

The European Citizens' Initiative

Experience of the first three years

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- ▶ The large number of European Citizens' Initiatives indicates that EU citizens want to be involved in the political decision-making process.
- ▶ The requirements as to what personal details supporters have to provide should be made uniform across the EU.
- ▶ Electronic data collection must be carried out by way of the EU Commission's computer program and on one of its available hosting servers.
- ▶ Citizen's Committees should have a legal personality for reasons of liability.

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1 Introduction

The European Citizens' Initiative (ECI) allows "not less than one million citizens who are nationals of a significant number of Member States" to invite the EU Commission to submit legislative proposals on certain matters.¹ An ECI is possible where and insofar as the EU has been given the power to adopt a legal act.

Although the ECI was only introduced by way of the Lisbon Treaty, which came into force on 1 December 2009, the idea of the direct participation of citizens at EU level is not new. There have been attempts - if unsuccessful - since 1988 to bring in a right of initiative for EU citizens. Thus, in October 1996, the then Austrian foreign minister and Vice Chancellor Wolfgang Schüssel and his Italian counterpart Lamberto Dini, called for the inclusion of a Citizens' Initiative into the Treaty of Amsterdam but failed to find support for it. Success did not materialise until June 2003 when the European Convention included a right of initiative in the draft constitution². Although the Constitutional Treaty, which was rejected by France and the Netherlands, failed, the idea was taken up by the Lisbon Treaty.

The Lisbon Treaty provides that the actual procedures and conditions for the implementation of an ECI by the European Parliament and the Council on a proposal from the Commission must be defined by means of a Regulation.³ On 31 March 2010, the EU Commission submitted a proposal for a European Citizens' Initiative. The European Parliament accepted the ECI Regulation⁴ on 15 December 2010, the Council on 14 February 2011.

The ECI Regulation came into effect on 1 April 2012⁵ and since then it has been put to use on many occasions. This ceplnput aims to show how the ECI works, the insights which have been gained in the first three years and where there is need for improvement.

2 Procedure of the European Citizens' Initiative

The ECI must be organised by EU citizens who have reached minimum voting age under the national law on European Parliament elections.⁶ A citizens' committee must be set up to organise the ECI which is responsible for all issues and which consists of at least seven EU citizens⁷ from at least seven different Member States.⁸ It is liable for any damage it causes during the organisation of an ECI in accordance with applicable national law.⁹ The citizens' committee appoints a representative and one substitute to act as the contact persons for the institutions of the Union.¹⁰

¹ Art. 11 Treaty on European Union (TEU).

² Art. I-47 (4) Treaty establishing a Constitution for Europe (TCE, OJ. C 310 of 16 December 2004).

³ Art. 24 Treaty on the Functioning of the European Union (TFEU).

⁴ Regulation (EU) No. 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative (OJ. L 65 of 11 March 2011), last amended by Delegated Regulation (EU) No. 531/2014 of the Commission of 12 March 2014 (OJ. L 148 of 20 May 2014).

⁵ Art. 23 Regulation (EU) No. 211/2011.

⁶ Art. 3 (1) Regulation (EU) No. 211/2011.

⁷ Members of the European Parliament who are also members of the citizens' committee are not counted for the purposes of reaching the minimum number of participants (Art. 3 (2), sub-para. 3 Regulation (EU) No. 211/2011).

⁸ Art. 3 (2), sub-para. 1 Regulation (EU) No. 211/2011).

⁹ Art. 13 Regulation (EU) No. 211/2011.

¹⁰ Art. 3 (2), sub-para. 2 in conjunction with Recital 8 Regulation (EU) No. 211/2011.

2.1 Registration

Prior to initiating the collection of statements of support, the organisers must register the ECI with the EU Commission. The following requirements apply:¹¹

- The citizens' committee must be in place and the contact person appointed together with a substitute.
- The proposed initiative does not manifestly fall outside the competences of the EU and is not manifestly abusive, frivolous or vexatious.
- The proposed initiative is not manifestly contrary to the values¹² of the EU.

In this case, the following must be submitted to the Commission: a description of the proposed initiative, reference to the legislative competences involved, sources of funding and details of the organisers.¹³

The EU Commission examines and registers the ECI within two months of receipt of this information.¹⁴ The organisers will be notified of the result and registration is made publicly available in an on-line register¹⁵ set up by the EU Commission. Where the EU Commission refuses registration, the on-line register will only contain the ECI application and the rejection notification.¹⁶

2.2 Collection of statements of support

2.2.1 General provisions:

The organisers have twelve months to collect statements of support starting from registration.¹⁷ An EU-wide standard form must be used for the collection.¹⁸ The personal details to be provided by supporters are governed by the rules of the Member States and therefore vary from Member State to Member State. For this reason, there are two forms: one for collection in Member States which require the provision of a personal identification number and one for collection in Member States which do not require the provision of a personal identification number.¹⁹ Other national particularities are covered in the forms.

