

Response by Mehr Demokratie e.V. on the EU Commission's Green Book on the European Citizens' Initiative

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Introduction

Mehr Demokratie was involved in the process which led to the inclusion of the European Citizens' Initiative (ECI) in the Constitutional Treaty/Reform Treaty¹ and welcomes the Commission's efforts towards making the Initiative available to citizens as soon as possible by means of a Regulation. We share the view that the ECI offers significant possibilities for the development of European civil society and of a European public space, and thus for democracy itself at the EU level - as long as the Commission, as the intended recipient of such initiatives, makes active use of the opportunity the ECI presents for engaging intensively with the citizens. For we also see considerable risks if the expectations and hopes for the use of this new instrument were to be disappointed as a consequence of the imposition of impractical procedural rules.

Based on our extensive practical experience with direct democracy, we therefore offer this response as a contribution to the hoped-for user-friendliness of the ECI.

The first thing to note is that the ECI is neither a petition nor an instrument which leads to a referendum. It is a summons to the EU Commission to launch a legislative initiative (an "agenda initiative").

In view of the requirement to collect a minimum of a million signatures, and of the considerable geographical size of the EU with its more than 20 official languages and an as yet inadequately interconnected transnational civil society, we make the following core demands of the future ECI Regulation:

- (1) that the qualifying thresholds be significantly lower (as a percentage of the population) than at the national level, and that signatures can also be given online;

¹ Cf. Efler, M.: *A rollercoaster ride towards democracy*, at <http://www.democracy-international.org/story.html>.

- (2) that the Commission be willing to offer support services for initiatives, for example by providing information on the issue being addressed and on the procedure, as well as legal advice, translation services and the partial reimbursement of organisers' expenses;
- (3) that the rules allow initiatives which seek to amend the content of the EU Treaties;
- (4) that the Regulation specify not only the formal qualifying criteria for an ECI, but also the procedural steps which follow submission of an initiative (including the right of the organisers to be heard in person by the Commission, and for judicial review in the case of a submitted initiative being rejected).

We now move on, firstly to answering the specific questions raised in the Green Book, and subsequently to addressing a number of core issues which the Green Book wholly fails to mention.

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?

Mehr Demokratie considers that a qualifying threshold of a third of the total number of states - in the sense of "a significant number" - would be too high. European (transnational) civil society is only in its infancy, and is thus as yet insufficiently inter-connected and networked. A qualifying threshold which is too high would serve only those organisations which are already large, well-organised and -networked, and which have considerable resources. The ECI would be ineffective and unusable as a democratic tool if the result was that in practice only such organisations would be able to secure a hearing for their concerns.

The comparisons with Switzerland and Austria which the Commission quotes do not apply adequately to the situation. In the first place, what is launched in Switzerland by a quorum of one-third of the cantons is a popular referendum - which enjoys a far greater degree of effectiveness and compulsion (in terms of its binding power on the authorities) as a democratic instrument. Secondly, in both Austria and Switzerland, the quorums are applied alternatively i.e. *either* 100,000 signatures must be collected *or* the relevant initiative can be introduced by one third of the cantons or states. In only one of the 10 EU Member States which has a procedure comparable with the ECI at the national level is there the requirement to secure the signature quorum from a minimum number of regions.

Linking the ECI provisions to certain Treaty articles - such as the ruling on enhanced cooperation between Member States, or the application of the 'early warning system' - is misguided and inappropriate, as is the reference by the European Parliament, in its vote of 07.05.2009 on the ECI, to the quorum of one-fourth of

Member States which may launch initiatives in the areas of judicial cooperation in criminal cases and cooperation between police forces. For a European Citizens' Initiative is merely an *indirect* right of initiative, since it merely formulates a desire for the Commission to take up an initiative. Logically, therefore, the quorum for the "significant number of Member States" should be less than one-fourth. We consider that a threshold of a sixth to a fifth of Member States would be appropriate and sufficiently high.

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?

We believe that the threshold of 0.2% of the total population of a Member State is too high. In Italy, 50,000 signatures are sufficient to launch a citizens' initiative - corresponding to around 0.8% of the total population. Because of the overall size of the EU, we recommend a threshold a little lower than the Italian one and we thus consider a threshold of 0.05% of the total population of each contributing Member State as adequate. In a state such as Germany, this would be at least 40,000 signatures.

A higher percentage than this would not be in proportion to the nature of a citizens' initiative, which has the character only of an invitation and is not determinative. Representativity is assured through the required number of member states. The ECI functions as a mechanism for presenting proposals to the Commission i.e. it is an agenda-setting device.

