on two contextual issues that should be borne in mind in the discussion around Treaty amendments. Firstly, the Committee provides for an overview of some Treaty amendments that are necessary when new EU Member State accede the EU. Secondly, the Committee sets out the possibilities in the current Treaties to alter EU decision-making. This can either through the passerelle clauses which render existing decision-making procedures more flexible, or via flexibility clauses which enable extending EU competences and powers with a view to attaining the objectives of the EU.

⁴ An overview:

- The Franco-German report titled "Sailing on high seas: Reforming and enlarging the EU for the 21st Century" of 8 September 2023, aimed at achieving three goals: 1) increasing the EU's capacity to act, 2) getting the EU enlargement ready, 3) and strengthening the rule of law and the EU's democratic legitimacy.⁴
- The manifesto of 4 October 2023, titled "The European Union at the time of a New Cold War", calling for EU Treaty changes to deliver new European public goods, signed by, amongst others, Jean-Claude Juncker or Herman Van Rompuy.⁴
- The final declaration adopted by EU leaders on 6 October 2023 in the informal EU Council meeting in Granada, in which Members argued that: *"Enlargement is a geo-political investment in peace, security and prosperity (...) In parallel, the Union needs to lay the necessary internal ground and reforms."*⁴
- The report of October 2023 entitled 'EU Treaties – Why Targeted Changes are Necessary: An Approach Based on European Public Goods, Citizenship, and Democracy' authored by experts on European constitutional law, political science, political economy and other EU policies.⁴ In the report, five major reasons are identified to justify targeted EU Treaty changes: 1) more security and strategic autonomy regarding peace, energy, food, critical materials and digital transformation; 2) stronger European drive to conduct the green transition and the digital transformation while tackling new social inequalities; 3) a larger scale investment capacity at the EU and national levels backed by sources of taxation; 4) a more attractive EU democracy in its representative and participatory components based on European citizenship; 5) enlargement as a new geo-political imperative.
- The EU Parliament's report "on proposals for the amendment of the Treaties" of 7 December 2023.⁴ For more than a year, a group of rapporteurs from the European Parliament has been working on proposals to reform the EU Treaties on the basis of Article 48 (2) TFEU. In August 2023, it presented its draft.⁴ Since then, the report has cleared further obstacles in Parliament: on 25 October 2023 it was adopted by the Committee on Constitutional Affairs and on 22 November 2023 by the plenary of the Parliament. With 291 votes in favour, 274 against and 44 abstentions, the decision was relatively close.⁴ In accordance with Article 48 TEU, the Council forwarded this resolution to the European Council in December 2023.

Necessary Treaty Amendments upon the Accession of a New EU Member State

With each accession of a new Member State in accordance with Article 49 TEU, the EU's founding treaties are amended. This follows directly from Article 49 TEU, which states: "The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant state."

What adjustments can be made to the Treaties via the Article 49 TEU procedure—without triggering the ordinary or simplified treaty revision procedures under Article 48 TEU—remains an open question.

In any case, certain treaty provisions must necessarily be amended upon the accession of a new Member State. Based on the most recent accession of Croatia in 2013,⁵ the following changes can be considered necessary:

- (i) **Article 52(1) TEU**, which defines the territorial scope of Union law.
- (ii) **Article 55(1) TEU**, which determines the authentic languages of the Treaties (assuming the official language of the new Member State is not already listed in Article 55(1) TEU).
- (iii) **Article 255, paragraph 2 of the Euratom Treaty**, which likewise sets out the authentic languages of that treaty.

Since the TFEU refers back to Articles 52 and 55 TEU for matters regarding territorial scope and official languages, no separate amendment of the TFEU is needed—unless the new Member State has special ties with overseas countries or territories, such as the Netherlands with Aruba and the Dutch Antilles. In that case, Articles 198 and 355 TFEU and Annex II of the TFEU would also need to be amended.

The statutes of the Court of Justice, the European Central Bank, and the European Investment Bank—although forming part of primary EU law as protocols to the Treaties—are not part of the Treaties themselves. They are generally formulated neutrally enough to remain unchanged upon enlargement or can be amended through legislative procedures if necessary.⁶

⁵ See Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community, OJ EU 2012, L 112/21.

⁶ See Article 308 TFEU for the EIB. As regards the ECB and the Court, not all provisions of their Statutes can be amended by legislative procedure (see Articles 129(3) and 281 TFEU), but these Statutes do not normally require amendment in the light of accession.

