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## 12. The First Public Hearing on an ECI: Unclear Aims and Confusing Debates

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*Julian Plottka, Research Associate with the Institut für Europäische Politik in Berlin, closely observed the public hearing for the first successful ECI “Right to Water”. In this article he reflects on how it was structured, what happened, how well that served the ECI’s goals and how the ECI public hearing might be strengthened in the future.*

The European Commission’s reaction to successful initiatives is the bottleneck in the progression of a European Citizens’ Initiative (ECI). The Commission can only be *asked* to act. But it is not *required* to act (e.g., propose new legislation).

*Regulation No 211/2011* establishes four obligatory procedures (article 10 and 11): (1) the ECI has to be published; (2) the Commission has to “receive the organisers at an appropriate level”; (3) a public hearing at the European Parliament has to take place; (4) the Commission must publish its conclusions. This article discusses whether the third procedure, the public hearing, has the potential to contribute to the ECI’s success.

### **Different hearing formats considered during development of ECI regulation**

The Commission’s original proposal for the ECI regulation did not include a hearing. However, a hearing was added to the final regulation. During the legislative procedure different hearing models were discussed. They varied with regard to the organiser – e.g., EU Parliament committees, the Commission, the European Economic and Social Committee (EESC). Further discussion explored different ways to structure the hearing – e.g., hold a hearing at the EESC and inform the Commission, hold a hearing in the Parliament with the Commission and the Council represented, oblige the Commission to hold the hearing and inform other EU institutions.

The proposed roles for the Commission reveal the hearing’s first purpose: to establish a dialogue between the Commission and ECI organisers. The hearing is seen as a substitute for the fact that the ECI is not binding (i.e., the Commission is not required to act). Furthermore, it was expected that the hearing would foster public debate.

The hearing’s formal framework, spelled out in *Regulation No 211/2011, article 11* and the *Parliament’s rules of procedure, rule 197a and 203a*, allows considerable flexibility in how to organise the hearing.

### **First ECI public hearing on *Right to Water***

To date, just one hearing, for the ECI *Right to Water*, has been organised. It took place at the European Parliament in Brussels on 17 February 2014, one month before the Commission’s conclusions are due on 20 March 2014. It was organised by the Parliament’s *Committee on Environment, Public Health and Food Safety (ENVI)* in association with the Committees on *Development (DEVE)*, *Internal Market and Consumer Protection (IMCO)*, and *Petitions (PETI)*. The participants were:

- The ECI *Right to Water*, represented by members of its citizens' committee;
- European Commission, represented by Maroš Šefčovič, Vice-President of the Commission for Inter-Institutional Relations and Administration, and representatives from the Directorate-General (DG) *Environment, Internal Market and Services* and *EuropeAid Development & Cooperation*;
- European Parliament, represented by Matthias Groote, chair of *ENVI*, and Gerald Häfner, for *PETI*, with many MEPs in the audience;
- European Economic and Social Committee (EESC);
- Committee of the Regions (CoR).

The Council was not represented. Other stakeholders were not invited to speak.

Framed by an opening and a closing session, the hearing was divided into three thematic sessions. Groote, Šefčovič and Häfner opened the hearing, followed by a first presentation of the ECI. The subsequent thematic sessions had the same structure: ECI organisers' introduction, question and answer session for the MEPs, replies by the ECI organisers, response by the Commission DG representative; conclusion by ECI organisers. Finally, the EESC and CoR presented their points of view, followed by concluding remarks by the ECI organisers, Šefčovič and Groote.

Does this agenda serve the initial purposes? While MEPs questioned the organisers directly during the hearing, the Commission presented prepared statements. Šefčovič was probably chosen to represent the Commission to stress the importance to the Commission of the ECI as *a new democratic instrument*. Commission DGs were represented by lower ranking officials during the thematic sessions. The Parliament put stronger emphasis on the ECI's subject by assigning responsibility to *ENVI*, whose chair chaired the hearing. Häfner represented *PETI* on the panel, probably to underline the Parliament's interest in the ECI itself. But *PETI*'s role was minor compared to *ENVI*'s role, showing the reverse pattern of the Commission's representation.

