

## LEGAL AND HISTORICAL ASPECTS OF CIVIC ACTIVITY IN THE EUROPEAN COMMUNITIES AND IN EU

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**Summary.** Civic activity in the European Communities and the European Union has never been the priority. This is visible in the legislative acts which emanate a lack of political will of the European decision-makers in this respect. The project of European Communities had an elite character from the very beginning. Increasing integration, which meant that the sovereignty of national states was gradually ceded onto the institutions of the Community, enforced gradual involvement of citizens in this process. This was supposed to show in direct elections to the European Parliament (since 1979) as well as in the possibility of expressing the will in treaty referendums. Together with the formal establishment of the European Union, its citizenship was established too by introducing the European Citizens' Initiative. Theoretically, it was supposed to be an instrument allowing the Union citizens to get directly involved in its legislative process. In practice it proved to be a highly imperfect legal tool whose provisions had to be amended. The few attempts to give the vote to the citizens, such as the referendum over the Maastricht Treaty, the referendum over the Treaty establishing the Constitution for Europe, or the Treaty of Lisbon effectively discouraged the legislator from this type of democratic experiments. When the EU citizens noticed that the legally available forms of civic activity were but a façade of democratization, they focused on other models of operativeness.

**Key words:** European Union, European Communities, EU law, legal absurdities in EU, European integration

### INTRODUCTORY REMARKS

After the hecatomb of World War II the politicians of Western Europe wondered how to guarantee long-term peace on the old continent. The panacea was sought in the integration of European countries founded on trust. As a consequence, the building of the European Community was commenced and over the years it changed its form of organization, status and name. Its creators, called the founding fathers of united Europe, were the foremost politicians, the citizens of France, Germany and Italy. Besides the fact that they held the most prominent positions in their country, they were connected by one more important common factor. They were all Christian democrats. Christian values were of fundamental importance to them [Audisio and Chiara 2016]. As democrats, they realized that they would have to convince the citizens of the member states of the Community being created, next give them the vote and let them co-decide. Together with the development of European institutions based on treaties, gradually direct activity of the community and the union was aroused. A number of legal regulations were implemented the aim of which, at least theoretically, was to build a civil society

(Ger. *Zivilgesellschaft*; French *société civile*), first on the Community-wide and then on the Union-wide levels.<sup>1</sup>

## 1. IN THE COMFORT OF CABINETS OR INSTITUTIONS OF EUROPEAN COMMUNITIES

Five years after the end of warfare in Europe, i.e. on 9 May 1950, the French minister of foreign affairs Robert Schuman proposed the creation of a common market of coal, coke, lignite as well as iron and manganese deposits between France and Germany. He based on a project by Jean Monnet which was positively echoed in Germany. Chancellor Konrad Adenauer, who had held his office for almost a year, welcomed the French proposition not only with joy but even with enthusiasm. A year later in Paris six countries, namely France, the German Federal Republic, Italy, Belgium, the Netherlands and Luxembourg signed a treaty establishing the European Coal and Steel Community (ECSC). It came into life in July 1952 and was expected to bind for 50 years [ibid., 63–65].<sup>2</sup> International supervision over such raw materials as coal and steel was supposed to prevent the outbreak of the third world war. It is well-known that a little earlier the Republic of Federal Germany was to be divided into smaller states with the aim of effective neutralization [Bender 1997, 99–101]. Undertaking cooperation with France, Germany stepped onto another level. It showed that they were able to reconcile with France, and even become independent. Germany became a legitimate member of the Council of Europe (since July 1950). The project of European integration was not submitted to social consultation (incidentally, then it would have been difficult to realize) but was born in the comfort of Jean Monnet's office. As recalled by Robert Schuman: "In the small seat at rue de Marignac he (J. Monnet) together with his collaborators prepared a project of the European Coal and Steel Community – without any publicity and without the knowledge of public opinion, or even the knowledge of the government" [Audisio and Chiara 2016, 65; Serczyk 1996, 68–69; Poppinga 1987, 74–77]. J. Monnet himself presented it in his memoirs in the following way: "The privilege of those who rule is to decide in the common interest. Because I did not have this privilege I had to execute my participation through a mediator. Schuman and Clappier entered the circle of conspirators" [Monnet 2015, 324].<sup>3</sup> This political style, which was maintained for many years, na-

<sup>1</sup> The term civil society most probably comes from Aristotle. Since then a number of concepts of civil society have appeared but all of them refer to self-organization and conscious public activity Cf. *Arystoteles. Dzieła wszystkie*, vol. 1, PWN, Warszawa, p. 53–61, 90–94ff. Jean Monnet was in this respect an advocate of small steps (*petits pas*). Since 1954 he placed emphasis on "awakening the spirit of integration," see *Jean Monnet: Jednocząca siła, dzięki której powstała Unia Europejska*, [https://europa.eu/european-union/sites/europaeu/files/eu-pioneers/eu-pioneers-jean-monnet\\_pl.pdf](https://europa.eu/european-union/sites/europaeu/files/eu-pioneers/eu-pioneers-jean-monnet_pl.pdf) [accessed: 25.11.2020]; Monnet 2015, 324.

<sup>2</sup> *Kalendarium integracji europejskiej*, [https://europa.eu/abc/12lessons/key\\_dates\\_pl.htm](https://europa.eu/abc/12lessons/key_dates_pl.htm) [accessed: 25.11.2020]; see Piotrowski 2019, 22–23.

