
3. Citizens' Initiative: What's next?

Mário Tenreiro

Mário Tenreiro, Head of the Institutional Affairs Unit at the Secretariat General of the European Commission, was closely involved with the development and implementation of the ECI regulation until 1st January 2014. It is to be stressed that the opinions expressed in this article are purely personal and do not reflect by any means those of the Commission. The suggestions from the author shall not, in any case, be seen as a forecast of what might be the position of the Commission on these matters at the time of the review of the regulation.

On the morning of the 17th of February 2014 the representatives of the first ever successful transnational citizens' initiative (*Right to Water*) were received at the European Commission by the Vice-President of the European Commission Maros Šefčovič and participated, in the afternoon, in a public hearing at the European Parliament, also with the presence of the Vice-President and other Commission representatives. A full day dedicated to participatory democracy.

What the impact of this specific initiative, or any other subsequent initiative, will be in European politics is still to be seen. Similarly, the impact of this new "constitutional" right on the development of participatory democracy and of a European public space of discussion and dialogue cannot yet be measured. However, the experience with the operation of this new instrument, i.e., the *EU Regulation N° 211/2011 of 16 February 2011* on the citizens' initiative (ECI), is mature enough to allow a brief incursion into the territory of "how to improve it". The regulation foresees that it should be reviewed in 2015, but before introducing any possible proposal for an amendment, the Commission will likely present an evaluation and launch a public consultation.

As a personal contribution to this future debate, I will try to briefly comment on some of the more important issues that I feel should be considered in a future revision of the regulation. The aim is not to provide answers, but to contribute to the future debate by raising some preliminary questions.

The initiators – the citizens' committee

The idea of the citizens' committee of seven natural persons coming from seven different member states was introduced by the European Parliament during the negotiation process of the draft ECI regulation. It was not included in the initial proposal of the Commission, which considered that any "person" (either a natural or a legal person) could initiate a citizens' initiative.

The experience with the citizens' committee has however been positive and such a requirement certainly contributed not only to avoiding easy registration by frivolous initiatives, but it also guaranteed from the start the transnational character of the initiative. So, I do not see any reason to depart from this principle.

However, I wonder if the proposal of the Commission was not correct when it foresaw the possibility for organisations (legal persons) to also run citizens' initiatives. The first experiences showed

that, for the moment, only citizens' committees which were strongly supported by transnational organisations really succeeded in collecting more than one million signatures. So why not allow these organisations to be at the forefront in a formal way and not only in an informal one, "hiding behind", to a certain extent, an artificial citizens' committee? Allowing an organisation to formally be the "owner" of a citizens' initiative would certainly help to solve problems related to the "liability question", which seems to have a deterrent effect on citizens – i.e., the regulation establishes that *"organisers shall be liable for any damage they cause in the organisation of a citizens' initiative in accordance with national law"*. This could still be combined with the principle that the organisation should be supported by a committee of citizens coming from different member states.

The process of registration

The process of registration showed itself to be effective. More than 40 % of the initiative proposals have been dismissed on legal grounds (absence of powers of the Commission to act). In three cases the initiators decided to take the Commission to court. The positive effect of the legal filter at the registration phase is to avoid launching campaigns for subjects for which the Commission's response could only be negative at the end of the process. Looking at this outcome as positive implies that we take as an assumption that the Commission should respond positively to any initiative which would be successful. However, as we know, this is not the case, and this should not be the case. The Commission has the duty of promoting the general interest of the Union and should not respond positively to any citizen's initiative which would go against this principle.

If we see a citizens' initiative as what it really is – the possibility for citizens to force a European debate on a European question, and to force the European Commission to take a formal position on the issue – then one can question whether the legal filter is not impeding the launching of interesting European debates, on real European questions, with a real possibility of provoking political outcomes, even if the Commission could only respond by an absence of action due to its lack of powers. The fact that the Commission cannot act does not mean that nobody else can act! The rejection, on the basis of purely legal grounds, of initiatives with a clear European political dimension results in practice in avoiding what could have been interesting European debates with potentially positive outcomes.

