

BALÁZS VIZI

## The Unintended Legal Backlash of Enlargement? The Inclusion of the Rights of Minorities in the EU Constitution

The fate of the Constitutional Treaty of the European Union<sup>1</sup> appears to be gloomier than ever after the rejection of its ratification at the referendums held in France on 29 May 2005, and in the Netherlands on 1 June 2005. Nevertheless, despite growing uncertainty over its future, the Treaty and its elaboration may already call attention to a few matters that have no precedence in the treaty law of the Union. One of these novelties is the inclusion of a reference to the rights of minorities, which despite its simple and vague formulation can be seen as a step towards integrating the Union's external policy efforts with internal obligations. As a matter of fact, while the question of minority protection has become a strong discursive element in the European Union's external relations, especially in its enlargement policy, the lack of any internal reference or normative background has become an obtrusive gap between the EU's external policies and internal commitments.

The European Union through the Constitution Treaty indeed, for the first time in EU history, recognises minority rights among the values of the Union, as Art. I-2 states:

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, **including the rights of persons belonging to minorities**. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. (emphasis added)

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<sup>1</sup> Treaty establishing a Constitution for Europe. *Official Journal*, C 310, 16 December, 2004.

In the following, I will attempt to give an overview on the political and legal background of the inclusion of this reference to minority rights in the Constitutional Treaty, arguing that the recent eastern enlargement of the EU served as the catalyst for its adoption.

The Constitution Treaty was designed to form a milestone in the process of European integration. At the Laeken Summit in 2001<sup>2</sup> the European Council decided to elaborate the Constitution Treaty in order to answer the challenges of an enlarged EU and substantial institutional reforms. Legislative work on the new Treaty formally began at the European Convention, convened first in February 2002. The Convention was designed to provide an open forum for the representatives of member states, candidate states, and EU institutions to discuss the future of the Union and adopt the first draft of the European Constitution Treaty.<sup>3</sup>

The inclusion of a reference to the rights of minorities in the Treaty caused slight debates in the plenum of the European Convention.<sup>4</sup> That a variety of international forums already exist for the purpose of protecting minority rights internationally, and that the existing and developing mechanisms of organisations such as the Council of Europe (CoE) and the Organization for Security and Co-operation in Europe (OSCE) provide a suitable framework for the arrangement of minority problems, proved the most powerful arguments against involving the EU in international protection of minority rights. Though the legal fragility of these international instruments is well known, why should one expect more from the EU? Furthermore, why should the process of European integration take over the burden of such problematic legal questions as the international protection of minority rights? From a political perspective, the OSCE High Commissioner on National Minorities is widely renown for its mediating role between minorities and their governments in situations bearing the threat of ethnic conflict. Among the legal documents, besides the international human rights treaties, the CoE Framework Convention for the Protection of National Minorities (FCNM, 1995) and the CoE European Charter for Regional or Minority Languages (1992) are also widely accepted in Europe and among

<sup>2</sup> Laeken European Council Presidency Conclusions. 14–15 December, 2001. SN 300/1/01 REV 1.

<sup>3</sup> The Convention was composed of 2 members delegated by the European Commission, 16 delegated by the European Parliament, 1 delegated by each government and 2 delegated by each national parliament. The candidate states were represented in the Convention on an equal footing with the member states, though the representatives of the candidate states did not have a right to veto.

<sup>4</sup> For the discussions, proposed amendments and contributions of the European Convention see <<http://european-convention.eu.int>>

EU member states. The effectiveness of these international instruments can be questioned, but the duplication of these instruments within the Union seemed superfluous to most members of the Convention.

Thus, the first draft of the Constitution Treaty presented by the Presidency of the Convention to the Inter-governmental Conference (IGC) on 20 June 2003 did not contain any reference to the rights of minorities. The incorporation of the Charter of Fundamental Rights in the body of the Constitution Treaty prohibits discrimination based, among others, on “membership of a national minority”. The final draft elaborated by the Presidency and accepted by the majority of the Convention did not make additional steps regarding reinforcing the *rights* of minorities. Nevertheless, during the Convention debates, three important questions potentially relevant to minorities emerged. One proposal, presented by the Hungarian MP József Szájer, suggested the creation of a consultative body, the Committee of National and Ethnic Minorities based on the example of the Committee of Regions.<sup>5</sup> Another contribution called the Convention to reformulate the role of constitutional regions by extending the implementation of multi-level governance in the Union. And several different proposals were made to include a reference to minority rights protection either among the basic principles of the Union or in other provisions of the Treaty related to human rights protection.<sup>6</sup> As the final draft presented by the Presidency of the Convention to the IGC dismissed the provision on minority rights, Hungarian Prime Minister Péter Medgyessy proposed at the first IGC discussion on the draft Constitutional Treaty in Thessaloniki on 20 June 2003, a modification of the Treaty. The proposed modification did not aim at including a separate article on minority rights in the Treaty – which was already seen as an unrealistic attempt – it only argued for the completion of Art. I-2 (enlisting the Union’s values) with a reference to the “rights of national minorities”. The main argument for applying such a vague term, potentially implying recognition of the rights of minority communities, was that among the Copenhagen accession criteria no reference was made to the individuals belonging to minorities. According to press information, the Hungarian proposal was backed, surprisingly, by the French President Jacques Chirac and by the hosting Greek Prime Minister.<sup>7</sup> Later, during the following summits of the IGC, other states (especially the Belgian and Latvian gov-

<sup>5</sup> CONV 580/03.

<sup>6</sup> See for a brief overview of the proposed amendments on minority rights: Bevezető az Európai Konvent kisebbségvédelmi javaslataihoz. In Kovács Nóra – Osvát Anna – Szarka László (eds.): *Tér és terep III. – tanulmányok az etnicitás és az identitás kérdésköréből*. Budapest: Akadémiai Kiadó, 2004. 315–324.

<sup>7</sup> See „EU: Chirac támogatja a magyar felvetést”. *Népszabadság Online*, 20 June, 2003.

ernments) expressed criticism of the proposal, arguing that the general protection of human rights and the prohibition of discrimination based on the membership of a national minority should be satisfactory provisions under EU law. Finally, largely as a result of the Hungarian government's insistence on the matter, under the Irish presidency of the EU at the finalising of the text of the Constitutional Treaty, a viable compromise was achieved which added a reference to the "rights of persons belonging to minorities" added to Art. I-2, thus using the widespread individualistic terminology of international documents.