<sup>3</sup> Bernard Clappier was also the head of R. Schuman's Office.

turally had its advantages but at the same time it infected the project of European integration. Civic activity was reduced to indirect representation (i.e. in the elections to national parliaments with the mediation of some chosen leaders and the officials delegated by the former). It is worth to note that in 1954 the Bilderberg Group was established on the initiative of a Pole, Józef Retinger. It was a closed body representing the spheres of politics and economics. The Group has been holding its meetings till today, without issuing any official statements. The secret of the key to the choice of its participants as well as the topics of the agenda created an aura of a conspiracy theory of history presented in opposition to the citizens' initiatives, ergo democracy. The first meeting of the Group was held in a Dutch hotel Bilderberg, which gave its name. The aim of the Group was unification of Europe and an economic rapprochement with the United States of America. Members of the group were in contact with the key figures actively engaged in the unification of Europe. Józef Retinger, who was the secretary of the Bilderberg Group till the end of his life, had also been a member of the honorary presidium of the European Movement some time before, in 1948. Besides him, the board included the prime minister of Great Britain Winston Churchill, the former prime minister of France Leon Blum, Paul-Henry Spaak the prime minister in office of Belgium (also, the first chairman of the General Assembly of UNO, later ECSC) as well as the prime minister of Italy Alcide De Gasperi. The character of European unity is reflected to some extent by the words directed by Retinger to De Gasperi: "Now, when you have also joined us, the two of us are going to conspire for the good of our countries and Europe." [Bender 1997, 105–106; Piotrowski 2017, 183–86, 371–74]. However, there were more conspirators.

In 1955 in Messina the leaders of six ECSC countries took the decision on extending the integration onto all sectors of economy. Two years later representatives of ECSC signed a treaty in Rome which established the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM). In this way three European Communities found themselves within one six-state Community. The Convention adopted together with the Treaties of Rome was supposed to coordinate the institutional system of the Communities. The Parliamentary Assembly, functioning since 1958, which changed its name in 1962 into the European Parliament became an organ of all the three Communities, which were attributed legal personality.<sup>4</sup> The process was crowned in March 1965 with the Merger Treaty. One Commission (of European Communities) and one Council of Ministers were established for all European Communities. Candidacies of members of the community bodies were agreed upon by the politicians of the me-

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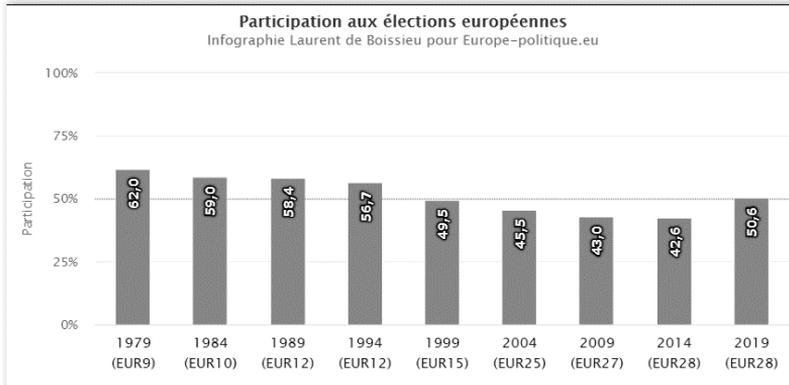
<sup>4</sup> Treaties of Rome. The Treaty establishing the European Economic Community, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:11957E/TXT> [accessed: 25.11.2020], Art. 201. Art. 7 prohibited "any discrimination on grounds of nationality;" Art. 138 regulated the number of delegates from the Parliamentary Assembly; Art. 148 regulated the parity of votes in the Council. In all those places, France, Germany and Italy had the greatest number of votes. The same referred to the financial contributions of member states (cf. Art. 200).

mber states. Delegates from national parliaments made the European Parliament, which served the three Communities. In 1973 the Community members were joined by Denmark, Ireland and Great Britain. A year later a decision was taken on the organization of direct elections to the European Parliament, which meant opening a little the door of the cozy offices to the citizens, or – more exactly – their representatives elected directly to one of the Community institutions. That was to be but the beginning of the way: for many a hope for democratization of the Communities, that is to say the true and effective civic activity.

## 2. ON THE WAY TO THE EUROPEAN UNION

The first direct elections to the European Parliament (EU) were held between 7 and 10 June 1979.<sup>5</sup> Totally, 410 members were elected. It deserves to be mentioned that the voter turnout in those elections was 62%, which was to be an unbeatable record in comparison to the following elections to EU held every five years.

Table no. 1: Participation in the European Parliament elections in the years 1979–2019



Source: Europe-politique.eu-élections

Together with the process of accepting new members to the European Communities, and then to EU,<sup>6</sup> and the extension of EU competences, the voter turnout successively dropped by several percent, in 2014 by nearly 20%. An exception were the last elections in 2019, when for the first time an increase was observed at the level of 50.6%. That result, however, differed from the results of the first election in 1979. Then a small political group of 11 persons from Belgium,

<sup>5</sup> Extending the elections for 4 days followed from the specific character of the electoral calendar of member states. For example, in Denmark the elections were held on Thursday (4 June), while in Germany on Sunday (7 June).

<sup>6</sup> Greece joined in 1981, Spain and Portugal in 1986, Austria, Finland and Sweden in 1995, Cyprus, the Czech Republic, Estonia, Lithuania, Latvia, Malta, Poland, Slovakia, Slovenia, Hungary in 2004, Bulgaria and Romania in 2005, while Croatia in 2013 [Barcz 2009, 87–110].

Denmark, Ireland and Italy was established in the European Parliament (Technical Group of Independents). Its members included a Danish MEP Jens-Peter Bonde, descending from the People's Movement Against EEC.

