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# The Citizens of Democracy: Participation for Integration in the European Union after the Lisbon Treaty

*By Rossana Deplano\**

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## INTRODUCTION

Sometimes the best solution to a complex or endemic problem comes from a simple idea. The issue of civic engagement within the European Union (EU) has been one such problem, until the entry into force of the Treaty of Lisbon on December 1, 2009. At the EU level there is a two-pronged type of democratic participation. On one hand, representative democracy consists of the representation of citizens in the European Parliament and the presence of political parties, which are able to represent the interests of European citizens before the EU institution. Representative democracy in the EU has not been altered by the entry into force of the Lisbon Treaty. On the other hand, direct democracy has been significantly affected by the 2009 reform treaty. Prior to the Lisbon Treaty, direct democracy in the EU was limited to the right to petition the European Parliament,<sup>1</sup> the right to apply to the European Ombudsman<sup>2</sup> and the right to address the European institutions and bodies.<sup>3</sup> These democratic methods fostered an individualized kind of participation that did not reflect the collective dimension of European citizenship. The Treaty of Lisbon has filled this gap by introducing a unique means of grassroots participation in the democratic life of the Union—the European Citizens' Initiative (ECI)—which confers on European citizens the right to suggest new legislation. By submitting a legislative proposal to the European Commission (the Commission) that has received the support of at least one million citizens from at least one quarter of the EU member States, European citizens now have the right to directly invite the Commission to bring forward their legislative proposal. As the executive body of the EU, the Commission is the only body with the authority to make formal proposals for legislation, and is primarily responsible for the implementation of proposals adopted by the legislative bodies. Whereas European Parliament represents EU citizens and the Council of the EU represents individual member states, the Commission must uphold the interests of the EU as a whole.

Such an innovation represents an unprecedented means of transnational democracy, insofar as it establishes the conditions for increased public engagement within an international

organization. In particular, the citizens' initiative strengthens the position of EU citizens by requiring transparency throughout the deliberative process between EU institutions, European citizens and the competent national authorities. The transparency requirements are set forth in both of the two EU constitutive treaties and in Regulation 211/2011 of the European Parliament and the Council, which implements the relevant Lisbon Treaty provisions on the citizens' initiative.<sup>4</sup> The European Economic and Social Committee (EESC) has pointed out that mandatory transparency requirements confer legitimacy on the entire citizens' initiative procedure.<sup>5</sup> This article discusses the legitimizing role of transparency in context of the citizens' initiative.

The first section outlines both the origins and features of the citizens' initiative to show how the new right to propose legislation is situated in the broader context of the EU. This process underscores the differences between the citizens' initiative and the pre-existing right to petition. The second section assesses the provisions on transparency set forth in the two EU constitutive treaties as well as in Regulation 211/2011, which establishes the conditions and procedures required to submit a legislative proposal. For the sake of clarity, the substantive aspects of the citizens' initiative are referred to in this section as the right to submit legislative proposals for consideration by the Commission, whereas its procedural aspects are referred to as the European Citizens' Initiative. This section demonstrates that transparency is both a prerequisite for the right to submit legislative proposals to the Commission and an integral part of each stage of the ECI. The third section evaluates other recent initiatives that foster direct civic participation and compares the implications of the civic engagement taking place within an intergovernmental organization like the EU with similar forms of direct participation in the life of other national and international actors.

## TOWARD AN EU CITIZENS' INITIATIVE

European Union institutions and member states have resorted to reform treaties several times in the past. The Treaty of Lisbon represents the most recent attempt to adjust the institutional architecture of the EU to make it more efficient and responsive to the needs of a modern globalized society. The Lisbon Treaty amends the two constitutive EU treaties, the Treaty on European Union (TEU) and the Treaty establishing the European Community. The former provides the basic legal framework of the EU, while the latter, renamed the Treaty on the Functioning of the European Union (TFEU), organizes its functioning.<sup>6</sup> The two treaties have the same legal weight and together constitute the primary law of the EU.<sup>7</sup>

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# The Treaty of Lisbon has filled this gap by introducing a unique means of grassroots participation in the democratic life of the Union—the European Citizens’ Initiative—which confers on European citizens the right to suggest new legislation.

