

Courtesy translation

European's Citizen Initiative
Hearing at the E.P. (Committee on Constitutional Affairs) on 26 February 2015
Intervention of Mr Carlo Casini

I am speaking both as the former President of this Committee at the time when the Regulation 211/2011 was drafted, and as a person who has closely followed the initiative "oneofus".

As it is known, this initiative has obtained the maximum consensus ever recorded to this date in terms of popular accessions, which have been certified by the Member States to 1,894,693, although they exceeded 2 million (taking account of those excluded for formal defects). It should also be remembered that acceptances have been received from all the EU Member States and that in 19 states the minimum amount required by the Regulation in at least seven states has been exceeded.

The initiative recognized the equal dignity of every human being from its conception, and demanded the EU to ensure its neutrality regarding the decisions of the States involving the destruction of human embryos (either through destructive testing of embryos or through abortion) and therefore to establish a ban of European financing, direct or indirect, of activities involving the destruction of human beings, although they are at the embryonic state. As is it known, on 28 May 2014 the Commission decided not to pursue the initiative "oneofus". In the communication, any observation about the human identity of the embryo was omitted, and the legality of the funding paid by the EU for the support of scientific research that involves the destruction of human embryos and the financial support provided to organizations using instruments of protection of sexual and reproductive health and practicing abortion, was supported.

Thus was evaded the answer to Europe's citizens, who did not contest the legality of the current European action, but demanded the amendment of regulations, nor was given to the organizers of the initiative a chance to reply. The Commission, the executive body, has closed a procedure that would have to be of a legislative character, which is to amend the current regulatory framework.

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As it is expressly said in "recitals" 1, 2, 9 of Regulation 211/2011 and as it has been so often proclaimed in the parliamentary debate, and even more in the many meetings of the Constitutional Affairs Committee with the political authorities of the member states and in the discussions and documents of the COSAC, the purpose of the new institute should be to bring citizens closer to the EU, making it "*accessible, encouraging their participation in the democratic life of the Union, contributing to form European political awareness*".

But the effect caused by the outcome of the initiative "oneofus" was exactly the opposite. Many people have noted the futility of their hard work (a very hard work, given the complexity of the procedures to cross); and experienced as an injury to the democracy the fact that a limited number of people have been able to frustrate the demand of two million people without a proper debate and without a vote. The risk is that it has caused a shift away from Europe rather than a bridging between the EU and its citizens. This applies not only to the initiative "oneofus", but to any other initiative that has a similar outcome.

If the aim that the European regulatory framework had in mind has been changed into its opposite, it is a sign that there is something wrong in the procedure outlined in Regulation 211/2011.

I think the error is mainly in the letter c) of art. 10, which gives the Commission the power "to act or not", after the stimulus caused by the citizens. Starting from the observation of this error, the citizens' initiative should be restructured. Citizens do not expect that the institutions perform what they ask for, but they want at least a serious debate to happen, at the level of popular representation, in the whole European Parliament.

Regulation 211/2011 provides a preliminary admissibility of the Commission, which may prevent the start of the collection of the accessions (art. 4). It is true that the parameters that can prevent the launch of the initiative are very wide (b), c), d) of art. 4), but it is really remarkable that in the case of "oneofus" all the reasons listed in the Commission's final communication to "take no action" were already present at the time when it was decided to register. It is absurd that a hard work is carried out during a full year in all of Europe, when already from the start, declaring its willingness to take no action in the direction indicated by the applicants, the Commission would have avoided effort, expense, frustration, and the fogging of the European idea.

The fact is that Regulation 211/2011 brings together disciplines that are different, as it is evident from the comparison with the national systems of participatory democracy, where the law of popular initiative can be distinguished from the popular referendum. The first is not subject to any control of admissibility, but has no binding effect for anyone. Like other parliamentary proposals, it may be subject or not to parliamentary scrutiny. The referendum, however, presupposes a very wide participation, and a subsequent admissibility check, after which you determine binding effects, the involvement and the vote of a whole people to say "Yes" or "No" to the referendum proposal.

As to the initiative, there is an admissibility check, but it is preventive and the its overcoming does not create any binding effect. The people are not held to account, not even through their representatives.

In other words, it seems to me that an initiative that really wants to bring citizens closer to Europe should have as a conclusion - once attained the estimation of admissibility and the long process strictly defined that ensures the reliability and wide dissemination of consent - that it merits a true parliamentary debate, with the involvement of the political forces and individual MPs who are expressions of all peoples, of which the participants to the citizens' initiative are a significant fraction.

Basically, to make it interesting and effective, the citizens' initiative should be compared more to a popular referendum than to a petition, although it is much more shared at the popular level.

The public hearing provided in Article 11 of Regulation 211/2011 is not sufficient, because it is optional, and because it intends to present the initiative without debate and vote, and because it does not involve the entire Parliament, but only a small representation of the relevant committees. Normally the hearing provides a preliminary knowledge that should precede a real political debate and a final vote, but in the context of the citizens' initiative, it plays a role of mere gratification of the initiators, without consequences in terms of representative democracy, which is founded on the popular sovereignty.

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It is true that Article 11 of the Treaty of Lisbon (TEU) configures the citizens' initiative as an "*invitation to the European Commission to submit any appropriate proposal*". It is also to bear in mind that the European legal system entrusts the power to initiate legislation almost

exclusively to the Commission. But it is equally true that strong criticisms are put to the monopoly granted to the Commission and precisely the citizens' initiative could be a first good modification to the current structure and current practices. Moreover, the Lisbon Treaty does not regulate the consequences of the "invitation" for the Commission. An obligation of the Commission to encourage a debate and a parliamentary vote accompanying the proposal of the citizens with a reasoned opinion, which could also be a rejection or a modification, or an alternative content, is therefore not excluded. It is not to be ignored, by the way, that Article 11 of the TEU does not pose as the aim of the citizens' initiative only a legislative act, but more generally a "legal act", which, pursuant to art. 288 of the Treaty on the Functioning of the European Union (TFEU) may also be different from a law, which leaves ample room for the Commission to suggest answers to Parliament of a different nature.

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In any case, only a parliamentary debate followed by a vote, with the involvement of all MEPs and of all parties gives meaning to the citizens' initiative and distinguishes it from a simple petition. What is, in fact, currently, the difference between a petition signed by one million citizens and the initiative governed by Regulation 211/2011? In practice, the petition a) does not encounter in its preparation and collection of subscriptions the red tape required for the citizens' initiative; b) may also be submitted by a few citizens (even just one), c) can be discussed and voted in the Parliament, even if only at committee level.

Why, then, use as an instrument of democratic participation, the citizens' initiative, much more complicated and with a legal effect which is not different from the one potentially determined by a petition?

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It is clear that a reform is needed. Articles 10 and 11 should be amended, making it mandatory to hold a debate in the plenum of the European Parliament, preceded by a document prepared by the Commission, at which citizens address the "invitation" that is legally sound and extremely important, because it complies with the rules established by law.