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**The European Citizens' Initiative – Participatory
Democracy in the European Union**

Mihaela Cărăușan

*National School of Political Studies and Public Administration, Faculty of Public Administration,
Bucharest, Romania, mihaelacarausan@gmail.com*

Abstract: A new democratic tool, the European Citizens' Initiative (ECI), starting with April 2012, will allow one million European Union (EU) citizens to ask the European Commission to propose EU legislation. The ECI could thus create a new space inside the EU policy-making machine for ordinary EU citizens. The purpose of the paper is to analyse the early implementation of the Treaty of Lisbon provisions concerning citizens' initiative. At the level of the European Union, member states in their fundamental laws set up the democratic initiative of the people. The following Member States have citizens' initiatives at national level: Austria, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and The Netherlands. These initiatives differ considerably in scope and generally operate according to different procedures. Because at EU level, there is no experience to build upon this, we will analyze the national citizens' initiative and the problems which occurred in practice. So, the citizens' initiative must accomplish few conditions which we intend to discover and unveil in a comparative study with the national initiative.

Keywords: common interests; active citizenship; European democracy on-line; European Union values

1. Background

The first step in European integration was taken when six countries (Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands) set up a common market in coal and steel, with the signing of the European Coal and Steel Community Treaty (ECSC) in Paris in 1951. The aim, in the aftermath of the Second World War, was to secure peace between Europe's nations. It brought them together as equals, cooperating within shared institutions. This treaty expired on 23 July 2002, exactly 50 years after it came into effect. Economic areas became the focus for supranational cooperation, when, in 1957, the six ECSC members agreed to establish the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) — the Treaties of Rome. (Cărăușan, 2011)

The main goals of the future EU have been identified in the Treaty of Rome establishing the EEC and among them we can find the will to eliminate the barriers which divide Europe by creating a closer union, a union of the people of Europe. After almost 60 years of existence, the European Union re-evaluates its main purposes of existence and establishes as objectives¹ the well-being of its peoples and to uphold and promote its values and interests and contribute to the protection of its citizens. The European Union is a community of states based on shared values, values established in the Treaties.

¹ In article 3 of the Treaty of European Union as it was modified after Lisbon (ex article 2 of TEU).

The Treaty on European Union introduces a whole new dimension of participatory democracy alongside that of representative democracy on which the Union is founded. Reinforcing the citizenship of the Union and recognizing every citizen's right to participate in the democratic life of the Union, the Lisbon Treaty enshrined the key standards of civil dialogue – the European Citizens' Initiative. It provides that *'not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the 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'* (Article 11, paragraph 4 of the Treaty on European Union).

The guiding principles for this proposal are therefore as follows:

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

ECI will add a new dimension to European democracy, complement the set of rights related to the citizenship of the Union and increase the public debate around European politics, helping to build a genuine European public space. Its implementation will reinforce citizens' and organized civil society's involvement in the shaping of EU policies. But the Commission cannot accept the proposed citizens' initiative which could be manifestly against the values of the Union. The methodological approach of our study will use documentation, comparison, observation and identification of national and European issues and syntheses of data collected to get the real dimension of the problems discussed.

2. The Citizen's Initiative in the Fundamental Laws of the Member States

All member states of the European Union are democratic and are based on the rule of law. They promote, almost, the same values and the citizens' role in the society development is recognised in their fundamental laws. The citizens' initiative is seen as the way in which people can participate in the life of the state by establishing new rules. The way in which these rules can be the result of the citizens' initiative was established differently and in the following lines we will pay attention to the national procedures. The following Member States have citizens' initiatives at national level: Austria, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and The Netherlands. Regional citizens' initiatives exist in Austria, Germany, Spain, Sweden and The Netherlands. Local citizens' initiatives can be found in Belgium, Germany, Hungary, Italy, Luxembourg, Slovenia, Spain and Sweden. These initiatives differ considerably in scope and generally operate according to different procedures. According to the Constitutional Act of the Czech Republic¹ and the Republic of Bulgaria² a bill can be introduced by any member of the Chamber of Deputies or Senate or by the Government/Council of Ministers. Moreover, under the Czech fundamental law a superior governing territorial unit has the right to introduce a bill. In the case of Belgium³, taking into

¹ Art. 41 of the Constitutional Act No. 1/1993 Coll. of the Czech National Council of 16th December 1992, as amended by Acts No. 347/1997 Coll., 300/2000 Coll., 448/2001 Coll., 395/2001 Coll. and 515/2002 Coll.

² Art. 87 of the Constitution of the Republic of Bulgaria, Prom. SG 56/13 July 1991, amended by SG 85/26 September 2003, SG 18/25 February 2005, SG 27/31 March 2006, SG 78/26 September 2006 - Constitutional Court Judgment No. 7/2006, SG 12/6 February 2007.

