

# DIGITAL DEMOCRATIC PARTICIPATION TOOLS AND EU COHESION POLICIES: WHAT PROTECTIONS FOR REGIONALLY SPECIFIC GROUPS IN MEMBER STATES' TERRITORIES?

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## ***Abstract:***

*The political debate on the protection of minorities and the diversity that characterises the EU Members States' territories remains open; it involves the Union's growth strategies and pushes for the promotion of an inclusive European identity that respects the geographical and cultural diversity of the European regions.*

*Some European Citizens' Initiative (ECI) push the EU to distinguish at a regulatory level geographical areas with cultural, ethnic, linguistic or religious specificities from the wider neighbouring areas of the Member State in which they are located; to adopt, for example, the concept of „region with a national minority“ and to protect the specific groups located in the Union in line with Article 2 TEU and the Charter of Fundamental Rights of the European Union (hereinafter: Charter).*

*This proves that bottom-up impulses, which the EU facilitates in a pioneering way, can synthesise the EU democratic and participatory values and the aims of social and economic progress and that e-participation and cohesion policy can foster unexplored perspectives in the integration process.*

*The paper\* aims to reconstruct the essential characteristics and purposes of European cohesion policies and digital participation tools also considering the relevant European jurisprudence; investigate their ability to contribute to the future of the Union; deepen the interactions useful for protecting the singular groups present within the members.*

**Keywords:** digital participation; Union's cohesion policies; „national minority regions“; European identity; European culture.

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## ***Introduction. The ‘Cohesion policy for the equality of the regions and sustainability of the regional cultures’ initiative and the digital participation tools***

The ‘*Cohesion policy for the equality of the regions and sustainability of the regional cultures*’ initiative (hereinafter: proposal, initiative)<sup>1</sup> intertwines bottom-up participation and the Union’s economic, social and territorial cohesion policy<sup>2</sup> with the forms of protection reserved for people belonging to minorities and the diversities in the EU members’ territories<sup>3</sup>.

On 22 February 2024, the Court of Justice of the European Union (hereinafter: EU Court) validated the partial registration decision adopted by the Commission in 2019<sup>4</sup> and now the proposal awaits examination by the Commission<sup>5</sup>. It was submitted to the European Commission on 4 March 2025, after having gathered 1,269,351 verified statements of support. Undoubtedly, the initiative starts the debate within the Union on the protection of minorities and cohesion objectives. It brings back to the centre of attention the possibility of the communities to contribute to the definition of Union policies<sup>6</sup> with a European Citizens’ Initiative (ECI), that is, the digital participatory democracy tool, introduced with the Lisbon Treaty in Article 11 TEU<sup>7</sup>.

The rule establishes the right of the citizens of the Union, in the number of at least one million, to submit legislative proposals to the EU Commission on matters in relation to which these citizens consider a legal act of the Union necessary for the purposes of the Treaties. In this way, the Union has launched digital democracy, that is, participation in political life through electronic tools/platforms. The aim is to increase the level of democratic participation in the decision-making process of the Union.

In different circumstances, the European Parliament and the EU Court have outlined its peculiarities. Firstly, the ECI offers European citizens the opportunity to identify their aspirations and to call for action by the Union; thus, the European integration project comes closer to them<sup>8</sup>. In the EU Court’s view, the added value of the institution „lies not in the certainty of its outcome, but in the possibilities and opportunities it creates for citizens of the Union to engage in a political debate within the [European] institutions“<sup>9</sup>. From this perspective, the ECI aims to implement the democratic values of the Union and the principle of equality expressed in Article 9 of the TEU, according to which European citizens have the right to benefit from equal attention from institutions, bodies, offices and agencies of the Union.

The discipline of the ECI is now contained in Regulation (EU) 2019/788<sup>10</sup>. The text repealed previous Regulation (EU) no. 211/2011<sup>11</sup> to make the participatory tool more accessible and transparent, less onerous and easier to manage for organisers and supporters, in line with the case law of the EU Court<sup>12</sup>. In any case, the Commission retains discretionary powers regarding the follow-up to be given to the ECI.

The popular initiative (ECI), so far, has had a modest impact and has rarely affected the decision-making process. At the international level, digital democracy originated around the nineties of last century. As the Council of Europe states, digital democracy concerns democracy<sup>13</sup> and its task is to integrate and support the traditional process of democracy. Nevertheless, the phenomenon remains confined to the initial and final stages of the political debate. So far, it fails to direct the political debate towards the needs of the community.

### **The aim of the proposal: the protections of the „regions with national minority“**

The *Cohesion Policy initiative for the equality of regions and the sustainability of regional cultures* has animated, since the beginning, the debate between the Union, its citizens especially from Eastern Europe<sup>14</sup> and the Member States on the values, objectives and policies characterising the European integration process.

