3.
The European Citizens’ Initiative: 
Challenges and Perspectives

Salvatore Aloisio, Giorgio Grimaldi, 
Umberto Morelli, Antonio Padoa-Schioppa*

INTRODUCTION. DEMOCRACY IN THE EUROPEAN 
UNION: GENERAL REMARKS

To date representative democracy has had quite a fragile context in the 
European Union (EU) system. The Lisbon Treaty, the latest revision of 
the treaties and currently one of the EU’s fundamental texts, states that 
“the functioning of the Union shall be founded on representative democracy” (Art. 10.1, Treaty on European Union – TEU†). The most significant steps leading to representative democracy in a European framework are:

(a) The election of the European Parliament (EP) by universal suffrage 
since 1979.

* Acknowledgements: This paper is the result of the authors’ joint collaboration and common efforts carried out with a continuous exchange of ideas. The research group included researchers and scholars within the Centre of Studies on Federalism (CSF). The first preliminary draft report on this issue was presented at the Workshop “The State of Democracy in the EU After the Lisbon Treaty”, held on 3 November 2010 at the University of Turin and promoted by a drafting group composed of CSF, Istituto di Affari Internazionali (IAI) and Notre Europe. The individual sections of the paper can be acknowledged as follows: Introduction, Sections 1.1, 1.5, 2, 2.1, 2.2, 3, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 to Giorgio Grimaldi; Section 1.2, 1.3, 1.4, 4.1, 4.2, 4.3, 4.4, 4.5 to Salvatore Aloisio; Section 5, 5.1, 5.2, 5.3, 5.4 and 5.5 to Umberto Morelli and Antonio Padoa-Schioppa.

(b) The extension of the EU’s decision-making powers to an ever-increasing number of subjects and to other remits. However, these powers of the EP so far do not include major areas such as fiscal powers of the EU, own resources, foreign policy and defence and several other crucial domains among the competences of the European Union as established in the Treaties. The Single European Act implemented in 1987 made provisions for cooperation procedure until the subsequent reforms which turned the EP from a minor and mainly consultative body (a talk shop) into one of the major EU institutions. In fact the Maastricht Treaty introduced the co-decision procedure and EP powers progressively increased.

(c) European citizenship, as established by the Maastricht Treaty, came into force in 1993, although national citizenship still prevails and EU nationality is subordinated to it. The EU is a *sui generis* organisation with ingredients of supranational democracy. The scientific community has offered many definitions for it precisely because of its hybrid nature: in fact there are various forms of democracy and decision-making processes living alongside each other, such as representative, participatory, associative and deliberative democracy.

---


4 For a very recent contribution which sees the EU as an example of representative transnational democracy in the form of Union of Citizens and Member States see J. Hoeksmma, *A Story of Europe. The European Union as an Emerging Democracy*, in “Europe’s World” Community Posts, 16 December 2010, http://www.europesworld.org/Portals/
The EU has developed a number of participatory practices implemented through preliminary consultation of the so-called "organised civil society", the "intermediate groups", as defined by Alexis de Tocqueville in his work *Democracy in America*. These groups, independent and distinct from the state, embody freedom of association, and their purpose is to unite interests and educate, thus promoting citizens’ participation in political life and acting as a deterrent against the despotic attitude of political parties and the arbitrary power of sovereigns.\(^5\)

The bond between civil society and democracy is deep and longstanding, although the variety of its constituents has increased in Europe, especially since the late 20th century. Civil society can be defined as "the population of groups formed for collective purposes primarily outside of the state and the marketplace",\(^6\) despite current civil society associations in Europe being very diverse – economic lobbies, associations, Trade Unions (TUs), NGOs – with their aim being to influence the EU institutions.

Several studies spanning decades have confirmed the strong link between having membership of a civil society organisation and being politically active.\(^7\) Likewise the role of non-governmental players in consolidating democracy in independent postcolonial countries has also been observed in several contexts.\(^8\)

The European Commission (EC) is increasingly involving the above-

---


mentioned associations, in the consultation and advisory procedures. By offering expertise and by representing transnational groups, civil society players can enhance the legitimacy of EU actions as well as proving useful to institutions in implementing effective and shared policies. At times the EU institutions can find allies and supporters from within civil society when confronted with resistance by Member State governments. The development of participatory democracy,⁹ defined as social dialogue and consultation of the various associations of civil society,¹⁰ has recently become a hallmark of the EU’s workings.

A number of scholars consider associative democracy as a step beyond the liberal notion of representative democracy and have suggested the term “associative democracy” in the framework of a number of theories referring to globalised societies.¹¹ Associative democracy is

---

⁹ Reference to the principles of participatory democracy was contained in the title of Art. I-47 of the Treaty establishing a European Constitution. The title is no longer found in Art. 11 of the TEU which reiterates the following, already contained in the article:

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent [...]”.


¹¹ “Associative democracy is commonly understood as a model of participatory democracy in which the individual participation takes place in the context of self-governing interest groups or associations, which have, in their turn some sort of demo-
identified as the distribution of power among the various public and private decision-making centres, each one fulfilling its role, cooperating and extending social participation.\textsuperscript{12} Hence deliberative democracy develops through decentralised governance.\textsuperscript{13}

According to scholars such as Jürgen Habermas, deliberative democracy can be legitimised as a procedural and decentralised process where access to information, open and free speech and the standard of the procedures allow to make rational and acceptable decisions (epistemic value of deliberation).\textsuperscript{14} According to the afore-mentioned communicative approach the European "constitutional" process is seen to be democratic regardless of the existence of a European people (demos). Other authors believe that just European direct democracy and pan-European referenda are needed to remedy the democratic deficit in the EU\textsuperscript{15} and close the

\textsuperscript{12} "[...] of all the reform doctrines now current, only associationalism gives due recognition to the reality of an organisational society and seeks to address the problem by democratising institutions in civil society and by decentralising the state"; P. Perczynski, Citizenship and Associative Democracy, paper presented in Mannheim (Germany), at the European Consortium of Political Research (ECPR) Annual Joint Sessions, 26-31 March 1999, p. 6, https://www.essex.ac.uk/ecpr/events/joint sessions/paperarchive/mannheim/w20/perczynski.PDF. For an analysis of the limits and challenges of participative democracy in Europe, see G. Allegretti, "Europa e democrazia partecipativa: dagli attuali limiti alle opportunità per il futuro", in N. Vallinoto, S. Vannuccini (eds.), Europa 2.0. Prospettive ed evoluzioni del sogno europeo, Verona, Ombre Corte, 2010, pp. 30-43.

\textsuperscript{13} "The notion includes collective decision-making with the participation of all who will be affected by the decision or their representatives: this is the democratic part. Also, all agree that it includes decision-making by means of arguments offered by and to participants who are committed to the values of rationality and impartiality: this is the deliberative part"; J. Elster (ed.), Deliberative Democracy, Cambridge, Harvard University Press, 1998, p. 8. On these topics see R. Bifulco, Democrazia partecipativa e democrazia deliberativa, paper presented at the conference in Florence, "La democrazia partecipativa in Italia e in Europa: esperienze e prospettive", 2-3 April 2009, http://www.astrid-online.it/Forne-e-st/Studi--ric/Bifulco_democrazia-partecipativa--2_Firenze_2-3_4_09. doc.pdf.


\textsuperscript{15} The definition was first used with reference to the absence of legislative powers of
gap between citizens and the EU institutions, strengthening Europe with a bottom-up process.\textsuperscript{16} Andrew Moravcsik’s position differs altogether as he maintains there is no democratic deficit in the EU since it stems from the intergovernmental will to transfer parts of national sovereignty to manage common problems.\textsuperscript{17}

Another point of view on deliberative democracy suggests that the need to participate with equal conditions and equal rights is the foundation of democratic legitimacy (\textit{moral value of deliberation}).\textsuperscript{18}

Complex and multi-tier systems such as the EU are examples of a mixed implementation of representative, participatory, deliberative and associative democracy, the latter much as happens on a national level. It is not easy anyway to adapt the various theories addressing democracy on a national level to a pluralistic multi-layer, multi-level and compound democracy\textsuperscript{19} such as the type existing in the EU.\textsuperscript{20}


\textsuperscript{19} See S. Fabbrini, \textit{Compound Democracies: Why The United States and Europe Are Becoming Similar}, Oxford, New York, N.Y., Oxford University Press, 2007; \textit{Ibid.}, \textit{The Consti-
As for civil society, the issue of democratic legitimacy stands out: players from organised civil society are very heterogeneous in terms of their structures, characteristics, action methods and aims. The EU has not established any rules or regulations to identify the representative groups of collective claims from those representing private, corporative or sector-specific interests, and to clearly regulate lobbying activities. As a result, the EU has adopted a high degree of flexibility regarding the notion of civil society, which has meant including together the non-profit social and environmental NGOs, with associations and networks of associations not on the basis of principles of democratic representativeness and legitimacy and organised according to principles of economic utility and the defence of specific interests (namely industrial and farming associations). As interest groups or lobbies, the latter are included in the


21 According to the EC the concept of civil society "can nevertheless be used as shorthand to refer to a range of organisations which include: the labour-market players (i.e. trade unions and employers federations - the 'social partners'); organisations representing social and economic players, which are not social partners in the strict sense of the term (for instance, consumer organisations); NGOs (non-governmental organisations), which bring people together in a common cause, such as environmental organisations, human rights organisations, charitable organisations, educational and training organisations, etc; CBOs (community-based organisations), i.e. organisations set up within society at grassroots level which pursue member-oriented objectives, e.g. youth organisations, family associations and all organisations through which citizens participate in local and municipal life; and religious communities"; EC, *Communication from the Commission: Towards a Reinforced Culture of Consultation and Dialogue -- General Principles*
formal (committees) and informal consultation systems and procedures, which is a feature of EU decision making.\textsuperscript{22} As a result their role has become more important in all European public policies\textsuperscript{23} and especially in the relationship with the EC and the EP. Furthermore they have been recognised as members of the EU’s European Economic and Social Committee (EESC) alongside the trade unions and employers.

In addition to the afore-mentioned features of representative, participatory and associative democracy, both the contribution and action of national parliaments in guaranteeing “the good functioning of the Union” – which is strengthened by the Lisbon Treaty in Title II “Provisions on Democratic Principles”, Art. 12 of the TEU and regulated by Protocol No. 1 on the Role of National Parliaments in the European Union – and the participation of regions and local authorities as well as of the Euro-regions and the European Grouping of Territorial Cooperation (EGTC) established in 2006 have to be taken into consideration.

The peculiar contribution of national parliaments is to be tested with special reference to the interactions between national governments and the EP.\textsuperscript{24} The relationship between the EP and national parliaments is considered especially important in favouring European civil society participation, which can be further developed.\textsuperscript{25}


\textsuperscript{24} See Art. 12 TEU.

Regional levels of territorial and local forms of representation in individual EU Member States, officially recognised as having an institutional role in the Maastricht Treaty, which established the Committee of Regions (CoR) in 1994, have grown in importance both in developing community policies and in implementing EU provisions. This stresses their importance as players in the EU’s democratic life and as the links between the EU and the local populations.

1. **THE EUROPEAN CITIZENS’ INITIATIVE (ECI)**

1.1. **Citizens’ initiatives and direct democracy in the EU: a short outline**

Present day democracies offer four legal instruments of direct democracy:

1) A mandatory referendum on certain issues, which is legally binding.
2) A facultative referendum, called at the will of a public authority, binding or not-binding.
3) A citizens’ initiative where citizens collect signatures to call a referendum on a given draft proposal.
4) A citizens’ initiative as an agenda-setting instrument, aimed at collecting signatures for a bill to be discussed by a public authority invested with the power to decide whether it should be accepted or denied.

---


Only nine of the EU member States include national-agenda setting instuments – Italy, Slovenia, Hungary, Portugal, Romania, Austria, Spain, Lithuania and the Netherlands (the latter only since 2006) with minimum adhesion thresholds between 0.08 per cent of voters (50,000 citizens for Italy) and 1.43 per cent (Lithuania). Only two of those with national instruments require higher thresholds (Slovakia and Latvia). Several EU Member States make provisions for citizens’ initiatives and referenda at regional (Austria, Germany, Spain, Sweden and Holland) and local (Belgium, Germany, Italy, Luxembourg, Slovenia, Spain and Hungary) levels, while Switzerland and the US (in twenty-four states of the Federation) offer intranational referenda.28

A German Social Democrat member, Jürgen Meyer, put the suggestion of a European ECI at the European Convention in May 2003.29 He was supported by Mehr Demokratie e.V., an organisation which had also tabled several proposals for articles to be included in the draft Constitutional Treaty, as, for example, a European Citizens’ Initiative and a referenda.


rendum to approve any amendments to the Constitution.\textsuperscript{30}

All the proposed referenda were rejected by the Presidium of the Convention except for the Citizens’ Initiative which was included in the Draft Treaty establishing the Constitution of Europe, approved in June 2003 by the European Convention with the introduction of the requirement of a minimum number of citizens: “No less than one million citizens coming from a significant number of Member States” (Art. I-46, “The principle of participatory democracy”, para 4, \textit{Draft Treaty establishing a Constitution for Europe})\textsuperscript{31}). Subsequently the ECI was included in Art. I-47 of the Treaty establishing a Constitution for Europe, which mirrored the previous article, albeit with minor changes.\textsuperscript{32}

Since that time, the ECI, in a rather unexpected manner and hardly any debate, has survived the misfortunes of the Treaty, which had established a European Constitution, and has been included in the Lisbon Treaty.\textsuperscript{33} Immediately after its inclusion in the Constitutional Treaty in 2004, about twenty pilot “informal” European citizens’ initiatives have been carried out following a range of procedures by MPs (Members of Parliament), associations, Trade Unions (TUs) and a number of NGO networks, to test the instrument, in view of its implementation, some of them getting huge support.

The ECIs organised prior to the coming into force of the Lisbon Treaty were in fact Euro-petitions, and signatures were mostly e-gathered without e-mail verification.\textsuperscript{34} They included, for example: “The Oneseat

\textsuperscript{30} Mehr Demokratie e.V., established in 1988, is especially active in studying the development of local, national and European democracy and has reached good results, such as introducing municipal referenda in Bavaria in 1995 and in 1998 in Hamburg. Recently it initiated a campaign still underway for the establishment of national referenda in Germany (http://www.mehr-demokratie.de/).


\textsuperscript{34} For an illustration of the experiences linked to these campaigns see C. Berg, P. Carline, B. Kaufmann, J. Leinen, D. Wallis, \textit{Initiative for Europe Handbook 2008: the Guide to
Campaign”, promoted mainly by Members of European Parliament (MEPs) to establish Brussels as the only seat for the EP, to avoid the ongoing waste of time and money for the back and forth from Strasbourg for the Plenary EP Sessions35; “Against Nuclear Energy”, in order to end the Euratom Treaty and to prevent the construction of new nuclear facilities36; “For a European Referendum on the EU Constitution”, in order to trigger a consultative popular vote on the new European Constitution, launched in the spring of 2007 by the Union of European Federalists (UEF) and no longer active; “Initiative for the Initiative”, launched in November 2006 by a network of NGOs and student groups to promote a citizen-friendly ECI’s procedure37; “European Citizenship Initiative”, launched in 2006 by the European Citizen Action Service (ECAS – an NGO whose purpose is to support and channel NGO activities at the Community level) to establish a forum for the European citizenry, and to study and organise conferences.


