

II

(Non-legislative acts)

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2021/1484

of 8 September 2021

on the request for registration of the European citizens' initiative entitled 'Ensuring Common Commercial Policy conformity with EU Treaties and compliance with international law' pursuant to Regulation (EU) 2019/788 of the European Parliament and of the Council

*(notified under document C(2021)6607)***(Only the English text is authentic)**

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' initiative ⁽¹⁾, and in particular Article 6(2) and (3) thereof,

Whereas:

- (1) A request for registration of the European citizens' initiative entitled 'Ensuring Common Commercial Policy conformity with EU Treaties and compliance with international law' was submitted to the Commission on 5 July 2019.
- (2) On 4 September 2019, the Commission adopted Decision (EU) 2019/1567 ⁽²⁾ whereby registration of the citizens' initiative was refused.
- (3) That Decision was appealed at the General Court. In its judgment of 12 May 2021 in case T-789/19 ⁽³⁾, the General Court annulled Decision (EU) 2019/1567 on the ground that the Commission had failed to comply with its obligation to adequately state reasons. Notably the Commission had failed to state why the only possible legal basis for the act proposed was Article 215 of the Treaty on the Functioning of the European Union (TFEU) and why such act did not fall within the scope of the common commercial policy and could not, therefore, be adopted on the basis of Article 207 TFEU.
- (4) In order to take the necessary measures to comply with the judgment T-789/19, a new Decision on the request for registration of that European citizens' initiative should be adopted.
- (5) Regulation (EU) No 211/2011 of the European Parliament and of the Council ⁽⁴⁾, which was applicable at the time of the adoption of Decision (EU) 2019/1567, has been repealed with effect from 1 January 2020 and replaced by Regulation (EU) 2019/788. Therefore, the request for registration needs to be assessed now under this new legal framework.

⁽¹⁾ OJ L 130, 17.5.2019, p. 55.

⁽²⁾ Commission Decision (EU) 2019/1567 of 4 September 2019 on the proposed citizens' initiative entitled 'Ensuring Common Commercial Policy conformity with EU Treaties and compliance with international law' (OJ L 241, 19.9.2019, p. 12).

⁽³⁾ Judgment of the General Court of 12 May 2021, *Tom Moerenhout and others v European Commission*, T-789/19, ECLI:EU:T:2021:260.

⁽⁴⁾ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative (OJ L 065, 11.3.2011, p. 1).

- (6) On 8 June 2021, in accordance with Article 6(4) of Regulation (EU) 2019/788, the Commission informed the group of organisers of its assessment that the requirements for registration set out in Article 6(3), points (a), (d) and (e), of that Regulation were fulfilled and that the requirement set out in Article 6(3), point (b), was not applicable. However, as the text of the initiative as formulated in the request of 5 July 2019 did not allow the Commission to conclude that it fulfilled the requirement under Article 6(3), point (c), the Commission invited the organisers to clarify their initiative.
- (7) According to the Commission's preliminary assessment, the initiative seemed to pursue the objective of adopting Union restrictive measures (sanctions) and thus would appear to be covered by Article 215 TFEU, which requires, as a prior condition, that the Council adopts a decision in accordance with Chapter 2 (Specific provisions on the common foreign and security policy) of Title V of the Treaty on European Union. The Commission explained that in the absence of the prior Council decision, it cannot make a proposal and, in any event, that proposal would have to be made jointly with the High Representative of the Union for Foreign Affairs and Security Policy. It further indicated that from the text of the initiative, it was not clear whether it had the sole objective of imposing a general ban on all products coming from illegal settlements in occupied territories or whether also other forms of regulation at the Union border were envisaged. Finally, the Commission asked the organisers to clarify whether the initiative is territory-specific or aimed at a general prohibition without targeting a specific country or territory.
- (8) On 17 July 2021, the organisers sent a letter to the Commission services in which they provided clarifications about the objectives of their initiative. They explained that what they seek 'is that EU trade policy only happens with territories that have legal validity' and that they 'want EU trade policy to ensure that trade will not happen with territories that are illegally occupied or illegally acquired by the use of force exactly because of the constraints of international law'.
- (9) On 10 August 2021, a slightly amended version of the initiative was submitted to the Commission.
- (10) The objectives of the initiative are expressed as follows: 'We seek to regulate commercial transactions with Occupant's entities based or operating in occupied territories by withholding products originating from there from entering the EU market. The Commission, as Guardian of the Treaties, has to ensure consistency of Union's policy and compliance with fundamental rights and international law in all areas of EU law, including CCP. It must propose legal acts based on the Common Commercial Policy to prevent EU legal entities from both importing products originating in illegal settlements in occupied territories and exporting to such territories, in order to preserve the integrity of the internal market and to not aid or assist the maintenance of such unlawful situations.'
- (11) In so far as the initiative invites the Commission to submit a proposal for a legal act which should ensure that the European Union does not trade with occupant's entities based or operating in occupied territories under international law, the initiative asks for a measure intended to govern in a general manner EU international trade without targeting any specific country or territory. According to consistent case law, a measure that 'relates specifically to international trade in that it is essentially intended to promote, facilitate or govern trade and has direct and immediate effects on trade' ⁽⁵⁾ falls within the scope of the common commercial policy and should be based on Article 207 TFEU. In this respect, it would appear that the measure envisaged by the initiative would require enacting import and export prohibitions or restrictions vis-à-vis territories that are occupied under international law. Such a measure would therefore have a specific link ⁽⁶⁾ with international trade and as a consequence would fall within the scope of Article 207 TFEU even if it pursues foreign policy objectives ⁽⁷⁾.
- (12) In view of the clarifications provided by the organisers in their letter of 17 July 2021, and the slightly amended initiative, the Commission understands that the amended initiative invites the Commission to submit a proposal for a legal act under Article 207 of the Treaty, which should ensure that Union trade does not take place with occupant's entities based or operating in occupied territories and that thus the initiative asks for a trade measure that is general in nature and that does not target a specific country or territory.

