

## INSTITUTIONAL INNOVATIONS

## The Citizens' Initiative: A Participatory Cure for Europe?

Julie Hassing Nielsen European University Institute; for DIIS

### The European citizens' initiative: Why and how?

Ever since the Danish “no” to the Maastricht Treaty in 1992, the democratic deficit of the European Union has been extensively debated. The past decades, many aspects of the democratic deficit have been discussed, from the lack of transparency in the European Council to the lack of power of the European Parliament. Still, the passivity of the European people in EU politics has probably been the most widely discussed phenomenon.

It is a well-established fact that most Europeans are uninterested in European politics. The European Parliament elections have been widely neglected since their launching in 1979, with the worst ever turn-out in the 2009 election, where only 43% of all eligible voters cast a ballot. In addition, general knowledge about the EU and its policies has remained extremely low. One of the manifested goals in the Lisbon Treaty was to overcome popular indifference, and make the Union more democratic through enhanced institutional transparency and broader channels for popular participation. Many institutional changes were made; with some limitations, the Council's meetings are now opened for the public, and the co-decision procedure (re-named “the ordinary legislative procedure”) has been expanded to more policy areas, increasing the power of the European Parliament.

The most prominent of the new institutional innovations is the European citizens' initiative (ECI). And the ECI is also one of the most ambitious initiatives to date when it comes to participatory democracy at the EU-level. Launched as the first attempt to challenge the Commission's monopoly on legislative proposals, high hopes followed the ECI when it was introduced in the Lisbon Treaty. Still, the ECI had many open ends. Art. 11, paragraph 4, of the Lisbon Treaty states:

*Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the 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 article left many practical questions essentially unanswered: how many countries are “a significant number of Member States”? Which means should be used for collecting the signatures? How to verify these signatures? Should there be a time limit for the Commission's response? What would be the Commission's obligations when receiving an ECI? These questions were only a few among many in need of clarification.

Under the last Trio Presidency, the procedures and conditions for the ECI were adopted. In November 2009, the Commission launched a Green Paper, which was followed by hearings and consultations of stakeholders.<sup>1</sup> On this basis, the Commission sent out its “proposal for a regulation of the European Parliament and of the Council on the citizens' initiative” in March 2010.<sup>2</sup> And by mid-December 2010, the Council and the Parliament reached an agreement on the ECI. Most loose ends are now closed. The agreement stipulated that a minimum of one quarter of the Member States had to participate in an ECI. The minimum number of signatures from each of these countries is determined by multiplying the country's number of seats in the European Parliament with 750. The minimum age for signatories is the minimum age at which people are entitled to vote in European Parliament elections.

Also, we now have a stronger idea about how the ECI will work in practice. Initiatives will be registered online in software provided by the Commission. If the proposed initiative goes against EU's fundamental values or lies outside the competences of the Commission, the Commission can reject it. The ECI has to be initiated by a so-called “citizens' committee”, consisting of at least seven citizens resident in a minimum of seven different Member States. After the registration, the committee has up to one year to collect the necessary signatures. After the signatures have been handed in, the Commission has three months to examine the proposal. Meanwhile, members of the citizens' committee attend hearings at the Commission as well as present their initiative to the European Parliament. The Commission's conclusions will be available in a public statement, which includes the action, if any, the Commission intends to take. The first ECI is expected to be registered in early 2012, one year after the new procedures are announced in the Official Journal of the European Union.

### New challenges for the citizens' initiative

Now the main question is how to secure a successful launch of the ECI in 2012. Here, the Commission and the European people are key actors. The Commission will, for the first time, be somewhat challenged on its monopoly on legislative proposals. The “somewhat” should, however, be emphasized as the Commission is not obliged to follow an ECI. Still, the expected

1. European Commission, Green Paper, “Green Paper on a European Citizens' Initiative”, COM(2009)622 FINAL, 11 November 2009. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0622:FIN:EN:PDF>  
2. European Commission, Proposal, “Outcome of the Public Consultation on the Green Paper on the European citizens' initiative”, 8399/10 ADD1, 9 April 2010, available at: <http://register.consilium.europa.eu/pdf/en/10/st08/st08399-ad01.en10.pdf>

challenger, being the European people, might well prove to be uninterested in accepting the challenge. The Europeans have numerous times before proven reluctant to engage in European politics. And previous attempts to enhance the level of interests and activity in European politics have largely failed.

As mentioned, the Commission has no obligation to follow the ECI's. Thus, how the Commission responds to the first wave of ECI's in 2012 will determine whether the ECI becomes just another piece of *symbolpolitik*, or whether the ECI will evolve into a useful and influential tool for the European people. Overall, it is crucial that rejections of an ECI happen on legitimate ground. The Commission can refuse an ECI even before signatures are collected for two reasons: if the ECI goes against the fundamental values of the EU or if the initiative is outside the competences of the Commission.<sup>3</sup> Both potential grounds have weaknesses. The first refers to a not very clearly defined set of values, and the latter requires more knowledge about the European enterprise than what an average citizen is likely to possess. I elaborate on these aspects below.

The Commission can reject an ECI if it conflicts with the Union's fundamental values. Although this rejection is made to avoid extremist and fundamentalist misuse of the ECI, the fundamental values of the Union are still a grey-zone. What we learned from the prolonged discussions surrounding the now-buried Constitutional Treaty was the fact that a firm set of shared European values is not present in the EU. To highlight a few controversies, Member States have very different views on essential questions like abortion, euthanasia, drugs and separation of religion and state. Most of these issues are based on very different fundamental values; values that are not all shared across the continent. While many of these areas are not yet under the jurisdiction of the Commission, they might soon become so. And then what? How will the Commission take a stand on these sensitive topics? And, if indeed the Commission rejects an ECI with references to the Union's fundamental values, how can it possibly avoid alienating from the EU the citizens behind the proposal?