The new provision under Art. I-2 of the Constitutional Treaty obviously does not mean the emergence of a "minority protection regime" in the Union. Nevertheless, it seems reasonable to question why the efforts of those propagating the adoption of this clause succeeded despite the opposition, and even indifference, expressed during the Convention and the IGC. The answer may lie in the Union's previous enlargement policy and in its own legal traditions. Indeed, one of the most important, returning arguments was that the EU should be wedded to its position on the accession criteria of the Union, requiring, among others, the protection of minorities from applicant states, so this prerequisite should be transposed also to the Union's internal commitments.

The EU eloquently propagated the domestic implementation of measures on minority rights protection in CEE applicant states. The EU obviously could not promote its own normative regime on minority protection, but rather acted as an agent in transferring international norms to domestic legislation and policies in CEE candidate states. In constructivist theories, most studies on norm diffusion focus on the practices and procedures concerning how external norms are internalised in single states.<sup>8</sup> But in this case, the question was not only how, but *which* norms are taken into consideration. In the framework of EU enlargement policy, contesting the meaning of norms was particularly important- it highlighted the relevance of norm resonance and domestic norm construction in processes of norm diffusion in the field of minority protection conditionality.<sup>9</sup> Moreover, in a European Union context, norm development is not limited to national structures but also takes place on the European level, hence

<sup>8</sup> Cf. e.g. Checkel, Jeffrey T.: The Constructivist Turn in International Relations Theory. *World Politics*, Vol. 50, January, 1998. 4–10.

<sup>9</sup> Wiener, Antje and Schweltnus, Guido: Contested norms in the process of EU enlargement: non-discrimination and minority rights. *Constitutional WEB Papers*, Nr. 2, 2004.

creating “multiple path-dependencies”,<sup>10</sup> which imply that the actors involved in EU enlargement (national governments, EU institutions) also need to mediate over the meaning of that norm. The enlargement process provided only a few observable implications on domestic norm development for minority rights protection in the candidate states<sup>11</sup> but it sharply revealed the lack of legal commitment regarding the protection of minorities in the Union. In this sense, the silence of EU law over the acknowledgement of minority rights opened a normative gap between the expectations formulated by the Union towards candidate states (in many cases transferred into policy programs and normative requirements) and the missing legal recognition of minority rights protection within the EU. This normative tension provided a powerful argument for the inclusion of a reference to minority rights in the Constitution Treaty.

Studies on the enlargement of the Union from an institutionalist perspective underline the affects of enlargement on both the candidate states and the EU. The ‘impact’ of enlargement is indeed conceived in this perspective as the totality of the legal and political implications of the accession of new states, affecting both the candidate states and the European Union.<sup>12</sup> Acknowledgement of the protection of minority rights among the values of the Union may be considered a normative transposition of the same enlargement priority.

### *The question of minorities in EU external relations*

Minority rights have been a prominent, and in many aspects, contradictory issue in the eastern enlargement of the European Union.

Following the collapse of communist regimes, as a result of political changes and emerging ethnic cleavages in Central and Eastern Europe (CEE), legal protection of national minorities received increasing attention at an international level. Thus, within the broadening process of European integration in the 1990s, questions related to minorities became more strongly

<sup>10</sup> Wiener and Schweltnus, 5.

<sup>11</sup> Vermeersch, Peter: EU Enlargement and Minority Rights Policies in Central Europe: Explaining Policy Shifts in the Czech Republic, Hungary and Poland. *Journal on Ethnopolitics and Minority Issues in Europe*, Nr. 1, 2003; Sasse, Gwendolyn: Minority Rights and EU Enlargement: Normative Overstretch or Effective Conditionality? In Toggenburg, Gabriel (ed.): *Minority Protection and the Enlarged European Union: The Way Forward* Budapest: OSI LGI. 2004. 59–85.

<sup>12</sup> cf. Schimmelfennig, Frank and Sedelmeier, Ulrich: Theorising EU enlargement: research focus, hypotheses, and the state of research. *Journal of European Public Policy*, Vol. 9, Nr. 4, 2002. 502–504.

articulated. The institutional expansion of the Western international organisational regime, the extension of the Council of Europe, the North Atlantic Treaty Organisation, and the EU in particular, to CEE, offered a new perspective for international co-operation in the field of minority rights protection. Besides a number of OSCE provisions on minority rights, adoption of the FCNM and the CoE European Charter for Regional or Minority Languages signalled these changes.

As a result, member states of the European Union have not seen a need to formulate legal regulations on minority rights under EU law. But the EU could not refrain from taking a position on the matter. Apparently, the EU's position on minority issues reflected a dual strategy: under the realm of its foreign policy endeavours, the EU was primarily concerned with the impact of minority issues on the international security and stability of the CEE region, while in effect it formulated minority rights requirements in the context of general protection of human rights. This position also entailed that EU actions relevant for minorities living in CEE reflected a strategic approach on reinforcing political stability in the region and on minimising conflict potential related to problems concerning the treatment of minorities. Under its foreign policy strategy, the EU made scarce references to normative requirements towards CEE states on minority rights protection. It primarily focused upon political actions and conflict prevention measures. As it will be argued below, the Union's position did however change ever so slightly in the enlargement process, especially in the period of accession negotiations from 1998 to 2000.<sup>13</sup> The monitoring procedure of the European Commission required a regular analysis of the state of legislation in candidate countries, which included the situation of minorities. The main nodal-points of EU priorities formulated in the annual Regular Reports and in the Accession Partnerships reflect a more individualistic conception, articulating minority rights in the framework of individual human rights, thus focusing on the social integration of minorities (especially the Roma) and on the reinforcement of anti-discrimination legislation and policies in candidate states.