The proposal is based on the economic, social and territorial cohesion policy of the Union, and first and foremost, on the respect for the fundamental values of the Union which, set out in Article 2 TEU<sup>15</sup>, include human dignity, democracy, equality, the rule of law<sup>16</sup> and human rights<sup>17</sup> particularly of persons belonging to minorities. Moreover, it recalls the Union's objective of combating social exclusion and discrimination, of respecting the richness of its cultural and linguistic diversity and of ensuring the protection and development of Europe's cultural heritage<sup>18</sup>.

The promoters essentially ask the Union to adopt the concept of a „region with a national minority“ to legally recognize geographical areas characterized by cultural, ethnic, linguistic or religious specificities, clearly distinct from those of the surrounding areas. In concrete terms, they ask the Union to assign to ethnic minorities the administrative powers necessary to directly access Union funds in the field of cohesion and to bridge the economic gaps with neighbouring areas to protect the peculiarities of the places.

The governments most concerned have repeatedly tried to block the initiative by bringing an action for annulment before the Court<sup>19</sup>. The grounds for appeal, mostly procedural, have often concealed the fear of States being pushed by the Union to undertake constitutional reforms to recognise national minorities or to „share“ EU funds with a „region with a national minority“ within them, recognised by the European Union.

Therefore, the proposal involves the democratic and socio-economic values of the Union and pushes to investigate possible legal and political developments into the EU that could arise from the Commission's response.

### **Overview of the protection of minorities in international and EU law**

At the international level, the main reference texts, the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious

and Linguistic Minorities and the 1995 Framework Convention for the Protection of National Minorities of the Council of Europe, do not contain a clear definition of national minorities. However, the phenomenon finds its essential lines in Recommendation 1201 of the Parliamentary Assembly of the Council of Europe (1993) concerning an additional protocol on the rights of minorities to the European Convention on Human Rights<sup>20</sup>.

The 1993 text speaks of national minorities as groups of people present in a State, of which they are citizens and with whom they maintain ancient, solid and lasting ties. These groups of individuals represent specific ethnic, cultural, religious or linguistic characteristics; they are sufficiently representative, although numerically inferior to the rest of the national or regional population; above all, they are animated by the will to preserve together what constitutes their common identity, including culture, traditions, religion or language<sup>21</sup>.

The issue, therefore, mainly concerns national governments. Moreover, the strong bond of people belonging to minorities with their States justifies the burdens and prerogatives of national governments. They are required to regulate and protect local realities by virtue of their ethnic-territorial specificities, their constitutional charters, the ratified international law conventions<sup>22</sup> and the indications provided by the Council of Europe.

Perhaps also for this reason, the founding States of the Community and then the revisers of the treaties did not intend to provide primary law with specific provisions. The Treaty of Rome traced a markedly economic profile of the minorities present in the Community territories, protecting their rights to equal pay and the prohibition of discrimination based on nationality<sup>23</sup>. The Single European Act spoke of fundamental rights established in the Member States, while the Treaty of Maastricht contained a reference to the European Convention on Human Rights. Subsequently, the Treaty of Amsterdam broadened the perspective of human rights, laying the foundations for the work to be completed with the Treaty of Lisbon.

In the current EU legal system, the protection of the rights of linguistic, ethnic or national minorities has its own significance in the policies of accession to the Union<sup>24</sup>. A serious violation of the value of respect for the rights of persons belonging to minorities may also give rise to the opening of the procedure under Article 7 of the TEU. Likewise, the rights of minorities are guaranteed by the principles of non-discrimination and equal treatment, explicitly stated in some acts of secondary legislation<sup>25</sup>. More generally, a key, but not decisive, role is played by the European Union Agency for Fundamental Rights (AFR)<sup>26</sup>.

It is also true that the current Treaties have included the protection of persons belonging to minorities among the values of the Union referred to in Article 2 TEU. Moreover, Article 3 of the TEU declares, in its third paragraph, that the Union respects the richness of its cultural and linguistic diversity<sup>27</sup> and in defining and implementing its policies and actions, the Union must consider the fight against social exclusion and aim to combat discrimination based on racial or

ethnic origin<sup>28</sup>. Furthermore, the Charter mentions minorities in the prohibition of discrimination and in respect of cultural, religious and linguistic diversity, respectively, in Articles 21 and 22.

However, regional ethnic minorities do not officially find space in the treaties or in secondary legislation; nor is there a common vision among the member States regarding their legal qualification<sup>29</sup>. It follows that the Union does not enjoy significant competence in the field of minority rights but must guarantee their protection by European law.

In the silence of the European legal system, a positive solution to the proposal, examined here, comes from the EU Court and the European Parliament which, in different circumstances, open perspectives on the possible recognition of the prerogatives of national minorities in Union law<sup>30</sup>, within the framework of the cohesion policy.

