

IAI RESEARCH PAPERS

DEMOCRACY IN THE EU AFTER THE LISBON TREATY

Edited by Raffaello Matarazzo

Istituto Affari Internazionali (Rome)

Centro Studi sul Federalismo (Turin)

Notre Europe (Paris)



Edizioni Nuova Cultura



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List of Contributors

SALVATORE ALOISIO, Professor, University of Modena and Reggio Emilia

GIANNI BONVICINI, Executive Vice-President, Istituto Affari Internazionali, Rome

GIORGIO GRIMALDI, Professor, University of Valle d'Aosta

RAFFAELLO MATARAZZO, Researcher, Istituto Affari Internazionali, Rome and Adjunct Professor, St. John's University of New York, Rome Campus

UMBERTO MORELLI, Director, Centro Studi sul Federalismo, Turin, and Professor, University of Turin

ANTONIO PADOA-SCHIOPPA, President, Centro Studi sul Federalismo, Turin and Professor, University of Milan

TOMMASO PADOA-SCHIOPPA, President, Notre Europe, Paris

JULIAN PRIESTLEY, Member of the Board, Notre Europe, Paris

List of Abbreviations

AFCO	Committee on Constitutional Affairs (European Parliament)
CDU	Christlich Demokratische Union (Christian Democratic Union, Germany)
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union (see also ECJ)
CODAC	Conference of Defence Affairs Committees
COFACC	Conference of Foreign Affairs Committee Chairpersons
CoR	Committee of Regions
COREPER	Committee of Permanent Representatives
COSAC	Conference of Community and European Affairs Committees
CSDP	Common Security and Defence Policy
CSU	Christlich-Soziale Union (Christian Social Union, Germany)
EC	European Commission
ECAS	European Citizen Action Service
ECHR	European Court of Human Rights
ECI	European Citizens' Initiative
ECJ	European Court of Justice (see also CJEU)
EESC	European Economic and Social Committee
EFA	European Free Alliance
EFD	Europe of Freedom and Democracy
EGTC	European Grouping of Territorial Cooperation
ELDR	European Liberal Democrat and Reform
ENoP	European Network of Political Foundations
EP	European Parliament
EPP	European People's Party
EU	European Union
EUDO	European Union Democracy Observatory

LIST OF ABBREVIATIONS

EURATOM	European Atomic Energy Community
GM	Genetically Modified
GUE	European United Left
ID	Identity Document
IPEX	Interparliamentary EU Information Exchange
IT	Information Technology
LA	Local Authority
MEP	Member of the European Parliament
MMM	Monday Morning Meeting
MS	Member States
NGL	Nordic Green Left
NGO	<i>Non-Governmental Organization</i>
NP	National Parliament
PES	Party of European Socialists
PETI	Committee on Petitions (European Parliament)
PvdA	Partij van de Arbeid (Labour Party, Netherlands)
S&D	Progressive Alliance of Socialists and Democrats
SPD	Sozialdemokratische Partei Deutschlands (Social Democratic Party of Germany)
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TU	Trade Union
UEF	Union of European Federalists
UK	United Kingdom
US	United States of America
WEU-ESDA	Western European Union's European Security and Defence Assembly

Introduction

Gianni Bonvicini

This book is a natural follow-up to the research activity promoted primarily by the Istituto Affari Internazionali (IAI), Notre Europe, Centro Studi sul Federalismo (CSF), with the strategic partnership of Compagnia di S. Paolo, on the eve of the 2009 European Parliament (EP) elections, which produced a first volume entitled “Democracy in the EU and the Role of the European Parliament” (http://www.iai.it/pdf/Quaderni/Quaderni_E_14.pdf). That initiative had centered on the greater involvement of citizens in the EP electoral campaign and the launching of the proposal that European political parties indicate a candidate for the position of president of the European Commission. An extract of the first volume was circulated in the form of a Manifesto, written by Tommaso Padoa-Schioppa and undersigned by several eminent European figures, among the main European political forces to call upon them to undertake this task. The answer was, as expected, rather hesitant and reluctant. No candidate for president of the Commission was put forward during the campaign and European political parties once again missed an opportunity to make European elections more transparent and understandable for an increasingly sceptical public opinion (as demonstrated by the lowest turn-out at the polls in the history of EP elections).

The entry into force of the Treaty of Lisbon, on 1 December 2009, brought the EU’s troubled institutional reform process to an end. The institutional structure set out by the Treaty empowers the EU’s external projection and is intended to make the decision-making process more effective and accountable.

In an effort to decrease the distance between citizens and EU institutions, the Treaty introduces some important innovations: it increases

the number of policy areas in which legislation is approved through ordinary legislative procedure (the old co-decision procedure) and extends the powers of the European Parliament in the fields of agriculture, judicial and police cooperation, delegated acts, criminal law and the ratification of international agreements to which the Union is party. Moreover, the Treaty enhances the role of European political parties, which are now considered decisive in “forming European political awareness and ... expressing the will of citizens of the Union” (Art. 10, Title II).

The Treaty also establishes a clearer distribution of competences and powers between the Union and member states, which will make it easier for citizens to understand “who does what”. It introduces special arrangements that involve national parliaments fully in the EU legislative process, turning them into “watchdogs” of the principle of subsidiarity. Finally, the Treaty has created the European Citizens’ Initiative, which allows one million citizens from a significant number of member states to invite the Commission to submit a proposal on matters, which citizens feel require better implementation of the Treaty of Lisbon.

Nevertheless, the implementation of these provisions is troublesome since they impact on, among other things, the institutional balance of the EU. Not only does their effectiveness in reducing the distance between EU institutions and citizens remain to be seen, but also the application of some of these provisions could itself lead to inter-institutional conflicts and political ambiguities. Thus, the European Parliament has a key role to play as a political and institutional facilitator, as well as in promoting more consistent linkages between citizens and the EU institutional system.

In the light of these considerations, the three partner institutes – IAI, CSF and Notre Europe – met again in Turin, on 3 November 2010, to discuss the state of implementation of the Lisbon Treaty, placing particular attention on its innovations regarding the EU democratic deficit. This book is the outcome of those meetings.

The three aspects investigated in depth are reflected in the three papers presented in the book.

Chapter One. How are *European political parties* and party groups in the EP supporting the implementation of the Lisbon Treaty in order to

address the EU's democratic deficit? What measures and initiatives can be undertaken to help a European political party system evolve from national structures, taking into account different historical traditions and cultural factors? What kind of relations should be developed between European and national parties? How can the electoral system and systems of party financing be improved to facilitate the emergence of a European political party system? What initiatives are political parties planning to adopt to reverse the trend of decreasing voter turnout in view of the 2014 European elections? (Notre Europe)

Chapter Two. The implementation of the Lisbon Treaty is prompting *National parliaments* to exert tighter scrutiny on the EU legislative process, not entirely through the use of the new subsidiarity control mechanism, but particularly through a more effective impact on their government. The cooperation between National parliaments and governments, in fact, will be the key challenge of the post-Lisbon era. It is hard to evaluate, however, the effect of this new dynamic on the overall democratic legitimacy of the EU. (Istituto Affari Internazionali)

Chapter Three. The major challenges posed by the implementation of *European Citizens' Initiatives (ECIs)* are that they could raise expectations of higher involvement that could cause disappointment later. On the one hand, if there is an ECI for the EU to legislate on, the Commission does not have to wait for one million signatures in order to act; it can do so as soon as the ECI is tabled. Yet, once the Commission acts, it will take years before a final law becomes applicable. Great responsibility vests therefore with the European Parliament, which will have to become the guardian of the new instrument should the issues addressed through the ECIs be endorsed by the EP. (Centro Studi sul Federalismo)

The volume includes some final remarks drawn from the conclusions of the 2010 November seminar presented by Tommaso Padoa-Schioppa, always an essential and enthusiastic partner of efforts to develop the IAI's research program on the EU's democratic legitimacy. With these few concise and essential lines, taken from our personal notes, we believe to have interpreted Tommaso Padoa-Schioppa's true and profound thoughts on the state of democracy in the EU. More than just a touching tribute to his ideological and political contribution to

the European integration process, they also point out the path to be followed in our continuing study of the democratic future of the European Union and its citizens.

Rome, June 2011

1.

European Political Parties: The Missing link

*Julian Priestley**

INTRODUCTION: EUROPEAN PARTIES, SEVEN YEARS ON

Political parties everywhere are somewhat out of fashion. They have fewer members; they generally fail to attract young people; their idealism seems tarnished by constant trimming and jockeying; their reputations have been sullied by their efforts to gain funding; they seem to have failed to provide solutions to society's ills. Politicians command less respect. Old tribal loyalties or class-based affinities have diminished. Electorates have become more volatile. Mainstream democratic parties have lost ground to extremists with simplistic nostrums and to single-issue campaign groups.

But political parties remain essential to the democratic process. At their best they help to articulate and to a degree shape public opinion; they provide the framework for the orderly discussion and resolution of

* *Acknowledgments:* After the European elections "Notre Europe" decided to continue working on issues connected with the participation of citizens in the EU, and, in particular on European political parties. This paper (Policy paper 41) was published at the beginning of November 2010. It was launched at a seminar organized by the Istituto Affari Internazionali, Notre Europe and the Centro Studi sul Federalismo in Turin on 3 November 2010. The present text takes on board many of the points arising out of the seminar, as well as other pertinent comments made at meetings in the European Parliament and at the European University Institute in Florence, where it was introduced at a seminar hosted by President Josep Borrell Fontelles. In order to keep up to date with latest developments the author had contacts at the beginning of 2011 with leading officials from the larger European parties. The author would like to thank warmly all those party representatives who gave up their time to meet with him and to others both in political and academic circles who have made comments on the text.

policy differences; they are the main agencies for the contesting of open elections which underpin our democracy, and for the accountability of power. On occasion they may catch the public mood and help lift our sights. They are still the principal vectors for public opinion.

And the success of Europe as a political project based on a functioning efficient democratic system in which its citizens are fully engaged requires political parties operating on a continental scale. The authors of Maastricht and Nice recognised their central role in European integration. When successive treaty declarations were followed up by a Council/Parliament regulation in 2003, the embryonic parties were given resources from the European Union (EU) budget and staffing, and hence a degree of operational autonomy vis-à-vis the parliamentary groups. A new dimension to their work was provided by the Council/European Parliament (EP) regulation in 2007 allowing the Parties to set up political foundations.

But twenty years on from Maastricht, as “Notre Europe’s” study of 2009 demonstrated (Etudes et Recherches No. 71), the parties still fall far short of being in a position to carry out fully their vital role as the link between the political institutions of the EU and public opinion – a role that they alone can fill – or to provide steerage for their respective parliamentary groups.

If, by the term “political party” we mean democratic organizations of members, coming together on the basis of political affinity, drawing up programmes, selecting candidates for office, fighting elections, and ensuring that elected representatives uphold their commitments, then “European Political Parties” tick almost none of the above-mentioned boxes.

These parties will inevitably be different from their national counterparts, who are held together by common histories and cultural affinities. But unless they progress towards something resembling a common European political movement, making internal democratic reforms and encouraging the active participation of members they will never be the interlocutors for public opinion on European issues which the Treaty envisaged.

They remain to a large extent closed, unrecognised clearing houses, operating principally as structures to facilitate the transaction by na-

tional political parties of necessary common business. In terms of public opinion they remain essentially empty shells. They are not primarily campaigning organizations. They are still to a certain extent – at least organizationally – in the thrall of the parliamentary groups at the European Parliament. And their policy formation is essentially a technical exercise with often insipid, lowest common denominators of the policies of the component national parties the inevitable outcome.

Above all, ordinary party supporters, militants and members in the member states have little or no link with, no decision-making role in, and practically no sense of belonging to these European “parties”. The governing bodies of the European parties are essentially “confederal” by nature; key decisions are mostly taken by consensus, even where majority voting is allowed; party activities like congresses tend to be about providing a European platform for parades of national party leaders, giving them an extra opportunity to generate national publicity in an international context. On most issues, national party officials, usually international secretaries, call the shots.

If all the parties have taken some steps towards internal reform, as will be set out later, they have not yet realised their potential political vitality. But there are some encouraging signs of acceleration in the pace of change.

This is not to say that at the moment partisan politics plays no role in Europe’s institutions and in EU decision-making. On the contrary, through the political groups at the European Parliament, decisions have become intensely politicised. These groups are one of the great success stories of European integration. Nearly all decisions now taken by the EU are the result of compromises to which the political groups of the Parliament will have subscribed and, in many cases, shaped. The groups are well-organised, give themselves the time and means to develop first common group decisions, and then compromises across groups. Some of the most complex but important legislative acts have been ultimately determined by compromises hammered out in the EP, rather than in the Council of Ministers. Recent academic studies (see *VoteWatch.eu*, for example) confirm an increasing cohesion within the larger political groups, with percentages of around ninety, which would be no disgrace in a national context.

Of course, the parliamentary groups are to an extent confederal, with a structure reposing on strong national delegations. And the Treaties enshrine decision-making rules which push Parliament to reach its decisions on a broadly consensual basis if only to be able to wield its legislative and budgetary powers to the hilt. But there is real political debate within the groups which makes great efforts to reach united group positions. In many of our national parliaments as well, there has to be a search for consensus between party groupings in order to find majorities to sustain governments. In the European Parliament, the pivotal point of the consensus will shift from one legislature to the next following the election returns. For example, observers agree that the outcome of votes in the 2009-14 period has shifted in a more free-market direction on economic and social issues, given the relative strength of the rightwing and centre-right groups. But in the end, centre and centre-left groups often uphold a final compromise in order for the EP to have a substantial impact on the procedure.

But this trend in decision making, which emphasizes political choice rather than technological fudge, though welcome in itself, takes place in a vacuum which, while being ultimately linked to public opinion, is almost completely invisible to it. Of course, each Member of the European Parliament (MEP) is accountable to his or her electors; will be reporting back home (notwithstanding the massive hurdles which lie in the way of communicating European issues effectively with citizens); and will be in constant touch with his or her national or regional party. But these efforts are undermined by the absence of extraparliamentary organisations, acting as a relay between citizens and elected representatives, and shaping the policies and programmes, which MEPs then strive to implement.

It is true that the current situation gives MEPs in theory a very large freedom of maneuver – although this may be severely curtailed by the selection process for party candidates for election to the EP, particularly where places on the list are within the gift of party leaders – but in the long run it gives to electors the impression that the MEPs are not really their representatives and that, consequentially, citizens are not represented in decision making.

The paradox of an increasingly powerful European Parliament mobi-

lising decreasing public support was cruelly but clearly demonstrated in the 2009 elections.

1. THE 2009 EUROPEAN ELECTIONS

These elections were the clearest demonstration till date of the limitations of the exercise. The elections were not fought as if they mattered; not so much “second order” as an optional democratic extra. Public opinion was not mobilized; European themes were not developed; national issues prevailed; party differentiation was not achieved.

Certainly, the European manifestos marked a step forward with more detailed proposals than in previous elections. The PES (Party of European Socialists) even attempted to organise an input – electronically – from Socialist/Social Democratic party members in Member States (“PES activists”), having set up a list, with now some 20,000 members enrolled. Meetings on the manifesto were organised in the regions, sometimes on a cross-frontier basis. But the resulting programmes resembled basically disparate shopping lists, from which campaign themes could only be distilled with difficulty.

For example whereas the PES manifesto starts fairly strongly with a summary attempting to highlight the philosophical differences (along the lines of “... They follow the market. We follow our convictions... They say adapt the market. We say shape our future”), the proposals in the text make any differentiation with their principal rival difficult:

“We propose to work with all our global partners towards reform of the global financial architecture in order to prevent the recurrence of a financial crisis...”

The EPP (European People’s Party) on the same point says in its 2009 manifesto:

“The international financial architecture must be rebuilt. European regulations alone are not sufficient for global financial markets – we need to increase overall transparency and surveillance.”

The ELDR (European Liberal Democrats), with a manifesto written and approved before the full brunt of the financial crisis, has no comparable paragraph; and, indeed, its manifesto is actually shorter than the

summary of the manifestos of its two principal main competitors.

The Greens had the striking idea of a programme centred around the idea of a “Green New Deal”, with job creation in the new green technologies at its core; but then undermined their own efforts by allowing national opt-outs on key programme points.

Of course, certain issues including those that most concern electors remain national issues – health, tax and education. But even here there is a gradual process of what might be called “creeping Europeanisation”. Cross border health services, health and safety issues, and doctors’ working hours, have all been recent controversies in Europe. Gradually and reluctantly the EU is at last beginning to give some consideration to fiscal union at least for the Eurozone countries. Fiscal dumping is at the centre of discussions about shoring up monetary union. The European Council, no less, feels it is within its rights to issue strong recommendations to member states about national educational policies, which are then monitored and benchmarked in a drive to bolster Europe’s competitiveness.

In any political system of a federal type there will always be blurred demarcation lines between different levels of government. Progressively in Europe the parties will have to take position in their manifestos and programmes on questions which until recently were considered to be exclusively national. It is just no longer the case that the most controversial questions are national and that Europe has an essentially technical agenda.

But, to date, at any rate, the European party programmes have largely been ignored or supplanted by national programmes in the campaign proper. If the French socialists and some of the East European left of centre parties used the programmes as they stood, they were supplemented by some with a national “gloss” or simply left to lie on the table by others. Far from sharpening the ideological differences on Europe’s future between these parties, the national campaigns focused almost exclusively on the national political divide, only underlining that in their view there was nothing of significance at stake in the European elections per se. And if that was the view of national party leaders, why should the elector bother himself or herself with them?

On the key issue of common strategy – for the parties to name their

“candidate” for President of the European Commission (entirely consistent with the new procedures for nominating the Commission set out in the Lisbon Treaty) no breakthrough came because key governing parties like British Labour, the Spanish and Portuguese Socialists not merely refused to nominate a Socialist “candidate”. They actually endorsed the incumbent, Jose Durao Barroso, the EPP “nominee”: and this, despite a previous PES Congress having agreed in principle to have a Socialist “candidate”. At a stroke, this breaking of the ranks undermined any attempt to provide a European-wide personality focus for the elections. Worse, it contributed to the muddying of the political waters so that the electoral “choice” was made less clear.

A recent study for the European Parliament (“How to create a Transnational Party System”, by the Policy Department for Citizens’ Rights and Constitutional Affairs, 2010) makes a useful distinction between European parties and a European party system. In the views of the authors of this study, such a system can only exist when the parties compete and engage. To date there is, at least as regards the citizens, no direct engagement or competition between the parties. This undermines the purpose of having parties. A public confrontation between rival candidates for the presidency of the Commission would have provided that interparty engagement and competition, which alone can give vitality to the European political process.

Since the elections, both the EPP and the PES have reiterated their intention to promote a candidate for Commission President at the time of the next European elections. This would almost seem to be a Lisbon Treaty requirement. How could the European Council “take account of the European election results” in proposing to the EP a nominee for the Presidency of the Commission, if potential nominees have not been promoted prior to the elections? But the key question of methodology remains open.

The election campaign was characterised by a lack of vigour and the absence of European content. In some member states the European elections coincided with national, regional or local ballots (Luxembourg, Belgium, and the UK). In Germany, if the election was harder fought, this was in no small measure due to it being the last electoral test before the September 2009 national elections. In general the campaigns gave no

clear sense as to what was at stake. Those (like the French Greens or the German Christlich Demokratischen Union Deutschlands [CDU]/Christian Social Union [CSU]) who allowed some European content into their campaigns were rare exceptions yet they fared relatively well. In some member states the political parties deliberately avoided European themes, even excluding leading candidates to the European Parliament from key national campaign activities.

Events organised by the European political parties were few and far between and received practically no media coverage. Their resources are inadequate – and the parties currently spend on average almost half of their budget on central administration and another quarter on meetings of their statutory bodies (*source*: EP draft report by Mrs. Giannakou, rapporteur for the Constitutional Affairs Committee on the application of Regulation 2004/2003 on the regulations governing political parties at the European level and the rules regarding funding). There is no extra funding dedicated to fighting a European campaign and parties are hindered by rules (adopted by the European parliament Bureau – most recently in 2008) which while they technically allow campaign funding, prevent support being given directly to candidates and to member parties which have to conduct the campaigns in member states and the regions.

Sadly, a record 27 nations participating in a great continent-wide democratic event generated no excitement.

The results predictably led to the lowest ever turnout, making the trend of falling voter participation since 1979 an unbroken one. If the numbers voting were slightly higher than the media – so gleeful in its gloom – had predicted (and no lower than the turnout in most US Congressional elections), it was still a disappointing start for the seventh legislature of a Parliament now with its powers significantly strengthened.

And the European Parliament – far more than the US Congress or national parliaments of member states – needs high turnouts in its elections because it is the “new kid on the block”; because it is still in the process of consolidating its position as one of the key decision-making institutions in the EU, and because many in Europe’s do not recognise it as “their Parliament” but as part of a Brussels bureaucracy which they either ignore or loath.

For the European political parties the election was another setback.

Indeed, in some member states, political forces completely outside European party structures made the most headway. And there is no sign that voters wished to punish those parties (like the Czech and British Conservatives, who had indicated their intention to leave the EPP political group in the Parliament). In the EP distribution of seats, a further if slight trend away from the established European political “families” and their parliamentary groups was discernible.

2. THE DIVISION OF THE SPOILS

The paradox is all the greater then that these European parties came to play a very much greater role in the “division of the spoils” after the elections in which they had so little distinguished themselves. Meetings of national party leaders before European Council meetings had started from the mid-1980s onwards. By 1989, these meetings not only acted as a preparation for the substantive points on Council agendas; they started to become the trigger for the process of selecting the President of the European Commission and for the meeting – taking place immediately after the elections – for the leadership of the parliamentary group in the new legislature, and, on occasion, for the Presidency of the European Parliament, as well as for other posts.

One of the problems in making these meetings successful has been the natural tension that arises between parties in government and those in opposition. The prime ministers constitute a kind of “A” team, reluctant to share decisions with those party leader colleagues who do not have the responsibility of power. However, excluding the parties not in national governments would undermine the representativeness of the gatherings. In practice, the parties have sometimes found it difficult to engage the prime ministers, or even to command their presence. In general the EPP has been more successful, with Chancellor Merkel and President Sarkozy regularly playing an active part in preparatory meetings. In the PES with its dwindling number of Prime Ministers, the attendance of the British, Spanish and Portuguese leaders has been sporadic.

The procedure is not uniform between the “families”, and has varied over time. The parliamentary groups have gradually won the right to

greater autonomy in selecting their own leaderships, rather than rubber-stamping choices emerging from party conclaves of national leaders. On the other hand, as both the timetable for renewing the Commission now coincides with the parliamentary term, and successive Treaty changes have strengthened the institutional link, the party leaders' meeting became an important stage in preparing the nomination of its President. Already by 2004, a candidate even with the backing of Berlin and Paris, could be vetoed by the "political family" claiming first pick, on the basis of the electoral returns, although the precise circumstances which led to the elimination of the frontrunner, Belgian Prime Minister, Guy Verhofstadt, remain open to dispute.

And by 2009, the menu had been substantially enriched by the simple accident of timing. Because the much-delayed Lisbon Treaty entered into force at the end of 2009, coinciding with the beginning of a new Commission term, the party leaders found themselves confronted with the opportunity or indeed the obligation to take a view not simply on the candidates for the Presidency of the Commission, but also on the new "Lisbon" offices – the Presidency of the European Council and the High Representative. And this coincidence of timing will be repeated. The opportunities were effectively seized – the frontrunner for the presidency of the Council was derailed because of hesitation or outright opposition at these party meetings; and the compromise candidate for the High Representative position emerged at the same meetings in a typical European compromise.

For this post of High Representative, by a simple process of elimination, a left of centre candidate had to be chosen to balance the EPP nominees for the presidencies of the Council and the Commission. He or she had to come from a larger member state (as the two Presidents designated came from smaller ones), which effectively limited the choice to the two larger member states where the left was still in power. The British were considered to be "owed" something, given that their candidate for the other post had been eliminated. And a female candidate would be ideal, not least to ensure that one of the nominees for the three top posts would be a woman, while conveniently helping the designated Commission president meet the quota to which he had committed himself to the European Parliament. In the end, the process was steered by the UK and

Spanish Prime Ministers, being the only Socialists leading governments from larger member states.

So for a variety of reasons, the European political parties now exert an influence on the top nominations in the EU. They are a key element in the process. This welcome politicisation however needs qualification. Little consideration appears to have been given to the qualities necessary to fill the respective posts. With the exception of the veto on Tony Blair which was essentially for overriding political reasons which had their own legitimacy – Iraq – and the difficulties of appointing a nominee to preside the European Council from a member state which does not participate in key EU activities – the fate of other nominees tends to be decided by default. The successful ones ticked the right boxes – nationality, party affiliation, size of member state, North-South-East-West, gender. A computer programme could perhaps do the job as well. The triumphant nominees who emerged from this process may well demonstrate that they have all the qualities required to do the jobs they have – but if so that is a fortunate accident.

More seriously still, these nominations are not the result of any democratic input. For the reasons already given, the occasion to make the European elections a choice about the future President of the Commission was lost because some national parties refused to participate in the process, and thus indirectly underlined their own reluctance to commit to a politicisation of Europe. And when party leaders gathered in conclaves in June, October and November 2009, there is no evidence that a broad consultation exercise had taken place in their own respective parties prior to their decisions on the nominations. And even though, quite appropriately the EP group leaders played a role at the European party meetings, this does not necessarily imply that the preferences they expressed had been the fruit of substantive internal deliberations with the MEPs from their respective groups.

In short, the greater role of the European political parties in taking decisions about who runs Europe's institutions may be a welcome development from the days when these questions were dealt with exclusively on an intergovernmental basis. But they have added little discernible democratic value to the process. They have not brought public opinion closer to decision making. They have not necessarily enhanced the

quality of leadership of the institutions. For Europe's citizens the procedure is about as open and transparent as meetings of the conclave of Cardinals prior to the first sightings of white smoke.

Within the Parliament, the cohesion of the political groups has actually strengthened since the 2009 elections. The departure of the British and Czech conservatives from the ranks of the EPP, and the increasing number of Socialist parties losing national office has undoubtedly contributed to a certain ideological clarification on both sides. To put it bluntly and broadly, the EPP has evolved in a more "market" and less "social" direction – and also a little less "federalist" in the sense that the founding Christian Democrat fathers would have recognised – and despite the departure of the British and Czech members; while the Socialists appear to have shifted a little to their left.

To bolster the mainstream pro-European majority, a tripartite "grand coalition" (EPP, PES and ELDR) organised the internal division of the spoils which gave some necessary ballast to the EP in the early months of its post-electoral activities. It should also be noted that the financial and economic crisis of 2008 onwards has placed all three of these "families" in a state of some ideological flux, as they measure the impact of the crisis on the positions that they have traditionally espoused.

And as the Parliament has settled down to its core business it is noteworthy that two different majorities are discernible; on economic and social issues: a right of centre majority (grouped around the EPP, Liberals, and the new rightwing eurosceptic group of British, Czech and Polish conservatives) has made the running on internal market questions and broader regulatory issues. On other questions, such as civil liberties, and international issues, another majority of Socialists, Liberals (now clearly pivotal as the "swing" group), Greens and Radical Left has been constituted – the votes on SWIFT and on the Roma are illustrative. And of course this "progressive majority" showed its muscle during the hearings of Commissioners-designate in the autumn of 2009.

There will almost certainly be major tensions inside the groups as some sensitive issues come to the fore – not least the review of the EU budget, and structural policies. It has always been almost inevitably the case that this category of subject (revolving around budgetary transfers) has seen political cohesion at its weakest, as national concerns predo-

minate. But experience would indicate that the cohesion of the groups will withstand these strains, and that the current groups will be those that carry out the main business of the EP for the remainder of the legislature.

These developments and the positioning of the EP and its political groups, however, will go largely unreported in the media, and will quite simply pass public opinion by. In the absence of European political parties with members and activists involved in decision making, and of any visible engagement between these parties, the parliamentary dimension is increasingly important to outcomes, but its representative role to enhance the democratic quality of decisions and accountability is essentially thwarted.

3. OUTSIDE THE FORMAL STRUCTURES

To highlight the two shortcomings of the European political parties at this stage of their development – that they have not succeeded in mobilising militants in campaigns on European issues; and that they have failed to involve public opinion in EU decision making and in the designation of the leadership of Europe’s institutions – is not to deny some interesting but incremental progress.

There has been a proliferation of *informal* contacts, and networks, organised or at least inspired by the political families. There are regular meetings of leaderships or spokespersons of national parliamentary groups, with their EP counterparts. Ministers meeting in sectoral Councils are encouraged to have party preparatory meetings, sometimes with representatives from non-governmental parties as well as with spokespersons from the EP political groups. Through their national electoral victories, the EPP has been particularly successful in organising pre-Council contacts for up to as many as ten sectoral Councils: the Socialists, having pioneered the exercise, are no longer able to muster ministers in large numbers. The ELDR is also embarking on this process. Cross party and bilateral contacts have now moved far beyond the limited circle of party leaders, international secretaries and foreign affairs spokespersons.

This informal networking is and should develop further. Increasing contacts between party youth sections, women's organizations, ethnic minorities groupings, and pensioners which are starting to take place could complement the formal structures and contacts which have the disadvantages already noted – namely, that they are top-down and tend to by-pass activists and supporters at the local level.

To their credit it should also be noted that the European parties have sometimes thrown a lifeline to smaller national parties within the family, and given as voice in Europe that they would not otherwise have enjoyed. The Italian Greens and Irish Labour can bear witness to the benefits of European intraparty solidarity at moments when their national fortunes had dipped.

There is then a slow process of Europeanisation of national parties with a gradual deepening of their interest and involvement in European questions and activities. There is a degree of normalisation of contacts with like-minded parties in other member states. But the speed of these developments betrays no sense of urgency. They should be encouraged and seen as a welcome complement to reform of the European parties themselves, rather than as an alternative.

The new *Foundations*, referred to above, which are beginning to have an input on policy formation, are well placed to make comparative studies of national policies to inform future European programmes and to help to stimulate a growth in the networking between the parties and like-minded think tanks to enrich the quality of European debate. The parliamentary groups in the EP have strong links with the European party structures, which can sometimes lead to important initiatives like the PES push on hedge fund/personal equity regulation in the summer of 2008 just before the financial crash.

In the absence of a European media, national party leaders are increasingly addressing themselves to national media with initiatives, columns and letters co-signed with other national party leaders. That the right of centre leaders from three member states write to their national press on climate change, or that the leaders of the French Socialist Party (PS) and the German Social Democratic Party (SPD) write a joint piece on the economic crisis, or the then UK Prime Minister and the leader of the PES do likewise in the British press may not stop the traffic. But the

initiatives illustrate a slow significant evolution towards some form of European political space.

However, this informal vitality at the summit has so far not percolated beyond the Brussels beltway and some national capitals, and studiously bypasses ordinary party members and supporters, as well of course as public opinion.

4. POLITICAL PARTIES - CONSOLIDATING ENLARGEMENT

To be fair, in the last ten years, the priority for the European parties has had to be the cooption of political parties from the new member states, and the management of their integration. This has been a delicate, time-consuming and ultimately relatively successful exercise. There has been a greater ideological clarification within the three largest political parties. All three can now claim to have viable representation in the vast majority of member states.

Mistakes in ideological labelling of parties in East and central Europe have either been avoided or fairly promptly rectified. The process has encouraged disparate political parties to evolve into moderate pro-European centre-right, centre-left or centre parties, at home in a broadly progressive vision of Europe and of society in general. And by their action, the European parties have preserved for the European mainstream a clear and workable majority in the European Parliament. Without this careful exercise of consolidation, the European parliamentary group structures would have been undermined, the Parliament would have become ungovernable, and the capacity to conduct European business jeopardised.

These are important results to place on the credit side of the ledger for the European parties. But they are insufficient.

5. THE PARTIES AND PUBLIC OPINION

The EU and its institutions have lost public support in the last fifteen years. The reasons are manifold and mostly outside the remit of these re-

flections. Critically, the European institutions themselves have not proved successful in communicating with public opinion. This may be the case of the Council, which by its very nature is inhibited from conducting a sustained public dialogue. Many would argue that the Commission has been too timorous in its information policy. For the EP, as for any Parliament, although great progress has been made, not least with the new media, the mission of a parliamentary institution does not easily lend itself to controversial information campaigns, which would almost certainly not have the backing of many MEPs.

This loss of support for the Union is not without consequence; it is not simply a matter for regret. It threatens the Union's capacity for future action and development; if it cannot progress, it will wither. Many would now agree that at some stage the EU will need new Treaties to strengthen economic governance, to underpin Europe's future energy independence, and, in the longer term, to give the Union increased resources and create a greater capacity for decision making over foreign and security matters. And one day the problem of what might be described as the "plethora of Presidents" will also have to be tackled. But any Treaty change or any new policy initiative requiring public support will hit the buffers if the EU remains incapable of restarting a public dialogue with voters. And if the Union is not able to reform itself, to adapt and to deepen integration, then its immediate relevance and long-term survival may be in doubt.

This "participation" deficit is increasingly the subject of both political and academic debate. Some argue that the new procedures in Lisbon – the greater involvement of national parliaments, particularly through the control powers on subsidiarity, which they have now won, provide new openings for involving citizens more in the work of the Union. Others point to the citizens' initiative innovation in the Treaty, requiring a reaction from the institutions where a million signatures back an initiative. It may indeed be helpful for popular participation in the EU's affairs to have these extra means of involving citizens. But the central feature of European construction cannot be ignored or by-passed. There is a strong parliamentary dimension in the Union. The European Parliament, the first elected transnational parliamentary body with powers, is in many ways the defining characteristic of the Union and which differen-

tiates it from other international organizations. If there is a problem with citizens' participating in the Union, then the priority has to be to involve them more closely in the elections for the Parliament, and to give them a sense that their votes matter.

Would a reform of the electoral system for the European Parliament with a transnational list, with twenty-five members to be elected from a Europe-wide list as a complementary contingent to be added to the other MEPs elected regionally or nationally (see Policy Paper No 42 of "Notre Europe" written by Andrew Duff, MEP), add lustre to the EP election campaign? It is certainly an ambitious proposal, and it has garnered some support. But it would require a Treaty amendment and changes in the electoral laws of all the member states. It is difficult to believe that such a major change could win the unanimous support of all governments, and the backing of the national parliaments in good time for the 2014 elections. And the need to reverse the downward trend in turnout is urgent. The aim must be to make changes in time for 2014.

