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The European Citizens' Initiative: Chances, Constraints and Limits

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Founded in 1963 by two prominent Austrians living in exile – the sociologist Paul F. Lazarsfeld and the economist Oskar Morgenstern – with the financial support from the Ford Foundation, the Austrian Federal Ministry of Education, and the City of Vienna, the Institute for Advanced Studies (IHS) is the first institution for postgraduate education and research in economics and the social sciences in Austria. The **Political Science Series** presents research done at the Department of Political Science and aims to share "work in progress" before formal publication. It includes papers by the Department's teaching and research staff, visiting professors, graduate students, visiting fellows, and invited participants in seminars, workshops, and conferences. As usual, authors bear full responsibility for the content of their contributions.

Das Institut für Höhere Studien (IHS) wurde im Jahr 1963 von zwei prominenten Exilösterreichern – dem Soziologen Paul F. Lazarsfeld und dem Ökonomen Oskar Morgenstern – mit Hilfe der Ford-Stiftung, des Österreichischen Bundesministeriums für Unterricht und der Stadt Wien gegründet und ist somit die erste nachuniversitäre Lehr- und Forschungsstätte für die Sozial- und Wirtschafts-wissenschaften in Österreich. Die **Reihe Politikwissenschaft** bietet Einblick in die Forschungsarbeit der Abteilung für Politikwissenschaft und verfolgt das Ziel, abteilungsinterne Diskussionsbeiträge einer breiteren fachinternen Öffentlichkeit zugänglich zu machen. Die inhaltliche Verantwortung für die veröffentlichten Beiträge liegt bei den Autoren und Autorinnen. Gastbeiträge werden als solche gekennzeichnet.

Abstract

In order to celebrate the 20th anniversary of the establishment of European Union citizenship under the Maastricht Treaty in 1993, the year 2013 has been designated by the European Commission as the ‘European Year of Citizens’. The European Citizen’s Initiative (ECI) – labelled by the Commission as a ‘direct gateway through which citizens can make their voices heard in Brussels’ - may emerge in the European awareness as a new appealing platform for policy-shaping and communication. The ECI, through its transnational vox civilis character, figures among the most important novelties in the Lisbon Treaty and in the long run may facilitate and accelerate the bottom-up building of a European demos. The question is, however, whether the mechanism of pan-European signature collection is strong enough to face the democratic challenges present in the EU, especially during the ongoing financial crisis.

Keywords

European Citizens' Initiative, e-democracy, Democracy in the EU, European demos, European civil society.

General note on content

The views expressed in this article are those of the authors alone and do not necessarily reflect those of the IHS or the European Commission.

Contents

I. Historic and legal background

After more than 20 years of lobbying by civil society organizations[1] (Berg, 2008) in the light of permanent accusations concerning the EU's democratic deficit, one cannot underestimate the new provision introduced by the Treaty of Lisbon, which for the first time in the history of European integration incorporates a mechanism of participatory democracy into the primary law of the European Union. Since 1 April 2012 one million European citizens are enabled to ask the European Commission to submit a proposal for European legislation within the framework of the legislative powers attributed to the European Union.[2]

Earlier drafts for the provisions concerning the ECI were originally included in the Constitutional Treaty and were ultimately transferred to the Lisbon Treaty (Maurer and Vogel, 2009; Aloisio et al., 2011). The proposal was formally introduced by German MP Jürgen Meyer in the very last session of the constitutional Convention.[3] In his amendment to the draft Constitution Meyer argued that the ECI aims "to bring Europe closer to the people, as Laeken recommended. It represents a large step in the democratisation of the Union. It will extend the existing right of petition to a right of the citizens to present legislative proposals to the Commission of the EU" (Cuesta-López, 2012: 5).

The ECI should be seen in the light of article 10.3 of the Treaty on the European Union (TEU), which provides that every citizen shall have the right to participate in the democratic life of the Union. However, it should also be noted that the right to submit or sign an ECI is not among the explicit rights of EU citizens mentioned in article 20.2 of the Treaty on the Functioning of the European Union (TFEU). Accordingly, the ECI can be understood as a policy-shaping tool by which European citizens can engage with the European project, and strengthen pan-European debate on European policies (Kaczyński, 2010).

Taking into consideration that the right of a significant number of citizens to put their own legislative proposal before their national parliaments exists at the national level in only 12 of the 27 Member States[4], one could argue that the European Union has gone one step further

[1] Paradoxically, if one considers the twenty-two organisations that were most active in the consultation process on participatory democracy in the EU, only three of them asked the European Convention to enclose principles of direct democracy in the European Constitution. The aim of the majority of these organisations was to promote a system of institutionalised access of civil society organisations to the European institutions.

[2] Art. 11.4 Treaty on European Union (TEU).

[3] See Jürgen Meyer, Suggestion for Amendment to Article I-46 of the Treaty Establishing a Constitution for Europe, http://european-convention.eu.int/Docs/Treaty/pdf/34/34_Art%20I%2046%20Meyer%20EN.pdf. Similar proposals were presented by J. Borrell/C. Carnero/D. L. Garrido, Suggestion for Amendment to Article 34 of the Treaty Establishing a Constitution for Europe, http://european-convention.eu.int/Docs/Treaty/pdf/34/Art34bisBorrell.pdf; Alain Lamassoure, Suggestion for Amendment to Article 34 of the Treaty Establishing a Constitution for Europe, http://european-convention.eu.int/Docs/Treaty/pdf/34/art34bisLamassoure.pdf; J. Voggenhuber/R. Wagener/N. MacCormick/E. Lichtenberger/M. Nagy, Suggestion for Amendment to Article 34 of the Treaty Establishing a Constitution for Europe, http://european-convention.eu.int/Docs/Treaty/pdf/34/Art34Voggenhuber.pdf.

