

Dr. Günther Schefbeck
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Vienna, 29 January 2010

Re: Comment on the Green Paper COM (2009) 622

Dear Ladies,
Dear Sirs,

We are glad to follow the invitation to provide comments on the Green Paper on a European Citizens' Initiative. We share the opinion that involving citizens in the policy-making process within the framework of the EU and making available to them a legal instrument to submit legislative initiatives to the Commission will contribute to strengthening democracy at EU level and improving the quality of European legislation, by making use of what James Surowiecki calls the "wisdom of crowds".

Beyond that, we hold that the introduction of this new instrument would not only offer an opportunity to also introduce new technical tools into the democratic process but that this instrument is likely to be used efficiently only if such tools are available. Thus, the main focus of our comments will be on how to support the European citizens' initiative by new technologies, in order to offer the European citizens – regardless whether they are already organised in associative structures of any kind or non-organised individuals who would anyway need a specific networking structure enabling them to prepare a citizens' initiative and find sufficient public support for it – a realistic option to make use of the new instrument.

Nonetheless, we will, of course, also follow the particular invitation of the Commission to briefly answer the questions raised.

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

Having in mind the difficulties proposers of a citizens' initiative will have to face when trying to find support in the different member states, we endorse the European Parliament's position that the number of member states legally required should not be more than one quarter of them. Anyway, it will be politically desirable to find support in as many member states as possible, so that already from this issue it becomes evident that an electronic platform providing multilingual functionalities will be required to make the process work.

2. Minimum number of signatures per Member State

The Commission's principal argument that it needs a minimum number of signatures in those member states that are counted to reach the threshold of "significance" is understandable. This also goes for the argument in favour of a proportion instead of a fixed number. For systematic reasons, however, if there is an eligibility criteria (see question #3) the reference value should be the number of citizens eligible to support a citizen's initiative but not the population. We would argue that 0.1 % of those citizens was an appropriate minimum number, for a higher number would aggravate the difficulties already mentioned. Needless to point out we proceed from the assumption that all the signatures, including those coming from member states where said minimum number is not reached, will to be counted for the overall requirement of 1 mio. signatures.

3. Eligibility to support a citizens' initiative – minimum age

From a systematic point of view, it would seem to be quite logical to link the eligibility to support a citizen's initiative to active suffrage in EP elections.

4. Form and wording of a citizens' initiative

Being aware of the fact that legislative drafting requires quite specific knowledge and experience, it would be sufficient to only require that the initiative clearly state the subject matter and objectives. (By the way, since a legal amendment made in 1988 this also applies to Austrian people's initiatives and has always applied to Austrian citizens' initiatives since they were introduced in the same year.) Nonetheless, initiators aiming to prepare a draft legal act should be provided with drafting support. This need not necessarily forever be personal expert support, in a mid-term perspective such support could also be given by an electronic legislative drafting environment. From the very beginning of the citizens' initiative being operational, however, initiators were to be provided with a template and an editing environment supporting them in completing it.

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

There is definitely a need to offer an online tool for European-wide citizens' initiatives. Even for nation-wide citizens' initiatives online-tools would be of great help to raise new initiators and reach supporters more easily. With no online-tool available for initiatives on EU level it

would be too difficult and probably too expensive for most initiatives to emerge without the help of a funding e.g. from a party, which is definitely not what should be aimed for.

On the other hand, if no online tool for European citizens' initiatives is going to be offered, other organisations will fill this gap with maybe untrustworthy possibilities to support initiatives. These initiatives may follow other interests as well, especially if (partly) funded by a party or interest group. The danger of tools not being offered by the European Commission, the European Parliament or other official organisations is of course, that on the one hand, citizens' voice may not be heard and on the other it can never be found out that the given number of supporters of an initiative might really be traceable. It maybe in favour of a provider or an interest group to "cheat" and publish a higher number of supporters than the actual number of natural persons, who "signed" in for an initiative.

