

**THE EUROPEAN CITIZENS' INITIATIVE:  
NEXT BIG THING OR NEW FALSE GOOD IDEA?**



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**THE EUROPEAN CITIZENS' INITIATIVE:  
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FRANKLIN DEHOUSSE

With the collaboration of DIDIER VERHOEVEN



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# THE EUROPEAN CITIZENS' INITIATIVE: NEXT BIG THING OR NEW FALSE GOOD IDEA?

FRANKLIN DEHOUSSE

With the collaboration of DIDIER VERHOEVEN<sup>1</sup>

One innovative element of the Lisbon Treaty was the creation of a European Citizens' Initiative (ECI). At the time, this was sometimes hailed as a fundamental change in the European institutional system<sup>2</sup>. A few years after the entry into force of the Treaty, however, much less is heard about this "first truly transnational instrument of modern direct democracy"<sup>3</sup>, this "revolution in disguise"<sup>4</sup>, this "very innovative and symbolic" provision<sup>5</sup>. This could seem surprising at first sight. Since the entry into force of the Treaty, the implementation of this provision has been remarkably rapid. Meanwhile, new arguments have risen concerning the lack of democratic legitimacy of the European Union, and the lack of connection between the European institutions and the citizens.

This note evokes briefly the Treaty provision (§ 1), the adoption procedure of EU Regulation 211/2011 (§ 2), the main rules (§ 3), the accepted initiatives until the end of 2012 (§ 4), the rejected ones (§ 5), and finally the possible implementation problems (§ 6). It endeavours to provide the electronic references of all existing procedures at the end of 2012.

In a nutshell, the essential conclusions are the following ones. The main regulation in this domain (Regulation 211/2011) has been adopted quite quickly. There have been quite a few implementation problems. The impact of the partial decentralization of a European Citizens' Initiative has possibly been underestimated. The ICT support of this new instrument is absolutely central, and quite complex. A lot of initiatives have already been withdrawn in a short period of time (and a few of them subsequently reintroduced). Finally, we shall need a few years more to see whether the European Citizens' Initiative is "the next big thing or a false good idea". Most likely, the answer to this question could be somewhere in between those two analyses.

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1. F. Dehousse is professor (in abeyance) at the University of Liège and judge at the General Court of the Court of justice of the European Union. D. Verhoeven is assistant at the same General Court. This comment is strictly personal. The text has been updated till 31 March 2013.

2. Other people have been more skeptic: see for example J. P. Sauron, *L'initiative citoyenne européenne: une fausse bonne idée?*, Fondation Schuman, 2011; F. Ohnmacht, *The European citizens' initiative: much ado about nothing?*, *Papiers d'actualité* n° 3, Fondation Pierre Dubois, 2012.

3. B. Kaufmann, *The European Citizens' Initiative pocket guide*, Green European Foundation, updated version, 2012, p. 9.

4. D. Hierlemann and A. Wohlfarth, *A Revolution in Disguise: The European Citizens' Initiative*, Spotlight Europe 2010/07, Bertelsmann Stiftung, 2010.

5. J.C. Piris, *The Lisbon Treaty*, Cambridge Univ. Press, 2010, p. 134.





# 1. THE TREATY PROVISION

According to Article 11 paragraph 4 Treaty on the European Union (TEU), “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.”<sup>6</sup>

The procedures and conditions required for a citizens’ initiative must be determined by an ordinary legislative procedure, in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union (TFEU).

The Treaty provision has curious origins. Though the Convention on the future of Europe was literally drowned into amendments, the ECI was proposed very late. It was one of the latest amendments (mid-may 2003), proposed just one month before the adoption of the final text<sup>7</sup>. Other mechanisms of direct democracy had previously been discussed, but not that one. It was quickly integrated as the fourth paragraph of Article I-47 TEC. However, the matter was quickly considered as quite important at the end of the Convention<sup>8</sup>. In 2007, the Intergovernmental Conference (IGC) decided to split the elements of this paragraph between two different treaties. This is an unusual approach, which could be linked to the desire of maintaining stricter revision procedures for some aspects of the text.

The new mechanism was described in very different ways. For some commentators, it was the “next big thing” in the European institutional system<sup>9</sup>. Others underlined that this was no referendum, and not even a legislative initiative, but only a proposition to have a legislative initiative launched by the Commission. It was also mentioned that such an ‘agenda initiative’ “does not have political

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6. See W. Pichler, B. Kaufmann, A. Gross, A.-M. Sigmund, *The European Citizens’ Initiative (Art 11.4 TEU) impulses and suggestions of the European Citizens’ Initiative Office (ECIO)*. European Citizens’ Initiative Office, January 2010 ([http://ec.europa.eu/dgs/secretariat\\_general/citizens\\_initiative/docs/ecio\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/docs/ecio_en.pdf)) and J. Mayoral, *Democratic Improvements in the European Union under the Lisbon Treaty – Institutional changes regarding democratic government in the EU*. EUDO, February 2011 (<http://www.eui.eu/Projects/EUDO-Institutions/Documents/EUDOREport922011.pdf>)

7. CONV 724/03, presented by Professor J. Meyer, representative of the Bundestag.

8. For more details on the genesis, see A. Auer, *European Citizens’ Initiative*, *European constitutional law review*, 2005, pp. 79-86; S. Aloisio, G. Grimaldi, U. Morelli, A. Padoa-Schioppa, *The European Citizens’ Initiative: challenges and perspectives*, in R. Matarazzo ed., *Democracy in the EU after the Lisbon Treaty*, IAI/Nuova Cultura, 2011, pp. 65-150, et spec. 74-76.

