



Citizen Involvement in EU Policies: *Impossible Dream or Work in Progress?*

Dr Edward Best, Professor; Head of Unit 'European Decision-Making', EIPA Maastricht 1988-present
Frank Lambermont, Research Assistant, EIPA Maastricht 2008-present

11

Introduction

As the European Union has enlarged in terms of its membership, and expanded in terms of its competences, the idea of direct citizen participation in European policy-making has become both more important and more difficult. Given that many decisions are being taken at a level directly affecting over 500 million persons, and that EU institutional arrangements are so complex, is it really possible that citizens can become effectively engaged in EU decision-making?

The Lisbon Treaty has introduced the European Citizens' Initiative (ECI) as one means to help involve citizens directly in EU issues. This contribution looks at the precise nature of the ECI as finally agreed. It places the ECI in the context of broader political trends, and argues that the new mechanism may not produce the specific results expected by its proponent but, even so, could well have a positive impact on the democratic deepening of the EU in other ways.

The Lisbon Treaty and the Democratic Legitimacy of the EU

The Lisbon Treaty is, according to its preamble, the latest stage in 'enhancing the efficiency and democratic legitimacy of the Union and [...] improving the coherence of its action'. It does not say what the Union is, in political terms. It leaves the Union as an 'unidentified political object', floating between its legal nature as the creation of a treaty between 'High Contracting Parties' (perish the Constitutional Treaty's assertion that the Union is based on the will of citizens and states!) and its merit of a title on 'democratic principles' which starts with a reference to the Union's obligations to 'its citizens'.

This definitional uncertainty reflects not only the continuing differences across Member States as to the political nature of the EU, but also the continued co-existence within the Union of supranational rules in some areas, and inter- or trans-governmental cooperation in others. In such a context, it may be expected that the mechanisms for assuring democratic legitimacy will not be simple and may be contested. It is not the same thing to ask whether someone a) accepts the EU *per se* as a legitimate supranational level of authority; b) will not violate the specific binding rules on hazardous substances laid down in Regulation (EU) No 1234; or c) feels bound to support common European action in Libya.

The underlying democratic legitimacy of any political system as a whole depends on, at a minimum, the acceptance by people of the 'rightfulness' of authoritative decisions affecting their lives; their belief that they have had an opportunity to give their informed consent to the system; and their confidence in the availability of recourse if something goes fundamentally wrong. At this level, the question may arise as to whether individuals even want to be considered as 'citizens' of the system in question at all.

How people can shape individual decisions within a system is a quite different level of discussion. Assuming that the system enjoys an overwhelming degree of democratic legitimacy, different options for citizen involvement in decision-making may be compared on more or less the same level. Some such discussion has taken place in most countries in the last few decades against the background of political decentralisation, budgetary pressures, the drop in popular participation in traditional political structures, and the emerging discourse of good governance. Representative democracy can, it is widely insisted, be supplemented and indeed invigorated by forms of direct and participatory democracy.



An analogous debate has taken place since the mid-1990s in the rather different context of the EU. It has inevitably taken a more problematic form, since the EU, unlike the Member States, cannot rely on common 'foundational myths' or other strong forms of common identity as 'given' sources of democratic legitimacy. Moreover, there are important differences across the Member States as to what the EU should be like in the future.

12

It is not merely a question of democratic detail but an issue of constitutional concern to ask whether one should aim at the simplest possible formal structures of representation and accountability at EU level, or whether one should (also) try to deepen forms of citizen and stakeholder participation in a broader perspective of 'European Governance'? What kind of EU polity do people in Member States want to emerge at the end of all this?

The new 'Provisions on Democratic Principles' proclaim that 'The functioning of the Union shall be founded on representative democracy': direct representation in the European Parliament, and indirectly through the European Council and Council. The right of every citizen 'to participate in the democratic life of the Union' is listed in third place. This does not seem to suggest direct democracy, however, so much as the active involvement of citizens in multi-level representative democracy – indeed the fourth paragraph continues by stressing that 'Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.'