[4] E.g: Poland or Spain.

than most of its Member States in terms of direct participation of citizens in the legislative process (Ponzano, 2011).

A significant difference between the ECI and the citizens' initiative mechanisms at national levels in those 12 Member States cannot, however, be forgotten. In most cases, the citizens' right of legislative initiative allows to propose a legislative draft directly to the legislatures, that is to say national parliaments. In the case of the European Union this is not possible, due to the institutional and legal structure on which it is based: As a general rule, legislative initiatives for EU legislation originate from the European Commission (article 17 TEU). Therefore, no existing national model could simply be copied for the ECI.

The ECI gives a certain number of citizens the right to ask the European Commission, which by virtue of the European Treaties has a quasi-exclusive right of legislative initiative, to submit a legislative proposal.[5] Accordingly, the Commission is not obliged to pass the proposal to the legislative instances of the European Union, that is to say the European Parliament and the Council of Ministers.

Thus, this arrangement has nothing to do with the one present in the Member States, where either the legislative branch (parliament) or the executive branch (government) has the power to put forward legislative proposals.

There are, however, two narrow exceptions to this rule. Firstly, foreign and security policy, where the right of initiative belongs to the Member States and the High Representative.[6] Secondly, justice and home affairs, for which the Commission shares the right of legislative initiative with one-quarter of Member States (but not, in this case either, with the European legislative instances).[7] Consequently, citizens' initiatives concerning e.g. security policy are hard to imagine, as this area is ruled almost entirely through intergovernmental policy-making and executive acts rather than legislation as such.

Obviously, this does not mean that the European Parliament and the Council of Ministers are without influence on the Commission's activity or passivity. In accordance with Articles 225 and 241 of the TFEU both the European Parliament and the Council of Ministers can ask the Commission to submit a legislative proposal. The Commission can, however, decide whether or not to comply with such a request. Nonetheless, the Commission's dismissal of the proposal has to be justified.

Given these restrictions, one might argue that the Treaty of Lisbon confers the same right on one million European citizens as that held by the European Parliament and the Council of Ministers. That is, it confers the right to ask the Commission to submit a legislative proposal

[5] Art. 17.2 TEU.
[6] Art. 30 TEU.
[7] Art. 76 TFEU.

without any legal guarantee that the Commission will comply with the request (Ponzano, 2011).

Overall, the ECI can be seen as an "agenda-setting and policy-shaping" instrument, as it gives a minority of EU citizens the right to place an issue on the agenda for legislative consideration, being at the same time, however, not legally binding.

The right of legislative initiative by European citizens was not 'self-executing'. According to article 24 TFEU, an implementing regulation was required to govern the conditions and procedures necessary to enable one million European citizens to submit a request for European legislation to the European Commission and obtain from it a reasoned reply within a set timescale (Ponzano, 2011). In March 2010, after having presented its Green Paper[8] the European Commission submitted the respective proposal for a regulation to the European Parliament and the Council of Ministers.[9]

The Commission, while preparing the Green Paper and eventually the proposal for the regulation, used the so-called method of "reasoning by analogy": The Commission's services drafted the regulation on the basis of existing, similar procedures in EU legislation. Since however, as Warleigh argued, 'the formal granting of such ability to citizens, acting collectively, would be unparalleled in the history of international organisations and would thus have potentially enormous significance' (Warleigh, 2007: 64), it was impossible and insufficient to copy a design of various national procedures and apply them at EU level. Instead, the procedure had to follow an original concept, adapted to the needs of democratic life at the European level, where it is significantly more difficult to conduct a citizens' initiative (Berg, 2009).

In the end of 2010, the Parliament and the Council reached an agreement on the contents of the implementing regulation. The regulation was adopted at trilogue level during Parliament's first reading stage. It finally entered into force on 1 April 2012.

[8] European Commission, *Green Paper on a European Citizens' Initiative*, COM(2009) 622 final (Brussels, 11.11.2009).

[9] European Commission, *Proposal for a regulation of the European Parliament and of the Council on the citizens' initiative*, COM(2010) 119 final (Brussels, 31.03.2010).

II. The Procedure in a nutshell

II.1 Who can launch the ECI?

Both the Commission's Green Paper and the TEU did not mention who is eligible to start an initiative. This has, however, been specified in the adopted Regulation[10], which in Article 3.1 clearly states that "the organisers shall be citizens of the Union." Moreover, Article 3.4 of the Regulation requires that the signatories must be "of the age to be entitled to vote in elections to the European Parliament". Given the low involvement of youngsters in European affairs, the Regulation could have avoided the reference to the voting age in EP elections (determined by the Member States) and extended the right to support an ECI to EU citizens over sixteen years old (Cuesta-López, 2012: 11). This approach was supported, among others, by the Committee on Petitions of the European Parliament, which stated in its opinion that: "A lower age limit is proposed in order to encourage younger citizens' participation in the democratic life of the Union. The age limit of 16 years in case of European election already exists in certain Member States."[11] This solution has not been taken into consideration, due to Council's disagreement.