³ Art. 75 and 132 of the Constitution of Belgium, amended (http://www.senate.be/doc/const_fr.html)

consideration that it is a federal state made up of communities of regions (French community, Flemish community and German community), the Constitution stated that each branch of the federal legislative power (art. 75) and also the Community Government and the members of the Community Parliament have the right to initiate bills. As we can observe, in some cases, the initiative of the citizens was not regulated by the Constitution.

If in some European countries the citizens' initiative was not regulated by the Fundamental Law in other states such as Italy¹ the people may introduce public initiatives consisting of a bill drafted in articles and supported by at least 50,000 voters. In Italy we can distinguish between *ex-parte populi* (citizens' initiative - CI) and *ex-parte principii* (government initiative/proposal). For having a CI the procedure requires, besides the minimum number of signatures, that these should be obtained by a public authority within a limit of time of 6 months. The signature has to be authenticated in front of a notary, court or competent local authority. Currently there are 13 popular initiatives and none of them turned into an Act of Parliament, since the Parliament is not bound to provide a result for the CI.

In Austria, the experiences with the 'Volksbegehren'² are mixed. There are some indirect effects like agenda setting, mobilisation and influence on public debates. The direct effects - enactment of laws and definitive policy changes - are only limited. In 6 of 29 cases (as of 2002) citizens' initiatives were enacted by parliament in total or in significant parts. On the other hand, even citizens' initiatives with a very high number of signatures were completely ignored by the parliament. Initiatives were addressed with considerable delay (Rehmet, 2003). Out of the 213 popular initiatives submitted for legislative approval only 29 have been enacted (Vanzetta, 2006, p. 20). Also, in former soviet countries like Hungary³ and Poland⁴ the citizens' right to participate in the life of the states was regulated by their Constitutional Act. In Hungary, for example, the popular initiative may fall under the jurisdiction of the Parliament and at least 50,000 citizens' votes are required. In order to pass the law on popular initiative, the majority required is of two-thirds of the votes of the Members of Parliament present. A national popular initiative may be for the purpose of forcing the Parliament to place a subject under its jurisdiction on the agenda. The Parliament shall debate the subject defined by the national popular initiative. In order to call a national popular initiative, signatures may be collected for a period of two months and it is forbidden to collect them at the work places, in public transportation vehicles or in local authorities' headquarters. Similar outcomes are experienced in Poland. The Polish Constitution allows popular initiatives since 1997. The initiator has to gather 100,000 signatures in support of the proposal: approximately 0,3 % of the total registered electorate. As of 2005, the procedure was used 55 times - however, legislation enacted by the parliament followed in only 6 of those instances (Rytel, 2006).

In Spain⁵, where the barrier is much higher (500,000 citizens have to sign) a similar situation exists - 50 of 62 submitted initiatives have garnered sufficient support to even be subject to parliamentary debate - 12 renewed, 15 inadmissible, 9 without the number of signatures and 1 passed by contestation. The signatures are collected face to face in front of a notary. In 2010, 40% of Spain population manifested their interests in collecting the signature electronically. The limited range of

¹ Art. 71 and 87 of the Constitution of Italy, adopted on 22 of December 1947 and entered into force on 1st of January 1948.

² The name of the citizens' initiative in Austria. 100.000 signatures (1,7% of the electorate) must be gathered.

³ Art. 28/B - E, The Constitution of the Republic of Hungary, Act XX of 1949.

⁴ Art. 118 and 221 of the Constitution of Poland, adopted by the National Assembly on 2 of April 1997 and confirmed by referendum in October 1997.

⁵ Section 87 Spanish Constitution passed by the Cortes Generales in Plenary sittings of the Congress and the Senate held on October 31, 1978; ratified by referendum of the Spanish people on December 7, 1978 and sanctioned by His Majesty the King before the Cortes Generales on December 27, 1978.

issues that could be addressed by an initiative and the power of the legislature (Parliament) in determining the outcomes are the most important factors that have hindered the success of citizen initiatives.

3. ‘A Voice for All’ – Strengthening Participatory Democracy in the European Union

The EU has long been criticized for its democratic deficit. Several proposals for overcoming or reducing this deficit have been made. Some of them mention the role of more citizen participation and direct democracy – active citizenship. The EU citizens cannot directly influence the EU policy agenda, other than through the undemocratic form of interest representation (lobbying). It was not until 2005, when French and Dutch voters surprisingly rejected the EU Constitution in referenda, that EU leaders began to realize that EU citizens have changed. However, most defined the problem primarily as a failure of communications, not democracy: if EU citizens only understood what the EU does for them, they would support it. (Thomson, 2011, p. 2) The Treaty on European Union reinforces citizenship of the Union and enhances further the democratic functioning of the Union by providing, inter alia, that every citizen has the right to participate in the democratic life of the Union by way of a European citizens’ initiative.