36 See the campaign’s website: http://www.million-against-nuclear.net/index.php.

1.2. The ECI in the Lisbon Treaty: legal basis and general features

The European Citizens’ Initiative is included in the Lisbon Treaty, which entered into force on 1 December 2009, and is a major change. It is the first democratic instrument of participation, extending the power to propose to the EC legal initiatives within the EU political system, previously restricted to the Council (since 1957) and the EP (since the Maastricht Treaty came into force in 1993).

The Lisbon Treaty is a tenet for the EU of representative democracy as it states that:

- “the functioning of the Union shall be founded on representative democracy” (Art. 10.1 TEU);
- “Citizens are directly represented at Union level in the European Parliament” and “Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens” (Art. 10.2 TEU);
- “Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen” (Art. 10.3 TEU);
- “Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union” (Art. 10.4 TEU).

Two provisions identify the nature of the ECI:

1. Art. 11.4 of the TEU states how this instrument of democratic participation can be used: “Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties”.

2. Art 24.1 of the Treaty on the Functioning of the European Union (TFEU) defines the procedures and regulations to implement an ECI: “The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt
the provisions for the procedures and conditions required for a citizens’ initiative within the meaning of Article 11 of the Treaty on European Union, including the minimum number of Member States from which such citizens must come”.

The ECI is an instrument to bring together and organise citizens’ political demands; it differs both from other direct democracy initiatives – such as referenda – and from forms of deliberative democracy implemented to deal with complex social problems, especially at a local level and which involve various stakeholders. In fact it is the first example of a regional agenda-setting instrument on a continental scale in the framework of a political union with elements of supranationality.38

There are two issues that must be dealt with before interpreting the regulations concerning the ECI in the Lisbon Treaty:

a) The possibility of using an ECI for proposals to modify the Treaties.
b) The characteristics ECIs must have.

1.3. Interpreting Art. 11, para 4 of the Lisbon Treaty on the use of ECIs to modify the treaties

The interpretation of Article 11 is important. It enables citizens “to take the initiative of inviting the EC, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties”, on account of the right of initiative given to the Commission (Art. 17.2 TEU). Does it also enable citizens to take the initiative to submit proposals aimed at modifying the Treaties to the EC (Art. 48.2 TEU)?

Whatever the opinion on the political advisability of such a choice, the legality of the above-mentioned proposal must be first ascertained: whether, in the course of the ordinary legislative procedure (co-decision), the implementation regulation has introduced the possibility

of submitting proposals to amend Treaties; in the event of the preferential plaintiffs – that is, institutions that do not have to demonstrate any interest in taking action, be it the Member States or the European institutions, – opposing it, they could question its legality in the Court of Justice of the European Union (CJEU) (Art. 263 TEU, paras 1, 2, 3). In the (more likely) event that the regulation remains silent on the matter, the same problem could arise in the case of an ECI petitioning for a proposal to amend Treaties.

The issue remains unresolved. On the one hand there is no stated prohibition, on the other the limits of the proposal ("on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties") would appear to exclude a direct proposal to amend the Treaties. If one were to adopt a broad interpretation of the terms legal act and implementation of the Treaties, it could also include the proposals for amendment of the Treaties, which initiate the procedure to amend the Treaties (Art. 48 TEU), and thus by extension it could allow an ECI to petition the Commission submitting a proposal to amend the Treaties. However, this idea was turned down by the EC, and could be tabled again only if the CJEU (Court of Justice of the European Union) were to issue a pronouncement following an appeal by the promoters of an ECI (in the event of their proposal having been rejected


on those grounds). There are no doubts that an ECI can be submitted, in view of the implied powers as ruled by Art. 352 TFEU.

1.4. Assessing ECI features

The second issue, that is, the one concerning ECI characteristics, is less striking but fundamental in resolving detailed matters, and specifically whether they have to be formulated in detail – comparable to Commission proposals – or not.

The answer to this question is to be found in Art. 11 of the TEU, which refers to an invitation of the Commission to propose, but also in the specific ways the EU system works in terms of legislative initiatives. In fact the Commission has a virtually exclusive right to table legislation (see Art. 17, para 2 TEU) according to EU decision-making procedures. In this respect, an ECI cannot be considered a law proposal submitted to the competent body – as happens in other systems such as that of Italy, Austria, Poland and Spain – but is an invitation to the EC to make such a proposal.

Art. 11 is unequivocal on the matter and is also consistent with Articles 22542 and 241 of the TFEU,43 which identify the Council and the EP as the bodies with the power to request the EC to submit proposals.

This means that citizens’ initiatives cannot be a detailed legal act, as the drafting of the act is up to the EC. As the draft Commission regulation suggests, it is enough for the initiative to be drafted very clearly with a definite objective that falls within the remit of the EC’s competence as well as being accompanied by a clear and circumstantial moti-

42 “The European Parliament may, acting by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties. If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons”.

43 “The Council acting by a simple majority may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals. If the Commission does not submit a proposal, it shall inform the Council of the reasons”.

80
vation. Although not strictly forbidden, a draft proposal with articles need not be attached.

As a result the ECI is closer to a petition, and therefore simpler. However, this leaves the Commission broad discretionary powers to draft the final version and it even allows the EC to decide whether the ECI should be followed up or not – albeit within the limits described further in the text.

1.5. Proposals and requests by the European Parliament

Since 2008, the European Parliament Constitutional Affairs Committee (AFCO) has been debating the subject of ECIs with various hearings of experts and leading representatives of civil society. In February 2009, the AFCO presented a draft report requesting the EC for a regulation proposal to implement ECIs, attaching certain recommendations.

The Committee Report specifically recommended that:

• the Citizens’ Initiative requires that citizens from a minimum of one quarter of the total number of Member States take part, and that 1:500 must support the initiative within each Member State for the initiative to be legitimate;
• all EU citizens who have a right to vote in their country may participate in a citizens’ initiative;
• the procedure for the citizens’ initiative will comprise the following five stages:
  i. registering the initiative, including specifying the organisers of the ECI,
  ii. collecting statements of support,

---

44 In this respect I. Ingravallo believes the proposal of the Commission to be “generic” in that it does not mention the possibility, suggested in the Green Paper, to annexe the legal initiative to a legal draft act and hopes it will be modified accordingly because in the current context ECIs are not adequately appreciated and have turned into something like a petition”; see I. Ingravallo, “Brevi note sull’iniziativa legislativa dei cittadini europei”, in La Comunità Internazionale, Vol. 65, No. 2 (2010), pp. 256, 251-60.

iii. presenting the initiative,
iv. a statement of its position by the Commission,
v. verifying that the requested legal act is consistent with the
Treaties;

- in the interest of transparency, the organisers of a successfully regis-
tered citizens’ initiative will be required to present a report to the
Commission on the funding and sources of funding after the pro-
dure has concluded.\(^46\)

The rapporteur, Sylvie-Yvonne Kaufmann (European United Left/Nordic
Green Left - GUE\(^47\)/NGL) from Germany, opened the debate at the
plenary session by stating she had not received support in the work done
on the ECI by her Group and by the European Left Party, but otherwise
expressing thanks for the support shown by representatives of other EP
groups (Group of the European People’s Party and European Democrats,
the Group of the Alliance of Liberals and Democrats for Europe and the
Group of the Greens/European Free Alliance) as well as from the Social-
Democrat Jo Leinen, chair of the AFCO.\(^48\) The report was adopted with
380 votes in favour, 41 against and 29 abstentions. All the main groups
were favourable, but the labour MEPs from the Socialist Group ab-
stained.\(^49\) Those voting against were the GUE/NGL since they considered

--
\(^46\) EP, Report of 3 February 2009 Requesting the Commission to Submit a Proposal for a
Regulation of the European Parliament and of the Council on the Implementation of the
XML&language=EN; EP, Citizens to Have the Right to Ask the Commission to Submit a
type=IM-PRESS&reference=20090219BRI50012&secondRef=ITEM-024-EN&format=XML
&language=EN.

\(^47\) Gauche Unitaire Européenne.

Doc.do?type=CRE&reference=20090506&secondRef=ITEM-015&format=XML&language
=EN.

\(^49\) R. Corbett (PSE) declared: “Mrs Kaufman’s proposals would lead to the citizens’
initiative process becoming bogged down or hampered by onerous bureaucrati-
requirements (like Member States having to check every signature and pre-certification by
the Commission that it is legal). To encourage more participation, we should follow the
spirit of the Citizens’ Initiative – namely that it should be as accessible and easy to use as
the ECI to be absurd and hypocritical as it is contrary to the intention expressed against the Constitutional Treaty by representatives of the Non-Attached Members who felt that the ECI is deceptive and unable to lessen the power of the Eurocrats; the Independence and Democracy Group for whom the proposal was not clear and continued to reiterate provisions already present in the Constitutional Treaty not ratified. Repeating the contents of the AFCO report, the resolution approved by the EP asserted that the citizens’ initiative should be admissible if it concerns an EU competence and is not contrary to the general principles of the EU. It also added that it should not take more than two months from the submission of the ECI for the Commission to decide on its admissibility and registrations could be rejected only on legal grounds and not on grounds of political expediency.

In the following re-election of the EP in June 2009, individual MEPs petitioned the EC to present a proposal for a regulation in line with the recommendations from the EP and asked whether the ECI already

---

50 Ibid., Speech from P. Guerreiro (GUE/NGL).
51 Ibid., Speech from B. Gollnisch (NI).
underway could be taken into consideration after the Lisbon Treaty comes into force, receiving a negative response from the Commission.\textsuperscript{54} With reference to the outcomes of the consultation which took place after adopting the Green Paper, it was also asked whether the Commission had considered favouring and regulating online citizens’ initiatives, the activities of the social networks and the use of new information and communication technologies for helping start up the ECI.\textsuperscript{55} Further clarification was requested about any minimum national thresholds to be


reached as a requisite for starting up the ECI. Other MEPs critical of the ECI asked in what way the Commission intended creating public confidence in the new instrument, arguing that the EU had provoked considerable public scepticism in two different cases: in 2000 regarding as unacceptable the Austrian national election results and imposing sanctions against this country after the arrival of the extreme right into a new coalition government; and later, disregarding the referenda in France, in the Netherlands and in Ireland.

2. THE EUROPEAN COMMISSION’S PROPOSAL FOR A REGULATION OF THE ECI

2.1. Consultation

After having received an EP resolution requesting to prepare a proposal of an ECI regulation and a series of annexed recommendations and before the Lisbon Treaty came into force, the EC decided to promote a general consultation with the adoption of a Green Paper on a European Citizens’ Initiative on 11 November 2009. The consultation was organised to give the various components of the EU society (organised civil
society, stakeholders and public authorities in the Member States, citizens and all interested parties) a chance to express their opinions as to what the ECI should be.

The consultation took place on ten issues and relative questions (in brackets) that follow below:

1. *Minimum number of Member States from which citizens must come*
(Do you consider that one-third of the total number of Member States would constitute a “significant number of Member States” as required by the Treaty?).

2. *Minimum number of signatures per Member State*
(Do you consider that 0.2 per cent of the total population of each Member State is an appropriate threshold? If not, do you have other proposals in this regard in order to achieve the aim of ensuring that a citizens’ initiative is genuinely representative of a Union interest?).

3. *Eligibility to support a citizens’ initiative - minimum age.*
(Should the minimum age required to support a European citizens’ initiative be linked to the voting age for the European Parliament elections in each Member State? If not, what other option would you consider appropriate, and why?).

4. *Form and wording of a citizens’ initiative.*
(Would it be sufficient and appropriate to require that an initiative clearly state the subject matter and objectives of the proposal on which the Commission is invited to act? What other requirements, if any, should be set out as to the form and wording of a citizens’ initiative?).

5. *Requirements for the collection, verification and authentication of signatures*
(Do you think that there should be a common set of procedural requirements for the collection, verification and authentication of signatures by Member States’ authorities at EU level? To what extent should Member States be able to put in place specific provisions at the national level? Are specific procedures needed in order to ensure that EU citizens
can support a citizens’ initiative regardless of their country of residence? Should citizens be able to support a citizens’ initiative online? If so, what security and authentication features should be foreseen?).

6. **Time limit for the collection of signatures.**
(Should a time limit for the collection of signatures be fixed? If so, would you consider one year to be an appropriate time limit?).

7. **Registration of proposed initiatives.**
(Do you think that a mandatory system of registration of proposed initiatives is necessary? If so, do you agree that this could be done through a specific website provided by the European Commission?).

8. **Requirements for organisers - Transparency and funding.**
(What specific requirements should be imposed upon the organisers of an initiative in order to ensure transparency and democratic accountability? Do you agree that organisers should be required to provide information on the support and funding that they have received for an initiative?).

9. **Examination of citizens’ initiatives by the Commission.**
(Should a time limit be foreseen for the Commission to examine a citizens’ initiative?).

10. **Initiatives on the same issue.**
(Is it appropriate to introduce rules to prevent the successive presentation of citizens’ initiatives on the same issue? If so, would this best be done by introducing some sort of disincentives – or time limits?).

The consultation was completed on 31 January the 2010 with 329 answers – 160 from individual citizens, 133 from organisations and 36 from public authorities), which was a wide and interested reaction, albeit not an exceptional one.\(^5^9\) A large section of organised civil society,

\(^5^9\) The texts of the contributions can be consulted on line at http://ec.europa.eu/
ready to intervene on specific community policies, did not consider the ECI as a priority.

On 22 February 2010 the EC organised a public hearing open to all respondents to circulate and listen to the suggestions they had received.60

2.2. Proposal for regulation of the ECI

On 31 March 2010 the Commission published a Proposal for a Regulation of the European Parliament and of the Council on the Citizens’ Initiative,61 preceded by an explanatory memorandum, which states it will consider the overall result of the public consultation and adds that it is inspired by two guiding principles:
THE EUROPEAN CITIZENS’ INIATIVE

- “The conditions should ensure that citizens’ initiatives are representative of a Union interest, whilst ensuring that the instrument remains easy to use.”
- “The procedures should be simple and user-friendly, whilst preventing fraud or abuse of the system and they should not impose unnecessary administrative burdens on the Member States.”

