

Opinion of the European Committee of the Regions — European Citizens' Initiative

(2018/C 247/10)

Rapporteur:	Luc Van den Brande (BE/EPP), Member of the Flemish-European Liaison Agency
Reference documents:	COM(2017) 482 final
	SWD(2017) 294 final

I. RECOMMENDATIONS FOR AMENDMENTS

Amendment 1

Article 1

Text proposed by the Commission	CoR amendment
Subject matter	Subject matter
<p>This Regulation establishes the procedures and conditions required for an initiative inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens of the Union consider that a legal act of the Union is required for the purpose of implementing the Treaties (the 'European citizens' initiative' or 'initiative').</p>	<p>This Regulation establishes the procedures and conditions required for an initiative inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens of the Union consider that a legal act of the Union pursuant to Article 288 of the Treaty on the Functioning of the European Union (TFEU) is required for the purpose of implementing the Treaties (the 'European citizens' initiative' or 'initiative').</p>

Reason

Adds a reference to Article 288 of the Treaty on the Functioning of the European Union in order to make it clear that 'legal act' means not just binding regulations, directives and decisions, but also non-binding recommendations and opinions.

Amendment 2

Article 1

Text proposed by the Commission	CoR amendment
Subject matter	Subject matter
<p>This Regulation establishes the procedures and conditions required for an initiative inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens of the Union consider that a legal act of the Union is required for the purpose of implementing the Treaties (the 'European citizens' initiative' or 'initiative').</p>	<p>This Regulation establishes the procedures and conditions required for an initiative inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens of the Union consider that a legal act of the Union is required for the purpose of implementing the Treaties (the 'European citizens' initiative' or 'initiative').</p>

Text proposed by the Commission	CoR amendment
	'Implementing the Treaties' shall also be understood to mean that the Commission has the option, under Article 48 TEU, of submitting proposals for the amendment of the Treaties.

Reason

Article 48 of the Treaty on European Union states that the Commission may submit to the Council proposals for the amendment of the Treaties. Since the Commission has the authority to propose Treaty changes, citizens' initiatives proposing such changes must also be regarded as admissible.

Amendment 3

Article 4.4

Text proposed by the Commission	CoR amendment
<p data-bbox="188 913 767 972">Information and assistance by the Commission and by Member States</p> <p data-bbox="177 1032 783 1310">After the Commission has registered an initiative in accordance with Article 6, it shall provide the translation of the content of that initiative into all the official languages of the Union for its publication in the register and its use for the collection of statements of support in accordance with this Regulation. A group of organisers may, in addition, provide translations into all the official languages of the Union of the Annex for its publication in the register and also, as the case may be, of the draft legal act referred to in Annex II and submitted in accordance with Article 6(2).</p>	<p data-bbox="825 913 1404 972">Information and assistance by the Commission and by Member States</p> <p data-bbox="809 1032 1418 1283">After the Commission has registered an initiative in accordance with Article 6, it shall provide the translation of the content of that initiative into all the official languages of the Union for its publication in the register and its use for the collection of statements of support in accordance with this Regulation, including translations of the Annex for its publication in the register and if applicable, of the draft legal act referred to in Annex II and submitted in accordance with Article 6(2).</p>

Reason

It seems reasonable that the European Commission, once an initiative is registered, also provides translations of the annex documents, in particular also of the draft legal act if this forms part of the initiative.

Amendment 4

Article 6

Text proposed by the Commission	CoR amendment
<p data-bbox="411 1800 544 1832">Registration</p> <ol data-bbox="177 1890 783 2085" style="list-style-type: none"> 1. Statements of support for an initiative may only be collected after the initiative has been registered by the Commission. 2. The group of organisers shall submit the request for registration to the Commission through the register. 	<p data-bbox="1046 1800 1179 1832">Registration</p> <ol data-bbox="809 1890 1415 2085" style="list-style-type: none"> 1. Statements of support for an initiative may only be collected after the initiative has been registered by the Commission. 2. The group of organisers shall submit the request for registration to the Commission through the register.