In the early 1990s, the EU's foreign policy, as included in the Maastricht Treaty (1992), developed together with the Union's policy on enlargement. Under the Union's foreign policy strategy, and in light of the crisis in Yugosla-

<sup>13</sup> The Luxembourg European Council on 13 December 1997 decided to start accession negotiations with the Czech Republic, Estonia, Hungary, Poland, Slovenia and Cyprus, accession negotiations started with the "5+1" in March 1998. The Helsinki Summit of the European Council on 11 December 1999 approves the application of six new states, and in January 2000 accession negotiations started with Bulgaria, Latvia, Lithuania, Romania, Slovakia and Malta.

via, fostering the improvement of minority protection in CEE became one of the more substantial elements in the EU's external policy on 'conflict prevention'.<sup>14</sup> In this fairly broad interpretation of 'conflict prevention', not only are mediation or economic and diplomatic pressure on disputants discussed, but also attempts to reduce the internal and external sources of insecurity. The multiple strategy applied by the EU comprised financial aid programs specifically aimed at encouraging democratisation; the promotion of regional co-operation, and accession conditions to foster democratisation and respect for human and minority rights.

In their joint declaration with the US in 1991, EU member states proclaimed that one of the greatest challenges to democracy and prosperity in Eastern Europe was "*dealing with ethnic diversity and the rights of persons belonging to national minorities*".<sup>15</sup> PHARE, the Association (or Europe) Agreements, and the structured relationships which developed all supported the political and economic reforms in CEE, and thus were conceived as helping engender security. Commission President Jacques Delors stated that above all, the EU's priority would be "*to promote stability on the eastern and southern borders by paying more attention to preventive diplomacy*".<sup>16</sup> Accordingly, one of the specific aims for the Common Foreign and Security Policy suggested by EU foreign ministers in June 1992 was "*contributing to the prevention and settlement of conflicts*".<sup>17</sup> The importance attributed by the EU to minority protection in conflict settlement was reflected among others in the joint statement of the then twelve member states on the recognition of new states in CEE. The EU's external political interest in considering issues related to minorities first appeared in 1991 after the collapse of former Yugoslavia. In 1991, the member states established the so-called Badinter Commission responsible for delivering expert opinions on legal questions arising from the dissolution of SFRY.<sup>18</sup> As a follow up to the work of this Commission, on 16 December 1991, the Community foreign ministers issued, within the framework of European Political Co-operation,

<sup>14</sup> Smith, Karen E.: *The Making of EU Foreign Policy: the Case of Eastern Europe*. London: Macmillan. 1999. 136–137.

<sup>15</sup> EC-US Statement on Peaceful and Democratic Transformation in the East. *EPC Press Release*, P111/91. 9 November, 1991.

<sup>16</sup> Delors, Jacques: *European Union and European Security. European Security after the Cold War Part I*, Adelphi Paper Nr. 284. London: Brassey's, 1994. 9.

<sup>17</sup> Annex I, Lisbon European Council Presidency Conclusions. *EC Bulletin*, Nr. 6, 1992, pt. I. 31.

<sup>18</sup> Pellet, A.: The Opinions of the Badinter Arbitration Committee – A Second Breath for the Self-Determination of Peoples. *European Journal of International Law*, Vol. 3. 1992.

a 'Declaration on the Guidelines on Recognition of New States in Eastern Europe and the Soviet Union' and the 'Declaration on Yugoslavia'. This recognition was made conditional upon amongst other things: "guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE".<sup>19</sup> The European Communities thereby introduced minority protection as a new element within the spectre of conditions for the recognition of statehood. The reference to CSCE documents in this regard formed a common basis for European states on minority issues, inasmuch in the 1980s the CSCE, with its trans-European membership and coverage of human rights matters, provided an appropriate framework for including minority issues after 1989 (i.e. CSCE Copenhagen Document in 1990 and in the Charter of Paris for a 'New Europe' in the same year). Thus, the member states of the EU have tried to find the consensual minimum on minority rights protection by referring to CSCE documents. Although this guideline was not always followed consistently on state recognition, it was the first time when member states expressed their common concern on the protection of minorities.<sup>20</sup>

Later, in a different context, the European Council exposed its position on the close inter-relation between progress in social and political transition, democratic stability and minority rights in a very similar sense when it stated:

"The protection of minorities is ensured in the first place by the effective establishment of democracy. The European Council recalls the fundamental nature of the principle of non-discrimination. It stresses the need to protect human rights whether or not the persons concerned belong to minorities. The European Council reiterates the importance of cultural identity as well as rights enjoyed by members of minorities which such persons should be able to exercise in common with other members of their group. Respect of this principle will favour political, social and economic development."<sup>21</sup>

As an even more important political step forward, the declaration of accession criteria at the European Council in Copenhagen in 1993<sup>22</sup>, included the re-

<sup>19</sup> *EC Bulletin*, Nr. 12, 1991.119.

<sup>20</sup> Though within the European Parliament there were also earlier initiatives in this field, they have scarcely been reflected in the Commission's or the Council's policies and actions. Toggenburg, 2000. 221–222.

<sup>21</sup> Presidency Conclusions of the European Council, Luxembourg, 28–29 June, 1991; Annex V, para. 7. SN 151/2/91.

<sup>22</sup> Presidency Conclusions, Copenhagen European Council, 21–22 June 1993, Part A, para. 7 (iii). SN 180/93, p. 12.



quirement of “respect for and protection of minorities”, and opened the foreseeable perspective of membership to associate countries in CEE. In fact, by this time, integration of CEE states, i.e. granting them EU membership- was seen as the best strategy to spread security and stability in CEE in the long-term. In the short-term, the main stress was still on conflict-prevention and conflict-resolution in the EU’s policies towards CEE.

In this regard, the significance of minority issues from a security perspective was reflected in the importance attributed to them under the Pact on Stability in Europe, the EU’s foremost conflict-prevention and conflict-resolution initiative in the pre-accession period. The Stability Pact project, launched by France in 1993 and formulated under the patronage of the EU, was presented as an exercise in preventive diplomacy, based on the principles of good-neighbourly relations and minority protection. The idea was to channel all debates on border and minority issues into bilateral agreements, motivating candidates by their prospective EU membership. Despite the fact that in 1995, the Stability Pact was signed without any breakthrough successes, under the umbrella of the OSCE, the involvement of the EU in the project remained of primary importance.

