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Direct Democracy for the EU: A Place for Interest Groups in the European Citizens' Initiative

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Abstract:

The European Citizens' Initiative represents the EU's most ambitious foray into direct democracy to date. While initially conceived to harness the expertise and representative functions of interest groups, recent pressure from the European Parliament seeks to exclude interest group involvement. If the ECI is to prove effective in bridging the gap between European citizens and EU decision-making institutions, however, it will need to ensure a place for interest groups in the process.

Introduction

Democracy is on the march, and not only in the failed states and authoritarian regimes of North Africa. The European Union is also undergoing its own revolution in democracy. Just a few months ago, the Council of the EU and European Parliament passed legislation on the European Citizens' Initiative (ECI) finalizing a provision in the Lisbon Treaty that aims to bring European citizens closer to an otherwise aloof and overly technocratic policy-making process. It creates a right for citizens to propose EU legislation to the European Commission, so long as they number at least one million citizens and come from a significant number of member states.¹

The ECI is an ambitious skirmish against the Union's democratic deficit. It is meant to foster rigorous public debate on European issues, provide a bridge between the EU and its citizens, generate a genuine EU "public sphere," and create a new channel through which novel ideas and policy solutions find their way onto the EU's agenda. It is little wonder, then, that the ECI has garnered considerable attention in the media and from good-governance groups. Over 20 initiatives are already in the making – indeed were underway before the implementing measures had even been officially ratified.²

The fate of direct-democracy mechanisms elsewhere, however, suggests every ground for caution. California in particular, where a similar mechanism has fallen into the hands of special interest groups, provides the most troubling examples. Californian initiatives have no safeguards against interest groups and allow any group with minimal organisation and deep pockets the chance to effectively and irreversibly change the state constitution. Californian initiatives not only tend to saddle policy-makers with incoherent and contradictory mandates but have also been blamed for the state's dire economic circumstances.³ Direct democracy, it seems, has a tendency to teeter precariously between good governance and oligarchy.

¹ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, *Official Journal of the European Union*, 11.3.2011.

² Constant Brand, "MEPs look to make it easier to launch citizens' initiatives," *European Voice* 4-10, November 2010, p.1

³ *The Economist*, "Special Report: Democracy in California", April 23-29, 2011.

It is perhaps little wonder, then, that one imperative, stressed in particular by the European Parliament, is to protect the EU's citizen initiative from interest-group influence. For the Parliament, the ECI must remain a channel for individual citizens to influence EU politics and not a tool for interest groups. To this end, ECI regulations passed in March present various safeguards against interest-group involvement, most of which have taken shape in transparency conditions and rules for funding. Most strikingly, the ECI regulations permit interest groups to "promote a citizens' initiative,"⁴ but prohibit these groups from organising them.

Interest groups and direct democracy

Fears of interest group involvement in the ECI process are relatively new. In fact, in its earliest stages, the ECI was clearly envisioned by the Commission as a mechanism specifically designed for interest groups. Not only did the Commission involve interest groups among the central ECI "stakeholders" during the consultation period in 2010, but its 2009 Green Paper also acknowledged that interest groups would be essential for actually carrying out an initiative. The Commission rejected the idea that proposals "must be presented by citizens or by committees made up of a certain number of citizens" seeing this requirement as "too burdensome." Instead, "organisers can either be individual citizens or organisations." After all, "launching and organising a campaign for a proposed European citizens' initiative will in most cases require support from organisations and/or funding."⁵

The Commission's embrace of interest groups in the ECI is part of a long history of engagement and interaction. The Commission has been mandated, since the 1997 Treaty of Amsterdam, to "consult widely (...) with representative associations and civil society" during the policy-making process.⁶ Interaction with interest groups is also institutionalized in the open consultation process, many *ad hoc* committees, and most explicitly in the Social Dialogue procedure and the two consultative bodies, the Committee of Regions and the European Economic and Social Committee. The logic behind these interactions is simple: EU decision-makers are woefully understaffed and pressed for time and thus ill-equipped to cope adequately with the complex regulatory nature of EU politics. What EU decision-makers lack in terms of the requisite knowledge and information, interest groups have in spades. They are, after all, experts in their fields and possess both the means and motivation for generating useful techni-

⁴ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, *Official Journal of the European Union*, 11.3.2011, preamble, section 9.

