



Observations and Recommendations on EU Treaty

Article 11

The European Citizen's Initiative (ECI)

January 2010

Irish Congress Trade Unions' ID number is 49140263150-65

INTRODUCTION

The Treaty of Lisbon, entered into force on 1 December 2009. One of the least reported changes brought about by this Treaty may prove to be the most impactful. The introduction of European citizens' initiative (ECI) provides that one million citizens can request the initiation of legislation. Ultimately it will be for the commission to decide whether to reject or take up a proposal but it will be difficult for the Commission to ignore the wishes of a million citizens.

The issues at stake now, are how this potentially far-reaching system will operate in practice. The EU Commission have set out a consultation process – a Green Paper - about how citizens' initiatives should be carried out, received and assessed. The Green Paper sets out ten potentially controversial but largely technical questions on how to collect signatures; how many member states should be involved and in what proportions, as well as the form and timing of the proposals. The Irish Congress Trade Unions position is that transparency, democratic accountability and the protection of fundamental human rights must be built into the processes underpinning the operation of ECIs.

With a view to the preparation of the Regulation to implement Article 11(4) TEU, the EU Commission Green Paper invites views by 31 January 2010. This submission sets out the observations and recommendations of the Irish Congress Trade Unions, the national representative body for 800,000 workers and their unions on the island of Ireland.

ICTU WELCOMES THE ECI AS NEW COLLECTIVE RIGHT FOR EU CITIZENS

Article 11(4) of the Treaty on European Union (TEU) creates a new right. It provides that:

"Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European 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.

"The procedures and conditions required for such a citizens' initiative shall be determined in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union."

The first paragraph of Article 24 of that Treaty says:

"The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure [that is, co-decision between the Council and the European Parliament and qualified majority voting in the Council], shall adopt the provisions for the procedures and conditions required for a citizens' initiative within the meaning of Article 11 of the Treaty on European Union, including the minimum number of Member States from which such citizens must come."

The ICTU welcomes the creation of this new collective right, to any group of one million citizens, to address to the Commission a request to consider legislative proposals. The prospect of proposing direct initiatives will arouse a lot of interest among workers. Trade Unions undoubtedly have the capacity to raise a million signatures across 27 member states. However, unlike trade unions, not all organisations operating in the EU have the best interests of EU citizens at heart. There is a real danger that issues will be hijacked or that ‘citizen’ groups will be set up to ‘front’ an agenda of discrimination and hate or to undermine hard won human rights. Congress is therefore calling on the Commission to sets out rules that safeguard social progress and protect against any the ECI process being used to undermine human rights in Europe.

THE REGULATION SHOULD SPECIFY THAT TO BE ADMISSIBLE THE FORM AND WORDING OF THE ECI MUST ENSURE PROPER RESPECT FOR HUMAN RIGHTS.

The ICTU agrees with the Commission that measures, such as a standard formula, should be put in place to ensure that the wording of an ECI is not so convoluted that it is unclear what the signatories actually want. However the regulations need to do more; it is not sufficient to merely require that an ECI would state clearly the subject-matter of the proposal. What is needed is a clear requirement that to be admissible the wording of the ECI must respect human rights in Europe. Our request is consistent with the Treaty which provides that the wording of the ECI may call on the Commission to present an ***“appropriate proposal”*** in areas falling within the EU’s competence, ***“on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.”***

The Irish Congress of Trade Unions is calling for the Commission to underline that the EU Treaties recognise the existence of human rights as set out in various European and international instruments. The Regulations should therefore require that, for an ECI to be put forward, it must be consistent with the Social Policy provisions Art 151-161 and with the effective observance of the following instruments;

- i) *EU Charter of Fundamental Rights*;
- ii) *the European Convention on Human Rights* and the decisions of the *European Court of Human Rights*;

- iii) Member States obligations arising under *International Labour Organisation Conventions* ;
- iv) the *International Covenant on Economic, Social and Cultural Rights*;
- v) the *International Covenant on Civil and Political Rights*;
- vi) *Council of Europe's Social Charter*;
- vii) *Universal Declaration of Human Rights*.

The Commission cannot allow ECIs to be used to displace or interfere with equality, human rights and workers rights of EU's citizens. Such is situation is undesirable both from the citizens perspective and from Member States point of view as they should not have to choose between conflicting rights, conflicting standards and obligations.

Congress therefore calls on the Commission to require that all ECIs are compatible with the above human rights frameworks and further that any ECIs that are incompatible with these human rights instruments would be ruled as **'inadmissible'**.

MANDATORY REGISTRATION IS DESIRABLE

Congress supports the proposal for mandatory registration of proposed initiatives and this system should be used to prohibit registration of ECIs that are **'inadmissible'**. For reasons of transparency and accountability, the Commission's decisions on admissibility should be reasoned and subjected to judicial review. This has the dual benefit of allowing organisations promoting an ECI to be able to have a decision on admissibility in advance of starting their campaign and ensuring against the cynical use of the ECI as means to gain respect for proposals that are contrary to equality, human rights principals, workers rights or otherwise harmful or unlawful.

Organisers should be entitled to present their arguments directly to the decision-makers and must therefore have a right to a formal hearing at the EU Commission. Organisers should have access to an appeals process, including but not limited to judicial review.

The Regulations should set out how rival campaigns emerging in support of countervailing proposals will be dealt with. It is easy to imagine a campaign from one set of citizens in Europe gaining 1m signatures and another equal and opposite also gaining 1m signatures.

THE REGULATIONS MUST IMPOSE OBLIGATIONS ON THE ORGANISERS OF AN ECI IN ORDER TO ENSURE TRANSPARENCY AND DEMOCRATIC ACCOUNTABILITY

Organisers of initiatives should be required to provide certain information. It seems obvious that the source of any funds deployed in a campaign should be declared publicly. But this is insufficient; organisers should be required to inform the Commission and the public, in each member state, how the initiatives are funded, how much is used on each campaign activity and by member state. The names and aims of the organisations that financially support an initiative must be publically available along with the names and relevant interests of Directors and senior staff of those organisations. Individuals who financially support the campaign (contributions over €200) should also be listed.

The ICTU recommends that the Commission place a ceiling on the amount that can be spent on a campaign. The regulations should also prohibit the use of certain activities during the campaign. This is fundamental, as without rules there is a real risk that advertising 'gimmicks' or other manipulative or coercive practices may be used. A big problem is how to collect and verify signatures and how to ensure against 'rigging'. A major question mark hangs over online initiatives, with all the potential security problems they involve.

A monitoring and complaints process must be provided along with dissuasive sanctions that can be brought to bear on those running the campaign who over spend, engage in prohibited advertising practices or signature rigging.

CONCLUSION

The Irish Congress Trade Unions welcomes the establishment of this new collective right for citizens in Europe. We warn that rules are needed to safeguard against ECI's being used to undermine Human and other Fundamental Rights. Organisers should have a right to be informed of the Commission's decisions on admissibility and have access to an appeals process, including but not limited to a judicial review. We recommend a system of mandatory registration in which organizers are obliged to make public their sources of finance. Finally we call for an accessible complaints process and an effective monitoring system.

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