Precisely, the EU Court<sup>31</sup> admits that a region „with a national minority“ is not to be included among the areas which, according to the Treaties, present „serious and permanent natural or demographic handicaps“. Nevertheless, it believes that, in certain territories, ethnic, linguistic, cultural or religious peculiarities can have a negative impact in terms of development and make necessary for the Union to intervene to strengthen the economic, social and territorial cohesion of that geographical area. Indeed, the list of disadvantages which require special attention to be paid to a specific region, outlined in Article 174 of the TFEU, is merely an example<sup>32</sup>.

It follows that the Union's support for ethnic, linguistic, cultural and religious minority areas, affected by serious and permanent economic and social disadvantages, meets the objectives of the Treaties<sup>33</sup>.

Even the European Parliament, since the early 2000s<sup>34</sup> and, most recently, in 2018<sup>35</sup>, did not exclude the possibility that the Union may intervene to protect national minorities present in its territories in light of the values and objectives referred to in Articles 2 and 3 of the TEU and of the cohesion policy. In its view, without prejudice to the competences of national governments, the Union may express its opinion on a variety of issues relating to persons belonging to national minorities.

To this end, several of European Parliament's resolutions urge the Commission to formulate a legislative proposal on minimum standards for the protection of minorities in the Union that defines the European concept of „national minority“ in a flexible manner, since this phenomenon is quite difficult to classify. In its opinion, the proposal should respect not only the principles of subsidiarity and proportionality, but also the international commitments of the Union<sup>36</sup> and the indications provided by the 1993 Council of Europe recommendation.

The warning of the European Parliament has, so far, had a purely political follow-up with the commitment of the Commission, announced at the end of the *ICE Minority SafePack*<sup>37</sup>, to launch awareness campaigns on minorities and to monitor the actions of the Member States. It must also be said that

*Minority SafePack* remains limited to the protection of linguistic minorities, instead, the proposal, examined here, aims at the administrative autonomy of regional areas with national minorities.

### **Possible regulatory developments within the Union**

The awaited Commission's discretionary response may mark a change of direction within the Union. Three scenarios seem plausible.

The European executive institution may decide not to proceed, at least initially, with a legislative proposal. Such a solution is in harmony with the recent practice of the Commission to continue the dialogue on the issues covered by the ECI, in case that some doubts remain, presumably, on the feasibility of a legislative proposal. In fact, in this case, the achievement of a broad support to a legislative proposal could be opposed by governments that feel threatened by the internal repercussions in terms of regulatory and structural burdens and the possibility of accessing European funds.

The sensitivity and scope of the issue seem to suggest that the Commission should engage on a political level, by promoting conferences, interinstitutional discussions at the various levels concerned or by proceeding with non-legislative acts, such as, for example, the publication of a green paper, followed by a white paper.

The European executive institution may decide to proceed with a legislative proposal. In this case, the Commission could opt for a proposal for a directive that outlines the concept of „region with a national minority“ in a flexible manner, as suggested by the EU Court and the European Parliament. The proposal could be based on the economic cohesion of the Union on the combined provisions of Articles 174 and 177 of the TFEU, already identified by the EU Court. The provisions provide a particularly broad and non-exhaustive definition of the regions potentially affected by the structural measures; they describe, in general, the objectives of cohesion policies; give the European institutions a broad power regarding the measures to be undertaken in compliance with the subsidiarity principle.

The Commission may decide not to proceed in any way. In this case, it is not excluded that the promoters will reiterate the proposal after having reshaped it to write an important step in the history of the minorities of the Union.

Regardless of the content, the Commission's assessment will open a political debate, most probably with the involvement of the European Parliament, which may adopt soon a new resolution in line with the ones issued so far.

### **Concluding remarks**

The proposal combines the aims of cohesion policy with bottom-up involvement. The initiative has the merit of having animated the debate on certain possible transformations within the Union and the Member States.

The needs that emerged from the proposal are unique and, so far, unexplored. The obstacles to the introduction of the European concept of a national minority region come mainly from national systems. Undoubtedly, the demands of people belonging to national minorities are frowned upon by the governments, concerned with the management and allocation of European cohesion resources, as well as with the structural reforms possibly arising within them.

On the other hand, since the beginning, the European treaties have promoted the logics of solidarity, fairness and inclusion of socio-economic progress through cohesion. Moreover, they recognize that the cultural diversity of the European continent includes the national minorities living in the Member States. Indeed, the current treaties have elevated the protection of minorities to primary law, stressing the individual dimension. Article 2 of the TEU speaks of persons belonging to minorities and of their recognized protections, in line with the international texts, while the Charter reserves the guarantees to national minorities, without defining them.

