

A Citizen's Contribution to the Public Consultation on the European Citizens' Initiative

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Introduction

The Treaty of Lisbon brought significant changes to the status and rights of Union citizens. The introduction of a legally binding Charter of Fundamental Rights and the European Citizens' Initiative, hereafter the 'ECI', should be welcomed by all as steps towards a more democratic and human rights-centred European Union. The ECI, founded by Article 11(4) of the newly worded EU Treaty (TEU),¹ is a positive addition to the workings of the EU by providing for the first time in the history of European integration a means whereby citizens can play a role in proposing European-wide legislation.

This discussion shall focus on the author's opinion, as a Union Citizen, of the Commission's Green Paper on a European Citizens' Initiative, henceforth 'the Green Paper'.² The issues highlighted by the Green Paper shall now be discussed in turn.

Issues for Consultation

Minimum number of Member States from which citizens must come

The first question that the Commission poses relates to the minimum number of Member States from which Union citizens must come from for a successful ECI. Article 11(4) TEU states that 'a significant number of Member States' must be involved in a prospective ECI in order for it to be successful. The reason for requiring a 'significant number' is to ensure that an initiative is 'sufficiently representative of a Union interest'.³ The Treaty article does not provide any further guidance and so it is for the Regulation, which shall govern the procedures of the ECI, to determine what 'a significant number of Member States' will be.

The Commission and the European Parliament have different opinions as to what proportion would be deemed 'a significant number'. The European Parliament argues for the threshold to be one quarter of Member States and refers to Article 76 Treaty on the Functioning of the EU (TFEU).⁴ Whereas the Commission proposes that the threshold should be set at one third of Member States

¹ Article 11(4) TEU:

"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."

² Commission's Green Paper on a European Citizens' Initiative, COM(2009) 622 final [hereafter 'Green Paper'].

³ Green Paper, p.4.

⁴ European Parliament resolution on 7 May 2009 requesting the Commission to submit a proposal for a regulation of the European Parliament and of the Council on the implementation of the citizens' initiative (2008/2169(INI)) [hereafter 'Resolution'], p.4.

which it argues would ‘strike the right balance’.⁵ A threshold of a majority of Member States was also discussed as a ‘significant number of Member States’ but rejected by both the Commission and the European Parliament as excessive.

The Commission notes that the threshold one-third is used in numerous provisions ‘of a more general nature’ and significant in some national systems as well.⁶ However, the ECI should be seen in light of its unique function within the EU, which is to enhance democratic legitimacy. Despite the weak link between the threshold proposed by the European Parliament in Article 76 TFEU and the concept of the ECI, the proportion of one quarter has merit. One quarter of Member States would allow for a ‘significant proportion of Member States’ and allow Union citizens to make practical use of their rights in organising and supporting ECIs.

As there is currently 27 Member States, one quarter is roughly seven Member States. How can anyone say that the joint opinion of citizens from seven Member States is not significant? One quarter of Member States would also ensure ECIs relate to a European, as opposed to a national, interest. The Commission should concentrate on the merits of the threshold itself rather than finding common proportions in other EU or national procedures as this would lead to a better result for the citizenry of the Union. Therefore in order for the concept of ECI to come to life a threshold of one quarter is an appropriate balance between enabling Union citizens to make practical use of this right and ensuring the issue in question is a European rather than one in the national interest. A one-third threshold would be an inappropriate proportion and would ultimately weaken the ECIs significance in the EU.

Minimum number of signatories per Member State

The next issue discussed by the Commission was the need to set a fair minimum number of signatories for a Member State to be deemed involved in an ECI. It is agreeable that such a threshold needs to be set to ensure that a proposed ECI has ‘a genuine European flavour’.⁷ The Commission is correct to conclude that fixing a specific number would be an incorrect approach to take due to the ‘enormous differences in populations’ between the different Member States.⁸ Therefore a threshold would be more appropriate and sensitive to the feelings of the smaller Member States.

Article 11(4) states that a minimum of ‘one million citizens’ are required for a successful attempt at creating an ECI. The European Parliament’s proposal is to set the threshold as a proportion of the population. The European Union currently has a population of just below 500 million people and one million people is required for a ECI. Thus as 0.2% of the Union’s population is required for an ECI it could be seen appropriate to fix the threshold at 0.2% of the Member States population which for Germany would be 160,000 people and 20,000 people in Belgium.⁹

Strategic placing of campaign resources would be a likely consequence of such a system as any threshold would differentiate the value of a citizen’s signature depending upon which Member State they are a national of. For example, it would be cheaper and logically easier to campaign in the smaller Member States than the larger ones, making countries such as Luxembourg, Malta and Cyprus

⁵ Green Paper, p.5.

