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Do not kill the European Citizen Initiative in Bureaucracy

Dear Madame, Sir,

Please find attached the contribution of European Federation of Public Service Trade Unions (EPSU) to the Commission Green Paper on a European Citizens' Initiative COM (2009) 622 final Brussels 11.11.2009.

Our response is accompanied by a legal opinion on what a possible Citizens' Initiative could demand of the European Commission, something on which the Commission itself remains silent. The opinion is written by Professor Markus Krajewski (Universities of Potsdam and Bremen)

We are concerned that the European Commission (as well as the European Parliament in its report) imposes a range of burdens on the organizers of an Initiative which each separately appear justified but which taken together make the organization of a Citizens' Initiative not an easy matter. Both the European Commission and European Parliament do give the impression that they regard the Initiative as an unwelcome burden on their work by making it difficult for the organizers to achieve success despite statements to the contrary.

There seems also to be confusion between the ECI – a non-binding Agenda setting outcome – and a Referendum. We should not forget that when an ECI will demand of the Commission to introduce a legal act, this will still have to be going through the mills of the normal procedures, seeking to achieve support in the EP and the Council of Ministers. The Commission will keep at all stages its position to comment, amendment and even reject the act. But it should not shelf it before Parliament and Council have had an opportunity to also express themselves.

The forthcoming regulation should provide clarity on what type of legal act can be proposed, on the requirements for registration, on the support the organizers can expect and on the Commission action following a successful ECI.



The contributions of EPSU can be published and we are welcome to participate in any further discussions might the Commission organise these.

Yours sincerely,

A handwritten signature in black ink, which appears to read 'J. Goudriaan', written in a cursive style.

Jan Willem Goudriaan
EPSU Deputy General Secretary

**Contribution of EPSU
to the Commission Green Paper on a European Citizens' Initiative.
COM(2009) 622 final Brussels, 11.11.2009**

Do not kill the Citizens' Initiative in Bureaucracy

Launching the public consultation, Commissioner Margot Wallström promised
"the new democratic tool must be accessible, transparent and user-friendly"

The European Federation of Public Service Trade Unions (EPSU) welcomes the publication of the Commission Green paper on a European Citizens' Initiative following the signing of the Lisbon Treaty. It is time that the Commission (and Parliament and Council) provide clarity on the ECI.

Guiding our response to the Green Paper are:

- The organization of a European Citizens' Initiative should be easy and citizens' friendly. Citizens and their organizations should not be facing undue bureaucracy, or such obstacles which will make it neigh impossible for citizens to undertake such an Initiative. Requirements which will force organizational burdens on citizens will in effect mean that only powerful and resourceful groups (loaded with money) can undertake the Initiative. It is then no longer a Citizens' Initiative. And while many requirements and thresholds can be justified individually, it is their cumulative nature that risks burying the European Citizens' Initiative.
- The Citizens' Initiative is not a European Referendum. However, the more stringent the requirements, the more the European Commission (and Parliament and Council) should be obliged to follow and implement what the signatories of a successful Initiative ask.
- The proposed Regulation should furthermore be clear on how the Commission is to act. As the legal study (commissioned by EPSU) indicates there is considerable uncertainty on this, even to the extent that the Commission does not have to act or that the Commission can change the objectives of the Initiative. An appeal procedure needs to be in place.
- The European Citizens Initiative is a new European instrument. The elaboration of this instrument should therefore also be European, with European rules. Only then will the ECI lead to more European debate and a more European public space.

1. **European Citizens' Initiative – Treaty Text**
2. **Do not give credence to cynical views**
3. **What is missing?**
 - 3.1 ***How will Commission Act ?***
 - 3.2 ***Amendments to the Treaty***
 - 3.3 ***What support can organizers expect ?***
 - 3.4 ***Specialised legal advice when ECI has been successful***
4. **Some comments on the EP report on the ECI**
5. **Answers to the Questions posed by the European Commission in its consultation**

1. European Citizens' Initiative

The Lisbon Treaty introduces the European citizens' initiative. Article 11.4 states that *"not less than one million 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"*

As the Commission states the Citizens' Initiative has the potential to give a stronger voice to European Union citizens. The Citizens' Initiative would give citizens the right to call directly on the Commission to bring forward proposals which citizens consider important.