It is also true that the proposal can rehabilitate the institute of the ECI, so far disappointing in terms of participation, and demonstrate that it is possible to involve the communities in the definition of policies impacting the collective well-being.

More generally, the purposes of European integration allow us to relate cohesion and the ECI in terms of reciprocal functionality. Without ignoring the procedural problems of the participatory instrument, there is no doubt that the ECI strengthens trust in European institutions and promotes the active participation of citizens in the development of Union policies and their evolutionary implementation. Likewise, cohesion can use the ECI to best achieve its inclusive aims.

This requires a certain European education for European citizens and the promoters of ECI. Yet, the Union's actions aimed, up to now, at relaunching the participatory institution to give promoters and potential subscribers adequate educational support on Union issues.

The scenario could improve if the Commission played the role of *amicus* of citizens. Therefore, if, in its opinion, the initiative is in the general interest of the Union, it should act as a driving force for EU co-legislators rather than as a filter. From this perspective, the Commission's propensity to continue the dialogue on the issues covered by the various initiatives, even if rejected, deserves a positive evaluation.

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<sup>1</sup> Also known as *Cohesion policy for the equality of the regions and sustainability of the regional cultures*. This designation appeared in the first request of registration (2013) and continues to appear in the EU Court of Justice's judgments.

<sup>2</sup> Artt. 174-178 TFEU. PIATTONI, S., POLVERARI, L. (eds.) (2016), *Handbook on Cohesion Policy in the EU*, Edward Elgar Publishing, Cheltenham and Northampton; PESCE, C., *Coesione economica, sociale e territoriale*, in TESAURO, G., DE PASQUALE, P., FERRARO, F. (eds.) (2021), *Manuale di diritto dell'Unione europea*, Editoriale Scientifica, Naples, pp. 499-510; TESAURO, G., *Senza Europa nessun Paese andrà lontano*, in AA.Vv. (2021), *Annali AISDUE*, Naples, p. 341 ff. For an historical reconstruction: HOOGHE, L. (ed.)



(1996), *Cohesion Policy and European Integration: Building Multilevel Governance*, Oxford University Press, Oxford; TESAURO, G., *La politica di coesione ed il rapporto con le altre politiche comunitarie*, in PREDIERI, A. (eds.) (1996), *Fondi strutturali e coesione economica e sociale nell'Unione europea. Atti del convegno (Firenze, 12-13 maggio 1995)*, Giuffrè, Milan, p. 123 ff.

- <sup>3</sup> For an historical reconnaissance of the phenomenon: CAPOTORTI, F. (1979), *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, Geneva UN, available online; AMATO, G., BATT, J. (1998), *Minority Rights and EU Enlargement to the East. Report of the First Meeting of the Reflection Group on the Long-Term Implications of EU Enlargement: The Nature of the New Border*, Florence European University Institute, *RSC Policy Papers Series*, No 98/5; GORDOS, A., *L'Intégration européenne et la sauvegarde des valeurs culturelles*, in DÉLPERÉE, F., TROCSANYI, L. (2003), *L'unité et la diversité de l'Europe - Les droits des minorités. Les exemples belge et hongrois*, Bruylant, Brussels; TOGGENBURG, G. N. (2003), *Minorities (...) the European Union: Is the Missing Link an „Of” or a „Within”?*, in *Journal of European Integration*, pp. 273-284.
- <sup>4</sup> Commission Decision (EU) 2019/721 of 30 April 2019 on the proposed citizens' initiative entitled 'Cohesion policy for the equality of the regions and sustainability of the regional cultures'.
