



Council of the
European Union

020776/EU XXVII. GP
Eingelangt am 20/05/20

Brussels, 20 May 2020
(OR. en)

8120/20

Interinstitutional File:
2020/0099(COD)

INST 94
POLGEN 55

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	20 May 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 221 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down temporary measures concerning the time limits for the collection, verification and examination stages provided for in Regulation (EU) 2019/788 on the European citizens' initiative in view of the COVID-19 outbreak

Delegations will find attached the above-mentioned legislative proposal COM(2020) 221 final.

Encl.: COM(2020) 221 final



EUROPEAN
COMMISSION

Brussels, 20.5.2020
COM(2020) 221 final

2020/0099 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**laying down temporary measures concerning the time limits for the collection,
verification and examination stages provided for in Regulation (EU) 2019/788 on the
European citizens' initiative in view of the COVID-19 outbreak**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The COVID-19 pandemic has affected Member States and their citizens in an unprecedented way. In response to the pandemic, Member States have taken measures to stop or slow down COVID-19 transmission, including lockdown measures that have led to a near standstill of public life in almost all Member States.

The pandemic inevitably also has a serious impact on the European citizens' initiative (ECI); a participative democracy instrument that depends on the engagement of citizens across the EU. The right to submit an ECI is enshrined in the Treaty on European Union (Article 11(4) TEU). The national confinement measures and more generally the omnipresence of the pandemic make it currently nearly impossible for organisers to successfully continue their local campaigning activities and the collection of paper statements of support to help them gather the required statements within the set period of 12 months.

Member States and the European institutions have also certain obligations as regards the verification (including certification) of the validity of the collected statements of support and the examination of a successful initiative. These obligations are equally time-bound. Due to the exceptional circumstances stemming from the national measures taken in response to the unprecedented public health crisis caused by the COVID-19 pandemic, Member States and the European institutions may not be able to fulfil these obligations within the set legal time limits.

In order to preserve the efficacy of the European citizens' initiative instrument during this pandemic and to provide reassurance and legal clarity to organisers of initiatives the collection, verification or examination of which is ongoing, it is necessary to adopt temporary measures that allow to extend the collection periods of these initiatives. Similar temporary measures should be taken to allow Member States to request the European Commission for an extension of the verification period in case their competent authorities due to the measures taken to combat the pandemic, cannot complete the verification in time. Likewise, the European Parliament and the European Commission should be allowed to postpone the public hearing and the meeting with the organisers until the public health situation in the country where they plan to organise these meetings, allows again to do so. The corresponding period for examining a valid initiative should be extended accordingly.

- **Consistency with existing policy provisions in the policy area**

The legislation concerned by this Regulation is Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative. That Regulation does not contain specific provisions which would allow extending the collection, verification and examination period of registered initiatives in situations as those caused by the COVID-19 crisis. It is therefore necessary to adopt relevant provisions in order to take into account the effect of the measures taken in response to the public health crisis caused by the COVID-19 pandemic and to provide legal certainty to groups of organisers and Member States authorities.

- **Consistency with other Union policies**

The substantial difficulties that organisers currently face, due to the Member States' measures taken in response to the COVID-19 pandemic, to collect paper statements of support and to organise local campaigns to inform the public of their initiatives, could compromise their ability to reach the threshold of one million statements of support in at least seven Member States. This is a precondition to ask the European Commission to submit a proposal for a legal act of the Union on the subject matter for the purpose of implementing the Treaties. As a result, the efficacy of this participatory democracy instrument at Union level, which Union citizens has granted the right to submit a proposal for such a legal action, would be undermined. Like for other Union policies and legal instruments, impacted by the COVID-19 pandemic, it is therefore proposed to take temporary measures to counter these unforeseeable and exceptional impacts.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal concerns the applicable time limits for the collection, verification and examination phase in Regulation (EU) 2019/788. The adoption of that Regulation is based on Article 24 TFEU. Article 24 TFEU provides a specific legal basis for the European citizens' initiative and the adoption by means of regulations of the provisions for the procedures and conditions required for a citizens' initiative within the meaning of Article 11 of the Treaty on European Union. Consequently, the proposal is also based on 24 TFEU.

- **Subsidiarity (for non-exclusive competence)**

The length of the relevant time limits for European citizens' initiatives is defined in Regulation (EU) 2019/788. That Regulation in its current form does not provide for the necessary flexibility in the application of the time limits that would allow the groups of organisers, Member States and the European institutions to benefit from an extension of these time limits in case of exceptional circumstances such as that of a COVID-19 pandemic. Such extensions can only be achieved through provisions of Union law, i.e. in the form of temporary derogations.

