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THEORETICAL ASPECTS ON THE "LEGISLATIVE INITIATIVE" – RIGHT OF THE EUROPEAN CITIZENS

Elise Nicoleta VÂLCU[1]

Abstract

The Lisbon Treaty states that "Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship". The quality as a European citizen offers rights stated for the first time by the Maastricht Treaty. A major novelty in the area of the rights as a European citizen is brought by the Lisbon Treaty which states the right to initiative of the citizen of the Union's Member States. In this regard, the Treaty states that "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 11 of the Treaty on European Union and Article 24 of the Treaty on the Functioning of the European Union".

We wonder what is the purpose of this Union's treaty? Given that the Lisbon Treaty states in general terms this right without studying the procedure itself, the secondary Union regulation is meant to amend the treaty. In this regard, Art 2 of the Regulation explicitly defines the usual terms of the procedure namely, "citizens' initiative", "signatories" and "organizers".

Keywords: *citizens' initiative, signatories, declaration of support, organizers*

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1. **Introduction**

European citizenship has been defined by the Maastricht Treaty as being a major conceptual novelty, in the meaning that "Every person holding the nationality of a Member State shall be a citizen of the Union, according to the laws of that Member State".

Art 8 of the Lisbon Treaty has re-launched the concept of the European citizenship stating that "*Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship*".

Being a Union's citizen offers supranational and complementary rights to those offered by the citizenship of a Member State. In this regard, Treaty on European Union states (Fuerea (2006): 51), 5 categories of supranational rights, complementary to national citizenship:

a) The right to move and reside freely[2] within the territory of the Member States recognized for all Union's citizens residing on the territory of other Member States of the Union (Art 18, former Art 8A TEC);

b) The right to vote and to stand as candidates in elections to the European Parliament[3] and in municipal elections in their Member State of residence[4], under the same conditions as nationals of that State (Art 19.1 and 19.2, former Art 8B TEC);

c) The right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State

[2] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

[3] Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals; EU Official Journal L 329/34 of 30.12.1993

[4] Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals

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on the same conditions as the nationals of that State[5] (former Art 8C TEC);

d) The right to petition the European Parliament (Art 21 former Art 8D TEC);

e) The right to apply to the European Ombudsman (European Mediator), and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language (new Art 21 of the TEC inserted by the Treaty on the Functioning of the European Union – TFEU {former Art 8D}).

Citizens' initiative[6] is a new right stated by the Lisbon Treaty and added to those already existent, giving the citizens of the Member States the possibility to directly invite it 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, this procedure being similar to the right offered to the European Parliament based on Art 225 TFEU and with the right offered for the Council based on Art 241 TFEU.

2. The issue on the citizens' initiative stated by Regulation (EU) No 211/2011 of the European Parliament and of the Council on 16 February 2011

As above-mentioned, the present Regulation completes the issue on the citizens' initiative in relation with the text inserted in the Lisbon Treaty by offering additional explanations.

Specifically, the citizens' initiative represents an initiative presented to the Commission in accordance with the present Regulation, by which it is invited to submit, within the limitations of its attributions, any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties, initiative supported by at least 1 million eligible signatories.

The "signatories" are Union's citizens who have supported a certain citizens' initiative by completing a statement of support. The signatories of a citizens' initiative shall come from at least one quarter of Member

[5] Decision of the representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations

[6] Green Card on the European citizens' initiative, Brussels, 11.11.2009, COM (2009) 622 final

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States[7] and correspond to the number of the Members of the European Parliament elected in each Member State, multiplied by 750.

The debates on the text regarding the minimum number of Member States have considered the following opinions:

a) One of the options was to settle the threshold to be formed by a majority of Member States. In a 27 Member States Union, the majority would be formed by 14 states. Nevertheless, we consider that the use of the term "significant number" was not taken into account as representing a majority of Member States. Even more, a majority would seem disproportionately high.

b) Another option was the settlement of the threshold at a quarter of Member States, namely 7 of them. The proposal for the threshold was submitted by the European Parliament in its resolution on the citizens' initiative, using an analogy with Art 76 of the TFEU, which states measures regarding judicial cooperation in civil or criminal matters can be adopted at the initiative of a quarter of Member States. The European Commission did not consider that this precedent offers a powerful analogy for the citizens' initiative, having a regional feature.

c) A third option was that of establishing the threshold to a third of Member States, being necessary 9 states. This was considered as being in accordance with a series of more general provisions of the Treaty. In a specific manner, the threshold is stated by the provisions on "consolidated cooperation": "at least 9 Member States" must participate. A third is also used as a threshold for the number of national Parliaments necessary to start the procedure of subsidiarity stated by Art 7 Para 2 of the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the treaties. The last solution was used by the final text of the above analyzed Regulation.

