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GREEN PAPER

on a European Citizens' Initiative

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I. INTRODUCTION

The Treaty of Lisbon, which was signed in Lisbon on 13 December 2007 and amends the Treaty on European Union and the Treaty establishing the European Community, sought in particular to reinforce the democratic fabric of the European Union. One of its major innovations is to introduce the European citizens' initiative. It provides that *"not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the 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"*¹.

It also provides that the procedures and conditions required for such a citizens' initiative, including the minimum number of Member States from which citizens must come, shall be determined in a Regulation to be adopted by the European Parliament and the Council on a proposal from the European Commission.

The European Commission welcomes the introduction of the citizens' initiative, which will give a stronger voice to European Union citizens by giving them the right to call directly on the Commission to bring forward new policy initiatives. It will add a new dimension to European democracy, complement the set of rights related to the citizenship of the Union and increase the public debate around European politics, helping to build a genuine European public space. Its implementation will reinforce citizens' and organised civil society's involvement in the shaping of EU policies.

The Commission is convinced that European citizens should benefit from this new right as quickly as possible after the entry into force of the Treaty of Lisbon. The Commission's ambition would therefore be to make it possible for the Regulation on the citizens' initiative to be adopted before the end of the first year after the entry into force of the Treaty and it trusts that the European Parliament and the Council will share that objective. Given the importance of the future proposal for citizens, organised civil society, stakeholders and public authorities in the Member States, citizens and all interested parties also need to have the opportunity to give their views on how the citizens' initiative should work.

The purpose of this Green Paper is therefore to seek the views of all interested parties on the key issues that will shape the future Regulation. The Commission hopes that the consultation will encourage a wide range of responses.

The experience of citizens, stakeholders and public authorities in relation to similar popular initiatives that are in place within the Member States, would be of particular interest in the context of this consultation.

The Commission also welcomes the European Parliament's resolution on the citizens' initiative, which was adopted in May 2009², as a valuable contribution to this debate.

¹ Article 11, paragraph 4, of the Treaty on European Union.

² European Parliament resolution of 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 - P6_TA(2009)0389

II. ISSUES FOR CONSULTATION

While the principle itself and the key features of the citizens' initiative are enshrined in the new Treaty, the procedure and practical arrangements required for this new institutional instrument raise legal, administrative and practical issues. These issues are presented hereafter together with a number of questions to which citizens and stakeholders are invited to respond.

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

The Treaty indicates that the signatories of a citizens' initiative must come from "a significant number of Member States" and provides that the Regulation shall establish "the minimum number of Member States from which such citizens must come".

Several considerations need to be made in order to determine what the right threshold should be:

Firstly, the reason for requiring that signatories come from a "significant number of Member States" is to ensure that an initiative is sufficiently representative of a Union interest. Whilst a high threshold would indeed ensure that the initiative is sufficiently representative, it would nevertheless make the procedure more burdensome. On the other hand a low threshold would render the initiative more accessible, but less representative. Therefore the right balance has to be struck between these two considerations.

Secondly, the threshold should be determined on the basis of objective criteria, in particular in the light of other Treaty provisions, as to avoid conflicting interpretation.

One option would be to require that the threshold be a majority of Member States. With 27 EU Member States, a majority would currently be fourteen. The Treaty would not exclude such an approach. Nevertheless the use of the term "significant number" appears to indicate that a majority was not intended. Moreover a majority would seem disproportionately high.

Another option, at the lower end of the spectrum, would be to set the threshold at one quarter of Member States. That would currently be reached with seven Member States. This is the threshold that the European Parliament put forward in its resolution on the citizens' initiative, using an analogy with Article 76 of the Treaty on the functioning of the European Union, which provides that acts relating to judicial cooperation in criminal matters or police cooperation can be adopted on the initiative of a quarter of the Member States. The European Commission does not consider that this precedent offers a strong analogy for the citizens' initiative. It is very sector-specific and its logic differs from that of the citizens' initiative. Moreover, the Commission considers that one quarter of Member States would be too low a threshold to guarantee that the Union interest is adequately reflected.

A third option would be to set the threshold at one third of Member States. That would currently be reached with nine Member States. This would match a number of provisions of the Treaty which are of a more general nature. It is the threshold used in the provisions on "enhanced cooperation" which provides that "at least nine Member States" must participate³. One third is also used as the threshold for the number of national Parliaments needed to

³ Article 20 of the Treaty on European Union.

trigger the subsidiarity procedure provided for in Article 7(2) of the protocol on the principles of subsidiarity and proportionality, attached to the Treaties.

