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Can the European Citizens' Initiative be a solution to the crisis of EU legitimacy?

Abstract: The paper presents considerations related to the crisis of legitimacy in the European Union and an attempt EU institutions have made to resolve it by introducing the European Citizens' Initiative to European Union legislation. The European Citizens' Initiative, as an instrument of direct democracy, gives citizens the possibility of approaching the Commission with a request inviting it to submit a proposal for a legal act of the EU, and thereby influencing EU legislation. This may facilitate the elimination of the problem of the crisis of legitimacy, trust in institutions and Euro-skepticism.

Key words: crisis in the European Union, crisis of legitimacy, the European Citizens' Initiative, the European Union, the European Union citizenship, direct democracy

Introduction

European Union institutions launched the European Citizens' Initiative as an instrument of direct democracy only five years ago, on April 1, 2012. This date marked the Regulation of the European Parliament and of the Council coming into effect (European Parliament and the Council, 2011). Granting EU citizens the right and opportunity to become involved in EU legislation processes certainly provides for the formation of conscious social commitment at the level of the European Union. Viewed in the light of the current crisis of civil trust in EU institutions, this step emerges as both indispensable and significant for the future perception and participation of societies in the political life of the EU.

Due to the multiple crises the European Union is immersed in at present, it had to face up to the challenge of making member states realize the benefits of enhanced integration. This is accompanied by an unprecedented crisis of legitimacy, which is a further impediment to EU efforts to resolve its problems.

The issues related to Euroskepticism which recently emerged, the dwindling trust of citizens in EU institutions and the questionable attempts EU institutions and member states made in order to entrench the democratic legitimacy of the EU have seemed to further dishearten its citizens about integration processes and the EU as such. At present, the EU is suffering from a credibility crisis which is augmented by the economic crisis in eurozone, resulting in decreased legitimacy and citizens' trust in EU institutions as well as the necessity and rationale for European integration.

Therefore, a question arises of how EU leaders can boost EU credibility. A number of ideas have been presented, ranging from structural reforms to a stronger involvement of national parliaments in the EU decision-making system. Yet, can these proposals reduce the Euroskepticism, which has recently reached an all-time high, and restore trust in the decisions and activities of EU institutions?

These issues are worth exploring in terms of altering the policies implemented by EU institutions on one hand and with respect to granting EU citizens specific instruments enabling them to participate in the EU legislative process on the other.

The first step in implementing this concept consisted in the Lisbon Treaty coming into force on December 1, 2009. Article 11.4 of the Treaty provides EU citizens with the ability of exerting an impact on the legislative process. If successful, it seems that the European Citizens' Initiative – an instrument of direct democracy – could foster social involvement, increased trust and entrenchment of democratic legitimacy (Mik, 2008, p. 104).

Analysis of the operation of the European Citizens' Initiative (ECI), however, raises concerns that so far it has failed to meet its fundamental function as an instrument of direct democracy, and in practice does not enable European citizens to influence EU law. The ECI may fail to resolve the legitimacy crisis in the EU due to the small number of initiatives implemented to date, due to the complicated and demanding procedure and the considerable number of rejected initiatives.

This paper addresses the following research questions:

- does the ECI constitute a genuine instrument of direct democracy;
- can the ECI be viewed as a solution to the legitimacy crisis in the EU;
- what is the process of implementing the ECI;
- what role does the ECI play in EU legislative process;

- what role does the European Commission play, and what initiatives may be implemented under the ECI;
- what initiatives have been implemented, and for what reasons have other initiatives been rejected.

The objective of this paper is to verify the hypothesis that the ECI is not an effective solution to the legitimacy crisis in the EU. For this purpose, the method of institutional-and-legal analysis has been employed in the research; this facilitates the analysis of primary and secondary law of the EU, namely treaties, regulations, reports, communications as well as documents and websites dedicated to the ECI. This enables the hypothesis to be verified on the basis of such criteria as the influence of ECIs on changes to EU laws, the number of ECIs implemented, and the number of initiatives rejected by the European Commission. Another crucial criterion involves the attitude of the European Commission to those initiatives which managed to win one million valid statements of support.

Scope of the European Citizens' Initiative

For an ECI to be registered by the European Commission, it has to meet the criteria set out in the regulation.

Firstly, the ECI cannot go beyond the scope of EU policies. EU institutions have relevant instruments at their disposal which facilitate their operation within the scope provided for in treaties. The fields addressed by specific policies and the scope of valid EU regulations can be found on the European Commission's website, whereas more detailed information is provided by the Treaty on the European Union and the Treaty on the Functioning of the European Union (European Commission, *European Citizens' Initiative Official register. Can your idea...*, 2016).