9. See for example B. Kaufmann and J. Pichler eds., *The Next Big Thing, Making Europe ready for the Citizens’ Initiative*, Wissenschaftsverlag, 2011.

significance in any of the Member States where it has been implemented”<sup>10</sup>. Furthermore, of course, a lot depended on the conditions required by the implementation regulation, since the Treaty provision remained very general.

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10. V. Cuesta-Lopez, A preliminary approach to the regulation on European citizens' initiative from comparative constitutional law, in. *The European citizens' initiative – a first assessment*, College of Europe, Research Papers n° 24, 2012, p. 8. For a more complete approach on this line, see M. Setälä and T. Schiller eds., *Citizens' Initiatives in Europe: Procedures and Consequences of Agenda-Setting by Citizens*, Palgrave Macmillan, 2012.

## 2. THE ADOPTION OF REGULATION 211/2011

On 7 May 2009, the European Parliament adopted a resolution<sup>11</sup> requesting the Commission to submit a proposal for a regulation of the European Parliament and of the Council on the implementation of the citizens' initiative. This reflects the sensitivity of the topic: it happens rarely that the Parliament cares about the implementation of one text before it has even entered into force.

Some orientations were set in the European Commission's "Green Paper on a European Citizens' Initiative"<sup>12</sup> issued the 11 November 2009. This document launched a public consultation which ended on 31 January 2010. The consultation was structured around 10 key issues for which the Green Paper outlined the possible options, and also the possible advantages or disadvantages. These 10 key issues were:

1. Minimum number of Member States from which citizens must come
2. Minimum number of signatures per Member States
3. Eligibility to support a citizens' initiative – minimum age
4. Form and wording of a citizens' initiative
5. Requirements for the collection, verification and authentication of signatures
6. Time limit for the collection of signatures
7. Registration of proposed initiatives
8. Requirements for organisers – Transparency and funding
9. Examination of citizens' initiatives by the Commission
10. Initiatives on the same issues

On that basis respondents were invited to indicate whether they agreed with the Commission's initial assessment and whether they had alternative proposals and suggestions. Many interesting and innovative ideas were put forward by stakeholders. Most of the contributions highlighted the fact that the citizens' initiative is an important step for European democracy and the construction of a European public space. They considered that this new instrument of participatory democracy could potentially be a good opportunity to bridge the gap between the European Commission and EU citizens, encouraging a dialogue between them and stimulating the feeling of a European identity.

The contributions broadly underlined the need for the procedures and conditions for the citizens' initiative to be simple, user-friendly and accessible to all EU citizens. They also confirmed that different requirements were needed in

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11. European Parliament resolution of 7 May 2009 requesting the Commission to submit a proposal for a regulation of the European Parliament and of the Council on the implementation of the citizens' initiative – P6\_TA(2009)0389

12. Green Paper on a European Citizens' Initiative, COM(2009) 622 final – 11.11.2009

order to ensure that the instrument remains credible and is not abused. These requirements had additionally to establish uniform conditions for supporting a citizens' initiative across the EU.

The 31 March 2010, the Commission made a "Proposal for a Regulation of the European Parliament and of the Council on a Citizens' Initiative"<sup>13</sup>. On 15 December 2010 the European Parliament adopted a legislative resolution concerning that proposal. It adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary were the result of a compromise negotiated between the European Parliament and the Council. They amended the Commission proposal of 31 March 2010.

The negotiation concentrated on various topics. One of them was the moment of the admissibility check. Others were the number of Member States from which the signatures had to originate, or the time span for collecting signatures. There were also worries concerning the nature of personal data to be presented by the supporters, sometimes being perceived as too intrusive. Finally, an essential point was of course to determine what happens in case of success of an initiative.

These were certainly no easy choices, in spite of the appearances. On one side, the procedure has to be "*simple and user-friendly*". On the other side, it must find ways of "*preventing fraud or abuse*". It must also not impose "*unnecessary administrative burdens*". However, the prevention of fraud can impose cumbersome checks. And it could be said that collecting one million signatures in 27 Member States, 23 languages, and twelve months cannot, by definition, be so simple.

The rules and procedures governing the citizens' initiative are set out in EU Regulation 211/2011<sup>14</sup>, which was adopted the 16 February 2011. This Regulation is applicable as from 1 April 2012. It will be reviewed by 1 April 2015, and every three years thereafter, the Commission shall present a report to the European Parliament and the Council on the application of the Regulation.

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13. Proposal for a Regulation of the European Parliament and of the Council on a Citizens' Initiative, COM(2010) 119 final – 2010/0074 (COD) – 31.03.2010

14. OJ EU L 65, 11.03.2011, 1-22.

### 3. THE GENERAL RULES<sup>15</sup>

#### 3.1. The procedure

##### 3.1.1. *The Commission's initial check*

According to the original proposition, the Commission had to analyze the validity of an initiative after it has gathered 300.000 votes. This was considered as a heavy constraint, which could additionally lead to a lot of disappointments. For these reasons, the final text imposes now a first check at the beginning of the procedure, before any registration. This check is however limited: it is restricted to the identification of manifest mistakes. Annex II of Regulation 211/2011 describes all the required information which has to be provided by the organizers to register a citizens' initiative.

