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The European Citizen's Initiative process

The idea of giving European citizens a right of initiative was proposed by civil society organizations and institutions more than 20 years ago. It now looks as if we will actually have a legal basis for this right quite soon. *Carsten Berg*, coordinator of the ECI-project, outlines how the key elements of a European Citizens' Initiative process should be designed in order to enable the effective use of this new instrument and to guarantee equal access.

The idea of giving European citizens the right of initiative is not new among civil society organizations and EU institutions. The European Parliament put forward proposals for introducing an initiative tool as long ago as the '80s and '90s. But it was only when the European Citizens' Initiative right found its place in what was then called the Constitutional Treaty that it became widely known and well accepted. After the French and Dutch citizens rejected the Constitutional Treaty, it took another two years until the heads of state decided to include the European Citizens' Initiative right in the new "Reform Treaty".

As soon as the "Reform Treaty" enters into force, a proposal for a European regulation is expected to be adopted, so that citizens and their organisations can benefit from the new right as quickly as possible. It is therefore time to prepare in some detail a fair procedure for the interplay between citizens and the EU institutions within a European citizens' initiative process.

First, it is necessary to recognise that citizens' initiatives must be designed in a citizen-friendly way if they are to be workable. Second, it is useful to analyse the existing provisions for and experience with citizens' initiatives at the national level - though no existing model can simply be copied for the European citizens' initiative. Third, only a design that takes into account the specific needs of transnational democracy will enable the effective use of this new instrument and guarantee equal access.

Citizens' Initiative Procedures at National Level

Legal provisions for citizens' initiative procedures, as well as their actual use by citizens, have increased over the last 20 years at the local, regional and national levels. While these developments can be seen as part of a European and global trend towards greater direct citizens' participation, this has also proven to be a development that strengthens modern representative democracies, by making them more interactive, responsive and representative. If we examine the growing use of initiative procedures, we can identify at least two main forms of citizens' initiatives:

A: **the agenda citizens' initiative** enables a number of citizens to submit a proposal which must be considered by an authority, but is not submitted to a vote of the electorate.

B: **the popular citizens' initiative** allows a given number of citizens to put their own proposal on the political agenda and initiate a vote (referendum) on it. Whether the proposal is put to a vote of the electorate is *not* at the discretion of the authorities.

Within the context of the European Union at its current stage of development, the proposed European Citizens' Initiative (ECI) has the form of an agenda initiative. It does not give citizens the right to initiate a vote on an issue, but it gives a minority the right to place an issue on the agenda for legislative consideration. After the introduction of a citizens' initiative in the Netherlands in 2006, all in all twelve EU Member States now provide a kind of citizens' initiative right at the national level. However, these are designed in very different ways and include limitations on such matters as: the number of signatures required; specific timetables and deadlines; the exclusion of certain issues. Moreover, in some countries it is only permitted to sign initiatives in a few designated places.

Provisions for citizens' initiatives in Member States at national level and at EU-level

Country	Population (millions)	Signatures required	As a percentage of the electorate	Type of initiative
Italy	57.6	50,000	0.08	A
EU	490.4	1,000,000	0.20	A
Netherlands	16.3	40,000	0.25	A
Poland	38.6	100,000	0.26	A
Slovenia	1.9	5,000	0.26	A
Hungary	10.2	50,000	0.49	A
Portugal	10.8	75,000	0.69	A
Romania	22.3	250,000	1.12	A
Austria	8.1	100,000	1.23	A
Spain	39.4	500,000	1.27	A
Lithuania	3.5	50,000	1.43	A
Slovakia	5.3	350,000	6.60	B
Latvia	2.3	230,000	10.00	B

Types of initiatives: A: agenda citizens' initiative B: popular citizens' initiative

Logically there are higher thresholds for popular citizens' initiatives (cf. Latvia and Slovakia) than for agenda initiatives for which the thresholds vary between 0.08 % and 1.43 % of the electorate. Experience shows that in some countries citizens' initiatives are used frequently, while in others they are hardly used at all. Whereas in Italy, for example, the citizens' initiative right has been used more than 50 times in 20 years, the Latvian citizens' initiative has been tried only five times in 10 years. This has to do with the fact that only 0.08 % of the electorate have to sign a valid initiative in Italy, while in Latvia the threshold is 10%. In addition, the Latvian constitution excludes many issues from the initiative process, whereas most Italian laws can be contested by the people. The constitution of the German sub-state of Bavaria provides another example of a citizen-unfriendly initiative procedure, where 10 % of the electorate have to sign the initiative in just 14 days, and only within designated official premises. In other words, it very much depends on the design of the mechanism whether citizens can actually make use of an initiative procedure and take part in shaping policy. This is true for the national as well as for the European level.