Another requirement for an initiative is that it must address a matter that falls within the European Commission's power to submit a proposal for a legal act. The range of such issues is established in various treaties. The European Commission is empowered to propose a legal act when an article of the relevant treaty refers to an ordinary or special legislative procedure, except in specific cases where an article specifically mentions that an institution other than the Commission makes a proposal, or the article explicitly mentions that the Commission is responsible for making

a proposal (European Commission, *European Citizens' Initiative Official register. Can your idea...*, 2016).

Yet another crucial element of an ECI involves referring to the relevant provisions of treaties, either by indicating specific articles or a general reference deemed significant in view of the proposed initiative (European Commission, *European Citizens' Initiative Official register. Can your idea...*, 2016).

An ECI cannot concern a proposal which contradicts the EU values set out in Article 2 of the Treaty on the European Union (Witkowska, 2013, p. 37).

An analysis of the data published on the website of the European Commission, and in a report on the operation of the ECI, points to the enormous problems related to how citizens understand the ECI. The common reason for the refusal to admit 19 initiatives for registration by the European Commission was that the "proposed citizens' initiative falls manifestly outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties" (European Commission, *European Citizens' Initiative Official register. Refused requests*, 2016).

Eligible entities and the procedure of registering a European Citizens' Initiative

The basic entity entitled to submit a European Citizens' Initiative is a citizens' committee, which in accordance with Article 3.2 of the Regulation of the European Parliament and of the Council is to be composed of at least seven persons residing on the territory of at least seven different member states of the European Union (European Parliament and the Council, 2011). They do not have to be nationals of seven different member states, although they do have to be permanent residents of their respective territories (European Commission, *European Citizens' Initiative Official register. Can your idea...*, 2016). Members of the citizens' committee, or organizers, have to hold the nationality of an EU member state and be old enough to vote in European Parliament elections (European Parliament and the Council, 2011).

The definition of the ECI and the basic legal framework are set out in Art. 11.4 of the Treaty on the European Union. Detailed procedures and the necessary requirements to submit and register an initiative are stipu-

lated in the Regulation of the European Parliament and of the Council of 16 February 2016 on the citizens' initiative (Capik, Gniewek, p. 13).

The purpose of these regulations was to entrench EU democratic legitimacy by granting a new political right to its citizens (Śledzińska-Simon, 2015, p. 51). In order to submit an ECI, at least one million signatures of EU citizens from at least a quarter of EU member states has to be collected. Upon their collection, an application may be submitted to the EC, which calls on the institutions to take the initiative to introduce a legal act which in the opinion of citizens is necessary for the proper implementation of treaty objectives (European Parliament, 2016, p. 1).

The step that initiates the procedure for submitting an ECI consists in establishing a citizens' committee. Next, the proposed initiative needs to be registered on the European Commission's website. Initiative organizers are allowed twenty hours to fill in the registration form (European Commission, *European Citizens' Initiative Official register. Registration form*, 2016). Once the registration stage is completed, if the organizers set out to collect statements of support online, they are required to launch an online collection system on their website. Such a system must be equipped with the relevant security and technical elements (European Commission, *European Citizens' Initiative Official register. Certification*, 2016). Provided that the European Commission confirms that the initiative has been registered, the process of collecting statements of support can commence, either on paper or online. Organizers are allowed twelve months to collect a minimum of one million valid statements of support (European Commission, *European Citizens' Initiative Official register. Collections*, 2016).

The next step involves the verification of statements and submission of the initiative to the Commission. Once organizers collect the necessary statements of support, they must ask the competent national authorities in each member state where they collected statements of support to certify the number of statements. Once the organizers have received certificates from the competent national authorities (at least 7), they can submit their initiative to the Commission on the form presented in Annex VII to the Regulation.

The procedure is concluded with the Commission examining the initiative, public hearing in the European parliament and an answer by the Commission, issued within a period of three months. The Commission is in no way obliged to propose legislation as a result of an initiative (European Parliament and the Council, 2010, Arts. 8–10).

The political and institutional role of the European Commission in the launching of the European Citizens' Initiative

The specific political and institutional role of the European Commission should be noted, which follows directly from the provisions of the regulation. The Commission's role is emphasized because it is the only EU institution involved in the ECI process at the stage of submitting proposals and in the implementation of the initiative. It is the sole discretion of the European Commission to decide whether or not to register an initiative and propose legislation postulated in a citizens' initiative.

