

EUROPEAN CITIZENS INITIATIVES



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This report is one of a series of three documents by ECAS relating to the principle of participatory democracy in article 47 of the draft EU Constitutional Treaty. The other two reports explore the relationships between the EU and civil society which are essentially reactive – how to give citizens and representative organizations a fair hearing, how to improve the financial relationship between the Commission and NGOs. Those issues cover all aspects of EU policies whether or not they are in the legislative domain. When it comes to the idea that participatory democracy is not just about citizens involvement in legislation and programmes established by the Institutions, but also about their right to propose initiatives, the focus becomes in practice far narrower. Whereas other aspects of article 47 require a whole variety of measures to be put into effect by the Institutions, here we explore what is required to prepare a single European law on citizens' initiatives.

In this paper, it is argued that there is some danger of citizens' initiatives being seen as the solution to the problem of the democratic deficit and to the lack of a European demos or civil society. In a way they are but they are likely also in practice to be one instrument among others, infrequently used and for this reason should not be over-regulated or give rise to exaggerated expectations or fears.

This general conclusion appeared to be supported at the seminar organized by ECAS on 13 September on the topic 3 C's for "participatory democracy" and which was attended by about 100 participants. The seminar did not result in any major changes so much as additions to the original background paper. It seems that at any rate within the European Commission and among European NGOs,

citizens initiatives are seen with a mixture of enthusiasm and scepticism – or to put it in other words, it is impossible to know in advance what they will bring. The report of the seminar states:

“In the discussion and in the background document, there appears to be a consensus that citizens’ initiatives are not the guaranteed or only answer to ensuring participatory democracy:

- on the one hand, citizens’ initiatives represented a demand from the bottom-up rather than the top down, based on motivation for the cause of Europe and a way of bringing the EU closer to the citizen
- on the other hand, citizens’ initiatives could come to contradict each other, or be used to stir up a public controversy beyond their stated purpose or be seized on as a weapon by the extreme right.”

In a paper for a seminar on 11 October 2004 in the European Parliament, the Initiative and Referendum Institute (IRI) points out that “the right of initiative gives people the possibility of becoming political agenda – setters.” Here it is argued that not all items in the EU agenda lend themselves to this approach.

Origins of the amendment in article 47

In the last days of the Convention on the future of Europe, an amendment to introduce citizens’ initiatives in the text of article 1-47 of the draft Constitution was accepted by the praesidium. Effective lobbying by the IRI and two members of the convention, Jürgen Meyer (MP) and Alain Lamassure (MEP) in collecting signatures eventually succeeded. As they came to the end of the laborious process of the draft Constitution, Valery Giscard d’Estaing and his colleagues in the praesidium became more aware of the difficulties there would be of “selling” the results. There is little doubt that they were right. Citizens’ initiatives will

certainly be a selling point in the referenda campaigns on the constitutional treaty.

This is therefore a new and somewhat fragile child of European policy making. It is worth bearing in mind that there has not been much background research and discussion around the EU Institutions. In the run-up to the Amsterdam Treaty, a similar proposal was made jointly by Austria and Italy in 1996, but it was discussed in secret in the intergovernmental conference and gathered very little support and attention. The petitions committee has made proposals to strengthen the right to petition and the European Parliament's right to initiate legislation. In the proposals on European citizenship made to the Convention on the future of Europe by ECAS it was suggested that "the European Parliament might impose a duty on itself to take an initiative on the basis of a petition which had received say one million signatures from more than a certain number of member states, provided the request was within the competence of the Union"¹ It is worth noting that the rather rare initiatives and proposals made in the past saw citizens' initiatives as creating a closer link to the European Parliament rather than to the Commission, a point discussed below.

This rather hurried and unconsidered genesis of citizens initiatives makes it all the more important when the Commission consults on the European law to implement article 47 that it does so at a very early stage and as widely as possible. The clause on citizens' initiatives does not after all settle how they are to be put in effect:

"No fewer than 1 million citizens coming from a significant number of member states may invite 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 this Constitution. A European law shall determine the provisions for the specific procedures and conditions required for such a citizen's initiative."

¹ Rethinking European Citizenship, ECAS 2003, p. 36

At the seminar on 13 September, there was no indication of how the Commission intends to proceed. This is not surprising since at that time the new Commissioners designate were preparing for hearings with European Parliament committees. It was felt however that the appointment of Margot Wallström as Vice President of the Commission in charge of Communication, as well relations with civil society and citizens' initiatives was a reason for optimism. In the previous Commission, she was commissioner for the environment, the area of EU policy where "participatory democracy" is most developed. The new Commission will no doubt make its intentions clear after it takes up office on 1 November as to whether it will start to prepare a proposal for a European law soon or wait until the draft Constitutional Treaty is ratified. ECAS would prefer sooner rather than later so that the period before ratification can be used to collect submissions and evidence and to consult widely.