Text proposed by the Commission	CoR amendment
<p>When submitting the request the group of organisers shall also:</p> <p>(a) transmit the information referred to in Annex II in one of the official languages of the Union;</p> <p>(b) where it is made up of more than 7 members, indicate those seven members to be taken into account for the purpose of Article 5(1) and (2);</p> <p>(c) as the case may be, indicate that a legal entity has been created, pursuant to Article 5(7).</p> <p>Without prejudice to paragraphs 5 and 6, the Commission shall decide on the request within two months of its submission.</p> <p>3. The Commission shall register the initiative if: (...)</p>	<p>When submitting the request the group of organisers shall also:</p> <p>(a) transmit the information referred to in Annex II in one of the official languages of the Union;</p> <p>(b) where it is made up of more than 7 members, indicate those seven members to be taken into account for the purpose of Article 5(1) and (2);</p> <p>(c) as the case may be, indicate that a legal entity has been created, pursuant to Article 5(7).</p> <p>Without prejudice to paragraphs 5 and 6, the Commission shall decide on the request within two months of its submission.</p> <p><i>The Commission shall submit the request for registration to an independent committee of seven members, made up of lawyers, academics and representatives of European civil society, who shall assess the admissibility of the request for registration. They may hold a hearing with the group of organisers. The committee shall provide the Commission with a reasoned decision, and the Commission will take a decision on that basis.</i></p> <p>3. The Commission shall register the initiative if: (...)</p>

Reason

One of the key sticking points with the new regulation is still the Commission's conflict of interest and its monopoly over all stages of the procedure. It is therefore proposed — in line with the CoR's 2015 opinion — that the registration decision should be entrusted to an independent committee of lawyers, academics and representatives of European civil society.

Amendment 5

Article 8

Text proposed by the Commission	CoR amendment
<p style="text-align: center;"><i>Collection period</i></p> <p>1. All statements of support shall be collected within a period not exceeding 12 months from a date chosen by the group of organisers (the 'collection period'), without prejudice to Article 11(6). That date must be not later than three months from the registration of the initiative in accordance with Article 6.</p> <p>The group of organisers shall inform the Commission of the date chosen at the latest 10 working days before that date.</p>	<p style="text-align: center;"><i>Collection period</i></p> <p>1. All statements of support shall be collected within a period not exceeding 18 months from a date chosen by the group of organisers (the 'collection period'), without prejudice to Article 11(6). That date must be not later than three months from the registration of the initiative in accordance with Article 6.</p> <p>The group of organisers shall inform the Commission of the date chosen at the latest 10 working days before that date.</p>

Text proposed by the Commission	CoR amendment
Where the group of organisers wishes to terminate the collection of statements of support before the end of 12 months after the beginning of the collection period, it shall inform the Commission of the date at which the collection period is to end.	Where the group of organisers wishes to terminate the collection of statements of support before the end of 18 months after the beginning of the collection period, it shall inform the Commission of the date at which the collection period is to end.

Reason

Collecting 1 million signatures is quite an undertaking, and requires a great deal of publicising and awareness-raising among citizens. In order to achieve the final target within a year, the group of organisers would have to be extremely well organised. It is important to avoid a situation in which only large, transnationally organised non-governmental organisations are able to launch ECIs. We therefore suggest increasing the collection period to 18 months, which would be less of a deterrent for potential initiative organisers.

Amendment 6

Article 14

Text proposed by the Commission	CoR amendment
Publication and public hearing	Publication and public hearing
<p>1. (...)</p> <p>2. Within three months after the submission of the initiative, the group of organisers shall be given the opportunity to present the initiative at a public hearing.</p> <p>The Commission and the European Parliament shall co-organise the public hearing at the European Parliament. Representatives of the other institutions and advisory bodies of the Union, as well as interested stakeholders, shall be given the opportunity to participate in the hearing.</p> <p>The Commission and the European Parliament shall ensure a balanced representation of relevant public and private interests.</p> <p>3. The Commission shall be represented in the hearing at an appropriate level.</p>	<p>1. (...)</p> <p>2. Within three months after the submission of the initiative, the group of organisers shall be given the opportunity to present the initiative at a public hearing.</p> <p>The European Parliament shall organise the public hearing at the European Parliament. Representatives of the other institutions and advisory bodies of the Union, the National Parliaments, as well as interested stakeholders, shall be given the opportunity to participate in the hearing.</p> <p>The European Parliament shall ensure a balanced representation of relevant interests at the hearing.</p> <p>3. The Commission shall be represented in the hearing at an appropriate level.</p> <p>4. Following the hearing, the European Parliament adopts a recommendation to the European Commission on how to respond to the ECI in question.</p>

Reason

The best place for a group of organisers to explain their initiative is the European Parliament, and it would therefore be logical for the European Parliament to take full responsibility for organising this hearing. There is no institutional reason for the Commission to be involved in organising it. This should also give organisers greater confidence that the process will be transparent and independent. Associating the national Parliaments to this process should increase the chances of creating a European debate.

