INTRODUCTION The Lisbon Treaty enhances participatory democracy stating in the third paragraph of article 10 of the Treaty on European Union (TEU) that: “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.” This view expresses great mistrust on the part of European citizens as far as the way the EU is run at present and conveys the feeling of suspicion with regard to the MEPs who represent them. Moreover does the British Minister of State for European issues, David Lidington, not defend the draft law that aims to subject any significant transfer of power from London over to the European union to referendum – thereby maintaining that “there will be no possibility for the government to get up to any tricks” [1]?

This claimed closeness between the citizen and the decisions being taken on his/her behalf becomes a reality thanks to the European citizens’ right to initiative which is included in the fourth paragraph of article 11 in the 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 Citizens’ Initiative did not cause any significant polemic on either national or European level during negotiations of the regulation relative to how it should be implemented. Hence serious thought about the systemic effects this tool may have on Europe’s institutional structure seems necessary before the latter start to become apparent.

QUESTIONS RELATIVE TO THE IMPLEMENTATION OF THE CITIZENS’ INITIATIVE

The procedures and conditions governing the presentation of this kind of initiative are set according to article 24 paragraph 1 of the TFEU. On 11th November 2009 the European Commission published a Green Paper on the European Union (three weeks before the entry into force of the Lisbon Treaty on 1st December 2009). The consultation period ran from 11th November 2009 to 31st January 2010. 65 registered organisations, 70 non-registered organisations [2], 153 individual citizens and 41 public authorities (central government or Federal State, national or regional parliaments) answered the call. In addition to this consultation there was a public hearing in Brussels on 22nd February 2010.

SUMMARY The regulation governing how the European Citizens’ Initiative is to be implemented is due to be adopted at the beginning of 2011. During the negotiation procedure no major difference in opinion emerged with regard to this on the part of either the European Commission, the Council of the European Union and the European Parliament. This consensus contrasts with the significant effect that this tool of participatory democracy may have on European institutional dynamics. Various issues are raised: the disruption caused by its implementation with regard to the European Commission exercising its competence in terms of legislative initiative; reconciling divergence between the signatories of the citizens’ initiative and the positions adopted by the European Council, the Council of Ministers, the European Parliament and even the national parliaments; the potential disturbance of the regulatory role played by the Court of Justice.
The European Citizens’ Initiative: not such a good idea?

In 2010 that targeted everyone who had taken part. When questioned by the author, the European Commission said it believed that “the number of contributions received during this consultation was satisfactory. It is comparable to that received for other Green Papers”. Moreover it stressed that “a major share of answers came from individual citizens.”

The Green Paper attempted to pinpoint any problems that had not been provided for by the TEU. It noted ten: the minimum number of Member States from which the signatories of the initiative must come, the minimum number of signatories per country; the minimum age of the signatories; the form and title of the Citizens’ Initiative; rules governing the collation of, checking and authentication of the signatures; the time allowed to collate signatures; the means to make an official registration of initiatives; rules regarding transparency and funding (applicable to the organisers); the possible time taken by the Commission to respond; the procedure to adopt if several Citizens’ Initiatives focus on the same subject.

**THE UNION’S INSTITUTIONS AND THE CITIZENS’ INITIATIVE**

The table below lays out the various positions defended by the Commission, the Council and the European Parliament when the draft regulation on the Citizens’ Initiative was being debated.

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<tbody>
<tr>
<td>Minimum number of Member States from which signatories have to come</td>
<td>One third of the Member States (ie 9 Member States)</td>
<td>One third of Member States (ie 9 Member States)</td>
<td>One fifth of Member States (ie 5 Member States)</td>
<td>One quarter of Member States (ie 7 Member States)</td>
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<tr>
<td>Minimum number of citizens per Member State</td>
<td>Number of MEPs in the EP x 750</td>
<td>Number of MEPs in the EP x 750</td>
<td>Number of MEPs in the EP x 750</td>
<td>Number of MEPs in the EP x 750</td>
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<tr>
<td>Organisers</td>
<td>Natural person or legal entity or organisation</td>
<td>Natural person or legal entity or organisation</td>
<td>Natural person within a citizens’ committee comprising at least 7 members living in at least 7 Member States</td>
<td>Natural person within a citizens’ committee comprising at least 7 members living in at least 7 Member States</td>
</tr>
<tr>
<td>Minimum age required to support an initiative</td>
<td>Voting age in European elections</td>
<td>Voting age in European elections</td>
<td>16 years of age</td>
<td>Voting age in European elections</td>
</tr>
<tr>
<td>Registration of proposed initiatives</td>
<td>Obligatory in an on-line register made available by the European Commission.</td>
<td>Obligatory in an on-line register made available by the European Commission which reserves the right to refuse the registration of an initiative.</td>
<td>Obligatory in an on-line register made available by the European Commission which reserves the right to refuse the registration of an initiative.</td>
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<tr>
<td>Procedures and conditions for the collation of support statements</td>
<td>On-line and/or paper collation</td>
<td>On-line and/or paper collation</td>
<td>On-line and/or paper collation</td>
<td>On-line and/or paper collation</td>
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<tr>
<td>Time allowed to collate support statements</td>
<td>12 months</td>
<td>12 months</td>
<td>12 months</td>
<td>12 months</td>
</tr>
<tr>
<td>Decision on admissibility of proposed initiatives</td>
<td>The organiser must submit a decision request to the Commission with regard to the admissibility after collating 300,000 signatures from at least three Member States.</td>
<td>The organiser must submit a decision request to the Commission with regard to the admissibility after collating 100,000 signatures from at least three Member States.</td>
<td>No decision on admissibility provided for.</td>
<td>No decision on admissibility provided for</td>
</tr>
</tbody>
</table>