- <sup>5</sup> CJEU 22 February 2024, C-54/22 P, *Romania/Commission*, points 39-43: „(...) under Article 4(2)(b) of Regulation No 211/2011, the Commission is to register a proposed ECI provided that it 'does not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties'. 40 (...) that condition for registration must, in accordance with the objectives pursued by the ECI, as set out in recitals 1 and 2 of Regulation No 211/2011 and consisting inter alia in encouraging participation by citizens in the democratic life of the European Union and making the European Union more accessible, be interpreted and applied by the Commission, when it receives a proposed ECI, in such a way as to ensure easy accessibility to ECIs (see, to that effect, judgments of 12 September 2017, *Anagnostakis v Commission*, C589/15 P, EU:C:2017:663, paragraph 49; of 7 March 2019, *Izsák and Dabis v Commission*, C420/16 P, EU:C:2019:177, paragraph 53; and of 20 January 2022, *Romania v Commission*, C899/19 P, EU:C:2022:41, paragraph 44). 41 Accordingly, it is only if a proposed ECI, in view of its subject matter and objectives as reflected in the mandatory and, where appropriate, additional information that has been provided by the organisers pursuant to Annex II to Regulation No 211/2011, manifestly falls outside the framework of the Commission's powers to submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties that the Commission is entitled to refuse to register the proposed ECI pursuant to Article 4(2)(b) of that regulation (judgments of 12 September 2017, *Anagnostakis v Commission*, C589/15 P, EU:C:2017:663, paragraph 50, and of 7 March 2019, *Izsák and Dabis v Commission*, C420/16 P, EU:C:2019:177, paragraph 54). 42 Furthermore, it is also clear from the case-law of the Court that the Commission must confine itself to examining, for the purposes of assessing whether the condition for registration laid down in Article 4(2)(b) of Regulation No 211/2011 is satisfied, whether from an objective point of view the measures in a proposed ECI, envisaged in the abstract, could be adopted on the basis of the Treaties (judgment of 20 January 2022, *Romania v Commission*, C899/19 P, EU:C:2022:41, paragraph 46 and the case-law cited). 43 Accordingly, where, following an initial analysis carried out in the light of the mandatory and, where appropriate, additional information provided by the organisers, it is not established that a proposed ECI manifestly falls outside the framework of the Commission's powers, it is for that institution to register that proposed ECI, provided that the other conditions set out in Article 4(2) of Regulation No 211/2011 are satisfied (judgment of 20 January 2022, *Romania v Commission*, C899/19 P, EU:C:2022:41, paragraph 47)“; points 63-67: „(...) in interpreting a provision of EU law it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 22 December 2022, *Sambre & Biesme and Commune de Farciennes*, C383/21 and C384/21, EU:C:2022:1022, paragraph 54 and the case-law cited). 64 In that connection, (...), it is clear from the settled case-law of the Court that the condition for registration set out in Article 4(2)(b) of Regulation No 211/2011 must, in accordance with the objectives pursued by the ECI, as set out in recitals 1 and 2 of Regulation No 211/2011 and consisting inter alia in encouraging participation by citizens in the democratic life of the European Union and making the European Union more accessible, be interpreted and applied by the Commission, when it receives a proposed ECI, in such a way as to ensure easy accessibility to ECIs. 65 (...) those objectives support an interpretation of that provision whereby the



