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Towards a Golden Age of the European Citizens' Initiative?

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In December 2023, the European Commission published its first review of the [Regulation \(EU\) 2019/788](#) on the European Citizens' Initiative (ECI Regulation). The [2023 ECI Review Report](#) reveals some very positive developments on the ECI process since the entry into force of the Regulation in January 2020: [the support of proposed initiatives has been doubled and the refusal of registration has been minimized](#). Furthermore, out of the 10 initiatives that successfully passed the threshold of one million statements of support since the beginning of functioning of the ECI process in 2012, 4 were replied to by the Commission during the last 12 months, making 2023 the most successful year in the lifespan of the ECI so far!

These developments are definitely good omens, but do they suggest that we are heading to a golden age of the ECI? After providing a short background on the ECI mechanism, this contribution discusses the major positive developments resulting from the implementation of ECI Regulation, as presented in the 2023 Review Report. Subsequently, it questions the potential of these developments to ensure the fulfillment of ECI's objectives, namely the encouragement of citizen participation and the promotion of democratic dialogue.

1. ECI Background

The European Citizens' Initiative (ECI) is undoubtedly the most important participatory democracy instrument in the EU. It is the mechanism with which at least one million citizens coming from at least 7 Member States may invite the European Commission to

submit any appropriate proposal for the purpose of implementing the Treaties, within the framework of its powers (Article 11 para. 4 TEU, Articles 1 and 3 ECI Regulation). First introduced in the [Constitutional Treaty](#) and conserved in the Treaty of Lisbon, the ECI was welcomed with enthusiasm for its potential to reinvigorate European democracy, providing an agenda-setting mechanism to the EU citizens and, therefore, enhancing the EU democratic dialogue.

However, shortly after the entry into force of the first ECI Regulation ([Regulation \(EU\) No 211/2011](#)) in 2012, a number of shortcomings relating to the broad discretion of the Commission when registering initiatives as well as the limited reach and impact of the ECI on policymaking appeared (see, *inter alia*, [here](#), [here](#) and [here](#)). In an effort to address criticism, the Regulation 2019/788 was adopted. The Regulation 'aims to make the European citizens' initiative more accessible, less burdensome and easier to use for organisers and supporters, and to strengthen its follow-up in order to achieve its full potential as a tool to foster debate' (Recital 5).

2. Positive developments of the Regulation 2019/788

As described in the 2023 Review Report, significant improvements can be reported in the first three years of implementation of the ECI Regulation. These improvements concern primarily the registration process, the collection of support and the follow-up stage.

a. Registration process: facilitating dialogue and providing second chances

Before an initiative is published for support, it has to be registered with the Commission. At this stage, the Commission needs to verify that all procedural requirements are complied with by the organisers, that the proposed initiative does not manifestly fall outside the framework of its powers, it is not manifestly abusive, frivolous or vexatious or contrary to the values of the Union as set out in Article 2 TEU (Article 6 para. 3 ECI Regulation). This process attracted criticism under the previous Regulation, as the Commission had on multiple occasions refused the registration of initiatives, claiming that the proposed measures do not fall under its competence to submit a legislative proposal. This approach was reproached by the Court of Justice of the EU (see [Minority SafePack](#) and [Efler](#) cases) and had to be moderated in the new ECI Regulation.

As such, Regulation 2019/788 establishes a two-stage procedure of registration. According to Article 6 para. 4 of the Regulation, the Commission must inform the organisers of a proposed initiative if it considers it to fall outside its competence. The organisers have the chance to revise their initiative within two months and resubmit it. The Commission may,

subsequently, accept fully or partially the initiative or simply refuse it. This new procedure has given rise to a success story: during the reporting period, out of the 40 initiatives received, 37 were registered by the Commission (8 of which after revision), one was withdrawn and only one was ultimately refused registration.

It should be highlighted that this procedure has been coupled with opportunities of information and assistance provided under Article 4 of the Regulation. This provision stipulates the obligation of the Commission to spread the word about the ECI in general (along with Article 18 ECI Regulation) and facilitate (prospective) organisers. The Commission is instructed to create an online collaborative platform to this end. This is the [ECI Forum](#), which provides practical information as well as legal and campaigning advice to organisers. The Forum has been the object of particular praise in the 2023 Review Report, the organisers commenting that they found it to be 'essential for ensuring the registration' of their initiative.

b. Collection of support: new IT systems to the rescue

The second important shortcoming of the ECI mechanism relates to its difficulty to trigger citizen mobilization to participate and support ECIs. This was mainly due to the low levels of awareness of the participatory instrument, while a number of technical difficulties with regards to the collection of statements of support could not be disregarded.

