

European, Issue
n°192
31th January 2011

from **Jean-Luc Sauron**,
Counsel of the Conseil d'Etat

The European Citizens' Initiative: not such a good idea?

SUMMARY The regulation governing how the European Citizens' Initiative is to be implemented is due to be adopted at the beginning of 2011. During the negotiation procedure no major difference in opinion emerged with regard to this on the part of either the European Commission, the Council of the European Union and the European Parliament. This consensus contrasts with the significant effect that this tool of participatory democracy may have on European institutional dynamics. Various issues are raised: the disruption caused by its implementation with regard to the European Commission exercising its competence in terms of legislative initiative; reconciling divergence between the signatories of the citizens' initiative and the positions adopted by the European Council, the Council of Ministers, the European Parliament and even the national parliaments; the potential disturbance of the regulatory role played by the Court of Justice.

INTRODUCTION The Lisbon Treaty enhances participatory democracy stating in the third paragraph of article 10 of the Treaty on European Union (TEU) that: "Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen." This view expresses great mistrust on the part of European citizens as far as the way the EU is run at present and conveys the feeling of suspicion with regard to the MEPs who represent them. Moreover does the British Minister of State for European issues, David Lidington, not defend the draft law that aims to subject any significant transfer of power from London over to the European Union to referendum – thereby maintaining that "there will be no possibility for the government to get up to any tricks" [1]?

This claimed closeness between the citizen and the decisions being taken on his/her behalf becomes a reality thanks to the European citizens' right to initiative which is included in the fourth paragraph of article 11 in the TEU, "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." The Citizens' Initiative did not cause any significant polemic on either national or European level during negotiations of the regulation relative to how it should be implemented. Hence serious thought about the systemic effects this tool may have on Europe's institutional structure seems necessary before the latter start to become apparent.

QUESTIONS RELATIVE TO THE IMPLEMENTATION OF THE CITIZENS' INITIATIVE

The procedures and conditions governing the presentation of this kind of initiative are set according to article 24 paragraph 1 of the TFEU.

On 11th November 2009 the European Commission published a Green Paper on the European Union (three weeks before the entry into force of the Lisbon Treaty on 1st December 2009). The consultation period ran from 11th November 2009 to 31st January 2010. 65 registered organisations, 70 non-registered organisations [2], 153 individual citizens and 41 public authorities (central government or Federal State, national or regional parliaments) answered the call. In addition to this consultation there was a public hearing in Brussels on 22nd February

1. *Europolitique*, no. 4117 12th January 2011, Focus. Likewise it seems appropriate to note that the Danish Prime Minister is being prosecuted for "having allowed the entry into force of the Lisbon Treaty without a referendum and by a simple vote in the national Parliament" (*chronique en bref*, *Europolitique*, no 4118 13th January 2011).

2. With regard to the meaning of registered and non-registered organisation this is what appears on the European Commission's site: "In the interest of transparency organisations are asked to publish all information about themselves by registering in the register of lobbyists and interest groups and by registering their code of conduct. Contributions by non-registered organisations will be published separately from those of registered organisations."

The European Citizens' Initiative: not such a good idea?

2010 that targeted everyone who had taken part. When questioned by the author, the European Commission said it believed that "the number of contributions received during this consultation was satisfactory. It is comparable to that received for other Green Papers". Moreover it stressed that "a major share of answers came from individual citizens."

The Green Paper attempted to pinpoint any problems that had not been provided for by the TEU. It noted ten: the minimum number of Member States from which the signatories of the initiative must come, the minimum number of signatories per country; the minimum age of the signatories; the form and title of the Citizens' Initiative; rules governing the collation of, checking and authen-

tication of the signatures; the time allowed to collate signatures; the means to make an official registration of initiatives; rules regarding transparency and funding (applicable to the organisers); the possible time taken by the Commission to respond; the procedure to adopt if several Citizens' Initiatives focus on the same subject.