In most democracies, a dialogue with citizens is conducted, not exclusively, but first and foremost by political parties. They do this through campaigns, involving not just leaderships based in capital cities but through party members throughout. To play their role fully, to live up to the expectations placed upon them and to help the Union reconnect with its 500 million citizens, reform of the European parties is now essential, and a pre-condition for making the next European elections a success.

6. FOUR MODEST REFORMS

However, any change proposed will only be agreed on if it is respectful of certain obvious facts; that parties at the European level are never going to be as tightly knit and disciplined as national parties (national parties will inevitably be the core element within the European parties); that to seek to ignore them or by-pass them would condemn any reform to failure; that there can be no single blueprint for these reforms; and finally, that each European party will evolve in different ways. Some European parties will be reluctant to put pressure on their national member parties to accept the constraints or limitations that any strengthe-

ning of the European party might entail. But those who want these European parties to fulfill their potential can at least put forward certain very basic ideas for reform which, if they interest the parties, will then be adapted to their own circumstances and structures.

There are four priorities for change.

1. First, and crucially, *individual members should be recognized by the European parties and involved in their work*. In the longer term allowing citizens to affiliate directly to European parties would constitute a democratic gain. At present this possibility is limited to some parties (notably where there is no national affiliate, or, paradoxically, where there is a profusion of affiliated parties). The parties which resist the idea of individual memberships for those who are not members of national parties point to the resistance they would have from their national parties. However the larger parties are now embarking on the idea of activist members who receive direct mailing from the European party, and who are able at least to express their views directly. It is a first step towards creating a European membership, which is an individual sense of belonging. As the parties develop their social networking via Facebook and Twitter a genuine dialogue could develop. It is also a vital tool for the parties to be able to communicate their decisions directly to thousands and perhaps later hundreds of thousands of party members. The PES has some 20,000 national party members who are PES activists. The EPP has some 12,000 Facebook adherents – able to follow decisions in real time and indeed live events. The ELDR is also creating an associate membership, and is using the new media.

These developments should be part and parcel of a general reform of membership; with parties still able to affiliate en bloc, but with members receiving a distinct European membership card enabling them to participate in internal decision making. This would be a step beyond just mentioning the European party on the national card (a decision already taken by one of the European parties but not generally applied by its component national parties) but which is itself a useful first measure.

This of course raises difficult questions as national parties are structured differently – some with a tradition of mass membership, some with a more elitist history. For example, the French PS has slightly fewer members than the Belgian PS. The Romanian party has a membership of

500,000, dwarfing that of the UK Labour Party. Membership charges often differ greatly. There are signs that those differences are diminishing; numbers of party members are generally in decline, and parties in search of new recruits have often reduced the cost of joining. One way would be to allow all national affiliated party members to opt in, with a small uniform surcharge. Party officials would doubtless balk at the extra complication in managing membership. Their leaders should insist that the attainment of the national party's ideological objectives now requires a viable ideological European counterpart.

And, in the longer term, opening up European parties to individual members would address the problem of those European citizens effectively disenfranchised from activity in the European parties simply because those parties may not have national counterparts. For example, a right of centre UK citizen or a centrist Czech liberal have at the moment no European party to which they could affiliate because the European liberals do not have a member party in the Czech Republic; and the British and Czech conservatives are outside the EPP fold.

2. Of course membership of a European party could only have meaning and be sustained if members may play a role in the taking of party decisions. Where parties are run on a top-down basis, membership withers. Where members are empowered, numbers grow. So the second reform linked to the first must be to *strengthen democracy directly and indirectly within the European parties.*

The first element must be to make the Congresses of the parties – in principle, the supreme decision-making body for each party – a genuine exercise in party democracy. Seats could at least in the short term continue to be allocated to national or regional delegations on the basis of the number of MEPs from the party, and the number of votes in Council. But when it comes to electing delegates to Congresses, the local party members' decisions should be paramount. And in the longer term, the seats should of course be allocated in accordance with the numbers of members in the region. And if this encourages parties to recruit more members to increase their leverage, this is all to the good.

All members in any region should have the right to elect delegates, who would no longer be selected by party bosses. This process has started in the PES, with delegates elected specifically from the regions

by party members in the SPD; or for a fixed period in the case of the Dutch PvdA. Other parties still send lists decided by national party leaderships; or fill up places with MEPs (to save money) – despite previous party resolutions to involve party members in the selection of delegates.

This is crucial. The right of party members to elect delegates to European party Congresses, while respecting the autonomy of national parties to decide on the method, is a litmus test for the democratic quality of the European parties.

Second, the party membership as a whole should approve by secret ballot, the programme and the manifesto of the party for European elections – drawn up by the directly elected executive and Congress but ratified by all. This might seem to some like window dressing, an empty gesture giving the illusion of participation. But this process would not simply extend the awareness and sense of ownership of the programme; it should stimulate members to campaign for the party in the elections.

Third, the parties should designate a candidate for the Presidency of the Commission on the basis of primaries, with the designated candidate receiving the backing of a majority of the full membership. For this to work candidates would have to declare themselves well in advance and hustings would have to be organised in regions and in member states. Some doubtless well-qualified personalities might be reluctant to show their hand early, and risk their national careers. So be it. The Commission President is effectively the head of the day-to-day executive of the EU. It is a political, not a technical job. Its standing and authority would be immeasurably enhanced by this public exercise. Again the designation of candidates by open procedures in the parties would give a new impetus to the EP election campaign, and would mobilise party members.

To those who point out that the post of President of the Commission is not the only leadership position in the EU, it is worth recalling that the link between this post and the elections to the EP has already been established by the Treaty; that the nominee for High Representative is at least subjected to a degree of public scrutiny through the hearings procedure for Commissioners; and that the President of the European Council has a specific if important role of steering the work of the Council, but that he is not head of the Union's executive. Of course, giving to the Commission President this greater democratic legitimacy would

strengthen the office compared with the European Council, which, in the view of those attached to supranational institutions and the community method, will simply enable some of the prestige and authority that the Commission has lost over the years to be clawed back.

Making these primaries open to all electors would neatly sidestep the issue of the great differences in number of members in the national parties. It would be a dramatic step forward in involving all Europe's citizens in the project. To those who would argue that such a step would weaken the role of party members, it is worth pointing out that in those parties where they have been tried (by the French socialists in the selection of their candidate for the presidency in 2007, by the Italian Democrats for their party primaries which mobilised millions of voters and by the UK Conservatives in a couple of Westminster constituencies, for example), open primaries (or primaries where non-party members may participate for a token fee) have galvanised parties – although in France and Italy they did not guarantee ultimate electoral success. There is much that can be criticised in the way the American political system operates, but no one can deny the hugely mobilising effect of their primaries. Nor is there any evidence to suggest that the effect of open primaries is to weaken the ideological edge of the candidates.

The proposal for choosing the candidate for the presidency of the Commission by open primary may well be too far-reaching and radical to be accepted in one leap and implemented for 2014. But it is surely the way forward. For the next European elections, the minimum aim – as a halfway house – should be decisions on nominees to be taken either by party primaries or by democratically legitimate party Congresses, following open procedures where potential candidates put forward their views and programmes and submit themselves to the rigours of hustings in the regions before the vote at these Congresses. Once the process is unleashed, it will almost inevitably be opened up and improved over time, as ordinary party members start to insist that they play a fuller part.

And, unmistakably, that process has now begun. The two largest of the European parties are now committed to field candidates for 2014. That being the case, the ELDR leadership, which confirmed that no decision on this would be taken until their party congress in 2012, recognises that they would almost inevitably join the race. A Green candidate

would also be very likely in these circumstances, as would candidates from some if not all the other small European parties. To be absent from the contest would be to forego the showcasing possibilities for these parties.

The EPP will almost certainly nominate their candidate at the Congress of the party scheduled towards the end of 2013 and which should draw up the electoral platform. It is intended that the successful candidate would be elected by Congress delegates: this would not be a coronation. There is however reluctance to envisage any primaries in regions and member states for there is a fear that an extended process would discourage sitting or recent heads of government from putting their names forward. In the EPP there remains the view that Commission presidents should have had past experience as members of the European Council; and it has to be admitted that they have by far the largest stock of former and current presidents and prime ministers.

The PES (Party of European Socialists), which decided unanimously at its Prague Congress in autumn 2009 “to run for the next European elections with a common strategy to implement a common programme, embodied by a common candidate for the position of European Commission President”, has started making some practical preparations. This candidate would be “chosen in an open way” to ensure “the quality and legitimacy of the candidate”. In 2010, the PES Council (the main executive body) set up a working group to propose criteria for candidates, who would vote, the procedure and a timetable. The working group’s conclusions will be examined and adopted by the Council at the end of 2011. If open primaries are unlikely to be accepted at this stage because of reservations from the national parties, there is a clear desire to involve party members in the process, perhaps through regional and national hustings, prior to the local election of Congress delegates, or maybe through national party primaries. The national election calendar will probably push the endorsement of the PES candidate for the Commission presidency towards the end of 2013.

It is therefore probable that by the end of 2013 several candidates will have been nominated by the main European political parties through a process which will at least have some democratic value and involve party activists. And once one party starts off down the road of

open debate and primaries this should lead to a virtuous circle with others following suit if not in 2014, then almost certainly by 2019.

With those candidates in the field, the European parties would have a European focus for the 2014 elections. Both the EPP and the PES recognise that the campaign for and promotion of their candidate for the Commission presidency will be the priority for the election period, and to which they would devote most effort and resources. Thought is already being given to how to ensure national and regional media coverage for their nominees, and how to organise television debates. At least here there is now a chance for the engagement of and competition between the European parties, identified by some as the precondition for a transnational party system.

To pursue the various proposals aimed at democratising and opening up the work of parties does not simply require overcoming some opposition from national party hierarchies concerned at losing control of the European activities of their parties. They would have very substantial cost implications; the Congresses of the parties are already expensive: adding regional or national hustings (with at least some interpretation facilities) would add new financial burdens, as would regular consultations of party members.

Both the annual operating budget of the parties and party staffs would have to be increased (from the current 12 million euros total). The funding of the parties, primarily from the European Parliament budget, has usually been approved without difficulty by the parliamentary groups in the EP. It is understood that the total funding for the parties should increase by around 15 per cent annually, with a view to its doubling by 2014. But there is strong case for extra earmarked funding for election year to finance campaigning activities.

The MEPs should be the first to realise that any increase in those budgets would have a positive knock-on effect on participation in European elections. With this in mind, there is nothing to stop them from making the subsidies conditional on certain steps to democratise the European parties. If aid to third countries is often made conditional, there would be an argument to apply these criteria to European political bodies in receipt of EU funding.

And the somewhat artificial restrictions on European parties using

their funds on European election campaigns should be lifted. Those funds will have to be strictly audited to make sure that the elections they fund are European, not national or regional but support for European election activities for candidates and in the member states is a necessary part of the effort to boost participation. In the United States, public funding is available for the campaigns for top office. Almost whatever extra funding might be agreed for party activities prior to the European elections, it would continue to be dwarfed by the staggering amounts of public and private spending during American elections. Failure to meet the costs for the EP elections is ultimately to undermine the idea of making European decision making accessible to citizens. In a transnational, multicultural and multilingual environment, organising effective democracy was never going to be done on the cheap.

3. Any move in the direction of greater party democracy would spell the end of internal decision making by consensus. So a third category of reforms would see majority voting become the general rule – but with majorities reflecting numbers of party members, rather than the more artificial composition currently pertaining for the Congresses and executive bodies of the parties which have in fact tended to maintain a form of decision making by consensus. Deciding on a majority basis only where the issues are determined by majority in the EU effectively excludes foreign policy questions, enlargement and, most importantly, resources. Majority voting – already the standard practice in the EPP and ELDR – should be the rule on all policy and organizational questions, with higher thresholds possible for changes to party constitutions, and acceptance of new affiliated parties and organisations.

4. The fourth change should flow from the others, from greater internal democratisation and the involvement in decision making of party activists. *The ideological offer of the parties should be sharpened.* To date the European manifestos of the parties are long and largely interchangeable wish lists, which are almost completely superfluous in any campaign. Worse still the mainstream parties have allowed themselves to be boxed into a simplistic pro-European corner as if there were simply no differences between them but that they all subscribe to some prevailing Brussels orthodoxy. It is perfectly possible for parties to be passionately European but to disagree fundamentally about what the Eu-

ropean institutions have done in the past and should do in the future. By letting themselves be painted as merely the sometimes muted cheerleaders for the EU, the main parties do neither themselves nor the EU any favours. The refrain from blasé voters so often heard at national elections – “they’re all the same” – applies with particular acuity in the European polls.

The campaigns, which should be a regular feature of party activity and not just gadgets for the pre-election period, should focus on a very limited number of points of differentiation. The PES campaign in autumn 2010 for a European Tobin tax organised in Brussels *and* the member states was a good example. It may not have lived up to all the hopes of the organisers but to have held some fifty campaigning events simultaneously throughout the EU highlights the possibilities of transnational political campaigning. The PES will in 2011 campaign for social Europe. Both the EPP and the ELDR have set certain themes for 2011 activities – immigration for the former, demographic change for the latter. This will also serve to sharpen the profile of the parties.

As the 2010 EP study (mentioned earlier) suggests, the European parties might like to look at the new possibilities offered by the Lisbon Treaty as a means of expanding their campaigning armoury. A European party might actively promote a citizens’ initiative on a priority theme. The simultaneous examination of Commission proposals in national parliaments might also be an occasion for party groupings in the national and the European parliaments to enhance their cooperation.

If party differences become less blurred and programmes less insipid, the motivation for participating and voting is strengthened, and the temptation to vote for extremes outside the democratic mainstream is weakened.

Party leaders and activists need to understand that a European dimension to party policy is now central to a party’s credibility. There are various conclusions to be drawn from this.

They need first to ensure that their representatives in the European institutions, Commissioners and MEPs, be of the highest quality. Election to the EP or nomination to the Commission must now be seen not as a stint in Brussels, as compensation for some setback in a national career, or, even worse, as a kind of punishment or exile. It should become

an opportunity for the individuals concerned to play a role in the party political strategy at the European level.

Almost none of the traditional policy ambitions of parties can even begin to be met by national means alone. Whether it be a far-reaching ecological programme, transfers of wealth and power, the reduction of burdens on business or stricter regulation, limitations to immigration or facilitating free movement – what member states can do is now so heavily constrained by both the obligations of member states under the Treaty and the logic of globalisation that only competing ideological visions at the European level will have any sustainable credibility. Electors increasingly understand that many promises made at national elections cannot be honoured in the absence of EU action. It is time the parties caught on.

7. CAN WE?

Are these reforms feasible? It is easy to see the lines of resistance – from national party officials who wish to retain influence, from some political forces who would still deny Europe's political vocation, and from the euro-sceptic media which would denigrate any strengthening of Europe's nascent transnational democracy.

But all the reforms outlined flow from successive Treaty provision about the role of European political parties, from the existing Regulation on parties, and from the Lisbon Treaty link between the Commission presidency and the European elections. No new Treaty amendment or substantive change to the regulation on European political parties is required – although the strengthening of the latter and the development of a statute for European Parties would be desirable. More resources would be necessary but the subsidies to the European parties are paid out of the EP's Budget, which give to the MEPs every possibility to increase the funding to extend the continental reach of these parties, and to strengthen their representativeness and internal democracy.

This question of the future of the European parties is now the subject of public debate – and not just in academic circles. The European Parliament is currently examining the report of its Constitutional Affairs

committee mentioned earlier. The first draft calls for “the parties to begin now, without being required to do so by the legislator, on the following reforms: the possibility of individual membership; and the election by all party members of delegates to party Congresses, which in turn designate the decision-making bodies of the party, submitting programmes and manifestos either to a referendum of all party members or to a Congress, and deciding in the same way on the designation of their nominees for the presidency of the Commission”. The cause of reform is gaining momentum.

The parties are moving towards the kind of reforms outlined: they should be encouraged to accelerate the change. Already perceptible change is underway; national party activists are gradually becoming involved; the parties are beginning to make internal democratic reforms; there are some perceptible European themes emerging in their campaign work; they are communicating more and better; and party candidates for the presidency of the European Commission will be in the forefront of the 2014 elections to the European Parliament.

Now the question is – will these changes be sufficient and in time to help the EU re-engage with Europe’s citizens?

The future of Europe as a political project depends on being able to mobilise European public opinion on political issues. European political parties should make an essential contribution. At present they are impeded from doing this by a lack of popular participation in their work, and by democratic and organisational weaknesses. The parties should be challenged in the months to come to make the internal reforms necessary for them to be able to lead a transformative European election campaign in 2014.

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2.

National Parliaments after the Lisbon Treaty: A New Power Player or Mr. No in the EU Decision Making?

Raffaello Matarazzo

INTRODUCTION

The integration of National Parliaments (NPs) into the European Union's (EU's) legislative and democratic processes is one of the most challenging innovations introduced by the Lisbon Treaty which came into force on 1 December 2009. The main purpose of this integration within the EU's decision making is to "contribute actively to the good functioning of the Union". Consequently the precise role of the NPs is defined under Title II of the Treaty in the "provisions on democratic principles" (Art. 12, TEU).¹ The Treaty moreover recognises the NPs as the proper interlocutors of the EU institutions, formally independent of their national government.

The NPs new role in the EU's institutional framework does not just rely on the provisions and protocols directly devolved on them, but on other general systemic innovations, like the consolidation of the EU's competences (which are national powers delegated to the EU institutions but adopted by national governments and, where appropriate, by the European Parliament) and procedures, the extension of the ordinary legislative procedure, the new voting system in the Council, the diminished veto power of individual member states, and the new institutional figures and structures. In this context, the new Treaty not only increases the NPs direct impact on the EU's legislative process, but also boosts the former's

¹ In the Maastricht Treaty the role of national parliaments was limited to an annexed declaration, while in the Amsterdam Treaty it was incorporated in a specific protocol.

role of control and political guidance *vis-à-vis* their respective governments.² As per the new Treaty, NPs can now be considered “indirect institutions” of the EU, contributing to the definition – within a unique integrated framework – of the new EU constitutional balance at the European as well as at the national level.³

This approach was also confirmed on 30 June 2009 by the Judgment of the German Federal Constitutional Court on the ratification of the Lisbon Treaty.⁴ The judgment underlined the need – in the light of the EU’s extended competences and enhanced institutions – for the “responsibilities related to European integration” to be accepted by the national parliaments, not solely through the new provisions of the Treaty, but also through proper mechanisms of internal constitutional law. In the aftermath of the ratification of the Treaty, not solely the German Parliament, but even the French, the Lithuanian, the Irish and Portuguese parliaments adopted internal provisions aimed at consolidating the relationship between the parliaments and the governments on EU affairs. Most member states are now following the same approach.⁵

In this paper the concepts of accountability and democratic legitimacy within the EU framework will first be defined, followed by a brief overview of the changes introduced by the Lisbon Treaty in the NPs. In order to evaluate the NPs impact on the legitimacy and accountability of the EU’s decision making, four areas related to the NPs participation in

² See the report French Senate, *Les parlements nationaux at l’Union europeenne apres le traite’ de Lisbonne* (No. 393), 2007/2008.

³ See A. Esposito, “Il Trattato di Lisbona e il nuovo ruolo costituzionale dei parlamenti nazionali: le prospettive per il Parlamento italiano”, in *Rassegna Parlamentare*, Vol. 4 (2009) p. 1118-1173.

⁴ See <http://www.bundesverfassungsgericht.de/en/index.html>.

⁵ See M. Bothe, “The Judgment of the German Federal Constitutional Court regarding the Constitutionality of the Lisbon Treaty” (English series; Doc IA10920), <http://www.iai.it/pdf/DocIAI/iai0920.pdf>; A. Padoa-Schioppa, “Germany and Europe, the judgement of the Court of Karlsruhe”, in *Perspectives on Federalism*, Vol.1, single issue (2009), ISSN: 2036-5438, http://www.on-federalism.eu/attachments/052_download.pdf; M. Niedobitek, “The Lisbon Case of 30 June 2009 - A Comment from the European Law Perspective”, in *German Law Journal*, Vol. 10, No. 8, pp. 1267-76, http://www.germanlawjournal.com/pdfs/Vol10No08/PDF_Vol_10_No_08_1267-1276_Lisbon%20Special_Niedobitek.pdf.

the EU process will be focused on, that is: (a) their influence on the positions of the national governments; (b) their political dialogue with the European Commission; (c) their inter-parliamentary cooperation; and (d) their relationship with the European Parliament (EP). In the conclusion, the problems relating to the process of implementation, which can strengthen and/or limit, the NPs contribution to the EU's legitimacy and democratic accountability, will be highlighted.

1. DEMOCRATIC LEGITIMACY AND ACCOUNTABILITY: A NEW ROLE FOR NPS

Inter-parliamentary cooperation started in the 1980s, in the aftermath of the first direct elections to the EP (1979). At the initial stage, political dialogue was conducted on an *ad hoc* basis. The Conference of Community and European Affairs Committees (COSAC) was established in May 1989 and its role was confirmed by the protocol on the role of national parliaments in the Amsterdam Treaty (1997). From the very beginning of inter-parliamentary cooperation, the NPs' task has revolved around increasing their control on EU affairs.

The debates over the democratic legitimacy of the EU intensified after the signing of the Maastricht Treaty in 1992 and the first referenda on the Treaty, which took place in Denmark and France. The NPs have always claimed a more direct role in the EU process, viewing themselves as the key actors in solving the so-called "EU democratic deficit".⁶

A broad consensus in the European Union exists on the idea that democratic legitimacy is increasingly important in European politics. Democracy, however, remains a contested concept: a look at the constitutions of the member states reveals that several views exist on the institutions and procedures considered essential for ensuring democratic

⁶ See G. Majone, "Europe's Democratic Deficit: The Question of Standards", in *European Law Journal*, Vol. 4, pp. 5-28; and A. Moravcsik, "In Defence of the 'Democratic Deficit': Reassessing the Legitimacy of the European Union", in *Journal of Common Market Studies*, Vol. 40, No. 4, pp. 603-624.

legitimacy. The challenging task is to draft a political framework that can be considered democratically legitimate from the many and very different perspectives existing among member states.

Wolfgang Wagner identifies two main schools of thought in the debate on the EU's democratic legitimacy: (1) legitimacy as ensured by effective governance ("government for the people" or "output legitimacy"). The EU can be considered legitimate if it contributes to the provision of public goods such as security, wealth or a clean environment; (2) legitimacy as ensured by participatory procedures (government by the people" or "input legitimacy"): a policy is deemed legitimate to the extent that the decision-making process is open to citizens participation.⁷ According to this view, the parliament is the key institution to which citizens delegate competences to make laws. The present paper expands in particular on the second typology, "input legitimacy", which has several implications for the role of NPs, in particular after the entry into force of the Lisbon Treaty.⁸

Linked to the concept of democratic (input) legitimacy is that of accountability. According to Mark Bovens, accountability (as a social relation) can be defined as "a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct; the forum may pose questions and pass a judgement, and the actor may face consequences."⁹ An evaluation will be made of the extent to which parliamentary institutions scrutinise the EU's decision making and how the implementation the Lisbon Treaty is affecting this process. Two aspects must be kept in mind in this regard: (a) the quan-

⁷ See W. Wagner, "The democratic legitimacy of European Security and Defence Policy", Paris, EUISS (European Union Institute for Security Studies), 2005 (EUISS Occasional Paper; 57), p. 7, [http://www.iss.europa.eu/nc/actualites/actualite/select_category/22/article/the-democratic-legitimacy-of-european-security-and-defence-policy/?tx_ttnews\[pS\]=1104534000&tx_ttnews\[pL\]=31535999&tx_ttnews\[arc\]=1&cHash=2214e5e50a](http://www.iss.europa.eu/nc/actualites/actualite/select_category/22/article/the-democratic-legitimacy-of-european-security-and-defence-policy/?tx_ttnews[pS]=1104534000&tx_ttnews[pL]=31535999&tx_ttnews[arc]=1&cHash=2214e5e50a).

⁸ See also A. V. Schmidt, *Democracy in Europe*, London, Routledge, 2008.

⁹ See M. Bovens, "Analysing and Assessing Public Accountability. A Conceptual Framework", 2006 (European Governance Paper; No. C-06-01), p. 9; and M. Comelli, "Democratic accountability of the CSDP and the role of the European Parliament", in E. Greco, S. Silvestri, N. Pirozzi (eds.), *EU Crisis Management: Institutions and capabilities in the making*, December 2010 (*Quaderni IAI*, English Series ; 19).

tum power the Treaty's provisions attribute to the NPs; and (b) to what extent these provisions stimulate the NPs to use the powers they already have.¹⁰

2. THE LISBON TREATY PROVISIONS

The relevant innovations introduced by the Lisbon Treaty were contemporary to the rise of the NPs in the EU's decision-making process over the last decade.

If the Treaty of Amsterdam (1997) provided an increased flux of information from the European institutions to NPs, the draft Treaty negotiated by the Convention on the Future of Europe (2002-2003), attributed to the NPs the power of launching a procedure (the "yellow" card) to withdraw a Commission's legislative proposals before they were scrutinised by the Parliament and the Council.

In 2006 the European Commission launched "political dialogue" with NPs, in order to reply in the debate on the "EU democratic deficit" following the rejection of the Constitutional Treaty in France and in The Netherlands (Spring 2005). Through political dialogue with NPs, the Commission wanted not only to improve the cooperation between NPs and EU institutions, but also to address the growing problems relating to the transposition of the communitarian law into national legislation.

The negotiations on the Treaty of Lisbon did not reverse this trend, providing NPs two more weeks for the control of the subsidiarity check and, more importantly, establishing the stronger "orange" card procedure.

According to the Lisbon Treaty (Art. 12) the main reason for the NPs involvement in the EU decision-making process is to "contribute actively to the good functioning" of the Union. The clause on the subsidiarity check is considered a key tool for delivering this.

¹⁰ See P. Kiiver, "The Treaty of Lisbon, the National Parliaments and the Principle of Subsidiarity", in *Maastricht Journal of European and Comparative Law* (MJ), No.1 (2008), pp. 77-83.

The NPs' engagement in the EU procedures is defined not only by the two protocols "on the role of National Parliaments in the EU" (Prot. No.1 annexed to the Treaty) and "on the application of the principles of subsidiarity and proportionality" (Prot. No. 2), but also by the following articles:

- Art. 5, TEU, on the competences of the Union
- Art. 10, establishing the principle of "representative democracy"
- Especially Art. 12.

According to Art.12, EU institutions have to forward to the NPs all the legislative proposals of the Union. This article also establishes the subsidiarity checks and determines a specific engagement of the NPs in the areas of freedom, security and justice, such as "political monitoring of Europol and the evaluation of Eurojust's activities". NPs also take part in the revision procedures of the Treaties and are fully informed about the accession applications. Finally, Art.12 also reasserts inter-parliamentary cooperation between NPs and with the EP.

2.1. The protocols

Protocol No. 1 determines the procedures by which the Commission sends its draft legislative and non-legislative proposals to the NPs as well as others actors with legislative powers. The protocol also establishes the "eight-week period" for responding to the proposals before the legislative process begins.

Protocol No.2. lays out the rules for the subsidiarity check by NPs. The principle of subsidiarity affirms that, unless EU institutions have exclusive power, action will only be taken at a European level if it were to be more effective than acting at a national level. Each NP's chamber¹¹ has eight weeks to communicate to the presidents of the EU Commission, the European Council and the Council, the reasons why it feels that a draft breaches the subsidiarity principle. Each chamber is responsible for the consultation, where necessary, with regional parliaments en-

¹¹ Forty chambers in the EU, since 13 member states have a bicameral system.

trusted with legislative powers. If a third of all European NPs¹² (a fourth in the area of justice, freedom and security) determine that a document does not respect the subsidiarity principle, the legislative proposal needs to be reviewed (“*Yellow*” card, Art 7.2 of the Protocol on the principles of subsidiarity and proportionality). The Commission, or any other legislative initiator, is not obliged to withdraw its proposal but must explain the reasoning of its choice (in the form of a Communication).

If more than half of the NPs decide that there has been a breach of the subsidiarity principle in a policy area subject to the ordinary legislative procedure, and if the Commission decides to maintain its legislative proposal regardless, then the NPs’ opinions as well as those of the Commission are transmitted to the EP and to the Council (“*Orange*” card procedure, Art 7 [3] of the Protocol). Before dealing with the proposal itself, the Commission’s legislators are called upon to explain how the principle of subsidiarity is being respected. The Commission’s opinion is forwarded to the legislative authorities in the EP and the Council together with the reasoned opinions of the NPs. The EP then decides through the majority principle, while the Council requires 55 per cent of the votes, whether or not to continue with the legislative procedure.¹³ If any of them agrees with the NPs’ opinion, the proposal is rejected.¹⁴

2.2. *The Court of Justice*

Last but not least, an oversight over the application of the subsidiarity principle can be exercised by the Court of Justice of the European Union, to which a national government can appeal on the request of its national parliament (Art. 8, Protocol No. 2). The implications of this provision could be very serious, if a national chamber decides to ask its govern-

¹² Two votes per country, one vote per chamber in the bicameral systems.

¹³ See J.V. Louis, “National Parliaments and the Principle of Subsidiarity-Legal Options and Practical Limits”, in *European Constitutional Law Review* Vol. 4, No. 3 (2008), p. 429-52

¹⁴ See EPC, CEPS & EGMONT Joint Study, “National Parliaments and Subsidiarity Check: A new actor in town”, in *The Treaty of Lisbon—A second look at the Institutional Innovations*, Brussels, Sept 2010, pp. 111-12. http://www.epc.eu/documents/uploads/pub_1150_epc_egmont_ceps_-_treaty_of_lisbon.pdf.

ment to systematically appeal to the Court: the EU decision-making process can face delays and, possible standstills. According to Andrea Manzella, this provision can bring to “possible juridification via case law of criteria that are *per se* open to considerable political discretion”. The Court is indeed “*the* authority that can provide legal meaning to the justification requirement (stated in Protocol No.2, Art 5), imposed upon those bodies which put forth draft legislation. [...] These requirements, were they to remain entrusted to political decision makers, would lend themselves to very volatile and ambiguous application.”¹⁵ In other words, it is apparently on the Court’s very threshold that the subsidiarity principle eludes the rules of an essentially political game, with decisions taken on the basis of the balance of power struck at a given point in time among Union bodies and national parliaments.¹⁶

Finally, the Lisbon Treaty also recognises the NPs authority to stop the application of the general *passerelle* clause (Art. 48.7, TEU). This allows for changes in the decision making of the Council from unanimity to majority voting or for the modification of the special legislative procedure to an ordinary one.¹⁷ This can be initiated, for example, to allow the EP to have a more effective overview on a certain policy. This decision can be adopted on the basis of a unanimous vote within the European Council. Each national parliament chamber, however, has the power to block it in the six months following the proposal. The same veto power is retained by each chamber on the specific *passerelle* clause (Art. 81.3, TFEU), which lets the Council pass from the special to the ordinary legislative procedure for those measures dealing with judicial cooperation in civil matters concerning family law and with cross-border implications. Such a veto power in EU decision making is very relevant. Even if it is unlikely that a single chamber can decide to

¹⁵ See A. Manzella, “The role of Parliaments in the democratic life of the Union”, in S. Micossi and G.L. Tosato (eds.), *Europe in the 21st century: Perspectives from the Lisbon Treaty*, Brussels, CEPS paperbacks, 2009, p. 267. <http://www.ceps.eu/book/europe-21st-century-perspectives-lisbon-treaty>.

¹⁶ *Ibid.*

¹⁷ In certain cases specified in the Treaty, laws and framework laws may be adopted by the Council alone or, more rarely, by the EP alone, rather than by the two institutions jointly. These are named special legislative procedures (Arts. 1-34).

activate it, this veto power can be considered a threat to the EU's legislative process.

3. THE FOUR DOMAINS OF NPS PARTICIPATION AT THE EU LEVEL

3.1. NPs' rising influence on national governments

Cooperation with the government represents the main channel of participation between the NPs and EU decision making. The Lisbon Treaty has enhanced this aspect, introducing new tools that can increase the democratic (input) legitimacy of the decisions of the national governments at the EU level.

The NPs influence on the positions of the Member States within the Council has often been underestimated. The extent and intensity of this cooperation changes on the basis of the different constitutional instances. In most Member States, the government provides the parliament with legislative proposals and documents of the Union, in conformity with established practice or according to legislative or constitutional provisions.¹⁸

Three main models for parliamentary participation in the EU's legislative process can be visualised:¹⁹

- 1) *Document based* approach: Parliaments examine EU legislative proposals systematically or by *ad hoc* selections, eventually adopting policy prescriptions. In some of the countries conforming to this method, the government can suspend its action within the Council (by its own initiative or under parliamentary request) on a certain proposal, until parliamentary scrutiny is over.²⁰

¹⁸ In the UK, Denmark, Finland and Estonia, the governments have to also point out the most relevant documents and give detailed information on the forthcoming negotiations in the Council. Binding constitutional provisions on transmission and information duties exist in Finland, France, Germany, Latvia, and The Netherlands.

¹⁹ See A. Esposito., "Il Trattato di Lisbona", *op. cit.*, p. 1124.

²⁰ This approach is generally adopted in Bulgaria, Cyprus, the Czech Republic, France,

- 2) *Procedural* approach: The government presents to the parliament its negotiating position on the main draft proposals of the EU, before every Council meeting. In this case parliamentary accountability is exerted in advance over the government's position rather than just on draft proposals, and can be fixed through politically (and in some cases also legally) binding acts.²¹
- 3) The Estonian, Lithuanian and Hungarian NPs are using a mix of the previous two models.

The Lisbon Treaty's entry into force prompted some NPs, such as the Italian and the German ones, to pass from the first to the second model. While on the one hand the impact of the new Treaty on the NPs relationship with their governments increases the latter's democratic legitimacy, on the other it may lead to questions on the effectiveness of the EU's decision-making process.

First, the extension of majority voting within the Council and the reduction of matters on which Member States can exert veto power can prompt some NPs to define more specific negotiating mandates or ask for more parliamentary scrutiny.²² This trend may get further streng-

Ireland, Luxembourg, Portugal, and by the Belgian and the Dutch senates.

