

## The European Citizens' Initiative: the corner stone of a European Public Sphere?

*The Regulation adopted by the European Parliament on 15<sup>th</sup> December 2010 establishes the procedures and conditions required to organise a European Citizens' Initiative. Its implementation will still take some more time.*

A “milestone”. A “breakthrough”. Parliamentarians and NGOs did not spare hyperbole when, on 15<sup>th</sup> December 2010, the European Parliament (EP) approved the Regulation which sets the legal framework for organising a “European Citizens' Initiative” (ECI). True, it is the first time in world history that a “direct cross-border, transnational democratic procedure”<sup>1</sup> is about to become reality. However, expectations about the nature of the measure, and its implications for “participatory democracy” should be prudently controlled.

The aim of this article is therefore to give our readers an insight on what an ECI more precisely is and what can realistically be expected from it by the EU citizens for whom it is intended<sup>2</sup>.

### *Background and Wording*

The idea to provide for an ECI in European primary law was a late addition to the draft Treaty submitted by the Convention on the future of Europe to the European Council in June 2003. After the Constitutional Treaty was rejected by referenda in France and the Netherlands (incidentally, through a process of direct participatory democracy), the ECI was included in the Lisbon Treaty as one of the “Provisions on Democratic Principles” (art. 9 to 12 TEU). Art. 10 states that “the functioning of the Union shall be founded on representative democracy” (embodied at EU level by the EP) before stressing the right of “every citizen” to “participate in the democratic life of the Union”. Art. 11 lists four modes of this participation: 1. horizontal civil dialogue (citizens between themselves); 2. vertical civil dialogue (citizens with institutions); 3. consultation (institutions asking citizens for their opinion); 4. the ECI (citizens asking institutions to make a legislative proposal – see box).

### *An “agenda-setting” instrument at the hands of ‘real’ citizens*

First, it must be clearly understood that the ECI does not turn citizens into legislators. It merely affords them the right to submit a request to the Commission to make a legislative proposal at EU level, in the same way as the EP and the Council may do (art 225 & 241 TFEU). This so-called “agenda-setting” instrument complements the structures of representative democracy. It is meant neither to compete with nor to bypass them. It is therefore highly significant that the EP has fought to include in the Regulation clear provisions for a public hearing to be organised *at the EP* once an ECI has been successfully submitted to the Commission (Regulation, art. 11).

Secondly, an ECI does not include a popular vote and has nothing to do with a referendum. The Commission's exclusive right of initiative is not touched: the Commission remains free to follow up, or not, a successful initiative (one that would have overcome all the hurdles, such as 1 million signatories from at least a quarter of the Member states). This entails that every ECI must begin by meeting two criteria, that will be briefly checked at registration: 1. it must fall within Commission's remit; 2. it must request the Commission to make a legal proposal “for the purpose of implementing the Treaties” where the promoters of the ECI have identified some lack.

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<sup>1</sup> EESC Opinion, 17th March 2010, [http://eescopinions.eesc.europa.eu/EESCopinionDocument.aspx?identifiant=ces/sous-comite/sc032%20a%20mise%20en%20oeuvre%20du%20traite%20de%20lisbonne/ces465-2010\\_ac.doc&language=EN](http://eescopinions.eesc.europa.eu/EESCopinionDocument.aspx?identifiant=ces/sous-comite/sc032%20a%20mise%20en%20oeuvre%20du%20traite%20de%20lisbonne/ces465-2010_ac.doc&language=EN)

<sup>2</sup> This article does not aim at presenting comprehensively the Regulation. It can be consulted in its provisional form, before its publication in the Official Journal of the European Union, at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0480&language=EN&ring=A7-2010-0350>.

Thirdly, the ECI is supposed to be a tool for citizens, allowing them to raise issues seemingly ignored by 'Brussels'. However, it presupposes knowledge - about Commission's powers and Treaty provisions - that few citizens will have. Even though the EP and the Council managed to lower the "significant number of Member States" to 1/4 (against 1/3 initially), it is a formidable task for a normal citizen to gather one million signatures in at least seven countries! It requires time - and money! So, there is a risk that ECIs could be "hijacked" by well-informed and well-funded EU interest groups, rather than extending a new right to 'real citizens'. The Regulation therefore grants the right to organise an ECI only to "natural persons" who are also citizens of the EU (third country residents are excluded). Further, to ensure that the request deals with a Europe-wide concern, the Regulation requires no less than seven such "natural persons" from at least seven different Member States to form a "citizens' committee" which will manage the ECI throughout its lifespan. This requirement has nevertheless the potential to foster communication and debate amongst the citizens themselves.

In other words, ECI is intended as a way for citizens to "knock on the door" of the Commission (but nothing more than that) and a way to promote the emergence of a European public sphere, where EU-institutions, and primarily the EP, also have a key role to play. But organising an ECI will be a task requiring skills and perseverance.

*An ECI is no matter for amateurs, or for those seeking instant change*

For instance, collecting "statements of support" (a poetic phrase wording for "signatures") may be made either on paper or online. If the latter, the organiser will have to set up a specific website, to be certified beforehand by a Member State's relevant authority so as to assure data protection. Further, any signature collected, whether on paper or on line, must be certified by the respective citizen's Member State. However, rules of certification vary from country to country (in some countries, not in all of them, ID numbers are requested<sup>3</sup>), so that organisers must be cautious in their methods of collecting and verifying. Such a procedure is hardly realistic for signatures collected on the street. This provision is the most controversial one in the Regulation. Organising an ECI is definitely not for amateurs.

Nor will an ECI achieve change overnight. It will require time to set a citizens' committee, to fill in the required forms, to secure certification at various stages, etc. The Commission is granted two months to register an ECI on its website. Up to twelve months is then allowed for the signatures to be collected. The Commission may then take three months to respond to a successful ECI. If it agrees to make a proposal, many more months will be needed for drafting and for discussions at the EP and Council. There is therefore no guarantee that the outcome will match the organisers' intentions, long before.

The ECI is indeed a newcomer amongst the EU's instruments of participative democracy, with a huge potential, but also with huge hurdles before its implementation. It is a complex instrument for the ordinary citizens for whom it is intended. Therefore, hopes placed on it need to be realistic. Nevertheless, it could become a key building block of a (still under construction) European public sphere. If it becomes a corner stone, so much the better. As always, much will depend on how citizens make use of it.

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Art. 11, §4 TEU
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<sup>3</sup> The complexity of this process is only scratched here. See Annex III of the regulation for its full extent.

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 procedures and conditions required for such a citizens' initiative shall be determined in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union.

*Art. 24 TFEU*

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens' initiative within the meaning of Article 11 of the Treaty on European Union, including the minimum number of Member States from which such citizens must come.