

Closing note on the Strategic Initiative with the European Commission on the revision of the European citizens' initiative (ECI) regulation (SI/6/2017/KR)

Correspondence - 23/05/2019

Case SI/6/2017/KR - **Opened on** 11/07/2017 - **Decision on** 28/05/2019 - **Institution concerned** European Commission |

The European citizens' initiative (ECI) constitutes one important example of how citizens can participate in the democratic life of the European Union. In this strategic initiative with the European Commission, the Ombudsman suggested ways of improving the ECI procedure.

These suggestions for improvements preceded the Commission's public consultation on the revision of the regulation on the citizens' initiative. The purpose of this revision is to make it easier for European citizens to participate in the democratic decision-making process of the EU, and to make the ECI procedure more user-friendly. The Ombudsman's suggestions on how to achieve this were inspired by the principles of independence, transparency, and meaningful engagement with stakeholders and the wider public.

The Ombudsman is pleased that her suggestions were largely taken on board in the Commission's proposal for the revision of the ECI regulation, and that all are reflected in the agreement between the co-legislators on the outcome of this revision.

The Ombudsman stresses however that continued public engagement and engagement with the organisers and potential organisers is the key to making a success of the ECI tool.

When the new rules are applied, the Ombudsman will be looking critically at how they are followed in practice. Meanwhile, the Ombudsman will deal with any complaint concerning the ECI procedure that is submitted and is admissible.

1. Background

1. The European citizens' initiative (ECI) is referred to as a participatory democracy instrument through which EU citizens can suggest concrete legal changes to the European Commission.



Once an initiative gathers 1 million signatures, or ‘statements of support’, and meets all the validity criteria, the Commission decides on what follow-up action to take. As such, the ECI constitutes one important example of how citizens can participate in the democratic life of the European Union.

2. This note looks at the impact of the European Ombudsman’s efforts to improve the European Citizens’ Initiative (ECI) procedure, taking into account the agreement reached between the European Parliament and the Council of the EU on the revision of the ECI regulation. [1]

3. On 11 July 2017, the Ombudsman wrote to the Commission suggesting ways to improve the ECI procedure (SI/6/2017/KR). [2] This letter drew on the Ombudsman’s guidelines stemming from her own-initiative inquiry into the functioning of the ECI ([OI/9/2013/TN](#)) [Link], as well as complaints received about the ECI procedure. [3]

4. On 6 September 2017, the Commission replied that it welcomed the Ombudsman’s suggestions as very valuable input for its proposal to revise the ECI regulation. [4]

5. On 12 December 2018, Parliament and Council reached an agreement on the Commission’s proposal. The procedure to revise the ECI procedure is now completed. The revised ECI regulation was published in the Official Journal of the EU. [5]

6. The regulation will apply as of 1 January 2020.

2. Strategic initiative

7. The Ombudsman’s suggestions are set out in annex, along with relevant aspects of the co-legislators’ agreement on the revision of the ECI regulation. The overview is subdivided into suggestions that seek to improve how to i. organise ECIs, ii. support ECIs and iii. make ECIs more impactful. For example, the Ombudsman urged that the registration process for ECI proposals is made more efficient, including through providing helpful, clear and accurate advice to ECI organisers; that the needs of persons with disabilities are addressed throughout the ECI procedure; and that the EU institutions ensure that the public debate that follows ECIs that have reached one million or more statements of support is inclusive and transparent.

3. Conclusion

8. The Ombudsman welcomes the fact that many of the suggestions she made have been taken into account either in the original Commission proposal or as a result of the work of the co-legislators. By way of example, while the Ombudsman’s point on funding and sponsorship transparency was not in the Commission’s proposal, it is encouraging to note that it ultimately was included in the agreement on the revision.

9. The Ombudsman stresses that continued public engagement and engagement with the



organisers and potential organisers is key to making a success of the ECI tool.

10. When the new rules enter into force, the Ombudsman will be looking critically at how they are followed in practice. Meanwhile, the Ombudsman will deal with any complaint concerning the ECI procedure that is brought to her attention.

Annex

Follow-up to the Ombudsman's suggestions

Ombudsman suggestions on making it easier to organise ECIs:

- A more efficient registration process, including through providing helpful, clear and accurate advice to ECI organisers.

It was agreed that the ECI Forum [6] , which is already being used, will become a permanent tool. This platform provides practical advice and legal advice, including on issues relating to admissibility. It also serves as a discussion forum about the ECI, enabling an exchange of information and best practices among citizens, groups of organisers, stakeholders, non-governmental organisations, experts and other institutions and bodies of the Union wishing to participate.

There will be contact points in EU Member States that can provide assistance and advice on aspects of the regulation that fall under the competence of national authorities and concern the applicable national law.

- Mitigating the risks of ECI organisers when dealing with large amounts of personal data, combined with the lack of legal personality of the citizens' committees'.

The Ombudsman has advocated, with some success, for a new approach that mitigates the risks of ECI organisers exposed to in the organisation of an ECI. ECI organisers will be allowed to set up a legal entity that assumes legal liability in relation to the actions of the ECI. Previously the lack of legal personality of the citizens' committees left the organisers unprotected in case of failings in terms of dealing with large amounts of personal data.

