Save Europe Act

The Commission Rejects the European Citizens' Initiative on Remigration

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On 22 July, the European Commission refused to register the European Citizens' Initiative (ECI) Save Europe Act. In the respective decision, the Commission argued for the first time that the initiative is manifestly contrary to the values of the Union under Article 2 of the Treaty on European Union (TEU) and the Charter of Fundamental Rights of the European Union (EU Charter). The Commission has made it clear that participatory democracy cannot be used to promote the "fight for remigration", as the organisers describe their proposal on the ECI website. The decision has since been challenged before the General Court (Case T-621/26).

The Commission's decision illustrates to what extent the ECI legal framework can prevent the instrument from being used in ways that run counter to the values of the Union. More broadly, it extends the general debate on the protection of Union's fundamental values to the realm of transnational participatory democracy.

The Discriminatory Nature of the Initiative

The ECI Save Europe Act is encouraging remigration, recognising the collective identity of native peoples of Europe and supporting the restoration of demographic balance as opposed to demographic replacement.

As summarised in paragraph 3 of the refusal decision, the aim of the Save Europe Act initiative is:

> *to call on the Commission to propose a Union act establishing a temporary moratorium on new non-Western immigration channels, including study and family reunification visas, while fundamentally reforming the EU migration and asylum system. The act should strengthen external border protection, rapid screening and return procedures, and provide for the systematic and accelerated remigration of illegally staying migrants, rejected asylum seekers, and further categories of non-European migrants whose continued stay places a serious burden on Member States. It should also ensure mutual recognition of return decisions across the Union, stronger cooperation with third countries on readmission, and the removal of welfare pull factors that encourage further migration into Europe.*

Save Europe Act is therefore calling for immigration-related measures raising serious concerns under the principle of non-discrimination. As the Commission has emphasised, the proposed generalised moratorium would discriminate on the basis of race and ethnic origin and would not be grounded on "migration-management criteria" but rather on the ethnic, cultural or civilisational origin of the persons concerned (paragraph 5). Furthermore, the ECI is based on "ethnic and cultural continuity of native peoples of Europe" and talks of "demographic replacement by the non-Western and non-European migrants."

According to Commission, this discriminatory criterion relies on the assumption that non-Western criteria refer exclusively to external migration flows and third-country nationals whereas the initiative in fact targets European citizens of non-European and non-Western origin (paragraph 6). Consequently, Save Europe Act does not satisfy the conditions for registration, as it is manifestly contrary to the principle of non-discrimination under Article 21 of the EU Charter and the values enshrined in Article 2 TEU.

This is the very first time that the Commission has made such an assessment of a proposed ECI.

The First Application of Article 6(3)(e) of Regulation 2019/788

This tool of participatory democracy is defined in Article 11(4) TEU. It enables the European citizens to invite the European Commission to submit a proposal on any matter where they consider that a legal act of the Union is required to implement the Treaties. To that end, the ECI must receive the support of at least one million persons across the EU. However, prior to publication for support, the Commission controls that the initiative satisfies admissibility requirements set out in Article 6(3) of Regulation 2019/788. These are, shortly, that it is not *manifestly*: outside the Commission's powers; abusive, frivolous or vexatious; contrary to EU values or fundamental rights. If the initiative meets these criteria, it can be registered by the Commission, and the organisers can begin collecting statements of support.

In the first years of the ECI, whenever the Commission refused to register a proposal, it consistently argued that the proposal fell manifestly outside its competence to submit a legislative proposal. This strict approach to the first condition of admissibility reflected the Commission's narrow interpretation of the initial ECI Regulation (Regulation No 211/2011, Article 4(2)(b)). Nonetheless, both the EU judiciary and the EU legislature have attempted to relax the admissibility requirements regarding the ECI's objective of enhancing participatory democracy, as an expression of Article 10(3) TEU.

Consequently, under the new framework established by Regulation 2019/788, the registration is now easier: the Commission enjoys less discretion to assess whether the measures in a proposed ECI manifestly fall outside the scope of its powers. Article 6(3)(c) remains informed by EU courts' case law relating to the former Regulation, according to which *manifestly* implies a low threshold, i.e. a *prima facie* evaluation of the legal basis and objectives of an ECI (see e.g. Anagnostakis, paras 49-50). As such, Save Europe Act could probably have satisfied this criterion. However, since the conditions to register an ECI set out in Article 6(3) are cumulative, it still had to comply with the other admissibility requirements. By upholding ideas that run counter to the Union's core values and the rights enshrined in the EU Charter, the ECI has failed to fulfil the registration requirement set out in Article 6(3)(e).

This was the first time the Commission had to assess an ECI on the ground of EU values. First introduced in 2011 (Article 4(2)(d) of Regulation No 211/2011), this provision reflects the legislator's intention to prevent this instrument of citizen participation from being used to put forward proposals that are incompatible with the Union's fundamental principles. In applying this criterion, the Commission relied on the Court's recent case law, which provided the relevant guidance for assessing whether the ECI manifestly contradicted Article 2 TEU and the EU Charter.