Despite the Copenhagen political criteria of accession formulated in 1993, conditions of consideration and EU policy on improving the situation of minorities and inter-ethnic relations in CEE till 1997–1998 were by and large determined by the Union’s foreign policy strategy.<sup>23</sup> The political conditionality of accession was not officially specified or translated to any exact legal or institutional requirement. Moreover, while part of the preparation for accession of the associated countries in the fields covered by the Association Agreements before 1997 already consisted of a “structured dialogue”<sup>24</sup>, the systematic assessment of political conditionality began only after 1997 when accession negotiations took on an institutional structure.

In this respect, the introduction of accession negotiations signalled an important turning point. The European Union utilised a unique approach: lacking its own internal mechanisms and measures to survey or control minority rights protection, it continuously monitored the situation of minorities in candidate states as an integrated segment of its conditionality policy under the institutional mechanism of supervising candidate states’ progress towards membership. Through the accession process, the European

<sup>23</sup> Smith, 139–140 and 155–160.

<sup>24</sup> Jacobsen, Hanns-D.: The European Union’s Enlargement. *European Integration online Papers (EIoP)*, Vol. 1. Nr. 14, 1997. 8–9. <<http://www.ciop.or.at>>

Commission's monitoring procedure put the Copenhagen political criteria of membership in a normative framework: the Commission regularly had to evaluate existing policies and legislation in candidate states and formulate its position in a more structured framework.

The manner in which the EU applied its pre-accession monitoring procedure on minority rights combined normative and political elements. And in the light of the EU's great potential in inducing policy and legislative changes in candidate countries, it calls for particular attention. Taking minority rights protection into account on the enlargement agenda in an institutionalised form within the EU was therefore a very new development both in its implementation of the membership process and in its consequences for candidate states and for the EU integration process.

In general, by introducing political conditionality, the aim is to improve the conditions of human rights protection (in this case also minority rights protection) and democratic governance in the external state.<sup>25</sup> But this pursuit does not necessarily entail scrutinising the concrete measures adopted.

While at the Copenhagen European Summit of 1993 member states left the precise terms of the economic and political conditionality unclear, the accession partnerships presented to ten CEE applicants in 1998 did much to remove this ambiguity in general, but could not dissolve the obscurity of the minority protection requirement. In general terms, conditionality is now strictly defined in terms of pre-conditions; that is, policy actions to be undertaken by applicants before they are granted membership. In addition, many of the conditions laid out – particularly the adoption of the *acquis*, reform in justice and home affairs – did not offer the possibility of negotiating opt-outs secured previously by many other states (e.g. the United Kingdom with respect to Schengen).

Applying a strict conditionality policy indeed served complementary goals for the EU. First, the opposition to the EU's quick eastward enlargement was “*overcome by setting what were seen as basic conditions to ensure that the countries joining could be integrated relatively easily*”; one of the main goals of conditionality was “*to minimise the risk of new entrants becoming politically unstable or economically burdensome to the existing EU*”.<sup>26</sup> Second, at the time of the collapse of

<sup>25</sup> Sørensen, Georg: *Political Conditionality*. London: Frank Cass, 1993.

<sup>26</sup> Grabbe, Heather (1999) *A Partnership for Accession? The Implications of EU Conditionality for the Central and Eastern European Applicants*. Florence: European University Institute RSC WP, Nr. 12, 1999. 3; see also Michalski, A. and Wallace, H.: *The European Community: the challenge of enlargement*. London: Royal Institute of International Affairs, 1992.

communist regimes in CEE, the EU was already deeply engaged in promoting human rights and liberal values in its external relations to third countries.<sup>27</sup>

From the late 1980s the use of political conditionality in extending commercial relations or political co-operation with non-member states, was set up as an adequate means to promote the protection of human rights and liberal democratic values.<sup>28</sup>

The period from the presentation of the Commission Opinions in 1997 to the conclusion of accession negotiations in December 2003 was formally structured by the Commission's Regular Reports, the Accession Partnership and through bilateral accession negotiations. In this second period, the actors involved in assessing conditionality both in the Commission and in candidate states began a more specific interpretation of norms and principles related to minority rights protection. Nonetheless, even in this period, the EU did not provide a general and consistent model on which minority protection standards meet accession requirements. In this sense it was also argued that accession conditions remained a "moving target",<sup>29</sup> the interpretations provided by EU officials changed in time and from country to country.<sup>30</sup> Even more, because the *acquis* is also open to minimalist and maximalist interpretations,<sup>31</sup> the interpretations given to specific norms in relation to minority rights standards varied and affected the demands made on CEE candidate states.

In the 1997 Opinions, the European Commission first evaluated the readiness of applicant states for membership. Later, the need to provide a regular overview of candidate states' progress towards complying with, among others, the minority protection criterion, necessitated the formulation of

<sup>27</sup> Cannizzaro, Enzo (ed.): *The European Union as an Actor in International Relations*. The Hague: Kluwer Law International, 2002. 297–302; Clapham, Andrew: Where is the EU's Human Rights Common Foreign Policy, and How is it Manifested in Multilateral Fora? In Alston, Philip et al. (ed.): *The EU and Human Rights*. Oxford University Press, 1999. 627–683.

<sup>28</sup> As the formula adopted by the Conclusion of the Luxembourg European Council of 28 and 29 June 1991, pronounced "respect, promotion and safeguard of human rights is an essential part of international relations and one of the cornerstones of European co-operation as well as of relations between the Community and its Member States and other countries". European Council in Luxembourg 28–29 June 1991, Conclusions of the Presidency, Annex 5, para.1. *Bulletin* 02/07/1991; SN 151/2/91 p. 25.

<sup>29</sup> Grabbe, 6.

<sup>30</sup> Hughes, James and Sasse, Gwendolyn: Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs. *Journal on Ethnopolitics and Minority Issues in Europe*, Nr. 1, 2003. 1–38.