Although at first, any single EU citizen would have been able to launch an initiative, due to an amendment by the European Parliament, a citizens' committee of at least seven persons who are residents of at least seven different Member States has to be formed.[12] One could argue that this requirement is slightly too restrictive and that leaving citizens the freedom to organise themselves in a different manner would be a better solution. The provision may have been helpful as a non-binding recommendation to initiators; however, as a compulsory condition sanctioned by refusal of registration it might be considered somewhat disproportionate. On the other hand, this rule, which is taken from the national citizens' initiative systems, is supposed to function as a filter. It prevents the registrar, in the case of ECI the Commission, from becoming paralyzed through a flood of applications submitted by individual citizens (de Witte, 2010: 9). The European Parliament was of the opinion that the initiative should be proposed by committee "in order to facilitate the emergence of real European-wide issues, the reflection on those issues and the collection of signatures throughout the Union".[13] The lack of information in the ECI Regulation concerning legal liability of the committee is, however, unclear and should be specified in order not to deter citizens from submitting ECIs. What is more, the organisers shall designate one representative and one substitute ('the contact persons'). These contact persons shall liaise

[10] Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative.
[11] European Parliament, *Report on the proposal for a regulation on citizens' initiative*, A7-0350/2010 (Strasbourg 02.12.2010).
[12] Regulation (EU) 211/201, Art. 3.2.
[13] European Parliament, A7-0350/2010.

between the citizens' committee and the institutions of the Union throughout the procedure and shall be mandated to speak and act on behalf of the citizens' committee.[14]

II.2 How to register an initiative?

According to Article 4 of the Regulation "prior to initiating the collection of statements of support from signatories for a proposed citizens' initiative, the organisers shall be required to register it with the Commission". The registration has to conform to conditions mentioned in Annex II to the Regulation: The initiative has to contain a title and short description, and refer to provisions of the Treaties considered relevant by the organisers for the proposed action. The same Article requires from the initiators the publication of "regularly updated information on the sources of support and funding". The Regulation does not foresee, however, any public funding for the organisers from the EU.

The Commission, after having received all the relevant documents, has two months to register a proposed citizens' initiative under a unique registration number and send a confirmation to the organisers, provided that all the conditions are fulfilled. Besides the formal conditions, the proposal also cannot manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties, it cannot be manifestly abusive, frivolous or vexatious, and finally it cannot be manifestly contrary to the values of the Union as set out in Article 2 TEU[15] . If any of these conditions are not met, the Commission shall refuse the registration, and is obliged to inform the organisers of the reasons for the refusal, as well as of all possible judicial and extrajudicial remedies available to them.

In this case, however, throwing the rejected citizens' initiative into the waste-bin would probably strengthen the alienation of many citizens from the European project. Every single ECI reflects a societal problem considered by citizens as worthy of action by a public institution (Kaczyński, 2010: 2). Thus, the Commission should avoid mere replies such as "this is beyond EU competences," or "this is contrary to the values stated in the Treaties."

Differently than in most national citizens' initiatives[16], the organisers of the ECI have to formulate their proposal in general terms and not as a proper draft law. To collectively articulate a general principle will certainly be a powerful agenda setting tool, but at the same time it will leave a lot of room for political horse-trading to those who have to interpret and

[14] Regulation 211/2011, Art.3.2.

[15] "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

[16] For example, the Italian agenda initiative must consist "of a bill drafted in articles" (article 71 Italian Constitution) and the Austrian Volksinitiative "must be put forward in the form of a draft law" (article 41.2 Austrian Constitution). However, some examples of popular initiatives formulated in general terms do exist: the Swiss popular initiative can be submitted in the form of a general proposal (initiative populaire générale).

implement the principle. On the other hand, a fully formulated legislative proposal has the advantage of being a strong basis for potential future debates, negotiations and decisions. The drawback is that such a precisely worded text could become an obstruction, e.g. by highlighting problems with existing EU law (Kaufmann, 2012: 16). Moreover, the organisers can also suggest the form, which the adopted act should take (regulation/ directive/ decision). Consequently, if the initiator's goal is to achieve full harmonisation in a given area, instead of minimum harmonisation, a regulation would be more appropriate than a directive. In any respect the Commission has the last word on this matter. Overall, however, the present solution should be regarded as a major facilitation for the initiators.

The EP reasonably rejected the Commission proposal's provision establishing that the decision on the admissibility would be adopted after the collection of 300,000 statements of support from signatories from at least three Member States (article 8 of the Commission's proposal).[17] The EP's Rapporteurs of the Committee on Constitutional Affairs did not "support the idea of this check taking place after the collection of 100,000 or 300,000 signatures, as this would rightfully cause great frustration to organisers." [18]

II.3 How to collect signatures?

After registration of the initiative the second stage of the process begins: the signature gathering period. This duty belongs obviously to the organizers of the initiative[19], who may collect statements of support in paper form or electronically.[20] The period of twelve months, during which the initiative takers can gather signatures, was the subject of lengthy discussions, with the Council and the Commission sticking to the one year period and the European Parliament together with some civil society organizations suggesting extending the time span to eighteen months (Bouza Garcia, 2012: 59).

With regard to the amount of statements of support needed for a given ECI, article 11 TEU sets the threshold at a fairly low level, as one million EU citizens represent just 0.2% of the whole population of the EU. Compared to the amount of signatures required to trigger similar popular initiatives in the Member States the percentage is in many cases much higher (Maurer and Vogel, 2009: 16).[21]

The Regulation also specifies concrete quotas concerning the number of Member States which the signatories have to come from. The Commission proposed a 'one-third of the

[17] COM(2010) 119 final.
[18] European Parliament, *Working Document on a proposal for a regulation of the European Parliament and of the Council on the citizens' initiative* (Strasbourg 22.06.2010).
[19] Regulation 211/2011, Art. 5.1.
[20] Ibid Art. 5.2 and 6. Problems related to electronic identification and authentication procedures, which are still not yet available in most of the Member States, were solved by the application of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures.
[21] E.g. Poland – 0,26%; Spain – 1,20%; Latvia – 10%.

