
Implementing Lisbon: a critical appraisal of the Citizens' Initiative

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BACKGROUND

In a much-heralded effort to bring people across Europe closer to the EU and enhance the Union's democratic legitimacy, the Lisbon Treaty has introduced the *Citizens' Initiative* (CI) – an idea born in the final phase of the Constitutional Convention.

This instrument allows more than one million citizens from a "significant" number of Member States to invite the European Commission to submit a legislative proposal within the "framework of its powers" and "for the purpose of implementing the Treaties" (Article 11 TEU). But how will the CI work in practice? What are its likely implications for the EU and its citizens?

And will its introduction really boost the Union's democratic legitimacy?

The vague formulation of the Treaty's provisions on the CI left many issues relating to its implementation unsettled. In May 2009, the European Parliament (EP) adopted a resolution seeking clarification on these issues by calling on the Commission to submit a proposal on the CI as soon as Lisbon entered into force. Following intense public consultations with civil society organisations, the Commission presented its proposal on 31 March 2010 and the Council agreed its general approach in June – so the ball is now in the European Parliament's court.

STATE OF PLAY

The Commission's draft regulation on the Citizens' Initiative is based on two guiding principles: first, the conditions set for its use should ensure that CIs are "representative of a Union interest"; and second, the procedures should be "simple" and "user-friendly" whilst "preventing fraud or abuse" and avoiding "unnecessary administrative burdens". In other words, the Commission's proposal aims to balance the accessibility of the new instrument – as widely requested during the public consultation procedure – against the need to ensure the integrity of the EU system.

The draft regulation specifies, among other things, the minimum number of Member States and signatories required; the rules for registration and admissibility, and for the collection, verification, and authentication of statements of support; the guidelines for the

Commission's response; and a clause on the potential review of the regulation.

The main thresholds

The Commission's proposal stipulates that the one million signatories required must come from at least one-third of Member States – i.e. nine out of the current 27. This reflects its intention to guarantee that such initiatives foster transnational debate.

A 'successful' CI must also be backed by a minimum number of signatories in every Member State. To address concerns that setting a fixed percentage for all EU countries (irrespective of the size of their population) would not be equitable, the Commission has proposed that the number of signatories be "degressively proportional" to the population of

each Member State, with the minimum number of citizens from each country calculated by multiplying the number of MEPs per country by 750 (so, for example, for Luxembourg the minimum number of signatories is set at 4,500 - i.e. 750×6 – and for Germany at 72,000 – i.e. 750×96).

This formula gives larger Member States a lower threshold relative to their population size (0.09% of the population in Germany's case) and smaller EU countries a higher one (0.9% for Luxembourg), thereby encouraging the organisers of such initiatives to give equal consideration to both big and small Member States in their efforts to meet the required thresholds. In a proportional or fixed percentage mechanism, organisers would have had to collect substantially more signatures in larger Member States and many fewer in smaller ones (for example, just around 1,000 in Luxembourg compared with about 160,000 in Germany to reach a fixed threshold of 0.2% of the population).

Rules for CI registration and admissibility check

At the start of the process, organisers will have to register a CI on a Commission website. They will also have to present their proposal, identify the legal base under which they believe the Commission can act, and provide information about the sources of funding and support for the initiative.

The Commission also suggests two registration criteria. The first seeks to eliminate initiatives which are “abusive or devoid of seriousness”. Although the proposal does not clarify the exact procedure, this is unlikely to require a high-level political decision by the Commission. The second indicates that the Commission will reject initiatives that are “manifestly against the values of the Union”. In any case, the organisers will have the legal right to challenge the Commission's decision in the European Court of Justice or appeal to the European Ombudsman, although this is not explicitly mentioned in the draft regulation.

The Commission has also proposed carrying out an admissibility check once organisers have collected 300,000 signatures in at least three Member States. It would then have two months to decide whether the issue falls within its powers and whether it is compatible with the Treaties. The Council has proposed lowering this threshold from 300,000 to 100,000 signatories, and giving the Commission three months instead of two to complete the check. Whatever the final threshold, it will release the Commission from the burden of ‘checking’ every single initiative registered and help to verify whether a proposal has substantial public support. It could also reduce the frustration which would probably

accompany a potential rejection *after* at least one million signatures had been gathered.

