

The promises and pitfalls of the European Citizens' Initiative

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1. Introduction

Some time ago I worked for a Belgian consultancy company that organised citizen participation on a large-scale infrastructure project in and around Antwerp. Not surprisingly, the main goal of the citizen participation was to increase the legitimacy of the project. My company decided that the citizen participation would consist of evening meetings with a group of local citizens, randomly chosen from the local population. What made these meetings so special was not particularly that citizens were involved (which happens more often), but that the recommendations stemming from these evening meetings were binding. Now you may be wondering: what's the catch here? What is crucial is that the citizens were only allowed to decide on which of four types of trees would be planted in their nearby areas. The meetings were no success: at best six citizens joined the group. Though all of them were very much interested in trees and though we had some thorough discussions about the topic, the problem was obviously that the turnout was too low to have any impact on the legitimacy of the decisions made.

This example illustrates some of the basic dilemmas of citizen participation in decision-making. The more important a decision, the less likely it is that politicians will allow citizens to have influence and the less likely it is that it will mobilise citizens. If few citizens are mobilized, legitimacy will be unaffected and the whole participation exercise becomes meaningless. Some participatory devices are thus predestined to failure. Is the European Citizens' Initiative (ECI) one of them?

In this lead piece, I will start by presenting an overview of three different types of initiatives. This distinction matters as each different type of initiative has different promises and pitfalls. Afterwards I will discuss the potential impact of the ECI on the

input, throughput and output legitimacy of the EU. After this theoretical discussion I will zoom in on Austria, which has a long history of initiatives, and discuss what practical lessons we can draw. The subsequent section will then discuss whether the ECI and the initiative fits in divided societies. The last section will provide a summary of the promises and pitfalls of initiatives and conclude that there are reasons to be mildly optimistic about the ECI.

2. Three types of initiatives

Let me start with the distinction between different types of initiatives. Broadly speaking there are three types of them: namely citizen petitions, citizens' initiatives and citizen-initiated referendums. Each type is different and has different consequences.

A first type of initiatives are petitions. Petitions are rather noncommittal and there are few formal requirements that have to be met. As a result, petitions are very commonly used. However, politicians also have few obligations and can decide to drop the issue if they want.¹ Such an initiative is no threat to politicians, but neither is it very likely to increase the legitimacy of an institution. Petitions exist in many countries, such as Australia, Belgium, the United Kingdom, Germany and the United States. More in general, the right to petition is enshrined in most of the EU member states' constitutions (Preuß, 2012:949-951).

A second type of initiatives are citizens' initiatives. Such initiatives have a distinct set of rules and require a certain signature threshold to be passed before an initiative is deemed valid. Most often such a threshold is about 2 or 3% of the electorate, but this differs from one country to another. Typically once a citizens' initiative is deemed valid, the parliament must discuss the issue. The ECI fits in this category, as well as the Dutch and Austrian initiatives.

¹ One of the few studies that examines petitions and their impact illustrates how low the impact of petitions often is. Palmieri (2007) found that in Australia merely 3.3% of the petitions presented to the House of Representatives (2001-2006) have been discussed; while just three of the 2589 petitions since 1999 received an official Ministerial response. Similar results were found by a special committee of the German Bundestag (<http://www.bundestag.de/bundestag/ausschuesse17/a02/Docs/PetJahresbericht2010.pdf>) and a special committee of the House of Commons (UK House of Commons Procedure Committee, 2006-2007).

A third and last type of initiative are citizen-initiated referendums whereby a successful initiative automatically triggers a referendum. This type of initiative is clearly the most far-reaching as it is far more difficult for a legislator to ignore the outcome of a referendum. This form of initiative is very rare and presently only exists in a few established democracies, most notably in Italy, New Zealand and Switzerland at the national level. At the sub-national level it is more widespread, especially in the US.

The three different types of initiatives should not be lumped together. A petition is at best a low investment/low returns instrument while a citizen-initiated referendum is potentially a high investment/high returns one. As a result, their impact and workings are entirely different. Probably due to the difference in impact, petitions are hardly ever studied (Preuß, 2012:949), while there is an abundance of studies dealing with the impact of citizen-initiated referendums. Citizens' initiatives are somewhere in the middle and therefore it is difficult to predict what their impact will be. There are just a few empirical studies that examine the impact of citizens' initiatives (Müller, 1998; Bos & Pieterse, 2012). In what follows I will try to draw lessons from the few available studies and experiences with citizens' initiatives. When no such information is available I will use insights from either petitions or citizen-initiated referendums. When I do so, it is important to remember that petitions are weaker instruments than citizens' initiatives while citizen-initiated referendums are stronger ones.

