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EUROPEAN CITIZENS INITIATIVE- THE BASIC ELEMENT OF EUROPEAN PARTICIPATION DEMOCRACY

Nicoleta DIACONU¹

Abstract

The European Citizens' Initiative is one of the major innovations introduced by the Treaty of Lisbon, which aims to improve the participation of citizens of the European Union in the process of drafting European legislation.

The European Citizens' Initiative is a form of direct democracy and consists of an invitation addressed to the European Commission by European citizens to propose legislation on areas where the EU has the power to legislate.

According to Article 20 TEU, citizenship of the Union is established. Every citizen of the Union is a citizen of the Union. Citizenship of the Union does not replace national citizenship but is added to it.

European citizenship as a complementary prerogative of national citizenship and not a substitute for it.

The basic citizenship of any person is determined according to internal legal norms, and European citizenship is a consequence of holding a citizenship of a state that is a member of the European Union.

Keywords:

Citizens' initiative; participatory democracy; European citizenship; the European Parliament; national parliaments.

1. Evolution of participatory democracy in the European Union

a) Place and role of the European Parliament within the EU institutional system

During the historical evolution of the European Union, the European Parliament was the expression of democracy in the European Union. Since 1979, Members of the European Parliament have been elected by direct, free and secret vote by citizens of the European Union. Thus, the European Parliament became the democratic voice of the peoples of the European Union.

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The role of the European Parliament has increased in the course of European Community development and now, in accordance with the provisions of the Treaty of Lisbon, it has been exercising, together with the Council, legislative and budgetary functions².

If, initially, Parliament's powers were reduced to the exercise of institutional control, then its legislative powers grew progressively, with most of the European legislation currently being adopted through the ordinary legislative procedure, where the Parliament and the Council have equal decision-making positions.

Since the adoption of the Treaty of Lisbon, the role of the European Parliament in the exercise of its legislative function has increased significantly, by participating in the adoption of the legal acts of the European Union by the two legislative procedures provided for in Article 289 TFEU (previously described):

- Ordinary legislative procedure, Parliament's role being similar to the Council;
- Special legislative procedures, whereby Parliament is consulted or approves (as appropriate) the acts adopted by the Council.

In September 2001, the European Parliament endorsed the European Code of Good Administrative Behavior, which sets standards for EU institutions and bodies and their employees to deal with citizens in the European Union.

b) Role of National Parliaments in the European Union

Another element of democracy within the European Union is the involvement of national parliaments in the European Union's legislative process.

Under Article 12 TEU, national parliaments actively contribute to the smooth functioning of the Union:

- a) by being informed by the Union institutions and by receiving notifications of draft Union acts in accordance with the Protocol on the role of national parliaments within the European Union;
- b) respecting the principle of subsidiarity in accordance with the procedures laid down in the Protocol on the application of the principles of subsidiarity and proportionality;
- c) by participating, within the area of freedom, security and justice, in the mechanisms for assessing the implementation of Union policies and by

² Art.14 TUE.

engaging in political control of Europol and in the evaluation of Eurojust's activities;

d) by participating in the review procedures of the Treaties;

e) by being informed about applications for membership of the Union;

f) by participating in interparliamentary cooperation between national parliaments and the European Parliament, in accordance with the Protocol on the role of national parliaments in the European Union.³

The European Parliament and the national parliaments jointly define the organization and promotion of effective and regular interparliamentary cooperation within the Union.

c) Affirming the democratic principles of the European Union

The principle of equality for European citizens

In all its activities, the Union respects the principle of equality for its citizens, who enjoy equal attention from its institutions, bodies, offices and agencies. Every citizen of the Union is a citizen of the Union. Citizenship of the Union does not replace national citizenship but is added to it.⁴

The principle of representative democracy

The functioning of the Union is based on the principle of representative democracy⁵.

Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, who in their turn are democratically accountable either to national parliaments or to their citizens.

Every citizen has 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.⁶

Political parties at European level contribute to the formation of European political consciousness and expression of the will of the citizens of the Union.

³ The Protocol on the role of national parliaments in the European Union annexed to the Treaty of Lisbon contains provisions on information for national parliaments and on interparliamentary cooperation.

⁴ Art. 9 TUE

⁵ Art.10 TUE

⁶ Art.11 TUE

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

The institutions of the Union shall maintain an open, transparent and constant dialogue with representative associations and civil society.

In order to ensure consistency and transparency of Union action, the European Commission has wide stakeholder consultations.

The principle of transparency⁷ and the right of access to documents⁸

In order to promote good governance and ensure the participation of civil society, the institutions, bodies, offices and agencies of the Union shall act in a manner which best respects the principle of transparency.

The European Parliament meets in public sessions as well as the Council when it debates and votes on a draft legislative act.

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State shall have a right of access to the documents of the institutions, bodies, offices and agencies of the Union irrespective of the medium on which such documents are held, principles and conditions to be established in accordance with this paragraph.

The general principles and limits which, for reasons of public or private interest, govern the exercise of the right of access to documents shall be laid down by regulations of the European Parliament and of the Council, acting in accordance with the ordinary legislative procedure.

