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WORKING DOCUMENT

on a proposal for a regulation of the European Parliament and of the Council
on the citizens' initiative

Committee on Constitutional Affairs

Rapporteur: Zita Gurmai and Alain Lamassoure

The ECI (European Citizens' Initiative) will add a new dimension to the European democratic system by giving one million citizens the right to call for the European Commission to put forward legislative proposals falling within its powers.

This direct democratic instrument aims at empowering the citizens with the same initiative rights that the Council of Ministers and the EP already enjoy.

However, it will not deprive the Commission of its monopoly on legislative initiative: successful ECIs will invite the Commission to make a proposal but the decision to do so will remain in the Commission's hands only.

The other aim of the ECI is to foster debate at European level, to "connect" European institutions and citizens in order to adopt legislation that will meet people's needs and expectations, within the framework of the Union's competences and the Commission's powers.

Since the ECI will be a new and powerful right, we should not neglect the obligations and need for responsibility that it implies for the organisers.

This working document intends to set out the rapporteurs' views at this stage and to put forward some suggestions to launch a debate and to find the most suitable solutions for the ECI to be a success and to avoid frustrations and disappointment, while also being user-friendly and accessible. It will outline the main characteristics of the successive stages of the procedure following a step-by-step approach.

I. Preliminary actions to be taken by the organisers:

1. First, only EU citizens who are entitled to vote at European elections should organise and/or support an ECI.
2. It would make sense for the organisers to be natural persons only in order to safeguard the essence of the process i.e. for it to remain a citizens' instrument. However, legal persons would have the right to support the organisers, financially, logistically, etc. as long as the nature and costs of their support is outlined and made public and transparent.
3. To make the process as European as possible from the beginning and to foster greater debate, the organisers should get together into a "citizens committee" of at least seven persons coming from at least a quarter of the Member States (MS). By doing so, only European-wide issues could emerge and it would ease the forthcoming signatures' collection process as there would already be a representative in a quarter of the MS. Hence, even though it seems to be a constraint at first, it would in reality ease the rest of the procedure.
4. The organisers would be responsible for the translations of the ECI into the other official languages of the EU of their choice but the Commission could check these translations upon demand.
5. In addition, other options could be explored and the rapporteurs would welcome comments and suggestions on the following issues:
 - 5.1. Would it make sense to ask for the organisers to have the support of some directly elected persons who would endorse the initiative? If so, how many of them should support it and should they come from at least a quarter of the MS as well or would it just introduce an unwelcome dose of representative democracy into the process?
 - 5.2. Should we ask the organisers to provide a deposit which would naturally be given back to

them if the ECI turns out to be successful - ?

II. Registration of an ECI:

6. Firstly, the organisers should designate a representative to be the contact person for the European institutions throughout the procedure.

7. It is in the organisers' and citizens' interest to aim for launching initiatives that will realistically have a chance to succeed so as to avoid wasting time and resources on initiatives that will not be deemed admissible. The organisers should specify from the start the legal basis they rely on. This would also foster debate as the organisers would need to reflect on what the EU can do or not do. If this legal basis were to be incorrect and if a more appropriate one existed, the body in charge of checking the admissibility of an ECI would be able to rectify it for the ECI to be registered and to go forward. As a result, this would not be a significant hurdle for valuable initiatives but it would prevent those that would have nothing to do with EU competences from being initiated.

8. It should be compulsory for the organisers to provide detailed information throughout the whole procedure on every kind of support that they receive from natural and/or legal persons so that citizens will know who is behind the initiatives that they choose to endorse.

Transparency will be key to the success of the ECI.

III. Admissibility check:

9. It might make sense for the first admissibility check - based on legal criteria - to take place after 5.000 signatures have been collected. This symbolic figure ensures the representation of genuine public support and in the meantime it would prevent an overburdening of the Commission without the organisers spending too many resources on the process. However, this is only a suggestion and the admissibility check could also be done right after the registration. In any case, the rapporteurs do not support the idea of this check taking place after the collection of 100.000 or 300.000 signatures, as this would rightfully cause great frustration to organisers.

10. In order to protect the Commission from being accused of deciding on the admissibility of an ECI on political grounds rather than on legal ones - which would undermine its credibility and cast doubt over the whole process -, it might make sense for it to not be the only organ that will make this decision in the first place. This would avoid the Commission being both judge and jury and it would also prevent it from being overwhelmed.

11. It might be more appropriate to appoint an ad hoc "wise people committee", gathering some experts, scholars and/or jurists, so that they would be as impartial as possible. Nine of them would be appointed by the three institutions: three by the Commission, three by the Council and three by the EP, as they will have to approve any legislative proposal *in fine* and it will be the MS who will later on implement any future legislation. There would also be a representative of the Commission - the Commissioner in charge of institutional affairs or his representative - and, possibly, a representative of the rotating presidency of the Council and an MEP i.e. ten or twelve persons. The Commission representative could chair this committee.

