Research Handbook: Minority Politics in the European Union
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The European Commission and Minority Rights

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Abstract

With its extensive powers, the Commission could interpret 'expansively' the numerous legal references relating to minorities in EU Law, and develop the EU's engagement with minority rights. The Commission could do this by (i) focusing on the full spectrum of minority rights where permitted, (ii) engaging in minority rights as broadly as legal powers allow and (iii) applying these consistently across case studies and states. This chapter argues that the Commission's current performance is not of adequate quality and quantity, when compared to the possibilities presented by the legal powers. This is particularly problematic since minority rights is a declared value of the EU in primary law. This unsatisfactory performance on the part of the Commission lends support to those who have long called into question the status of the EU as an organisation credibly founded upon the values of human rights and minority protection.

6 key words: Commission; values; law; selectivity; minorities; discrimination

1. <a>INTRODUCTION

The need to critically analyse the role of the European Commission in the EU's engagement with minority rights is important. Besides the setting of key directions of the EU by the Council and the adjudication of law by the Court, the Commission has a significant role in the direction of the EU (see eg Nugent, 2000; Nugent and Rhinard, 2016; Egeberg, 2019. This is because of

its powers, as set out in Article 17 TEU: to initiate legislation in most matters; 'promote the general interests of the Union and take appropriate initiatives to that end'; and manage EU programmes and budgets and exercise executive, coordinating and management functions, given to it in the Treaties. With these powers, the Commission can shape EU action towards minority rights.

There is no specific EU legal instrument on minority rights, nor an explicit legislative competence to introduce minority rights legislation *per se*, (despite calls to introduce competence provisions: see recently Van Bossuyt, 2007a; Van Bossuyt, A, 2007b; De Schutter, 2006; De Schutter, 2007). However, there are more than 50 legislative provisions which refer to the term 'national minorities' in EU law (Toggenburg, 2018 at 364) and the Commission could interpret these diverse competences 'expansively' to make best use of them. The chapter argues that although the Commission does engage with minority rights at times, the 'quantity' is low compared to the possibilities presented by the legal powers, and that the actions also are not 'quality' acts of effective engagement. Not maximising on these powers that the Commission has, might be regarded as particularly problematic since the EU has expressly declared minority rights as a value of the EU, in Treaty law. The Commission's weak performance adds substance to the long-held criticism of the EU as lacking credibility in the field of human rights, and may also be perceived to be a voluntary unwillingness by the Commission to support minority related issues. To illustrate these points, section 2 outlines what an expansive approach might mean for minority rights. Sections 3 and 4 assesses this in the external and internal dimensions of the EU. Section 5 assesses what this tells about the role of the Commission in furthering (or otherwise) human rights and minority protection image of the EU, before the chapter concludes in Section 6.

2. <a>MINORITY RIGHTS PROTECTION: AN EXPANSIVE APPROACH

An expansive (as opposed to a narrow or select) approach in this chapter does not refer to acts outside of legal parameters, an approach we may find with the European Court of Human Rights (Dothan, 2014). Rather, even with a narrower approach, there are 3 suggested ways in which the Commission could maximise on its legal powers: (i) focusing on the full spectrum

of minority rights where permitted, (ii) engaging in minority rights as broadly as legal powers allow and (iii) applying these consistently across case studies and states.

As regards the first element of the full spectrum of rights, law can either directly concern minorities (eg non-discrimination on grounds of race, ethnicity or religion, as well as other human rights) or can have minority dimensions (eg education, culture or language spheres). In established international minority rights instruments, minority rights are numerous. First, because they include general human rights protection (non-discrimination, the right to life, freedom of expression, or family life), which can be applied to take into account 'minority' dimensions. For instance, health rights might take into account data on COVID-19 which suggests that persons from minorities are more affected by the virus than non-minorities (Public Health England, 2020), and the right to education might recognise religious distinctions. Minority rights are numerous also because they include minority-specific rights, which aim to preserve the identity of minority groups. The Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) serves as a benchmark for the EU. It encompasses a whole host of actions for authorities, including on equality and non-discrimination; culture, language, identity; non-assimilation; free assembly, association, thought, conscience and religion; access to media; inclusive curriculums and minority education institutions; as well as participation in the economic, social, cultural and political life of society. To have a comprehensive, and not a selective approach, to minority rights, the European Commission would (within the legal limits of EU competences) demonstrate consideration for the diverse range of the rights found across human rights and minority protection instruments.

The second element of an expansive approach to minority protection would see the Commission exercising powers as broadly as legal competences allow, instead of narrowly. Thus, in non-discrimination, the Commission cannot bind EU MS to substantive equality, but it can promote it, and thereby follow the Court's current practice of a 'blended formal substantive' approach (De Vos, 2020); or in education, whilst MS cannot be required to teach minority languages, the Commission could encourage it through soft law. According to Dothan (2014, p510), there are 3 methods of Treaty interpretation: the textual (based on the text); the subjective (based on the intent of the authors) and the teleological (based on the purpose of the legislation). The Vienna Convention on the Law of Treaties favours a textual approach, but in light of the context and purpose of a provision (Art 31(1)). Dothan argues that most

international adjudicators have exercised an expansive approach in their role as legal interpreters. The Commission could take a similar expansive approach, and this would be in line with the spirit of relevant Treaty provisions, as discussed below.

The third element of an expansive approach to minority rights requires the Commission to act on issues, states or groups consistently. The heavier human rights burdens on external states, as opposed to EU MS has long been criticised (Abrisketa et al (2015); Hachez and Marx (2020); Williams (2004) 6-9) as contributing to 'incoherence' and 'inconsistencies' and 'irony' in EU human rights (Williams (2004). A selective approach to (minority) rights protection damages the reputation of the EU as a protector of rights. The third and final component of an 'expansive' approach is therefore an integral part of this wider debate on the EU's credibility as a human rights organisation. This credibility is thrown into further doubt in the issue of minority rights because – as discussed further in section 5 - a narrow approach by the Commission could arguably be voluntary, given that EU legal powers would permit the Commission to act more broadly.

3. <a>THE COMMISSION'S ENGAGEMENT WITH MINORITY RIGHTS: EXTERNAL DIMENSIONS

The European Commission represents the EU in external relations and it is here that minority rights first significantly entered onto the EU's radar, across the 1990s and 2000s, in EU enlargement policy. Some attention is given to this early period because it sets trends for the Commission's actions which have been hard to shake off, even some 30 years later.

3.1 <b>The Beginnings: EU Enlargement

The European Commission's first noteworthy engagement with minority rights came in 1993. Newly independent states of Eastern Europe and surroundings had ambitions to join the EU and the EU showed awareness of the need to stabilise the majority-minority relations in these states as a pre-condition of their membership, as set out at the Copenhagen European Council

Presidency Conclusions of 21-22 June 1993 – the Copenhagen Criteria.' 13 Eastern and South-Eastern states joined the EU between 2004 to 2013, and negotiations are ongoing with the Western Balkan states of Albania, Bosnia, Kosovo, Montenegro, North Macedonia, Serbia, and had have been long standing with Turkey.

