

## **Response of the Secretariat of COMECE to the European Commission's public consultation on the European Citizens' Initiative**

The Commission of the Bishops' Conferences of the European Communities (COMECE) is made up of 25 Bishops delegated by the Catholic Bishops' Conferences of the European Union<sup>1</sup>. The objectives of COMECE are to monitor and partner the process of European integration, to inform and raise awareness within the Church of EU policy and legislation, and to maintain, based on the Church's social teaching, a regular dialogue with the European Institutions. COMECE has a permanent Secretariat in Brussels, which is funded by the Bishops' Conferences of the European Union.

On 11 November 2009 the European Commission published a Green Paper on a European Citizens' Initiative. The Secretariat of COMECE welcomes this new instrument as an important step towards strengthening democracy at EU level, and in contributing towards bridging the gap between the European Union and its citizens. After having consulted the Catholic Bishops' Conferences of the EU, the Secretariat of COMECE wishes to respond to the questions raised by the European Commission.

<p><b>1. Do you consider that one third of the total number of Member States would constitute a "significant number of Member States" as required by the Treaty? If not, what threshold would you consider appropriate, and why?</b></p>
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The Secretariat of COMECE shares the Commission's view that a 'significant' number of Member States must be less than a majority of Member States. Otherwise Article 11 (4) of the Treaty of the Functioning of the EU (TFEU) would have explicitly referred to the term "majority". That being said, the Commission's definition of one third of Member States appears defensible from a legal point of view. However, we believe that the European Parliament's suggestion<sup>2</sup> of one fourth of Member States is sufficient in order to ensure that the Union's interest is adequately reflected. We take the view that the definition of the threshold should also be interpreted in the light of the practical effectiveness of this new instrument ("*effet utile*"). The Commission's comparison with the situation in Austria and in Switzerland appears less convincing if one considers that a European citizens' initiative is much more difficult to organise than national citizens' initiatives.

<sup>1</sup> See <http://comece.eu/content/site/en/whoweare/memberbishops/index.html>.

<sup>2</sup> Insofar as this document refers to the European Parliament, it refers to its Resolution of 7 May 2009 on the implementation of the citizens' initiative, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2009-0389>.

**2. Do you consider that 0.2% of the total population of each Member State is an appropriate threshold? If not, do you have other proposals in this regard in order to achieve the aim of ensuring that a citizens' initiative is genuinely representative of a Union interest?**

We support the Commission's intention to fix a minimum number of signatures per Member State in the future Regulation, in order to avoid purely nominal participation, which would undermine the requirement to be representative. This minimum number should indeed be determined as a proportion of the population of each Member State.

However, the 0.2 % threshold championed by the Commission (as well as by the European Parliament) is based, in our view, on an error in reasoning. The Commission and the Parliament argue that, as the population of the EU amounts to approximately 500 million citizens and as 1 million signatures (which represents 0.2 % of the Union's population) are sufficient, according to Article 11 (4) TFEU, 0.2 % of the population could be taken as the minimum number of citizens required for each Member State.

However, this approach does not take into account the fact that many young EU citizens will not be entitled to participate in the citizens' initiative, as they will have not yet reached the necessary minimum age<sup>3</sup>, which will be fixed in the future EU Regulation. Whereas the figure of 500 million refers to the *total* EU population, the requirement of 1 million signatures only refers to EU citizens having reached the minimum age for participation.

**If one estimates the number of EU citizens eligible to participate in a citizens' initiative as being approximately 375 million<sup>4</sup>, the requirement for representation would be reached if, within each one of the necessary "*significant number of Member States*" 1/375 of citizens ( $\approx$  0.27 %) who had reached the necessary minimum age were to have signed the initiative<sup>5</sup>. Depending on the demographic situation in the Member States this threshold would be slightly lower or slightly higher than the threshold proposed by the European Commission.**

**3. Should the minimum age required to support a European citizens' initiative be linked to the voting age for the European Parliament elections in each Member State? If not, what other option would you consider appropriate, and why?**

As regards the definition of the 'minimum age', it is paramount that those citizens who may already participate in citizens' initiatives at national level are also permitted to do so at European level. Excluding young citizens from European citizens'

<sup>3</sup> See Question 3.

