

Rewarding a European Citizens' Initiative

Unlike many national citizens' initiative procedures, a European process will not lead to a popular vote but to legislative action by the Commission. The effort to gather more than one million signatures from across Europe must be rewarded, says *Daniel Schily*.

Article 47 of the draft European constitutional treaty gives EU citizens a right of initiative in the form of a European Citizens' Initiative (ECI). According to this right, if a million EU citizens from several member states support an initiative proposal with their signatures, the Commission (and in exceptional cases the European Council) can be required to present a formal legislative proposal (for consideration by the EU Parliament and the Council). Proposals must be within the competence of the EU and relate to issues which, in the citizens' opinion, require to be set out in Union law.

If an ECI is to be qualitatively different from a mere mass petition, there needs to be clarification, not only in relation to the practical design of the procedure – what are, for example, the formal conditions under which an ECI can be launched? – but also in relation to its legal consequences: what should happen when an ECI has satisfied the formal conditions and collected the required number of signatures?

The right of initiative in the European Union

We must first be clear as to what a right of initiative of a million EU citizens could and should mean in the context of European law and government practice.

The right of initiative of the Commission

So far, the Commission has had the sole right of initiative in the EU. It is argued that this is the only way that the Commission – as the 'executive of a supranational state' – can fully carry out its responsibilities as the protector of the treaties and of the general interest. It does so by being the only one charged with the task of generating proposals about issues which fall within the treaty – where this is specifically provided for in the treaty, or where it (the EC) considers it to be necessary. It has:

- an unlimited right of initiative in the 'communitised' areas [policy areas listed in Article 3] where the Council only makes decisions on proposals which it has received from the Commission; thus, when a law is actually enacted and what its basic thrust is depend primarily on the Commission;
- on questions of Common Foreign and Security Policy (CFSP), both the Commission and the member states can make proposals. However, the Commission has no right of initiative in certain areas of justice and home affairs.

Beyond this, both the Council and the European Parliament can call upon the Commission to draft proposals if they believe this is necessary. Thus the right of initiative of the Commission is rightly considered to be the key to the institutional equilibrium of the EU.

The right to withdraw

An unusual feature of the Commission's right of initiative is the right to withdraw initiatives until they have been legally enacted. The rationale for this right derives from the complex diplomatic circumstances within which the Commission must seek to have its proposals accepted. This right is, however, very far-reaching. It confers power through the Commission's ability to make tactical decisions. Those bodies which have the right of initiative at the nation-state level – government, parliamentary groups

and possibly the electorate – do not normally have this possibility.

The European Citizens' Initiative right

If one wants to avoid seriously impairing the functioning of the European Union, one cannot and should not simply place a European Citizens' Initiative on a par with the Commission's right of initiative. On the other hand, there must be a guarantee that an ECI is not purely dependent on the goodwill of the Commission – it would then be merely a mass petition.

This can be done by leaving the Commission completely free in substance, but at the same time being bound to respond to the Citizens' Initiative – within a specified period of time and depending on the subject-matter of the initiative – in the form of a proposal which is then passed to the relevant organs of the EU.

Time period between the handing in of an initiative and the response from the Commission

There should be no more than 6 months between the submission of an ECI and a response from the Commission. It may also be necessary to place a time limit on the response times of the other EU organs – the Parliament and the Council. The whole process should probably not take longer than one year.

European Citizens' Initiative in the communitised areas

If a valid ECI relates to one of the communitised areas, the Commission could respond in one of the following ways:

- **No initiative:** the Commission provides an explanation as to why it cannot/does not wish to draft an initiative proposal based on the ECI.
- **Unsupported initiative:** the Commission has reservations about the ECI and gives its reasons for not supporting it, but nonetheless allows it to proceed to the legislative process, leaving the final decision to the legislative organs of the EU.
- **Counter-proposal:** the Commission presents its own counter-proposal *in addition to* the ECI proposal and leaves the decision to the legislative organs – whilst recommending that its own proposal be accepted.
- **Approved initiative:** the Commission adopts the ECI proposal and recommends its approval by the legislative organs.

The Commission is not permitted to withdraw these initiatives (see above)

European Citizens' Initiative in the area of CFSP and other areas

If a valid ECI proposal falls within the field of Common Foreign and Security Policy or another of the areas within which the Council or the European Parliament can call upon the Commission to draft proposals, then the 'No initiative' option for the Commission falls away. The other options remain.

European Citizens' Initiative in areas where the Commission has no right of initiative.

If a valid ECI proposal falls into the area in which the Commission has specifically no right of initiative, then the Commission passes the proposal to the Council without a formal recommendation. The Council prepares a position statement.

Legislation

Council and Parliament

As the (only) organ of the EU directly elected by the citizens, the European Parliament is the natural point of reference (in addition to the Commission) for an ECI proposal. It is therefore recommended that an ECI should in principle first be debated in a special session of the Parliament. The ECI representatives (e.g. campaign committee) may present their case to the Parliament; this is then considered together with the proposal(s) from the Commission (and possibly the Council).

The conclusion of this special session marks the end of the period of presentation of the ECI proposal and the beginning of the period of converting it into legislation. From this point on the rules of the normal EU legislative procedure apply – in line with the existing rules for the division of responsibilities and powers between the Parliament and the Council.

In the ‘No initiative’ case (see above) both the Council and the Parliament can request the Commission to reconsider its position.

Obligation towards the initiative committee

The Commission shall keep the representatives of the ECI informed of all the official stages in the processing of their ECI proposal.

Openness and transparency

Public presentation of the ECI

The President of the Commission shall publicly receive a valid ECI proposal in person.

Right to address the Parliament

The representatives of the ECI have the right to address the special session of the European Parliament.

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