THE EUROPEAN CITIZENS’ INITIATIVE REGISTRATION:
FALLING AT THE FIRST HURDLE?

Analysis of the registration requirements and the
“subject matters” of the rejected ECIs

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The European Citizens’ Initiative

Since 1st of April 2012
★ 49 ECIs have been proposed to the European Commission
★ 28 were registered (22 unique)
★ 20 refused
★ 9 withdrawn
★ 3 collected more than 1 million signatures

The Registration Process

Art. 4(2) of Regulation 211/2011
★ A citizens’ committee must be in place;
★ The proposed initiative must not “manifestly fall outside the
framework of the Commission’s powers to submit a proposal for a
legal act of the Union for the purposes of implementing the
Treaties” (legal admissibility test);
★ The proposed initiative must “not be manifestly abusive, frivolous or
vexatious”; and
★ The proposed initiative must “not be manifestly contrary to the
values of the Union”, as set out in Art. 2, TEU.

Interpretation of the “manifestly outside”

The Commission argues that a proposed citizens’ initiative will fail:
★ “outside”: none of the Treaty provisions can serve as a legal basis for
the legal act proposed by the citizens’ initiative
★ “manifestly outside”: none of the Treaty provisions could serve as a
legal basis – irrespective of factual circumstances.
Application of the criteria by the European Commission

* Each letter rejecting registration has wording along the following lines:

  "The Commission considers that there is no legal basis in the Treaties which would allow a proposal for a legal act with the content you envisage."

Legal analysis of rejected initiatives

* The study suggests that there are three categories of refusal decisions:

  - Category 1: Initiatives that were clearly outside the EU's competences
  - Category 2: Initiatives that, upon further scrutiny, appear to fall outside the EU's competences
  - Category 3: Initiatives that may well have been within the EU's competence

Category 1: Initiatives that were clearly outside the EU's competences

* Many are manifestly outside, because a Treaty amendment would be required.

Examples:

* "Citizens of a new State, which has seceded from a Member State should be citizens of the EU"
* "Proposal to create a European, public bank founded on social and ecological development"

Category 2: Initiatives that, upon further scrutiny, appear to fall outside the EU's competences

* Initiatives that, upon further scrutiny, fall outside the Commission's powers, because the specific proposal was beyond the EU's competence, even though the general policy area was — or appeared to be — dealt with in the Treaties

Examples:

* "Abolition of bullfighting in Europe and cruelty to bulls for entertainment"
* "Conservation of cats and stray animals"
* "Ethics for animals and kids"
* "For a Europe without legalised prostitution"
Category 3: Initiatives that may well have been within the EU's competence

* Initiatives that may well have been within the Commission's powers, because it is a matter of Treaty interpretation whether the proposals fall within the EU's competence under the Treaties — depending on factual circumstances.

Examples:
* "Right to life-long care: leading a life of dignity and independence is a fundamental right!"
* "Unconditional Basic Income!"

(Other) decisions that raise questions

* A review of the initiatives that the Commission has chosen to register also raises questions about its decision-making in this area.

In particular, a number of initiatives that were registered appear to fall "manifestly outside" the Commission's power to propose a legal act of the Union.

Examples:
* "Termination of the EU/Swiss Agreement on Free Movement of Persons"
* "For responsible waste management, against incinerators"

Main Conclusions

ECAS analysis of the subject matters of the refused initiatives suggests that, at least in a number of cases, the Commission has erred in its decision to refuse registration.

* The legal admissibility test was too narrowly applied (e.g., because the proposed initiative correctly identified a legal basis in the Treaties, and the subject matter of the initiative fell within the scope of the EU's competence).

* The decision to refuse registration was arbitrary (e.g., because initiatives with similar characteristics were treated differently, or vice versa).

* The reasons given for rejection were incomplete (e.g., because the Commission did not fully address all the Treaty provisions cited as a legal basis).

Recommendations for the upcoming review of the Regulation (1)

* Clarify through public debate the nature of the ECIs as an agenda-setting instrument.

* Define the remit of the "legal act" and/or the political actions that the European Commission can initiate or undertake.
Recommendations for the upcoming review of the Regulation (2)

* Provide a definition of "manifestly outside" that is clear, easy to understand and is not subject to arbitrary interpretation
* Clarify the procedure for the legal admissibility test and ensure transparency of the decision-making process

Recommendations for the upcoming review of the Regulation (3)

* Establish an ECI officer, similar to the Hearing Officer in competition law
* Secure adequate legal advice for ECI organisers with regard to the legal basis of initiatives

Thank you
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