- **Proportionality**

This Union action is necessary to achieve the objective of the proper functioning of the European citizens' initiative provided for by Regulation (EU) 2019/788, given the magnitude of the effects caused by the Member States' measures in response to the COVID-19 pandemic. The proposal is limited to targeted temporary measures, which are taken in response to the effects caused by the Member States' measures in the context of the COVID-19 pandemic. The measures are limited to what is necessary to ensure legal certainty and to preserve the efficacy of the European citizens' initiative as enshrined in the Treaty on European Union.

The Commission implementing powers for a further prolongation of the collection period in respect of affected initiatives is limited in scope and proportionate. It is subject to the objective, verifiable requirement that the measures taken by the Member States are or continue to be in place in a majority of Member States or in a number of Member States, representing more than 35% of the EU population. Likewise, the Commission only grants a

Member State the authorisation to apply an extension of the verification period for a given initiative, if the Member State concerned demonstrates that due to the COVID measures in place, it cannot complete the verification within the set period of three months. The Member State concerned shall submit a reasoned request for such an extension.

The proposed amendment is limited in time, under the assumption that the pandemic will have been overcome by the end 2022.

- **Choice of the instrument**

A Regulation is the appropriate instrument to introduce the necessary flexibilities in extending the legal time limits that apply to the collection, verification and examination stage of the European citizens' initiative under Regulation (EU) 2019/788. The extension of those time limits requires an act of the Union of general application, which is binding and directly applicable in all Member States. A Regulation is also considered appropriate to provide the necessary legal basis for granting the Commission with implementing powers to prolong the collection period and the verification period upon request of the Member State concerned.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

N/A

- **Stakeholder consultations**

Given the urgency of the matter, formal stakeholder consultation has not been carried out. However, the proposal follows on a consultation with the Expert Group on the European Citizens' initiative. A meeting was held on 30 April 2020 with the Expert Group, following a survey on the main outline of an amendment. The Commission also received several letters from organisers of ongoing initiatives during the pandemic, asking to find adequate and appropriate solutions - notably extension of time limits - to address their problems in the collection of the necessary statements of support. Similar requests have been received from Members of Parliament, including the Chair of the Committee on Constitutional Affairs.

- **Collection and use of expertise**

N/A

- **Impact assessment**

The proposed targeted temporary measures primarily aim at providing, for exceptional reasons in the context of the COVID-19 outbreak, extensions of the relevant periods in Regulation 2019/788. The measures apply for a relatively short period of time. Therefore, an impact assessment is not considered necessary.

- **Regulatory fitness and simplification**

N/A

- **Fundamental rights**

N/A

4. BUDGETARY IMPLICATIONS

The proposal does not have budgetary implications.

Under Regulation (EU) 2019/788, the organisers have to put in place an online collection system for the online collection of statements of support. They can decide to set up such system themselves, but they can also use the central online collection system that is set up and managed by the Commission. For initiatives using the central online collection system, the extension of the collection period implies a longer continued use by the groups of organisers of the centralised collection system. As the system has been designed to host multiple initiatives at the same time, there are no additional costs of such continued use. An extension of the collection period does not require additional human resources within the Commission administration in handling these initiatives, as the obligations for the Commission laid down by Regulation (EU) 2019/788 with regard to the initiatives remain the same.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The implementation of the measures will be monitored and reported upon in the framework of the general reporting mechanisms established in Regulation (EU) 2019/788.

- **Explanatory documents (for directives)**

N/A

- **Detailed explanation of the specific provisions of the proposal**

The proposed temporary measures concern Regulation (EU) 2019/788 on the European citizens' initiative.

The proposal provides for an extension of the time limits for the collection of statements of support for initiatives registered under Regulation (EU) 2019/788 or under Regulation (EU) No 211/2011. The proposal also provides for the possibility for a Member State to request a prolongation of the verification period. A similar measure is proposed to prolong the examination period of a valid initiative, depending on the specific circumstances. The measures are temporary in nature, as these only apply until end 2022.

As regards the extension of the collection period, the proposal contains as a first temporary measure that the collection period is extended with six months for initiatives, for which the collection of statements of support was ongoing on 11 March 2020, the day on which the World Health Organization formally announced that the COVID-19 outbreak had become a worldwide pandemic. Since then, all Member States have taken measures to stop or slow down the pandemic, which substantially hampers the possibility for organisers of initiatives to do local campaigning and to collect paper statements of support.