Passerelle and flexibility clauses in EU decision-making

Passerelle clauses are simplified Treaty revision provisions that are aimed at rendering existing decision-making procedures more flexible. More specifically, they entail modifying decision-making rules by allowing a move from unanimity to QMV and/or by introducing the ordinary legislative procedure (OLP) in specific cases in which the Treaties currently provide for a special legislative procedure. *They do not extend EU competences*. There are two types of passerelle clauses:

- (1) *general*; these can be used to change decision-making pursuant to the whole TFEU and Title V TEU (EU external action and CFSP) and require unanimous authorisation by the European Council and EP consent. Only if no national parliaments opposes the envisaged change, can it be adopted;
- (2) *specific*; in six specific policy areas entailing unanimous authorisation by the European Council or the Council.

Table: two types of passerelle clauses

(1) <i>general passerelle clauses</i>	Art. 48 (7) TEU subparagraph one [move from unanimity to QMV]
	Art. 48 (7) TEU subparagraph two [move from special legislative procedure to OLP].
(2) <i>specific passerelle clauses</i>	CFSP [Art. 31(3) TEU]
	family law [Art. 81 (3) TFEU]
	social policy [Art. 153 (2) TFEU]
	environmental policy [Art. 192 (2) TFEU]
	multiannual financial framework [Art. 312 (2) TFEU] ⁷
	enhanced cooperation [Art. 333 TFEU]

Such clauses can be used in 67 of the 94 cases in which the Treaties provide for unanimity;⁸ passerelle clauses cannot be used in the remaining cases in which unanimity is required – e.g. ordinary Treaty-revision procedure, the accession of new Member States, decisions with military or defence implications, flexibility clause.⁹

The flexibility clause (Art. 352 TFEU) enables the Council to adopt, subject to certain conditions and safeguards, appropriate measures where the Treaties have not provided the EU with the necessary powers. In other words, unlike the passerelle clauses, the flexibility

⁷ Perhaps it would be possible to include provisions on rule of law enforcement in the Council Regulation under Article 312 TFEU (which states that the Multiannual Financial Framework 'shall determine the amounts of the annual ceiling on commitment appropriations by category of expenditure and of the annual ceiling on payment appropriations' but also 'shall lay down any other provisions required for the annual budgetary procedure to run smoothly'); the last sentence is most relevant in this context. But as far as we know, this has never happened; the preferred option for rule of law enforcement was Article 322(1)(a) TFEU in connection with the EU budget implementation via Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget.

⁸ General Secretariat of the Council, 'Proposals and related specific measures contained in the report on the final outcome of the Conference on the Future of Europe: Updated preliminary technical assessment', note 10033/22, 30 November 2022.

⁹ European Parliament resolution of 11 July 2023 on the implementation of the passerelle clauses in the EU Treaties (2022/2142(INI)).

clause enables extending EU competences and powers with a view to attaining the objectives of the EU.

The flexibility clause has a fairly broad scope as it applies 'within the framework of the policies defined by the Treaties'. There are however two important subject-matter limits on the use of the flexibility clause:

- (i) common foreign and security policy (CFSP) and
- (ii) prohibition to harmonize matters within the framework of the Treaties for which harmonisation is explicitly excluded.

Due to the broad scope of the flexibility clause and the 'EU competence creep' concerns raised by it, Declarations 41 and 42 annexed to the Founding Treaties bring additional clarifications on the restricted use of Art. 352 TFEU. It is thus stipulated that the flexibility clause cannot be used to:

- (i) pursue the broadly formulated objectives of Article 3(1) TEU, i.e. to 'promote peace, its values and the well-being of its peoples' (Declaration 41);
- (ii) extend the EU powers beyond the framework created by the provisions of the Treaties as a whole, in particular those defining the task and activities of the Union;
- (iii) to circumvent the application of the Treaty revision procedures (Declaration 42).

In brief, both the passerelle and flexibility clauses (1) have quite a broad scope and application within the framework of the EU Founding Treaties (subject to certain limitations); (2) entail specific procedural changes without altering the EU competences (passerelle clauses) or more far-reaching changes to the EU competences and powers (flexibility clause); and (3) in principle cannot address fundamental Treaty changes (these should be subject to the ordinary or simplified treaty revision procedure in Art. 48 TEU).

1. Strengthening Article 7-procedure

Proposal for amending Article 7 TEU

(1) On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a qualified majority after obtaining the consent of the European Parliament, shall determine within six months of receiving a proposal whether there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.¹⁰

(2) The Council, acting by a qualified majority within six months of receiving a proposal by one third of the Member States, by the European Parliament, acting by a majority of its component Members, or by the Commission, may submit an application to the Court of Justice on the existence of a serious and persistent breach by a Member State of the values referred to in Article 2. The Court of Justice shall decide on the application after inviting the Member State in question to submit its observations.

