

Reply to the EU Commission Green Paper on a European Citizen's Initiative (COM(2009)622 final)

My personal interest in this subject comes from it having been the focus of my Masters thesis (see SOUSA FERRO, Miguel, **"Popular legislative initiative in the E.U."**, 26 (2007) *Yearbook of European Law* 355-385). Although the following comments do not quote specific legal basis, for purposes of synthesis, these may be found in this thesis.

0. Non-binding nature of the ECI

A central issue in the discussion of the European Citizen Initiative has been whether or not the Commission would be bound to put forward the suggested legislative initiative once a valid ECI had been submitted to it.

The European Commission and the European Parliament have already made it clear that, under their interpretation, there is no binding effect. The ECI is seen as a mere extension to EU citizens of the right of request of a legislative initiative, already granted to the Council and Parliament.

For the reasons outlined in the above mentioned paper, I agree with this interpretation, as the only one allowed by the Treaty.

However, if the objective is truly to promote a new instrument of democratic participation, then it must be recognised that it would be counter-productive to reduce this new right to the status of a petition. Even if it legally does not meet the requirements for a true Agenda Initiative, still an interpretation must be found that is coherent with the spirit of the Treaty. The Treaty intends to deepen democratic participation, not to reduce or complicate it.

If we are to say that the Commission has merely the obligation to consider the legislative initiative, but not to submit it, then all the new right of ECI has brought is an incredible complication of a right that any EU citizen already has. Aside from the explicit right of petition to the EU Parliament, which can lead to a request of a legislative initiative, any EU citizen may write the Commission and obtain a reply in his/her own language. This means, effectively, that any individual citizen could already write the Commission to propose EU legislation, and he/she should expect some kind of reply. In this case too, the Commission would have an obligation to consider the content of the letter.

If the ECI is to retain any innovative value, the future ECI Regulation must foresee a special duty of the Commission to consider the proposal. There should be language clarifying that the Commission's decision to put forward or to reject a validly submitted ECI cannot be arbitrary. The intention is to involve the Citizens in the legislative making process, and the institute's structure was clearly copied from national Agenda Initiatives, which directly set the agenda for the legislator. Because its requirements are more demanding, the ECI must put the citizens closer to the European legislator (i.e. the European Parliament and the Council of Ministers) than a mere petition would.

In short, the future ECI Regulation should foresee the Commission's obligation to pass an ECI on to the legislative bodies, unless this would clearly be contrary to the interests of the European Union. This seems to be the only required and legitimate test.

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

A "significant" number of Member States need not even be a quarter of them.

The objective of this requisite is not to guarantee that the proposal will adequately reflect the interest of the Union. That determination must be made, at a later phase, by the European Commission and, ultimately, by the EU legislator.

The purpose is rather to guarantee that the issue has an EU dimension. The fact that citizens from different Member States are interested in it gives some reassurances of that. It is in this

sense that the term “significant” should be read. While, clearly, two Member States would not suffice, a requisite that citizens come from 15% of the Member States (i.e. presently 4 MS) is enough to ensure an EU dimension.

No legitimate analogy can be established with the one third requirement for enhanced cooperation or for national Parliaments to trigger the subsidiarity procedure. For the first, the objective is not merely to guarantee an EU dimension, but to guarantee a critical mass of States, also in the logic of keeping the EU project as harmonious as possible (does also the requirement that any other Member State be allowed to join). For the second, it is also not an EU dimension which is sought, but a guarantee that enough national Parliaments agree that the subsidiarity principle is being endangered.

Also, the practical dimension to the underlying realities is very different. It is much easier to get 9 Governments of 9 Parliaments to agree on a common proposal than it is for civil society organisations to gather one million signatures of citizens from 9 Member States.

Finally, any options on this point should take into account the considerations made above on the binding nature of the ECI. The more powerful the instrument, the more justifiable it is to impose restrictions. Adversely, there are no reasons to impose burdensome requirements on a proposal that can be arbitrarily accepted or rejected by the Commission.

2. Minimum number of signatures per Member State

I am in agreement with the Commission’s position on this point (i.e. imposing a minimum requirement of 0,2% per Member State in order to meet the geographical distribution requirement).

