



Title: Is the European Citizen's Initiative a Serious Threat for the Community Method?

Author(s): Nikos Vogiatzis

Source: European Journal of Legal Studies, Volume 6, Issue 1 (Spring/Summer 2013), p 91-107

Abstract:

This article proceeds to a normative claim that the potential of the European Citizens' Initiative (ECI) – an instrument expected to increase democratic legitimacy in the EU – should be evaluated in the light of the post-Lisbon Community method and not as an additional 'opportunity structure for citizens' participation'. The first section explains why the Community method is primarily a mechanism of 'output legitimacy', even after the Lisbon Treaty. Furthermore, the legal framework of the ECI (notably the Regulation 211/2011 but also the Commission's Green Paper preceding the adoption of the Regulation) is provided. The evaluation section concludes that the ECI's legislative framework, far from an instrument of direct democracy, perhaps an additional 'opportunity structure', cannot affect the Community method nor seriously increase democratic legitimacy at the EU level due to the – simultaneous – presence of two thresholds: the intactness of the Commission's legislative monopoly and the burdensome formalities imposed upon citizens and organisers.

IS THE EUROPEAN CITIZENS' INITIATIVE A SERIOUS THREAT FOR THE COMMUNITY METHOD?

Nikos Vogiatzis*

TABLE OF CONTENTS

1.	INTRODUCTION: WHY THE ECI SHOULD BE SEEN ALONGSIDE THE STATUS OF THE POST-LISBON COMMUNITY METHOD	92
2.	THE COMMUNITY METHOD AS A MECHANISM OF (PRIMARILY) OUTPUT LEGITIMACY.....	93
3.	THE ECI'S LEGAL FRAMEWORK: TREATY OF LISBON, THE COMMISSION'S GREEN PAPER AND REGULATION 211/2011	96
4.	EVALUATION OF THE LEGISLATIVE FRAMEWORK: A SYMBOLIC INTRODUCTION WHICH CANNOT INCREASE THE DEMOCRATIC LEGITIMACY OF THE COMMUNITY METHOD.....	100
4.1	The Intactness of the Commission's Agenda Setting Monopoly	101
4.2	The Burdensome Formalities Imposed upon Citizens and Organisers	103
4.3	Some Thoughts on the ECI as an Addition to Existing 'Structures for Participation'	105
5.	CONCLUSIONS.....	106

* PhD Researcher in Law, University of Hull. This is a widely revised version of a paper firstly presented in June 2011 at the UACES Student Forum Annual Conference at the University of Surrey. For comments on the first version, beyond the participants of the conference, I would also like to thank Dr Marton Varju and Dr Elizabeth Monaghan. Many thanks also go to the anonymous reviewers for further improvement. All errors remain mine.

1. INTRODUCTION: WHY THE ECI SHOULD BE SEEN ALONGSIDE THE STATUS OF THE POST-LISBON COMMUNITY METHOD

When the Lisbon Treaty entered into force on December 1st, 2009, the students of the European Union were particularly interested in the potential of the long promised, discussed and publicized ‘European Citizens’ Initiative’ (ECI), ie the possibility of one million citizens to contact the Commission in order to initiate the decision-making process. Would it mark a new democratic chapter in the life of the EU’s decision-making or would it be a symbolic declaration of faith in the citizens of Europe?

This article suggests that the potential of the ECI should be evaluated in relation to its possible impact on the post-Lisbon Community method and not as an addition to the existing ‘opportunity structures for citizens’ participation’.¹ Two principal reasons could be identified. First, undeniably the purpose of the ECI is to produce legislation and this can be confirmed by a series of provisions.² The European Parliament referred to the citizens’ initiative as ‘a means of exercising public sovereign power in the area of legislation’.³ This is clearly stated in the Commission’s online interactive guide, ‘If the Commission decides to follow your initiative [...] the legislative procedure starts’.⁴ Therefore its purpose is to directly affect the Union’s decision-making processes, where the Community method’s presence has admittedly become dominant. Second, and equally important, it appears that the EU institutions (and in particular the Commission) have recognized the need of the Community method to follow a different path. In the well known White Paper on European Governance,⁵ there were explicit references to the shortcomings of the Community method, which should take in the future a ‘less top-down approach’, characterized by openness, clarity and interaction with the regional level, in order to help reduce the state of alienation between the citizens and the Union’s work and eventually meet their expectations.⁶ Similarly, in a Communication on the future of the Community method, the shortcomings of the latter were summarized by the Commission as follows, ‘It [the Community method] has proved its *effectiveness* and must preserve it. It must gain in terms of *democratic legitimacy*. Future reforms of the treaties will therefore need to look at *renewing the Community method*’.⁷ Third, and related to the above, it is suggested that an instrument designed primarily to involve citizens in decision-making will increase democratic legitimacy only if it is going to contribute to nothing less but exactly this; affect decision-making and in particular the Community method. I return to this point in the penultimate section of this contribution.

¹ See Michael Nentwich, ‘Opportunity Structures for Citizens’ Participation: The Case of the European Union’ in Albert Weale and Michael Nentwich (eds), *Political Theory and the European Union: Legitimacy, Constitutional Choice and Citizenship* (Routledge 1998) 125 – 140.

² As art 11.4 TEU verifies, but also art 4.2(b) of Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative [2011] OJ L 65/1 (Regulation). Besides, as will be seen below, the organisers of the ECI should specify the Treaty provisions that enable the Commission to act, whereas they may optionally submit a draft legal act to the Commission.

³ European Parliament 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 [2009] (Resolution).

⁴ <ec.europa.eu/citizens-initiative/public/how-it-works/answer?lg=en> accessed 11 January 2013.

⁵ Commission of the European Communities, ‘European Governance: A White Paper’ [2001] COM 428 (White Paper)

⁶ *ibid* 4 and 7.

⁷ Commission of the European Communities, ‘Communication on the Future of the European Union – European Governance: Renewing the Community Method’, [2001] COM 727 final, 8 (emphasis in the original).

A discussion on the EU's insufficient democratic legitimacy and its nature exceeds the purposes of this study.⁸ One thing is certain, the debate is far from outdated, not only in scholarly terms⁹ but also in discourses by national and EU leaders in the context of the current crisis.¹⁰ For present purposes, if we accept first, that the Union's decision-making, placing centrally the Community method, is still widely based on 'output' legitimacy mechanisms (efficiency) rather than 'input' mechanisms (processes)¹¹ and second, putting aside scholarly accounts, that the Union's institutions and in particular the Commission has highlighted – as shown above – the need for a less top-down approach with a view to involving the citizens and thus gain in democratic legitimacy, then it is pivotal to examine to what extent the citizens' initiative strengthens the input side of democracy at Union level.