This left-wing Euroskeptic politician had a seat in the European Parliament for 29 years without any break.<sup>7</sup> After many years he reminisced that when he was elected an MEP for the first time, civic activity was made so difficult that no citizen or MEP could even phone the European Commission since its numbers were kept secret.<sup>8</sup> Bonde and other MEPs were involved in the activity for transparency and reform of European institutions. He co-created the parliamentary Intergroup SOS Democracy and was its active member [Bonde 2018]. Since 1999 he cooperated with a British Euroskeptic Nigel Farage within the frameworks of one political group in the European Parliament. Their activity was aimed at democracy, which was reflected in the group's name Europe of Democracies and Diversities (EDD), and next Independence and Democracies (IND/DEM), and Europe of Freedom and Democracy (EFD) and Europe of Freedom and Direct Democracy (EFDD).<sup>9</sup> Politicians of this formation were rather uncomfortable for the community and union establishment, especially because in the course of time their activity gained an increasing support among the citizens.

In February 1992 the Treaty on European Union (TEU) was signed. It came into life in November 1993. In the meantime, the vote was held on that treaty in the parliaments of 9 member states and referendums took place in the countries,<sup>10</sup> which was supposed to testify to its legal and democratic legitimacy. The process of ratification did not proceed without any perturbations. The citizens of Denmark rejected the document in the referendum but a later agreement for a different Danish interpretation (opt-outs) made it possible to accept it. Amendment of the constitution was necessary in France. In Germany the parliament voted TEU through although – according to the research at that time – 75% of the German society was against it [Strzепka 2018]. It was already the very first sentences of the finally accepted document which said that the Union marked a new stage of cooperation between European nations “where decisions are made as close to the citizens as possible.”<sup>11</sup> The Treaty for the first time established the Union citizenship. It was treated as additional in relation to the citizenship of the member state. It would be hard to consider the entry “Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member

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<sup>7</sup> Cf. Jens-Peter Bonde (Profile), [https://www.europarl.europa.eu/meps/en/1275/JENS-PETER\\_BONDE/history/6](https://www.europarl.europa.eu/meps/en/1275/JENS-PETER_BONDE/history/6) [accessed: 25.11.2020].

<sup>8</sup> The farewell speech of J.-P. Bonde in Brussels from May 2008. The account in the Author's collections.

<sup>9</sup> The last two groups already functioned without J.-P. Bonde.

<sup>10</sup> In Ireland the Treaty was approved both in the parliament and in a referendum. In 1994 the referendums in Austria, Finland and Sweden adopted TEU.

<sup>11</sup> The Treaty of Maastricht [henceforth cited as: Treaty of Maastricht], Common Provisions, Art. A and Art. 8, <http://www.eur-lex.europa.eu> [accessed: 25.11.2020]. In the Treaty the name European Economic Community was replaced by the European Community.

State in which he or she resides, under the same conditions as nationals of that State” (Treaty of Maastricht, Art. 8b, sect. 2) to be a sign of stimulated civic activity in the Union. It did not, for example, attract a host of candidates from Denmark to stand for the European elections from the Territory of the United Kingdom, etc. In addition, the Union citizens were given the right to submit petitions to the European Parliament and to the European Ombudsman in matters falling within the EU’s activity which – as it was worded – “affect the petitioners directly” (Treaty of Maastricht, Art. 8d, 138d and 138c). The Committee on Petitions functioning in the European Parliament up till now defined itself “as a bridge between Europeans and the EU institutions.”<sup>12</sup> However, due to the course of proceeding comparable to a transmission belt between the citizens and the European Commission, the Committee on Petitions became more of a buffer than a gate leading to a satisfying interaction. For a number of years the Committee of Petitions was regarded by the general public to be the least attractive, ergo the least important among the twenty standing committees functioning in the European Parliament.

From the legal and historical point of view on the European Communities, the most important event was certainly to be the adoption of the European constitution. To this aim, the European Convention was established in 2001. It was composed of over a hundred persons headed by the former president of France Valéry Giscard d’Estain. It was in his apartment that the main entries of the “Treaty establishing a Constitution for Europe” came into being. The project included provisions giving the member states’ citizens a possibility of the citizens’ direct initiative. What is peculiar, the presidium of the convention opposed including those provisions in the main text. Finally, however, as was noted on the official sites of the European Parliament, “organized efforts to organize a civil society led to the decision to preserve them.”<sup>13</sup> In July 2003 the Convention submitted a document of 278 pages<sup>14</sup> including Articles 47 entitled “The principle of participatory democracy.” Item 1 placed an obligation on the European Union institutions to give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action. Point 4 provided that “No less than one million citizens coming from a significant number of Member States may invite the Commission 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 Constitution.”<sup>15</sup> Specific regulations, procedures and conditions of the citizens’ initiative (such as, for example, a precise minimum number of countries) were supposed to appear in a special “European law.”<sup>16</sup> This did not happen since, despite the leaders of EU countries signing the

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<sup>12</sup> MN\1184468PL.doc. PE575.044v06-00, Wytoczne Komisji Petycji. Grudzień 2015 r. (update January 2018).

<sup>13</sup> European Citizens’ Initiative, <https://www.europarl.europa.eu/factsheets/pl> [accessed: 09.10.2020].

<sup>14</sup> The final version with the final acts included 482 pages (Polish version).

<sup>15</sup> The Treaty Establishing a Constitution for Europe, Luxembourg 2005, p. 40–41.

<sup>16</sup> *Ibid.*, p. 41.