The European Commission is responsible for the conduct of a citizens' initiative at the European level. Thus, the EC establishes a contact point with the purpose of providing information and assistance to citizens, as provided for by Art. 4.1 of the Regulation (Capik, Gniewek, p. 105). A contact point enables the EC to make informal contact with the potential organizers of a citizens' initiative, who can obtain information about whether the planned initiative can be registered even before a request for registration is formally submitted to the EC (European Commission, *Report*, 2015, p. 14).

Organizers are assisted by the *Europe Direct* information center and by the European Commission directly. This contact is established once a citizens' initiative is registered via the organizer's website or email. Technical support, which is primarily related to the online collection of statements of support, all other assistance and information are provided via email or the *Joinup* platform (European Commission, *Report*, 2015, p. 14).

Once a citizens' initiative is submitted, the EC is obliged to conduct a public hearing in the European Parliament, thereby enabling the organizers to present their postulates (Capik, Gniewek, p. 106).

Eventually, the EC itself examines the proposal submitted. Within three months the Commission is obliged to issue a formal response spelling out the legal and political conclusions from the proposal. The European Commission is not obliged to take any steps, but it is obliged to justify its decisions (Capik, Gniewek, p. 106) and to provide information on appeal measures available inside and outside the law. Measures applicable in this case involve a complaint regarding invalidity due to an infringement of material and procedural law submitted in accordance with Art. 263 of the Treaty on the Functioning of the European Union by a natural or legal person, or by the Council, European

Parliament and member state (Śledzińska-Simon, 2015, p. 63). Certain concerns are expressed in the literature on the subject about the EC making the decisions on citizens' initiative at its sole discretion. It is stressed that the "admissibility criteria" are very demanding, and the fact that the EC fails to take action even in the case of admissible initiatives can inspire a sense of defeatism among EU citizens, thereby increasing their disappointment with the EU. Certainly, this was not "the intention of those who opted for the European Citizens' Initiative to be launched in the legislative system of the European Union" (Capik, Gniewek, p. 106).

Practical dimensions of the European Citizens' Initiative

The successful collection of one million statements of support required for an ECI to be launched is primarily conditioned on the ability to mobilize huge numbers of citizens by means of verbal messages disseminated via promotional campaigns. The ECI empowers 'political outsiders,' namely different interest groups, social groups and ordinary EU citizens who would like EU legislation to be changed, and whose voices have so far not found any representation in EU institutions, political groups in the European Parliament and the media. Initiatives make it possible for minorities to democratically voice their standpoint, although the support of at least one million EU citizens is mandatory for this purpose (Śledzińska-Simon, 2015, p. 60).

The analysis of those initiatives that have collected one million valid statements of support seems to be of particular significance when assessing the operation of ECI and its impact on solving the legitimacy crisis of the EU. The initiatives were selected because they were the only ones genuinely capable of changing EU legislation. So far, only three ECIs have managed to garner the required one million statements of support: "Right2Water," "One of Us" and "Stop Vivisection." Out of 35 initiatives so far, which have successfully completed the registration stage, the remaining 32 either failed to collect one million statements or were withdrawn by their initiators. Nineteen initiatives failed to be registered because the European Commission refused its consent. At present, statements of support for eight open ECIs are being collected (European Commission, *European Citizens' Initiative Official register. Open initiatives*, 2016).

Analysis of initiatives submitted to the European Commission

The analysis and comparison of the three citizens' initiatives that have garnered one million valid statements of support below is founded on the following criteria: the European Commission's attitude to the initiatives submitted, the European Commission submitting a proposal for a legal act and the direct impact an initiative has on the changed EU legislation.

The first initiative to collect one million valid statements of support is Right2Water. Its full name reads: "Water and sanitation are a human right! Water is a public good, not a commodity!" (European Commission, *Communication from the European Commission on the European Citizens' Initiative*, p. 2, 2014).

Applying to the European Commission to put forward a proposal for a legal act, the organizers of the Right2Water initiative made reference to the human right to water and sanitation, as recognized by the United Nations, promoting the provision of water and sanitation as essential public services for all (European Commission, *Communication from the European Commission on the European Citizens' Initiative, Access to water*, p. 19, 2014). This citizens' initiative aimed to ensure that all inhabitants of EU member states enjoy the right to water and sanitation through the operations of EU institutions and national bodies; that water supplies and management of water resources are not subject to internal market rules; and that the EU increases its efforts to achieve universal access to water and sanitation (European Commission, *Communication from the European Commission on the European Citizens' Initiative, Access to water*, p. 2, 2014).