It is important that the European Parliament adopts its own position on the initiative following the hearing.

Amendment 7

Insert a new article after Article 15.

Text proposed by the Commission	CoR amendment
	<i>Initiatives that do not obtain the certificate provided for in Article 12(5), but that collect 75 % of the necessary signatures within the collection period, shall be forwarded by the Commission to the European Parliament, the European Economic and Social Committee and the European Committee of the Regions for information.</i>

Reason

Past experience has shown that some initiatives that could not obtain the required number of statements of support were nonetheless innovative for European policy. It would therefore be regrettable for the political message of such initiatives to be lost. The European Parliament may decide, based on the social and political relevance of such initiatives, to develop its own initiatives.

Amendment 8

Article 24

Text proposed by the Commission	CoR amendment
<p style="text-align: center;"><i>Review</i></p> <p>The Commission shall periodically review the functioning of the European citizens' initiative and present a report to the European Parliament and the Council on the application of this Regulation no later than <i>five</i> years from the date of application of this Regulation, and every <i>five</i> years thereafter. The reports shall be made public.</p>	<p style="text-align: center;"><i>Review</i></p> <p>The Commission shall periodically review the functioning of the European citizens' initiative and present a report to the European Parliament and the Council on the application of this Regulation no later than <i>three</i> years from the date of application of this Regulation, and every <i>three</i> years thereafter. The reports shall be made public.</p>

Reason

It is important to evaluate the functioning of the ECI at regular intervals, with regard not only to the procedures but also to its political impact and the actual involvement of citizens in the policy. Timely review is needed so that corrective action can be taken, and an interval of three years would therefore be more appropriate. If this new Regulation fails, that would be the end of the ECI.

II. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS,

1. On 13 October 2015, the Committee of the Regions adopted an opinion on the European Citizens' Initiative (ECI) ⁽¹⁾. The opinion was prompted by the European Commission's report on the application of Regulation (EU) No 211/2011. Due to the significant volume and tenor of feedback received during the ongoing procedure, the Committee of the Regions called for a revision of the aforementioned regulation.
2. Europeans are at the heart of the European project. European participatory democracy must be understood as encouraging European citizens to become involved in European politics and to shape Europe's future. The Treaty (Article 10 (3)) confers upon every citizen the right to participate in the democratic life of the Union.
3. The European Citizens' Initiative is a right for European citizens. It ***can help to respond*** to the ***perceived*** democratic deficit ***of the European Union*** and ***to*** bridge the gap between ***EU citizens*** and European ***institutions and*** policy ***makers***. With the continuing economic and confidence crisis in the EU, it is crucial ***to provide opportunities*** for an open dialogue ***between EU citizens*** in order to prevent their further disenchantment with European integration. ***It is particularly important to build or*** to restore the trust of ***those*** young Europeans who may have lost faith in the ***process*** of European

⁽¹⁾ OJ C 423, 17.12.2015, p. 1.

integration. **By offering** citizens the right of legislative initiative **the ECI** as a transnational tool, **provides an opportunity to engage with the EU's political agenda and** aims to encourage a Europe-wide debate on issues of concern to European citizens.

4. Under Article 11 of the Treaty on European Union, the EU institutions are required to inform citizens and representative associations and to give them the opportunity to make known and publicly exchange their views in all areas of Union action. The same article contains an explicit mandate for the European Commission to consult with parties concerned in order to ensure that the Union's actions are coherent and transparent; the European Commission should take the basic requirement of 'accountability' as a prerequisite for democracy and good governance seriously in line with the spirit of the Treaties.

5. In order to ensure that the ECI can become a successful part of the EU's democratic fabric, it is of key importance that successful ECIs lead to genuine political debates and receive more substantial political follow-up by the EU institutions.

6. The ECI is no substitute for the European Commission's right of initiative which has brought about progress in deepening the Union and which must continue. The ECI is an additional channel for mutual understanding between citizens and provides a transnational dimension to EU debates, which is beneficial to the EU's institutional system as a whole, including the European Commission itself; the ECI therefore has the potential to be a very good example of 'democracy in action'.