3. Why it matters: increasing legitimacy

The most important question is obviously: will the European Citizens' initiative be able to create/restore the legitimacy of the EU? In what follows I will always take a citizens' perspective (and not for instance a judicial perspective). To assess the legitimacy question I will focus on *input legitimacy* ('will the ECI increase the legitimacy of the EU because citizens were involved themselves?'); *throughput legitimacy* ('is the way the European Commission deals with the initiative likely to be deemed legitimate?') and *output legitimacy* ('will it lead to better policies?') (cf. Risse & Kleine, 2007).

3.1 Input legitimacy

To increase the input legitimacy (or perception of accountability) of the EU, European citizens must know the ECI and know that citizens were involved in the ensuing legislation.

1. *'Awareness'*. As research has shown, citizens are not reluctant to sign a petition and by now signing has become a common practice in Western established democracies (Norris, 2003). However, before citizens can sign a petition they have to know about its existence. This brings me to the so-called 'awareness problem'. The current awareness of the ECI isn't exactly high. If citizens do not know they can hold the EU accountable and contribute to EU policy through the ECI, it cannot change their ideas about the legitimacy of the EU. However, what is crucial is the following: general awareness about the ECI and its procedures is only a minor issue. It is *not* important to communicate about the procedures as civil society has already picked them up. This is crucial as it will not be individual citizens but civil society who can and will use the citizens' initiative. Citizens cannot gather one million signatures, civil society can. In that sense, information availability and practical support are more important than awareness. When necessary, civil society groups should be able to find information about the procedures. If the EU wants to increase its input legitimacy, the awareness of *specific* citizen initiatives and their consequences on European policy matter more than the mere knowledge that there is such a thing as the ECI. In any case, it will be difficult to raise awareness about the ECI as an institution and therefore I am quite sceptical about information campaigns about the ECI procedures. It is a successful and highly publicized initiative that raises awareness. Hence, my advice would be do not try to sell the ECI, but sell specific initiatives.

2. *A successful ECI was ignored*. The flip side of the coin is that once an ECI has received a lot of attention it will be difficult to ignore it even if there are valid reasons for doing so. In these cases chances are that ignoring an ECI will be seen as another act of an out-of-touch EU. As such the ECI can actually reduce the input legitimacy of the EU by giving citizens the impression that the ECI is just another example that they there is no

way that the EU can be held accountable. The underlying reason is that citizens have little knowledge about the European decision-making process. The ECI is not an instrument of direct legislation and does not eliminate the traditional processes, it merely offers a more or less alternative means of initiating the legislation-process. The cumbersome decision-making still follows afterwards, which may lead to frustration and unrealistic expectations from citizens. As a result, rejection may feed lead to discontent. It has been well documented that people who participate in deliberative or participatory democracy have high expectations of the outcome of that process. When their input is rejected, they become very dissatisfied (cf. Delli Carpini, Cook & Jacobs, 2004).² As a result, ignoring an ECI may increase euroscepticism.³ My advice would thus be to tread carefully when rejecting an ECI.

On the more positive side, an ECI could (1) make citizens more attentive to European policy and (2) empower the European institutions vis-à-vis national governments. Indeed, research has found that people who sign petitions are more likely to vote, a finding that is the strongest amongst the people who are ‘irregular voters’ (Parry, Smith & Henry, 2012:117). Given the relatively low levels of voter turnout at European elections, there may well be a lot to gain here. But it is especially the second effect that is probable as it will be hard for individual governments to ignore or reject a successful ECI. This is even more likely when a significant number of signatures comes from their countries. As such the ECI can strengthen the position of the European Commission in negotiations.

