



EUROPA

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AK Position Paper

Green Paper on the European Citizens' Initiative

About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Herbert Tumpel
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 – amongst others unemployed, persons on maternity (paternity) leave, community- and military service – of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Werner Muhm
Director

Executive Summary

It is important that the more detailed provisions, which the Green Paper has put up for discussion promote the citizens' involvement and their readiness to take the initiative and that the results of an ECI are taken seriously.

From the point of view of employees, the introduction of the European Citizens' Initiative (ECI) represents one of the most important innovations of the Treaty of Lisbon. The ECI has the potential to narrow the frequently diagnosed gap between the EU and its citizens. An overall evaluation by the Treaty of Lisbon disclosed that AK also regarded its introduction as an important criterion for the endorsement of the new primary legislation structure of the EU.

Against this background it is important that the more detailed provisions, which the Green Paper has put up for discussion, firstly promote the citizens' involvement and their readiness to take the initiative and secondly that the results of an ECI are taken seriously. Otherwise the new instrument is in danger of becoming a democratic policy alibi, which only further strengthens the reputation of the EU as "a Europe removed from its citizens under the control of elites".

Administrative requirements are in particular appropriate where the democratic integrity of the proceedings has to be preserved and where manipulation opportunities have to be met with reasonable means. In the opinion of AK, some of the ways considered by the Commission in the Green Paper to solve the issue do not take this requirement into account (e.g. online support). By contrast, others would turn out to

be too strict as they would stifle the involvement of citizens by bureaucracy or restrict the circle of possible supporters. The latter concerns in particular the lack of admissibility of public funding mentioned in the Green Paper with regard to the demands made on the organizers (see in detail in Question 8). Apart from that, important aspects, such as the required support of an ECI by Commission and Member States, are neglected in the Green Paper (see in detail in Question 7, Item c).

The AK position in detail

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

Justified arguments with regard to the more detailed definition of the term “**a significant number of Member States**” are found both for the variant to set the threshold at a quarter as well as for a third of the Member States. The consistency with various other legal instruments speaks for setting the threshold at a third, as preferred by the Commission, for example the number of required subsidiarity objections to review a draft of a legislative act (compare Art 7 Paragraph 2 of the protocol [or. 2] of the Treaty of Lisbon on the application of the principles of subsidiarity and proportionality). A referendum, Austrian-style, partly expects that the threshold will be set at a third (compare Art 41 Paragraph 2 B-VG [Federal Constitution of the Republic of Austria]). From a legal point of view, a higher threshold (e.g. the majority of the Member States) would in the opinion of AK no longer be justifiable by only using term “significant number”.

On the other hand, the condition of a third of the Member States requires a high degree of intercommunication in currently at least nine states of the EU. Acknowledging the protection of minorities and the considerable effort, which has to be made for collecting signatures, AK tends towards a lower threshold of **a quarter of the Member States**.

2. Minimum number of signatures per Member State

The threshold value of 0.2% of the overall population of each individual Member State must basically be regarded as suitable. The calculation method based on a relative number of signatures protects less populated Member States against being disadvantaged. In addition, this value also seems to be justifiable in comparison to national regulations.

It has, however, to be taken in account that this threshold might be detrimental to the participation in larger Member States. According to this, Germany, the most populous country of the EU, would need the support of about 164,000 citizens to be relevant for determining the minimum number. This high threshold speaks for a lower value of **0.1 % of the overall population**.

In this context, it is also important to take the aspect of mutual interconnections concerning the individual minimum requirements into account. The higher the threshold of significance is set with regard to the Member States (see Question 1) the lower the yardstick must be for the countability per Member State. If in this respect the threshold of currently 9 states, in which the minimum number of signatures aimed at by the Commission would be realised, a relevant reduction to 0.1 % of the overall population per Member State would be required.

Hence, the Commission is solely responsible for the technical preparation of a respective legislative proposal.

Apart from that it has to be made clear, that with regard to the overall result of a citizens' initiative - provided that the relevant thresholds have been exceeded - **each declaration of support or vote in the EU counts**, independent of the fact whether the minimum number has been reached in the country in question or not.

3. Criteria to support a citizens' initiative - Minimum age

AK too supports the approach of the Commission and is in favour of linking the possible participation to the right to vote in the elections to the European Parliament. This means that until a uniform right to vote in the **elections of the European Parliament** has been adopted, the criteria on the decision of the right to vote have to be assessed in accordance with national legal systems.

4. Form and wording of a citizens' initiative

From the point of view of AK it is adequate that a Citizens' initiative only details **subject-matter and objectives** of a legislative proposal. A legally fully formulated legislative proposal would be a completely unreasonable obstacle. It would only place difficult formal legal demands on such a project. It would also be difficult for potential supporters to identify with the project if its actual purpose was wrapped in - for many incomprehensible - requirements of legal formality, as they in particular characterize the European secondary legislation (e.g. choosing the right legal basis or the possible

legislative measure). It must also be considered that the initiative monopoly with regard to law-making continues to remain with the European Commission. Hence, it is the latter, which is solely responsible for the technical preparation of a respective legislative proposal.