⁶ Green Paper, p.4-5.

⁷ Green Paper, p.5.

⁸ Ibid.

⁹ Resolution, p.4.

key targets for an efficient campaign. However, the alternative to this difference in value would have been the potential silencing of such countries and as their influence is minimal in the EU anyway it seems that the threshold of 0.2% is a fair balance between the different interests of the Member States.

Eligibility to support an ECI minimum age

Article 11(4) TEU does not impose a minimum age of eligibility for supporting an ECI. However, as the Commission states it is reasonable to ‘fix a minimum age’ to ensure the credibility of the ECI as a respected part of European democracy. The Commission outlines two options for this. The first is to link the ECI to the voting age for European elections in the Member States which would lead to an age requirement of 16 in Austria and 18 in the other 26 Member States. The second option is to set the minimum age in Regulation itself.¹⁰

The European Parliament notes that it is ‘desirable to avoid conflicting interpretations’ and uses the example of differing minimum age requirements between the Member States as something to avoid. It is agreeable that the minimum age of eligibility should be consistent throughout the Union. Therefore linking it to the voting age for European elections in the Member States would lead to an unsatisfactory result. This subsequently leads to the conclusion that the minimum age of eligibility must be incorporated into the Regulation itself at either 18 or 16.

It is proposed that the age of 16 should be the minimum age requirement in order to legally support an ECI. Despite the additional administrative needs this would require, such an age limit would through involving European citizens at a younger age harvest a generation of more active Union citizens. At the age of 16 in most European countries you do not have the right to vote but you are sufficiently mature to support or reject particular causes. It has been commented by many that, as a result of the internet and changes in culture, there is no real gap any more between those who are 18 and those aged 16. This leads to the conclusion that such a distinction is arbitrary. A minimum age of 16 would also make the EU more relevant to younger people and could inspire them for increased involvement in a European context.

The Commission’s Green Paper argues that setting the minimum age at 16 ‘would create a significant administrative burden by diverging from existing systems for voter registration’.¹¹ The administrative burden would not be to the extent envisaged by the Commission. In the United Kingdom, and most if not all of the other Member States of the EU, young people leave secondary education at the age of 16. Thus there is already sufficient data as to when people turn 16 and this could be used by the Member States to record who is eligible to support an ECI.

¹⁰ Green Paper, p.6.

¹¹ Ibid.

Form and wording of a ECI

Article 11(4) TEU does not specify the form in which an ECI should take. It is agreeable that some requirements are necessary so that the subject matter and position taken by an ECI can be easily identified by both citizens and the Commission. Making it a requirement for ECIs to take the form of a draft legal act, as required in some Member States,¹² would seriously undermine its use excluding and deterring most Union citizens from organising an ECI. Such a requirement would leave ECIs solely in the reach of non-governmental organisations and private companies leading to some interests being excluded from the organising of ECI campaigns all together.

One option that the Commission outlines in the Green Paper is for a requirement to clearly state ‘the subject-matter and objectives of the proposal on which the Commission is invited to act’.¹³ This option would be less burdensome than the one mentioned above and would still give citizens the option of annexing a draft legal document onto the ECI. Stating the subject-matter however should not be interpreted as to require that the ECI must refer to a particular area of the Commission’s competence. The Commission has experience in its competencies and should be able to identify the competency most relevant to the proposed ECI itself. However, this should not prevent Union citizens from suggesting the particular competency they believe the ECI falls under.

No further requirements other than subject matter and objective should be required when submitting an ECI. The Commission has the information required to identify what the issue is and what the ECI proposes.

Requirements for the collection, verification and authentication of signatories

The legitimacy and credibility of an ECI should be protected by provisions that ‘ensure adequate verification and authentication of signatures’ so that ECIs are a respected part of European democracy.¹⁴ The Green Paper states that no institution at EU level ‘has the competence’ to check the eligibility and validity of signatures.¹⁵ National authorities will therefore be required to verify the collection of signatures within their respective territories. However, it is correct to suggest that common requirements should be set out within the Regulation to ensure that all Union citizens, regardless of which Member States they are a national of, have an equal right to taking part in an ECI. There are two approaches in which this can be done; either through full harmonization or with the introduction of minimal requirements to ensure some standard across all 27 Member States of the EU.

In its Green Paper, the Commission argues that full harmonisation of procedural requirements at EU level would ‘impose considerable additional administrative and regulatory burdens’ on those Member States that already have procedures in place. By contrast, a minimal standards approach would allow Member States to adopt additional measures within the Framework of the requirements set out at EU level. As the situation differs between the Member States in terms of population size and geography it would be reasonable to allow the Member States to adopt some additional measures to tailor the Framework set out by the Regulation to their particular needs whilst setting out basic standards to ensure the legitimacy of ECIs. Such an approach will also allow for joint action through use of a secure online means of pledging support.