THE UNION'S INSTITUTIONS AND THE CITIZENS' INITIATIVE

The table below lays out the various positions defended by the Commission, the Council and the European Parliament when the draft regulation on the Citizens' Initiative was being debated.

	Draft Regulation (31/03/2010)	Position of the Council of the EU (General Approach 22nd June 2010)	EP's Position (October 2010)	Regulation [3] (December 2010- January 2011)
Minimum number of Member States from which signatories have to come	One third of the Member States (ie 9 Member States)	One third of Member States (ie 9 Member States)	One fifth of Member States (ie 5 Member States)	One quarter of Member States (ie 7 Member States)
Minimum number of citizens per Member State	Number of MEPs in the EP x 750	Number of MEPs in the EP x 750	Number of MEPs in the EP x 750	Number of MEPs in the EP x 750
Organisers	Natural person or legal entity or organisation	Natural person or legal entity or organisation	Natural person within a citizens' committee comprising at least 7 members living in at least 7 Member States	Natural person within a citizens' committee comprising at least 7 members living in at least 7 Member States
Minimum age required to support an initiative	Voting age in European elections	Voting age in European elections	16 years of age	Voting age in European elections
Registration of proposed initiatives	Obligatory in an on-line register made available by the European Commission.	Obligatory in an on-line register made available by the European Commission which reserves the right to refuse the registration of an initiative.	Obligatory in an on-line register made available by the European Commission which reserves the right to refuse the registration of an initiative.	Obligatory in an on-line register made available by the European Commission which reserves the right to refuse the registration of an initiative.
Procedures and conditions for the collation of support statements	On-line and/or paper collation	On-line and/or paper collation	On-line and/or paper collation	On-line and/or paper collation
Time allowed to collate support statements	12 months	12 months	12 months	12 months
Decision on admissibility of proposed initiatives	The organiser must submit a decision request to the Commission with regard to the admissibility after collating 300,000 signatures from at least three Member States.	The organiser must submit a decision request to the Commission with regard to the admissibility after collating 100.000 signatures from at least three Member States.	No decision on admissibility provided for.	No decision on admissibility provided for

3. On this see the table on the procedures and conditions required for a citizens' initiative at the end of this article.

	Draft Regulation (31/03/2010)	Position of the Council of the EU (General Approach 22nd June 2010)	EP's Position (October 2010)	Regulation (December 2010- January 2011)
Requirements re- latives to checking and authentication of support state- ments.	Responsibility of Mem- ber States	Responsibility of Member States based on checks that can be undertaken by means of random surveys	Responsibility of Member States based on checks that can be undertaken by means of random surveys	Responsibility of Member States based on checks that can be undertaken by means of random surveys [4]
Examination of a Citizens' Initiative by the Commission	The Commission has four months to examine an initiative and say what action it intends to take	The Commission has four months to examine an initiative and say what action it intends to take	The Commission has three months to examine an initiative and say what action it intends to take	The Commission has three months to examine an initiative and say what action it intends to take
Commission Report on the implementa- tion of the regula- tion	5 years after the entry into force of the regulation	3 years after the date of implementation of the regulation	3 years after entry into force and every three years after that	3 years after entry into force and every three years after that

The European Parliament's and Council's agreement on the draft regulation was noted on 16th December 2010. The Council is due to adopt the regulation "with regard to the Citizens' Initiative" during the Council of Ministers at the beginning of 2011. Then the Member States will have one year to take the necessary steps for its implementation.

The table helps the reader see how great convergence was between the three European institutions with regard to this issue. Any differences in opinion are highlighted in bold in the table. With the exception of the number of Member States required other differences were insignificant. Although the European Parliament achieved the suppression of measures relative to the decision over an initiative's admissibility delivered by the Commission this reappears during the initiative's registration via the means made available to the Commission to reject an initiative. The minimum number of signatories is no longer a condition for the examination of admissibility – but was this really an obstacle? The time taken for the Commission to publish a report on the implementation of the regulation and the modifications to be made to it was decreased from five to three years after its entry into force and after that it will be published every three years. But in any case adapting the text to constraints would have been guaranteed in other ways (on the European Parliament's request for example). As for limiting the nature of the initiative's organisers is concerned (natural person or legal entity for the Commission and the Council, natural person within a citizen's committee for the European Parliament) – this was simply a matter of perspective

since neither institution challenged the right for a legal entity (political party, union or association) to support an initiative.