To have one common database for European-wide citizens' initiatives over all European countries, there must be some sort of coordination between the data that have to be entered by citizens' of all member states (minimum criteria). The following data are suggested to be part of minimum criteria to be entered by supporters of initiatives:

- First name, surname
- Date of birth, place
- Address (street, number, post code, city, country)
- E-mail address
- Passport number

These details are certainly not good enough to authenticate somebody as being a person who really "signed" an initiative, but by having to add the date of birth, place and the passport it could well be accepted without having too much of a burden. Of course a central database would have to check automatically if a passport number and a name – possibly also other data – match with each other.

In case a country has more secure alternatives to offer (e.g., procedures for e-voting, or a citizen's card with digital signature possibilities or similar secure technologies) these authentication possibilities should also be taken into account and should be part of a European-wide citizens' initiative portal. For citizens already using more secure authentication possibilities in maybe other areas (e-voting, digital signatures for communicating with municipal authorities, etc.) it could be of great advantage to let them use a familiar procedure. It gives the citizens the possibility to sign an initiative online in their e.g. working office instead of having to do this at home after work by looking for their passports

to be able to add the passport number to the online form to join an initiative.

In principle supporting an initiative must be easy – if not easier – than buying a book online. Therefore existing infrastructure in countries where these technologies are already in use in other areas for authentication could be helpful. It would also be worthwhile to think of a procedure where citizens only have to be registered – and authenticate themselves – only once and (only) then are able to sign initiatives with a userID and password. The key element should be a system where automated signatures for supporting an initiative are completely impossible. Therefore a “strict” authentication of a citizen must happen at some time in the process.

For initiating a new initiative stricter rules can be put in place. In this case an online-form for new initiatives should only be possible with a higher level of authentication, e.g. a digital signature. This is also helpful to make sure that there might not be too many new initiatives with similar content as it is more likely for citizens to engage more with the subject.

Alternatively initiators as well as citizens wanting to support an initiative and not having the possibility to do this online, have to be given the possibility to take part, either by providing a facility for the use of a public computer with internet connection or by offline attendance. The number of offline participants will have to be added to the online tool by some official. The same possibility should be put in place for initiators who don't have and don't want to get a digital signature or other devices needed for publishing new initiatives.

Key questions that have to be solved in relation with an online-tool for citizens' initiatives:

- Time and effort – who is responsible for counting and adding offline signatures to the online procedure?
- Data protection – should the name of the initiator be published? Some kind of regulation must be clearly published for every citizen to see
- Content check-up of transmitted initiatives with regard to immoral and unlawful content before publication
- Explanations will have to be made in all languages spoken within the EU – this could be solved by offering one EU-domain as well as many country domains for member States with the same wording (e.g., initiatives.at, initiatives.de, etc.). There should be links to all country member state domains from the main EU domain.
- In which languages should new initiatives be published? Who translates/is allowed to translate initiatives? Should it be possible for any supporter to translate an existing

initiative and link it with the existing one? Who guarantees that an original initiative in one language is the same as the initiative translated into another language?

- In case of overwhelming participation procedures for load balancing have to be implemented, e.g. country domains backing up each other.

6. Time limit for the collection of signatures

Evidently, the question is linked to question #7, for only if there is mandatory registration setting a time limit for collecting support would make sense, because only in this case it would be verifiable. One year, in an age of dynamic societal developments, is quite a long period of time; however, the difficulties in promoting an initiative on a cross-border level may require such a period. No less evidently, a time limit for the Commission's examination of an initiative (see question #9) would be justified as a *contrarius actus*.

7. Registration of proposed initiatives

Registration will be necessary to ensure a uniform procedure as well as the uniform template for a citizens' initiative are kept to, and to set the starting point for the time set aside for collecting the signatures. It makes good sense to foresee an online procedure for registration: The registration functionality should be one specific feature of an electronic environment also enabling initiators to prepare their initiatives, and subsequently to collect signatures.

8. Requirements for organizers – transparency and funding

Linking the requirements on organizers to those foreseen for submitting a petition to the EP seems to be a very reasonable approach. Along with the registration of the initiative, the respective basic information on identity of the organizer(s) is to be submitted and subsequently published. As to funding and transparency, we have to be aware that many NGOs would not be able to perform their business without public funding; thus, in order not to prevent a good deal of civil society organisations from organizing citizens' initiatives, public funding should not be an obstacle to submitting such an initiative. Transparency with regard to public as well as private funding, however, seems to be a reasonable counterweight to potentially hidden interests in promoting a citizens' initiative. However, as it is always the case with transparency, there will be two questions to be answered, namely how to check the correctness and completeness of the information provided and what are the legal consequences if the transparency requirements are violated.

