

CONTRIBUTION TO THE EUROPEAN COMMISSION'S PUBLIC CONSULTATION ON EUROPEAN CITIZENS' INITIATIVE¹

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Introduction

The European Citizens' Initiative right (ECI) (TEU Art. 11.4) is a democratic innovation which has no equal anywhere else in the world. For the first time in the history of democracy, citizens of multiple states have acquired a shared transnational right of participation in political decision-making. Like the European Parliament (Art. 225, since 1993) and the European Council (Art. 241, since 1957), they can make proposals to the EU Commission as to how EU law can evolve.

This new democratic citizens' right has an enormous potential to strengthen both Europe and democracy itself. It has a *direct* impact in strengthening representative democracy in the EU. *Indirectly*, however, it can also help to strengthen the integration of the EU, promote a greater shared sense of European identity and of a European civil society, and lead to a stronger identification of the citizens with the EU and its institutions.

This new democratic instrument is designed to strengthen the participatory level of the representative democratic institutions; the shaping of its procedures must therefore take into account the particular challenges which derive from its character as a transnational instrument, from its agenda-setting nature and the associated aim of a strengthened dialogue between EU citizens and the institutions, from the greater transparency of the decision-making process, and also, lastly, from the need to reinforce the legitimacy of European politics. Fundamentally, therefore, in the designing of the procedural rules care needs to be taken to ensure that no unnecessary obstacles are placed in the way of the citizens in the exercise of their new right.

It must especially be borne in mind that the ECI does not lead to a popular vote; it is the vehicle merely for proposing to the EU Commission that it adopt a legislative initiative. As such it has the character of an 'agenda initiative'.

Nonetheless, the particular difficulties presented by the transnational nature of the procedure make it essential for wide-ranging support measures and mechanisms to be put in place which can help the new democratic instrument to give sustained reinforcement to the European Union as a political and democratic community of 500 million citizens in currently 27 states.

¹ http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/index_en.htm

If freedom and democracy are not to become merely the exclusive privilege of privileged groups and organisations (privileged by having access to special resources), then the institutions which exist to promote democracy must work to make it available to all. This is especially necessary when geographical distance and language barriers have to be overcome - something that no democracy has ever had to face before.

While the forthcoming EU regulation on the European Citizens' Initiative must be designed in an inviting, enabling and empowering way, the new instrument opens a new democratic territory, both direct and transnational. Because of that all involved parties need to use an innovative, courageous and patient approach focused primarily on the qualitative aspects of the new procedure. This is especially true when it comes to practical issues like the envisaged e-collecting of signatures and the establishment of a ECI infrastructure.

The Initiative and Referendum Institute has been instrumental in developing the idea and concept for the European Citizens' Initiative since 2001 and welcomes the invitation to provide advice and recommendations for the forthcoming EU regulation and practice on Art. 11.4 of the Lisbon Treaty. Please find our brief inputs below:

1. Minimum number of Member States from which citizens must come

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

2. Minimum number of signatures per Member State

Questions:

*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?*

The first two questions packages must be dealt with in one section as they are closely interrelated. Art. 11.4 of the Lisbon Treaty states that signatures must come from "a significant number of Member States". However, bearing in mind the general background criteria mentioned above, the minimum number of participating states should not be too high, since an ECI is after all only a proposal to the Commission. There can be no question of a majority decision. On the contrary, the "significant number" must be significantly less than a majority. An ECI primarily expresses the relevance of a part (of the EU community) for the whole i.e. the relevance for the entire EU of an articulated political issue. Relevant issues can be raised by smaller minorities, so that a minimum of one quarter of the Member States, i.e. currently 7 states, would be sufficient - though even this number is rather high.

It is not only by securing signatures from as large a minority of Member States as possible that the European, transnational dimension of the instrument can be reinforced. The extent to which it is relevant and pertinent to Europe also depends on the minimum number of signatures which must come from each Member State. So an incentive should be created to attract signatures from more than the minimum number of Member States.

A higher level of transnational representativity for secured signatures could be achieved by instituting a 'sliding scale' mechanism, such that where signatures came from only 7 Member States at least 0.1% of the registered voters in these states would have to sign; if there were 9 participating Member States, then the percentage would fall to 0.05% of the electorate. Additional participating states could reduce

the minimum signature quorum to 0.02%; and in the event that an initiative secures signatures from all the Member States, the percentage would be lowered to 0.016%.

The proposal in the Green Paper to require a minimum of 9 participating Member States, with signatures coming from at least 0.2% of the population, does not take into account the special difficulties of collecting signatures trans-nationally.

In determining the minimum number of signatures per Member State, the calculation should be based, as a matter of principle, on the number of registered voters in each state, and not on the total number of residents. Comparable procedures in the national states use the former number as their reference size.