The main provisions of the Proposal for a Regulation are the following:

- The minimum number of Member States is fixed at one-third (Art. 7).
- The minimum number of citizens per Member State is calculated through a “fixed threshold for each Member State, which is degressively proportionate to the population of each State with a minimum threshold and a ceiling”.
- “Where the organiser is a natural person, that person shall be a citizen of the Union and be of the age to be entitled to vote in the European elections. Where the organiser is a legal person or an organisation it shall be established in a Member State. Organisations which do not have legal personality under the applicable national law shall

---

63 “It is the threshold used in the provisions on ‘enhanced cooperation’ which provide that ‘at least nine Member States’ must participate (art. 20 TEU). It is also used as the threshold needed to trigger the subsidiarity procedure provided for in art. 7.2 of the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaties; Ibid., pp. 4-5.
64 Ibid., p. 5. The EC based the thresholds on a objective criteria: the multiple of the number of Members of the EP agreed in the context of the 2007 Intergovernmental Conference (750) “in order to reflect the demands of many stakeholders to set a threshold below 0.2% of the population, on the one hand, and to take account of concerns that the threshold in small Member States should not be too low, on the other. Indeed, by using a multiplication factor of 750, the threshold for over half of Member States would be lower or significantly lower than 0.2% of the population, whilst for the smaller Member States the threshold would be higher. This system will thus allow a proportionately lower number of signatories for large countries and a proportionately higher number for small countries” (Art. 7 and Annex I); Ibid. The minimum number of supporters per country ranges from 3,750 in Malta, the EU’s smallest Member State, to 74,250 in populous Germany.
have representatives that have the capacity to undertake legal obligations on their behalf and assume liability” (Art. 3.1). "In order to be eligible to support a proposed citizens’ initiative, signatories shall be citizens of the Union and shall be of the age to be entitled to vote in the European elections” (Art. 3.2) and therefore 18 years in all member states except for Austria where it is sixteen;

- Compulsory registration of the ECI s in an online register made available by the EC in one of the EU official languages providing information “in particular on the subject-matter and objectives as well as on the sources of funding and support for the proposed citizens’ initiative” (Art. 4.1), but “proposed citizens’ initiatives which can be reasonably regarded as improper because they are abusive or devoid of seriousness will not be registered” (Art. 4.3) and furthermore “The Commission shall reject the registration of proposed citizens’ initiatives which are manifestly against the values of the Union” (Art. 4.4);

- Signatures will be collected on paper or on-line abiding by the data protection act, in which case it will have to be certified within a month by the national authority (Art. 6) and a time-limit of 12 months is fixed for the collection of statements of support (Art. 5.4);

- “After having collected 300,000 statements of support in accordance with Article 5 from signatories coming from at least three Member States, the organiser shall submit to the Commission a request for a decision on the admissibility of the proposed citizens’ initiative [...]” (Art. 8.1).

- “The Commission shall, within a period of two months from the receipt of the request referred to in paragraph 1, take a decision on admissibility” and “The proposed citizens’ initiative shall be considered admissible if [...] (a) it concerns a matter where a legal act of the Union can be adopted for the purpose of implementing the Treaties; and (b) it falls within the framework of the powers of the Commission to make a proposal” (Art. 8.2).

"The decision referred to in paragraph 2 shall be notified to the organiser of the proposed citizens’ initiative and made public” (Art. 8.3);

- "Member States will have three months to check the sample of signatures collected nationally for an ECI declared admissible” (Art. 9);
3. ECIS: SUGGESTIONS AND OUTLOOK

The EC’s submission of the proposal for a Regulation has rekindled the debate on the ECI highlighting a range of different positions.

65 Ibid, p. 15.
The present section will try to offer a brief overview of the main suggestions and assessments by the EP, the Council of the European Union, the Committee of Regions (CoR), the European Economic and Social Committee (EESC), European parties and EP parliamentary groups, the European civil society and by individuals and experts on the EC’s Proposal for a Resolution. In the sections devoted to the EP and to the Council of the EU will be discussed some of the amendments and changes that led to an inter-institutional agreement and to the EP voting on a first reading of the Regulation on 15 December 2010. After its adoption without discussion at a meeting of the Education, Youth, Culture and Sport Council in Brussels on 14 February 2011 the Regulation EU No. 211/2011 of the EP and of the Council on the citizens’ initiative was signed at an official ceremony held in Strasbourg on 16 February 2011 by Foreign Minister János Martonyi, and President Jerzy Buzek, on behalf of the Council and the European Parliament respectively. It has been published in the Official Journal of the European Union and will be applicable one year after entry into force in order to allow member states and the Commission to take the necessary measures to implement it.

3.1. The European Parliament

The Regulation proposed by the EC did not implement a number of suggestions of the EP:

- The request that the EC pronounce on the admissibility within two months from registering the ECI and not after having obtained a certain number of signatures.
- The recommendation to the Commission to decide within two months

---

of having collected the signatures, proposing that the ECI could only be rejected for legal motives and never for reasons of political pragmatism, and a possible rejection could be subject to judicial control by the CJEU and the European Ombudsman if the contestation proved to be within its jurisdiction (lack of transparency, poor administration, etc.).

- The request that the decision be published in the Official Journal of the EU and posted online and, last, that a hearing of the promoters be organised in order to further investigate the proposal so that the EC could decide within three months whether to go ahead or to shelve the idea, reporting its motives to the EP. If the EC were not to have reached any decision within the period indicated, the CJEU and/or, if necessary the European Mediator would have taken over.

From what can be seen in the working paper from the EP’s AFCO for the proposed regulation which the EP and the Council will be required to discuss, presented on 22 June 2010 and approved at the AFCO meeting on 12 July, it aimed at making amendments. As well as agreeing and reiterating some of the choices already made by the EC (the exclusive involvement of citizens with voting rights for the EP, preference for natural persons as legal representatives of the ECI, responsibility of the promoters for language translation and checking of the texts by the EC on demand, transparency of the registration, in the legal responsibility and in the funds received from organisers), the document proposes:

- “to make the process as European as possible from the beginning and to foster greater debate, the organisers should get together into a ‘citizens committee’ of at least seven persons coming from at least a quarter of the Member States (MS). By doing so, only European-wide issues could emerge and it would ease the forthcoming signa-

---

tutures’ collection process as there would already be a representative in a quarter of the MS. Hence, even though it seems to be a constraint at first, it would in reality ease the rest of the procedure”. 69

- to explore various options on the following issues:
  “5.1. Would it make sense to ask for the organisers to have the support of some directly elected persons who would endorse the initiative? If so, how many of them should support it and should they come from at least a quarter of the MS as well or would it just introduce an unwelcome dose of representative democracy into the process?
  “5.2. Should we ask the organisers to provide a deposit which would naturally be given back to them if the ECI turns out to be successful?” 70;

- to provide a first admissibility check:
  “9. It might make sense for the first admissibility check – based on legal criteria – to take place after 5,000 signatures have been collected. This symbolic figure ensures the representation of genuine public support and in the meantime it would prevent an overburdening of the Commission without the organisers spending too many resources on the process. However, this is only a suggestion and the admissibility check could also be done right after the registration. In any case, the rapporteurs do not support the idea of this check taking place after the collection of 100,000 or 300,000 signatures, as this would rightfully cause great frustration to organisers” 71;

- to attribute the decision about the ECI’s admissibility to a “wise people committee”:
  “11. It might be more appropriate to appoint an ad hoc ‘wise people committee’, gathering some experts, scholars and/or jurists, so that they would be as impartial as possible. Nine of them would be appointed by the three institutions: three by the Commission, three by the Council and three by the EP, as they will have to approve any leg-

---

69 Ibid., I. Preliminary Actions to Be Taken by the Organisers, No. 3, p. 2.
70 Ibid., I, Nos. 5, 5.1, 5.2, pp. 2-3.
71 Ibid., III. Admissibility Check, No. 9, p. 3.
islative proposal. It will eventually be the MS who will later on implement any future legislation. There would also be a representative of the Commission – the Commissioner in charge of institutional affairs or his representative – and, possibly, a representative of the rotating presidency of the Council and an MEP i.e. ten or twelve persons. The Commission representative could chair this committee”72;

• to specify on which basis the ECI should only be considered not admissible:
  “12. Their decision shall be based on the following criteria:
  - the legal basis;
  - the respect of EU values (namely article 2 of the TFEU and the Charter of fundamental rights);
  - a preliminary subsidiarity check (a more thorough check would still take place once a million signatures are collected).

Obviously abusive ECIs could be rejected but the wording of the Commission’s proposal needs to be improved”73;

• to point out different procedures if the ECI is declared admissible or not:
  “14. Then, two different scenarios will be possible:
  14.1. The ECI is declared admissible: it will be officially registered and be published on the special website that the Commission will launch.
  14.2. The ECI is not admissible: the organisers could appeal to the Commission which will have the right to either confirm or annul the ad hoc committee’s decision. If the Commission confirms this, the organisers will have the right to appeal this decision to the CJEU as provided for in the Treaties”74;

• to provide a dedicated software for collecting signatures online:
  “18. The online collection could be done through specific websites to be designed by the organisers and which will need to be certified and monitored by the competent authorities of the MS in which it

72 Ibid., III, No. 11, p. 3.
73 Ibid., III, No. 12, pp. 3-4.
74 Ibid., III, No. 14, 14.1, 14.2, pp. 3-4.
will be launched. Commonly available software, developed by the Commission, would be welcome. It would be at the disposal of the organisers who may or may not use it”\textsuperscript{75};

- to discuss about prolonging the period of collecting the signatures:
  “19. A 12-month period would be suitable as on the one hand, signature collection will not be easy nor fast; on the other hand however a longer period might jeopardize the 'momentum'. Indeed, citizens will lose interest if the procedure takes too much time and the ECI would not be of relevance any more”\textsuperscript{76};

- to establish procedures and the timeline for the verification of signatures:
  “20. The verification of signatures should be left to the MS and be dealt with within 3-months. Random checks seem to be the most efficient way to deal with this issue”\textsuperscript{77};

- a particular procedure aiming to guarantee outcome of the ECI:
  “21. The Commission will then engage into a two-step process which will include a hearing of the organisers:
  - a decision on the legal aspects of the ECI within two months;
  - a political decision on the follow up that it will give, or not, to the ECI. Its conclusions should be sent to the organisers and explained in a communication to the Council and the EP, to be published in the Official Journal of the EU and on the ECI specific website. This should be done within two months as well.

22. Some suggest that the EP should automatically adopt a resolution on every ECI that will gather one million signatures.\textsuperscript{78}

The last two sections of the Working Document propose the following solutions and considerations:

- “VI. Final decision and different ways to follow up on an ECI:

\textsuperscript{75} Ibid., IV. Collection of Signatures, No. 18, p. 4.
\textsuperscript{76} Ibid., IV, No. 19, p. 4.
\textsuperscript{77} Ibid., V. Once One Million Signatures Have Been Collected, No. 20, p. 4.
\textsuperscript{78} Ibid., V., Nos. 21 and 22, pp. 4-5.
23. This step is of utmost importance as this is what in fact makes the difference between petitions and ECIs. If this step is not clear enough, European citizens will have less incentive to use this mechanism.

- **VI.I. If the Commission decides to put forward a proposal:**
  24. It should draft a proposal within a certain time limit, which could be the same for all ECIs or could be decided on a case-by-case basis.

- **VI.II. If the Commission decides not to do so:**
  25. To avoid disappointment and to ensure that citizens feel that they have been listened to, it is important that the regulation outlines the fallback procedures. Several options would be on the table:
  25.1. First of all, the Commission could still decide to put forward a proposition resulting from an ECI that has not gained enough support but does raise a valid issue.
  25.2. Council and EP could also take a non-successful ECI up according to their initiative rights. The EP could in particular hold hearings of the organisers (upon request of its committees or of political groups) and adopt a resolution.
  25.3. If the criteria (set out in the RoP [Rules of Procedure] of the EP) are met, the organisers could turn the ECI into a petition to the EP.
  25.4. The Commission’s decision will be subject to appeal to the ECJ [European Court of Justice].

- **VII. Other provisions:**
  26. It could be relevant to specify that it should not be possible to launch an ECI asking for the annulment of a recently adopted piece of legislation.
  27. When it comes to the role of the EP, the rapporteurs are open to any suggestions on what it should/could do and on the need to actually formalise it.
  28. National parliaments would probably not have a formal role but they would have the possibility to provide support and advertisement to any ECI that they wish.
  29. The role that the EESC and the CoR could play also requires further reflection.
  30. As in any other European procedure, the organisers will have the
opportunity to seize the Ombudsperson in cases of maladministration.

31. The respective roles of the ECJ and of the Ombudsperson could be addressed in the recitals as they would not be any different than in any other procedure but mentioning them could make the regulation easier to understand and more user-friendly.

32. To make the ECI procedure as user-friendly as possible the rapporteurs believe that a 'Users’ guide to the ECI' should be drafted [...]”79

The subsequent steps involved a meeting the AFCO on the 12 July with the representatives of the Committee of Regions and the EESC and on 30 September a meeting with the representatives of the national parliaments.

The debate proceeded within the AFCO,80 including hearings where there appeared to be some convergence on the aforementioned proposals. The experts heard also included Jürgen Meyer and the former rapporteur Kaufmann who spoke “both against a Commission proposal to make it mandatory for all signatories of an initiative to supply their ID [Identify Document] card numbers” and supported “extending the time allowed for collecting signatures from 12 to 18 months”,81 Also the min-

79 Ibid., VI. Final Decision and Different Ways to Follow up on an ECI; VII. Other Provisions, p. 5. Various academics feel that the Commission is not free to decide whether or not to go ahead with the legislative proposal suggested for an ECI that meets the requisites and has previously been judged admissible, but which has the duty to forward a proposal to the EP and to the Council which would then have to decide on what should be done; cf. A. Maurer, S. Vogel, Die Europäische Bürgerinitiative, Chancen, Grenzen und Umsetzungsempfehlungen [The European Citizens’ Initiative, Opportunities, Limitations and Recommendations for Implementation], Stiftung Wissenschaft und Politik (SWP Deutsches Institut für Internationale Politik und Sicherheit, Studien 28) October 2009, pp. 26-28, http://www.swp-berlin.org/common/get_document.php?asset_id=6431.


imum age being moved to 16 is seen favourably with some provisos. The AFCO requested and was granted a background information study from the EP Directorate-General for Internal Policies, on the present situation in the Member States of the EU, and on European level, as far as the use of modern technical equipment such as online registration of popular initiatives, referendums or petitions is concerned.

During the joint AFCO and PETI meeting held on the 9 November 2010 the last draft regulation for implementing the European Citizens' Initiative (ECI) on 28 October was prepared with the participation of Commission and Council representatives. The committee convened on 30 November had adopted a draft report on the ECI and given a mandate to a group of negotiators to seek agreement in a triilogue (three-way talks among the EP, EC and Council of the EU) later the same day. The EP ne-

---

82 The Italian, C. Casini (EPP Group), has stated that he is not in favour because the only country where voting takes place at 16 years of age is Austria. For further information about the positions of the AFCO Commission, see EP, Committee: Constitutional Affairs, Citizens' Initiative, 5 October 2010, http://www.europarl.europa.eu/news/public/story_page/001-84689-274-10-40-901-20101001STO84608-2010-01-10-2010/default_en.htm.


negotiation group consisted of the Constitutional Affairs Committee rapporteurs Alain Lamassoure (EPP, France) and Zita Gurmai (Alliance of Socialists & Democrats – S&D, Hungary), and the two Petitions Committee rapporteurs, Diana Wallis (ALDE, United Kingdom) and Gerald Häfner (Greens/European Free Alliance, Germany), as well as the shadow rapporteurs Helmut Scholz (European United Left/Nordic Green Left – GUE/NGL, Germany) and Morten Messerschmidt (Europe of Freedom and Democracy – EFD, Danemark). The EP negotiation group has reached a compromise with the Council of the EU and the EC\(^\text{87}\) on some issues.

Differences between the EP (which had suggested reducing the minimum number of countries and the ages of the signatories) and the Council of the EU (which had stuck to the EC proposal), were overcome.\(^\text{88}\) The French government stated recently that, in line with Council and Commission, it wants to keep the threshold for the amount of participating countries to one-third but in the end an agreement was reached with a minimum threshold of countries corresponding to one quarter.