Rules for collecting and verifying signatories

Although civil society representatives asked for longer, the Commission's proposal gives organisers ‘only’ 12 months from the date of a CI's registration to collect the minimum one million signatories. However, in line with demands raised during the consultation process, the draft regulation imposes no restrictions on how statements of support are collected and would allow online endorsement from the outset – a somewhat contentious issue because, while the collection of statements of support in ‘cyberspace’ makes it easier to accumulate signatories, it could obstruct active deliberation and campaigning in the ‘real world’ within and across EU countries.

The Commission and Council have not proposed any standard rules for the verification of signatories. The Commission merely specifies that each Member State must check the statements of support from their own citizens within three months – even if they signed up in another EU country. The Council has suggested that signatories' country of residence should be allowed to verify their statements of support, unless the identification document provided with it was issued in a different Member State (non-EU residents are not considered, as the Lisbon Treaty explicitly refers to citizens who are “nationals”).

Both proposals could reduce the administrative burden for Member States that already have systems in place to do this. But without specific and collective rules, discrepancies in national practices might complicate the task facing CI organisers and render the verification and authentication process more susceptible to manipulation. Moreover, without a clear timeframe for sending in the statements of support for verification, the submission of an initiative could be drawn out beyond the 12-month deadline for collecting them. Such a delay might test both the relevance of the initiative as well as the patience of its organisers and supporters.

Guidelines for the Commission's response

The draft regulation gives the Commission four months to examine a CI once it has been officially submitted (i.e. after one million citizens have signed up) and publish a Communication setting out what “action it intends to take, if any, and its reasons for doing so”. The words “if any” already indicate that the Commission might decide to take *no* action, even if the CI fulfils all the administrative criteria. The proposal does not set any precise criteria to guide the Commission's response, either in terms

of choosing from various legal instruments available or drafting a suitable but potentially negative reply.

The review clause

In recognition of the fact that the EU is entering uncharted territories with the CI, the draft proposal introduces a review clause obliging the Commission to present a report to the EP and Council on its

implementation five years after the regulation has entered into force. The Council has proposed reducing this to three years from the date of the regulation's application. The Commission has also foreseen the possibility of amending the Annexes – which include i.a. a list with the minimum number of signatories per Member State – by means of delegated acts, which would allow changes to be made without adopting a completely new regulation.

PROSPECTS

The Commission's proposal has settled a number of 'technical' issues related to implementation. If the guidelines set out in the draft regulation allow the new instrument to function smoothly, the EU and its citizens stand to benefit in at least four ways. It could:

1. Help to counter public disengagement with European affairs by offering citizens the possibility of pushing the EU's 'legislative button'.
2. Stimulate transnational dialogue and debate on specific public concerns across Europe.
3. Promote the Europeanisation of national public discourses, if the pros and cons of a proposal are discussed in national political arenas.
4. Have an 'educational function', making citizens more aware of how the EU works and, especially, of the Commission's role.

These potential benefits could strengthen the link between the EU and its citizens, and thus boost the Union's public legitimacy. However, several unanswered yet critical questions deserve consideration to assess the instrument's broader implications.

Who will apply the instrument?

Given the resources required to launch a CI, it seems unlikely that 'ordinary citizens' will do this themselves. They will instead have to rely on intermediaries such as NGOs, trade unions, political parties, or lobby groups to articulate and drive their interests via such initiatives.

Many CIs could therefore reflect specific interests pushed by a well-organised minority rather than commanding broad public support. In such cases, policy-making might fall prey to a 'tyranny of minorities' backed by interest groups which are better equipped to collect one million signatures. While at first glance, one million signatories might sound an impressive figure, they would in fact account for just 0.2% of the entire EU population or 0.3% of EU citizens eligible to vote – a low threshold even compared to similar national instruments.

To avoid abuse of the instrument by groups championing narrow concerns, two additional safeguards should be

added to the regulation. First, the Commission should be obliged to hold wide-ranging consultations with relevant stakeholders before it responds to a proposal. Second, as the Council now also recommends, organisers should be asked to supply well-documented evidence about the (financial) supporters of an initiative before the Commission decides on its admissibility. The Commission's draft regulation only compels organisers to provide such information when a CI is registered at the outset of the overall process.

Will the response to a CI breed frustration?