Commission must be able to proceed with partial registration of a proposed ECI. 66 As the General Court rightly held in paragraph 116 of the judgment under appeal, the consequence of denying the Commission that option would be that the registration of a proposed ECI would, in principle, be refused in its entirety even in the case where only part of the proposal manifestly falls outside the framework of that institution's powers to submit a proposal for a legal act of the European Union, within the meaning of Article 4(2)(b) of Regulation No 211/2011. Thus, on account, hypothetically speaking, of a minimal error on the part of the organisers as to the scope of those powers, their proposed ECI would have to be rejected in its entirety, which would, in that way, manifestly undermine the objective of ensuring easy accessibility to ECIs. 67 It follows that the General Court did not err when it held, in paragraph 116 of the judgment under appeal, that the Commission could, by way of the decision at issue, proceed with partial registration of the proposed ECI at issue, by circumscribing the scope of that proposal in accordance with the wording of Article 1(2) of that decision".

- <sup>6</sup> TESAURO, G., DE PASQUALE, P., FERRARO, F. (eds.) (2023), *Manuale di diritto dell'Unione europea*, Editoriale Scientifica, Naples; ADAMI, R., TIZZANO, A. (eds.) (2024), *Manuale di Diritto dell'Unione europea*, Giappichelli, Torino. See also: PESCE, C. (2016), *Democrazia rappresentativa e democrazia partecipativa nell'Unione europea*, Editoriale Scientifica, Naples; DAMATO, A. (2017), *Profili critici e istanze di revisione del diritto di iniziativa dei cittadini europei*, in *Il Diritto dell'Unione Europea*, pp. 39-67; SANTINI, A. (2019), *L'iniziativa dei cittadini europei. Quale contributo alla legittimità democratica dell'Unione?*, Editoriale Scientifica, Naples; SANTINI A., *Il nuovo regolamento sull'iniziativa dei cittadini europei: tra continuità e innovazione*, in AA. VV. (2019), *Temi e questioni di diritto dell'Unione europea*, Cacucci, Bari, pp. 621-634; INGLESE, M. (2020), *L'iniziativa dei cittadini europei a dieci anni dal Trattato di Lisbona: tra consolidate criticità e inesplorate prospettive*, in *federalismi.it*, pp. 194-215; LOPES, D., PACHECO, Y. V. (eds.) (2023), *European Citizens' Initiative: A Tool for Engagement and Active Citizenship*, Göttingen University Press, Göttingen.
- <sup>7</sup> See also Art. 24 TFEU. According to Art. 11 TEU, the institutions give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action; they maintain an open, transparent and regular dialogue with representative associations and civil society.
- <sup>8</sup> *European Parliament resolution of 17 December 2020 on the European Citizens' Initiative 'Minority SafePack - one million signatures for diversity in Europe' (2020/2846(RSP))*.
- <sup>9</sup> CJEU 19 December 2019, C-418/18 P, *Puppinck e a./Commission*, point 70.
- <sup>10</sup> Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative, in force since 1 January 2020. *European Parliament resolution of 13 June 2023 on the implementation of the Regulations on the European citizens' initiative (2022/2206(INI))*.
- <sup>11</sup> Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative.
- <sup>12</sup> CJEU 12 September 2017, C589/15 P, *Anagnostakis/Commission*; 7 March 2019, C-420/16 P, *Izsák e Dabis/Commission*; 19 December 2019, C-418/18 P, *Puppinck e a./Commission*; 20 January 2022, C-899/19 P, *Romania/Commission*; C-54/22 P, *Romania/Commission*, mentioned above. See also: Advocate General Emiliou's Opinion of 5 October 2023, C-54/22 P, *Romania/Commission*. See also: Judgement of the General Court 10 May 2016, T-529/13, *Izsák e Dabis/Commission*; 3 February 2017, T-646/13, *Minority SafePack - One Million Signatures for Diversity in Europe /Commission*; 24 September 2019, T-391/17, *Romania/Commission*; 10 November 2021, T-495/19, *Romania/Commission*; 9 November 2022, T-158/21, *Minority SafePack - One Million Signatures for Diversity in Europe/Commission*.
- <sup>13</sup> European Committee on Democracy and Governance, *E-Democracy Handbook*, Strasbourg, 27 August 2020; *Recommendation CM/Rec(2022)11 of the Committee of Ministers to member States on principles for media and communication governance*, 6 April 2022; *Recommendation CM/Rec(2022)12 of the Committee of Ministers to member States on electoral communication and media coverage of election campaigns*, 6 April 2022; *Recommendation CM/Rec(2022)13 of the Committee of Ministers to member States on the impacts of digital technologies on freedom of expression*, 6 April 2022.
- <sup>14</sup> The highest percentage of signatures is, in order, Hungarian, Slovak and Lithuanian. Indeed, the issue of regional minorities is particularly acute in Eastern European countries and has had an impact on EU membership. SKALNIK LEFF, C., ARMEANU, O. I. (2017), *Ethnic Politics of the Hungarian Minorities in Slovakia*,

Romania, and Serbia in 2015, in *European Yearbook of Minority*, pp. 321-250; BALINT, K. (2020), *Non-Territorial Autonomy in East-Central Europe: What about Romania?*, in *Central European Journal of Comparative Law (CEJCL)*, pp. 87-110.