Before publishing and adopting any draft law, the Commission should ask for opinions on the range of questions and options raised by the text above. It would be useful in this context to relate consultation to a background document on citizens' initiatives at national or regional level, and the experience of the most advanced countries such as Switzerland. What is appropriate within a particular national, cultural context may not work at European level, so that comparisons have to be treated with caution. Nevertheless not enough is known about the comparative research across European countries.

Citizens' initiatives are an answer to those EU policy makers, NGOs and researchers who for years have advocated a more bottom-up approach and a direct link between the people and the Institutions.

"This citizens' initiative is an institutional expression of direct democratic participation in the law-making process of the European transnational participatory democracy.

So the Europe-wide citizens' initiative could be also regarded as a success by those democratic theorists who are captivated by the idea of democracy and transnational democratic participation."²

In fact, this new possibility and the discussion about implementing legislation will provide a useful focal point for efforts to create multi-level citizenship and governance as well as strengthen the role of civil society. For over a million signatories to be collected over a significant number of countries, there has to be a genuine European public opinion and sense of common citizenship and objective. In turn, success depends on a vibrant civil society co-ordinating the national/local efforts to gather signatures, operating at different geographical levels and able to articulate the demand towards the European Union. Citizens' initiatives can make up for the fact that under the Treaty there is no mechanism whereby people can oblige the Commission to take an initiative, or any system of judicial review. Such power remains an exclusive prerogative of the Commission itself subject only to legal challenge by member states or the European Parliament.

Citizens' initiatives will strengthen too the development of a European civil society. A European NGO becomes more than a federation of national associations, and through them has a direct link to individual members and the public at large. Citizens' initiatives also go well beyond consultations in the follow-up. The promoters of a citizens' initiative surely have rights of appeal and to have a seat at the table in the negotiations and adoption of their draft. In turn this raises questions about the need to consider a relationship between the citizen and the EU Institutions which is as intense and structured at all stages of the legislative decision-making process as it is with the most powerful interest groups and lobbies.

² Victor Cuesta, the future of the European Citizen Initiative in transnational democracy in the making

Scope and limits of citizens' initiatives

Citizens' initiatives, one might assume, could cover a wide range of concerns which may be best dealt with at the European level: bio-ethical issues, genetically modified organisms, global warming, protection against "spam" mail, child protection on the internet, availability of essential drugs at affordable prices, issues to do with migration, organized crime, the fight against terrorism or foreign policy issues and so on. Yet experience suggests that the collection of over 1 million signatories behind a new legislative initiative is likely to remain the exception rather than the rule in EU decision-making. The would-be promoters of any citizens' initiative have a number of hurdles to overcome:

- *Is the issue one of popular concern?* Anyone who has collected signatures is aware that doing so is too time consuming unless it is on an issue which people know about and can relate to. Citizens' initiatives are likely to work on precise, topical single issues but less likely to do so on general issues of environmental sustainability, product safety or public health.

- *Is the concern shared across a sufficient number of countries?* Where there is a case for environmental, public health or consumer legislation, it is unlikely to be perceived as sufficiently important in enough countries at the same time. The issue may be perceived differently: in terms of environmental protection in one country, public health is in another. An environmental catastrophe like an oil spillage makes the case for legislation clear in one country, but not in another where there are other priorities. Very often too the case for legislation is not always black and white but is in a grey area of the precautionary principle and risk assessment. Scientific opinion and perception of the priorities for action among citizens and NGOs can diverge markedly.

- *Is there a big enough population basis to collect 1 million signatures?* It is argued that a quarter of one percent of the total EU population of 420 million is a low threshold. But this ignores the fact that when EU law has a direct impact on peoples' everyday lives and citizens' rights, it may well only be applicable and relevant to a small number. Thus European citizenship rights are triggered by cross-border activity and only 6 million EU citizens together with 15 million third country nationals, make up the migrant population. A high proportion of complaints and petitions are about social rights or recognition of qualifications connected to free movement, and come from individuals in this target group. Similarly, the link between people and EU legislation on the environment tends to be of a local rather than a cross border nature. It is not surprising then many complaints and petitions come from local or national environmental groups (and concern such issues as the Spanish plans for water supply). It is not easy to create a mass impact in such areas, but that does not make them less important.