The figure of one third is also important in some national systems. The Austrian Federal Constitution states that citizens' initiatives must receive the support of 100 000 voters or one sixth of the voters in at least three Länder, which represents one third of the 9 Austrian Länder. Outside the EU, the Swiss threshold for the number of cantons required for optional referenda is also close to one third.

The Commission considers that a threshold of one third would strike the right balance between ensuring adequate representativity on the one hand and facilitating the use of the instrument on the other.

Questions:

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?

2. Minimum number of signatures per Member State

In view of the fact that the Treaty requires that a citizens' initiative be supported by no less than a million citizens coming from a significant number of Member States, the Commission considers that it is necessary to set a minimum number of citizens that are required to support an initiative in each of the Member States involved. The reference to a "significant number of Member States" was introduced in order to ensure that a European citizens' initiative would have a genuine European flavour. This implies in turn that a minimum number of participating citizens is needed across the minimum number of Member States to ensure that it reflects a reasonable body of opinion. It would be contrary to the spirit of the Treaty if an initiative could be presented by a large group of citizens from one Member State and only a purely nominal number of citizens coming from other Member States.

Such a requirement for a minimum number of citizens per Member State, would of course only concern the minimum number of Member States from which citizens presenting a citizens' initiative must come.

One approach in order to determine what the minimum number of citizens should be per Member State would be to set a fixed number of participating citizens for all Member States. This would have the advantage of being clear and simple. However given the enormous differences in population between the Member States, ranging from 410 000 in Malta to 82 million in Germany, such a fixed number would penalize citizens coming from smaller Member States.

Another more equitable option would be to set the threshold as a proportion of the population of each Member State. To fix this threshold, an analogy could be made with the proportion of citizens of the Union required to present a citizens' initiative. The population of the Union currently stands just under 500 million citizens. Therefore one million out of 500 million represents 0.2% of the population of the Union. 0.2% of the population of each Member State where signatures are collected could therefore be taken as the minimum number of citizens required for that State⁴. This

⁴ This is the option favoured by the European Parliament in its resolution on the citizens' initiative.

would currently represent around 160 000 for a country like Germany or 20 000 for a country like Belgium.

It is worth noting that the proportion of citizens required to support an initiative in most of the Member States where such an instrument is in place, is significantly higher than 0.2%. This is the case for instance in Austria and Spain where it is set at around 1.2% of the population, in Lithuania, where it is almost 1.5% of the population and Latvia where it is set at 10% of the population. Hungary, Poland, Portugal, and Slovenia also have thresholds above 0.2% of the population.

Questions:

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?

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

The Treaty provision applies to all citizens of the Union. It seems reasonable, however, to fix a minimum age for supporting a citizens' initiative. This is the case in all Member States where citizens' initiatives exist.

There appear to be two different options:

One would be to require that in order to be eligible to support a European citizens' initiative, citizens must be of voting age for the European elections in their Member State of residence⁵. This is the general practice in Member States: to support a citizens' initiative, citizens need to be eligible to vote. The voting age in all Member States is 18 with the exception of Austria where it is set at 16.

Whilst this approach would mean that citizens in Austria would benefit at a younger age from the right to support a citizens' initiative, it would nevertheless mirror the existing practice for electing members of the European Parliament.

Another option would be to set the minimum age for supporting an initiative in the Regulation itself, e.g. setting it at 16 or 18. Setting the minimum age at 18 would be in line with the voting age in all but one Member State. However, it would exclude those citizens who are already of voting age at 16 in Austria. Setting the minimum age at 16 would create a significant administrative burden by diverging from existing systems for voter registration.

Questions:

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?

If not, what other option would you consider appropriate, and why?

⁵ This is the proposal put forward by the European Parliament in its resolution on the citizens' initiative.

4. Form and wording of a citizens' initiative

The text of the Treaty does not specify what form a citizens' initiative should take but merely that it should invite *"the European Commission, within the framework of its powers to submit any appropriate proposal on matters where citizens consider that a legal of the Union is required for the purpose of implementing the Treaties"*⁶.

It nevertheless appears necessary to set out some requirements as to what form an initiative should take, in particular in order to be sure that citizens and the Commission can clearly identify what the subject-matter and objectives of an initiative are.

One option would be to require that a citizens' initiative take the form of a draft legal act with clearly recognisable legal provisions. Draft laws are indeed required for initiatives in some Member States (Austria, Italy, Poland and Spain). However, such a requirement appears to be unnecessarily restrictive and burdensome. Moreover, the wording of the Treaty does not suggest that a draft legal instrument is the form required.