Special Requirements for the Transnational Level

In elaborating guidelines for a user-friendly citizens' initiative procedure at the European level, it is useful to analyze the experience with citizens' initiative rights in European states. In general, one can observe similar challenges. Making use of a citizens' initiative procedure often involves extensive work by citizens and authorities in preparing and conducting a process which can take years before it is finalized. As noted above, it is not possible to copy

the design of a national procedure and apply it at the EU level. Instead, the procedure needs to be an original creation, adapted to the needs of democratic life at the European level. If we take into account the specific circumstances at the EU level, it is easy to see how much more difficult it is to organize and carry out a successful citizens' initiative at this level: huge geographic distances between European citizens, the enormous variety of more than 20 European languages, and the absence of a common public space are strong communication barriers that mark some of the key challenges to developing a transnational democracy. Hence, when working on the procedure it must always be remembered that we are dealing with a European and not a national citizens' initiative.

Of course, two essential procedural elements were already fixed by the Convention's praesidium, which finally decided on a minimum of 1,000,000 signatures coming "from a significant number of member states". If we bear in mind that this is not a popular initiative, but an agenda initiative at the transnational level, 1,000,000 signatures (equivalent to 0.2 % of the European electorate) is already a high figure, when compared for example with the Italian agenda initiative, which requires only 0.08% of its electorate. In fact, those members of the Convention, and expert citizens' groups, who prepared this article – such as the German Parliament delegate Prof. Meyer, one of the 'fathers' of this right – originally preferred a much lower threshold.

The second element – that the 1,000,000 signatures need to come from "a significant number of member states" – allows more room for interpretation. On the one hand, this quorum is meant to ensure that it is a *transnational* initiative and not merely a national one. On the other hand, the legislator should take care that this requirement does not impose too high hurdles for effective implementation of the ECI. The figure of four countries should therefore be sufficient.

If we bear in mind the existing high hurdle of one million signatures and the formidable challenges every ECI will be confronted with due to its transnational nature, any additional formal restrictions – such as sub-thresholds, time limits, issue exclusions and provisions for collecting signatures – should be kept reasonably low and as favorable as possible to the organizers of future citizens' initiatives. In addition, some supportive elements and incentives ought to be incorporated into the procedure. Launching initiatives, campaigning for initiatives and collecting signatures is not only a very time-consuming affair, but one that also costs a lot of money. In Switzerland, for instance, the cost of collecting signatures is estimated at two Swiss francs per signature. For a European citizens' initiative, therefore, a projected budget could be of the order of at least one million Euros – mainly for printing, secretarial work and advertising expenses. In many countries, citizens' initiatives receive a certain type of assistance and financial support, in the same way as other political bodies such as political parties and their representatives. Since the European Citizens' Initiative has the same status in submitting a request to the EU Commission as does the European Parliament, the initiative committee should receive funding from the EU budget, just as European parties and Members of the European Parliament are funded from public sources.

In the case of the existing reimbursement procedures for citizens' initiatives at the national level, financial support is only provided for at the very end, after all the required signatures have been collected and the initiative has passed its final qualification. For the ECI it is suggested that a first limited reimbursement should be provided after the initiative has passed preliminary qualification by having collected 100,000 signatures. Otherwise we would run the risk that at the European level only large and well-established organizations would be capable of financing an ECI in advance. The cases of the first 20 informal ECIs, documented in this

Handbook, indicate that it is mainly big organizations such as Greenpeace, or European trade organizations, which are capable of pre-investing such levels of capital and of collecting a million signatures without any external support. Smaller groups would be prevented, or at least seriously discouraged, from making use of the instrument. A first reimbursement after 100,000 signatures have been collected would offer an additional incentive to properly carry out an ECI. In other words, only appropriate funding will enable the effective use of this new instrument and guarantee equal access to the ECI. These special requirements for the transnational level need to be taken into account when developing the detailed stages within the procedure.