European Constitution, its text was rejected in a referendum in France (29 May 2005) and in the Netherlands (1 June 2005). Their results came as a shock to the promoters of European integration. Two Union countries which were the founders of the Communities proved to be the brakes. At the same time a dissonance between the will and activity of the citizens on the one hand and their political representatives on the other was made visible. In France, 54.8% were against the Euroconstitution, while in Holland as many as 61.6%.<sup>17</sup> A little earlier, during a voting over the same text in the European Parliament, the majority of MEPs from France and the Netherlands spoke “in favour” of it.<sup>18</sup> That led to the conclusion that in the future the key documents should not be submitted to the vote of the Union citizens but they should be left to politicians. This moral was born after the “period of reflection” announced in June 2005. The project of a common constitution was returned to at the beginning of 2006. The minister of foreign affairs of France at that time Nicolas Sarkozy suggested that “the regulations which do not arouse controversy should be selected from the existing draft and a synthetic document should be adopted quickly.” It was commonly called a mini European constitution, later the Lisbon Treaty. The task was undertaken by the German presidency, effecting its acceptance by the leaders of the governments and the heads of state in October 2007 in Lisbon. The document, which was officially called the “Reform Treaty” (also the Treaty of Lisbon), was signed on 13 December 2007 in Lisbon. The package of uncontroversial provisions of the European constitution included an article on civic initiatives which as Art. 11 in Title II was transferred to the Lisbon Treaty.<sup>19</sup> To implement the Treaty, its ratification in the European Parliament and in the parliaments of particular member states was necessary. Due to the binding regulations, it was subject to a national referendum only in Ireland. The parliamentary ratification process proceeded positively, which was in agreement with the Union scenario, but in a referendum held in June 2008 most of the Irish voted “no.” In such a case, when there was no unanimity among the member states, the Treaty of Lisbon fell. Nevertheless, the pressure applied on Ireland on the one hand, and the promises of special gua-

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<sup>17</sup> Laurent de Boissieu, *Referenda europejskie*, <https://www.europe-poitique.eu> [accessed: 25.11.2020] (with a correction of slight inaccuracies).

<sup>18</sup> Voting in EP on Euroconstitution (January 2005). Totally: 500 for, 137 against, 40 abstained. The political establishment and the leading political parties of the majority of EU countries spoke “for” Euroconstitution, while their electorates spoke “against.” For example, in the Netherlands the parties supporting Euroconstitution occupied 85% of the seats in the Parliament. Cf. Kuźelewska 2011, 83–88, 131–34. The Author notices that “A lack of a loyal attitude of the voters towards the political elites can be seen.”

<sup>19</sup> *Wersje skonsolidowane Traktatu o Unii Europejskiej i Traktatu o Funkcjonowaniu Unii Europejskiej. Karta Praw Podstawowych Unii Europejskiej*, Luksemburg 2010, p. 20–21. The Chancellor of Germany Angela Merkel said: “the essence of the constitution was preserved;” Valéry Giscard d’Estaing: “the text is actually a repetition of the greater part of the essence of the constitution;” and the prime minister of Denmark at that time Anders Fogh Rasmussen: “all symbolic elements have disappeared, what is the most important, the very core is left.” Cf. *Sztuka owijania w bawełnę*, <https://www.rp.pl/artukul/77062-Sztuka-owijania-w-bawelne.html> [accessed: 15.12.2007].

rantees on the other led to another referendum. It took place in October 2009 and then the majority of the Irish (67.1%) accepted the new act of law.

### 3. IN THE EUROPEAN SUPERSTATE

Results of the second Irish referendum removed the last obstacle on the way to the implementation of the Treaty of Lisbon, which took place on 1 December 2009. Then the European Union acquired (for the first time in history) legal personality. It became a subject of international law. The issues pertaining to citizenship transferred from the Maastricht Treaty, the rights of citizens' initiative and the establishment of Europe-wide political parties, rules of participation and others acquired new dimensions. The Union replaced the European Community and defined itself to be its "legal successor" at the same time declaring that decisions would be taken "with possibly the highest respect to the principle of openness and as close to the citizens as possible."<sup>20</sup> Nevertheless, few expected a breakthrough. The skepticism resulted from the very construction of the European Union, which came to be associated with a deficit of democracy, and which simultaneously became its synonym [Piotrowski and Rzeczowska 2016, 139–43; Celiński 2009; Mizera 2014, 87–138]. Deformation of Montesquieu's tripartite separation of powers is what attracts attention. The key position was taken by the European Commission, which accumulated in itself the prerogatives of both the executive and the legislative powers as well as – partly – the judiciary. It has the legislative initiative which the European Parliament is deprived of. The Commission is a guardian of treaties, it distributes financial means (is responsible for the budget) and "oversees the application of the Union law under the supervision of the Court of Justice of the European Union."<sup>21</sup> The European Parliament, as a democratic fig leaf of EU was legally reduced to the role of an accompanying body functioning according to the principle of agreement, consultation and consent. The democratically elected Members of the European Parliament were able to show their power during the voting on the election of the president of the Commission and then its whole composition. Practically, those were the only moments when the Union decision-makers became more flexible, i.e. open to the citizens' initiatives or the initiatives of politicians elected by the citizens. Its clear example was the election of the president of the European Commission in 2004. Jose Manuel Barroso, a Portuguese politician applied for this position. He did not want to reveal the list of committees – working groups appointed by the European Commission and concealed from the public. It was not until almost forty MEPs threatened to vote against his candidacy that he changed the decision.

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<sup>20</sup> Consolidated versions of the Treaty, Art. 1, p. 16, 399–400; The Treaty of Lisbon gave the legal force to the Charter of Fundamental Rights, whose Art. 41 "Right to Good Administration" harmonized with the provisions on ECI.

<sup>21</sup> Consolidated versions of the Treaty, p. 25. Art. 17, sect. 2 read: "Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise."