According to Article 4.2., before an initiative is officially registered, the Commission thus benefits from a two month delay to check whether:

1. a citizens' committee has been formed and the contact persons designated
2. the proposed citizens' initiative does not manifestly fall outside the framework of the Commission's powers to submit a legislative proposal to implement the EU treaties
3. the proposed citizens' initiative is not manifestly abusive, frivolous or vexatious
4. the proposed citizens' initiative is not manifestly contrary to the EU values as set out in the EU treaties<sup>16</sup>.

If these conditions are fulfilled, the Commission shall register a proposed citizens' initiative under a unique registration number and send a confirmation to the organisers (if the conditions are not met the Commission shall refuse the registration). According to Article 4 § 1, an online register must be made available by the Commission for that purpose.

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15. See M. Dougan, What are we to make of the citizens' initiative?, 48 *Common Market Law Review* 1807-1848 (2011); L. Bouza Garcia, V. Cuesta López, E. Mincheva and D. Szeligowska, *The European Citizens' Initiative – A First Assessment* – Bruges Political Research Paper n° 24, February 2012 ([http://www.coleurope.eu/sites/default/files/research-paper/wp24\\_eg.pdf](http://www.coleurope.eu/sites/default/files/research-paper/wp24_eg.pdf)); T. Woolfson, *L'initiative citoyenne: un pas vers la démocratie directe dans l'Union européenne* in *Les modes d'expression de la citoyenneté européenne – UCL Presses universitaires de Louvain*, 2011; P. Ponzano, *L'initiative citoyenne européenne: la démocratie participative à l'épreuve*, *Revue du droit de l'Union européenne*, 2012/4, pp. 615-626.

16. Article 2 of the Treaty on European Union (TEU): 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

This compromise has sometimes been criticized. This requires in fact the Commission to make two different evaluations of the proposition, one at the beginning of the process, and the other one at the end. More fundamentally, for some observers, it is curious that the Commission has to make an evaluation of a proposition which is meant to oblige it later to consider an initiative. This could be seen as biased. Others have for example evoked the possibility of conferring this duty to a commission of the European Parliament (but this could possibly lead to other difficulties).

### ***3.1.2. The gathering of 1.000.000 signatures***

Due to the scope of the operation, online collection systems are essential. In that context, according to Article 6 § 1, “the data obtained through the online collection system shall be stored in the territory of a Member State. The online collection system shall be ... in the Member State in which the data collected through the online collection system will be stored. The organizers may use one online collection system for the purpose of collecting statements of support in several or all Member States.”

During the legislative debate, the EU institutions had to find a balance between accessibility and security. They went for a very high level of data security. Furthermore, in their implementation measures, for the same reason, the Member States have also required a lot of information concerning the signatories. Consequently, there is no available standard which would be both EU-wide and user-friendly. As indicated below, this has complicated strongly the launching of the ECIs in a first phase.

### ***3.1.3. The institutions' role after a success***

According to Article 10 § 1 of Regulation 211/2011, the next steps of the procedure for the examination of a citizens' initiative are:

1. “Where the Commission receives a citizens' initiative 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.”

The organisers shall thus normally be given the opportunity to present the citizens' 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.

On Tuesday 22 May 2012, the European Parliament adopted amendments to its Rules of Procedure with regard to the implementation of the European Citizens' Initiative<sup>17</sup>, particularly in terms of organising and conducting the public hearings. The report about these amendments states that when the Commission publishes a citizens' initiative in the register, the president of the Parliament should ask the competent committee to hold a public hearing at the Parliament, "*at an appropriate date*", in other words within three months following the presentation of the ECI to the Commission, to be attended by a representative group of organisers invited to present the initiative. If several published initiatives have a "similar objective", the president of the European Parliament could decide, having consulted the organisers of the ECIs, to hold a joint public hearing to deal with all the citizens' initiatives in question, on an equal footing. The parliamentary committee would also ensure that the Commission takes part in the organisation of the public hearing.

Proposed citizens' initiatives which have been registered but which cannot be presented to the Commission because "*it was not possible to respect all of the relevant procedures and conditions laid down*" may be examined by the petitions committee if it feels that a follow-up is appropriate.

The Commission is not obliged to propose legislation as a result of an initiative. If the Commission decides to put forward a legislative proposal, the normal legislative procedure begins. The Commission proposal is submitted to the legislator (generally the European Parliament and the Council or in some cases only the Council). If adopted, it becomes law.

### 3.2. The possible scope

The subject of an ECI must concern a policy area where the EU has competence and that in that policy area, the Commission has the power to submit a proposal for a legal act. The Treaty does not distinguish between the different types of acts. These can cover exclusive, shared or complementary competences.

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17. See Decision of 22 May 2012 amending Parliament's Rules of Procedure with regard to the implementation of the European citizens' initiative (2011/2302(REG)).

Among the information necessary to have an ECI registered, the Treaty provision(s) (Article or broader reference) considered relevant for the action proposed must be indicated. A non-exhaustive list of the subjects with the corresponding Treaty Articles can be found on the European Commission ECI's website<sup>18</sup>.

In this context, the provision offers clearly the benefit of the doubt to the authors of any initiative. According to Article 4.2 of Regulation 211/2011, any initiative must be accepted if “the proposed citizens’ initiative does not *manifestly* fall outside the framework of the Commission’s powers”<sup>19</sup>.

### 3.3. The electronic specifications

Regarding technical specifications, the Commission must set up and maintain open-source software incorporating the relevant technical and security features necessary for compliance with the compliance of Regulation 211/2011 regarding the online collection systems. The software must be made available free of charge. To implement this, the Commission has adopted technical specifications which are stated in the Commission Implementing Regulation 1179/2011/EU of 17 November 2011 laying down technical specifications for online collection systems pursuant to Regulation (EU) 211/2011<sup>20</sup>.