3. On this see the table on the procedures and conditions required for a citizens’ initiative at the end of this article.
The European Parliament’s and Council’s agreement on the draft regulation was noted on 16th December 2010. The Council is due to adopt the regulation “with regard to the Citizens’ Initiative” during the Council of Ministers at the beginning of 2011. Then the Members States will have one year to take the necessary steps for its implementation.

The table helps the reader see how great convergence was between the three European institutions with regard to this issue. Any differences in opinion are highlighted in bold in the table. With the exception of the number of Member States required other differences were insignificant. Although the European Parliament achieved the suppression of measures relative to the decision over an initiative’s admissibility delivered by the Commission this reappears during the initiative’s registration via the means made available to the Commission to reject an initiative. The minimum number of signatories is no longer a condition for the examination of admissibility – but was this really an obstacle? The time taken for the Commission to publish a report on the implementation of the regulation and the modifications to be made to it was decreased from five to three years after its entry into force and after that it will be published every three years. But in any case adapting the text to constraints would have been guaranteed in other ways (on the European Parliament’s request for example). As for limiting the nature of the initiative’s organisers is concerned (natural person or legal entity for the Commission and the Council, natural person within a citizen’s committee for the European Parliament) – this was simply a matter of perspective since neither institution challenged the right for a legal entity (political party, union or association) to support an initiative.

But was the difference over the number of States significant? The variation in the European Parliament’s position - from a fifth to a quarter - as opposed to the third demanded by the Commission and the Council appears to have been a means of bringing drama into the negotiation rather than being a real position on either one side or the other. It was clear that with European public opinion as a witness the most demagogic figure would be brought to bear. As soon as the European Parliament suggested a figure that was too low (one fifth) and which had no precedent in any of the treaties it was natural that negotiations would end in a compromise between the Commission, the Council (one third) and the European Parliament (one fifth). “Common sense” won through - revealed in the choice of a quarter which corresponds to the figure selected in article 76 of the TFEU. This article makes provision for acts relative to legal or police cooperation in penal matters to be adopted on the initiative of a quarter of Member States. A similar approach could undoubtedly be applied with regard to arguments about the age of the signatories.

### WHAT EFFECT WILL THE CITIZENS’ INITIATIVE HAVE ON POST- LISBON INSTITUTIONS?

The first preamble of the regulation stresses that “this procedure provides the citizens with the possibility of addressing the Commission directly presenting it with a re-

<table>
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<tr>
<th>Requirements relatives to checking and authentication of support statement.</th>
<th>Responsibility of Member States</th>
<th>Responsibility of Member States based on checks that can be undertaken by means of random surveys</th>
<th>Responsibility of Member States based on checks that can be undertaken by means of random surveys</th>
<th>Responsibility of Member States based on checks that can be undertaken by means of random surveys</th>
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<tbody>
<tr>
<td>Examination of a Citizens’ Initiative by the Commission</td>
<td>The Commission has four months to examine an initiative and say what action it intends to take</td>
<td>The Commission has four months to examine an initiative and say what action it intends to take</td>
<td>The Commission has three months to examine an initiative and say what action it intends to take</td>
<td>The Commission has three months to examine an initiative and say what action it intends to take</td>
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<tr>
<td>Commission Report on the implementation of the regulation</td>
<td>5 years after the entry into force of the regulation</td>
<td>3 years after the date of implementation of the regulation</td>
<td>3 years after entry into force and every three years after that</td>
<td>3 years after entry into force and every three years after that</td>
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</table>

4. For the vital checking of signatures to be undertaken for the Member States without “incurring unnecessary administrative costs”, it has been decided that the latter could restrict checking to random surveys without them having to authenticate every single signature. – otherwise the workload could prove to be extremely heavy: for example 74,250 signatures to check in Germany or 54,000 in France.
The European Citizens’ Initiative: not such a good idea?

