

European Citizens' Initiative

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Abstract

The European Citizens' Initiative is the expression of participatory democracy within the European Union, where one million citizens of it, who have their domicile in at least one quarter of the Member States, have the right to invite the Commission, to submit a proposal for a legal act in the application of treaties. The Citizens Initiative has its source in the concept of European Union Citizenship, first governed by the Treaty of Maastricht (Treaty on European Union/TEU). At present, the European Citizens' Initiative has its legal basis in the TEU, TFEU, Regulation (EU) No. 211/2011 and in the Rules of Procedure of the European Parliament. Regulation (EU) No. 211/2011, establishes detailed procedures and conditions for the Commission to make such an initiative. Since the implementation of the EU Injunction, three initiatives have been submitted to the Commission, which have proved viable.

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JEL Classification: K10, K33.

1. Legislative initiative

1.1. Commission legislative initiative²

Union legislative acts **may be adopted only on a proposal from the Commission**, unless the Treaties provide otherwise. The other acts shall be adopted on a proposal from the Commission, where the Treaties so provide (according to Article 17 (2) TEU).

The Commission was conceived as a “driving force for European integration”³, having its “**general mission (...) initiative**”⁴ and, in particular, **the task of proposing legislative projects**.

☞ Through the **legislative initiative, the Commission is helping to design, prepare and outline the measures taken by the Council and Parliament to formulate Union policies by presenting them as proposals**⁵.

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² Ioana Nely Militaru, *European Union Law*, third edition, revised and added, Bucharest, 2017, p. 257 et seq.

³ See G. Isaac, M. Blanquet, *Droit communautaire general*, 8 ed., Dalloz, Paris, 2001, p. 62.

⁴ CJCE, 26 February 1976, SADAM, 88 to 90/75, Rec. 323.

⁵ See O. Manolache, *Community Law Treaty*, 5th Edition, C.H. Beck, Bucharest, 2006, p. 127.

Whenever the Council acts on the basis of Commission proposals, it is considered **to have a right of legislative initiative**⁶ (under the TFEU and TEuratom).

The Commission may only propose draft legislation in cases where the Treaties confer on it such competence, while being bound by the principle of subsidiarity as set out in Art. 5 par. (3) TEU that the Union, acting on the initiative of the Commission, **“intervenes only if and to the extent that the objectives of the proposed action can not be sufficiently achieved by the Member States, either at central level or at regional and local level, dimensions and effects of the proposed action can be better achieved at Union level.”** The cases where the “Commission proposal” is retained by the TFEU are numerous.

☞ In most cases, **the Commission acts on its own initiative, in cases where legal acts are adopted through ordinary legislative procedure. This procedure shall be initiated only on a proposal from the Commission** [Art. 289 par. (1) TFEU].

In some situations, however:

- **it is the Council that asks the Commission** to make a recommendation or a proposal, as appropriate, under the conditions of Art. 135 TFEU, in others, the Council is required to consult the Commission (Article 49 TEU)⁷;

- **the European Parliament**, acting by a majority of its component members, **may request the Commission** to submit any appropriate proposal on matters for which it considers that it is necessary to draw up a Union act implementing the Treaties (Article 225 TFEU).

Thus, on the basis of a report drawn up by the competent committee, in accordance with art. 225 TFEU, **Parliament**, acting by a majority of its component members, **may request the Commission to submit to it any appropriate legislative proposal**. Parliament may at the same time set a deadline for such a proposal. The competent parliamentary committee must first seek the approval of the Conference of Presidents. The Commission can agree or refuse to prepare a legislative proposal requested by the European Parliament.

A proposal for a Union act based on the **right of initiative conferred on Parliament** by virtue of Art. 225 TFEU, can also be made by a **Member of the European Parliament**. This proposal shall be submitted to the President of Parliament, who shall forward it to the committee responsible for scrutiny. It may decide to put it in plenary.

There are also situations in which “the Commission may amend its proposal throughout the procedures leading to the adoption of an act of the Union”, according to art. 293 par. (2) TFEU, with reference to an act of the Council which is adopted on a proposal from the Commission, “as long as the Council has not taken a decision” (n.a.).

There are situations in which the Commission is required to submit its proposals within a specified period, **failure to comply with this date entitles the other EU institutions and Member States to notify the CJEU of finding a breach**

⁶ See C. Lefter, *Fundamentals of Institutional Community Law*, Economic Publishing House, Bucharest, 2003, p. 170.

⁷ *Idem*.

of the Treaties (Article 265 TFEU⁸). In others, for example in art. 109 TFEU, the Commission is not bound by any deadline.