⁵ European Commission, *Green Paper on a European Citizens' Initiative*, Brussels, 11.11.2009, p.11.

⁶ European Commission (2007) Treaty of Lisbon, *Official Journal of the European Union*, Available online: <http://eurlex.europa.eu/JOHtm1.do?uri=OJ:C:2007:306:SOM:EN:HTML> 2007: Art. 8b

cal, legal and political information with regard to how a certain policy will play out.

In an important sense, interest groups carry out a function that the Parliament has so far failed to fulfil: namely, bringing a certain degree of legitimacy to the EU decision-making process by linking citizens to the EU. A steady increase in the Parliament's power has not resonated with EU citizens. Consistently low voter-turnout rates have given the Parliament a "second-order" status. Voters, aware of limits of the Parliament, do not vote for the parties (or candidates) they believe to be the best suited to representing them at EU-level but instead cast their ballots instead to make a statement about the national political arena. By contrast, interest groups have long been recognized as powerful *ersatz*-channels through which citizens can voice their preferences. In some cases, interest groups may offer opportunities for participation in the policy-making process that infrequent elections do not. Democracy, after all, cannot simply be reduced to a head-counting exercise. While elections only count each vote once, interest group representatives takes account of the intensity of citizen preferences on specific issues. Finally, many interest groups can also act as "schools of democracy" for citizens, producing in-group pro-democratic and pro-civic experiences. Similarly, interest groups can also provide arenas for citizen discourse on EU issues and can even work to generate a sense of trust or so-called social capital between members.

The value-added of including interest groups in the ECI process is not only clear but the Parliament's concerns about their threat to the ECI are overblown. There is little chance, after all, of the ECI producing the kind of disastrous results we have seen in California. Where Californian's can actually "write" binding law with their initiatives, the ECI merely puts a proposal on the table. What's more, the Commission has already vowed to block so-called "silly petitions" like abolishing the EU as well as those that are fundamentally against the spirit of the EU.⁷

But this is certainly something that the Parliament implicitly knows. The Parliament, after all, is aware of the extent to which it benefits from interacting with interest groups. MEPs depend on interest groups for providing them with a link to EU citizens and with information about citizen preferences. A 1996 survey of MEPs estimated an astonishing 67,000 contacts per year with interest groups – MEPs, it seems, tend to interact more frequently with interest groups than with decision-makers in the EU's other institutions.⁸ Clearly, rhetoric about direct democracy and safeguarding the ECI from interest groups is more of a face-saving exercise. The Parliament is of two minds when it comes to interest groups. While fully aware of how interest groups facilitate its democratic work, the Parliament nevertheless desires to be seen as the sole purveyor of democracy in the EU. This is perhaps justified given that its powers and

⁷ "EU commissioner vows to block 'silly' petitions," Euractiv, 6.5.2010.

⁸ Wessels, B. (1999) European Parliament and Interest Groups, in R.S. Katz and B. Wessels (eds.), *The European Parliament, National Parliaments and European Integration* (Oxford: Oxford University Press).

place in the EU decision-making process were hard-won and decades in the making.

Importantly, the Parliament's equivocation regarding interest groups is reflected in ECI regulations. While prohibiting interest groups from organising initiatives, the current regulations have retained an important although not altogether explicit place for interest group involvement. These "points of access" for interest groups are not loopholes that have somehow escaped the purview of the Parliament but rather reflect the Parliament's deep understanding of the role that interest groups play in linking European citizens to the EU decision-making process. The important point to make here is that keeping these points of access open and ensuring that interest groups manage to take advantage of them will be very important to the overall success of the ECI.