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?

Mehr Demokratie agrees with this proposal. In general, the right to give ones signature to an ECI should be linked to the right to vote.

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?

Mehr Demokratie agrees with this suggestion, but would add that the initiators of the ECI should have the option of presenting their proposal either as a fully formulated draft legislative act or as a suggestion which, while stating clearly the subject-matter and aim(s), may still require to be worked on and made more specific.

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?

Since we are dealing with an EU-wide procedure, minimum standards should be determined at the EU level. These standards would refer to the way signatures are collected, what information is required to enable verification of the right to give ones signature, and how the online collection of signatures is to be organised (see below). The Member States should determine all the remaining questions. In addition, the Member States should be responsible for verifying the signatures, as there is no Europe-wide register of voters.

In respect of the manner of signature collection, the rules should in any case allow for the possibility of free signature collection i.e. the collection of signatures in open public places, among ones circle of friends and acquaintances and at public events, and also for the submission of signatures by post. This is currently not possible in Austria and Southern Tyrol. The Member States should be free to make supplementary provisions, such as signature-gathering in town halls and other public offices.

Signatories should give their first and family names, their full address and postal code, their date of birth and their signature. The signatures are to be considered valid if the identity of the signatory can be unequivocally confirmed, and if there is a proper signature i.e. a signature should not be declared invalid if individual details such as the date of birth or the postcode are missing, as long as the person's identity can be confirmed. The absence of a handwritten signature, on the other hand, would invalidate the form. After the signatures have been checked and submitted, all personal data should be deleted.

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

No. A citizen can sign if there is a signature form available where he/she is. It is then the responsibility of the initiative committee to send the signature to the appropriate authority for the person's identity to be verified.

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

Citizens should have the possibility of signing initiatives online. The large size of the EU makes the networking of European society difficult. Many Member States have as yet poorly developed civil society structures. Online signature collection also allows for significant savings for initiatives because there are no printing costs. However, registration and verification must be so arranged that the process is straightforward and transparent - for example, as follows: when someone signs online, they must give their name, address, email address and date of birth. The Commission would check the validity of the signature with the relevant offices in the Member States. Before the process is initiated, the signatory must confirm their identity by clicking on a link sent to them by email. In working out the specific details of online signature collection, reference should be made to the experience of the Member States with online petitions.

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

Yes.

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

No. The time between the launch of the initiative and the end of signature collection should be 18 months, though it should also be possible for the organisers to hand in the signatures before the deadline. An 18-month time-limit would ensure that the initiators had sufficient time to organise Europe-wide networking. This period of time is appropriate also because it is not so long that an issue would have lost its topicality and relevance.

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

We welcome a mandatory procedure for registering proposed initiatives. However, we would also insist that there be a right to receive professional advice on the admissibility of an initiative. It is often difficult to ascertain the precise scope of EU powers, making it essential for organisers of initiatives to be able to consult relevant experts, so that potential problems can be resolved at an early stage. Ultimately, such a provision would also ease the burden on the institutions by lessening the likelihood of later disagreements and possible legal appeals.

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

It should be possible for a planned initiative to be declared via a specific website provided by the European Commission, but this should not be the only possibility. Citizens should have other options - for instance, by writing to the Commission, or

by an application in person at one of the regional offices of the EU. It would also make sense for all citizens' initiatives to be available for download from a website, regardless of the manner of registration.

In some Member States very active online debates on political issues take place on the websites of the parliamentary petitions committees, where one can view all the online petitions and take part in discussion forums. Petitions which attract many signatures are often picked up by the media from these sites. In the interests of creating a European public space, it would seem more than desirable for such a server to be set up, where people from all over Europe can debate issues with each other, independently of the campaign organisations and interest groups.

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

Beyond the requirement for transparency as to how an initiative is financed (see below), no other specific requirements should be imposed on initiative organisers.

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

Organisers should be obliged to provide details of who is supporting and funding an initiative. This would increase transparency, both for the organisers and for the initiative itself, and give both greater credibility. However, this requirement should not result in bureaucratic over-regulation. Disclosure should relate to the initiative's total income and expenditure, and also reveal any large donations.

Consideration should also be given to the reimbursement by the European Union of part of the proven burden of costs borne by the organisers. This would make initiatives more financially independent and less likely to be subject to possible influence from private donors. However, in order to prevent abuse, any refund of demonstrated expenses should take place only after the submission of the required quorum of signatures, whose level remains to be determined. Organisers should also be granted the right to avail themselves of the translation services of the EU, so that their initiative texts can be translated into all the official EU languages.

