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Implementation of the European Citizens' Initiative (ECI)

Green/EFA Group position paper

I. Introduction

The European Citizens' Initiative is one of the innovations introduced by the Lisbon Treaty. 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]***

The ECI is the very first step towards a more participatory model of democracy in Europe and will for the first time give people the possibility to raise issues and to bring them on the agenda of their political institutions. Thus it will help to create European-wide initiatives, discourses and consciousness and will bring us closer towards real European democracy and citizenship.

Exact procedures and conditions required for such a Citizens' initiative are to be determined in a Regulation to be adopted by the European Parliament and the Council on a proposal from the European Commission.

The first step for us is now to elaborate our position on the general framework. (Only once this framework is in place, we can reflect upon promoting or supporting initiatives on certain concrete issues!!!)

During our discussions we have to keep in mind 4 important elements:

- The European citizens' initiative is **not** to be confused with a petition nor with a referendum. **It is** nothing more (and nothing less) than **a non-binding instrument for agenda-setting by the citizens of the EU**. And: It only applies to issues within the European Unions' fields of competence and legislative powers. Otherwise it will not be admissible! (This means that initiatives on issues such as the prohibition of building minarets, or the introduction of the death penalty

would be dismissed from the very beginning).

- The European **Commission is not obliged** to take up a citizens' initiative and transform it into a concrete legislative proposal. The mere fact of submitting an initiative does not in itself give rise to a requirement on the part of the Commission to put forward a proposal for a legal act, let alone a proposal with a specific substance. However, an ECI should be dealt with **equally conscientiously than a call from Parliament or Council** when they request the Commission to submit proposals. Therefore this stage of the procedure must be transparent and open of the highest possible degree of public scrutiny.

- In case the Commission does not take up an ECI, **Parliament** could always take it up **via its own rights of initiative (Art. 225 TFEU)** if the majority of its members consider that it would be sensitive to get active in the field proposed by the initiative.

- **Greens have always considered the European citizens' initiative as one of the major innovations of the Lisbon Treaty. We have to care now that the ECI is implemented in a way that guarantees the legitimacy and credibility of the instrument, makes it strong and effective and ensures its accessibility for European citizens**

II. Issues on which we need to elaborate a common Green/EFA position

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**. The Regulation shall establish the exact number. In order to guarantee the expression of a certain European interest it seems necessary to set a minimum number of citizens that are required to support an initiative in each of the Member States involved. At the same time the number should not be too high to allow real free and new initiatives without too much financial and other support to manage it - and not provide the ECI as an instrument only for those well-organised big organisations that already have a seat and powerful lobby in Brussels.

   In this respect, the draft legislation of the Commission even lags behind the proposal of the EP in its last period. The Parliament in its report on guidelines for a proposal for regulation proposed one quarter of Member States. The Commission increased the threshold by proposing one third of the Members States.

   EP and Commission then proposed a further threshold (which is not in the LT) of a necessary support of 0, 2% of the citizens in each Member State.

   Green position: In order to guarantee European instead of national issues and at the same time keep the right to initiative accessible for ordinary citizens and not just powerful lobbyists the Green Working Group would propose **a minimum number of one fifth of Member States**.

2. **Minimum number of signatures per Member State**

   Concerning this additional threshold we believe that a set percentage for all Member States - as

originally proposed by the Commission - is not equitable. Because - for example in the case of a required number of 0,2% of the population - in small countries like Luxembourg an amount of 1000 signatures would be much easier to collect than, for example, 160 000 in Germany. So in big countries the hurdle would be too high, since, for example, in Italy 50.000 signatures are already sufficient to launch a citizens' initiative nationwide - corresponding to around 0.08% of the total population. This means that the percentage required has to reflect the size of a countries population.

We Greens therefore propose **a threshold that is digressively proportional to the population of each state** within the range of 0,05 and 1 percent of the population. And we are delighted that we could convince the Commission to adopt this proposal in their draft regulation.

3. **Eligibility to support an ECI: minimum age and third country nationals**

The minimum age is one of the less complicated issues. In principle two options are possible. Either a common minimum age in whole Europe or the support of an ECI is linked to the eligibility to vote in the single Member State.

Green position: Since the ECI is not a binding referendum, but an agenda-setting instrument that should be kept as open as possible for participation and since it could be good for Europe to especially invite young people to take or share initiatives for Europe we recommend **a minimum age of 16 for whole Europe**.

Third country nationals are so far excluded from the right to sign an ECI. The Commission in its proposal clearly states that only "citizens of the Union" can support an initiative.