²¹ This approach is more common in Austria, Denmark, Finland, Germany, Greece, Italy, Latvia, Malta, the Slovak republic, Sweden, and in the Polish and Slovenian chambers. In Finland, Poland and Hungary, if during the negotiation the government partially changes the position earlier agreed on with the parliament, it has to explain the reasons to the Assembly.

²² As regards the Italian Parliament, for example, the entry into force of the Lisbon Treaty has given impulse to strengthen cooperation between the parliament and government, in particular during the preparation of EU legislative acts. In order to improve the control by the Chambers of the subsidiarity check, a first innovation obliges the government to provide the Chambers with information and comments on the EU draft legislation that needs to be submitted for the subsidiarity check, in ample time prior to the scrutiny. A second establishes an Inter-ministerial Committee for European Affairs (CIACE) in the prime minister's office to coordinate the government's priorities with the opinions from parliament on the same issues during the preparation of EU legislative acts. This constant evaluation is expected to strengthen government action within the EU Council of Ministers. A third provision states that "the government assures that the position represented by Italy in the EU Council of Ministers or in relations with the other institutions and organs of the EU takes account of the prescriptions defined by the chambers". See R. Matarazzo and J. Leone, "Sleeping Beauty Awakens: The Italian Par-

thened after the projected institution of the new double majority voting on 1 November 2014.

Second, the new (and more specific) classification of the Union's competences can provoke some parliaments to conduct a more systematic scrutiny of the legislative validity of the draft proposals. The competence involved, in fact, impacts the NPs powers of control. The early warning on subsidiarity, for example, can be exerted only in case of non-exclusive competences of the EU. Subsidiarity checks, moreover, can intersect regional competences also, in federal or regional systems like those of Germany, Belgium, Austria and Spain and, to some extent, also in Italy.²³

Finally, the creation of new institutions and tools in order to strengthen the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP) – such as the roles of the President of the Council, the High Representative for Foreign Affairs and Security Policy, Vice-President of the Commission, the External Action Service, and a permanent structured cooperation on defence, etc. – is not balanced by an increased accountability and transparency in the Council's decision making or by the enhanced powers of accountability of the EP. This leaves room for maneuver to the NPs, who possess increased control on the position of their governments on these matters.²⁴

liament and the EU after the Lisbon Treaty", in *The International Spectator*, Vol. 46, No. 3 (September 2011).

²³ See A. Esposito, "Il Trattato di Lisbona", *op. cit.*, p. 1125-1126. Motivated opinions on subsidiarity check presented by the NP could influence the relevant government's position within the Council, especially if a majority of NPs are not there in order to activate the "yellow" or "orange" card procedures.

²⁴ The Conference of the Speakers of the Parliaments of the EU, held in Brussels on 4-5 April 2011, failed to reach an agreement on the proposal to set up an inter-parliamentary conference for the scrutiny of the CFSP and the CSDP, which should be composed of delegations of the NPs, of the EU Member States, and the EP. The NPs renewed their concern over the EP's role within an eventual inter-parliamentary mechanism of scrutiny. See Presidency Conclusions of the Conference of the Speakers of the Parliaments of the EU, Brussels, 4-5 April 2011: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/afco/dv/conf-parl-eu-4-5april2011_/conf-parl-eu-4-5april2011_en.pdf. See also M. Comelli, "Democratic accountability of the CSDP", *op. cit.* p. 5-7, and A. Esposito, "Il Trattato di Lisbona", *op. cit.*, p. 1127.

3.2. A stronger dialogue with the European Commission

The relationship between the European Commission and NPs was defined for the first time in 2005, when the deputy president of the Commission, Margot Wallstrom, presented an overall cooperation framework between the EC and the NPs.²⁵ However, it was only in the aftermath of the rejection of the Constitutional Treaty in France and in The Netherlands (Spring 2005), that the Commission decided to launch a “political dialogue” with NPs (June 2006) in order to respond to protests on the “EU’s democratic deficit” and to further involve NPs in the democratic process.

The Commission started transmitting legislative proposals and consultative documents directly to the NPs, allowing them to send comments and opinions, responding systematically on the merit of the comments received. Political dialogue involves not only matters subject to the subsidiarity check, but all aspects of the Commission’s political and legislative initiatives. The dialogue can mainly be developed prior to the presentation of the draft proposal. This facilitates parliamentary interventions and the Commission’s reactions on strategy or consultation documents, thanks to the former’s informality and absence of strict deadlines.²⁶

The Commission decided to open a wider and more informal dialogue with the NPs for four main reasons. First, the growing problems linked to the transposing of communitarian law on to national legislation; second, the Commission’s awareness of the NPs difficulties, as political institutions in limiting their scrutiny strictly to subsidiarity; third, the determination to bring to light from the very start, possible problems related to the political impact of the Commission’s legislative proposals at the national level; finally, the will to create, in view of the entry into force of the new *early warning* mechanism, a political framework

²⁵ The document was transmitted to NP Presidents in April 2005.

²⁶ See A. Esposito, “Il Trattato di Lisbona”, *op. cit.* p. 1133. Political dialogue, moreover, refers much more to Protocol No. 1 (“on the role of national parliaments”) of the Lisbon Treaty, which provides non-binding information duties, rather than to Protocol No. 2 (“on the subsidiarity check”).

favouring dialogue and information exchange between EU institutions and NPs in order to prevent possible oppositional approaches.²⁷

The NPs attitude to the overall content of the Commission's documents rather than just on the control of national competences is worth noting. A small part of the comments ascribed to the Commission arise from the principles of subsidiarity and proportionality. This is relevant in the light of the Lisbon Treaty's innovations because it confirms that most NPs will just not activate the *early warning* mechanism to intervene on the Commission's legislative initiatives. The latter, moreover, does not deal with the *legitimacy* of the Union's intervention with respect to national competences; rather, it deals with its *intensity*. According to the proportionality principle, in fact, the Union's action should not exceed what is necessary.²⁸

Within the framework of the political dialogue with the European Commission, the performance and participation of the NPs differs significantly.²⁹ Between September 2006 and December 2009, a total of 618 opinions were received from 35 (out of 40) national chambers. The entry into force of the Treaty of Lisbon has boosted this cooperation: about 40 percent more opinions were issued by NPs in 2010 than in 2009.

According to the European Commission Annual report 2010, during the first year with the new Treaty, the Commission sent to NPs 82 draft legislative acts falling under the subsidiarity control mechanism, and received a total of 211 opinions related to these proposals. Out of these 211 opinions, 34 (about 15 percent) were reasoned opinions concluding

²⁷ See L. Gianniti, "Il ruolo dei Parlamenti nazionali", in F. Bassanini and G. Tiberi (eds.), *Le nuove istituzioni Europee. Commento al Trattato di Lisbona*, Bologna, Il Mulino, 2010, p.177.

²⁸ See R. Adam, A. Tizzano, *Lineamenti di diritto dell'Unione Europea*, Torino, Giappichelli, 2008, p. 29. The European Convention, in the drafting of the protocol on the subsidiarity and proportionality principles, decided to limit the *early warning* mechanism just to the first one. The idea was that NPs main role was to check possible violations by the Union of national competences, rather than to interact directly with the EU institutions on the merit of its interventions.

²⁹ European Commission, *Annual Report 2010 on relations between the European Commission and national parliaments*, COM (2011) 345 final, Brussels, 10 June 2011. http://ec.europa.eu/dgs/secretariat_general/relation/relation_other/npo/docs/ar_2010_en.pdf.

that a proposal, or a part of it, was in breach of the subsidiarity principle. About three quarters of these 211 opinions were received by the Commission within the eight week period after the formal transmission letter had been sent. This confirms that NPs have upgraded their capacities in response to the new Treaty and that they can react to the Commission proposals much faster than before.³⁰ Of course, the political relevance and influence of a chamber on the European legislative process do not depend on the number of the opinions expressed within a year, but rather on the political weight of the parliament (and of the country itself) and on the specific content of the opinions.

Most NPs send a copy of policy documents that are addressed to their governments to the Commission, confirming that they do not think of political dialogue with the Commission as an alternative to the relationship with their government, but as complementary to the intention of enhancing the national position.³¹

As regards the implementation of the Lisbon Treaty, the Commission perceives the subsidiarity control mechanism as a political and not purely an accounting function, and wants to facilitate NPs access to it.³² The Commission considers the subsidiarity control mechanism and the political dialogue as “two sides of the same coin, with the former being part of a wider political relationship between the Commission and national Parliaments”. NPs seem to welcome this approach, having so far focused their opinions on the proper contents of the Commission documents rather than just on the subsidiarity check.

³⁰ The most productive chambers in 2010 were the Portuguese *Assembleia da Republica* with 106 opinions (zero reasoned), the Italian Senate, with 71 opinions (one reasoned), the Czech Senate, with 29 opinions (one reasoned), the Italian House, with 25 opinions and then the German Bundesrat, with 23 opinions, including one reasoned. See European Commission, *Annual Report 2010*, p.11.

³¹ In accordance with their internal procedures, the very active Swedish and Danish parliaments continue to participate in the political dialogue with the Commission only on non-legislative documents, reserving the examination of legislative proposals to the accountability action of their governments.

³² See the joint letter sent by the President and the Vice-President of the Commission on 1 December, 2009, to the Presidents of the 40 chambers and of the European Parliament and the Council: http://ec.europa.eu/dgs/secretariat_general/relation/relation_other/npo/docs/letter_en.pdf.

Overall, if the approach developed so far by the Commission and NPs continues, the subsidiarity check could lose the characteristic potential of disturbing – or, even, blocking – the tool of decision making often emphasized by NPs and policy analysts. It could, on the contrary, further encourage political interaction, without the need to look for “blocking minorities” in order to activate the yellow card procedure or “blocking majorities” for the orange card. Moreover, the Commission’s decision to reply systematically to all the opinions received by the NPs, has enhanced awareness of the constructive role the NPs can play in the future implementation of the new Treaty.³³

Finally, it is striking that the Commission is interested in developing direct dialogue with each of the 40 national chambers (considered autonomously) rather than with the parliaments as a whole. On the one hand, the Commission seems to be very sensitive to the national specificities and institutional balances within each constitutional system. On the other, however, this could be part of a “divide and rule” approach aimed at decreasing the parliaments’ possible cohesion against EU institutions. Each chamber, in fact, tends to be very jealous of its prerogatives and methods.³⁴

3.3. *Evolving nature of inter-parliamentary cooperation*

The contribution of the inter-parliamentary cooperation process toward a larger role for NPs in the EU is still unclear and problematic. The co-existence of two main visions of inter-parliamentary cooperation has, in fact, delayed its development. Some NPs (often led by the French Assembly) have, for many years, insisted on the need to create a new institutional body, possibly with substantive legislative powers, or to set up a third European legislative Chamber involving representatives of both the EP and NPs.³⁵

³³ See A. Esposito, “Il Trattato di Lisbona”, *op. cit.*, p. 1142.

³⁴ See P. M. Kaczynski, “Paper tigers or sleeping beauties? NPs in the post-Lisbon European Political System” *CEPS Special Report* (February 2011).

³⁵ The proposal of a third Chamber for NPs was presented at the European Convention by the Convention President Valéry Giscard D’Estaing, and rejected by the Assembly.

This approach has been opposed (or almost entirely refuted) by a majority of NPs, thus reinforcing the conviction that the best way to increase the NPs accountability is to put into practice flexible administrative instruments as well as increase the exchange of information among the parliaments and EU institutions. Despite the fact that the second vision has eventually prevailed, the conflict between these approaches has delayed – and, partially, weakened – the impact of inter-parliamentary cooperation on the EU’s decision making.

It was only in May 1989 that the “Conference of Community and European Affairs Committees” (COSAC) was established. Its role was confirmed by the protocol on the role of national parliaments in the Amsterdam Treaty (1997). COSAC envisaged a biannual meeting with six representatives of each parliament, and since the first meeting its task has been to increase the NPs control on EU affairs. It enables regular information exchanges, best practices and opinions on EU topics between the European Affairs committees of NPs and the EP. Its presidency follows the Council’s rotating presidency.³⁶

Despite the fact that COSAC, with an *ad hoc* secretariat, is the only centre of cooperation to be formally recognised by the Treaties its political role and vocation are still ambiguous. Debates within the COSAC sometimes focus on general political issues, at others on information exchange and coordination for the subsidiarity check, and at others still on the adoption of common positions on the implementation of the Lisbon Treaty. The identity crisis of the COSAC depends either on the very different roles the European Affairs committees play in their national set up, or on conventionally being the battleground for the creation’s supporters of a third European legislative Chamber involving representatives of NPs.

Apart from COSAC, other forums have contributed to the development of inter-parliamentary cooperation. The Conference of Speakers of

³⁶ The regulatory framework for inter-parliamentary cooperation was adopted in 2004 with the “Guidelines for inter-parliamentary cooperation”, updated without major changes in 2008 by the Lisbon Conference of Speakers of the EU Parliament. The three principles of cooperation are: equity among all parliaments, decision making by consensus, autonomy and independence of each parliament or chamber.

the EU Parliament, which meets annually in the presence of the president of the EP, is one such example. Probably the most positive cooperation experienced so far by parliamentary officials and administrations has been in the two following main forums: (a) the regular meetings of NPs representatives in Brussels (Monday Morning Meetings, MMM); and (b) the Inter-Parliamentary EU Information Exchange (IPEX). The latter is a platform for the electronic exchange of EU-related information between NPs of the EU, run since 2009 by its own organisational network. The network is hosted by the EP and has the cooperation of all NPs.³⁷

In addition, an increasing number of meetings are being held between political groups within the EP and their relevant groups within the NPs in order to coordinate the new Treaty's implementation or to adopt *ad hoc* political initiatives. Preparatory meetings of European political families are usually organised before COSAC meetings.

Between 2005 and 2009 COSAC conducted eight subsidiary checks (twice a year), as trial runs for the incoming system and to check on the NPs capacity to make the new system work.³⁸ It was also an occasion for NPs to familiarise themselves with the "yellow" and "orange" card procedures. At the 43rd meeting in Madrid, in May-June 2010, COSAC decided to terminate the trials. COSAC also decided that cooperation between NPs would not be coordinated top-down, and urged the NPs to "intensify their use of IPEX and other forms of cooperation in order to provide mutual information concerning their respective activities and standpoints".³⁹

On the basis of the recent experiences, it is foreseeable that each chamber will initiate the procedure individually, and inform other

³⁷ See www.ipex.eu. The IPEX project was promoted by the Conference of Speakers of the EU parliaments of Rome in 2000. Its implementation was led, in particular, by the Swedish, the Danish and the Italian parliaments. In 2006 the new website was launched, containing a complete catalogue of Commission documents from 2006 onwards as well as documents from the individual NPs specific Commission documents or legislative procedures.

³⁸ For more information on the exercise see http://www.cosac.eu/en/info/early_worning.

³⁹ Conclusions of the XLIII COSAC, <http://www.cosac.eu/en/meetings/Madrid2010/ordinary.doc/conclus.pdf>.

chambers through IPEX. Subsidiarity checks, moreover, will probably be conducted on a regular basis by a few national chambers, and most of the others will follow only if a breach *has* occurred. A timing problem might arise if a chamber, which regularly scrutinises all proposals, discovers a breach. In that case, there might not be enough time for the other NPs to complete the scrutiny before the expiry of the deadline.⁴⁰

3.4. Problematic relationship with the European Parliament

The entry into force of the new treaty has had a twin effect on the EP-NPs relationship. On the one hand, it has increased inter-institutional dialogue, information exchange and meetings between relevant committees. On the other, however, it has expanded the room for competition, in particular the power of scrutiny of sensitive topics.

On inter-institutional dialogue, with the Lisbon Treaty the number of opinions issued by NPs on EU draft legislation and then sent to the competent committees of the European Parliament has been constantly increasing, as have the meetings between European and national parliamentary committees. The German, Belgian and Danish parliaments, for example, regularly invite European MPs (as observers without voting rights) to the meetings of the European Affairs Committee. Coordination between national and European MPs is also increasing within relevant party groups, in order to implement a more effective formulation of the agenda.

On the issue of increasing competitiveness, new opportunities for competition (or clashes) are arising between the NPs and the EP, particularly on the monitoring of the CFSP and CSDP. Following the EP's active role in the negotiations for the organisation of the External Action Service (where the EP used its new budgetary powers to influence decisions), concern was expressed by the Member States on the EP's ambitions regarding a domain that remains primarily inter-governmental.

The Conference of the Speakers of the Parliaments of the EU, held in

⁴⁰ EPC, CEPS, and EGMONT Joint Study, "National Parliaments and Subsidiarity Check", *op. cit.*, p. 117.

Brussels on 4-5 April 2011, failed to reach an agreement on the proposal to hold an inter-parliamentary conference for the scrutiny of the CFSP and the CSDP (composed of delegations of the NPs, of the EU Member States, and of the EP). The new conference should substitute the Western European Union's European Security and Defence Assembly (WEU-ESDA), disbanded by June 2011 because considered redundant by the entry into force of the Lisbon Treaty and specifically by the EU defence clause. On this occasion a group of NPs renewed their concern on granting the EP a strong role in the new structure. Deep differences also emerged "between those who wished to focus on the intergovernmental dimension of the CFSP and the CSDP, and those who wished the Community dimension also to be included".⁴¹ The Presidency's conclusions emphasized that the structure should have the goal of ensuring the monitoring of the CFSP/CSDP from a parliamentary point of view (*scrutiny*), rather than truly to control it (*control*), and to "enable NPs to better scrutinise their governments in this field, and the EP to exert its functions within the European institutional framework".⁴²

In general, tensions arise due to the two opposing philosophies of EU integration: the EP conceives its role as that of being the legislative soul and the engine of integration; the NPs tend instead to defend the intergovernmental dimension of the EU, viewing the EP as an antagonist and a possible threat. There is no doubt however that a stronger cooperation would enhance the overall legitimacy of the EU, particularly in the context of the decreasing participation of European citizens in both the European and national elections.

⁴¹ Presidency Conclusions, *op. cit.*, p. 5, para. 4.

⁴² *Ibid.*, para 3. According to the Presidency Conclusions, (*op. cit.*) the inter-parliamentary conference should replace the existing COFACC and CODAC meetings. The conference should meet twice a year in the country that is holding the six-monthly Council Presidency or in the EP in Brussels, on the matter decided by the Presidency. Extraordinary meetings should be held when deemed necessary or urgent. The High Representative for Foreign Affairs and Security Policy of the European Union should be invited to the meetings of the conference in order to set out the outlines and strategies of the common foreign and defence policy of the Union. Finally, the conference may adopt non-binding conclusions by consensus.

4. CONCLUDING REMARKS

The implementation of the Lisbon Treaty is becoming as important as its original negotiation and subsequent ratification. However, changes are occurring, because the situation in which it entered into force (1 December 2009) was very different from the one in which it was first conceived (2002-2003) and later approved. Whether the new Treaty's provisions on NPs contributes to strengthening EU's democratic legitimacy, or to creating major problems for EU decision making will depend on both the use of the "yellow" and "orange" card procedures for ensuring respect for the subsidiary principle, and on the rising influence of NPs on their governments.

In terms of accountability, the author has tried in this study to explain why EU institutions and national governments will need to increasingly justify their conduct compared to the past. At least formally, this implies an increase in the EU's transparency and input legitimacy. The contribution of national assemblies to the EU's legitimacy, however, cannot be limited to the "yellow" and "orange" card procedures. It relies, in fact, on other key innovations of the institutional framework.

The following conclusions can be drawn on the four levels of participation of the NPs in the EU process analysed in this study:

First, the NPs cooperation with their government will continue to be their main channel for influencing the European democratic process. The Lisbon Treaty strengthens this trend by introducing new tools to increase the democratic (input) legitimacy of government decisions. The risk of governments – generally politically very close to their parliaments – using new mechanisms to delay or derail the EU process is high, exacerbated by the diverse relationships existing among the Member States, and between the governments and the NPs. However, it is probable that the NPs involvement can contribute to an increase in national co-responsibility. In several Member States, this can positively impact manipulative anti-Brussels accusations, leading to wider political debates on EU issues.

Second, political dialogue between the NPs and the Commission is increasing both the quality of the political climate and of communication exchange. The inclination of the NPs to enter into the substance of the

Commission's draft proposals, rather than just limiting their action to controlling national competences, is certainly positive. If the approach developed so far by the Commission and NPs continues, the subsidiarity check can lose its potential disturbing – or blocking – factor in decision making, a fact often emphasized by policy analysts. It could, on the contrary, invoke further political communication, without the need to look for “blocking minorities” in order to activate the yellow card procedure or “blocking majorities” for the orange card. Moreover, the Commission's decision to reply systematically to all the opinions received by the NPs, has enhanced the awareness of the constructive role the NPs can play in the future implementation of the new Treaty.

Third, the contribution of inter-parliamentary cooperation toward a larger role for NPs in the EU process is still unclear and problematic. The conflict between two opposing visions has, in fact, delayed the increase in cooperation and decreased its impact. The prevailing approach aims at intensifying the use of flexible administrative instruments within CO-SAC (such as IPEX and other forms of cooperation). This is undoubtedly deepening the exchange of information among the Parliaments and EU institutions and improving inter-parliamentary cooperation day-by-day. Problems relating to the timing of coordination among NPs may arise, moreover, if the control over the subsidiarity breach will continue to be in the hands of those few national chambers that are known for being most active.

Finally, the NPs and the EP continue to incorporate two opposing approaches to EU integration: the NPs tend to defend the inter-governmental dimension of the EU, considering the EP as an antagonist and possible threat, while the EP conceives its function as that of the main promoter of integration. Political dialogue between these actors will continue to be undermined by this differing view: the entry into force of the new Treaty has, in fact, increased inter-institutional dialogue, but it has also enlarged the scope for competition, in particular the scrutiny of sensitive issues like CFSP and CSDP.

As underlined in this study, the Treaty's innovations on NPs affects different levels of EU decision making and democratic (input) legitimacy. The implementation of the Treaty will reveal whether the extension of participatory procedures to the NPs can be considered an opportunity

or a major threat to the system.

Finally, it is worth recalling that most parliamentarians are reluctant to invest time and means on the scrutiny of European matters, basically due to lack of political incentives, low voter interest, distance from national politics and lack of proper feedback.⁴³ The key would then lie in making EU matters as highly political as possible. Keeping the NPs engagement in EU issues constantly on the burner can ensure this, as then the MPs will find it embarrassing not to be involved in the supranational process.

⁴³ See P. Kiiver, *Europe in Parliament: Towards Targeted Politicization*, Scientific Council for Government Policy (WRR online paper; No. 23), 2007, available at www.wrr.nl/content.jsp?objectid=4040.

3.

The European Citizens' Initiative: *Challenges and Perspectives*

*Salvatore Aloisio, Giorgio Grimaldi,
Umberto Morelli, Antonio Padoa-Schioppa**

INTRODUCTION. DEMOCRACY IN THE EUROPEAN UNION: GENERAL REMARKS

To date representative democracy has had quite a fragile context in the European Union (EU) system. The Lisbon Treaty, the latest revision of the treaties and currently one of the EU's fundamental texts, states that "the functioning of the Union shall be founded on representative democracy" (Art. 10.1, Treaty on European Union – TEU¹). The most significant steps leading to representative democracy in a European framework are:

- (a) The election of the European Parliament (EP) by universal suffrage since 1979.

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¹ Formerly Art. I-46, para 1, Conference of the Representatives of the Governments of the Member States (CIG), *Treaty Establishing a Constitution for Europe*, (87/2/04 REV 2), Brussels, 29 October 2004, <http://www.consilium.europa.eu/igcpdf/en/04/cg00/cg00087-re02.en04.pdf>.

- (b) The extension of the EU's decision-making powers to an ever-increasing number of subjects and to other remits. However, these powers of the EP so far do not include major areas such as fiscal powers of the EU, own resources, foreign policy and defence and several other crucial domains among the competences of the European Union as established in the Treaties. The Single European Act implemented in 1987 made provisions for cooperation procedure until the subsequent reforms which turned the EP from a minor and mainly consultative body (*a talk shop*) into one of the major EU institutions.² In fact the Maastricht Treaty introduced the co-decision procedure and EP powers progressively increased.
- (c) European citizenship, as established by the Maastricht Treaty, came into force in 1993, although national citizenship still prevails and EU nationality is subordinated to it.³

The EU is a *sui generis* organisation with ingredients of supranational democracy. The scientific community has offered many definitions for it precisely because of its hybrid nature: in fact there are various forms of democracy and decision-making processes living alongside each other, such as representative, participatory, associative and deliberative democracy.⁴

² See B. Rittberger, *Building Europe's Parliament*, Oxford, Oxford University Press, 2005, p. 177.

³ "In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it". Art. 9, TEU, see "Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union" (2008/C 115/01), in *Official Journal of the European Union* (OJEU), Vol. 51 (9 May 2008), <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2008:115:SOM:en:HTML>. On this issue see J. Shaw, *Citizenship: Contrasting Dynamics at the Interface of Integration and Constitutionalism*, Florence, European Universities Institute, July 2010 (EUI Working Paper RSCAS, No. 2010/60), http://eudo-citizenship.eu/docs/RSCAS%202010_60.pdf.

⁴ For a very recent contribution which sees the EU as an example of representative transnational democracy in the form of Union of Citizens and Member States see J. Hoek-sma, *A Story of Europe. The European Union as an Emerging Democracy*, in "Europe's World" Community Posts, 16 December 2010, <http://www.europesworld.org/Portals/>

The EU has developed a number of participatory practices implemented through preliminary consultation of the so-called “organised civil society”, the “intermediate groups”, as defined by Alexis de Tocqueville in his work *Democracy in America*. These groups, independent and distinct from the state, embody freedom of association, and their purpose is to unite interests and educate, thus promoting citizens’ participation in political life and acting as a deterrent against the despotic attitude of political parties and the arbitrary power of sovereigns.⁵

The bond between civil society and democracy is deep and longstanding, although the variety of its constituents has increased in Europe, especially since the late 20th century. Civil society can be defined as “the population of groups formed for collective purposes primarily outside of the state and the marketplace”,⁶ despite current civil society associations in Europe being very diverse – economic lobbies, associations, Trade Unions (TUs), NGOs – with their aim being to influence the EU institutions.

Several studies spanning decades have confirmed the strong link between having membership of a civil society organisation and being politically active.⁷ Likewise the role of non-governmental players in consolidating democracy in independent postcolonial countries has also been observed in several contexts.⁸

The European Commission (EC) is increasingly involving the above-

0/PDF_version/Issue16/A%20STORY%20FOR%20EUROPE-EW.pdf.

⁵ “[...] no countries need associations more – to prevent either despotism of parties or the arbitrary rule of a prince – than those with a democratic social state”, A. de Tocqueville, *Democracy in America*, New York, Anchor Books, 1965, p. 192.

⁶ A. van Rooy (ed.), *Civil Society and the Aid Industry. The Politics and Promise*, London, Earthscan, 1998, p. 30.

⁷ See, for example, G. Almond, S. Verba, *The Civic Culture*, Boston, Little, Brown and Co., 1963; E. von Erlach, “Politicization in Associations: An Empirical Study of the Relationship between Membership in Associations and Participation in Political Discussions”, in *World Political Science Review*, Vol. 2. No. 1 (2006), pp. 1-29, <http://www.sfu.ca/igs/APR/encounters/V2N1/switzerland06.pdf>.

⁸ L. Svåsand, A. Tostensen, *Non-state Actors and Democratic Consolidation*, Bergen, Chr. Michelsen Institute, (CMI Working Paper No. 1/2009, NUFU Project on Democratic Consolidation in Malawi), <http://bora.cmi.no/dspace/bitstream/10202/423/1/Working%20paper%20WP%202009-1.pdf>.

mentioned associations, in the consultation and advisory procedures. By offering expertise and by representing transnational groups, civil society players can enhance the legitimacy of EU actions as well as proving useful to institutions in implementing effective and shared policies. At times the EU institutions can find allies and supporters from within civil society when confronted with resistance by Member State governments. The development of participatory democracy,⁹ defined as social dialogue and consultation of the various associations of civil society,¹⁰ has recently become a hallmark of the EU's workings.

A number of scholars consider associative democracy as a step beyond the liberal notion of representative democracy and have suggested the term "associative democracy" in the framework of a number of theories referring to globalised societies.¹¹ Associative democracy is

⁹ Reference to the principles of participatory democracy was contained in the title of Art. I-47 of the Treaty establishing a European Constitution. The title is no longer found in Art. 11 of the TEU which reiterates the following, already contained in the article:

"1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent [...]."

¹⁰ As far as communication policy to promote dialogue, communication and democracy is concerned, reference is made to Plan D of the Commission, approved after the failure of the French and Dutch referenda on the ratification of the Constitutional Treaty: see European Commission (EC), *The Commission's Contribution to the Period of Reflection and Beyond: Plan D for Democracy, Dialogue and Debate*, Brussels, 13 October 2005, (COM [2005] 494 final), http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com_2005_0494en01.pdf. On civil dialogue, see EP, *Report on the Perspectives for Developing Civil Dialogue under the Treaty of Lisbon* (A6-0475/2008), 4 December 2008, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2008-0475+0+DOC+PDF+V0//EN&language=EN>. As for the recent report and the action for the EC to facilitate citizens' consultation see *Reding Calls for Wider Use of Citizens' Consultations*, in "Euractiv", 16 September 2010, <http://www.euractiv.com/en/pa/reding-calls-wider-use-citizens-consultations-news-497829>.

¹¹ "Associative democracy is commonly understood as a model of participatory democracy in which the individual participation takes place in the context of self-governing interest groups or *associations*, which have, in their turn some sort of demo-

identified as the distribution of power among the various public and private decision-making centres, each one fulfilling its role, comparing, cooperating and extending social participation.¹² Hence deliberative democracy develops through decentralised governance.¹³

According to scholars such as Jürgen Habermas, deliberative democracy can be legitimised as a procedural and decentralised process where access to information, open and free speech and the standard of the procedures allow to make rational and acceptable decisions (*epistemic value of deliberation*).¹⁴ According to the afore-mentioned communicative approach the European “constitutional” process is seen to be democratic regardless of the existence of a European people (*demos*). Other authors believe that just European direct democracy and pan-European referenda are needed to remedy the democratic deficit in the EU¹⁵ and close the

cratic structure”; P. Perczynski, *Citizenship and Associative Democracy*, paper presented in Mannheim (Germany), at the European Consortium of Political Research (ECPR) Annual Joint Sessions, 26-31 March 1999, p. 6, https://www.essex.ac.uk/ecpr/events/joint_sessions/paperarchive/mannheim/w20/perczynski.PDF. For an analysis of the limits and challenges of participative democracy in Europe, see G. Allegretti, “Europa e democrazia partecipativa: dagli attuali limiti alle opportunità per il futuro”, in N. Vallinoto, S. Vannuccini (eds.), *Europa 2.0. Prospettive ed evoluzioni del sogno europeo*, Verona, Ombre Corte, 2010, pp. 30-43.

¹² “[...] of all the reform doctrines now current, only associationalism gives due recognition to the reality of an organisational society and seeks to address the problem by democratising institutions in civil society and by decentralising the state”; P. Hirst, “Renewing Democracy through Associations”, in *Political Quarterly*, Vol. 73, No. 4, 2002, pp. 409-21.

¹³ “The notion includes collective decision-making with the participation of all who will be affected by the decision or their representatives: this is the democratic part. Also, all agree that it includes decision-making by means of arguments offered by and to participants who are committed to the values of rationality and impartiality: this is the deliberative part”; J. Elster (ed.), *Deliberative Democracy*, Cambridge, Harvard University Press, 1998, p. 8. On these topics see R. Bifulco, *Democrazia partecipativa e democrazia deliberativa*, paper presented at the conference in Florence, “La democrazia partecipativa in Italia e in Europa: esperienze e prospettive”, 2-3 April 2009, http://www.astrid-online.it/Forme-e-st/Studi--ric/Bifulco_democrazia-partecipativa--2-Firenze_2-3_4_09.doc.pdf.

¹⁴ See J. Habermas, *The Post-National Constellation and the Future of Democracy*, Cambridge, Polity Press, 2001.

¹⁵ The definition was first used with reference to the absence of legislative powers of

gap between citizens and the EU institutions, strengthening Europe with a bottom-up process.¹⁶ Andrew Moravcsik's position differs altogether as he maintains there is no democratic deficit in the EU since it stems from the intergovernmental will to transfer parts of national sovereignty to manage common problems.¹⁷

Another point of view on deliberative democracy suggests that the need to participate with equal conditions and equal rights is the foundation of democratic legitimacy (*moral value of deliberation*).¹⁸

Complex and multi-tier systems such as the EU are examples of a mixed implementation of representative, participatory, deliberative and associative democracy, the latter much as happens on a national level. It is not easy anyway to adapt the various theories addressing democracy on a national level to a pluralistic multi-layer, multi-level and compound democracy¹⁹ such as the type existing in the EU.²⁰

the EP in D. Marquand, *Parliament for Europe*, London, Jonathan Cape, 1979. For recent overviews of the heterogeneous and large debate on the EU's democratic deficit, see T. Jensen, "The Democratic Deficit of the European Union", in *Living Reviews in Democracy*, Vol. 1, No. 1-2 (2009), also online at <http://democracy.livingreviews.org/index.php/lrd/article/view/lrd-2009-2/8>; B. Rittberger, "Democracy and European Union Governance", in M. Egan, N. Nugent, W. E. Paterson (eds.), *Research Agendas in EU Studies. Stalking the Elephant*, Basingstoke, Palgrave Macmillan, 2010, pp. 134-67.

¹⁶ See U. Beck, E. Grande, "Cosmopolitanism: Europe's Way Out of Crisis", in *European Journal of Social Theory*, Vol. 10, No. 1 (2007), pp. 67-85.

