

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

Analysis of the registration requirements and the "subject matters" of the rejected ECIs

Presentation by Onno Brouwer

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The European Citizens' Initiative

Since 1st of April 2012

- ★ 49 ECIs have been proposed to the European Commission
- ★ 29 were registered (22 unique)
- ★ 20 refused
- ★ 9 withdrawn
- ★ 3 collected more than 1 million signatures

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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.

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Interpretation of the "manifestly outside"

The Commission argues that a proposed citizens' initiative will fall:

- ★ "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.

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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."

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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

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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"

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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

Example:

- ★ "Abolition of bullfighting in Europe and cruelty to bulls for entertainment"
- ★ "Concern for pets and stray animals"
- ★ "Ethics for animals and kids"
- ★ "For a Europe without legalised prostitution"

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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); and/or
- ★ 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 of 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

Onno Brouwer, Joep Wolfhagen, Daniel Baker
Freshfields Bruckhaus Deringer LLP