Member States' requirement. This hurdle has been successfully lowered by the European Parliament to one-fourth of the Member States from which the signatories have to come. Some commentators regarded this as a means of bringing drama into the negotiation rather than being a real position on either one side or the other, luckily "common sense" won through (Sauron, 2011: 192). Lowering the threshold certainly facilitates the realization of initiatives that have the potential for one million signatures. On the other hand, the finally agreed threshold also facilitates ECI that essentially deal with regional issues.

What is more, the Regulation specifies a minimum number of citizens who are required to support an initiative in each of the Member States involved. As the Commission stated reasonably in the Green Paper "it would be contrary to the spirit of the Treaty if an initiative could be presented by a large group of citizens from one Member State and only a purely nominal number of citizens coming from other Member States." Hence, the EP and the Council agreed a formula which is based on the number of Members of the European Parliament elected in each Member State multiplied by 750.[22] This gives larger Member States a lower threshold relative to their population size (0.09% of the population in Germany's case) and smaller EU countries a higher one (0.9% for Luxembourg), thus encouraging the initiators of such initiatives to give equal consideration to both bigger and smaller Member States in their efforts to meet the required thresholds. If a proportional or fixed percentage mechanism had been introduced, organisers would have had to collect substantially more signatures in larger Member States and many fewer in smaller ones (for example, just around 1,000 in Luxembourg compared to ca. 160,000 in Germany in order to reach a fixed threshold of 0.2% of the population) (Emmanouilidis and Stratulat, 2010).

When the required amount of signatures has been collected, the organizers have to submit the statements of support, in paper or electronic form, to the relevant competent authorities for verification and certification.[23] The signatures will always be attributed to and counted on the quota of the country that issued the verification document of the signer. After submitting the statements, national authorities shall, within a period not exceeding three months from receipt of the request, verify the statements of support submitted on the basis of appropriate checks, in accordance with national law and practice, as appropriate.[24] For the purpose of the verification of statements of support, the authentication of signatures is not required at that stage.[25] On that basis they shall deliver to the organisers a certificate confirming the number of valid statements of support for the Member State concerned.

After obtaining the certificates and provided that all relevant procedures and conditions set out in this Regulation have been complied with, the organisers may submit the citizens'

[22] Concrete numbers are set out in Annex I of the Regulation 211/2011.
[23] Regulation 211/2011, Art. 8.1.
[24] Ibid. Art. 8.2.
[25] Ibid. Art. 8.2.

initiative to the Commission.[26] Any support and funding received for that initiative must be also specified. That information will be then published in the register.

Thanks to the European Parliament's amendments, the Commission is also obliged to receive the organizers at an appropriate level to allow them to explain in detail the matters raised by their initiative. Moreover, in order to popularize the initiative and defend its political gravity, the organisers shall be given the opportunity to present the citizens' initiative at a public hearing. These meetings are organised at the European Parliament, with the participation of other institutions and bodies of the Union at an appropriate level.[27]

Eventually, within three months from the submission, the Commission is obliged to set out in a communication, its legal and political conclusions on the citizens' initiative, the action it intends to take, if any, and its reasons for taking or not taking that action.[28]

This provision appears confusing, considering that the ECI had been previously subject to an ex-ante validation by the Commission. Hopefully, the "legal conclusion" will not be a new technical judgment on its admissibility but a final decision on the suitable kind of legal act chosen in order to draft the ECI and the proper legislative procedure. As for now, it looks like the Commission is entitled to freely change the title, the form and the language of the initiative before it gives its formal approval (Auerer, 2005). Although, the Regulation does not give the citizens' committee the possibility to participate in the ECI's drafting process, in practice this would be seen as a positive and "pro-citizen" solution.

II.4 Means of redress

A crucial question arises for cases in which the Commission rejects the registration of an initiative. Do the organisers have any right to appeal?

It seems logical that the committee should be able to challenge such a decision in the framework of an action for annulment under Article 263 TFEU. This article provides that any natural or legal person may introduce an action for judicial review of an act of the institutions (in this case – the Commission) addressed to that person. The potential review could be invoked e.g. if the Commission fails to adequately justify its decision, which could be regarded as an infringement of an essential procedural requirement. One could also imagine a scenario where the Parliament decides to challenge the Commission's refusal to register or follow-up on a proposal backed by the EP (Szeligowska and Mincheva, 2012: 71).

