

BULLETIN

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Editors: Marcin Zaborowski (Editor-in-Chief), Agnieszka Kopeć (Executive Editor),
Łukasz Adamski, Beata Górka-Winter, Leszek Jesień, Łukasz Kulesa,
Marek Madej, Beata Wojna, Ernest Wyciszkievicz

European Citizens' Initiative: An Instrument of EU Direct Democracy

by Agata Gostyńska

A group of at least one million EU citizens will be able to invite the European Commission (EC) to submit a legislation proposal. This instrument known as the European Citizens' Initiative (ECI) is currently under discussion by EU institutions, although the debates focus on ECI technicalities, watering down the real significance of this tool of direct democracy. As a result, the future regulation on the ECI already raises concerns over whether or not the mechanism would ultimately boost participatory democracy and shape the EU's civil society.

Background. A proposal to give EU citizens a stronger voice in the EU decision-making process was raised already during the European Convention on the Constitutional Treaty. The ECI was retained in the Lisbon Treaty (LT). Under Art.11.4 of the amended Treaty on European Union (TEU), not less than one million EU citizens who are nationals of a significant number of member states (MS) can invite the EC to start the legislation process by filing a proposal in matters of their particular interest. At the end of 2009, the EC adopted a Green Paper on the ECI, identifying major administrative and practical aspects of the future mechanism, and launched a broad public debate on the future shape of this instrument. As a result of consultations, the EC presented a draft regulation on the ECI amended by the General Affairs Council (GAC) on 14 June.

ECI Mechanism. Signatories of the ECI shall come from at least one-third of MS (i.e. currently at least nine MS). In those MS signatories shall account for at least the minimum number of citizens set in the Annex to the draft regulation (number of MEPs from each MS approved by draft decision of the European Council approved politically by the EP in 2007, multiplied by 750, i.e. in case of Poland $51 \times 750 = 38,250$). Only citizens eligible to vote in elections to the EP would be able to sign the ECI. The organisers, both natural and legal persons, should record proposed ECIs in the EC's register prior to collecting any statements of support. The EC shall refuse to register any ECI considered abusive, devoid of seriousness or against fundamental EU values set in the Art. 2 TEU. Statements of support shall be collected within 12 months of ECI registration.

In line with GAC amendments, after having collected 100,000 statements of support from signatories coming from at least three MS, the organiser should submit a request to the EC for its opinion on admissibility. Within two months the EC should declare whether or not the proposed ECI falls within its powers and a legal act can be formulated. If the EC gives a green light to the ECI and all the necessary statements are gathered, they shall be sent by the organiser to the MS in order to be verified and certified. The organiser directs declarations of support to the MS that have issued the identity documents indicated in the declaration of support. Only six MS (Denmark, Ireland, Netherlands, Finland, Great Britain, Slovakia) do not require data about identity documents in declarations of support, and in that case declarations are directed to the MS of residence or to the MS of nationality of the signatory indicated in the declaration. Once verification is completed, the MS shall provide the organiser with a certificate on the number of valid statements of support. The ECI backed by at least one million certified signatures may subsequently be submitted to the EC, which examines it within four months. The organizers, European Parliament and EU Council shall subsequently be informed by the EC about intended actions regarding the initiative.

Evaluation and Significance of the ECI. The ECI regulation is among the top priorities of the Belgian presidency. Its adoption by December would mark the first anniversary of the functioning of the LT, although this is not an easy task, as the EP is already signalling its concerns. Accord-

ing to the Working Document drafted by the EP's Committee on Constitutional Affairs (AFCO) and the Position Paper presented by the Committee on Petitions, a lower threshold should be set (of a quarter of MS, i.e. currently seven countries, or even of one-fifth, i.e. six MS), as this would safeguard broader access to the ECI. The EP and the European Ombudsman (EO) are concerned that setting the admissibility check at the level of 100,000 signatures might—should it turn out to be negative—effectively discourage others from launching the initiative. Such a check shall be undertaken within or just after registration. According to the Commission, the three-step approach (registration, admissibility check and final evaluation of the ECI) should help avoid overloading the system with initiatives devoid of seriousness or without broad public support. The draft regulation does not foresee any public hearing with the organisers of the ECI. Both the MEPs and NGOs point to an exchange of views on the ECI with the organisers as crucial prior to taking a final decision on the ECI. The MEPs and the EO additionally warn against the criticism that might be provoked by an institutional architecture where the EC acts as both an administrator and a judge.

The lively debate over the ECI should be seen in a broader context. Over the years the EP has been seeking more powers. The LT significantly extends its mandate and enhances its role as the second major legislation body equal to the EU Council. The EP wishes to consolidate its competence assigned by the LT and manifests its determination to participate in the law-making process at the early stage. Through the ECI the EP could influence the Commission in initiating legislative proposals. A legislative invitation backed by millions of EU citizens is more powerful than any resolution or lobbying, so the EP is pushing for supervisory competence in the future ECI mechanism. The AFCO has already suggested establishing an ad hoc "wise men committee" embracing experts or scholars appointed by the EP, EC and the EU Council, to rule on an admissibility of the ECI.

The ECI will provide a broad platform for a pan-European discussion and hence it may be used by the European political parties to promote their activities. The Alliance of Socialists and Democrats has already announced plans to trigger the ECI with respect to the EU financial transaction tax.

It is interesting to note that the Committee of the Regions and the European Economic and Social Committee are also keen to play an active role in the process. Both have suggested hosting public hearings on the ECIs successfully submitted to the EC, and their advisory functions would guarantee a neutral forum for dialogue between the EC and supporters of the ECI.

Other major beneficiaries of the ECI include bigger NGOs. With their well-developed networks abroad, financial resources and legal assistance in determining whether or not an ECI falls with the EC powers, they have better chances for a green light for their initiatives than ordinary EU citizens or small local NGOs.

The ECI needs to be improved in order to become well-managed and citizen-friendly. During the AFCO joint meeting with representatives of national parliaments on 30 September, EC Vice President Maroš Šefčovič pointed to the imperfections of the current ECI mechanism, reiterating the need for a compromise on such issues as the admissibility check, public hearings or a helpdesk for the organisers.

Statements of support will be collected not only on paper but also electronically in order to curb administrative burdens and meet the expectations of the e-generation. The draft regulation imposes obligations on the MS in this respect, as the MS will be responsible for storing the data collected online. They will have to designate an authority to certify that the online collection system of the organiser conforms with all personal data protection requirements. According to figures published by the EC in 2009, Poland and Latvia were among the countries witnessing the highest growth among the EU27 with respect to the e-availability of the basic public services (a growth of 27% in 2007–2009, with the current level of e-availability of basic public services at 53%). The online collection of statements of support could not only contribute to establishing e-government in Poland, but also reopen a discussion on challenges of e-voting in parliamentary or presidential elections.