The term 'participatory democracy', which had been recognised in the Constitutional Treaty as a second principle underlying the EU's democratic life, does not figure in the post-Lisbon Treaty on European Union. The same four elements are listed in the corresponding article (now Article 11): namely that 'citizens and representative associations' are to have the opportunity to make their views known; the institutions shall maintain an open, transparent and regular dialogue with 'representative associations and civil society'; the European Commission is to carry out broad consultations with 'parties concerned'; and the European Citizens' Initiative.

The European Citizens' Initiative: what has been agreed?

The substance of the Regulation putting into practice the new Treaty provisions was agreed informally in December 2010 and entered into force on 1 April 2011 (a date which can surely not have been chosen consciously, and could perhaps have been avoided for public relations purposes). It will only 'apply', however, as of 1 April 2012.

The arrangements finally agreed make it easier than initially proposed for an initiative to be conducted; demand more of the Commission in terms of providing support; strengthen the position of organisers in making their position known once one million verified statements of support are received; and will place greater pressure on the Commission regarding its decision on whether or not to act in accordance with an initiative¹.

The million citizens required will have to come from at least one-quarter (*i.e.* seven) of the Member States, with a varying minimum population threshold equivalent to 750 times the number of MEPs elected in each Member State.

Initiatives are to be proposed by a 'citizens' committee' composed of at least seven persons who are residents of at least seven Member States.

The Commission is to register the initiative within two months so long as

- the citizens' committee has been formed and contact persons have been designated;
- the initiative does not manifestly fall outside the scope of the Commission's power under the Treaties to submit a proposal for the requested legal act;
- the proposed initiative is not 'manifestly abusive, frivolous or vexatious';
- the proposed initiative is not manifestly contrary to the values of the Union as set out in Article 2 of the Treaty on European Union.

Once an initiative is duly presented, the Commission will have three months within which to examine the initiative and to 'set out in a communication its legal and political conclusions on the initiative, the action it intends to take, if any, and its reasons for taking that action or not.' Moreover, the EP succeeded in including an article providing that the organisers will be entitled to hold a public hearing at the European Parliament, with the participation of the Commission 'at an appropriate level!'

Much will depend on the management of expectations by organisers of initiatives, as well as on the capacity of the Commission to respond.

13

The European Citizens' Initiative: what does it mean?

Great expectations have been raised by the ECI as to the prospects for increasing public interest in the EU, building citizens into the policy-making process, promoting Europe-wide debates and strengthening trans-European solidarity.

There are also risks. Much will depend on the management of expectations by organisers of initiatives, as well as on the capacity of the Commission to respond. The most obvious danger is disappointment and frustration, even a backlash. All concerned will have to explain clearly to people that successful submission of an initiative does not automatically mean that the Commission will present a proposal, and that even if the Commission does do so, the final result will be determined by the Council and the Parliament.

Direct democracy, which aims at citizen empowerment, is much more concerned with 'minority' concerns than with majority rule.

The ECI does not bring 'direct democracy' to EU decision-making, at least not if this is understood as the possibility for all citizens with political rights in a system to vote on an issue in a way which will then become binding upon them. Indeed, the very idea of direct democracy through binding EU-wide votes raises some fundamental questions. The legitimacy of authoritative decision-making by simple majority depends on the existence of

a simple 'demos' - a set of people who not only share a common identity, but also feel no need for any arrangement for minority representation in addition to their equality as citizens. The potential legitimating function of a 'demos' is usually stretched across different levels (local, regional, state, European) and different natures (territorial, ideological, cultural/religious). In the EU, this differentiated sense of identity is strong. It cannot be assumed that the ideal democratic form of decision-making would even in theory be a direct manifestation of the majority preference of the individual citizens of the EU. On the contrary, decision-making on the basis of an aggregation of preferences by simple majority rule in the EU would be illegitimate, and alarming in the eyes of most smaller Member States and minorities. The EU system has therefore tended to give priority to minority protection rather than majority rule.

The ECI is more precisely described as an 'agenda initiative', meaning that a set of citizens is to some degree empowered to put on the agenda of decision-makers an issue of minority concern. Indeed, the point is well made that direct democracy, which aims at citizen empowerment, is much more concerned with 'minority' concerns than with majority rule.