9. Examination of citizens' initiatives by the Commission

In order to ensure an efficient procedure, a time limit for the examination of a citizens' initiative by the Commission is as necessary as a time limit for collecting signatures. If at the end of such an examination phase the Commission not yet has to present a legal draft act destined to implement the initiative's objectives (in case the assessment would suggest that) but just has to make a principal assessment of the initiative, six months should be a sufficient period of time. Of course, this assessment, along with additional matter related to the Commission's opinion-making process (e.g., studies or comments), if available, should be published within the electronic environment for processing citizens' initiatives.

10. Initiatives on the same issue

The electronic environment supporting potential organizers of citizens' initiatives in communicating and networking already in the preparation phase should contribute to avoiding submissions in parallel of substantially identical or similar initiatives. Successive submission, however, cannot be excluded, and there will be no way to exclude it if the Commission stays to its policy described sub item #7; there, the Green Paper states that "the Commission does not consider that such a registration process should involve any decision by the Commission as to the admissibility of the proposed initiative". If, however, the Commission decides to give up this policy and to regularly check the admissibility of proposed initiatives, there seem to be other issues justifying the rejection of a proposed initiative much more than a substantive repetition, e.g. a violation of the principles laid down in the Charter of Fundamental Rights.

General Conclusions

European legislation has become an even more complex process than national legislation, due to adding the supranational layer of legislation, which is intertwined with the national layers in a manifold way. Such complexity, to prevent legislation from being alienated from the citizens addressed, calls for more transparent legislative procedures, as well as for more active involvement of citizens. While such involvement on the level of preparing EU legislation is already supported electronically by the Commission's consultation platform, the new instrument of the European citizens' initiative, as an instrument to enable citizens to play a more pro-active role in European policy-making, will require support by a specific electronic environment, too.

Such an environment nowadays is well within technical realizability. Just to refer to one well-known technical tool, an early political and technical initiative has been taken by the Scottish Parliament already more than ten years ago, i.e. the Scottish ePetitioner System, which meanwhile has already been taken over by other legislatures like the German Bundestag. Even though it is not supporting collaborative drafting, it has become sort of an early reference system for “ePetitioning”.

An electronic petitioning environment of today would, of course, make use of state-of-the-art semantic and Social Web technologies to support preparing, registering, promoting, submitting, and evaluating citizens’ initiatives by

- making available not only format templates but also relevant public knowledge resources, and facilitating the sharing of knowledge, in the process of drafting such initiatives,
- empowering co-operative action in such a process, e.g. by making use of Social Web tools like wikis, aiming at producing aggregated and well-structured initiatives,
- allowing online communication not only between the organizers of an initiative but also between them and the Commission, along with supporting a formalized registration procedure,
- providing facilities for publishing the initiatives registered, along with the required information on the initiator(s), but also for embedding the initiative in its knowledge environment assisting the European citizens in making up their minds about an initiative,
- enhancing the public discourse through a more transparent setting of arguments by visualization technologies,
- facilitating the collection of the required signatures of citizens backing the initiative in a way meeting the identification and authentication requirements, along with functionalities allowing to currently track the number and member state distribution of signatures collected,
- supporting the submission of the initiative once the required number of signatures has been reached, and
- assisting the administrative officials in processing and evaluating the initiatives.

Of course, not all of these functionalities will already be implementable until 2011 when, in accordance with the Commission’s intentions, the European citizens’ initiative is to become operational. However, from the very beginning it needs a comprehensive concept for such an electronic environment that then is to be realized step by step. Needless to point out that

from the start the functionalities will have to be available in a multilingual way, which, if an intelligent solution is aimed at, will be one of the major technological challenges.

That is why the conceptual efforts should start as soon as possible. We hope we were able to indicate what these efforts might be about, and we are, of course, ready to provide more detailed input if requested.

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