<sup>4</sup> This corresponds to the number of eligible voters in the 2009 European elections.

<sup>5</sup> As opposed to *1/500* of the Member States' *total population*.

initiatives at a time where they are already eligible to support initiatives in their home country could increase euroscepticism. Having regard to the situation in Member States where young citizens' already may support initiatives at the age of 16, an EU-wide minimum age of 18 years must be avoided.

We acknowledge that an obvious, reasonable and – above all – very practical solution would be to link the minimum age to the voting age in each Member State.<sup>6</sup>

**4. Would it be sufficient and appropriate to require that an initiative clearly state the subject-matter and objectives of the proposal on which the Commission is invited to act? What other requirements, if any, should be set out as to the form and wording of a citizens' initiative?**

We share the Commission's view that it should be necessary, but also sufficient, that an initiative clearly state the subject-matter and objectives of the proposal on which the Commission is invited to act. In-depth knowledge of European lawmaking must not be a prerequisite for launching a successful citizens' initiative. This, of course, does not exclude the possibility that citizens' initiatives take the form of draft legal acts or of legal provisions amending or replacing existing Articles in EU Directives and Regulations. It is indeed probable that most citizens' initiatives will try to be as precise as possible and will, therefore, use legal language in order to enhance their chances of success.

**5. Do you think that there should be a common set of procedural requirements for the collection, verification and authentication of signatures by Member States' authorities at EU level? To what extent should Member States be able to put in place specific provisions at national level? Are specific procedures needed in order to ensure that EU citizens can support a citizens' initiative regardless of their country of residence? Should citizens be able to support a citizens' initiative online? If so, what security and authentication features should be foreseen?**

In our view it is paramount that the voices of citizens from all EU Member States have the same chance to be heard. It is true that a perfect level playing field could best be realised through a full harmonisation of procedural requirements for the collection, verification and authentication of signatures by the Member States. However, we share the Commission's view that *full* harmonisation – even if it were setting lower procedural standards than those in place for existing citizens' initiatives at Member States level – is likely to come into conflict with specific and important national situations. We therefore take the view that the Commission's approach of establishing only a certain number of minimum requirements in the future EU Regulation without

<sup>6</sup> However, those who propose an EU-wide minimum age of 16, such as the Czech Bishops' Conference, may also have a point, as a minimum age of 16 might help to encourage young citizens to get involved in European affairs and, thus, to contribute to bridging the gap between the European Union and its young population.

going into the procedural details is reasonable.

**However, we would like to ask the Commission to take into account the specific situation of Member States where there is no universal means of readily establishing the identity of a signatory.** To give an example<sup>7</sup>, in the UK the Government has ruled out introducing identity cards before 2015. Around 12 million individuals have no passport, many of them do not have a driving license. The only available mechanism for verification of citizens' identity is therefore the Electoral Register. However, the Register does not exist in a centralised form but is compiled and stored at the level of local government. The expense of cross-referencing individual signatories with copies of individual local registers – a process which the Commission envisages as the responsibility of national authorities – would be considerable and places a heavy financial burden on the UK Government, which would effectively be required to offer blanket subsidies to anyone wishing to organise a citizens' initiative. Signatories would also face travel difficulties and expenses since, whereas in other EU Member States it might be possible to sign an initiative anywhere in the country, in the UK it would be necessary to return to the place of registration in order to sign.

**We think that citizens should be able to support a European citizens' initiative online.** This would reduce the costs to citizens of signing an initiative and facilitate participation of EU citizens' residing outside the European Union. However, in the light of Internet usage varying widely in the EU, from 36% in Romania to 89% in Sweden, the Commission should give some thought to how a level playing field regarding the collection of signatures in different Member States can be ensured.