Each institution, body, office or agency shall ensure the transparency of its work and shall lay down in its rules of procedure specific provisions on access to its own documents in accordance with the regulations referred to in the second subparagraph.

The provisions of this paragraph shall apply to the Court of Justice of the European Union, the European Central Bank and the European Investment Bank only when exercising administrative functions.

The European Parliament and the Council shall ensure the publication of documents on legislative procedures under the conditions laid down in the regulations referred to in the second subparagraph.

d) Establishment of European citizenship

⁷ Art.15 TFUE

⁸ Art. 42 Charter of Fundamental Rights of the European Union.

The Maastricht Treaty introduces the notion of European citizenship as a complementary prerogative of national citizenship and not a substitution for it.

According to Article 20 TEU, citizenship of the Union is established. Every citizen of the Union is a citizen of the Union. Citizenship of the Union does not replace national citizenship but is added to it.

The basic citizenship of any person is determined according to internal legal norms, and European citizenship is a consequence of holding a citizenship of a state that is a member of the European Union.

This view was reinforced by the Treaty of Maastricht (Article F, paragraph 1), which states that "the Union respects the national identity of the Member States whose government systems are based on democratic principles."

Union citizens have the rights and obligations laid down in the Treaties. They enjoy, among other things,;

a) the right to move and reside freely within the territory of the Member States;

b) the right to vote and to stand as a candidate in the European Parliament as well as to local elections in the Member State in which they reside, under the same conditions as nationals of that State;⁹

c) the right to enjoy protection in the territory of a third country in which the Member State of which they are nationals is not represented by the diplomatic and consular authorities of any Member State under the same conditions as nationals of that State;

d) the right to petition the European Parliament,¹⁰ to address the European Ombudsman and the right to address the Union institutions and consultative bodies in any of the Treaty languages and to receive a reply in the same language.

⁹ However, there are a number of shortcomings in this area caused by national regulations on the granting of the right to vote in internal elections. Thus, some countries grant the right to vote to aliens (Denmark, the Netherlands), while others recognize this right only to their own nationals (France, Germany). For these reasons, there are a number of difficulties in exercising the right to vote, as any European citizen has the right to vote and to be elected in the European Parliament elections, regardless of the country in which he or she lives. The provisions of art. 190 par. 3 The EC Treaty, as amended by the Maastricht Treaty, reiterates the need to adopt a uniform procedure for eligibility and conduct of voting for all Member States. This provision has imposed constitutional changes in some states, including France

¹⁰ According to art. 128-130 of the Rules of Procedure of the European Parliament.

These rights shall be exercised under the conditions and limits defined by the Treaties and by the measures adopted for their implementation.

e) Right to good administration

Everyone has the right to a fair, equitable and reasonable treatment of his or her problems by Union institutions, bodies, offices and agencies.¹¹

This right shall include in particular: (a) the right of any person to be heard before any individual measure likely to prejudice him; (b) the right of any person to have access to his / her own file, respecting the legitimate interests of confidentiality and professional and commercial secrecy; (c) the administration's obligation to motivate its decisions.

Everyone has the right to reparation by the Union of the prejudice caused by its institutions or agents in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

Any person may write to the Union institutions in one of the Treaty languages and must receive a reply in the same language.

Within the European Union, the concept of good administration has been enunciated by the Court of Justice of the European Union, starting from the recognition of the general principles of law of the Member States.

The concept of European citizenship added new valences to the right to good administration.

The fundamental right to good administration was first regulated by the Charter of Fundamental Rights of the European Union, meaning the adaptation of the concept of good administration to contemporary realities.

f) European citizens' initiative

The European Citizens' Initiative is one of the major innovations introduced by the Treaty of Lisbon, which aims to improve the participation of citizens of the European Union in the process of drafting European legislation.

2. The legal framework for the exercise of the citizens' initiative in the European Union

The European Citizens' Initiative is a form of direct democracy and consists of an invitation addressed to the European Commission by European citizens to propose legislation on areas where the EU has the power to legislate.

¹¹ Art.41 Charter of Fundamental Rights of the European Union.

The Treaty of Lisbon marks a new stage in the process of creating an ever closer union among the peoples of Europe, where decisions are taken in full respect of the principle of transparency and as close as possible to citizens.

The regulations on the exercise of the citizens' initiative are as follows:

- Article 11 (4) of the Treaty on European Union, which states that "at the initiative of at least one million citizens of the Union who are nationals of a significant number of Member States, the European Commission may be invited to submit, within the limits his / her attributions, an appropriate proposal on matters where these citizens consider that a legal act of the Union is necessary for the application of the Treaties". The Treaty on European Union (TEU) strengthens the citizenship of the Union and further enhances the democratic functioning of the Union by providing, inter alia, that every citizen must have the right to participate in the democratic life of the Union through a European citizens' initiative.

- Article 24 (1) TFEU, according to which the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt provisions on the procedures and conditions necessary for the submission of a citizens' initiative within the meaning of Article 11 of the Treaty on European Union, including the minimum number of Member States from which citizens presenting such an initiative must come.