On the whole the following key EP demands were accepted in the discussions:

- the admissibility check on an initiative will be made at the point of registration in the EC website, not after 300,000 signatures have already been collected.\(^\text{89}\)

---


\(^{89}\) See Art. 4 “Registration of a proposed citizens’ initiative”, para 1 of the Regulation EU No. 211/2011, *op. cit.*: “1. Prior to initiating the collection of statements of support from signatories for a proposed citizens’ initiative, the organisers shall be required to register it with the Commission, providing the information set out in Annex II, in particular on the subject matter and objectives of the proposed citizens’ initiative.

That information shall be provided in one of the official languages of the Union, in an
to ensure that the initiatives are well-founded and have a European dimension, a citizens’ committee of at least seven members coming from seven Member States should be set up to register an initiative\textsuperscript{90};

- the signatories must come from a minimum number of Member States: this was lowered to one quarter of the States – seven Member States (as we have seen, the original proposal was one-third, while MEPs had suggested one-fifth);

- the Commission will help the organisers\textsuperscript{91} of an initiative by providing a user-friendly guide and setting up a point of contact\textsuperscript{92};

online register made available for that purpose by the Commission (“the register”).

The organisers shall provide, for the register and where appropriate on their website, regularly updated information on the sources of support and funding for the proposed citizens’ initiative.

After the registration is confirmed in accordance with paragraph 2, the organisers may provide the proposed citizens’ initiative in other official languages of the Union for inclusion in the register. The translation of the proposed citizens’ initiative into other official languages of the Union shall be the responsibility of the organisers.

The Commission shall establish a point of contact which provides information and assistance”.

\textsuperscript{90} See Art. 3 “Requirements for organisers and for signatories” of the Regulation EU No. 211/2011, \textit{op. cit.} “Requirements for organisers and for signatories:

1. The organisers shall be citizens of the Union and be of the age to be entitled to vote in elections to the European Parliament.

2. The organisers shall form a citizens’ committee of at least seven persons who are residents of at least seven different Member States.

3. The organisers shall designate one representative and one substitute (the contact persons), who shall liaise between the citizens’ committee and the institutions of the Union throughout the procedure and who shall be mandated to speak and act on behalf of the citizens’ committee.

Organisers who are Members of the European Parliament shall not be counted for the purposes of reaching the minimum number required to form a citizens’ committee. (...)

4. In order to be eligible to support a proposed citizens’ initiative, signatories shall be citizens of the Union and shall be of the age to be entitled to vote in elections to the European Parliament.”

\textsuperscript{91} See Art 2 “Definitions”, para 3 of the Regulation EU No. 211/2011, \textit{op. cit.} “organisers’ means natural persons forming a citizens’ committee responsible for the preparation of a citizens’ initiative and its submission to the Commission”.

a mandatory public hearing for every successful citizens’ initiative with the EC.\textsuperscript{93}

A compromise was also reached on the difficult question of how to verify the authenticity of the signatures. In spite of the EP’s requests to make the verification process as easy as possible each member state will decide how to verify the identity of the signatories. On this aspect the possibility of the EP proposals on the deletion of the obligation to give an ID card number when signing an ECI (in spite of the fact the European Data Protection Supervisor had determined that ID card numbers are not necessary and should not be collected from individuals supporting an ECI\textsuperscript{94})


\textsuperscript{94} The recommendations of the European Data Protection Supervisor (EDPS) – quoted by the Initiative for ECI Campaign – stated: “The EDPS takes the view that the mandatory information fields in the model form are all necessary for the purpose of organising the citizens initiative and securing the authenticity of the statements of support, except for the personal identification number. The EDPS therefore recommends deleting this information field from the model form in Annex III”. According to Initiative for ECI “the retention of the ID number requirement in some, but not all, Member States, even where not technically needed to verify identity, also violates paragraph 4 (introduction) of the proposed regulation. This states that ‘citizens of the Union are subject to similar conditions for supporting a citizens’ initiative regardless of the Member State from which they come’”; Compromise ECI Regulation Requires Mandatory Public Hearings... but Allows Collection of ID Numbers, 1\textdegree December 2010, Press Release by the ECI
and the minimum age of the signatories\textsuperscript{95} were accepted by the Council of the EU against the resistance of the Member States seemed to be just a few.\textsuperscript{96} One limitation which remained concerns the maximum time to gather signatures, which has been kept at twelve months.\textsuperscript{97}

The institutions continued negotiations on the remaining issues and a final agreement was reached between the EP and the Council and supported by the EC. On 3 December 2010 the Report on the Proposal for a Regulation of the EP and of the Council on the Citizens’ initiative of AF-CO was fine tuned for approval in Parliament in the following EP plenary session.\textsuperscript{98} On the basis of this document, on 15 December 2010 the EP approved by large majority (628 votes in favour, 24 abstention and 15 against\textsuperscript{99}) a resolution and a first reading decision on the draft EC


\textsuperscript{96} “3/4 of Member States will require ECI supporters to provide intrusive personal data such as ID card numbers. So far, only nine countries have stated they will not collect ID card numbers: Belgium, Denmark, Estonia, Finland, Germany, Ireland, the Netherlands, Slovakia and the United Kingdom”; Compromise ECI Regulation Requires Mandatory Public Hearings... but Allows Collection of ID Numbers, op. cit.

\textsuperscript{97} See Art. 5 “Procedures and conditions for the collection of statements of support”, para 5 of the Regulation EU No. 211/2011, op. cit.


\textsuperscript{99} For further details on this vote see: http://votewatch.eu/cx_vote_details.php?id_act=1278&lang=en.
Regulation including the amendments agreed on with the Council.\textsuperscript{100} The latter adopted the Regulation in February 2011 without further discussion so that it came into force in April 2011 but it only will be applicable from 1 April 2012, one year after, in order to allow Member States and the Commission to take the necessary measures to implement it.\textsuperscript{101}

This result was favourably accepted by the EP, which has significantly improved the Commission’s initial proposal. “We rewrote two thirds of the text”, Häfner affirmed, particularly to make the procedure “simpler, more accessible and more transparent”.\textsuperscript{102} On its part, the EC expressed its appreciation for the speed with which an inter-institutional agreement on the ECI has been reached.\textsuperscript{103}

3.2. The Council of the European Union

In April 2010, the Spanish presidency and the Member States circulated a document about the ECI in which the Council of the EU noted there were four key questions to discuss and on which to find common ground within the month of June:

• registration of the proposed initiative and its admissibility (Art. 4, 7


and 8 of the Regulation proposal);
- minimum number of signatures per Member State (Art. 7 and Annex I);
- procedures and conditions for the collection of statements of support (Art. 5 and Annex III);

In June 2010, due to lack of a consensus between the Member States, the Council initially proposed pronouncing on the admissibility of the ECI at the time of registration\footnote{Council of the EU, 10626/1/10 REV 1, Inter-institutional File: 2010/0074 (COD), Brussels, 11 June 2010, http://register.consilium.europa.eu/pdf/en/10/st10/st10626-re01.en10.pdf.} as the main amendment to the Regulation. However, a "general orientation" was agreed on just a few days later on the following amendment proposals:

- reduction from 300,000 to 100,000 signatures for requesting the ECI's admissibility,
- a three month (instead of two) period available for the Commission to decide on the matter,

In the second reviewed version of its orientation, the Council also tasked the EC with developing an open-source software system compliant with the provisions for recording signatures online,\footnote{See Art. 6, para 2, c. 4 “Online collection system” of the Regulation EU No. 211/2011, op. cit.: “By 1 January 2012, the Commission shall set up and thereafter shall maintain open-source software incorporating the relevant technical and security features necessary for compliance with the provisions of this Regulation regarding the online collection systems. The software shall be made available free of charge”.} also providing the tech-
nical and security requisites stated by the Regulation and also a list of possible identification documents required for each European country.\textsuperscript{108}

The Belgian presidency of the Council, which took over from the Spanish presidency on 1 July, stated its intention to reach an inter-institutional agreement with the EP about the ECI by 1 December 2010, exactly a year after the Lisbon Treaty came into force.\textsuperscript{109} As mentioned above, this happened on 30 November 2010, thanks to a tentative deal hammered out between members of the AFCO, the Commission and the Council (trialogue meeting), which met most of the MEPs’ demands. On 8 December an ambassadorial Coreper meeting on the ECI took place and informed the EP by letter of the undertaking of the Council of the EU to approve Parliament’s position, in accordance with Art. 294 para 4 of the Treaty on the Functioning of the European Union.\textsuperscript{110} At the Foreign Ministers’ meeting on 14 December, the Council of the EU endorsed the agreement reached with the EP and the EC on a draft regulation.\textsuperscript{111} As became apparent after the approval of the Regulation, the Member States will have one year to incorporate the new legislation into national law, as agreed at the trialogue meeting.\textsuperscript{112} As requested by the Council of


\textsuperscript{110} “If the Council approves the European Parliament’s position, the act concerned shall be adopted in the wording which corresponds to the position of the European Parliament”.


the European Union, minimum age requirements for ECI participation will be the same as that set for voting in EU elections, and will vary according to the country. The legislation on the European Citizens’ Initiative will be applied only one year after it has been published in the Official Journal of the EU. The first official initiatives can be considered only from 1 April 2012.

The Belgian Presidency attained its aim of beginning the implementation of the ECI. Olivier Chastel, the representative of the Belgian Presidency of the Council, claimed that this development was the first of its kind in the world, insofar as it involves, “participatory democracy at a supranational level”.113

3.3. The European Economic and Social Committee (EESC)

The EESC offered to perform a dual role “as a facilitator of embryonic citizens’ initiatives, enabling those involved to network and possibly to meet” and “as an institutional mentor, issuing an opinion to assist the Commission in evaluating a successful initiative, holding hearings, and so on”.114 Additionally “the Committee will also take part in publicity campaigns”.115

The EESC expressed the following positions on the future ECI Regulation to be approved. It:

- supports the position of the EP as regards the reduction of the minimum number of Member States to one quarter;

pressdata/EN/genaff/118465.pdf.


115 Ibid.
proposes the reduction of signatures for requesting admissibility to 50,000;
requests greater protection of identity data, while also avoiding too many demands for identification documents, except for a specific request for further information to be supplied from, for instance, Europe citizens not resident in the EU;
suggests institutional cooperation, creating a “help desk” and a guide to using the ECI.

3.4. The Committee of Regions (CoR)

The Committee of Regions too agreed with the EP as regards certain issues:

• reduction of countries involved to a quarter instead of a third of the Member States;
• request to not leave the final decision on the ECI to the Commission but to a committee representative of the EU’s “multiple government” (EC, Council of the EU, and EP);
• the importance, when evaluating the ECI, of respecting community competences, the values of the EU, the criteria in matters of fundamental rights and of subsidiarity.

It also feels it is necessary to create information centres in various places in the EU and technical assistance for translating, which should be taken over by the EC.116

---

3.5. European parties\textsuperscript{117}

The positions expressed by the parliamentary groups and by the European parties can be only briefly referred to here.\textsuperscript{118}

In the Group of European People’s Party in the EP (EPP Group) a request was repeated for an understandable, clear, cheap ECI, for which the EP is asked to play an important role of providing opinions to the EC about the ECIs in progress in order to avoid proposals being rejected without having fully understood the underlying reasons due to poor investigation. The EPP supports close cooperation between the national and European authorities for implementing the ECI, recommends the use of internet for collecting signatures and for the campaign, making a pronouncement on the admissibility before acquiring an excessive number of signatures, and harmonising the procedures. During the vote on the ECI regulation on 15 December the group fully supported the agreement, which had been reached with the contribution of the AFCO co-rapporteur Alain Lamassoure (249 MEPs in favour and 2 abstained),\textsuperscript{119} optimistic on the future of the ECI as it was open to all in-


\textsuperscript{119} EPP Group, Citizens’ Initiative: Easy Access for a Europe Closer to its Citizens. Alain
stances and players of civil society. In the report approved by the AFCO and later by the EP the suggestion of a “wise men committee” suggested by the EPP to start an ECI had not been approved, and had been replaced by an organisers’ committee.

On the necessity of common principles established for collecting and authenticating the signatures, as well as a clear and simple text for activating the initiatives and the use of internet, the declarations of the Group of the Progressive Alliance of Socialists & Democrats in the EP (S&D Group) are consistent, but also emphasized the need for transparency in the funding to avoid the predominance of commercial interests. Additionally, without denying the provision of a million signatures as set by the Lisbon Treaty, its representatives mostly feel that the criteria established by the Regulation should be as open as possible to enable the instrument of the initiative to operate. If the EC seemed to be dragging its feet, the Group was intent on directly enhancing the ECI by using it as an alternative and exceptional political tool for promoting, having launched its own ECI, which will be referred to shortly. As reasserted by the Italian MEP of the Democratic Party, the S&D Group has contributed to include political parties as ECI organisers, to strengthen the role of European political parties in the Community system. The plenary session vote on the ECI Regulation on AFCO (of which the MEP Zita Gurmai of the S&D group was a co-rapporteur), saw the S&D Group vote solidly with 169 in favour and 2 abstentions. The result was hailed with great satisfaction by Martin Schultz, leader of the group.


121 According to Schultz “The European Citizens’ Initiative is a unique opportunity: it is the first time that European citizens can get together and let us know, with one, strong voice if they think that we as European decision-makers are not doing our job properly or missing out on important issues”; P. Aliberti, Political Leaders Must not Be Afraid of Citizens’ Initiative, S&D Group in EP, Newsroom, News, 15 December 2010, http://www.
The Group of Alliance of Liberals and Democrats for Europe in the EP (ALDE Group) unlike the first two main groups of the EP referred to, mainly proposed the creation of an instrument to assist the ECI and emphasized the importance of a preliminary checking of the signatures at the moment of registering. Furthermore, they requested that the minimum number of Member States should be a quarter of all member countries. In July 2010, the British MEP Diana Wallis – vice-president of the EP and one of the promoters of a European Lobbyists’ Register and also on the board of the Initiative and Referendum Institute Europe, a think tank striving towards direct democracy – presented a working paper to the EP Petitions Committee (PETI) in which she proposed replacing the admissibility check after a certain number of signatures had been gathered by a pre-registration check, guaranteeing the right of petitioning also to those below voting age to make young people feel closer to the EU, and establishing an obligation for the Commission to hold a public hearing of supporters of the ECI on reaching a million signatures, so as to create a true dialogue between citizens and European institutions.\textsuperscript{122} As the rapporteur for PETI on the ECI regulation proposal, together with Gerald Häfner (Greens/European Free Alliance – Greens/EFA Group), Wallis also presented a position paper that refers again to these requests and other significant amendments aimed largely at forcing the EC to dialogue with the ECI (a summary of the proposals from ALDE Group and Greens/EFA Group).\textsuperscript{123} The reaction of the EC to these proposals presented at the PETI was immediately negative, at least as regards eliminating the admissibility checks after a certain number of signatures. The prior checking of the ECI was considered impracticable by the EC. According to the declarations made by Michael Mann, spokesman for the


Commissioner in charge of the ECI, the vice-president of the Commission, Maroš Šefčovič, this could risk the EC becoming bogged down in analysing not serious proposals and yet, only by keeping registration and admissibility in two distinct moments, would it allow to debate on the proposed issues in the interest of the organisers of the ECI so as to get their initiatives known and discussed.  

