



EUROPEAN
COMMISSION

Brussels, 31.5.2023
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COMMISSION IMPLEMENTING DECISION

of 31.5.2023

on the request for registration, pursuant to Regulation (EU) 2019/788 of the European Parliament and of the Council, of the European citizens' initiative entitled 'Effective implementation of the concept of judicial precedent in EU countries'

(Only the English text is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative¹, and in particular Article 6(2) and (3) thereof,

Whereas:

- (1) A request for registration of a European citizens' initiative entitled 'Effective implementation of the concept of judicial precedent in EU countries' was submitted to the Commission on 4 May 2023.
- (2) This request follows the request for registration of a European citizens' initiative entitled 'Effective implementation of the concept of judicial precedent in all EU countries' which was submitted to the Commission on 14 February 2023.
- (3) By letter of 8 March 2023 (C(2023) 1602 final), in accordance with Article 6(4) of Regulation (EU) 2019/788, the Commission informed the group of organisers that as regards the request for registration submitted on 14 February 2023, the requirements for registration set out in Article 6(3), first subparagraph, points (a), (d) and (e), of that Regulation were fulfilled and that Article 6(3), first subparagraph, point (b), thereof was not applicable. However, the Commission also explained that the initiative did not fulfil the requirement set out in Article 6(3), first subparagraph, point (c), of Regulation (EU) 2019/788 as Article 81 of the Treaty on the Functioning of the European Union (TFEU), on which the organisers had based their initiative, did not provide a legal basis for the legal act proposed by the initiative, as that provision is limited to matters having cross-border implications. Article 82 TFEU also could not provide a legal basis for the legal act proposed by the initiative as the objective of the initiative fell manifestly outside the scope of the four areas set out in Article 82(1), points (a) to (d), TFEU. Moreover, the initiative did not fall under any of the three areas set out in Article 82(2), points (a) to (c), TFEU nor did it concern another 'specific aspect of criminal procedure' referred to in Article 82(2), point (d), TFEU. The Commission also informed the organisers that Article 65 TFEU, referred to by the initiative, was not relevant in this context and that Articles 20 and 45 of the Charter of Fundamental Rights of the European Union did not provide the Commission with a competence to propose a legal act. The Commission therefore informed the organisers

¹ OJ L 130, 17.5.2019, p. 55.

pursuant to Article 6(4), first subparagraph, of Regulation (EU) 2019/788 that they could either amend the initiative to take into account the Commission's assessment, or maintain, or withdraw, the initial initiative in accordance with Article 6(4), second subparagraph, of Regulation (EU) 2019/788.