Among the amendments introduced by the Lisbon Treaty is the citizens’ initiative, which represents a new mechanism for participatory democracy. Its legal basis is now set forth in Article 11(4) of the TEU, which reads:

“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 the citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.”

The provision is complemented by Article 24 of the TFEU, which states that the procedures and conditions required for a citizens’ initiative shall be determined by means of a regulation.<sup>8</sup> Accordingly, on February 16, 2011, the European Parliament and the Council of the European Union adopted Regulation 211/2011 on the citizens’ initiative,<sup>9</sup> after examination the Commission’s proposal.<sup>10</sup>

Though the citizens’ initiative is a right bestowed on individual EU citizens, it is nonetheless distinct from the preexisting right to petition, as set forth in Article 227 of the TFEU. Together, these unique features contribute to regional integration by uniting individuals in pursuit of collective interests, and strengthen the role of the EU as a representative institution with genuine concern for such interests. First, by requiring that individual citizens form a collective of “no less than one million citizens,” Article 11(4) of the TEU ensures that the initiative accurately represents the interests of the European community. Regulation 211/2011 supports this aim by specifying in Article 2 that the signatories of a citizens’ initiative be nationals of at least one quarter of all member states.<sup>11</sup> EU citizens are thus required to reach across borders—in communities otherwise separated by language, ethnicity, religion, or culture—in search of common ground and mutually enriching initiatives. Regulation 211/2011 further specifies in Article 7(2) that the minimum number of signatories “shall correspond to the number of the Members of the European Parliament elected in each Member State, multiplied by 750.”<sup>12</sup>

By contrast, the right to petition is a right reserved to any natural or legal person residing or having its registered

office in the territory of a EU member state.<sup>13</sup> It can be exercised either individually or in association with other citizens or legal persons, and is confined to matters that directly affect the petitioner.<sup>14</sup> For example, in 2003, residents of the Susa Valley in Italy presented a petition in opposition to the proposed construction of new high-speed and capacity railway connections between Turin and Lyon.<sup>15</sup> The petition specifies direct harm to the residents of the Susa, in particular damage to the environment, looming questions of financial costs, and concern that the community would become a “corridor of facilities and services” in furtherance of private business interests. Whereas the right to petition is exercised in the sole interest of the petitioner, the citizens’ initiative encourages EU citizens to seek unity in the midst of rich diversity in furtherance of the collective interest. In the process, the initiative adds a layer of direct participatory democracy to the EU, bringing it closer still to the day-to-day needs of the citizens it is charged with representing. In this sense, the citizens’ initiative contributes to the EU process of regional integration.

## TRANSPARENCY

The requirement that EU institutions create and maintain a transparent dialogue with civil society is integral to the underlying democratic principles of the EU. Article 10(3) TEU reads:

“Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.”

Article 11 of the TEU further obliges the EU institutions to carry out three different duties, in addition to the citizens’ initiative, regarding transparency. Paragraph 1 covers the horizontal, citizen-to-citizen, relationship and requires that the EU institutions give EU citizens “the opportunity to make known and publicly exchange their views in all areas of Union action.”<sup>16</sup> Subsequent paragraphs cover the vertical, institution-to-citizen relationship. Paragraph 2 requires the EU institutions to “maintain an open, transparent and regular dialogue” with civil society. Lastly, Paragraph 3 refers to the particular duty of the Commission to “carry out broad consultations with parties concerned to ensure that the Union’s actions are coherent and transparent.” Although these provisions do not explicitly refer to the citizens’ initiative, they must not be read in isolation from Article 11(4), which establishes the right to submit legislative proposals to the



The European Citizens' Initiative Becomes Law.

Commission. Transparency should instead be interpreted as a universal treaty requirement that extends to treatment of ECIs, and therefore establishes the legitimacy of the entire citizens' initiative process.