(3) Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, shall decide within six months thereof to take appropriate measures. Such measures may include the suspension of commitments and payments from the Union's budget, or the suspension of certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council and the right of the Member State in question to hold the Presidency of the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

(6) [(new)] The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules aimed at the protection of the values referred to in Article 2.

Explanation

The Article 7-procedure is generally seen as the 'nuclear option'¹¹ in the EU's toolbox sanctioning breaches of the foundational values in Article 2 TEU, because of its potential far-ranging consequences. It could result in the suspension of 'certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council' (see Article 7(3) TEU). The procedure was initiated in relation to Poland on the instigation of the European Commission in December 2017 (and closed in May 2024) and the European Parliament vis-à-vis Hungary in September 2018.¹²

¹⁰ Cf. amendments 9-12 in European Parliament resolution of 22 November 2023 on proposals of the European Parliament for the amendment of the Treaties ([2022/2051\(INL\)](#), [Texts adopted - Proposals of the European Parliament for the amendment of the Treaties - Wednesday, 22 November 2023](#)

¹¹ ec.europa.eu/commission/presscorner/detail/en/speech_12_596

¹² This procedure was closed on 29 May 2024 by the Commission, because it considered that there is no longer a clear risk of a serious breach of the rule of law in Poland following a series of legislative and non-legislative measures to address the concerns on independence of the justice system.
https://ec.europa.eu/commission/presscorner/detail/en/mex_24_2986

Nonetheless, the threshold in terms of voting requirements are high, both in relation to the first dialogical or preventive phase ('risk of a serious breach' in Article 7(1)) and the second sanctioning phase ('serious and persistent breach in Article 7(2)). Even the adoption (non-binding) recommendations in the first phase require a majority of four fifths in the Council of Ministers. It is thus no surprise that the procedure has never moved beyond so-called non-committal Article 7(1)-hearings in the Council without any consequences. The second sanctioning phase which could lead to the aforementioned suspension of (voting) rights even requires unanimity in the European Council. Only the Commission or one third of the Member States can propose to initiate this second phase, after obtaining the consent of the European Parliament. The role of the European Parliament is thus limited and it cannot enforce that the other EU institutions act diligently in relation to Article 7 TEU. Various proposals have been made to amend the decision-making process in the context of Article 7 TEU.¹³ While the Belgian Presidency Progress Report of 10 June 2024 noted the reluctance of Member States to revise Treaties, it at the same time held that 'Member States underlined ... the need to clarify the Article 7 TEU procedure, specifically on the timeline and possible suspension of rights'.¹⁴ The Franco-German working group recommended to refine the procedure by replacing unanimity minus 1 by a majority of four-fifths at the European Council, to reinforce the automaticity of the response by including time limits to force the Council and the European Council to take a position when the procedure is triggered and to include automatic sanctions five years after a proposal to trigger the procedure.¹⁵ The European Parliament proposed various concrete amendments, streamlining the decision-making process while also giving the CJEU a role in relation to Article 7(2).

The Franco-German working group also suggested to include the possibility to preclude a Member State from taking over the presidency of the Council, once a determination under paragraph two has been made. This is in line with the recommendations by the Meijers Committee.¹⁶ In 2023, the Committee proposed three avenues to prevent the potential undermining of the Council's functioning and cooperation within the EU, as a consequence of a Member State (under Article 7(1) TEU monitoring or subject to rule of law-related budgetary conditionalities) exercising the Council Presidency. Specifically, the Meijers Committee suggested that the European Council, using its powers under Article 236(b) TFEU, should introduce rules postponing a Member State's Presidency until three years after the resolution of its legal issues. This would require amending existing Council decisions to formalize the new order of presidencies. This procedure is now integrated into the current proposal amending Article 7 TEU.

Article 7 TEU should also be amended with a view on the Conditionality Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget. The title of this Regulation shows that it primarily aims to protect of the Union budget in the case of breaches of the principles of the rule of law instead of protection of the rule of law on the basis of budget conditionality.

¹³ Cf. Bard, Petra and Kochenov, Dimitry and Kochenov, Dimitry and Pech, Laurent and Wouters, Jan, Treaty changes for a better protection of EU values in the Member States (October 01, 2024). ELJ 2024, forthcoming., UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper Forthcoming, Available at SSRN: <https://ssrn.com/abstract=5008918> or <http://dx.doi.org/10.2139/ssrn.5008918>

¹⁴ <https://data.consilium.europa.eu/doc/document/ST-10411-2024-INIT/en/pdf>, p. 4.

¹⁵ https://www.diplomatie.gouv.fr/IMG/pdf/20230919_group_of_twelve_report_updated14.12.2023_cle88fb88.pdf, p. 8.