But was the difference over the number of States significant? The variation in the European Parliament's position - from a fifth to a quarter - as opposed to the third demanded by the Commission and the Council appears to have been a means of bringing drama into the negotiation rather than being a real position on either one side or the other. It was clear that with European public opinion as a witness the most demagogic figure would be brought to bear. As soon as the European Parliament suggested a figure that was too low (one fifth) and which had no precedent in any of the treaties it was natural that negotiations would end in a compromise between the Commission, the Council (one third) and the European Parliament (one fifth). "Common sense" won through - revealed in the choice of a quarter which corresponds to the figure selected in article 76 of the TFEU. This article makes provision for acts relative to legal or police cooperation in penal matters to be adopted on the initiative of a quarter of Member States. A similar approach could undoubtedly be applied with regard to arguments about the age of the signatories.

WHAT EFFECT WILL THE CITIZENS' INITIATIVE HAVE ON POST-LISBON INSTITUTIONS?

The first preamble of the regulation stresses that "this procedure provides the citizens with the possibility of addressing the Commission directly presenting it with a re-

4. For the vital checking of signatures to be undertaken for the Member States without "incurring unnecessary administrative costs", it has been decided that the latter could restrict checking to random surveys without them having to authenticate every single signature. – otherwise the workload could prove to extremely heavy: for example 74,250 signatures to check in Germany or 54,000 in France.

The European Citizens' Initiative: not such a good idea?

quest which invites it to submit a proposal for the purpose of implementing the Treaties following the example of the right given to the European Parliament in virtue of article 255 of the Treaty on the Functioning of the European Union and to the Council in virtue of article 241 of the Treaty on the Functioning of the European Union." The right to legislative initiative by both of the Union's legislative bodies is placed on the same footing as that attributed to one million of its citizens!

The reason the Commission has to give in justification of its decision to accept or reject an initiative can be likened to that granted to the European Parliament by the Commission in the framework agreement [5] on relations between the European Parliament and the European Commission dated 20th October 2010. In this framework agreement if the European Parliament requests a legislative initiative on the part of the Commission the latter "puts forward a legislative proposal within one year or it includes a proposal in its working programme for the following year. If it does not put a proposal forward the Commission gives detailed reasons for this to the Parliament". Having to give reasons for refusal increasingly undermines the Commission's power to initiative since it constantly has to justify why it is not taking any action! After Lisbon the claim of the Commission's so-called monopoly over initiative is no longer a reality. We can see that this monopoly has been undermined in eight different ways (including the monopoly over initiative [6])

. Moreover does this mean that the Commission is not allowed to take the initiative of a legislative proposal as long as the 12 months necessary for the collation of the signatures have not elapsed? In other words do European citizens have the "temporary monopoly" over initiative preventing the European Commission from exercising its competence to issue a concurrent legislative proposal whilst signatures are being collated? Does this temporary invalidation of legislative initiative apply to that provided for a quarter of the Member States in article 76 of the TFEU?

The European Council and the Council of Ministers are not safe from upheaval. What would happen if a million Europeans from seven Member States launched an initiative for the creation of euro bonds, rejected by the Franco-German duo at the European Council of December 2010? This is not just a flight of fantasy since the Greek Prime Minister, George Papandreou maintained,

after Paris and Berlin's refusal, that he wanted to launch a citizens' initiative in this direction [7].

Finally European Parliament may very well be affected. The financial crisis and the solutions that have been provided to this have highlighted the importance of the validation by the national parliaments of the financial contributions made by the Member States to the European Financial Stabilisation Fund. The European Parliament's legitimacy, whose deficit is demonstrated by low turnout in the European elections, may also have to face a European initiative which challenges its positions. What effect would a citizens' initiative have if it diverged from legislation adopted at first reading by the European Parliament after a political agreement with the Council of the European Union?