2.2.2 Special provisions for electronic collection

Where statements of support are collected electronically (wholly or in part), the on-line collection system must be certified, before starting the collection, by the Member State on whose territory it is to be carried out.²⁰ The collected data may be collected and stored in one or more Member States.²¹ Certification requires compliance with appropriate security features and technical

¹¹ Art. 4 (2) Regulation (EU) No. 211/2011.

¹² The values of the EU are set out in Art. 2 TEU.

¹³ Full details of the information required for registration are contained in Annex II Regulation (EU) No. 211/2011.

¹⁴ Art. 4 (2), sub-para. 1 Regulation (EU) No. 211/2011).

¹⁵ The register is available at <http://ec.europa.eu/citizens-initiative/public/welcome>.

¹⁶ Art. 4 (4) Regulation (EU) No. 211/2011.

¹⁷ Art. 5 (5) Regulation (EU) No. 211/2011.

¹⁸ The form is contained in Annex III Regulation (EU) No. 211/2011.

¹⁹ Annex III Part A Regulation (EU) No. 211/2011 (without personal ID number) or Annex III Part B Regulation (EU) No. 211/2011 (with personal ID number).

²⁰ In Germany, the Federal Office for Information Security (BSI) is responsible for certification; information is available at https://www.bsi.bund.de/DE/Themen/weitereThemen/ECI/Online_Sammelsysteme/OCS_node.html.

²¹ Art. 6 (1) Regulation (EU) No. 211/2011.

standards defined in detail by the EU Commission by way of implementing regulations.²² A certification issued by a Member State must be recognised by the other Member States.²³ As an alternative to setting up their own collection systems, the organisers can also use a collection system provided free of charge by the EU Commission which complies with the aforesaid technical requirements.²⁴

2.3 Verification of statements of support

An ECI can only be supported by EU citizens who have reached minimum voting age under the national law on European Parliament elections.²⁵ The Member States are responsible for verifying the number and validity of the statements of support.²⁶ Once the organisers have finished collecting statements of support, they must apply for a certificate from the competent national authority in every Member State in which they have collected, showing the number of valid statements of support collected in that country.

The certificates must be applied for separately in each Member State. The statements of support must be submitted on paper or electronically depending on how they were collected.²⁷ Electronically collected statements of support may be submitted either in printed form or in secure electronic form. Verification is the responsibility of either the Member State of residence or of nationality of the supporter or the Member State that issued the identification number - generally the identity card number. The authorities must issue the certificate within three months.²⁸

3 Consequences of the European Citizens' Initiative

3.1 Examination by the EU Commission

In order that, following successful registration, the EU Commission can also deal with the contents of the ECI, it must be supported by at least one million EU citizens from at least a quarter of the Member States. In addition, in at least seven Member States, at least as many supporters must take part as the respective Member State has seats in the European Parliament multiplied by 750.²⁹ Thus, for a successful ECI in Germany with 96 Members of Parliament and about 81 million inhabitants, 72,000 statements of support are necessary, in Luxembourg with six Members of Parliament and about 550,000 inhabitants, the figure is 4,500. Each supporter is only permitted to support the planned ECI in one Member State.

²² The details are set out in Commission Implementing Regulation (EU) No. 1179/2011 of 17 November 2011 laying down technical specifications for online collection systems.

²³ Art. 6 (3), sub-para. 2 Regulation (EU) No. 211/2011).

²⁴ Art. 6 (2), sub-para. 4 Regulation (EU) No. 211/2011; the software and accompanying information are available at <http://ec.europa.eu/citizens-initiative/public/software>.

²⁵ Art. 3 (4) Regulation (EU) No. 211/2011.

²⁶ Art. 15 (2) Regulation (EU) No. 211/2011; in Germany, the Federal Office of Administration has been appointed (Section 1 ECIG).

²⁷ Art. 8 (1), sub-para. 1 Regulation (EU) No. 211/2011).

²⁸ Art. 8 (2), sub-para. 1 Regulation (EU) No. 211/2011).

²⁹ Art. 7 (2) Regulation (EU) No. 211/2011.

