

European Citizens Initiative: evaluating a controversial legal (political?) instrument and the way forward

***Public Hearing on the European Citizens'
Initiative***

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I. Basic controversy

- European Citizens Initiative (ECI) has a high significance in the system of the Treaties → the involvement of citizens in the EU decision-making as a constitutional principle appears already amongst the objective and values of the EU
 - See generally: **Articles 1, 2, 3(1) TEU**, then underpinned by the provisions on democratic principles (**Article 8(3) TEU**) → **Article 11(4)** is located in this context
- ↕
- Despite ECI's constitutional importance, it is an "underachiever" = its potential has not been really explored and used during the 3 years of its application (since 1 April 2012)
 - **Some figures:** **51** ECIs proposed, and **31** registered, **20** refused (**40 %**) → only **2** successful ECIs submitted to the COM so far → 2 COM communications on the follow-up, but neither of the two contains legislative proposals!

II. Constitutional implications of ECI

1) Tool for **participatory democracy** + addition to existing “opportunity structures for citizens participation” (M. NENTWICH)

- In practice:

- many burdens, uncertainties & too bureaucratic formalities
(↔ ECI Reg. Preamble, recital no 2 – “*clear, simple, user friendly*”)
- COM’s half-hearted and braking attitude

- Dilemma: if trend continues = solemn objectives of participatory democracy can be hardly attained & aim to bring citizens closer to the EU + to increase citizens’ willingness to participate in the decision making process may be negatively affected

II. Constitutional implications of ECI

2) ECI may have considerable impact on the **post-Lisbon Community method** (decision-making process)

- purpose of the ECI: initiating a legislative proposal + producing legislation (hard, legal instrument) (**Art. 11(4) TEU**: “the Commission [...] 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”) ← → some argue: just an agenda setting tool to raise issues of concern for citizens (soft, political instrument)
- pre-Lisbon COM communications: Community method should be reformed, notably by strengthening its democratic legitimacy + need for an instrument designed primarily to involve citizens in decision-making → will increase democratic legitimacy
- input legitimacy process of the Community method can be enhanced and improved by efficient/successful use of ECI
- this narrative: reason for COM’s jealousy? (affecting its monopoly of initiative)

III. The way forward – legal perspective

- ECI should become a real + effectively functioning instrument, adding directly citizens' will to the EU's decision-making *trias politica* → agenda-setting not only by the Institutions (mainly COM), but by EU citizens, too
- To explore its full potential, ECI should be open to new topics, falling under the material scope of the Treaties but not yet taken up by the Union legislators
- New topics should undisputedly fit into core EU policies or objectives → they shall be formulated in that logic, by identifying the appropriate EU legal basis + legally precise & succinct proposals needed (? ECI Reg. Art. 4(2) b) compatible w/ Art. 11(4) TFEU?)
- ECI could complement Article 265 TFEU (procedure before the CJEU if Institutions fail to act) + Article 352 TFEU (flexibility clause, w/ unanimity)
 - e.g. *protection of persons belonging to minorities*: amongst EU values + references in the EU Charter (Articles 21-22), but no implementing/secondary legislation yet
 - two mechanisms represent a top-down approach to address this issue (restricted access), while the ECI denotes a bottom-to-the-top approach, based on wide democratic participation (democratic legitimacy)

IV. Conclusions

After three years of existence, ECI at the crossroads:

- A **new democratic chapter** in the life of EU's decision-making (ECI with sharp teeth and real influence)

OR

- It remains a **symbolic declaration** of faith in the European citizens, just a democratic illusion (ECI as an "empty shell")

Key player: **COM** → success of the story largely depends on it, BUT duty of sincere cooperation to achieve EU's objectives (Art. 4(3), 13(2) TEU) equally applies to it.

And...**CJEU** can also have a say... (see: 5 pending cases)



THANK YOU FOR YOUR KIND ATTENTION!



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