7. The European Citizens' Initiative offers the opportunity for European citizens to participate in the European decision-making process and to influence the European policy agenda. However, the Commission needs to develop additional initiatives to strengthen civil dialogue and bring people closer to European policies. The ECI should be seen as one of the instruments for achieving the goals of participatory democracy, but it should not be expected that this initiative will automatically secure public involvement in European decision making.

8. Attention must be paid to the possibilities provided for in the Treaty with regard to participatory democracy and in particular to vertical civil dialogue ⁽²⁾. In order to 'maintain an open, transparent and regular dialogue with representative associations and civil society' (Article 11(2) TEU), the European Commission should initiate a 'dialogue regime' where the European institutions focus on delivering substance rather than concentrating on procedures. The ECI is not a working co-decision instrument: it has to be seen as a basic pillar of participatory democracy dedicated to deliberation, collaboration, cooperation and co-design and as a window of opportunity to confront the European Commission with serious concerns, in order to create awareness and generate mutual understanding.

9. The European Citizens' Initiative is the expression of participatory democracy that complements the notion of representative democracy; it enhances the set of rights related to citizenship of the Union and the public debate on European politics; it should strengthen citizens' ownership of and identification with the Union.

10. The legal and political participatory instruments to come to a renewed governance architecture based on the principle of multilevel governance should be strengthened. Multilevel governance is essentially multi-channelled and therefore allows for more 'active' European citizenship. The challenge is to provide for a system of innovative interest representation in which people feel represented on an equal basis in their various identities.

11. A European public space for debate between citizens and with decision-makers is important for the legitimacy and accountability of the EU. The deficit in democracy can only be eliminated if a European public sphere comes into existence incorporating the democratic process.

12. The policy recommendations on participatory democracy at European level, as expressed in the Committee of the Regions' opinion of 13 October 2015, remain in full force.

⁽²⁾ Reaching out to EU citizens; A new opportunity 'About us, with us, for us', a report by Luc Van den Brande, Special Adviser to the President of the European Commission, Jean-Claude Juncker, October 2017.

The new regulation on the European Citizens' Initiative

13. In its 2015 opinion, the Committee of the Regions said that the ECI in its current form would not promote participatory democracy, because the procedure and the various rules entailed too many administrative and technical constraints, obstacles and hindrances that would discourage citizens from taking part in the European democratic process. Moreover, the current citizens' initiative did not allow citizens to influence the European policy agenda and political decision-making process.

14. In line with the views already voiced by the European Parliament, the European Economic and Social Committee and the European Ombudsman, the Committee of the Regions considers that the new regulation is an important step in the right direction to improve the ECI's procedures.

Procedural and administrative improvements in the new regulation

15. The Committee of the Regions welcomes the following procedural and administrative improvements in the new regulation proposed by the Commission:

- Citizens launching an initiative are individuals (organisers) but henceforth they may create an entity with legal personality so as to limit the criminal liability of organisers for fraud and serious negligence.
- The period allowed for collecting signatures is still 12 months, but the organisers of the initiative are given a further three months after registration to decide on the starting date of the collection period.
- Anyone over the age of 16 may sign a statement of support.
- The personal data that must be submitted by anyone signing a statement of support have been simplified. It will be possible for all EU citizens to give their support based on their nationality, regardless of their place of residence. The Commission proposes a choice between two templates for statements of support. (Currently Member States use 13 different forms).
- Improvements in the registration procedure, including the possibility of registering initiatives in part instead of rejecting the whole initiative on the basis of admissibility, with the Commission registering only the admissible part.
- An online collaborative platform for the ECI providing a forum for discussion, advice and support for organisers will be set up.
- A central online collection system (OCS) will be set up and operated by the Commission in order to simplify the collection and cataloguing of statements of support as well as the checking of these statements by national authorities. The Commission will develop and host it permanently and offer it free of charge.
- Upon registration of an ECI, the Commission will provide translation into all EU languages and inform all the other EU institutions and bodies about a new ECI.
- The Commission provides support for (potential) organisers of an ECI (the Member States are asked to set up one or more ECI contact points).
- The Commission will provide awareness-raising and communication activities on the ECI.