Green position: EU policies concern third country nationals living in the EU as much as EU citizens. Bearing in mind that the ECI is a non-binding instrument whose major objective is to make the Commission aware of people's concerns and problems, **third country nationals who are residents of the EU should not be deprived of the right to sign an ECI** and to draw the attention of the Commission on the concerns of people living in the EU. Moreover, the Greens have always supported more open concepts of citizenship and citizens' rights.

4. **Requirements for the collection, verification and authorisation of signature**

In order to guarantee the legitimacy and credibility of citizens' initiatives, provisions will be needed so as to ensure adequate verification and authentification of signatures. However, it has to be kept in mind that in this delicate phase of initiating initiatives unnecessary burdens should be avoided. This holds true for the collection as well as for the verification of signatures.

Green position: All possible legal and technical ways to collect signatures should be allowed. This includes the **collection of signatures in the streets as well as online.** For the online collection the Commission should provide a website that allows

- easy access to sign the initiative
- to ensure that only existing and legitimated persons sign,
- to ensure that those who signed did this only once
- to guarantee enough safety for the data given by citizens.

Verification of the signatures should be dealt with by the responsible authorities of the Member

States. A verification of every single signature must not be necessary. **Random examination** is sufficient to proof whether a sufficient amount of signatures has been reached.

Personal identification numbers are not necessary for verifying signatures. They would prevent many people who care about the protection of their personal data from signing an initiative. Moreover, according to the European Data Protection Supervisor they have no added value for the verification of signatures. Name, address, and nationality are sufficient for identifying a person.

5. **Time limit for the collection of signatures**

The Commission suggests a time limit of 12 months for collecting the signatures supporting an ECI.

Green position: The time limit should be two years (or 24 months). Our experience is that transnational initiatives need enough time for communication, meetings, travelling, translation and creating enough support in a significant number of states - especially if they are not initiated by big and established NGOs. Therefore one year is not enough. The deadline does not mean that citizen initiatives could not be handed in earlier if they have already gained the necessary support. In reality it means that after this date signatures that have been given by citizens become invalid. There is no need for this and it would cause a lot of unnecessary frustration to set this deadline earlier than after 2 years.

6. **Registration of proposed initiatives**

Green position: Initiatives should be registered. For this purpose the Commission should provide a specific website. This website should also put at disposal an extensive explanation of formal and legal requirements for the success of an initiative.

7. **Requirements for organisers - Transparency and committee of organisers**

Green position:
The initiative has to name at least 7 persons out of a minimum of 3 MS that can speak and decide for the initiative. Such a committee of organisers has two advantages. On the one hand, it requires initiators to put some effort into an initiative already before it can be registered. In this way, it helps to avoid immature and unreasoned initiatives. On the other hand, the committee members can serve as direct reference persons for the Commission - for instance concerning questions of admissibility, hearings and other issues.

For the sake of transparency and democratic accountability, organisers of initiatives should, in addition to the basic information on address and persons responsible,be required to provide basic **information in relation to the organisations that support an initiative and how the initiative is or will be funded.** Disclosure should relate to the initiative's total income and expenditure, and also to any large donations.

8. **Examination of citizens' initiatives by the Commission: the admissibility check**

In the draft regulation of the Commission the admissibility check is designed as a two-step process. The first step relates to the registration of a proposed citizens' initiative by the Commission. The Commission intends to use the registration also as a filtering mechanism for not admitting "abusive" ECIs or ECIs "which are manifestly against the values of the Union". A second admissibility check is intended at a latter stage of the process, namely after ECI organisers have collected 300.000 signatures. The aim of this check is to examine the legal basis of an ECI and to admit only those initiatives that fall within the framework of power of the Commission to make a proposal.

Green position: There indeed should be a mechanism for excluding citizens' initiatives, which violate fundamental rights respected by the EU. However, rejecting an ECI on the basis of generalised arguments like "abusive" or "against the values of the Union" is far too unspecified and contradicts the principle of legal certainty (*Bestimmtheitsgrundsatz*). The Commission should instead **decide on the basis of clear legal examination. An ECI should be rejected if it is in breach of Art. 6 TEU, the Charter of Fundamental Rights, and the European Convention of the Protection of Human Rights and Fundamental Freedoms.**

Moreover, **the whole check of admissibility should be done at the very beginning and not after the creation of strong expectations and many months of signatures having been collected. C**hecking the legal admissibility of an initiative only after 300.000 signatures is far too late, will cause massive frustrations and can have a detrimental effect on the legitimacy of such decisions and the responsible institution. So registration and the examination of legal admissibility must be done before the collection of signatures is started. The Commission must thoroughly explain its decision to the organisers of an ECI - and the organizers must have the right to challenge it before the **Court of Justice**.