² Similar results were observed in a report that evaluated the Dutch citizen initiative and a report that evaluated the UK petition provision. The Dutch researchers interviewed all the initiators of the 12 initiatives held to date. In the cases where the initiatives were ignored, the initiators became very dissatisfied with politics in general (see Bos & Pieterse, 2012: 14-15). In the UK, the House of Commons Procedure Committee found that ‘very often the outcome of the procedure is perceived by petitioners to be inadequate (UK House of Commons Procedure Committee. 2006-2007:8)

³ One can make a distinction between three types of citizens: the initiators, the signers and the rest of the population. The first group has the highest expectations. The signers can also have high expectations, depending on how well they are kept up to date by the initiators or the media. The last group, the people who did not sign, do not have specific expectations, but can be influenced by the media.

3.2 Throughput legitimacy

Many of the difficulties that surround legislation on citizens' initiatives in the early days of their existence have to do with throughput legitimacy. Throughput legitimacy is linked to the process itself. In concreto such legitimacy stems from the transparency of the procedures, the legality of the process and its overall quality. Especially when the legislation has just been introduced, as is the case with the ECI, it is still unclear how it will actually work out. For instance, it is impossible to predict exactly which initiative proposals will be put forward. As such it is also impossible to outline in detail which topics are allowed and which are not (see also De Waele, 2012:60). This is something that is developed *en cours de route*. As a result one can expect 'turf wars' whereby different conceptions of the scope of the initiative legislation clash. To acquire throughput legitimacy, it is therefore important that the European Commission is open (transparent) about its reasons to accept/reject a proposal. However, mere transparency is not enough – the quality and legality of the argumentation matter as well. Here *consistency*, i.e. similar proposals needed to be treated in a similar way, and *consultation* of the initiators can play an important role. Especially the latter is important as it has been shown that people who are consulted and taken seriously are more likely to support the outcome of a discussion (even if they do not agree with it) (Delli Carpini, Cook & Jacobs, 2004). Such consultations can also reveal bottlenecks in the procedures.⁴ In sum, especially in the beginning it is important to spend enough time on building throughput legitimacy.

3.3 Output legitimacy

Lastly, one could wonder: will an ECI lead to better policies? Will it increase the sense of responsiveness of the European people? It may well, but here again some dangers loom ahead. After all, some people are more likely to sign initiatives than others. Initiatives can be biased in three ways: they can be hijacked by the participation elite, special interests and a few countries. If such hijacking takes place, the ECI will not lead to 'better' policies but to policies that fit one specific group better than all others.

⁴ Hence, one can only applaud the recent decision of the Commission to allow some of the initiatives to make use of its free, open-source software in response to complaints.

1. The initiative gets hijacked by the *participation elite*.

The first danger is the impact of the so-called participation elite. This is linked to awareness of the specific initiative (you must know it to support it). There is a chance that the ECI only reflects what the usual suspects, the citizens (groups) who already participate a lot, know and want. If this is the case, the initiative will only reflect the desires of this higher educated, cosmopolitan, wealthier, middle-aged participation elite as these groups are more likely to sign petitions (Caren, Ghosal & Ribas, 2011:141-142). One way to overcome this bias is using tailor-made survey research from the Eurobarometer and check the attitudes of the broader European public opinion.⁵ This is common practice regarding important topics, so why not use it for the ECI?

2. The initiative gets hijacked by *special interests*.

Experiences from California, where you have citizen-initiated referendums, show that lobby groups are quite good at getting (or even buying) signatures, but not at winning referendums (Donovan, Bowler and McCuan, 2001:117). However, given that the European citizens' initiative consists only of a signature phase, theoretically, one could fear that the people who signed the initiative are channelled into signing by lobby groups who spend lavishly. More in general, if this occurs an ECI will probably not be representative for large parts of the European public opinion but only those targeted by the lobby groups. To be fair, I think that the requirements included in the procedures of the ECI limit the danger of excessive influence of special interests. Nevertheless it is important to stay vigilant on this matter. I will return to this topic in section 4.2.

3. The initiative process is biased towards a *few countries*.

One of the potential problems of the current procedures is that the signature requirements are different for different countries. As a result it will be easier to collect signatures and meet the requirements in some countries but not others. The danger that looms is that some countries will be reduced to useful 'fillers' to meet the requirements. Obviously,

⁵ The ECI on the other hand offers insights on the *intensity* of these preferences (i.e. how important the issue is to somebody).

from a macchiavellistic point of view one could note that this offers possibilities for initiators to focus their attention to just a few countries. Whether this will be problematic or not again remains to be seen. What is most important is to evaluate this regularly.