The relevant provision is complemented by a Commission empowerment to prolong the collection period of these initiatives and of initiatives that started their collection at a later date, in case a majority of Member States, or a number of Member States representing more than 35% of the EU population (continue to) have in place such measures or in case of a new outbreak requiring Member States to take again such measures, affecting initiatives to the same extent. The empowerment is limited in time (only extensions of three months, with a maximum total collection period of 24 months), and based on objective criteria.

Implementing acts for the further prolongation of the collection period of initiatives the collection of which was already ongoing on 11 March 2020 or on the date of entry into force of this Regulation can only be adopted after this Regulation has entered into force. The extension period of six months provided for in this Regulation provides sufficient time after its entry into force for the Commission to decide on a further prolongation of the collection period for these initiatives, if needed.

The proposal contains a specific temporary measure in case a Member State considers that due to the exceptional circumstances caused by the measures in its country, its national authority reasonably cannot complete the verification and certification of the statements of support within the three months period. In such a case, the Member State can submit a reasoned request to the Commission to extend this period, with a minimum of one month and a maximum of three months.

Several initiatives that are currently in the process of collecting statements of support have been registered under Regulation (EU) No 211/2011. As regards the collection and verification process, these initiatives are still subject to the provisions of that Regulation. The proposal ensures that the relevant measures on the extension of the collection and verification period also apply to these initiatives.

Under Regulation (EU) 2019/788, the examination period is also subject to specific time limits. The European institutions are required to organise a meeting with the organisers (to be organised by the Commission within one month after submission of a successful initiative) and a public hearing (to be organised by the European Parliament within three months after submission). The organisation of such events may be difficult within the time limits set by Regulation (EU) 2019/788, taking into account the measures put in place in response to the COVID-19 pandemic in the country where the institutions intend to organise these events. In such a case, the European institutions should be allowed to organise such events as soon as the public health situation in that country again allows for organising such events. In such cases, the European Commission shall adopt its Communication in response to a valid initiative within three months after the public hearing in the European Parliament.

If, because of the temporary measures defined in this proposal, the collection, verification or examination period is extended, a temporary measure catering for an extension of the retention periods defined in Regulation (EU) 2019/788 is necessary to avoid a legal requirement that would lead to a premature destruction of the statements of support.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down temporary measures concerning the time limits for the collection, verification and examination stages provided for in Regulation (EU) 2019/788 on the European citizens' initiative in view of the COVID-19 outbreak

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 24 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) On 11 March 2020, the World Health Organization announced that the COVID-19 outbreak had become a worldwide pandemic. The Member States have been affected in a dramatic and exceptional way by the consequences of that pandemic. They have taken a series of restrictive measures to stop or slow down the transmission of COVID-19, including lockdown measures to restrict the free movement of their citizens, the prohibition of public events, and the closure of shops, restaurants and schools. Those measures have led to a near standstill of public life in almost all Member States.
- (2) The measures taken by the Member States have inevitably also had a serious impact on European citizens' initiatives. For a European citizens' initiative to be successful, Regulation (EU) 2019/788 of the European Parliament and of the Council³ requires the organisers to collect at least 1 million statements of support in at least 7 Member States within a period of 12 months. In particular, paper-based collection of statements of support, local campaigning and the organisation of public events, which are of

¹ OJ C , , p. .

² OJ C , , p. .

³ Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative (OJ L 130, 17.5.2019, p. 55).

significant importance for a successful initiative, have become substantially more difficult because of the measures taken in response to the COVID-19 pandemic.