Regulation 2019/788 tries to facilitate the collection of statements of support, enabling organisers to choose the date in which the 12-month deadline for the collection period starts, within six months from the registration of the initiative (Article 8 para. 1). This gives organisers more time to structure their campaign so as to achieve the threshold of support required.

Yet, the major advancement Regulation 2019/788 offers with regards to facilitating the collection of statements of support is the establishment of the central online collection system (Article 10) on the improved ECI website. Thanks to this system, all the organisers have to do is to inform the Commission about their intention to use the website. This site does not only relieve organisers from the costs and legal responsibilities of setting up their own individual collection platform, which would have to abide by certain technical characteristics and data protection requirements, but it also provides a one-stop shop for all initiatives currently under collection stage. This provides the opportunity for stimulation of the democratic activity, as it is available in all EU official languages and ECIs may find support from citizens that enter the platform to be informed or support initiatives with similar causes. The website provides all types of information about ECIs in conjunction with the possibility that supporters remain informed over relevant updates. ECI organiser

groups can still choose an individual collection system (Article 11), but the vast majority opted for the Commission website or the [OpenECI software](#) created by civil society organisations.

These advancements seem to have benefited the collection of statements as, in the three years of implementation of the new ECI Regulation, the support has been doubled: 9 million statements of support collected since 2020, in a total of 18 million since 2012, and 5 initiatives successfully met the threshold of support, with two more being in the [verification process](#) by the Member States.

c. Follow-up: problem not solved, but better handled

Another stance that has been very much commented upon under the previous regime was the follow-up of the Commission on successful initiatives. In the first successful initiatives, the Commission responded in loose terms, not planning on taking any immediate legal action or, in the case of [One of Us](#) initiative, no action at all. In the subsequent case law, the Court clarified that the Commission was by no means obliged to submit a legislative proposal in answer to a successful initiative and possesses a wide discretion regarding the actions it might take, which is an illustration of the EU institutional balance ([One of us](#), paras. 103-118 and [Puppinck](#), paras. 56-63 in appeal). The added value of the ECI mechanism, according to the Court, lies not in the certainty of an outcome, but in the opportunities it creates for EU citizens and the democratic debate it triggers ([Puppinck](#), para. 70; [AG Bobek Opinion](#), para. 78). Yet, although a certain (legal) outcome may not be an end in itself, the absence thereof can be frustrating for participants, who dedicated significant resources to arrange the initiative and could be demotivated from partaking in any further democratic activities.

The ECI Regulation could not alter the level of obligation of the Commission. It could just expand the deadline in which the Commission must reply from three to six months, and oblige it to adopt a timeline of any envisaged actions, while systematizing the involvement of the European Parliament (Articles 14-16 ECI Regulation).

Interestingly though, in the six initiatives the Commission replied to after 2020, the proposed follow-up seems to be much more tangible; the Commission replied in meticulous terms, being open to citizens' suggestions and involving their views in the policymaking circle, which is now streamlined under the [Better Regulation Agenda](#). More specifically, in response to the [End the Cage Age](#) initiative, the Commission – which had already mandated the European Food Safety Authority (EFSA) to provide update scientific opinions on the subject-matter – declared that it intended to submit a legislative proposal to phase out and finally prohibit the use of cage systems for specific animals, as part of

the planned revision of EU animal welfare legislation. In addition, with regards to the [Stop Finning](#) initiative, the Commission committed to launch an Impact Assessment on the matter and with regards to [Save cruelty-free cosmetics – Commit to a Europe without animal testing](#), it would develop a roadmap towards ultimately phasing out animal testing for chemical safety assessments and support further research. Interestingly, on a first, replying to the [Fur Free Europe](#) initiative, the Commission sent a mandate to EFSA requesting an updated scientific opinion on the welfare of fur animals.