The decision to invite no other stakeholders or experts increased the focus on the ECI *Right to Water*, but did not contribute to the quality of the debate. The concept of the hearing seems to be driven by the willingness to value the ECI and the conviction that the hearing should be on the ECI's entire content. But the concept neither serves the initial purposes nor reveals any different aim. The meeting between the ECI organisers and the Commission prior to the hearing probably contributed much more to fostering dialogue. Only limited media coverage of the hearing could be expected.

The ECI organisers seemed to be ill at ease in the formal setting. They did not act as experts on water policy. They altered the agenda by spontaneously giving the floor to different organisers. One of the additional speakers confessed he was not an expert on the matter discussed, but could make some comments based on his professional experience. During the first session, the chair of the hearing had to remind the ECI organisers that the issue of liberalisation was to be discussed *only* during the third session.

While the formal setting reveals no coherent strategy and the ECI organisers did not impose an alternative strategy, it might be more instructive to look at what actually was discussed. Throughout the hearing, three topics were discussed, although not every actor touched on every issue: (1) the importance of the ECI to European democracy; (2) EU liberalisation policy; (3) EU water policy.

- (1) The importance of the ECI to European democracy was addressed by Šefčovič and some MEPs who described the day as “a milestone in European history”. Probably, this institutional dimension is a phenomenon of the first hearing and will not be mentioned in future hearings.
- (2) The discussion on liberalisation policy differed from the formal agenda. The issue was broached by ECI organisers. Their critiques of the Commission were supported by some MEPs and countered by others. Commission representatives refused to comment on this topic outside of the third session on “no liberalisation of water services”. This politicised debate partly fulfils the initial purposes of fostering public debate and creating a dialogue, even though it contained conflict.
- (3) Water policy was discussed by some MEPs and Commission representatives, the EESC and the CoR. The ECI organisers struggled with their role as experts for water policy. The debate covered a broad range of detailed issues and resembled a parliamentary expert hearing.

### A proposal for two ideal ECI hearing formats

While I expect the debate on the institutional dimension to be a phenomenon of the first ECI hearings, the other debates support my assumptions that the actors have different expectations with regard to the ECI hearing and that there is no commonly agreed strategy. From these debates I deduce two ideal types of ECI hearings, which each result from different visions of what an ECI should be:

- (1) *Scrutinising the Commission*: Instead of giving the floor to ECI organisers, the hearing aims to increase public pressure on the Commission to act. Scrutinising the Commission would politicise the ECI further and make it an instrument for conflict. That is appropriate for controversial issues of high salience (e.g., liberalisation), while issues of common interest (e.g., development policy) will not benefit. Such a hearing should take place on the Commission’s premises and oblige all parties to the legislative procedure to be represented (i.e., including the Council). Inviting additional experts is not necessary as the debate will be rather general than technical. This type of hearing considers the ECI as an instrument to politicise representative democracy on the EU level and to further strength the parliament. The ECI is a citizen right to *control the legislators*.
- (2) *Expert hearing*: The major aim is to facilitate the dialogue between ECI organisers and the Commission. It is less confrontational than #1 and tries to increase mutual understanding. It is appropriate for uncontroversial topics. Additional experts and stakeholders should be invited to discuss technical details. Representatives of other EU institutions are welcome but not required. Instead of the Commission, the ECI organisers and the other experts are consulted. It considers the ECI as an *instrument of participative democracy*, the only one at the citizens’ disposal.

The empirical evidence is still very weak and more research is needed to have a reliable basis to discuss reform options. Yet there are two arguments in favour of the first “scrutinize the Commission” type of hearing. The expert hearing type is not fruitful for controversial ECIs, which need public attention. For uncontroversial ECIs, the Commission has its own interest in consulting the organisers and doesn’t need to be “forced” by hearing rules to do so. Currently, the only thing that is clear is that the ECI public hearing must be reformed – either within the existing formal framework or by reforming the ECI regulation.

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