¹⁷ See A. Moravcsik, *Why the European Union Strengthens the State: Domestic Politics and International Cooperation*, Harvard University, Center for European Studies (CES Working Paper 52), 1994, <http://www.ces.fas.harvard.edu/publications/docs/pdfs/Moravcsik52.pdf>; *Ibid.*, "In Defence of 'Democratic Deficit': Reassessing Legitimacy in the European Union", in *Journal of Common Market Studies*, Vol. 40, No. 4 (2002), pp. 603-24, <http://www.princeton.edu/~amoravcs/library/deficit.pdf>. Without entering the debate on the European demos and democratic deficit, for a debate more closely related to the Constitutional Treaty reference is made to C. Malandrino (ed.), *Un popolo per l'Europa unita. Tra dibattito storico e nuove prospettive teoriche e politiche*, Firenze, Olschki, 2004

¹⁸ For an analysis on epistemic/rational deliberation and moral/participatory deliberation see E. O. Eriksen, *Deliberation and the Democratic Legitimacy in the EU. Are Working Agreements the Most that Can Be Expected?*, University of Oslo (ARENA Centre for European Studies, Working Paper No. 8), April 2006, http://www.arena.uio.no/publications/working-papers2006/papers/wp06_08.pdf.

¹⁹ See S. Fabbri, *Compound Democracies: Why The United States and Europe Are Becoming Similar*, Oxford, New York, N.Y., Oxford University Press, 2007; *Ibid.*, *The Consti-*

As for civil society, the issue of democratic legitimacy stands out: players from organised civil society are very heterogeneous in terms of their structures, characteristics, action methods and aims. The EU has not established any rules or regulations to identify the representative groups of collective claims from those representing private, corporative or sector-specific interests, and to clearly regulate lobbying activities. As a result, the EU has adopted a high degree of flexibility regarding the notion of civil society, which has meant including together the non-profit social and environmental NGOs, with associations and networks of associations not on the basis of principles of democratic representativeness and legitimacy and organised according to principles of economic utility and the defence of specific interests (namely industrial and farming associations).²¹ As interest groups or lobbies, the latter are included in the

tutionalisation of a Compound Democracy: Comparing the European Union with the American Experience (Constitutionalism Web-Papers, ConWEB, No. 3), 2008, <http://www.bath.ac.uk/esml/conWEB/Conweb%20papers-filestore/conweb3-2008.pdf>.

²⁰ See T. Hüller, "Conceptualising Democratic Associational Involvement in EU Decision Making - Contributions from Contemporary Political Theory", in *Acta Politica*, Vol. 45, No. 3 (September 2010), pp. 298-319. The Author affirms that no one has developed a plausible EU-specific theory of associative democratisation and concludes that only a restricted vision of democratic associational involvement in EU decision making is viable. On the democratisation in the EU as a process of constitutional conflict between institutional actors see F. Schimmelfennig, *The Normative Origins of Democracy in the European Union: Towards a Transformationalist Theory of Democratization*, National Centre of Competence in Research, Switzerland (NCCR Challenges to Democracy in the 21st Century, Working Paper No. 39, December 2009, <http://www.nccr-democracy.uzh.ch/publications/workingpaper/pdf/WP39.pdf>).

²¹ According to the EC the concept of civil society "can nevertheless be used as shorthand to refer to a range of organisations which include: the labour-market players (i.e. trade unions and employers federations – the 'social partners'); organisations representing social and economic players, which are not social partners in the strict sense of the term (for instance, consumer organisations); NGOs (non-governmental organisations), which bring people together in a common cause, such as environmental organisations, human rights organisations, charitable organisations, educational and training organisations, etc.; CBOs (community-based organisations), i.e. organisations set up within society at grassroots level which pursue member-oriented objectives, e.g. youth organisations, family associations and all organisations through which citizens participate in local and municipal life; and religious communities"; EC, *Communication from the Commission: Towards a Reinforced Culture of Consultation and Dialogue -- General Principles*

formal (committees) and informal consultation systems and procedures, which is a feature of EU decision making.²² As a result their role has become more important in all European public policies²³ and especially in the relationship with the EC and the EP. Furthermore they have been recognised as members of the EU's European Economic and Social Committee (EESC) alongside the trade unions and employers.

In addition to the afore-mentioned features of representative, participatory and associative democracy, both the contribution and action of national parliaments in guaranteeing "the good functioning of the Union" – which is strengthened by the Lisbon Treaty in Title II "Provisions on Democratic Principles", Art. 12 of the TEU and regulated by Protocol No. 1 on the Role of National Parliaments in the European Union – and the participation of regions and local authorities as well as of the Euro-regions and the European Grouping of Territorial Cooperation (EGTC) established in 2006 have to be taken into consideration.

The peculiar contribution of national parliaments is to be tested with special reference to the interactions between national governments and the EP.²⁴ The relationship between the EP and national parliaments is considered especially important in favouring European civil society participation, which can be further developed.²⁵

and Minimum Standards for Consultation of Interested Parties by the Commission, Brussels, (COM 2002/704 final), 11 December 2002, p. 6, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0704:FIN:en:PDF>.

²² See D. Hierlemann, A. Wohlfarth, *A Revolution in Disguise: The European Citizens' Initiative*, (Spotlight Europe, 7/2010), August 2010, p. 2, http://aei.pitt.edu/14871/01/xcms_bst_dms_32090_32091_2.pdf. See also M. C. Marchetti, *Democrazia e partecipazione nell'Unione europea*, Milano, Franco Angeli, 2009.

²³ See C. Ruzza, *EU Public Policies and the Participation of Organized Civil Society*, Milan, Dipartimento di studi sociali e politici dell'Università di Milano (DSSP Working Paper) 23 November 2005, pp. 33, http://www.sociol.unimi.it/papers/2005-11-23_Carlo%20Ruzza.pdf. See also J. Greenwood, *Interest Representation in the European Union* (2nd ed.), Basingstoke, Palgrave Macmillan, 2007.

²⁴ See Art. 12 TEU.

²⁵ See MEP (Member of the European Parliament), *European Parliament Needs to Be Hub for National MPs*, interview by Silvana Koch-Mehrin, German liberal MEP (Alliance of Liberals and Democrats for Europe Group–ALDE Group) and European Parliament Vice-President, in online "Euractiv", 4 October 2010, <http://www.euractiv.com/en/future-eu/mep-european-parliament-needs-be-hub-national-mps-interview-498147>.

Regional levels of territorial and local forms of representation in individual EU Member States, officially recognised as having an institutional role in the Maastricht Treaty, which established the Committee of Regions (CoR) in 1994, have grown in importance both in developing community policies and in implementing EU provisions. This stresses their importance as players in the EU's democratic life and as the links between the EU and the local populations.²⁶

1. THE EUROPEAN CITIZENS' INITIATIVE (ECI)

1.1. *Citizens' initiatives and direct democracy in the EU: a short outline*

Present day democracies offer four legal instruments of direct democracy:

- 1) A mandatory referendum on certain issues, which is legally binding.
- 2) A facultative referendum, called at the will of a public authority, binding or not-binding.
- 3) A citizens' initiative where citizens collect signatures to call a referendum on a given draft proposal.
- 4) A citizens' initiative as an *agenda-setting instrument*, aimed at collecting signatures for a bill to be discussed by a public authority invested with the power to decide whether it should be accepted or denied.²⁷

²⁶ For a brief analysis on democratic institutional changes in the EU under the Lisbon Treaty see J. Mayoral, *Democratic Improvements in the European Union under the Lisbon Treaty. Institutional Changes regarding Democratic Government in the EU*, Florence, European Union Democracy Observatory (EUDO) EUI, RSCAS, February 2011, pp. 10, <http://www.eui.eu/Projects/EUDO-Institutions/Documents/EUDOreport922011.pdf>.

²⁷ On direct democracy see T. Schiller, "Modern Direct Democracy in Europe. Dynamic Developments on All Levels", in J. Lee, B. Kaufmann (eds.), *Global Citizens in Charge. How Modern Direct Democracy Can Make Our Representative Democracies Truly Representative*, Seoul (Korea) Democracy Foundation, 2009, pp. 131-45, http://www.iri-europe.org/fileadmin/user_upload/pdf/Global%20Forum%20Publication.pdf; T. Benedikter, *Democrazia diretta. Più potere ai cittadini*, Torino, Sonda, 2008. For an up to date account of direct democracy instruments' experience around the world see electronic databases provided by C2D - Centre for Research on Direct Democracy (http://www.c2d.ch/inner.php?table=dd_db). For an article on both the relationship between direct

Only nine of the EU member States include national-agenda setting instruments – Italy, Slovenia, Hungary, Portugal, Romania, Austria, Spain, Lithuania and the Netherlands (the latter only since 2006) with minimum adhesion thresholds between 0.08 per cent of voters (50,000 citizens for Italy) and 1.43 per cent (Lithuania). Only two of those with national instruments require higher thresholds (Slovakia and Latvia). Several EU Member States make provisions for citizens' initiatives and referenda at regional (Austria, Germany, Spain, Sweden and Holland) and local (Belgium, Germany, Italy, Luxembourg, Slovenia, Spain and Hungary) levels, while Switzerland and the US (in twenty-four states of the Federation) offer intranational referenda.²⁸

A German Social Democrat member, Jürgen Meyer, put the suggestion of a European ECI at the European Convention in May 2003.²⁹ He was supported by Mehr Demokratie e.V., an organisation which had also tabled several proposals for articles to be included in the draft Constitutional Treaty, as, for example, a European Citizens' Initiative and a refe-

democracy and federalism and the one between direct democracy and minority rights see E. Alber, "Direct Democracy: Driving Force for a New Political Federal Culture?" in *The Federalist Debate*, Vol. 23, No. 1 (March 2011), pp. 31-34.

²⁸ For a comparative study on direct democracy and the EU see F. Mendez, M. Mendez, V. Triga, *Dilemmas of Direct Democracy: The European Union from Comparative Perspective*, Geneva (C2D Working Paper Series; 30/2008), http://www.c2d.ch/files/C2D_WP30.pdf. For a guide on the experiments of direct democracy from the local to the transnational level see B. Kaufmann, R. Büchi, N. Braun, *Guidebook to Direct Democracy in Switzerland and Beyond*, Marburg, IRI, 2010, http://www.iri-europe.org/fileadmin/user_upload/pdf/CHDD10.pdf.

²⁹ See J. Meyer, *Suggestion for Amendment to Article I-46 of the Treaty Establishing a Constitution for Europe*, http://european-convention.eu.int/Docs/Treaty/pdf/34/34_Art%20I%2046%20Meyer%20EN.pdf. For similar proposals see also: J. Borrell, C. Carnero, D. L. Garrido, *Suggestion for Amendment to Article 34 of the Treaty Establishing a Constitution for Europe*, <http://european-convention.eu.int/Docs/Treaty/pdf/34/Art34bisBorrell.pdf>; A. Lamassoure, *Suggestion for Amendment to Article 34 of the Treaty Establishing a Constitution for Europe*, <http://european-convention.eu.int/Docs/Treaty/pdf/34/art34bisLamassoure.pdf> (this amendment proposed the citizens' right of petition and the institution of a European referendum on European legislation and on the ratification of reform treaties); J. Voggenhuber, R. Wagener, N. MacCormick, E. Lichtenberger, M. Nagy, *Suggestion for Amendment to Article 34 of the Treaty Establishing a Constitution for Europe*, <http://european-convention.eu.int/Docs/Treaty/pdf/34/Art34Voggenhuber.pdf>.

rendum to approve any amendments to the Constitution.³⁰

All the proposed referenda were rejected by the Presidium of the Convention except for the Citizens' Initiative which was included in the Draft Treaty establishing the Constitution of Europe, approved in June 2003 by the European Convention with the introduction of the requirement of a minimum number of citizens: "No less than one million citizens coming from a significant number of Member States" (Art. I-46, "The principle of participatory democracy", para 4, *Draft Treaty establishing a Constitution for Europe*³¹). Subsequently the ECI was included in Art. I-47 of the Treaty establishing a Constitution for Europe, which mirrored the previous article, albeit with minor changes.³²

Since that time, the ECI, in a rather unexpected manner and hardly any debate, has survived the misfortunes of the Treaty, which had established a European Constitution, and has been included in the Lisbon Treaty.³³ Immediately after its inclusion in the Constitutional Treaty in 2004, about twenty pilot "informal" European citizens' initiatives have been carried out following a range of procedures by MPs (Members of Parliament), associations, Trade Unions (TUs) and a number of NGO networks, to test the instrument, in view of its implementation, some of them getting huge support.

The ECIs organised prior to the coming into force of the Lisbon Treaty were in fact Euro-petitions, and signatures were mostly e-gathered without e-mail verification.³⁴ They included, for example: "The Oneseat

³⁰ Mehr Demokratie e.V., established in 1988, is especially active in studying the development of local, national and European democracy and has reached good results, such as introducing municipal referenda in Bavaria in 1995 and in 1998 in Hamburg. Recently it initiated a campaign still underway for the establishment of national referenda in Germany (<http://www.mehr-demokratie.de/>).

³¹ See *Draft Treaty Establishing a Constitution for Europe*, Brussels (CONV/850/03), 18 July 2003, <http://european-convention.eu.int/docs/Treaty/cv00850.en03.pdf>.

³² See *Treaty Establishing a Constitution for Europe* (OJEU, C 310), Vol. 47 (16 December 2004), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:310:0011:0040:EN:PDF>.

³³ See A. Auer, "European Citizens' Initiative", in *European Constitutional Law Review*, Vol. 1, No.1 (2005), pp. 79-86.

³⁴ For an illustration of the experiences linked to these campaigns see C. Berg, P. Carline, B. Kaufmann, J. Leinen, D. Wallis, *Initiative for Europe Handbook 2008: the Guide to*

Campaign”, promoted mainly by Members of European Parliament (MEPs) to establish Brussels as the only seat for the EP, to avoid the ongoing waste of time and money for the back and forth from Strasbourg for the Plenary EP Sessions³⁵; “Against Nuclear Energy”, in order to end the Euratom Treaty and to prevent the construction of new nuclear facilities³⁶; “For a European Referendum on the EU Constitution”, in order to trigger a consultative popular vote on the new European Constitution, launched in the spring of 2007 by the Union of European Federalists (UEF) and no longer active; “Initiative for the Initiative”, launched in November 2006 by a network of NGOs and student groups to promote a citizen-friendly ECI’s procedure³⁷; “European Citizenship Initiative”, launched in 2006 by the European Citizen Action Service (ECAS – an NGO whose purpose is to support and channel NGO activities at the Community level) to establish a forum for the European citizenry, and to study and organise conferences.

Transnational Democracy, Brussels, Initiative and Referendum Institute Europe, 2007, pp. 8-46, http://www.iri-europe.org/fileadmin/user_upload/media/IRI-Handbook2008.pdf. For further details on the ECI see also B. Kaufmann, J. W. Pilcher (eds.), *The European Citizens’ Initiatives. Into New Democratic Territory*, Wien, Intersentia, 2010.

³⁵ See One Seat Initiative’s website: <http://oneseat.eu>. There were 1.067,838 signatures presented to the EC on 18 September 2006, subsequently forwarded to the Committee on Petitions of the EP (although the Commission itself had ruled out that the issue could be raised by an ECI). See what the Secretary General of the EC included in the brief questions and answers: “7. Can an ECI deal with the seat of the European Parliament in Strasbourg? No, making a proposal on this matter does not fall within the framework of the Commission’s powers. The seat of the institutions is determined by common accord of the governments of the Member States”; see *European Citizens’ Initiative, I. General Q&A on the European Citizens’ Initiative*, http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/docs/faq_eci_final_version_en.pdf. For a study on the subject see V. C. Papp, *Non-decision on the “Seat Issue” of the European Parliament. The Politics of Agenda Setting in the European Union*, Masters Thesis, Public Administration, School of Management & Governance Enschede, University of Twente, Netherlands, August 2008, pp. 86, http://essay.utwente.nl/59090/1/scriptie_V_Papp.pdf.

³⁶ See the campaign’s website: <http://www.million-against-nuclear.net/index.php>.

³⁷ On the origins of the initiative and its developments see C. Berg, *News on the European Citizens’ Initiative (September 2009)*, Permanent Forum of European Civil Society, <http://en.forum-civil-society.org/spip.php?article190>. The initiative will be debated later too because it is actively involved in promoting the ECI; see <http://www.citizens-initiative.eu>.

1.2. The ECI in the Lisbon Treaty: legal basis and general features

The European Citizens' Initiative is included in the Lisbon Treaty, which entered into force on 1 December 2009, and is a major change. It is the first democratic instrument of participation, extending the power to propose to the EC legal initiatives within the EU political system, previously restricted to the Council (since 1957) and the EP (since the Maastricht Treaty came into force in 1993).

The Lisbon Treaty is a tenet for the EU of representative democracy as it states that:

- “the functioning of the Union shall be founded on representative democracy” (Art. 10.1 TEU);
- “Citizens are directly represented at Union level in the European Parliament” and “Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens” (Art. 10.2 TEU);
- “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” (Art. 10.3 TEU);
- “Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union” (Art. 10.4 TEU).

Two provisions identify the nature of the ECI:

1. Art. 11.4 of the TEU states how this instrument of democratic participation can be used: “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”.

2. Art 24.1 of the Treaty on the Functioning of the European Union (TFEU) defines the procedures and regulations to implement an ECI: “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".

The ECI is an instrument to bring together and organise citizens' political demands; it differs both from other direct democracy initiatives – such as referenda – and from forms of deliberative democracy implemented to deal with complex social problems, especially at a local level and which involve various stakeholders. In fact it is the first example of a regional agenda-setting instrument on a continental scale in the framework of a political union with elements of supranationality.³⁸

There are two issues that must be dealt with before interpreting the regulations concerning the ECI in the Lisbon Treaty:

- a) The possibility of using an ECI for proposals to modify the Treaties.
- b) The characteristics ECIs must have.

1.3. Interpreting Art. 11, para 4 of the Lisbon Treaty on the use of ECIs to modify the treaties

The interpretation of Article 11 is important. It enables citizens "to take the initiative of inviting the EC, 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", on account of the right of initiative given to the Commission (Art. 17.2 TEU). Does it also enable citizens to take the initiative to submit proposals aimed at modifying the Treaties to the EC (Art. 48.2 TEU)?

Whatever the opinion on the political advisability of such a choice, the legality of the above-mentioned proposal must be first ascertained: whether, in the course of the ordinary legislative procedure (co-decision), the implementation regulation has introduced the possibility

³⁸ For a brief description of the ECI see L. Ventura, *The European Citizenship Initiative (ECI): A New Democratic Tool? "TEPSA Brief"*, 8 September 2010, <http://tepsa.be/TEPSA%20BRIEF%20ECI%20final.pdf>.

of submitting proposals to amend Treaties; in the event of the preferential plaintiffs – that is, institutions that do not have to demonstrate any interest in taking action, be it the Member States or the European institutions, – opposing it, they could question its legality in the Court of Justice of the European Union (CJEU) (Art. 263 TEU, paras 1, 2, 3). In the (more likely) event that the regulation remains silent on the matter, the same problem could arise in the case of an ECI petitioning for a proposal to amend Treaties.

The issue remains unresolved.³⁹ On the one hand there is no stated prohibition, on the other the limits of the proposal (“on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties”) would appear to exclude a direct proposal to amend the Treaties. If one were to adopt a broad interpretation of the terms *legal act* and *implementation of the Treaties*, it could also include the proposals for amendment of the Treaties, which initiate the procedure to amend the Treaties (Art. 48 TEU), and thus by extension it could allow an ECI to petition the Commission submitting a proposal to amend the Treaties.⁴⁰ However, this idea was turned down by the EC,⁴¹ and could be tabled again only if the CJEU (Court of Justice of the European Union) were to issue a pronouncement following an appeal by the promoters of an ECI (in the event of their proposal having been rejected

³⁹ Remarks on this point can be found in P. Ponzano, *Strengthening European Democracy: the Citizens' Initiative*, 2008, http://en.forum-civil-society.org/IMG/pdf_Strengthening_European_Democracy.pdf.

⁴⁰ Contra A. Auer, “European Citizens' Initiative”, *op. cit.*, p. 82 (“The ECI is legislative and not constitutional: It does not give the citizens the right to launch the process of amending the constitution”) and V. C. Lopez, “The Lisbon Treaty's Provisions on Democratic Principles: A Legal Framework for Participatory Democracy”, in *European Public Law*, Vol. 16, No. 1 (2010), pp. 137, 123–38, http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/docs/cuesta_victor_3_en.pdf.

⁴¹ See what is stated in the short questions and answers on the ECI circulated by the Secretary General of the EC: “8. Will citizens be able to launch a revision of the Treaties with an ECI? No. According to the Treaty, citizens' initiatives can only concern proposals on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties”, *European Citizens' Initiative, I. General Q&A on the European Citizens' Initiative*, http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/docs/faq_eci_final_version_en.pdf.

on those grounds). There are no doubts that an ECI can be submitted, in view of the implied powers as ruled by Art. 352 TFEU.

1.4. Assessing ECI features

The second issue, that is, the one concerning ECI characteristics, is less striking but fundamental in resolving detailed matters, and specifically whether they have to be formulated in detail – comparable to Commission proposals – or not.

The answer to this question is to be found in Art. 11 of the TEU, which refers to an invitation of the Commission to propose, but also in the specific ways the EU system works in terms of legislative initiatives. In fact the Commission has a virtually exclusive right to table legislation (see Art. 17, para 2 TEU) according to EU decision-making procedures. In this respect, an ECI cannot be considered a law proposal submitted to the competent body – as happens in other systems such as that of Italy, Austria, Poland and Spain – but is an invitation to the EC to make such a proposal.

Art. 11 is unequivocal on the matter and is also consistent with Articles 225⁴² and 241 of the TFEU,⁴³ which identify the Council and the EP as the bodies with the power to request the EC to submit proposals.

This means that citizens' initiatives cannot be a detailed legal act, as the drafting of the act is up to the EC. As the draft Commission regulation suggests, it is enough for the initiative to be drafted very clearly with a definite objective that falls within the remit of the EC's competence as well as being accompanied by a clear and circumstantial moti-

⁴² "The European Parliament may, acting by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties. If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons".

⁴³ "The Council acting by a simple majority may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals. If the Commission does not submit a proposal, it shall inform the Council of the reasons".

vation. Although not strictly forbidden, a draft proposal with articles⁴⁴ need not be attached.

As a result the ECI is closer to a petition, and therefore simpler. However, this leaves the Commission broad discretionary powers to draft the final version and it even allows the EC to decide whether the ECI should be followed up or not – albeit within the limits described further in the text.

1.5. Proposals and requests by the European Parliament

Since 2008, the European Parliament Constitutional Affairs Committee (AFCO) has been debating the subject of ECIs with various hearings of experts and leading representatives of civil society.⁴⁵ In February 2009, the AFCO presented a draft report requesting the EC for a regulation proposal to implement ECIs, attaching certain recommendations.

The Committee Report specifically recommended that:

- the Citizens' Initiative requires that citizens from a minimum of one quarter of the total number of Member States take part, and that 1:500 must support the initiative within each Member State for the initiative to be legitimate;
- all EU citizens who have a right to vote in their country may participate in a citizens' initiative;
- the procedure for the citizens' initiative will comprise the following five stages:
 - i. registering the initiative, including specifying the organisers of the ECI,
 - ii. collecting statements of support,

⁴⁴ In this respect I. Ingravallo believes the proposal of the Commission to be “generic” in that it does not mention the possibility, suggested in the Green Paper, to annexe the legal initiative to a legal draft act and hopes it will be modified accordingly because in the current context ECIs are not adequately appreciated and have turned into something like a petition”; see I. Ingravallo, “Brevi note sull’iniziativa legislativa dei cittadini europei”, in *La Comunità Internazionale*, Vol. 65, No. 2 (2010), pp. 256, 251-60.

⁴⁵ See EP, *Public to Have More Say with 1 Million EU Signature Plan*, 6 October 2008, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20081006STO38717+0+DOC+XML+V0//EN>.

- iii. presenting the initiative,
 - iv. a statement of its position by the Commission,
 - v. verifying that the requested legal act is consistent with the Treaties;
- in the interest of transparency, the organisers of a successfully registered citizens' initiative will be required to present a report to the Commission on the funding and sources of funding after the procedure has concluded.⁴⁶

The rapporteur, Sylvie-Yvonne Kaufmann (European United Left/Nordic Green Left - GUE⁴⁷/NGL) from Germany, opened the debate at the plenary session by stating she had not received support in the work done on the ECI by her Group and by the European Left Party, but otherwise expressing thanks for the support shown by representatives of other EP groups (Group of the European People's Party and European Democrats, the Group of the Alliance of Liberals and Democrats for Europe and the Group of the Greens/European Free Alliance) as well as from the Social-Democrat Jo Leinen, chair of the AFCO.⁴⁸ The report was adopted with 380 votes in favour, 41 against and 29 abstentions. All the main groups were favourable, but the labour MEPs from the Socialist Group abstained.⁴⁹ Those voting against were the GUE/NGL since they considered

⁴⁶ EP, *Report of 3 February 2009 Requesting the Commission to Submit a Proposal for a Regulation of the European Parliament and of the Council on the Implementation of the Citizens' Initiative* (A6-0043/2009), Rapporteur S.-Y. Kaufmann (GUE/NGL), <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A6-2009-0043&format=XML&language=EN>; EP, *Citizens to Have the Right to Ask the Commission to Submit a Legislative Proposal*, 5 March 2009, <http://www.europarl.europa.eu/sides/getDoc.do?type=IM-PRESS&reference=20090219BRI50012&secondRef=ITEM-024-EN&format=XML&language=EN>.

⁴⁷ Gauche Unitaire Européenne.

⁴⁸ EP, *Debates*, Strasbourg, 6 May 2009, <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20090506&secondRef=ITEM-015&format=XML&language=EN>.

⁴⁹ R. Corbett (PSE) declared: "Mrs Kaufman's proposals would lead to the citizens' initiative process becoming bogged down or hampered by onerous bureaucratic requirements (like Member States having to check every signature and pre-certification by the Commission that it is legal). To encourage more participation, we should follow the spirit of the Citizens' Initiative - namely that it should be as accessible and easy to use as

the ECI to be absurd and hypocritical as it is contrary to the intention expressed against the Constitutional Treaty⁵⁰ by representatives of the Non-Attached Members who felt that the ECI is deceptive and unable to lessen the power of the Eurocrats⁵¹; the Independence and Democracy Group for whom the proposal was not clear and continued to reiterate provisions already present in the Constitutional Treaty not ratified. Repeating the contents of the AFCO report, the resolution approved by the EP asserted that the citizens' initiative should be admissible if it concerns an EU competence and is not contrary to the general principles of the EU. It also added that it should not take more than two months from the submission of the ECI for the Commission to decide on its admissibility and registrations could be rejected only on legal grounds and not on grounds of political expediency.⁵²

In the following re-election of the EP in June 2009, individual MEPs petitioned the EC to present a proposal for a regulation in line with the recommendations from the EP⁵³ and asked whether the ECIs already

possible"; EP, *Debates – Explanations of Vote*, Strasbourg, 7 May 2009, <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20090507&secondRef=ITEM-010&format=XML&language=EN>.

⁵⁰ *Ibid.*, Speech from P. Guerreiro (GUE/NGL).

⁵¹ *Ibid.*, Speech from B. Gollnisch (NI).

⁵² EP, *Resolution of 7 May 2009 Requesting the Commission to Submit a Proposal for a Regulation of the European Parliament and of the Council on the Implementation of the Citizens' Initiative* – (P6_TA-PROV[2009]0389), and Annexure, *Recommendations as to the Content of the Commission Proposal for a Regulation of the European Parliament and of the Council on the Implementation of the Citizens' Initiative*, *op. cit.*; *Ibid.*, Press Release, *European Parliament's Analysis of the Lisbon Treaty. Plenary Session*, 7 May 2009, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0389+0+DOC+XML+V0//EN#BKMD-22>.

⁵³ *Ibid.*, *Debates. Question to the Commission no 47 by Frank Vanhecke (H0386/09)*, Subject: *Regulation on Citizens' Initiative*, Strasbourg, 26 November 2009, <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20091126&secondRef=ANN-01&format=XML&language=EN>; *Ibid.*, *Written Question by Claude Moraes (S&D) to the Commission, Subject: European Citizen's Initiative (P-0487/10)*, 2 February 2010; *Ibid.*, *Answer Given by Mr Barroso on behalf of the Commission*, 24 February 2010, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2010-0487&language=EN>; *Ibid.*, *Written Question by Rareş-Lucian Niculescu (PPE) and Elena Oana Antonescu (PPE) to the Commission, Subject: Proposals for Legislative Acts through a Citizen's Initiative under the Treaty of Lisbon (E-0414/10)*, 12 February 2010, <http://www.europarl.europa.eu/>

underway could be taken into consideration after the Lisbon Treaty comes into force, receiving a negative response from the Commission.⁵⁴ With reference to the outcomes of the consultation which took place after adopting the Green Paper, it was also asked whether the Commission had considered favouring and regulating online citizens' initiatives, the activities of the social networks and the use of new information and communication technologies for helping start up the ECI.⁵⁵ Further clarification was requested about any minimum national thresholds to be

sides/getDoc.do?type=WQ&reference=E-2010-0414&language=EN; *Ibid.*, *Answer Given by Mr. Barroso on behalf of the Commission*, 26 February 2010, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2010-0414&language=EN>; *Ibid.*, *Parliamentary Questions. Written Question by Nessa Childers (S&D) to the Commission, Subject: The European Citizens' Initiative (E/0791/10)*, 22 February 2010, <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2010-0791&format=XML&language=EN>; *Ibid.*, *Answer Given by Mr Barroso on behalf of the Commission*, 29 March 2010, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2010-0791&language=EN>.

⁵⁴ *Ibid.*, *Parliamentary Questions, Written Question by Jan Philipp Albrecht (Verts/ALE) to the Commission, Subject: European Citizens' Initiative (E/0519/10)*, 16 February 2010, <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2010-0519&format=XML&language=EN>; *Ibid.*, *Parliamentary Questions, Written Question by Alexander Alvaro (ALDE) to the Commission, Subject: Procedures and Conditions Relating to the European Citizens' Initiative (E-0559/10)*, 16 February 2010, <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2010-0559&format=XML&language=EN>; *Réponse commune donnée par M. Šefčovič au nom de la Commission, Questions écrites: E-0519/10, E-0559/10*, 6 April 2010 <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2010-0519&language=EN>; *Ibid.*, *Questions to Commission, EP Debates, Question no 23 by Silvia-Adriana Țicău, Subject: Measures Regulating the Procedures and Conditions for the Presentation of Legislative Initiatives by European Citizens (H-0010/10)*, 11 February 2010, <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20100211&secondRef=ANN-01&format=XML&language=EN>.

⁵⁵ *Ibid.*, *Parliamentary Questions. Written Question by Izaskun Bilbao Barandica (ALDE) to the Commission, Subject: Consultation on a European Citizens' Initiative (E/818/10)*, 22 February 2010, <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2010-0818&format=XML&language=EN>; *Ibid.*, *Réponse donnée par M. Šefčovič au nom de la Commission*, 29 March 2010, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2010-0818&language=EN>; *Ibid.*, *Debates, Question no 45 by Alan Kelly (H-0064/10) Subject: Citizens' Initiative - Making It Accessible Online* 11 March 2010, <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20100311&secondRef=ANN-01&format=XML&language=EN>.

reached as a requisite for starting up the ECI.⁵⁶ Other MEPs critical of the ECI asked in what way the Commission intended creating public confidence in the new instrument, arguing that the EU had provoked considerable public scepticism in two different cases: in 2000 regarding as unacceptable the Austrian national election results and imposing sanctions against this country after the arrival of the extreme right into a new coalition government; and later, disregarding the referenda in France, in the Netherlands and in Ireland.⁵⁷

2. THE EUROPEAN COMMISSION'S PROPOSAL FOR A REGULATION OF THE ECI

2.1. Consultation

After having received an EP resolution requesting to prepare a proposal of an ECI regulation and a series of annexed recommendations and before the Lisbon Treaty came into force, the EC decided to promote a general consultation with the adoption of a Green Paper on a European Citizens' Initiative on 11 November 2009.⁵⁸ The consultation was organised to give the various components of the EU society (organised civil

⁵⁶ *Ibid.*, *Parliamentary Questions, Written Question by Kyriacos Triantaphyllides (GUE/NGL) to the Commission Subject: Thresholds in the European Citizens' Initiative* (E-1372/10), 11 March 2010, <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2010-1372&format=XML&language=EN>; *Ibid.*, *Answer given by Mr Šefčovič on behalf of the Commission*, 7 May 2010, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2010-1372&language=EN>.

⁵⁷ *Ibid.*, *Parliamentary Questions. Written Question by Andreas Mølzer (NI) to the Commission* (E/0772/10), 22 February 2010, <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2010-0772&format=XML&language=EN>; *Ibid.*, *Answer given by Mr Barroso on behalf of the Commission*, 23 April 2010, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2010-0772&language=EN>.

⁵⁸ EC, *Green Paper on a European Citizens' Initiative* – Brussels (COM[2009] 622 Final), 11 November 2009, http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/docs/com_2009_622_en.pdf. See also Honor Mahony, *EU Citizens' Initiative Raises Political and Legal Headaches*, "Euobserver", 11 November 2009, <http://euobserver.com/9/28969>.

society, stakeholders and public authorities in the Member States, citizens and all interested parties) a chance to express their opinions as to what the ECI should be.

The consultation took place on ten issues and relative questions (in brackets) that follow below:

1. Minimum number of Member States from which citizens must come

(Do you consider that one-third of the total number of Member States would constitute a “significant number of Member States” as required by the Treaty?).

2. Minimum number of signatures per Member State

(Do you consider that 0.2 per cent of the total population of each Member State is an appropriate threshold? If not, do you have other proposals in this regard in order to achieve the aim of ensuring that a citizens’ initiative is genuinely representative of a Union interest?).

3. Eligibility to support a citizens’ initiative - minimum age.

(Should the minimum age required to support a European citizens’ initiative be linked to the voting age for the European Parliament elections in each Member State? If not, what other option would you consider appropriate, and why?).

4. Form and wording of a citizens’ initiative.

(Would it be sufficient and appropriate to require that an initiative clearly state the subject matter and objectives of the proposal on which the Commission is invited to act? What other requirements, if any, should be set out as to the form and wording of a citizens’ initiative?).

5. Requirements for the collection, verification and authentication of signatures

(Do you think that there should be a common set of procedural requirements for the collection, verification and authentication of signatures by Member States’ authorities at EU level? To what extent should Member States be able to put in place specific provisions at the national level? Are specific procedures needed in order to ensure that EU citizens

can support a citizens' initiative regardless of their country of residence? Should citizens be able to support a citizens' initiative online? If so, what security and authentication features should be foreseen?).