¹⁶ <https://www.commissie-meijers.nl/wp-content/uploads/2023/05/230519-Meijers-Committee-comment-on-the-EU-Presidency-.pdf>.

Various proposals have been put forward, including by the new German government and the Franco-German working group, to further develop the conditionality mechanism into a more comprehensive sanctioning instrument for violations of the EU's fundamental values.¹⁷ Making the rule of law conditionality mechanism an instrument to sanction breaches of the rule of law is not possible without an amendment of the EU Treaties, because of the legal basis of the Conditionality Regulation 2020/2092.¹⁸ The legal basis is Article 322(1)(a) TFEU which enables the adoption of financial rules for establishing and implementing the Union budget. Using conditionalities and financial rules to protect the rule of law can not be based on this relatively circumscribed legal basis, considering the case law of the CJEU and the Opinion of the Council Legal Service.¹⁹

¹⁷ https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag2025_bf.pdf, p. 135.

¹⁸ Cf. https://www.diplomatie.gouv.fr/IMG/pdf/20230919_group_of_twelve_report_updated14.12.2023_cle88fb88.pdf, p. 16.

¹⁹ CJEU 16 February 2022, Case C-156/21, Hungary v Parliament and Council, ECLI:EU:C:2022:97; CJEU 16 February 2022, Case C-157/21, Poland v Parliament and Council, ECLI:EU:C:2022:98; Cf. Legal Opinion No 13593/18 of the Council Legal Service No 13593/18 of 25 October 2018 concerning the Proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States (COM(2018) 324 final).

2. Establishing a mechanism for monitoring the safeguarding of the fundamental values set out in Article 2 TEU in acceding Member States

Proposal for a new paragraph in Article 49 TEU

Without prejudice to Article 7, the Council and Parliament shall establish, through the ordinary legislative procedure, the mechanism by which the Commission shall monitor, verify and, where necessary, support the actual safeguarding in a newly acceded Member State of the rule of law and other fundamental values set out in Article 2.

Explanation

The European Union is founded on the rule of law, a principle common to all Member States. The area of freedom, security and justice and the internal market, created by the Treaty on European Union and the Treaty establishing the European Community, are based on the mutual confidence that the administrative and judicial decisions and practices of all Member States fully respect the rule of law. This implies for all Member States the existence of an impartial, independent, and effective judicial and administrative system properly equipped, *inter alia*, to fight corruption. Actual existence and functioning of those systems in acceding Member States is crucial and needs to be actively monitored and, where necessary, supported.

The above amendment creates the legal basis for a verification and support mechanism comparable to the Control and Verification Mechanism (CVM), the post-accession oversight tool in place with respect to Bulgaria and Romania between 2007 and 2023. The CVM was established by a Decision of the Commission²⁰ referring to provisions in the accession instruments of the two Member States.²¹ It was closed by the Commission in September 2023.²²

The existence of the CVM provided citizens, non-governmental organizations and judges in Romania and Bulgaria with a legal basis in EU law and leverage for actions for safeguarding the rule of law by national authorities. This leverage is demonstrated among others by the case law of the Court of Justice on the CVM,²³ by subsequent references by Bulgarian and Romanian judges referring to that case-law and by the action for annulment of the

²⁰ Commission Decision of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (document number C(2006) 6569), OJ 2006, L 354/56.

²¹ Article 4(3) of the Treaty of Accession of the Republic of Bulgaria and Romania, and Articles 37 and 38 Act of Accession of the Republic of Bulgaria and Romania.

²² Commission Decision (EU) 2023/1785 of 15 September 2023, OJ 2023, L 229/91 and [CVM for Bulgaria and Romania \(europa.eu\)](#).

²³ Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, Asociația “Forumul Judecătorilor din România” and others v. Inspectoratul Național de Combateri și alți, Judgment of the Court of Justice (Grand Chamber) of 18 May 2021, EU:C:2021:393 and Case note by Ondrej Kadlec and David Kosar in Common Market Law Review (59) 2022, p. 1823–1852,

Commission's decision to close the CVM initiated by an organization of Romanian magistrates.²⁴

The amendment allows for flexibility as to form, content, and duration of the mechanism.

The words "without prejudice to Article 7" mean that this additional mechanism is the default for newly acceded Member States but does not prevent an Article 7 procedure to be launched.

²⁴ Case T-1126/23 (Asociația Inițiativa pentru Justiție v Commission) in the General Court.

3. Reinforcing the independence of the Judges and Advocates-General of the Court of Justice

Proposal for amending Article 253 TFEU

(1) In the first paragraph of Article 253 the words “they shall be appointed by common accord of the governments of the Member States for a term of six years, after consultation of the panel provided for in Article 255” are replaced by: “they shall be appointed by common accord of the governments of the Member States for a single term of nine years, after consultation of the panel provided for in Article 255.”