What kind of issues may be placed on the agenda? The list of 25 'pilot' initiatives presented between 2004 and 2009² is suggestive of the kind of issues which may be involved. Five were procedural, proposing the introduction of EU citizens' initiatives and referendums. Two proposed specific institutional-political measures (that Brussels should be the only seat of the Parliament, to ensure a partnership with Turkey rather than accession). Two proposed special international relief measures. Four concerned environmental/ecological interests. Three concerned the general needs of specific groups of people (the handicapped, cancer victims and the obese). One was limited to a specific practical question (an EU-wide emergency number). The rest reflected very general concerns (all EU residents to be EU citizens; a pan-European civil service; EU cooperation in justice; to authorise natural therapies in all Europe; to save Social Europe; human dignity and individual development to be fundamental values of the EU; quality public services to be available to all; to ban work on Sunday).

The ECI may have indirect consequences which deepen the democratic quality of European integration in other ways.

We do not know what precisely will happen from 2012 on. Some may feel more optimistic and others more sceptical as to the measures which will be proposed and their reception in Brussels. We argue not only that this does not matter – the most important thing is to open up the field for democratic exploration, within reasonably-defined minimum parameters. Beyond this, we argue that (barring disasters and backlash) the ECI may have indirect consequences which deepen the democratic quality of European integration in other ways.

14

Conclusion

Citizens' initiative should not be seen as 'direct democracy' at the European level in any way which challenges existing principles. It may, rather, help to re-legitimize and re-invigorate the two processes which remain inevitably the core of EU policy-making, namely Commission consultations and multi-level political representation.

We started with a 'Community method' which rested upon the independent Commission's exclusive right of initiative, with its guarantee of equal consideration of all Member States' interests and balanced consultation of all parties concerned. The democratic legitimacy of legally-binding decisions rested on the representative principle underpinning Member State governments, and the less-articulated legitimacy derived from Commission consultations, as complementary forms of (non-power based) interest aggregation, and incipiently 'deliberative democracy'.

Following the introduction of codecision in 1993, assumptions about democratic legitimacy changed completely, to include the direct election of the Parliament which now had equal powers in legislation. Codecision was extended in 1999 and again with the Lisbon Treaty, while the EP has also new powers of control over the 'delegated acts' adopted by the Commission on the basis of legislative acts, as well as new powers over financial matters and of institutional supervision.

There has thus been, *de facto*, a semi-parliamentarisation of the system on top of the original Community method. This may be seen as a formal strengthening of the system, and the Commission and the Parliament can still usually be counted as institutional allies in the integration process. At the same time, however, this process has contributed to some problems of legitimacy in public perceptions for both sides. The Commission is seen as somehow not legitimate because it has powers but has not been directly elected (which many would argue was part of its original *raison d'être*). On the other hand, the Parliament has suffered because it was seen (wrongly) to have no formal powers, or because there was seen (rightly) to be a contrast between its ever-increasing formal powers and the degree of social legitimacy reflected in constantly-declining turnout in European elections.

Even if the ECI does not change much in legal reality regarding the influence of citizens on Commission initiatives, the fact that this process is now codified under the treaty and



will be subject to additional political considerations can only help legitimate consultation as part of EU democracy.

It is a good thing also that interaction between the ECI and political parties has not been blocked. The preamble states that 'Entities, notably organisations which under the Treaties contribute to forming European political awareness and to expressing the will of citizens of the Union [*i.e.* political parties at European level] should be able to promote a citizens' initiative, provided that they do so with full transparency.' It is hard to see what local issues could be transformed directly into European initiatives even on a transnational basis outside the framework of general EU legislation. As indicated above, the kinds of issue likely to be proposed are very varied. To the extent that they involve structured political choices for the EU, the most important consequence of local and national debates will normally be to force political parties to adopt clear positions. If this can contribute to the consolidation of multi-level political parties, then this will be an important step forward in EU democracy.

Notes

- ¹ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ L 65/1 of 11 March 2011.
- ² GEF (Green European Foundation) (2010) *The European Citizens' Initiative Handbook*, Luxembourg: Initiative and Referendum Institute Europe (IRI) and GEF.