Given that the contribution this article aims at making resides in the possible impact of the ECI upon the Community method, it is opportune to delimitate from the start the two ways in which this could take place. On the one hand, the ECI could penetrate to the Community method – from a pragmatic perspective – by affecting the agenda-setting monopoly of the Commission. On the other hand and in a broader context, a *flexible* initiative that would prioritize the involvement of the European citizens without imposing unnecessary thresholds could add to the overall improvement of the democratic character of the EU process of decision-making. Thus, before any assessment, it is crucial to present the main features of the Community method with a view to demonstrating how the method is a mechanism of primarily output legitimacy (see next section). This section will be followed by the provisions on the ECI, focusing on the Treaties, the Commission's Green Paper and the Regulation 211/2011. The final section will attempt to answer the research question of the article, namely whether the ECI could offer any alternatives to the current framework of a largely output-oriented Community method.

2. THE COMMUNITY METHOD AS A MECHANISM OF (PRIMARILY) OUTPUT LEGITIMACY

The Community method has been the cornerstone of the production of transnational law of a multilevel polity, the EU. An extensive exposition of its features appears unnecessary.¹² The focus of this contribution will therefore shift to the demonstration of its output-oriented character. As a preliminary remark, nonetheless, one may distinguish between the Community method *stricto sensu* and the Community method *lato sensu*. The latter could be defined as follows: beyond the minimum version of decision-making presented in the White Paper, there is a whole cycle of preparation for the Commission before the actual activation

⁸ But see a comprehensive overview in Beate Kohler-Koch and Berthold Rittberger (eds), *Debating the Democratic Legitimacy of the European Union* (Rowman and Littlefield, 2007). Furthermore, as Philippe Schmitter wisely put it, legitimacy is 'invoke[d] [...] when it is missing or deficient'. See Philippe C Schmitter, 'Can the European Union be Legitimised by Governance?' (2007) 1 EJLS 1.

⁹ Compare for instance the recently published paper by Schmidt, where she inserts the notion of 'throughput legitimacy', in other words 'governance *with* the people': Vivien Schmidt, 'Democracy and Legitimacy in the European Union Revisited: Input, Output *and* "Throughput"' [2012] Political Studies 1-21 and references cited therein.

¹⁰ Giovanni Moro (ed), *The Single Currency and European Citizenship: Unveiling the Other Side of the Coin* (Continuum 2013, forthcoming).

¹¹ Fritz Scharpf, *Governing in Europe: Effective and Democratic?* (OUP 1999).

¹² One might wish to consult the White Paper, 8; Giandomenico Majone, *Dilemmas of European Integration: The Ambiguities and Pitfalls of Integration by Stealth* (OUP 2005) and recently Renaud Dehousse (ed), *The Community Method: Obstinate or Obsolete?* (Palgrave Macmillan 2011).

of its initiative right, which runs from ‘agenda-setting’ to ‘policy formulation’ (the discussion of the alternatives) and *vice versa*.¹³

The Commission claimed that the Community method *stricto sensu* respects representative democracy, because the European Parliament represents the citizens of the Union, while the Council represents the member states.¹⁴ As Lord has shown, however, the so-called ‘dual representation’ is to a certain extent utopian, given that the elections for the European Parliament are considered as second-order, with very limited campaigns and debates on European issues,¹⁵ whereas it would be rather difficult to prove that national voters, when electing their governments, take into account to a considerable degree the performance or the agendas of their candidate-ministers in the Council.

More importantly, however, the Commission, along with scholarship, understands that the Community method widely favours efficiency, trying ‘to arbitrate between different interests’.¹⁶ This is in line with the classic Majone view, that the EU is a ‘regulatory model’ sacrificing democracy for ‘efficiency-oriented policies’ which, at the end of the day, leave no member state on the losing side and therefore, only popular support for a federal idea can fulfil the call for a truly democratic EU.¹⁷ In this context, as will be further demonstrated below, the Commission proposes bills that are likely to be accepted at the levels of the European Parliament and the Council. At the Council, the practice of ‘issue linkage’ among member states – with the assistance of Coreper – facilitates the consensual spirit of decisions and the resolution of conflicts.¹⁸ As Dehousse observes, ‘an ideological commitment to European integration’ is not imperative; even if member states adopt ‘a pure strategy of self-interest’, they still ‘could [...] support (limited) transfers of sovereignty to improve the efficiency of international policy-making’.¹⁹ Therefore, an outcome (output) that will leave most actors satisfied is the priority. Why efficiency, then?

Historically, the Community method has been, to a large extent, an evolution of the Monnet method without producing the overall spill over effect that Monnet and other fathers of European integration had predicted.²⁰ According to Majone, supranational independent institutions, producing legally-binding decisions and bigger in competences in relation to international organizations known at that time, were particularly relevant in terms of integrating highly regulatory national markets and preserving the initial separation between politics and economics.²¹ The institutions largely play on a non-majoritarian basis, ignoring the government/opposition dimension and thus ‘the prime theme of the internal

¹³ Alasdair R Young, ‘The European Policy Process in Comparative Perspective’ in Helen Wallace, Mark A Pollack and Alasdair R Young (eds), *Policy-making in the European Union* (OUP 2010) 52-55.

¹⁴ White Paper 8.

¹⁵ Christopher Lord, ‘Democracy and the European Union: Matching Means to Standards’ (2006) 13 *Democratization* 668 – 684. See further Karlheinz Reif and Hermann Schmitt, ‘Nine Second-Order National Elections – A Conceptual Framework for the Analysis of European Elections Results’ (1980) 8 *Eur J Political Research* (1980) 3-44.

¹⁶ White Paper 8.

¹⁷ Giandomenico Majone, ‘Europe’s ‘Democratic Deficit’: The Question of Standards’ (1998) 4 *ELJ* 5-28.

¹⁸ Thomas König and Dirk Junge ‘Conflict Resolution in the Council by Linkage of Commission Proposals’ in Renaud Dehousse (ed) *The Community Method: Obstinate or Obsolete?* (Palgrave Macmillan 2011) 76-88.

¹⁹ Renaud Dehousse, ‘Conclusion: Obstinate or Obsolete?’ in Dehousse (ed) (n 12) 201.

²⁰ Brigid Laffan and Sonia Mazey, ‘European Integration: The European Union – Reaching an Equilibrium?’ in Jeremy Richardson (ed) *European Union: Power and Policy-Making* (Routledge 2006) 32-54.