A day before the voting he revealed a secret list comprising 3,094 working groups with the budget lines and other details. In a letter, David O'Sullivan, Secretary General of the European Commission asked, however, to keep it from the public.<sup>22</sup> This form of communication was a visible proof of a lack of will on the side of the highest bodies of the European Commission to inform the citizens in a reliable manner. Access to information is always the first step to activate the citizens. It was not easy to overcome this barrier. Five years later, in 2009, Barroso, who applied for re-election, already showed a more open attitude. He reduced the number of working groups to one thousand and he even placed a list of them on the Commission's website. He was obliged to do it by the Lisbon Treaty, which ensured the citizens' access to documents.<sup>23</sup> It also guaranteed a possibility of direct contact between the citizens and the European Commission on the basis of the legally sanctioned European Citizens' Initiative (ECI). This specific "strengthening of direct democracy in the European Union" did not take place instantly. Many items of the Lisbon Treaty were formulated vaguely, which led to the conclusion that the vagueness was deliberately raised to the rank of the rule. This also referred to the provisions on ECI. Although it was written in the Treaty of Lisbon that more than one million citizens of the Union may take such an initiative (Art. 11), an exact number of member states and other technical issues were not established. They were left for the future regulations of the European Parliament and the Council (Art. 24).<sup>24</sup> It took many months to arrive at the final text (Directive No. 211/2011), which came into life in January 2012.<sup>25</sup> While preserving the Treaty's million of citizens who take initiative, "a considerable number of Member States" was made precise as a minimum one fourth, which means seven out of 27 (and since 2013, 28) member states. In those seven countries it was necessary to collect a definite minimum number of signatures. The established

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<sup>22</sup> Listed d'Autorisation Anuelle 2004 (Document exclusivement a usage interne) with a letter of David O'Sullivan to Jens Petera Bonde from 21.07.2004 in Strasbourg (copies in the Author's collections). The letter included, for example, the following fragments: "please find attached a copy of our internal and informal list of working groups. [...] we would not wish to see it made public. The list included, for example, the Group for banana curving, the Group for labeling textiles, the Group for animal well-being, the Group for lifts, etc."

<sup>23</sup> The European Parliament Resolution from 17 December 2009 on improving the legal frameworks concerning access to documents after the Treaty of Lisbon came to life, directive (WE) No. 1049/2001, [www.europarl.europa.eu](http://www.europarl.europa.eu) [accessed: 25.11.2020]. A list of working Committees from 2009 is found in the Author's collections.

<sup>24</sup> Consolidated versions of the Treaty, p. 58; Cf. Barcz 2011, 16–25.

<sup>25</sup> Commission Delegated Regulation (EU) No. 268/2012 of 25 January 2012 amending Annex I of Regulation (EU) No. 211/2011 of the European Parliament and of the Council on the citizens' initiative, O.J. EU (for the Commission signed by the President José Manuel Barroso), <https://eur-lex.europa.eu/homepage.html> [accessed: 25.11.2020]. Earlier, i.e. since 10 March 2010 r, a draft was dealt with by the Parliament and the Council, on 16 February 2011 it was officially adopted, and on 11 April 2011 it came into life in the form of a directive (UE) No. 211/2011, next for nearly a year it was technically improved on the level of national states. Cf. Fact sheets on the European Union, European Citizens' Initiative, [www.europarl.europa.eu/factsheets/pl/sheet/149](http://www.europarl.europa.eu/factsheets/pl/sheet/149) [accessed: 25.11.2020].

parity is the number of Members of the European Parliament multiplied by 750 [Piotrowski 2014, 115–16].<sup>26</sup>

Table no. 2: The minimum number of signatories to ECI in the member states of EU

Belgium	16,500	Italy	54,750	Portugal	16,500
Bulgaria	13,500	Cyprus	4,500	Romania	24,750
the Czech Republic	16,500	Latria	6,750	Slovenia	6,000
Denmark	9,750	Lithuania	9,000	Slovakia	9,750
Germany	74,250	Luxembourg	4,500	Finland	9,750
Estonia	4,500	Hungary	16,500	Sweden	15,000
Ireland	9,000	Malta	4,500	the United Kingdom	54,750
Greece	16,500	The Netherlands	19,500	France	55,500
Spain	40,500	Austria	14,250	Poland	38,250

Source: O.J. EU from 27 March 2012, Annex to Commission Delegated Regulation (EU) No. 268/2012 (from 25 January 2012)

In accordance with the adopted parities, the lowest number of signatories was required in Cyprus, Malta and Luxemburg, while the highest in Germany, France and Great Britain. In Poland the minimum of the entitled signatories was set at 38,250.

It also appeared that the European Citizens' Initiative can be taken only by a specially appointed "citizens' committee" whose at least seven members (at the age allowing participation in elections to EP) must come from seven different countries of the European Union. It could not be based on any existing organization or association. Naturally, that complicated the problem since the "citizens' committee" had to find the financial means connected with its administrative activity. The European Citizens' Initiative was to be registered on the Commissions' website and that was not an automatic act. First, it was required that a document with the title of the initiative and its brief description should be submitted as well as the legal basis and information on the committee's member and the sources of funding should be presented. The Commission had two months to examine the application. The decision on registering the initiative meant publishing it on the websites of the Commission. Since that moment the organizers had a year to co-

<sup>26</sup> See *Obywatele Unii Europejskiej i ich prawa*, in: *Noty faktograficzne o Unii Europejskiej*, Urząd Publikacji Unii Europejskiej, Luksemburg 2014, p. 108.

llect a minimum of one million signatures.<sup>27</sup> After they were collected (in a paper or electronic form),<sup>28</sup> they were to be presented to the competent national bodies (Ministry of the Interior, electoral committee or a census),<sup>29</sup> which had three months for their certification. The initiative submitted to the Commission, correctly verified, had to be “immediately” published in a register of the European citizens’ initiatives. Next a representative of the Commission had to meet the initiators, listen to their arguments and enable a public hearing in the European Parliament according to Art. 222 of its Rules of Procedure of the European Parliament.<sup>30</sup> Three months were given for those activities. After the whole complex procedure was fulfilled, the Commission, however, did not have any obligation to put forward a concrete legislative motion to the European Parliament and/or the Council.