(2) The fourth paragraph of Article 253 (currently reading: “Retiring Judges and Advocates-General may be reappointed.”) is deleted.

Explanation

Currently, the Judges and Advocates-General of the Court of Justice are appointed by common accord of the governments of the Member States for a term of six years. They may be re-elected. The re-election procedure creates the possibility of undue influence. To reinforce their independence from the governments of the Member States it is proposed that their term of appointment is extended from six to nine years and that they may not be re-appointed. The proposal to do away with re-election, is not informed by specific information suggesting undue influence, but a matter of best practice and a sounder guarantee that no undue influence will affect judicial decision-making in the Court of Justice.

The judges in the European Court of Human Rights (Article 23(1) ECHR), in the International Court of Justice (Article 13(1) of its Statute) and in the International Criminal Court (Article 36(9)(a) of its Statute) are appointed for nine years. Only the judges of the ICJ may be re-elected. Re-election of judges in the ECtHR and the ICC is explicitly excluded. In a fair number of Member States (e.g. France, Spain, Italy, Portugal, Romania) constitutional judges are also appointed for nine years. Hence, the proposed amendment of 253 TFEU would be in line with the constitutional system/traditions in these Member States.

In the November 2021 Coalition Agreement of the German SPD-Green-FDP government (2021-2025), it was agreed to propose to extend the term of appointment of the judges of the Court of Justice to twelve years. The judges in the German Constitutional Court are appointed for twelve years.

The consequences of these two amendments for the sitting judges and advocates-general should be discussed and regulated after discussion with and in agreement with the Court of Justice.

According to Article 254 TFEU these amendments will apply to the judges of the General Court as well.

4. Obligation of the Commission to present annually a report on Rule of Law in each Member State and involve civil society in the preparation of this report

Proposal for a new Article 7a TEU

The European Commission shall present to the European Parliament and to the Council each year a reasoned and comprehensive report on the status of the rule of law in each of the Member States.

When preparing this report, the Commission will publish an open request to non-governmental organisations in the Member States to contribute within a term of at least two months reliable information on the rule of law situation in the Member State of their main activities. The Commission may involve independent experts in the Member States in the preparation of the report.

Explanation

Observance with the Rule of Law is one of the Copenhagen conditions for accession of new Member States to the Union. Article 7 TEU provides that the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Currently, there is no provision of systematic information on (monitoring of) the status of the Rule of Law in Member States.

The aim of the amendment is to entrust the European Commission with the task to monitor and regularly report on the rule of law situation in Member States and allow for contributions of civil society and independent experts in the process of monitoring and reporting.

Without observance of the rule of law in its Member States, the rule of law in the Union is at risk and the external action of the Union in support of democracy and the rule of law in the wider world (Article 21 TEU) loses legitimacy.

5. Explicit competence of EU to monitor that elections for the European Parliament in Member States are free and fair

Proposal for a new paragraph in Article 223 TFEU

The European Parliament shall draw up a proposal to lay down the provisions necessary for independent election observation missions to the election of its Members, including a system of review and follow-up to the findings of these missions.

The Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, which shall act by a majority of its component Members, shall lay down the necessary provisions.

The act shall provide that the monitoring of elections may be delegated to another international organisation.

Explanation

The freedom and fairness of elections in EU Member States has long been taken for granted. Yet, as is evident from *inter alia* the European Commission's Rule of Law Reports and reports of electoral missions conducted by OSCE-ODIHR (Office for Democratic Institutions and Human Rights), there are concrete indications that elections in some Member States are no longer fair due to lack of level playing fields and fair electoral campaigns.

Since 2009 there had been no systematic monitoring of the European Parliament elections, neither by the EU nor by other international organisations. However, OSCE recently published its first report on EU Parliamentary elections in 16 years.²⁵ The report highlighted several concerns regarding the 2024 elections, including media biases, misuse of resources, underrepresentation of minority groups and barriers to candidacy and voting lack of systematic reporting for over a decade, coupled with recent findings of electoral malpractices and obstacles to democratic participation, emphasise the urgent need for consistent oversight and scrutiny of the Union's electoral processes. The EU legislator should therefore adopt a monitoring mechanism that reviews the Member State compliance with EU law and European standards. In view of the overlap with the mandate and expertise of other international organisations, especially OSCE-ODIHR, the monitoring could be delegated to such an organisation. All EU Member States are members of the OSCE.