²¹ Majone (n 12) 33-36 and 43-44.

political process is the contest among autonomous institutions over the extent and security of their respective jurisdictional prerogatives'.²²

In parallel, the Community method has not been static and concrete over the years. As the integration process was evolving, it has been subject to the shift of dynamics among institutions and member states. For instance, the establishment of Coreper and the highly debated comitology phenomenon have had an undeniable overall impact on the Commission's independence/defence of the European interest.²³ What is more, beyond its classic cases establishing direct effect and supremacy, the CJEU has admittedly – yet indirectly – co-shaped co-decision. A notable example is *Les Verts*²⁴ concerning the *locus standi* of the European Parliament, the latter coming out stronger in every Treaty reform from Maastricht onwards.²⁵ Furthermore, recent research demonstrates that the Commission is losing significantly vis-à-vis its legislative monopoly to the benefit of the European Council and the Council.²⁶

Accordingly, the Commission being a 'policy initiator' implies that it has the final word as regards the proposal (or not) of legislation, but this doesn't mean that it is unexposed to considerable pressures. As previously shown, the European Council's guidelines certainly affect the Commission's policy, and the same applies to the other two actors, the European Parliament and the Council (or its rotating Presidency), let alone the numerous pressure groups that deliberate with the Commission.²⁷ This phase, which is described here as the Community method *lato sensu*, may involve contacts with interest groups, 'expert' and 'consultative committees', invitations/political pressures from other EU institutions to legislate, publication of White and Green papers and respective feedback, and context-evaluation by the Commission.²⁸ In sum, a privileged networking that enables the Commission to figure out which policy proposal is likely to be accepted by the Council and the European Parliament and which one is likely to be rejected.²⁹ Therefore, the Commission does not propose *ex nihilo*, and certainly, this pivotal practice further increases the chances of effectiveness, or output legitimacy. And it is unquestionable that the Community method does not end there as beyond the Commission's initiative, one could refer to the comitology phenomenon,³⁰ the role of Coreper, contributions from the

²² *ibid* 50.

²³ Renaud Dehousse and Paul Maignette, 'Institutional Change in the EU', in John Peterson and Michael Shackleton (eds) *The Institutions of the European Union* (OUP 2006) 20-32.

²⁴ Case 294/83, *Parti écologiste 'Les Verts' v European Parliament* [1986] E.C.R. 1339.

²⁵ Jean-Paul Jacqué, 'Les Verts v The European Parliament', in Miguel Poiares Maduro and Loic Azoulay (eds) *The Past and Future of EU Law: The Classics of EU Law Revisited on the 50th Anniversary of the Rome Treaty* (Hart Publishing 2010) 316-323. In particular, on p 323, he argues: 'But one must recognise that the Court brought about a revolution, not only in granting Parliament capacity to be sued and, thus, opening the way to granting it standing to sue and then to the recognition in the Treaties of a status for Parliament equivalent to that of the Council and the Commission'. For further arguments on the 'transformation' of the Community method see Dehousse (n 19) 201-203.

²⁶ See Paolo Ponzano and others, *The Power of Initiative of the European Commission: A Progressive Erosion?* (Notre Europe 2012); Uwe Puetter, 'Europe's Deliberative Intergovernmentalism: The Role of the Council and European Council in EU Economic Governance' (2012) 19 *J Eur Public Policy* 162.

²⁷ Liesbet Hooghe and Neill Nugent, 'The Commission's Services' in John Peterson and Michael Shackleton (eds) *The Institutions of the European Union* (OUP 2006) 152.

²⁸ Neill Nugent, *The Government and Politics of the European Union* (Palgrave Macmillan 2006) 163-171 and 395-404.

²⁹ *ibid*.

³⁰ Christian Joerges and Jürgen Neyer, 'From Intergovernmental Bargaining to Deliberative Political Processes: The Constitutionalisation of Comitology' (1997) 3 *ELJ* 273-299.

Committee of the Regions or the Economic and Social Committee, and so on. The above exceed the objectives of this contribution.

On the post-Lisbon status of the method, one observes that the Treaty strengthens the Community method *stricto sensu* by abolishing the pre-existing three pillars, by renaming the co-decision legislative procedure to ‘ordinary legislative procedure’³¹ and by extending its application significantly. This signals the strengthening of the European Parliament, but not automatically a critical augmentation in democratic terms; as Weiler put it, legitimizing the process by relying on co-decision only ignores that the procedure is still under the control of the Council, which is the ‘ultimate legislator’.³² Concerning the subsequent extension of qualified majority voting (QMV) in the Council, different views have been expressed. Majone accentuates the delays in decision-making whenever QMV is used to the expense of unanimity,³³ whilst Bribosia finds that after Lisbon, ‘the Community method has not only been reasserted, but also reinforced’.³⁴ For present purposes, the differences are not substantial as Majone argues that the Community method should be even more efficient, and Bribosia that the status quo (an efficiency-oriented method) has been expanded *ratione materiae*.

To resume this discussion, the following thoughts might be of relevance; whereas the claims for the significance of the production of outcomes in a supranational multilevel polity retain their validity, the author subscribes to views suggesting that the EU should seriously consider, if not prioritize, input mechanisms as well,³⁵ not least since there might occur times when the EU might not be able to ‘deliver’ according to citizens’ preferences, thereby instantly bringing to surface the perennial issue of its insufficient democratic legitimacy.

The ECI presented an excellent opportunity to depart from the prioritization of considerations on the effectiveness of the method, as previously described, towards a more democratically legitimized Community method through the direct participation of citizens in the process. Given that the Lisbon Treaty left many aspects of the ECI unsettled, it would fall upon the Regulation – on the basis of Article 24 TFEU – to essentially determine the ECI’s direction. That being said, we may now focus on the legal framework of the ECI.

3. THE ECI’S LEGAL FRAMEWORK: TREATY OF LISBON, THE COMMISSION’S GREEN PAPER AND REGULATION 211/2011

As an introductory remark, it should be noted that along with referenda, initiatives are considered as the modern applications of direct democracy. Why is direct participation critical? As Dahl maintains, the ‘fundamental democratic dilemma’ of a polity is whether it

³¹ Art 294 TFEU.

³² JHH Weiler, *The Constitution of Europe: Do the New Clothes Have an Emperor? And Other Essays on European Integration* (CUP 1999) 38.

³³ Majone (n 12) 56-59.

³⁴ Hervé Bribosia, ‘The Main Institutional Innovations in the Lisbon Treaty’, in Stefan Griller and Jacques Ziller (eds) *The Lisbon Treaty: EU Constitutionalism Without a Constitutional Treaty?* (Springer 2008) 78. This seems to be the view of the Commission as well, which had stated that ‘[w]ith regard to *effectiveness, the scope of majority decision-making needs to be extended*. See Commission (n 7) 7 (emphasis in the original).

