



## Background Information

"Stop TTIP" lawsuit against EU Commission at the ECJ  
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### The story so far...

- On 15 July 2014 the European Citizens' Initiative (ECI) "Stop TTIP" citizen's committee submitted its application to register the ECI with the European Commission. The initiative called for: the negotiating mandate for the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the USA to be suspended, and for the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada not to be concluded.  
For more information, visit: <https://stop-ttip.org/what-is-the-problem-ttip-ceta/>
- On 11 September 2014 the EU Commission announces that it rejected to register the ECI.
- 'Stop TTIP' launches a so-called 'self-organised' ECI. In addition, an appeal against EU Commission's rejection is to be submitted at the European Court of Justice.
- A FOIA request into the commission's rejection shows that on 18 July, two days after the application to register the ECI, the General Secretariat requests Legal Services to formulate a position. This position statement of 25 July makes reference to an earlier memo from the Legal Service dated 15 July – the day of the registration application – in which causes for a rejection are sought and tested. It appears that on the date of the ECI's submission the Commission had already decided to reject the ECI.
- By early November 2014, the Stop TTIP alliance has grown into more than 290 organisations from 23 member states, having together already collected over 787,000 signatures.

### This is how the EU Commission justifies the rejection of the ECI:

- 1. The negotiating mandate for TTIP is an internal preparatory act, and not a legal act affecting EU citizens. The act affects institutions only; not EU law directly. An ECI can only be directed at a concluded act, and not already at its preparatory stage.
- 2. An ECI proposing *not* to enforce a legal act is not possible. An ECI may be formulated only positively, i.e. work towards the enactment of a legal act.

### Why the rejection of the ECI is legally not tenable

- In its rejection, the EU Commission differentiates between legislative acts with internal effects (e.g. the negotiating mandate for an international contract) and legislative acts with external effect (e.g. the conclusion of an international contract). Neither the Lisbon Treaty (Treaty on European Union, article 11 section 4) nor in the European Citizens' Initiatives implementation framework (regulation of the European Parliament and of the Council 211/2011) refers to such differences.
- The commission claims that: An ECI may be directed at the signature and conclusion of an international contract ("the signature and conclusion of an international agreement with a given subject and content may be requested by a citizens' initiative"). This does not match the assertion that preparatory acts for international contracts may not be the subject of an ECI. This is because



even the signature of an international contract by the Council is in principle a preparatory act – the contract is actually first concluded when the ratification process is complete. Here, the EU Commission is contradicting itself.

- The EU Commission asserts that an ECI may not make proposals which reject – but there is no mention of this in the legal texts: In the regulation on the European Citizens' Initiative (regulation 211/2011), it is specified that the citizens have the right "to participate by means of a European Citizens' Initiative in the democratic life of the Union". An ECI is intended to serve the "implementation of the contracts" – for this, new regulations may be created or old regulations may be modified or repealed. There is not a syllable which indicates that only constructive, i.e. positively formulated, ECIs are to be possible. The instrument of an ECI is intended to enable lively participation at EU level by citizens – it is available to the citizens as a motive force or as a brake.
- In November 2012 the Commission permitted the ECI "Termination of Free Movement of Persons for Switzerland", also known as the Swissout Initiative. This ECI – which was later withdrawn by the initiators – had the aim of terminating the agreement on free movement of persons between the EU and Switzerland. Accordingly, it was indeed possible for an ECI to call for the termination of an already concluded contract. Yet it should not be possible in any way to call for a contract not to be concluded in the first place. Here too the Commission is contradicting its own logic.

### **Why the rejection of the ECI is a political scandal**

- Through its legal interpretation, the Commission is attempting to completely exclude its citizens from the development of international contracts: they should have no influence on their preparation. However, if international contracts are already in force, it is then almost impossible to challenge them – it is practically impossible to terminate them.
- The Commission wants to push through that an ECI can be used by citizens only to applaud decisions and schemes of EU bodies. Criticism or rejection should not be permitted, at least through official channels.
- And what is more: From the justification of the rejection, it follows that an ECI on international contracts should not be possible, even if it were formulated positively ( "...the preparatory Council decisions authorising the opening of international negotiations or repealing such authorisation do not fall within the scope of the Regulation"). The citizens want to initiate a Europe-wide agreement on the determination of occupational safety standards? Impossible – says the Commission.
- If citizens are to be active through an ECI only if the EU institutions have already made all the important advance decisions, then the instrument of the European Citizens' Initiative is almost worthless.

### **Conclusion**

- With its decision on the "Stop TTIP" ECI, the EU Commission is indicating how it envisions citizen participation at the European level: purely as an arrangement for applauding decisions which have already been made. In forward-looking questions, this means the following for its citizens: we have to stay outside. We cannot just acquiesce to this.
- The action before the European Court of Justice is about more than the registration of the Stop TTIP ECI. With Stop TTIP, the EU Commission is attempting to create a precedent in order to prevent further Citizens' Initiatives relating to international contracts, and to give the EU



institutions almost total negotiating freedom. That is a free ticket to the dismantling of democracy!

- In 2012, when the instrument of the European Citizens' Initiative was introduced after many years of campaigning by democracy activists, the idea behind it was to give citizens greater influence on EU policies and to reduce the democratic deficit at the EU level. The ECI may make a proposal, but in the end the EU Commission decides whether the proposal is implemented. If even this weak instrument is now taken away from us, there will no longer be anything that we can do in an official way to prevent democracy from being transformed into government by lobby.