The interplay between citizens and authorities in three main phases

The interplay between citizens and authorities within a European citizens' initiative procedure will be outlined in three main phases:

Phase 1: From the idea to preliminary registration

Phase 2: From official launch to submission

Phase 3: From final registration to final decision

Within each of these three phases one can of course define many more steps and sub-phases.

Phase 1: From the idea of starting a ECI to preliminary registration

In this first phase general information about the ECI needs to be available. This is the phase in which the initiative committee which will prepare and conduct the initiative is being formed, and in which the requirements for preliminary registration must be fulfilled. Only when this has been done can the initiative be launched.

a) Providing General Information

Any ECI will only come into being if citizens know about the availability of the initiative procedure and the concrete "rules of the game". It is therefore vital that the EU establishes effective channels of information and education on how European Citizens' Initiative procedures work. This should include a multilingual consultancy and a dedicated website with a users' forum where citizens with similar interests could 'meet', exchange views and actually prepare the launch of a citizens' initiative. The site would also include information on all the current ECIs. This would exploit the considerable potential for synergies and prevent painful and unnecessary duplication of work from the start. Experience at the national level shows that on average it takes around a year from the idea to the actual launch of a citizens' initiative. Mostly only well-prepared initiatives with a carefully worked out campaign plan will have a chance of success.

b) EU authorities provide a dedicated ECI Office

For the sake of transparency and efficiency the EU should communicate through its own dedicated ECI Office: an agency that serves as a non-partisan focal point between the general secretariats of the European Commission, the European Parliament and the Council on the one hand, and the European citizens' initiative committees on the other. Its purpose is to provide the citizens with support services and serve as their point of contact throughout the entire process. This ECI office would also coordinate communication between the three EU

institutions. When it comes to the point of verifying the signatures, the ECI Office would need to coordinate an EU-wide cooperation between the national voter registration offices and monitor whether the laid-down minimum standards in relation to European citizens' initiatives have been respected.
(see phase 3).

c) Formation of the Initiative Committee

Citizens' Initiatives are formulated by authors, who are usually also their initiators. It is they who draft, sign and register the initiative. This generally requires an organised structure such as a citizens' association, called an "Initiative Committee", which at the national level consists of up to 27 members. The initiative committee is the legal entity for an ECI: it represents it before the authorities through the entire process and is the official contact for the general public and media. Drafting the proposal is of high importance as the wording will be kept through the entire procedure. It needs to be readable by the public in different languages, be legally acceptable and correspond with the original idea of the initiative committee.

d) How to submit a proposal?

When a proposal is formulated, it is essential that the objective and scope of the initiative is easily and precisely identified. Only then can a proposal be submitted for preliminary registration. In general, the initiative committee should have the right to choose between two options: a draft legal act, or a general proposal mentioning the specific goals of the legislation and the main measures to be introduced or changed. Assistance concerning questions of the legality of the proposal should be provided by the European authorities / ECI Office.

e) Preliminary registration

As soon as an initiative is submitted and registered for publication, the initiative is officially launched. First, however, there will be a pre-check of the admissibility conditions for each ECI. For example: does the European Commission have the right of initiative in relation to the matter in question, or does it lie within the framework of human rights? If the check is positive, the ECI will be published in the Official Journal of the European Union, the Official Gazettes of member states and on the above-mentioned dedicated ECI website. As is done, for example, in Switzerland, in this phase the EU should provide for translations of the text of the initiative and of the signature-collection forms.

If the admissibility conditions are not met, preliminary registration can lead to citizens' initiatives being rejected. This will be the case if the ECI is misleading, gives rise to confusion, or if it includes commercial advertising. An ECI will also fail at this stage if it concerns areas which are not within the competence of the European Commission. However, as the Commission itself is entitled to propose treaty changes it should also be possible to launch initiatives which relate to treaty issues. Preliminary registration is a precondition for receiving further assistance and support from the authorities. It is also the starting point for the deadlines which must be met in relation to the first opportunity for initial reimbursement, and to final registration.

