



October 2010  
AK Position Paper

## 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

From the point of view of the 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 reduce the often diagnosed gulf between the EU and its citizens. In an overall evaluation of the Treaty of Lisbon, the Austrian Federal Chamber of Labour (AK) too regards its introduction as an important criterion for endorsing the new primary legislation structure of the EU.

On the one hand, the ECI should promote both the engagement and the readiness of the citizens to take the initiative; on the other hand, the results of an ECI have to be taken seriously. Otherwise, the new instrument is in danger of becoming a democratic policy alibi measure, which just confirms the reputation of the EU to be a „Europe for elites that is remote from its citizens“.

In accordance to this, requirements on implementing an ECI should not be structured so tightly that they suffocate the engagement of the citizens with unnecessary burdens or limit the circle of possible supporters without good reason. With its draft regulation, the European Commission has already included many suggestions concerning the Green Paper, which have also been contributed by the AK. Also with respect to the ongoing discussion process, attention should be paid with respect of not creating any unnecessary complications for the initiation of

ECIs (for example by demands on the organisers or specifying the form of an initiative to be submitted, see AK Position Item 5 and 7). Apart from that, one article of the Directive should explicitly determine that each statement of support submitted must be added to the overall result of the ECI, independent of the fact whether the relevant country has achieved the minimum number of votes (see AK Position, Item 3).

On the other hand, administrative requirements are appropriate where the democratic integrity of the procedure must be preserved and where manipulation opportunities have to be met with reasonable means. By introducing a registration phase for ECIs and an online register, the Commission has already found an intelligent approach. A more in-depth content-related admissibility check carried out by the Commission or a Committee of Wise Men when reaching certain threshold values, however, seems to be going too far (see AK Position, Item 9). In the opinion of the AK, the option and the organisation of casting votes by online voting does not do enough justice to the requirement of democratic integrity (see AK Position, Item 10).

Another important aspect, namely the one concerning the required support of an ECI by Commission and Member States, has not yet been considered adequately in the draft regulation and should therefore be included in the ongoing discussion (see AK Position, Item 12).

With respect to the ongoing discussion process, attention should be paid with respect of not creating any unnecessary complications for the initiation of ECIs.

# The AK position in detail

## 1. Minimum number of Member States from which supporters must come from

Art 11 Paragraph 4 of the new Treaty on the European Union determines that at least 1 million citizens of the Union from a „**significant number of Member States**“ must support an ECI. With regard to the further definition of the term „significant number of Member States“, there are both justified arguments for the 1/4 variant as well as for one 1/3 of the Member States.

On the other hand, however, the **requirement of a third** of the Member States requires a **very high degree of networking** in currently nine states of the EU. Acknowledging the protection of minorities and the considerable time and effort that has to be spent collecting signatures, the AK, however, suggests the introduction of the lower threshold of **a quarter of the Member States**.

## 2. Minimum number of signatories per Member State

The second figure to be determined by the Regulation, is the threshold value of required signatories per Member State. Originally, in its Green Paper the Commission had recommended a fixed threshold value of 0.2% of the population. The problems here were that small Member States would easily overcome this hurdle (for example

only some hundred votes for Malta) and that this bar, however, had been set relatively high for large Member States (Germany for example would have needed 160,000 signatures to be eligible for the relevance threshold).

In this regard, the current **approach**, included in the Commission proposals, seems to have found **a good middle course**, which determines **fixed threshold values per Member State**, with degressive proportionality to the population. This helps also larger Member States, such as Germany, to achieve the required threshold. This means for small states, such as Austria, that a slightly higher threshold has to be achieved. The required 14,250 votes, however, seem to be feasible.

## 3. Every vote cast must count!

The Commission proposal specifies on the one hand that statements of support must come from at least one third of the Member States; on the other hand it embeds fixed threshold values per Member State (see above). What, however, the Draft regulation has not yet expressly determined, is what has to be done when the required threshold values are exceeded in the required third of the Member States and if in addition, statements of support are submitted in other states, these states, however, have not achieved the necessary hurdles.

