

Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN concerning the European Commission

Decision

Case OI/9/2013/TN - **Opened on** 18/12/2013 - **Decision on** 04/03/2015 - **Institution concerned** European Commission (No further inquiries justified) |

Available since April 2012, the European Citizens' Initiative (ECI) allows a group of at least one million EU citizens to call on the European Commission to propose new EU legislation. After receiving a number of complaints, the Ombudsman decided to investigate the proper functioning of the ECI procedure and the Commission's role and responsibility in this regard. The Ombudsman invited organisers of ECIs, civil society organisations, and other interested persons to provide input on how well the ECI is working. On the basis of these responses, the Ombudsman made a range of suggestions to the Commission to increase the effectiveness of the ECI process.

Having received the Commission's response, the Ombudsman now concludes her inquiry with eleven guidelines for further improvement. While noting that the Commission has done a lot to give effect to the ECI right in a citizen-friendly way, the Ombudsman believes that more can be done. As some of these suggestions are relevant to the European Parliament, the Ombudsman will also write to the President of Parliament. In this way, she trusts that her suggestions, made both during the inquiry and in this decision, will prove useful as these institutions, together with the Council of the EU, set about reviewing the ECI Regulation later this year.

The background to the own-initiative inquiry

1. This inquiry concerns the operation of the European Citizens' Initiative (ECI) and the European Commission's role and responsibility in this regard. The ECI allows a group of at least one million EU citizens from seven Member States to call on the Commission to propose new EU legislation. Up and running since 1 April 2012, when the ECI Regulation [1] setting out its rules and procedures became applicable, the ECI has attracted much interest, with two ECIs so far submitted to, and answered by, the Commission after having obtained over one million signatures.

2. After receiving a number of complaints from citizens who had tried to launch ECIs, the



Ombudsman opened an own-initiative inquiry [2] to encourage and support efforts to improve the procedure. The two objectives of the inquiry are to ensure that the present ECI Regulation works as well as possible and to provide input for the legislator to consider as part of the review being carried out this year [3] .

The inquiry

3. The Ombudsman launched this inquiry by inviting organisers of ECIs, civil society organisations, and other interested persons to provide input on how well the ECI is working and to submit their ideas on possible future changes to the ECI Regulation. After collecting and examining 18 contributions to her targeted consultation, the Ombudsman set out her analysis to the Commission and asked it to respond to the issues she had identified. The Ombudsman received the Commission's opinion in October 2014. The Ombudsman has since then monitored the debate on the ECI, through events and studies. Her decision takes the information provided to her and other relevant publicly available material into account.

Arguments presented to the Ombudsman

4. The contributions to the Ombudsman's targeted consultation raised issues that the Ombudsman categorised as follows: (a) engaging with citizens; and (b) practical, technical and legal issues. The Ombudsman set out her analysis to the Commission along these lines and asked it to respond. The letter to the Commission requesting an opinion is available on the Ombudsman's website [4] .

5. In its opinion [5] , the Commission explained that it is in constant dialogue with organisers of ECI initiatives and has taken note of all their comments and concerns since the start of the implementation of the ECI Regulation. Where improvements could be undertaken under the current legal framework, the Commission has already taken measures and will continue to do so, wherever possible, to make the ECI as citizen-friendly as possible. The Commission pointed out, in this respect, that some of the issues raised in the contributions received by the Ombudsman have been overtaken by improvements that the Commission has made.

6. The Commission further explained that some of the Ombudsman's comments or suggestions cannot be implemented under the current legal framework. They will, however, be taken into account in the reflections that will take place in the context of the 2015 review of the ECI Regulation, it said.

The Ombudsman's assessment

The democratic life of the Union



7. The ECI is provided for in the section of the Treaty on European Union setting out democratic principles. Described as an instrument of participatory democracy, the ECI constitutes a specific means by which citizens can participate in the democratic life of the Union and by which the Commission can ensure that its decisions as regards legislative proposals are taken as closely as possible to the citizens.

8. The section of the Treaty on democratic principles also contains the statement that the functioning of the Union shall be founded on representative democracy and that citizens are directly represented at Union level in the European Parliament.