12. Their decision shall be based on the following criteria:

- the legal basis ;

- the respect of EU values (namely article 2 of the TFEU and the Charter of fundamental

rights) ;

- a preliminary subsidiarity check (a more thorough check would still take place once a million signatures are collected).

Obviously abusive ECIs could be rejected but the wording of the Commission's proposal needs to be improved.

13. Hence, the overall framework of the ECI would be addressed but this would not in any case mean that it is a definitive green light and that every ECI that gathers a million signatures will result in the Commission drafting a legislative proposal. This shall be made clear for the organisers.

14. Then, two different scenarios will be possible:

14.1. The ECI is declared admissible: it will be officially registered and be published on the special website that the Commission will launch.

14.2. The ECI is not admissible: the organisers could appeal to the Commission which will have the right to either confirm or annul the ad hoc committee's decision. If the Commission confirms this, the organisers will have the right to appeal this decision to the ECJ as provided for in the Treaties.

IV. Collection of signatures:

15. This should be done both on paper and online and the practical modalities should be left for the MS to decide.

16. Concerning the personal data that will be required from signatories, a satisfactory balance must be found between what is absolutely necessary for verification and what could discourage people from signing initiatives. Furthermore, great attention will have to be paid to data protection issues.

17. With regards to the residence vs. nationality issue of the signatories, the rapporteurs would appreciate the MS providing more information on what they could accept in order to settle on a clearer wording than in the Commission's proposition.

18. The online collection could be done through specific websites to be designed by the organisers and which will need to be certified and monitored by the competent authorities of the MS in which it will be launched. A commonly available software developed by the Commission would be welcome. It would be at the disposal of the organisers who may or may not use it.

19. A 12-month period would be suitable as, on the one hand, signature collection will not be easy nor fast but, on the other hand, a longer period might jeopardize the "momentum". Indeed, citizens will lose interest if the procedure takes too much time and the ECI would not be of relevance any more.

V. Once one million signatures have been collected

20. The verification of signatures should be left to the MS and be dealt with within 3-months. Random checks seem to be the most efficient way to deal with this issue.

21. The Commission will then engage into a two-step process which will include a hearing of the organisers:

- a decision on the legal aspects of the ECI within two months ;

- a political decision on the follow up that it will give, or not, to the ECI. Its conclusions should be sent to the organisers and explained in a communication to the Council and the EP, to be published in the Official Journal of the EU and on the ECI specific website. This should be done within two months as well.

22. Some suggest that the EP should automatically adopt a resolution on every ECI that will gather one million signatures.

VI. Final decision and different ways to follow up on an ECI:

23. This step is of utmost importance as this is what in fact makes the difference between petitions and ECIs. If this step is not clear enough, European citizens will have less incentive to use this mechanism.

VI.I. If the Commission decides to put forward a proposal:

24. It should draft a proposal within a certain time limit which could be the same for all ECIs or could be decided on on a case-by-case basis.

VI.II. If the Commission decides not to do so:

25. To avoid disappointment and to ensure that citizens feel that they have been listened to, it is important that the regulation outlines the fallback procedures. Several options would be on the table:

25.1. First of all, the Commission could still decide to put forward a proposition resulting from an ECI that has not gained enough support but does raise a valid issue.

25.2. Council and EP could also take a non-successful ECI up according to their initiative rights. The EP could in particular hold hearings of the organisers (upon request of its committees or of political groups) and adopt a resolution.

25.3. If the criteria (set out in the RoP of the EP) are met, the organisers could turn the ECI into a petition to the EP.

25.4. The Commission's decision will be subject to appeal to the ECJ.

VII. Other provisions:

26. It could be relevant to specify that it should not be possible to launch an ECI asking for the annulment of a recently adopted piece of legislation.

27. When it comes to the role of the EP, the rapporteurs are open to any suggestions on what it should/could do and on the need to actually formalise it.

28. National parliaments would probably not have a formal role but they would have the possibility to provide support and advertisement to any ECI that they wish.

29. The role that the EESC and the CoR could play also requires further reflection.

30. As in any other European procedure, the organisers will have the opportunity to seize the Ombudsperson in cases of maladministration.

31. The respective roles of the ECJ and of the Ombudsperson could be addressed in the recitals as they would not be any different than in any other procedure but mentioning them could make the regulation easier to understand and more user-friendly.

32. To make the ECI procedure as user-friendly as possible the rapporteurs believe that a "Users' guide to the ECI" should be drafted.

33. The timeline for the entry into force of the regulation is also to be discussed as some MS will have to make practical and legal arrangements to be able to deal with ECIs. It would be wiser to wait for them to be fully ready rather than to rush into the procedure. However, MS may already start preparing for the implementation of this regulation even at this stage.

34. As this instrument is new at a continental scale, a review clause will surely be necessary. The review could be done either after a certain number of ECIs have succeeded or after five years, depending on which of these criteria to be met first.

35. On the legislative procedure itself, the rapporteurs, as well as the rapporteurs appointed in PETI, would like to hold exploratory talks with the Council quite early in the process so as to reach common positions as soon as possible and to conclude the procedure at first reading to meet European citizens' expectations.