- (3) Member States and the Union institutions also have certain legal obligations under Regulation (EU) 2019/788. Those obligations are subject to strict time limits from which Regulation (EU) 2019/788 does not allow any derogations.
- (4) The Treaty on European Union has granted citizens of the Union the right to approach the Commission with a request inviting it to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties. The citizen's initiative is one of the main instruments for citizens of the Union to engage in an easy and accessible way in the democratic and political debate about the Union and to put issues that matter to them on the agenda of the Union.
- (5) In the current exceptional circumstances and in particular because of the measures taken by the Member States in response to the COVID-19 pandemic, temporary measures are necessary to preserve the effectiveness of that instrument, and to provide legal certainty regarding possible extensions of the applicable time limits.
- (6) Member States have indicated that they will only gradually reduce the level of restrictions introduced by the measures in response to the COVID-19 pandemic, in order to monitor and control the public health situation. An extension of the period for the collection of statements of support by six months, covering the period starting from 11 March 2020, when the World Health Organization announced that the outbreak had become pandemic, is therefore appropriate. That extension is based on the assumption that at least in the first six months since 11 March 2020 a majority of Member States or a number of Member States representing more than 35% of the Union population will have measures in place that will substantially hamper the organisers' possibilities to carry out local campaigning and collect paper statements of support. The collection period of initiatives the collection of which was ongoing on 11 March 2020 should therefore be extended by six months. Where the collection period of an initiative started after 11 March, that period should be extended proportionately.
- (7) Given that the end of the pandemic in the Union is difficult to predict, it is appropriate to empower the Commission to adopt implementing acts to further prolong the collection period in respect of initiatives, for which the collection period is still ongoing on 11 September 2020 in cases where the exceptional circumstances resulting from the COVID-19 pandemic continue to exist. The six-month extension of the collection period provided for by this Regulation should allow the Commission sufficient time to decide whether a further prolongation of the collection period is justified. The empowerment should also allow the Commission to adopt implementing acts to prolong the collection period in the case of a new public health crisis linked to a new outbreak of COVID-19, if a majority of Member States or a number of Member States representing more than 35% of the Union population have taken measures that are likely to have the same effect.
- (8) In order to ensure uniform conditions for the implementation of the prolongation of the collection period, implementing powers should be conferred on the Commission.

Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁴.

- (9) The measures taken by the Member States in response to the COVID-19 pandemic may significantly affect the ability of competent authorities to verify the validity of statements of support within the time limit of three months laid down in Regulation (EU) 2019/788. For example, there may be fewer staff available, or the competent authorities may have additional tasks and responsibilities as a consequence of the pandemic.
- (10) Member States should ensure that, despite the measures taken in response to the COVID-19 pandemic, their administrations function as normally as possible. However, in exceptional circumstances, a Member State should be allowed to submit a reasoned request to the Commission for an authorisation to apply an extension of the verification and certification period. The request should be substantiated and take into account the effects of the pandemic related measures on the functioning of that Member State's competent authorities. Any extension granted should not be longer than the initial verification period.
- (11) Due to the measures taken by the Member States in response to the COVID-19 pandemic, it may be difficult for the Union institutions to organise meetings with organisers or public hearings in the context of the examination of valid initiatives in the Member State where they intend to organise such meetings. In such cases, the institutions should be allowed to postpone the organisation of those meetings to a date when the public health situation in that Member State allows to do so. Where the public hearing is postponed, the Commission should be able to delay the adoption of its communication setting out its legal and political conclusions on the initiative to three months after the public hearing has taken place, to allow it to take due account of the findings at the hearing.
- (12) Where the period for collection, verification or examination is extended due to the measures taken by the Member States in response to the COVID-19 pandemic, the retention periods for statements of support laid down in Regulation (EU) 2019/788 are extended accordingly.
- (13) The unforeseeable and sudden outbreak of COVID-19 and the resulting measures taken by the Member States, which have been regularly prolonged, have meant that as regards some individual situations it was not possible to adopt the temporary measures provided for in this Regulation in time. For that reason, the temporary measures should also cover the period before its entry into force.
- (14) This Regulation should also apply to initiatives registered before 1 January 2020 under Regulation (EU) No 211/2011 of the European Parliament and of the Council⁵, to which the provisions of that Regulation on the collection period of statements of

⁴ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁵ 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).

support and verification and certification by Member States continue to apply pursuant to Article 27 of Regulation (EU) 2019/788.

- (15) Considering the temporary nature of the Member States' measures in response to the COVID-19 pandemic, the period of application of this Regulation should also be limited.
- (16) This Regulation should be adopted as a matter of urgency, so that situations of legal uncertainty affecting citizens, organisers, national administrations and the Union institutions, in particular where the relevant time periods for the collection of statements of support, verification and examination in respect of a number of initiatives have already ended or are about to end, remain as short as possible. It is therefore appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.
- (17) This Regulation should enter into force as a matter of urgency on the day following that of its publication in the Official Journal of the European Union,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down temporary measures applicable to the collection, verification and examination periods for registered citizens' initiatives under Regulation (EU) 2019/788 and Regulation (EU) No 211/2011, in the context of the measures taken by the Member States in response to the COVID-19 pandemic.