Uncertainty surrounds the nature and quality of the Commission's response to 'successful' initiatives. The Lisbon Treaty states that a CI merely "invites" the Commission to give "serious consideration" to every initiative and to present an "appropriate proposal" if the issue falls within its powers. It is thus free to determine the nature of its response, which could range from a concrete legislative proposal to a mere recommendation or non-binding opinion.

If the Commission fails to strike the right balance when it reacts to a CI, this could not only undermine its role and damage its image but also further alienate the public from the EU. Simply adopting an initiative – which might be particularly appealing in situations where the Commission wishes to avoid public criticism – could severely undermine its right of initiative. Conversely, the instrument risks becoming a source of frustration if organisers and signatories of a 'successful' CI perceive that the Commission did not (adequately) respond to their proposal, either by failing to put forward a concrete proposal or by responding in a way that does not match their expectations.

Two things should be done to reduce the risk of dissatisfaction. First, after some initial experience with the new instrument, more concrete and objective criteria should be set to guide the Commission's decision on an initiative. Second, in cases where the Commission does not make a legislative proposal, its response should set out the precise reasons for

this decision and suggest alternative bodies and tools to consult on the issue at hand.

Beyond the Commission's role, there are two other potential sources of frustration.

First, even if the Commission's response satisfies the expectations of the organisers and signatories, the legislative proposal might still be amended or rejected by the EU's two legislators; i.e. the EP and/or the Council.

Second, delays could become a source of discontent, as it would take years for a 'successful' CI to be implemented, with the application cycle alone taking at least 19 months – 12 months to collect one million signatures, three months to verify and authenticate them, and four months for the Commission to respond. Furthermore, the draft regulation does not set a timeframe for the Commission to make a legislative proposal, and it is impossible to specify how long it will take the co-legislators to decide on any such proposal.

Will the instrument affect the EU's functioning?

It is difficult to predict how popular the new instrument will be and how often it will be used. If there is a large number of CIs, the sheer volume could add significantly to the workload of the Commission, which is obliged to consider all proposals at least twice – once during the admissibility check and again when deciding on the appropriate reaction. This could divert the Commission's attention from other important commitments or encourage it to simply pass proposals directly to the legislators or take no (suitable) action at all.

There is also a risk of deadlock if an initiative clashes with an existing EU policy or if the Commission faces contradictory requests in different fields. CIs could, for example, simultaneously call for, or argue against, a more ambitious reduction of CO2 emissions; for or against more liberal immigration policies; for or against the use of GMOs, etc. There are no guidelines for assessing and handling opposing initiatives. In such situations, the EP could become a valuable guardian of the instrument, providing an arena for debate on certain issues and/or acting as a 'filter' in support of specific initiatives by asking the Commission to submit a relevant legislative proposal.

The increased pressure on the Commission to propose certain laws could prove inauspicious in two other

respects. First, the potential expansion of legislative activity could run counter to the recent trend towards 'less regulation'. Second, some initiatives could force issues on the agenda which the Commission might have preferred to avoid (for example, limiting bank executives' salaries or opening accession negotiations).

What implications for democracy in the EU?

Although the CI is often praised for its potential to boost democracy at the EU level, it is not in fact likely to transform the Union's democratic quality dramatically.

True, it will enrich the public's conventional participatory *repertoire* with a form of *advocacy democracy*, whereby citizens can *indirectly* influence the EU's policy process via intermediary bodies. However, it will neither alter the model of representative democracy on which the EU is founded and has functioned until now, nor substantially improve its quality.

Put simply, the new instrument in *itself* will not contribute significantly to overcoming the EU's 'democratic deficit': on its own, it will not lead to a more democratically accountable system or fundamentally increase the degree of politicisation in the EU or give European politics the lifeblood of a vibrant democracy, which thrives on the clash of opposing arguments and the personalisation of political conflicts.

Conclusions

As the Citizens' Initiative has yet to be put into practice, it is too early to deliver a verdict on whether it will achieve its declared aim of bringing people across Europe closer to the EU and to each other. Only time and practice will demonstrate its merits and shortcomings. Bearing this in mind, its implementation should be welcomed with a healthy dose of realism, and with a readiness to find creative solutions to any problems should the need arise.



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The issues raised in this paper are discussed within the EPC's EU Politics and Governance Forum.



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