The organizers have also the possibility to use another online collection system. In this case, however, this alternative system must conform to the technical specifications established by Regulation 1179/2011. It must also be certified by one of the national authorities habilitated to do so.

As indicated in Regulation 211/2011, “the procedures and conditions required for the citizens’ initiative should be clear, simple, user-friendly and proportionate to the nature of the citizens’ initiative so as to encourage participation by citizens and to make the Union more accessible.” (Recital 2). The technical specifications draw upon the findings of the Open Web Application Security Project’s (OWASP) Top 10 2010. This project provides an overview of the most critical web application security risks as well as tools for addressing these risks.

This imposes important constraints on the organisers. According to the annex of regulation 1179/2011, “Organisers provide documentation showing that they fulfil the requirements of standard ISO/IEC 27001, short of adoption”.

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18. <http://ec.europa.eu/citizens-initiative/public/competences?lg=en>

19. See P. Ponzano, L'initiative citoyenne européenne: la démocratie participative à l'épreuve, *Revue du droit de l'Union européenne*, 2012/4, p. 620.

20. OJ EU L 301, 18.11.2011, p. 3-9



These requirements are numerous and substantial<sup>21</sup>. “Organisers choose security controls based on the risk analysis in 2.1(a) from the following standards: (1) ISO/IEC 27002; or (2) the Information Security Forum’s “Standard of Good Practice”. Whatever they choose, they must address a lot of issues<sup>22</sup>. Application of these standards can be limited to the parts of the organisation that are relevant for the online collection system. For instance, human resources security can be limited to any staff that has physical or networking access to the online collection system, and physical/environmental security can be limited to the building(s) hosting the system.”

Almost three months after the first ECI registration, none of the six registered ECI had begun to collect signatures. Unfortunately, the online signature collection system offered by the Commission was not yet up and running. In addition to this, the EU’s central information services staff was unable to answer many questions concerning the ECI process.

In a letter sent end July 2012 to the ECI organizers, the Commission admitted its responsibility at the stage of the confirmation of the registration of proposed ECI and in the fact that the ECI organizers were not able to use the open source collection software which was supposed to be proposed by the Commission. It explained that the system had been successfully installed in the Data Centre premises in Luxembourg and that the organizers could access to this pre-installed software platform after receiving their system certification by the Luxembourg Certification Authority. In this context, the organizers can also use the Commission’s servers to deploy their system (they must conclude a “hosting agreement”, which include some security provisions).

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21. “For that purpose, they have:

- (a) performed a full risk assessment, which identifies the scope of the system, highlights business impact in case of various breaches in information assurance, enumerates the threats and vulnerabilities of the information system, produces a risk analysis document that also list countermeasures to avoid such threats and remedies that will be taken if a threat occurs, and finally draws up a prioritised list of improvements;
- (b) designed and implemented measures for treating risks with regard to the protection of personal data and the protection of family and private life and measures that will be taken in the case risk occurs;
- (c) identified the residual risks in writing;
- (d) provided the organisational means to receive feedback on new threats and security improvements.”

22. (a) risk assessments (ISO/IEC 27005 or another specific and suitable risk assessment methodology are recommended);
- (b) physical and environmental security;
  - (c) human resources security;
  - (d) communications and operations management;
  - (e) standard access control measures, in addition to those set forth in this Regulation;
  - (f) information systems acquisition, development and maintenance;
  - (g) information security incident management;
  - (h) measures to remedy and mitigate breaches in information systems which would result in the destruction or accidental loss, alteration, unauthorised disclosure or access of personal data processed;
  - (i) compliance;
  - (j) computer network security (ISO/IEC 27033 or the SoGP are recommended).”

Independent of whether the ECI organizers choose to use the Commission's infrastructure or not, the one-year deadline for collecting the signatures needed for their initiatives has been extended. They were given 12 months from the moment the Commission's hosting infrastructure became operational (1 November 2012). A new deadline (1 November 2013) has thus been set for all the ECIs registered before 1 November 2012 as a response to issues faced by the organisers during the start-up phase.

For instance, the ECI registered on 10 May 2012 "EU Directive on Dairy Cow Welfare"<sup>23</sup> has been withdrawn on 20 July 2012 until the ECI system will work properly. The ECI registered on 10 May 2012 "Single Communication Tariff Act"<sup>24</sup> has been withdrawn on 3 December 2012 and re-registered the same day probably to have a new deadline allowing a 1 year delay to collect the 1 million signatures required. This solution gives the organizers one more month than the 1 November 2013 deadline proposed by the Commission for all the ECIs registered before 1 November 2012.

### 3.4. The constraints concerning personal data

Article 12 of Regulation 211/2011 imposes different constraints to the organizers (and the competent authorities in the Member States) regarding the protection of personal data. In processing personal data, they have to comply with Directive 95/46/EC and the national implementing provisions, and they are considered as data controllers in accordance with Article 2(d) of Directive 95/46/EC. This can have a huge impact on the communication strategy. People must thus be asked individually, for example, if they wish to receive more information and be associated with the campaign.

### 3.5. The required level of support

The initiative must receive the support of at least one million eligible signatories coming from at least one quarter of all Member States. The minimum number of signatories per Member State is set in Annex I of Regulation EU 211/2011. According to Article 7 paragraph 2 and 3 of the Regulation and following a modification in the composition of the European Parliament, Annex I (Minimum number of signatories per Member State) of EU Regulation 211/2011 has been amended by the Commission Delegated Regulation EU 268/2012 of 25 January 2012 amending Annex I of Regulation EU 211/2011 of the European

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23. <http://ec.europa.eu/citizens-initiative/public/initiatives/obsolete/details/2012/000004>

24. <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2012/000016>

Parliament and of the Council on the citizens' initiative<sup>25</sup>. This represents more or less 0,2% of the entire EU population.