Launching a citizens' initiative capable of mobilizing sufficient support in enough countries is therefore not easy. The main challenge is likely to be not so much with overcoming organizational difficulties or creating mechanisms for collecting signatures, but with the choice of subject and the way it is presented in the first place. The choice of subject and the proposal for an EU law has to be also in EU competence. It is not surprising given the weight of the Common Agricultural Policy and the requirements in EU single market legislation, that the petitions presented to the European Parliament and which have over 1 million signatures are in the areas of animal welfare or are demanding an end to tests on animals in EU rules on cosmetics. It is precisely in such areas where there is a rare link between concerns shared by large numbers of people and the EU's capacity to legislate, that citizens' initiatives are likely to emerge. One can predict that the Commission and MEPs would like to see proposals arise in areas of strategic

importance, rather than on the specific narrow issues which characterize mass petitions. However, it is precisely by narrowing the focus to single issues that a link can be found between everyday concerns and EU legislation.

What will be the chances of success? Any protagonist of an initiative has to weigh up the chances of success. To begin with they will have a novelty value and will be encouraged by the EU Institutions. There will be considerable pressure to support and adopt citizens' initiatives within the Institutions. However, as more initiatives are presented that are perceived rightly or wrongly as having a distinct bias politically, geographically or towards a minority interest, the greater will be the Commission's tendency to amend them in its proposals or not to act at all. The new Constitutional Treaty gives citizens a role in the legislative process, but at the same time submits that process to stricter parliamentary scrutiny of conformity with the principles of proportionality and subsidiarity. National experience suggests that citizens' initiatives by no means succeed as easily as one might have thought with parliaments. One could well imagine the necessary blocking minority of national parliaments challenging the need for the citizens initiatives in the Council of Ministers, especially from member states from which few, if any signatures were collected. In advance, the draft European law or framework law proposed has to be able to pass the tests of subsidiarity and be able to secure majorities in the European Parliament and Council. The law also has to survive possible undermining by the predatory Brussels lobbying machine.

A lack of real debate leading up to the inclusion of citizens' initiatives in the draft Constitutional Treaty meant that perhaps the types of difficulty mentioned above have not been considered. Unless the scope for citizens initiatives is made as broad as possible and subjected only to an absolute minimum of conditions, the EU's rhetoric about participatory democracy will produce too few examples to move from theory to practice. Idealism about "participatory democracy" must

not obscure the real difficulties about launching and succeeding with citizens' initiatives.

What a European law to implement article 47 could contain

What would one expect to see in such a European law? It is important to remember that while the initiative might come from citizens, the Commission will retain the right to decide whether or not to propose legislation. In the words of the Constitution, the aim of the 1 million signatures is to "invite the Commission to submit any appropriate proposal." This is not the same as the Swiss "initiative populaire" sent to referendum ballot, but closer to the indirect initiative which is fully subordinated to the principle of representative democracy. The fate of the initiative is not decided in a final popular vote. This "soft" version is recognized more generally in the Austrian, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovenian and Spanish constitutions³

Against this background, great care should be taken in the implementing legislation not to place additional requirements on the collection of signatures and to make sure that the balance of power in the decision-making process is as favourable as possible to the initiative without undermining the principles of representative democracy. A list of at least ten items needs to be considered.

(i) Collection of signatures – and the definition of "citizens"

As the table below from the article by Victor Cuesta suggests, the European Convention has chosen, (rightly given the difficulties mentioned above) a rather low number of 1 million by comparison with national constitutional requirements.

³ Source. Article by Victor Cuesta in transnational democracy in the making. This article and the contributions to a conference in May 2004 published by the Swiss department of foreign affairs and the Initiative and Referendum Institute, Europe have been invaluable to us.

Indirect statutory Initiative from...	Population (millions)	Signatures required	Percentage (%)
Latvia	2.3	10% (230,000)	10
Lithuania	3.4	50,000	1.47
Spain	39.4	500,000	1.26
Austria	8.1	100,000	1.23
Portugal	10.8	75,000	0.69
Hungary	10.2	50,000	0.49
Poland	38.6	100,000	0.25
Slovenia	1.9	5,000	0.26
European Union	480	1,000,000	0.20
Italy	57.6	50,000	0.08

The draft law should make it clear that by “citizens” is not meant exclusively nationals of member states but that the right to participate in initiatives is also enjoyed by legally resident third country nationals. There is a precedent here. Article 255 of the Amsterdam Treaty could have restricted the right of access to documents to European citizens, but the legislators made sure in the implementing text that the right was not only enjoyed by nationals of member states, but also by third country nationals.