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This legal uncertainty should be removed. The AK suggests in this respect that one article in the Regulation expressly determines that when ascertaining the total result of an ECI, **every statement of support submitted in the EU counts**, independent of the fact whether the relevant country has achieved the minimum number required or not.

#### 4. Minimum age for supporting a citizens' initiative

There seems to be a consensus in the European Institutions (Commission, Council, European Parliament) to link the minimum age for supporting a citizens' initiative to the voting age for the **elections to the European Parliament**. This means that until a uniform electoral law to the European Parliament has been adopted, the criteria for deciding on the right to vote have to be evaluated in accordance with national legal systems.

The AK fully agrees with this consensus: given the fact that in Austria the voting age for the elections to the European Parliament is 16 years, any exclusion of the group of 16-18-year olds from participating in the citizens' initiative would by no means be desirable.

#### 5. Requirements on the organisers of an ECI

With regard to requirements on the organisers of an ECI, there is on the one hand the issue of **transparency and democratic accountability**. From the point of view of the AK, it is neces-

sary to publish information concerning **which organisations support an initiative and how these are funded**. This request is satisfied by the registration phase included in the Commission proposal.

Apart from transparency requirements, no **other requirements** should be imposed **on organisers and supporting organisations**, which would make the introduction of initiatives more difficult.

It has been proposed within the scope of the discussion in the Constitutional Committee in the European Parliament only to admit natural persons as organisers of citizens' initiatives. This proposal overlooks the fact that citizens are often organised in form of representations of interests, organisations or associations. The AK is therefore in favour of maintaining the position of the Commission proposal, according to which both natural **as well as legal persons** may act **as organisers** of an ECI.

Based on the argument to further underline the element of citizen participation and the European Idea, the European Parliament suggested right from the beginning setting up a **Citizen Committee** (with representatives from at least 7 Member States). This, however, appears to be rather a **hurdle for initiators** of ECIs and it should be left to the organisers how they want to organise any cooperation.

Two other proposals, which were also discussed in the European Parliament, would **also make any contribution more difficult** apart from the fact that

they cannot be derived from the Treaty on the European Union. This concerns on the one hand the proposal that an ECI must also **be co-initiated by a certain number of MEPs** and the proposal that organisers had to pay a **deposit** on the other. Concerning the proposal with regard to paying a deposit, the working document of Committee on Constitutional Affairs of the European Parliament (Working document from 22. June 2010, page 2) states that the organisers „would be given back [...] if the ECI turns out to be successful“. This should under no circumstances be interpreted in such a way that the deposit is forfeited if the target of 1 million supporters cannot be achieved or if the ECI does not pass the admissibility check by the Commission or the Committee of Wise Men (see AK Position, Item 9).

The AK welcomes that the Commission has not specified any requirements on the organisers with regard to the issue of public funding.

The AK expressly welcomes that the Commission has not specified any requirements on the organisers with regard to the issue of **public funding** addressed within the scope of the Green Paper. Many organisations, including NGOs, receive a wide range of public funding, from financial support to benefits in kind, sometimes by making rooms available, where required. Such benefits indirectly also cross-subsidise campaigns of relevant institutions. In Austria and other Member States, communities have sometimes participated in or supported certain campaigns. It is therefore essential to maintain the approach started by the Commission in the ongoing discussion process.

## 6. Registration of planned initiatives

The Commission proposal requires that **planned initiatives have to be registered with the Commission** before signatures can be gathered. The AK supports this request and has already suggested in its Position on the Green Paper **to introduce a form-bound registration resp. introductory procedure**. On the one hand, the introduction is linked to ECI-related legal consequences (time limit, rejection/non-registration by the Commission, required official support or support by the Commission; concerning the latter see AK Position, Item 11). On the other hand, such a procedure promotes the seriousness of the ECI; on the other hand, the introduction of a certain **basic threshold** for the initiation of the ECI would counteract any „anything goes“ attitude of this instrument.