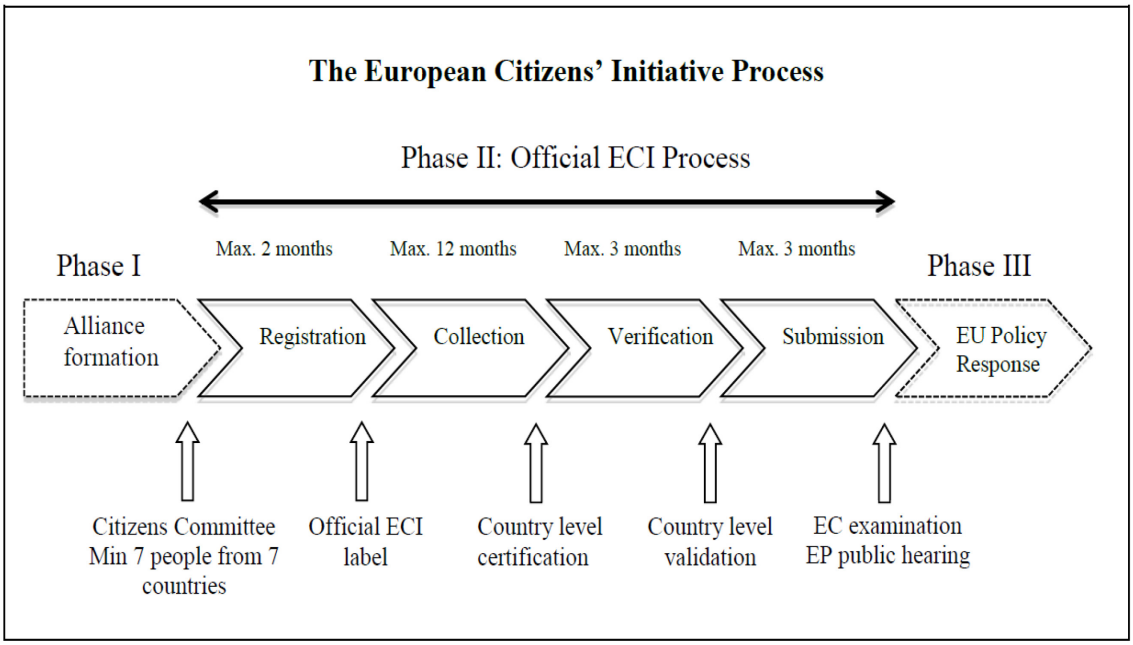
The ECI organizer may also complain to the European Ombudsman, especially regarding procedural matters such as a too slow processing of an initiative on behalf of the

[26] Ibid. Art. 9.
[27] Ibid. Art. 11.
[28] Ibid. Art. 10.1.c).

Commission. Despite the lack of direct legal effects on the Commission, such complaint would be one of the solutions to create public awareness regarding possible maladministration of initiatives (de Witte, 2010: 19).

As far as the Commission's reaction is concerned, two possibilities might be considered in case of refusal of the proposal. Firstly, the Commission should indicate who has the power to address the particular problem, and secondly, it should also commit itself to monitoring how the process develops and then report on it. The European Parliament should be involved in this process as the only EU institution with a direct mandate from European citizens. Should Parliament conclude that the Commission failed to address the specific issue, it should have the right to call on the responsible Commissioner to give an explanation to the Parliament on the matter (Kaczyński, 2010: 2).

However, after the completion of signature gathering, no redress is possible, as the final decision is based on a political analysis of the initiative's substance by the Commission.



III. What initiatives can be taken into consideration?

Neither the TEU nor the implementing Regulation 211/201 provide a list of particular issues excluded from the scope of the ECI (Bilbao Ubillos, 2012: 53). One might argue, however, that a reference to the single subject requisite would be broadly welcomed, as it would guarantee the coherence and substantive unity of the proposals presented by the citizens (Cuesta-López, 2012: 17). This would also facilitate the understanding of the initiative by citizens and allow voters to express a clear standpoint on a particular issue. Moreover, by introducing this requirement one could prevent a situation where citizens would vote on a very popular initiative along with an unrelated provision that the initiators care about, but about which voters care little, are neutral or opposed.

The regulation fails to address a procedural question concerning the overlapping of similar or totally opposite initiatives. This legal inaccuracy reflects the EP's and the Council's choice to deal with this eventual issue through political tools and discretionary procedures. Consequently, this may raise questions about the transparency of the submission procedure.

On the other hand, such a scenario may be an effective encouragement for a pan-European debate with the involvement of initiators who submitted the conflicting proposals.

The Commission should then move to inform all interested parties of existing potential conflicts and preferably support a public debate among them prior to the signature collection procedure. Alternatively, presentation of any contradictory initiatives could be held off until the first one has terminated its period of collection in order to compare whether the two proposals really conflict. In this case, the Commission would have a strong position in terms of preparing its own proposal, at the same time allowing the committees of both proposals to present their ideas in front of the European Parliament. The Parliament could therefore evolve into a guardian of the instrument, providing an arena for debate on certain issues and/or acting as a public 'filter' in support of specific initiatives by asking the Commission to submit a relevant legislative proposal. Although this solution is not included in the Regulation, it may foster the transformation of the ECI as a policy-shaping instrument into a genuinely deliberative policy-making process (Bouza Garcia, 2012: 36).

Another crucial question to consider about the scope of the ECI, is whether it could serve as a tool to amend the Treaties. Although at some point several organisations interested in the citizens' initiative lobbied in favour of this interpretation, most Member States pointed out that both Article 11 TEU and the implementing Regulation itself exclusively refer to initiatives aimed at applying the Treaty and not at changing it. While the Commission is competent to start either the ordinary or the simplified treaty revision procedure[29], it seems that this is a competence that clearly falls outside the Commission's general power to submit "a proposal

[29] Art. 48 TEU.

for a legal act of the Union for the purpose of implementing the Treaties"[30]. Therefore, an ECI demanding the revision of the Treaties could be automatically dismissed.

At the same time, however, it remains open to dispute whether the creation of a financial facility to defend the euro is an initiative which aims at implementing or at modifying the Treaty of Lisbon. In any case, that is not the issue. It is self-evident, that even if a million citizens were able to propose an amendment to the Treaties in force, it is highly likely that the European Commission would not comply with the request, hiding itself behind the Member States in their capacity as "masters of the treaties", which would most probably block any such initiative. In this case, the European Parliament, which has the same powers as the Commission to propose an amendment to the Treaties, could take its own initiative in this respect.[31]

[30] Regulation 211/2011, Art 4.2a).
[31] Art. 48.2 TEU.