More explicit transparency requirements are set forth in specific provisions of Regulation 211/2011. In a manner that is clear and easily accessible to citizens, Regulation 211/2011 demands strict verification of evaluation criteria at each stage of the ECI review process. The Regulation further stipulates that each decision be made publicly available.<sup>17</sup>

The first stage in establishing a citizens' initiative is the registration of a proposed ECI.<sup>18</sup> Article 4 of Regulation 211/2011 states that the organizers must register the initiative with the Commission by providing information on the subject matter and the objective of the proposed ECI.<sup>19</sup> The organizers must also provide the sources of funding for the proposed ECI.<sup>20</sup> On one hand, these disclosures allow the citizens to establish a proper projection of the initiative. On the other hand, they allow the Commission to verify whether or not the proposed initiative falls outside its powers or is sufficiently contrary to the values of the EU to warrant an outright refusal.<sup>21</sup> The Commission's scrutiny also prevents fraudulent use of the ECI.

The second stage involves the collection of statements of support for the ECI by its organizers. Article 5 of Regulation 211/2011 sets the timeframe for collection as twelve months, starting with the date of registration. Statements can be collected

in paper form or online<sup>22</sup>, and must comply with the form provided in Annex III of the regulation.<sup>23</sup> At this stage, Regulation 211/2011 further imposes sequential obligations on the parties: signatories must indicate personal data,<sup>24</sup> organizers must act as data controllers with regard to the statements of support collected,<sup>25</sup> and the competent national authorities must verify the statements and certify, free of charge, the number of valid statements.<sup>26</sup>

The third stage governs the process of submission and review, and is articulated in three steps. The first step involves the actual submission to the Commission, comprised of the certificate obtained from the national authorities and the transparency report on any support or funding received for that initiative.<sup>27</sup> In the second step, the ECI is reviewed by the Commission.<sup>28</sup> The Commission must publish the ECI within three months,<sup>29</sup> and can summon the organizer to discuss in detail the matters raised by the initiative.<sup>30</sup> The organizers are also given the opportunity to present the ECI at a public hearing organized at the European Parliament.<sup>31</sup> In the third and final step, the Commission issues its decision.<sup>32</sup> According to Article 10(c) of the regulation, the Commission must "set out in a communication its legal and political conclusions [...], the actions it intends to take, if any, and its reasons for taking or not taking that action."<sup>33</sup> The decision is communicated to the organizers, the European Parliament, and the Council, and then made public.<sup>34</sup>

As Regulation 211/2011 does not apply until April 1, 2012, the ECI must be read in perspective. For the moment, it is essential to understand the overall importance of transparency in the process of the ECI. Each of the three stages of an ECI is grounded in the initial decision of EU citizens to partake in an ECI either as a supporter or an organizer. Whereas EU citizens must avail themselves of the standard procedures provided for in Regulation 211/2011, which are known and publicly available in advance, the EU institutions, in collaboration with the competent national authorities, cannot interfere with the decision to initiate an ECI. EU institutions limit their intervention to the verification process of the requirements for transparency set forth in Regulation 211/2011 for each of the three stages. In doing so, EU institutions must comply with the criteria established by Regulation 211/2011, which are known in advance, and have a duty to publicly justify their decision. As a result, in the first stage the verification by the Commission of the registration requirement guarantees that only an ECI that is genuinely in the interest of the EU and is supported only by EU citizens is registered. In the second stage, by verifying the identity of the supporters, the competent national authorities officially state

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that the ECI is a EU citizens' initiative. In the third stage, the Commission ascertains that organizers collected at least one million valid signatures from at least seven member states. If this requirement is met, the ECI is complete and the EU citizens have collectively exercised their right to invite the Commission to submit a legislative proposal. The subsequent decision of the Commission on the ECI must also be justified and made public in the website of the Commission.

### PARTICIPATION THROUGHOUT THE INTERNATIONAL COMMUNITY

A successful citizens' initiative creates a multi-tiered dialogue among the European citizens, the European institutions, and the competent national authorities, according to the substantive and procedural provisions set out in Article 11 of the TEU and Regulation 211/2011 respectively. The citizens' initiative also requires an understanding of the broader functions of EU institutions by the right-holders. According to Article 11(4) of the TEU, the citizens' initiative creates the right to invite the Commission to present legislative proposals "on matters where the citizens consider that a legal act of the Union is required *for the purpose of implementing the Treaties* (emphasis added)." This is to say that a legislative proposal cannot be submitted in matters where the EU treaties have already been implemented. Therefore, the citizens' initiative covers only the residual areas that still need to be implemented. To successfully implement the treaties, both the organizers and supporters of a citizens' initiative must have a sound knowledge of EU law, including the transparency requirements discussed in the previous section.