¹² Green Paper, p.7.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

However, Member States should be restricted in the extent to which they can tailor the rules of procedure on ECIs. The Commission and the European Court of Justice should have the competence to review the additional rules that the Member States impose on the procedures governing ECIs. A special procedure should also be established to allow individual citizens to bring complaints straight to the European Court of Justice in situations where the Member State in question has severely restricted the way in which their nationals, and other Union citizens that reside within its territory, participate in ECIs. An example of a restrictive requirement would be a rule that requires all signatures to be collected at one particular centre in the whole country. This rule would be restrictive in most Member States and would therefore undermine the ECI as a credible tool of European democracy.

Specific procedures should be in place to ensure that all Union citizens can support ECIs regardless of their country of residence. A restriction stating that Union citizens can only support ECIs within their Member State of origin would undermine the free movement of persons provisions of the EU which is a central fundamental freedom that all Union citizens enjoy. Linguistic problems should also not hinder a Union citizen from supporting an ECI within their host Member State. One way in which this could be provided for is an online means of pledging support for ECIs which is secure to prevent online attacks. Member States should adopt legislation that provide for criminal sanctions and the exclusion from supporting or organising ECIs within a specific period for anyone found guilty of hacking or attacking in any other way the result of an ECI. The online tool should also be found within the Europa with a separate section of the website dedicated to ECIs. This section of the website should inform Union citizens of any ECI campaigns that are currently ongoing with contact details of the organisers so that they can be involved in the campaign. The webpage should also list and give full details of the ECIs that are open for signature at that moment in time with a hyperlink allowing them to go onto a secure online form to pledge support. In order to ensure eligibility and validity of an online pledge of support details such as passport number and home address should be provided. If a home address is required the relevant Member State should then send a confirmation letter via post stating that their pledge of support has been accepted. The entire section of the Europa website should be available in all 23 official languages of the European Union.

Data protection must be safeguarded throughout the ECI process with data only being used for the purposes of that particular ECI and should not be passed onto third parties, even for the purpose of other ECIs they may wish to support. An option could be included on the online form stating that they wish to be placed on an email list which informs them about future ECIs.

Time limit for the collection of signatures

Article 11(4) TEU does not provide for a time limit for the collection of signatures. The Commission argues that it is justifiable to impose a reasonable time limit as ECIs ‘link to topical issues may refer to problems that lose relevance’ and the ‘context in which people sign may change in this period’.¹⁶ It was noted in the Green Paper that national time limits within European countries with national citizens’ initiative procedures varies from a number of days to several months. The time limit must not be too restrictive in order to accommodate the ‘increased complexity’ of an EU-wide campaign. The European Parliament proposes a time limit of one year for an ECI campaign.¹⁷

¹⁶ Green Paper, p.9-10.

¹⁷ Green Paper, p.10.

Due to the precedent that national systems show and the arguments that justify the inclusion of a time limit, it can be argued that the establishment of a time limit is a reasonable measure to take in order to ensure ECIs have credibility and legitimacy. The length of this time limit should be 18 months given the scale of the task in an EU-wide campaign. The proposal of one year is insufficient and could lead to organisers of ECIs concentrating on Member States with smaller populations in order to obtain the 0.2% population threshold required. This would subsequently lead to a rushed and fragmented public debate on the issue of focus in the ECI. Therefore given the large scale of such a campaign and the need to create a multi-lingual public debate, 18 months would be a more reasonable time limit.

Registration of proposed initiatives

As a time limit should be imposed on ECIs it is necessary to determine when the time limit starts running and when it ends. It is correct to suggest that a registration procedure for prospective ECIs is necessary in order to keep these time limits in check. Registration should begin before the collection of signatures and it must be made clear as to when the time limit has begun after registration. This registration could be made on a dedicated section of the Europa website which provides information about current ECI campaigns and a form for registering new ECIs in order to provide for greater transparency. This form should clearly set out the stages of procedure in a comprehensible format and further guidance on how to set up an ECI campaign using successful case studies. The Commission is correct to suggest that the registration process should not ‘involve any decision’ on the admissibility of a proposed ECI as this could lead to confusion relating to the Commission’s decision making process.¹⁸ It could also be expected that organisers would check that their proposed ECI is within the Commission’s competencies.

Requirements for organisers – Transparency and funding

It is safe to presume that most ECI campaigns will require funding and support from organisations. The Commission argues that ‘in the interests of transparency and democratic accountability’ organisers should be required to provide ‘basic information’ relating ‘to organisations that support an initiative and how initiatives are or will be funded’.¹⁹ The European Parliament also states that organisers should publicly assume responsibility for the funding and the sources of this funding.