<sup>31</sup> Wiener, Antje: The Embedded Acquis Communautaire: Transmission Belt and Prism of New Governance. *European Law Journal*, Vol. 4, No. 3, 1998. 294–315.

some basic standards which reflected the Commission's interpretation on minority rights. During the enlargement process, the European Commission implicitly attached a few common understandings to the Copenhagen criterion on minority protection. It consistently urged candidate states to sign and ratify the FCNM, although the Commission's attention did not extend to the implementation of the FCNM. In general the Commission refrained from evaluating the effective legal regulation on minority rights: the existence of legal provisions on minority rights was already seen by the Commission as a positive development, their efficient implementation, or the coherence between the needs of minorities affected and the law were scarcely analysed in the Regular Reports. Another recurrent issue in the Commission's monitoring activity, as revealed in the Regular Reports, was the integration of minorities in mainstream, majority society. A strong emphasis on the integration of Russians in the Baltic States and the Roma in almost every candidate states signals such efforts/preferences.<sup>32</sup>

The definition of the Copenhagen political criteria, the European Commission's monitoring activity and especially the lack of any reference to minorities and their rights in the *acquis* eloquently raised the question of applying a double standard towards candidate countries. The Union required policy measures never before formulated as internal commitments for the member states.

The problem of the Union applying a double standard has been widely discussed in literature.<sup>33</sup>

As mentioned above, the pressure to formally remove this double standard appeared in the discussions of the European Convention. In fact, the concept of minority protection during the enlargement process became a legitimate and powerful discursive element in EU rhetoric. But could not easily become a normative provision. The formulation of Art. I-2 did not overcome any substantial problems regarding the interpretation of the term "minorities" or their rights. Expressions, like "minorities", "minority issues", "minority rights" have appeared in the political discourse during the enlarge-

<sup>32</sup> see Vermeersch, Peter: Ethnic mobilisation and the political conditionality of European Union accession: the case of the Roma in Slovakia. *Journal of Ethnic and Migration Studies*, Vol. 28, No. 1, 2002. 83–101; Vermeersch, 2003; Hughes and Sasse, 2003.

<sup>33</sup> De Witte, Bruno: *Politics versus Law in the EU's Approach to Ethnic Minorities*. Florence: European University Institute, RSC Series, Nr. 4, 2000; Toggenburg, Gabriel: A Rough Orientation through a Delicate Relationship: the European Union's Endeavours for its Minorities. In Trifunovska, Sezana (ed.): *Minority Rights in Europe: European Minorities and Languages*. The Hague: Asser Press, 2001. 205–233; Hughes and Sasse, 2003.

ment process usually without any further definition or explanation. The formulation of Art. I-2 in the Constitution Treaty, however could be expected either directly or indirectly to give some orientation also in this aspect. At least the adopted expression was most likely influenced by the existing political and legal traditions of the Union. The political rhetoric of EU representatives during the enlargement process concerning problematic issues of individual vs. collective rights, cultural diversity and minority protection remained open to vagueness and often referred to minorities in general. At the extension of the Union's values to minority rights in the Constitution Treaty, Art. I-2 shifts from the term of "national minorities" or "minorities" in general to the "rights of persons belonging to minorities", reflecting the more widely accepted individualistic approach to human rights. Still it remains open to political interpretations: e.g. the Hungarian Parliament in its resolution on the ratification of the Constitution Treaty attached a separate interpretation to Art. I-2, stating that it covers both the individual and the community rights of minorities.<sup>34</sup>

Nevertheless, as it will be seen below, the Union's law may at least delineate the broader interpretative framework.

### *Human and minority rights under the acquis*

From a legal perspective, over the past couple of years a number of articles were published questioning whether European law already extends, or should extend, to the protection of minority rights.<sup>35</sup> Under the legislation in force, Article 6(1) TEU enlists the fundamental values of the Union. It does not specifically mention minority rights, and remains nebulous on whether they are included in the expression "*human rights and fundamental freedoms*". It should be recalled that usually under international law the concept of minority rights protection is more a complementary dimension of human rights protection rather than a self-evident inclusive element. Likewise, the Copenhagen political criteria also made a distinction between human rights and the respect for and protection of minorities.

Article 6(2) TEU is equally silent on this point. The references it makes to the European Convention on Human Rights (ECHR) and to the "*constitutional traditions common to the Member States*" does not help clarify whether the concept of minority rights is encapsulated within the notion of "fundamental

<sup>34</sup> Resolution on 20 December 2004.

<sup>35</sup> e.g. Schweltnus, Guido: „Much ado about nothing?“ Minority Protection and the EU Charter of Fundamental Rights. *Constitutional Web-Papers*, No. 5, 2001.

rights' (Article 6(2)) which must be respected as general principles of Community law.

But the explicit reference Art. 6(2) makes to the respect for ECHR remains important as Art. 14 ECHR provides that the enjoyment of human rights “*shall be secured without discrimination*” – among others – on the grounds of “[...] *association with a national minority*”. Since the EU must respect the fundamental rights guaranteed by the ECHR as general principles of Community law, one could suggest that the EU is also bound to ensure the principle of non-discrimination based on association with a national minority.<sup>36</sup> However, it should be noted that Art. 14 ECHR refers exclusively to “*the enjoyment of the rights and freedoms set forth in this Convention*”. On the other hand, the general principles of the *acquis* do not incorporate the provisions of the ECHR, as such, in EU law. Hence, the general principle of non-discrimination set out in Article 14 ECHR binds the Union as a general principle of Community law in the context of the founding treaties, and not solely in relation to the rights and freedoms set forth by the Convention.

As Article 6(2) TEU also refers to “*the constitutional traditions common to the Member States*”, it might be wondered whether the conjunctive ‘and’ found between the reference to the ECHR and ‘as they result’ suggests that the constitutional traditions common to the Member States is not an alternative source of human rights protection but rather a cumulative requirement for protection. If that interpretation should prove correct, the argument that derives from it would not sit easily with the fact that some of the latter are not particularly receptive to the concept of minorities, as notably illustrated by the list of parties to the FCNM.<sup>37</sup> On the other hand, Article 6(2) includes the well-established case law of the European Court of Justice as regards the observance of the general principles of Community law.<sup>38</sup> Moreover, in regards to the acknowledgement of the

<sup>36</sup> Hillion, Christophe: Enlargement of the European Union – the Discrepancy between Membership Obligations and Accession Conditions as regards the Protection of Minorities. (2003, original manuscript, published in Hungarian ‘Az Európai Unió bővítése – a tagsági kötelezettségek és a csatlakozási követelmények ütközése a kisebbségvédelem terén’. *Pro Minoritate*, Nr. 4, 2003. 5.