3. Eligibility to support a citizen’s initiative – minimum age

I am in agreement with the Commission’s position on this point (i.e. linking the minimum age for ECI to the voting age for the European Parliament).

4. Form and wording of a citizens’ initiative

It is sufficient and appropriate to require an ECI to clearly state the subject-matter and objectives of the proposal.

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

A common EU procedure for the collection, verification and authentication is crucial to the success of this new democratic instrument, which has the potential of stirring European-wide debate from the bottom-up.

As the Commission has rightly pointed out, a compromise must be found between the requirements on Member States to adapt their existing mechanisms for verification and authentication, and the need not to impose unjustified burdens on the use of ECI.

The compromise, I believe, should be different depending on the method used to collect signatures.

Arriving at a solution that would exclude the use of “certified and protected online tools” for collection of signatures would too drastically diminish the impact and potential of ECI in an age where political participation is steadily moving to online platforms. Such online tools would be the simplest to use, and also the simplest to verify. Member States need only be asked to check signatures and voter registration numbers of their own citizens with their computer databases. In this scenario, each subscriber would need only provide: name, date of birth, Member State of citizenship and voter registration number (or equivalent identification number). As a safety mechanism, the server could associate to each online subscription the I.P. of origin, so as to allow for subsequent investigation in case of detection of fraud.

It should be noted that, in the context of online tools (as described), the requirements placed upon Member States would be very limited, and would not foreseeably require a significant effort or change of existing procedures for verification and authentication of signatures.

Such online tools should be offered in parallel with mechanisms for the collection of signatures in paper form, to allow for more traditional methods of promoting democratic participation. The same information as mentioned above should be required, and verification should be carried out by sampling or in full, as decided by each Member State.

Verification and authentication mechanisms should be complemented by an additional safety measure. Once received, each ECI would be published online by the Commission, including the list of supporters. Any citizen which finds his/her name on the list unduly, should be able to inform the Commission, directly or through a third party, the name being thereupon stricken from the list of supporters.

It should be kept in mind that, in Member States where citizen agenda initiatives have been submitted to requirements of authentication by public notary or collection at officially designated centers, this has in practice led to the instrument almost never being used.

6. Time limit for the collection of signatures

I am in agreement with the Commission's position on this point (i.e. imposing a time limit of one year for collection of signatures).

7. Registration of proposed initiatives

I am in agreement with the Commission's position on this point. Registration in a publicly available site, provided by the Commission, would greatly facilitate the promotion of ECIs and would establish a high level of transparency. It seems advisable for the Commission to take no position whatsoever, at the stage of registration, on the eventual admissibility of the initiative on the grounds of content. Admissibility should only be assessed after verification of the collection of the minimum number of signatures.

Registration in a Commission website would also tie in with the necessary publicizing of the signatures of an ECI (see comments to question 5, on the additional mechanism for verification and authentication).

8. Requirements for organizers – transparency and funding

I am in agreement with the Commission's position on this point.

9. Examination of citizens' initiatives by the Commission

I am in agreement with the Commission's position on this point, in what concerns the time limit for the examination of the citizens' initiative.

However, I am not in agreement with the position that this analysis should include the decision on "whether the substance of the initiative merits further action from its side". For more on this issue, refer *supra* to the first item (*Non-binding nature of the ECI*).

10. Initiatives on the same issue

There is, as yet, no need to impose limits on initiatives addressing the same issue, either simultaneously or successively. Experience with popular legislative initiatives in other States suggests that there is very little risk that a lack of limits will lead to an undue burden on the system. In any case, if experience proves that a limit is necessary, it may easily be introduced at a subsequent date. To do so already would be to give in to an unjustified and baseless fear of this instrument.

It should also be kept in mind that such limits, even if they were to be introduced in the future, should never prevent the simultaneous or successive presentation of initiatives on the same issue, but with significantly different content (e.g. two opposing proposals).

11. Rights of organizers after admittance of ECI

One point that was not addressed in the public consultation, but which should nonetheless be taken into consideration, is the need to foresee certain rights of organizers after admittance of an ECI.

Having made the effort to collect 1 million signatures from several Member States, organizers should not then have to see their project debated without the opportunity of contributing at least once to that debate before the institutions themselves, rather than merely indirectly, through the media.