Claims that the EU has a ‘democratic deficit’ and that it is crucial for the EU’s future to strengthen its democratic legitimacy have continued to arise for the last 20 years¹. For the greater part of its history, citizens have not been at the centre of the European political system. One response to this was the establishment of the Citizenship of the Union, in addition to national citizenships. The Maastricht Treaty (1992) – Treaty Establishing the European Community (TEC)² – has integrated the Citizenship of the Union into the Treaty of Rome. The rights granted to the EU citizens include the right of free movement, the right to vote in communal elections in all Member States, the right of diplomatic protection and the right to petition to the European Parliament. These rights were regarded as a first step towards full-fledged citizens’ rights. The concept of the Union citizenship is dynamic (Kluth, 2002, RN 1). Art. 22 TEC provided for three annual reports by the Commission that could form a basis to complement the Citizenship of the Union by the Council and subsequent approval of the Member States. Thus far, the Commission has presented four reports.³ However, none of them referred to new instruments of participatory or direct democracy until the Lisbon treaty recognized every citizen’s right to participate in the democratic life of the Union. (Efler, 2006, p.5)

The decision-making arenas can be seen to have a number of essential characteristics: inclusiveness; judgmental and dialogical (Pettit, 2001). So, ECI is trying to bring the inclusiveness of the citizens in the European decision-making process through the direct dialogue with EU citizens. In order to do that it has to accomplish some criteria. Hajer (2005, p. 450) in his performative analysis of decision-making noted that good deliberative / participative decision-making needs to meet the following criteria:

- reciprocity: ‘discussion must be conducted through an argumentative exchange’;
- inclusivity: all stakeholders are free to participate in the argumentative exchange;
- openness: the argumentative exchange must not be staged and ‘must avoid unnecessary barriers, including that of (professional) language’;

¹ See in this sense the Eurobarometer values in the last 20 years.

² Consolidated Version of the Treaty Establishing the European Community: Official Journal of the European Communities, C 325/33.184, 24.12.2002.

³ COM (93) 702; COM (97) 230; COM (2001) 506; COM (2004) 695.

- integrity: the argumentative exchange ‘requires honesty and no double play’;
- accountable: stakeholders ‘are accountable to political bodies and to the public at large’;
- dialogical: the argumentative exchange mobilises knowledge and induces “learning through an iterative process”.

Specifically, massive EU – wide public outreach and communications campaigns will be needed to convince over a million people in at least seven different countries to support a given ECI. This could in turn lead to the development of temporary ‘European public spaces’ where the ECI topic is discussed - e.g., in national media, in community meetings, between friends, etc. (Thomson, 2011, p.6)

Given the importance of this new provision of the Treaty for citizens, civil society and stakeholders across the EU and considering the complexity of some of the issues to be addressed, the Commission launched a broad public consultation with the adoption of a Green Paper on 11 November 2009. The consultation elicited over 323 replies from a broad range of stakeholders, including individual citizens (159 replies), organisations (133 replies) and public authorities (31). Most of the replies were from France, Spain, Italy, Germany, Greece, Portugal etc., as we can see some of these countries have regulations in the area and the good practices were used to improve the EU regulation. A public hearing was also held for all respondents to the Green Paper on 22 February 2010 in Brussels. The responses to the Green Paper underlined the need for the procedures and conditions for the citizens’ initiative to be simple, user-friendly and accessible to all EU citizens and that they should be proportionate to the nature of the citizens’ initiative. The responses also confirmed that a number of requirements are necessary in order to ensure that the instrument remains credible and is not abused and that these requirements should ensure uniform conditions for supporting a citizens’ initiative across the EU. The procedure and practical arrangements required for this new institutional instrument raised legal, administrative and practical issues that were established in the Regulation no 211/2011 of the European Parliament and of the Council¹ as provided for in Article 11 of the Treaty on European Union and Article 24 of the Treaty on the Functioning of the European Union. To ensure that this instrument is credible and is not abused some verification requirements were established at national and EU level.

Requirements ex-ante (before the registration of the initiative by the Commission):

- the citizens’ committee has to be made up of at least 7 members – EU citizens who are resident in at least 7 different EU countries;
- the proposed citizens’ initiative does not manifestly fall outside the framework of the Commission’s powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties;
- the proposed citizens’ initiative is not manifestly abusive, frivolous or vexatious; and
- the proposed citizens’ initiative is not manifestly contrary to the values of the Union as set out in TEU.