In accordance with the Commission proposal, initiatives, “which can be reasonably regarded as improper because they are **abusive or devoid of seriousness**“ are not to be registered by the Commission; Initiatives, „**which are manifestly against the values of the Union**“ must be rejected by the Commission. The AK already demanded in its Position on the Green Paper that initiatives must be disallowed, which violate absolute fundamental values of the Community and therefore welcomes the relevant provision of the Commission.

Any „abusive“ or „not serious“ use of the initiative could be difficult to prove in individual cases. That is why

the AK suggests introducing instead a **low (!) quantitative hurdle** (5,000 or 10,000 signatures) as a condition for registering with the Commission. This ex-ante check by the Commission should basically ensure that the **infrastructure of the European Union is protected against serious political misuse**. It should definitely not be concerned with checking in advance whether such an initiative would come under the sector of EU competences or not. The **Council** suggested to also permit the Commission during the registration phase to reject citizens' initiatives, which are „manifestly outside the scope of the Treaties“. This provision too could lead to questions of interpretation, which are not easily decided; in contrast, the proposed low, quantitative hurdle creates a clear and comprehensible criterion. The regulation should also expressly state that initiators whose initiatives are not registered by the Commission are entitled to **appeal to the ECJ**.

For reasons of legal certainty alone, the EU Commission should decide on the admissibility of the registration at least four weeks prior to the start of the signature collection. The time limit starts upon the expiry of this deadline resp. from the time the approval of the Commission has been received. This **time limit** should be explicitly determined in Art 4 of the Regulation proposal.

In addition, the AK also supports the introduction of an **online register**, which has also been mentioned in the Commission proposal, in which

all ECIs are made available by the Commission (Commission proposal, Art 4 Paragraph 1). This provision, however, should be amended in such a way that ECIs must be published in all - and not only in one - official languages of the Union (see AK Position, Item 8).

### 7. Form and formulation of a citizens' initiative

The Commission proposal specifies that ECIs must contain the following information: **subject matter, objectives, legal basis in the agreements** as well as all sources of funding and support (see above). In the opinion of the AK, it is sufficient when a citizens' initiative only states subject matter and objective of a legislative proposal. **A fully formulated legislative proposal would be a completely unreasonable hurdle**. It would confront such an undertaking not only with difficult formally juridical requirements. It must therefore be welcomed that the Commission proposal does not - as originally proposed in the Green Paper - already requests the submission of a concrete legal text. This would also be detrimental to the identifiability of potential supporters if the actual issue would be wrapped in - for many incomprehensible - legal requirements as they are particularly characteristic for the European secondary law (e.g. choice of the correct legal basis or the possible legislative measure). However, the initiators **should be free** to also use a **fully formulated legal instrument** as the basis of an ECI.

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Both the Commission proposal and the working document of the Committee on Constitutional Affairs in the European Parliament specify that the organisers have to provide right from the start the **legal basis** on which a proposed initiative is based. European law experts will not find it difficult to specify a possible legal basis. On the other hand, it seems to be difficult to reconcile this with the idea that the ECI is a genuine measure for the civil society. According to this, the position, which is currently being discussed by the **Council** and which regards the specification of a legal basis only as facultative **information of the organisers**, should be given priority.

### 8. Translation of an initiative into all official languages

The Commission proposal does not include any clear statements with regard to translating a citizens' initiative into all official languages. Hence, the conclusion to be drawn must be that the responsibility for the translation into all official languages must lie with the organisers of an initiative. It would be a sensible approach to consider a **translation by the services of the Commission**.

This measure would ensure that citizens speaking a less familiar language (and without relevant foreign language skills) are also able to participate in all citizens' initiatives, which would strengthen the European idea. Furthermore, this would make it possible to guarantee uniform quality standards for all citizens' initiatives.

### 9. No further admissibility check

Checking the admissibility of ECIs is insofar required as those citizens' initiatives would already have to be rejected ex ante, which violate absolute fundamental values of the European society. As already mentioned under Item 6, this „admissibility check“ should already be carried out within the scope of registering an initiative with the Commission.