To conclude like national democracies, European democracy is looking for a better means to express its citizens’ expectations. Although the effects on European institutional system have been underestimated in this article the European initiative does indeed comprise a means to motivate and democratise the European decision-making process. It helps the institutional, national and European network which represents the citizens to form a better idea of their expectations. For the positive impact of the citizens’ initiative to have effect it seems that as the latter is being implemented European citizens, institutions and the governments of the Member States need to learn more about it. The report on its implementation planned three years after its entry into force should be the subject of an exceptional consultation – in the ilk of the one

quest which invites it to submit a proposal for the purpose of implementing the Treaties following the example of the right given to the European Parliament in virtue of article 255 of the Treaty on the Functioning of the European Union and to the Council in virtue of article 241 of the Treaty on the Functioning of the European Union.” The right to legislative initiative by both of the Union’s legislative bodies is placed on the same footing as that attributed to one million of its citizens!

The reason the Commission has to give in justification of its decision to accept or reject an initiative can be likened to that granted to the European Parliament by the Council in the framework agreement [5] on relations between the European Parliament and the European Commission dated 20th October 2010. In this framework agreement if the European Parliament requests a legislative initiative on the part of the Commission the latter “puts forward a legislative proposal within one year or it includes a proposal in its working programme for the following year. If it does not put a proposal forward the Commission gives detailed reasons for this to the Parliament”. Having to give reasons for refusal increasingly undermines the Commission’s power to initiative since it constantly has to justify why it is not taking any action!

After Lisbon the claim of the Commission’s so-called monopoly over initiative is no longer a reality. We can see that this monopoly has been undermined in eight different ways (including the monopoly over initiative [6]) . Moreover does this mean that the Commission is not allowed to take the initiative of a legislative proposal as long as the 12 months necessary for the collation of the signatures have not elapsed? In other words do European citizens have the “temporary monopoly” over initiative preventing the European Commission from exercising its competence to issue a concurrent legislative proposal whilst signatures are being collated? Does this temporary invalidation of legislative initiative apply to that provided for a quarter of the Member States in article 76 of the TFEU?

The European Council and the Council of Ministers are not safe from upheaval. What would happen if a million Europeans from seven Member States launched an initiative for the creation of euro bonds, rejected by the Franco-German duo at the European Council of December 2010? This is not just a flight of fantasy since the Greek Prime Minister, George Papandreou maintained, after Paris and Berlin’s refusal, that he wanted to launch a citizens’ initiative in this direction [7].

Finally European Parliament may very well be affected. The financial crisis and the solutions that have been provided to this have highlighted the importance of the validation by the national parliaments of the financial contributions made by the Member States to the European Financial Stabilisation Fund. The European Parliament’s legitimacy, whose deficit is demonstrated by low turnout in the European elections, may also have to face a European initiative which challenges its positions. What effect would a citizens’ initiative have if it diverged from legislation adopted at first reading by the European Parliament after a political agreement with the Council of the European Union?

The national parliaments, which have been given considerable power in terms of control over the principle of subsidiarity may have ground to complain about a citizens’ legislative initiative. Who would arbitrate this conflict? The Court of Justice could only take control of the issue if it became a true body for the constitutional regulation of European competences. Should the way it recruits its judges not develop towards a more political model similar to that used for judges in the US Supreme Court or at least close to that applied with regard to judges at the European Court of Human Rights in order to affirm the more political nature of this type of decision [8]?

***


7. With regard to this, Europolitique no.414 7th January 2011.

8. With regard to this see Jean-Luc Sauron, Procédures devant les juridictions de l’Union européenne et devant la CEDH, Gualino-Lextenso éditions, November 2010.
planned for a Green Paper – in order to lay out citizen-users’ expectations and to justify quite transparently any potential modifications that might have to be made.

This report may very well have to face a citizens’ initiative with regard to modifying the way this tool of participatory democracy functions!

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Annexe

Table of procedures and conditions required for a Citizens’ Initiative, as provided in article 11 of the TEU and article 24 in the TFEU

ORGANISERS
They must:
- Be European citizens
- Be of the required age to vote in the European Parliament elections.

A CITIZENS’ COMMITTEE
Comprising at least 7 members from at least 7 different Member States

NB: if the organisers are MEPs they are not considered as being amongst the 7 members required.