- <sup>15</sup> AMALFITANO, C. (2018), *General Principles of EU Law and the Protection of Fundamental Rights*, Edward Elgar Publishing, Cheltenham; BARATTA, R. (2018), *La „communauté de valeurs“ dans l'ordre juridique de l'Union européenne*, in *Revue des affaires européennes*, pp. 81-91; VON BOGDANDY, A., SPIEKER, L. D., *Protecting Fundamental Rights Beyond the Charter. Repositioning the Reverse Solange Doctrine in Light of the CJEU's Article 2 TEU Case Law*, in BOBEK, M., ADAMS-PRASSL J. (eds.) (2020), *The EU Charter of Fundamental Rights in the Member States*, Bloomsbury Publishing, Oxford, pp. 525-546; VON ARNAULD, A., *Harmonisation through General Principles of Law*, in ZIEGLER, K. S., NEUVONEN, P. J., MORENO-LAX V. (eds.) (2022), *Research Handbook on General Principles in EU Law*, Edward Elgar Publishing, Cheltenham, pp. 40-61; SPIEKER, L. D. (2023), *EU Values Before the Court of Justice: Foundations, Potential, Risks*, Oxford University Press, Oxford.
- <sup>16</sup> OVÁDEK, M. (2018), *The Rule of Law in the EU: Many Ways Forward But Only One Way to Stand Still?*, in *Journal of European Integration*, pp. 495-503; SAFJAN, M. (2019), *The Rule of Law and the Future of Europe*, in *Il Diritto dell'Unione Europea*, pp. 425-440; CIRCOLO, A. (2023), *Il valore dello Stato di diritto nell'Unione europea. Violazioni sistemiche e soluzioni di tutela*, Editoriale Scientifica, Naples.
- <sup>17</sup> WOUTERS, J. (eds.) (2020), *The European Union and Human Rights: Law and Policy*, Oxford University Press, Oxford; WOUTERS, J., OVÁDEK, M. (2021), *The European Union and Human Rights: Analysis, Cases, and Materials*, Oxford University Press, Oxford.
- <sup>18</sup> Art. 3 TEU; art. 22 Charter. ROSSI, L. S., *Fundamental Values, Principles, and Rights After the Treaty of Lisbon: The Long Journey Toward a European Constitutional Identity*, in BERROD, F. (eds.) (2015), *Europe(s), Droit(s) européen(s). Une passion d'universitaire. Liber amicorum en l'honneur du professeur Vlad Constantinesco*, Bruylant, Bruxelles, pp. 511-524; SKOURIS, V. *L'identité nationale: qui détermine son contenu et selon quels critères?*, in AA. VV. (2018), *Liber Amicorum Antonio Tizzano. De la Cour CECA à la Cour de l'Union: le long parcours de la justice européenne*, Giappichelli, Torino, pp. 912-924.
- <sup>19</sup> C-54/22 P, *Romania/Commission*, mentioned above.
- <sup>20</sup> Recommendation 1201 (1993), *Additional protocol on the rights of minorities to the European Convention on Human Rights*.
- <sup>21</sup> Article 1 Recommendation 1201 (1993): „ (...) the expression “national minority” refers to a group of persons in a state who: a. reside on the territory of that state and are citizens thereof; b. maintain longstanding, firm and lasting ties with that state; c. display distinctive ethnic, cultural, religious or linguistic characteristics; d. are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; e. are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language“.
- <sup>22</sup> See: UNO, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (1992); The Council of Europe, *Framework Convention for the Protection of National Minorities*, 1 February 1995. MATIJEVIC, M. V. (2020), *Adequate Representation of Persons Belonging to National Minorities in Public Sector: the Nature, Content and Scope of Obligations in the Comments of the Advisory Committee for the Framework Convention*, in *Foreign Legal Life*, pp. 55-68; CRAIG, E. (2021), *The Framework Convention for the Protection of National Minorities and Internalization: Lessons from the Western Balkans*, in *Review of Central and East European Law*, pp. 1-40; JACOB-OWENS, T. (2021), *Immigration and Multicultural Citizenship in Europe: Insights from the Framework Convention for the Protection of National Minorities*, in *International Journal on Minority and Group Rights*, pp. 167-197; TUDISCO, V. (2022), *National Human Rights Institutions and Access to Justice for National Minorities in Europe*, in *International Journal on Minority and Group Rights*, pp. 577-603.
- <sup>23</sup> DE WITTE, B., *Market Integration and Cultural Diversity in EU Law*, in VADI, V., DE WITTE B. (eds.) (2015), *Culture and International Economic Law*, Routledge, London, p. 193 ff.
- <sup>24</sup> Artt. 6, 49 TEU. The accession criteria or Copenhagen criteria, after the European Council in Copenhagen in 1993 which defined them, are the conditions all candidate countries must satisfy to become a member state. These are: political criteria: stability of institutions guaranteeing democracy, the rule of law, human rights and