The national parliaments, which have been given considerable power in terms of control over the principle of subsidiarity may have ground to complain about a citizens' legislative initiative. Who would arbitrate this conflict? The Court of Justice could only take control of the issue if it became a true body for the constitutional regulation of European competences. Should the way it recruits its judges not develop towards a more political model similar to that used for judges in the US Supreme Court or at least close to that applied with regard to judges at the European Court of Human Rights in order to affirm the more political nature of this type of decision [8]?

To conclude like national democracies, European democracy is looking for a better means to express its citizens' expectations. Although the effects on European institutional system have been underestimated in this article the European initiative does indeed comprise a means to motivate and democratise the European decision-making process. It helps the institutional, national and European network which represents the citizens to form a better idea of their expectations. For the positive impact of the citizens' initiative to have effect it seems that as the latter is being implemented European citizens, institutions and the governments of the Member States need to learn more about it. The report on its implementation planned three years after its entry into force should be the subject of an exceptional consultation – in the ilk of the one

5. JOUE no. L304 20th November 2010, pages 47 and onwards, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:304:0047:0062:FR:PDF>.

6. With regard to this see Jean-Luc Sauron, *Le puzzle des institutions européennes*, Gualino-Lextenso éditions, 4th edition, November 2010, pages 169-170.

7. With regard to this see, *Europolitique* no.4114 7th January 2011.

8. With regard to this see Jean-Luc Sauron, *Procédures devant les juridictions de l'Union européenne et devant la CEDH*, Gualino-Lextenso éditions, November 2010.

planned for a Green Paper – in order to lay out citizen-users' expectations and to justify quite transparently any potential modifications that might have to be made.

This report may very well have to face a citizens' initiative with regard to modifying the way this tool of participatory democracy functions!

Author : Jean-Luc Sauron,

Counsel of the Conseil d'Etat, Associate Professor at the
Paris-Dauphine University

05

THE FOUNDATION'S LATEST PUBLICATIONS

European Interview with Pascal Perrineau on the Rise of National Populism in Europe

European Interview n°53 - 24/01/2011 - Pascal Perrineau

How do we re-create a predictable European economic environment?

European Issue n°191 - 17/01/2011 - Jean-François Jamet

For Europe- Fifth Edition - May 2010

You can read all of our publications on our site:

www.robert-schuman.eu

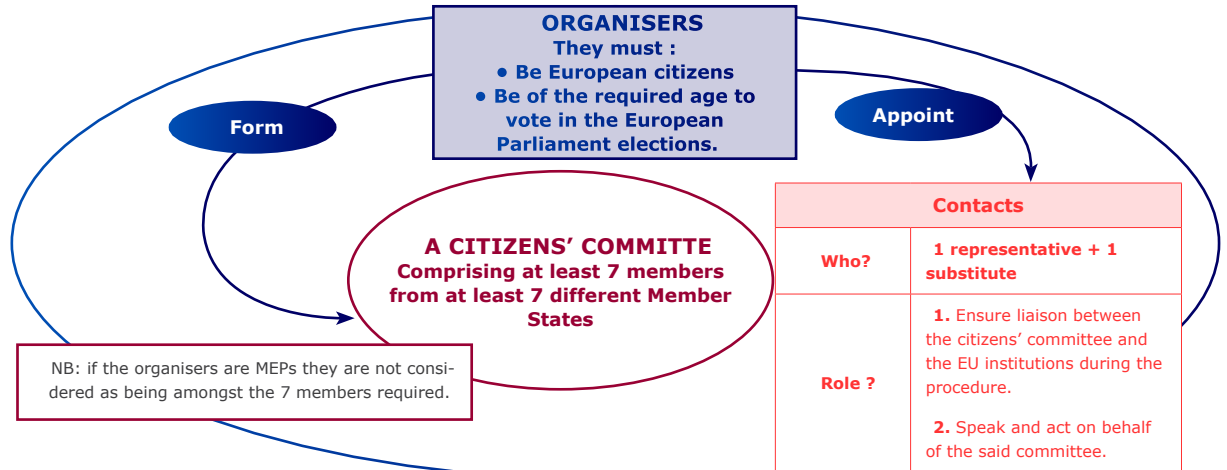
Publishing Director: Pascale JOANNIN

THE FONDATION ROBERT SCHUMAN, created in 1991 and acknowledged by State decree in 1992, is the main French research centre on Europe. It develops research on the European Union and its policies and promotes the content of these in France, Europe and abroad. It encourages, enriches and stimulates European debate thanks to its research, publications and the organisation of conferences. The Foundation is presided over by Mr. Jean-Dominique Giuliani.

Annexe

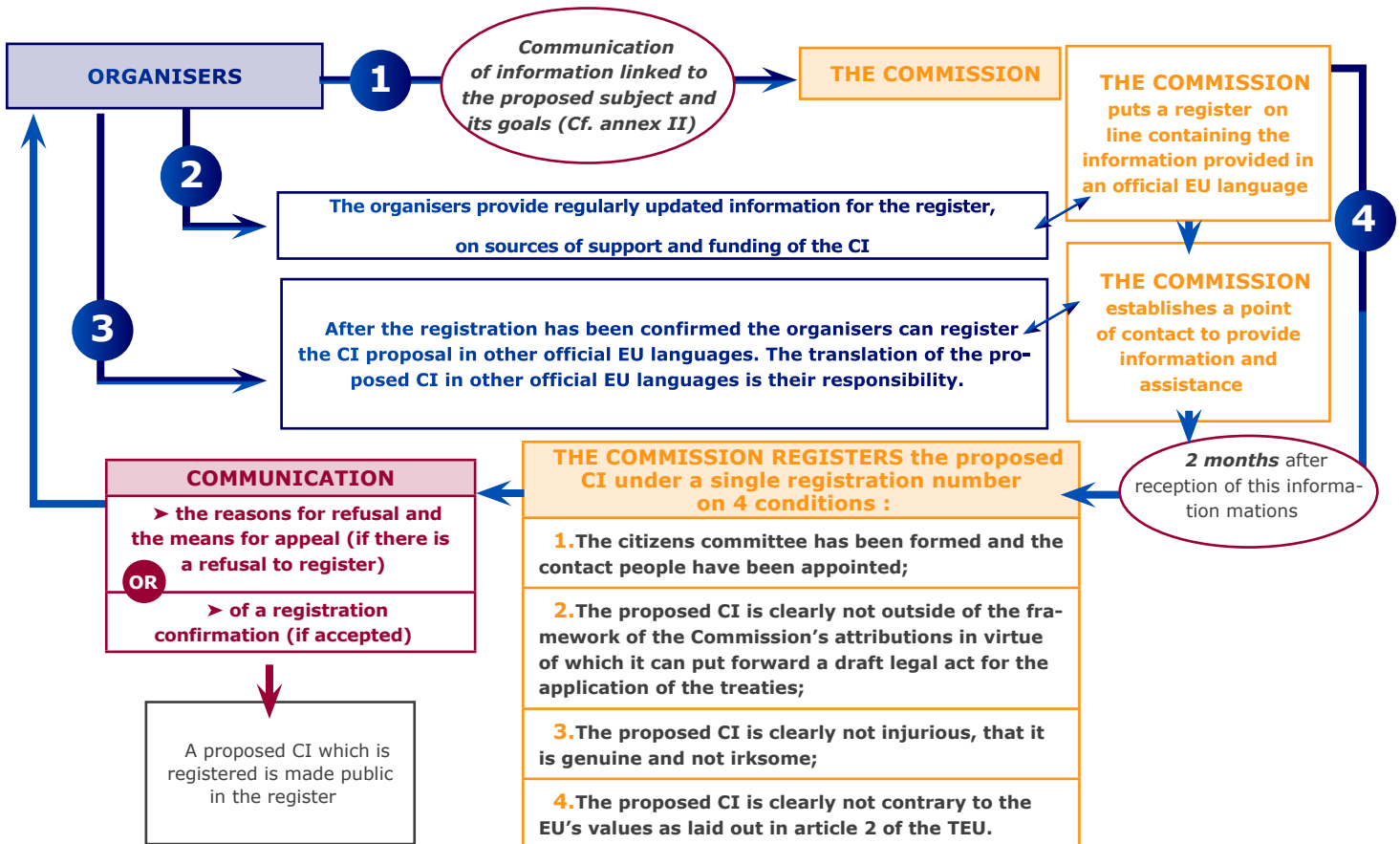
Table of procedures and conditions required for a Citizens' Initiative, as provided in article 11 of the TEU and article 24 in the TFEU