Regarding the concept of "organizers", the Regulation defines them, but also establishes limits. Thus, according to the Regulation the organizers are natural persons, citizens of the European Union of the age to be entitled to vote in elections to the European Parliament in order to submit it to the Commission.

In order to ensure the smooth running of a citizens' initiative the Regulation states a minimal structure of organization. This is represented by a citizens' committee, formed of at least seven persons who are

[7] Art 7 of the Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011

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residents of at least seven different Member States, promoting European issues and reflect on them. For reasons of transparency, fluidity and efficiency in communication, the citizens' committee shall designate one representative and one substitute ('the contact persons'), who shall liaise between the citizens' committee and the institutions of the Union throughout the procedure and who shall be mandated to speak and act on behalf of the citizens' committee.

2.1. Submission of a citizens' initiative to the Commission

In order to ensure the coherence and transparency regarding the citizens' initiatives and to avoid collecting signatures for a proposal which does not comply with the conditions laid down in this Regulation, prior to collecting the statements of support, the organizers shall be required to register it with the Commission providing the information in particular on the subject matter and objectives of the proposed citizens' initiative in one of the official languages of the Union, in an online register made available for that purpose by the Commission ('the register'). The organizers 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.

Within two months from the receipt of the information, the Commission shall register[8] a proposed citizens' initiative under a unique registration number and send a confirmation to the organizers, provided that the following conditions are fulfilled[9], the citizens' committee has been formed by at least 7 members residing in at least 7 different Member States:

a) the proposed citizens' initiative does not manifestly fall outside 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;

[8] At any time before the submission of statements of support in accordance with Article 8, the organizers may withdraw a proposed citizens' initiative that has been registered. In that case, an indication to that effect shall be entered in the register.

[9] The Commission shall refuse the registration if the conditions laid down in paragraph 2 are not met. Where it refuses to register a proposed citizens' initiative, the Commission shall inform the organizers of the reasons for such refusal and of all possible judicial and extrajudicial remedies available to them. See in this regard Art 4 Para 3 of the Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011

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b) the proposed citizens' initiative is not manifestly abusive, frivolous or vexatious;

c) the proposed citizens' initiative is not manifestly contrary to the values of the Union as set out in Art 2 TEU.

2.2. Procedures and conditions for the collection of statements of support

In this regard, the organizers complete the forms prior to initiating the collection of statements of support from signatories. The information given in the forms shall correspond to the information contained in the register.

For a proper use of modern technology as an instrument of democracy it is appropriate that the organizers collect the statements of support both in paper form and electronically. All statements of support shall be collected after the date of registration of the proposed citizens' initiative and within a period not exceeding 12 months. Online collection systems shall have adequate security and technical features in place in order to ensure that:

a) only natural persons may submit a statement of support form online;

b) 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 unauthorized disclosure or access;

c) the system can generate statements of support in a form complying with the models set out in Annex III.

Where the online collection system has the adequate security and technical features the relevant competent authority shall within one month issue a certificate to that effect in accordance with the model set out in Annex IV. The organizers may only start collecting statements of support through the online collection system once they have obtained that certificate.

After collecting the necessary statements of support from signatories, the organizers shall submit the statements of support, in paper or electronic form, to the relevant competent authorities[10] for verification

[10] Each Member State shall designate one competent authority responsible for

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and certification. For that purpose the organizers shall separate those statements of support collected in paper form by those which were electronically signed using an advanced electronic signature and those collected through an online collection system. The organizers shall submit statements of support to the relevant Member State as follows:

a) to the Member State of residence or of nationality of the signatory;

b) to the Member State that issued the personal identification number or the personal identification document indicated in the statement of support.

The competent authorities shall, within a period not exceeding three months from receipt of the request, verify the statements of support submitted on the basis of appropriate checks and to the organizers a certificate, certifying the number of valid statements of support for the Member State concerned. After obtaining the certificates, the organizers may submit the citizens' initiative to the Commission, accompanied by information regarding any support and funding received for that initiative. That information shall be published in the register.

Where the Commission receives a citizens' initiative it shall:

a) publish the citizens' initiative without delay in the register;

b) receive the organizers at an appropriate level to allow them to explain in detail the matters raised by the citizens' initiative;

c) within three months, set out in a communication its legal and political conclusions on the citizens' initiative, the action it intends to take, if any, and its reasons for taking or not taking that action. The communication shall be notified to the organizers as well as to the European Parliament and the Council and shall be made public.

Conclusions

We consider that the introduction of this initiative consolidates the involvement of citizens and civil society in drafting EU policies offering their right to directly request the Commission to submit new initiatives. This will add a new dimension for the European democracy shall complete the set of rights regarding European citizenship and shall

coordinating the process of verification of statements of support and for delivering the certificates provided for therein.

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intensify the public debate on European policies, contributing to the creation of an authentic European public space.

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