However, there have been flaws in the Commission's practices of assessing candidate states' minority protection (see eg Rechel, 2008) many of which link to the lack of an expansive approach. The Commission exercises double standards. This was firstly argued to be through stricter application of minority rights to acceding states in the EU's external domain than to existing states in its internal domain (Hillion, 2004-5; De Witte, 2002; Sasse, 2004) and to newly acceded states, whose successful membership resulted in the leverage of the Commission being thereafter weakened (Ibryamova, 2013, p350; Brosig 2010). This indicated that that minority rights were for export only (De Witte, 2002, p139; Toth, 1997, p527). Double standards were secondly claimed due to differences in applying minority rights standards between groups, issues or candidate states. The Commission focused mainly on the situation of Roma in most of the candidate countries (Janse, 2019, p55), and the Russian minorities in Estonia and Latvia (Janse, 2019, p55) ignoring or giving reduced attention to other sizeable minorities, such as Hungarians in Romania and Slovaika and Turks in Bulgaria (Hughes and Sasse, 2003, p14). Latvia was admitted as an EU MS, despite not ratifying the FCNM (Topidi, 2012, p86) as other states had done. Slovakia was deemed to provide minority because it permitted the use of minority languages in official communication, even though it did not require officials to be competent in those languages (Brosig, 2010, p398). In addition, the Commission erred in judging Estonia as meeting linguistic rights, when it was in breach of the FCNM (Brosig, 2010, p399). Guy comments, in relation to Roma, '[i]n the end, no applicants were refused [admission], even though there was no evidence that the situation of their Romani citizens had significantly improved', (Guy, 2009, p34). EU funding was also ineffective in bringing about improvements to minority rights in candidate states, for reasons such as aims being too ambitious for the time-frames, inadequacy of strategies, and lack of pilot assessments to determine proper needs, as opposed to ad-hoc allocation of funding (Guy, 2009, p31).

This chaotic and ineffective start to the Commission's performance on minority rights has not been rectified in recent years of enlargement. This is despite the Copenhagen Criteria and the protection of minorities in enlargement becoming primary law, with Articles 2 and 49 TEU, and relevant enlargement documents referring to the need to improved conditions for minorities

(European Parliament, 2012, p62). A European Parliament study assessed that '[p]rogress is often attested in cases in which requested legislation, strategies or action plans have been adopted. Only rarely, progress or setback is documented by statistics or numbers', (European Parliament, 2012, p62). The expertise of the Commission to reach some of these conclusions is also queried, because there have been only rare references to the work of international bodies (European Parliament, 2012, p62). The Commission's implementation of the legal importance given to the value of minority rights is, therefore, weak. Further, unjustifiable differential treatment of states still continues. When comparing Croatia, Serbia, and Kosovo, 'it is striking that only the European Partnership with Kosovo deals with this subject outside the dedicated chapter on human and minority rights', (European Parliament, 2012, p60). There are problems with the enlargement process on a more macro-scale also. This has particularly been the case with Bulgaria's veto of the opening of accession negotiations with North Macedonia in December 2020, conditional upon the latter acknowledging its roots as Bulgarian, and denying that a Macedonian language or ethnicity not existed (Fouéré, 2021). The Commission has been unable to broker the nationalist and minority disputes in this example. France also vetoed the opening of negotiations with North Macedonia and Albania in October 2019, conditional on reforming the enlargement process[1] so that states were more ready and aligned with EU values, when they entered the EU.

3.2 <b>Other Aspects of External Relations

Aside from enlargement policy, which developed a specific minority rights angle, Article 21 TEU universally requires the EU to conduct its external relations in line with the human rights values of the EU, and the details are set out in the EU Strategic Framework on Human Rights and Democracy (Council of the European Union, 2012). The Strategic Framework mentions the 'fight against discrimination in all its forms', including discrimination on grounds of race or ethnicity as one of the EU's priorities. EU Action Plans pursuing this strategy declare minority rights as a goal of the EU (Council of the European Union, 2015). However, this commitment to minority rights has not translated effectively into practice. For example, in trade policy, trade agreements have human rights clauses and refer to ethnic minorities (Lechner,

[1] The reform came in 2020, and requires a progress on the 'cluster' of the rule of law, economic rights and public administrative reform to be made before other chapters are opened: European Commission (2020a).

2018). Minorities are also mentioned in impact assessment guidelines (European Commission, 2015). However, there are inconsistencies between trade agreements (Hachez and Marx, 2020 at 369ff). The activation of human rights clauses has been rare,[2] and has not ever been based on minority protection. Likewise, development policy reflects a tension between minority rights on paper and its activation in practice, because minority rights receive varying importance across different states and regions (Abrisketa, et al, 2015, p57), and is also not acted upon. Similarly, the EU's neighbourhood policy[3] declares human rights and minority protection as a policy priority, but the related Action Plans give no more than a nominal place to minority rights in very vague terms. In addition, the Commission treats states inconsistently, and it is only in relation to Ukraine that it has inserted more explicit concrete recommendations (European Parliament, 2012, p74). A final mention can be made of the area of freedom, security and justice. The Stockholm Programme of 2010 (European Council, 2010) included human rights within its remit, and the Action Plan requires that '[m]easures to tackle discrimination, racism, anti-Semitism, xenophobia and homophobia must be vigorously pursued,' (European Commission, 2010, para 2(3). Both the Stockholm Programme and the Action Plan emphasise action on Roma (Abrisketa et al, 2015, p95). However, there is a clear gap regarding emphasis on the protection of other groups. The EU's general poor performance with human rights externally, has fuelled the continuing criticisms of the EU's credibility in human rights more widely.[4]

This section demonstrated that the European Commission's approach in the external relations of the EU is not expansive. In enlargement policy, the Commission does not focus on the full spectrum of minority rights or interpret these broadly; it does not use its powers to the fullest; and it does not apply its powers consistently as between groups/issues or states. This is a vast wasted opportunity to use what was a direct inclusion of a minority rights yardstick in the powers given to the Commission. Other aspects of external relations fare worse, in that there is barely a minority rights dimension practised effectively, if at all, even though documents have interpreted human rights in Article 21 TEU to include minority rights.

[2] So far only activated as regards ACP countries, and sanctions did not involve lifting of trade preferences, Hachez and Marx (2020) at 371. In addition, the general preference system has been withdrawn in the cases of labour rights violation in Belarus and Burma. However, this is not consistent, however, for instance, Pakistan did not face a similar fate: Abrisketa at al (2015) at 62

[3] To the South: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia and to the East: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. Russia takes part in Cross-Border Cooperation activities under the ENP and is not a part of the ENP as such.