2. Do not give credence to cynical views

The Commission is not outspoken in the Green Paper what it will do with an Initiative. The Treaty text says only that the Commission can be "invited" to act. The Commission could therefore just table an Initiative in the College of Commissioners and kill it there when the Commissioners believe that it is not appropriate to act, even if they publish their reasons for doing so in a Communication. This will undermine the legitimacy of the Initiative. **The Commission should be clear that it will act and bring forward the demand of the organizers and signatories to the European Parliament and Council. The legal opinion commissioned by EPSU underlines that the Commission leaves considerable uncertainty on this point that needs to be clarified in the Regulation.**

This does not take away the prerogative of the Commission to initiate and act. The Commission can still provide its opinion in an accompanying paper to the European Parliament and Council.

There should also be the possibility of the organizers **to appeal against a decision of the Commission** if it will not take forward the Initiative or if the Commission substantially changes the nature of the Initiative according to the organisers.

For example; the organizers could argue that the European Commission is to commit to high public health care standards and is to promote public health care provision. The Commission could respond by seeking to liberalise the health care market and introduce competition arguing in a malicious way that this would promote such high standards and public health as the organizers request whereas the Commission initiative is the contrary of that the organizers seek to achieve.

Such an appeal procedure needs to be with an independent organism which does not hold a stake in the issue, for example the **European Ombudsman**. Its decision would have to obtain a binding nature; or alternatively it will be the European Court of Justice as it concerns a decision of the Commission.

We realize that an Initiative can be repulsive and can conflict with the **values** the European Union stands for, including its democratic nature. As the legal opinion commissioned by EPSU argues there are sufficient safeguards build in, such as that Parliament and Council would have to co-decide as well as that the initiative can not be against the **values** of the Treaty.

3. What is missing?

3.1 *How will Commission Act ?*

3.2 *Amendments to the Treaty*

3.3 *What support can organizers expect ?*

3.4 *Specialised legal advice when ECI has been successful*

3.5 *Review*

3.1 *How will Commission Act?*

As argued above, the Green Paper is silent on how the Commission will or should act in case a Citizens' Initiative proposes legislation that the Commission so far has disagreed with, even if possible and based on the Treaty, existing legislation and European Court of Justice rulings.

An example would be a social clause in the public procurement directives. The Commission has effectively argued against this during the revision of the Directives. The Commission adopted a very narrow interpretation, whereas others and including in the European Parliament sought a broader scope.

For the Citizens' Initiative to be credible and achieve legitimacy the Commission should act in accordance with the demands of the organizers, also when the Commission, European Parliament and/ or the Council have on previous occasions not been positive towards similar demands. We should not forget that the European Parliament and Council will be involved in the further legislative process. Some would call this an **Agenda Initiative –tabling an issue to be put on the political agenda.**

If it is not the intention of the Commission to act, and we are considering simply that a large group of citizens can invite the Commission to reflect on their proposal, there is a limited need for almost any burden to be placed on the collection of signatures, apart from the million signatures and the significant number of Member States.

The Citizens' Initiative is not a *referendum* in which citizens would seek to pass a law or other binding legal text through a popular vote. We can understand that more stringent standards would apply in that case.

The Citizens' Initiative is neither a *petition* (which exists already – to the European Parliament). The Commission does not need to even react to a petition. The European Commission should not seek to (intentionally??) confuse the ECI with a petition. When

launching the Communication the Commission statements did use the word “petition”. That is not acceptable.

3.2 *Amendments to the Treaty*

The Commission should further provide clarity if a Citizens’ Initiative can ask the Commission to introduce **amendments to the Treaty**. The Commission should indicate which articles of the Treaty can be used for this so citizens understand the appropriate basis to use for their demands. The legal opinion commissioned by EPSU underlines that there is **no obstacle** to this, even if the process to change primary law will be more cumbersome.

