



Council of the
European Union

Brussels, 15 November 2018
(OR. en)

13851/18

Interinstitutional File:
2017/0220(COD)

INST 429
AG 29
CODEC 2016
POLGEN 212

NOTE

From:	Presidency
To:	Delegations
No. Cion doc.:	12307/17 + ADD 1-2 + COR 1
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the European citizens' initiative – Presidency compromise proposal

With a view to the GAG meeting on 20 November, delegations will find in Annex a note containing Presidency suggestion for a compromise package on a set of provisions of the above Regulation under discussion with the European Parliament.

Presidency compromise proposal**Background**

Since the beginning of the negotiations in early September, i.e. in six technical meetings and two political trilogues on 11 September and 13 November with the Parliament and the Commission, the Presidency has maintained its mandate provided for in the general approach from 26 June 2018. The Presidency has secured most of the elements in the general approach, and the Parliament has accepted several key elements for the Council such as national contact points (Article 4), statement of support forms and ID number (Article 9), verification and certification by national authorities (Article 12), communication (Article 17) and protection of personal data (Article 18). A limited number of additional improvements, within the mandate of the Presidency, have been agreed in areas such as: (i) advice and support to organisers (Article 4); (ii) group of organisers (Article 5); (iii) registration; (iv) central online collection system (Article 10); (v) transparency (Article 16); (vi) communication (Article 17); (vii) protection of personal data (Article 18); and (viii) measures for citizens with disabilities.

The Presidency is very close to finalising the negotiations and reaching an agreement on this file. However, an agreement will not be reached without further progress on the remaining key issues, and in particular the age of support for the ECI and individual online collection systems where the Parliament and the Commission have maintained their positions (i.e. support to lowering the age of support to 16 years and maintaining the possibility for organisers to use their own individual online collection systems).

Against this background, and taking into account the outcome of the last political trilogue on 13 November, this document provides delegations with a set of compromise proposals to be discussed in the extraordinary meeting of the GAG on 20 November, before approval by Coreper on 28 November ahead the final trilogue on 29 November.

I. KEY ISSUES UNDER DISCUSSION

1) Age entitling to support ECI (Article 2, Recital 7)

In the first trilogue on 11 September, the European Parliament supported the Commission proposal which lowers the minimum age for supporting an ECI to 16 years, and signalled that it was one of its absolute priorities. The Commission also stressed that this is an essential element of its proposal and a political priority for the revision of the ECI Regulation..

The Presidency defended the position of Member States. While stressing that the Council fully shares the objective of ensuring a broader participation in the initiative in order to reinforce the democratic legitimacy of the EU and that the Member States stand fully behind the idea of youth being more actively involved in the political life and decision-making, it referred to the constitutional, technical and political obstacles that Member States are facing. It presented the Council solution as a balanced compromise providing the necessary flexibility already today for those who wish to lower the age to 16 years.

At the technical level, the Presidency has provided a detailed explanation of the obstacles referred to above. Besides the fact that setting minimum age for support touches in some Member States a sensitive issue of "the legal age of majority", the Presidency elaborated more in detail on technical difficulties related to the system of verification of signatures. In some Member States, statements of support are checked against the voter register, which contains citizens of the age of 18 years and older. The Presidency explained that, taking this into account, by lowering the age to 16 years there is a risk that valid statements of support would not be taken into account because the database would not give a match as the person would simply not be found in the register.

In the trilogue on 13 November, both Parliament and Commission maintained a strong position that European citizens should be able to participate in European politics through the ECI from the age of 16 years . The Commission stressed the objectives of the proposal arguing that lowering the age of support to 16 years will enhance the participation of the younger generation in the democratic debate at EU level and contribute to raise their awareness about the EU and increase the number of potential supporters of European citizens' initiatives. The EP as well as the Commission questioned the link made by the Council between the minimum age for supporting an ECI and the age entitling to vote in European elections, arguing that the right to support an initiative and the right to vote in EU elections are completely different matters and therefore such a link cannot reasonably be made.