6. Time limit for the collection of signatures.

(Should a time limit for the collection of signatures be fixed? If so, would you consider one year to be an appropriate time limit?).

7. Registration of proposed initiatives.

(Do you think that a mandatory system of registration of proposed initiatives is necessary? If so, do you agree that this could be done through a specific website provided by the European Commission?).

8. Requirements for organisers - Transparency and funding.

(What specific requirements should be imposed upon the organisers of an initiative in order to ensure transparency and democratic accountability? Do you agree that organisers should be required to provide information on the support and funding that they have received for an initiative?).

9. Examination of citizens' initiatives by the Commission.

(Should a time limit be foreseen for the Commission to examine a citizens' initiative?).

10. Initiatives on the same issue.

(Is it appropriate to introduce rules to prevent the successive presentation of citizens' initiatives on the same issue? If so, would this best be done by introducing some sort of disincentives – or time limits?).

The consultation was completed on 31 January the 2010 with 329 answers – 160 from individual citizens, 133 from organisations and 36 from public authorities), which was a wide and interested reaction, albeit not an exceptional one.⁵⁹ A large section of organised civil society,

⁵⁹ The texts of the contributions can be consulted on line at <http://ec.europa.eu/>

ready to intervene on specific community policies, did not consider the ECI as a priority.

On 22 February 2010 the EC organised a public hearing open to all respondents to circulate and listen to the suggestions they had received.⁶⁰

2.2. Proposal for regulation of the ECI

On 31 March 2010 the Commission published a Proposal for a Regulation of the European Parliament and of the Council on the Citizens' Initiative,⁶¹ preceded by an explanatory memorandum, which states it will consider the overall result of the public consultation and adds that it is inspired by two guiding principles:

[dgs/secretariat_general/citizens_initiative/contributions_en.htm](http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/contributions_en.htm).

⁶⁰ See http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/stakeholder_hearing_en.htm. For further information see the section on the ECI on the EC official website: http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/index_en.htm.

⁶¹ EC, *Proposal for a Regulation of the European Parliament and of the Council on the Citizens' Initiative*, Brussels (COM[2010] 119 final), 31 March 2010, http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/docs/com_2010_119_en.pdf; [http://www.europarl.europa.eu/meetdocs/2009_2014/documents/afco/dv/com_com\(2010\)0119/com_com\(2010\)0119_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/afco/dv/com_com(2010)0119/com_com(2010)0119_en.pdf); EC, Commission Staff Working Document, *Outcome of the Public Consultation on the Green Paper on a European Citizens' Initiative. Accompanying Document to the Proposal for a Regulation of the European Parliament and of the Council on the Citizens' Initiative*, Brussels (SEC(2010)370), 31 March 2010, http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/docs/sec_2010_370_en.pdf; European Citizens' Initiative (ECI MEMO/10/116), 31 March 2010, <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/116&format=HTML&aged=0&language=EN&guiLanguage=en>; *European Citizens' Initiative: Giving Citizens New Possibilities to Influence EU Policy*, Brussels (IP/10/397), 31 March 2010, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/397&format=HTML&aged=0&language=EN&guiLanguage=en>; Maroš Šefčovič Vice-President of the European Commission Responsible for "Interinstitutional Relations and Administration". *Speaking Points for Press Conference on the "European Citizens' Initiative"*. *Press Conference on European Citizens' Initiative Brussels* (SPEECH /10/138), 31 March 2010, <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/138&format=HTML&aged=0&language=EN&guiLanguage=en>; Constant Brand, *Commission Sets Out Rules for Citizens' Initiative*, "European Voice", 31 March 2010, <http://www.europeanvoice.com/article/2010/03/commission-sets-out-rules-for-citizens-initiative/67558.aspx>.

- “The conditions should ensure that citizens’ initiatives are representative of a Union interest, whilst ensuring that the instrument remains easy to use.”
- “The procedures should be simple and user-friendly, whilst preventing fraud or abuse of the system and they should not impose unnecessary administrative burdens on the Member States.”⁶²

The main provisions of the Proposal for a Regulation are the following:

- The minimum number of Member States is fixed at one-third (Art. 7).⁶³
- The minimum number of citizens per Member State is calculated through a “fixed threshold for each Member State, which is degressively proportionate to the population of each State with a minimum threshold and a ceiling”.⁶⁴
- “Where the organiser is a natural person, that person shall be a citizen of the Union and be of the age to be entitled to vote in the European elections. Where the organiser is a legal person or an organisation it shall be established in a Member State. Organisations which do not have legal personality under the applicable national law shall

⁶² Explanatory Memorandum, in EC, *Proposal for a Regulation of the European Parliament and of the Council on the Citizens’ Initiative*, *op. cit.*, p. 2.

⁶³ “It is the threshold used in the provisions on ‘enhanced cooperation’ which provide that ‘at least nine Member States’ must participate (art. 20 TEU). It is also used as the threshold needed to trigger the subsidiarity procedure provided for in art. 7.2 of the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaties”; *Ibid.*, pp. 4-5.

⁶⁴ *Ibid.*, p. 5. The EC based the thresholds on a objective criteria: the multiple of the number of Members of the EP agreed in the context of the 2007 Intergovernmental Conference (750) “in order to reflect the demands of many stakeholders to set a threshold below 0.2% of the population, on the one hand, and to take account of concerns that the threshold in small Member States should not be too low, on the other. Indeed, by using a multiplication factor of 750, the threshold for over half of Member States would be lower or significantly lower than 0.2% of the population, whilst for the smaller Member States the threshold would be higher. This system will thus allow a proportionately lower number of signatories for large countries and a proportionately higher number for small countries” (Art. 7 and Annex I); *Ibid.* The minimum number of supporters per country ranges from 3,750 in Malta, the EU’s smallest Member State, to 74,250 in populous Germany.

have representatives that have the capacity to undertake legal obligations on their behalf and assume liability” (Art. 3.1). “In order to be eligible to support a proposed citizens’ initiative, signatories shall be citizens of the Union and shall be of the age to be entitled to vote in the European elections” (Art. 3.2) and therefore 18 years in all member states except for Austria where it is sixteen;

- Compulsory registration of the ECIs in an online register made available by the EC in one of the EU official languages providing information “in particular on the subject-matter and objectives as well as on the sources of funding and support for the proposed citizens’ initiative” (Art. 4.1), but “proposed citizens’ initiatives which can be reasonably regarded as improper because they are abusive or devoid of seriousness will not be registered” (Art. 4.3) and furthermore “The Commission shall reject the registration of proposed citizens’ initiatives which are manifestly against the values of the Union” (Art. 4.4);
- Signatures will be collected on paper or on-line abiding by the data protection act, in which case it will have to be certified within a month by the national authority (Art. 6) and a time-limit of 12 months is fixed for the collection of statements of support (Art. 5.4);
- “After having collected 300,000 statements of support in accordance with Article 5 from signatories coming from at least three Member States, the organiser shall submit to the Commission a request for a decision on the admissibility of the proposed citizens’ initiative [...]” (Art. 8.1).
- “The Commission shall, within a period of two months from the receipt of the request referred to in paragraph 1, take a decision on admissibility” and “The proposed citizens’ initiative shall be considered admissible if [...]: (a) it concerns a matter where a legal act of the Union can be adopted for the purpose of implementing the Treaties; and (b) it falls within the framework of the powers of the Commission to make a proposal” (Art. 8.2).

“The decision referred to in paragraph 2 shall be notified to the organiser of the proposed citizens’ initiative and made public” (Art. 8.3);

- “Member States will have three months to check the sample of signatures collected nationally for an ECI declared admissible” (Art. 9);

- “Where the Commission receives a citizens’ initiative [...] it shall:
 - a. publish the citizens’ initiative without delay on its website;
 - b. examine the citizens’ initiative and, within 4 months, set out in a communication its conclusions on the initiative, the action it intends to take, if any, and its reasons for doing so” (Art. 11.1).

“The communication referred to in paragraph 1(b) shall be notified to the organiser of the citizens’ initiative as well as to the European Parliament and the Council and shall be made public” (Art. 11.2)⁶⁵;

- Responsibility for data protection is handed to the organisers with a stated time limit (Art. 12): “The organiser shall destroy all statements of support received for a given citizens’ initiative and any copies thereof at the latest one month after submitting that initiative to the Commission in accordance with Article 10 or 18 months after the date of registration of a proposed citizens’ initiative, whichever is the earlier”;
- Last, a review clause is included, according to which “Five years after the entry into force of this Regulation, the Commission shall present a report to the European Parliament and the Council on the implementation of this Regulation” (Art. 21).

Before offering a critical assessment on the proposal it is opportune to consider the main positions the European Institutions, European parties (through the EP political groups), organised civil society, scholars and research centres have taken on the ECI.⁶⁶

3. ECIS: SUGGESTIONS AND OUTLOOK

The EC’s submission of the proposal for a Regulation has rekindled the debate on the ECI highlighting a range of different positions.

⁶⁵ *Ibid*, p. 15.

⁶⁶ For a synthetic analysis on the ECI see A. Gostyńska, “European Citizens’ Initiative: An Instrument of EU Direct Democracy”, in *Bulletin PISM* (Polski Instytut Spraw Międzynarodowych) bulletin of The Polish Institute of International Affairs, No. 128, (26 October 2010), <http://www.pism.pl/bulletin/a204-2010.pdf>.

The present section will try to offer a brief overview of the main suggestions and assessments by the EP, the Council of the European Union, the Committee of Regions (CoR), the European Economic and Social Committee (EESC), European parties and EP parliamentary groups, the European civil society and by individuals and experts on the EC's Proposal for a Resolution. In the sections devoted to the EP and to the Council of the EU will be discussed some of the amendments and changes that led to an inter-institutional agreement and to the EP voting on a first reading of the Regulation on 15 December 2010. After its adoption without discussion at a meeting of the Education, Youth, Culture and Sport Council in Brussels on 14 February 2011 the Regulation EU No. 211/2011 of the EP and of the Council on the citizens' initiative was signed at an official ceremony held in Strasbourg on 16 February 2011 by Foreign Minister János Martonyi, and President Jerzy Buzek, on behalf of the Council and the European Parliament respectively. It has been published in the Official Journal of the European Union and will be applicable one year after entry into force in order to allow member states and the Commission to take the necessary measures to implement it.⁶⁷

3.1. *The European Parliament*

The Regulation proposed by the EC did not implement a number of suggestions of the EP:

- The request that the EC pronounce on the admissibility within two months from registering the ECI and not after having obtained a certain number of signatures.
- The recommendation to the Commission to decide within two months

⁶⁷ See Regulation EU No. 211/2011 of the EP and of the Council of the 16 February 2011 on the citizens' initiative, *OJEU*, L 65, Vol. 54, (11 March 2011), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:065:FULL:EN:PDF>. For a brief analysis see G. Allegri, "Il Regolamento UE riguardante l'iniziativa dei cittadini". Note introduttive", in *Federalismi.it*, 6 April 2011, <http://www.federalismi.it/document/05042011130312.pdf>. See also Council of the EU, *Go-ahead Given to the European Citizens' Initiative*, Brussels (6469/11 Presse 24), 14 February 2011, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/119272.pdf.

of having collected the signatures, proposing that the ECI could only be rejected for legal motives and never for reasons of political pragmatism, and a possible rejection could be subject to judicial control by the CJEU and the European Ombudsman if the contestation proved to be within its jurisdiction (lack of transparency, poor administration, etc.).

- The request that the decision be published in the Official Journal of the EU and posted online and, last, that a hearing of the promoters be organised in order to further investigate the proposal so that the EC could decide within three months whether to go ahead or to shelve the idea, reporting its motives to the EP. If the EC were not to have reached any decision within the period indicated, the CJEU and/or, if necessary the European Mediator would have taken over.

From what can be seen in the working paper from the EP's AFCO for the proposed regulation which the EP and the Council will be required to discuss,⁶⁸ presented on 22 June 2010 and approved at the AFCO meeting on 12 July, it aimed at making amendments. As well as agreeing and reiterating some of the choices already made by the EC (the exclusive involvement of citizens with voting rights for the EP, preference for natural persons as legal representatives of the ECI, responsibility of the promoters for language translation and checking of the texts by the EC on demand, transparency of the registration, in the legal responsibility and in the funds received from organisers), the document proposes:

- "to make the process as European as possible from the beginning and to foster greater debate, the organisers should get together into a 'citizens committee' of at least seven persons coming from at least a quarter of the Member States (MS). By doing so, only European-wide issues could emerge and it would ease the forthcoming signa-

68 EP, Committee on Constitutional Affairs, *Working Document on a Proposal for a Regulation of the European Parliament and of the Council on the Citizens' Initiative*, Rapporteurs: Z. Gurmai (Socialists & Democrats in the EP - S&D) and A. Lamassoure (European People's Party in the EP - EPP), 22 June 2010; <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-443.095+01+DOC+PDF+V0//EN&language=EN>.

tures' collection process as there would already be a representative in a quarter of the MS. Hence, even though it seems to be a constraint at first, it would in reality ease the rest of the procedure".⁶⁹

- to explore various options on the following issues:
 - "5.1. Would it make sense to ask for the organisers to have the support of some directly elected persons who would endorse the initiative? If so, how many of them should support it and should they come from at least a quarter of the MS as well or would it just introduce an unwelcome dose of representative democracy into the process?
 - "5.2. Should we ask the organisers to provide a deposit which would naturally be given back to them if the ECI turns out to be successful?"⁷⁰;
- to provide a first admissibility check:
 - "9. It might make sense for the first admissibility check – based on legal criteria – to take place after 5.000 signatures have been collected. This symbolic figure ensures the representation of genuine public support and in the meantime it would prevent an overburdening of the Commission without the organisers spending too many resources on the process. However, this is only a suggestion and the admissibility check could also be done right after the registration. In any case, the rapporteurs do not support the idea of this check taking place after the collection of 100,000 or 300,000 signatures, as this would rightfully cause great frustration to organisers"⁷¹;
- to attribute the decision about the ECI's admissibility to a "wise people committee":
 - "11. It might be more appropriate to appoint an ad hoc 'wise people committee', gathering some experts, scholars and/or jurists, so that they would be as impartial as possible. Nine of them would be appointed by the three institutions: three by the Commission, three by the Council and three by the EP, as they will have to approve any leg-

⁶⁹ *Ibid.*, I. Preliminary Actions to Be Taken by the Organisers, No. 3, p. 2.

⁷⁰ *Ibid.*, I., Nos. 5, 5.1, 5.2, pp. 2-3.

⁷¹ *Ibid.*, III. Admissibility Check, No. 9, p. 3.

islative proposal. It will eventually be the MS who will later on implement any future legislation. There would also be a representative of the Commission – the Commissioner in charge of institutional affairs or his representative – and, possibly, a representative of the rotating presidency of the Council and an MEP i.e. ten or twelve persons. The Commission representative could chair this committee”⁷²;

- ♦ to specify on which basis the ECI should only be considered not admissible:

“12. Their decision shall be based on the following criteria:

- the legal basis;
- the respect of EU values (namely article 2 of the TFEU and the Charter of fundamental rights);
- a preliminary subsidiarity check (a more thorough check would still take place once a million signatures are collected).

Obviously abusive ECIs could be rejected but the wording of the Commission’s proposal needs to be improved”⁷³;

- ♦ to point out different procedures if the ECI is declared admissible or not:

“14. Then, two different scenarios will be possible:

14.1. The ECI is declared admissible: it will be officially registered and be published on the special website that the Commission will launch.

14.2. The ECI is not admissible: the organisers could appeal to the Commission which will have the right to either confirm or annul the ad hoc committee’s decision. If the Commission confirms this, the organisers will have the right to appeal this decision to the CJEU as provided for in the Treaties”⁷⁴;

- ♦ to provide a dedicated software for collecting signatures online:
“18. The online collection could be done through specific websites to be designed by the organisers and which will need to be certified and monitored by the competent authorities of the MS in which it

⁷² *Ibid.*, III, No. 11, p. 3.

⁷³ *Ibid.*, III, No. 12, pp. 3-4.

⁷⁴ *Ibid.*, III, No. 14, 14.1, 14.2, pp. 3-4.

will be launched. Commonly available software, developed by the Commission, would be welcome. It would be at the disposal of the organisers who may or may not use it”⁷⁵;

- ♦ to discuss about prolonging the period of collecting the signatures:
“19. A 12-month period would be suitable as on the one hand, signature collection will not be easy nor fast; on the other hand however a longer period might jeopardize the ‘momentum’. Indeed, citizens will lose interest if the procedure takes too much time and the ECI would not be of relevance any more”⁷⁶;
- ♦ to establish procedures and the timeline for the verification of signatures:
“20. The verification of signatures should be left to the MS and be dealt with within 3-months. Random checks seem to be the most efficient way to deal with this issue”⁷⁷;
- ♦ a particular procedure aiming to guarantee outcome of the ECI:
“21. The Commission will then engage into a two-step process which will include a hearing of the organisers:
 - a decision on the legal aspects of the ECI within two months;
 - a political decision on the follow up that it will give, or not, to the ECI. Its conclusions should be sent to the organisers and explained in a communication to the Council and the EP, to be published in the Official Journal of the EU and on the ECI specific website. This should be done within two months as well.
- 22. Some suggest that the EP should automatically adopt a resolution on every ECI that will gather one million signatures.⁷⁸

The last two sections of the Working Document propose the following solutions and considerations:

- ♦ “VI. Final decision and different ways to follow up on an ECI:

⁷⁵ *Ibid.*, IV. *Collection of Signatures*, No. 18, p. 4.

⁷⁶ *Ibid.*, IV., No. 19, p. 4.

⁷⁷ *Ibid.*, V. *Once One Million Signatures Have Been Collected*, No. 20, p. 4.

⁷⁸ *Ibid.*, V., Nos. 21 and 22, pp. 4-5.

23. This step is of utmost importance as this is what in fact makes the difference between petitions and ECIs. If this step is not clear enough, European citizens will have less incentive to use this mechanism.

- *VI.I. If the Commission decides to put forward a proposal:*

24. It should draft a proposal within a certain time limit, which could be the same for all ECIs or could be decided on a case-by-case basis.

- *VI.II. If the Commission decides not to do so:*

25. To avoid disappointment and to ensure that citizens feel that they have been listened to, it is important that the regulation outlines the fallback procedures. Several options would be on the table:

25.1. First of all, the Commission could still decide to put forward a proposition resulting from an ECI that has not gained enough support but does raise a valid issue.

25.2. Council and EP could also take a non-successful ECI up according to their initiative rights. The EP could in particular hold hearings of the organisers (upon request of its committees or of political groups) and adopt a resolution.

25.3. If the criteria (set out in the RoP [Rules of Procedure] of the EP) are met, the organisers could turn the ECI into a petition to the EP.

25.4. The Commission's decision will be subject to appeal to the ECJ [European Court of Justice].

- *VII. Other provisions:*

26. It could be relevant to specify that it should not be possible to launch an ECI asking for the annulment of a recently adopted piece of legislation.

27. When it comes to the role of the EP, the rapporteurs are open to any suggestions on what it should/could do and on the need to actually formalise it.

28. National parliaments would probably not have a formal role but they would have the possibility to provide support and advertisement to any ECI that they wish.

29. The role that the EESC and the CoR could play also requires further reflection.

30. As in any other European procedure, the organisers will have the

opportunity to seize the Ombudsperson in cases of maladministration.

31. The respective roles of the ECJ and of the Ombudsperson could be addressed in the recitals as they would not be any different than in any other procedure but mentioning them could make the regulation easier to understand and more user-friendly.

32. To make the ECI procedure as user-friendly as possible the rapporteurs believe that a 'Users' guide to the ECI' should be drafted [...]".⁷⁹

The subsequent steps involved a meeting the AFCO on the 12 July with the representatives of the Committee of Regions and the EESC and on 30 September a meeting with the representatives of the national parliaments.

The debate proceeded within the AFCO,⁸⁰ including hearings where there appeared to be some convergence on the aforementioned proposals. The experts heard also included Jürgen Meyer and the former rapporteur Kaufmann who spoke "both against a Commission proposal to make it mandatory for all signatories of an initiative to supply their ID [Identify Document] card numbers" and supported "extending the time allowed for collecting signatures from 12 to 18 months".⁸¹ Also the min-

⁷⁹ *Ibid.*, VI. *Final Decision and Different Ways to Follow up on an ECI*; VII. *Other Provisions*, p. 5. Various academics feel that the Commission is not free to decide whether or not to go ahead with the legislative proposal suggested for an ECI that meets the requisites and has previously been judged admissible, but which has the duty to forward a proposal to the EP and to the Council which would then have to decide on what should be done; cf. A. Maurer, S. Vogel, *Die Europäische Bürgerinitiative, Chancen, Grenzen und Umsetzungsempfehlungen* [*The European Citizens' Initiative, Opportunities, Limitations and Recommendations for Implementation*], Stiftung Wissenschaft und Politik (SWP Deutsches Institut für Internationale Politik und Sicherheit, Studien 28) October 2009, pp. 26-28, http://www.swp-berlin.org/common/get_document.php?asset_id=6431.

⁸⁰ See EP Press Release, Committee: Constitutional Affairs, *Hopes and Doubts over EP Electoral Reform and Citizens' Initiative*, 30 September 2010, <http://www.europarl.europa.eu/en/pressroom/content/20100927IPR83714>.

⁸¹ EP Press Release, Committee: Constitutional affairs, *Hearing on Citizens' Initiative Rules: "We Don't Want Red Tape"*, 5 October 2010, <http://www.europarl.europa.eu/en/pressroom/content/20101004IPR84968>.

imum age being moved to 16 is seen favourably with some provisos.⁸² The AFCO requested and was granted a background information study from the EP Directorate-General for Internal Policies, on the present situation in the Member States of the EU, and on European level, as far as the use of modern technical equipment such as online registration of popular initiatives, referendums or petitions is concerned.⁸³

During the joint AFCO and PETI meeting held on the 9 November 2010 the last draft regulation for implementing the European Citizens' Initiative (ECI) on 28 October⁸⁴ was prepared with the participation of Commission and Council representatives.⁸⁵ The committee convened on 30 November had adopted a draft report on the ECI and given a mandate to a group of negotiators to seek agreement in a triad (three-way talks among the EP, EC and Council of the EU) later the same day.⁸⁶ The EP ne-

⁸² The Italian, C. Casini (EPP Group), has stated that he is not in favour because the only country where voting takes place at 16 years of age is Austria. For further information about the positions of the AFCO Commission, see EP, Committee: Constitutional Affairs, *Citizens' Initiative*, 5 October 2010, http://www.europarl.europa.eu/news/public/story_page/001-84689-274-10-40-901-20101001ST084608-2010-01-10-2010/default_en.htm.

⁸³ See EP, Directorate-General for Internal Policies, Policy Department C Citizens' Rights and Constitutional Affairs, *The European Citizens' Initiative Online?* Brussels (Note by W. Lehmann, PE 435.361), July 2010, <http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=32331>.

⁸⁴ EP, Committee on Constitutional Affairs, *Draft Report on the Proposal for a Regulation of the European Parliament and of the Council on the Citizens' Initiative* (COM[2010] 0119 – C7-0089/2010 – 2010/0074[COD]), Rapporteurs: Z. Gurmai and A. Lamassoure, Rapporteurs for the opinion: G. Häfner and D. Wallis, Committee on Petitions, 28 October 2010, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-445.836+02+DOC+PDF+V0//EN&language=EN>.

⁸⁵ EP, Committee: Constitutional Affairs, *Citizens' Initiative: Keep It Simple*, 9 November 2010, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bIM-PRESS%2b20101108IPR92629%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=IT>, *Citizen-friendly Consensus on ECI Regulation Getting Closer*, 9 November 2010, <http://www.citizens-initiative.eu/?p=568>.

⁸⁶ EP Press Release, Committee: Constitutional Affairs, *MEPs Vote for a More User-friendly Citizens' Initiative*, 30 November 2010, <http://www.europarl.europa.eu/en/pressroom/content/20101129IPR02708>. One of the few criticisms was by the UK Liberal Democrat MEP Andrew Duff who "accused committee members of having voted for a 'very restrictive' interpretation of the scope of an ECI and claimed that 'the [Lisbon]

negotiation group consisted of the Constitutional Affairs Committee rapporteurs Alain Lamassoure (EPP, France) and Zita Gurmai (Alliance of Socialists & Democrats – S&D, Hungary), and the two Petitions Committee rapporteurs, Diana Wallis (ALDE, United Kingdom) and Gerald Häfner (Greens/European Free Alliance, Germany), as well as the shadow rapporteurs Helmut Scholz (European United Left/Nordic Green Left – GUE/NGL, Germany) and Morten Messerschmidt (Europe of Freedom and Democracy – EFD, Denmark). The EP negotiation group has reached a compromise with the Council of the EU and the EC⁸⁷ on some issues.

Differences between the EP (which had suggested reducing the minimum number of countries and the ages of the signatories) and the Council of the EU (which had stuck to the EC proposal), were overcome.⁸⁸ The French government stated recently that, in line with Council and Commission, it wants to keep the threshold for the amount of participating countries to one-third but in the end an agreement was reached with a minimum threshold of countries corresponding to one quarter.

On the whole the following key EP demands were accepted in the discussions:

- the admissibility check on an initiative will be made at the point of registration in the EC website, not after 300,000 signatures have already been collected.⁸⁹

Treaty provides for a citizens' initiative to demand a revision of the [EU] Treaties themselves',", see *MEPs Demand 'User-friendly' Citizens' Initiative*, "Euractiv", 1 December 2010, <http://www.euractiv.com/en/pa/meps-demand-user-friendly-citizens-initiative-news-500156>.

⁸⁷ EP, Press Release, Committee: Constitutional Affairs, *Citizens' Initiative: EU Institutions Close to Final Agreement*, 1 December 2010, <http://www.europarl.europa.eu/it/pressroom/content/20101129IPR02728>.

⁸⁸ See C. Brand, *MEPs to Back Simpler Petition Rules*, "European Voice", 25 November 2010, <http://www.europeanvoice.com/article/imported/meps-to-back-simpler-petition-rules/69506.aspx>.

⁸⁹ See Art. 4 "Registration of a proposed citizens' initiative", para 1 of the Regulation EU No. 211/2011, *op. cit.*: "1. Prior to initiating the collection of statements of support from signatories for a proposed citizens' initiative, the organisers shall be required to register it with the Commission, providing the information set out in Annex II, in particular on the subject matter and objectives of the proposed citizens' initiative.

That information shall be provided in one of the official languages of the Union, in an

- to ensure that the initiatives are well-founded and have a European dimension, a citizens' committee of at least seven members coming from seven Member States should be set up to register an initiative⁹⁰;
- the signatories must come from a minimum number of Member States: this was lowered to one quarter of the States – seven Member States (as we have seen, the original proposal was one-third, while MEPs had suggested one-fifth);
- the Commission will help the organisers⁹¹ of an initiative by providing a user-friendly guide and setting up a point of contact⁹²;

online register made available for that purpose by the Commission (“the register”).

The organisers 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.

After the registration is confirmed in accordance with paragraph 2, the organisers may provide the proposed citizens' initiative in other official languages of the Union for inclusion in the register. The translation of the proposed citizens' initiative into other official languages of the Union shall be the responsibility of the organisers.

The Commission shall establish a point of contact which provides information and assistance”.

⁹⁰ See Art. 3 “Requirements for organisers and for signatories” of the Regulation EU No. 211/2011, *op. cit.*: “Requirements for organisers and for signatories:

1. The organisers shall be citizens of the Union and be of the age to be entitled to vote in elections to the European Parliament.

2. The organisers shall form a citizens' committee of at least seven persons who are residents of at least seven different Member States.

3. The organisers 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.

Organisers who are Members of the European Parliament shall not be counted for the purposes of reaching the minimum number required to form a citizens' committee. (...)

4. In order to be eligible to support a proposed citizens' initiative, signatories shall be citizens of the Union and shall be of the age to be entitled to vote in elections to the European Parliament.”

⁹¹ See Art. 2 “Definitions”, para 3 of the Regulation EU No. 211/2011, *op. cit.*: “organisers’ means natural persons forming a citizens' committee responsible for the preparation of a citizens' initiative and its submission to the Commission”.

⁹² EP, Press Release, Committee: Constitutional Affairs, *Citizens' initiative: EU Institutions Close to Final Agreement*, 1 December 2010, <http://www.europarl.europa.eu/it/>

- a mandatory public hearing for every successful citizens' initiative with the EC.⁹³

A compromise was also reached on the difficult question of how to verify the authenticity of the signatures. In spite of the EP's requests to make the verification process as easy as possible each member state will decide how to verify the identity of the signatories. On this aspect the possibility of the EP proposals on the deletion of the obligation to give an ID card number when signing an ECI (in spite of the fact the European Data Protection Supervisor had determined that ID card numbers are not necessary and should not be collected from individuals supporting an ECI⁹⁴)

pressroom/content/20101129IPR02728. For a comprehensive description of the AFCO Decision on 30 November see EP, Procedure file COD/2010/0074, Citizens' Initiative, 30/11/2010 - EP: decision of the committee responsible, 1st reading/single reading, <http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=en&procnum=COD/2010/0074>.

⁹³ See Art. 11 "Public hearing" of the Regulation EU No. 211/2011, *op. cit.*; *Compromise ECI Regulation Requires Mandatory Public Hearings... but Allows Collection of ID Numbers*, 1 December 2010, Press Release by the ECI Campaign, <http://www.citizens-initiative.eu/?p=621>. For further details and positions see also Andrew Willis, "Brussels Says First Ever Citizens' Petition Does Not Count", *Euobserver*, 30 November 2010, <http://euobserver.com/9/31388>; R. Marsden, "Mixed MEP Response to New Citizens' Initiative Plans", *The Parliament*, <http://www.theparliament.com/latest-news/article/newsarticle/mixed-mep-response-to-new-citizens-initiative-plans/>; EPP Group, Press Release, *Easy Access to the Citizens' Initiative for a Europe Closer to its Citizens. Alain Lamassoure MEP*, 30 November 2010, <http://www.eppgroup.eu/press/showpr.asp?PRControlDocTypeID=1&PRControlID=9912&PRContentID=16854&PRContentLG=en>; *MEPs Demand 'User-friendly' Citizens' Initiative*, "Euractiv", 1 December 2010, <http://www.euractiv.com/en/pa/meps-demand-user-friendly-citizens-initiative-news-500156>.

⁹⁴ The recommendations of the European Data Protection Supervisor (EDPS) – quoted by the Initiative for ECI Campaign – stated: "The EDPS takes the view that the mandatory information fields in the model form are all necessary for the purpose of organising the citizens initiative and securing the authenticity of the statements of support, except for the personal identification number. The EDPS therefore recommends deleting this information field from the model form in Annex III". According to Initiative for ECI "the retention of the ID number requirement in some, but not all, Member States, even where not technically needed to verify identity, also violates paragraph 4 (introduction) of the proposed regulation. This states that 'citizens of the Union are subject to similar conditions for supporting a citizens' initiative regardless of the Member State from which they come'"; *Compromise ECI Regulation Requires Mandatory Public Hearings... but Allows Collection of ID Numbers*, 1^o December 2010, Press Release by the ECI

and the minimum age of the signatories⁹⁵ were accepted by the Council of the EU against the resistance of the Member States seemed to be just a few.⁹⁶ One limitation which remained concerns the maximum time to gather signatures, which has been kept at twelve months.⁹⁷

The institutions continued negotiations on the remaining issues and a final agreement was reached between the EP and the Council and supported by the EC. On 3 December 2010 the Report on the Proposal for a Regulation of the EP and of the Council on the Citizens' initiative of AF-CO was fine tuned for approval in Parliament in the following EP plenary session.⁹⁸ On the basis of this document, on 15 December 2010 the EP approved by large majority (628 votes in favour, 24 abstention and 15 against⁹⁹) a resolution and a first reading decision on the draft EC

Campaign, <http://www.citizens-initiative.eu/?p=621>. See also Initiative for European Citizens' Initiative, *No ID Card Number from Any ECI Supporter in Any Country*, 4 November 2010, <http://www.citizens-initiative.eu/?p=524>; Opinion of the European Data Protection Supervisor on the proposal for a Regulation of the European Parliament and of the Council on the citizens' initiative (2010/C 323/01), *OJEU*, C 323, Vol. 53, 30 November 2010, pp. 1-5, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:323:0001:0005:EN:PDF>.

⁹⁵ G. Sebag, *Citizens' Initiative. Clock Ticking as Quest for Compromise Continues*, "Europolitcs", 10 November 2010, <http://www.europolitcs.info/clock-ticking-as-quest-for-compromise-continues-art286793.html>.

⁹⁶ "3/4 of Member States will require ECI supporters to provide intrusive personal data such as ID card numbers. So far, only nine countries have stated they will not collect ID card numbers: Belgium, Denmark, Estonia, Finland, Germany, Ireland, the Netherlands, Slovakia and the United Kingdom"; *Compromise ECI Regulation Requires Mandatory Public Hearings... but Allows Collection of ID Numbers*, *op. cit.*

⁹⁷ See Art. 5 "Procedures and conditions for the collection of statements of support", para 5 of the Regulation EU No. 211/2011, *op. cit.*

⁹⁸ EP, *Report of the Committee on Constitutional Affairs and the Opinions of the Committee on Petitions, the Committee on Culture and Education and the Committee on Civil Liberties, Justice and Home Affairs (A7-0350/2010) on the Proposal for a Regulation of the European Parliament and of the Council on the Citizens' Initiative (COM(2010)0119 – C7-0089/2010 – 2010/0074(COD))*, Rapporteurs: Z. Gurmai and A. Lamassoure, Committee on Constitutional Affairs - Rapporteurs for the opinion: G. Häfner and D. Wallis, Committee on Petitions, <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2010-0350&language=EN>.

⁹⁹ For further details on this vote see: http://votewatch.eu/cx_vote_details.php?id_act=1278&lang=en.

