

European Union Citizenship–Ground of an Active Democracy

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Abstract

The process of European integration generated a new legal order, European Union, to the profit of which the Member State have limited their sovereign rights and of which the subjects are not only the states but also their nationals, according to the decision issued by European Court of Justice in the case law Van Gend & Loos.

The normative changes from Maastricht to Lisbon treaties refer to a new view of sovereignty, self-determination and rights of individuals and it purposes to strengthen the citizens' feeling of belonging to the European Union.

The analysis of the regulation on The European citizens' initiative (ECI) as introduced by the Lisbon Treaty, reveals that the a million citizens from seven member states are allowed to change the EU legislation, having the support of European Commission.

Keywords: Eu Citizenship, Transnational Citizenship, Citizens' Rights, Active Democracy, European Citizens' Initiative

Introduction

The complex process of European integration has multiple layers pertaining to normative changes, market integration a transnational structure, as European Union itself which cannot be a polity in the traditional meaning of the word, but a symbol of the denial of modern approach of sovereignty and political territoriality (Singh, 2009).

„The normative changes from Maastricht to Lisbon treaties refer to a new vision of sovereignty, self-determination and rights of individuals and it purposes to strengthen the citizens' feeling of belonging to the European Union”. (Ene, Pop, Micu, 2012)

Therefore, the Treaty of the European Union, also known as the Maastricht Treaty, introduced the term of European Union Citizenship under Article 17(1) - former Art.5 (C)- as follows: *Citizenship of the Union is hereby established. Every person holding the nationality of a member state shall be a citizen of the Union.* And since the Treaty of Amsterdam, Art.17(1) continues: *Citizenship of the Union shall complement and not replace national citizenship.*

The entry into force of the Lisbon Treaty (initially known as the Reform Treaty) gives the European Union (EU) a legal personality and an independent corporate existence for the first time – separate from and superior to its member states. In this regard, the Lisbon Treaty changes the meaning of citizenship, and emphasizes the fact that it is a status additional to

national citizenship. (Militaru, 2010) An additional citizenship is a true dual citizenship so that EU citizens will be both national and EU citizens. This is because the EU has its own legal personality separate from those of its Member States and can have individuals as its real citizens for the first time. (Rădulescu, 2012)

The new additional citizenship is connected to the Charter of Fundamental Rights and the rights defined in Article 9 new TEU and Article 20 (1) TFEU, (both treaties form the Lisbon Treaty). In this normative context, the term “additional” underlines the duality between national and EU citizenship and expresses an accurate delineation of the two statuses; (Ene, Micu, 2013) it emphasizes the new development of EU citizenship which grants to EU citizens additional rights, such as: the right to petition the European Parliament, to apply to the Ombudsman and to write to any of the institution and agencies of the Union in any of the official languages of the Union and to receive a reply in that language etc.

Moreover, Article 11 TEU provides that one million citizens, coming from a significant number of EU Member States, may in a petition ask the EU institutions to elaborate a legislation on a specific subject. The details of this right are to be laid down according to Article 24 TFEU.

Based on these provisions, we may argue that the European Citizens' Initiative (ECI), having a specific issue and involving directly the physical persons in EU decision-making process, represents a form of active democracy of the EU. „It is a major step forward in the democratic life of the Union. It's a concrete example of bringing Europe closer to its citizens,” said the European Commission Vice-President Maroš Šefčovič.

The present article begins by analysing the normative background of European Citizens' Initiative, and stress the potentialities and limitations of the procedure of the participation in EU law and governance. It then examines the normative implications of procedures provided by Regulation (EU) no 211/2011 of the European Parliament and of the Council in order to apply the European Citizens' Initiative. It concludes that the normative framework establishes limits the discretion of the institutions in shaping participation practices.

Legal Framework

According to Article 11(4) of the Treaty on 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.

The procedures and conditions required for such a citizens' initiative shall be determined in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union (TFEU): The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens' initiative within the meaning of Article 11 of the Treaty on European Union, including the minimum number of Member States from which such citizens must come.

From the text quoted above it might be detached three essential traits of ECI. First, such a citizens' initiative has to be developed at European scale, which implies one million signatures to be valid. Second, these signatures should come from a significant number of Member States; and third, after both former requirements are met, the Commission is “invited” to put forward a European legal act required for the purpose of implementing the Treaties.