4. Citizens' initiatives in practice: lessons from Austria

Until now my discussion has been fairly theoretical. In this section I will examine how citizens' initiatives work in practice – and what problems one can expect to occur. I want to focus in particular on Austria as this country has a lot of experience with citizens' initiatives: no less than 35 initiatives were held since 1964. Austria is thus a good 'what if'-case (what if there is actually a lot of awareness?), but it is also a good 'how'-case (how do you make sure that an ECI gets a sufficient number of signatures?).

First some background information. In Austria initiatives require at least 100.000 signatures (around 2% of the electorate) to be valid. In a first stage, the initiative organizers need to collect 8.032 signatures to trigger the start of the procedure (Müller, 2006:110). Once this initial number of signatures has been collected the second stage of the process starts. In this stage offices are opened all over the country where people can sign the initiative. When the required number of signatures is reached, the organizers are invited to the parliament when their initiative is discussed.

4.1 One million signatures: a lot or not?

The ECI threshold is set at one million signatures (or approximately 0.25% of the European electorate), which is actually quite low if you compare it to the Austrian one. However, ironically, if you want to sell this to the European electorate, one million still sounds like a lot. It is a symbolic number that conveys a strong message. This is a disadvantage and an advantage at the same time. It is a *disadvantage* because it will be more difficult to sell this to the media and the public opinion, who will automatically think the ECI is merely window dressing with a bar that is deliberately set high. However, it can also be an *advantage* as one million signatures are hard to discredit once they are gathered. Such perceptions matter, especially for the media. In Austria for instance, the threshold of 100,000 signatures is deemed to be very low. Most of the

initiatives that start the second stage pass the threshold. Of the 35 a solid 33 managed to do so.⁶ Some even manage to get 25% of the electorate behind them (http://www.bmi.gv.at/cms/BMI_wahlen/volksbegehren/Alle_Volksbegehren.aspx). As a result, any initiative who just barely gets more than 100,000 signatures is labelled a failure by the Austrian media. It is unlikely that this happens to the ECI even though relatively the Austrian threshold is actually higher than the European one (2% of the electorate versus 0.25%), because of the symbolic weight the number ‘one million’ has.

4.2 The success formula

As I mentioned earlier, in Austria, the support for individual citizens’ initiatives can vary substantially. The least successful initiative, the 1995 initiative in favour of the abolition of the special taxes on motorcycles, got merely 75,525 signatures; while the most successful one, the 1982 initiative against the building of a conference centre in Vienna, got no less than 1,361,562 signatures (http://www.bmi.gv.at/cms/BMI_wahlen/volksbegehren/Alle_Volksbegehren.aspx).

But what makes one initiative more successful than the other? The success formula seems to be: [Political issue] + [Support of a political party] + [Popular media support] = Success.

A *first* element that all successful initiatives share is that the topics are highly politicized and as a general rule, the more political an issue is, the more signatures it gets. Many if not all of the current initiatives deal with niche topics. It remains to be seen whether they will be able to start a snowball effect and attract one million signatures. A *second* lesson from Austria is that many of the successful initiatives had the support from political parties. Indeed the parties often used an initiative to profile themselves and helped to mobilise support for it (Müller, 1998). As such, the ECI may spur the ‘Europeanization’ of political parties. It can also give the factions in the European Parliament an

⁶ As an aside: in Austria and the Netherlands politicians expected a large number of initiatives when the legislation was first implemented. However, in practice just one to two initiatives are submitted per year. In that sense, the ECI already outperforms both countries, though it obviously remains to be seen whether this pace will remain the same.

opportunity to profile themselves and it can strengthen the ties between civil society and the parties. In sum, it can create a more ‘political’ European arena. A *third* characteristic of successful Austrian initiatives is that they are discussed and supported by national media, especially the *popular* newspapers such as the Austrian ‘Kronen Zeitung’. The popular media can reach an audience that normally is not aware of European issues. However, popular media are typically anti-establishment. As such, I would expect that the first successful ECI to be one on a fairly populist issue, one that is picked up by the popular media.