IV. Practice: Ongoing initiatives

As for now, twenty-seven initiatives applied for registration. Fourteen initiatives have been officially registered by the European Commission and are ongoing[32]. Their subject matter varies from supporting educational programmes such as Erasmus, to climate protection, to one proposal aimed at granting EU citizens residing in another Member State the right to vote in all political elections in their country of residence, on the same conditions as the nationals of that State.

All the ongoing initiatives vary not only in terms of subject but also by the appearance of their websites, which function as the main platforms that facilitate the collection of signatures. It is self-evident that initiatives with transparent and user-friendly web pages translated into the majority of European languages have better chances to successfully collect signatures online. Unfortunately, until now, the functionality of several websites still leaves a lot to be desired.[33]

On the other hand, organisers of initiatives may have already noticed that the collection of only electronic signatures will not be sufficient to bring the proposal to the Commission. In order to face the challenge of collecting one million signatures in at least seven Member States, organisers have to get involved in a face-to-face collection. Obviously, this requires much more work in terms of logistics but at the same time, the personal aspect is likely to strengthen identification of many citizens with the supported initiative.

This is well evidenced by the example of the „Right2Water" initiative, which is the first ECI in European history to have succeeded in collecting the minimum number of signatures, also due to the fact that they performed face-to-face collection. The petition argues against the deregulation of water utilities as forwarded in the Commission's proposal for a directive on the award of concession contracts.[34] The signatories ask the Commission to propose legislation that would make the right to clean drinking-water a human right. Most signatures came from Germany and Austria, where water utilities are publicly-owned and public opinion became enraged by the idea that the EU would force local governments to privatize water distribution. The initiative, however, continues to collect signatures in order to reach the distribution quorum of at least seven Member States, and to compensate for potentially invalid signatures.

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[32] Among initiatives rejected by the Commission, one can find proposals against nuclear power or a recommendation to sing the European Anthem in Esperanto.

[33] Not to mention the total lack of functionality and user-friendly approach in the case of ECI Online Collection System provided by the European Commission.

[34] See COM(2011) 897 final, 2011/0437 (COD)

Table 1: Right2Water ECI – Signatories as on 2 April 2013

Country	Paper signatories	Online signatories	Total	Minimum signatories
	2/04/2013	**2/04/2013**	**2/04/2013**	**required EU**
Austria	10	58843	58853	14250
Belgium	14075	9773	23848	16500
Bulgaria		781	781	13500
Cyprus	2000	319	2319	4500
Czech Republic	1500	2309	3809	16500
Denmark	141	1587	1728	9750
Estonia	113	826	939	4500
Finland	1656	4608	6264	9750
France	2000	8956	10956	55500
Germany	50150	1135775	1185925	74250
Greece	15	7462	7477	16500
Hungary	260	1640	1900	16500
Ireland	1000	1571	2571	9000
Italy	9000	25541	34541	54750
Latvia	200	169	369	6750
Lithuania	1000	5988	6988	9000
Luxembourg	209	3070	3279	4500
Malta	1500	282	1782	4500
Netherlands	314	9102	9416	19500
Poland	167	947	1114	38250
Portugal	235	2686	2921	16500
Romania	426	1183	1609	24750
Slovakia	1200	11717	12917	9750
Slovenia	4027	14536	18563	6000
Spain	6000	14206	20206	40500
Sweden	1000	3189	4189	15000
United Kingdom	600	3263	3863	54750
Total	**98798**	**1330329**	**1429127**	

Table 2: Ongoing ECI[35]

Official title	*Date of registration*	*Subject-matter*	*Aprox. no. of signatures*
Let me vote	28.01.2013	EU citizens' right to vote in all political elections in country of residence.	No data
End Ecocide in Europe: A Citizens' Initiative to give the Earth Rights	21.01.2013	Adoption of legislation to prohibit, prevent and pre-empt Ecocide.	16,900
Unconditional Basic Income (UBI) - Exploring a pathway towards emancipatory welfare conditions in the EU	14.01.2013	Better cooperation between the Member States aiming to explore the Unconditional Basic Income (UBI) as a tool to improve their respective social security systems.	21,400
Single Communication Tariff Act	03.12.2012	One unique all-inclusive, monthly flat-rate communication tariff within the boundaries of the EU.	No data
"30 km/h - making the streets liveable!"	13.11.2012	A 30km/h (20mph) EU-wide default speed limit for urban/residential areas.	18,000
European Initiative for Media Pluralism	05.10.2012	Protection of media pluralism.	3,000
Central public online collection platform for the European Citizen Initiative	27.08.2012	Creating an Online European Initiatives Platform where one can register new initiatives and collect signatures.	No data
Suspension of the EU Climate & Energy Package	08.08.2012	Suspend the 2009 EU Climate & Energy Package.	No data
Pour une gestion responsable des déchets, contre les incinérateurs	16.07.2012	Harmonisation of laws in terms of waste neutralization.	No data
High Quality European Education for All	16.07.2012	Adoption of common education goals reflecting EU basic values.	No data
Stop vivisection	22.06.2012	Phasing out animal experiments.	208,000
One of us	11.05.2012	Juridical protection of the dignity and the right to life of every human being.	81,000
Right2Water: Water and sanitation are a human right! Water is a public good, not a commodity!	10.05.2012	Right to clean drinking water and sanitation.	1,339,400
Fraternité 2020 - Mobility. Progress. Europe.	09.05.2012	Enhancement of EU exchange programmes, e.g. Erasmus or the EVS.	60,630

[35] As on 08.04.2013.