9. **Procedures after a successful ECI**

In contrast to all the detailed rules and provisions that ECI-organisers have to obey, the Commission is pretty short on its own obligations in dealing with a successful ECI. In Art. 11 of the draft regulation it only stipulates that it will "examine the citizens' initiative and, within 4 months, set out in a communication its conclusions on the initiative, the action it intends to take, if any, and its reasons for doing so".

Green position:
This is the most important point in making the ECI an efficient instrument for agenda-setting by the citizens and not only a toothless tiger. There must be clear regulations and legal provisions on what has to happen after an ECI was successful. Our proposal: If the ECI is formally and legally admissible, the Commission is obliged to discuss the content of its proposal and possible ways to take action on it adequately. The **Commission informs the EP and the Council of Ministers on how it intends to respond to a successful initiative. Parliament and Council can adopt an opinion on the issue.**

Moreover, the initiators of an ECI have the right to be heard by the Commission in a public hearing, where they can publically explain and discuss their proposal and reasons - and they must have the right to proper and transparent information on its deliberations and their result.

Did the Commission come to the conclusion not to take action on the initiative, the European

Parliament (in most of the cases the committee on petitions) can take up the issue and invite the Commission to explain its reasons in a public hearing where also the initiators and - if he wishes - the European Ombudsman can explain their view on this decision.

If the Commission comes to the conclusion that it will take legal action, it has to explain in what direction it would consider to propose a legal initiative and how the initiators and stakeholders will be involved. The Commission has to table its proposal within one year following its decision on the ECI.

The EP (or its committees) is free to put the issue on its agenda and to also hold a hearing at any given time.

If the Commission breaches this rules of procedure, organisers can appeal to the European Ombudsman and ultimately to the ECJ.

10. **Initiatives on the same issue**

Green position: Every initiative has to be registered on the specific website of the Commission, which is public. This could ensure that duplication would be avoided. Further legal restrictions are not needed. In order to reach the very high quorum initiatives themselves have to be interest in not splitting their force in different initiatives on the same issue.

11. **Treaty amendments**

Green position:
The precise wording of Art. 11 (4) "*... a legal act of the Union is required for the purpose of implementing the Treaties*" leaves room for interpretation of whether treaty amendments fall under the scope of the Citizens' Initiative. However, it has never been the intention of the promoters of Art. 11 (4) to restrict the ECI purely to secondary legislation. EU treaties are very detailed and complex. In contrast to national constitutions, they include numerous specific policies, tools, and instruments that, in the Member States, would be part of lower legislation. Greens do favour a more generous interpretation in order to allow citizens playing an active role in some of the most important political issues and to genuinely enhance the citizens' initiative as an instrument to "reinforce citizens' and organised civil societies involvement in the shaping of EU policies".[[1]][2] On the other hand, ECI's that propose Treaty amendments can become by no means a loophole for infringements of the Charter on Fundamental Rights or the ECHR. At the end it will however be up to the European Court of Justice to decide on concrete cases how far it stretches the concept of implementing the Treaties in its verdicts.

12. **Additional mechanisms supporting initiators of an ECI**

Green position:
In respect to the very difficulty for not already European-wide organised initiatives of the civil society with elaborating and launching an initiative in many different languages and member states and in order to avoid that only organised civil society, big, powerful and financial sound NGOs can this instrument, we have to reflect upon ways to support initiators of initiatives. This contains not only the need for help with translations or legal advice. Since it is often difficult to ascertain the

precise scope of EU powers, it will also be essential for organisers of initiatives to be able to consult relevant experts, so that potential problems can be resolved at an early stage. Ultimately, such a provision would also ease the burden on the institutions by lessening the likelihood of later disagreements and possible legal appeals.

Thus, initiatives must have the right to receive professional help especially for translation purposes and for advice on the legal design and the admissibility of an initiative.

Since it would make no sense to oblige the Commission to directly supporting the initiative in this phase of the process (because then the same institution that helped with advice and formulations will later on be the one to decide on the proposal which makes it on both ends of the process less free) an independent solution is needed. Therefore we propose to establish an independent body for help and advice with citizens' initiatives. This could lead to a very useful **focal point for citizens' engagement and citizens' participation.** It could be led by an authorized EU- appointee for citizens' participation that will be funded by the European Union, elected by the EP and controlled by a board with representatives not only of the council, the commission and the parliament but, in majority, of the civil society.

[1] Article 11 (4), of the Treaty on European Union.
[2]European Commission: Green Paper on a European Citizens' Initiative, COM (2009) 622 final, p. 3.

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