Interest Groups Access to the ECI

First, ECI regulations state that each initiative must be represented by a Citizens' Committee "composed of natural persons (organisers) coming from at least seven different Member States."⁹ The Citizens' Committee is meant to liaise with EU institutions on matters related to the initiative, encourage "the emergence of European-wide issues and to foster reflection on those issues,"¹⁰ as well as to provide translations of a proposed initiative into "other official languages of the Union for inclusion in the register."¹¹ Moreover, the Citizens' Committee is ultimately "liable in accordance with applicable national law for any damage that they cause."¹²

The provision for a Citizens' Committee makes initiatives without prior organisation on a European level and considerable finances very difficult. It is little wonder, then, that the first initiatives to be organised even before ECI regulations were passed came from interest groups (Green Peace and The European Disability Forum).¹³ Where individual citizens might be hard pressed to find individuals from seven member states who are willing to take up these tasks *and risks*, interest groups are well equipped. Large NGOs and trade unions have sprawling membership networks across any number of member states with many motivated representatives. Costs related to translation and the potential to be held legally responsible for

⁹ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, *Official Journal of the European Union*, 11.3.2011, preamble, section 8.

¹⁰ *Ibid.*

¹¹ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, *Official Journal of the European Union*, 11.3.2011, Art. 4.1.

¹² Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, *Official Journal of the European Union*, 11.3.2011, preamble, section 22.

¹³ Constant Brand, "MEPs look to make it easier to launch citizens' initiatives," *European Voice* 4-10, November 2010, p.1

any “damage” caused by an initiative should also not be underestimated. Interest groups with considerable resources are clearly essential to the ECI process in this respect.

Second, there are rather strict personal data requirements for all signatories of initiatives. Providing this kind of information may act as a serious deterrent to potential signatories. Initiatives organised by interest groups, however, will face far fewer problems in this respect. Any interest group with a large membership base, such as a national or supranational trade union or professional organization, already has access to this kind of information through its membership lists. Mobilising members for an initiative should be equally straightforward. After all, interest groups are mandated to represent the interests of their individual members and, thus, initiatives would necessarily reflect these same interests.

Finally, initiatives need to be formulated and presented as a sound, clear and concise policy recommendation. The only formal requirement in this regard is that organisers indicate “the provisions of the Treaties considered relevant (...) for the proposed action.”¹⁴ Interest groups will be essential, however, when it comes to the form and wording of an initiative. “Organisers may provide more detailed information on the subject, objectives and background to the proposed citizens’ initiative in an annex. They may also, if they wish, submit a draft legal act.”¹⁵ Interest groups with considerable resources, a team of policy and legal experts and clear insight into the EU policy-making process will be able to provide initiatives that tick all the boxes. Submitting an initiative with a draft legal act puts the initiative into a language that EU decision-makers can both understand and appreciate.

Ultimately, the success of the ECI in linking citizens to the EU’s decision-making process hinges on interest group involvement. It is crucial, then, that rhetoric about direct democracy does not result in more effective mechanisms blocking this involvement. More specifically, the points of access that are now available to interests groups need to be made more explicit in order that interest groups may exploit them. Bringing greater democracy to the EU cannot hinge solely on the Parliament and its MEPs. Importantly, including interest groups in the decision-making process is nothing new. Indeed, the EU has long turned to interest groups to perform a function that the Parliament has been hard pressed to fulfil. Thus, the ECI does not need to break new ground by including interest groups but rather simply hold course. The inconsistent and equivocal approach of the Parliament, however, threatens to undermine the important democratic promise of the ECI.

¹⁴ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative, *Official Journal of the European Union*, 11.3.2011, Annex II.4.

¹⁵ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative, *Official Journal of the European Union*, 11.3.2011, Annex II.