06



1ST STAGE

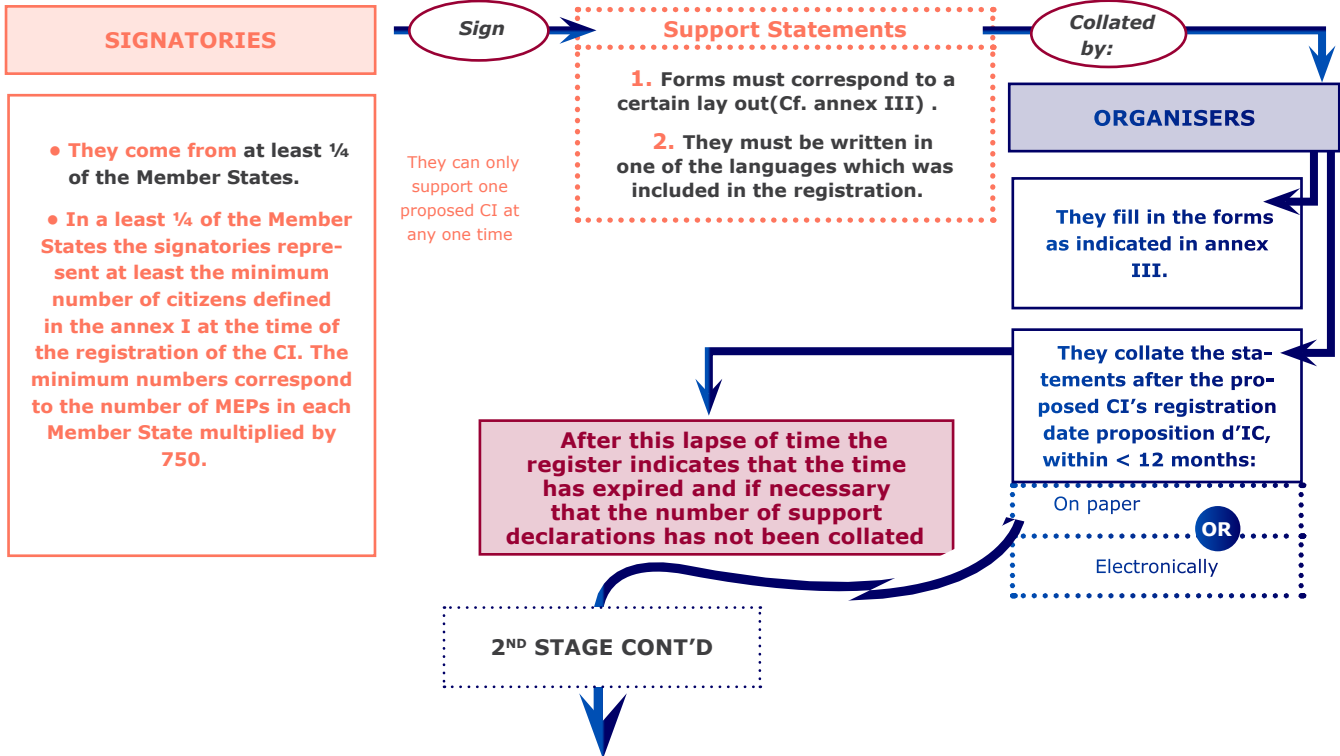
REGISTRATION OF A CITIZENS' INITIATIVE PROPOSAL



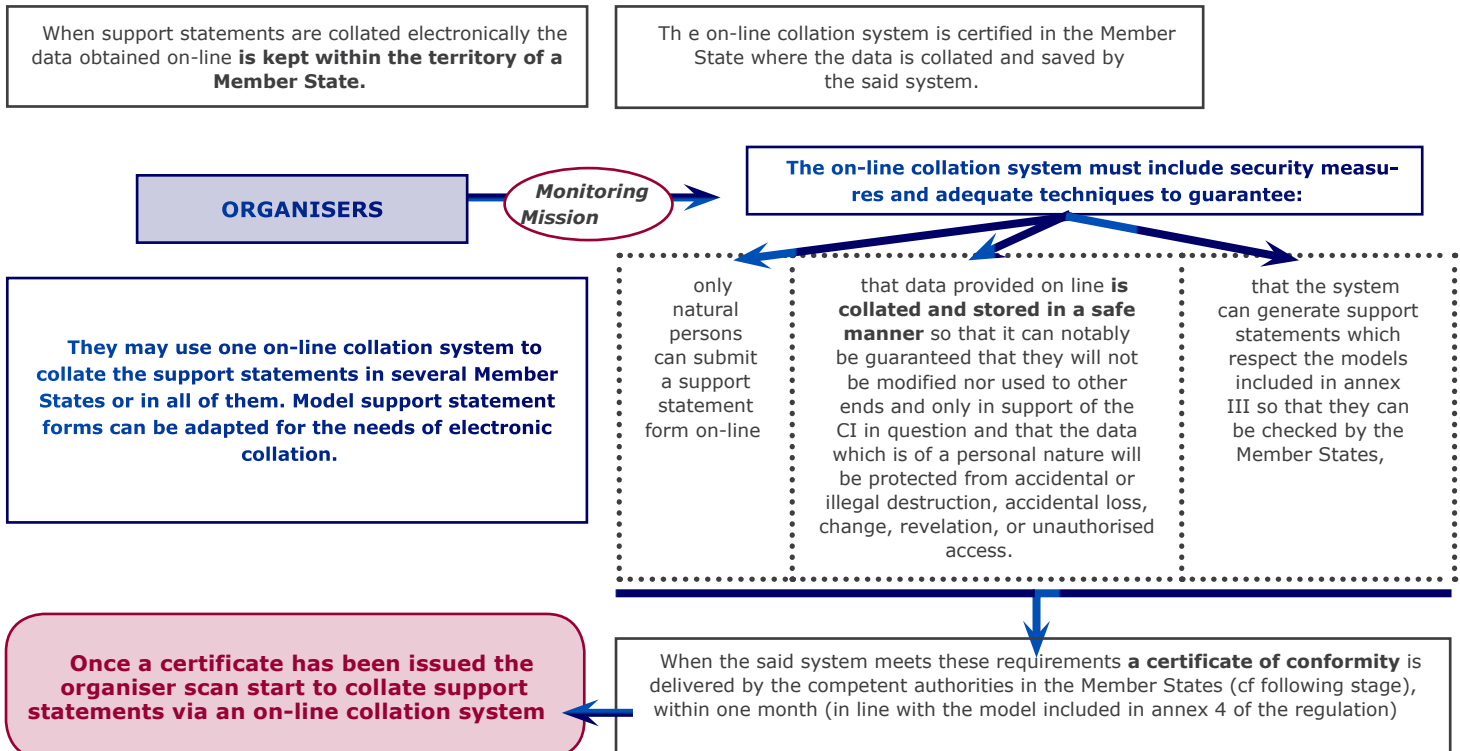
2ND STAGE