1. The citizens committee has been formed and the contact people have been appointed;
2. The proposed CI is clearly not outside of the framework of the Commission’s attributions in virtue of which it can put forward a draft legal act for the application of the treaties;
3. The proposed CI is clearly not injurious, that is genuine and not irksome;
4. The proposed CI is clearly not contrary to the EU’s values as laid out in article 2 of the TEU.

The organisers provide regularly updated information for the register, on sources of support and funding of the CI

After the registration has been confirmed the organisers can register the CI proposal in other official EU languages. The translation of the proposed CI in other official EU languages is their responsibility.

THE COMMISSION
The Commission registers the proposed CI under a single registration number on 4 conditions:

1. The citizens committee has been formed and the contact people have been appointed;
2. The proposed CI is clearly not outside of the framework of the Commission’s attributions in virtue of which it can put forward a draft legal act for the application of the treaties;
3. The proposed CI is clearly not injurious, that is genuine and not irksome;
4. The proposed CI is clearly not contrary to the EU’s values as laid out in article 2 of the TEU.

THE COMMISSION

➤ the reasons for refusal and the means for appeal (if there is a refusal to register)

➤ of a registration confirmation (if accepted)

2 months after reception of this information
The European Citizens' Initiative: not such a good idea?

**2nd Stage**

**The Collation of Support Statements**

**Sign**
- They come from at least ¼ of the Member States.
- In a least ¼ of the Member States the signatories represent at least the minimum number of citizens defined in the annex I at the time of the registration of the CI. The minimum numbers correspond to the number of MEPs in each Member State multiplied by 750.

**Support Statements**
- Forms must correspond to a certain layout (Cf. annex III).
- They must be written in one of the languages which was included in the registration.

**Organisers**
- They fill in the forms as indicated in annex III.
- They collate the statements after the proposed CI’s registration date proposition d’IC, within < 12 months:
  - On paper
  - Electronically or

**Signatories**
- They can only support one proposed CI at any one time

**Collated by:**
- After this lapse of time the register indicates that the time has expired and if necessary that the number of support declarations has not been collated

**2nd Stage Cont’d**

**The Specific Case of On-Line Collation**

- When support statements are collated electronically the data obtained on-line is kept within the territory of a Member State.
- The on-line collation system is certified in the Member State where the data is collated and saved by the said system.

**Organisers**
- They may use one on-line collation system to collate the support statements in several Member States or in all of them. Model support statement forms can be adapted for the needs of electronic collation.

**Monitoring Mission**
- The on-line collation system must include security measures and adequate techniques to guarantee:
  - that the data provided on line is collated and stored in a safe manner so that it can notably be guaranteed that they will not be modified nor used to other ends and only in support of the CI in question and that the data which is of a personal nature will be protected from accidental or illegal destruction, accidental loss, change, revelation, or unauthorised access.
  - that the system can generate support statements which respect the models included in annex III so that they can be checked by the Member States.

**Once a certificate has been issued the organiser can start to collate support statements via an on-line collation system**

- When the said system meets these requirements a certificate of conformity is delivered by the competent authorities in the Member States (cf following stage), within one month (in line with the model included in annex 4 of the regulation)
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3rd Stage

Checking and Certification of Support Statements

Organisers

Submission of all support statements collated for checking & Certification.

The MS of residence or the nationality of the signatory OR the MS which delivers the personal ID number provided in the declaration.

Competent Authorities in the Member States (ME)

Who are they?

They are appointed by the Member States who must communicate their names and addresses to the Commission. A list of these authorities is then made public by the Commission.

Role?

They are responsible for delivering the support certificate.

They sort the support statements:
- collated on paper,
- signed electronically or by way of an advanced electronic signature,
- collated by means of an on-line collation system.

Delivery (free of charge) of a certificate (in line with the model included in annex VI of the regulation), indicating the number of valid support declarations for the Member State concerned.

4th Stage

Presentation of a CI to the Commission and the Examination Procedure

Organisers

Presentation of the CI to which all information relative to any type of funding obtained for this initiative is added.

This information is published in the register.

After reception of the CI:

➤ It receives the organisers at an appropriate level so that they can explain in detail the issues raised in the CI.

➤ It publishes this rapidly on its internet site.

➤ Within ≤ 3 mois it presents by way of a communication its legal and political conclusions on the CI, the action it intends to take, if necessary the reasons it has to undertake or not undertake this action.

Public hearing

Utilisation d’un formulaire (annexe VII du règlement) devant être completé, accompagné de copies, sur papier ou sous forme électronique, des certificats de déclaration.

European Parliament

Commission