Phase II: From official launch to submission

As soon as an initiative has been registered for publication, the initiative is officially launched with its aim of collecting at least 1,000,000 signatures across Europe. From then on the initiative needs to inform as many Europeans as possible about the signature gathering

process. It is especially important to clarify how signatures can be collected and how they need to be distributed (between countries). Moreover, it is important to define a first reimbursement opportunity before it comes to final submission.

a) The signing process

There should be a guarantee that the signatures can be gathered freely and not only in government registration offices, as specified in some member states. Distribution of printed (and downloadable) signature forms to be completed has proven over years to be one of the most efficient, and verifiable, ways of collecting signatures. Even though signing by hand is still the most common and secure way of formally supporting a proposal, it is also essential to explore and develop a verifiable online signature procedure. It is clear that a verifiable e-signature option would tremendously help to facilitate large-scale use of and access to this new instrument.

b) Distribution of the signatures

While an initiative should not be required to collect signatures in more than four member states, the essential question is how these signatures need to be distributed within the minimum of four countries. Logically it would not be sufficient if only 1 or 100 signatures were to come from one country in order for it to qualify as a contributing country. Therefore the required minimum number of signatures coming from each country should be 0.1% of the citizens entitled to vote in each country.¹

c) First reimbursement opportunity

In order to receive support from the authorities beyond legal consultation, publication and translation, an initiative should have the opportunity to apply for financial support. An ECI would need to qualify for this by collecting at least 100,000 valid signatures within 12 months. If an ECI overcomes this first hurdle it should receive financial support (10 cents per signature) connected to expenditure for specific items that must be related to the work of an ECI – such as travel vouchers, materials and secretarial work. In addition, it should receive extra media coverage and a special place on the public ECI website and in the above-mentioned official gazettes and at the public meeting places in EU representations in member states. Registration and verification of the first 100,000 signatures would take place at the official ECI office – the same agency as for preliminary registration.

Phase III: From final registration to final decision

When an ECI has submitted the 1,000,000 signatures it is then for the authorities to verify the authenticity of the signatures and provide for reimbursement. The EU Commission then has the task of examining the proposal and finally announcing its position on the matter.

a) Final registration

Once the required 1,000,000 signatures have been collected, the initiative committee submits them to the official ECI Office. This represents the formal application for final registration with the authorities, which then have to verify and validate the signatures.

¹ See appendix for the detailed distribution of signatures for each country.

b) Verification

The authorities need to quickly verify in how far the admissibility conditions for the signature collection have been met – with the possibility that the ECI could be rejected. The essential questions are: Is the total of signatures really 1 million? Do they come from the required number of at least four member states? Do they satisfy the distribution criterion of having the signatures of at least 0.1 % of the electorate in at least four countries? And have they been collected within the given time limit of 24 months starting from preliminary registration?

c) Authentication of one million signatures

Last but not least, the identity of the signatures themselves needs to be verified. The data supplied has to be checked for authenticity, completeness and correctness. At the present time, verification and authentication systems do not yet exist at the European level, but only in the European countries where there are citizens' initiatives. It is unrealistic to expect that a European system with a European voter database – which would allow the EU to carry out the verification itself – can be put in place within a reasonable time-frame. The problem with verification by EU member states is that there is a risk of citizens being treated unequally in the different countries, since the parameters for an ECI would differ according to the national origin of the signatories and would be subject to disparate national legislation. (There are similar problems with elections to the European Parliament). For the time being, therefore, the EU needs to ask member states to carry out the required verification using the procedures in force in each state. But the EU also needs to coordinate an EU-wide cooperation between national voter registration offices and lay down minimum standards to be respected in relation to European citizens' initiatives.

c) Reimbursement

If final registration is successful, part of the costs, i.e. 10 cents per signature, can be reimbursed.

c) Presentation of the ECI

Once at least one million signatures have been verified, the next step for the authorities is to carry out an in-depth examination of the initiative. The official ECI office would have to send the initiative to all the relevant departments of the Commission and EP committees and ensure that it is followed up within a short time limit of three months. While an initiative is being dealt with by the Commission, its authors (the initiative committee) should be consulted and have a right to be heard. A new or reformed committee for petitions and citizens' initiatives could be the arena where the initiative committee could make a live presentation of its proposal. Representatives of the appropriate Commission departments and specialized parliamentary committees would be present, as well as interested members of the public.

d) Decision

After what will have been a very long and difficult procedure for both the authorities and especially the citizens, the final task for the Commission is to make a formal statement of its response to the initiative committee at the latest by three months after the ECI has been submitted. In the event that the initiative is rejected, the Commission should publish an in-

depth analysis and give full reasons for its decision. There should be provision for any decision by the Commission to reject an ECI to be appealed before the Court of Justice. If the response from the authorities is positive, the Commission then adopts the ECI as an approved initiative and submits it to the normal EU legislative process.