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

Before this question can be answered, it would first be necessary to clarify what is to be the role of the Commission after a citizens' initiative has been submitted.

It is clear, to begin with, that the Commission must ascertain whether the formal requirements for an ECI - such as the number of signatures, the number of states etc. - have been met (formal acceptance). Then the initiative proposal has to be checked to ensure that its subject-matter is within the competences of the EU Commission and that it is compatible with superordinate law (test of admissibility).² Organisers should have the right to appeal to the European Court of Justice in the event that an initiative is rejected by the Commission. Provision should also be made for the Commission and the European Court to accept an initiative in part. In addition, each ECI should be officially announced as soon as practicable in the Official Journal of the EU, and in the corresponding official gazettes of the Member States.

Citizens' initiatives which have satisfied the formal criteria and the rules of admissibility must then be dealt with by the Commission. The Commission must reach a political decision as to whether it will adopt the initiative proposal in whole or in part, or whether it will reject it.³ In all cases the reasons for the decision must be given. Adoption of an initiative - in whole or in part - means that the Commission will prepare draft legislation and initiate the legislative process set out in the Treaties.

A time limit of 6 months in total is appropriate. However, a decision ought to be reached within a shorter time frame - such as 2 months - as to whether an initiative has satisfied the formal and admissibility criteria.

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

Mehr Demokratie does not believe that any special provisions are necessary to prevent repeat presentations of initiatives on the same issue. The requirement to collect a million signatures should be sufficient in itself to ensure that initiatives on the same issue are not repeatedly launched.

Questions not raised in the Green Book

Unfortunately, several core questions are not dealt with at all in the Green Book. Thus, for example, the question as to whether European Citizens' Initiatives which

² In respect to the latter, consideration must be given to the limits of the powers transferred to the EU by its Member States, and to the Charter of Fundamental Rights, if an ECI itself is not directed towards a treaty amendment. In all cases, international law must be taken into account.

³ Several experts are of the opinion that the Commission is not free to decide whether it should put forward draft legislation or not. They believe that if an ECI has satisfied the formal criteria and the test of admissibility, the Commission has a duty - maybe a limited one, depending on the circumstances - to put forward draft legislation. However, neither the European Council nor the Parliament can be bound by a citizens' initiative. Cf. Maurer, A/Vogel, S.: Die Europäische Bürgerinitiative, Chancen, Grenzen und Umsetzungsempfehlungen, October 2009, pp 26-28.

seek or would result in amendments to the EU Treaties is not raised. But this issue is of great importance in relation to the scope of application of the ECI.

a.) Treaty amendments

The precise wording of the Art. 11 (4): "*... a legal act of the Union is required for the purpose of implementing the Treaties*" leaves room for the interpretation that an ECI may not be used to propose a treaty amendment. That would be a great flaw. It was never the intention of the authors of Art. 11 (4) to restrict the ECI purely to secondary legislation. Art. 192 (2) TEC - the model for Art. 11 (4) - is not restricted to secondary legislation. Moreover, the EU Treaties are very complex and have far more political content than national constitutions. To exclude treaty amendments would prevent European citizens from being able to play an active role in the most important political issues. The Lisbon Treaty gives the Commission and - for the first time - the European Parliament the possibility of proposing treaty amendments. Why should European citizens be denied the option of asking the Commission to initiate a treaty amendment process? The Commission's proposals in respect of the ECI therefore need to be supplemented by a clarifying statement that citizens' initiatives whose aim and/or consequence would be a treaty amendment are also permissible.

b.) Organisers' right to a hearing

One important potential added value of the ECI is an improvement in the level and quality of communication between the EU institutions and the EU citizens. But for this to happen it is essential that ECIs are taken seriously and are dealt with in a transparent and respectful procedure and manner. In addition to what was stated above in relation to the time limit for the Commission, it would be extremely important for the organisers to be able to present their arguments directly to the decision-makers. Organisers must therefore have a right to a formal hearing at the EU Commission. The hearing must also be open to the public.

In the event that the Commission adopts an ECI proposal and formulates a draft law, the organisers must also be given the opportunity to present their case to the EU Parliament and the European Council. It should be open to the EU Parliament to involve itself with an ECI independently of the formal route of transfer from the Commission and to arrange a hearing with representatives of the initiative. The same should also apply in the event of a rejection of an ECI by the Commission. The practical details of the way the Council and Parliament deal with ECIs can be further specified in the relevant rules of procedure.