The sliding scale offers the great advantage that politically active Europeans will be encouraged to let as many other Europeans as possible from all parts of Europe know about their issue and get them involved in discussing it. This is an example of what is for us an important principle: that the design and shaping of the institutions of European democracy must be such as to provide encouragement and stimulus to the carriers of that democracy - those Europeans who are able to think and act trans-nationally - and/or give these people a special chance of being effective.

3. Eligibility to support a Citizens' initiative

Questions:

*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?

Apart from the question of a minimum age for signatories, the Green Paper gives no clear indication of the criteria for eligibility to give ones signature in support of an ECI. As the ECI is not a decision-making instrument, but merely the vehicle for presenting a proposal, it is in principle imaginable that it should *not* be linked to the eligibility to vote in a Member State. However, since in practice only the latter can be reliably verified (cf. point 5), eligibility to sign initiatives will necessarily be linked to the right to vote in European parliamentary elections.

As proposed by the Commission, therefore, eligibility should be determined by the voting age in the Member State in which the signatory is registered as an elector. This means that in Austria signatures can be given from the age of 16, and in all other Member States from the age of 18.

4. Form and wording of a Citizens' initiative

Questions:

*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?

The introduction of the European Citizens' Initiative should help to increase understanding among the peoples of Europe for the legislative process within the EU, and also contribute to making the language of legislation easier to read and understand. It is thus essential that in respect of form and composition basic requirements are specified which support these twin goals. This applies to the title, the specific proposal/request, and, if necessary, the reasoning behind it. It is also important to bear in mind that an initiative should observe the rule of unity of subject-matter i.e. two or more different proposals on divergent issues should not be brought together within one initiative. It must always be

quite clear what one is supporting when one signs an ECI. Clarity demands that only one core issue be formulated per initiative.

In respect of the title it is clear that it is for the organisers of the initiative to formulate both this and the proposal itself, neither of which may contain any defamatory, discriminatory or personal content, nor advertising for a particular product. The website which should be created for the registration of initiatives (cf. point 11) should set maximum values - in terms of characters and/or words - both for the title (e.g. maximum 100 characters), the proposal (e.g. max. 1000 characters) and rationale (e.g. max. 5000 characters).

5. Requirements for the collection, verification and authentication of signatures

Questions:

*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?*

For this decisive area of the transnational, deliberative process of persuasion it is particularly crucial to avoid unnecessary obstacles and restrictions. On the contrary, this phase of the initiative process demands special support measures and mechanisms, as will be outlined in Point 11. A European Citizens' Initiative should be able to collect signatures in all the possible ways which are legally and technically available. This includes online signature collection, but should not be restricted to it. Free collection in public spaces should also be possible. The EU regulation should guarantee standards for equal conditions in all member states.

For practical reasons, a full check of all signatures for verification and authentication purposes should be dispensed with at the outset. It should be sufficient to arrange for sample checks to be carried out. These should be performed by the relevant voter registration regulatory bodies of the Member States.

However, when it comes to the e-collecting of signatures, a whole new set of practical applications, ramifications and checks must be implemented. If not, there is a big risk that the complexity of the e-collecting process would back-fire onto the process, the European Union and in the end on participatory democracy as such. It is important to underline that e-collection of signatures cannot be compared to e.g. e-banking, as there is a contract and safety—concept in place between a bank and its customer while a public authority cannot establish such a contract with a free citizen – or offer payments if something goes wrong. Additionally, while an e-banking system clearly can identify the customer, a political signature system must ensure the “secrecy of the vote”. There is with other word very little room for failures in the formal process of gathering signatures, verification and authentication. For this reason the Initiative and Referendum Institute urges the EU Commission to go ahead very carefully in introducing e-collecting systems linked to the ECI. This has furthermore to do with the non-existence of a pan-EU voter register. For a long time the EU will have to rely on national or even sub-national voter registers, whose quality and updating can differ considerably. E-collecting should not be avoided, but to be established and developed on a step-by-step basis. Initially, e-collecting may be just used during a short and extremely well monitored period within the full signature gathering time-frame. Based on the experiences with these brief e-collection windows a full-fledged system of e-collecting may be developed in the future.

6. Time limit for the collection of signatures

Questions:

*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?

Making contact with, discussing with, and convincing far more than a million people, plus collecting at least a million signatures in anything from 7 to 27 countries, needs adequate time - especially for initiative committees which do not already have their own extensive infrastructure and which also have to consolidate themselves during this process. The time allowed for the collection of signatures ought therefore to be between 18 and 24 months. The precise length of time to be fixed will also depend on the design and scope of the support mechanisms.

7. Registration of proposed initiatives

Questions:

*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?*

Initiatives should be declared and registered. To enable this to be done efficiently, it is most important that a dedicated EU Initiative website be set up. The site would deal not only with the registration process (filling in the required information about the initiative committee and the initiative), but would give information and guidance for potential organisers which, for example, would also enable citizens to make a prior, non-committal, assessment of the likely chances of success for their issue and their organisation.