[4] See more below at Section 5

4. <a>THE COMMISSION'S ENGAGEMENT WITH MINORITY RIGHTS: INTERNAL DIMENSIONS

For a number of years, the EU's enlargement process was the primary basis for the Commission's engagement with minority rights. However, further opportunities arose as EU law evolved (Ahmed, 2011; Toggenburg, 2004; Topidi, 2010). (Unfortunately, many of these opportunities have been largely neglected by the Commission, so that whilst there may at times seem to be a number of initiatives that concern minority communities, these do not take advantage of the legal powers the EU has in terms of quantity or quality of actions, and have not been expansive in several regards.

4.1 <b>The Legal Framework

The Treaty of Lisbon made minority rights an explicit feature of the EU. It is a founding value in Article 2 TEU; it is a legally binding part of enlargement policy in Article 49 TEU; and Article 3 TEU requires the Union to promote its values, respect its cultural and linguistic diversity and its cultural heritage, and sets peace as an aim of the EU. Respect for culture and languages are found in other Treaty provisions, such as Article 55(2) TEU which provides for the translation of the EU Treaties into languages which are official in either whole of partial areas of a MS.[5]

It has traditionally been argued that value provisions (such as Articles 2 and 3 TEU) although influential in legal interpretation (eg Bredimas, 1978), and taken into account by the European Commission in implementing Union policies (European Commission, 2021a, p1), are non-binding (Lasok and Millet, 2004, p.386; Arnull (2006); Casa Fleischhandel v BALM (215/88) [1989] E.C.R. 2789 at 31). However, academics have argued that Article 2 values are legally

[5] Declaration 16 to the Treaty of Lisbon confirms that the purpose of Article 55(2) s to contribute to the fulfilment of diversity in Article 3 TEU.

binding (Scheppele et al, 2021) and references therein, for instance: Pech et al, 2016, 200; Hillion, 2016; Kochenov and Pech, 2016); Scheppele, 2016; Piris, 2010), and must be more than non-binding assertions, because they are given weight by Article 7 TEU, which permits investigation of, and political action against, states for breaches of Article 2 values. The European Commission is given power to initiate the Article 7 process and make recommendations to the EU institutions.[6] Article 258 TFEU also enables the Commission to take infringement action against MS for breaches of EU Law.[7]

Beyond values of the EU, anti-discrimination is a long standing norm of EU Law and includes legal competence in Article 19 TFEU to act on racial, ethnic, and religious discrimination. The two Article 19 Directives are Article 2000/43 on race and ethnic origin and Directive 2000/78 prohibiting religious discrimination in employment,[8] and of course further legislation can be introduced. Anti-discrimination is to be mainstreamed across the EU's policies, under Article 10 TFEU, and this requires the EU to 'actively 'combat' (European Union Agency for Fundamental Rights, 2011) rather than merely avoid discrimination. The EUCFR also prohibits discrimination, under Article 21, including on grounds of race, religion and membership of a national minority. Although Charter provisions do not constitute legal bases for the introduction of legislation on national minorities (unlike with race, ethnicity and religion under Article 19 TFEU), nonetheless, Article 51 EUCFR binds the Commission as an EU institution, and the MS, within the scope of EU Law. The Charter also requires respect for linguistic and cultural diversity, in Article 22. In other aspects of the legal framework, the EU respects, as 'general principles' of EU law, any minority related rights and principles arising from the constitutional traditions of Member States and the ECHR., under Article 6 TEU. In addition, minority rights would be relevant in policy areas such as education, social exclusion, employment, culture, and regional policies .[9] Art.4(2) TEU commands respect for MS' local government structures, and Article 11 TEU requires the EU to liaise with civil society and representative associations and provides the right to EU citizens to submit proposal for law to the Commission (The European Citizen's Initiative).

[6] For analysis of Article 7, see Closa (2020); Bonelli (2021); Kochenov (2021)
[7] For recent analysis, see Bogdanowicz and Schmidt (2018)
[8] Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22; Directive 2000/78 prohibiting discrimination on grounds of religion, belief, disability, age or sexual orientation in the field of employment [2000] OJ L303/16
[9] Articles 6 and 9 TFEU; Title IX Employment Title X Social Policy Title XI European Social Fund; Title VII Education; Title VIII Culture; Title XVIII Economic, Social and Territorial Cohesion

The progressive introduction of such provisions over the past 50 years has created numerous avenues for the Commission to engage with, and enforce, rights and values relevant to minorities. The European Commission has key roles in this bundle of provisions, whether as legislator, enforcer or implementor. The next section assesses whether the Commission's performance on these powers is expansive.

4.2 <b>The Commission's Actions in Practice

4.2.1 <c>Anti-discrimination

When considering the types of issues that the Commission has been engaged in across the years, it is clear that the Commission does not act on the full spectrum of minority rights, as outlined in section 2 earlier, but has focused on anti-discrimination, and within that, bias towards the topics of race and ethnicity, over religion, or membership of a national minority explicitly. The Commission has recently adopted the Anti-Racism Action Plan 2020 (European Commission,2020b) setting out strategies for stamping out racism, raising the voices of minority groups and working with multiple actors to better address racism. The Commission set itself the task to review current law and recommend improvements.[10] The Commission also held its first anti-racism summit in 2021.[11] Other initiatives include the Commission's High Level Group on combating racism, which supports the EU and MS.[12] This group has adopted the Code of Conduct to fight illegal hate speech online, and platforms (eg Facebook, Twitter and Instagram) are to review notifications of hate speech within 24 hours and remove or disable the content.[13]

The most visible attention has been paid by the Commission to one group: the Roma. DG Justice and Fundamental Rights has a separate category of policies devoted specifically to Roma. Most importantly, there is a Roma-specific open method of coordination (OMC), under the EU Framework for National Roma Integration Strategies, which commenced in 2011. This focuses on setting goals, reviewing, and making recommendations on state performance on

[10] See for instance, a review of the anti-discrimination legislation: European Commission (2021)
[11] https://www.antiracism-eusummit2021.eu/
[12] https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=51025
[13] https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en

integrating Roma in education, employment, housing and healthcare (European Commission, 2020c). The Framework has been extended to beyond 2030 (European Council, 2020, p9), and expands its scope to issues such as anti-gypsism, the collection of disaggregated data and equality, the drafting of more specific measurable national targets, and tackling intersectional discrimination. The European Council's 2021 Recommendation also recognises the need to tackle structural discrimination against Roma (Council of the European Union, 2021). The Roma are the focus of the Commission through Roma Summits, Roma Platforms, and national Roma contact points, and the Commission issued Article 258 infringement proceedings against three MS for school segregation of Roma.[14] The Commission's initiatives on Roma are a good example of the Commission trying to work towards fulfilling the legal powers it has under EU law, in terms of specific action to address discrimination against members of one minority group (Article 19 TFEU).

Not all minority groups receive the same regard from the Commission. The Commission's actions towards Roma are often justified on the basis of the Roma being the largest and most deprived minority in Europe. However, legal powers upon which the Commission acts, do not limit Commission action to this. The Commission could also develop defined strategies to promote integration and improvement for Black or Asian communities in the UK, or the Asian, Turkish, sub-Saharan or African communities in Germany, France and Spain, as well as Hungarians in Slovakia and Romania, and Russians in Lithuania and Latvia. This is not to suggest that the Commission should be criticised for not developing defined policies for each and every group, but the current focus is not at all expansive and is very selective.