It was felt that the requirement of a fixed percentage for all Member States would be inequitable. Thus the number of signatories can be degressively proportional to the population of each Member State. The precise number has been defined by multiplying the number of the members of the European Parliament by 750. The threshold of signatories is thus higher in the small Member States, in term of population percentage.

This support must be gathered in 12 months after the date of registration. Such a timeframe has been considered as too drastic by civil society representatives. Though this argument is understandable, there are also good reasons to prevent the procedure from taking too much time. In a Union composed of 470 million people, 27 Member States and 23 official languages, however, this depends a lot on the accessibility and the efficiency of the electronic supporting instrument.

### 3.6. The delegated acts

One important feature of Regulation 211/2011 lies in the possibility offered to the Commission to modify the annexes by means of delegated acts. According to Article 16, "the Commission may adopt, by means of delegated acts in accordance with Article 17 and subject to the conditions of Articles 18 and 19, amendments to the Annexes ... within the scope of the relevant provisions of this Regulation". As we have seen, a lot of conditions have been defined in these annexes. Such a procedure can thus allow quicker and easier revisions. According to Article 19, "the European Parliament or the Council may object to the delegated act within a period of two months from the date of notification". Finally, Article 18 allows the European Parliament or the Council to revoke this delegation at any time.

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25. OJ EU L 89, 27.03.2012, 1-2.



## 4. THE REGISTERED INITIATIVES

At the end of 2012, 15 initiatives had been registered by the Commission.

The first European Citizens' Initiative to be registered was "**Fraternité 2020 – Mobility. Progress. Europe**"<sup>26</sup> on 9 May 2012. F2020 wants to enhance EU exchange programmes – like Erasmus or the European Voluntary Service (EVS) – in order to contribute to a united Europe based on solidarity among citizens.

Other Citizens' initiatives were registered until December 2012:

- "**Single Communication Tariff Act**"<sup>27</sup> registered on 10 May 2012. The subject of this ECI is one unique all-inclusive, monthly flat-rate communication tariff within the boundaries of the European Union. (withdrawn and re-registered on 3 December 2012)
- "**Water and sanitation are a human right! Water is a public good, not a commodity!**"<sup>28</sup> registered on 10 May 2012. It invites the European Commission to propose legislation implementing the human right to water and sanitation as recognised by the United Nations, and promoting the provision of water and sanitation as essential public services for all.
- "**EU Directive on Dairy Cow Welfare**"<sup>29</sup> registered on 10 May 2012. An EU Directive to improve welfare of the EU's 23 million dairy cows, create a level playing field and guarantee minimum standards enable improvements as seen with legislation for pigs and poultry. (This initiative has been withdrawn on 20 July 2012 until the ECI system functions properly.)
- "**One of us**"<sup>30</sup> registered on 11 May 2012 concerning legal protection of the dignity, the right to life and integrity of every human being from conception in the areas of EU competence in which such protection is relevant.
- "**Let me vote**"<sup>31</sup> registered on 11 May 2012 wants to complete the rights of European citizens enumerated in Article 20 § 2 TFEU, by a vote in any political election in the Member State of residence under the same conditions as nationals of that State. (withdrawn and re-registered on 28 January 2013)
- "**Stop vivisection**"<sup>32</sup> registered on 22 June 2012 proposing a European legislative framework aimed at phasing out animal experiments and asking the European Commission to abrogate Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010 on the protection of animals used for scientific purposes<sup>33</sup> and to present a new proposal that

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26. <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2012/000001>

27. <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2012/000016>

28. <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2012/000003>

29. <http://ec.europa.eu/citizens-initiative/public/initiatives/obsolete/details/2012/000004>

30. <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2012/000005>

31. <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2013/000003>

32. <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2012/000007>

33. OJ EU L 276, 20.10.2010, p. 33-79

does away with animal experimentation and instead makes compulsory the use – in biomedical and toxicological research – of data directly relevant for the human species.

- **“High Quality European Education for All”**<sup>34</sup> registered on 16 July 2012 with the objective of establishing a multi-stakeholder platform where all the education actors (parents, students, teachers...) could debate, discuss and propose a European policy for a better and pluralistic EU-2020 oriented education model at both primary and secondary level as foreseen by the Lisbon Treaty.
- **“For a responsible management of waste, against incinerators”**<sup>35</sup> registered on 16 July 2012 to propose a Directive to the European Commission relevant in all Member States to strengthen the sorting of household waste, prohibit over-packaging, require the use of recyclable packaging, ban waste incinerators and force, for the treatment of waste, to use technologies without affecting health and environment.
- **“Suspension of the EU Climate & Energy Package”**<sup>36</sup> registered on 8 August 2012 proposing to suspend the 2009 EU Climate & Energy Package (excluding energy efficiency clauses) and further climate regulations until a climate agreement is signed by major CO2 emitters – China, USA, and India.
- **“Central public online collection platform for the European Citizen Initiative”**<sup>37</sup> registered on 27 August 2012. The main aim of this ECI is to provide an online platform where new initiatives could be registered and collect signatures. This platform would give a general overview of the open initiatives, allow discussion between organisers and supporters of the initiatives and transparently show at which state the initiatives are and who is in charge of the next step until the final decision will be taken.
- **“End Ecocide in Europe: A Citizens’ Initiative to give the Earth Rights”**<sup>38</sup> registered on 1<sup>st</sup> October 2012 inviting the Commission to adopt legislation, to prohibit, prevent and pre-empt Ecocide, the extensive damage, the destruction and loss of ecosystems. (withdrawn and re-registered on 21 January 2013)
- **“European Initiative for Media Pluralism”**<sup>39</sup> registered on 5 October 2012 proposing a media pluralism protection through partial harmonisation of national rules on media ownership and transparency, conflicts of interest with political office and independence of media supervisory bodies. The organisers of this ECI ask for amendments to the Audiovisual Media Services Directive or the endorsement of a new Directive. According to the organisers this would be a necessary step towards the correct functioning of the Internal Market.