On the other hand, an unclear or insufficiently detailed text might be misleading for the signatories and could make it more difficult for the Commission to give a precise and justified response. Another option could therefore be to require that an initiative clearly state the subject-matter and objectives of the proposal on which the Commission is invited to act. Such an option would not exclude the possibility for citizens to annex a draft legal act for ease of reference.

Questions:

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?

What other requirements, if any, should be set out as to the form and wording of a citizens' initiative?

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

In order to guarantee the legitimacy and credibility of citizens' initiatives, provisions will need to be made so as to ensure adequate verification and authentication of signatures, in line with the relevant national, European and international legislation on fundamental rights, human rights and the protection of personal data. Since there is no body at EU level that has the competence or the necessary information to check the validity of signatures and to check whether any given citizen of the Union is actually eligible to support a citizens' initiative, this task will need to be performed by the national authorities of the Member States⁷. The national authorities would therefore be responsible for verifying and certifying the results of the collection exercise within their country.

However there are a number of considerations to be made in relation to how the verification should be carried out within the Member States and the extent to which common requirements should be set out at EU level.

⁶ Article 11, paragraph 4, of the Treaty on European Union.

⁷ This is also acknowledged by the European Parliament in its resolution on the citizens' initiative.

All Member States have procedures and mechanisms for the verification of electors and a large number of them already have verification and authentication procedures for national citizens' initiatives. These verification and authentication procedures vary considerably, however, from one Member State to the other: some Member States have rather strict requirements in place as regards collection procedures. These include for instance requirements that citizens may only sign initiatives in officially designated centers, or that a public official or a notary must be present to authenticate all signatures at the time of collection, or requiring that a certificate of voter registration be issued for each signatory. Other Member States, on the other hand, have lighter systems in place, which do not impose any specific requirements for the collection of signatures but generally require ex-post verification of the signatures collected by the authorities, both in order to check the validity of the signatures and to verify the number of signatures collected.

It seems clear that the ultimate objective of Community provisions in this regard should be to ensure that Member States can guarantee adequate verification of the eligibility of signatures collected for a European citizens' initiative within their country, without imposing unduly restrictive requirements upon citizens or unnecessary administrative burdens.

One option in order to achieve this objective would be to require that Member States put in place adequate measures to that effect, whilst leaving it up to them to decide on the level of regulation of such procedures, including the possibility of making use of the provisions already in place for national citizens' initiatives. This option would have the advantage of offering considerable flexibility to Member States in the way they implement this provision. It would also greatly facilitate implementation for those Member States that already have procedures for citizens' initiative in place. On the other hand, this could mean that one same initiative would be subject to considerably different procedural rules in the different Member States, with the result that collecting signatures may be easier in some Member States and more difficult in others. This option could therefore have the unintended consequence that the voice of citizens of some Member States would be easier to hear than that of citizens of other Member States.

On the other end of the spectrum, another option could be to foresee a full harmonization of procedural requirements at EU level. This would mean in practice that all applicable procedural requirements would be set out in the EU Regulation and that the Member States would neither be able to derogate from those nor impose additional national requirements. This would have the advantage of ensuring a completely level playing field across the EU as regards the procedures to follow for preparing a citizens' initiative. Nevertheless it would impose considerable additional administrative and regulatory burdens on those Member States that already have procedures in place. Moreover there are specificities in national systems and procedures that an EU Regulation is unlikely to be able to fully take into account.

Therefore a more rational option could be to set a number of basic provisions at EU level, including on the one hand certain minimum requirements for verification and authentication of signatures and on the other hand obligations for Member States to facilitate the collection process and remove unduly restrictive requirements.

According to this approach, Member States would only be able to adopt additional measures within the framework of the requirements set out at EU level. This option would have the advantage of combining a certain level of flexibility for Member States, whilst ensuring common features for the procedures across the EU.

Such an approach could preserve the European-wide nature of the citizens' initiative by facilitating the simultaneous collection of signatures in several Member States. For that purpose, consideration should be given to the use of certified and protected online tools.

Any approach chosen would **also** need to **allow** EU citizens that reside outside their country of origin to support citizens' initiatives. Member States can draw on their experience in managing the right to vote of such citizens in European Parliament elections.