Regulation including the amendments agreed on with the Council.¹⁰⁰ The latter adopted the Regulation in February 2011 without further discussion so that it came into force in April 2011 but it only will be applicable from 1 April 2012, one year after, in order to allow Member States and the Commission to take the necessary measures to implement it.¹⁰¹

This result was favourably accepted by the EP, which has significantly improved the Commission's initial proposal. "We rewrote two thirds of the text", Häfner affirmed, particularly to make the procedure "simpler, more accessible and more transparent".¹⁰² On its part, the EC expressed its appreciation for the speed with which an inter-institutional agreement on the ECI has been reached.¹⁰³

3.2. *The Council of the European Union*

In April 2010, the Spanish presidency and the Member States circulated a document about the ECI in which the Council of the EU noted there were four key questions to discuss and on which to find common ground within the month of June:

- registration of the proposed initiative and its admissibility (Art. 4, 7

¹⁰⁰ See EP, *European Parliament Legislative Resolution of 15 December 2010 on the Proposal for a Regulation of the European Parliament and of the Council on the Citizens' Initiative* (COM(2010)0119 – C7-0089/2010 – 2010/0074(COD)), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0480+0+DOC+XML+V0//EN>; EP, *Gather a Million Signatures and Ask the EU to Pass a New Law*, European Parliament plenary session, 13-16 December 2010, http://www.europarl.europa.eu/news/public/focus_page/008-106348-001-01-01-901-20101203FCS06328-01-01-2006-2006/default_p001c011_en.htm; *Parliament Gives Go Ahead to Citizens' Petitions*, "Euractiv", 16 December 2010, <http://www.euractiv.com/en/pa/parliament-gives-go-ahead-citizens-petitions-news-500652>.

¹⁰¹ Europa Press Releases Rapid, *Commission Welcomes Agreement on European Citizens' Initiative* (IP/10/1720) 15 December 2010, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1720&format=HTML&aged=0&language=EN&guiLanguage=en>.

¹⁰² "(EU) EP/Citizens' Initiative: MEPS Approve Regulation", in *Agence Europe*, Bulletin Quotidien Europe, No 10278, Thursday, 16 December 2010, p. 7.

¹⁰³ See the statement by the vice-president, *Agreement on European Citizens' Initiative*, http://ec.europa.eu/commission_2010-2014/sefcovic/headlines/news/2010/12/eci_en.htm.

and 8 of the Regulation proposal);

- minimum number of signatures per Member State (Art. 7 and Annex I);
- procedures and conditions for the collection of statements of support (Art. 5 and Annex III);
- online collection systems (Art. 6).¹⁰⁴

In June 2010, due to lack of a consensus between the Member States, the Council initially proposed pronouncing on the admissibility of the ECI at the time of registration¹⁰⁵ as the main amendment to the Regulation. However, a “general orientation” was agreed on just a few days later on the following amendment proposals:

- reduction from 300,000 to 100,000 signatures for requesting the ECI’s admissibility,
- a three month (instead of two) period available for the Commission to decide on the matter,
- revising ECI procedures (review clause) every three years instead of every five, as had been suggested by the Commission.¹⁰⁶

In the second reviewed version of its orientation, the Council also tasked the EC with developing an open-source software system compliant with the provisions for recording signatures online,¹⁰⁷ also providing the tech-

¹⁰⁴ Council of the EU, *8796/10, Inter-institutional File:2010/0074 (COD)*, Brussels, 21 April 2010, <http://register.consilium.europa.eu/pdf/en/10/st08/st08796.en10.pdf>.

¹⁰⁵ Council of the EU, *10626/1/10 REV 1, Inter-institutional File: 2010/0074 (COD)*, Brussels, 11 June 2010, <http://register.consilium.europa.eu/pdf/en/10/st10/st10626-re01.en10.pdf>.

¹⁰⁶ Council of the EU, *Agreement on Draft Regulation Implementing the European Citizens’ Initiative*, Luxembourg (11099/10 PRESSE 178), 14 June 2010, <http://register.consilium.europa.eu/pdf/en/10/st11/st11099.en10.pdf>; Council of the EU, General Affairs, *Press Release 3022nd Council Meeting*, Luxembourg, 14 June 2010, <http://europa.eu/rapid/pressReleasesAction.do?reference=PRES/10/174&format=HTML&aged=0&language=EN&guiLanguage=en>. See also General Affairs Council, *Developments in the European Citizens’ Initiative Among Achievements of Spanish Presidency of EU*, 14 June 2010, http://ue2010.biz/en/documentosynoticias/noticias/jun14_cag.html.

¹⁰⁷ See Art. 6, para 2, c. 4 “Online collection system” of the Regulation EU No. 211/2011, *op. cit.*: “By 1 January 2012, the Commission shall set up and thereafter shall maintain open-source software incorporating the relevant technical and security features necessary for compliance with the provisions of this Regulation regarding the online collection systems. The software shall be made available free of charge”.

nical and security requisites stated by the Regulation and also a list of possible identification documents required for each European country.¹⁰⁸

The Belgian presidency of the Council, which took over from the Spanish presidency on 1 July, stated its intention to reach an inter-institutional agreement with the EP about the ECI by 1 December 2010, exactly a year after the Lisbon Treaty came into force.¹⁰⁹ As mentioned above, this happened on 30 November 2010, thanks to a tentative deal hammered out between members of the AFCO, the Commission and the Council (trialogue meeting), which met most of the MEPs' demands. On 8 December an ambassadorial Coreper meeting on the ECI took place and informed the EP by letter of the undertaking of the Council of the EU to approve Parliament's position, in accordance with Art. 294 para 4 of the Treaty on the Functioning of the European Union.¹¹⁰ At the Foreign Ministers' meeting on 14 December, the Council of the EU endorsed the agreement reached with the EP and the EC on a draft regulation.¹¹¹ As became apparent after the approval of the Regulation, the Member States will have one year to incorporate the new legislation into national law, as agreed at the trialogue meeting.¹¹² As requested by the Council of

¹⁰⁸ Council of the EU, 10626/2/10 REV 2, *Inter-institutional File:2010/0074 (COD)*, Brussels, 22 June 2010, <http://register.consilium.europa.eu/pdf/en/10/st10/st10626-re02.en10.pdf>.

¹⁰⁹ "Belgium Wants Citizens' Initiative Deal by December", *Euractiv*, 22 July 2010, <http://www.euractiv.com/en/future-eu/belgium-wants-citizens-initiative-deal-december-news-496565>; see also Belgian Presidency of the Council of the EU, *Vanackere Takes Interim Stock of the Presidency*, News, 2 October 2010, <http://www.eutrio.be/press-release/vanackere-takes-interim-stock-presidency>; *L'initiative citoyenne, un beau projet pour tous les citoyens européens*, <http://www.eutrio.be/fr/blog/l-initiative-citoyenne-un-beau-projet-pour-tous-les-citoyens-europeens>.

¹¹⁰ "If the Council approves the European Parliament's position, the act concerned shall be adopted in the wording which corresponds to the position of the European Parliament".

¹¹¹ See *Council Gives Green Light to the Compromise on European Citizens' Initiative*, "Euroalert", 14 December 2010, <http://euroalert.net/en/news.aspx?idn=11304>.

¹¹² EP, Press Release, Committee: Constitutional Affairs, *Citizens' Initiative: EU Institutions Close to Final Agreement*, 1 December 2010, <http://www.europarl.europa.eu/it/pressroom/content/20101129IPR02728>; Council of the EU, *Council Approves Compromise with Parliament on the European Citizens' Initiative*, Brussels (17876/10, Presse 349), 14 December 2010, http://www.consilium.europa.eu/uedocs/cms_Data/docs/

the European Union, minimum age requirements for ECI participation will be the same as that set for voting in EU elections, and will vary according to the country. The legislation on the European Citizens' Initiative will be applied only one year after it has been published in the Official Journal of the EU. The first official initiatives can be considered only from 1 April 2012.

The Belgian Presidency attained its aim of beginning the implementation of the ECI. Olivier Chastel, the representative of the Belgian Presidency of the Council, claimed that this development was the first of its kind in the world, insofar as it involves, "participatory democracy at a supranational level".¹¹³

3.3. *The European Economic and Social Committee (EESC)*

The EESC offered to perform a dual role "as a *facilitator* of embryonic citizens' initiatives, enabling those involved to network and possibly to meet" and "as an *institutional mentor*, issuing an opinion to assist the Commission in evaluating a successful initiative, holding hearings, and so on".¹¹⁴ Additionally "the Committee will also take part in publicity campaigns".¹¹⁵

The EESC expressed the following positions on the future ECI Regulation to be approved. It:

- supports the position of the EP as regards the reduction of the minimum number of Member States to one quarter;

pressdata/EN/genaff/118465.pdf.

¹¹³ See "(EU) EP/Citizens' Initiative: MEPs Approve Regulation", in *Agence Europe* (Bulletin Quotidien Europe, No 10278), Thursday 16 December 2010, p. 7.

¹¹⁴ EESC, *Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on the Citizens' Initiative*, COM(2010) 119 final - 2010/0074 (COD), SCO/001Citizens' Initiative, Brussels. Rapporteur-general: Anne-Marie Sigmund, 14 July 2010, <http://eescopinions.eesc.europa.eu/eescopiniondocument.aspx?language=en&docnr=993&year=2010>; OJEU, 2011/C 44/34, 11 February 2011, pp. 182-185, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:044:0182:0185:EN:PDF>.

¹¹⁵ *Ibid.*

- proposes the reduction of signatures for requesting admissibility to 50,000;
- requests greater protection of identity data, while also avoiding too many demands for identification documents, except for a specific request for further information to be supplied from, for instance, Europe citizens not resident in the EU;
- suggests institutional cooperation, creating a “help desk” and a guide to using the ECI.

3.4. *The Committee of Regions (CoR)*

The Committee of Regions too agreed with the EP as regards certain issues:

- reduction of countries involved to a quarter instead of a third of the Member States;
- request to not leave the final decision on the ECI to the Commission but to a committee representative of the EU’s “multiple government” (EC, Council of the EU, and EP);
- the importance, when evaluating the ECI, of respecting community competences, the values of the EU, the criteria in matters of fundamental rights and of subsidiarity.

It also feels it is necessary to create information centres in various places in the EU and technical assistance for translating, which should be taken over by the EC.¹¹⁶

¹¹⁶ *Opinion of the Committee of the Regions on the European Citizens’ Initiative (CI-VEX-V-007)*, 85th plenary session, 9-10 June 2010. Rapporteur: S. Masini (Party of European Socialists, PES), President of the Province of Reggio Emilia (Italy), <http://coropinions.cor.europa.eu/coropiniondocument.aspx?language=en&docnr=167&year=2010>; OJEU, 2010/C 267/12, 1 October 2010, pp. 57-63, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:267:0057:0063:EN:PDF>; *Citizens’ Initiative - the CoR Finds the Commission Proposal Over-Complicated*, CoR Press Release, 10 June 2010, <http://www.cor.europa.eu/pages/DetailTemplate.aspx?view=detail&id=452734ff-c1a6-474b-adb7-b4ffc1c3f9c3>; *Opinion of the Committee of the Regions on the European Citizens’ Initiative (2010/C 267/12)*, OJEU, C 267, Vol. 53, 1 October 2010, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:267:0057:0063:EN:PDF>.

3.5. European parties¹¹⁷

The positions expressed by the parliamentary groups and by the European parties can be only briefly referred to here.¹¹⁸

In the *Group of European People's Party in the EP (EPP Group)* a request was repeated for an understandable, clear, cheap ECI, for which the EP is asked to play an important role of providing opinions to the EC about the ECIs in progress in order to avoid proposals being rejected without having fully understood the underlying reasons due to poor investigation. The EPP supports close cooperation between the national and European authorities for implementing the ECI, recommends the use of internet for collecting signatures and for the campaign, making a pronouncement on the admissibility before acquiring an excessive number of signatures, and harmonising the procedures. During the vote on the ECI regulation on 15 December the group fully supported the agreement, which had been reached with the contribution of the AFCCO co-rapporteur Alain Lamassoure (249 MEPs in favour and 2 abstained),¹¹⁹ optimistic on the future of the ECI as it was open to all in-

¹¹⁷ Information taken – unless otherwise specified – from B. Gallais, *Inventaire des prises de position sur la mise en place de l'Initiative Citoyenne Européenne prévue à l'article 11, paragraphe 4, du traité sur l'Union européenne*, July 2010, http://forum-civil-society.org/IMG/pdf_Rapport_Bertille_Gallais.pdf.

¹¹⁸ For the speeches by representatives of all the parliamentary groups of the EP in the debate at the plenary session and before presenting the Regulation proposal of the EC, see EP, *Debates, Development of the European Citizens' Initiative Based on Article 11(4) of the Treaty on European Union*, Brussels, 24 March 2010, <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20100324&secondRef=ITEM-013&format=XML&language=EN>. For the debate and the explanations of vote in the plenary session of 15 December 2010 when the first reading of the ECI Regulation was approved, amended as compared to the one suggested by the EC following a negotiation between the EP, Council and EC see EP, *Debates, 6. Citizens' Initiative (debate)*, Strasbourg, 15 December 2010, <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20101215&secondRef=ITEM-006&language=EN&ring=A7-2010-0350>; EP, *Debates, Explanations of Vote*, Strasbourg, 15 December 2010, <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20101215&secondRef=ITEM-010&language=EN&ring=A7-2010-0350#3-354>, <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20101215&secondRef=ITEM-010&language=EN&ring=A7-2010-0350#3-231>.

¹¹⁹ EPP Group, *Citizens' Initiative: Easy Access for a Europe Closer to its Citizens*. Alain

stances and players of civil society. In the report approved by the AFCO and later by the EP the suggestion of a “wise men committee” suggested by the EPP to start an ECI had not been approved, and had been replaced by an organisers’ committee.

On the necessity of common principles established for collecting and authenticating the signatures, as well as a clear and simple text for activating the initiatives and the use of internet, the declarations of the *Group of the Progressive Alliance of Socialists & Democrats in the EP (S&D Group)* are consistent, but also emphasized the need for transparency in the funding to avoid the predominance of commercial interests. Additionally, without denying the provision of a million signatures as set by the Lisbon Treaty, its representatives mostly feel that the criteria established by the Regulation should be as open as possible to enable the instrument of the initiative to operate. If the EC seemed to be dragging its feet, the Group was intent on directly enhancing the ECI by using it as an alternative and exceptional political tool for promoting, having launched its own ECI, which will be referred to shortly. As reasserted by the Italian MEP of the Democratic Party, the S&D Group has contributed to include political parties as ECI organisers, to strengthen the role of European political parties in the Community system.¹²⁰ The plenary session vote on the ECI Regulation on AFCO (of which the MEP Zita Gurmai of the S&D group was a co-rapporteur), saw the S&D Group vote solidly with 169 in favour and 2 abstentions. The result was hailed with great satisfaction by Martin Schultz, leader of the group.¹²¹

Lamassoure MEP, Press Release, 15 December 2010, <http://www.eppgroup.eu/press/showpr.asp?PRControlDocTypeID=1&PRControlID=9976&PRContentID=16943&PRContentLG=en>. For further details see M. Jeanne, *European Citizens’ Initiative. Enabling EU Citizens to Take Part in Shaping EU Policies*, EPP Group in EP, “In Focus”, 6 December 2010.

¹²⁰ See EP, *Debates, 6. Citizens’ Initiative (debate)*, Strasbourg, 15 December 2010, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20101215+ITEM-006+DOC+XML+V0//EN&language=EN>.

¹²¹ According to Schultz “The European Citizens’ Initiative is a unique opportunity: it is the first time that European citizens can get together and let us know, with one, strong voice if they think that we as European decision-makers are not doing our job properly or missing out on important issues”; P. Alberti, *Political Leaders Must not Be Afraid of Citizens’ Initiative*, S&D Group in EP, Newsroom, News, 15 December 2010, <http://www>.

The *Group of Alliance of Liberals and Democrats for Europe in the EP (ALDE Group)* unlike the first two main groups of the EP referred to, mainly proposed the creation of an instrument to assist the ECI and emphasized the importance of a preliminary checking of the signatures at the moment of registering. Furthermore, they requested that the minimum number of Member States should be a quarter of all member countries. In July 2010, the British MEP Diana Wallis – vice-president of the EP and one of the promoters of a European Lobbyists' Register and also on the board of the Initiative and Referendum Institute Europe, a think tank striving towards direct democracy – presented a working paper to the EP Petitions Committee (PETI) in which she proposed replacing the admissibility check after a certain number of signatures had been gathered by a pre-registration check, guaranteeing the right of petitioning also to those below voting age to make young people feel closer to the EU, and establishing an obligation for the Commission to hold a public hearing of supporters of the ECI on reaching a million signatures, so as to create a true dialogue between citizens and European institutions.¹²² As the rapporteur for PETI on the ECI regulation proposal, together with Gerald Häfner (Greens/European Free Alliance – Greens/EFA Group), Wallis also presented a position paper that refers again to these requests and other significant amendments aimed largely at forcing the EC to dialogue with the ECI (a summary of the proposals from ALDE Group and Greens/EFA Group).¹²³ The reaction of the EC to these proposals presented at the PETI was immediately negative, at least as regards eliminating the admissibility checks after a certain number of signatures. The prior checking of the ECI was considered impracticable by the EC. According to the declarations made by Michael Mann, spokesman for the

socialistsanddemocrats.eu/gpes/public/detail.htm?id=135058§ion=NER&category=NEWS.

¹²² *Liberal Group in the European Parliament Defines Its Project for the Citizens' Initiative*, 16 July 2010; http://www.dianawallismep.org.uk/news/000817/liberal_group_in_the_european_parliament_defines_its_project_for_the_citizens_initiative.html.

¹²³ EP, Committee on Petitions, *Position Paper Concerning the Draft Regulation on the European Citizens' Initiative*. Rapporteurs: D. Wallis (ALDE) & G. Häfner (Greens/EFA), 14 July 2010, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NON SGML+COMPARL+PE-445.752+01+DOC+PDF+V0//EN&language=EN>.

Commissioner in charge of the ECI, the vice-president of the Commission, Maroš Šefčovič, this could risk the EC becoming bogged down in analysing not serious proposals and yet, only by keeping registration and admissibility in two distinct moments, would it allow to debate on the proposed issues in the interest of the organisers of the ECI so as to get their initiatives known and discussed.¹²⁴ The Commissioner later emphasized that the ECI must “be taken seriously and not create a platform for attacks against European ideas”.¹²⁵ However, thanks to the agreed inter-institutional agreement the previous admissibility threshold of 300,000 signatures was scrapped and the Regulation was approved on 20 December, which established that the Commission would carry out a check to determine whether an ECI is admissible at the point of registration. During the final vote in plenary at the EP, the ALDE Group voted solidly in favour of the regulation (78 in favour and no votes against or abstentions). Several members stressed the importance of a number of amendments to the Regulation of the EC and in particular the UK LibDem Andrew Duff maintained that future modifications of the Treaty would be possible.¹²⁶

The *Greens/European Free Alliance in the EP (Greens/EFA Group)*, a European parliamentary group made up of representatives of two separate and progressive European political families (European Greens and European Free Alliance, the party of stateless nations and disadvantaged minorities), underscored the importance of relations with a broader civ-

¹²⁴ “MEP Wants to Scrap ‘Entry Threshold’ for Citizens’ Petitions”, *Euractiv*, 20 July 2010, <http://www.euractiv.com/en/future-eu/mep-wants-scrap-entry-threshold-citizens-petitions-news-496480>;

¹²⁵ M. Moss, *EU Citizens’ Initiative ‘Could Be Open to Abuse’*, 15 September 2010, <http://www.theparliament.com/latest-news/article/newsarticle/eu-citizens-initiative-could-be-open-to-abuse/>.

¹²⁶ Duff said: “Liberals and Democrats welcome the fact that the scope of the Citizen’s Initiative has been drawn sufficiently wide to allow proposals to be made that would change the EU treaties. Here the new law accurately reflects the Treaty itself, which foresaw as permissive a process as possible in the interests of boosting the popular legitimacy of Europe’s new federal democracy”; ALDE Group in EP, *Citizen’s Initiative: Towards a European Participatory Democracy*, Press Release, 15 December 2010, <http://www.alde.eu/press/press-and-release-news/press-release/article/citizens-initiative-towards-a-european-participatory-democracy-36670/>.

il society, also taking into account the positions expressed by the EESC, and the need to guarantee proper support to promoters of the ECI. In July 2010, the Greens/EFA Group prepared its own general orientation,¹²⁷ which includes requests aimed at reinforcing the citizens' initiative and making it more viable also for the purposes of civil participation in promoting EU political-institutional developments. In order to evaluate the Commission's ECI Regulation proposal, the Green Working Group within the Greens/EFA Group declared that the ECI is one of the main innovations of the Lisbon Treaty and with a clear distinction from both referenda and from petitions¹²⁸ and suggested:

- pre-checking the signatures and, "in order to guarantee European instead of national issues and at the same time keep the right to initiative accessible for ordinary citizens and not just powerful lobbyists ..., a minimum number of one-fifth of Member States";
- (concerning the minimum number of signatures per Member State) "a threshold that is degressively proportional to the population of each state within the range of 0.05 and 1 per cent of the population";
- the participation in the ECI of all European citizens with "a minimum age of 16 for the whole of Europe", separating the minimum age from the voting age for the EP for greater involvement of young people in politics and in consideration of the non-binding nature of the ECI, and also that the participation of "third country nationals who are residents of the EU should not be deprived of the right to sign an ECI and to draw the attention of the Commission on the concerns of people living in the EU";
- eliminating the request for personal identification numbers;

¹²⁷ See Green/EFA Group, *Green/EFA Group Position Paper. Implementation of the European Citizens' Initiative (ECI)*, Brussels, 16 July 2010, http://archive.greens-efa.eu/ms/topics/dok/348/348028.implementation_of_the_european_citizens@en.ht.

¹²⁸ "The European citizens' initiative is **not** to be confused with a petition nor with a referendum. **It is** nothing more (and nothing less) than **a non-binding instrument for agenda-setting by the citizens of the EU**" (bold in the text) and "it only applies to issues within the European Unions' fields of competence and legislative powers", see Green/EFA Group, *Green/EFA Group Position Paper. Implementation of the European Citizens' Initiative (ECI)*, *op. cit.* (bold parts in the original text).

- 24 months for collecting the signatures (twice as long as suggested by the EC);
- creating an organising committee for the ECI with at least 7 members from three different countries;
- earmarking adequate facilities to ensure translations, legal consultancy, in order to avoid limiting access to the ECI exclusively to large organisations;
- the inadmissibility of the ECI only decided “on the basis of clear legal examination. An ECI should be rejected if it is in breach of Art. 6 TEU, the Charter of Fundamental Rights, and the European Convention of the Protection of Human Rights and Fundamental Freedoms [ECHR]”;
- the possibility of appealing to the CJEU against the final decision of the EC on the ECI;
- “the initiators of an ECI have the right to be heard by the Commission in a public hearing”;
- “the EP (or its committees) is free to put the issue on its agenda and to also hold a hearing at any given time”;
- the admissibility of amending Treaties as a purpose of the ECI.¹²⁹

The Greens/EFA Group and ALDE have proved to be the most committed political forces in promoting and modifying the draft EC Regulation,

¹²⁹ “The precise wording of Art. 11 (4) ‘... a legal act of the Union is required for the purpose of implementing the Treaties’ leaves room for interpretation of whether treaty amendments fall under the scope of the Citizens’ Initiative. However, it has never been the intention of the promoters of Art. 11 (4) to restrict the ECI purely to secondary legislation. EU treaties are very detailed and complex. In contrast to national constitutions, they include numerous specific policies, tools, and instruments that, in the Member States, would be part of lower legislation. Greens do favour a more generous interpretation in order to allow citizens to play an active role in some of the most important political issues and to genuinely enhance the citizens’ initiative as an instrument to ‘reinforce citizens’ and organised civil societies involvement in the shaping of EU policies”, Article 11 (4), of the Treaty on European Union; EC, *Green Paper on a European Citizens’ Initiative* (COM [2009] 622 final), p. 3. “On the other hand, ECIs that propose Treaty amendments can become by no means a loophole for infringements of the Charter on Fundamental Rights or the ECHR. At the end it will however be up to the European Court of Justice to decide on concrete cases how far it stretches the concept of implementing the Treaties in its verdicts”. *Ibid.*

with a view to making it less restrictive.¹³⁰ This group also played an important role in information.¹³¹ Jointly with the ALDE the Greens/EFA Group voted solidly in December 2010 for the ECI Regulation at the EP (52 in favour and no votes against nor abstentions).

The speeches by the *European Conservatives and Reformists' Group (ECR Group)* criticised the limits imposed according to the prevailing interpretation of the Lisbon Treaty about which issues ECIs can deal with because, in their view, answers should unreservedly be given also about other issues not within the Commission's scope. Specifically, the representatives of this new group, set up in July 2009, raised the question of transparency, foreseeing a strong risk of domination of this participatory tool by the more structured organisations with greater economic and social resources, the more influential lobbies able to afford the expense of organising and running campaigns, which would exclude access to the ECI by groups of individual citizens or the smaller associations with limited funds.¹³² The ECR Group expressed its support for an ECI launched in February 2010 by the Bavarian Christian Democrat MEP and member of the EPP Group, Martin Kastler, who proposed making Sunday a holiday in the entire EU, for dedicating to the family and leisure, supported by various Christian family organisations, especially the Catholic ones, and also by the *Commissio Episcopatum Communitatis Europensis* – Commission of the Bishops' Conferences of the European Union.¹³³ Furthermore, faced with the possibility of increased EU re-

¹³⁰ G. Häfner, PETI co-rapporteur has been the most active of the so-called Gang of Four consisting of the four rapporteurs of the first four political groups at the EP, two from AFCD (Gurmai, Lamassoure) and two from the PETI (Wallis, Häfner); see Greens/EFA Group, *European Citizens' Initiative: European Democracy Takes a Step Forward as EP vote Paves Way for Citizens' Initiative*, Press Release, Strasbourg, 15 December 2010, http://www.greens-efa.eu/cms/pressreleases/dok/365/365195.european_citizens_initiative@en.htm.

¹³¹ See *The European Citizens' Initiative*, Strasbourg, 14 December 2010, http://www.greens-efa.eu/cms/topics/dok/365/365014.the_european_citizens_initiative@en.htm.

¹³² ECR Group, *Press Release, EU Citizens Initiative Should Give Power to the People, not to Lobbyists and Interest Groups*, Brussels, 31 March 2010, <http://www.ecrgroup.eu/eu-citizens-initiative-should-give-power-to-the-people--not-to-lobbyists-and-interest-groups-news-91.html>.

¹³³ *ECI, Mum and Dad Belong to Us on Sunday!*, <http://www.free-sunday.eu/en/con>

sources – as suggested by the EC – the Belgian, Derk Jan Eppink, Conservative and Reformist MEP, has prepared the ground for a European Citizens' Initiative (ECI) against EU taxation.¹³⁴ The ECR Group wants to make it easier for people to sign up to a petition, without having to provide passport numbers or ID card details and proposed that an initiative will only require signatories from a fifth of EU Member States, but has accepted the compromise reached, that is, in a quarter of EU Member States and nearly all its members voted in favour of the modified ECI regulation approved by the EP in December 2010 (40 in favour, one against and one abstention). The ECR Group spokesperson on the AFCO Committee, Ashley Fox, MEP, stated that the ECI would be a test to see whether the EC is really serious about listening to citizens.¹³⁵

The *European United Left/Nordic Green Left European Parliamentary Group (GUE/NGL Group)* – mainly critical about the resolution presented to the EP by the rapporteur Kaufmann (despite his belonging to the same GUE/NGL Group) – drew attention to the need to guarantee the participation of citizens, believing that the proposals from the EC and the Council were insufficient. According to several of its representatives, the ECI should be as accessible as possible by further reducing the age limit and eliminating the request for personal identification documents.¹³⁶ Furthermore the Group insisted on the need to take account of citizens' wishes also in relation to their opposition to current developments in the European integration and to the referenda held about the

tent/citizens-initiative. See also H. Bodenez, *Les défenseurs du dimanche se heurtent aux contradictions de l'Initiative citoyenne européenne*, 1 October 2010, <http://www.liberte-politique.com/identite-de-leurope/6262-les-defenseurs-du-dimanche-se-heurtent-aux-contradictions-de-linitiative-citoyenne-europeenne>.

¹³⁴ D. J. Eppink, *The Trap of an EU Tax. The Launch of Grassroots Campaign to Halt an EU Tax*, "European Voice", 11 November 2010, <http://www.europeanvoice.com/article/imported/the-trap-of-an-eu-tax/69386.aspx>.

¹³⁵ See ECR Group, *EU Citizens' Initiative: Proof of Pudding Will Be in the Eating for Commission Says Fox*, News, Strasbourg, 15 December 2010, <http://www.ecrgroup.eu/eu-citizens-039--initiative--proof-of-pudding-will-be-in-the-eating-for-commission-says-fox--news-233.html>.

¹³⁶ GUE/NGL Group, *Empower People with User-Friendly Citizens' Initiative, not a Bureaucratic Nightmare*, 15 September 2010, <http://www.guengl.eu/showPage.php?ID=8766>.

Treaty, which adopts a Constitution for Europe. It then put forward the idea of holding a debate at the EP about the ECIs before they are approved in order to seriously consider the proposals and then to issue a declaration, also involving a modification to the EP regulation and eliminating bureaucratic obstacles so as to make citizen's participation less frustrating. The GUE/NGL Group suggested amendments to the ECI Regulation – the latter being the outcome of an inter-institutional compromise and voted in the EP Plenary on 15 December 2010, with a special reference that all EU citizens be allowed to sign, rather than just resident EU citizens. However, a large majority turned down the proposal as it was voted by the Group and the Greens/EFA Group only. One of its members, Helmut Scholz, MEP, said that he would return to this question when the regulation was revised in three years' time.¹³⁷ The GUE/NGL mostly voted in favour of the final document (19 in favour, 2 against and 9 abstentions) considering it a "major step forward" with regard to the Commission's proposal.¹³⁸

Support for the ECI was forthcoming from the *Europe of Freedom and Democracy Group* in the EP (EFD Group) since they consider it could raise awareness in citizens about European questions far more than many costly EU information campaigns of only limited impact led by the EC, but they also hope for clear, understandable and accessible regulations. Two-thirds of the EFD Group voted in favour of the Regulation as amended by the EP in December 2010 (14 in favour, 6 against and 2 abstentions)

Finally, there was deep scepticism among the Dutch Non-Attached MEPs both about the instrument and with the matters that the ECI could cover. They criticised the EU bureaucracy and the illusion of democracy, which the ECI aims to construct – in practice, it is proposing a pointless initiative whose purpose is to hide the centralising nature of the EU. However a favourable attitude to the amended Regulation the EP voted

¹³⁷ (EU) "EP/Citizens' Initiative: MEPS Approve Regulation", *Agence Europe* (Bulletin Quotidien Europe, No 10278), Thursday, 16 December 2010, p. 7.

¹³⁸ GUE/NGL Group in the EP, *Citizens' Initiative Welcome but Should be Opened to a Wider Public*, 15 December 2010, <http://www.guengl.eu/showPage.php?ID=9110&ROOTPAGE=1&LANG=1&GLANG=1>.

in December 2010 was also registered among the Non-Attached MEPs (12 favourable, 4 against and 7 abstentions)

It is to be remembered that particularly the ALDE and the Greens/EFA Group pay attention to the idea of the ECI, promoting dialogue and exchange with the civil society on this matter by means of conferences and hearings.¹³⁹ In spring 2010 The Green European Foundation, linked to European Greens and the Greens/EFA Group, announced that a guide to the ECI was about to be issued; it was published in November 2010 as the first Handbook on this issue after the Lisbon Treaty entered in force.¹⁴⁰

Additionally, the possibility that the same parties will be direct promoters of the ECI is worth noting: this is already happening, according to what was announced in May 2010 by the German and Austrian Social Democrat parties, members of the Party of European Socialists which, in September 2010, began a campaign, and an ECI in order to establish a regulating of financial markets and a European tax on speculative transactions so as to combat the contested inertia of the popular, conservative and liberal-democrat forces.¹⁴¹ In view of a debate at the EP aimed

¹³⁹ The Greens/EFA Group organised a hearing on 12 May 2010 at which various NGOs took part, with the illustrative title "The European Citizens' Initiative. Toothless Tiger - Or an Open Door for the People?", http://www.gef.eu/index.php?id=16&tx_ttnews%5Btt_news%5D=124&cHash=e1659a4b50. The Greens/EFA Group is also promoting the next ECI Conference in the European Parliament on 29 June 2011, <http://www.greens-efa.eu/european-citizens-initiative-3817.html>. The ALDE Group promoted the seminar "European citizens' Initiative. Question of Implementation" organised on 22 June 2010 in Brussels, <http://oldsite.alde.eu/it/foto/2010/photos-seminar-european-citizens-initiative-questions-of-implementation/?detail=52819&album=0>; H. Mahony, *EU Democracy Instrument Continues to Cause Headaches*, "Euobserver", 23 June 2010, <http://euobserver.com/9/30350>. On 15 September 2010, the GUE/NGL Group held a conference in Brussels called "Take the Initiative: A Hearing on the European Citizens' Initiative", <http://www.guengl.eu/showPage.php?ID=8694>; http://newsportal.european-left.org/nc/english/newshome/news_archive/news_archive/zurueck/latest-news-home-4/artikel/give-power-to-people-and-not-a-bureaucratic-monster/.

¹⁴⁰ See Green European Foundation (GEF), *The European Citizens' Initiative Handbook. Your Guide to the World's First Transnational Direct Democratic Tool*, produced in cooperation with IRI, main author: B. Kaufmann, Brussels, November 2010, http://www.gef.eu/fileadmin/user_upload/GEF-09-64_European_Citizens_Initiative_web_final.pdf.