³⁵ Consider for instance Richard Bellamy, ‘Democracy Without Democracy? Can the EU’s Democratic “Outputs” be Separated from the Democratic “Inputs” Provided by Competitive Parties and Majority Rule?’ (2010) 17 J Eur Public Policy 2-19; Christopher Lord, *A Democratic Audit of the European Union* (Palgrave Macmillan 2004); Dimitris Chrysochoou, *Democracy in the European Union* (Tauris 2000); Óscar García Agustín, ‘Transnational Deliberative Democracy in the Context of the European Union: The Institutionalisation of the European Integration Forum’ (2012) 16 Eur Integration Online Papers <eiop.or.at/eiop/texte/2012-010a.htm> accessed 11 January 2013.

will sacrifice its size for participation, or inversely, whether it will grow and operate as a 'large-scale unit' leaving policy-making and decision-making to representatives and experts.³⁶ In this respect, it appears that the abovementioned tools of direct democracy are well suited to cover the shortcomings of representative democracy, whenever they occur.³⁷

In the European Union, with the well known and discussed characteristics of diversity and pluralism, the ECI figured among the provisions of the 'Constitutional' Treaty, but despite (or because of) the disappointment by the two negative referenda, it still features in Lisbon. Indeed, it is now part of the provisions on democratic principles of the EU (Title II TEU). Article 11.4 TEU states:

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.

Furthermore, in Article 24 TFEU, one reads that the ECI forms part of the European citizenship, but residency in the EU is not adequate; the signatories must be member state nationals, therefore (as Article 20 TFEU verifies) EU citizens. However, Dougan's excellent analysis of the legal and potentially constitutional implications of the ECI questions the exclusion of third country nationals and rightly points out that, after all, the right to petition the European Parliament is open to everyone.³⁸

On November 11th, 2009, the Commission published a Green Paper on the citizens' initiative,³⁹ which broadly outlined its views. The citizens' initiative (as a draft legislative Resolution) was voted by an emphatic majority by the European Parliament, receiving 628 out of 667 votes (94.2%),⁴⁰ demonstrating the European Parliament's will to support this new tool of political participation. On 16th February 2011, the European Parliament and the Council adopted the Regulation 211/2011, the legally binding version of the ECI, relying considerably on the Commission's Green Paper. In what follows, I examine in parallel the views of the Commission and the final provisions of the Regulation.

In the introduction of the Green Paper, the Commission set out its expected outcomes, while recognizing the absence of a European public sphere:

It will add a new dimension to European democracy, complement the set of rights related to the citizenship of the Union and increase the public debate around European politics, helping to bring a genuine European public space. Its implementation will reinforce citizens' and organized civil society's involvement in the shaping of EU policies.⁴¹

Furthermore, the preamble of Regulation 211/2011 states that the initiative should be 'clear, simple, user-friendly [...] so as to encourage participation by citizens and to make the

³⁶ Robert A Dahl, *On Democracy* (Yale UP 2000) 100-118.

³⁷ For a strong defence of this point see David Altman, 'Bringing direct democracy back in: toward a three-dimensional measure of democracy' (2012) 19 *Democratization* 1-27.

³⁸ Michael Dougan, 'What are we to make of the Citizens' Initiative?' (2011) 48 *CMLR* 1821-1822.

³⁹ Commission of the European Communities, 'Green Paper on European Citizens' Initiative', [2009] COM 622 final (Green Paper).

⁴⁰ Votewatch, 'European Parliament – Citizens' Initiative' <www.votewatch.eu/en/citizens-initiative-draft-legislative-resolution-vote-legislative-resolution-ordinary-legislative-pr.html> accessed 11 January 2013.

⁴¹ Green Paper 3.

Union more accessible'.⁴² Besides, modern technology should be a useful 'tool of participatory democracy', whereas data protection is a high priority.⁴³

The Green Paper recognized a few priorities regarding consultation. First, what should be the minimum number of member states? Examining the various options, the Commission's view was that the two opposite choices would be to either require a majority of member states or one quarter of them.⁴⁴ According to the Commission, the two pivotal explanations of the use of the phrase 'significant number of member states' in the Treaty were that the initiative should be, on the one hand, 'sufficiently representative of a Union interest' and on the other hand, a flexible mechanism which could actually work in practice. The Commission concluded that the balanced choice would be one third of member states. The Regulation slightly departs from this view, since it was finally decided that the minimum number of member states should be one quarter.⁴⁵ For now, this number is 7.

Further in the Green Paper, the Commission endorsed the viewpoint that the collection of signatures must be somehow proportional across member states, thus fixing additional minimums there; besides, this was in accordance with the 'spirit of the Treaties' and it would indeed reflect that the proposed legislation would represent a 'reasonable body of opinion' in each member state.⁴⁶ Instead of fixing a specific minimum number across member states, the Commission observed that the proportional option would be 0.2% of the population of each participating member state. The reason was that out of 500 million citizens (the population of the Union) 1 million is needed, which is 0.2%.⁴⁷ The Regulation somehow slightly departs from this position, stating that the minimum signatories per member state should be calculated in accordance with the number of MEPs multiplied by 750.⁴⁸ Thus, Annex I of Regulation confirms that countries electing, for instance, 22 MEPs (Belgium, Czech Republic, Greece, Hungary and Portugal) will have to certify that at least 16,500 of their nationals support the initiative.

A link with the European elections may also be identified as regards minimum age requirements for citizens. It was therefore proposed by the Commission to refer to the voting age for the elections for the European Parliament in each member state, which is 16 in Austria and 18 in the remaining states.⁴⁹ The proposal was eventually followed.⁵⁰

The Regulation stresses the role of organisers, who are 'natural persons forming a citizens' committee responsible for the preparation of a citizens' initiative and its submission to the Commission',⁵¹ including the responsibility of registering the initiative and collecting the signatures. Article 3 contains further prerequisites: EU citizenship is required (therefore a non-EU citizen cannot organize a campaign), while the members of the committee must be 'at least seven persons who are residents of at least seven different Member States' and they

⁴² Recital n 2 of Regulation.

⁴³ See Recitals n 14 and 21 of Regulation, respectively.

⁴⁴ Green Paper 4.

⁴⁵ Art 7.1 of Regulation. See also Recital n 5 of Regulation, where the rationale provided by the Commission is reproduced, without further justifications, 'In order to ensure that a citizens' initiative is representative of a Union interest, while ensuring that the instrument remains easy to use, that number should be set at one quarter of Member States'.

⁴⁶ Green Paper 5.

⁴⁷ Ibid. This was the view of the European Parliament as well. See Resolution (n 3).

⁴⁸ Article 7.2 of Regulation.

⁴⁹ Green Paper 6.

⁵⁰ Art 3.4 and Recital 7 of Regulation. The same age requirements apply to the organisers of the initiative (see below n 51).