3.3 *What support can the organizers of an ECI expect?*

The ECI is a new and European instrument. The formal restrictions should be low. Hence the proposals and suggestions we make to the different questions. See below. The other implication of a European Citizens Initiative is that the organizers, due to the complexity of the EU system and the national differences should be able to count on support from the EU institutions in a number of areas. The regulation should include:

- *A right to legal advice.* Are the organizers using the appropriate legal basis for what they seek to achieve? As the legal basis of a legal act can often be a very political choice – the European Commission has proposed to regulate patient mobility on the basis of internal market rules, rather than on the basis of public health provisions for example – the legal advisors should be independent of the European Commission. The current position of the Commission appears to be that the organizers “can be expected to have fully assessed whether the initiative legally falls within the framework of the Commission’s powers before launching an initiative”. This is not realistic as many citizens would not be aware of the “fine-print” of the EU Treaty. It also leads to an additional hurdle as seeking legal advice increases the costs for the organizers. It links also with the point made earlier and in the legal opinion commissioned by EPSU: the European Commission has not clarified a number of issues regarding what legal basis can be sought. This all increases the risk that the Commission could declare an ECI inadmissible even if the 1 million signatures has been collected.
- *A right to translation* of the text the organizers seek to get signed. This would ensure that the Initiative is indeed the same in all countries.

A more difficult issue is if the Commission should *contribute to the costs* of an ECI. The Commission rejects “reimbursement in part of the costs”. It says that this would be “in the interest of preserving the independence and citizen-driven nature of initiatives” (page 11, point 8). The Commission does not explain why an initiative would lose its independence when receiving funding from the EU budget. The regulation could well describe which (part of) costs will be reimbursed – for example those relating to the setting up the basic infrastructure of the Initiative (translations, registration...)

3.4 *Specialised legal advice when ECI has been successful*

Another issue is what support will be available to the organizers when the Commission is preparing its answer to a successful ECI. The Commission will have a need to discuss with the organizers the precise nature of a demand, the wording of a text it will propose and reflection on the implications that are intended. **We propose that the organizers of a successful Initiative can draw on specialized legal advice when discussing with the Commission and that these costs will be reimbursed.**

3.5 Review

The European Citizens' Initiative is a new Instrument. The Regulation should therefore have a review clause that will allow the European Commission, Parliament and Council to consider the experience and if the criteria or not too lax or too restrictive.

We plead to start with a more open, less cumbersome set of criteria that could be refined if needed following experience. It seems unlikely that the Regulation will be able to solve all questions and issues that will arise right now.

This review could take place in two stages: a mid-term review after the first 20 (registered) ECIs or alternatively after the first 5 successful ones for example. This review would allow the European institutions to examine if the Regulation and procedures are well explained etc. A review with the aim of revising the Regulation could take place after the first 40 (registered) ECIs or the first 10 successful ones?

4. Some comments on the EP report on the ECI

The European Parliament adopted a position on the ECI with the Kaufmann Report – European Parliament resolution of 7 May 2009 requesting the Commission to submit a proposal for a regulation of the European Parliament and of the Council on the implementation of the citizens' initiative - P6_TA(2009)0389

It provided many important and valuable suggestions to the Commission and others regarding the European Citizens' Initiative, especially as regards procedure and possibilities for appeal against decisions of the European Commission.

What the report also does is adding a whole range of criteria on the ECI that would increase the burden for the organizers. It also suggests that in each Member States procedures are elaborated on the ECI.

We do disagree with the adding of criteria and with the separate development of Member States rules.

Criteria

Whereas it is realistic to assume that most ECIs will be organized by national or European organizations, the authors of the regulation should constantly bear in mind that it should be possible for a small number of individual citizens or smaller and less resourceful groups to organise an ECI. Each criterium makes that more difficult. That is the problem with several of the EP points raised such as providing further background on the person who signs (age, country, address...) and the option to withdraw the signature, to provide copies of solemn declarations...