¹⁴¹ See A. Jam, *Spekulationssteuer: SPD und SPÖ für Europäische Bürgerinitiative*, 18 May 2010, http://www.spd.de/aktuelles/News/3604/20100518_Spekulationssteuer_

at guaranteeing pluralism in the EU, and thus directed against the concentration of power in this sector – which mainly refers to the Italian situation and boycotted by the centre-right parliamentary groups of the EP – some representatives of the Greens/EFA Group expressed their intention to launch an ECI for promoting European regulations safeguarding freedom of information.¹⁴²

If the parties use this instrument, especially where major issues are at stake, it is still a positive sign that can help reinforce the cooperation between the national parties belonging to the European parties. It is also to be hoped that they will bring about constant cooperation with European citizens by performing a supporting role to larger groups, alliances and networks in order to broaden and reinforce a European political action at several levels. By doing this, the European parties could create greater consensus around projects and proposals, obtaining more importance within the representative political arena at the level of the European, national and regional parliaments. The ECI could therefore be a useful meeting area for revitalising the European political landscape as long as the citizens and not just the political parties feel they have a voice in the matter. In this respect, the political parties could give a worthwhile contribution to civic initiatives by performing a politico-cultural educational action through the various European political foundations. These refer to

SPD_und_SPOe_.html; H. Meyer, “European Social Democrats Push for Citizens Initiative on Financial Transaction Tax”, *Social Europe Journal*, 19 May 2010, <http://www.social-europe.eu/2010/05/european-social-democrats-push-for-citizens-initiative-on-financial-transaction-tax/#>; Constant Brand, “Socialists Launch Petition for Bank Transaction Tax”, *European Voice*, 20 May 2010, <http://www.europeanvoice.com/article/imported/socialists-launch-petition-for-bank-transaction-tax/67999.aspx>; “Socialists Plan ‘Citizens’ Initiative’ on Taxing Speculation”, *Euractiv*, 3 September 2010, <http://www.euractiv.com/en/future-eu/socialists-plan-citizens-initiative-taxing-speculation-news-497412>; <http://www.spiegel.de/politik/deutschland/0,1518,695411,00.html>; Hierlemann, Wohlfarth, *A Revolution in Disguise: The European Citizens’ Initiative*, op. cit., p. 7. Website of the campaign: <http://europeansforfinancialreform.org/>.

¹⁴² See EP, *Written Declaration on Financing Media Sector - Ensuring the Right of Information and Freedom of Expression*, 14 June 2010, http://www.jeanmariecavada.eu/users_files/news/file/FILE_d_claration_crite.pdf; “MEPs Call for EU Law to Defend Media Pluralism”, *Euractiv*, 9 June 2010, <http://www.euractiv.com/en/infosociety/meps-call-eu-law-defend-media-pluralism-news-495043>.

non-profit organisations that are independent but ideologically linked to the six main European political parties within the European Network of Political Foundations (ENoP), a network set up in 2006 and funded since 2009 by the EU to help promote democracy, cooperation in development and political dialogue and to establish dialogue and communication both with the EU institutions and with civil society (currently consisting of 63 members including foundations, research institutes and think-tanks distributed around the EU countries¹⁴³).

3.6. Civil society

Since it is impossible to represent the host of diverse situations covering a myriad of subjects, reference will be made to a selection of proposals made by the NGOs directly promoting the ECI. Such NGOs have formed an alliance that takes its name from the Initiative.

Right from the moment of consultation, the ECI Campaign¹⁴⁴ disputed the approach of the initial proposal from the EC, which was proceeding along similar lines as for the instruments of the agenda-setting initiative existing on a national basis. According to the assessment of this campaign, to be established the ECI should have received more support than these national initiatives, which often differ greatly in nature and character or in terms of rights to legal assistance, translations, partial reimbursement of expenses, and so on. Additionally, the ECI should have fewer time constraints for collecting signatures than the national initiatives (even more so when considering, for instance, that Swiss civic initiatives allow 18 months for collecting signatures) and?? that?? require a smaller number of signatures. In this respect neither the EC Regulation nor the text subsequently voted on by the EP, meet these requirement.

¹⁴³ ENoP website: <http://www.european-network-of-political-foundations.eu/cms/index.php/eng>.

¹⁴⁴ The ECI Campaign is one of those already mentioned among the first informal ECI, created by various NGOs for combating euro-scepticism and hostility towards the process of institutional reform after the French and Dutch referenda in May and June 2005 which prevented the Treaty for a European Constitution being ratified; website <http://www.citizens-initiative.eu/>.

Seven amendments were suggested for improving the Commission's Regulation proposal, and specifically to:

- 1) Clarify the EC's follow-up to successful ECIs ("Each successful ECI should result in a public hearing process where the Commission explains its response to the ECI in a transparent way directly and in exchange with the organisers of an ECI. As is the case for a legislative initiative from the European Parliament, the Commission should also be given a time limit in which to issue a legislative proposal").¹⁴⁵
- 2) Simplify the signature form and eliminate ID number requirements (personal identification card number: ID card, passport, social security card).
- 3) Simplify the admissibility check ("In order to avoid huge frustration, we therefore urge the institutions to do the legal admissibility check in the beginning after successful registration [...]. In other words, the two admissibility checks shall be merged; otherwise this instrument *remains too bureaucratic and non-transparent*").
- 4) Consider ECIs that propose treaty amendments as admissible ("It needs to be explicitly clarified that ECIs may not be restricted to secondary law (policy proposals). Otherwise citizens would be denied to participate in the most important political issues. Given that the

¹⁴⁵ Regarding this point, Kaczyński believes that, even if the ECI were not considered inadmissible due to not being within the scope of the EC, the Commission should specify who can deal with the problem and monitor and supervise the developments of the proposal. Therefore "the EU's decision-making process would distinguish between the formal exclusive competence of the Commission to initiate a legislative process and a *political* right of initiative. This *political* right of initiative would then belong on an equal basis to the European Commission, the European Council, the European Parliament and organised civil society, through the European Citizens' Initiative"; P. M. Kaczyński, *The European Citizens' Initiative: A Proper Response from the Commission*, CEPS Commentary, 8 January, 2010, <http://www.ceps.eu/book/european-citizens%E2%80%99-initiative-proper-response-commission>; <http://www.ceps.eu/ceps/download/2841>. This position is also emphasized by T. Benedikter who points out that, if the ECI regarded the area of foreign security and defence policy in which the Commission has no right of legislative action, the Commission should pass this proposal, without formal recommendation, to the Council whose task would be to take a formal position, see T. Benedikter, *Più democrazia per l'Europa. La nuova Iniziativa dei cittadini europei e proposte per un'Unione europea più democratica*, Lavis (Trento), Arca Edizioni, 2010, p. 56.

- Commission may propose treaty amendments, it should be possible to launch ECIs requiring treaty amendments to implement”).
- 5) Extend the time limit to 18-24 months.
 - 6) Reduce the minimum number of Member States to 5 (“A European Party only needs members from seven Member States. Given that ECI is simply an agenda-setting initiative that will later follow standard EU legislative procedures, signatures from at least 5 member (1/6) states would be sufficient”).
 - 7) Provide practical support to ECI organisers (“Support prior to signature collection should include comprehensive information on how to conduct an ECI and legal advice. Once the ECI has been declared admissible, official translation of the text into all 21 EU official languages should be provided. To promote transnational citizen involvement, travel vouchers and free meeting space for citizens from different countries to meet to discuss the ECI topic should also be provided”).¹⁴⁶

The final text of the Regulation approved by the EP, and which will enter into force in 2012, has taken on board the issues raised in points 1 and 3, and partly in points 6 and 7.

As well as promoting amendments to the Regulation proposal,¹⁴⁷ it

¹⁴⁶ See Initiative for the European Citizens' Initiative, *Welcome to the ECI-Campaign!*, 24 July 2010, <http://www.citizens-initiative.eu/?p=272>. Regarding the proposals of the Campaign and of one of the main organisations, Mehr Demokratie e.v., see Benedikter, *Più democrazia per l'Europa*, op. cit., especially *Dieci regole fondamentali per una legge favorevole all'attuazione dell'ICE (10 Fundamental Rules for a Law Implementing the ECI)*, p. 69 (proposed by Democracy International, <http://www.democracy-international.org> and Mehr Demokratie). The author also proposes reforms for introducing the referendum institutes and a federal model for a democratic Europe with three chambers (EP, Chamber of the States with representatives elected by national parliaments, Chamber of the Regions with a representative elected by each Regional council – Regions NUTS 2). For a critical approach, see certain opinions by analysts and activists in L. Cendrowicz, “Direct Democracy: Citizen Initiatives Come to Europe”, *Time*, Brussels, 7 April, 2010, <http://www.time.com/time/world/article/0,8599,1978069,00.html>.

¹⁴⁷ See the pressure campaign by JEF (Jeunes Européens Fédéralistes, Young European Federalists) with open letter to be sent to MEPs, Commissioners, Heads of State, Ministers of Foreign Affairs soliciting amendments similar to those presented by the ECI campaign: JEF, *Stepping up the Campaign to Inject More Democracy into the EU!*, <http://jef.communicate-europe.co.uk/activities/campaigns/european-citizens-initiative/>; JEF,

also campaigns for European civic initiatives already developed (as mentioned earlier) and new ones (not infrequently with campaigns that involve actions for increasing awareness among the public) on the widest range of subjects,¹⁴⁸ of an informal nature but which could, in the future, be registered and possibly acknowledged by the EU. Even though the regulation setting up is yet to be finalised, the first ECI could become the one launched in March 2010, promoted by Greenpeace, calling for a moratorium on all new Genetically Modified (GM) crop production in Europe until a proper safety regime has been put in place. The initiative follows the authorisation by the EC of a BASF antibiotic-resistant GM potato. According to this NGO, one million signatures from across every country in the EU were collected by 28 September and “signatures continue to pour in from across Europe”. The Commission received signatures in October 2010 and declared that the petition can be given full consideration. After the official request there has to be an “admissibility test” in order to become an effective ECI.¹⁴⁹ The ECI was officially pre-

Open Letter. Concerns: The ECI is Your Best Shot to Inject More Democracy into the EU, http://jef.communicate-europe.co.uk/fileadmin/files_jef-europe/Activities/Campaigns/New_JEF_Open_Letter_on_the_ECI_-_The_ECI_is_your_best_shot_to_inject_more_democracy_into_the_EU.doc. For a federalist approach see also the position of the vice-president of UEF (Union of European Federalists): G. Montani, “The European Citizens’ Initiative. A New Springtime for European Democracy?”, *Europe’s World*, 11 October 2010, http://www.europesworld.org/NewEnglish/Home_old/CommunityPosts/tabid/809/PostID/1895/TheEuropeanCitizensInitiativeANewSpringtimeforEuropeanDemocracy.aspx.

¹⁴⁸ See, for instance, the proposal of a European day dedicated to obesity (European Obesity Day), <http://uk.obesityday.eu/en/european-citizens-initiative-petition>.

¹⁴⁹ “First ‘Citizens’ Initiative’ to Call for GM Crop Freeze”, *Euractiv*, 6 October 2010, <http://www.euractiv.com/en/cap/first-citizens-initiative-call-gm-crop-freeze-news-498524>; A. Pasolini, *Europeans Mobilize against GM Food*, 10 October 2010, <http://bi-kyamasr.com/wordpress/?p=18285>. See the petition and press release on Greenpeace’s website: *1 Million Voices for a GE-free Future*, <http://www.greenpeace.org/international/en/campaigns/agriculture/solution-ecological-farming/take-action/EU-Petition/?thingstodo>. Greenpeace has organised this initiative together with Avaaz, “a new global online advocacy community that brings people-powered politics to global decision-making” founded in 2007; http://www.avaaz.org/en/eu_gmo/. In the only European-wide poll on public opposition to GM crops, almost 60 per cent of Europeans expressed their concern; Eurobarometer, *Attitudes of European citizens towards the environment, Report*. Fieldwork: November-December 2007, Publication: March 2008, p. 65, http://ec.europa.eu/public_opinion/archives/ebs/ebs_295_en.pdf; see also *Over a Mil-*

sented to the EU Health Commissioner, John Dalli, on 9 December, six days before Parliament approved the new citizens initiative, casting the legitimacy of their petition into doubt. Since the ECI Regulation will not be in force until 2012 and conditions or requisites included in the ECI Regulation are not yet applicable, the initiative is still classed as a euro-petition and signatures may have to be collected again for the procedure to be valid. However this initiative not only meets, but also exceeds many of the ECI procedures and conditions agreed by the trialogue (it is over a million signatures 1,030,308 to be precise, from all 27 Member States, collected well within a year, and reaching country quotas in twelve countries - five more than the minimum, with all signatures verifiable according to Greenpeace).¹⁵⁰ A legal opinion by Ludwig Krämer, a German legal expert and maximum expert of European environmental legislation, formerly in the employment of the EC from 1972 to 2004, challenges the above and states as follows:

Article 11 TEU with regard to citizens' right of petition is unconditional and sufficiently precise. Therefore it is, at least in October 2010, directly applicable. The omission by the European Parliament and the Council to adopt the implementing provisions under Article 24 TFEU does not affect the EU citizens to exercise their right under Article 11 TEU.¹⁵¹

lion Europeans Call for GM Crop Freeze, http://media-newswire.com/release_1128857.html; M. Pispini, *Over a Million EU Citizens Finally Have their Say on GM Crops*, 9 December 2010, <http://www.greenpeace.org/international/en/news/Blogs/makingwaves/over-a-million-eu-citizens-finally-have-their/blog/29331>.

¹⁵⁰ For further details see: EC, *GMOs: Commissioner Dalli receives a petition from Greenpeace and Avaaz*, Midday Express -- News from the Press and Communication Service's midday briefing, 9 December 2010, http://ec.europa.eu/commission_2010-2014/dalli/docs/GMO_Midday_GreenpeacePetition_09122010_en.pdf; Avaaz.org, Greenpeace, *Q&A European Citizens' Initiative*, <http://www.greenpeace.org/raw/content/eu-unit/press-centre/policy-papers-briefings/eci-QandA-9-12-10.pdf>; A. Willis, "EU Receives Anti-GMO Petition Amid Raging Legal Battle", *Euobserver*, 10 December 2010, <http://euobserver.com/885/31474>; "Green Groups Jump the Gun on Europe's Million Signature Law", *Environment News Service*, Brussels, 16 December 2010, <http://www.ens-newswire.com/ens/dec2010/2010-12-16-01.html>.

¹⁵¹ L. Krämer, *Legal opinion on European Citizens' Initiative Dec 2010*, Madrid, 7 October 2010 - Addition of 27 November 2010, Greenpeace European Unit - Policy Papers

However, during a press conference that followed the EP vote in favour of the Regulation on 15 December 2010, the vice-president of the Commission Šefčovič said that this petition is certainly “politically very important” but it cannot be legally considered as an ECI because the Regulation establishing the rules was not yet in force and the EC had to defend “the general European interest”, enforcing a strictly legalistic approach on this point. EP positions do not all agree: according to Diana Wallis “by launching this petition at the time that negotiations on the ECI regulation were still taking place, the NGOs had willingly taken this risk”. Vice versa Häfner appealed for the approach to be more political than legalistic, stating that that “the citizens’ petitions that succeeded in obtaining one million signatures should be taken into very serious political consideration, even if they do not yet fulfil the legal criteria of an ECI”.¹⁵²

The Forum of the European Civil Society has promoted an ECI-Water Platform in order to use the ECI Regulation to propose amendments to the existing European Directive no. 2000/60/EC,¹⁵³ concerning the Union action in the field of water policy.¹⁵⁴

After Japan’s worst nuclear accident at Fukushima nuclear power plants arising from the Great East Japan earthquake and tsunami on March 2011, an ECI to induce the complete withdrawal of nuclear energy could be proposed, calling also for an intergovernmental conference to abolish European Atomic Energy Community (Euratom).¹⁵⁵

In view of the final debate on the EC draft Regulation on the ECI, the

and Briefings, <http://www.greenpeace.org/eu-unit/press-centre/policy-papers-briefings/legal-opinion-on-european-citizens-initiative>.

¹⁵² (EU) “EP/Citizens’ Initiative: MEPs Approve Regulation”, *Agence Europe* (Bulletin Quotidien Europe, No 10278), Thursday 16 December 2010, p. 7.

¹⁵³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:327:000:0072:EN:PDF>.

¹⁵⁴ See P.D. Grosjean, *Platform “European Citizens’ Initiative - Water*, Brussels, Permanent Forum of European Civil Society, 2 December 2010, <http://en.forum-civil-society.org/spip.php?article230>.

¹⁵⁵ See *Citizens’ Initiative to Help Faymann’s Anti-nuclear Crusade*, in “Euractiv” 28 April 2011, <http://www.euractiv.com/en/energy/citizens-initiative-help-faymanns-anti-nuclear-crusade-news-504356>; *Together with SPÖ: Gabriel: People’s Initiative Against Nuclear Power*, <http://economicsnewspaper.com/policy/german/together-with-spo-gabriel-peoples-initiative-against-nuclear-power-1127.html>.

Initiative for the European Citizens' Initiative had launched an online petition in support of some amendments it had already put forth.¹⁵⁶ Its director later commented on the negotiations and EP debate highlighting the need of a mandatory hearing for ECIs (subsequently included in the Regulation) and to exclude the request for ID card numbers for the signature (not accepted).¹⁵⁷ The European Citizens' Action Service (ECAS) publicised a letter it had circulated among MEPs where they suggested extending the time to collect signatures, introducing less stringent procedures for verifying signatures to avoid "discouraging and limiting the chances of success for many initiatives".¹⁵⁸ The letter contained the results of a survey carried out by the same NGO, which showed how 66 per cent of all interviewees "could refuse to sign an initiative if they were asked to provide their identity card or passport number".¹⁵⁹ Last, the letter called for a conference with the EC and the

¹⁵⁶ The text of the petition is as follows: "To all EU governments, members of the EU Parliament and the President of the European Commission: 'As EU citizens who want to engage in European politics, we call on you to adopt effective regulations for the European Citizens' Initiative (ECI). Initiatives should be given enough time (18 months), and they should not require signatures from more than one-fifth of the Member States. Demanding ID or passport numbers from signers is an unnecessary hurdle that should be avoided. Citizens must be able to present initiatives in a public hearing with the Commission. The ECI must encourage and facilitate citizen participation' "; Initiative for the European Citizens' Initiative, *Please Support Our Petition for ECI!*, 25 November 2010, <http://www.citizens-initiative.eu/?p=580>; *EU: Time for People-Powered Democracy!*, http://www.avaaz.org/en/eu_citizens_initiative/?cl=840743988&v=7623; *Avaaz Support ECI Campaign and Launches Petition for a Usable Citizens' Initiative*, Press Release by the ECI Campaign, 25 November 2010, <http://www.citizens-initiative.eu/?p=588>. The EP's AFCO, on 30 November 2010 unanimously adopted its position on the ECI which included all of petition's points – except for the signature collection deadline which remains twelve months; *Compromise ECI Regulation Requires Mandatory Public Hearings... but Allows Collection of ID Numbers*, 1 December 2010, Press Release by the ECI Campaign, <http://www.citizens-initiative.eu/?p=621>.

¹⁵⁷ C. Berg, "Citizens' Initiative is Being Gutted in Technical Negotiations", *Euractiv*, Letters to the Editor, 7 December 2010, <http://euractiv.blogactiv.eu/2010/12/07/citizens-initiative-is-being-gutted-in-technical-negotiations/>.

¹⁵⁸ A. Castberger (President of ECAS), *Open Letter to the Members of the European Parliament: The European Parliament Should Take a Stand for Transnational Democracy*, <http://www.ecas-citizens.eu/content/view/361/222/>.

¹⁵⁹ *Ibid.* See also *Survey on the Personal Identification Data Requirement in the Citi-*

ECI organisers.¹⁶⁰

Academics have also put forward the idea of broadening the instrument for an ECI to include national parliaments.¹⁶¹ However, as regards subsidiarity – also taken to mean closeness to citizens – and how this pans out with the new instrument for participation represented by the ECI and the new regulations contained in the Lisbon Treaty, some authors state that the participatory democracy allowed by an instrument such as the ECI does not generally offset the lack of democracy in the EU since the development of a fully legitimised and representative EP is the goal necessary for democratising the EU.¹⁶² Others, however, urged the EU to have more courage for overcoming the EC's Regulation proposal with the aim of meeting the requests of the ECI Campaign and various NGOs.¹⁶³ Specifically, a very critical study on the draft EC Regulation on ECIs commissioned by the S&D Group and carried out by the European Union Democracy Observatory (EUDO), under the direction of Alexander H. Trechsel and Bruno de Witte (European University Institute), re-

zens' Initiative, <http://www.ecas-citizens.eu/content/view/344/342/>.

¹⁶⁰ Castberger, *Open Letter to the Members of the European Parliament*, *op.cit.*

¹⁶¹ "It would have been worth considering, either in the Convention or in the Intergovernmental Conference, whether the national Parliaments (too) ought to be given the right to invite the Commission to propose E.U. laws. National Parliaments are directly and locally elected, parliamentarians live in their constituencies in contact with citizens, there is a working inter-parliamentary network that can facilitate production of an initiative (*See, e.g.*, Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC), <http://www.cosac.eu>) and parliamentarians are experienced legislators. If the National Parliaments were found incapable of increasing the responsiveness of Union politics, perhaps that would have been the better time to experiment with continent-size referenda on petitions"; J. Šuchman, "European Citizens(') (May Soon Take The) Initiative", in *Columbia Journal of European Law Online*, Vol. 16 (2010), p. 64 (pp. 59-65), http://www.cjel.net/online/16_1-suchman/; http://www.cjel.net/wp-content/uploads/2010/05/Suchman_online.pdf.

¹⁶² See, for example, I. Stirn, *The European Union after Lisbon: An Increased 'Closeness to Citizens' through Institutional Reform?*, Lecture 32nd EGPA (European Group for Public Administration) Toulouse, Lecture Annual Conference – September 2010, 13 August 2010, pp. 15, <http://egpa2010.com/documents/PSG10/Stirn.pdf>.

¹⁶³ A. Kammel, A. Möller, *Mehr Demokratie wagen: Der Entwurf zur Europäischen Bürgerinitiative muss überarbeitet werden*, Austria Institut für Europa- und Sicherheitspolitik (AIES, Fokus 5/2010), <http://www.aies.at/download/2010/AIES-Fokus-2010-05.pdf>.

sulted in a new proposal aimed at strengthening European civil society participation. The authors believe that “the major problems for the implementation of the ECI as the new participatory democratic flagship of EU institutions is that it is very hard to distinguish from the existing petition right to the European Parliament”.¹⁶⁴ To avoid the ECI becoming “a toothless pseudo-direct and pseudo-democratic tool”¹⁶⁵ they suggest that the ECI should be supplemented with a consultative EU-wide referendum to be requested by the EP with a simple majority.¹⁶⁶

A balanced analysis therefore leads to concluding that the ECI can be a complementary instrument to representative democracy.¹⁶⁷

Compared to the Regulation proposed by the EC on 15 December 2010, the adoption of the amended ECI Regulation which followed an inter-institutional compromise as above described, was welcomed by most of the European Civil Society. In spite of a limited number of suggestions having been included in the adopted version of the Regulation (well-balanced registration procedure featuring a citizens’ committee, the wide signature-gathering options, the encouraging hearing privileges for successful initiatives), excluding others (such as extending the period for collecting signatures and the elimination of ID requirements, etc.) several commentators consider the coming into force of the ECIs as from 2012 as the beginning of a new season and of new challenges for

¹⁶⁴ B. de Witte, A. H. Trechsel, D. Damjanović, E. Hellquist, J. Hien, P. Ponzano, *Legislating after Lisbon: New Opportunities for the European Parliament*, A study prepared in the framework of the EUDO, EUDO Observatory on Institutional Change and Reform, RSCAS, EUI, Florence, June 2010, section 1.7 (“Neither ‘Citizen’ – Nor ‘Initiative’”) p. 18; [http://www.eui.eu/Projects/EUDO/Documents/EUDO-LegislatingafterLisbon\(SD\).pdf](http://www.eui.eu/Projects/EUDO/Documents/EUDO-LegislatingafterLisbon(SD).pdf).

¹⁶⁵ *Ibid.*, p. 19.

¹⁶⁶ “The adding of a consultative referendum to the ECI regulation is on our view legally feasible, thus it would be enough to include it in the ECI-regulatory framework”; *Ibid.*, p. 19.

¹⁶⁷ See V. Cuesta Lopez, *The Lisbon Treaty’s Provisions on Democratic Principles: A Legal Framework for Participatory Democracy*, *op. cit.* This author said: “we must conclude that participatory governance is not a definitive solution to improve the democratic quality of EU: participation of civil society organizations in the policy-making can never replace widespread political participation through representation. Direct participation and political representation should thus be seen as complementary to democratize the EU”; *Ibid.*, p. 138.

the ECI – to be amended and corrected in time – seeing it as a useful and effective tool in pursuing the battle for direct democracy and the democratisation of the EU. “The ultimate success or failure of the ECI, however, will depend on how the Commission responds to a successful ECI”, declared Carsten Berg, campaign director at the ECI Campaign¹⁶⁸ after having said that the ECI “is the first transnational instrument of participatory democracy in world history”.¹⁶⁹ A far-reaching educational and information process is required as are archives and practical work to inform European citizens of the new instrument.¹⁷⁰

4. CRITICAL ANALYSIS OF THE EUROPEAN COMMISSION'S REGULATION PROPOSAL AND THE DEBATE IN PROGRESS

The ordinary legislative procedure (co-decision) set forth in Art. 24 TFEU began with the regulation proposal made on 31 March 2010 by the EC, following the formulation of a Green Paper in November 2009 and a public consultation on the subject, with speeches by the institutions and the bodies of the EU.

¹⁶⁸ According to Berg “One million citizens cannot be ignored. A successful ECI must have consequences and lead to political decisions. Only when citizens realise that they are actually being heard will this instrument strengthen the democratic engagement of citizens. Otherwise it will simply lead to more frustration.”; see Initiative for the European Citizens' Initiative, *ECI Campaign Welcomes the Approval of the ECI Regulation*, <http://www.citizens-initiative.eu/?p=646>.

¹⁶⁹ *Parliament Gives Go Ahead to Citizens' Petitions*, “Euractiv”, 16 December 2010, *op. cit.*

¹⁷⁰ See B. Kaufmann, “Merry Christmas, Europe!”, Comment, *Euobserver*, 16 December 2010, <http://euobserver.com/7/31521>. See also information and support in order to help organisations to deal with the impact of an ECI see the brochure *Is your organisation ready for the European Citizens' Initiative?*, “Fleishman Hillard International Communications” (FH “Tech Spotlight” No. 7), 20 March 2011, <http://www.fleishmanhillard.eu/uploads/NewsEvents/documents/European%20Citizens%20Initiative%20March%202011.pdf>. For a recent European civil society meeting on ECI see <http://www.touteurope.eu/fr/actions/citoyennete-justice/les-droits-du-citoyen-europeen/presentation/dossier-special-sur-l-initiative-citoyenne.html>.

Here we shall examine the most important profiles in the light of the Commission's proposal and the alternative solutions emerging from the debate or within the bodies of the EU.

4.1. Minimum number of Member States

This is a point that is crucial for the success of the ECI, and yet heavily debated and controversial.

As described above, the Commission's proposal establishes one-third of the Member States as the significant number required by Art. 11 TEU, unlike that requested by the EP (1/4) and by various political powers and movements of the civil society that were asking for even lower proportions.

It is clear how, by choosing not to set a minimum number of States, the Treaty leaves it to the political discretion of the legislator to reconcile the need for the ECI to be actually supranational and the difficulty in implementing it. Due to this political discretion, the analogical reasoning used by the EC in support of its choice does not seem to have any basis.

In fact, the EC stance is based, "on other provisions of the Treaty, according to which nine or one-third of Member States is sufficient to ensure the representation of a Union interest. It is the threshold used in the provisions on 'enhanced cooperation' which provide that 'at least nine Member States' must participate".¹⁷¹ However, a first criticism noted that Art. 76 of the TFEU states a different proportion, a quarter of the Member States: "The acts referred to in Chapters 4" – Judicial Cooperation in criminal Matters – "and 5" – Police Cooperation – "together with the measures referred to in Art. 74 which ensure administrative cooperation in the areas covered by these Chapters, shall be adopted: (a) on a proposal from the Commission, or (b) on the initiative of a quarter of the Member States".¹⁷²

In any case, it is easy to counter the EC reasoning with the fact that,

¹⁷¹ *Explanatory Memorandum, 3.1. Minimum number of Member States (Article 7) in EC, Proposal for a Regulation of the European Parliament and of the Council on the Citizens' Initiative COM(2010) 119 final, op. cit., p. 4.*

¹⁷² See Ingravallo, *op. cit.*, p. 255.

where the Treaty indicated minimum number of States, it did so explicitly. While in Art. 11.4, this choice was not made, and a more open-ended approach was chosen (“a significant number of Member States”), it is clear that this was to avoid making the choice inflexible in the primary source of EU law. This leaves it open to the legislative acts of the EU to choose the threshold, according to the historical-political moment where and when the decision is made the first time or, later on, amended. With a view to favouring the implementing of the ECI, it appears reasonable to adopt the lowest of the thresholds possible. An excessively high percentage of States could undermine the presentation of proposals that, although supranational, would only be of relevance to certain specific geographic areas where there would be more interest in offering support, while adhesion elsewhere would be solely founded on the sharing of an opinion. We refer here to a proposal connected with the Mediterranean area (fewer than 9 countries but more than 6), although likewise this could be said for other areas sharing specific geographical features or similar production activities, etc. The instrument of the citizens’ initiative specifically aims to protect minorities who would not otherwise be able to bring their problems to the attention of the European legislator, which supports the above. The compromise text of the Regulation approved by the EP with a minimum number of seven Member States is an actual improvement and a relatively satisfactory solution to avoid excessive restrictions in implementing ECIs.

4.2. Minimum number of signatures per Member State

This important aspect seems to have been resolved consensually and in keeping with the objectives of the ECI in Art. 7 and in Annex I of the Regulation proposal formulated by the EC, which indicates “a threshold for each Member State, which is degressively proportional to the population of each State with a minimum threshold and a ceiling”.¹⁷³ Indeed, if a State is to be included in those that help to achieve the significant quota required by the Treaty, it is right to say that a minimum number

¹⁷³ *Ibid.*, p. 5.

of adhesions among its citizens is required. However, purely proportional mechanism immediately appeared unfair because of the difficulty in gathering adhesions grows exponentially and not proportionally. In fact, “a set percentage for all Member States is not equitable, as it is much easier, for instance, to collect statements of support from 1,000 citizens (representing 0.2% of the population) in Luxembourg than 160,000 in Germany, and therefore easier for small Member States to count rather than large ones”.¹⁷⁴ This criterion of raising the number of signatures required in the States with fewer inhabitants and lowering the number in those with large populations, makes the sharing of the adhesions between the various countries contributing to reach the threshold of States fairer. Obviously, it remains possible to collect adhesions also in States where it is not possible to reach the minimum number of signatures.

4.3. The initial step: formulation, registration, and admissibility of the ECI

Among the various aspects regarding this phase, the choice of the moment when admissibility of the ECI is checked is especially important. In this case, the options range between two very distant extremes. On the one side, those (civil society, political forces, and also the Council and the EP) that consider ECI's admissibility should be evaluated immediately, in the moment of its registering, and therefore before beginning to collect signatures, or otherwise after collecting a very low number of signatures, much lower than that proposed by the EC; on the other, where the EC, in its draft Regulation, states that evaluating the ECI's admissibility is to be done on reaching 300,000 statements of support from signatories coming from at least three Member States.

There are points in favour of both positions. An immediate admissibility check or, at least, an adhesion threshold much lower than that proposed, stems from the intention not to discourage turning to the idea

¹⁷⁴ *Ibid.*, *Explanatory Memorandum*, 2.2. *Ensuring that Citizens' Initiatives Are Representative of a Union Interest*, p. 3.

of the ECI due to the risk of seeing a huge organisational effort defeated by inadmissibility. On the other hand, the EC's fear of being submerged by ECI requests that could never gain widespread consensus or may even be spurious or provocative is also understandable. Less understandable, however, is the motivation used by the EC in the Explanatory Memorandum in which a preliminary check is not included "as a major objective is to promote public debate on European issues, even if an initiative does not finally fall within the framework of the legal powers of the Commission".¹⁷⁵ In fact, since the ECI is a legal provision included in the Treaties, it does not seem appropriate to endorse a discretionary regulatory choice just for the purpose of facilitating its different instrumental use.

In order to contribute to the launching of the new instrument, it would seem appropriate to maintain admissibility thresholds as low as possible, and this applies to all the points where minimum thresholds are provided for. This is even more the case considering that the Regulation proposal is aware of the need to evaluate the results of applying this legal institution later. For this purpose, there will be a review clause in which it is stated that, in five years (in the EC's proposal, but currently only three according to the Council and in the end incorporated by the EP in December 2010), the EC shall send a report to the EP and the Council, evidently for the purpose of making amendments to the Regulation text. To ensure the ECI's success, in an experimental stage, it would seem reasonable that the discretionary choices facilitate the use of the new instrument, since it is very likely that, when rethinking the ECI, decisions could be taken aimed at curbing any abuses.

These considerations favour an admissibility check that is either immediate or on collecting a limited number of statements of support. The former was the one that in the end was included in the Regulation and will come into force in 2012. If the latter had been implemented, any amendments to the initial text of the ECI should have been agreed by the promoters, in order to do not undermine the first signatures collected.

¹⁷⁵ *Ibid.*, *Explanatory Memorandum*, 3.7. *Decision on the Admissibility of Proposed Citizens' Initiatives (Article 8)*, p. 6.

This second hypothesis is mentioned because, albeit in a controversial manner it could be used to retroactively solve the issue of the aforementioned Greenpeace and Avaaz Europetition on banning GMs: in fact although the petition was presented before the entry into force of the Regulation, it could meet minimum required standards and thus, following verification and amendments, it could be accepted without having to collect the signatures again.

The evaluation of the ECI's admissibility must certainly be based only on parameters of legality. In this respect, the proposal made by the AF-CO of the EP in the working document seems acceptable: this is to assign the admissibility evaluation firstly to a committee of experts, leaving the EC with a sort of confirmation of the evaluation, which if it were a negative opinion (or there were no response), could be followed, by an appeal by the promoters to the CJEU. The question of the terms of appeal against the EC is more complex in terms of the final decision, and so it will be referred to with more attention at such time. However, the Regulation voted by the EP has not accepted such proposals.