Moreover, as a matter of fact, even if the Commission has no powers to do exactly what is asked by the initiative, it could maybe still take some action around the request. If we take the case of the request for registration on the 8 July 2012 for an initiative on an "unconditional basic income", this is exactly what happened. This request, asking for the introduction of a ruling at European level, was rejected on the 6 September, but another similar demand was submitted on the 14 November and was accepted, because it merely asked for action to encourage cooperation between the member states aimed at exploring the "unconditional basic income" as a tool to improve their respective social security systems. We could have arrived at the same outcome by granting registration from the start and treating the question as to what can be done in the formal response from the Commission – after one million signatures had been collected.

Of course, we should remember that one of the reasons for the admissibility check was also to avoid organisers spending a lot of time and money in collecting one million signatures only to be told that the Commission is unable to follow up the initiative in any way. But maybe experience shows that this is indeed irrelevant since the Commission could carry out some kind of follow-up anyway.

The time for collection of statements of support

Experience seems to show that one year from the day of registration to collect one million signatures is too short. The process to get certification of the online systems of collection of statements of support makes it even shorter. Contrary to the initial proposal of the Commission, the regulation does not allow signature collection to start online before the online system has been certified as safe by the public authorities of the member state where the data centre is physically located.

The Commission services did their best to help ECI organisers by informing them as soon as possible that their initiative would be registered, while postponing the formal registration until the latest possible moment within the two month period, in order to allow the initiators to best use the time at their disposal to get the certification of the online system. But a better solution should be found. Different solutions are possible – such as extending the 12-month collection period, or changing the starting point for counting the time i.e., beginning not with registration but, for instance, from a date to be decided by the initiators within some specified margin.

The statement of support forms and verification by the member states

The initial proposal of the Commission included only one model of support form, but the dynamic of the negotiations led to a quite complex system, with different forms according to the different member states. The process of verification of the statements of support by the member states went reasonably well on the first experience, but it also showed the need to clarify and simplify the support forms. This question is, of course, connected to the content of the forms.

The data which is required varies substantially by member state. There are two groups and two philosophies: the member states which, among other data, ask for the disclosure of an identification number (which often can only be held by nationals); and the member states which do not ask for such a number. Within each group there are still different requirements. The simpler form is the one accepted by Finland: the signatory has only to indicate their name, country of residence, nationality and date of birth. This rule is applicable to any European citizen residing in Finland and to any Finn, irrespective of his or her place of residence. The most demanding form is the one chosen by Italy, Austria and France: the signatories have to indicate their name, place of residence (street, house number, postal code, city, country), date of birth, place of birth, nationality and a personal identification number (passport or identity card, including mention of the issuing authority for Italy).

The more data that is required and the more sensitive the data protection question is (which is behind the need of onerous technical specifications for the online collection systems and pre-certification by the member states), the more likely it is that questions related to liability of the organisers in case of damages may arise and that citizens will be discouraged from supporting an initiative. On the other hand, the simpler the forms are, the less effective the checking of the signatures may be by the member states, the more easily frauds could be committed (for instance, by creating support forms on the basis of data publicly available) and the less serious the final result would look (the actual support for the initiative). How to resolve this dilemma?

In the next section, I will propose an ambitious approach for development in the medium term. But if we remain with a less radical solution, I think we really need an open discussion with the member states to understand why the requirements are so diverse. A good point of departure

could be to discuss the Finnish system – the easiest one – and try to understand what would be the obstacles for the other member states to accept the same system.

The online collection system

The hosting of the online system (connected with the need to respect the technical specifications established by the Commission's implementing *Regulation n° 1179/2011 of 17 November 2011*) appeared to be one of the most difficult obstacles the citizens' committees had to confront. At the initiative of Vice-President Šefčovič, the Commission finally offered any organiser the possibility to host their online system on the Commission's servers.

The legitimate question is whether this system, which was implemented on a temporary basis to overcome organisers' difficulties, should not become permanent. I am convinced it should. But I believe also that the whole system should be significantly improved. First of all, it makes no sense that the online systems hosted on the Commission's premises should be certified by a national authority – in this case the Luxembourg authorities. Secondly, the progress of new technologies should allow systems which could work even without any need for subsequent verification by national authorities. The system could even evolve towards a central collection system managed by the Commission (on a non-mandatory basis – I am convinced that the organisers should remain free to use private systems of collection, as is the case today).