⁽⁵⁾ Judgments of the Court of Justice of 22 October 2013 *Commission v Council*, Case C-137/12, ECLI:EU:C:2013:675, paragraph 57, and of 18 July 2013, *Daiichi Sankyo*, C-414/11, ECLI:EU:C:2013:520, paragraph 51.

⁽⁶⁾ Opinion 2/15 of 16 May 2017, Free Trade Agreement with Singapore, ECLI:EU:C:2017:376, paragraph 37.

⁽⁷⁾ Judgments of the Court of Justice of 17 October 1995, *Werner*, C-70/94, ECLI:EU:C:1995:328, paragraph 10, and of 17 October 1995, *Leifer*, C-83/94, ECLI:EU:C:1995:329, paragraph 10.

- (13) In order for potential signatories to understand the objective of the initiative as registered, the group of organisers should ensure that the details of the initiative to be published in the forms set out in Annex III of Regulation (EU) 2019/788 and in the central online collection system or individual online collection system as applicable, include the mention that the initiative asks for a measure intended to govern in a general manner EU international trade without targeting any specific country or territory.
- (14) For these reasons, 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 as required by Article 6(3), point (c), of Regulation (EU) 2019/788.
- (15) This conclusion is without prejudice to the assessment of whether the concrete factual and substantive conditions required for the Commission to act, including the compliance with the principle of proportionality, would be met in this case.
- (16) 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 that it has designated the contact persons in accordance with Article 5(3), the first subparagraph, of that Regulation.
- (17) The initiative is neither manifestly abusive, frivolous or vexatious, nor 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.
- (18) In conclusion, provided that the objectives of the initiative entitled 'Ensuring Common Commercial Policy conformity with EU Treaties and compliance with international law' include the requested additional information, the initiative meets all the requirements laid down in Article 6(3) of Regulation (EU) 2019/788 and should therefore be registered,

HAS ADOPTED THIS DECISION:

Article 1

The European citizens' initiative entitled 'Ensuring Common Commercial Policy conformity with EU Treaties and compliance with international law' shall be registered with the following additional information on the objectives of the initiative: 'The initiative thus invites the Commission to submit a proposal for a legal act under the Common Commercial Policy which is general in nature and does not target a specific country or territory'.

The group of organisers shall publish the initiative as registered in the forms set out in Annex III of Regulation (EU) 2019/788 as well as in the central online collection system or the individual online collection system, as applicable.

The Commission shall publish the same information on the scope of the registration of the initiative in the register.

Article 2

This Decision is addressed to the group of organisers of the European citizens' initiative entitled 'Ensuring Common Commercial Policy conformity with EU Treaties and compliance with international law', represented by Mr Tom MOERENHOUT and Mr Giovanni FASSINA acting as contact persons.

Done at Brussels, 8 September 2021.

For the Commission
Věra JOUROVÁ
Vice-President