THE COLLATION OF SUPPORT STATEMENTS

07



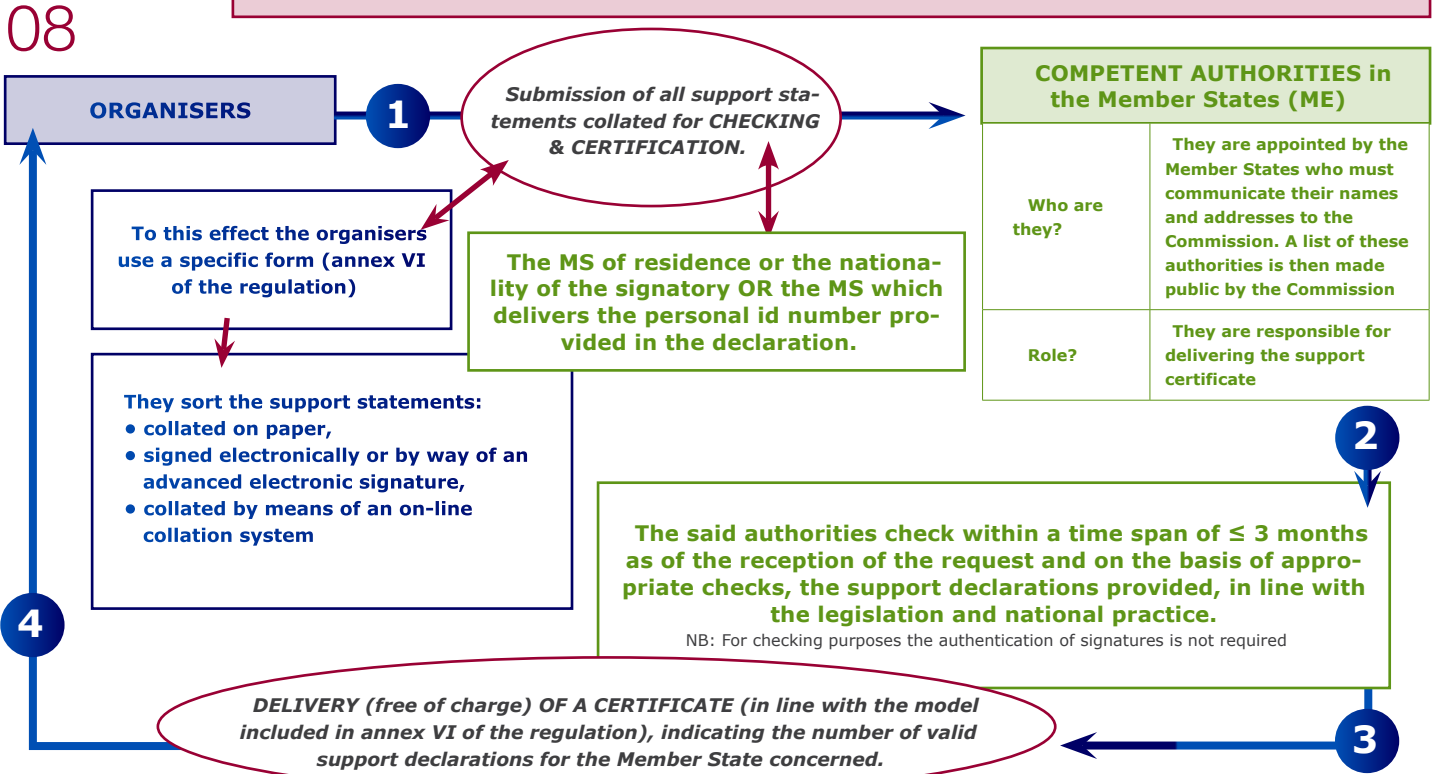
THE SPECIFIC CASE OF ON-LINE COLLATION



The European Citizens' Initiative:
not such a good idea?

3RD STAGE

CHECKING AND CERTIFICATION OF SUPPORT STATEMENTS



4TH STAGE

PRESENTATION OF A CI TO THE COMMISSION AND THE EXAMINATION PROCEDURE

