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GREEN PAPER

The European Citizens' Initiative (COM (2009) 622 DEF.)

Enel S.p.A. is the largest Italian power company and the second largest European utility for installed capacity. It produces, distributes and sells electricity and gas across Europe, North and Latin America. The company has approximately 82.000 employees and operates a wide range of hydroelectric, thermoelectric, nuclear, geothermal, wind, and photovoltaic power stations. Enel S.p.A. is present in 23 countries with approximately 95.000 MW of generating capacity. It serves approximately 61 million electricity and gas customers. Listed on the Milan (I) stock exchange since 1999, it has the largest number of shareholders of any Italian company, approximately 1.2 million retail and institutional investors. Its shares are part of the MIB30 index (for further details please see www.enel.com).

Introduction

The Lisbon Treaty signed in Lisbon on 13th December 2007, modifying the Treaty on European Union and the Treaty establishing the European Community, foresees the introduction of an important means of democratic participation in which not less than one million EU citizens "*who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties*" (Article 11 comma 4, Consolidated Version of the Treaty on European Union).

This introduction of participative democracy within the traditional policy-making process in European politics aims to guarantee the conditions for open and efficient public consultation capable of producing shared decisions.

Enel S.p.A. positively values this new development introduced by the Lisbon Treaty, in that it provides civil society with both the possibility of developing a conscious position on relevant European issues as well as exercising legislative power through inviting the Commission to present a normative proposal on relevant European issues through an inclusive and participative process for citizens.

However, exercising this abovementioned right has to be well-balanced and managed in order to:

- a) Permit special interest groups to raise interest regarding their proposal amongst a wider number of European citizens than their own membership, thus avoiding a Citizens' Initiative becoming a tool by which such groups can exert direct pressure on European institutions.
- b) Avoid otherwise ending the distinction between legislative bodies and *stakeholders*, with the resultant possibility of institutions being instrumentalised by associations and companies.

On the basis of the above points, we view it is extremely important that the regulations in question expressly provide the Commission with role of evaluating whether proposed initiatives respect the central principals of the Treaty on European Union, including both the four fundamentals of freedom of internal markets and the freedom of economic activity as covered by Article 81 onwards of this Treaty. Future regulations also have to establish clear norms governing the procedure's transparency and legitimacy to guarantee coherence between a proposed initiative, the object of the general volition expressed in voting, and the final act of presenting/registering a draft law. Furthermore, it is appropriate to carefully determine the precise number of European citizens required to present such proposals.

Responses to the Consultation Topics

1. Would a third of the total number of Member States represent a "significant" number as required by the Treaty? If not, what would constitute an acceptable threshold and why?

The Lisbon Treaty states that not less than one million citizens presenting an initiative must come from a "significant" number of Member States. This term leaves ample margin in defining the most appropriate

threshold. On this basis, Enel S.p.A. holds that the threshold of one third of Member States identified by the Commission is best suited to guaranteeing that an initiative is sufficiently representative of a European Union interest.

2. Would 0.2% of the population of each involved Member State represent an adequate threshold? If not, which other solutions would guarantee that a Citizens' Initiative is fully and sufficiently representative of a European Union interest?

We fully share the Commission's concern regarding the need to guarantee that a reasonable number of European Union interests are represented by establishing a minimum number of participating citizens in a minimum number of Member States. This number should be established as a percentage and not in absolute terms. On this basis, we hold that 0.2% is an appropriate value. The regulation in question, moreover, has to clearly state that 0.2% is, alone, insufficient to satisfy the minimum requirements for presenting an initiative unless the necessary minimum number of Member States (i.e. one third) is also met. So, for example, on this basis an initiative supported by one million citizens representing 0.2% of the population of six Member States could not be judged as acceptable by the Commission.

3. Should the minimum age to support a European Citizens' Initiative be set at the same level as that required in to vote in European elections in any given Member State? If not, which system would be appropriate and why?

In order for the procedure to be both standardised and administratively efficient (perhaps by foreseeing an *ad hoc* age for participation in a European Citizens' Initiative), we hold that the regulation in question has to foresee the minimum age for supporting a Citizens' Initiative as corresponding to that established by each Member State for European elections. Firstly, this would provide the benefit of harmonising the minimum age to participate in Initiatives (in all Member States except one, the minimum age is 18 years old). Secondly, it would not create additional administrative burdens in that no modifications would be required to Member States' existing electoral registration systems.

4. Would it be both sufficient and appropriate to stipulate that an initiative clearly announces its theme and objective in asking the

Commission to act? Which other requirements would eventually need to be defined regarding the nature and composition of a Citizens' Initiative?

A Citizens' Initiative has to be presented as a written draft project accompanied by an explanatory memorandum and corresponding economic impact analysis. We hold that a simple declaration of an Initiative's theme and objective is insufficient. Adopting a legal form for Initiatives would guarantee transparency and certainty when collecting signatures, so providing citizens with a clear evaluation tool and the guarantee of results. On this basis, the Commission should not substantially modify the proposed text, instead intervening to correct only aspects of a technical nature. In the case that the promoter committee are not in agreement with merging their proposal with Initiatives previously presented to the Commission, the Commission, providing required information to the project subscribers, would have the full mandate to either draft a text respecting the requests of the Citizens' Initiatives or to merge the texts of numerous Citizens' Initiatives on the same theme.

5. Would a series of common procedural prerequisites applicable to the collection, verification and authentication of signatures be fixed by Member State authorities on a European Union level?

To which extent should Member States be able to provide specific arrangements at a national level?