For nearly eight years of the practical accessibility of the European Citizens’ Initiative, i.e. till November 2020, the number of the submitted Initiatives was ninety nine, twenty four of which were rejected. Seventy-five were registered, which meant being recognized as justified, and only 6 of those finished successfully.<sup>31</sup> During the first five years, i.e. 2012–2017, formal conditions were satisfied only by 3 initiatives. This is not a particularly impressive figure considering the whole logistic and legal *entourage* [Piotrowski 2019, 293–94; Zdanowicz 2018, 105–22]. The first of such effective activities of the citizens turned into a legislative proposition was the initiative on water – “Right2Water.” It was submitted to the European Commission in December 2013. It was aimed to improve the quality of drinking water and access to it. As a consequence, a new directive was introduced in 2018 on the basis of which – according to the Commission’s estimates – it would be possible to “reduce potential health risks associated with drinking water from about 4% to below 1%”.<sup>32</sup> A famous European Citizens’ Initiative “One of Us” experienced a different fate. The initiative concerned the legal protection of human life (banning experiments on human embryos). Its initiator was an Italian lawyer and politician (former MP and MEP) Carlo Cassini. The

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<sup>27</sup> Ibid.; European Citizens’ Initiative, [www.europarl.europa.eu](http://www.europarl.europa.eu) [accessed: 25.11.2020]; A refusal of the Commission can be questioned in the form of an appeal or in court. The reason for refusal can be a contradiction, the initiative being outside the competences of the Commission or its incoherence with the EU values (Art. 2 TEU) as well as when the Commission finds it unserious.

<sup>28</sup> This form requires certificates of competent national authorities.

<sup>29</sup> A list of institutions see: <http://ec.europa.eu/citizens-initiative/public/authorities-verification?lg=pl> [accessed: 09.11.2020].

<sup>30</sup> European Citizens’ Initiative. The hearing is organized by the said Commission of EU, later the Parliament holds a debate which can close with a resolution and then it analyzes the motions of the Commission – Rules of Procedure of the European Parliament, in: [www.europarl.europa.eu](http://www.europarl.europa.eu) [accessed: 09.11.2020]; See more in: *European Citizens’ Initiative – First lessons of implementation. Study*, European Parliament, Bruxelles 2014, p. 82.

<sup>31</sup> European Citizens’ Initiative: <http://ec.europa.eu/citizens-initiative/home-pl> [accessed: 09.11.2020]. Some of them did not manage to collect over a million votes of support.

<sup>32</sup> Right2Water, <https://ec.europa.eu/> [accessed: 25.11.2020]; cf. Proposal for a Directive of the European Parliament and of the Council on the quality of water intended for human consumption (recast), Brussels, 01.02.2018 (European Commission, p. 64).

initiative was registered in May 2012 in Brussels and positively went through all the stages provided by legal regulations. It was signed by more than 1.7 million citizens of the EU countries, with the biggest number of signatures from Italy, Poland and Spain. Not only did it exceed the number of signatures collected for “Right2Water,” but it also broke the record of support for any initiative taken until 2015. “ECI One of Us” was also supported by Pope Francis and earlier by Benedict XVI. If the Initiative had finished successfully, the Union could not designate membership fees of all EU citizens for abortion and experiments on human embryonic matrix cells [Piotrowski 2013a, 116–18].<sup>33</sup> In May 2014 the European Commission rejected this initiative arguing “that it saw no need to propose changes to the Financial Regulation.” This negligent attitude of the Commission came to be called “anti-civic arrogance” [Piotrowski 2019, 50–51]. In July 2014 the ECI originators of “One of Us” filed an appeal to the Court of Justice of the European Union (CJEU) arguing that the Commission “failed to take into consideration the existing legislation of the Court of Justice on human embryos and used erroneous argumentation justifying the funding of abortion.” Additionally, “the complaint referred to the infringement of the procedure of examining ECI and the fact of strengthening the democratic deficit in the Union institutions.”<sup>34</sup> In April 2018 the complaint was rejected by CJEU with the argumentation that the European Commission presented “the sufficiency of its statement of reasons and the absence of manifest errors of assessment.” Commenting upon the issue on the pages of “Rzeczpospolita” daily, the Director of the Center of International Law Ordo Iuris Karina Walinowicz stated that “this shows clearly that the European Citizens’ Initiative is but a façade creation of appearances of democraticness of the European Union.”<sup>35</sup> Other commentaries included suggestions that this negligent approach of the Union organs to ECI “One of Us” would result in a decrease of voter turnout in the elections of the European Parliament, or even with a wish of some member states to leave the Union.<sup>36</sup> Ultimately, however, the ECI One of Us activists decided to continue their work on the forum of the European Union by registering themselves as one of the many lobby organizations.<sup>37</sup> In 2012, when the first citizens’ initiatives were taken, including “One of Us,” the European Union was granted the Nobel Peace Prize. Regardless of the joy, a pro-

<sup>33</sup> *Jeden z Nas*, <https://pl.wikipedia.org/w/index.php?title=Jeden-z-Nas&oldid=55499504> [accessed: 25.11.2020]. See also Carlo Cassini, ONE of US. THE FIRST EUROPEAN CITIZENS’ INITIATIVE. One of Us: it is true, it is right, in is necessary, 2014 Edizioni Cantagalli S.r.l. – Siena, pp. 132.

<sup>34</sup> *TSUE odrzucił inicjatywę “Jeden z Nas”*, <https://www.rp.pl/Unia-Europejska/304269961-TSUE-odrzucił-inicjatywę-Jeden-z-Nas.html> [accessed: 26.04.2018].

<sup>35</sup> *Ibid.*; Cf. *Jeden z Nas*. We read in the conclusion of the article: “This case revealed the monopoly of the European Commission within the frameworks of the legislative initiative and confirmed the controlling function of the Court of Justice in relation to the Commission. Alas, three voice of the EU citizens on life protection was completely ignored.”

<sup>36</sup> *TSUE zdecydował: Nie będzie ochrony ludzkich embrionów*, <https://dorzeczy.pl/kraj/126260/tsue-zdecydowal-nie-bedzie-ochrony-ludzki-embriow.html> [accessed: 25.11.2020].

