



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-418/18 P  
Puppinck and Others v Commission

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**Advocate General Bobek: the General Court was correct in confirming the Commission decision not to submit a legislative proposal in the context of the European citizens' initiative 'One of Us'**

According to the Treaty on European Union<sup>1</sup>, EU citizens, not fewer than one million from at least a quarter of all Member States, may take the initiative of inviting the Commission, within the framework of its powers, to propose to the EU legislature to adopt a legal act for the purpose of implementing the Treaties ('European citizens' initiative', ECI). Before being able to begin collecting the requisite number of signatures, the organisers of the initiative must have it registered with the Commission, which examines in particular its subject matter and objectives.

Mr Patrick Grégor Puppinck and six other persons ('the appellants') form the citizens' committee of the European citizens' initiative called '*Uno di noi*' ('One of Us') registered with the Commission in 2012. The objective of that initiative is to establish a ban and end the financing, by the EU, of activities which presuppose the destruction of human embryos, including the direct or indirect funding of abortion. After its registration, the initiative collected the requisite million signatures before being officially submitted to the Commission at the beginning of 2014. On 28 May 2014 the Commission stated in a communication<sup>2</sup> that it did not intend to take any action.

Dissatisfied with the communication of the Commission, the authors of the initiative had sought its annulment before the General Court. In its judgment<sup>3</sup> the General Court declared, first, that the action was inadmissible in so far as it was brought by the entity known as 'European Citizens' Initiative One of Us', without prejudice to the admissibility of that action in so far as it was also being brought by the seven natural persons comprising the citizens' committee of the ECI. Second, the General Court found that the communication constituted a challengeable act against which an action for annulment can be brought. Finally, it rejected the five grounds for annulment put forward by the appellants and dismissed the application.

By the present appeal, the appellants claim that the Court of Justice should set aside the judgment of the General Court and annul the communication. In support of their appeal, the appellants claim that the General Court erred in interpreting Article 11(4) TEU as well as the European citizens' initiative Regulation<sup>4</sup>, that it performed a wrong analysis of the communication, that it used an incorrect level of scrutiny, that it incorrectly assessed the reasons provided in the Communication and finally that the General Court wrongly characterized the objective of the ECI in question.

In today's Opinion, Advocate General Michal Bobek notes that this is the first case before this Court concerning the follow-up by the Commission in the case of a 'successful ECI' and that 'One of Us' is one of only four ECIs to date that have attained the required number of signatures. This, he notes, opens up two important questions of principle raised by the present case: first, is the Commission obliged to submit any concrete legislative proposals following a successful ECI?

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<sup>1</sup> Article 11(4) TEU.

<sup>2</sup> COM (2014) 355 final.

<sup>3</sup> Case: [T-561/14](#) One of Us and Others v Commission. See Press Release No. [52/18](#)

<sup>4</sup> Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative (OJ L 65, 11.3.2011, p. 1–22)

Second, what standard of judicial review is to be applied when reviewing the position taken by the Commission following a successful ECI?

The Advocate General then proceeds to deal with each of the five grounds of appeal. He suggests that the first ground of appeal based on an incorrect interpretation of the Treaty and of the ECI Regulation must be rejected as unfounded. He finds that the propositions of the appellants in this regard are supported neither by the wording and genesis of the relevant provisions, nor by a systematic and contextual consideration of the ECI mechanism within the interinstitutional decision-making process, nor by the (properly identified) aims and purposes of the ECI.

In this context the Advocate General suggests that the wording of the relevant EU law provisions, as well as the genesis of those provisions, clearly indicate that **the ECI was neither conceived of nor drafted in such a way as to impose an obligation on the Commission to adopt the requested proposal**. The same flows from the systemic and institutional context within which the ECI is placed. He notes that the interpretation suggested by the appellants would disrupt the legislative institutional balance. It would mean that an ECI supported by a group of more than one million citizens would gain power of initiative surpassing that of the directly democratically elected European Parliament and also that of the democratically legitimised, albeit indirectly, Council. In practical terms, a (vocal) fraction of European citizens would be given more weight than the two EU institutions that are directly and indirectly legitimised by (potentially) all European citizens

As regards the added value of the ECI in its current institutional design as set out in the TEU and the ECI Regulation, the Advocate General observes **that it is apparent that the ECI is much more than a mere symbolic nod toward participative democracy. It constitutes an institutional vehicle to allow for the emergence of policy issues of interest to a group of citizens**. It gives visibility to matters of concern to citizens, which may not already be on the agenda of the institutions or even on the agenda of the political groups represented in the European Parliament. It allows direct access to the institution that, in the particular sui generis EU institutional system, holds the power of legislative initiative. Moreover, it obliges that institution – the Commission – to seriously consider and engage in an assessment of the proposals of a successful ECI, and to do so publicly and subject to public scrutiny.

In suggesting that the second ground of appeal be dismissed, Advocate General Bobek finds that, contrary to what the appellants allege, the Commission Communication fulfils the requirements of the ECI Regulation by presenting its conclusions in a way that allows for an understanding of the legal and political nature of the considerations it contains. The third ground of appeal raises the crucial issue of the degree of scrutiny to which EU courts should subject a communication containing the decision of the Commission on the follow-up of a successful ECI. In this case the Advocate General notes that, in general, in areas in which the discretion of the Commission is very wide, as noted in connection with the first ground of appeal, the correlating standard of judicial review is a limited one. A limited standard of review is necessitated by the political latitude in the power of initiative of the Commission, which intrinsically involves reconciling divergent interests and selecting policy options. That latitude also follows from the political nature of the core assessment in the Commission's communication of how and whether to follow up on successful ECIs, as part of its power of initiative. **EU Courts cannot substitute the political assessment by the Commission, which must inform its decision to trigger the decision-making process by exercising its power of initiative.**

Advocate General Bobek also proposes to dismiss fourth and fifth grounds of appeal concerning respectively manifest errors of assessment and an alleged mischaracterization of the ECI.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the

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appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

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