⁵¹ Art 2.3 of Regulation.

should select ‘contact persons’ to connect with the institutions. Members of the European Parliament are excluded.

Another interesting point is to determine whether the submission of the initiative must have a certain legal form, eg a draft law, or whether it is sufficient to demonstrate clearly in the text the ‘subject-matter and objectives of the proposal’, leaving the further translation into a legal document to the Commission. Indeed, the Commission endorsed the second option⁵² and so does the Regulation. The submission of a ‘draft legal act’ is optional.⁵³

An online register will be maintained by the Commission in order to accommodate the registration of the initiatives.⁵⁴ The registration should be followed by a title, the subject matter, the objectives and the pertinent Treaty provisions that enable the Commission to act, the details of the organisers, and the exact sources of funding, all of which serve the overall transparency of the process.⁵⁵ The Commission will provide the organisers with a registration number within two months, after having performed a very critical control in terms of its content.⁵⁶ This control should work as a counter-balance to the initiative being used for populist purposes or manipulation. More specifically, it has to be verified that the proposal ‘does not manifestly fall outside the framework of the Commission’s powers to submit a proposal for a legal act’.⁵⁷ The term ‘manifestly’ points to the discretionary powers of the Commission, and also leaves the door open for a second, *ex post* control, once the signatures have been collected. In addition, the initiative should not be ‘manifestly abusive, frivolous or vexatious’⁵⁸ and should be in accordance with the values of the Union of Article 2 TEU, such as human dignity, the rule of law, fundamental rights and democracy.⁵⁹ In the case of a negative response, the Commission should provide thorough explanations, notably by identifying which of the abovementioned conditions were not met, and it should inform the organisers of any available means of action, notably Court remedies or the possibility of contacting the European Ombudsman.⁶⁰ Once registered, the initiative will become publicly accessible, in accordance with the principle of transparency.⁶¹ Transparency is also guaranteed via the absence of central EU funding, which will ensure the ‘independence and citizen-driven nature of initiatives’.⁶²

In relation to time limits, the Commission observed that the deadline should be ‘reasonable and sufficiently long so as to allow a campaign’.⁶³ The Regulation states that the organisers benefit from a 12-month period to collect the signatures.⁶⁴ The time limit can be characterized as fair and reasonable. The collection of signatures may be achieved via the completion of detailed forms indicating full name, residence, place of birth, nationality, date/signature and for some countries, a personal identification number.⁶⁵ An additional form should be completed by the organisers, along with the signatories’ form. Furthermore,

⁵² Green Paper 7.

⁵³ Annex II of Regulation.

⁵⁴ Art 4 of Regulation.

⁵⁵ Annex II of Regulation.

⁵⁶ The Regulation reflects here the Resolution of the European Parliament.

⁵⁷ Art 4.2 (b) of Regulation.

⁵⁸ Art 4.2 (c) of Regulation.

⁵⁹ Art 4.2 (d) of Regulation.

⁶⁰ Art 4.3 of Regulation.

⁶¹ Art 4.4 of Regulation.

⁶² Green Paper 10.

⁶³ *ibid.*

⁶⁴ Art 5.5 of Regulation.

⁶⁵ Annex III of Regulation.

if one opts for the online collection of signatures (incontestably a positive development), one should obtain a specific certificate for this, ensuring that the collection complies with Regulation 211/2011.⁶⁶ The Regulation applies from April 1st, 2012, whereas pursuant to its Article 15 the Commission has now uploaded on its website a list of competent national authorities to certify the statements of support and another list for the online collection system.⁶⁷ In typical bureaucratic fashion, the authorities will have to issue another certificate concerning the number of valid signatures in a maximum period of 3 months,⁶⁸ which should be afterwards forwarded to the Commission by the organisers, along with the forms concerning the content of the initiative.⁶⁹ Upon the receipt of the proposal, the Commission must publish it, meet with the organisers so as the key elements of the proposal be explained and finally, publish within 3 months a communication concerning the Commission's 'legal and political conclusions'.⁷⁰ Note that in the Green Paper, the Commission had pointed out that its role consists of an evaluation of the ECI before deciding 'whether the substance of the initiative merits further action from its side', followed by conclusions which should take the form of a communication, in a fixed deadline, according to the principles of good administration.⁷¹ A public hearing at the European Parliament⁷² will provide the organisers with the opportunity for further attention. This appears to be the only instance where the European Parliament engages in the process.⁷³

4. EVALUATION OF THE LEGISLATIVE FRAMEWORK: A SYMBOLIC INTRODUCTION WHICH CANNOT INCREASE THE DEMOCRATIC LEGITIMACY OF THE COMMUNITY METHOD

Before assessing the potential impact of the ECI on the Community method, it is useful to recall the threshold of this paper. The ECI, due to its nature, should affect decision-making and, more specifically, the Community method, the latter being output-oriented. Only an impact on decision-making will increase the democratic legitimacy of the Union, which needs to be looked at in the Commission's own words,⁷⁴ besides the numerous scholarly accounts. It is not suggested that the ECI should amount to a national instrument of direct democracy without counter-majoritarian adaptations, but it should at least *affect decision-making*.

As previously demonstrated, the ECI could affect the Community method via two avenues. It could either decisively influence the Commission's agenda-setting monopoly (or, should we choose to place the threshold lower, it could at least affect the Community method *lato sensu*) or it could facilitate the involvement of European citizens by refraining from imposing burdensome, unnecessary formalities, thereby adding to the overall improvement of the democratic character of the EU process of decision-making.

The title of this section has already set the tone, but it is opportune to refer in the first place to some provisions of the Regulation that point in the right direction: the control before the

⁶⁶ Art 6 of Regulation.

⁶⁷ <ec.europa.eu/citizens-initiative/public/implementation-national-level?lg=en> accessed 11 January 2013.

⁶⁸ Art 8.2 of Regulation.

⁶⁹ Art 9 of Regulation.

⁷⁰ Art 10 of Regulation.

⁷¹ Green Paper 12-13.

⁷² Art 11 of Regulation.

⁷³ Exclusive of the obligation of the Commission to submit a Report to the European Parliament every three years on the application of the Regulation. See Art 22 of Regulation.

⁷⁴ See above n 7

collection of signatures ensures that the values of the Union but also the Commission's competences are respected; the minimum number in each member state depends on the number of MEPs; the collection of signatures accurately does not exceed the time-limit of 12 months; from a democratic legitimacy perspective in particular, the wide application of the principle of transparency at all the levels of the process and the possibility for the online collection of signatures – certainly a faster mechanism – add some limited elements of democratic legitimisation to the broader picture of decision-making in the EU.