- (4) On 4 May 2023, the group of organisers resubmitted the initiative.
- (5) The objectives of the initiative as expressed by the organisers are the introduction of 'a mechanism at national level which guarantees mutual recognition of final judicial decisions adopted by courts' in other Member States and 'on the option of invoking national judicial precedents decided by the courts of the country in question'. The proposed mechanism would apply provided that: '(a) the Court of Justice of the European Union (CJEU) has had occasion to interpret the applicable provisions of EU law' and that '(b) the case in question concerns similar or identical legal questions'. The organisers consider that this 'mechanism should be actually available to litigants, allowing them to request the recognition of another decision relevant to their case at any stage of the proceedings. Furthermore, a certain degree of flexibility should be ensured in light of the *'rebus sic stantibus'* clause, making it possible to change the case-law if certain fundamental circumstances have changed.' In addition, the organisers consider that Member States should be 'obliged to impose effective, dissuasive and proportionate penalties in cases where the mechanism is not complied with'.
- (6) An annex to the initiative provides further details on the subject matter, objectives and background to the initiative. It states that the 'CJEU and the EU institutions have repeatedly found that in some EU countries courts tend to apply EU law without ensuring a uniform and coherent approach' and that this 'undermines the equality of Member States before the treaties' and 'leads to possible discrimination between litigants in the Member States and to significant uncertainties as to how compliance with EU law is ensured at national level'. Citing Article 4(2) of the Treaty on European Union, the annex explains that the initiative 'aims to consolidate a uniform judicial practice among the Member States, while at the same time respecting different judicial culture and traditions'. It also states that the proposal is 'proportionate and necessary in order to ensure the protection of the rule of law and to maintain the uniform implementation of EU law, since by introducing a mechanism which leads to the recognition of earlier judicial decisions, the judicial traditions and the procedural autonomy of each Member State are preserved'. Moreover, individuals should be able to invoke 'a mechanism for reviewing decisions which are incompatible with judicial precedents concerning similar or identical situations.' In this context, the annex mentions that Member States should be required to monitor the proper implementation of the mechanism by national courts, 'meaning that the Member States could be held liable for violations of obligations under EU law in line with settled CJEU case-law'.
- (7) The Commission understands that the amended initiative aims to introduce a mechanism that ensures mutual recognition of final judicial decisions taken by the courts in other Member States and reliance on national judicial precedents decided by the courts of the State concerned. That mechanism would apply subject to three cumulative criteria being satisfied: (i) the final judicial decision applied provisions of Union law; (ii) the CJEU has already interpreted the same relevant provisions of Union law and (iii) the case concerned is governed by similar or identical points of law.

- (8) Article 81(1) TFEU provides that the Union is to develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. That cooperation may include measures for the approximation of the laws and regulations of the Member States. Furthermore, Article 81(2), point (a), TFEU provides that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, are to adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases.
- (9) Similarly, Article 82(1) TFEU which concerns judicial cooperation in criminal matters provides that such cooperation is to be based on the principle of mutual recognition of judgments and judicial decisions and that it is to include the approximation of the laws and regulations of the Member States in the areas referred to in Article 82(2) and Article 83 TFEU. Pursuant to Article 82(1), second subparagraph, point (a), TFEU the European Parliament and the Council are to adopt measures to lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions.
- (10) Given that the initiative aims at introducing the concept of mutual recognition in cases that require the application of provisions of Union law subject to certain conditions, the Commission considers that the initiative's objective falls within the scope of Articles 81 and 82 TFEU.
- (11) For that reason, none of the parts of the initiative manifestly falls outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties.
- (12) That conclusion is without prejudice to the assessment of whether the concrete factual and substantive conditions required for the Commission to act, including compliance with the principles of proportionality and subsidiarity and compatibility with fundamental rights, would be met in this case.
- (13) The group of organisers has provided appropriate evidence that it fulfils the requirements laid down in Article 5(1) and (2) of Regulation (EU) 2019/788 and has designated the contact persons in accordance with Article 5(3), first subparagraph, of that Regulation.
- (14) The initiative is not manifestly abusive, frivolous or vexatious, nor is it manifestly contrary to the values of the Union as set out in Article 2 of the Treaty on European Union and rights enshrined in the Charter of Fundamental Rights of the European Union.
- (15) The initiative entitled 'Effective implementation of the concept of judicial precedent in EU countries' should therefore be registered.
- (16) The conclusion that the conditions for registration under Article 6(3) of Regulation (EU) 2019/788 are fulfilled does not imply that the Commission in any way confirms the factual correctness of the content of the initiative, which is the sole responsibility of the group of organisers of the initiative. The content of the initiative only expresses the views of the group of organisers and can in no way be taken to reflect the views of the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The European citizens' initiative entitled 'Effective implementation of the concept of judicial precedent in EU countries' shall be registered.

Article 2

This Decision is addressed to the group of organisers of the citizens' initiative entitled 'Effective implementation of the concept of judicial precedent in EU countries', represented by Mr Marius PITIGOI and Ms Mihaela-Roxana GODINAC acting as contact persons.

Done at Brussels, 31.5.2023

For the Commission
Věra JOUROVÁ
Vice-President