The European treaties have provided only at level of principle the right of European legislative initiative accorded to European citizens; and it has been established that the procedure of ECI is detailed by regulation. (Militaru, 2011)

Under these provisions two regulations were adopted: Regulation (EU) no 211/2011 of the European Parliament and of the Council on the Citizens' Initiative, and Commission Implementing Regulation (EU) no 1179/2011 laying down technical specifications for online collection systems pursuant to Regulation (EU) no 211/2011 of the European Parliament and of the Council on the citizens' initiative.

The Procedure of European Citizens' Initiative

The procedure of ECI is detailed in Article 4 of Regulation (EU) no.211/2011 and it commences by registration of a proposed citizens' initiative in one of the official languages of the Union, with an online register made available by the Commission.

To be considered by the Commission, any ECI shall cumulatively fulfill the following conditions:

- the citizens' committee has been formed and the contact persons have been designated;
- the necessary information set out in Annex II, in particular on the subject matter and objectives of the proposed citizens' initiative has been provided;
- the proposed citizens' initiative is within 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 it is not manifestly contrary to the values of the Union as set out in Article 2 TEU.

If the above conditions are met, the Commission shall register the proposed citizens' initiative under a unique registration number within two months from the receipt of the information set out in Annex II of the regulation. Also, the Commission shall establish a point of contact which provides information and assistance.

If the above conditions are not fulfilled, the Commission shall refuse the registration of the proposed citizens' initiative and shall inform the organisers of the reasons for such refusal. At any time before the submission of statements of support, the organisers may withdraw a proposed citizens' initiative that has been registered. In that case, an indication to that effect shall be entered in the register.

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

Therefore, "this proposal makes the ECI extremely accessible: even individual persons can launch an ECI". (Damjanović, Hellquist, Hien, Ponzano, 2010)

The second stage of the procedure consist in collecting the statements of support from signatories for a proposed citizens' initiative, which, according to Regulation (EU) no.211/2011, may be done of support in paper form or electronically.

In order to collect the statements of support in paper form, the organisers shall complete the forms as indicated in Annex III and which are in one of the language versions included in the register for that proposed citizens' initiative. The information given in the forms shall correspond to the information contained in the register.

Signatories may only support a given proposed citizens' initiative once, and in this regard they complete statement of support forms made available by the organizers with only the

personal data that are required for the purposes of verification by the Member States, as set out in Annex III.

In case that statements of support are collected online, these shall be electronically signed using an advanced electronic signature and shall be treated in the same way as statements of support in paper form. The data obtained through the online collection system shall be stored in the territory of a Member State, which certify that this system have adequate security and technical features in place in order to ensure that:

- the possibility of submission a statement of support form online for natural persons only;
- the data provided online are securely collected and stored, in order to ensure, inter alia, that they may not be modified or used for any purpose other than their indicated support of the given citizens' initiative and to protect personal data against accidental or unlawful destruction or accidental loss, alteration or unauthorised disclosure or access;
- the system can generate statements of support in a form complying with the models set out in Annex III, in order to allow for the verification by the Member States in accordance with Article 8(2).

The organisers may use one online collection system for the purpose of collecting statements of support in several or all Member States, thus the models for the statement of support forms may be adapted for this purpose.

The organisers may only start collecting statements of support through the online collection system once they have obtained the certificate, in accordance with the model set out in Annex IV. Therefore, the organisers shall make a copy of that certificate publicly available on the website used for the online collection system. Member States shall recognize the certificates issued by the competent authorities of other Member States.

The signatories of a citizens' initiative shall come from at least one quarter of Member States and they shall comprise at least the minimum number of citizens set out, at the time of registration of the proposed citizens' initiative, in Annex I, in order to be valid. Those minimum numbers shall correspond to the number of the Members of the European Parliament elected in each Member State, multiplied by 750. Signatories shall be considered as coming from the Member State which is responsible for the verification of their statement of support in accordance with the second subparagraph of Article 8(1).

As has been underlined, "even if one wants to preserve a strong trans-European touch of the ECI, one quarter of the Member States seems to be a too high hurdle. It could be the case, that certain cross-border territorial entities have a common trans-national problem to solve.(...) In other case, even if the potential for one million signature would be given in the affected region, an ECI would not be successful as the signatures would only come from two or three Member State instead of the required seven." (Damjanović, Hellquist, Hien, Ponzano, 2010)

The entire procedure of collecting the statements of support shall be completed within a period not exceeding 12 months from the date of registration of the proposed citizens' initiative. At the end of that period, the register shall indicate that the period has expired and, where appropriate, that the required number of statements of support was not collected.