I am also thinking here about the creation of a European Citizens' Card (E.C.C), which would contain the necessary technology to allow for an electronic signature. This would mean overcoming problems with data protection, data transfer, data verification by the member states, etc. Of course, on the one hand, this could not be, at least in a start-up phase, the only way to sign (in particular, paper signatures should continue to be allowed), and on the other hand, the E.C.C. should have other functions, such as proof of medical insurance when traveling abroad, identification for European elections and for traveling inside the EU, etc.

The European Union needs symbols: symbols that show a belonging to a shared project, a shared space, a common culture, a common future. We have passports, ID cards, social security cards, driver's licenses, credit cards with which we can pay anywhere, but we do not have a single document which attests to our European citizenship. Creating such a document, one of whose properties would be to allow participation in the ECI direct democracy tool, would certainly be a step forward in reinforcing the sense of our common destiny, the engagement of citizens in European matters.

The conditions for supporting an initiative

The ECI regulation states only that to be "*eligible to support a proposed citizens' initiative, signatories shall be citizens of the Union and shall be of the age to be entitled to vote in elections to the European parliament*". This drafting reflects the fact that in most member states the voting age is 18, but in one member state it is 16. However, the interpretation of the provision raised some questions. May a national of a country allowing the vote from age 16 sign an ECI even if he/she resides in a country where the voting age is 18?

I am convinced that it would be better to establish clearly the same age for all the citizens in a revision of the regulation. And why not 16? Personally, I am not insensitive to the argument that this

could be a way to raise the interest of young people in politics, and in particular, in European politics. A possible compromise could be to establish 16 as the age to support an ECI but 18 as the age to launch it (being part of a citizens' committee).

While the only conditions in the regulation are age and nationality, in practice some categories of citizens have been excluded from the right to support ECIs by the simple operation of the rules on data to be disclosed set out in the annexes. As some member states ask for some data and others for different data, some citizens fall through the cracks. In practice, the data requested by the member states has the following implication: sometimes only nationals are covered, sometimes only residents are covered, and sometimes both are covered, which is the optimal solution. The revision to the annexes by the Commission's *Delegated Regulation n° 887/2013 of 11 July* solved some situations but not all. The annexes relating to the data to be included in the forms can only be amended at the request of the member states.

For instance, citizens from the UK are still excluded from supporting an ECI when they reside outside the Union or in a member state requiring the number of a document which is reserved to nationals (national identity card number or passport number, for instance). Some countries like Italy or Cyprus also issue identity cards to non-national residents, but this is not the case for the majority of member states. This can only be solved by more harmonised forms.

The awareness of the public in general

The awareness of the average citizen of the new right of the "citizens' initiative" seems to be very low. The understanding of this instrument on the part of the media is also quite unsatisfactory. If one believes that one of the most important added values of the ECI is its contribution to the development of a "European public space", the present situation should be radically improved. This means that actions should be taken both at European and at national level to raise the awareness and the comprehension of this new tool of participatory democracy.

The institutions, governments and administrations should not see participatory democracy in general, and the ECI in particular, as a threat to their powers or as a factor disrupting their efficiency. They should see it rather as an aid to better performing their duties. Representative democracy is clearly under-performing in our societies and it should accept any help from new forms of democracy and citizen participation. I am firmly convinced that here resides one of the keys to allowing our post-modern societies to face the challenges of the future. Not only in Europe, but worldwide.

The ECI is certainly a small step for the citizens, but could help in developing big steps for humanity!

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The text in this file is a part of the book:

AN ECI THAT WORKS!
Learning from the first two years of the European Citizens' Initiative

Edited by Carsten Berg and Janice Thomson

Prefaces by Maroš Šefčovič, Martin Schulz and Dimitris Kourkoulas

2014, The ECI Campaign, Alfter (Germany)

This book contains contributions from 16 ECIs,
14 analytic and prospective contributions, and two interviews.

You may order the book by email: contact@citizens-initiative.eu

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