There are a number of important issues to consider that relate to the extent to which the collection of signatures is regulated and the nature of the requirements for verification and authentication. These are:

- whether any conditions should be imposed as to where and how signatures can be collected: e.g. by means of circulation of lists to be filled in and signed, by post, in officially designated centers, etc.;
- what specific requirements for verification and authentication and what security features would be needed in case of online collection of signatures;
- whether a citizen's statement of support for a given initiative should be checked in the Member State of which he/she is a national or in his/her Member State of residence;
- what safeguards in view of the protection of personal data should be in place for the collection and processing of data.

Questions:

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?

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

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

6. Time limit for the collection of signatures

The Treaty does not foresee a time limit for the collection of signatures. However, in European countries that have citizens' initiatives in place, a time limit for collecting signatures is usually set. The time limits vary from a number of days (for example, thirty days in Latvia or sixty days in Slovenia) to several months (for example, six months in Spain or eighteen months in Switzerland).

In addition, several reasons would justify the introduction of a time limit for the European citizens' initiative: such initiatives are often linked to particularly topical issues and may refer to problems which, if there is no time limit, or if the time limit is too long, lose their

relevance; the context in which people sign may change if the period is too long (for example, if European legislation on the same subject is amended or adopted in the meantime).

However, if a time limit is imposed, it must be reasonable and sufficiently long so as to allow a campaign reflecting the additional complexity of working throughout the European Union. This could be achieved by providing for a period of, for instance, one year⁸.

Questions:

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

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

7. Registration of proposed initiatives

Aside from the length of time, consideration should be given as to the way of determining when the time limit starts running and when it ends. In most Member States the time limit generally begins following completion of the required publication or registration formalities; however there are cases where the time limit is determined by the dates of the signatures.

The Commission considers that if a time limit is indeed set, it would be necessary to require a form of registration of the proposed initiative before the collection of signatures begins. Such registration could be done by the organisers of an initiative on a specific website provided by the Commission for this purpose. They would be required to upload all relevant information on the proposed initiative (e.g. title, subject-matter, objectives, background etc.) on the website, which would then be publicly available. The system would then provide the organiser with confirmation of the registration, the date and a registration number, on the basis of which the collection campaign could be launched.

Such registration would therefore serve to set the clock ticking but would also provide transparency as regards proposed citizens initiatives for which campaigns are running.

However, 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. Indeed it does not consider that it would be appropriate for the Commission to verify the formal admissibility of proposed initiatives before any signatures have yet been collected⁹. Such an approach could lead to confusion, giving the impression that the Commission had given some form of green light to proposed initiatives on more than purely procedural grounds. It would require checks to be made which would delay the moment from which signatures could be collected. Moreover, the admissibility and substance of initiatives cannot be seen in isolation and thus it would not be appropriate at the early stage of registration to undertake this examination.

The Commission understands that there may be some reluctance to launching an initiative across the EU, with the risk that it may ultimately be rejected on the grounds that it is not admissible. However it should be noted that the admissibility criterion - that the proposal on

⁸ One year is the time-limit suggested by the European Parliament in its resolution on the citizens' initiative.

⁹ In its resolution, the European Parliament was rather of the opinion that an ex ante admissibility check should be made.

which the Commission is invited to act should be within the framework of its powers - is sufficiently clear and is known at EU level. In any event, organizers can normally be expected to have fully assessed whether the initiative legally falls within the framework of the Commission's powers before launching an initiative.

Questions:

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

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

8. Requirements for organisers - Transparency and funding

Launching and organising a campaign for a proposed European citizens' initiative will in most cases require support from organisations and/or funding.

In the interests of transparency and democratic accountability, the Commission considers that the organisers of initiatives should be required to provide certain basic information in particular in relation to the organisations that support an initiative and how the initiatives are or will be funded. This would be in the interest of the citizens considering signing up to an initiative; this would also be in line with the Commission's European Transparency Initiative¹⁰.

If registration is foreseen, such information could be provided on the register made available by the Commission. The Regulation could also require that organisers make publicly available all relevant information on funding and support during the course of the campaign.

In relation to the issue of funding, it should be noted that, without prejudice to other forms of cooperation and support for civil society organizations, it is not foreseen that any specific public funding would be provided for citizens' initiatives. This is also in the interest of preserving the independence and citizen-driven nature of initiatives.

Aside from requirements upon organisers relating to transparency, it should be noted that many national systems include provisions as to who may actually act as an organizer of an initiative. These generally require that an initiative must be presented by citizens or by committees made up of a certain number of citizens. The Commission considers that such a requirement may be too burdensome at EU level and would therefore prefer not to impose any restriction as to who may present an initiative - i.e. organisers can either be individual citizens or organisations. The case of petitions to the European Parliament offers a useful analogy in this context. Indeed, the Treaty provides that any citizen of the European Union and any natural or legal person residing or having its registered office in a Member State have the right to address a petition to the European Parliament¹¹.