What if an initiative does not comply to the success formula? Can money buy success? Indeed, an alternative route to success may be hiring a specialised company. This happens quite regularly in California, where such companies can be hired to gather signatures. In California in 2001, one signature cost approximately 0.87 to 1.32\$ (Donovan, Bowler and McCuan, 2001: 119). It has to be stressed that these costs come on top on all the other costs. As such it seems pretty clear that one would have to invest an awful lot of money to buy the needed ECI signatures. Given that getting the signatures is absolutely no guarantee that the Commission will accept the ECI, it is unlikely that a company would spend so much money. It should thus not come as a surprise that buying signatures does not happen in Austria as the citizens’ initiative instrument does not lend itself very well to such practices. To sum up, the threshold of one million signatures makes it unappealing for special interests to take buy success in an ECI instead of e.g. using the more traditional lobbying approach.

4.3 The difficulty of polarized issues

A third lesson from Austria is that a citizens’ initiative such as the ECI is not a referendum: the opposing side has *no* voice. One can compare it to facebook: you can only like an initiative, you cannot dislike it. This is especially problematic with polarized issues. Theoretically, such an issue can lead to two opposing initiatives. But what if both make it? This happened in Austria in 1980. The opinion of the silent majority (the people who did not sign) is crucial here. Indeed, one initiative having more signatures than the opposing one does not automatically mean that this initiative is more popular amongst the

silent majority. For instance, in Austria 90% of the electorate did not sign any of the competing initiatives. Under such circumstances the opinion of the silent majority is crucial. All of this is obviously important for the legitimacy of the EU. My suggestion would again be to complement the ECI with information from Eurobarometer surveys when both ECI's are successful.

4.4. The cost of ignoring the outcome of an initiative

A fourth lesson from Austria is that the reaction of politicians matters. Initiatives leave the politicians a lot of room to ignore or reject an initiative. Many of the Austrian initiatives with a high support were ignored (Müller, 1998). However, they did politicize the issue, damaged the legitimacy of the government and had electoral consequences for the parties who ignored it. In sum, ignoring an initiative comes at a cost and the higher the support for the issue, the higher the cost is likely to be.

5. Unifying or dividing the people?

Giving that this e-book appears as part of a series in the context of 'rethinking Belgium' I will reflect upon the potential consequences of a citizens' initiative for divided societies. Indeed, one could think of both Belgium and the European Union as 'divided' societies. To the best of my knowledge no research exists on the impact of petitions and citizens' initiatives in divided societies. However, there is some research on the impact of (citizen-initiated) referendums in such societies. Citizen-initiated referendums can be seen as an 'extreme' case of initiatives, as citizens' initiatives are a milder version of initiatives. As such research on referendums can teach us about what happens under 'extreme' circumstances – and how to make sure things do not go wrong.

Belgium, for instance, has had a very negative experience with referendums. In 1950 a referendum showed that the Flemish part of the country overwhelmingly supported the return of King Baudouin, while the other parts decisively rejected his return (Gerard & Van Nieuwenhuysse, 2005:237). These divergent results put the country on the brink of a breakdown. The traumatic referendum experience has haunted Belgian referendum

discussions ever after (for an overview see Jacobs, 2011: Chapter 6). Nevertheless referendums are not necessarily incompatible with divided societies. There are many federalized countries that actually have referendum provisions, such as Australia, Austria, Canada and Switzerland. There are generally two ways to adapt referendums to divided societies. The first is by excluding certain topics from the referendum and the second is by introducing special majority requirements (Qvortrup, 2005:165). Of the two, the second is the most important as it is often difficult to predict which topics will prove to be ‘explosive’. In the remainder of this section I will therefore focus on the special majority requirements. What is vital is that federalized countries have a different understanding of what is meant by ‘the people’. Quite often referendums are about the majority of the people – i.e. a simple 50% +1 of the people/eligible voters.⁷ Yet in federalized countries this is often seen as a caricature of democracy. In Switzerland, for instance, a referendum has to pass in a majority of the cantons before it is deemed valid. Such a geographical requirement exists in Australia as well. It is interesting to note that Swiss referendums only rarely fail because they are not supported by voters in a majority of the cantons: just 6 of the 143 proposed constitutional amendments (where the geographical requirement applies) were rejected for this reason (Qvortrup, 2005:172). Indeed, such requirements primarily function as an emergency brake and have a preventive effect by discouraging referendums that stand no chance in large parts of the country.