34. <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2012/000008>

35. <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2012/000009>

36. <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2012/000010>

37. <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2012/000011>

38. <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2013/000002>

39. <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2012/000013>

- “30 km/h – making the streets liveable”<sup>40</sup> registered on 13 November 2012. This ECI suggests a 30 km/h (20 mph) EU-wide default speed limit for urban or residential areas. It has proven successful in reducing injuries, noise, air pollution and CO2 emissions, and improving the traffic flow.
- “Rescission of the free movement of persons in Switzerland”<sup>41</sup> registered on 19 November 2012. (withdrawn on 4 February 2013)

On 11 February 2013, “Right2water” became the first ECI to have collected over 1 million signatures. HOWEVER the minimum number of signatories from at least one quarter (7) of all Member States as set in Article 2, paragraph 1 of the Regulation was not reached yet. The ECI organizers collected the minimum signatories in 5 Member States only (see figure below). These Member States were Austria, Belgium, Germany, Slovakia and Slovenia. The organizers have until 1 November 2013 to collect the minimum signatures in at least 2 other Member States.

Country	Paper signatories 6/03/2013	Online signatories 6/03/2013	Total 6/03/2013	Minimum signatories required EU
Austria	10	57739	57749	14250
Belgium	14075	8891	22966	16500
Bulgaria		539	539	13500
Cyprus	2000	178	2178	4500
Czech Republic	1500	2149	3649	16500
Denmark	141	1508	1649	9750
Estonia	102	715	817	4500
Finland	1656	3762	5418	9750
France	2000	7297	9297	55500
Germany	50150	1068685	1118835	74250
Greece	5	3016	3021	16500
Hungary	260	1573	1833	16500
Ireland	1000	1447	2447	9000
Italy	9000	15591	24591	54750
Latvia	200	161	361	6750
Lithuania	1000	1011	2011	9000
Luxembourg	104	2186	2290	4500
Malta	1500	275	1775	4500
Netherlands	255	8027	8282	19500
Poland		761	761	38250
Portugal	150	2105	2255	16500
Romania	330	1005	1335	24750
Slovakia	1000	10709	11709	9750
Slovenia	4027	12450	16477	6000
Spain	6000	9517	15517	40500
Sweden	1000	2472	3472	15000
United Kingdom	600	2690	3290	54750
Total	98065	1226459	1324524	

40. <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2012/000014>

41. <http://ec.europa.eu/citizens-initiative/public/initiatives/obsolete/details/2012/000015>





## 5. THE REJECTED INITIATIVES

“**My vote against nuclear power**”<sup>42</sup> which seeks to phase out the use of all nuclear energy within the EU and to provide for a secure energy in the future, is the first European Citizens’ Initiative (ECI) to be rejected by the European Commission. In its reasoning, the Commission referred to the Euratom Treaty for the promotion of nuclear energy, alleging that the Treaty bans the use of a citizens’ initiative directed against nuclear power (see question 6.3 below).

The other refused requests until the end of 2012 have been: Recommend singing the European Anthem in Esperanto, Strengthening citizen participation in decision-making on the collective sovereignty, Abolition of bullfighting in Europe and the use of bulls in celebrations of cruelty and torture for fun, Creation of a European Public Bank focused on the social, ecological and solidarity development, ONE MILLION SIGNATURES FOR “A EUROPE OF SOLIDARITY”, Unconditional Basic Income.

It must be noticed that the explanations provided by the Commission have been extremely synthetized until now, with the exception of “**My vote against nuclear power**”<sup>43</sup>.

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42. <http://www.my-voice.eu>

43. See for example the letter of Mrs Catherine Day of 06.09.2012 about the “Création d’une Banque publique européenne axée sur le développement social, écologique et solidaire”. The organizers criticized the fact that the decision was justified in one sentence. It states only: “nous ne voyons pas, après examen juridique approfondi, aucune autre disposition dans les traités qui pourrait servir de base juridique pour l’adoption d’un acte juridique de l’Union dont l’objet principal serait celui que vous indiquez”.



## 6. THE REMAINING QUESTIONS

### 6.1. Is the software sufficiently user-friendly?

As indicated in Regulation 211/2011, “*The procedures and conditions required for the citizens’ initiative should be clear, simple, user-friendly and proportionate to the nature of the citizens’ initiative so as to encourage participation by citizens and to make the Union more accessible.*” (Recital 2)

However, the Online Collection Software provided by the Commission seems still far from this target. According to many comments, the installation of the software is long, complex and needs advanced IT-skills from the user<sup>44</sup>. The ECI website for online signing is not yet sufficiently developed. It is neither very attractive, nor interactive. This means that many supporters could possibly give up and the ECI organizers could therefore lose a lot of potential online signatures.