In what follows, the criticism will focus on two main issues, namely the possibility of the Commission to set aside one million signatures and the widespread existence of formalities. The simultaneous presence of both, it is argued, undermines the potential of the ECI in relation to the abovementioned threshold.

4.1 The Intactness of the Commission's Agenda Setting Monopoly

I will subscribe from the start to the viewpoint that the ECI, as presented in the Lisbon Treaty and more importantly in Regulation 211/2011, is first and foremost a mechanism of transnational participatory, rather than direct democracy.⁷⁵ Indeed, the European model of the citizens' initiative is a 'non-binding agenda-setting' version⁷⁶ differing from most of member states' analogous mechanisms, where citizens can forward the proposal directly to the legislative chamber, an option which is not possible at the European level due to the presence of the Commission.⁷⁷ According to one view, the European initiative is not a proper 'popular legislative initiative' for the above reasons – the EU policymakers do not trust their citizens 'to initiate the decision-making process' – being in the risk to be classified as a more sophisticated right to petition the European Parliament.⁷⁸ The European Parliament had highlighted this danger, citizens must identify the differences between the two instruments and the eventual Regulation should point to that direction.⁷⁹

Subsequently, it appears incontestable that the major institution that will deal with the ECI has been decided to be the European Commission; in other words, the success of the story has been entrusted to the Commission. The Commission will issue reports every three years, and further to Article 290 TFEU, it may amend the Annexes of the Regulation using delegated acts,⁸⁰ leaving a right to revocation or objection to the European Parliament and the Council,⁸¹ as a counter-balance to the Commission's powers. One might wonder why the Commission would need to be the responsible EU institution for the ECI, given the Commission's perception among citizens as a technocracy that cannot reach the European citizens. The European Parliament could be a valid alternative. The overwhelming voting percentage at the European Parliament (94.2%) is perhaps another indication that the

⁷⁵ See Miguel Sousa Ferro, 'Popular Legislative Initiative in the EU: *Alea Iacta Est*' (2007) 26 YB Eur L 355 - 385 and in particular a comprehensive table on p 360; see also Janice Thomson, "A Space inside Europe for the Public" before "A European Public Space": The European Citizens' [2011] Initiative and the Future of EU Public Engagement, online: <www.involve.org.uk/wp-content/uploads/2011/03/ECI-A-Space-Inside-Europe-for-the-Public.pdf> accessed 11 January 2013; Paolo Ponzano, 'A Million Citizens can Request European Legislation: A *Sui Generis* Right of Initiative' [2011]: <blogs.eui.eu/eudo-cafe/a-million-citizens-can-request-european-legislation-a-sui-generis-right-of-initiative.html> accessed 11 January 2013; Dougan (n 38), 1807 and 1834.

⁷⁶ Thomson (n 75) 3.

⁷⁷ Ponzano (n 75).

⁷⁸ Sousa Ferro (n 75) 360 and 376.

⁷⁹ Resolution (n 3).

⁸⁰ Art 16 of Regulation.

⁸¹ Arts 18 and 19 of Regulation, respectively.

European Parliament was enthusiastic to make efforts so as to boost the possibilities of this new instrument. Furthermore, given the limited participation in European elections, the active involvement of the European Parliament in the initiative could be a good opportunity to re-connect with citizens.

Furthermore, and related to the above, it appears that the Commission has complete discretionary powers in relation to the handling of the initiative, its only obligation being to justify and explain the possible absence of action (or inversely the action), 'the Commission should explain in a clear, comprehensible and detailed manner the reasons for its intended action, and should likewise give its reasons if it does not intend to take any action'.⁸² From a direct-democratic perspective, this is an obvious shortcoming. While the first scanning in relation to the admissibility, *before* the collection of signatures is totally understood, the eventual rejection of the initiative on the basis of merits will leave citizens, EU democracy supporters and civil society organizations largely disappointed. Accordingly, the first level of scrutiny (*ex ante* approval in procedural and substantial terms) should ensure that even if citizens ask for anything, or act further to populist manipulation, that proposal will not be forwarded. Imagine, for example, a campaign against fundamental rights or an action which falls outside the scope of the EU competences as described now in Title I of the TFEU. However, upon the collection and verification of signatures, the Commission should have been obliged to start the respective legislative procedure and subsequently accept the replacement of its monopoly, a scenario which would indeed affect the initiative part of the Community method. One should not forget that even under this scenario, there would still be room for deliberation in the Council and the European Parliament. In order to become EU law, the proposal would still have to pass by the two Institutions, which further ensures a final round of scrutiny,⁸³ however not performed by the Commission.

Laurent argues that the Commission needs to act with 'prudence' and to apply the standards of 'sincere cooperation', in order to avoid a perception of the instrument as a 'democratic illusion', from the citizens' perspective.⁸⁴

Thus, the European Parliament's reference to the ECI as 'a means of exercising public sovereign power in the area of legislation'⁸⁵ was not followed by far. It is striking that none of the abovementioned documents (Regulation 211/2011, but especially the Commission's Green Paper, or even the Resolution of the European Parliament)⁸⁶ make any recommendation or provide insight as to how the Commission should use its discretionary powers in relation to the final decision on the initiative. This could perhaps be regarded as a manifestation of the willingness of all institutions to leave the Community method 'undamaged'. On the question whether, from a legal perspective, it could (or should) be otherwise, divergent lines of argumentation may be identified. Ponzano answers in the negative, stressing the 'particularities of the European Union's institutional system', and

⁸² Recital n 20 of Regulation.

⁸³ If the act indeed falls under the scope of the ordinary legislative procedure.

⁸⁴ Sylvain Laurent, 'Le droit d'initiative citoyenne : en attendant l'entrée en vigueur de la Constitution européenne' (2006) 497 *Revue du Marché Commun et de l'Union Européenne* 225 (author's translation).

⁸⁵ Resolution.

⁸⁶ One could add here the contribution of the European Ombudsman to the Commission's Public Consultation, where in brief he argued that he is willing to supervise the Commission's stance towards the admissibility stage of the initiative, which is a purely legal issue, contrary to the final assessment which is a political matter and should be dealt with by the European Parliament. See European Ombudsman 'Contribution to the Public Consultation on the European Citizens' Initiative': <www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/4592/html.bookmark> accessed 11 January 2013.

inviting us not to underestimate that the citizens have been granted a right equivalent to the right both the European Parliament and the Council enjoy.⁸⁷ Dougan argues that ‘it always seemed doubtful that [the ECI’s Regulation] could lawfully have been used to go much further’ without ‘infring[ing] the Commission’s institutional prerogative of legislative initiative’.⁸⁸ Sousa Ferro in his sceptical account accentuates the policy-oriented issues that occurred during the Constitutional Convention, namely the undesirability of introducing a popular legislative initiative without extending accordingly the right of the European Parliament.⁸⁹ That being said, and regardless of a definitive answer to this interesting question, one observes that, in the context of a *de facto* ‘progressive erosion’ of the Commission’s legislative monopoly discussed above, which is widely perceived as a natural evolution of the method, it would need to fall upon the ECI to stick to the formal observation of the Commission’s prerogative.