The Commissioner later emphasized that the ECI must “be taken seriously and not create a platform for attacks against European ideas”. However, thanks to the agreed inter-institutional agreement the previous admissibility threshold of 300,000 signatures was scrapped and the Regulation was approved on 20 December, which established that the Commission would carry out a check to determine whether an ECI is admissible at the point of registration. During the final vote in plenary at the EP, the ALDE Group voted solidly in favour of the regulation (78 in favour and no votes against or abstentions). Several members stressed the importance of a number of amendments to the Regulation of the EC and in particular the UK LibDem Andrew Duff maintained that future modifications of the Treaty would be possible.

The Greens/European Free Alliance in the EP (Greens/EFA Group), a European parliamentary group made up of representatives of two separate and progressive European political families (European Greens and European Free Alliance, the party of stateless nations and disadvantaged minorities), underscored the importance of relations with a broader civ-

---

The European Citizens’ Initiative

...il society, also taking into account the positions expressed by the EESC, and the need to guarantee proper support to promoters of the ECI. In July 2010, the Greens/EFA Group prepared its own general orientation,¹²⁷ which includes requests aimed at reinforcing the citizens’ initiative and making it more viable also for the purposes of civil participation in promoting EU political-institutional developments. In order to evaluate the Commission’s ECI Regulation proposal, the Green Working Group within the Greens/EFA Group declared that the ECI is one of the main innovations of the Lisbon Treaty and with a clear distinction from both referenda and from petitions¹²⁸ and suggested:

- pre-checking the signatures and, “in order to guarantee European instead of national issues and at the same time keep the right to initiative accessible for ordinary citizens and not just powerful lobbyists ..., a minimum number of one-fifth of Member States”;
- (concerning the minimum number of signatures per Member State) “a threshold that is degressively proportional to the population of each state within the range of 0.05 and 1 per cent of the population”;
- the participation in the ECI of all European citizens with “a minimum age of 16 for the whole of Europe”, separating the minimum age from the voting age for the EP for greater involvement of young people in politics and in consideration of the non-binding nature of the ECI, and also that the participation of “third country nationals who are residents of the EU should not be deprived of the right to sign an ECI and to draw the attention of the Commission on the concerns of people living in the EU”;
- eliminating the request for personal identification numbers;


¹²⁸ “The European citizens’ initiative is not to be confused with a petition nor with a referendum. It is nothing more (and nothing less) than a non-binding instrument for agenda-setting by the citizens of the EU” (bold in the text) and “it only applies to issues within the European Unions’ fields of competence and legislative powers”, see Green/EFA Group, Green/EFA Group Position Paper. Implementation of the European Citizens’ Initiative (ECI), op. cit. (bold parts in the original text).
• 24 months for collecting the signatures (twice as long as suggested by the EC);
• creating an organising committee for the ECI with at least 7 members from three different countries;
• earmarking adequate facilities to ensure translations, legal consultancy, in order to avoid limiting access to the ECI exclusively to large organisations;
• the inadmissibility of the ECI only decided “on the basis of clear legal examination. An ECI should be rejected if it is in breach of Art. 6 TEU, the Charter of Fundamental Rights, and the European Convention of the Protection of Human Rights and Fundamental Freedoms [ECHR]”;  
• the possibility of appealing to the CJEU against the final decision of the EC on the ECI;
• “the initiators of an ECI have the right to be heard by the Commission in a public hearing”;
• “the EP (or its committees) is free to put the issue on its agenda and to also hold a hearing at any given time”;
• the admissibility of amending Treaties as a purpose of the ECI.  

The Greens/EFA Group and ALDE have proved to be the most committed political forces in promoting and modifying the draft EC Regulation,

---

129 “The precise wording of Art. 11 (4) ‘... a legal act of the Union is required for the purpose of implementing the Treaties’ leaves room for interpretation of whether treaty amendments fall under the scope of the Citizens’ Initiative. However, it has never been the intention of the promoters of Art. 11 (4) to restrict the ECI purely to secondary legislation. EU treaties are very detailed and complex. In contrast to national constitutions, they include numerous specific policies, tools, and instruments that, in the Member States, would be part of lower legislation. Greens do favour a more generous interpretation in order to allow citizens to play an active role in some of the most important political issues and to genuinely enhance the citizens’ initiative as an instrument to ‘reinforce citizens’ and organised civil societies involvement in the shaping of EU policies’, Article 11 (4), of the Treaty on European Union; EC, Green Paper on a European Citizens’ Initiative (COM [2009] 622 final), p. 3. ‘On the other hand, ECIs that propose Treaty amendments can become by no means a loophole for infringements of the Charter on Fundamental Rights or the ECHR. At the end it will however be up to the European Court of Justice to decide on concrete cases how far it stretches the concept of implementing the Treaties in its verdicts’. Ibid.”
with a view to making it less restrictive.\textsuperscript{130} This group also played an
important role in information.\textsuperscript{131} Jointly with the ALDE the Greens/EFA
Group voted solidly in December 2010 for the ECI Regulation at the EP
(52 in favour and no votes against nor abstentions).

The speeches by the \textit{European Conservatives and Reformists’ Group (ECR Group)}
criticised the limits imposed according to the prevailing in-
terpretation of the Lisbon Treaty about which issues ECIs can deal with
because, in their view, answers should unreservedly be given also about
other issues not within the Commission’s scope. Specifically, the rep-
resentatives of this new group, set up in July 2009, raised the question of
transparency, foreseeing a strong risk of domination of this participa-
tory tool by the more structured organisations with greater economic and
social resources, the more influential lobbies able to afford the expense
of organising and running campaigns, which would exclude access to the
ECI by groups of individual citizens or the smaller associations with li-
mited funds.\textsuperscript{132} The ECR Group expressed its support for an ECI
launched in February 2010 by the Bavarian Christian Democrat MEP
and member of the EPP Group, Martin Kastler, who proposed making
Sunday a holiday in the entire EU, for dedicating to the family and le-
isure, supported by various Christian family organisations, especially the
Catholic ones, and also by the Commissio Episcopatum Communitatis
Europensis – Commission of the Bishops’ Conferences of the European
Union.\textsuperscript{133} Furthermore, faced with the possibility of increased EU re-

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{130} G. Häfner, PETI co-rapporteur has been the most active of the so-called Gang of
Four consisting of the four rapporteurs of the first four political groups at the EP, two
from AFCO (Gurnai, Lamassoure) and two from the PETI (Wallis, Häfner); see Greens/
EFA Group, \textit{European Citizens’ Initiative: European Democracy Takes a Step Forward as
greens-efa.eu/cms/topics/dok/365/365014.the_european_citizens_initiative@en.htm.
\item \textsuperscript{132} ECR Group, \textit{Press Release, EU Citizens Initiative Should Give Power to the People,
eu/eu-citizens-initiative-should-give-power-to-the-people-not-to-lobbyists-and-
interest-groups-news-91.html
\item \textsuperscript{133} \textit{ECI, Mum and Dad Belong to Us on Sunday!}, http://www.free-sunday.eu/en/con
\end{itemize}
\end{footnotesize}
sources – as suggested by the EC – the Belgian, Derk Jan Eppink, Conservative and Reformist MEP, has prepared the ground for a European Citizens’ Initiative (ECI) against EU taxation. The ECR Group wants to make it easier for people to sign up to a petition, without having to provide passport numbers or ID card details and proposed that an initiative will only require signatories from a fifth of EU Member States, but has accepted the compromise reached, that is, in a quarter of EU Member States and nearly all its members voted in favour of the modified ECI regulation approved by the EP in December 2010 (40 in favour, one against and one abstention). The ECR Group spokesperson on the AFCO Committee, Ashley Fox, MEP, stated that the ECI would be a test to see whether the EC is really serious about listening to citizens.

The European United Left/Nordic Green Left European Parliamentary Group (GUE/NGL Group) – mainly critical about the resolution presented to the EP by the rapporteur Kaufmann (despite his belonging to the same GUE/NGL Group) – drew attention to the need to guarantee the participation of citizens, believing that the proposals from the EC and the Council were insufficient. According to several of its representatives, the ECI should be as accessible as possible by further reducing the age limit and eliminating the request for personal identification documents. Furthermore the Group insisted on the need to take account of citizens’ wishes also in relation to their opposition to current developments in the European integration and to the referenda held about the


Treaty, which adopts a Constitution for Europe. It then put forward the idea of holding a debate at the EP about the ECIs before they are approved in order to seriously consider the proposals and then to issue a declaration, also involving a modification to the EP regulation and eliminating bureaucratic obstacles so as to make citizen’s participation less frustrating. The GUE/NGL Group suggested amendments to the ECI Regulation – the latter being the outcome of an inter-institutional compromise and voted in the EP Plenary on 15 December 2010, with a special reference that all EU citizens be allowed to sign, rather than just resident EU citizens. However, a large majority turned down the proposal as it was voted by the Group and the Greens/EFA Group only. One of its members, Helmut Scholz, MEP, said that he would return to this question when the regulation was revised in three years’ time.\(^{137}\) The GUE/NGL mostly voted in favour of the final document (19 in favour, 2 against and 9 abstentions) considering it a “major step forward” with regard to the Commission’s proposal.\(^{138}\)

Support for the ECI was forthcoming from the Europe of Freedom and Democracy Group in the EP (EFD Group) since they consider it could raise awareness in citizens about European questions far more than many costly EU information campaigns of only limited impact led by the EC, but they also hope for clear, understandable and accessible regulations. Two-thirds of the EFD Group voted in favour of the Regulation as amended by the EP in December 2010 (14 in favour, 6 against and 2 abstentions).

Finally, there was deep scepticism among the Dutch Non-Attached MEPs both about the instrument and with the matters that the ECI could cover. They criticised the EU bureaucracy and the illusion of democracy, which the ECI aims to construct – in practice, it is proposing a pointless initiative whose purpose is to hide the centralising nature of the EU. However a favourable attitude to the amended Regulation the EP voted


in December 2010 was also registered among the Non-Attached MEPs (12 favourable, 4 against and 7 abstentions)

It is to be remembered that particularly the ALDE and the Greens/EFA Group pay attention to the idea of the ECI, promoting dialogue and exchange with the civil society on this matter by means of conferences and hearings. In spring 2010 The Green European Foundation, linked to European Greens and the Greens/EFA Group, announced that a guide to the ECI was about to be issued; it was published in November 2010 as the first Handbook on this issue after the Lisbon Treaty entered in force.

Additionally, the possibility that the same parties will be direct promoters of the ECI is worth noting: this is already happening, according to what was announced in May 2010 by the German and Austrian Social Democrat parties, members of the Party of European Socialists which, in September 2010, began a campaign, and an ECI in order to establish a regulating of financial markets and a European tax on speculative transactions so as to combat the contested inertia of the popular, conservative and liberal-democrat forces. In view of a debate at the EP aimed


at guaranteeing pluralism in the EU, and thus directed against the concentration of power in this sector – which mainly refers to the Italian situation and boycotted by the centre-right parliamentary groups of the EP – some representatives of the Greens/EFA Group expressed their intention to launch an ECI for promoting European regulations safeguarding freedom of information.142

If the parties use this instrument, especially where major issues are at stake, it is still a positive sign that can help reinforce the cooperation between the national parties belonging to the European parties. It is also to be hoped that they will bring about constant cooperation with European citizens by performing a supporting role to larger groups, alliances and networks in order to broaden and reinforce a European political action at several levels. By doing this, the European parties could create greater consensus around projects and proposals, obtaining more importance within the representative political arena at the level of the European, national and regional parliaments. The ECI could therefore be a useful meeting area for revitalising the European political landscape as long as the citizens and not just the political parties feel they have a voice in the matter. In this respect, the political parties could give a worthwhile contribution to civic initiatives by performing a politico-cultural educational action through the various European political foundations. These refer to


non-profit organisations that are independent but ideologically linked to the six main European political parties within the European Network of Political Foundations (ENoP), a network set up in 2006 and funded since 2009 by the EU to help promote democracy, cooperation in development and political dialogue and to establish dialogue and communication both with the EU institutions and with civil society (currently consisting of 63 members including foundations, research institutes and think-tanks distributed around the EU countries).

3.6. Civil society

Since it is impossible to represent the host of diverse situations covering a myriad of subjects, reference will be made to a selection of proposals made by the NGOs directly promoting the ECI. Such NGOs have formed an alliance that takes its name from the Initiative.

Right from the moment of consultation, the ECI Campaign disputed the approach of the initial proposal from the EC, which was proceeding along similar lines as for the instruments of the agenda-setting initiative existing on a national basis. According to the assessment of this campaign, to be established the ECI should have received more support than these national initiatives, which often differ greatly in nature and character or in terms of rights to legal assistance, translations, partial reimbursement of expenses, and so on. Additionally, the ECI should have fewer time constraints for collecting signatures than the national initiatives (even more so when considering, for instance, that Swiss civic initiatives allow 18 months for collecting signatures) and require a smaller number of signatures. In this respect neither the EC Regulation nor the text subsequently voted on by the EP meet these requirement.


144 The ECI Campaign is one of those already mentioned among the first informal ECI, created by various NGOs for combating euro-scepticism and hostility towards the process of institutional reform after the French and Dutch referenda in May and June 2005 which prevented the Treaty for a European Constitution being ratified; website http://www.citizens-initiative.eu/.
Seven amendments were suggested for improving the Commission’s Regulation proposal, and specifically to:

1) Clarify the EC’s follow-up to successful ECIs (“Each successful ECI should result in a public hearing process where the Commission explains its response to the ECI in a transparent way directly and in exchange with the organisers of an ECI. As is the case for a legislative initiative from the European Parliament, the Commission should also be given a time limit in which to issue a legislative proposal”).

2) Simplify the signature form and eliminate ID number requirements (personal identification card number: ID card, passport, social security card).

3) Simplify the admissibility check (“In order to avoid huge frustration, we therefore urge the institutions to do the legal admissibility check in the beginning after successful registration [...]. In other words, the two admissibility checks shall be merged; otherwise this instrument remains too bureaucratic and non-transparent”).

4) Consider ECIs that propose treaty amendments as admissible (“It needs to be explicitly clarified that ECIs may not be restricted to secondary law (policy proposals). Otherwise citizens would be denied to participate in the most important political issues. Given that the

---

145 Regarding this point, Kaczyński believes that, even if the ECI were not considered inadmissible due to not being within the scope of the EC, the Commission should specify who can deal with the problem and monitor and supervise the developments of the proposal. Therefore “the EU’s decision-making process would distinguish between the formal exclusive competence of the Commission to initiate a legislative process and a political right of initiative. This political right of initiative would then belong on an equal basis to the European Commission, the European Council, the European Parliament and organised civil society, through the European Citizens’ Initiative”; P. M. Kaczyński, *The European Citizens’ Initiative: A Proper Response from the Commission*, CEPS Commentary, 8 January, 2010, [http://www.ceps.eu/book/european-citizens%E2%80%99-initiative-proper-response-commission](http://www.ceps.eu/book/european-citizens%E2%80%99-initiative-proper-response-commission); [http://www.ceps.eu/ceps/download/2841](http://www.ceps.eu/ceps/download/2841). This position is also emphasized by T. Benedikter who points out that, if the ECI regarded the area of foreign security and defence policy in which the Commission has no right of legislative action, the Commission should pass this proposal, without formal recommendation, to the Council whose task would be to take a formal position, see T. Benedikter, *Più democrazia per l’Europa. La nuova Iniziativa dei cittadini europei e proposte per un’Unione europea più democratica*, Lavis (Trento), Arca Edizioni, 2010, p. 56.
Commission may propose treaty amendments, it should be possible to launch ECI s requiring treaty amendments to implement").