Until this amendment enters into force, the Member States should coordinate within the framework of the Council of Ministers the practice of sending out invitations. Given the limited budget and capacity of OSCE/ODIHR, the EU could compensate for the funding of election observation missions carried out by OSCE/ODIHR. Such funding can be part of permanent working arrangements with OSCE/ODIHR. The OSCE Copenhagen Document, agreed by European States at the Copenhagen meeting of the Conference on the Human

²⁵ Organization for Security and Co-operation in Europe, European Parliament Elections, 6-9 June 2024: Final Report: <https://www.osce.org/odihr/elections/eu/581764>, 28 November 2024.

Dimension of the CSCE in June 1990, provides for a standing invitation to observe elections in those States.

Next to the monitoring of European Parliament elections, the European Commission should systematically review and use, where appropriate, the findings of election observation missions to Member States in its rule of law-related activities, in particular in the country chapters of its annual Rule of Law Report. In its Rule of Law Reports, the European Commission should specifically address concerns about the lack of level playing fields in Member States during the electoral process as a result of media bias and media capture, and the financing of campaigns and political parties.

6. Granting the European Parliament a right to start infringement proceedings

Proposal for a new Article 259 TFEU

A Member State which considers that another Member State has failed to fulfil an obligation under the Treaties may bring the matter before the Court of Justice of the European Union. The European Parliament, acting by a majority of its constituent members, may also bring such a matter before the Court.

Before bringing such an action for an alleged infringement of an obligation under the Treaties, the Member State or the European Parliament shall bring the matter before the Commission.

The Commission shall deliver a reasoned opinion after each of the States, or the European Parliament and the Member State concerned have been given the opportunity to submit their own case and their observations on the other party's case both orally and in writing.

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court.

Explanation

The current main options for infringement procedures are regulated in Articles 258-260 TFEU.²⁶ Article 258 TFEU grants the Commission the right to take infringement actions against Member States that violated EU law. This enables the Commission, as the 'guardian of the treaties', to oversee the application of EU law and respect for the Treaties by the Member States. Under Article 259 TFEU, Member States enjoy the right to start a procedure against another Member State for an alleged infringement of an obligation under the Treaties.

Articles 258-259 TFEU have remained largely unchanged since the Treaty of Rome, in particular where it concerns the right to initiate proceedings. As such it reflects the institutional make up of those days, in which the European Parliament was but a Parliamentary Assembly.²⁷ However, successive Treaty amendments have put the European Parliament at an equal footing with the other institutions, deriving direct popular legitimacy of the European citizens.²⁸

It is proposed that this development is reflected in a new Article 259 TFEU, granting the European Parliament a similar right to initiate infringement action against Member States.

²⁶ Other provisions refer to infringement procedures as well, e.g., art 108 TFEU.

²⁷ At that time, the European Parliament was only consulted on a selected number of draft measures.

²⁸ Chapter 3 by Steve Peers from Barnard and Peers (eds.): *European Union Law* 3rd edition, OUP, p. 54-55.

Importantly, this would enable the European Parliament to provide control and supplement to the European Commission as 'guardian of the treaties'.²⁹ Moreover, the European Parliament could also better execute its role in ensuring compliance with the values of Article 2 TEU in Member States. Now, the European Parliament can only take the initiative for an Article 7 TEU procedure, but is otherwise sidelined. This amendment gives the European Parliament the opportunity to investigate abuses in Member States at an earlier stage via a less drastic instrument than Article 7 TEU.

It would create more consistency with the present institutional dynamics. Such consistency is already reflected by article 7 TEU on (a risk of) systemic breaches of the EU's core values, which can be initiated by a proposal of the European Parliament, the Member States, or the Commission.

This amendment would also reinforce the right to petition in Article 227 TFEU. This amendment gives the European Parliament the opportunity to respond to petitions that, according to the European Parliament, are well-founded regarding (non-)compliance with Union law or other activities of Member States within the scope of Union law. Now the European Parliament can do little other than adopt a resolution on these issues or bring them to the attention of the European Commission in writing or orally.

²⁹ See also Kelemen, R. D. and Pavone, Tommaso, Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union (December 27, 2021). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3994918.

7. Public access to EU legislative documents and good record keeping

Proposal for amending Article 15 TFEU and a new Article 297a TFEU

Article 15 TFEU

(1) ...

(2) The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislation. Deliberations and negotiations at every stage of the legislative process shall be recorded in publicly accessible documents, in accordance with the regulations foreseen in Article 15(3) TFEU and Article 297a TFEU.

(3) Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph.

General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the European Parliament and the Council, by means of regulations, acting in accordance with the ordinary legislative procedure.

Each institution, body, office or agency shall ensure that its proceedings are transparent and sufficiently recorded and documented, and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph as well as the regulation governing common standards of good record keeping as foreseen in Article 297a TFEU.