In all cases, however, the Parliament or the Council, as the case may be, may request the Commission to explain and justify the merits of its proposals.

The Commission's proposals are published in the Official Journal of the European Union, **the „C” series** being called **„COM documents”**.

Although the right of legislative initiative, as a rule, belongs to the Commission, the Treaties provide for this right to be exercised by:

- **the European Parliament**, which draws up a draft for the purpose of establishing the necessary provisions to allow the election of its members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States, 223 TFEU;

- **at least one million citizens of the Union** who are nationals of a significant number of Member States who are entitled to invite the Commission to submit, within the limits of its powers, an appropriate proposal on matters where those citizens consider that a legal act of the Union is necessary, in order to apply the treaties.

1.2. The legal basis of the European Citizens' Initiative

The European Citizens' Initiative is a materialization of participatory democracy within the European Union⁹, whereby one million citizens of that country who have their domicile in at least one quarter of the Member States have the right to invite the Commission to submit a proposal for a legal act to apply Treaties.

The European Citizens' Initiative has its legal basis in the TEU (Article 11, paragraph 4), TFEU (Article 24 (1)), Regulation (EU) 211/2011 and in the Rules of Procedure of the European Parliament (Article 197a). That Regulation lays down detailed procedures and conditions for the submission to the Commission of such an initiative. Since the adoption of the Regulation, three initiatives have been submitted to the Commission, which have proved viable.

2. Evolution of the European Citizenship Initiative

In 1996, in preparation for the Amsterdam Intergovernmental Conference, the Austrian and Italian Foreign Ministers proposed the introduction of a right to present such citizens' initiatives, in addition to the right to petition the European Parliament. However, the proposal was not adopted at the conference.

⁸ See the deficiency action, according to art. 265 TFEU, where the deadline is two months.

⁹ On participatory democracy within the European Union and its role in creating the European Public Space see Cătălin-Silviu Săraru, *European Administrative Space - recent challenges and evolution prospects*, ADJURIS – International Academic Publisher, Bucharest, 2017, p. 10-12; Cătălin-Silviu Săraru, *Drept administrativ. Probleme fundamentale ale dreptului public*, C.H. Beck, Bucharest, 2016, p. 783-787.

Provisions on a citizens' initiative very similar to the current system were initially included in the draft Constitutional Treaty (Article 47 (4)).

The constitutional treaty does not bring into force the provisions on the European Citizens' Initiative were introduced during the drafting of the draft Treaty of Lisbon.

The right to submit a citizens' initiative is now enshrined in the Treaties of the European Union as follows:

- **Article 11 (4) of the TEU (Title II on “Provisions on democratic principles”)** establishing the basic framework for this right and which refers to art. 24 TFEU,

- **Article 24 (1) TFEU** which expressly provides for the power of the European Parliament and of the Council to adopt regulations (acting in accordance with an ordinary legislative procedure) containing provisions on the procedures and conditions required for the submission of an initiative citizens. Under the same conditions of adoption, those regulations must also establish the minimum number of Member States from which the citizens presenting such an initiative come from.

These provisions have been considered inconclusive, which is why the extensive consultations carried out in a Commission Green Paper¹⁰ have resulted in a proposal for a regulation on the initiative.

To this end, a draft proposal was submitted to the Parliament and the Council on 31 March 2010 and the political agreement was reached on 15 December 2010, which allowed the formal adoption of the text by Parliament and the Council on 16 February 2011.

It entered into force on 1 April 2011.

Regulation (EU) No 211/2011 on the European Citizens' Initiative became applicable only one year later.

By 1 April 2015 and every three years thereafter, the Commission had to report on the application of the Regulation on the European Citizens' Initiative for its possible review.

The Commission adopted this report on 31 March 2015 in a communication¹¹. The text of the report identifies a number of deficiencies and takes into account part of the substantial research undertaken for the European Parliament¹².

The right to file a European citizens' initiative is different from the right to petition.

Petitions may be addressed by EU citizens or by resident EU natural or legal persons and should address issues that fall within EU fields of activity and

¹⁰ See Commission Green Paper COM (2009) 0622.

¹¹ See COM (2015) 0145.

¹² European Citizens Initiative - First lessons of implementation (First European Conclusions after Implementation). See the Thematic Department on Citizens' Rights and Constitutional Affairs, 2014: [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509982/IPOL_STU\(2014\)509982_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509982/IPOL_STU(2014)509982_EN.pdf) (consulted on. 15.10.2017).

directly affect the petitioner. Petitions are addressed to Parliament as a direct representative of the citizens at EU level.