Apart from that, initiators, however, should be free to base an ECI on a fully formulated legal act.

What is important in this context is the requirement to have all relevant statements and details **translated into all official languages of the Union**. The citizens of the Union should have the option of reading all relevant contents of the ECI in their mother tongue (see Question 7, item b below on reporting requirements). The restriction to subject-matter and objectives of the proposal does in this context also enable a relatively cost-effective translation by the services of the Commission.

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

a. on the European level of regulation

AK supports unified Europe-wide procedural rules. In this sense the chosen legal instrument would be a **regulation**. More national room for manoeuvre or greater legal deviations between the Member States would certainly prejudice the objective of **cross-border involvement in EU policies**. Meanwhile, flexibility is appropriate, where, within the meaning of consistency,

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Member States can also take over existing national examples and procedures for citizens' initiatives.

The provision could be set up in such a manner that it would regulate the various stages and aspects of the procedure (introduction, collection, ascertainment, support, transparency, control). With regard to the collection, AK believes that the two formats to be preferred (signature in an administrative office or in the presence of an authorized person) should, if possible, be fully standardized.

b. on content requirements on the collection, verification and authentication

Concerning the collection attention has to be paid to the fact even though a **low threshold** would make support more accessible, it has to be ensured that the procedure is **manipulation-proof**. In that respect it is essential that the signatures are verified by an authorized person. Therefore, we regard online support via the private internet with scepticism. It does not guarantee the authenticity of signatures and contradicts the public character of democratic participation.

One should, however, consider the **use of collection lists**. An authorized person would have to verify the identity of a supporter, confirming it by his or her own signature. This authorisation should by no means only be reserved to officials. It should also be possible to select private persons on application to perform this duty, if necessary by swearing them in.

Apart from this innovative form, the EU provision should also integrate the conventional methods of collection. Insofar it should, loosely based on the Austrian Citizens' initiative, also be possible to render one's signature **in an administrative office**. Apart from that, the use of collection lists would effectively take the pressure off authorities.

Furthermore, for the purpose of verification in accordance with the registration and data protection regulations of the Member States, a **subsequent verification** of signatures in appropriate form (at least on a random basis) should be provided for.

6. Time limit for the collection of signatures

In order to guarantee the integrity of the European Citizens' Initiative, introducing a **time limit** - as it is also the case in Member States with popular initiatives - appears to be sensible. However, due to the increased demands on transnational signature collection a correspondingly longer time limit is essential for the ECI. Therefore, a time limit of **one year** is appropriate.

7. Registration of proposed initiatives

a. Registration procedure resp. introduction procedure necessary

To begin with, AK stresses that a **registration procedure or introduction procedure** in due form and time is **required**. On the one hand, legal consequences are linked to the introduction of the ECI (with regard to the time limit

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see answer to Question 6, on the inadmissibility for reasons of content and on the required official support see following Items b and c). On the other hand, such a procedure promotes the integrity of the ECI resp. counteracts the arbitrariness of this instrument by introducing a certain basis threshold for initiating the ECI (see Answer to Question 8, Item c).

b. Verification of admissibility in terms of content

A verification of **admissibility** is insofar required as those citizens' initiatives already had to be prohibited ex ante, which infringe against the **absolute basic values of the European society** (for example in connection with the resurgence of National Socialist or Fascist activities). As relevant measure one could, in analogy to Art 7 TEU, refer to a "serious infringement of the values mentioned in Art 2 TEU, on which the Union is based".

With regard to the concerns voiced by the Commission in respect of an ex ante verification one has to point out that the issue is not whether such an initiative would fall under the area of EU competences or not. What is important is to protect the infrastructure of the European Union against serious political misuse.

The admissibility of the registration should be decided by the EU Commission - for reasons of legal certainty alone - within four weeks prior to the start of the signature collection. The time limit begins after the expiry of this deadline or from the time the Commission has given its approval.

If technically possible, a **registration on a specially set up website of the Commission** would also be very useful.

Apart from the addressed procedure, one should at this point also mention in particular the necessary support by the Commission and the authorities of the Member States within the scope of an approved ECI. This important aspect, however, is not mentioned in the Green Paper.

c. Support of the ECI by EU and Member States

Initially, the support involves **reporting requirements**. The **Commission** is therefore obliged to report on ongoing ECIs on the internet. In this context, the text of the initiative (in particular objectives and subject-matter) as well as other details should be published in the interest of transparency of the supporters (or only linked as the case may be) and translated by the services of the Commission into all official languages of the EU.

Furthermore and with regard to the **Member States**, it is necessary to make a free of charge **public announcement in the media**, including **broadcasting**.

