



**CONTRIBUTION BY ECAS TO THE HEARING
OF THE PETITIONS COMMITTEE ON
CITIZENS INITIATIVES**

BRUSSELS, 27 JANUARY 2010

RESPONSE BY ECAS

To the Green Paper On a European Citizens' Initiative (COM (2009)622 final)

ECAS welcomes the introduction of citizens' initiatives if EU level under article 11 of the Lisbon Treaty and the Commission's "green paper" which raises questions about how to put the Treaty into effect with a regulation. Our response to these questions and suggestions on other issues which are not addressed in the "green paper" results from research done in 2004 and participation in hearings organized by the Committee on Constitutional affairs before the adoption of the Kaufmann report.¹ Our replies are also guided by a sense that this new instrument holds out promise to involve citizens directly in European integration, but that there is also a risk of frustrating those expectations.

On the one hand, this new instrument and the process of collecting over 1 million signatures across the Union is European Citizenship in action. For over a million signatures to be collected over a significant number of countries, the issue has to be one on which there is a genuine European public opinion and a sense of common citizenship and objective. In turn, success depends on a vibrant civil society co-ordinating the efforts to gather signatures, operating at different geographical levels and able to articulate the demand towards the European Commission and the other Institutions. Citizens' initiatives will strengthen the development of a European civil society. A European umbrella body becomes more than a co-ordination of national associations and through them has a link to individual members and the public at large.

At the same time, there are a number of obstacles to achieving such an objective which should be taken into account by avoiding an over regulatory and burdensome approach. If the requirements are too high, few citizen initiatives would be genuinely citizen-based.

There is a combination of obstacles promoters of citizens' initiatives on a European scale have to overcome:

- Internal organisation
Whilst 1 million signatures is a low threshold by comparison with national systems, comparisons with collecting signatures in one country are not always valid. It is much more difficult with differences in language, culture and organisational structures in civil society to launch a European initiative than a national one.
- Issues are rarely equally topical across EU 27
Ideally, a topical issues would be topical across the Union at the same time, so that the volunteers and organisations collecting signatures do not need to go into time-wasting explanations. Except for certain high-profile issues, this is though rare. There is often a time lag between an issue coming up in one country and then crossing borders.

¹ European Citizens initiatives, November 2004

- Initiatives have to be within the legal competence of the EU
The issue has to be both in the public eye and one on which the European Commission has the legal competence under the Treaties to act, or at least on aspects of the issue. Opportunities to achieving this link between public opinion and a Europe capable of achieving results are not as common as protagonists of participatory democracy could like to believe. Moreover, the promoters of the initiatives are taking a risk since there is no guarantee that the Commission will act.
- EU legislation can have a varied impact
The impact of issues which could be taken up by citizens' initiatives is very different depending on the characteristics of different countries or regions, patterns of production and more or less advanced existing national rules which increase or reduce the demand for European intervention. As a result, there are bound to be differences in the degree of involvement and enthusiasm for the initiative by citizens and civil society.

Another reason for the European Commission to opt for the minimum number of safeguards and conditions and to facilitate the presentation of citizens' initiatives is that the European Parliament and Council may add new ones. At least the Commission should be aware of the danger and that the end result could be a regulation which defeats partially its own purpose and severely restricts the use of this new instrument. It would be better to err on the side of keeping conditions to a minimum and allow for example for a revision after 5 years so that if necessary there could be some tightening of the rules in the light of experience. It is difficult to strike the right balance and therefore a revision clause appears desirable. The Green paper does not mention this option.

The following are ECAS' replies to the questions put with additional observations on some points:

1. **Q. 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?**

In practice there is not a significant difference between the Commission's proposal for one third = 9 member states or the European Parliament's for one quarter = 7 member states. In the light of our introductory remarks and bearing in mind that some EU-wide measures nevertheless have a particularly uneven impact, (i.e. they concern particular types of regions), it would be preferable to accept the European Parliament position.

2. **Q. Do you consider that 0.2% of the total population of each member state is an appropriate threshold?**

It depends on the total number of member states from which signatures are collected. But, to meet the minimum threshold, our answer is "yes" because this is the position of both the European Parliament and Commission and there are no grounds for objection.

3. Q. 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?

Yes, since this is the position of both the European Parliament and the European Commission and there does not appear to be an alternative which would command support. This is one issue which could, though, be reviewed after 5 years in the light of practice. There may well be more support for the idea that European citizens initiatives should give the younger generation the chance to play their role in the building of Europe and lower the age to 16.

4. Q. 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?

The Commission should propose a standard form so that the organisers of the initiative can set out the title and objectives of their proposal and its legal basis in the Treaties. It is in their interests and they should be encouraged – not necessarily obliged – to go further and draft the main provisions of a legislative proposal. This is not a mass petition, but a right of initiative for citizens, equal to that granted under the Treaties, to the European Parliament. The organisers of citizens' initiatives should benefit from technical and legal support. That is one reason why ECAS is proposing the creation of a European civil society house.²

5. Q. Do you think that there should be a common set of procedural requirements for the collection, verification and authentication of signatures?

This part of the green paper is the most complex and at times almost contradictory. The European Parliament answered this question in the negative suggesting member states should verify signatures. The European Commission goes partly in the same direction, whilst also concluding that in view of the differences in national procedures and the impossibility of harmonising them, "a more rational option could be to set a number of basic provisions at EU level." The main methods of collecting signatures could be on the one hand collecting them in the street and in public places, and on the other through electronic communication. For electronic signatures, the requirements should be in any case European since the national boundaries have no meaning. A possible approach which would not impose prohibitive burdens on the organisers and deter citizens from signing could be to place the duty on the organisers to show that they have collected and checked signatures, for the Commission to carry out spot checks and if systematic violation of the rules is suspected, work with the authorities of the member states to investigate further.