Building on the Court's Values Case Law

Invoking the protection of common values under Article 6(3)(e) of Regulation 2019/788, the Commission has shown its willingness to draw red lines. Moreover, as the organisers attempted to justify the initiative by relying on the national identity clause enshrined in Article 4(2) TEU, the Commission rejected the idea that this could be used to justify widespread exclusion from immigration channels based on ethnic origin (para 7).

In doing so, the decision builds on the Court's recent judgment *Values of the Union* (C-769/22). The ECJ stated that Article 4(2) TEU protects "only a view of the national identities which is consistent with the values enshrined in Article 2 TEU" (para 562). Therefore, the Commission's decision follows the development of "the very identity of the Union as a common legal order of a society in which pluralism prevails" (C-769/22, para 551), which makes it impossible to protect the "cultural and demographic continuity of the peoples of Europe" under Article 4(2) TEU.

The Commission's decision further echoes this judgment by recognising a "manifest" contradiction to Union values and fundamental rights. In *Values of the Union*, the Court introduced a manifestness threshold into the assessment of a violation of Article 2 TEU and the EU Charter by Hungary (C-769/22, in particular paras. 141 and 551), an approach that was not only

welcomed but has attracted criticism in the literature as well (see e.g. here).

In the present case, the ECI regulatory framework explicitly provides for the threshold of manifestness. As the organisers have recently brought an action for annulment before the General Court, the proceedings may provide an opportunity to clarify the meaning and scope of this criterion in this context. Although it remains to be seen whether the Court will adopt a consistent approach to this criterion, it is highly likely that *Values of the Union* will form the starting point for its reasoning.

From Legal Procedure to Political Mobilisation

Following the refusal to register their ECI, the organisers of the Save Europe Act reportedly announced their intention to take the matter to the General Court (see here). On 18 September, an action for annulment named after one of the initiative's organisers, Eva Vlaardingerbroek, was effectively lodged before the General Court (Case T-621/26). Should the General Court confirm the Commission's decision – as it seems highly likely – the ECI will not be able to formally initiate a democratic debate on remigration at EU level.

Meanwhile, the organisers are campaigning across the EU and transforming the ECI into a real political movement: the fight for remigration. Moreover, they are organising events and meetings in support of this initiative and have effectively collected already more than 750,000 signatures, despite the fact that these signatories cannot legally serve for their initial ECI. They have also mobilised visible far-right and radical-right politicians such as Björn Höcke, leader of the Alternative for Germany (AfD) in Thuringia; former Hungarian Prime Minister and Fidesz leader Viktor Orbán; Santiago Abascal, president of the Spanish far-right party Vox; and Eric Zemmour, president of France's far-right Reconquête party, to name but a few.

This collection of support does not bind the Commission yet it concurrently reinforces the organisers' evergreen claim that "Brussels elites" are not listening. They frame the refusal as evidence of a disconnect between the institutions and the demands they claim to represent. As stated on the ECI's website, the Commission's refusal demonstrates "the institution's democratic deficit and create a powerful mobilizing force for further action".

In this respect, the application of Article 6(3)(e) directly echoes the political critique put forward by the organisers. By making the registration of an ECI conditional on the initiative not being manifestly contrary to the Union's fundamental values and rights, the provision necessarily entails a determination as to the boundaries of legitimate participatory democracy within the Union's constitutional order.

The Commission's decision may thus prevent the ECI itself from becoming a formal forum for advancing initiatives that run counter to the Union's fundamental principles. It cannot, however, stop the organisers from turning the ECI into a vehicle for political mobilisation. As Alberto Alemanno has observed, the legalistic understanding of the instrument may encourage organisers to reinvent it through creative uses aimed at attracting public attention. Save Europe Act thus illustrates the limits of what the narrow conditions of the ECI legal framework on the registration can achieve.

Conclusive Remarks

The Commission's decision underscores its commitment to preventing the ECI from being used to challenge Union's core values. Its application of Article 6(3)(e) for the first time shows that the registration stage can act as a safeguard against such misuses of the instrument.

At the same time, the decision signals a return to a stricter approach of initiatives' registration. The Court of Justice had previously relaxed this step to enable ECIs to "initiate debate on policy within the EU institutions without having to wait for the commencement of a legislative procedure" (see Puppinck, para. 70; see also T-495/19, para. 51). Although secondary legislation excludes initiatives that contradict Article 2 TEU and the EU Charter from this formal debate, the increasing prevalence of such ideas in European public discourse underscores the importance of addressing them within the Union's democratic framework. Simultaneously, the political attention received by the ECI

Save Europe Act demonstrates that excluding an initiative from the ECI procedure does not prevent the political debate from extending beyond the instrument's legal framework.

Together with the case currently pending before the General Court, this decision therefore highlights the need to reconcile the ECI's function as a channel for democratic debate with the necessity to safeguard Union's fundamental values. While the answer may seem relatively straightforward in the present case, it may be more difficult to draw the boundaries between these two functions in future cases, which calls for a clear and consistent definition of a "manifest" contradiction to the core principles of the Union.

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