Requirements post-ante, after the registration and before submitting the initiative to the Commission:

- to reach the minimum number of statements to support (on paper or on-line) the initiative;

The initiative must be backed by at least 1 million EU citizens from 7 or more EU member countries and among collected countries a minimum number of statements has to be reached – equal to the

¹ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative published in the Official Journal of the European Union L 65, 11.03.2011.

number of MEPs elected in that country, multiplied by 750. For example, in Romania the minimum number of statements is 24.750 (33MEPs * 750 = 24.750).

- to verify the minimum age required to organise and support an initiative which is the voting age for European Parliament elections – currently 18 except Austria, where it is 16;
- to ensure that the statements comply with the models set out by the Regulation (Annex III);
- to collect the statements after the date of registration of the proposed citizens' initiative and within a period not exceeding 12 months;
- to send regularly updated information on the sources of support and funding for the initiative to the Commission;
- to have the certificate, if the collection is made on-line, the certificate enacted by the responsible national authority (each member state will establish the authority no later than 1st of March 2012) is free of charge;
- to submit the statements of support, in paper or electronic form, to the relevant national competent authorities for verification and certification;
- to comply with Directive 95/46/EC¹ in processing personal data needed to the citizen initiative.

After obtaining the certificates from the national authorities, the organisers submit their initiative to the Commission. The Commission in the procedure of the examination of a citizens' initiative will:

- publish the citizens' initiative without delay in the register;
- receive the organisers at an appropriate level to allow them to explain in detail the matters raised by the citizens' initiative;
- 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.

This procedure affords citizens the possibility of directly approaching the Commission with a request inviting it to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties similar to the right conferred on the European Parliament under Article 225 of the Treaty on the Functioning of the European Union (TFEU) and on the Council under Article 241 TFEU. The ECI is binding on the Commission, which has to take legislative action once an ECI is admissible. However, it is not obliged to simply pass the unchanged ECI text on to the other institutions. Specifically, massive EU-wide public outreach and communications campaigns will be needed to convince over a million people in at least seven different countries to support a given ECI. This could in turn lead to the development of temporary 'European public spaces' where the ECI topic is discussed - e.g., in national media, in community meetings, between friends, etc. (Thomson, 2011, p.6)

But, the new technologies brought to fore a new issue for the ECI, the on-line sign-up and with it a new form of democracy the on-line one. This system is not used in the EU member states but it is required (Spain, 2010). For this the Commission has to provide by 1st of January 2012 the software for the collection of signatures, free of charge. However, the Commission does not intend to propose an on-line collection system on its own website. It would be the responsibility of the organiser to set up an on-line collection system complying with the requirements set out in the Regulation in terms of security and authentication.

¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data published in Official Journal L 281, 23.11.1995, p. 31.

4. Conclusions

The Treaty of Lisbon added a whole new dimension of participatory democracy to the European Union in addition to that of representative democracy, on which the Union is founded. For the first time, a treaty gives to every EU citizen an innovative way to be able to exercise the right to participate directly in the democratic life of the EU: The European Citizens' Initiative, which will be the first formal European 'bottom-up' processor in the history of the EU. This means that the European Citizens' Initiative will give citizens a right, which mirrors that of the European Parliament and of the Council in asking the Commission to make proposals. It will oblige the Commission, as a college, to give serious consideration to the demands made by one million citizens.

In order to accomplish its task this new tool has to be user friendly, simple, straightforward, understandable and most of all accessible. So, it has to respect all the Hajer (2005) criteria of participative decision-making process, because this instrument needs to be used in order to foster a European public space. Nevertheless, barriers remain in the way of ECI, such as:

- the petition will not go directly to the Commission but to the national authorities which may determine whether or not all the signatures are valid. The commission will be looking for any excuse to bin the ECI.
- to win support across the required seven countries, the text should be translated into the languages of those countries and should be accurate with the original one.

Even so, the internet will play a key role in the success of future ECIs and Social Media is the best way to achieve the one million signatures. The ECI represents an exceptional opportunity to shape up the EU policy agenda (potentially initiating legislative proposals). Therefore, organizations should reflect on the possibility of integrating grassroots campaigns into their public affairs strategies.

Through the ECI, EU has made 'a big step' for member states' citizens and also for the organization of the institution of the Union. To pass from the representative democracy, to the participative one and in the end to rejuvenate it through a new form, 'the on-line democracy', represents for the EU a new way of seeing the future.

To become a stronger community in a globalized era, *the EU needs the human touch* and this is exactly the spirit of the Lisbon treaty and in particular the ECI strength.

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