V. Chances and limits

The European Commission stated optimistically that the ECI "provides a singular opportunity to bring the Union closer to the citizens and to foster greater cross-border debate about EU policy issues, by bringing citizens from a range of countries together in supporting one specific issue".[36] The Commission assumes therefore, that by signing mass petitions, citizens will automatically be better informed about the EU decision-making process, as well as about the EU in general. There is, however, little evidence to support this hypothesis. The ECI's contribution to this kind of vertical Europeanisation[37] will most probably be minimal since it demands only a small measure of communication which is likely to happen in a "vertical way", that is, appealing to a special section of citizens' interests. This type of communication is likely to address citizens who are already well-informed (Bouza Garcia, 2012: 29).

However, if the ECI were indeed used more frequently by different groups for different policy topics, the position and role of the citizen in the EU could slowly begin to shift from being far removed to becoming more engaged in the EU decision-shaping process. This assumption is based on a few potential consequences that might occur after the introduction of the first successful ECI:

First, as mentioned before, ordinary citizens who supported a successful ECI would realize that they actually can have an impact at EU level. Secondly, there is a chance that EU leaders might discover that citizens can be perceived as valuable partners for positive change rather than negative forces to be feared. Thirdly, civil society organisations dealing with national issues would, through the process of working on an ECI, strengthen and develop their own cross-border networks. This might be a big step towards a further involvement in EU policy. Lastly, national media which nowadays rarely cover EU policy from a transnational perspective might start cross-border reporting on EU issues seeing that the ECI is an appropriate platform to do so (Thomson, 2011: 4).

As it does not impose strong legal obligations upon the institutions to act, the ECI rests on a very weak conception of participatory democracy. From an institutional perspective however, the new instrument is important since it stimulates a form of collective action which neither

[36] COM(2010) 119.

[37] Vertical Europeanization is defined as "the process of paying closer attention to Brussels", while horizontal Europeanization "means increasingly taking account of what happens in other member states of the European Union" (Brüggemann, Michael/Kleinen von Königslöw, Katharina (2007) : *Let's talk about Europe': explaining vertical and horizontal Europeanization in the quality press*, TranState working papers, No. 60, http://hdl.handle.net/10419/24972, pp. 3-4)

the Council nor the EP are able to provide. Such endorsement may induce EU institutions, civil society and citizens to start pan-European campaigns and debates, thus leading public opinion at the national level into a more meaningful form of collective action in the EU.

Most certainly, the European Commission will play a crucial role when it comes to the possible impact of the ECI (Best and Lambermont, 2011: 13). Not only due to its key role in the technical and formal part of the procedure, but above all, because it will possibly be the most strongly influenced institution.

The first challenge for the Commission occurs already at the time of the registration of initiatives. It might find itself under pressure to decide, at an early stage, on politically sensitive issues, although these might not even come close to the one million threshold. Radical, populist and Euro-sceptic initiatives are likely to happen, most probably, however, organisations seeking influence rather than just fame will make proposals that are acceptable to EU institutions. Nevertheless, the Commission should not underestimate nor disregard initiatives that are not in line with its view on particular issues, as it would undermine the democratic character of the overall ECI project.

The ability of the ECI to attract media attention will play a very important role and most probably will not depend on the mechanism itself but on the subject matter addressed by the ECI. Being aware of the state of today's mass media, it is not hard to predict that "exotic" initiatives which are unlikely to be taken on board by the Commission will mostly be in the spotlight. From the EU institutions' point of view, the contribution of the ECI to media attention may be limited or rather counterproductive (Bouza Garcia, 2012: 31).

Although it is frequently ignored, the role of mass media should not be underestimated. Still, most people simply know nothing about the ECI. When polled by Eurobarometer in spring 2012, only 3% of EU citizens said they were "very likely" to use the European Citizens' Initiative. On the other hand, however, more than two-thirds of all respondents stated that they are not going to use it.

All in all, the medium-term success of any initiative will be dependent on the construction of relevant political coalitions, and perhaps, in some cases, more than the minimum requirement of a million signatures in 7 countries will be needed.

The main issue, however, arises after the successful collection of signatures. Even if the Commission lives up to the expectations of the organisers and signatories by turning the initiative into a proper legal draft, it will be subject to amendments or indeed be dismissed by

the EU's legislators; i.e. the EP and/or the Council (Chyła, 2012: 165). Although it is hard to imagine the European Parliament openly rejecting an ECI after months of arduous signature collection organized by the same citizens who elect the MEPs, this will probably not be the case with regards to the Council, which works on an intergovernmental basis.

This raises a crucial question concerning the eventual effectiveness of the ECI. In fact, one could state that the ECI is just a mere reinforcement of one of the existing rights of EU citizens, i.e. the right to address a petition to the EP, now extended towards the European Commission.[38]

As for now, under Article 227 TFEU, any citizen of the Union, as well as any person residing in any EU Member State, has the right to address a petition to the EP if it concerns a matter that comes within the EU's field of activity and affects them directly. The petition can be submitted individually or collectively. What is more, no requirements such as a threshold of signatures or other requirements found in the ECI Regulation are imposed. Although the EP has no duty to comply with or answer a petition, the Commission, in case of an ECI, is also not bound by any successful initiative.