The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks.

The European Parliament, the Council, and the Commission shall ensure publication of the documents relating to the legislative procedures under the terms laid down by the regulations referred to in the second subparagraph.

Article 297a TFEU

(1) In order to promote good governance and ensure the legitimacy and legality of Union decisions, all institutions, bodies, offices and agencies of the Union shall ensure that decision-making processes are recorded to a sufficient standard in documents.

(2) The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down general standards of good record keeping, including the uniform drafting, traceable registration, and durable and secure storage, including in archives, of Union documents.

(3) The regulations foreseen in Article 297a (2) TFEU shall contain specific provisions for record keeping in the legislative procedure.

Explanation

Article 15 TFEU

In its current form, Article 15 TFEU (or any other provision in the TFEU) does not contain any provisions on the quality of documents that can be requested. An addition to Article 15(2) mandates that the legislative process is to proceed on the basis of documents, and that these documents are existent and of sufficient uniformity and quality and in principle public. Textual additions in Article 15(3) TFEU now place these principles of good record keeping alongside those of the widest possible public access. Finally, in line with standing case law, the Commission is now added as an institution participating in the legislative process, and thus explicitly required to proactively disclose legislative documents.

Article 297a TFEU

The lack of clear provisions on good record keeping at Treaty level to this end is a lamentable omission. In recent years, situations have repeatedly surfaced in which important records were reported missing, implausibly non-existent, or existent, but not considered documents for the purposes of Regulation 1049/2001, on the basis of mere internal administrative guidelines of the institutions. These practices undermine the effet utile of the public's right of access to documents and have been criticised by Members of the European Parliament, the European Ombudsman, and the European Court of Auditors.

Thus, a new Treaty Article, explicitly providing a single legal basis for ensuring the quality of EU records, is necessary. Its placement between Article 297, governing the procedure of finalising adopted legislative acts, and Article 298, governing measures for ensuring good administration, would fit in well with the Treaty chapter and section in question.

It is not desirable that the new Treaty Article contains detailed prescription as to the precise nature of good record keeping. For that, European administrative support procedures vary too widely depending on the Union function and task at hand. Hence, more detailed prescription falls to the legislative act underlying the proposed Article. Nevertheless, the proposed Treaty Article enumerates a number of procedural categories that are to be addressed in the foreseen legislative act.

8. Reinforcing the transparency, human rights observance, and accountability of EU agencies

Proposal for amending Article 13(5) TEU and Article 291(2) TFEU and for a new Article 250a or 309a TFEU

Article 13 TFEU

(5) The Member States, the European Parliament, the Council and the Commission may be assisted by EU agencies in the preparation and implementation, including the enforcement, of the policies of the Union.

Article 250a or 309a TFEU

(1) In so far as necessary to attain the objectives of the policies of the Union, agencies possessing legal personality may be set up pursuant to legislative acts and they may be granted executive, including operational and enforcement, powers.

(2) The EU agencies shall act transparently and their accountability, as well as their compliance with fundamental rights as guaranteed by the Charter of Fundamental Rights, will be guaranteed.

(3) For the purposes of this Article, the European Parliament and the Council, acting by means of a single regulation in accordance with the ordinary legislative procedure, shall lay down in advance the general principles governing the functioning of such agencies and the exercise of their powers.

Article 291 TFEU

(2) Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council, or, in duly justified specific cases, on EU agencies.

Explanation

The proposal suggests making two targeted amendments to existing provisions of EU primary law, in addition to introducing one wholly new Article in Part VI of the TFEU for reinforcing the transparency, human rights observance and accountability of EU agencies (three amendments in total).³⁰

As EU agencies have become increasingly important, not just within the EU institutional system but also influencing the lives of citizens and the activities of economic entities, it is a matter of transparency and legitimacy to ensure that the EU's constitutional charter properly reflects this reality. For reasons of legitimacy it is also important that the Treaties prescribe that the creation and empowerment of a new EU agency requires the intervention of the

³⁰ These proposals have been made before: Merijn Chamon, *EU Agencies - Legal and Political Limits to the Transformation of the EU Administration*, Oxford, OUP, 2016, p. 97 et seq.

formal legislator. In addition, the above noted case by case basis on which agencification has proceeded, has resulted in an unjustified and irrational heterogeneity in the requirements imposed on EU agencies in their functioning, undermining legal certainty and legitimacy. For this reason, a provision in the Treaties that requires a binding framework spelling out a uniform and minimum standard for a number of horizontal requirements that ought be applicable to all EU agencies, regardless of the specific policy area in which they are active, should be included.