¹⁰ In its resolution, the European Parliament considers that the organisers of a citizens' initiative must, for the sake of transparency, publicly assume accountability for its funding including the sources of that funding.

¹¹ Article 227 of the Treaty on the functioning of the European Union.

Furthermore, organisers should comply with the obligations relating to the protection of personal data according to the relevant national law implementing EU legislation on data protection.

Questions:

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

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

9. Examination of citizens' initiatives by the Commission

Once the required number of signatures for a citizens' initiative have been collected and that they have been validated by the relevant Member States' authorities, the organizer of an initiative can formally submit the initiative to the Commission.

The Lisbon Treaty sets no time limit for the Commission to deal with a citizens' initiative, once it has been duly submitted. In part this could be in recognition of the fact that an initiative may deal with complex issues and the Commission would need some time to properly examine it before deciding on the action it intends to take: in certain cases, this might include the need to carry out an analysis of the merits and shortcomings of a proposed policy initiative. It should be noted that no specific time-limit is foreseen either for the examination of petitions by the European Parliament.

However, there is a case for fixing a time limit in line with good administrative practice and also in order not to leave a long period of uncertainty as regards the Commission's response. If a time limit is set, it should be long enough to allow the Commission to carefully examine the content of the initiative submitted. On the other hand, it should ensure that the supporters of an initiative are informed of the action that the Commission intends to take within a reasonable period of time.

The national systems operate different approaches to deadlines for considering citizens' initiatives. Whilst some systems impose deadlines ranging from a few weeks to several months, other systems do not impose a specific deadline on the authorities.

One could therefore foresee an obligation for the Commission to examine a citizens' initiative within a reasonable time-frame not exceeding 6 months. Such an approach would provide a time-limit whilst ensuring that the Commission has enough time in order to give initiatives adequate consideration, taking into account the potential complexities that they may entail.

This examination period would begin on the date of formal submission of the initiative to the Commission. This could be notified on the specific web-site mentioned under point 7.

During this period the Commission would assess both the admissibility of an initiative - i.e. whether the initiative falls within the framework of its powers - and whether the substance of

the initiative merits further action from its side¹². Once the Commission has examined an initiative, its intention would be to set out its conclusions in relation to the action it envisages in a communication which would be made publicly available and notified to the European Parliament and the Council. The action envisaged in the communication may include, as appropriate, the need to carry out studies and impact assessments in view of possible policy proposals.

Questions:

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

10. Initiatives on the same issue

In principle, it cannot be excluded that a number of initiatives on the same issue would be presented. However if a registration system is put in place, the transparency provided could ensure that duplication would be avoided.

This nonetheless leaves the potential issue of successive presentations of the same request, which would create undue burdens for the system and, in time, could undermine its reputation as a serious instrument for democratic expression. Therefore consideration should be given to whether some disincentives or time limits should be put in place to constrain the ability to represent an initiative (for instance a failed citizens' initiative could not be represented again before a certain time limit has elapsed).

However, it should be borne in mind that although some initiatives may regard the same subject-matter and contain some similar elements, they might not be identical. Moreover, the operational and financial resources required to the launch of an EU-wide initiative are likely to limit repetition and duplication.

Questions:

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

If so, would this best be done by introducing some sort of disincentives - or time limits?

III HOW TO RESPOND

Contributions to this consultation process should be sent to the Commission by 31st January 2010, either by email to the address "ECI-Consultation@ec.europa.eu", or by post to the following address:

European Commission
Secretariat General
Directorate E "Better Regulation and Institutional Issues"
Unit E.1 "Institutional Issues"

¹² The European Parliament, in its resolution on the citizens' initiative, had suggested a two-step approach by which the Commission would first have 2 months to verify the representativeness of an initiative and then a further 3 months to examine and take a decision on the substance of the initiative.

B - 1049 Brussels

The contributions received will be published on the internet, unless the author objects to publication of the personal data on the grounds that such publication would harm his or her legitimate interests. In this case the contribution may be published in an anonymous form.

Professional organisations responding to this Green Paper are encouraged, if they have not already done so, to register in the Commission's Register for Interest Representatives (<http://ec.europa.eu/transparency/regrin/>). This Register was set up in the framework of the European Transparency Initiative with a view to provide the Commission and the public at large with information about the objectives, funding and structures of interest representatives.

The Commission may invite contributors to a public hearing on the subject of this Green Paper.