Besides, the whole round of policy-preparation (or, the Community method *lato sensu*) can difficultly be affected. The Commission has practically 18 months after the registration (12 months for the collection, 3 months for the verification and another 3 months after the submission and until the communication) to form its final position, which is sufficient time to seek for the abovementioned well-established consultation practices. Upon the submission, there is a time limit of only 3 months, but we can estimate that the Commission might already possess the necessary information to assess the potential of the initiative well in advance of the deadline of 12 months. Also, the public hearing of Article 11 before the European Parliament could be seen as an additional source of networking. What is more, the Commission may decide to reject the proposal even by suggesting that this preparatory phase is incomplete and that it needs more time to decide on the substance; according to the spirit of the Regulation, it appears that a well justified/explained conclusion of this kind would be totally acceptable (of course the danger of maladministration is always present for the Commission).

4.2 The Burdensome Formalities Imposed upon Citizens and Organisers

Let us now turn to the second leg of our examination, namely an assessment on the thresholds of the citizens’ initiative. It was previously argued that the ECI could perhaps provide an alternative to the current system of decision-making, had it not been designed as a mechanism where unnecessary formalities would have been imposed. In this context, I subscribe to the concerns of civil society,⁹⁰ adding that the instrument is in the danger of becoming quite impractical to use. A synoptic presentation of the prerequisites is worth mentioning: a minimum number of member states; a minimum number of signatories per member state; requirements for the citizens’ committee; the registration/registration number; the receipt of a certificate for the online collection; the receipt of a certificate verifying the statements of support; the completion of detailed forms; and of course, the clarification of the authorities of member states in the first place. On the one hand, it is understood that the EU officials wish to verify the validity of the signatures and the levels of actual support across member states. On the other hand, the overall process does not sound user-friendly and appealing. One would expect more simplified procedures for a new tool promising to boost political participation.

⁸⁷ Ponzano (n 75).

⁸⁸ Dougan (n 38) 1842.

⁸⁹ Sousa Ferro (n 75) 375.

⁹⁰ <www.act4europe.org/code/en/policy.asp?Page=267&menuPage=214> accessed 11 January 2013.

More in detail, the choice of the minimum number of member states was based on an incomplete analysis which in any case did not consider the present obstacles for political participation at the EU level. The Regulation merely declares that one quarter of member states ensures simultaneously representativeness and flexibility.⁹¹ The Commission's position, expressed in the Green paper (one third of member states), was based on references to rather irrelevant articles of the Lisbon Treaty,⁹² or experiences from one EU (Austria) and one non-EU (Switzerland) country. However, derogations from this rule could have been provisioned, with a view to enhancing the chances of appropriate endorsement and therefore citizens' involvement. For instance, in areas of regional interest (eg an environmental issue in Scandinavia or in the Adriatic Sea), since it might be difficult to launch a pan-European action, an initiative from the nationals of the member states directly concerned could have been provisioned. In fact, this argument could indeed stem from the abovementioned Protocol on subsidiarity, given that Article 2 states that, '[b]efore proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged'.

In addition, as previously explained, the responsibility to verify the authenticity of each signature shall remain with the member states, for their respective citizens. However, the Commission was preoccupied to impose certain pan-European administrative provisions in the first place, as a choice between 'full harmonisation of procedural requirements' and member-state flexibility, because this 'approach could preserve the European-wide nature of the citizens' initiative'.⁹³ One might be somewhat sceptical as to whether, by preventing member states from utilizing flexible mechanisms, the Commission indeed struck the right balance there.

What is more, the capability of the organisers to withdraw the initiative after the registration, but before its submission⁹⁴ is partly problematic as well, giving the impression that the proposal 'belongs' to the organisers, instead of citizens, although it was the European Parliament that suggested this provision. A more justifiable option would be to leave the process open after the registration. One cannot entirely preclude this scenario as once the initiative is published, on highly sensitive issues, the organisers could be subject to diverse political pressures. Nonetheless, their eventual decision to withdraw cannot prevail over the voice of thousands of citizens. Accordingly, as Dougan asserts, the organizational prerequisites imposed by the Regulation render 'the prospect of NGOs monopolizing whatever agenda-setting influence might be squeezed from the new [E]CI a real one'.⁹⁵ Inversely, the European Parliament had proposed that any statement of support could be withdrawn before the expiration of the period of 12 months.

In a broader context, it has been supported that 'modern citizens are, on the whole, better educated', demand direct involvement and there is evidence of this 'in declining voter participation and collapsing political party membership'.⁹⁶ They have enormous access to information and they prioritize accountability; for instance, the *Indignados* exercised

⁹¹ Recital n 5 of Regulation.

⁹² The 'enhanced cooperation' mechanism and the involvement of national parliaments in the observance of the subsidiarity principle, as defined in Art. 7.2 of the Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality of the Lisbon Treaty.

⁹³ Green Paper 7-9.

⁹⁴ Art 4.5 of Regulation.

⁹⁵ Dougan (n 38), 1833.

⁹⁶ Thomson (n 75).

considerable pressure in Spain, Greece and elsewhere. Generally, an evolution worth noticing is, according to della Porta, the emergence of European movements and various forms of activism, which do not question the European polity as such, but rather the quality of decision-making.⁹⁷ Applying these thoughts to Regulation 211/2011, it is arguably unpromising that the final framework of the ECI overlooked the possibilities for a more direct involvement.

To put it differently, one could understand either a less formal/more flexible process and the Commission's initiative monopoly remaining unaffected, or a strict procedure with various levels of scrutiny, but the eventual outcome being the submission of the proposal by the Commission to the European Parliament and the Council.⁹⁸ But the inclusion of both thresholds gives us grounds to assume that for the EU policymakers and despite the rather generous promises, the citizens' involvement in decision-making is still not a priority. Eventually, one can still hope that one million signatures of seven member states under such formalities are a heavy political input and it would be really surprising to see the Commission finally rejecting the initiative (see more on this point below). What the Commission could opt for, though, would be to retain the principal idea – the rationale – of the proposal and amend some specific (or crucial) details. In any case, only the Commission's actual policy on this matter will tell. What we do know, nonetheless, is that the legal framework, which is under evaluation in this contribution, leaves in principle ample room for discretion to the European Commission.

