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Schnellbach, Christoph

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Christoph Schnellbach

The European Citizens' Initiative: a useful instrument for public participation?

The European Citizens' Initiative (ECI) - one of the major innovations of the Lisbon Treaty - allows citizens from April 2012 to call directly on the European Commission to propose a legal act within the framework of its powers. However, the formal requirements for such an initiative have been set very high: to be successful, an ECI will require a million signatures from at least seven out of twenty-seven member states. While the idea behind the ECI is to address the democratic deficit in the European Union by helping citizens to participate directly in the legislative process, implementation issues could undermine the effectiveness, relevance and democratic potential of this new instrument.

What is the ECI?

The ECI introduces a new form of public participation within the EU's multi-level politics framework. The legal basis of the ECI is set out in Article 11, Paragraph 4 of the Treaty on European Union (TEU) and Article 24, paragraph 1 of the Treaty on the Functioning of the European Union (TFEU). According to Article 11 of 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". It is disputed, however, if the Lisbon Treaty provides for a citizens' initiative to demand a revision of the EU Treaties themselves. As it falls well within the Commission's powers to trigger a treaty amendment, it is unlikely that ECIs are put on the same footing in that respect.

On a proposal from the European Commission, the European Parliament and the Council adopted a legislative act which defines the rules governing this new instrument. Regulation No. 211/2011 of 16 February 2011 on the citizens' initiative determines the practical arrangements, conditions and procedure of the ECI. In accordance with the regulation, it will only be possible to launch the first European Citizens' Initiatives from 1 April 2012.

The regulation stipulates that an ECI must have the backing of signatures from at least one quarter of member states. Signatories must be eligible to vote

in European Parliament elections in the country concerned. Smaller countries will need proportionately more signatories than bigger states, as the figure is corresponding to the number of Members of the European Parliament elected the respective country. A minimum number of statements must be collected in each country, ranging from 74.250 in Germany and 54.000 in France, UK and Italy to 3.750 in the smallest EU member Malta.

There are several steps to be taken for a successful ECI. First, a so-called "citizens' committee" composed of at least seven EU citizens who are resident in the same number of different member states must be set up to register an initiative. At the point of registration, the Commission will carry out a check to determine whether the proposed citizens' initiative meets the formal criteria and must respond within two months. The Commission has to register the proposed initiative if the composition of the citizens' committee follows the formal rules. Furthermore, the following conditions must be fulfilled:

- the proposed citizens' initiative does not 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
- the proposed citizens' initiative is not manifestly abusive, frivolous or vexatious
- the proposed citizens' initiative is not manifestly contrary to the values of the Union as set out in Article 2 TEU

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Once the Commission has registered the ECI, the organisers are free to continue collecting signatures (in paper form and/or electronically). The committee will have 12 months to collect the necessary statements of support, which have to be certified by the competent authorities in the respective member states. The Commission will then have three months to examine the initiative and decide how to act on it. The organisers will also have the opportunity to present their initiative at a public hearing organised at the European Parliament. In its answer set out in a communication, the European Commission has to explain its conclusions on the initiative, what action it intends to take, if any, and its reasoning.

Implementation issues and intrinsic constraints

The ECI is still not fully put into practice as major procedural points are currently under discussion. The European Commission wants carry out an admissibility check once 300.000 signatures have been collected. However, EU institutions disagreed on whether and when this preliminary check shall take place. The Council and the Parliament opted for low admissibility criteria, while the Commission wanted to keep the initial hurdles high. There is a fear that by setting low admissibility criteria, the ECI could become susceptible to fraud or be hijacked by extremists or powerful lobby organisations. On the other hand, however, there is a much greater danger of making the ECI too bureaucratic and useless for its original purpose of introducing more direct participation, as citizens would be discouraged from using it. This also affects some technical issues that remain to be resolved, concerning practicalities surrounding the organisation of public hearings, as well as the translation of ECIs into the EU's official languages. Furthermore, it is still not clear who has to pay the costs for the mechanism to verify signatures. The European Commission is currently developing open source software that can be used by organisers to collect statements of support online and is working with member states to help them figure out how to verify signatures. Responsibility for doing so lies with member states, and some countries are insisting that signatories give their passport or ID numbers. Data protection and proper mechanisms would have to be introduced to prevent fraud and duplication of signatures.

Another critical point is the institutional response to successful ECIs. The European Commission is under no obligation to translate the initiative into European law, as this depends on whether or not it has the intention, will and power to do so. Determined in Article 10 of the Regulation 211/2011, the executive body of the European Union must decide if it is going to propose a new law. Within the given timeframe, the Commission sets out in a communication its legal and political conclusions on the citizens' initiative based on its examination.