6. Q. Should a time limit for the collection of signatures be fixed?

In the study done in 2004, ECAS was against time limits because in any case "it is in the interests of the organisers to achieve momentum and present the initiative as soon as possible." Most experts however were in favour of time limits in the hearing organised by the European Parliament, so ECAS changes its position.

² The explanation of this initiative can be found on the ECAS website – www.ecas-citizens.eu

Many however make the point that to some extent the process of discussion and interaction in drawing up an initiative is as important as the outcome. Moreover, considerable discussion and debate are necessary especially in countries where the issue is not perceived as topical as it may be in others. One year may be too short to take into account for a European project and the need to build up support in some member states. 18 months would be preferable.

7. Q. 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?

Whilst making this proposal, the Commission is at pains to stress that it should not amount to giving any kind of approval to the initiative. However, any system of official registration is likely to give rise to confusion and is open to abuse and claims that the initiative is somehow supported by the Commission which would make the collection of signatures easier. There is also a potential confusion of roles in the suggestion of using the Commission's website or even a specific website it provides, for this purpose. ECAS does not believe that a system of registration is needed to establish the deadline for collecting signatures, the date of the first signature being sufficient. It would be enough to have an optional system of registration under an independent website provided for example by the European civil society house. Such an intermediary organisation between the Commission and the organisers can provide the latter with legal advice and guidance as to the best way to make their initiative acceptable.

8. Q. What specific requirements should be imposed on organisers?

The spirit of the Treaty reform was to give a place to citizens to make their voice heard. Therefore it should be possible to create some safeguards against this instrument being hijacked by lobbies and special interests. This can be done by making it clear in the regulation that organisers should be not-for-profit organisations independent of commercial interests, political parties and governments. Moreover, as proposed by the Commission, the organisers should be obliged to declare fully all sources of funding.

The Commission is probably right not to propose the setting up of a fund for citizens' initiatives at this stage, even though it is perfectly possible to envisage mechanisms of financial support which would respect the independence of the initiative. Experience will show whether or not lack of financial support is a real barrier to genuinely Europe-wide citizens' initiatives. At the same time as asking for signatures, organisers can raise funds from the public. There are some European funding instruments, such as the Europe for citizens' programme, which might provide indirect support, for example for meetings and exchanges across member states. The question of funding should be reviewed after 5 years of experience with citizens' initiatives.

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

There can be no objection to the idea of an obligation on the Commission to respond (other than just examine) a citizens' initiative within 6 months at the latest. It has to be accepted that the Lisbon Treaty does not put an obligation on the

Commission to accept a citizens' initiative and as a result many observers interpret this new instrument as little more than a mass petition. It will take more than imposing a time limit on the Commission to convince such doubters, and also to motivate potential organisers.

ECAS has three further proposals to achieve a better balance between the citizens, on the one hand, and the Commission's right, on the other, to preserve its freedom of initiative.

Firstly, although the Commission receives the initiative, the European Parliament which represents citizens should not be sidelined. This would also have the disadvantage of creating tensions between the principles of participatory and representative democracy, which should on the contrary reinforce each other. Therefore, in its study of 2004, ECAS made the following proposals, which it maintains.

“A reformed committee on petitions and citizens initiatives could be a forum where the protagonists of the initiative could first present their proposals. Representatives of the appropriate Commission departments and specialised parliamentary committees would be present. MEPs have the skills to interpret the invitation coming from the citizens, to advise them about the best way to put their arguments and at the same time to be their advocates with the Commission. This early public assessment would help clarify the technical drafting issues of Union competence and give the protagonists not only a sense of how the Commission will react but the legislative Institutions of the Union as well.”

Secondly, the regulation should set out the requirements on the Commission in terms of accountability towards the organisers of the citizens' initiative by providing them, within the time limit, with a reasoned position for endorsing the initiative and following it up, accepting parts but not the proposal in its entirety, or rejecting it.

Thirdly, the regulation should include the suggestion made in the European Parliament's report that “the Commission invites the initiative's organisers to a hearing and gives them an opportunity to explain in detail the matters raised in the initiative” The regulation should make it clear that when the Commission follows the initiative and proposed draft legislation, the organisers should be given an opportunity of similar hearings with the European Parliament and the Council of ministers. The justification for this is that aspects of the original initiative may be overlooked in the process of amending and reaching compromises among political groups and member states.

10. Is it appropriate to introduce rules to prevent the successive presentation of citizens' initiatives on the same issue?

Such a danger may be more theoretical than real and could be left for further consideration until after the first 5 year period of operation of citizens' initiatives. In principle, ECAS would be against such rules on the grounds that repeated attempts after a refusal by the Commission would in any case be unlikely to obtain the necessary public support.

More importantly, however, the Commission's green paper is silent on rights of appeal, even though the European Parliament in its opinion does address this issue. The Commission has the right not to present a legislative proposal following an initiative, and that right is not subject to challenge. On the other hand, the organisers should have a right of appeal either to the European ombudsman or to the European Court of first instance as to the grounds for the Commission's decision and the way it was reached.

Just as the regulation on access to documents contains rights of appeal internally within the Commission as well as to the external bodies, so should the regulation on citizens' initiatives contain such rights.

ECAS would like to stress that although initiatives have been tried before the entry into force of the Lisbon Treaty, no one can really tell how this new instrument will work in practice. Hence, the idea of a review clause so that the rules can be as light as possible leaving open the possibility of adding to them in the light of experience, if this proves necessary.