On March 19, 2014, the European Commission issued its official Communication on the initiative submitted (European Commission, *Communication from the European Commission on the European Citizens' Initiative, Access to water*, p. 2, 2014). It presented conclusions and the European Commission's standpoint on the postulates contained in the citizens' initiative. The European Commission presented an extensive picture of earlier activities undertaken in relation to the subject of the initiative. The EC expressed its satisfaction with civil involvement in such an important matter for the EU, ensured its continuing these efforts and urged member states to make every effort to implement their citizens' postulates. The EC also obliged itself to undertake new steps, such as conducting social consultation on the directive on access to potable water and supporting talks between relevant entities (European Commission,

Communication from the European Commission on the European Citizens' Initiative, Access to water, 2014, pp. 13–14).

The European Commission makes no mention in its Communication about submitting a proposal for a legal act related to the citizens' initiative, although this forms the foundation of the idea for the ECI and for direct democracy. By this token, the EC is depriving EU citizens of the possibility to influence EU legislation. The vast majority of activities presented by the EC in its Communication refer to initiatives that have already been launched; only one item of the suggested activities mentions the possibility of social consultations to be held on the directive, which nevertheless gives no guarantees whatsoever that this directive will be issued or implemented by member states in due course.

Another initiative, “One of Us” was registered on the European Commission's website on May 11, 2012. Its subject matter is: “Juridical protection of the dignity, the right to life and of the integrity of every human being from conception in the areas of EU competence in which such protection is of particular importance” (*One of Us*, 2016). The objective of this initiative is to establish a ban and end the financing of activities which presuppose the destruction of human embryos, in particular in the areas of research, development aid and public health, and to ensure the protection of the life of every human being from the moment of conception. The initiative's organizers apply the definition of human embryo articulated by the European Court of Justice in the *Brüstle vs. Greenpeace* case. It defines the human embryo as the beginning of the development of a human being. The organizers also drafted a legal act to regulate this matter (European Commission, *European Citizens' Initiative Official register; One of Us*, 2016) since they deemed it necessary to change the EU budget with respect to how financial resources are spent, and thereby unify EU law (*One of Us*, 2016).

The final Communication on the “One of Us” initiative was adopted by the EC on May 28, 2014. The EC clearly states that the proposal for a legal act will not be submitted, as the EC deems the legislation enacted by the European Parliament and Council sufficient given the needs in this area. This decision unambiguously deprives EU citizens of the opportunity to influence EU legislation which should be amended, in their opinion. By this token, the assumptions of neither participatory democracy nor of the citizens' initiative as its instrument are implemented.

The third, and so far the last citizens' initiative that has managed to garner one million valid statements of support is the “Stop Vivisection”

initiative. Its subject matter concerns proposing a European legislative framework aimed at phasing out animal experiments in the EU by 2020. The organizers' main objective is for the EC to abrogate directive 2010/63/EU on the protection of animals used for scientific purposes and to present a new proposal that does away with animal experimentation (European Commission, *European Citizens' Initiative Official register: Stop Vivisection*, 2016).

The final EC Communication on this initiative was adopted on June 3, 2015. The EC standpoint presented therein expresses support for the ideas of the citizens' initiative to do away with animal experimentation and ensures that this is the ultimate aim of EU legislation (European Commission, 2015, p. 2). Yet, even though the EC supports the proposed idea, it was not in favor of the measures proposed by the organizers to solve the problem of conducting animal research (European Commission, 2015, pp. 10–11).

The "Stop Vivisection" ECI is yet another exemplification of the fact that even though the mandatory number of valid statements of support has been collected and all other requirements to submit the initiative have been met, the European Commission makes use of its right to refuse to propose a legal act as it deems that the currently binding laws and activities of the European Union ensure sufficient and exhaustive regulation of issues addressed by citizens' initiatives. In this way, EU citizens are again deprived of the possibility to influence EU legislation, despite having completed the entire procedure of the initiative.

European Citizens' Initiative as a new form of civil participation in EU political life

The ECI as a new form of civil participation in the political life of the European Union is an important instrument of a newly launched mechanism of direct democracy. One of its tasks is to bring citizens closer to the EU. Nevertheless, the ECI in no way provides member state citizens with direct decision-making power that would allow them to change current legislation after its adoption by the European Commission (Capik, Gniewek, p. 104).

Five years after the introduction of the ECI, it can be deemed to be an instrument that activates those social groups and EU citizens which were already socially aware of such matters as the protection of health, life and the environment at the very beginning of the ECI. It has had a decidedly

smaller influence on those citizens who have neither developed such an awareness or interest in EU politics. It should be stressed that none of the instances of social activation has translated into a change to EU legislation through a citizens' initiative (Śledzińska-Simon, 2015, pp. 60–61).