(ii) The condition of the “significant number of member states”

How should a “significant number of member states” be interpreted? Round the Convention, it seemed that signatures from 8 out of 25 countries were considered a reasonable requirement. In deciding on the number there are conflicting requirements. The difficulty though is that this might seem fair for some genuinely Europe-wide issues, but less fair in other cases. On the one hand, European laws and framework laws may have a limited geographical impact, (i.e. cohesion policies) whilst some issues are much more strongly felt in the South than the North or East of Europe. On the other hand, there is the problem of persuading MEPs, officials and ministries from countries from which no signatures have been collected to support the draft law and secure

a qualified majority. 8 countries would therefore appear reasonable but there should be no requirement for a minimum number per country. One of the authors of Article 47, Jurgen Meyer suggests a limit of 25% of signatures coming from any one state. This may seem reasonable, but is it necessary? No European initiative is likely to succeed if the signatures come from predominantly one country, but why should the citizens not be allowed to try?

(iii) Should there be time limits?

The fewer the conditions on the geographical spread and numbers of signatures, the better from the point of view of controls and checks (see iv below).

There is some debate among experts about time limits of say 8 to 16 months to collect signatures. Why not two years, or no time limit since a citizens' initiative which takes too long to present will be weaker and may well be lost in advance? It is in the interests of the organizers to achieve momentum and present the initiative as soon as possible, but as explained above, this may be easy in some countries, but require launching the debate for the issue to be known in others. Would European legislators be justified in imposing a timetable on citizens if they cannot impose one on themselves?

In the paper for the seminar of 11 October, IRI also has an open mind on the question but insists rightly that if there are to be time limits they should also apply to the Institutions' response:

“There are no time limits written into Art. 47.4. Experience shows that a significant amount of time is needed to develop a dialogue between the group launching an initiative and the wider society. Public dialogue is of value in itself. For this reason, the time limit should not be shorter than one year. It is possible to argue that there is no need for a time limit at all, since the initiatives are just

an advisory, agenda-setting tool. This would, however, weaken the motivation to concentrate on and complete the signature-gathering process. A final deadline should, therefore, be considered.

Finally, there should be firm time limits for the subsequent processing of the subject of the initiative by the EU institutions.”

(iv) What checks on signatures should be necessary?

The organizers should on presenting the initiative be asked to make a declaration as to the numbers and authenticity of the signatures by country. It is in their interests to ensure that in the course of the legislative process, there can be no challenge to the validity of the initiative and to go as far as possible above the threshold of 1 million signatures to ensure that this is the case. The collection of signatures through websites and by e-mail should be allowed. Self-regulation is the best approach, but there should be the possibility for the Commission to make spot checks. It is important to avoid over formalizing approaches to collecting and validating signatures, which would act as a serious deterrent to trying to collect them in the first place.

(v) Presentation, examination of the initiative and rights of appeal

The draft European law should make it clear that the initiative has to be presented in a form which makes it more than just a mass petition. It should not be over-prescriptive, but might encourage the promoters of initiatives to present their proposals in the form of draft legal texts or at least a clear indication of what the main articles should contain.

(vi) The respective roles of the Commission and the European Parliament

The invitation is addressed to the Commission. And this immediately raises the question of whether or not the European Parliament should be involved at an early stage. Jurgen Meyer’s reply to this question clearly has considerable

authority. He argues that "the wording of Art. 47 – and that was very important for getting the majority in the convention – is identical with the wording which at present gives the EP the right to address the Commission, to use the right of initiative."⁴ The aim is to give a group of citizens the same right as MEPs to demand an initiative, so that it is addressed to the Commission and the European Parliament "cannot have the right to stop or delay such an initiative." So far so good.

In practice however, there is a close link between citizens' initiatives and petitions. In 1998 for example some 7000 women from a number of European countries sent a petition to the European Parliament because they suffered damage from silicone breast implants; as a result the Commission made proposals to strengthen the directive on medical devices. It is also necessary to encourage the Institutions to work together to respond positively to citizens initiatives. The hierarchy in the constitutional Treaty which places representative democracy above participatory democracy should be respected to avoid a conflict between the two concepts. A reformed committee on petitions and citizens initiatives could be a forum where the protagonists of the initiative could first present their proposals. Representatives of the appropriate Commission departments and specialized parliamentary committees would be present. MEPs have the skills to interpret the invitation coming from the citizens, to advise them about the best way to put their arguments and at the same time to be their advocates with the Commission. This early public assessment would help clarify the technical drafting issues of Union competence and give the protagonists not only a sense of how the Commission will react but the legislative Institutions of the Union as well.