The Commission's selectivity continues in that limited attention is also given to religious discrimination. Whilst there has been some focused action on tackling anti-Semitism since 2019,[15] and anti-Muslim hatred since 2015,[16] it is weaker than for race, and there is inequality between the approach to the different religious groups. For instance, the anti-Semitism working group will adopt an EU strategy, while the Coordinator for anti-Muslim hatred has been

[14] Czech Republic, Hungary and Slovakia

[15] including through the Commission's establishment of a working group to support Member States in developing effective strategies for combating anti-Semitism: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/racism-and-xenophobia/combating-antisemitism/working-group-combating-antisemitism_en

[16] With the establishment of a Coordinator for the combating of anti-Muslim hatred, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/racism-and-xenophobia/combating-anti-muslim-hatred_en

involved in workshops and events thus far, but with no proposed tangible outcome at policy level. The EU's competence on anti-discrimination would certainly permit the Commission to do more for religion. It could for instance address the issue through the development of national strategies. It could also take up the duty to mainstream non discrimination on grounds of religion across EU policies. However, the Commission has only recently begun to outline a formal mainstreaming approach, with the establishment in 2019 of the Equality Task Force (European Commission, 2021a).

Having outlined the point of selectivity by the Commission, with particular bias towards the Roma, the Commission's commitment to the Roma should not be over-exaggerated, as its efforts have not been regarded as successful.[17] The Commission's support has been primarily one of integration of Roma into society, with neglect for immediate action to protect Roma in the face of serious breaches of their rights by EU MS, and no coverage for institutional discrimination. This demonstrates a narrow approach to Roma by the Commission. The Commission failed to act effectively in relation to France and Italy from 2008 onwards, when both states took restrictive measures towards Roma, expelling them from the state (Martin, 2013; Severance, 2010), or issuing decrees to fingerprint them and practicing discriminatory housing policies (Amnesty International, 2018). In both Italy and France, Roma suffered violence and deaths. The Commission issued an initial notification to France, without follow up action, simply engaging in a 'brief war of words' (O'nions 2011, p366), and failed to act against Italy despite investigating years of documented abuse (Nielsen, 2018), as criticised by Amnesty International (Amnesty International, 2018). In both cases, the Commission could have more actively and promptly engaged Article 7 TEU or Article 258 TFEU processes for infringements of EU law and values. In addition, any outputs from Roma Summits and the Roma Platforms are not legally binding and do not have follow up mechanisms, which could effectively make any difference to Roma on the ground. Roma initiatives developed and led by the Commission 'lack of transparency, weak methodology behind the discussions (non-independent research based debates) and the risks of inconsistency in action by the Commission' (ERPC 2012, p69) as well as a high degree of uncertainty as to how, if at all, they contribute to monitoring or assisting MS' implementation of EU duties (ERPC 2012, p69).

[17] The Commission itself acknowledges limited progress in healthcare and employment, and worsening in other areas, such as an increase in school segregation: European Commission (2020c) page 2; see also a review of the National Roma Integration Strategies in ERPC (2012)

To follow on from the above, enforcement is perhaps the greatest weakness in the Commission's performance on minorities and whether such performance is expansive. The Commission generally does not use enforcement mechanisms fully, if at all, for instance its failure to utilise Article 258 in relation to the poor treatment of refugees in Greece. Effective enforcement is also hindered by lack of apparatus to address structural and institutional discrimination, which results in systematic discrimination against persons from minority groups. Article 258 TFEU is primarily geared towards the identification of individual instances of breaches and is not suitable to effectively address systematic problems.[18] Without taking a more expansive approach, the Commission cannot make any significant impact on addressing continuous and far-reaching breaches of EU law by MS. This can be seen particularly in the case of Hungary, which has discriminated against women, Roma and sexual minorities, and with Poland and the erosion of the independence of the judiciary (Scheppele et al, 2021), p90; Amnesty International 2020; Amnesty International 2021).

To summarise, the field of anti-discrimination has been steadily populated in terms of Commission initiatives. However, there is not an expansive application of the Commission's powers. There is selectivity towards race or ethnicity and Roma, over other grounds of discrimination, or other groups. Furthermore, the failures of enforcement at points when serious risks are occurring on the ground for minorities in MS has prevented the Commission being taken seriously as a protector of EU values in human and minority rights. In addition, there has been no overall mainstreaming of anti-discrimination in EU law and policy.

4.2.2. <c>Outside of discrimination: diversity initiatives

The attention given by the Commission to the issue of discrimination, and its particular focus on race and the Roma, is not mirrored outside of discrimination, for instance in respect of ethnic, racial, cultural and linguistic diversity, which have been highlighted as important European values in Articles 2 and 3 TEU, and are referred to in Articles 21 and 22 EUCFR. This is an element of selectivity already practised by the Commission in the attention it gives to various aspects of its powers. The Commission's approach has not been to develop initiatives which, albeit through soft law measures, encourage the MS to better respect the diversity of its

[18] On the argument that Article 258 can be useful for systemic breaches of the (values provisions of the) EU Treaty, see Scheppele et al (2021)

population systematically and consistently. Instead, it has been to hold events or provide funds to celebrate cultures and languages, which is a much more indirect means of achieving this aim.[19] In addition, the EU's social inclusion strategy since the Lisbon European Council of 2000 has targeted minorities, although not in significant measure (Cianetti, 2018).

A celebration of diversity approach potentially encourages an environment of awareness and respect for diversity, but has had little impact on the ground. It is also a limited reading of EU legal powers on diversity, as well on mainstreaming duties under Article 10 TFEU.[20] More effective measures are those which, for instance, use an OMC approach to encourage better respect for diversity within MS or which support states to remove obstacles to the provision of resources. Other examples could involve the Commission explicitly ring-fencing funding for minorities or undertaking impact assessments to ensure that EU law and policy respects diversity and does not harm it.

A set of suggestions to enhance the impact of the EU on minorities were recently recommended to the Commission in a European Citizen's Initiative. The full set of proposals in The Minority Safepack Initiative (MSPI) is worth outlining here: [21]

1. A Council Recommendation to enhance cultural and linguistic diversity, including protecting the use of minority languages in public spaces, as well as in media and commerce.
2. Amend funding programme rules in education, culture and media, so as to be more inclusive of minority languages and cultures.
3. A Regulation to establish a European Language Diversity Centre.
4. Special attention to be paid to national and linguistic in regional development funds.
5. Amend Horizon Europe Programme to allow the financing of research into strengthening the situation of national and linguistic minorities.
6. A proposal to strengthen the rights of stateless persons.