Today, there is no general binding framework governing EU agencies in secondary legislation,³¹ and the specific rules on transparency and accountability are to be determined for each agency separately. In 2012, the EU institutions did agree on a 'Common Approach on EU Decentralised Agencies' but that document is merely a non-binding inter-institutional agreement,³² the content of which has generally been assessed as underwhelming by commentators.³³ However, and by contrast, the EU agencies' human rights obligations are regulated horizontally through the Charter of Fundamental Rights (Article 51(1)) and the limits to the powers that can be delegated to the EU agencies has been clarified by the Court in the *Short-selling* judgment of 2014 when the Court confirmed that the EU agencies' exercise of powers should be subject to judicial review.³⁴ It is in light of this context that the three amendments are to be understood:

Firstly, the addition of a fifth paragraph to Article 13 TEU would explicitly recognize the existence of EU agencies for the purposes of transparency.

Secondly, the wholly new Article would be an enabling clause which explicitly recognizes that EU agencies can be set up and can be granted executive powers, referring back to the sectoral legal bases as the legal bases used to set up and empower the agencies. It would recall and reconfirm that agencies should be held accountable, that they should act transparently and in compliance with fundamental rights. It would instruct the legislator to adopt a horizontal framework instrument for agencies (i.e. a *binding* Common Approach). The enabling clause would be introduced as Article 250a TFEU if EU agencies are envisaged as 'satellites' of the Commission; or as Article 309a TFEU if they are envisaged as more independent bodies. The latter choice would have ramifications for the detail of the framework to be established, since

³¹ There is only a framework for the so called executive agencies (which come within the authority of the Commission), see Regulation (EC) 58/2003 of the Council laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes, O.J. 2003 L 11/1.

³² For the text of the Common Approach, see Council of the European Union, Doc. 11450/12.

³³ Elsa Bernard, 'Accord sur les agences européennes: la montagne accouche d'une souris', (2012) RDUE3, pp. 399-446; Miroslava Scholten, 'The Newly Released 'Common Approach' on EU Agencies: Going Forward or Standing Still?', (2012) CJEL Online, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2236240; Merijn Chamon, *EU Agencies - Legal and Political Limits to the Transformation of the EU Administration*, Oxford, OUP, 2016, p. 97 et seq.

³⁴ Case C-270/12, *United Kingdom v. Council and Parliament*, ECLI:EU:C:2014:18.

the framework would arguably have to be more detailed if agencies are envisaged as genuinely independent bodies.

Thirdly, the amendment of Article 291(2) TFEU would explicitly allow the conferral of implementing powers to EU agencies (rather than *only* to the Commission and the Council), protecting the institutional prerogatives of the Commission by making clear that empowerments to EU agencies should be exceptional and duly justified.

9. Explicit competence for the EU to deal with statelessness matters

Proposal for a new Article 79(2)(e) TFEU

[For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:]

(e) a fair procedure for determining whether a person is stateless, the standard of treatment to be accorded to stateless persons, and the conditions of residence for stateless persons.

Explanation

Unlike its predecessors, the Lisbon Treaty specifically addresses the legal position of stateless persons. According to Article 67(2) TFEU, such persons are to be equated with third-country nationals. Accordingly, legislation based on Title V ‘Area of freedom, security and justice’ TFEU that contains obligations and rights of third-country nationals applies equally to stateless persons. The EU legislator has however not regulated the position of stateless persons who fall outside the scope of that legislation.

In 2012, the EU pledged to achieve accession by all Member States to the 1954 Convention relating to the Status of Stateless Persons, the main international instrument for the protection of such persons. The large majority of Member States are party to this treaty. The 1954 Convention remains poorly implemented by many Member States. Most Member States do not have functioning procedures for determining statelessness. Further, the absence in many Member States of a route by which stateless persons can regularize their status leaves these individuals at risk of permanent marginalization. This contrasts sharply with the existence of asylum determination procedures and protected statuses in all EU Member States which give effect to the 1951 Refugee Convention and which are consolidated in the common EU asylum policy.

The proposed amendment would oblige the EU legislator to provide to the Member States normative guidance on how to address statelessness issues by incorporating the standards of the 1954 Convention into EU law. In addition, EU law should lay down common standards for a statelessness determination procedure and define the conditions for obtaining legal residence and free movement within the Union.³⁵ The proposal does not impact on the right of Member States to determine who their nationals are.

³⁵ These proposals have been made before: K. Swider, ‘Protection and identification of stateless persons through EU law’, *Amsterdam Centre for European Law and Governance Working Paper Series* (2014) and Meijers Committee, ‘Proposal for an EU directive on the identification of statelessness and the protection of stateless persons’ (2014).