Are specific procedures required to guarantee EU citizens the ability to support a Citizens' Initiative from outside their country of residence?

Should citizens be able to support a Citizens' Initiative online? If yes, which security and authenticity measures are foreseen?

In order to guarantee a transparent, non-discriminatory and reliable process, the regulation in question has to establish common rules for each phase of the process. This will serve to avoid any eventual discrepancies created by differing legal sensibilities between Member States, as well as in reaching a corresponding level of harmonisation.

The authentication phase requires particular attention, with it being appropriate to include a notary or other public official. This should also

apply to the verification and regularisation of the signature collection procedure, which must be requested from the relevant and appropriate bodies within each Member State. Member States, therefore, have the task of producing specific norms identifying, for example, bodies best suited to the authentication and verification of signature collection following the division of competencies within their legal system. While the regulation in question regarding providing tools of participative democracy fixes the rules for a uniform procedure throughout the EU area, national norms are required to complete the specific provisions that need to be adapted to each Member States' organisational characteristics.

Subscription to an Initiative is considered regular if made by a person holding EU citizenship, even if resident in another Member State. On this basis, the existing procedures relating to expatriates for parliamentary and/or European elections can be used. Moreover, the already foreseen possibility of on-line subscription could facilitate participation in Citizens' Initiatives, assuming the personal identity of those signing the electronic document can be guaranteed, for example through the use of digital signatures.

6. Should a time limit be set for the collection of signatures? If yes, would a one-year period be appropriate?

It is preferable to determine a relatively brief period, ideally six months, for the collection of signatures. This will avoid the objective of any given Initiative losing relevance, either following "traditional" legislative initiatives on the same theme or changes in circumstances (for example in cases such as environmental, public health or consumer rights issues). In fact, a collection period in excess of six months risks starting a process which is both costly and unable to achieve its stated aim due to the effect of very often unpredictable external circumstances.

7. Is an obligatory registration system necessary for proposed Initiatives?

If yes, is it acceptable that this registration can be made using a dedicated internet site provided by the European Commission?

There is clear benefit to a registration system for Citizens' Initiatives requiring registration data, the themes in question and the proposed legislative initiative. This would provide a valid instrument to monitor Initiatives and avoid the proposal of legislative initiatives on the same

topic. Additionally, it would also establish a clear date from which the time limit for signature collection would begin (six months in our proposal). Such a register should be public, accessible to both the Commission and citizens alike, the latter being invited to consult it before proposing any Initiative. Failing to consult this public register and hence proposing an already-existing legislative initiative should bring about both the non-admissibility of the duplicative initiative as well as the application of economic sanctions for its organisers.

8. Which specific conditions would be imposed on the organisers of an Initiative to guarantee transparency and checks on democracy?

Is it desirable for organisers to be required to provide information on help and financing received regarding the Initiative?

As highlighted by the European Parliament in its resolution of 7th May 2009 (INI/2008/2169), *"the citizens" initiative is a means of exercising public sovereign power in the area of legislation and is subject, as such, to the transparency principle; this means that the organisers of a Citizens' Initiative must publicly assume accountability for its funding, including the sources of that funding"*. On this basis, it is worthwhile foreseeing the obligation for organisers of Citizens' Initiatives to sign the register of interest representatives as outlined in European Commission Communication COM (2008) 323: "European Transparency Initiative - A framework for relations with interest representatives (Register and Code of Conduct)". This would allow citizens, who have direct access to this register, to understand not only which general or specific interest groups are endeavouring to influence the European institutions' decision-making process but also which human and financial resources are being used to this end. The regulation in question has to expressly indicate that information pertaining to both financing and any other type of help received during the signature collection campaign must be included for the purposes of signing this register. The register is signed by those carrying out interest representative activities, i.e. activities carried out with the aim of influencing the European institutions' elaboration of policy and decision-making process. Above all, signing the register involves the relevant party adhering to the principles and norms of the Code of Conduct. This specifically includes: the obligation of declaring their interests and, if appropriate, the interests of their clients or members; guaranteeing that, to their knowledge, the information provided is

objective, complete, up-to-date and not misleading; and providing accurate information to avoid misleading third parties or EU personnel. Violations of this Code are subject to claims on the part of citizens. Moreover, such violations will also be subject to the initiation of administrative procedures on the part of the Commission, up to and including exclusion from the register, therefore creating the impossibility of promoting further Initiatives.

9. Is a specific time limit foreseen for the European Commission to evaluate a Citizens' Initiative?

In order to assign a clear time limit to the completion of the whole process, we consider it necessary to have a specific time limit foreseen for the European Commission to evaluate an Initiative. In this period, which should not exceed three months, the Commission should evaluate a proposal's formal regularity and substance on the basis of its legislative initiative. To this end, the Commission should evaluate: whether the proposed legislative initiative is in accordance with the principal tenets of the Treaty; that all involved parties satisfy the necessary relevant criteria; that the initiative is supported by no less than one million EU citizens; that these citizens represent not less than one third of the Member States; that no Citizens' Initiatives have previously been proposed on the same theme; and that the Initiative has not previously been rejected as against the principal tenets of the Treaty. In parallel, the Commission should evaluate if the Initiative's promoters possess the relevant competencies to present a legislative initiative on the theme in question.

10. Is it correct to introduce rules to avoid Citizens' Initiatives being respectively presented on the same theme?

If yes, would the best method to avoid this risk be through introducing dissuasive mechanisms or mandatory deadlines?

Please refer to the answer provided to question 7 above.

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