*Taking into account the firm opposition by the European Parliament and the Commission, **the Presidency suggests adding, in Article 2, a 'may-clause' and adjusting Recital 7 to make clear that Member States can lower the age limit already under the current legal framework. For the implementation of this may-clause, the Presidency also suggests that Member States will inform the Commission if they decide to lower the age for their respective nationals,** so that the Commission can adjust the central online collection system to allow the citizens to support initiatives:*

Recital 7

(7) It is appropriate to set a minimum age for supporting an initiative [...], **which should correspond to the age at which citizens are entitled to vote in elections to the European Parliament.** In order to **enhance the participation of young European citizens in the democratic life of the European Union** and thus achieve the full potential of the European citizens' initiative as an instrument of participatory democracy, **Member States which consider it appropriate should be able to lower the minimum age for supporting an initiative to 16 years** and should inform the Commission accordingly. The periodic reviews on the functioning of the European Citizens' Initiative should also cover the developments on this issue.

Article 2

Right to support a European citizens' initiative

Every citizen of the Union who is at least **of the age to be entitled to vote in elections to the European Parliament** shall have the right to support an initiative by signing a statement of support ('the signatory'), in accordance with this Regulation.

Member States may lower the minimum age entitling to support an initiative to 16 years, in accordance with their national laws, and in such a case they shall inform the Commission accordingly.

The Presidency considers this to be a positive step towards the Parliament and the Commission, for which the issue is essential, and a balanced proposal. It ensures that there is no obligation for all Member States to lower the age of support to 16 years, thus safeguarding the flexibility for Member States on this issue, and also taking into account other elements of the proposed package deal.

2) **Individual online collection systems (IOCS)**

The Parliament made clear in the first trilogue on 11 September that keeping the possibility to use IOCS was essential for the civil society, and thus for the European Parliament. The Commission maintained its proposal stressing the importance for organisers of maintaining the possibility to have their own systems as foreseen under the current Regulation, including: (i) flexibility to the group of organisers to set-up their own online collection systems with the functionalities they consider appropriate for their initiatives and online collection campaigns; (ii) possibility to determine the Member State in which they would like to store the statements of support and the personal data collected will be stored, in connection with the nationality or residence of the organisers or where they consider it to be more appropriate from an organisational and logistical point of view.

At the technical level, we have provided a detailed explanation why the Council opted for not maintaining the possibility to run IOCS under the new Regulation. We referred to the administrative and financial burden for Member States related to the certification. Keeping IOCS goes against the very spirit of the new Regulation and the possible improvement, facilitation, simplification and user-friendliness that the newly established central online collection system (COCS) offers. By not being obliged to certify the individual systems and to undertake adaptations at national level for that purpose, Member States would have less financial and administrative burden related to controlling private, parallel systems.

As the Commission software and hosting service has been, up to now, used by the majority of initiatives and it can be fairly expected that the new system should be used by a large majority of initiatives in the future, it appears that maintaining the IOCS would be disproportionately burdensome, in particular taking into account the availability of a COCS provided by the Commission as of 1 January 2020 for free.

In the trilogue on 13 November, the Parliament stressed the importance of the keeping a diversity of online collection systems for the civil society, showing, however, a certain degree of understanding for the Member States' concerns about the related administrative and financial burden. The Commission maintained its proposal on the basis of the above-mentioned argument. In the light of this and the fact that on 13 November, the Parliament also accepted the Council's amendment to the Commission proposal to maintain the full ID-number for verification purposes (see point III(1) below, the Presidency suggests as a compromise:

- 1) **introducing a transitional period phasing out the use of IOCS** to give time to stakeholders to adapt to the new central online collection system. This would be done by keeping Article 11 and all related provisions in the Regulation, but making explicit under Article 26 that Article 11 shall apply only to initiatives registered in accordance with Article 6 **by 31 December 2021**. This will mean in practice that national authorities will be required to certify these systems until 30 June 2022 at the latest because an initiative registered at the latest date of 31 December 2021 would have a maximum of 6 months to put in place its individual system and begin the collection of statements of support. All new initiatives registered after the 31 December 2021 will use the central online collection system and will therefore not require the certification of the individual systems by the national authorities.*
- 2) introducing a provision, under Article 10, **providing for an obligation by the Commission to consult the stakeholders when further developing COCS**, in order to take into account their concerns. This would be a response to arguments that the competition from IOCS would encourage improvements in the COCS and that the Commission would be fine-tuning its system without taking into consideration the wishes and suggestions of the civil society and of the whole community of stakeholders.*

Recital 20

(20) To facilitate the transition to the new central on-line collection system, a group of organisers should continue to have the possibility to set-up its own online collection systems [...] **and to collect statements of support through this system for initiatives registered in**

accordance with Article 6 by 31 December 2021. The group of organisers should use a single individual online collection system for each initiative. Individual online collection systems set up and operated by a group of organisers should have adequate technical and security features in order to ensure that the data are securely collected, stored and transferred throughout the procedure. For that purpose, the Commission should set out detailed technical specifications for the individual online collection systems, in cooperation with the Member States. The Commission may seek advice of the European Union Agency for Network and Information Security (ENISA) which assists the Union institutions in developing and implementing policies related to security of network and information systems.

Article 26

Entry into force and applicability

This Regulation shall enter into force on the twentieth day following its publication in the Official Journal of the European Union. It shall apply from 1 January 2020.

However Articles 9(4), 10, 11(5) and 19 to 23 shall apply from the entry into force of this Regulation.

Article 11 [+ all related provisions] shall apply only to initiatives registered in accordance with Article 6 by 31 December 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Article 10

Central online collection system

5a. The Commission shall consult stakeholders on further developments and improvements of the central online collection system to take into account their suggestions and concerns.

Article 11

Individual online collection systems

kept (+ all related provisions in the proposal and its Annexes)

The Presidency considers this to be a balanced compromise, ensuring phasing out of the use of individual online collection systems and the end of the need for certification of these systems by the national authorities. It takes into account the other elements of the compromise package, and in particular the age limit where the Presidency suggests in essence to maintain the general approach.

II. OTHER ISSUES UNDER DISCUSSION

1) ECI lifecycle

EP provided on 18/10 a note summarizing objectives of the adjustment proposed to the ECI life-cycle in its AM 29 (extending the deadline for the organisers to inform the Commission about their choice of amending, maintaining or withdrawing the initial initiative by one month); AM 33 (prolonging the period for organisers to set the date of start of collection period by 3 months), AM 45 (prolonging the deadline of 5 months for the Commission to issue a communication by 1 month) and AM 58 (shortening the review clause period to 3 years). Overall the EP's proposals would extend the timeline by a maximum of 5 months.

The Council supported, in its general approach, the Commission proposal in terms of the ECI life-cycle, as it found it well balanced and respecting well the phases of the initiative and different actors involved. It struck a good balance also with regard to the review of the Regulation which was set by the Commission at 5 years. The Presidency defended the general approach along the discussions at technical level.

The EP made a thorough presentation of its amendments, stressing the importance of providing enough time for stakeholders to register an initiative and to start the collection period. It also explained that prolonging the deadline for the Commission's reply would give sufficient time to the Parliament to organise a hearing and a debate. The Commission has indicated flexibility on this point to take into account the Parliament proposals as part of the final agreement and is open to support the Parliament amendments.

Taking into account the good progress we made, and for the sake of an overall compromise, the Presidency suggests accepting the amendments 29, 33 and 45, as this would also in the view of the Presidency be to the advantage of organisers.

Recital 7

(17) Statements of support for an initiative should be collected within a specific time limit. In order to ensure that an initiative remains relevant, whilst taking into account the complexity of collecting statements of support across the Union, that time limit should not be longer than 12 months from the date of the start of the collection period determined by the group of organisers.