Chances of the ECI as a mechanism of participatory democracy

As an innovative mechanism of citizen participation, the ECI offers three major chances to overcome the democracy gap in the EU. First, as ECIs are based on large numbers of signatures, they will foster transnational discourse, European social movements and civic engagement. The arrangement of ECIs could establish long term structural ties between European societies and even lead to a European public space. Transnational advocacy networks and NGOs will have a leading role in organising successful initiatives. Second, the ECI enables European citizens to access the EU policy process. The mere possibility of direct participation in EU legislation will increase the legitimacy and accountability of the Union in the view of its citizens. The initiation of an ECI is not confined to political or economic elites: even marginalized groups or minorities can start an initiative and engage in agenda-setting. The ECI will therefore enforce social cohesion and pluralism in the EU. This does not contradict the majority rule, as the initiative will have to pass majorities in further instances of the EU law-making process. Third, the nature of the ECI is solution-oriented and leads to constructive rather than destructive initiatives. This means that ECIs do not primarily result in sanctions for the rulers. The destructive potential of top-down initiated referendums on European integration could be seen in the rejection of the Constitutional Treaty by French and Dutch voters in 2005. More recent examples are the Irish referendums on the Treaty of Lisbon (2008 and 2009). This case was especially illustrating as - after the initial rejection of the Treaty - it was in the competence of authorities to ask the electorate the same question for a second time (then with a positive out-

come). On the contrary, the ECI is not designed to achieve congruence between the government's position on an issue and the voters, but to engage citizens constructively in the political process. The ECI goes beyond the simplistic fight for the yes or no of voters as initiators have to come up with a genuine idea to shape policies at the EU level.

Recommendations

Implementation issues are threatening to delay the first petitions, which are scheduled for registration in April 2012. Given the current situation in the EU it is of utmost importance for the accountability of the Union to make sure that the ECI is implemented in the most accessible manner. Accordingly, two problems have to be addressed: lack of funding and slow progress made on putting in place national systems to manage the ECI.

Finding the right balance between effectiveness and data protection will be crucial for implementing ECIs. Eighteen member states are demanding passport data of signatories although most of those countries don't even ask for such information for national elections. Instead of collecting ID and passport numbers from every signatory, random checks by the relevant national authorities would be a suitable alternative to prevent both duplication and data retention. Some countries including Germany, UK, Denmark, Slovakia, Finland and the Netherlands will require personal information (e.g. name of the signatory, address, place of birth and nationality) but not personal identification data. Moreover, the costs for the mechanism to verify signatures should not be left with the organisers of an ECI, as it would hinder the free use of this democratic instrument. Conversely, organisers should provide regularly updated information on the sources of support and funding for their initiative for transparency reasons.

The prospect of the ECI may also cause greater demand for the participation of civil society, which is seen as an opportunity to legitimise

European governance. The EU institutions and NGOs should engage in communicating the new instrument, as the ECI is not sufficiently well-known among citizens, grassroots organisations and even some policymakers themselves. The European Commission should offer assistance in translating ECIs accurately in many languages.

Given the risk that petitions are destined to fail on the grounds that they do not meet the high admissibility criteria, disillusionment with the EU might actually increase. If a high percentage of initiatives don't take the initial hurdles and the Commission refuses to act on the successful ones, it would gradually lead to even more frustration among EU citizens. The European Parliament should make more use of its influence on the Commission to assure that ECIs are adequately handled. While the main cleavages on this issue run between the European Parliament and the Commission, both institutions have a shared 'European' interest in making this new instrument work properly. They should pressure governments on their behalf to implement the regulation on the ECI in a timely manner.

One million signatures cannot and should not be ignored. A successful ECI must go beyond awareness-raising and lead to political decisions. To this end, the Commission and the member states are now in the driver's seat to guarantee that the ECI becomes a useful tool of transnational participatory democracy in Europe.

"A successful ECI must go beyond awareness-raising and lead to political decisions."

Christoph Schnellbach received his Ph.D. in political science from the Interdisciplinary Doctoral School at the Andr ssy University Budapest.
schnellbach@daad-alumni.de

C·A·PERSPECTIVES Editors
Michael Bauer, Florian Baumann,
Sebastian Sch ffer
CAPerspectives@cap-lmu.de

Center for Applied Policy Research
Maria-Theresia-Str. 21
81675 Munich · Germany
www.cap-lmu.de