3. Reaching the pinnacle of the ECI?

The 2023 ECI Review Report sheds light on the facts and figures of the first years of implementation of the ECI Regulation. The numbers are definitely positive, revealing the involvement of more citizens in the leading EU participatory mechanism. Is that enough to affirm that we are heading towards a golden age for the ECI, in which the participatory instrument achieves its full democratic potential of encouraging citizen participation and fostering the democratic debate?

It can hardly be denied that the ECI Regulation brings up advancements towards the direction of encouraging participation and dialogue in three ways. First, it facilitates the ECI organisers to gain a privileged spot in the democratic dialogue. The improved possibilities on registration and the central collection system establish an enhanced platform for the organisers to spark debate. Second, it significantly contributes to the civic education of EU citizens, which constitutes one of the [core participatory democracy functions](#). With the legal and campaigning guidance provided by the ECI Forum together with the ameliorated user-friendly website, organisers and supporters can familiarize themselves with the ECI process and the EU affairs in general and, thus, obtain skills and knowledge which can be used in their further participation in the national and European political debate.

Third, even though the improvements on the follow-up stage do not emerge from the ECI Regulation *per se*, the Commission seems to be developing a more consolidated practice with regards to handling of successful initiatives. It provides carefully reasoned responses and appears to be more open-minded towards citizens proposals. The Fur Free Europe provides a telling example, with the Commission deciding to promote EFSA research on the matter. The case is of special interest, as an exceptional instance of [bridging the gap between citizen participation and expert policymaking](#). It can, thus, be argued that the current institutional practice may contribute to rectifying citizens' expectations from the ECI mechanism and motivate them to take part again in the future. What is more, actual

impact on policymaking cannot be ignored: [recent research](#) shows that ECIs have prompted policy changes not only in the EU, but also in national and subnational level.

Nevertheless, it cannot be affirmed with certainty that the ECI Regulation succeeds in establishing a golden age of the ECI, in which the Union's infamous participatory mechanism is able to motivate citizens and generate more democratic debate. On the one hand, the structural problems with regards to participation are not adequately addressed. Organizers dedicate significant resources, in terms of time and money, in order to draft an initiative and launch a campaign in a number of Member States for its support. It is really hard to attract attention to an initiative without adequate funding, not to mention connections, especially with large NGOs with expertise on the field. The ECI Forum provides guidance for funding and networking opportunities, but the challenges remain.

On the other hand, the political reality may often hinder the potential of enhancement of democratic dialogue. While it appears that a successful initiative may have better chances to achieve a meaningful follow-up in case it corresponds to the already existing agenda and priorities set by the Commission, this cannot be taken for granted; the political priorities might change and, therefore, the promises given to citizens might not always be kept. The case of the End the Cage Age initiative is illustrative in this regard: while the topic was very much on the Commission's radar when the initiative was launched and replied to, the Commission ended up not submitting a legislative proposal for phasing out cages by the end of 2023, as committed to do. [Several animal protection organisations](#) complained about the Commission's failure to act and the [European Ombudsman launched an inquiry](#) into the Commission's actions on the issue.

After all, the boost of the democratic debate is dependent on an mixture of non-legal factors such as the public appeal and nature of the topic of the initiative, the organisation and methods of campaigning (publicity in the traditional and/or social media, the involvement of relevant NGOs) and the level of public awareness around the ECI, which is admittedly still low (64% of the respondents in the [Flash Eurobarometer 528 Citizenship and democracy](#) stated that they are aware of their right to participate in an ECI).

To sum up, the insights from the implementation of the ECI Regulation so far are encouraging, but they alone cannot guarantee the constant enhancement of the democratic debate and, therefore, the long-lasting success of the participatory mechanism. This depends on a variety of factors, including the political priorities and institutional practice. At this point, it is to be underlined that the 2023 ECI Review Report is part of the [2023 Citizenship package](#), which reports the [status of citizenship rights](#) and adopts actions for their further development. This set of measures was shortly followed by the [Defense of Democracy package](#), which includes Recommendations [on inclusive and resilient electoral processes](#) in EU level and [on promoting the engagement and effective](#)

[participation of citizens and civil society organisations in public policy-making processes](#) in national, regional and local level. This remarkable activity highlights the Commission's institutional strive to safeguard and promote the democratic debate, especially in light of the 2024 European elections. It remains to be seen whether these developments, especially the enhanced image of the ECI, will succeed in fostering the democratic dialogue in the EU and its Member States and, hence, augment the turnout in forthcoming elections.