5) Extend the time limit to 18-24 months.

6) Reduce the minimum number of Member States to 5 ("A European Party only needs members from seven Member States. Given that ECI is simply an agenda-setting initiative that will later follow standard EU legislative procedures, signatures from at least 5 member (1/6) states would be sufficient").

7) Provide practical support to ECI organisers ("Support prior to signature collection should include comprehensive information on how to conduct an ECI and legal advice. Once the ECI has been declared admissible, official translation of the text into all 21 EU official languages should be provided. To promote transnational citizen involvement, travel vouchers and free meeting space for citizens from different countries to meet to discuss the ECI topic should also be provided").

The final text of the Regulation approved by the EP, and which will enter into force in 2012, has taken on board the issues raised in points 1 and 3, and partly in points 6 and 7.

As well as promoting amendments to the Regulation proposal, it

---

146 See Initiative for the European Citizens’ Initiative, Welcome to the ECI-Campaign!, 24 July 2010, http://www.citizens-initiative.eu/?p=272. Regarding the proposals of the Campaign and of one of the main organisations, Mehr Demokratie e.V., see Benedikter, Più democrazia per l’Europa, op. cit, especially Dieci regole fondamentali per una legge favorevole all’attuazione dell’ICE (10 Fundamental Rules for a Law Implementing the ECI), p. 69 (proposed by Democracy International, http://www.democracy-international.org and Mehr Demokratie). The author also proposes reforms for introducing the referendum institutes and a federal model for a democratic Europe with three chambers (EP, Chamber of the States with representatives elected by national parliaments, Chamber of the Regions with a representative elected by each Regional council – Regions NUTS 2).


147 See the pressure campaign by JEF (Jeunes Européens Fédéralistes, Young European Federalists) with open letter to be sent to MEPs, Commissioners, Heads of State, Ministers of Foreign Affairs soliciting amendments similar to those presented by the ECI campaign: JEF, Stepping up the Campaign to Inject More Democracy into the EU, http://jef.communicate-europe.co.uk/activities/campaigns/european-citizens-initiative/; JEF,
also campaigns for European civic initiatives already developed (as mentioned earlier) and new ones (not infrequently with campaigns that involve actions for increasing awareness among the public) on the widest range of subjects, of an informal nature but which could, in the future, be registered and possibly acknowledged by the EU. Even though the regulation setting up is yet to be finalised, the first ECI could become the one launched in March 2010, promoted by Greenpeace, calling for a moratorium on all new Genetically Modified (GM) crop production in Europe until a proper safety regime has been put in place. The initiative follows the authorisation by the EC of a BASF antibiotic-resistant GM potato. According to this NGO, one million signatures from across every country in the EU were collected by 28 September and “signatures continue to pour in from across Europe”. The Commission received signatures in October 2010 and declared that the petition can be given full consideration. After the official request there has to be an “admissibility test” in order to become an effective ECI. The ECI was officially pre-
sented to the EU Health Commissioner, John Dalli, on 9 December, six
days before Parliament approved the new citizens initiative, casting the
legitimacy of their petition into doubt. Since the ECI Regulation will not
be in force until 2012 and conditions or requisites included in the ECI
Regulation are not yet applicable, the initiative is still classed as a euro-
petition and signatures may have to be collected again for the procedure
to be valid. However this initiative not only meets, but also exceeds
many of the ECI procedures and conditions agreed by the triologue (it is
over a million signatures 1,030,308 to be precise, from all 27 Member
States, collected well within a year, and reaching country quotas in
twelve countries - five more than the minimum, with all signatures veri-
fiable according to Greenpeace).\textsuperscript{150} A legal opinion by Ludwig Krämer, a
German legal expert and maximum expert of European environmental
legislation, formerly in the employment of the EC from 1972 to 2004,
challenges the above and states as follows:

Article 11 TEU with regard to citizens’ right of petition is uncondi-
tional and sufficiently precise. Therefore it is, at least in October
2010, directly applicable. The omission by the European Parlia-
ment and the Council to adopt the implementing provisions under
Article 24 TFEU does not affect the EU citizens to exercise their
right under Article 11 TEU.\textsuperscript{151}

\textsuperscript{150} For further details see: EC, GMOS: Commissioner Dalli receives a petition from Green-
peace and Avaaz, Midday Express -- News from the Press and Communication Servi-
dalli/docs/GMO_Midday_GreenpeacePetition_09122010_en.pdf; Avaaz.org, Greenpeace,
Q&A European Citizens’ Initiative, http://www.greenpeace.org/raw/content/eu-unit/
press-centre/policy-papers-briefings/eci-QandA-9-12-10.pdf; A. Willis, “EU Receives
euobserver.com/885/31474; “Green Groups Jump the Gun on Europe’s Million Signatu-
swire.com/ens/dec2010/2010-12-16-01.html.

\textsuperscript{151} L. Krämer, Legal opinion on European Citizens’ Initiative Dec 2010, Madrid, 7 Oc-
tober 2010 - Addition of 27 November 2010, Greenpeace European Unit - Policy Papers
However, during a press conference that followed the EP vote in favour of the Regulation on 15 December 2010, the vice-president of the Commission Šefčovič said that this petition is certainly “politically very important” but it cannot be legally considered as an ECI because the Regulation establishing the rules was not yet in force and the EC had to defend “the general European interest”, enforcing a strictly legalistic approach on this point. EP positions do not all agree: according to Diana Wallis “by launching this petition at the time that negotiations on the ECI regulation were still taking place, the NGOS had willingly taken this risk”. Vice versa Häfner appealed for the approach to be more political than legalistic, stating that that “the citizens’ petitions that succeeded in obtaining one million signatures should be taken into very serious political consideration, even if they do not yet fulfil the legal criteria of an ECI”.152

The Forum of the European Civil Society has promoted an ECI-Water Platform in order to use the ECI Regulation to propose amendments to the existing European Directive no. 2000/60/EC,153 concerning the Union action in the field of water policy.154

After Japan’s worst nuclear accident at Fukushima nuclear power plants arising from the Great East Japan earthquake and tsunami on March 2011, an ECI to induce the complete withdrawal of nuclear energy could be proposed, calling also for an intergovernmental conference to abolish European Atomic Energy Community (Euratom).155

In view of the final debate on the EC draft Regulation on the ECI, the


Initiative for the European Citizens’ Initiative had launched an online petition in support of some amendments it had already put forth. Its director later commented on the negotiations and EP debate highlighting the need of a mandatory hearing for ECIs (subsequently included in the Regulation) and to exclude the request for ID card numbers for the signature (not accepted). The European Citizens’ Action Service (ECAS) publicised a letter it had circulated among MEPs where they suggested extending the time to collect signatures, introducing less stringent procedures for verifying signatures to avoid “discouraging and limiting the chances of success for many initiatives”. The letter contained the results of a survey carried out by the same NGO, which showed how 66 per cent of all interviewees “could refuse to sign an initiative if they were asked to provide their identity card or passport number”. Last, the letter called for a conference with the EC and the

---

156 The text of the petition is as follows: “To all EU governments, members of the EU Parliament and the President of the European Commission: ‘As EU citizens who want to engage in European politics, we call on you to adopt effective regulations for the European Citizens’ Initiative (ECI). Initiatives should be given enough time (18 months), and they should not require signatures from more than one-fifth of the Member States. Demanding ID or passport numbers from signers is an unnecessary hurdle that should be avoided. Citizens must be able to present initiatives in a public hearing with the Commission. The ECI must encourage and facilitate citizen participation’”; Initiative for the European Citizens’ Initiative, Please Support Our Petition for ECI!, 25 November 2010, http://www.citizens-initiative.eu/?p=500; EU: Time for People-Powered Democracy!, http://www.avaaz.org/en/eu_citizens_initiative/?c=840743988&v=7623; Avaaz Support ECI Campaign and Launches Petition for a Usable Citizens’ Initiative, Press Release by the ECI Campaign, 25 November 2010, http://www.citizens-initiative.eu/?p=588. The EP’s AFCO, on 30 November 2010 unanimously adopted its position on the ECI which included all of petition’s points – except for the signature collection deadline which remains twelve months; Compromise ECI Regulation Requires Mandatory Public Hearings... but Allows Collection of ID Numbers, 1 December 2010, Press Release by the ECI Campaign, http://www.citizens-initiative.eu/?p=621.


159 Ibid. See also Survey on the Personal Identification Data Requirement in the Citi-
ECI organisers.  

Academics have also put forward the idea of broadening the instrument for an ECI to include national parliaments. However, as regards subsidiarity – also taken to mean closeness to citizens – and how this pans out with the new instrument for participation represented by the ECI and the new regulations contained in the Lisbon Treaty, some authors state that the participatory democracy allowed by an instrument such as the ECI does not generally offset the lack of democracy in the EU since the development of a fully legitimised and representative EP is the goal necessary for democratising the EU. Others, however, urged the EU to have more courage for overcoming the EC’s Regulation proposal with the aim of meeting the requests of the ECI Campaign and various NGOs. Specifically, a very critical study on the draft EC Regulation on ECIs commissioned by the S&D Group and carried out by the European Union Democracy Observatory (EUDO), under the direction of Alexander H. Trechsel and Bruno de Witte (European University Institute), re-


161 “It would have been worth considering, either in the Convention or in the Intergovernmental Conference, whether the national Parliaments (too) ought to be given the right to invite the Commission to propose EU laws. National Parliaments are directly and locally elected, parliamentarians live in their constituencies in contact with citizens, there is a working inter-parliamentary network that can facilitate production of an initiative (See, e.g., Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC), http://www.cosac.eu) and parliamentarians are experienced legislators. If the National Parliaments were found incapable of increasing the responsiveness of Union politics, perhaps that would have been the better time to experiment with continent-size referenda on petitions”; J. Suchman, “European Citizens() (May Soon Take The) Initiative”, in Columbia Journal of European Law Online, Vol. 16 (2010), p. 64 (pp. 59-65), http://www.cjel.net/online/16_1-suchman/; http://www.cjel.net/wp-content/uploads/2010/05/Suchman_online.pdf.


sulted in a new proposal aimed at strengthening European civil society participation. The authors believe that “the major problems for the implementation of the ECI as the new participatory democratic flagship of EU institutions is that it is very hard to distinguish from the existing petition right to the European Parliament”. To avoid the ECI becoming “a toothless pseudo-direct and pseudo-democratic tool” they suggest that the ECI should be supplemented with a consultative EU-wide referendum to be requested by the EP with a simple majority.

A balanced analysis therefore leads to concluding that the ECI can be a complementary instrument to representative democracy.

Compared to the Regulation proposed by the EC on 15 December 2010, the adoption of the amended ECI Regulation which followed an inter-institutional compromise as above described, was welcomed by most of the European Civil Society. In spite of a limited number of suggestions having been included in the adopted version of the Regulation (well-balanced registration procedure featuring a citizens’ committee, the wide signature-gathering options, the encouraging hearing privileges for successful initiatives), excluding others (such as extending the period for collecting signatures and the elimination of ID requirements, etc.) several commentators consider the coming into force of the ECIs as from 2012 as the beginning of a new season and of new challenges for


165 Ibid., p. 19.

166 “The adding of a consultative referendum to the ECI regulation is on our view legally feasible, thus it would be enough to include it in the ECI-regulatory framework”; Ibid., p. 19.

167 See V. Cuesta Lopez, The Lisbon Treaty’s Provisions on Democratic Principles: A Legal Framework for Participatory Democracy, op. cit. This author said: “we must conclude that participatory governance is not a definitive solution to improve the democratic quality of EU: participation of civil society organizations in the policy-making can never replace widespread political participation through representation. Direct participation and political representation should thus be seen as complementary to democratize the EU”; Ibid., p. 138.
the ECI – to be amended and corrected in time – seeing it as a useful and effective tool in pursuing the battle for direct democracy and the democratization of the EU. "The ultimate success or failure of the ECI, however, will depend on how the Commission responds to a successful ECI”, declared Carsten Berg, campaign director at the ECI Campaign after having said that the ECI “is the first transnational instrument of participatory democracy in world history”. A far-reaching educational and information process is required as are archives and practical work to inform European citizens of the new instrument.

4. CRITICAL ANALYSIS OF THE EUROPEAN COMMISSION’S REGULATION PROPOSAL AND THE DEBATE IN PROGRESS

The ordinary legislative procedure (co-decision) set forth in Art. 24 TFEU began with the regulation proposal made on 31 March 2010 by the EC, following the formulation of a Green Paper in November 2009 and a public consultation on the subject, with speeches by the institutions and the bodies of the EU.

168 According to Berg "One million citizens cannot be ignored. A successful ECI must have consequences and lead to political decisions. Only when citizens realize that they are actually being heard will this instrument strengthen the democratic engagement of citizens. Otherwise it will simply lead to more frustration.”; see Initiative for the European Citizens’ Initiative, ECI Campaign Welcomes the Approval of the ECI Regulation, http://www.citizens-initiative.eu/?p=646.


Here we shall examine the most important profiles in the light of the Commission’s proposal and the alternative solutions emerging from the debate or within the bodies of the EU.

4.1. Minimum number of Member States

This is a point that is crucial for the success of the ECI, and yet heavily debated and controversial.

As described above, the Commission’s proposal establishes one-third of the Member States as the significant number required by Art. 11 TEU, unlike that requested by the EP (1/4) and by various political powers and movements of the civil society that were asking for even lower proportions.

It is clear how, by choosing not to set a minimum number of States, the Treaty leaves it to the political discretion of the legislator to reconcile the need for the ECI to be actually supranational and the difficulty in implementing it. Due to this political discretion, the analogical reasoning used by the EC in support of its choice does not seem to have any basis.

In fact, the EC stance is based, “on other provisions of the Treaty, according to which nine or one-third of Member States is sufficient to ensure the representation of a Union interest. It is the threshold used in the provisions on ‘enhanced cooperation’ which provide that ‘at least nine Member States’ must participate.”¹⁷¹ However, a first criticism noted that Art. 76 of the TFEU states a different proportion, a quarter of the Member States: “The acts referred to in Chapters 4 – Judicial Cooperation in criminal Matters – “and 5” – Police Cooperation – “together with the measures referred to in Art. 74 which ensure administrative cooperation in the areas covered by these Chapters, shall be adopted: (a) on a proposal from the Commission, or (b) on the initiative of a quarter of the Member States”).¹⁷²

In any case, it is easy to counter the EC reasoning with the fact that,

⁷² See Ingravallo, op. cit., p. 255.
where the Treaty indicated minimum number of States, it did so explicitly. While in Art. 11.4, this choice was not made, and a more open-ended approach was chosen ("a significant number of Member States"), it is clear that this was to avoid making the choice inflexible in the primary source of EU law. This leaves it open to the legislative acts of the EU to choose the threshold, according to the historical-political moment where and when the decision is made the first time or, later on, amended. With a view to favouring the implementing of the ECI, it appears reasonable to adopt the lowest of the thresholds possible. An excessively high percentage of States could undermine the presentation of proposals that, although supranational, would only be of relevance to certain specific geographic areas where there would be more interest in offering support, while adhesion elsewhere would be solely founded on the sharing of an opinion. We refer here to a proposal connected with the Mediterranean area (fewer than 9 countries but more than 6), although likewise this could be said for other areas sharing specific geographical features or similar production activities, etc. The instrument of the citizens’ initiative specifically aims to protect minorities who would not otherwise be able to bring their problems to the attention of the European legislator, which supports the above. The compromise text of the Regulation approved by the EP with a minimum number of seven Member States is an actual improvement and a relatively satisfactory solution to avoid excessive restrictions in implementing ECIs.