Where the required number of valid statements of support is reached, the ECI can be submitted to the EU Commission. At the same time, up-to-date information must be provided about the support and funding received.³⁰

The EU Commission publishes the ECI in the Register and receives the organisers so that they can explain the ECI in detail. The resulting legal and political conclusions are published by the EU Commission in the form of a Communication within three months in which the EU Commission also sets out any action it intends to take.³¹

3.2 Subsequent Procedure

During the three-month period prior to submission of the Communication of the EU Commission, the organisers are also given the opportunity to present the ECI in the context of a public hearing in the European Parliament. The European Parliament and the EU Commission shall ensure that other bodies who might be affected by the ECI - e.g. the Economic and Social Committee - take part in this hearing.

The EU Commission continues to reserve the sole right of initiative. This means: Even where an ECI fulfils all the criteria and the European Parliament - and where appropriate other affected institutions - support the proposed initiative, it is at the discretion of the EU Commission whether or not to submit a legislative proposal. It is not, at least legally, obliged to transpose the initiative into a legislative proposal.

4 Deployment of the European Citizens' Initiative

Since the ECI Regulation came into effect, 51 applications to register a planned ECI have been submitted to the EU Commission. Of these, 31 initiatives have been registered, 20 have been rejected. Of the 31 registered initiatives, 10 were withdrawn. 18 of the 21 remaining collections of statements of support have already been completed. Of these, twelve collections did not achieve the required number of supporters; three are still awaiting the result and three collections were successful. The EU Commission has already responded to each of these by way of a Communication.³²

Tab. 1. Number of registered and non-registered initiatives

Registered: 31					Not registered: 20
Withdrawn	Collection unsuccessful	Collection completed & awaiting result	COM examination complete	Ongoing collections	Registration rejected
10	12	3	3	3	20

Source: Register of European Citizens' Initiatives

³⁰ The level above which funding must be reported corresponds to that contained in Regulation (EC) No. 2004/2003 of the European Parliament and of the Council of 4 November on the regulations governing political parties at European level and the rules regarding their funding (Art. 9, sub-para. 2 Regulation (EU) No. 211/2011).

³¹ Art. 10 (1) Regulation (EU) No. 211/2011.

³² Communications from the Commission on the European Citizens' Initiatives: "Water and sanitation are a human right! Water is a public good, not a commodity!" COM(2014) 177 of 19 March 2014; Communication from the Commission on the European Citizens' Initiative "One of us", COM(2014) 355 of 28 May 2014; "Stop Vivisection", C(2015) 3773.

According to the European Economic and Social Committee, the European Citizens' Initiative has been created as an instrument of direct democracy allowing citizens, who are currently rather disengaged from political Europe, to get involved by way of concrete initiatives and aims.³³ Although the large number of planned European Citizens' Initiatives indicates active involvement on the part of EU citizens, it is not possible to say whether these are citizens who were previously disengaged.

5 Critique

Irrespective of the active participation, there are - predominantly legal - problems in some areas which hinder the procedure and which should be remedied going forward.

5.1 Registration procedure

The EU Commission has so far rejected 20 applications for registration because they manifestly fell outside the competences of the EU. The registration procedure has therefore proven to be of value as a condition for starting the collection of statements of support.

5.2 Collection of statements of support

The collection of statements of support is in need of improvement in two areas. Firstly, Member States should not be permitted to impose varying requirements on the submission of personal details. Every Member State assigns personalised and numbered identity papers to its nationals. Specifying this number, along with the name and address of the supporter, should be sufficient to enable a check to be made on whether the person is an EU citizen who meets the age requirement. Ascertaining place of residence does not appear to be necessary.

Secondly, using the EU Commission's computer program for electronic collection, which is currently voluntary, should be made obligatory. This would save the organisers from having to carry out substantial programming work, and the authorities would no longer have to carry out certification. In addition, the EU Commission should be obliged to provide a server for electronic collection and storage. This would allow for greater safeguarding of data protection and security and electronic collection could begin immediately after successful registration allowing optimal use of the twelve-month period for collection.

5.3 The citizens' committees

Making the citizens committees liable for any damage they cause is justified. The possibility of giving them a legal personality recognised under the respective national law on liability - in Germany, for example that of a registered association - should be considered. This would allow questions of liability, which in any case have to be handled under national law, to be clarified by way of instruments established in the Member States and the citizens' committees could insure themselves against risks if required. Without a legal personality, the two people responsible are at risk of unlimited personal liability. An additional advantage of the legal personality is that it would improve the ability to collect financial donations because private individuals generally receive less in the way of donations than a legal bodies.

³³ Opinion of the European Economic and Social Committee on the ECI Regulation, OJ C 354 of 28 December 2010.

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