The next stage of ECI procedure is verification and certification of statements of support by the competent authorities from relevant Member State. The Article 8, para.1 of Regulation establish that relevant Member State is that state of residence or of nationality of the signatory, or the state that issued the personal identification number or the personal identification document indicated in the statement of support by a signatory.

Each Member State shall designate one competent authority responsible for coordinating the process of verification of statements of support and for delivering the certificates provided for therein, and shall forward the identification features of the competent authorities to the Commission. The Commission shall make the list of competent authorities publicly available.

The organisers shall submit collected statements of support to the competent authorities from relevant Member State and shall separate those statements of support collected in paper form, those which were electronically signed using an advanced electronic signature and those collected through an online collection system, using the form set out in Annex V of Regulation.

Within a period not exceeding three months from receipt of the request, the competent authorities shall verify the statements of support submitted on the basis of appropriate checks, in accordance with national law and practice, as appropriate. After that, the competent authorities shall deliver to the organizers, free of charge, a certificate in accordance with the model set out in Annex VI, certifying the number of valid statements of support for the Member State concerned. For the purpose of the verification of statements of support, the authentication of signatures shall not be required.

The final stage of ECI procedure consist in submission the citizens' initiative for examination to the European Commission. For this purpose, the organizers shall obtain the confirming certificates and shall comply with all relevant procedures and conditions set out in this Regulation. They submit the citizens' initiative to the Commission, accompanied by information regarding any support and funding received for that initiative, which shall be published in the register. Moreover, the organisers shall make use of the form set out in Annex VII and shall submit the completed form together with copies, in paper or electronic form, of the confirming certificates.

After the Commission received a citizens' initiative and the related documentation, it shall publish it without delay in the register. Also the Commission shall receive the organisers at an appropriate level to allow them to explain in detail the matters raised by the citizens' initiative. Within three months, the Commission shall 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 communication shall be notified to the organisers as well as to the European Parliament and the Council and shall be made public.

Where the conditions provided by Regulation are fulfilled, and within three months a public hearing will be held during that the organisers shall be given the opportunity to present the citizens' initiative in front of the European Parliament, together with such other institutions and bodies of the Union as may wish to participate, including the Commission represented at an appropriate level.

In case that the ECI is rejected, the Commission should publish the reasons of this decision. The scholars emphasized that "there should be provision for any decision by the Commission to reject an ECI to be appealed before the Court of Justice." (Berg, 2007)

Conclusions

European Citizens' Initiative (ECI) represents an absolute novelty, being the first democratic tool of transnational citizen participation in the world (Häfner, 2010). By developing the citizens' initiative mechanism at European level, the European legislator plans to strengthen the institution of European citizenship, improving democratic process within the EU.

The analysis of the whole procedure, allowed us to identify the key elements of it, namely the way in which the Commission will establish relationships with citizens, and the extent of it intends to exercise the powers conferred in this regard.

From this point of view we refer to a high level of decision of the Commission in assessing the opportunity and admissibility of a citizens' initiative.

The legal doctrine argues the necessity of an institutional mechanism to counterbalance the powers conferred on the Commission in this procedure, to avoid turning it into a pseudo-direct and pseudo-democratic tool. (Militaru, 2011)

Thus was formulated the idea of developing a surveillance mechanism to the Commission by the European Parliament which stops any arbitrary measures taken by it. Only in this way European citizens can be brought closer to Europe, an idea formulated in the European Constitutional Convention.

In this regard, as has been stressed in the literature, "the EP should perform an important task of acting as the guardian of the procedure and supporter of the institute, interacting with the ECI and possibly absorbing its suggestions and ideas where these are unable to get to the end of the procedure. The use of Art. 225 TFEU would be essential for creating a dual channel towards achieving a particularly well-accepted ECI within the EP. Also, the national parliaments, apart from monitoring compliance with subsidiarity, could be stimulated to deal with the issues raised, look further into and debate them. Apart from achieving the objectives, the ECI should be conceived as an important occasion for broadening debate, participation, quality of politics and create a common European home of greater trust. All this will depend on the attitude of the EU institutions and the spirit that animates the organising and implementing of this tool for popular initiative, the only survivor from the referendum proposals and direct, participatory democracy promoted within the European Convention on the future of Europe (2002-2003). Therefore, even if the ECI were only able to play a complementary role in the democratisation of the EU, this would already be a good result. Trying out this new democratic instrument, so that it is inclusive and stimulates European decision making at all levels, is certainly useful and the ECI can form a bridge between citizens and the EU, a channel for communication and exchange." (Alvatore, Grimaldi, Morelli, Padoa-Schioppa, 2011)

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