What does this all mean for the ECI? Referendums are clearly different from citizens’ initiatives. Citizens’ initiatives are not about getting a majority of the votes. Neither do they typically pit one part of a country against another. Indeed, contrary to referendums where results are often calculated by province or region, we often do not know the exact geographical distribution of the signers. On top of that, citizens’ initiative differ from referendums in that it is easier to reject them. However, citizens’ initiatives -and especially the ECI- are not completely different from referendums. As stated earlier it will be difficult to ignore an ECI that brought together one million signatures given the

⁷ As Qvortrup (2005:165) shows, only very rarely a referendum is decided by a narrow margin. Most referendums have a clear outcome.

symbolic value of that number. Moreover, the ECI differs from most other citizens' initiatives in that it does offer insight in the distribution of the signers. As such the ECI could theoretically face some of the dangers of (citizen-initiated) referendums. Luckily in practice the ECI procedures actually include both a limitation of the range of topics and a geographical minimum requirement. As both safeguards are applied, the risk of disintegration is significantly reduced.

A bit more about the geographical requirements. As the Green Paper by the European Commission (2009:5) already mentions, in order for the ECI to have a 'genuine European flavour' it has to reflect a 'reasonable body of opinion'. But what is significant and what is reasonable? Compared to for instance the Swiss majority requirement (50% +1 of the cantons), the ECI requirement, which stands at some 27% of the member states, is actually quite low. As such it may be a bit vulnerable to the criticism that the signers are not representative of the European public opinion. As mentioned earlier, if a few countries hijack the process, this risks decreasing the output legitimacy of the EU. Again, I think that the ECI procedures provide ample protection against such biases by allowing the Commission to reject an ECI. Still, this is an important matter to keep an eye on, as frequent rejections damage the legitimacy of the whole instrument. It is a thin line.

I want to end this section with a positive note. Given that seven countries is still quite a substantial number, the geographical requirement will most likely push for a more European civil society, one that is active in several countries. Hence the ECI may even have a unifying effect. Indeed, when proper procedures are applied, citizens' initiatives need not damage a divided society but can actually be beneficial. As they currently stand, the ECI procedures are likely to do a pretty good job.

6. Conclusion: promises and pitfalls

In this lead piece I have discussed the promises and pitfalls that surround the European Citizens' Initiative. I focussed on input, throughput and output legitimacy and provided some insights based on the Austrian experiences with citizens' initiatives. Given that the ECI is still new, it is difficult to predict what its consequences will be. Nevertheless

some elements of the instrument are clearly promising, while the contours of some pitfalls are also starting to become visible.

Regarding the *promises*, it cannot be denied that the ECI offers European civil society and citizens the opportunity to take part in the European decision-making process. This is definitively a step forward. If the instrument becomes widely known and mobilizes a lot of signers, it may well be the beginning of a more political European arena. The signature threshold is relatively low, but not so low as to make the ECI meaningless compared to European elections. As a result the ECI has the potential to become a powerful instrument.

However all this potential will come to naught if successful initiatives are not taken seriously. This is the main *pitfall* of the ECI and of participatory devices more in general. When successful initiatives rejected or ignored by politicians, the instrument risks to backfire and increase euroscepticism – even if there are good grounds for doing so. As such it is important to build throughput legitimacy and to work on clear, reasonable and widely accepted rules for rejection. All of this matters as you can't have it both ways: if you want the ECI to have a chance to increase the legitimacy of the EU, you have to grant citizens genuine impact. If you do not take them seriously, it is just a waste of time and money.

All in all, the ECI is promising. Whether or not it will fulfil its potential, will depend on many factors. Some of these are 'known unknowns'. Even though we do not know which ECI will be the first to be successful, it is clear that it will influence how the ECI is perceived by citizens and received by politicians. However, there are also 'unknown unknowns' - factors that nobody can foresee. This lead piece has identified some of the areas that need monitoring, but without a doubt new things will pop up along the road. It is thus important to regularly evaluate the ECI and it is applaudable that the Commission intends to do this. In the end only time will tell what the impact of the ECI will be. Until then, as this piece has shown, there is room for mild optimism.

7. References

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