Article 2

Extension of time limits for the collection of statements of support

- (1) Notwithstanding Article 8(1) of Regulation (EU) 2019/788 and Article 5(5) of Regulation (EU) 211/2011, where the period for the collection of statements of support for an initiative the collection of which was ongoing on 11 March 2020, the maximum collection period shall be extended for a period of six months in each case.

Where the collection of statements of support for an initiative started between 11 March 2020 and 11 September 2020, the maximum collection period shall run until 11 September 2021.

- (2) The Commission may adopt implementing acts to prolong the maximum collection periods of initiatives referred to in paragraph 1, if a majority of Member States or a number of Member States representing more than 35% of the Union population continue to apply after 11 September 2020 measures in response to the COVID-19

pandemic which substantially hamper the possibility for organisers to collect paper statements of support and to inform the public of their ongoing initiatives.

The Commission may adopt implementing acts to prolong the maximum collection period of initiatives for which the collection is ongoing at the moment of a new COVID-19 outbreak requiring a majority of Member States or a number of Member States representing more than 35% of the Union population to apply measures that affect organisers of those initiatives to the same extent.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 6(2) and shall identify which initiatives are concerned and the new end date of their collection period.

The duration of each prolongation shall be three months.

For the purpose of assessing whether the requirement in the first and second subparagraph is fulfilled, the Member States shall provide the Commission, upon request, with information on the measures that they have taken or intend to take in response to the COVID-19 pandemic.

- (3) Notwithstanding paragraphs 1 and 2, the total duration of the collection period shall not exceed 24 months.
- (4) The Commission shall inform the organisers and the Member States of the extension granted in respect of initiatives concerned. It shall publish its decision in the online register referred to in Article 4(3) of Regulation (EU) 2019/788.

Article 3

Extension of time limits for the verification and certification of statements of support by the Member States

- (1) Notwithstanding Article 12(4) of Regulation (EU) 2019/788 and Article 8(2) of Regulation (EU) No 211/2011, where a Member State considers that due to the measures it has taken in response to the COVID-19 pandemic, it will not be possible to complete the verification and certification of statements of support for a given initiative within the period laid down in those provisions, it may submit a reasoned request for an authorisation to apply an extension of that period. That request shall be submitted to the Commission at the latest one month before the end of the period concerned.
- (2) Where, upon a request submitted in accordance with paragraph 1, the Commission finds that the requirements laid down in that paragraph are fulfilled, it shall adopt an implementing act authorising the Member State concerned to apply an extension of the period specified in paragraph 1. The extension shall not be less than one month and shall not exceed three months.

The Commission shall inform the Member State and the organisers of the initiative concerned of the extension. It shall publish its decision in the online register referred to in Article 4(3) of Regulation (EU) 2019/788.

Article 4

Extension of time limits for the examination of valid initiatives

- (1) Notwithstanding Articles 14(2) and 15(1) of Regulation (EU) 2019/788, where the European Parliament or the Commission have encountered difficulties since 11 March 2020 in organising a public hearing or a meeting with organisers, respectively, because of the measures taken in response to the COVID-19 pandemic by the Member State where those institutions intend to organise the hearing or meeting, they shall organise the hearing or the meeting as soon as the public health situation in the Member State concerned makes it possible to do so.
- (2) Notwithstanding Article 15(2) of Regulation (EU) 2019/788, where the European Parliament postpones the public hearing pursuant to paragraph 1 of this Article, the Commission shall adopt its communication setting out its legal and political conclusions on the initiative within three months after the public hearing.

Article 5

Extension of time limits for retention of personal data

- (1) Notwithstanding Article 19(5) of Regulation (EU) 2019/788, where the maximum collection or verification and certification period for a given initiative is extended in accordance with Articles 2 and 3 of this Regulation, the time limit of 21 months within which statements of support and copies thereof are to be destroyed shall be extended by the same period.
- (2) Notwithstanding Article 19(8) of Regulation (EU) 2019/788, where the maximum collection period, verification and certification period, or examination period for a given initiative is extended in accordance with Articles 2, 3 and 4 of this Regulation, the time limits within which records of email addresses are to be destroyed pursuant to that Article shall be extended by the same period.

Article 6

Committee procedure

- (1) The Commission shall be assisted by the committee on the European citizens' initiative established by Article 22 of Regulation (EU) 2019/788.
- (2) Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 7

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply until 31 December 2022.

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

Done at Brussels,

*For the European Parliament
The President*

*For the Council
The President*