<sup>37</sup> Reminder: among the 15 member states of the Union France has not signed the FCNM and other four countries have not ratified it as of 1 August 2005.

<sup>38</sup> The Court has always considered that in ensuring that the observance of fundamental rights which belongs to the general principles of Community law, it draws inspiration from the constitutional traditions common to the member states, and also from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or to which they are signatories. In other words, the recognition of minority rights as a fundamental right under the *acquis*, in the sense of Article

prohibition of discrimination on the grounds of belonging to minorities, it shall be instructive that all member states are signatories of the ECHR and thus bound by its provisions, whether or not their constitutional tradition otherwise includes the protection of minorities.

Consequently, it could be suggested that the general principle of non-discrimination enshrined in Article 14 ECHR is part of the fundamental rights that the EU is bound to respect, as a general principle of Community law on the basis of Article 6(2) TEU.

Turning to the question of a potential EU competence to ensure “the respect for and protection of minorities”, one needs to consider the provisions of Article 13 TEC introduced by the Amsterdam Treaty. This amendment also strengthened the clause on non-discrimination with Art. 13 of the Treaty establishing the European Community, and hence, empowering the Council to take action to combat discrimination. According to the wording of Art. 13, “*the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation*”.

Surprisingly, this anti-discrimination provision, unlike ECHR Art. 14, does not mention discrimination based on association with a national minority.<sup>39</sup>

Following this provision, the most important development was the 29 June 2000 adoption of the Directive 2000/43/EC<sup>40</sup> regarding the fight against discrimination, on the principle of equal treatment between persons irrespective of racial or ethnic origin. This so-called Race Directive sets out a binding framework for the prohibition of racial discrimination as it prohibits direct and indirect discrimination as well as racial “harassment”.<sup>41</sup> The Directive applies to “all persons”, and thus to nationals of third countries, and applies both to natural and legal persons<sup>42</sup> declaring, with reference to UN treaties,

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6(2) TEU does not require that it is also a constitutional tradition common to the member states.

<sup>39</sup> It should be noted that Art. 13, despite the specific attention paid by the European Parliament to the situation of languages in the EU, does not include “language” among the grounds on which discrimination is prohibited.

<sup>40</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Official Journal L 180, 19 July 2000. 22–26.

<sup>41</sup> According to Art. 2(3) of the Directive, harassment will be deemed to be discrimination “when an unwanted conduct related to racial or ethnic origin takes place with purpose of or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment”.

<sup>42</sup> Art. 3.

the UDHR and the ECHR that “[t]he right to equality before the law and protection against discrimination for all persons constitutes a universal right”.<sup>43</sup>

Regarding the situation of minorities, however, neither Art. 13 TEC, nor the Race Directive offered a clear step towards protection under EU law.

Even if the measures adopted acknowledge – implicitly – the prohibition of discrimination on the grounds of belonging to national or ethnic minorities, it does not provide a legal framework for their protection under the *acquis*.<sup>44</sup> In principle it could be suggested that Article 13 TEC, although silent on the question of minorities, could nonetheless be relied on by the Council for adopting measures which would cover *inter alia* discrimination based on belonging to a national minority. A look at the provisions of the EU Charter of Fundamental Rights, however, could shed light on future developments in this regard.<sup>45</sup> Article 21 (1) of the Charter provides that “[a]ny discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited” (emphasis added). The Convention that drafted the Charter explained Article 21 as follows: ‘Paragraph 1 draws on Article 13 of the EC Treaty, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage...’. It could thus be argued that the expression ‘membership of a national minority’ finds its source in Article 14 ECHR rather than in EC law. This would tend to confirm that Article 13 could not be used as a basis for adoption to specifically combat discrimination based on *membership of a national minority* mentioned elsewhere in Article 21 of the Charter, and which finds its source in the ECHR. Indeed, the Charter makes it clear in its so-called horizontal clauses that it “does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties”.<sup>46</sup> Consequently, it seems unlikely that the Council could adopt a measure dealing *specifically*

<sup>43</sup> Preamble, pt. 3.

<sup>44</sup> Toggenburg, 2001.

<sup>45</sup> *Official Journal*, C 364/1 (2000). But it should be noted that, the Charter is not presently enforceable. Solemnly proclaimed in Nice by the Council, the Commission and the European Parliament, it will become binding for the member states only if the Treaty on European Constitution (which incorporated the Charter) enters into force. Nevertheless, the principles established by the Charter have already been taken into account in the EU decision making processes. See De Búrca, Gráinne: Human Rights: The Charter and Beyond. *Jean Monnet WP*, Nr. 10, 2001. <<http://www.jeanmonnetprogram.org/papers/01/013601.rtf>>

<sup>46</sup> Article 51(2) of the Charter.



with that type of discrimination, as the Race Directive mentioned above did in relation to discrimination based on racial or ethnic origin.

Moreover, based on the ruling of the ECJ in the case of *Bickel/Franz*,<sup>47</sup> Pentassuglia argued<sup>48</sup> that this restrained approach is minimising minority rights considerations on the basis of general Community interests.<sup>49</sup> Though, on the other hand, the ECJ stated in its decision that “the protection of such a minority may constitute a legitimate aim” for member states, still the Court did not declare that the rights of minorities would be regarded as a fundamental principle in EU law.

Thus, it can be seen that the expressed inclusion of minority rights under Art. I-2 not only provides clarification of the previous reference to human rights protection in general, but also effectively adds a new element in the Union’s evolving interpretation of human rights.

There may, however, be an additional, broader field potentially relevant for the interpretation of minority rights under the *acquis*. Over the course of the previous decade the idea of respecting cultural diversity within the Union expanded on several occasions to the recognition of the linguistic and cultural diversity represented by minorities in the EU.

### *The respect for cultural diversity*

The Treaty of Maastricht withal reinforcing the process of political integration provided a strong emphasis to the cultural dimension of the European integration. The introduction of Article 128 (today Art. 151 TEC) of the Treaty,<sup>50</sup> indirectly recognises that not a single Member State is culturally

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<sup>47</sup> Case C-274/96, *Criminal Proceedings against Bickel/Franz* 24 November 1998 [1998] ECR 7637.