- respect for and protection of minorities; economic criteria: a functioning market economy and the capacity to cope with competition and market forces; administrative and institutional capacity to effectively implement the *acquis* and ability to take on the obligations of membership. See: HILLJON C. (2004), *EU Enlargement A Legal Approach*, Bloomsbury Academic, London; TOPIDI, K. (2013), *Are the Copenhagen Criteria Undermined by the Lisbon Treaty?*, in *European Yearbook of Minority*, pp. 37-59; SARGENTINI, J., DIMITROVS, A. (2016), *The European Parliament's Role: Towards New Copenhagen Criteria for Existing Member States*, in *Journal of Common Market Studies*, pp. 1085-1092; HITAJ, E. (2017), *L'allargamento dell'Unione europea verso i balcani occidentali. Stabilità politica della regione oltre i criteri di Copenhagen?*, in *Rivista della cooperazione giuridica internazionale*, pp. 49-65; OGNJANOSKA, L. (2021), *Promoting the Rule of Law in the EU Enlargement Policy: A Twofold Challenge*, in *Croatian Yearbook of European Law and Policy*, pp. 237-278.
- <sup>25</sup> Directive 2000/43/EC of 29 June 2000 (consolidated version); Regulation (EC) No 1007/2009 of the European Parliament and the Council of 16 September 2009 on trade in seal products. TOGGENBURG, G. N. (2002), *The Race Directive: A New Dimension in the Fight against Ethnic Discrimination in Europe*, in *European Yearbook of Minority Issues*, p. 231 ff.
- <sup>26</sup> Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights. TOGGENBURG, G. N. (2010), *Exploring the Fundament of a New Agent in the Field of Rights Protection: The F(undamental) R(ights) A(gency) in Vienna*, in *European Yearbook of Minority Issues Online*, pp. 597-625.
- <sup>27</sup> Linguistic and cultural diversity is referred in the Union policies dedicated to education, art. 165(1), TFEU, and culture, art. 167(1) TFEU. MARLETTA, M., PARISI, N. (eds.) (2008), *Multiculturalismo e Unione Europea*, Giappichelli, Torino; CARUSO, F. (2010), *Le competenze dell'Unione europea e degli Stati membri in materia di „istruzione“*, in *Diritto e società*, p. 207 ff.; PESCE, C., *Cultura*, in TESAURO, G., DE PASQUALE, P., FERRARO, F., *op. cit.*, pp. 462-468.
- <sup>28</sup> Artt. 9, 10 TFEU.
- <sup>29</sup> About minorities in EU: AHMED, T. (2011), *The Impact of EU Law on Minority Rights*, Hart Publishing, Oxford and Portland; GULIYEVA, G., *Defining the Indefinable: A Definition of 'Minority' in EU Law*, in MALLOY, T. H., MARKO, J. (eds.) (2014), *Minority Governance in and beyond Europe - Celebrating 10 Years of the European Yearbook of Minority Issues*, Brill Nijhoff, Leiden, pp. 165-198; BARTEN, U. (2015), *Minority Rights in the European Union after Lisbon*, in *Nordic Journal of Human Rights*, pp. 74-94; ASLI BILGIN, A. (2019), *Minority Protection in the European Union: To Protect Or Not to Protect*, in *International Journal on Minority and Group Rights*, pp. 92-115.
- <sup>30</sup> NAGY, N., SZAPPANYOS, M. (2021), *The Rights of European Minorities: Justice, Public Administration, Participation, Transfrontier Exchanges and Citizenship - International Developments in 2021*, in *European Yearbook of Minority Issues*, pp. 133-160.
- <sup>31</sup> T-495/19, *Romania/Commission*, mentioned above; C-54/22 P, *Romania/Commission*, mentioned above.
- <sup>32</sup> *Izsák e Dabis /Commission*, C-420/16 P, mentioned above.
- <sup>33</sup> *Ex multis*: CJEU 24 April 2012, C-571/10, *Kamberaj* and EU case law mentioned above.
- <sup>34</sup> *European Parliament resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe*, (2005/2008(INI)): „The political dimension and the urgent need for anti-discrimination policies and minority protection 1. Considers that it is of primary importance to the enlarged Union of 25 Member States and 450 million inhabitants: - to reinforce the links between the Union's peoples and the project that it represents, while at the same time strengthening the sense of belonging to the European Union and the recognition of each person's own history, culture, identity and distinctiveness“.
- <sup>35</sup> *European Parliament resolution of 13 November 2018 on minimum standards for minorities in the EU*, (2018/2036(INI)): „1. Recalls that Member States have an obligation to guarantee minorities the full enjoyment of their human rights, whether as individuals or as a community; 2. Recalls that while protection of minorities is a part of the Copenhagen criteria, both for the candidate countries and for the Member States, there is no guarantee that candidate states will stick to the commitments undertaken under the Copenhagen criteria once they became Member States; 3. Notes that the EU still lacks effective tools to monitor and enforce the respect of minority rights; regrets that in the field of minority protection the EU has either taken for granted

the assumption that its Member States comply with minority rights or has relied on external monitoring instruments, such as those of the UN, the Council of Europe or the OSCE; 4. Notes that compliance with the Copenhagen criteria by states before and after their accession to the EU must be subject to constant monitoring and to a constant dialogue within and between Parliament, the Commission and the Council; stresses the need for a comprehensive EU protection system for minorities, accompanied by a robust monitoring mechanism; 5. Recalls that, in accordance with Article 17(1) of the TEU, the Commission, as guardian of the Treaties, has the legitimacy and authority to ensure that all the Member States are upholding the rule of law and other values referred to in Article 2 of the TEU; considers, therefore, that the measures taken by the Commission to carry out the task and to ensure that the conditions which existed before a Member State's accession are still being fulfilled do not violate the sovereignty of the Member States". See also: *European Parliament resolution of 13 December 2016 on the situation of fundamental Rights in the European Union in 2015*, (2016/2009(INI)); *European Parliament resolution of 7 February 2018 on protection and non-discrimination with regard to minorities in the EU Member States*, (2017/2937(RSP)).

<sup>36</sup> Guideline No. 5 on Relations between the Council of Europe and the European Union, adopted by the Heads of State and Government of the Council of Europe member states, Warsaw, 16 and 17 May 2005.

<sup>37</sup> COMMUNICATION FROM THE COMMISSION on the European Citizens' Initiative 'Minority SafePack - one million signatures for diversity in Europe', Brussels, 14 January 2021 C(2021) 171 final. See: RELAÑO PASTOR E., TOPIDI K. (eds.) (2024), *Minority Rights and Social Change Norms, Actors and Strategies*, Routledge, London.

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