⁴ Contribution to the May 2004 Conference mentioned above

(vii) The Commission's response and rights of appeal

The draft law should oblige the Commission to accept the initiative provided it is within the competence of the Union and has a legal basis in the Constitutional Treaty. The Commission should be entitled to make technical amendments but not to change the substance of the initiative. In any case, change to the substance is likely to occur when the European Parliament and Council, the legislative Institutions of the Union, and which would co-sign the final text, examine the proposal. The only instance of where the Commission should have a right to refuse a citizens' initiative in the competence of the Union is when it considers that it would violate the fundamental principles of the draft Constitutional Treaty. According to the report of the seminar on 13 September, the Commission might define basic principles as follows:

“the four internal market freedoms; respect for fundamental rights; equal treatment between men and women; the general anti-discrimination clause and the obligations of integration in areas such as environmental consumer protection.”

It is right that the Commission should reject citizens' initiatives which could violate the Charter of Fundamental rights (i.e. which are discriminatory or racist). However, if conformity to the Constitution is defined too broadly, it could be interpreted as a means to undermine the rights of citizens sceptical about the EU, and thus give a decidedly undemocratic twist to a democratic instrument. Judging from national experience, there are bound to be citizens initiatives which run counter to the majority political consensus in the EU.

If the Commission refuses to act and propose the draft law, it should be obliged to notify the organizers of the citizens' initiative after the hearing in the Parliament within a three month period from the date it was presented. There would then be a right to appeal to the Secretary General of the Commission itself and if that failed to convince the Institution to change its

mind, to go either to the European ombudsman or to the European Court of first instance. The procedure would be similar to that established under the regulation on access to documents.

(viii) A right to be heard at all stages of the decision-making process

In most cases, the appeals procedure should not be necessary. The organizers of the citizens' initiatives would be able in the course of gathering signatures to consult widely with European officials and politicians as to the validity and viability of their proposal. The real problem is what happens during the legislative decision-making process where "les absents ont toujours tort" The draft implementing text for Article 47 should make it clear that the representatives of the initiative should be heard by the competent parliamentary committees, working parties of government officials and meetings of ministers responsible for the adoption of the legal act.

(ix) Funding

Finally, there are issues of funding. It may be argued that if the intention of article 47 is to give citizens initiatives a similar status to a request by the European Parliament to the Commission to act, the organizers should receive funding from the EU budget just as MEPs are funded. The difference however is that until the citizens' initiative is presented it has no official status with the EU Institutions and is independent from them. The more the initiative is independent and seen to be independent, the better, although there are certainly arguments in favour of the organizers being able to obtain expert advice from the Institutions, i.e. on how to draft their initiative and the legal basis. One approach might be for a group of foundations together with the Commission to set up a trust fund to which applications could be made to support the preparation of citizens' initiatives. This could be run like a legal aid scheme, where disbursements are decided on a case by case basis, depending on the means available to the promoters of the initiative, the

merits of their objective and their chances of success. There should be no automatic right to funding. Once the initiative is sent to the Commission, travel and subsistence expenses as well as justified costs of additional research and access to expertise of the representatives of the initiative, should be supported by the Institution concerned.

Recommendations

The amendment to article 47 on citizens initiatives was added at the last minute by the Convention to the draft Constitutional Treaty without much previous discussion. It is particularly important therefore that the Commission should consult widely on the options before making its legislative proposals which cannot be presented in any case until the Constitutional Treaty is ratified.

The Commission should also publish a background study comparing different national models and their applicability at the European level.

This paper suggests that citizens initiatives may give rise to exaggerated expectations among theorists of participatory democracy. In practice, there are likely to be few and rather narrowly focused initiatives.

Whilst 1 million signatures may not appear a significant total, the constraints and obstacles surrounding European citizens' initiatives described here should not be underestimated. It is therefore important to avoid a too formal and regulatory approach to time limits or checking signatures and conditions which can be piled up on the requirement in article 47 to cover a "significant number of member states."

In this respect the paper makes a number of detailed (but still preliminary proposals) "to make sure that the balance of power in the decision-making

process is as favourable as possible to the initiative without undermining the principles of representative democracy.”

- The initiative should be put forward as a draft European law, which the Commission will be expected not to change, except from the technical point of view, provided it is within its competence and conforms to the basic principles of the Charter of fundamental rights.
- There should be a first discussion before the Commission makes its proposals in a reformed parliamentary committee on petitions and citizens' initiatives.
- If the Commission refuses to act, there should be a right of appeal first internally and then externally to the European ombudsman or to the European court of first instance (similar to the regulation on access to documents).
- The organizers of the citizens' initiatives should be heard at each stage of the legislative decision-making process, and their costs should be covered.
- A trust fund should be created by foundations and the European Commission to which applications could be made to launch citizens' initiatives.