The group of organisers should have the possibility to choose the start date of the collection period within *six* months from the registration of the initiative. The group of organisers should inform the Commission of the date chosen at the latest ten working days before that date. To ensure coordination with the national authorities, the Commission should inform the Member States of the date communicated by the group of organisers.

Article 6(4)

.....

In that case, the group of organisers may either amend the initiative to take into account the Commission's assessment to ensure that the initiative is in conformity with the requirement laid down in **point (c) of** paragraph 3[...] or maintain or withdraw the initial initiative. The group of organisers shall inform the Commission of its choice within *two* months of the receipt of the Commission's assessment giving the reasons thereof, and shall, as the case may be, transmit amendments to the information referred to in Annex II to replace the initial initiative.

Article 8(1)

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')[...]. That date must be not later than *six* months from the registration of the initiative in accordance with Article 6.

Article 15

2. Within six months of the publication of the initiative in accordance with Article 14(1), and after the public hearing referred to in Article 14(2), the Commission shall set out in a communication its legal and political conclusions on the initiative, the action it intends to take, if any, and its reasons for taking or not taking action.

*In relation to the review clause for the sake of an overall compromise, **the Presidency proposes reducing the period for review** in Article 24 **to four years** compared to the initial Commission proposal, taking into account the EP proposal to fix that period to three years.*

Article 24

Review

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 **four** years from the date of application of this Regulation, and every **four** years thereafter. The reports shall be made public.

*The Presidency also proposes **keeping the Council text in Article 26** (taking out the reference to Article 24)*

Article 26

Entry into force and applicability

...

However Articles 9(4), 10 [...] and 19 to **23** shall apply from the entry into force of this Regulation.

2) **Translations (Article 3(4))**

In its AM 23, the EP suggested a translation, by the Commission, of the content of the initiative, the annex and where applicable, the draft legal act into all the official languages of the Union. The Council supported, in its general approach, the Commission proposal whereby only the content of the initiative would be translated by the Commission, while the annex and draft legal act would be translated by the organisers, should they wish to do so.

At the technical level, this issue was thoroughly discussed. While sharing the objective to make the process more efficient, accessible and user-friendly for organisers, the Presidency raised concerns about the possible implications on the overall budget foreseen for the initiative.

The Commission expressed support to the amendments proposed by the Parliament pointing out that this would be: (i) fully aligned with the policy objectives of making the ECI more accessible and easier to use; (ii) provide direct added value for organisers to raise awareness on their initiatives across the EU and to citizens allowing them support initiatives in their native language (EU official languages); and (iii) the additional costs/budgetary resources of the amendments proposed by the Parliament (limiting the total number of characters per initiative) seem proportionate to these objectives.

The Commission presented technical proposals allowing to implement the Parliament amendments and also gave a very thorough explanation of the budgetary implications. It could agree with the

Parliament proposals on extension of character limits in Annex II in relation to both to content of initiatives (1200 characters) and a maximum of 5000 characters for its annexes. It confirmed that, while maintaining the figures in the legislative financial statement, i.e. EUR 50.000, the budget already foreseen could cover the translations of initiatives and their annexes to the extent proposed by the Parliament into all official languages for approximately 20 initiatives per year. This seems to be a reasonably high threshold, taking into account the average number of initiatives per year under the current Regulation (51 initiatives registered to date in a 6 year period 2012-2018). On the contrary, draft legal acts would have to be translated by the organisers themselves under their own responsibility;

The Presidency has followed the Commission's assessment and proposal on this element and suggests to Member States to accept the following compromise proposal:

1) The Commission shall provide the translation of the content of that initiative, including its annex, into all the official languages of the Union, within the limits set out in Annex II (i.e. a maximum of 1200 + 5000 characters);

2) a group of organisers may, in addition, provide translations into all the official languages of the Union of the draft legal act referred to in Annex II and submitted in accordance with Article 6(2). These translations shall be the responsibility of the group of organisers.

The Presidency finds this to be a balanced compromise which does not involve a budgetary increase, but maintains the figures in the legislative financial statement, i.e. EUR 50.000 per year.