4.2. Minimum number of signatures per Member State

This important aspect seems to have been resolved consensually and in keeping with the objectives of the ECI in Art. 7 and in Annex I of the Regulation proposal formulated by the EC, which indicates “a threshold for each Member State, which is degressively proportional to the population of each State with a minimum threshold and a ceiling”. Indeed, if a State is to be included in those that help to achieve the significant quota required by the Treaty, it is right to say that a minimum number

\[173 \text{Ibid., p. 5.}\]
of adhesions among its citizens is required. However, purely proportional mechanism immediately appeared unfair because of the difficulty in gathering adhesions grows exponentially and not proportionally. In fact, “a set percentage for all Member States is not equitable, as it is much easier, for instance, to collect statements of support from 1,000 citizens (representing 0.2% of the population) in Luxembourg than 160,000 in Germany, and therefore easier for small Member States to count rather than large ones”.¹⁷⁴ This criterion of raising the number of signatures required in the States with fewer inhabitants and lowering the number in those with large populations, makes the sharing of the adhesions between the various countries contributing to reach the threshold of States fairer. Obviously, it remains possible to collect adhesions also in States where it is not possible to reach the minimum number of signatures.

4.3. The initial step: formulation, registration, and admissibility of the ECI

Among the various aspects regarding this phase, the choice of the moment when admissibility of the ECI is checked is especially important. In this case, the options range between two very distant extremes. On the one side, those (civil society, political forces, and also the Council and the EP) that consider ECI’s admissibility should be evaluated immediately, in the moment of its registering, and therefore before beginning to collect signatures, or otherwise after collecting a very low number of signatures, much lower than that proposed by the EC; on the other, where the EC, in its draft Regulation, states that evaluating the ECI’s admissibility is to be done on reaching 300,000 statements of support from signatories coming from at least three Member States.

There are points in favour of both positions. An immediate admissibility check or, at least, an adhesion threshold much lower than that proposed, stems from the intention not to discourage turning to the idea

¹⁷⁴ Ibid., Explanatory Memorandum, 2.2. Ensuring that Citizens’ Initiatives Are Representative of a Union Interest, p. 3.
of the ECI due to the risk of seeing a huge organisational effort defeated by inadmissibility. On the other hand, the EC’s fear of being submerged by ECI requests that could never gain widespread consensus or may even be spurious or provocative is also understandable. Less understandable, however, is the motivation used by the EC in the Explanatory Memorandum in which a preliminary check is not included “as a major objective is to promote public debate on European issues, even if an initiative does not finally fall within the framework of the legal powers of the Commission”. In fact, since the ECI is a legal provision included the Treaties, it does not seem appropriate to endorse a discretionary regulatory choice just for the purpose of facilitating its different instrumental use.

In order to contribute to the launching of the new instrument, it would seem appropriate to maintain admissibility thresholds as low as possible, and this applies to all the points where minimum thresholds are provided for. This is even more the case considering that the Regulation proposal is aware of the need to evaluate the results of applying this legal institution later. For this purpose, there will be a review clause in which it is stated that, in five years (in the ECs proposal, but currently only three according to the Council and in the end incorporated by the EP in December 2010), the EC shall send a report to the EP and the Council, evidently for the purpose of making amendments to the Regulation text. To ensure the ECI’s success, in an experimental stage, it would seem reasonable that the discretionary choices facilitate the use of the new instrument, since it is very likely that, when rethinking the ECI, decisions could be taken aimed at curbing any abuses.

These considerations favour an admissibility check that is either immediate or on collecting a limited number of statements of support. The former was the one that in the end was included in the Regulation and will come into force in 2012. If the latter had been implemented, any amendments to the initial text of the ECI should have been agreed by the promoters, in order to do not undermine the first signatures collected.

This second hypothesis is mentioned because, albeit in a controversial manner it could be use to retroactively solve the issue of the aforementioned Greenpeace and Avaaz Europetition on banning GMs: in fact although the petition was presented before the entry into force of the Regulation, it could meet minimum required standards and thus, following verification and amendments, it could be accepted without having to collect the signatures again.

The evaluation of the ECI’s admissibility must certainly be based only on parameters of legality. In this respect, the proposal made by the AF- CO of the EP in the working document seems acceptable: this is to assign the admissibility evaluation firstly to a committee of experts, leaving the EC with a sort of confirmation of the evaluation, which if it were a negative opinion (or there were no response), could be followed, by an appeal by the promoters to the CJEU. The question of the terms of appeal against the EC is more complex in terms of the final decision, and so it will be referred to with more attention at such time. However, the Regulation voted by the EP has not accepted such proposals.

Last, from several quarters the need to provide some form of support to the promoters of the ECI was stated, particularly as regards the translations and the legal consultancy. We can imagine what would happen if the texts for gathering statements of support were not accurately translated and did not correspond to the original. Although the promoters are responsible for translations, it is also true that this kind of support would be called for to ensure the ECI is established. Cost constraints in the EU budget for such a service have to be considered and its public benefit would only be confirmed if the initiative is successful. As mentioned in the foregoing AFCO document providing some standard services, with the promoters paying a security deposit (or a guarantee), which would only be refunded if the required adhesions are reached, could be a way to reconcile needs. However, the “Draft Commission Statement” Annex to the Regulation approved by the EP in December 2010, states that translation costs must be covered by the organisers and that “before accepting the inclusion of new language versions in the register, the Commission will check that there are no manifest and significant inconsistencies between the original text and the new linguistic versions of the title, the subject-matter and the objectives” (Annex -

134
Draft Commission Statement, II).

4.4. Collection of signatures

There are two key issues in this respect:
1) How signatures are collected.
2) When they are collected.

1. The possibility of being able to collect the signatures electronically is paramount. In this respect, the Council and the EP run along the same lines in urging the EC to provide dedicated software. This aspect is quite important because the reliability in gathering the signatures needs to be strictly safeguarded, whether in traditional or electronic form. While maintaining as simple a system as possible, questioning whether the number of signatures required has actually been reached must be avoided. Even a suspicion circulating around would be enough to seriously discredit the ECI instrument. In this respect, the EP-approved Regulation has incorporated these matters and has established that “the Commission shall set up and thereafter maintain open-source software incorporating the relevant technical and security features necessary for compliance with the provisions of this Regulation regarding the online collection systems. The software shall be made available free of charge” (Art. 6 – Online collection systems, para 2, c. 4).

Hence, the worries about including IDs in the statements of support (both electronic and paper) must be played down. The risk that this aspect could deter potential subscribers seems less important than the need to guarantee the reliability of the ECIs, avoiding even just the suspicion that the names could partly have been taken from the telephone book.

Last, the objections concerning subscriber data protection are of no merit: although they are certainly sensitive data because they can give an insight into the political leaning of the subscriber, protection must be guaranteed by correctly conserving them and not by making them unascertainable, as would be the case if it were sufficient to just provide (as has been proposed) name, surname and address. As mentioned this provision was not modified in the Regulation approved by the EP in De-
cember 2010 and in the final text of the Regulation EU No. 211/2011.\textsuperscript{176} However, it is worthwhile mentioning that the ID card requirements of Member States in order to verify the authenticity of signatures won’t be mandatory differing significantly from country to country. In fact two distinct forms of statements of support have been foreseen: one for Member States which do not require the provision of a personal identification number/personal identification document number and another for the member states which require it.

2. As regards the time period in which the signatures can be collected, set at twelve months, it has to be noted that in this case the decision is extremely discretionary. In order to encourage the starting of the legal institution, it would be useful to provide a longer period, with the possibility of reducing it during reviews. However, as already mentioned, this was not possible because of the lack of an agreement among the inter-institutional triangle and as a result the Regulation adopted by the EP has not extended the time allowed for signature collection.

4.5. The final decision

At the end of the procedure, the EC will have to make its decision. The regulation project requires that the EC issues a statement, within four months – then reduced to three in the Regulation approved by the EP – motivating its conclusions about the initiative and any action to be taken. The AFCO working document offers a detailed proposal in largely acceptable terms, to make the follow-up of the ECI clear and transparent, even if the EC decides to not go ahead with the ECI.

However, although the procedures of the ECI can be checked, forcing the EC to meet various deadlines (as does the AFCO document), the final decision rests exclusively with the EC and that, according to the Treaty,

\textsuperscript{176} See Art. 12 “Protection of personal data”, para 1 of the of the Regulation EU No. 211/2011, \textit{op. cit.: “1. In processing personal data pursuant to this Regulation, the organisers of a citizens’ initiative and the competent authorities of the Member State shall comply with Directive 95/46/EC and the national provisions adopted pursuant thereto”}. 
could not be otherwise.

Furthermore, the EC is under no legal obligation whatsoever to present a proposal following an ECI.\textsuperscript{177} This is based on a literal interpretation of Art. 11 (where it speaks of the “initiative of inviting the EC, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties”) and a systematic interpretation referring to the same power of inviting to make a proposal already granted to the EP and the Council.

As a result, the EC has the obligation to motivate its decision and this allows a judicial control if there is an illegitimate decision (even when resulting from a motivational failing) and a political check, both by institutions (the EP, the Council and the Member States) and by public opinion, political parties and social groups, etc.

If there are no specific forms of action, the judicial check can make use of ordinary procedures,\textsuperscript{178} (especially for no stated reasons), or misuse of powers or infringement of general principles. Considering that this is a strictly political choice, it is unlikely that the CJEU can intervene and affect the EC’s discretionary powers. However, a total rejection of an ECI due to political dissent seems unlikely because, politically, it would be very difficult for the EC to decide not to go ahead with a formally admissible request, as can be seen from previous cases referring to forms of existing invitations to make proposals.\textsuperscript{179}

The Regulation approved by the EP in December 2010 has fine-tuned the procedure for the examination of a citizens’ initiative by the Commission, as can be seen in Art 10 of the said Regulation which states as follows:


\textsuperscript{178} In this respect, also as regards the ECI’s admissibility, see Ingravallo who, apart from the speech by the European Ombudsman, refers to the proceedings on failure to act (Art. 265 TFEU) and to the action for annulment (Art. 263 TFEU); see Ingravallo, \textit{op. cit.}, p. 258.


1. Where the Commission receives a citizens’ initiative [...] in accordance with Article 9 it shall:
   
   (a) publish the citizens’ initiative without delay on its website;
   
   (b) receive the organisers at an appropriate level to allow them to explain in detail the matters raised by the citizens’ initiative;
   
   (c) within three months, set out in a communication its legal and political conclusions on the citizens’ initiative, the action it intends to take, if any, and its reasons for taking or not taking that action.

2. The communication referred to in point (c) of paragraph 1 shall be notified to the organisers as well as to the European Parliament and the Council and shall be made public”.  

It also introduces a new article, namely, Art. 11 (see below) which refers to a mandatory public hearing at the European Parliament, as requested by the EP and by most of the organised civil society.

Article 11
Public hearing

Where the conditions of points (a) and (b) of Article 10 are fulfilled, and within the deadline laid down in point (c) of Article 10, the organisers shall be given the opportunity to present the citi-

---

180 Approved amendments are marked in bold and italic type. See the final text of Art. 10 “Procedure for the examination of a citizens’ initiative by the Commission” of the Regulation EU No. 211/2011, op. cit.:

1. Where the Commission receives a citizens’ initiative in accordance with Article 9 ("Submission of a citizens’ initiative to the Commission") it shall:
   
   (a) publish the citizens’ initiative without delay in the register;
   
   (b) receive the organisers at an appropriate level to allow them to explain in detail the matters raised by the citizens’ initiative;
   
   (c) within three months, set out in a communication its legal and political conclusions on the citizens’ initiative, the action it intends to take, if any, and its reasons for taking or not taking that action.

2. The communication referred to in paragraph 1(c) shall be notified to the organisers as well as to the European Parliament and the Council and shall be made public.
zens' initiative at a public hearing. The Commission and the European Parliament shall ensure that this hearing is organised at the European Parliament, if appropriate together with such other institutions and bodies of the Union as may wish to participate, and that the Commission is represented at an appropriate level.\textsuperscript{181}

5. **CONCLUDING REMARKS**

Thanks to the ECI, for the first time one million European citizens, representing a significant number of Member States, can intervene for stimulating the decision-making process of the EU, putting forward legislative proposals to the EC which form part of its attributions.

The path for reaching this goal schedules that, in 2012, the laws making this new transnational democratic participation tool operative will come into force.\textsuperscript{182}

The ECI could open new spaces, particularly for activating a European public sphere and for increasing the perception of a common European space for citizenship, the first step towards European populations feeling that they all form part of the same community.

In the medium term, the ECI could have an important function for indirectly stimulating the EP, and directly stimulating the EC which it addresses, offering itself as the driving force for political initiative and influencing the EC’s political agenda.

5.1. **Limitations and critical aspects**

Considering the technical, language, logistic and information barriers and the costs incurred by the organisers connected to preparing and divulging an initiative like the ECI across Europe, much larger and more challenging than national initiatives, the requirement of a million signa-

\textsuperscript{181} See the same text in Art. 11 “Public hearing” of the Regulation EU No. 211/2011, \textit{op. cit.}

\textsuperscript{182} For a tabular display of the decision-making process of the ECI see \url{http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=199169#404568}. 

139
tures (corresponding to 0.2 per cent of the electorate) is a higher threshold than all those found in the Member States, and for this reason disputed by various architects of democratic and participatory development in the EU.

A first clear limitation of the ECI, deriving from the hybrid institutional structure of the EU and also from the lack of democracy, is the presenting and submitting of the ECI to the EC instead of to the EP (which, instead, receives the petitions from European citizens: "any citizen of the European Union and any natural or legal person residing or having its registered office in a Member State have [...] the right to address a petition to the European Parliament", Art. 227 TFEU). The EP is a unique parliament, without any legislative initiative, which falls to the EC with the exception of foreign policy, defence and a few other policies, which are intergovernmental. It only has the power to propose and also a much broader but still limited power of co-decision – several areas such as foreign policy and defence are still excluded from the ordinary legislative procedure and this is true in spite of the fact its remit was extended by the Lisbon Treaty. Furthermore it cannot directly nominate the EC (which the European Council does) although it now holds the power to approve it and its approval is needed for the EC to be appointed. The President of the EC is currently appointed "taking into account the elections to the European Parliament and after having held the appropriate consultations" (Arts. 17.7 and 8). In all the domains where the EP has only a consulting role and not a co-decision role, the EU still suffers from a deficit of representative democracy.

Second, the EC, which holds the monopoly on legislative initiative and is the executive and technical administrative body of the EU (although subject to approval by the EP for entering in office and on the basis of the results from the latest European elections), is not obliged to give the go-ahead to the ECI.