[19] See further, Smile (2002). The European Commission (2003) verifies that the mainstream education, training, and cultural programmes are open to minority languages; European Commission (2021b) p6. See further, Linguistic diversity in the European Union – the case of regional and minority languages, 2018 (https://op.europa.eu/en/publication-detail/-/publication/371430cc-f2c1-11e8-9982-01aa75ed71a1

[20] which requires the mainstreaming of non-discrimination on grounds of race, ethnicity or religion, and indirectly also includes the cultural and linguistic traits of persons belonging to these groups.

[21] For commentary, see eg Willis (2021); Tarnok and Peter (2017); Toggenburg, G (2018)

7. A proposal to allow events of major importance for society, to be viewed in mother tongues, as well as to remove further obstacles to cross-border transmission of services.
8. A single market for copyright, to remove the obstacle of license barriers.
9. Amend the EU Regulations on state aid to exempt activities that support minorities.
10. New legislation to ensure concerns of minorities are taken into consideration in the election of the European Parliament;
11. Revision of the existing Council directives on the subject of equal treatment, including for national minorities.

The Commission objected to the initiative at two crucial points. First, it rejected the registration of the entire initiative because it contained some proposals which it could not accept: the last two proposals required new legislation on national minorities specifically, which fell outside of EU competences. The EU Court, however, required the Commission to sever the proposal and register 9 out of the 11 initial parts.[22] The revised initiative received overwhelming support at the European Parliament, before returning to the Commission in January 2021. However, at this second point, the Commission, in its response (European Commission, 2021b), rejected absolutely the initiation of any legislation to implement any parts of the proposal.

The Commission outlined that, in addition to the initiatives which recognise cultural and linguistic diversity as important in the EU, there were other ways in which it already met the proposed measures in the submitted initiative. It pointed to forums for dialogue with the cultural sector (eg Voices for Culture) which have already specifically considered culture, and the inclusion of minorities, and refugees and migrants (European Commission 2021b, p4). The Commission also noted that the Council has recommended that an expert group review the issue of linguistic diversity and translation of European works (European Commission, 2021b; p4; European Council, 2018a). The Commission has issued a guidance note for the structural funds to ensure respect for the Charter, which includes non-discrimination (European Commission, 2016), and recounts that structural funds already undertake projects which support for instance, the Roma (European Commission, 2021b, p10). The Commission

[22] General Court, judgment of 3 February 2017, case T-646/13, Minority SafePack v. Commission ECLI:EU:T:2017:59. The Commission registered the proposal, having omitted proposals 10 and 11 of the list outlined above in this chapter. See further, European Commission (2017)

indicated that it is implementing other relevant Council Recommendations[23] and that the Horizon funding scheme has funded projects relating to minorities and can continue to do so (European Commission, 2021b, pp10-11). Finally, the Commission also emphasised the desire to avoid competing with the work of the Council of Europe, on minorities.

The Commission neglected to provide a detailed or convincing analysis in its response document of how its proposed actions would effectively implement the aims of the MSPI. According to the Commission, existing law and the Commission's actions already meet the aims of the MSPI, or can easily do so in the future through the provision of further guidance notes, instead of adopting new measures (European Commission, 2021b). However, all existing Commission initiatives (apart from the Roma specific ones) mention minorities within a broader objective (eg education and teaching, or innovative research in Horizon 2020). However, guidance notes are weaker than amending the rules of funding programmes to explicitly cover minorities and/or ringfence funds for this purpose, and minority projects are unlikely to frequently win grants within a general approach. No action that the Commission currently takes in fact addresses the proposals of the MSPI, or only does so minimally. For instance, there are not targeted actions towards minority diversity (bar ad hoc examples) or actions such as removing barriers to copyright or state aid[24] in current practices. Furthermore, nothing the Commission does currently or plans to, will provide equal rights to stateless persons: the Commission indicating that it would instead continue to treat such persons as third country nationals (and therefore with reduced rights), but work to ensure their better integration in society (European Commission, 2021b, pp12-13). It is the case therefore that the Commission's insistence that its current or planned actions will cover the aims of the MSPI is exaggerated. These are clear examples of the many ways in which the Commission takes a restrictive, and not expansive, approach to its legal powers which can affect minorities.

To summarise this section, outside of anti-discrimination, the Commission's regard for minority rights is more limited than under the former policy area. The MSPI offered numerous ways in which the Commission could take a more expansive approach to its powers, which would have met EU Treaty aims on diversity. Outside of anti-discrimination, the Commission's

[23] For instance, European Council (2018b); European Council (2019), which makes a reference to minority languages; European Commission (2020d) ,which includes reference to minority languages; and the European Commission (2020c); and European Commission (2020e) (currently under examination by the Council).
[24] The Commission stating instead that there were sufficient opportunities in place already for projects funded by states on minorities to be not considered state aid, European Commission (2021b)pp17-18

efforts are reduced primarily to one of providing some funds, and programmes to celebrate diversity. This is a restrictive approach, and does not encompass a wide spectrum of minority rights or use the full powers of the Commission. Full use of powers would require the Commission to ensure that EU law and activities did not negatively impact linguistic and cultural diversity, as a standard utilisation of Article 22 EUCFR.

5. <a>THE REFLECTION ON THE EU AND THE ROLE OF THE EUROPEAN COMMISSION IN MINORITY RIGHTS

The discussion so far illustrates that, overall, the different parts of the Commission's actions put together do not make for an expansive contribution to minority rights. The Commission's expressed view is that it already acts in minority rights, and is willing to act further (European Commission, 2021b). However these are modest attempts and modest promises, when compared to the parameters of available legal bases. As well as raising doubts in relation to the Commission's genuine embracement of minority rights as a value of the EU, the Commission's performance adds to the criticism of the EU as a poor actor in the field of human rights. De Burca – writing post-Lisbon and thus applicable to the legal framework as it still stands today - argues that the EU's human rights framework, despite the changes made through the Lisbon Treaty, still suffers from major weaknesses (De Burca, 2011; see also Douglas-Scott, 2011). Not only are there still double standards between external and internal states (de Búrca, 2011, p 685, 687), but MS also dispute the EU's role in human rights, as shown by their reaction to EU intervention,[25] and the EU has a restricted role in scrutinising and enforcing human rights in MS', as shown by the terms of Article 51 EUCFR (which applies only to MS in implementing EU law) and Article 7 TEU (in relation to which the EU Fundamental Rights Agency is not given powers to collect data on MS).[26] This overall sense of an actor which is not credible in human rights applies well in the case of minority rights, because the Commission, as shown by its response to the MSPI, is resistant to developing EU policies which would have a more defined minority rights angle, and which could be done without transgressing substantive legal powers.

[25] Eg France's reactions to the EU in relation to Roma expulsions and Hungary's criticism of the EU in relation to its introduction of media legislation. See de Búrca. (2011) at 674

[26] The Agency is also restricted to reporting on MS in relation to their implementation of EU law, and not in relation to internal human rights more generally: de Búrca. (2011) at 674-6.