The users should also have appropriate hardware, operating software and hosting environment which have to comply with the technical specifications set out in the Regulation (EU) 1179/2011.

### 6.2. Are the personal data required for signing too cumbersome?

The personal data required to give electronic support to an ECI have been defined at the level of the Member States. This has engendered discrepancies. They could become a problem in the verification of supporting signatures. People can choose the jurisdiction under which they give their statement of support. It can be the country of nationality or the country of residence. It will be interesting to see whether this provokes some kind of forum shopping.

### 6.3. Must all initiatives regarding the revision of the Treaties be excluded?

In the procedure concerning the initiative “**My vote against nuclear power**”<sup>45</sup>, the EU Commission has stated it will not register ECIs which propose amend-

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44. See for example M. Starskaya and Ö. Cagdas, *Analysis of the Online Collection Software provided by the European Commission for the European Citizens’ Initiative* – ([http://epub.wu.ac.at/3643/1/Binder1\\_\(2\).pdf](http://epub.wu.ac.at/3643/1/Binder1_(2).pdf)) ePub<sup>uu</sup>, 2012.

45. <http://www.my-voice.eu>

ments to the Euratom Treaty<sup>46</sup>. In a nutshell, for the Commission, the Euratom Treaty does not provide the possibility of a citizens' initiative. Articles 11 TEU and 24 TFEU are not among the provisions applicable due to Article 106a Euratom. More fundamentally, "the legal bases of the TEU and the TFEU cannot be interpreted as giving the Commission the possibility to propose a legal act that would have the effect of modifyng/repealing provisions of primary law"<sup>47</sup>.

Some authors are also quite categorical about this<sup>48</sup>. This question, however, appears a little bit more complex. It has been analyzed with much greater subtlety by M. Dougan. "On the one hand, it is arguable that that drafting was intended to rule out calls for actually changing, rather than merely implementing, the current Treaties (or at least that the chosen wording must be interpreted as having such an effect). [...] On the other hand, even a literal construction of Article 11(4) TEU need not rule out every single proposed CI [citizens' initiative] which happens to involve an amendment to the existing Treaties: after all, certain perspectives on how best to further the Union's values and objectives as laid down in Articles 2 and 3 TEU could well necessitate the amendment of existing Treaty provisions or the introduction of new ones – thereby still fulfilling the requirement contained in Article 11(4) TEU that a CI should call for a legal act of the Union for the purpose of implementing (more effectively, certain) provisions of the Treaties (even if only by changing others). [...] In any case, and unlike some of the domestic popular petitions and initiatives found in the Member States, Article 11(4) TEU contains no list of subject matter (such as taxation or international affairs) which is to be excluded *a priori* from the scope of a potential CI."<sup>49</sup>

Another nuanced approach is offered by P. Ponzano. The European Parliament and most NGOs consider that the ECI could be used to propose a modification of the European Treaties. This position is contested by most of the Member States. Most probably, even in the case of a success, the Commission would not propose Treaty revision, but the European Parliament would keep the capacity to do it anyway<sup>50</sup>.

46. See letter 30.05.2012 from Mrs Catherine Day, Secretary General to Global 2000.

47. See also about this the press release of Global 2000 of 01.06.12.

<http://www.citizens-initiative.eu/?p=1134>

48. See N. LEVRAT, L'initiative citoyenne européenne: une réponse au déficit démocratique?, Cahiers de droit européen, 2011, pp. 53-101, spéc. 65.

49. M. Dougan, What are we to make of the citizens' initiative?, 48 Common Market Law Review 1807-1848 (2011), pp. 1835-1836.

50. L'initiative citoyenne européenne: la démocratie participative à l'épreuve, Revue du droit de l'Union européenne, 2012/4, pp. 622.

## 6.4. Will there be a language problem?

As often, the language question can be at the heart of institutional problems. At the beginning of the process, the organizers have to provide the original version of their ECI in one language, and one only. This choice will most likely have an impact with the organizers' choice of a state of certification. When a national authority has received a request for a certificate, it must provide an 'electronic stamp' within 30 days.

Later, after the registration of the ECI by the Commission, it is possible to upload on the website additional versions in other languages. This is an option, not an obligation. The organizers, however, have the obligation to provide accurate translations. The additional versions must thus be approved before they are used to customize the signature collection forms. After the uploading, these versions are thus controlled by the EU language services. It is important, since translation software is not presently able to offer an accurate translation.

## 6.5. What could be the role of the EU Courts?

The Court of Justice of the European Union could decide on the Commission's narrow interpretation of the scope of the ECI for instance when an ECI is rejected on unjustified grounds<sup>51</sup>. The organisers of a rejected initiative could for example bring proceedings before the General Court under the conditions specified in Article 263 of the TFEU<sup>52</sup>. Some people could also choose to contest the decision taken by a national authority in the delivery of a certificate concerning the online collection system or later in the control of the electronic statements of support. In this case, this could possibly lead to a prejudicial question.

## 6.6. Must the rules about signatures remain decentralized?

Some aspects of the mechanism remain decentralized in the framework of Regulation 211/2011. It will be interesting later to see whether this creates impediments for its functioning. For example, "finding the right balance between effectiveness and data protection will be crucial for implementing ECIs. Eighteen

51. If the organizers want to complain about maladministration, a non judicial available process can also be explored. They can file a complaint with the European Ombudsman under the conditions specified in Article 228 of the TFEU.