In addition, the support of the **authorities** of the Member States has to be regulated in detail. Apart from fundamental **reporting requirements** (by means of internet portals of the Member States and public announcement) authorities must be **available for accepting signatures**. Here too, the planned legal act has to go into more

detail, whereby the Member States, for example with regard to providing the latter (such as opening times of authority offices) have to be granted sufficient flexibility.

8. Requirements for organisers - Transparency and funding

a. Transparency obligations

With regard to transparency and democratic accountability, a relevant **verification seems to be sensible within the context of the admissibility review** of the ECI already. Insofar AK agrees that public information as to which organisations support the initiative and how it is funded is necessary.

b. No other legal requirements, in particular with respect of financing

However, **no specific requirements** should be imposed **on the organizers** of an initiative, in particular with regard to public funding, which has been problematised by the Commission. The Commission fails to recognise that many organisations, including NGOs, receive a wide variety of public funding - from financial support to benefits in kind; be it only in making rooms available. Such benefits implicitly also cross-subsidise campaigns of the relevant institutions.

Occasionally public funding is also assigned for the development and safeguarding of essential democratic-political media plurality. Just think of publicly funded public broadcasting, which is characteristic for the Member States of the Union.

Occasionally, municipalities have participated in or supported certain campaigns in Austria and other Member States.

The predominance of private stakeholders, however, can prove far more damaging than calling on public resources. A remarkable example, which the Commission will also be familiar with, is the organisation of the resistance against the EU Reform Treaty itself. Were those - undisputedly permitted - initiatives, which were certainly not publically funded, really "independent", and were they really initiated "by the citizens" within the meaning of the Commission?

Furthermore, the implicit ban of public funding is also additionally put into perspective, as in our opinion an ECI requires at least the infrastructural support by the Commission and the Member States (see reply to Question 7, Item c).

And even if one had to agree with the Commission that it would not be in accordance with the spirit of the ECI, if, for example, a Member State would directly finance an ECI by high subsidies, applying appropriate transparency requirements would even secure a solution in this case. Because, in the same way as all other politically responsible institutions, the Commission is free to consider this circumstance in the overall political assessment of the initiative.

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c. Provisions for the introduction of the procedure

The Commission assumes in the Green Paper that the introduction does not require any detailed provisions. As already mentioned (see reply to Question 7, Item a), provisions for the introduction of the procedure are required, because launching an ECI is **associated with legal consequences** (support by the Commission and the authorities of the Member States, time limit, possible ban).

In the interest of the integrity of the ECI, an appropriate application should also be borne by a larger group. It makes sense to assume a fraction of the required declaration of support of a certain Member State (e.g. **0.05 % of the residential population eligible to vote in the EP elections in a Member State, maximal, however, 10,000 supporters**). To underline the cross-boarder character it could be supplemented by a (low) Member States' threshold (e.g. 2 Member States where this percentage has to be reached).

In contrast to the point of view of the Commission, such provisions are relatively uncomplicated and should be regarded not as restriction, but as a protection against any exploitation of a democratic-participative element of political decision making. To underline this aspect, initiators should be "rewarded" insofar as signatures collected during the course of the applica-

tion, do not have to be repeated within the scope of the following registration period

9. Examination of citizens' initiatives by the Commission

We welcome the fixing of a time limit to allow the Commission to give an initiative adequate consideration. This period, however, should not **exceed 3 months**. This time frame is entirely adequate to provide the Commission with the opportunity to form an opinion, which steps or measures should be taken next.

Within this time frame, the Commission is required to make a binding statement on the details of the ECI (in form of a **decision**) and to give detailed **reasons** in case the project is dismissed.

10. Initiatives on the same issue

AK regards the risk that several initiatives on the same issue could be submitted repeatedly or at the same time, as negligible. In our opinion there is no need to make special precautions to avoid this. Even projects, which look similar at first glance, could include different aspects, which would justify a new initiative. Attention must also be paid to the fact that speedy submissions by opponents of the initiative could otherwise even undermine a European Citizens' Initiative.

A transparent list of existing citizens' initiatives, which is available on the internet, as well as networking at societal level should in our opinion be

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enough to guarantee that several initiatives are not launched on the same subject-matter.

Final remarks

Only practice will show how the European Citizens' Initiative will be used, especially as the thematic range is hardly restricted. The concrete design of the ECI, however, is a great opportunity for the EU to win over the politically interested and involved European Public. Correspondingly high expectations were raised within the scope of making the case with the citizens for accepting the Treaty of Lisbon.

In order to avoid that the ECI will after all be accompanied by disappointment, it will be necessary that the more detailed framework conditions will accommodate the citizens and that the concerns to be voiced by the initiatives will indeed be taken seriously.

We would therefore urgently ask you to consider our suggestions with regard to the subsequent work concerning a legislative proposal.

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