Therefore, the ECI turns out to provide an opportunity to draw the European Commission's attention to suggestions, problems and motions of EU citizens, rather than a genuine instrument influencing EU legislation. When an initiative is submitted, the EC is obliged to take a stand on the demands presented in it, but it is not obliged to make changes to EU legislation. Therefore, the essential outcome of the ECI is not empowering EU citizens to make direct decisions, but opening EU institutions to postulates and desires voiced by citizens. It enables them to take part in discussions they consider important by initiating a European debate and forming a European public sphere (Kaufmann, 2010, p. 7). The ECI was introduced into EU legislation to respond to the problem of the EU lacking democratic legitimacy. Yet the German Federal Constitutional Court stated that the provisions of Art. 11 of the Treaty on the European Union, which ensures the right of EU citizens to propose citizens' initiatives, are significant but only symbolic. It emphasized that enabling EU citizens and the social organizations which represent their interests to voice their position and support a given draft of a law can only supplement the legitimacy of EU authorities (Śledzińska-Simon, 2015, p. 50).

Conclusions

The ECI was designed to be an instrument to solve the problem of the crisis of EU legitimacy. The introduction of the right to submit citizens' initiatives was supposed to reduce the distance between EU institutions and EU citizens, increase their involvement in political life of the EU, increase their confidence in EU institutions, raise the level of social legitimacy and give citizens direct influence on laws passed in the EU. These were the factors essential for the unique character of the ECI as an instrument of direct democracy applied to create EU law. Nevertheless, this task was not achieved for any of the initiatives that garnered one million valid statements of support. This arouses doubts whether the ECI can justifiably be named an instrument of direct democracy.

Since the ECI came into effect in 2012, as many as 35 initiatives have failed to gather the obligatory one million valid statements of support. This

is an indication of the fact that the organizers of ECIs find it difficult to understand its essence and that the formal requirements are too difficult (procedures are overcomplicated and the mandatory number of statements of support too high). Additionally, even when all the requirements are met, there is no guarantee that EU legislation will be changed. This may result in a situation where, instead of solving the legitimacy crisis in the EU, it will be exacerbated. Reluctance, apathy, lack of trust, a skeptical attitude or rejection of the values that guide an EU which does not respond to the needs so clearly voiced by its citizens will become even more acute in European society. This is also influenced by the very strong position of the EC – a monopolist in deciding whether or not submitted initiatives are justified, both at the registration stage and later on, in the course of their implementation. It would be worth considering whether other institutions should also have the opportunity to check citizens' initiatives.

The research process has evidenced that, at the current stage of operation, the ECI seems ineffective. Further analysis could be conducted in the near future to provide a comprehensive evaluation of the implementation of this initiative.

The European Commission clearly has to review citizens' initiatives submitted and must not mindlessly adopt all of them and introduce every change they suggest, as this would undoubtedly pose a threat of institutional, legal or administrative chaos. Yet the EC should not reject the majority of the initiatives submitted, either. The EC seems to be facing a serious task of altering the procedure of implementing ECIs, so as to increase the proportion of initiatives that successfully complete the complicated procedure, and then enable citizens to actually influence EU legislation.

In the 2015 report on the ECI, the EC notices the problem of the initiative failing to meet its objectives. The EC also emphasizes the need to change the regulation on the ECI and conduct social consultations. Since consultations make it possible to learn about citizens' opinions on an initiative, they may become a key element in solving the problems of the dysfunctionality of the ECI. It also seems necessary to raise European society's awareness of the presence of the ECI. The ECI will not have a positive impact on solving any crisis if Europeans are not aware it exists.

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Czy europejska inicjatywa obywatelska może być odpowiedzią na kryzys legitymizacji w Unii Europejskiej?

Streszczenie

W artykule zaprezentowane zostały rozważania związane z kryzysem legitymizacji w Unii Europejskiej oraz próbą jego rozwiązania przez instytucje unijne, poprzez wprowadzenie do prawodawstwa Unii Europejskiej instrumentu europejskiej inicjatywy obywatelskiej. Europejska inicjatywa obywatelska jako narzędzie demokracji bezpośredniej, ma umożliwić obywatelom poprzez zwrócenie się do Komisji Europejskiej o przedłożenie wniosku legislacyjnego, wpływanie na prawo stanowione w Unii oraz stać się sposobem niwelowania problemu jakim jest trwający w Unii kryzys legitymizacji, zaufania do instytucji czy eurosceptycyzmu.

Słowa kluczowe: kryzys w Unii Europejskiej, kryzys legitymizacji, europejska inicjatywa obywatelska, Unia Europejska, demokracja bezpośrednia

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