Other international actors support forms of public engagement of the kind fostered by the EU through the citizens' initiative. Article 18(2) of the Union of South American Nations (USAN) shadows the provisions on the EU citizens' initiative. It reads:

"The Member States and organs of [USAN] will promote innovative mechanisms and spaces to encourage discussion of various issues ensuring that the proposals submitted by civil society receive adequate consideration and response."

Created in December 2008, USAN is an international organization aimed at strengthening the economic integration of the twelve South American states. However, lack of both a central law-making system and a compliant mechanism leaves no room for legal certainty and binding transparency requirements on member states. This prevents USAN from establishing the conditions for active and direct channels of participation of civil society in the policy-making of the Union, as set forth in Article 18(2) above.<sup>35</sup>

At the national level, other recent initiatives throughout the world aim at creating the right conditions for civic participation. For example, the U.S. Office of Public Engagement (OPE) represents an interface between the American citizens and the U.S. President, and seeks to embody "the President's goal of making government inclusive, transparent, accountable and responsible."<sup>36</sup> It relies extensively on an online dialogue—the OPE blog—between the public and the OPE as

a way of building an open and transparent government. The OPE strives to make the government inclusive by creating a forum for direct dialogue between the U.S. citizens and the President. It encourages transparency by "remov[ing] obstacles and barriers for citizens' engagement" in the work of the President.<sup>37</sup> From the perspective of the OPE, inclusion and transparency are two overlapping notions. In contrast to the citizens' initiative, the OPE's transparency is not required by statute or regulation. The vagueness of the OPE's conception of transparency thus affects its goals of accountability and responsibility. According to the OPE website, once collected, the citizen's opinions are circulated throughout the Executive Office of the President, in coordination with different departments, to present them to the appropriate bodies of the Federal Government. The 2009 *Citizen's Briefing Book*, for example, is a selection of the most popular of such ideas submitted by ordinary people to the President. However, the appropriate bodies of the Federal Government have no duty to examine the citizens' proposals, nor do they make the decisions that result from these proposals publicly available. This precludes any possibility for assessment of the accountability and responsibility of the government in relation to the participatory instrument created by the OPE. This also demonstrates that the OPE's model of public engagement is a discretionary tool in the hands of the Federal Government. It is therefore an opportunity for active citizenship, not a right to direct participation in the life of the government. Unlike the citizens' initiative, there are no reciprocal obligations between American citizens and the Federal institutions. It is nonetheless possible that Federal institutions translate the citizen's proposals into action. However, that would represent a choice of political convenience instead of the fulfillment of a legal obligation.

Another example of an initiative aimed at increasing civic participation is the 2010 Big Society initiative in the United Kingdom.<sup>38</sup> The initiative is conceived as a community empowerment agenda aimed at tackling social problems at the local level. Unlike the citizens' initiative, the Big Society consists of government requests for active grassroots participation in local development activities instead of citizen-driven proposals for legislative action. By providing support to volunteer organizations, charities, and social enterprises, the government encourages the private sector to deliver public services. The sources of this type of grassroots participation consist of the Big Society Bank, the National Service Pilots, the Community Organisers program and the Community First fund. Each of these sources is supported by separate funding provisions, according to the government programs. Decisions on funding are made available to the general public through both the Cabinet Office's website and the traditional media. However, despite the transparent deployment of capital and nation-wide training programs, the government request for investment in social change creates an active citizenship with limited powers. A passage from the Big Society's website reads:

"The Big Society is about collective action and collective responsibility. We [the government] recognize that active local people can be better than state services at finding innovative and more efficient solutions to local problems."<sup>39</sup>

Though the right to submit legislative proposals requires support from no less than one million citizens, once this threshold is met the resulting collective reflects a rich and complex array of expertise and passion for civic engagement.