The agreement also includes that the Commission will develop a central online collection system, and will carry out a consultation of stakeholders in relation thereto. The Ombudsman welcomes that this system will be free for users and will have the necessary technical features enabling online collection. She notes however that some civil society groups are unhappy that the agreement rules out the use of third party signature collection software. She intends to monitor the development of the new central online collection system, and how stakeholders'



views are taken into account.

- *Allowing the 12-month signature collection period to start at the date of the ECI organisers choosing (within a pre-set period).*

ECI organisers will have up to six months after the registration date to prepare the collection of statements of support. Within that period, they can decide on the start date.

Ombudsman suggestions on making it easier to support ECIs:

- *Simplifying and harmonising data requirements when signing an ECI.*

Data collected from citizens can be either name, date of birth and address (part A of Annex III) or name and ID (document) number (part B of Annex III).

Member States have to inform the Commission of their choice (part A or B form).

- *Allowing EU citizens to sign ECIs regardless of where they reside.*

When the new rules are applied, supporters of an ECI will use the form corresponding to their nationality. This ensures that statements of support signed by all EU citizens are taken into account, notwithstanding where they reside.

- *Addressing the needs of persons with disabilities.*

It was agreed that Member States and the Commission should ensure that persons with disabilities can exercise their right to support initiatives and can access all relevant sources of information on initiatives, including the online collection system and the ECI Forum, on an equal basis with other citizens, in accordance with the applicable law.

As a member of the EU Framework for the UN Convention on the Rights of Persons with Disabilities (CRPD), which aim is to " *promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity* ", the Ombudsman has a responsibility to ensure that the EU administration follows up on this. [7]

Ombudsman suggestions on making the ECI procedure more impactful:

- *Articulating the value of the public debate generated through the ECI procedure.*

This is articulated in the agreement, for example in recital 5: " *This Regulation aims to make the European citizens' initiative more accessible, less burdensome and easier to use for organisers and supporters, and to strengthen its follow-up in order to achieve its full potential as a tool to foster debate . It should also facilitate the participation of as many citizens as possible in the democratic decision-making process of the Union*" (underscore added).

The agreement also refers to "communication activities" in that " *the Commission shall raise public awareness about the existence, objectives and functioning of the European citizens' initiative through communication activities and information campaigns, thereby contributing to promoting the active participation of citizens in the political life of the Union. The European*



Parliament shall contribute to the communication activities of the Commission. ” (Article 18, “Communication”) [8]

· Ensuring that funding and sponsorship information reflects reality and that any issues are brought to its attention. (Specifically, suggesting that the Commission draw on the example of the Transparency Register’s quality checks and its alerts and complaints system.)

It was agreed that ECI organisers need to provide up to date information as regards their financial and other (in-kind) support exceeding 500 EUR, at least every two months. In addition, an alert mechanism will be introduced so that possible irregularities can be flagged.

· Acknowledging ECI organisers’ achievements publicly throughout the process.

The Commission is looking into providing more complete information on the ECI website, including for example all organisers of an ECI committee and more up to date information on the number of statements of support gathered.

- Ensuring the public debate is inclusive and transparent.

It was agreed the European Parliament should ensure a balanced representation of the interests of relevant stakeholders, including civil society, social partners, and experts and that the Commission should be represented at an appropriate level.

· Reconsidering the three-month timeframe for preparing a meaningful public hearing and to prepare the communication.

The examination phase during which the Commission assesses a valid ECI will be extended from three to six months. Within one month of the submission of the initiative, the Commission shall receive the group of organisers at an appropriate level to allow it to explain in detail the objectives of the initiative.

- Involve both Parliament and Council in the follow-up.

Whereas the Parliament and the Commission remain the two EU institutions that are mainly involved in the organisation of the hearing, the Council (and other institutions and advisory bodies of the Union) should have the opportunity to participate in the hearing in order to guarantee its inclusive character and broaden the public discussion.

Following the hearing, the Parliament will be entitled to assess the support for a valid initiative after its submission and will be able to assess the actions taken by the Commission in response to the initiative and outlined in a communication.

· Explain its political choices to the public in a detailed manner.

The agreement grants more time for the Commission to formulate its legal and political conclusions.



The Commission's communication shall be addressed to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions and shall be made public.

- Provide more consistent and comprehensible reasoning for refusing registration.

Within six months of the publication of the initiative, and after the public hearing, the Commission shall set out in a communication its legal and political conclusions on the initiative, the action it intends to take, if any, and its reasons for taking or not taking action. Where the Commission intends to take action in response to the initiative, including, where appropriate, the adoption of one or more proposals for a legal act of the Union, the communication shall also set out the envisaged timeline for these actions.

[1] Regulation (EU) No 211/2011 on the citizens' initiative, available here:

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:065:0001:0022:en:PDF>
[Link].

[2] See:

<https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/81311/html.bookmark?si-related-doc=1>
[Link].

[3] See:

<https://www.ombudsman.europa.eu/en/cases/decision.faces/en/59205/html.bookmark#hl1> [Link]

[4] See the annex for an overview of how the Ombudsman's suggestions have been followed-up on.

[5] Available here:

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.130.01.0055.01.ENG&toc=OJ:L:2019:130:TOC

[6] See:

<https://collab.ec.europa.eu/wiki/eci/display/ECI/European+Citizens%27+Initiative+Forum> [Link].

[7] Article 33 (National implementation and monitoring) of the CRPD includes:

" [...]

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention." see:

<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>
[Link].



[8] See:

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2019-0153>