3) Minority languages (Recital 11)

In its AM 7, the EP proposed the following text of Recital 11:

(11) In order to make the European citizens' initiative more inclusive and visible, for the promotion and diffusion of the ECI as well as for the collection of signatures it should be possible to use regional or minority languages.

In the technical meetings, the Presidency defended the Council's position and maintained that AM 7 should not be taken on board, as the issue of use of minority languages fall within the Member States competence.

On 26/10, the EP proposed a new rewording, making a reference to the constitutional order of Member States:

(11) In order to make the European citizens' initiative more inclusive and visible, for its promotion and the communication about it, as well as for the collection of statements of support, it should be possible to use other languages as determined by Member States among those which, in accordance with their constitutional order, enjoy official status in all or part of their territory, should the Member States decide to allow and to facilitate the use of those languages for the above-mentioned purposes.

Commission shared the Council's view to a large extent, in particular with regard to the use of these languages as part of the procedures and conditions under the Regulation, including the collection of signatures and the statements of support as proposed by the Parliament.

*In the trilogue on 13 November, the Commission supported the Council, pointing out that while the use of regional languages could be considered possible for organisers when they communicate about an ECI, they could not be used as part of the procedures and conditions for the ECI which can only be done in the official EU languages. It concluded that the current Regulation does not prohibit **the use of these languages by the organisers as part of their own activities** and this should continue to be the case in the new Regulation, without adding any requirement as part of the procedures and conditions under the Regulation.*

Along these lines, the Presidency suggests the following recital:

Recital 11

(11) In order to make European citizens' initiatives more inclusive and visible, organisers can use for their own promotion and communication activities languages other than the official languages of the Union which, in accordance with the Member States' constitutional order, have official status in all or part of their territory.

4) Public hearing

When it comes to Article 14 and the amendments by the PETI Committee, substantial progress has been made at technical level. In particular:

1) Commission accepted, in paragraph 1, to transmit, apart from sending it to other institutions and advisory bodies, a valid initiative also to national parliaments as part of the overall agreement on this Article.

1. When the Commission receives a valid initiative in respect of which the statements of support have been collected and certified in accordance with Articles 8 to 12, it shall publish without delay a notice to that effect in the register and transmit the initiative to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions, ***as well as to the national parliaments.***

2) On Article 14(2) second paragraph, a more streamlined wording has been found, with the European Parliament as a sole organiser of the public hearing, this being of great importance for the Parliament, in particular the PETI Committee:

The [...] European Parliament shall ***organise*** the public hearing ***at its premises.*** [...] ***Other institutions and advisory bodies of the Union, the national parliaments, and representatives of civil society,*** shall be given the opportunity to participate in the hearing.

3) With regard to the level of representation of the Commission in hearings, after a very intensive discussion and firm opposition by the Commission to AM 43 in the form proposed by the Parliament using very prescriptive language in relation to the level of representation at the hearing, on 13 November the Parliament could accept the wording of the Commission proposal, as taken over by the Council in its general approach:

3. The Commission shall be represented in the hearing at an appropriate level.

4) With regard to the participation by the Council in hearings, Parliament could agree with taking Council out of paragraph 2, but asked for including it under paragraph and obligation of the

Council's Presidency to be present at hearings. The Presidency opposed this proposal which would put an obligation upon the Council to participate, despite the lack of a legislative proposal and a mandate.

Following this exchange, the Parliament proposed an alternative sentence to be inserted in paragraph 3 so that it reads:

The Council shall be given the opportunity to participate in the hearing.

In the Presidency's view this is certainly a step into the right direction as it does not impose any obligation on the Council, but merely provides for the opportunity for the Council to participate. The Presidency thus suggests to the Member States to accept the following wording slightly amended in order to make it clear that the Council would not take any position, taking into account the overall agreement on Article 14:

The Council shall be given the opportunity to attend the hearing.