A European Citizens' Initiative is a direct request for a specific EU legal instrument. The Initiative (ICE) has to comply with a number of specific rules to fall into this category and should be addressed to the Commission, being the only one of the European institutions that has the right to put forward legislative proposals. In this respect, the European Citizens' Initiative is similar to the right of initiative conferred on:

- the European Parliament, thus, the European Parliament, acting by a majority of its component members, may request the Commission to submit any appropriate proposal on the matters it considers necessary to draw up a Union act for the implementation of the Treaties. If it does not make proposals, the Commission shall communicate its reasons to the European Parliament (Article 225 TFEU);

- the Council, therefore, 'The Council, acting by a simple majority, may request the Commission to carry out all the studies which it considers appropriate for the achievement of the common objectives and to submit to it any appropriate proposals. Where the Commission does not submit any proposal, it shall communicate the reasons to the Council '(Article 241 TFEU).

3. The procedure for the submission of a citizens' initiative¹³

3.1. Citizens' committee

The creation of a European Citizens 'Initiative starts with the establishment of an organizing committee, called the "citizens' committee". The Committee shall consist of **at least seven persons residing in at least seven different Member States** (but not necessarily of different nationalities) who have reached the age of voting in the European elections. MEPs can participate but are not taken into account when calculating the minimum number of citizens required to form a committee. The Committee should designate a representative and an alternate who will be the contact person for the European Citizens' Initiative concerned.

3.2. Registration

The Citizens' Committee must register the initiative with the Commission. This implies the submission of a document containing the title, the subject and a brief description of the initiative, the proposed legal basis as well as information on the members of the committee and all the sources of support and funding of the proposed initiative. Organizers can provide more detailed information, such as, for example, a draft of the proposed legislative document in the form of an annex. Within two months, the Commission has to decide whether to register the proposed initiative. If

¹³ See, Petr Novac, Technical Sheets on the European Union, the European Citizens' Initiative, http://www.europarl.europa.eu/about-parliament/ro/displayFtu.html?ftuId=FTU_2.1.5.html, (consulted on. 15.10.2017).

the procedural requirements are not met, the initiative is not recorded, while examining the Commission's powers, in particular if the proposal should come from this institution. Registration is denied if it is found that the initiative is manifestly unreasonable, abusive, vexatious or contrary to the objectives of the Union as set out in art. 2 TEU.

3.3. Collecting statements of support

Within 12 months of the registration of the initiative, the statements of support are collected. Collecting statements is done on paper or in electronic format. The online collection system must be certified by the competent national authorities. Detailed rules on technical specifications for online collection systems are laid down in a Commission Implementing Regulation¹⁴.

Statements of support will be verified, regardless of how they are collected, on paper or in electronic format. These requirements are laid down by each Member State and are also set out in Annex III to Regulation (EU) No. 211/2011.

There are Member States such as Belgium, Denmark, Germany, Estonia, Finland, Ireland, the Netherlands, Slovakia and the United Kingdom, which do not require the signatories of the statements of support to provide documents or personal identification numbers. However, in other Member States such identification is mandatory. Annex III to that Regulation also specifies, for each Member State, the type of personal identification documents that may be used.

The European Citizens' Initiative, to be considered by the Commission, has to collect one million statements of support within 12 months. The number of signatories in the Member State concerned must be at least 750 times the number of MEPs elected in that Member State. Thus, the minimum number of signed statements of support is established according to the same system of digressive proportionality used to establish the distribution of seats in the European Parliament between Member States¹⁵.

3.4. Verification and certification

After collecting the required number of statements of support from a sufficient number of Member States, the organizers must submit them to the competent national authorities¹⁶ responsible for certifying the statements of support compiled by the Commission on the basis of the information communicated by the Member States. Authorities are mainly Ministries of the Interior, electoral commissions or population registers. National authorities have three months to certify their statements of support, but are not required to authenticate their signatures.

¹⁴ See, Regulation (EU) No. 1179/2011.

¹⁵ See, Petr Novac, *op. cit.*, 10/ 2017.

¹⁶ See <http://ec.europa.eu/citizens-initiative/public/authorities-verification?lg=ro> (consulted on 15.10.2017), for a list of the competent national authorities.

3.5. Presentation and examination

At this stage, the organizers must present the relevant certificates issued by the national authorities on the number of statements of support and information on funding received from any source under Regulation (EC) No. 2004/2003 on the status and financing of political parties at European level. Contributions in excess of EUR 500 must be declared.