The list of the EP

Name

Date of Birth

Home Address

Nationality

A solemn declaration where people indicate they have not signed before

A solemn declaration that people declare that they are informed that they can withdraw their signature

Then the signatories are to be given a copy of:

- Statement of support
- The solemn declaration that they have not signed before
- The solemn declaration that they have taken note of the withdrawal option

Once again the report of the EP seems to confuse a Referendum type initiative with the ECI which is not a referendum, and which does not guarantee the organizers even that a particular piece of legislation will be brought forward.

More practical: anyone who has canvassed for signatures to a petition or initiative at a public market place for example does know that providing such statements of support would be a logistic nightmare. Once again this would make it very difficult for individual citizens or less resourceful organizations to organise such an initiative.

Separate rules at national level

We are aware that several Member States have rules for national citizens' initiatives and / or referendums. However the ECI is a truly European effort and hence its rules should be European. Once again, the organizers should not be required to study the different legal systems of the EU Member States, nor having to establish a campaign organization in a significant number of Member States. So we reject that in each Member State procedures are elaborated on the ECI. It is not a national initiative, it is not nationally binding and has to go a long (and European way) before it will be adopted. And if an analogy might help: There are no specific national rules either for an initiative of the European Commission. The ECI is a truly European endeavor.

In addition, if provisions are different from country to country European Union citizens' are not equal in how they can participate in the ECI.

A final point: does the European Parliament actually support the ECI ?

It is also known that many Parliamentarians (local, regional or national) do not like referendum type initiatives, or possibly the ECI and have sought to make it rather cumbersome under cover of "transparency, accountability, legitimacy."

5. Questions

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?

No

If not, what threshold would you consider appropriate, and why?

While the approach of the Commission to define 1/3 of Member States (9) as a significant number appears to be reasonable as it will provide a certain legitimacy to the Initiative, it does still place a heavy burden on citizens to establish a campaign for such an initiative in all these countries. The Commission also uses an analogy with the Swiss system which is not appropriate as the Swiss system can lead to a binding popular vote. The EP has argued for ¼ of Member States.

EPSU supports the EP position (1/4) This might need to be revised in future in the light of further enlargement. The reasoning by analogy with other existing systems does not

apply as the EU is of a very different nature as national system - the language and distance burdens citizens face to organize an ECI are immense. And while a European public space is emerging it is limited and hindered by language differences.

Do you consider that 0.2% of the total population of each Member State is an appropriate threshold?

The question is possibly somewhat misleading. What is proposed here is presumably that it is at least 0.2% of the population of the *significant number* of Member States.

Our answer would still be No.

We should not compare with national rules for Initiatives which lead to a binding referendum.

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 do agree that the Citizens' Initiative should be legitimate. The million signatures is a first step. The second is that to ensure the ECI has a European significance these million signatures will need to be collected in several countries (1/4 in our proposal) As we argued earlier it should be avoided that the cumulative nature makes the instrument very difficult to use.

We suggest that **the threshold is lower, like 0,1% or even lower if the ECI is able to collect signatures in many more Member States**. An initiative that collects an overall majority of its signatures in one or two MS but the remainder is collected in all the other MS even if not being 0,1% of these countries' populations can still be called a very representative ECI as it has attracted attention and support especially given the language barriers, differences in culture, legal systems etc. This aspect should be recognized in the Regulation.

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?

No. The Citizens' Initiative does not lead to binding legislation, nor to an official vote. It would exclude also that secondary school students would be able to engage in public debate and an ECI..

If not, what other option would you consider appropriate, and why?

If a minimum age is required this should be 16 years. It does demand of the organizers to collect the age of the person signing plus the issue of verification. And again this would increase the burden.

This can be solved of course if the European institutions assist with the infrastructure and further financial support.

As this is neither a vote, nor a referendum leading to binding legislation or decision, this issue should not be given an overdue importance. We note again that with each threshold or criteria added, the cumulative effect imposes burdens on the citizens which would like to organize an ECI.

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?

Yes it is sufficient that the ECI clearly states the subject matter and the objectives of the proposal. It is certainly appropriate to require the organizers to define what they seek to achieve.

We suggest it is up to the organizers if they want to attach a draft legal act with recognizable legal provisions, political statement of even a change to the Treaty itself.