Though the primary function of a petition is problem-solving; in certain cases the Committee on Petitions may refer a petition to other European Parliament committees for information or further action. Consequently, a committee might take a petition into account in its legislative activities.

Obviously, the ECI should be regarded as a much more extensive right of participation of citizens in the legislative activity, as it is submitted directly to the main body holding the right of legislative initiative.

[38] Surprisingly, the European Commission speaks in its press-release of a "petition", apparently relating to the ECI, see: <http://ec.europa.eu/news/eu_explained/091111_en.htm>.

VI. Conclusion

The implementing Regulation requires a review each third year. Accordingly, by the end of March 2015 the European Commission will have to present a first report on the ECI and will have to upgrade the tool from a baby-step to a more matured form of direct citizen participation at the transnational level (Kaufmann, 2012: 240).

At the time of an ongoing economic crisis which obviously has consequences on the perception of the Union by citizens, the EU is searching for new solutions to close its legitimacy deficit. The European Citizens' Initiative has the chance to become a new democratic tool. It is undoubtedly more direct and transnational than anything else we have experienced at the EU level (Kaufmann, 2012: 11). It represents a first step in providing what some call a "set of available opportunity structures for citizen participation" (Richardson, 1995). Certainly, it also has the potential to become a policy-creating instrument that will improve citizens' influence in the EU political context by reinforcing the exchange of civic competence and fostering civic inclusion at a supranational level (Hristova-Valtcheva, 2008: 116).

Considering the resources which are needed to launch an ECI, it seems, however, that the 'citizens' part of the project will not be as strong as previously assumed (Hrbek, 2012: 45). In fact, the citizens will certainly have to rely on intermediaries and aggregators such as NGOs, trade unions, political parties, or lobby groups to voice their interests via such initiatives (Dougan 2011: 1853). The question, therefore, is whether the ECI's will reflect people's concerns or rather specific interests pushed by well-organised and powerful minorities (Emmanouilidis and Stratulat, 2010: 3).

The ECI in today's form will definitely not be a procedure providing fast results (Kaufmann, 2011: 23). Given that the application cycle takes at least 20 months – two months to register the initiative, twelve months to collect one million signatures, three months to verify and authenticate them, and three more months for the Commission to respond, years will be needed for a successful initiative to be implemented. That means that either citizens will have to bide their time or delays will become a source of discontent, which might undermine the whole procedure.[39]

[39] The experience of two informal "Test-ECIs", which did not manage to collect 1 million signatures within 12 months, even so they were very large organisations (Greenpeace and the European Disability Forum), shows that the proposal of expending signature collection period was reasonable.

The major concern, however, is whether this new tool can strongly contribute to trans-European debates on the Union beyond the highly specialised circles or very vague ones in terms of political will formation (Hierlemann and Wohlfarth, 2010). Certainly, the ECI has a big potential to become a trigger for a functional reflexive democratisation process, because it would create the preliminary requirements for a demand of further democratisation (Trenz and Eder, 2004).

In fact, collecting signatures to petition European institutions is nothing new for European citizens and can be done by virtue of the fundamental right of freedom of expression. Hence, if the first ECIs were to fail in collecting signatures, or if the Commission was to massively reject them, it could be an easy way to discourage people from using this instrument, consequently being counterproductive in its aim to give citizens more opportunities to participate, and to reduce the alleged 'democratic deficit'.

Therefore, in order not to kill the initiative before it is born, it can be argued from a normative point of view that the Commission should present all successful initiatives, even if they are incompatible with its own agenda. Firstly, this would not undermine the Commission's formal right of initiative. Secondly, it would assure that all the organisations able to organise campaigns would have an opportunity to present their proposals to the decision making institutions. This principle should especially be applied to euro-sceptic initiatives, as their rejection without debate would certainly deepen the EU's legitimacy crisis.

Moreover, this may lead to the institutionalization of frequent opposition to the EU, which would probably become a more pragmatic and constructive critical voice on the Commissions' policies. In consequence, that would give the public the opportunity to make the EU institutions more accountable for their decisions (Bouza Garcia, 2012: 42).

The ECI may become a bigger 'game changer' than generally expected, as it may place not only the Commission, but also other European institutions in general, in the relatively new position of managing agendas and proposals coming from outsider organisations.

On the other hand, the ECI will probably not transform into a popular citizens' instrument, which allows a given number of citizens to put their own proposal on the political agenda and initiate a vote (referendum) on it (Berg, 2009: 2).

Certainly, the ECI may be regarded as a future door-opener for reform proposals, (Pichler, 2008: 29), however, the key issue will revolve around the attitude that the Commission will adopt towards it. It would not be welcomed if the Commission representatives were to say:

'We have created the instrument, now it is up to the citizens to prove themselves worthy of this new right' (Buehler, 2011: 56). Hence, if the Commission does not develop a constructive attitude towards diverse ECIs, facilitating their arrival into the legislative agenda, the result may be the reverse of what was expected: organisations wanting to influence the EU decision-making process are likely to avoid the ECI, leaving the field clear for organisations willing to show that the EU does not listen to its citizens.

No matter how positively the European Citizens' Initiative is perceived, it does not represent a definitive answer to the democratic challenges facing the EU. It would be too early to sing swan songs on the future of citizens' participation in the EU decision making process.

Participatory democracy in the EU may complement rather than replace representative democracy. This is not a negative perspective and it does not undermine the value of the ECI as a democratic instrument. The size of the EU and the complexity of the matters it deals with make a fully-fledged participatory democracy impractical (Sigalas, 2012).

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