This raises the fundamental question whether in addition to the above mentioned check within the scope of the registration, there is any need for a further admissibility check by the Commission or a Committee of Wise Men. The Commission proposal specifies that the organisers, when submitting **300,000 signatures** from at least 3 Member States, have to apply for the admissibility check of the initiative with the Commission. The EC must then check within two months, whether (1) the initiative concerns a subject matter, for which a legal act can be adopted by the Union and (2) whether it is within the scope of the powers of the EC to submit a proposal. The Council suggest reducing the number of **signatures to 100,000**.

The Commission argued this check should be carried out prior to the expiry of the total period to save the Member States the unnecessary effort of checking the statements of support. On the other hand - so the Commission proposal - the admissibility check should also not be carried out right at the start of the debate, as „a

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*major objective is to promote public debate on European issues, even if an initiative does not finally fall within the framework of the legal powers of the Commission” (Commission proposal, page 7). One has to agree with the statements of the Commission insofar as it was the declared objective of the introduction of the ECI to strengthen direct democracy and citizen participation. Even if an ECI is not clearly or completely located within the initiative area of the Commission, it is able to send a signal to the heads of state and government.*

What also speaks against an admissibility check in the format of Commission proposals is the fact that statements of support are also collected during the review period of the Commission (2 months) and that it might be possible that the limit of 1 million signatures during this period will be exceeded. It might strike the signing citizens as „odd“ if an initiative, which achieves the required threshold of 1 million Signatures is declared as inadmissible by the Commission.

In its position on the Green Paper, the AK has already voiced a **preference for a single-stage registration procedure**. In order to prevent initiatives, which are not serious - as mentioned above under Item 6 - a minimum amount of 5,000 resp. 10,000 signatures should be requested as a necessary condition for the entry into the register. Some Member States - among them Austria - have voiced a clear preference for a single-stage procedure in the Council.

From a democracy-political point of view, the check proposed by the **Parliament** to be carried out by a **Committee of Wise Men**, a committee of 10-12 appointed experts resp. representatives, appears not to be a suitable committee to decide on the admissibility of a direct democratic initiative. If the Commission takes the decision, at least the political responsibility for the decision is clear. Apart from that, the proposed nomination process in Council, Parliament and Commission appears to require rather a lot of bureaucratic, financial and time-related effort.

## 10. Collection of signatures

In respect to the collection, attention has to be paid to the fact that on the one hand admissions for support have a **low threshold**, but that the procedure is **tamper proof** at the same time. Insofar it is essential that the identity of the statements of support is being checked by an authorised person. For that reason, we regard **online support via the private internet with a certain amount of scepticism**. It does not guarantee the authenticity of the signatures and also contradicts the public character of democratic participation. The question also arises whether collecting signatures online definitely achieves the objective that European Institutions and Member States want to achieve with the ECI. The danger exists that online voting might lead to a flood of populist EU-critical initiatives. One should also not underestimate the costs for the Member States, which have to check the correctness

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of the statements of support. From the point of view of the AK, **two other formats (signatures made before authorities, collection lists)** should be given preference over online voting.

Somewhat odd appears the current compromise for the identification of the signing persons in the Council: according to this, it should be at the discretion of the Member States, which documents they request to identify a person. In the case of Austria, persons can be identified by their passport or ID card numbers; a number of other states (Denmark, Ireland, The Netherlands, Great Britain and Slovakia) do not demand any identification. Whether this is sufficient to protect against misuse is questionable.

In order to ensure the seriousness of the European Citizens' Initiative it seems to be sensible **to determine a fixed period**. The period of **12 months**, included in the Commission proposal seems to be appropriate for the ECI to meet the increased requirements of a transnational collection of signatures.

### 11. Data Protection

In particular, the provision of online signatures raises data protection issues. In accordance with the Commission proposal, the collection of online signatures is directly carried out by the organisers, whereby the database systems used by the Member States must be certified in respect of complying with security requirements.