52. In this context, some suggest that it will be much easier to contest a refusal from the Commission than an approval. In the latter case, one applicant would have to establish that (s)he is directly and individually concerned by the approval. See N. Levrat, *L'initiative citoyenne européenne: une réponse au déficit démocratique?*, Cahiers de droit européen, 2011, pp. 53-101.

member states are demanding passport data of signatories although most of those countries don't even ask for such information for national elections. Instead of collecting ID and passport numbers from every signatory, random checks by the relevant national authorities would be a suitable alternative to prevent both duplication and data retention"<sup>53</sup>.

Different problems could appear. "First, without specific and collective rules, discrepancies in national practices stand to exacerbate the operation of a citizens' initiative from the organizers' perspective. The coordinator(s) of any initiative will have to submit the collected statements of support for verification in the Member States from where the signatories originate — either by virtue of citizenship or residence. As a consequence, the organizer(s) will have to become familiar with the different national procedures and authentication bureaus. While such credentials may not pose major problems to experienced and well-organized actors, they could discourage ordinary citizens or small national NGOs from attempting to use the instrument. Second, the lack of standard rules for all Member States might make the verification and authentication of signatories more susceptible to manipulation"<sup>54</sup>.

### **6.7. Can the institutions prevent frustrations?**

A lot will depend on the Commission's reaction after the first success of a citizens' initiative. The problem will be especially acute if the Commission does not take any concrete measure. The mechanism is highly symbolic, but so would be the refusal to take it into consideration. The same could be said, less directly about the European Parliament and the Council, when they will have to examine any proposition. Paradoxically, this could lead at the end to more, and not less, accusations concerning the "democracy deficit" of the European Union.

### **6.8. Can this really be a citizens' initiative?**

Originally, such a mechanism was meant to connect directly citizens to the authorities. Considering the context, one has to wonder whether this is really possible. The cumulative requirements of numbers and geography make very difficult the organisation of such operations by simple citizens, without the support of powerful organisations. "The current debate conveys the impression that large civil society organizations such as Amnesty International or Greenpeace

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53. C. Schnellbach, *The European Citizens' Initiative: a useful instrument for public participation?*, C:A-Perspectives n° 3 – 2011, p. 3.

54. CEPS/EGMONT/EPC, *The Treaty of Lisbon: A Second Look at the Institutional Innovations*, 2010, p. 128.

will become the real beneficiaries of the ECI. It is ideally suited to large pressure groups such as the European Trade Union Confederation with its 60 million members.”<sup>55</sup>.

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55. D. Hierlemann and A. Wohlfarth, *A Revolution in Disguise: The European Citizens' Initiative*, Spotlight Europe 2010/07, Bertelsmann Stiftung, 2010, p. 4.





## A FEW (VERY TENTATIVE) CONCLUSIONS

The ECI is a new concept in a new Treaty, and has barely been implemented. Any conclusions must therefore remain quite limited. However, three years after the entry into force of the Lisbon Treaty, nearly one year after the entry into force of Regulation 211/2011, and with a bunch of registered initiatives, a few things seem already clear.

**1. This new mechanism has not drawn until now as much attention as some had hoped.**

Many reasons could explain this. The mechanism is complicated. It requires much time, attention, energy. A lot of conditions are required simply for an examination by the Commission of the possibility of taking an initiative. Everybody is still in a learning process. Furthermore, the attention of the public opinion has been largely taken until now by the tsunami of the financial crisis.

**2. In the present setting, the conditions for an ECI appear relatively heavy.**

Any project requires a bunch of signatures in at least eight Member States. This is not always simple, considering the variety of national political cultures, and also the languages barrier. Many Member States, we have seen, ask their citizens a personal ID number when they sign an ECI.

**3. The ICT aspects have been widely underestimated (at least by the present author).**

The European Citizens' initiative is not only the first transnational instrument of modern direct democracy, but the first *electronic* transnational instrument of modern direct democracy. This electronic aspect is due to various geography, languages, and costs constraints. It is an essential component of the system. This requires a certain level of commitment. In the present context, the existing software and hardware also require a certain level of commitment.

**4. Many interesting questions will still rise in the next years**

The European Union is only at the beginning of a long and complex process, with many new (and sometimes unforeseen) aspects. The only certainty we have presently is that it has not reached the end of its surprises yet.



## ECI REGISTRATION DEMANDS UNTIL 31 DECEMBER 2012

Open Initiatives	Obsolete Initiatives	Refused Requests for Registration
“Fraternité 2020 – Mobility. Progress. Europe”	“EU Directive on Dairy Cow Welfare”	“My vote against nuclear power”
“Water and sanitation are a human right! Water is a public good, not a commodity!”		“Recommend singing the European Anthem in Esperanto”
“One of us”		“Strengthening citizen participation in decision-making on the collective sovereignty”
“Let me vote”		“Abolition of bullfighting in Europe and the use of bulls in celebrations of cruelty and torture for fun”
“Stop vivisection”		“Creation of a European Public Bank focused on the social, ecological and solidarity development”
“High Quality European Education for All”		ONE MILLION SIGNATURES FOR “A EUROPE OF SOLIDARITY”
“For a responsible management of waste, against incinerators”		“Unconditional Basic Income”
“Suspension of the EU Climate & Energy Package”		
“Central public online collection platform for the European Citizen Initiative”		
“End Ecocide in Europe: A Citizens’ Initiative to give the Earth Rights”		
“European Initiative for Media Pluralism”		
“30 km/h – making the streets liveable”		
“Rescission of the free movement of persons in Switzerland”		
“Single Communication Tariff Act”		