<sup>37</sup> Its representative was Jakub Białtoszewicz, former coordinator of “One of us” in Poland. On lobbying in EU [Matusiak 2011].

blem appeared who it was exactly to receive the prize. No matter how much the heads of the European Council, the European Commission, the chairman of the European Parliament or the prime ministers of particular countries competed, ordinary citizens of the European union joined in. Assuming that the prize was granted to the whole Union and not only one of its institutions, some intended to go to Oslo individually to receive less than one cent. The prize amounted to approximately 930,000 Euros so by dividing it into about 500 million Union citizens it was estimated that one citizen was entitled to more or less 0.002 cent. The amount was symbolic but it pointed to a problem which was not necessarily a symbolic one. This activity of the citizens was also ignored in EU.<sup>38</sup> The earlier mentioned example of ECI “One of Us” cannot have encouraged the EU citizens to take further initiatives. With the aim of reversing this trend, the Union decision-makers put forward a proposition of a new directive which slightly simplified the technical procedures of ECI. For instance, the period when the Commission was obliged to take a stand towards a registered Initiative was lengthened from three to six months. Besides, a central system of collecting on-line declarations was to be created and served by the Commission. The role of the European Parliament, which was to control the Commission’s activities in the ECI legislative procedure, was to be strengthened.<sup>39</sup> In December 2018 the European Parliament and the Council reached consensus in this issue and finally the new regulations on ECI were published in the Official Journal on 17 May 2019 (thus replacing the EU directive No. 211/2011) and they have been binding since 1 January 2020.<sup>40</sup> A fact sheet of the European Parliament noted that “Thanks to the new directive on the European citizens’ initiative, this initiative has become more accessible, less bureaucratized and easier to use by its organizers and advocates. Besides, the new directive increases the possibilities of undertaking consecutive actions related to this initiative.”<sup>41</sup> In the meantime, on 23 June 2016, a referendum was held in Great Britain on its exit from the European Union. The majority, i.e. 51.89% of the society voted for Brexit (the voter turnout of 72.21%).<sup>42</sup> The campaign undertook such issues as bureaucratization of the Union and the Union’s detachment from its citizens. The Union legal regulations had been laughed at for years and not only on the Thames. One can venture a thesis that the media criticism, cyclical competitions for the greatest legal absurdity of EU etc.<sup>43</sup>

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<sup>38</sup> *European Union receives Nobel Peace Prize 2012*, [https://europa.eu/european-union/about-eu/history/2010-2019/2012/eu-nobel\\_en](https://europa.eu/european-union/about-eu/history/2010-2019/2012/eu-nobel_en) [accessed: 25.11.2020]; Piotrowski 2013b, 125–27, 284–86.

<sup>39</sup> Directive of the European Parliament and the Council on the European legislative initiative (Motion), Brussels, 13.09.2017, COM(2017) 482 final.

<sup>40</sup> Fact sheets on the European Union. European Citizens’ Initiative.

<sup>41</sup> *Ibid.*

<sup>42</sup> In October 2019 the sides came to an agreement as to the conditions of leaving the Union, next representatives of Great Britain left its institutions. The country will ultimately leave EU on 31 December 2020.

<sup>43</sup> The competition is supposed to open the eyes of the Union bureaucrats, see Piotrowski 2009, 119–22; Wróblewski 2015.

had a greater effect on the increase of citizens' activity and a reform of its legislation than the European Citizens' Initiative. It is also worth to direct attention to such publications as "Merde in Europe," where the mocking titles of chapters were drawn from the British press [Clarce 2017]. A response to this kind of activities was the appointment of the so-called "Stoiber Group" by the European Commission. In July 2014 the Group prepared a report of proposals to "reduce bureaucracy" and "foster the legislative process."<sup>44</sup> The report, however interesting, did not contribute to rapid changes. The breakthrough was Brexit. Soon after the Brexit referendum in Great Britain, a well-know financier, speculator and philanthropist George Soros said: "Admittedly, the Union is a flawed construction."<sup>45</sup> The significance of those words is made even stronger by the fact that for years Soros had been on friendly terms with the most important EU politicians and he affected the EU policy by means of the appointed organizations of civil society (Open Society). According to the documents which were stolen from G. Soros by hackers and which were then revealed as "Panama papers," he had made a list of 226 so-called trusted Euro deputies, allies which he is said to have influenced. This is nearly one third of the composition of the European Parliament. The list includes important figures, for example the former chairman of EP Martin Schulz as well as the leaders of political groups. A conclusion could be drawn that the controversial billionaire had far greater influence on the functioning of the Union than all European citizens' initiatives (ECI) and initiatives of the citizens together [Piotrowski 2019, 232, 236–38].<sup>46</sup> Prime Minister of Hungary Viktor Orban publicly accused Soros of "wanting to take control of the European institutions," implying he was going to do that in an undemocratic way, disregarding the will and initiative of the EU citizens. In Orban's opinion, vice president of the European Commission Frans Timmermans was "George Soros's man."<sup>47</sup> A number of persons connected to Soros found themselves in the Spinelli Group established earlier, on 16 September 2010 in Brussels. This deceased Italian communist, co-author of the Ventotene Manifesto is regarded by many to be the most important

<sup>44</sup> "Politico" from 15 September 2015 ([www.politico.eu](http://www.politico.eu)). Edmund Stoiber – for many years Minister President of Bavaria. This body started to function in 2007 (still during the term of office of Manuel Barroso). In Poland a competition for the greatest bureaucratic absurdities regularly took place since 2005.

<sup>45</sup> George Soros, Project Syndicate, [www.project-syndicate.org](http://www.project-syndicate.org) [accessed: 25.11.2020]; *Soros: Brexit prowadzi do dezintegracji Unii Europejskiej*, <https://wiadomosci.wp.pl/soros-brex-it-prowadzi-do-dezintegracji-unii-europejskiej-6025261940290689a> [accessed: 25.06.2016].