**6. Should a time limit for the collection of signatures be fixed? If so, would you consider that one year would be an appropriate time limit?**

In view of the complexity of a European citizens' initiative involving a significant number of Member States, differing procedural environments and languages, we agree with the European Parliament's suggestion to fix **one year as an appropriate time limit for the collection of signatures** by the organisers of the initiative.

**The one-year period should start on the first working day following the day on which the European Commission has officially confirmed the admissibility of the proposed initiative.**<sup>8</sup>

**7. Do you think that a mandatory system of registration of proposed initiatives is necessary? If so, do you agree that this could be done through a specific website provided by the European Commission?**

<sup>7</sup> Example given by the Bishops' Conference of England and Wales.

<sup>8</sup> For more details regarding the requirement of an admissibility decision by the European Commission, see the response to the next question.

As initiatives can only concern policy areas where the Commission has the power to act, it will be necessary for them to be registered to determine whether this condition is being met.

**Contrary to the considerations of the European Commission, we are firmly convinced that such a registration process *must* involve an ex-ante decision by the European Commission or – preferably – by an independent EU body<sup>9</sup> – as to the legal admissibility of the proposed initiative.** It would be unacceptable for the organisers of a citizens' initiative to collect 1 million signatures in the course of one year, only to be informed at the very end of the campaign that the initiative cannot be admitted as the Commission is not competent to deal with the matter. It would moreover be economically unreasonable – if not irresponsible – to launch the whole authentication and verification machinery of EU Member States for every – including even the manifestly inadmissible – citizens' initiative, before the European Commission has taken a stand on its admissibility.<sup>10</sup>

We do not share the Commission's view that it is "*sufficiently clear*" for the average EU citizen (for whom the citizens' initiative has been designed, but who is *not* an expert in EU law) to determine whether an initiative is admissible. According to the European Parliament's Resolution of 7 May 2009 a positive admissibility decision depends on whether the Union has legislative competence, whether the Commission has the right to submit a proposal in the matters concerned, and whether the requested legal act is not manifestly contrary to the general principles of law as applied in the Union.<sup>11</sup> These questions might, however, be difficult to answer for EU citizens. There are many examples where the European institutions have come to different conclusions as to whether a subject-matter falls within the framework of the Union's legislative competence and the Commission's powers.<sup>12</sup> These questions have often preoccupied even the European Court of Justice. This demonstrates that the answer is not always obvious.

**It is absolutely paramount that the organisers of a citizens' initiative are neither expected to dispose of a legal service specialised in EU lawmaking, nor should they feel compelled to hire specialised lawyers in order to ensure that the admissibility criterion is met.**

However, even if one follows the Commission's argument that the determination of the Commission's competence is "*sufficiently clear*", there would be no compelling reason why the European Commission (or – preferably – an independent body) could not examine and decide on the admissibility of the initiative *before* the signatures are collected. We share the Commission's view that the admissibility and substance of citizens' initiatives cannot be seen in isolation. However, the substance of each citizens' initiative is known from the start, and the legal assessment of the

<sup>9</sup> One might consider increasing the competence of the European Ombudsman in this respect.

<sup>10</sup> This appears, however, to be the Commission's approach. See p. 12 of the Green Paper: "Once the required number of signatures for a citizens' initiative has been collected **and they have been validated by the relevant Member States' authorities**, the organiser can formally submit the initiative to the Commission."

<sup>11</sup> See Recital T of the European Parliament's Resolution.

<sup>12</sup> There is a lot of truth in the German saying "two lawyers, three opinions".

admissibility of a citizens' initiative does not depend on the number of signatures being collected during the campaign.

Furthermore, we do not believe that an early admissibility decision would lead to confusion, indeed quite the contrary: it would avoid confusion. We do not see a danger that a positive admissibility decision might be misunderstood as a "green light" as to the merits of the initiative. It can be made unequivocally clear in the text of the admissibility decision that the fact that an initiative is admissible does not mean that the Commission is willing to embrace its objective.