<sup>48</sup> Pentassuglia, Gaetano: The EU and the protection of minorities: the case of Eastern Europe. *European Journal of International Law*, Vol. 12, Nr. 1, 2001. 32–33.

<sup>49</sup> In principle, in this case the ECJ upheld the rights of Mr. Bickel and Mr. Franz of, respectively, Austrian and German nationality, being prosecuted in the province of Bolzano (Italy), to have the criminal proceedings conducted in the German language on the same basis as the members of the German-speaking minority living in the region of Trentino-Alto Adige. The Court applied Art. 6 TEU in combination with the freedom of movement and residence of EU citizens, and argued that the Italian government cannot deny their right to equal treatment under domestic legislation on the basis that the relevant domestic provisions were designed purposely to protect the ethnic minority residing in the province.

<sup>50</sup> It has been argued that an incentive for the inclusion of competence in the field of culture in the Treaty (being the first change of the ‘constitutional’ treaties after the end of the Cold War) was the fear of a ‘Balkanization’ of Western Europe. Biscoe, Adam: The European Union and Minority Nations. In P. Cumper and S. Wheatley (eds.): *Minority Rights in the ‘New’ Europe*. The Hague: Martinus Nijhoff, 1999. 93.

homogenous: under the provisions of Article 128 (Art. 151), the Union is asked to contribute to the flowering of the “cultures of the member States, while respecting their national and regional diversity”.<sup>51</sup> This provision clearly suggests that European integration is not only based on the diversity represented by the member states, but that the Union must respect the internal national diversity of its member states. President of the Commission, Romano Prodi, underlined this interpretation when he stated at a conference in New York:

We in the EU we have a quasi-constitutional obligation to respect cultural, religious and linguistic diversity. That is why the EC Treaty gives us the task of contributing ‘to the flowering of the cultures of our Member States’. That is why, for example, we have been active since 1983 in supporting regional and minority languages. It is our belief that helping our citizens to retain these elements of their identity is the key to gaining their acceptance of the processes of European integration and of worldwide globalisation, and thus maintaining social harmony.<sup>52</sup>

Likewise, the importance of diversity has been reaffirmed by the introduction of Art. 22 in the Charter of Fundamental Rights of the EU, which states, “*The Union shall respect cultural, religious and linguistic diversity*”.<sup>53</sup>

The EU’s cultural approach is designed to be multi-political as it shall “take cultural aspects into account in its action under other provisions of the Treaty ...” (Art. 151 (4) TEC). This kind of “cultural impact assessment clause”<sup>54</sup> establishes culture as an aspect demanding respect by the Community, thus providing a major role to this competence provision.<sup>55</sup>

Along with these hints in the founding Treaties on cultural diversity, what may be important regarding minorities in this aspect is the specific interest given in the EU framework to the protection of linguistic diversity.<sup>56</sup> The

<sup>51</sup> Today art. 151 para. 1.

<sup>52</sup> Romano Prodi President of the European Commission ‘Cultural diversity and shared values’ New York University Law School New York, 4 November 2003. SPEECH/03/517

<sup>53</sup> On the role of the Charter see e.g. Búrca, 2001; Lerch, 2003.

<sup>54</sup> Toggenburg, 217.

<sup>55</sup> It is interesting to note that this latter clause was then functionally specified as the Treaty of Amsterdam added “. . . in particular in order to respect and to promote the diversity of its cultures”. Moreover, another important modification was inserted in the Treaty under the subvention provisions which allow, to a certain degree, the financial assistance to cultures by stating that “aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest” can be considered compatible with the internal market (today Art. 87(d)).

<sup>56</sup> see in detail Shuibhne, Niamh Nic: *EC Law and Minority Language Policy – Culture, Citizenship and Fundamental Rights*. The Hague: Kluwer Law International, 2002; also Vizi,

European Parliament, whenever addressing minority issues within the EU, usually granted the most attention to the protection of minority languages. The EP adopted a number of legislative initiatives aimed at safeguarding regional, minority or “lesser-used” languages in the EU throughout the previous decade. In 1981, the EP had already called on national governments and regional and local authorities to provide better protection to minority languages, and to establish<sup>57</sup> the European Bureau for Lesser Used Languages (EBLUL), an NGO observing the situation of minority languages in EU member states, partly financed by Commission sources.<sup>58</sup> In 1988, the Parliament initiated an even more ambitious project when it appointed Count Stauffenberg to prepare a report concerning a “Charter of the Rights of Ethnic Minorities”.<sup>59</sup> The report underlined the need to adopt a legal charter on the matter.<sup>60</sup> However, due to the forthcoming EP elections, the Parliament never discussed the Report and later, after the CoE Language Charter was adopted, promoted implementation of the Language Charter instead of elaborating its own.

The last pre-enlargement resolution reflected the attention the EP paid to regional or minority languages as the EP proposed to the Commission and

Balázs: Die Europäische Union und die Minderheitensprachen. In Szarka, L. and Nádor, O. (eds.): *Die Sprache und die kleine Nationen in Ostmitteleuropa*. Budapest: Europa Institut, 2003. 49–69.

<sup>57</sup> Resolution on a Community Charter of Regional Languages and Cultures and on a Charter of Rights of Ethnic Minorities Official Journal No. C 287, 9 November 1981 p. 106. Adopted by Parliament on 16 October 1981 on the basis of the so-called ‘Arfć report’ prepared by the Rapporteur, Gaetano Arfć. <<http://www.eblul.org>> last accessed on 10 December 2004.

<sup>58</sup> Resolution on Measures in Favour of Linguistic and Cultural Minorities, adopted by the Parliament on 11 February 1983, Official Journal C 068, 14 March 1983 p. 103. Resolution adopted on the basis of the report presented by Willy Kuyjers, Resolution on the Languages and Cultures of the Regional and Ethnic in the European Community, adopted by the EP on 30 October 1987. Official Journal 1987 C 318, p. 160. In this resolution, the Parliament adopted new recommendations for extending language use in the mass media, and in the different areas of the cultural, economic, social life alike. It recommended the administrative measure of officially recognizing surnames and place names in regional or minority languages and it emphasised that appropriate measures had to be taken to provide for the use of the regional and minority languages in public concerns (postal service, etc.), consumer information and product labelling, and on road and other public signs and street names. Resolution on Linguistic Minorities in the European Community, Official Journal 1994 C 61, p. 110. Resolution on Regional and Lesser Used European Languages, adopted by the Parliament on 13 December 2001, B-5 0770.