<sup>46</sup> *Lista 226 „zaufanych eurodeputowanych” Sorosa. Wśród nich sześć osób z Polski*, <https://www.pch24.pl/lista-226-zaufanych-eurodeputowanych-sorosa--wsrod-nich-szesc-osob-z-polski,45400,i.html> [accessed: 19.08.2016]; *Ludzie Sorosa w Parlamencie Europejskim? Na liście „sojuszników” sześcioro polityków z Polski... Sprawdź listę*, <https://wpolityce.pl/swiat/305200-ludzie-sorosa-w-parlamencie-europejskim-na-liscie-sojusznikow-szescioro-politykow-z-polski-sprawdz-liste> [accessed: 18.08.2016].

<sup>47</sup> *Premier Węgier: George Soros ma bardzo duże wpływy w Unii Europejskiej*, <https://www.polskie-radio24.pl/5/1223/Artykul/2252003,Premier-Wegier-George-Soros-ma-bardzo-duze-wplywy-w-Unii-Europejskiej> [accessed: 25.01.2019].

founding father of the European Union. Altiero Spineli was far from focusing on the stimulation of civic activity. He spoke for the European socialist revolution and abolishment of national states. The date when “The Spinelli Group” started its activity, i.e. already after the Treaty of Lisbon came into life, was not accidental. The initiators’ intention was to create a supporting, so-called European added value arousing the activity of those citizens only whose priority is the general European and not the national interest. This activity was expected to show on three levels, the importance determined by the sequence. The first level was the group of 33 founders, the second included Eurodeputies and deputies aiming at possibly the strongest integration, and the third level (place) finally were the “citizens who can join in the discussion by means of the Internet forum.”<sup>48</sup> The role of the majority of the EU citizens was de facto reduced to Internet comments and that was not only within this specific forum.

### FINAL REMARKS

The project of the European Communities had an elite character from the very beginning. It was aimed at peace on the old continent but also federalization of European countries. Increasing integration, which meant that the sovereignty of national states got gradually ceded onto the institutions of the Community, enforced gradual involvement of citizens in this process. This was to be shown in direct elections to the European Parliament as well as a possibility of expressing the will in treaty referendums. Together with the formal establishment of the European Union, its citizenship was established by the introduction of the European Citizens’ Initiative. Theoretically, it was supposed to be an instrument allowing the Union citizens to get directly involved in its legislative process. In practice it proved to be a very imperfect legal tool whose provisions had to be amended. The civic activity in the European Communities and the European Union was never the priority. This follows from the legislative acts which emanate a lack of political will of the European decision-makers in this respect. The few attempts to give the vote to the citizens, such as the referendum over the Maastricht Treaty, the referendum over the Treaty establishing the Constitution for Europe, or the Treaty of Lisbon effectively discouraged the legislator from this type of democratic experiments. When the citizens noticed that the legally available forms of civic activity were but a façade of democratization, they focused on other models of operativeness, the most effective of which proved to be the media pressure, especially taking the mocking forms. It brought better effects than civic’ activities undertaken on the basis of legal regulations of the European Communities and the European Union. However, it had its side effects such as Brexit. In-

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<sup>48</sup> Kancelaria Senatu. Przedstawiciel Kancelarii Senatu przy Unii Europejskiej, *Powołanie grupy im. Altiero Spinello na rzecz Europy federalnej i postnarodowej*. Sprawozdanie 64/2010 (15.09.2010), p. 1–6, [www.senat.gov.pl](http://www.senat.gov.pl) See: [www.spinelligroup.eu](http://www.spinelligroup.eu) [accessed: 25.11.2020].

stead of getting actively involved in reforming the Union, the citizens of Great Britain preferred saying “farewell” to its decision-makers.

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#### PRAWNO-HISTORYCZNE ASPEKTY AKTYWNOŚCI OBYWATELSKIEJ WE WSPÓLNOTACH EUROPEJSKICH I UE

**Streszczenie.** Aktywność obywatelska we Wspólnotach Europejskich i Unii Europejskiej nigdy nie stała na pierwszym planie. Wynika to z aktów prawodawczych, będących emanacją braku woli politycznej w tym względzie europejskich decydentów. Projekt Wspólnot Europejskich od początku miał charakter elitarny. Pogłębianie integracji, czyli cedowanie kawałek po kawałku suwerenności przynależnej państwom narodowym na instytucje Wspólnoty, a następnie Unii Europejskiej, zmuszało do stopniowego wciągania w proces ten obywateli. Świadczyć o tym miały bezpośrednie wybory do Parlamentu Europejskiego (od 1979 r.), a także możliwość wyrażania woli w referendum traktatowych. Wraz z formalnym powstaniem Unii Europejskiej, ustanowiono jej obywatelstwo, wprowadzając Europejską Inicjatywę Obywatelską. Teoretycznie miał to być instrument pozwalający obywatelom Unii na bezpośrednie zaangażowanie w jej proces legislacyjny. W praktyce okazał się daleko niedoskonałym narzędziem prawnym, którego zapisy trzeba było nowelizować. Nieliczne próby oddania głosu obywatelom, jak referendum nad Traktatem z Maastricht, referendum nad Traktatem ustanawiającym Konstytucję dla Europy, czy Traktatem z Lizbony, skutecznie odstraszyły prawodawcę od tego typu demokratycznych eksperymentów. Gdy obywatele UE dostrzegli, że dopuszczone prawnie formy aktywności obywatelskiej stanowią wyłącznie fasadę demokratyzacji, skoncentrowali się na innych modelach operatywności.

**Słowa kluczowe:** Unia Europejska, Wspólnoty Europejskie, prawo UE, absurdy prawne UE, integracja europejska

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