4.3 Some Thoughts on the ECI as an Addition to Existing 'Structures for Participation'

Finally, I shall briefly refer to a few more optimistic accounts on what appears at first sight a different in nature, yet equally important, path of assessment; the possibilities for deliberative/participatory democracy, inclusive of an active civil society dialogue on EU matters and/or 'the Europeanisation of national public discourses'.⁹⁹ One preliminary enquiry arises as follows: if the purpose was to add another opportunity for participation, why the ECI had to be entitled an 'initiative' and not, for instance, a Forum for EU-wide consultation? This would lower expectations for legitimisation, since the word 'initiative' inevitably points to a certain impact on legislation. Currently, as observed by at least two accounts,¹⁰⁰ a petition to the European Parliament is more user-friendly and inclusive *ratione personae* than the ECI, while essentially amounting, from a legal perspective, to the same result.

Putting comparisons aside, a vicious cycle might emerge and this points to the formalities of the ECI in how to foster a European public sphere (an EU-wide mobilisation) without a pre-existent civic *demos* and public sphere? The online collection of signatures appears as the way forward, with any consequences for citizens still not familiar with new media.¹⁰¹ The

⁹⁷ Donatella della Porta, 'The Emergence of European Movements? Civil Society and the EU' (2008) 3 EJLS 1-37.

⁹⁸ Assuming that the act falls under the ordinary legislative procedure, which is a very likely scenario.

⁹⁹ See CEPS and others, *The Treaty of Lisbon: A Second Look at the Institutional Innovations* (Brussels, 2010) 131, online: <www.ceps.eu/book/treaty-lisbon-second-look-institutional-innovations> accessed 11 January 2013; recently Elizabeth Monaghan, 'Assessing Participation and Democracy in the EU: The Case of the European Citizens' Initiative' (2012) 13 Perspectives on Eur Politics and Society 285-298.

¹⁰⁰ Soussa Ferro (n 75); Dougan (n 38).

¹⁰¹ See a recently published paper on this topic by Sèphane Carrara, 'Towards e-ECIs? European Participation by Online Pan-European Mobilization' (2012) 13 Perspectives on Eur Politics and Society 352-369.

Commission should be credited for temporarily providing its servers for organisers, in order to facilitate the online collection of signatures.¹⁰²

However, one could still argue that despite the possibilities for a significant EU-wide communicative interaction and dialogue that are indeed opening up (albeit in an unnecessarily formalistic context), any prospects for input legitimacy would be instantly undermined by a decision of the Commission to reject the proposal after the collection of signatures. This inevitably brings us back to the main argument of this contribution, namely to the normative claim on the ECI's link with the Community method and the effect on decision-making. Thus, since the instrument is legislative in nature, and since the formalities imposed by Regulation 211/2011 cannot be overcome now, the only viable option appears – again – to be the Commission setting aside *de facto* its discretion on legislative monopoly to the benefit of one million citizens or more. One should acknowledge that it is not an easy policy choice, but it is admittedly a choice that would increase the Commission's own legitimacy as well. For that to happen, it would merely suffice that the messages on the ECI website be followed, the ECI 'allows *one million EU citizens* to participate *directly* in the development of EU policies' – 'You can set the agenda!'.¹⁰³

5. CONCLUSIONS

Any assessment arguably depends on the threshold one will employ, and this applies to this contribution as well. If one chooses to evaluate the ECI as an addition to existing opportunity structures for participation, one might share the optimism occasionally expressed, though one might still need to identify what more the ECI has to offer (apart from a complicated procedure) when compared with the right to petition the European Parliament (even in that case, it has been shown why the setting aside of the Commission's legislative monopoly is necessary for legitimisation purposes).

On the contrary, this paper focused on the purpose of the ECI, in other words decision-making and legislation, where the post-Lisbon Community method remains preponderant. It was found that the ECI's legislative framework, unsurprisingly, creates an instrument far from the field of direct democracy, in a context where the Community method remains widely unaffected. More in detail, it was demonstrated that it is rather unlikely for the ECI to 'threaten' the Community method *stricto sensu*, by affecting the Commission's agenda-setting monopoly or the range of discretion of the Commission and increasingly of other institutional actors concerning the preparatory phase of decision-making (*lato sensu*); simultaneously, from a broader perspective, that it is unlikely to mark a turn to input-oriented mechanisms at the EU level due to various (but frequently unjustified) formalities.

Despite the aforementioned unfavourable legal framework, the EU practice (and I am referring primarily to the Commission, because the formalities imposed by Regulation 211 cannot be amended at this stage) could contribute towards a more prosperous future for the initiative, therefore towards a more identifiable influence on the Community method. Such optimistic scenario should include the extensive and *successful* use of the tool by European

¹⁰²ec.europa.eu/commission_2010-2014/sefcovic/headlines/press-releases/2012/07/2012_07_18_eci_en.htm accessed 11 January 2013.

¹⁰³ ec.europa.eu/citizens-initiative/public/welcome, accessed 11 January 2013. The word 'directly' emphasized by the author, otherwise emphasis in the original.

citizens¹⁰⁴ and possibly a positive contribution by the CJEU. The Court, if asked to review a decision of the Commission to reject or amend the proposal, could base its reasoning – beyond the proportionality test – on the presence of the ECI in the articles concerning the EU citizenship, or it could refer to the principles of openness and proximity to citizens¹⁰⁵ and the provisions on participation, especially the ‘right to participate in the democratic life of the Union’.¹⁰⁶ Otherwise, the risk of a symbolic introduction with limited input is visible.

¹⁰⁴ It is interesting to note that in 2010 and almost one year after the entry into force of the Lisbon Treaty, but before the adoption of the Regulation, some environmental NGOs submitted an ‘initiative’ on the ban of genetically modified organisms in the EU to the Commission, having managed to collect one million signatures. After an initial hesitation to accept the petition, the Commission eventually decided to consider it, while underlining that the formal mechanism had not been set up at that time. See generally: <euobserver.com/institutional/31388>; <www.euractiv.com/cap/citizens-initiative-call-gm-crop-news-498524>; <euobserver.com/environment/31474> all accessed 2 February 2013.

¹⁰⁵ Art 1 TEU.

¹⁰⁶ Art 10.3 TEU. Dougan expresses concerns on whether such a stance from the Court is legally permissible, given the Commission’s monopoly on legislation, but he anticipates a contribution from the Court at the first stage, namely the Commission’s decision on whether or not to register the initiative, thus ‘open[ing] up a whole new avenue for constitutional adjudication concerning some important grey zones in EU law’: Dougan (n 38) 1843 and 1848. One should add potential contributions from the European Ombudsman as well, who is both competent (Art 4.3 of Regulation) and determined (see above n 86) to supervise the Commission’s stance towards the admissibility stage of the ECI.