If the organizers are precise and clear the European Commission has less scope to deviate from their proposal, see points we have made earlier.

What other requirements, if any, should be set out as to the form and wording of a citizens' initiative?

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?

Yes, if there are further rules relating to the collection, verification and authentication of signatures these should be common.

However, these rules should relate to the EU level and not to the Member State level.

What minimum requirements are needed for the collection of signatures?

Name, age, place and country of residence are important.

Verification

It is at the EU level, hence the European Commission (or even a separate chamber with the European Ombudsman), to verify the signatures. The alternative would otherwise be that the organizers would have to offer signatures to a significant number of Member States for verification; once again this would make the instrument less accessible. We assume that the verification could take place through a statistically relevant sample.

Authentication

The above stated minimum requirements would be sufficient. As regards electronic signatures see our response to that question.

The European Commission should not push this responsibility to national level. The aim of the ECI is to create a European public space.

To what extent should Member States be able to put in place specific provisions at national level?

As argued earlier in chapter 4 on the European Parliament's report, we reject this option.

The ECI is a truly European effort and hence its rules should be European. Once again, the organizers should not be required to study the different legal systems of the EU Member States, nor having to establish a campaign organization in a significant number of Member States. So we reject that in each Member State procedures are elaborated on the ECI. It is not a national initiative, it is not nationally binding and has to go a long (and European way) before it will be adopted. And if an analogy might help: There are no specific national rules either for an initiative of the European Commission.

In addition, if provisions are different from country to country European Union citizens' are not equal in how they can participate in the ECI.

Are specific procedures needed in order to ensure that EU citizens can support a citizens' initiative regardless of their country of residence?

It should be possible for citizens to support an ECI even if not taking place in their country of residence and if he or she came across the ECI.

We note again that the European Commission presupposes a heavy procedural way in which a citizen can support a citizens' initiative linked to the rules in his or her country of residence. This links with the following point.

Should citizens be able to support a citizens' initiative online? If so, what security and authentication features should be foreseen?

Absolutely. The electronic signature campaign might be the only way in which a group of individual citizens and smaller and less resourceful organizations can organise a successful ECI.

There are several ways in which a signature procedure can ensure that the person that signs is a real human being. A step further would be having an official electronic ID. Or having an electronic signatures (PGP is the standard). The idea is that a person has a secret "key" that only that person has, and a public one that everyone can see.

http://en.wikipedia.org/wiki/Key_signing_party

But this option is a long way off from being universally adopted and accepted in the EU.

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

Yes. We do agree that there should be an end to initiatives, also to ensure clarity.

If so, would you consider that one year would be an appropriate time-limit?

Based on experience a one year period is rather short to collect a million signatures, especially in a European area. It takes time for the Initiative to be known. We would suggest a longer period like 18 months, plus the option for the organizers to prolong the initiative with a further 6 months if for example $\frac{3}{4}$ of the 1 million signatures has been collected, or if in certain countries the minimum threshold has not yet been achieved.

Once again: a short period is a burden on less resourceful groups which will need more time to get their initiative known throughout a significant number of Member States let alone the EU.

Note:

The Commission suggests that it should react within $\frac{1}{2}$ year to an ECI. This is not reasonable. The Commission's obligation to respond should not exceed three months following the successful ECI. We recognize that some issues are complex, and also that the ECI might not have been precise enough. This can be partly overcome by the availability of legal advice to the organizers when submitting an ECI.

Do you think that a mandatory system of registration of proposed initiatives is necessary?

It makes sense for the European Citizens' Initiative to be registered – it provides transparency to both the EU institutions as well as to citizens and possible organizers of an ECI understanding if an issue is already the subject of an ECI. It does allow the organizers to receive support for example.

Below we will argue that it needs to be known who the organizers are, where they receive funding from and what the text of the initiative is and its objectives.

If so, do you agree that this could be done through a specific website provided by the European Commission?

It is necessary to have a certain distance from the Commission. The Commission is the target as it will be requested to act. It seems preferable to link the Citizens' Initiative with a more independent EU Body, for example the European Ombudsman. The EP can be an alternative.