There could be numerous reasons for the Commission not taking a more expansive approach to the topic of minorities in the EU, but, as indicated by this chapter, a lack of powers would not seem to be the predominant reason. The Commission has traditionally been viewed as the integrationist body of the EU,[27] and as integration slowed in comparison to the early years of the EU (when the core of the single market was being established) there were suggestions that there had been a decline in the agenda-setting, legislative and executive powers of the European Commission (Nugent and Rhinard, 2016). Factors that may affect the Commission's role in any given policy area include the extent of power of the European Council (Nugent and Rhinard, 2016), and its powers to block or slow down integration; increasing powers given to the European Parliament as legislature; the more rigorous accountability of the Commission to the Parliament; and in addition, processes such as the OMC, which provide power to the MS regarding implementation. However, not all agree that the Commission has lost such powers and argue that critiques over-exaggerate the small changes that have been made to the Commission's role in the EU (Nugent and Rhinard (2016); see also Viterriti (2010).

As regards the topic of this chapter – minority rights – the lack of progression by the Commission, on minority rights, does not appear to concern a decline in power of the three main functions of the Commission in relation to the powers already integrated within the Treaty. The European Parliament's legislative role with the Commission, for instance, is unlikely to fiercely challenge the Commission on the integration of minority issues, because the Parliament is usually pro-integrationist (and pro-minorities), and is likely to support the Commission's position vis-à-vis the less integrationist institution: the Council.[28] For instance, this would be the case with respect to the proposals of the MSPI which received overwhelming support at the European Parliament, and this could specifically therefore include legal provisions in relation to state aid, copyright, media and stateless persons.[29] Other likely measures are predominantly within the management and powers of the Commission, such as the use of Article 258 TFEU, or initiatives to promote diversity, or introduce soft law initiatives, such as OMC processes. Whilst OMC does provide implementation powers to the MS, the Commission still has a useful role in data evaluation, agenda setting and monitoring,

[27] For discussion, see Pierson,; Constantin; Cf Hooge (2002) for a study showing that the Commission officials are not all pro-integrationist.
[28] which can in fact bolster any chances of the Commission securing necessary legislative changes, Hooge (2002), p10
[29] Hooge's study finds this to be the case with respect to the adoption of two Directives in EU Asylum law: Hooge (2002)

which can encourage progress in MS' positions. Moreover, the Commission is not hindered in making progress in areas where legislation is adequate for action, such as in anti-discrimination law, or as regards the integration of human and minority rights in external relations, because the necessary powers have already been adopted in legislation. Thus, the Commission is not restrained from attempting to take action for fear of outright obstruction in several areas. Instances where the Commission may face more difficulty includes the use of Article 7 TEU, which, given the dominating role of the European Council, may prevent the Commission from even proposing action in the first place. Overall, however, the lack of an expansive approach to minority rights in the EU by the Commission appears to concern the actions of the Commission to perform implementation in both quantity and quality terms, across the three markers for expansiveness that this chapter is based upon. Given the absence of formal restraints to a more expansive approach, as just described, it may be argued that a more select approach has been a voluntary choice on the part of the Commission and this bolsters concerns around the EU taking seriously its founding values of human rights and minority protection.

This situation fits within narratives around the inability of the EU to become a human rights organisation, when economics lie at its heart, and even post legal developments in Treaty law, that 'the transformation of the EU from internal market to a human rights organisation cannot be achieved merely by the assertion of some new, majestic sounding treaty provisions declaring the EU's values (Douglas-Scott, 2011, p679).' To believe that such a transformation has occurred is a myth (Smismans (2010), cited in Douglas-Scott (2011), 679), as is the belief that it can occur without more profound shifts in what the core of the EU is. This is evident in minority rights in the EU, where there are tensions in its legal status given to it within Article 2 versus the limited competences to follow through on the Article 2 claim, as well as the restricted – and not expansive - implementation of the available law. The treatment of minority rights (and specifically its implementation by the European Commission) is not surprising, given similar failures by the EU to live up to recent pressing human rights concerns in the EU (even where it had legal powers to act), including the treatment of migrants following the so-called 'Mediterranean migrants crisis', and the protection of democracy and the rule of law in the rise of the right wing crisis in Hungary, Poland, Italy and Greece. In short, the European Commission's lack of expansive implementation of minority rights in the EU might be a

reflection of its understanding that the EU project itself does not yet expect to take this (as well as other) human rights issue(s), seriously as a core part of its existence.[30]

6. <a>CONCLUSION

This chapter has argued that the European Commission does not act on powers relevant to minority rights expansively, by encompassing a wide spectrum of minority rights; using its powers to the fullest; and being consistent between groups or states. The Commission has instead applied its powers in a more select fashion (focusing mainly on non-discrimination, and within that favouring race over religion, and the Roma); not utilising its powers expansively (not explicitly or distinctly drawing out minority issues, not developing mainstreaming or utilising enforcement mechanisms), and not treating issues, groups, or states in a consistent manner (emphasising Roma over other groups or issues).

The Commission's actions are not systematic, are low in quantity terms, and are also poor in quality terms. An approach based on inconsistencies between and within external and internal domains, select development of non-discrimination, and celebration of diversity, has not utilised expansively the legal powers available to the Commission. The Commission has rejected new measures and initiatives in areas which are relevant to minorities, as outlined in the MSPI. Given that EU legal powers are available for the Commission to do more than it has done so, so far, then the Commission's restrictive approach might indicate a voluntary resistance on the part of the Commission and calls into question the image of the EU as an organisation founded upon the values of human rights and minority protection.

Bibliography

Abrisketa, J, Churruca, C, de la Cruz, C, García, L, Márquez, C, Morondo, D, Nagore, M, Sosa, L and Timmer, A Human rights priorities in the European Union's external and internal policies: an

[30] For a clear discussion of the contradictions in the EU's human rights values and practices, see Smismans (2010), pp 54 onwards.

assessment of consistency with a special focus on vulnerable groups, 2015, Frame, Large-Scale FP7 Collaborative Project GA No. 320000 1 May 2013-30 April 2017

Ahmed, T The Impact of EU Law on Minority Rights (Hart, Oxford, 2011)

Amnesty International (2018) "Italy: Authorities defy European Court's ruling and render dozens of Roma homeless", *(Amnesty International*, 26 July 2018) https://www.amnesty.org/en/latest/news/2018/07/italy-authorities-defy-european-courts-ruling-and-render-dozens-of-roma-homeless/>

Amnesty International (2020) https://www.amnesty.org/en/countries/europe-and-central-asia/hungary/report-hungary/

Amnesty International (2021) Poland: Briefing on the Rule of Law and independence of the judiciary in Poland in 2020-2021 - Amnesty International

Arnull, A The European Union and its Court of Justice, 2nd edn (Oxford: Oxford University Press, 2006)

Bogdanowicz, P, Schmidt, M 'The infringement procedure in the rule of law crisis: How to make effective use of Article 258 TFEU', (2018), 55, Common Market Law Review, Issue 4, pp. 1061-1100