The political approach is still missing

16. Notwithstanding the above proposals and measures included in the new regulation with a view to improving the ECI procedure and removing many obstacles, there is still an impression of an insufficiently open and over-cautious stance on the part of the Commission. This is especially evident in the more political aspects of the citizens' initiative:

- Participatory democracy is particularly important for restoring or improving confidence in the European project. The ECI must therefore be seen as a cross-border instrument allowing citizens to take part in the European democratic process and giving them a voice in EU policy-making: a European public space for debate between citizens and policy makers. The new regulation does not provide an adequate basis for this.
- The current conflict of interest on the part of the Commission is seriously damaging the effectiveness of the ECI in fostering public participation and confidence: in parallel, it has to be a key information provider and support structure for ECIs, is the primary 'addressee' for ECIs, and decides on registration and admissibility of the initiatives.
- The new regulation does nothing to resolve the Commission's conflict of interest, namely that it is: (1) the central information provider, (2) the support structure for citizens' initiatives, (3) the authority to which organisers must report and with which they must register, (4) the authority that determines whether an initiative may be registered, and (5) the body which must follow up on a successful ECI. The failure to resolve this conflict of interest continues to damage the effectiveness and the legitimacy of the European Citizens' Initiative. The CoR therefore proposed in its 2015 opinion that an impartial ad hoc committee composed of experts, academics and lawyers be set up to investigate the admissibility criteria as a kind of 'wise-persons council' or 'European Citizens Advocacy'.
- The Commission limits ECIs to matters falling within the Commission's remit where a legal act of the Union may be required in the framework of the Treaties. The Commission cleaves to the legalistic approach and does not provide sufficient clarity according to criteria to be defined. This could give rise to arbitrary assessments and risks, stifling any open and transparent political debate.
- Likewise, the Commission has not put forward any proposal that would address the wish to accept citizens' initiatives proposing an amendment to the EU treaties.
- It would have been appropriate to refer to citizens' rights and duties and to the principle of subsidiarity in the eligibility criteria.
- Certain citizens' initiatives have been put forward on important issues, but did not reach one million signatures or reached the required minimum in certain countries. Such ECIs are currently just put in a drawer. In cases where a significant number of signatures have been collected, however, the Commission should develop appropriate types of response so as not to lose the potential political message and associated mobilisation.
- The Commission should explain its political choices to the public in a detailed and transparent manner in its formal response to an ECI that has obtained more than one million signatures. Politically strong follow-up should be ensured.
- The European Parliament has an essential role to play in initiating political debate with the general public, for instance through the public hearings for which provision is made. Parliament should also act as a guarantor of political follow-up to successful ECIs and internalisation of the political message of ECIs that do not reach the required number of signatures.
- Serious consideration should be given to possibilities for a more structured, long-term follow-up to the European Parliament hearings by creating opportunities for citizens to review the action taken in response to a successful ECI and continue the debate about the subject. A formal second hearing organised by the EP and also involving the ECI proponents, following the publication of the European Commission's reaction to an ECI and creating space for further debate between all interested parties, should be explored.

Increase general awareness and knowledge of the ECI

17. Public awareness of the ECI is important. To this end, publicity and promotion campaigns should be organised with a view to giving the ECI a higher profile in the media and among the public.

18. The ECI could be an effective tool for democratic participation. The Commission and the Member States should therefore maximise their communication efforts with regard to this instrument in order to bring its existence to the attention of as many Europeans as possible and encourage active participation in it.

The contribution of the Committee of the Regions and LRAs

19. The Commission should also encourage and support local and regional elected representatives in spearheading the efforts to inform their citizens about the ECI instrument.

20. The ECI provides European citizens with an instrument which allows them to participate actively in European policy making. The European Committee of the Regions recognises its own role and responsibilities and in this context flags up the decision of its Bureau⁽³⁾ on the CoR's involvement in European Citizens' Initiatives. It reiterates its commitment to support ECIs which fall within the CoR's political remit and which are deemed politically relevant, for example by: supporting the European Commission in its screening of proposed ECIs from the perspective of their local/regional relevance and subsidiarity; hosting events linked to the ECI; supporting decentralised communication action on the ECI; where appropriate, drawing up own-initiative opinions on the subject of the ECI; participating actively in EP hearings and the political follow up; supporting the implementation of successful ECIs and where appropriate the legislation in response to them.

Brussels, 23 March 2018.

The President
of the European Committee of the Regions
Karl-Heinz LAMBERTZ

⁽³⁾ 144th meeting of the Committee of the Regions Bureau, 10 April 2013, item 8 — CDR1335-2013_11_00_TRA_NB-item 8.