Conclusions

Experience in EU member states has shown that citizens' initiatives, if they are to be truly workable, need to be designed in a citizen-friendly way. This is all the more true for a European Citizens' Initiative due to the far more difficult circumstances at the transnational level compared with the regional or national levels in Europe. Only clear guidelines for implementation of an ECI and a dedicated democratic infrastructure will enable successful future use and equal access. Summing up, therefore, the following elements are considered to be crucial for a citizen-friendly implementation:

1. The EU should establish its own dedicated ECI Office – an agency that will serve as a non-partisan focal point between the general secretariats of the European Commission, European Parliament and Council on the one hand, and the initiative committee of a European citizens' initiative on the other.
2. The ECI Office provides a) effective channels of information and education on how European Citizens' Initiative procedures work; b) provides consultancy and translation services and financial reimbursement for a portion of ECI costs; and c) coordinates the verification of the signatures between the national voter registration offices and monitors whether the laid-down minimum standards have been met.
3. ECIs have the following rights: a) right to advice from the official ECI office before gathering the signatures; b) the right to be heard by the respective institutions (Commission, Parliament, Council); c) the right for the text of the ECI to be published without delay in the Official Journal of the EU and the Official Gazettes of the member states; d) the right to challenge a rejection before the competent European Courts; and e) reimbursement in part of the costs, as well as support in kind after preliminary and final registration has been completed.
4. Free collection of signatures should be allowed i.e. the signatures can be gathered freely (by circulation/ downloading of forms to be filled in and signed) and not only in government registration offices.
5. ECIs can be submitted in either of two ways: a) as a general proposal mentioning the specific goal of the legislation and the main measures to be introduced; or b) as a draft legal act.
6. There should be a time limit for collecting signatures of 24 months. Initiatives should have enough time to collect the signatures; a short time period would disadvantage smaller initiative groups.
7. The subject-matter of an ECI must lie within the area where the European Commission has the right to make proposals. However, as the Commission itself is entitled to propose amendments to treaties, it should also be possible to launch initiatives which relate to treaty amendments.

8. An initiative should not be required to collect signatures in more than 1/6 to 1/5 of member states member states.

9. The required minimum number of signatures coming from each country (see Point 8) should be 0.05% of the citizens entitled to vote.

10. An initiative committee should have the right to present its ECI proposal in person. A reformed EP committee on petitions and citizens' initiatives could be the arena where the initiative committee could first present its proposal. Representatives from the appropriate Commission departments and specialized parliamentary committees would be present.

11. After final registration and verification of an ECI, the Commission has to give its reasons in the event of rejection. There should be a strict time limit of three months for the subsequent treatment of the subject by the EU institutions.

Appendix:

Number of 0.1 % of eligible voters for each EU country

Country	N° of voters	Population	0.1 % of eligible voters
DE	61,682,394	82,536,680	61,682
IT	49,854,299	57,844,017	49,854
UK	44,157,400	59,862,820	44,157
FR	41,518,582	59,630,121	41,519
ES	34,706,044	40,409,330	34,706
PL	29,986,109	38,218,531	29,986
RU	18 449 676	22,276,056	18,449
NL	12,168,878	16,192,572	12,169
EL	9,909,955	10,554,404	9,910
PT	8,821,456	10,407,465	8,821
CZ	8,283,485	10,203,269	8,283
HU	8,046,247	10,142,362	8,046
BE	7,552,240	10,355,844	7,552
BU	6,691,080	7,322,858	6,691
SE	6,827,870	8,940,788	6,828
AT	6,049,129	8,067,289	6,049
FI	4,227,987	5,206,295	4,228
SK	4,210,463	5,379,161	4,210
DK	4,012,663	5,383,507	4,013
IE	3,131,540	3,963,636	3,132
LT	2,654,311	3,462,553	2,654
SI	1,628,918	1,995,033	1,629
LV	1,397,736	2,331,480	1,398
EE	873,809	1,356,045	874
CY	483,311	715,137	483
MT	304,283	394,641	304
LU	214,318	448,300	214
TOTAL 27	377,844183	484,600194	377,844

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http://www.iri-europe.org/fileadmin/user_upload/media/IRI-Handbook2008.pdf