Bonelli, M 'From Sanctions to Prevention, and Now Back to Sanctions? Article 7 TEU and the Protection of the EU Founding Values', in Stefano Montaldo, Francesco Costamagna, Alberto Miglio, EU Law Enforcement, the Evolution of Sanction Powers (Routledge, London, 2021)

Bredimas, A, Methods of Interpretation and Community Law (Amsterdam: North-Holland, 1978), p.71-105

Brosig, M 'The Challenge of Implementing Minority Rights in Central Eastern Europe, European Integration' (2010) 32(4) Journal of European Integration, 393-411

Cianetti, L 'Trickle-Down Social Inclusion: The EU Minorities Agenda in Times of Crisis', (2018) JCMS Volume 56. Number 4. pp. 785–801

Closa C. Institutional logics and the EU's limited sanctioning capacity under Article 7 TEU (April 2020) International Political Science Review;

Constantin, A ‘Is the European Commission Too Powerful? Neofunctionalism and Intergovernmentalism Considered’ 2013 Inquiries Journal, VOL. 5 NO. 10;

Council of the European Union (2012), ‘Human Rights and Democracy: EU Strategic Framework and EU Action Plan’, Annex II, 11855/12 (2012) (Strategic Framework or Strategic Framework on Human Rights and Democracy)

Council of the European Union (2015), Action Plan on Human Rights and Democracy for the period 2015-2019, https://www.consilium.europa.eu/media/30003/web_en__actionplanhumanrights.pdf; Action Plan on Human Rights and Democracy 2020-2024 https://www.consilium.europa.eu/media/46838/st12848-en20.pdf

Council of the European Union, Council Recommendation on Roma Equality, Inclusion and Participation, 2020 6070/21 https://data.consilium.europa.eu/doc/document/ST-6070-2021-INIT/en/pdf,

De Búrca, G (2011) The Road Not Taken: The European Union As A Global Human Rights Actor. *The American Journal of International Law, 105*(4), 649-693

De Schutter, O 'The Framework Convention on the Protection of National Minorities and the Law of the European Union', European FP6 - Integrated Project Coordinated by the Centre for Philosophy of Law, Universit6 Catholique de Louvain, 2007 WP-FR-15.

De Schutter, O European Union Legislation and the Norms of the Framework Convention for the Protection of National Minorities, Committee of Experts on Issues Relating to the Protection of National Minorities (DH-MIN), DH-MIN (2006), 019

De Vos M. The European Court of Justice and the march towards substantive equality in European Union anti-discrimination law. International Journal of Discrimination and the Law. 2020;20(1):62-87

De Witte B, Politics versus Law in the EU’s Approach to Ethnic Minorities’ in Zielonka, J (ed.) Europe Unbound: Enlarging and Reshaping the Boundaries of the European Union (Routledge: London, 2002)

Dothan, S, ‘In Defence Of Expansive Interpretation In The European Court Of Human Rights’ (2014) (3)2 Cambridge Journal of International and Comparative Law 508–531

Douglas-Scott, S The European Union and Human Rights after the Treaty of Lisbon, *Human Rights Law Review*, Volume 11, Issue 4, December 2011, Pages 645–682

Egeberg, M, 'The European Commission' in Michelle Cini and Nieves Pérez-Solórzano Borragán (eds.), European Union Politics (OUP: Oxford, 2019), chapter 10

European Commission (2003), Communication on 'Promoting Language Learning and Linguistic Diversity: An Action Plan 2004-2006', COM (2003), 449

European Commission (2010), Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Delivering an area of freedom, security and justice for Europe's citizens – Action Plan Implementing the Stockholm Programme, COM(2010) 171 final

European Commission (2015), Directorate-General for Trade, Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives (2015), https://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153591.pdf

European Commission (2016), Commission notice — Guidance on ensuring the respect for the Charter of Fundamental Rights of the European Union when implementing the European Structural and Investment Funds ('ESI Funds'), C/2016/4384, OJ C 269, 23.7.2016, p. 1–19

European Commission (2017), Commission Decision (EU) 2017/652 of 29 March 2017 on the proposed citizens' initiative entitled 'Minority SafePack — one million signatures for diversity in Europe' (notified under document C(2017) 2200 final)

European Commission (2020a). Enhancing the accession process - A credible EU perspective for the Western Balkans. Brussels, 5.2.2020 COM(2020) 57 final: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/enlargementmethodology_en.pdf

European Commission (2020b), A Union of Equality, EU Action Plan Against Racism 2020-2025, https://ec.europa.eu/info/sites/info/files/a_union_of_equality_eu_action_plan_against_racism_2020_-2025_en.pdf page 4.

European Commission (2020c), Communication from the Commission to the European Parliament and the Council, A Union of Equality: EU Roma strategic framework for equality, inclusion and

participation, COM(2020) 620 final, https://ec.europa.eu/info/sites/info/files/union_of_equality_eu_roma_strategic_framework_for_equality_inclusion_and_participation_en.pdf

European Commission (2020d), Communication on achieving the European Education Area by 2025 (adopted in September 2020), which includes reference to minority languages;

European Commission (2020e), Proposal for a COUNCIL RECOMMENDATION on Roma equality, inclusion and participation, COM/2020/621 final

European Commission (2021a), Report from The Commission to The European Parliament And The Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive') COM (2021) 139 final

European Commission (2021b) Communication From The Commission on the European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe', COM(2021) 171 final,

European Council (2010), The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens (2010/C 115/01). (Stockholm Programme),Title 7 'Europe in a Globalised World – The external dimension of Freedom, Security and Justice'

European Council (2018a) , Council conclusions on the Work Plan for Culture 2019-2022 2018/C 460/10

European Council (2018b), Recommendation (2018/C 195/01) on promoting common values, inclusive education and the European dimension of teaching (adopted May 2018);

European Council (2019), Recommendation (2019/C 189/03) on a comprehensive approach to the teaching and learning of languages (adopted May 2019), which makes a reference to minority languages;

European Parliament, DG for External Policies of the EU, Mainstreaming Human And Minority Rights In The EU Enlargement With The Western Balkans, 2012

European Roma Policy Coalition, Report "Analysis of the National Roma Integration Strategies", March 2012.