This preliminary check-in should offer clarification not only of the formal requirements, but also of the legal ones. Organisers would be warned of the possible grounds for an initiative proposal being declared inadmissible: that the proposal is beyond the competences of either the EU or the Commission, or that it clearly contravenes international law or the European Charter of Human Rights. However, the formal and legal clarifications would only point organisers to possible ‘dissonances’; they should not prevent them from going ahead with the initiative. Nonetheless, any critical ‘dissonance’ in relation to legal requirements could jeopardize subsequent applications by the organisers for various kinds of support. (cf. points 9 and 11).

The Commission’s dedicated ECI website would also be of service during the further course of the initiative, by making available signature forms in all the official languages of the EU, and by giving directions on the signature collection procedure and on returning the completed forms. Lastly, the web portal should offer an overview of the procedure and its usage.

8. Requirements for organisers

Questions:

*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?*

Apart from basic information about the legally responsible promoters of an initiative (names of organisers, name of organisation if appropriate), further formal requirements in this area should ideally

be dispensed with in line with the aim of avoiding unnecessary obstacles and of enhancing the credibility of this new European citizens' right. It makes no sense, therefore, to impose a general requirement to provide detailed information on the financing of an initiative.

The situation is different, however, where initiatives wish to apply for additional support (cf. point 11). In such cases, the same disclosure rules should apply as for NGOs which receive public funds from the Commission in the form of a project subsidy or operating costs grant.

9. Examination of citizens' initiatives by the Commission

Questions:

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

The Commission's role is not limited to responding to "successful" initiatives. The Commission must rather see itself as being involved from the start in a variety of ways as a partner in a dialogue with both potential and active initiative organisers, offering encouragement and displaying a fundamental attitude of understanding and support:

Pre-phase - information and advice (mainly via the web portal)

Registration and Quality Control - formally correct initiatives registered on the website are assessed by the Commission for their formal and legal 'quality' to the extent that possible incompatibilities with the criteria for admissibility can be pointed out - equivalent to a "yellow card". This should not, however, impede the political process of the initiative (otherwise it might become necessary already at this early stage for courts to become involved in appeals - something we would view as serving no useful purpose, and as being potentially damaging to the credibility of the ECI).

Qualification for support measures - if a registered initiative has succeeded in collecting at least 50,000 signatures from three Member States (with signatures from a minimum of 0.1% of the electorate), the initiative has the right to receive targeted support in the form of vouchers (e.g. for infrastructure costs, travel and overnight accommodation). Cf. point 11.

After an initiative has been submitted with the required signatures and documentary evidence, the *EU Commission* must decide within 6 months whether it will adopt the proposal and prepare draft legislation.

There must then be a final check on the legal admissibility. In the event of a rejection, the organisers will receive a formal notice, and they will have the right, if they wish, to appeal to the European Court.

The Commission will inform the European Parliament and the Council of Ministers about the political content of the initiative. Prior to this the Commission will have arranged a hearing with the organisers, who are kept informed in a transparent and open manner about the Commission's deliberations on their initiative proposal. Before a final decision is reached, the European Parliament should also have the opportunity to hold a hearing.

The reasons for rejection or for only partial adoption of an initiative proposal must be given to the organisers and also be made publicly available.

10. Initiatives on the same issue

Questions:

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?

There is no need for a special ruling on this. Any problems that arise in this context should be discussed during the pre-phase and quality check, and the initiative group or groups made aware of any potential duplication.

Additional remarks

Under this point we would like to deal with a question which the Green Paper omitted to ask: the question as to whether and how organisers might receive special forms of support.

We feel very strongly that this should be the case. In contrast to certain opponents of transnational democracy, we are convinced that a shared democratic life is possible even where there are several hundred million people spread across many different countries and speaking many different languages. Numbers and geographical extent and diversity do not make democracy impossible. But the larger, more numerous and more diverse a democracy is, the more attention must be paid, in the shaping of its organisation, to the need to ensure that all its citizens - including those with limited resources, or who do not belong to large, well-established organisations - can avail themselves equally of its democratic instruments.

That is why the use, especially of this European Citizens' Initiative tool, must be supported and promoted pro-actively by the Commission. As soon as an ECI has collected the first 50,000 signatures from three Member States, and assuming that it has received a "green card" during the clarification process before signature collection begins (cf. points 7 and 9), the organisers should have a right to receive financial support to cover such expenses as translation, travel, administration, public meetings etc. The support would not take the form of cash payments, but would be in the form of vouchers up to the value of 100,000 euros.

This kind of support would enormously heighten the credibility of the ECI - and also that of the Commission and its efforts to democratise the European Union. In this context it must be emphasized that such a level of support is extremely modest. It would, however, make the strong point that the Commission is serious about democracy and that it is something which must be available to all and not only to those groups which already possess the necessary resources.

Contact and further reading

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