- The procedures and conditions to be met by the citizens' initiative are the subject of EU Regulation 211/2011 adopted by the European Parliament and the Council on 16 February 2011 (the "Citizenship Initiative Regulation")¹²

- The "Citizens Initiative" is defined in Article 1 of the Regulation as an initiative presented to the Commission in accordance with this Regulation, whereby the Commission is invited to present, within the limits of its powers, any appropriate proposal on matters for which citizens feel it is necessary a legal act of the Union for the implementation of the Treaties, which has been supported by at least one million eligible signatories from at least a quarter of all Member States;

¹² OJ L 65, 11.3.2011, p. 1). Consolidated Version of 28.7.2015.

3. The procedure for the exercise of the citizens' initiative

In order to launch a citizens' initiative, 7 EU citizens living in at least 7 different Member States who have reached the age¹³ of majority and are reunited in a "citizens' committee" are needed.

The Committee is the official organizer of the citizens' initiative and is in charge of conducting the procedure.

The Citizens' Committee needs to register its initiative on the Commission's website before starting to collect citizens' statements of support. After the registration is confirmed, the organizers have one year to collect the signatures. Also, according to Article 7 paragraph 1 of the Regulation, the signatories of a citizens' initiative must come from at least one quarter of the Member States.

Once an initiative has collected 1 million signatures reaching the minimum thresholds in at least 7 countries,¹⁴ the European Commission has to decide whether or not to take action.¹⁵

Under the provisions of the Regulation, Member States are required to designate the national authorities responsible for certifying online collection systems of statements of support. Also, for the implementation of the Regulation, Member States should designate a national authority to coordinate the verification of the data included in statements of support of their own citizens. In Romania, the Ministry of Communications and Information Society has been designated the authority responsible for the certification of online collection systems, and the Ministry of Administration and Internal Affairs has been responsible for checking the data included in the statements of support (HG 717/2012).¹⁶

The Commission will examine the initiative carefully. Within 3 months of receiving the initiative:¹⁷

- Commission representatives will meet with the organizers to enable them to explain in detail the issues raised by their initiative
- The organizers will be able to present their initiative in a public hearing at the European Parliament
- The Commission will issue an official response in the form of a communication explaining, where appropriate, what actions it will propose

¹³ The voting age is 18 years, except for Austrian citizens, who can vote at the age of 16.

¹⁴ The minimum thresholds are listed in Annex 1 of the Regulation. The minimum number of signatories for Romania, starting July 1, 2014, is 24,000 citizens.

¹⁵ Under Article 3 of the Regulation.

¹⁶ <https://www.mae.ro/node/4807> (30.05.2018)

¹⁷ <http://ec.europa.eu/citizens-initiative/public/basic-facts?lg=ro> (29.05.2018)

in response to the citizens' initiative and the reasons for its actions or the refusal to act.¹⁸

If the Commission decides to accept the citizens' initiative, the classical legislative procedure is initiated.

According to Article 22 of the Regulation on the Citizens' Initiative, every three years, the Commission must report on the application of the Regulation.

The first three completed citizens' initiatives were:¹⁹

- The Right2Water initiative²⁰ ("Water and sanitation is a human right! Water is a good public and not a commodity!") The organizers called on the Commission to ensure that all EU citizens enjoy the right to water and sanitation, exclude water supply and water resource management from the scope of internal market rules and liberalization and step up its efforts to guarantee universal access to water and sanitation throughout the world.

- The "One of us"²¹ initiative aims at respecting the dignity and integrity of the human embryo. The organizers have called on the European Union to ban and end the funding of activities involving the destruction of human embryos.

- The Stop Vivisection²² initiative gives European citizens the opportunity to express their disagreement with animal experiments, respecting human and animal rights.

- The "Prohibition of glyphosate and the protection of humans and the environment of toxic pesticides"²³

¹⁸ The answer will be formally adopted by the College of European Commissioners and published in all official languages of the EU.

¹⁹ <http://ec.europa.eu/citizens-initiative/public/initiatives/successful> (30.05.2018)

²⁰ Commission Communication, Brussels, 19.3.2014 COM (2014) 177 final. In the Communication, the Commission presented the actions it intends to take in response to the initiative.

²¹ Commission Communication, Brussels, 28.5.2014 COM (2014) 355 final. In the Communication adopted on 28 May 2014, the Commission explained that it had decided not to present a legislative proposal, given that the current funding framework, which was recently debated and approved by the EU Member States and the European Parliament, is the one suitable.

²² Commission Communication, Brussels, 3.6.2015 C (2015) 3773 final. The European Commission held a scientific conference in Brussels on 6-7 December 2016 to engage the scientific community and stakeholders in a debate on how to exploit the latest cutting-edge advances in biomedical research and other areas of research, on the development of scientifically valid non-animal approaches (alternatives to animal testing). <http://ec.europa.eu/citizens-initiative/public/initiatives/successful/details/follow-up/2012/000007/ro?lg=ro>

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²³ Commission Communication, Strasbourg, 12.12.2017 C (2017) 8414 final. The Commission has committed itself to presenting a legislative proposal to improve the transparency of scientific assessments and the quality and independence of the scientific studies underlying the risk assessment by the European Food Safety Authority (EFSA).