<sup>59</sup> PE. 156.208.

<sup>60</sup> It ought to be mentioned that the Report talked exclusively about ethnic minorities, in the plural never referring to the legal term of “persons belonging to minorities”, so suggesting a rather permissive approach to the group rights of minorities.

the Council the establishment of a European Agency on Linguistic Diversity and Language Learning, as well as launching a multi-annual programme on linguistic diversity and language learning.<sup>61</sup>

The changing legal background and developing political statements of this period are exemplified in the following statement by Commission President Prodi, “[...] *we must never forget that Europe is all about diversity. Therefore it needs us to respect and reap the rewards of diversity. European integration has always been about diverse peoples with varied cultures. [...] Diversity is one of Europe’s greatest treasures [...]*”.<sup>62</sup> His statement shows that diversity is perceived more and more as something to be protected, and as a principle, something that Europe must be based upon. The political commitment to the concept of cultural diversity and its correlation with the protection of minorities also results from the following declaration of the European Council: “*Europe, characterised by solidarity and a rich cultural mix, is founded on respect for diversity and on tolerance. All Member States [...] are continuously striving to build and maintain a Europe based on [...] the diversity of its cultures and languages, a Europe where [...] rights of minorities are protected*”.<sup>63</sup>

The mainstream approach reflected in relevant EP resolutions, and also in the perceptions formulated on ‘cultural diversity’ in the EU context suggests that despite the reticent approach in the EU on minority issues, there have been some identifiable priorities in this field prior to the adoption of the Constitutional Treaty. First, the respect for cultural diversity indeed resonates with the EP’s primary concern for the protection of minority languages, i.e. linguistic diversity characterising the EU. Second, neither the EP resolutions nor the emerging EU policies on preserving ‘diversity’ reflect the particular restrictions that usually characterise the international protection of minority rights. Nevertheless, unlike the principle of non-discrimination, the respect for cultural diversity is still much more a political slogan than a legally elaborated concept within the EU.

<sup>61</sup> Resolution on Regional and Lesser Used Languages – Enlargement and Cultural Diversity, adopted by the Parliament on 4 September 2003, P5\_TA(2003)0372

<sup>62</sup> Speech at the inauguration of the European Monitoring Centre on Racism and Xenophobia (EUMC) in Vienna, 7 April 2000. SPEECH/00/128.

<sup>63</sup> See *Declaration by the Council and the representatives of the Governments of the Member States on respecting diversity and combating racism and xenophobia*, Official Journal 1998 No. C 001, p. 1. (On the other hand diversity is not always meant to include minority cultures. This can be seen e.g. in the discussion regarding the inclusion of minority languages in the “European Year of Languages 2001” launched as Community program in 2001, see <<http://curlang.net/news.asp?id=181>>).

### *Difficulties in the interpretation of Article I-2*

It would surely prove premature to unravel the possible interpretations of the term “rights of persons belonging to minorities” under the application of the Constitution Treaty. Whenever the Treaty enters in force, the most interesting will be to see whether any case before the European Court of Justice (ECJ) will inspire the ECJ to elaborate a specific interpretation on minority rights under the *acquis*.

Nevertheless, despite the strong pessimism on the future of the Treaty, at least a few questions can be addressed here.

The first striking feature of the formula is the use of the term “minorities” without any further qualifications. Usually, international documents on minority rights tentatively delimit their sphere of application by referring to “national” minorities (as most European international documents do) or to “national or ethnic, religious and linguistic” minorities (as e.g. 1992 UN General Assembly Declaration<sup>64</sup> uses the term). Although in practice these additional denominations do not qualify applying any distinction between minorities displaying a linguistic, religious, cultural or national identity differing from the majority. Clearly they do not include, for example, sexual minorities. From this perspective, one can not say at present whether Art. I-2 also refers to the rights of other “non-classic” minorities, or if it remains in the traditional interpretation of minorities. Analysing the discussions in the European Convention and the context in which minority rights have appeared until present in EU policies, it may be argued that national or ethnic and linguistic minorities can be considered the natural addressees of this provision (see e.g. Art. II-81 of the Constitution Treaty, i.e. the former anti-discrimination article of the Charter of Fundamental Rights, prohibiting discrimination based on membership of a *national* minority). The inclusion or exclusion of other minorities, however, remains to be seen.

Another problem of application may emerge regarding the sanctions prescribed by the Constitution Treaty for member states not respecting the fundamental values of the Union. The values of the Union do not imply that the EU would have any additional competence for their effective regulation, they merely signify those fundamental principles, which both the EU organs and the member states shall respect. The Constitution Treaty attaches rather

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<sup>64</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, G.A. res. 47/135, 47 U.N. GAOR Supp. (No. 49) at 210, U.N. Doc. A/47/49 (1992).

severe political sanctions for the breach of these values, in extreme cases suspending certain rights of a member state in the Union.<sup>65</sup> While in regard to the evaluation of the violation of human rights the ECHR and the EU Charter of Fundamental Rights may provide an appropriate background, it remains difficult to say exactly which minority rights are covered by Art. I-2. In this respect, the assessing whether or not a member state violated specific rights of minorities seems rather difficult. As in the process of enlargement, here again external sources, the observation of the FCNM or other international documents, may serve as a point of orientation, but such evaluations clearly remain vulnerable to contrasting interpretations, more so than human rights in general.

Despite the fact that the interpretation of minority rights under EU law remains largely open to speculation, the evolution of Art. I-2 may prove instructive for external influence of legal development in the EU. The implications of the enlargement process in this field gained resonance under EU law, resulting in a new formulation of the Union's values. The effects of the 'internalisation of an external norm', however, remain to be seen.

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<sup>65</sup> See Art I-59, under paragraph 1, it states „[o]n the reasoned initiative of one third of the Member States or the reasoned initiative of the European Parliament or on a proposal from the Commission, the Council may adopt a European decision determining that there is a clear risk of a serious breach by a Member State of the values referred to in Article I-2. The Council shall act by a majority of four fifths of its members after obtaining the consent of the European Parliament.”