After receiving the proposed initiative, the Commission has the obligations to:

- publish the initiative without delay in a register,
- receive the organizers to enable them to explain the details of the request.

Following an exchange of views with the Commission, the organizers have the opportunity to present their initiative at a public hearing held at the European Parliament.

The hearing is organized by the committee responsible, which differs according to the subject of the European Citizens' Initiative (Rule 197a of the Rules of Procedure of the European Parliament).

4. Current European Citizens Initiatives

Prior to the adoption of Regulation (EU) No. 211/2011 and that procedures have been established, several organizations have tried to launch similar initiatives.

For example, in 2007, **the European Disability Forum** launched one of the first pilot initiatives, claiming that it has collected 1.2 million signatures.

Following the adoption of the European Citizens' Initiative Regulation in 2010, but before its entry into force, **Greenpeace** claimed to have received one million signatures calling for a moratorium on GMO crops.

Although the conditions laid down in the Treaties on the European Citizens' Initiative have been met, none has been taken into account.

Since April 1, 2012, over 40 European citizens' initiatives have been launched. 20 were denied registration because they were considered not to fall under the Commission's remit and 13 were withdrawn by their organizers.

Currently only four initiatives are in the collection phase, only three of them have collected the required number of signatures: Right2Water, One of Us and Stop Vivisection, and have been submitted to the Commission:

1. The Right2Water initiative invites the Commission to **“Proposes legislative acts implementing the human right to water and sanitation services as recognized by the United Nations and to promote the provision of water and sanitation services as essential public services for all.”**

2. **The initiative One of Us** calls for the EU **“to end the funding of activities involving the destruction of human embryos, especially in the areas of research, development aid and public health.”**

3. The Stop Vivisection initiative calls on the Commission to establish a **legislative framework for the phasing-out of animal experiments in the EU.**

Parliament held hearings with the representatives of each initiative on 17 February 2014, 10 April 2014 and 24 April 2015, attended by several parliamentary committees (those dealing with the environment, the internal market, research and the legal affairs, and the Commission for petitions).

The Commission provided a response in which it presented the legal and political conclusions on all three initiatives.

Several European citizenship initiatives have been the subject of legal action before the General Court, which, in its most recent judgment in Case T-646/13 *Minority SafePack v Commission*, found that the Commission had failed to fulfill its obligation to explain in detail and to justify the reasons why he refused to register a European citizens' initiative.

5. Conclusions

The European Citizenship Initiative has been and continues to be a major concern for the European Parliament.

On 7 May 2009, before the entry into force of the Treaty of Lisbon, Parliament adopted a resolution¹⁷ containing a detailed proposal for the implementation of the European Citizens' Initiative. After the entry into force of the Treaty, Parliament has contributed to the process by which the European Citizens' Initiative has become an instrument of participatory democracy more accessible and more adapted to the needs of citizens. In this respect, Parliament has, *inter alia*, achieved:

- a reduction in the minimum number of Member States from which statements of support have to come, from a third, as initially proposed, to a quarter;
- insisted that the admissibility check be carried out before registration;
- has put pressure on those provisions that allow all EU citizens and residents, irrespective of their nationality, to have the right to sign a European citizens' initiative.

In order to simplify and rationalize the procedures for conducting an ECI and to increase its impact, **on 28 October 2015, Parliament adopted a Resolution on the European Citizens' Initiative, requesting, among other things, the revision of the Regulation to simplify the data requirements with and provide funding to support the organization of European citizens' initiatives**¹⁸.

The Parliament's institution has also shown that it is necessary to offer more counseling and support to organizers on the recordings of proposals and to improve measures to improve current online collection tools. In 2017, Parliament's Committee on Constitutional Affairs launched an own-initiative legislative report on such a genuine revision of the European Citizenship Initiative Regulation¹⁹.

In September 2017, on the basis of Parliament's requests and a public consultation, the Commission finally made a proposal to revise the European

¹⁷ See OJ C 212 E, 5.8.2010, p. 99.

¹⁸ See OJ C 355, 20.10. 2017, p. 17.

¹⁹ See, Petr Novac, 06. 2017, *op. cit.*

citizens' initiative²⁰, reducing the voting age for signatories up to 16, simplifying the forms to raise adhesions, to allow all EU citizens to support an ICE, irrespective of their residence, and to extend the examination period of an ICE.

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10. Regulation (EU) 1179/2011.

²⁰ See http://ec.europa.eu/citizens-initiative/files/ECL_2017_Proposal_Annexes_en.pdf (consulted on 15.10.2017).