III. AGREED ISSUES

1) Data requirements - ID number

The Parliament did originally not amend the Commission proposal reducing the ID number for verification purposes to 4 digits. In the trilogue on 11 September, the Parliament maintained its position.

At the technical level, the Presidency has presented arguments provided for by Member States as to why reducing the ID number requirement to only 4 digits only would be rather a major obstacle for Member States when verifying the statements of support because the full ID number is often an essential criterion to correctly identify a statement of support. The Presidency referred to increased costs for Member States to adapt to the new system related to major adjustments of existing systems and databases and a potential significant increase of the number of statements of support assessed as invalid.

The Presidency is happy to note that on 13 November, Parliament could go along with this reasoning and could accept the Council's general approach maintaining the full ID number, as it is currently the practice. The Commission also supported the arguments and proposals by the Council on the need of flexibility for the Member States on this element.

2) Budget (AM 13 and 52)

Through amendments 13 and 52, the Parliament wished to include a reference to specific financing related to the ECI regulation, as explained in trilogue and at the technical level. While being in favour of transparency, the Presidency kept the line that any reference to financing should reflect the status quo, should not infringe on the budgetary authority and should not pre-empt future decisions under the MFF.

In technical meetings, all three institutions have tried to find a solution for such a reference, ideally in a recital. However, the Commission clarified that funding should not be a part of the ECI

Regulation for legal/technical reasons, as the Regulation concerns the conditions and procedure for the ECI (not budgetary aspects) and the amendment proposed by the EP encroaches upon the autonomy of the budgetary authority and funding for the ECI. It also explained that funding for the ECI is being already considered as part of the Commission proposal for a Regulation establishing the Rights and Values programme (c.f. COM(2018) 383 final) under the MFF discussions. It was concluded that funding for the ECI should be discussed in the context of the Rights and Values programme proposal and that a recital which would refer directly/indirectly to the Regulation establishing the Rights and Values programme proposal should be avoided if the new ECI regulation is to be adopted before adoption of the Regulation establishing the Rights and Values programme since a legal act cannot refer to another legal act which does not yet exist.

*In trilogue on 13 November, **the Parliament could go along with this Council and Commission reasoning and withdrew its amendments 13 and 52**, taking into account that there is specific financing foreseen by the Commission for the ECI under the next MFF.*

3) Examination by the Commission (Article 15)

AM 47 has been thoroughly discussed at the technical level, with the Commission, supported by the Council, firmly opposing an obligation upon the Commission to make a proposal within a set deadline of 12 months, defending its right of initiative. The Commission explained that it cannot accept mandatory requirements with a fixed deadline within which the Commission has to act or produce legislation. It goes beyond the scope of the ECI instrument as laid down under the Treaties and would impinge on the Commission's right of initiative also enshrined in the Treaties.

The Commission made the following technical proposal to take into account the Parliament amendments:

Where the Commission intends to take action in response to the initiative, including as the case may be, the adoption of proposal(s) for a legal act of the Union, the communication shall set out which actions the Commission intends to carry out in the 12 months following the date of adoption of the communication.

The EP proposed a compromise proposal:

Where the Commission intends to take action in response to the initiative, the communication shall set out a clear timeline for all the measures it intends to take .

Where the Commission has formally expressed its intention to submit a proposal for a legal act in response to the initiative, such proposal shall be introduced no later than [XX] months after the adoption of the communication.

Commission and Council could go along with the first paragraph as a compromise but not the second one (since it still provides for a fixed deadline within which the Commission has to act or produce legislation).

In the trilogue on 13 November, the Commission stressed that any reference to a set deadline to adopt legislation was not acceptable for the Commission, but signalled that the Commission was open to consider, in its Communication, a timeline for actions. The Presidency supported the Commission.

The Parliament confirmed that it could go in this direction, provided that the text would include a clear commitment by the Commission to indicate the timing of the actions it intends to take as opposed to a deadline for taking such actions. Taking into account this agreement in principle, the concrete text will be finalised at the technical level.