5.2. Opportunities and potential impact on European institutions and civil society

Having acknowledged this situation and despite these constrictions, it is equally true that the rules, procedures and implementation can have in-
teresting repercussions at various levels.

First of all, within the EU institutional framework it opens opportunities for cooperation and impetus by the EP and the European parties – like those that are already being noted while the ECIs are still symbolic but directly organised by European political parties and by their leading representatives.

And then within the area of civil society which can employ a new tool and, more in general, in terms of public opinion and the mass media.

It must nonetheless be noted that there is also a strong risk of the ECI remaining blocked by unclear over-sophisticated and demanding procedures and implementation rules, making it difficult to implement and causing disappointment and low interest in this tool, sentiments which would be accompanied by distrust and hostility towards the EC and the EU institutions that already suffer from low prestige. In any case, similar initiatives, tried at a national level in the past, apart from in those countries where a culture of direct participatory democracy is already well established, do not seem to be particularly appealing or have an incisive effect. Apart from various ECIs started without any operative instrument by various proposers and based on very differing proposals, as were referred to earlier, the ECI tool established by the Lisbon Treaty is a new idea to be fully explored, from which excessive claims should not be expected. The current situation in which there is a prevailing apathy, indifference and even rejection of the European integration and its institutions, recorded several times in recent years by the Eurobarometer and confirmed by emergent euro-sceptical and anti-European political and cultural movements, has resulted in poor attention and participation by citizens at elections and in the public debate. These behaviours seem to have been generated not just by lack of understanding or interest, but by a perception of politics in a nationalist vein, nurtured by the national dimension that permeates all Europe and, to a particular extent, the mass media and the political exchange in the Member States. The European elections thus confirm their main connotation of being “secondary”, acting purely as a means for verifying the balances of domestic power, possibly punitive or bringing new players to light, so that questions of European importance are unable to come to the surface.

Despite these problems and the heavy uncertainties about the proce-
dural aspects and the restrictions that could undermine the ECI, the potential in this innovation should not be underestimated because the ECI can still:

• help promote a transnational political debate and educate about civic participation within the EU;
• affect the democratisation of the EU and influence the EU, stimulating the implementing of policies and also, indirectly and for guaranteeing important objectives, bring about institutional reforms, despite the fact that the ECI can only intervene with proposals regarding the area of attribution of the EC and aimed at implementing treaties;
• check on the reform, the evolution and the implementing of EU policies.

The ECI should not become a tool only accessible to major organisations or political parties, but should be within reach of groups of citizens prepared to unite for participating and interacting with the European institutions. Clear, simple and transparent rules and attention to developing the perception and actual realising of a greater inclusion on the basis of transparency and exchange could permit a progressive re-emergence of trust and consensus for the EU activities and institutions. Participation in itself is not a guarantee of democracy and therefore rules assuring transparency, democracy and inclusion for favouring empowerment at various levels should help to liberate and to channel options in the European and public debate important to the lives of individuals. The effectiveness of the tool is equally important because otherwise it could soon be abandoned or simply become a mega-petition without any outlets. Apart from achieving the objectives, the ECI should be conceived as an important occasion for broadening debate, participation, quality of politics and create a common European home of greater trust. All this will depend on the attitude of the EU institutions and the spirit that animates the organising and implementing of this tool for popular initiative, the only survivor from the referendum proposals and direct, participatory democracy promoted within the European Convention on the future of Europe (2002-2003).

Therefore, to avoid in this current situation the risk of frustration or
of impracticability of the ECI, the EP should perform an important task of acting as the guardian of the procedure and supporter of the institute, interacting with the ECI and possibly absorbing its suggestions and ideas where these are unable to get to the end of the procedure. The use of Art. 225 TFEU would be essential for creating a dual channel towards achieving a particularly well-accepted ECI within the EP. Also, the national parliaments, apart from monitoring compliance with subsidiarity, could be stimulated to deal with the issues raised, look further into and debate them.

5.3. Some technical, political and financial proposals

• If the EC is not to become unpopular, it should acquire a more open and creative attitude, taking over the functioning and support of the technical, logistical and also financial side (any refunds), as well as setting up an updated and easily used website where all the ECIs are registered and information provided as per the Regulation approved by the EP in December 2010. All this would draw citizens closer to this tool for which an electronic signature should be permitted, while for favouring dialogue and exchange of information and ideas, and for making the action more fluid, the most versatile and appropriate information technology (IT) should be supported.

• As an alternative to financial refunds charged to the EU institutions, consideration could be given (not just for the ECI committees but generally for the NGOs that have similar characteristics with democratic principles and the respect of the rights of humans and minorities and the values of the EU) to creating a system of vouchers to allocate on the basis of citizens’ choices, reviving to some extent the proposals by Philippe C. Schmitter on how to democratise the EU,¹⁰³ and on how to develop an active European citizenship.

• The creating of an Agency for the ECI proposed by the Initiative for the ECI should be considered together with, and possibly merged

with, the proposed European Observatory for Democracy and Opinion\textsuperscript{104} for conducting studies on public opinion and on the world of information, on the methods for consultations, surveys and civic initiatives, spreading awareness and dialogue in contact with the world of science and civil society, and last, supporting the ECI.

• Regarding the decisions taken by the EC, it is essential that an appeal is allowed to the CJEU and, possibly, to the Ombudsman,\textsuperscript{105} since it is inappropriate that its action is not controlled and verified.

5.4. \textit{Risks and Perspectives: Euroscepticism, protection of public services, common goods and environment and democratisation of the EU}

There are certainly risks of contrasts between the EU bodies and between the various ECIs, such as the emergence of a possible “tyranny of lobbies”, well structured and with considerable financial resources, around this institution,\textsuperscript{106} or such as the appearance of its marginality.


\textsuperscript{106} See J. A. Emmanouilidis, C. Stratulat, \textit{Implementing Lisbon: A Critical Appraisal of the Citizens’ Initiative}, European Policy Centre (EPC Policy Brief), June 2010, http://www.epc.eu/documents/uploads/pub_1135_implisbion.pdf. Another author pointed out: “It must be remembered that gathering one million signatures across a continent could become an organizational nightmare, and, the more stringent the rules are, the fewer the entities that will have the capacity to run a petition campaign. The question then becomes - ‘Who will be able to benefit?’ As it is likely that there will be no public funding available for initiatives, entities with established networks and secured finances will be advantaged, whether those be political parties, NGOs, or private interests. We might, therefore, need to brace ourselves for initiatives on issues that are taboo in high politics. Fringe parties that have a xenophobic agenda and fall short of election thresholds may unite in proposing anti-immigration measures just as much as -- or even more than -- say, travelling European citizens frustrated by the diversity of electrical outlets”; J. Šu-
which could be encouraged by strong criticisms of an Eurosceptic nature (ECIs considered costly, pointless and "other-directed", etc.\textsuperscript{187}). The approval of the Regulation by the EP on 15 December 2010 has made the presentation of ECIs easier while giving the EC more responsibilities as it will have to check admissibility requirements at registration and which will inevitably undergo major political pressure and supply several services such as a help desk and a user guide, public hearings, monitoring of the different stages of successfully registered proposals, etc.\textsuperscript{188} However, ECIs, progressively revised and corrected on the basis of experience, are a major challenge, probably more for the indirect results that they can give (pushing the national and European institutions to act on issues raised and the emergence of European public opinion) than for the direct ones that, although important, are more uncertain. This would bring about a new democratic hope that could reverberate at various levels and penetrate for transforming it in the often resigned, nationalist and stifling national public spaces.

Probably, as stated by some, the protection of public services and common assets, the request for safeguarding and guaranteeing a social Europe, the promoting of rights and the protection of the environment are some of the main areas where the ECI could re-awaken and push the EU to act for a better future\textsuperscript{189} and a closer integration of the continent,


making the citizens and their representatives equally involved in a
democratic adventure to pursue for uniting Europe. A role of the ECI in
stimulating the political elites and in developing major diplomatic initia-
tives has also been envisaged in the field of foreign relations. In any
case participatory democracy can contribute to the development of a
greater degree of homogeneity while upholding diversities, and this in
turn may contribute to the strengthening of the process of European in-
tegration.

Therefore, even if the ECI were only able to play a complementary
role in the democratisation of the EU, this would already be a good re-
sult. Trying out this new democratic instrument, so that it is inclusive
and stimulates European decision making at all levels, is certainly useful
and the ECI can form a bridge between citizens and the EU, a channel for
communication and exchange.

The priority task to be dealt with for the democratisation of the EU
and increasing internal integration is certainly through institutional re-
forms and political changes such as:

- the reinforcing of the EU institutions and particularly the EP;
- ensuring direct elections to the EC by the EP based on the candida-
ture for the Presidency officialised by the European parties during
the elections for renewing the EP;

nell'Unione europea: prime riflessioni", in Federalismi.it, 8 December 2010, http://
www.federalismi.it/applMostraDoc.cfm?Artid=17220.

190 For instance, see the proposal to promote an ECI to encourage the EU to develop a
more effective foreign policy able to promote reconciliation between Israel and Pales-
tine: "As European leaders are unlikely to make hard decisions on their own, public
pressure will be essential. The Lisbon treaty also provides ordinary people with a tool
to petition the EU, namely the European Citizens’ Initiative. If a broad civil society coalition
can collect a million signatures from concerned citizens on a blueprint for change, then
we stand a chance of redefining the EU’s role in this interminable conflict", see Khaled
Diab, “How the EU Could Entice Israel to Seek Peace Making Europe’s Cosiness with
Israel Dependent on Commitment to Fair Peace Would Be More Effective than a Blunt
Boycott”, in Guardian, 26 November 2010, http://www.guardian.co.uk/commentisfree/
2010/Nov/26/eu-israel-europe-peace.

191 See D. Sidari, “La democrazia partecipativa nell’ordinamento comunitario: svilup-
pi attuali e prospettive”, in Diritto Pubblico, No. 2, 2009, pp. 589-607, http://www.astrid-
online.it/Riforma-de/Studio-e-ri/Archivio-25/Siclari--Democrazia-partecipativa-UE.pdf.
THE EUROPEAN CITIZENS’ INIziaTIVE

- consolidating the European political powers;
- the emergence of public opinion and supranational information bodies.

The ECI as a means for participation in the European decision-making process is certainly not a decisive institution, but neither should it be considered a plebiscitary, pointless or demagogic instrument. ¹⁹²

It can therefore be concluded that a properly promoted right of initi ativ e supported by simple, transparent and balanced rules, may contribute to the shaping of a democratically legitimated EU. As has been rightly pointed out, the ECI can perform “the delicate task of integration and correction of the representative democracy”. ¹⁹³

Specifically, ECIs can give rise to a European debate on issues of general and transnational interest, a useful element for forming a Europe-wide public opinion and for developing European citizenship.

5.5. ECIs in progress: suggestions and changes

Although not constituting key steps per se, the ECIs are not pointless distractions either. Several of the choices made by the EC’s Regulation proposal can be favourably accepted, particularly as regards the minimum number of signatures per Member State and the possibility of collecting the signatures online. However, a major step forward has been that some of the proposals made by the EP were incorporated in the compromise reached on 30 November 2010 between the EP’s AFCO, the European Council and the Commission and finally incorporated in the Regulation approved by the EP on 15 December 2010 and adopted by the Council of the EU on 16 April 2011. In spite of this progress, some of the changes

¹⁹² D. Wallis herself pointed to some of the ECI’s features: “It’s not a Swiss-style system of initiatives and referendums. It’s dipping the toe in the water of participatory democracy... an opportunity for European citizens to push the legislative button”, L. Peter, “Power to the People EU-style”, BBC News, 22 November 2010, http://www.bbc.co.uk/news/world-europe-11773647.

suggested by other sources discussed in this paper could also be considered in view of a future revision of the Regulation, specifically:

- as regards admissibility, the Commission should quickly express an opinion that is strictly on the legal aspects and free of other considerations and, if there is a negative opinion, then it should be possible to appeal to the CJEU;
- the time for gathering the signatures should be extended to at least 18 months because 12 months seems too short a period of time;
- when admissibility has been recognised and one million signatures have been collected, the EC should, as a rule, prepare an “appropriate proposal” (even though it is anyway not bound to do so which, in general, seems justified) for which “a legal act of the Union is required” (Art. 11 TEU); if the result is negative, it must be possible to dispute the motivated refusal at the CJEU;
- the arguments supported by some that the proposal made as regards the ECI could include rules for reforming the Treaties does not seem to have legal grounds, because the formulation of Art. 11 TEU seems sufficiently clear;
- despite this, the area in which it will be possible to present proposals by means of the ECI tool is extremely broad, with the only exception being matters competing solely to the EU. Both in matters ruled by ordinary legislative procedure and for those that require unanimity, the implementation of the possibilities allowed by the Treaties requires a quantity of important legal acts (regulations, directives, decisions) for which the ECI can intervene as a driving element, especially when there are no proposals from the Council or legislative initiatives on these subjects from the EC: from the EU budget to the EU’s own resources, taxation matters, circulating of services, infrastructures for energy, research and the environment, immigration, social policies, cohesion and so forth;
- an area to deal with particularly attentively is that of strengthened cooperation, provided for and governed by Art. 20 TEU: the limited framework mechanism provided for by the Treaties has enormous potential, especially when considering that Art. 333 TFEU acknowledges the possibility of applying the ordinary legislative procedure (and therefore with the co-decision of the EP), if this is decided un-
animously by the Member States that have embarked on enhanced cooperation;
• in this respect, a series of innovative proposals could be made by means of the ECI, for instance, as regards the procedures for investing in infrastructure and about European taxes, in connection with the Euro and within the framework of the choices and proposals of the Euro-group;
• for structured cooperation in defence matters (Art. 46.6 TEU), too, the area to be covered is potentially extremely broad and decisive;
• it is advisable to extend the possibility of promoting an ECI to the elected Local Authorities (LAs) of the Member States, although modes of implementation still have to be defined. Two could be envisaged:

i. Once the requisites for transparency and systems to avoid non-instrumental or distorted use of the ECI (for propaganda, or specific demands) have been identified, the said LAs could collect signatures directly.

ii. LAs could support and facilitate the collection of signatures, without acting as organisers of the ECI pursuant to existing provisions, increasing visibility and actively pursuing political intermediation.

To make operatively viable the procedure for collecting signatures on innovative proposals – starting with a group of countries intent on progressing towards a federal union – it would be hoped that the many pro-Europe and Federalist organisations present in Europe will investigate some initiatives (few but incisive, or even just one), getting their followers involved in the questions.194

The ECI Regulation has been adopted on 16 February 2011 and it shall apply from 1 April 2012. Now it should be implemented correctly, thus guaranteeing an actual opportunity for civil participation. EU’s credibility would be seriously damaged by failing to fulfil its promises or by

bureaucratic delays due to the required changes to be introduced na-
tionally or in the Community.

The agreements recently reached in the trialogue (EP–Council of the
EU–EC) and the approval of the Regulation EU No. 211/2011 seem to
herald a new era of hope and progress in the building of a political Eu-
rope as the EU is currently too divided, uncertain and wavering as it is
faced with challenges of the present day world.\textsuperscript{195}

direct democracy see: “Vox populi or hoi polloi? Does More Voting Necessarily Mean