Accordingly, active citizenship—organized in voluntary and community organizations, charities and social enterprises—is called on to deliver public services to local communities. Such services, however, are those already provided for by the public sector. It is therefore not clear whether the implementation of the Big Society’s programs by civil society aims at replacing or supplementing existing public services for local communities. In both cases, there should be a clear statement from the government on how the Big Society affects the rights and duties of taxpayers. Indeed, a lack of transparency surrounding funding prevents assessments of the final goal of collective responsibility, as articulated by the government. For this reason, the means of the Big Society agenda are not proportionate to the end of civic engagement for community development. In contrast, the provisions on the EU citizens’ initiative thoroughly state both the scope and the limits of the new participatory device to strike a transparent balance between what the citizens can achieve through the legislative initiative and what they should expect from the EU institutions.

### CONCLUSION

Introduced by the Lisbon Treaty in 2009, the European Citizens’ Initiative is a new instrument of direct democratic participation in the life of the EU, intended to make the institution more accessible to its citizens. Though the right to submit legislative proposals requires support from no less than one million citizens, once this threshold is met the resulting collective reflects a rich and complex array of expertise and passion for civic engagement. These citizens are then granted access to the European Commission on a level equal to that of the European Parliament and the Council. A codified set of review guidelines adds transparency and legitimacy to the submission and review process, since it requires the Commission to identify and publicly disclose the reasons for its decision. Within such a system, the voices of one million EU citizens become one to shape the law-making process, and contribute significantly to making the EU a modern institution that promotes the interests of its citizens.

### Endnotes: The Citizens of Democracy: Participation for Integration in the European Union after the Lisbon Treaty

<sup>1</sup> TFEU art. 227.

<sup>2</sup> *Id.* art. 228.

<sup>3</sup> *Id.* art. 20(2, *d*).

<sup>4</sup> Regulation 211/2011 of the European Parliament and of the Council on the Citizens’ Initiative, 2011 O.J. (L 65/1).

<sup>5</sup> Opinion of the EESC, *supra* note 11, para. 3.1.2, 183.

<sup>6</sup> TFEU, *supra* note 3, art. 1.1.

<sup>7</sup> *Id.* art. 1.2.

<sup>8</sup> There is a hierarchical relationship between the citizens’ initiative treaty provisions and those of Regulation 211/2011. As primary law of the EU, the treaties establish the right to invite the Commission to submit legislative proposals. TEU art. 11.4 sets forth the substantive aspects of the citizens’ initiative, as it provides for both its scope and its limits. In contrast, TFEU art. 24 determines the procedural aspects of the citizens’ initiative by requiring its implementation by means of a regulation. As secondary law of the EU, Regulation 211/2011 implements the treaty provisions on the citizens’ initiative by establishing its conditions and procedures. The main implications of the hierarchical relationship between the primary and secondary sources of EU law on the citizens’ initiative is that the treaty provisions cannot be amended by an ordinary

procedure, whereas the provisions of Regulation 211/2011 must be reviewed by April 1, 2015, and every three years thereafter. *See* Regulation 211/2011, *supra* note 13 art. 22.

<sup>9</sup> Regulation 211/2011, *supra* note 13.

<sup>10</sup> *European Commission, Proposal for a Regulation of the European Parliament and of the Council on the citizens’ initiative*, COM (2010) 119 final (March 31, 2010).

<sup>11</sup> Such a minimum number mirrors the requirement set forth in both TFEU art. 76 in the field of administrative cooperation and Regulation 2004/2003 art. 3.1(*b*) on the rules governing political parties at the European level. TFEU, *supra* note 3, art. 76.

<sup>12</sup> This option was adopted in the proposal of the Commission and provides for a fixed threshold for each member state, which is digressively proportional to the population of each state with a minimum threshold and ceiling. *European Commission, supra* note 6, para 3.2.

<sup>13</sup> TFEU, *supra* note 3, art. 227.

<sup>14</sup> *Id.* art. 227.

Endnotes continued on page 60