Last, from several quarters the need to provide some form of support to the promoters of the ECI was stated, particularly as regards the translations and the legal consultancy. We can imagine what would happen if the texts for gathering statements of support were not accurately translated and did not correspond to the original. Although the promoters are responsible for translations, it is also true that this kind of support would be called for to ensure the ECI is established. Cost constraints in the EU budget for such a service have to be considered and its public benefit would only be confirmed if the initiative is successful. As mentioned in the foregoing AFCO document providing some standard services, with the promoters paying a security deposit (or a guarantee), which would only be refunded if the required adhesions are reached, could be a way to reconcile needs. However, the "Draft Commission Statement" Annex to the Regulation approved by the EP in December 2010, states that translation costs must be covered by the organisers and that "before accepting the inclusion of new language versions in the register, the Commission will check that there are no manifest and significant inconsistencies between the original text and the new linguistic versions of the title, the subject-matter and the objectives" (Annex -

Draft Commission Statement, II).

4.4. Collection of signatures

There are two key issues in this respect:

- 1) How signatures are collected.
- 2) When they are collected.

1. The possibility of being able to collect the signatures electronically is paramount. In this respect, the Council and the EP run along the same lines in urging the EC to provide dedicated software. This aspect is quite important because the reliability in gathering the signatures needs to be strictly safeguarded, whether in traditional or electronic form. While maintaining as simple a system as possible, questioning whether the number of signatures required has actually been reached must be avoided. Even a suspicion circulating around would be enough to seriously discredit the ECI instrument. In this respect, the EP-approved Regulation has incorporated these matters and has established that “the Commission shall set up and thereafter maintain open-source software incorporating the relevant technical and security features necessary for compliance with the provisions of this Regulation regarding the online collection systems. The software shall be made available free of charge” (Art. 6 – *Online collection systems*, para 2, c. 4).

Hence, the worries about including IDs in the statements of support (both electronic and paper) must be played down. The risk that this aspect could deter potential subscribers seems less important than the need to guarantee the reliability of the ECIs, avoiding even just the suspicion that the names could partly have been taken from the telephone book.

Last, the objections concerning subscriber data protection are of no merit: although they are certainly sensitive data because they can give an insight into the political leaning of the subscriber, protection must be guaranteed by correctly conserving them and not by making them unascertainable, as would be the case if it were sufficient to just provide (as has been proposed) name, surname and address. As mentioned this provision was not modified in the Regulation approved by the EP in De-

ember 2010 and in the final text of the Regulation EU No. 211/2011.¹⁷⁶ However, it is worthwhile mentioning that the ID card requirements of Member States in order to verify the authenticity of signatures won't be mandatory differing significantly from country to country. In fact two distinct forms of statements of support have been foreseen: one for Member States which do not require the provision of a personal identification number/personal identification document number and another for the member states which require it.

2. As regards the time period in which the signatures can be collected, set at twelve months, it has to be noted that in this case the decision is extremely discretionary. In order to encourage the starting of the legal institution, it would be useful to provide a longer period, with the possibility of reducing it during reviews. However, as already mentioned, this was not possible because of the lack of an agreement among the inter-institutional triangle and as a result the Regulation adopted by the EP has not extended the time allowed for signature collection.

4.5. The final decision

At the end of the procedure, the EC will have to make its decision. The regulation project requires that the EC issues a statement, within four months – then reduced to three in the Regulation approved by the EP – motivating its conclusions about the initiative and any action to be taken. The AFCO working document offers a detailed proposal in largely acceptable terms, to make the follow-up of the ECI clear and transparent, even if the EC decides to not go ahead with the ECI.

However, although the procedures of the ECI can be checked, forcing the EC to meet various deadlines (as does the AFCO document), the final decision rests exclusively with the EC and that, according to the Treaty,

¹⁷⁶ See Art. 12 "Protection of personal data", para 1 of the of the Regulation EU No. 211/2011, *op. cit.*: "1. In processing personal data pursuant to this Regulation, the organisers of a citizens' initiative and the competent authorities of the Member State shall comply with Directive 95/46/EC and the national provisions adopted pursuant thereto".

could not be otherwise.

Furthermore, the EC is under no legal obligation whatsoever to present a proposal following an ECI.¹⁷⁷ This is based on a literal interpretation of Art. 11 (where it speaks of the “initiative of inviting the EC, 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”) and a systematic interpretation referring to the same power of inviting to make a proposal already granted to the EP and the Council.

As a result, the EC has the obligation to motivate its decision and this allows a judicial control if there is an illegitimate decision (even when resulting from a motivational failing) and a political check, both by institutions (the EP, the Council and the Member States) and by public opinion, political parties and social groups, etc.

If there are no specific forms of action, the judicial check can make use of ordinary procedures,¹⁷⁸ (especially for no stated reasons), or misuse of powers or infringement of general principles. Considering that this is a strictly political choice, it is unlikely that the CJEU can intervene and affect the EC’s discretionary powers. However, a total rejection of an ECI due to political dissent seems unlikely because, politically, it would be very difficult for the EC to decide not to go ahead with a formally admissible request, as can be seen from previous cases referring to forms of existing invitations to make proposals.¹⁷⁹

The Regulation approved by the EP in December 2010 has fine-tuned the procedure for the examination of a citizens’ initiative by the Commission, as can be seen in Art 10 of the said Regulation which states as follows:

¹⁷⁷ See B. Beary, “Sefcovic Stresses Right to Refuse Citizens’ Initiative”, *Europolitics*, 8 December 2010, <http://www.europolitics.info/institutions/sefcovic-stresses-right-to-refuse-citizens-initiative-art289396-33.html>.

¹⁷⁸ In this respect, also as regards the ECI’s admissibility, see Ingravallo who, apart from the speech by the European Ombudsman, refers to the proceedings on failure to act (Art. 265 TFEU) and to the action for annulment (Art. 263 TFEU); see Ingravallo, *op. cit.*, p. 258.

¹⁷⁹ See P. Ponzano, “Strengthening European Democracy: the Citizens’ Initiative”, *op. cit.* and Andreas Auer, “*European Citizens’ Initiative*”, *op. cit.*, pp. 83-84.

- “1. Where the Commission receives a citizens’ initiative [...] in accordance with Article 9 it shall:
 - (a) publish the citizens’ initiative without delay on its website;
 - (b) *receive the organisers 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*.
- 2. The communication referred to in point (c) of paragraph 1 shall be notified to the *organisers* as well as to the European Parliament and the Council and shall be made public”.¹⁸⁰

It also introduces a new article, namely, Art. 11 (see below) which refers to a mandatory public hearing at the European Parliament, as requested by the EP and by most of the organised civil society.

Article 11

Public hearing

Where the conditions of points (a) and (b) of Article 10 are fulfilled, and within the deadline laid down in point (c) of Article 10, the organisers shall be given the opportunity to present the citi-

¹⁸⁰ Approved amendments are marked in bold and italic type. See the final text of Art. 10 “Procedure for the examination of a citizens’ initiative by the Commission” of the Regulation EU No. 211/2011, *op. cit.*:

1. Where the Commission receives a citizens’ initiative in accordance with Article 9 [“Submission of a citizens’ initiative to the Commission”] it shall:

- (a) publish the citizens’ initiative without delay in the register;
- (b) receive the organisers 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.

2. The communication referred to in paragraph 1(c) shall be notified to the organisers as well as to the European Parliament and the Council and shall be made public.

zens' initiative at a public hearing. The Commission and the European Parliament shall ensure that this hearing is organised at the European Parliament, if appropriate together with such other institutions and bodies of the Union as may wish to participate, and that the Commission is represented at an appropriate level.¹⁸¹

5. CONCLUDING REMARKS

Thanks to the ECI, for the first time one million European citizens, representing a significant number of Member States, can intervene for stimulating the decision-making process of the EU, putting forward legislative proposals to the EC which form part of its attributions.

The path for reaching this goal schedules that, in 2012, the laws making this new transnational democratic participation tool operative will come into force.¹⁸²

The ECI could open new spaces, particularly for activating a European public sphere and for increasing the perception of a common European space for citizenship, the first step towards European populations feeling that they all form part of the same community.

In the medium term, the ECI could have an important function for indirectly stimulating the EP, and directly stimulating the EC which it addresses, offering itself as the driving force for political initiative and influencing the EC's political agenda.

5.1. Limitations and critical aspects

Considering the technical, language, logistic and information barriers and the costs incurred by the organisers connected to preparing and divulging an initiative like the ECI across Europe, much larger and more challenging than national initiatives, the requirement of a million signa-

¹⁸¹ See the same text in Art. 11 "Public hearing" of the Regulation EU No. 211/2011, *op. cit.*

¹⁸² For a tabular display of the decision-making process of the ECI see http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=199169#404568.

tures (corresponding to 0.2 per cent of the electorate) is a higher threshold than all those found in the Member States, and for this reason disputed by various architects of democratic and participatory development in the EU.

A first clear limitation of the ECI, deriving from the hybrid institutional structure of the EU and also from the lack of democracy, is the presenting and submitting of the ECI to the EC instead of to the EP (which, instead, receives the petitions from European citizens: “any citizen of the European Union and any natural or legal person residing or having its registered office in a Member State have [...] the right to address a petition to the European Parliament”, Art. 227 TFEU). The EP is a unique parliament, without any legislative initiative, which falls to the EC with the exception of foreign policy, defence and a few other policies, which are intergovernmental. It only has the power to propose and also a much broader but still limited power of co-decision – several areas such as foreign policy and defence are still excluded from the ordinary legislative procedure and this is true in spite of the fact its remit was extended by the Lisbon Treaty. Furthermore it cannot directly nominate the EC (which the European Council does) although it now holds the power to approve it and its approval is needed for the EC to be appointed. The President of the EC is currently appointed “taking into account the elections to the European Parliament and after having held the appropriate consultations” (Arts. 17.7 and 8). In all the domains where the EP has only a consulting role and not a co-decision role, the EU still suffers from a deficit of representative democracy.

Second, the EC, which holds the monopoly on legislative initiative and is the executive and technical administrative body of the EU (although subject to approval by the EP for entering in office and on the basis of the results from the latest European elections), is not obliged to give the go-ahead to the ECI.

5.2. Opportunities and potential impact on European institutions and civil society

Having acknowledged this situation and despite these constrictions, it is equally true that the rules, procedures and implementation can have in-

teresting repercussions at various levels.

First of all, within the EU institutional framework it opens opportunities for cooperation and impetus by the EP and the European parties – like those that are already being noted while the ECIs are still symbolic but directly organised by European political parties and by their leading representatives.

And then within the area of civil society which can employ a new tool and, more in general, in terms of public opinion and the mass media.

It must nonetheless be noted that there is also a strong risk of the ECI remaining blocked by unclear over-sophisticated and demanding procedures and implementation rules, making it difficult to implement and causing disappointment and low interest in this tool, sentiments which would be accompanied by distrust and hostility towards the EC and the EU institutions that already suffer from low prestige. In any case, similar initiatives, tried at a national level in the past, apart from in those countries where a culture of direct participatory democracy is already well established, do not seem to be particularly appealing or have an incisive effect. Apart from various ECIs started without any operative instrument by various proposers and based on very differing proposals, as were referred to earlier, the ECI tool established by the Lisbon Treaty is a new idea to be fully explored, from which excessive claims should not be expected. The current situation in which there is a prevailing apathy, indifference and even rejection of the European integration and its institutions, recorded several times in recent years by the Eurobarometer and confirmed by emergent euro-sceptical and anti-European political and cultural movements, has resulted in poor attention and participation by citizens at elections and in the public debate. These behaviours seem to have been generated not just by lack of understanding or interest, but by a perception of politics in a nationalist vein, nurtured by the national dimension that permeates all Europe and, to a particular extent, the mass media and the political exchange in the Member States. The European elections thus confirm their main connotation of being “secondary”, acting purely as a means for verifying the balances of domestic power, possibly punitive or bringing new players to light, so that questions of European importance are unable to come to the surface.

Despite these problems and the heavy uncertainties about the proce-

dural aspects and the restrictions that could undermine the ECI, the potential in this innovation should not be underestimated because the ECI can still:

- help promote a transnational political debate and educate about civic participation within the EU;
- affect the democratisation of the EU and influence the EU, stimulating the implementing of policies and also, indirectly and for guaranteeing important objectives, bring about institutional reforms, despite the fact that the ECI can only intervene with proposals regarding the area of attribution of the EC and aimed at implementing treaties;
- check on the reform, the evolution and the implementing of EU policies.

The ECI should not become a tool only accessible to major organisations or political parties, but should be within reach of groups of citizens prepared to unite for participating and interacting with the European institutions. Clear, simple and transparent rules and attention to developing the perception and actual realising of a greater inclusion on the basis of transparency and exchange could permit a progressive re-emergence of trust and consensus for the EU activities and institutions. Participation in itself is not a guarantee of democracy and therefore rules assuring transparency, democracy and inclusion for favouring empowerment at various levels should help to liberate and to channel options in the European and public debate important to the lives of individuals. The effectiveness of the tool is equally important because otherwise it could soon be abandoned or simply become a mega-petition without any outlets. 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, to avoid in this current situation the risk of frustration or

of impracticability of the ECI, 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.

5.3. Some technical, political and financial proposals

- If the EC is not to become unpopular, it should acquire a more open and creative attitude, taking over the functioning and support of the technical, logistical and also financial side (any refunds), as well as setting up an updated and easily used website where all the ECIs are registered and information provided as per the Regulation approved by the EP in December 2010. All this would draw citizens closer to this tool for which an electronic signature should be permitted, while for favouring dialogue and exchange of information and ideas, and for making the action more fluid, the most versatile and appropriate information technology (IT) should be supported.
- As an alternative to financial refunds charged to the EU institutions, consideration could be given (not just for the ECI committees but generally for the NGOs that have similar characteristics with democratic principles and the respect of the rights of humans and minorities and the values of the EU) to creating a system of vouchers to allocate on the basis of citizens' choices, reviving to some extent the proposals by Philippe C. Schmitter on how to democratise the EU,¹⁸³ and on how to develop an active European citizenship.
- The creating of an Agency for the ECI proposed by the Initiative for the ECI should be considered together with, and possibly merged

¹⁸³ P.C. Schmitter, *How to Democratize the European Union - and Why Bother?*, Lanham, Md., Rowman & Littlefield, 2000.

with, the proposed European Observatory for Democracy and Opinion¹⁸⁴ for conducting studies on public opinion and on the world of information, on the methods for consultations, surveys and civic initiatives, spreading awareness and dialogue in contact with the world of science and civil society, and last, supporting the ECI.

- Regarding the decisions taken by the EC, it is essential that an appeal is allowed to the CJEU and, possibly, to the Ombudsman,¹⁸⁵ since it is inappropriate that its action is not controlled and verified.

5.4. Risks and Perspectives: Euroscepticism, protection of public services, common goods and environment and democratisation of the EU

There are certainly risks of contrasts between the EU bodies and between the various ECIs, such as the emergence of a possible “tyranny of lobbies”, well structured and with considerable financial resources, around this institution,¹⁸⁶ or such as the appearance of its marginality

¹⁸⁴ S. Boucher, “If Citizens Have a Voice, Who’s Listening? Lessons from Recent Citizen Consultation Experiments for the European Union” (Notre Europe, Working Paper, No. 24), June 2009, [http://www.ceps.eu/book/if-citizens-have-voice-whos-listening-lessons-recent-citizen-consultation-experiments-european-;](http://www.ceps.eu/book/if-citizens-have-voice-whos-listening-lessons-recent-citizen-consultation-experiments-european-) <http://www.ceps.eu/ceps/download/1679>.

¹⁸⁵ EP, “Press Release, MEPs Discuss Citizens’ Initiative with Ombudsman”, Brussels, 15 June 2010, http://www.europarl.europa.eu/news/expert/infopress_page/020-76019-165-06-25-902-20100614IPR76018-14-06-2010-2010-false/default_en.htm.

¹⁸⁶ See J. A. Emmanouilidis, C. Stratulat, *Implementing Lisbon: A Critical Appraisal of the Citizens’ Initiative*, European Policy Centre (EPC Policy Brief), June 2010, http://www.epc.eu/documents/uploads/pub_1135_implisbon.pdf. Another author pointed out: “It must be remembered that gathering one million signatures across a continent could become an organizational nightmare, and, the more stringent the rules are, the fewer the entities that will have the capacity to run a petition campaign. The question then becomes - ‘Who will be able to benefit?’ As it is likely that there will be no public funding available for initiatives, entities with established networks and secured finances will be advantaged, whether those be political parties, NGOs, or private interests. We might, therefore, need to brace ourselves for initiatives on issues that are taboo in high politics. Fringe parties that have a xenophobic agenda and fall short of election thresholds may unite in proposing anti-immigration measures just as much as -- or even more than -- say, travelling European citizens frustrated by the diversity of electrical outlets”; J. Šu-

which could be encouraged by strong criticisms of an Eurosceptic nature (ECIs considered costly, pointless and “other-directed”, etc.¹⁸⁷). The approval of the Regulation by the EP on 15 December 2010 has made the presentation of ECIs easier while giving the EC more responsibilities as it will have to check admissibility requirements at registration and which will inevitably undergo major political pressure and supply several services such as a help desk and a user guide, public hearings, monitoring of the different stages of successfully registered proposals, etc.¹⁸⁸ However, ECIs, progressively revised and corrected on the basis of experience, are a major challenge, probably more for the indirect results that they can give (pushing the national and European institutions to act on issues raised and the emergence of European public opinion) than for the direct ones that, although important, are more uncertain. This would bring about a new democratic hope that could reverberate at various levels and penetrate for transforming it in the often resigned, nationalist and stifling national public spaces.

Probably, as stated by some, the protection of public services and common assets, the request for safeguarding and guaranteeing a social Europe, the promoting of rights and the protection of the environment are some of the main areas where the ECI could re-awaken and push the EU to act for a better future¹⁸⁹ and a closer integration of the continent,

chman, “European Citizens(‘) (May Soon Take The) Initiative,” *op. cit.* p. 64. On the risk of lobbies prevailing on ECIs see P. Zicchittu, “Il diritto di iniziativa dei cittadini: un nuovo strumento di partecipazione all’interno dell’Unione europea”, in *Quaderni costituzionali*, No. 3, September 2010, pp. 621-25.

¹⁸⁷ See, for example, the position of the European Foundation, set up by the UK Conservative politician and parliamentarian Bill Cash for promoting the renegotiating of participation in the EU by European populations, defining himself a “Euro-realist”, “European Citizens’ Initiative: A Waste of Time and Money!”, *Bill Cash’s European Journal*, 8 April 2010, http://europeanjournal.typepad.com/my_weblog/2010/04/european-citizens-initiative-a-waste-of-time-and-money.html.

¹⁸⁸ See J.A. Emmanouilidis and C. Stratulat, *The European Citizens’ Initiative: Next Step, Implementation*, European Policy Centre (EPC), Commentary, 16 December 2010, http://www.epc.eu/documents/uploads/pub_1203_the_european_citizens_initiative.pdf.

¹⁸⁹ See G. Allegri, “La partecipazione democratica dopo Lisbona,” 11 March 2010, <http://www.europeanrights.eu/index.php?funzione=S&op=5&id=367>. See also G. Allegri, “Il diritto di iniziativa dei cittadini europei (ECI) e la democrazia partecipativa

making the citizens and their representatives equally involved in a democratic adventure to pursue for uniting Europe. A role of the ECI in stimulating the political elites and in developing major diplomatic initiatives has also been envisaged in the field of foreign relations.¹⁹⁰ In any case participatory democracy can contribute to the development of a greater degree of homogeneity while upholding diversities, and this in turn may contribute to the strengthening of the process of European integration.¹⁹¹

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.

The priority task to be dealt with for the democratisation of the EU and increasing internal integration is certainly through institutional reforms and political changes such as:

- the reinforcing of the EU institutions and particularly the EP;
- ensuring direct elections to the EC by the EP based on the candidature for the Presidency officialised by the European parties during the elections for renewing the EP;

nell'Unione europea: prime riflessioni", in *Federalismi.it*, 8 December 2010, <http://www.federalismi.it/applMostraDoc.cfm?Artid=17220>.

¹⁹⁰ For instance, see the proposal to promote an ECI to encourage the EU to develop a more effective foreign policy able to promote reconciliation between Israel and Palestine: "As European leaders are unlikely to make hard decisions on their own, public pressure will be essential. The Lisbon treaty also provides ordinary people with a tool to petition the EU, namely the European Citizens' Initiative. If a broad civil society coalition can collect a million signatures from concerned citizens on a blueprint for change, then we stand a chance of redefining the EU's role in this interminable conflict", see Khaled Diab, "How the EU Could Entice Israel to Seek Peace Making Europe's Cosiness with Israel Dependent on Commitment to Fair Peace Would Be More Effective than a Blunt Boycott", in *Guardian*, 26 November 2010, <http://www.guardian.co.uk/commentisfree/2010/nov/26/eu-israel-europe-peace>.

¹⁹¹ See D. Siclari, "La democrazia partecipativa nell'ordinamento comunitario: sviluppi attuali e prospettive", in *Diritto Pubblico*, No. 2, 2009, pp. 589-607, <http://www.astrid-online.it/Riforma-de/Studi-e-ri/Archivio-25/Siclari---Democrazia-partecipativa-UE.pdf>.

- consolidating the European political powers;
- the emergence of public opinion and supranational information bodies.

The ECI as a means for participation in the European decision-making process is certainly not a decisive institution, but neither should it be considered a plebiscitary, pointless or demagogic instrument.¹⁹²

It can therefore be concluded that a properly promoted right of initiative supported by simple, transparent and balanced rules, may contribute to the shaping of a democratically legitimated EU. As has been rightly pointed out, the ECI can perform “the delicate task of integration and correction of the representative democracy”.¹⁹³

Specifically, ECIs can give rise to a European debate on issues of general and transnational interest, a useful element for forming a Europe-wide public opinion and for developing European citizenship.

5.5. ECIs in progress: suggestions and changes

Although not constituting key steps per se, the ECIs are not pointless distractions either. Several of the choices made by the EC's Regulation proposal can be favourably accepted, particularly as regards the minimum number of signatures per Member State and the possibility of collecting the signatures online. However, a major step forward has been that some of the proposals made by the EP were incorporated in the compromise reached on 30 November 2010 between the EP's AFCO, the European Council and the Commission and finally incorporated in the Regulation approved by the EP on 15 December 2010 and adopted by the Council of the EU on 16 April 2011. In spite of this progress, some of the changes

¹⁹² D. Wallis herself pointed to some of the ECI's features: “It's not a Swiss-style system of initiatives and referendums. It's dipping the toe in the water of participatory democracy... an opportunity for European citizens to push the legislative button”, L. Peter, “Power to the People EU-style”, *BBC News*, 22 November 2010, <http://www.bbc.co.uk/news/world-europe-11773647>.

¹⁹³ C. Bova, *Il diritto d'iniziativa dei cittadini europei ed i confermati limiti dell'iniziativa legislativa popolare in Italia*, p. 4, http://www.forumcostituzionale.it/site/images/stories/pdf/documenti_forum/euroscopio/note_europa/0008_bova.pdf.

suggested by other sources discussed in this paper could also be considered in view of a future revision of the Regulation, specifically:

- as regards admissibility, the Commission should quickly express an opinion that is strictly on the legal aspects and free of other considerations and, if there is a negative opinion, then it should be possible to appeal to the CJEU;
- the time for gathering the signatures should be extended to at least 18 months because 12 months seems too short a period of time;
- when admissibility has been recognised and one million signatures have been collected, the EC should, as a rule, prepare an “appropriate proposal” (even though it is anyway not bound to do so which, in general, seems justified) for which “a legal act of the Union is required” (Art. 11 TEU); if the result is negative, it must be possible to dispute the motivated refusal at the CJEU;
- the arguments supported by some that the proposal made as regards the ECI could include rules for reforming the Treaties does not seem to have legal grounds, because the formulation of Art. 11 TEU seems sufficiently clear;
- despite this, the area in which it will be possible to present proposals by means of the ECI tool is extremely broad, with the only exception being matters competing solely to the EU. Both in matters ruled by ordinary legislative procedure and for those that require unanimity, the implementation of the possibilities allowed by the Treaties requires a quantity of important legal acts (regulations, directives, decisions) for which the ECI can intervene as a driving element, especially when there are no proposals from the Council or legislative initiatives on these subjects from the EC: from the EU budget to the EU’s own resources, taxation matters, circulating of services, infrastructures for energy, research and the environment, immigration, social policies, cohesion and so forth;
- an area to deal with particularly attentively is that of strengthened cooperation, provided for and governed by Art. 20 TEU: the limited framework mechanism provided for by the Treaties has enormous potential, especially when considering that Art. 333 TFEU acknowledges the possibility of applying the ordinary legislative procedure (and therefore with the co-decision of the EP), if this is decided un-

animously by the Member States that have embarked on enhanced cooperation;

- in this respect, a series of innovative proposals could be made by means of the ECI, for instance, as regards the procedures for investing in infrastructure and about European taxes, in connection with the Euro and within the framework of the choices and proposals of the Euro-group;
- for structured cooperation in defence matters (Art. 46.6 TEU), too, the area to be covered is potentially extremely broad and decisive;
- it is advisable to extend the possibility of promoting an ECI to the elected Local Authorities (LAs) of the Member States, although modes of implementation still have to be defined. Two could be envisaged:
 - i. Once the requisites for transparency and systems to avoid non-instrumental or distorted use of the ECI (for propaganda, or specific demands) have been identified, the said LAs could collect signatures directly.
 - ii. LAs could support and facilitate the collection of signatures, without acting as organisers of the ECI pursuant to existing provisions, increasing visibility and actively pursuing political intermediation.

To make operatively viable the procedure for collecting signatures on innovative proposals – starting with a group of countries intent on progressing towards a federal union – it would be hoped that the many pro-Europe and Federalist organisations present in Europe will investigate some initiatives (few but incisive, or even just one), getting their followers involved in the questions.¹⁹⁴

The ECI Regulation has been adopted on 16 February 2011 and it shall apply from 1 April 2012. Now it should be implemented correctly, thus guaranteeing an actual opportunity for civil participation. EU's credibility would be seriously damaged by failing to fulfil its promises or by

¹⁹⁴ See P. Adriaenssens, "Which Should Be the First Federalist European Citizens' Initiative?", in *The New Federalist.eu*, 23 March 2011, <http://www.thenewfederalist.eu/Which-should-be-the-first-federalist-European-Citizens-Initiative#nb1>.

bureaucratic delays due to the required changes to be introduced nationally or in the Community.

The agreements recently reached in the triologue (EP–Council of the EU–EC) and the approval of the Regulation EU No. 211/2011 seem to herald a new era of hope and progress in the building of a political Europe as the EU is currently too divided, uncertain and wavering as it is faced with challenges of the present day world.¹⁹⁵

¹⁹⁵ For further details and news on ECI see, *Euractiv* ECI Dossier <http://www.euractiv.com/en/future-eu/european-citizens-initiative-links dossier-502067>; Pierre Fagnart, “Citizens’ Initiative: How It Works”, in *Europolitics*, 28 April 2011, <http://www.europolitics.info/institutions/citizens-initiative-how-it-works-art302593-33.html>. On ECI and direct democracy see: “Vox populi or hoi polloi? Does More Voting Necessarily Mean More Democracy? Peoples Power Has its Perils”, in *The Economist*, 28 April 2011, http://www.economist.com/node/18584396?story_id=18584396&fsrc=rss.

4.

Conclusion

*Tommaso Padoa-Schioppa**

If institutions are not animated by “human spirits”, nothing can prevent a society from succumbing to historical changes and disappearing. Institutions, while essential, are not enough. They need to be animated by internal vitality, otherwise can disappear, together with civilizations.

Democracy is a principle that has been interpreted differently over time, depending on geographical size and the political situation. It is not easy to find a common concept or experience of democracy.

Democracy primarily concerns persons, rather than a territory: there are several levels of government, so democracy is only achieved when it is present at every level.

Why do we talk about democracy at the EU level?

Two main issues have to be considered:

- a government that is effective can be illegitimate;
- a legitimate government can be ineffective.

Today, the EU suffers the most from a lack of effectiveness. In some political systems the basis of legitimacy is the legislative process (input legitimacy), while in others it is a government’s performance (output legitimacy).

The EU today lacks efficient performance rather than legitimate process. In other words, between the EU’s *demos* and its *kratos*, the latter is more of a problem than the former.

This lack of effectiveness is putting the EU integration process se-

* Notes drawn from the concluding remarks by Tommaso Padoa-Schioppa at the Workshop in Turin.

riously at risk. For the first time, there is a real danger of annulling past accomplishments. In other terms, the risk is not about further advancing, but about destroying what has been created. Without the euro, for example, the single market cannot survive.

However, this danger is also driving the EU to take steps to overcome its ambiguity. The crisis has set in motion forces of both destruction - for example the support for re-nationalization of specific policies - and of further construction. It is too early to assess which of the two will prevail.

As a result, it is a test for the EU institutions.

How can we assess EU institutions from a democratic point of view?

The Council of Ministers, in the domains in which it decides by unanimity, is an aggregation of national governments with no European legitimacy, whereas the European Parliament and the European Commission have that kind of legitimacy.

Considering the various roles of the actors and instruments examined in these three sessions of the workshop, their importance for the development of European democracy can be listed in the following, decreasing, order:

- (a) Parties are important, but they still remain national actors;
- (b) The ECI should be used, but it is a limited tool;
- (c) National parliaments are indispensable institutions, but are limited by national logics.

But there is also a fourth actor, the one that, in my opinion, has the most potential: the European Parliament. It is the institution where the forces of anti-desegregation should gather.

The European Parliament could break a coalition of the unwilling. The European Parliament can block the EU (on the budget or on the appointment of the new president of the European Commission). A total block for a few months could be better than twenty years of paralysis.

The Treaty of Lisbon has increased the powers of the European Parliament and there are signs that this will be perceived positively. The EP can raise the stakes and use its veto in positive ways.

What is needed is a greater separation of powers, so that each one can be more effective in its own task and, at the same time, having the existing powers play their roles more effectively.

Programme of the Workshop

Turin, November 3, 2010

- 08:50 *Meeting in the hotel lobby to walk to the conference venue*
- 09:15-09:30 WELCOME ADDRESS:
Anguel K. Beremliysky, European Commission Representation in Italy, Rome
- 09:30-09:45 INTRODUCTION - *Aim of the Initiative*
Gianni Bonvicini, Istituto Affari Internazionali (IAI), Rome
Umberto Morelli, Centro Studi sul Federalismo (CSF), Turin
Gaetane Ricard-Nihoul, Notre Europe, Paris
- 09:45-11:00 FIRST SESSION
The European Political Parties after Lisbon (Notre Europe)
Chair: *Gianni Bonvicini, Istituto Affari Internazionali (IAI), Rome*
Rapporteur: *Julian Priestley, Notre Europe, Paris*
Discussants: *Monica Frassoni, European Green Party, Brussels*
 Rudolf Hrbek, University of Tübingen
- 11:00-11:15 *Coffee break*
- 11:15-12:30 SECOND SESSION
The European Citizens' Initiative: challenges and threats (CSF)
Chair: *Gaetane Ricard-Nihoul, Notre Europe, Paris*
Rapporteur: *Antonio Padoa Schioppa, Centro Studi sul Federalismo (CSF), Turin*
Discussants: *Brendan Donnelly, The Federal Trust, London*
 Cesare Merlini, Istituto Affari Internazionali (IAI), Rome

12:30-13:15 *Lunch buffet*

13:15-14:30 **THIRD SESSION**

National Parliaments: the rise of awareness (IAI)

Chair: *Umberto Morelli*, Centro Studi sul Federalismo (CSF), Turin

Rapporteur: *Raffaello Matarazzo*, Istituto Affari Internazionali (IAI), Rome

Discussants: *Jean-Victor Louis*, University of Brussels
Renaud Dehousse, Sciences Po, Paris

14:30-15:15 **CONCLUDING REMARKS AND FINAL DISCUSSION**

The growing responsibility of the European Parliament towards the European citizens

Tommaso Padoa-Schioppa, Notre Europe, Paris

List of Participants

Maria Valeria Agostini	<i>Senate of the Italian Republic, Rome</i>
Salvatore Aloisio	<i>University of Modena and Reggio Emilia</i>
Anguel-Konstantinov Beremliysky	<i>European Commission, Representation in Italy, Rome</i>
Gianni Bonvicini	<i>Istituto Affari Internazionali (IAI), Rome</i>
Flavio Brugnoli	<i>Compagnia di San Paolo, Turin</i>
Anna Caffarena	<i>University of Turin</i>
Giancarlo Chevallard	<i>Paralleli - Istituto Euromediterraneo del Nord Ovest, Turin</i>
Michele Comelli	<i>Istituto Affari Internazionali (IAI), Rome</i>
Renaud Dehousse	<i>Sciences Po, and Notre Europe, Paris</i>
Brendan Donnelly	<i>The Federal Trust for Education and Research, London</i>
Monica Frassoni	<i>European Green Party, Brussels</i>
Andrea Gavosto	<i>Giovanni Agnelli Foundation, Turin</i>
Marco Gestri	<i>University of Modena and Reggio Emilia</i>
Mario Gioannini	<i>Compagnia di San Paolo, Turin</i>

LIST OF PARTICIPANTS

Giorgio Grimaldi	<i>University of Valle d'Aosta</i>
Rudolf Hrbek	<i>University of Tübingen</i>
Jennifer Hoff	<i>Notre Europe, Paris</i>
Alfonso Iozzo	<i>Centro Studi sul Federalismo (CSF), Turin</i>
Jean-Victor Louis	<i>University of Brussels, and TEPSA, Brussels</i>
Raffaello Matarazzo	<i>Istituto Affari Internazionali (IAI), Rome</i>
Cesare Merlini	<i>Istituto Affari Internazionali (IAI), Rome</i>
Umberto Morelli	<i>Centro Studi sul Federalismo (CSF), Turin, and University of Turin</i>
Antonio Padoa-Schioppa	<i>Centro Studi sul Federalismo (CSF), Turin, and University of Milan</i>
Tommaso Padoa-Schioppa	<i>Notre Europe, Paris</i>
Nicoletta Pirozzi	<i>Istituto Affari Internazionali (IAI), Rome</i>
Sergio Pistone	<i>Centro Studi sul Federalismo(CSF), Turin, and University of Turin</i>
Julian Priestley	<i>Notre Europe, Paris</i>
Gaetane Ricard-Nihoul	<i>Notre Europe, Paris</i>
Nicolò Russo-Perez	<i>Compagnia di San Paolo, Turin</i>
Anna Wohlfarth	<i>Bertelsmann Foundation, Gütersloh</i>

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