What specific requirements should be imposed upon the organisers of an initiative in order to ensure transparency and democratic accountability?

The organizers should provide clarity on who organizes the initiative. (Persons and/or organizations should be clearly identified and allow others, if so wished to obtain more information) This is easier to organise and provide through an electronic campaign and website. When registering the initiative this information should be provided.

The point on democratic accountability is less easy to understand. We do not wish to avoid this point but -democratic accountability to whom ? To the ones who approve the ECI organization ? To the signatures ?

Should a group of individual citizens have to establish a foundation, organise meetings, elections etc ? This would introduce another burden again. Should the ECI be agreed by the Board or Executive of a democratic organization ? During a campaign there will obviously be many moments to decide on issues. Should the meetings be public, minutes of meetings be made and recorded ?

We do have a concern though and that is that **corporations should NOT be allowed to organise a European Citizens' Initiative**. It would turn the ECI into a perverse exercise. The Regulation should make this clear.

The organizers should also provide clarity on the initiative so as to ensure that citizens sign an ECI that is clear (see the response to an earlier question)

The organizers should indicate where the funding comes from (see below)

Do you agree that organisers should be required to provide information on the support and funding that they have received for an initiative?

EPSU does find this an important point. It has happened that power- and resource-ful companies hide behind so-called citizens platforms (well known are patient-organisations

which receive funding from the pharmaceutical industry) whose aim is to lobby for certain causes but which in effect aim to promote the interests of that company or industry.

The organizers should make clear how they fund the initiative (own resources, other resources and the budget provided) Several ECIs will be organized by European organizations and executed by their national members. These national members should be known. This information should be made known in advance. The aim of the transparency on funding is to provide potential signatories the possibility to understand who is behind an ECI and judge themselves. The basic information could be made available also upon registration of the initiative.

Not all funding might be known at the start, and certainly if a group of citizens or less resourceful organization organizes the ECI, they might seek to obtain funding during the ECI campaign from citizens or other organizations. The organizers are to provide accountability of the funding received.

The suggestion of the EP for a Transparency Report after the ECI has been successful is worthwhile to explore further. This would allow the European Commission, the European Parliament and the Council to judge if the organizers have not used the ECI for objectives other than those stated. Appeal procedures should be in place if the Commission considers sanctions.

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

Yes.

It would be incumbent on the organizers to have a contact with the registry of the European Citizens' Initiatives to explore if their issue is already the subject of a (ongoing or successful) ECI. The office of the registry (the European Ombudsman) could advise the organizers if an issue would be admissible or not.

When an Initiative has been successful the Commission should react within 3 months with proposals on how to advance the issue of the ECI. It is of the utmost importance that citizens who have signed the petition do know that there is a reaction. It should be realized that between the reaction and proposal of the Commission a long period might pass before an Initiative has become European legislation for example.

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

We assume that the Commission means here - when a Citizens' Initiative has not been successful. Our answer is no. Why would the Commission seek to prevent citizens trying again and again ?

If an ECI has been successful and certainly during the period in which the issue is moving through the European legislative process (Commission proposal, EP and Council reactions) there should be a period in which no ECI should be accepted on the same issue. A campaign against the proposal (ECI) can focus on the MEPs and Member States governments if they would disagree.



This does imply that the ECI's are registered and that there is a person./ institutions which can judge if a new proposal is on the same issue as what goes through the legislative process. And again an appeal process is needed.

In reaction to one ECI there can be the organization of an alternative (- imagine pro- and contra a prohibition to smoke) during the same period.

If so, would this best be done by introducing some sort of disincentives - or time limits?

There should not be disincentives of this nature for citizens to undertake an ECI apart from the above.

EPSU is the *European Federation of Public Service Unions*. It is the largest federation of the ETUC and comprises 8 million public service workers from over 250 trade unions; EPSU organises workers in the energy, water and waste sectors, health and social services and local and national administration, in all European countries including in the EU's Eastern Neighborhood. EPSU is the recognized regional organization of Public Services International (PSI). For more information on EPSU and our work please go to: <http://www.epsu.org>