However, this certification and/or the introduction of liability and penal pro-

visions, which had been suggested by the Council are not sufficient to counter data abuse. With regard to data protection considerations, **Europe-wide uniform standards (development of a database by the Commission) for the collection of online signatures** would be extremely desirable. The Republic of Austria too has raised this request in the Council and is emphatically supported by the AK.

### 12. Support of the ECI by EU and Member States

Another important aspect, namely the one of the required support of an ECI by Commission and Member States does not appear to be sufficiently considered at the current level of discussion. First, support should include **information obligations**: hence, the **Commission** would be obliged to inform about ongoing ECIs on the internet. The online register, provided for in the Commission proposal is therefore an important first step. In this context, the text of the initiative (in particular objectives and subject matter) as well as other details within the meaning of the transparency of the supporters should be published (if appropriate, just linked) and translated by the services of the Commission into all official languages of the EU.

In view of the **Member States** it is also necessary to provide free of charge **public information in the media, including radio broadcasts**.

Apart from that, the support of the **authorities** of the Member States must be regulated in more detail. Apart from

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the basic **reporting requirements** (by way of Member State internet portals and public notice) authorities **must be available for accepting signatures**. Here too, a relevant paragraph should be included in the Regulation, whereby Member States - for example in respect of further details (such as opening hours of authorities) - should be given sufficient flexibility.

### 13. Treatment of collected signatures

The Commission proposal specifies that the Member States have to **check the signatures** (e.g. by carrying out spot checks). This provision is basically to be welcomed; in this context, however, **Europe-wide uniform standards would be desirable**.

In view of the further treatment of an initiative, the Regulation should also expressly state that - even if in individual states the threshold value of the required number of statements of support is not achieved - the statements of support submitted are added to the total of the support submitted (see AK Position, Item 3).

The Commission proposal specifies a **period of 4 months**, during which the ECI has to be checked by the Commission. Upon the expiry of this period, the Commission has to present its conclusions and intended measures in a **Communication**, which has to be conveyed to the organisers as well as the European Parliament and the Council.

The AK supports this basic procedure, it is, however, in favour of **reducing the period to 2 months**, as proposed

in the debate by the European Parliament. As the entry process for ECIs covers a full year and initiatives have to be registered with the Commission in advance, the Commission has sufficient time to prepare a respective Communication. The Parliament proposal, according to which the Commission is to be given a **deadline**, until when a possible **legal act announced** in the Communication should be submitted, also seems to be sensible.

### 14. More initiatives on the same subject

The European Parliaments requested that it should not be possible to use an ECI to **annul any recently adopted legal provision**. Such a restriction is not clear and the term „recently“ should be specified in more detail. It should absolutely not be possible to „block“ whole policy areas for direct democracy, if a legal act of the EU had recently been adopted in them.

The AK regards also the danger that **several initiatives on the same subject** could be submitted at the same time or repeatedly as negligible. In the opinion of the AK, special precautions to avoid this are therefore not required. Concerns, which at first glance might be similar, may include differences, which would justify a renewed initiative. Attention must also be paid to the fact that quick submissions of a European Citizens' Initiative might also be successfully undermined by opponents of the initiative.

A transparent list of the existing Citizens' Initiatives, which is available on

the internet as well as a network at social level should in our opinion provide enough guarantees that several initiatives are not launched on the same subject.

#### **15. Objective: Europe-wide uniform standards for procedures**

The AK is in favour of Europe-wide uniform rules of procedure.

The AK is in favour of Europe-wide uniform rules of procedure. Greater national scope resp. greater legal deviations between the Member States would certainly be detrimental to the objective of **cross-border Europe-political involvement**.

From the point of view of the AK, it would have been sensible to structure the regulation in such a way that it regulates the different levels and aspects of the procedure (introduction, collection, determination, support, transparency, control). In respect of the collection, both the formats, which in the opinion of the AK should be preferred (signature before authority resp. before authorised person) should if possible completely standardised. Should it not be possible to comply with this request in the current Regulation, the **creation of Europe-wide uniform standards for procedures could at least be included as an objective in the Regulation**.



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