(http://www.ergonetwork.org/media/userfiles/media/Final%20ERPC%20Analysis%2021%2003%2012_FINAL.pdf)

European Union Agency for Fundamental Rights, Respect for and Protection of Persons Belonging to Minorities 2008–2010, (2011)

Fouéré, E, 'The EU's Enlargement Agenda is no longer Fit for Purpose' (2021), https://www.ceps.eu/the-eus-enlargement-agenda-is-no-longer-fit-for-purpose/, accessed 16 June 2021

Guy, W 'EU Initiatives on Roma: Limitations and Way Forward' in Sigona, N and Trehan N, Romani Politics in Contemporary Europe, Poverty, Ehtnic Mobilisation and the Neoliberal Order (Palgrave MacMillan, London, 2009) pp 23-50

Hachez, N and Marx, A 'EU Trade Policy and Human Rights' in Wouters, Nowak, Chane and Hachez, The European Union and Human Rights: Law and Policy (OUP, Oxford, 2020), pp 365-385

Hillion, C 'Overseeing the Rule of Law in the EU: Legal mandate and means', in Closa C and Kochenov D (eds), Reinforcing Rule of Law Oversight in the European Union (Cambridge: Cambridge University Press, 2016)

Hillion, C Enlargement of the European Union—The Discrepancy between Membership Obligations and Accession Conditions as Regards the Protection of Minorities, (2004-5) 27(2) FORDHAM INT'L L.J. 715

Hooge, L, The European Commission and the Integration of Europe, Images of Governance (CUP, Cambridge, 2002)

Hughes, J and Sasse, G, '2003 4(1) Journal of Ethnopolitics and Minority Issues in Europe 1-37 at 14

Ibryamova, N 'European Union political conditionality and minority rights: compliance in Bulgaria and Romania' (2013) The International Journal of Human Rights, 17:3, 350-367

Janse, R, 'Is the European Commission a credible guardian of the values? A Revisionist Account of the Copenhagen Political Criteria during the Big Bang Enlargement', (2019) 17(1) International Journal of Constitutional Law 43-65 at 55

Kochenov D and Pech, L 'Better Late than Never? On the European Commission's Rule of Law Framework and its First Activation' (2016) 54 Journal of Common Market Studies, 1062;

Kochenov, D 'Article 7: A Commentary on a Much Talked-About 'Dead' Provision' in Armin von Bogdandy, Bogdanowicz, P, Canor, I, Grabenwarter, C, Taborowski, M, and Schmidt, M (Eds) Defending Checks and Balances in the EU Member States (Springer, 2021)

Lasok, K and Millet, T Judicial Control in the EU (Richmond: Richmond Law and Tax Ltd, 2004)

Lechner, L The European Union's Inclusion of Non-Trade-Issues in Preferential Trade Agreements, 2018, http://respect.eui.eu/wp-content/uploads/sites/6/2019/05/eu_ntis_ptas.pdf

Martin, M "Expulsion of Roma: the French government's broken promise", (*State Watch*, January 2013) <https://www.statewatch.org/analyses/no-222-france-roma-expulsion.pdf> accessed 28 December 2020

Nielsen, I "EU Commission skirts Italy sanctions on Roma evictions" *Euobserver* (Brussels, 27 July 2018) < https://euobserver.com/justice/142482> accessed 29 December 2020

Nugent, N (ed.), At the Heart of the Union: Studies of the European Commission (Palgrave Macmillan, 2000)

Nugent, N and Rheinard, M 'Is the European Commission *Really* in Decline?' (2016) 54(5) Journal of Common Market Studies 1199-1215;

O'nions, H 'Roma expulsions and discrimination: the elephant in Brussels, (2011) European Journal of Migration and Law, 13 (4), pp. 361-388 at 366

Pech et al., 'An EU Mechanism on Democracy, the Rule of Law and Fundamental Rights—Annex I (EPRS study)' (2016) PE 579.328, 200

Pierson, 'The Path to European Integration: A Historical Institutionalist Analysis' (1996) 29(2) Comparative Political Studies 123-63

Piris, J-C The Lisbon Treaty (Cambridge: Cambridge University Press, 2010), 71

Public Health England, Disparities in the Risk and Outcomes of Covid-19 (2020), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908434/Disparities_in_the_risk_and_outcomes_of_COVID_August_2020_update.pdf

Rechel, B, 'What Has Limited the EU's Impact on Minority Rights in Accession Countries?' 2008) 22(1) East European Politics and Societies: and Cultures pp171-191

Romania' (2013) 17(3) The International Journal of Human Rights 350-367 at 350

Sasse, G, 'EU Enlargement: Normative overstretch or effective Conditionality?' in Minority Protection and the Enlarged European Union (2004) 59-84

Scheppele KL, 'Enforcing the Basic Principles of EU Law through Systemic Infringement Actions', in Closa C and Kochenov D (eds), Reinforcing Rule of Law Oversight in the European Union (Cambridge: Cambridge University Press, 2016)

Scheppele KL, Kochenov D, and Grabowska-Moroz, B 'EU Values Are Law, after All: Enforcing EU Values through Systemic Infringement Actions by the European Commission and the Member States of the European Union', Yearbook of European Law, Vol. 00, No. 0 (2021), pp. 1–121

Severance, K "France's Expulsion of Roma Migrants: A Test Case for Europe", (*Migration Policy Institute*, 21 October 2010) <https://www.migrationpolicy.org/article/frances-expulsion-roma-migrants-test-case-europe> accessed 28 December 2020

Smile (2002), Final Report, Support for Minority Languages in Europe, , 15 May 2002, 56-57

Smismans, S 'The European Union's Fundamental Rights Myth' JCMS 2010 Volume 48. Number 1. pp. 45–66

Tarnok and Peter, P 'European Minorities win a battle in Luxembourg – The Judgement of the General Court in the case Minority Safepack European Citizens' Initiative (2017) 16(1) Journal on Ethnopolitics and Minority Issues in Europe 79-94

Toggenburg (Ed), Minority Protection and the Enlarged European Union (OSI, Budapest, 2004)

Toggenburg, G 'The European Union and the Protection of Minorities: New Dynamism Via the European Citizen Initiative?' (2018) 3-4 European Journal of Minority Studies 362-391 at 364

Topidi, K ‘Minority Issues in Europe and the EU Experience to Enlargement to Central and Eastern Europe’, in 5th Warsaw Seminar on Human Rights, (Kontrast ,Warsaw, 2012), 85-95 at 86

Topidi, K EU Law, Minorities and Enlargement, (Intersentia, 2010)

Toth, AG ‘The European Union and Human Rights: The way Forward’, (1997- CMLREv 491-529 at 527

Van Bossuyt, A (2007a) 'Fit for Purpose or Faulty Design? Analysis of the Jurisprudence of the European Court of Hunan Rights and the European Court of Justice on the Legal Protection of Minorities', Journal on EthnoPolitics and Minority Issues in Europe 1 (2007): 1-20

Van Bossuyt, A (2007b) 'Is There an Effective European Legal Framework for the Protection of Minority Languages? The European Union and the Council of Europe Screened', ELR 32, no. 6 (2007): 860-877, 868 and 877;

Viterriti, A ‘An Independent Norms Entrepreneur, The European Commission and Asylum Policy’, LSE Migration Studies Unit Working Paper 2010/03, https://www.lse.ac.uk/government/Assets/Documents/pdf/research-groups/msu/WP-2010-03.pdf

Williams, Andrew EU Human Rights Policies, A Study in Irony OUP: Oxford, 2004)

Willis, C ‘The Minority Safepack Initiative and Universal Basic Income: A Combination to Address Minority Issues in the European Union?’ (2021) International Journal on Minority and Group Rights 1-30