The other basis for rejection of an ECI is if it strikes a policy area outside the power of the Commission. Indeed, this situation is very likely to occur. The EU consists of a confusing web of intergovernmental and supranational cooperation divided between policy areas. Although information about the Commission's competences will be available on the Commission's webpage, it is still too ambitious to believe that citizens are able to determine which policy areas are within the competences of the Commission. Sadly, many ECI's could then end up as the famous petition against the two-seat location of the European Parliament. Here a petition with over a million signatures was sent to the European Parliament, only to be rejected as the issue was outside the community's competences.<sup>4</sup> If similar rejections happen to an ECI,

3. European Commission, "Commission welcomes agreement on European Citizens' Initiative", IP/10/1720, 15 December 2010, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1720&format=HTML&aged=1&language=EN&guiLanguage=en>

4. Petitions Committee: "Listening to the EU's citizen", Press release, Brussels, 23 September 2008. For more see: [www.oneseat.eu](http://www.oneseat.eu)

the new initiative, as well as the EU in more general terms, runs the risk of being perceived as intransparent by the European people.

What about the European people? Are they equipped to embrace the ECI in their daily lives? Certainly, if the aim is the creation of a European public sphere, challenges still lie ahead. Until now, the Europeans have shown little interest in European politics. They show little interest in the direct elections to the European Parliament just like they are uninformed about European affairs. Like it or not, this indifference has been the choice of the European people so far. And throughout the years, this behavioral pattern has been persistent. Will the ECI be able to act as a catalyst for change? Probably not – mainly because the ECI makes too many demands on European citizens.

One of these demands is an extensive international network. Recall that an ECI has to be initiated by a citizens' committee, consisting of at least seven citizens who are residents of at least seven different EU Member States. It is highly questionable that regular European citizens possess such a broad international network. In contrast to for example the US, the Europeans remain largely immobile. A majority tend to stay where they were born. They do not move to foreign countries, and they do not interact with other European nationalities on a daily basis. Thus, establishing such a citizens' committee with seven different EU nationalities is most likely not feasible for many Europeans. Arguably, since Internet access is becoming widespread, the formation of a citizens' committee could take place in the virtual space. Still, however, many Europeans do not have internet access. In Slovakia, for example, only 4.1 million out of a population of 5.5 million actually had internet access in 2010.<sup>5</sup> While the Internet enables some to participate cross-nationally, others are left behind. Sadly, those left behind are in particular those who are in demand for a successful creation of a European public sphere, embracing all social layers of the European community.

Another requirement for a successful ECI is extensive knowledge about the EU. As mentioned above, the Commission can reject an ECI that falls outside the Commission's competences. Yet, the average European citizen has shown a profound ignorance of even the most basic knowledge about European institutions, making it highly unlikely that they would be able to make a proper assessment of whether any particular proposal fits into those competences. What is required, however, is not only knowledge about the powers of the Commission, but also knowledge about the national role at the EU-level. Far from all Member States participate in all EU policy areas to the same extent. Much integration happens in a so-called multi-speed EU, where some countries, for one reason or another, have opt-outs from EU cooperation. Often these opt-outs are tricky and their consequences in a national context are difficult to determine. The settlement on the ECI ignores the multi-speed aspect of the EU, providing us with an odd democratic situation where citizens can sign an ECI and suggest legislation at the EU-level, which might not even be applicable to their own country.

5. For more numbers see: <http://www.internetworldstats.com/stats4.htm#europe>

Although explicitly stated in connection to the ECI that established organisations cannot organise an initiative, it is hard to envisage regular citizens take on the task without the promotion and support by an organisation.<sup>6</sup> The capacity to form an ECI will most likely be found in already established entities, resembling interest and lobby organisations. These organisations have proven well adaptable to the European framework and managed to influence, in particular the Commission, for decades. Still, it was exactly these sorts of organisations, being criticised for their undemocratic influence on the Commission at the expense of the regular citizen, the ECI was set up to supplement. But the huge demand for personal political capital from the individual citizens in the ECI makes it likely that already established entities, possessing the necessary political insights as well as international network, take over this new democratic tool as soon as a citizens' committee has launched an initiative. And then the initial goal of the ECI is lost. The ECI will then not expand participation of the European citizens nor will it create the much-wanted European public sphere. It will then be politics as usual, mobilising an already-mobilised group.

## Recommendations to the Trio Presidency

The Member States are only allocated with an administrative role in the ECI. They are provided with the capacity to secure the validity of the signatures in that particular country. Yet, nothing stands in the way for the Trio Presidency also to assume an informative and agenda-setting role. The advantage of the EU Presidency is that it brings the EU geographically closer to people that might otherwise feel distanced from the institutions in Brussels. Presiding means time in the media spotlight, and here the Trio Presidency should make an effort to push the ECI on the agenda. Through media coverage, the Trio Presidency is able to inform citizens about the existence of the ECI (they most likely do not know) as well as stimulate their political curiosity about this new democratic tool. The Trio Presidency should furthermore pay extra attention to provide information about the Commission's competences, and thus where an ECI could make a difference. Without information about the initiative to citizens as well as helpful procedural guidance about the ECI, the new democratic tool will most likely, in some form, end up in the hands of already existing cross-national networks or entities.

6. Press Release, "European Citizens Initiative (ECI)", MEMO/10/683, 15 December 2010, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/683&format=HTML&aged=0&language=EN&guiLanguage=en>