It is acceptable that organisers should be obliged to make public information about all financial assistance and other aid it has been given by organisations. This will allow the public and political commentators to plainly see what interests a particular ECI is serving and whether this is acceptable to the Union’s citizenry. Provisions in the regulation relating to transparency will also help shield the ECI from criticism which would consequently undermine its use as a tool of European democracy open to all. The organisers should be required to provide the names of organisations that have supported their ECI and the way in which they have supported them. This could be the financial assistance provided, stating the full amount donated, as well as other means of support such as help with publicity and promotional items used during the campaign. These details should be updated

¹⁸ Green Paper, p.10.

¹⁹ Green Paper, p.11.

frequently in order to ensure optimum transparency. Sanctions should be provided for to deter the concealment of financial assistance and other means of support from specific donors.

Examination of citizen's initiatives by the Commission

The Green Paper notes that no time limit is imposed by the Treaty for the Commission to deal with an ECI 'once it has been duly submitted'.²⁰ It is understandable that some time is required in order for the Commission to resolve complex issues in policy formulation which could take the form of an 'analysis of merits and shortcomings of a proposed policy initiative'.²¹ However, some kind of time limit is essential to ensure that the situation of a long period of uncertainty relating to the Commission's response does not become a reality. The Commission proposes six months to ensure that it has enough time to give an ECI adequate consideration.²² The Commission would assess whether the subject matter of the ECI falls within scope of its powers and whether it merits action. Admissibility will only include questions of legal competency with political considerations excluded completely. The European Parliament proposes a two step approach which allows for two months for admissibility and an additional three months to examine and decide upon the substance of the ECI.

A time limit seems necessary for the smooth running of the system and to prevent the uncertainty referred to above. If no time limit was imposed the ECI itself could be undermined as the Commission would only see it as part of its wider backlog rather than a pressing issue to take action on as soon as possible. It is arguable that the Commission's proposal of 6 months is too lenient and that decisions should be made at a faster rate. If the time limit of 18 months for collecting signatures is also taken into account, the entire process of an ECI, from the beginning relating to the registration form up to the final decision of the Commission would take 2 years. This is a long time for citizens to wait for action on a pressing issue.

The European Parliament's two-step approach is a step in the right direction but it is still felt to be too lenient in the time that the Commission has to determine admissibility of ECIs. Surely in the majority of cases the area of competence most relevant shall be easily identifiable or mentioned in the ECI itself. Therefore two months seems an excessive amount of time to determine admissibility. It is counter proposed that a period of one month for determining admissibility and a further period of three months for the merits of the proposal is more appropriate and would enable increased certainty to Union citizens involved in an ECI.

Initiatives on the same issue

The final issue discussed in the Commission's Green Paper is the possible situation whereby initiatives on the same issue are presented. Such an occurrence cannot be foreseen for two reasons, namely the system of registration and the resources required for a successful EU-wide ECI campaign. As the Commission rightly states a registration system would provide the transparency required to ensure that duplication is avoided.²³ If a section of the Europa website is created, similar to that outlined above, every Union citizen would be aware of the ongoing ECI campaigns at any particular

²⁰ Green Paper, p.12.

²¹ Ibid.

²² Ibid.

²³ Green Paper, p.13.

time and would be able to obtain the contact details of organisers to seek involvement. Successive presentations of the same request would also be unlikely due to the resources required for a successful ECI campaign in a 'significant number' of Member States. It is unlikely that organisations and other means of financial assistance shall be available for two campaigns on the same subject.

What is meant by 'on the same issue' is also an important consideration. If one interprets this to mean identically worded ECIs then the potential of duplicate campaigns is incredibly minor. However, if the 'same issue' is interpreted more broadly to mean ECIs on the same topic then this could be too broad and cover dissimilar proposals. Any restriction between these two extremes indicated above would be arbitrary and hard to justify; consequently undermining the ECI as a tool of European direct democracy. Such an arbitrary rule would also not help the EU fight back against criticisms that refers to a 'democratic deficit'. Therefore no provisions should be included within the regulation that concerns the prevention or sanctioning of successive initiatives 'on the same issues' as this would lead to an inappropriate and unacceptable result.

Conclusion

To conclude this contribution to the public consultation on the European Citizens' Initiative it is right to congratulate the work of the EU institutions thus far on its progress in creating a European Union for the diverse peoples of Europe. It is hoped that the comments above will be considered on par with others and help to ensure that the future Regulation relating to the European Citizen's Initiative creates a system that is both fair and practical.