That being said, we acknowledge that, as EU citizens become used to citizens' initiatives and make increasingly use of this instrument over the coming years, checking the legal admissibility of initiatives which have not yet collected any signatures and which sometimes may have been launched only for publicity purposes, might represent a considerable burden for the administration of the Commission or that of the independent EU body dealing with the examination of citizens' initiatives. Theoretically, citizens' initiatives could even be launched with the sole intention of obtaining legal clarification of the Commission's competence in a specific area (and to use this information for other purposes). We recommend that after some years of practical experience the European Commission considers whether to revise its future Regulation by including a **threshold of 1000 signatures** that must be collected in order to trigger an admissibility decision by the European Commission or the independent EU body created for this purpose.

**Last but not least, we support the suggestion of the European Parliament to foresee in the future EU Regulation the possibility for the organisers of a citizens' initiative to appeal against any inadmissibility decision – or the absence of a decision within the time limit prescribed in the Regulation – before the European Commission and – assuming the Commission does not revise the decision – before the Court of Justice of the European Union.<sup>13</sup> This would strengthen the credibility and efficiency of the new instrument.**

**8. What specific requirements should be imposed upon the organisers of an initiative in order to ensure transparency and democratic accountability? Do you agree that organisers should be required to provide information on the support and funding that they have received for an initiative?**

We welcome the Commission's suggestion that the organiser(s) of a citizens' initiative should provide certain basic information in relation to funding and the organisations that support the initiative financially. The level of detail to be provided by the organisers of a citizens' initiative should, however, be reasonable so as to ensure that the *average EU citizen*, who is not an expert in financial accounting, will be able to fulfil the requirements laid down in the future Regulation. As a general rule, when imposing requirements upon the organiser(s) of a citizens' initiative the Commission should be guided by the capability of the 'average EU citizen' to fulfil

<sup>13</sup> See Annex 5 e) of the Resolution of the European Parliament of 7 May 2009 on the implementation of the citizens' initiative.

the requirements.

**9. Should a time limit be foreseen for the Commission to examine a citizens' initiative?**

Yes. As regards the determination of the time limit, we support the **two-step approach of the European Parliament** according to which the European Commission should dispose of 2 months to verify the admissibility of a citizens' initiative *before* the collection of signatures and another 3 months to examine the merits of every initiative after having collected 1 million validated signatures.

We could also imagine a longer time limit for the admissibility check (e.g. 3 months), as this may in some cases be a difficult legal question. As regards the second step, a time limit of 3 months to examine the merits of the citizens' initiative appears sufficient, as citizens' initiatives approaching the 1 million signatures threshold will already have triggered a certain level of awareness and opinion building inside the European Commission even before the collection of the 1 million signatures has been completed.

**10. Is it appropriate to introduce rules to prevent the successive presentation of citizens' initiatives on the same issue? If so, would this best be done by introducing some sort of disincentives - or time limits?**

On the grounds of administrative simplicity a ban on duplicate initiatives might seem desirable at first sight. But such a ban would also grant a level of "ownership", control, and even prestige, to the first organisation able to register a particular initiative. This would not necessarily be the most representative organisation. It may even be an organisation that is hostile to the success of the particular initiative it has registered. In the latter case preventing the successive presentation of citizens' initiatives on the same issue could lead to "faked" initiatives launched with the sole aim of blocking a certain proposal.

In addition, banning duplicate initiatives would serve to dishearten organisations that might otherwise have contributed to the vibrancy of the democratic process through their participation.

One efficient way of preventing such discouragement as well as "faked" initiatives would be for the Commission – or an independent body – to determine which initiatives duplicate one another and to accept all signatures appended to all of these duplicates as counting towards one total.

In addition, the Commission should consider the possibility that two diametrically opposing initiatives, where both are admissible from the legal point of view, may each obtain 1 million signatures and create a dilemma for the Commission – or the independent EU body – as to the correct response. It would be helpful in this context if the Commission could *inform* the organisers whether a new initiative is related to existing, already registered initiatives.