9. In the Ombudsman's opinion, it would be a mistake to draw too sharp a contrast between participatory democracy, given effect – among other ways – through the ECI, and representative democracy at the EU level. They are mutually reinforcing concepts in the democratic life of the Union. To put this more concretely: the European Parliament, as well as the Commission, has a vital role to play in making a success of the ECI. The Ombudsman will, therefore, write to the President of Parliament to draw his attention to her findings in this case and to encourage Parliament to take responsibility in the relevant areas.

A. Engaging with citizens

10. The Ombudsman has already set out a range of suggestions to the Commission [6] to ensure that it engages fully with citizens who are planning, have submitted, or have successfully organised an ECI. The Ombudsman will refer to these three stages below as the preparation stage, the admissibility stage and the examination stage.

11. With regard to the preparation stage, the Ombudsman's overarching concern is to avoid an ECI being rejected for want of information on the side of the organiser about, among other things, EU law. It is for this reason that the Ombudsman called on the Commission to engage with ECI organisers and offer assistance to allow them to clarify and define the objective of their ECI.

12. In its reply, the Commission explained that it has established a point of contact providing information and assistance, based in the Europe Direct Contact Centre, through which it answers questions from potential ECI organisers. The Commission further explained why it cannot intervene formally to shape an ECI, given its subsequent role in deciding what follow-up action to take.

13. The Ombudsman agrees that it would not be appropriate for the Commission to take charge of drafting or amending an ECI, whose ownership must remain in the hands of the organisers. At the same time, she emphasises the importance of engaging with citizens who show an interest in shaping the future of the Union. **The Ombudsman would therefore encourage the Commission to provide as much guidance as possible to staff in the Europe Direct Contact Centre so that they can exercise reasonable judgment in striking the delicate balance between supplying helpful advice and being seen to steer a**



particular ECI.

14. With regard to the admissibility stage, the Ombudsman called on the Commission to provide sufficient and consistent reasoning for its decision to refuse to register an ECI, so that citizens can understand and scrutinise its position and possibly exercise their right to contest it.

15. The Commission replied that a refusal decision sets out the reasons for the refusal and mentions the possible remedies. A transparent policy has been adopted which allows for the publication of such replies on its website. These can therefore be scrutinised by the public and help potential organisers understand better the legal admissibility criteria.

16. The Ombudsman welcomes the fact that the Commission is trying to be as transparent as possible in terms of explaining its reasons for rejecting ECIs. The fact remains, however, that concerns are still raised alleging insufficient or unclear reasoning, or lack of consistency in the Commission's reasoning at this stage of the procedure. [7] By making its reasoning available for public scrutiny, the Commission has allowed for these concerns to be raised, which is a commendable first step. **The Ombudsman trusts that the Commission will learn the relevant lessons from the consistent reports in this regard and that it will endeavour to provide reasoning that is more robust, consistent and comprehensible to the citizen .** Robust, consistent and comprehensible reasoning will serve as valuable guidance to citizens, allowing them better to understand the nature of the ECI tool, as well as helping future ECI organisers to formulate their proposed initiatives. The Ombudsman will remain available to be of assistance both to citizens and to the Commission in dealing with individual complaints concerning allegedly insufficient or unclear reasoning and by providing, where appropriate, recommendations and guidance on the basis of principles of good administration [8] .

17. With regard to the examination stage, the Commission committed itself to giving every ECI "serious consideration". In her letter to the Commission, the Ombudsman noted that serious consideration implies that, before making a decision on whether and how to follow up a successful ECI, it would be useful for the Commission to: (i) set out and apply criteria and procedures for carrying out further studies such as consulting experts and third parties; and (ii) carry out preliminary consultations with the Council and Parliament with a view to determining whether there is political support for the ECI.

18. The Commission replied that, although it shares the view that experts or stakeholders other than the organisers should have the opportunity to make their views heard during the examination process, the current legal timeframe is too short to allow it to carry out public consultations, studies or impact assessments prior to issuing its reply. Equally, there would not be sufficient time for a formal consultation with the Council and Parliament.

19. The Ombudsman notes that her reason for making these suggestions to the Commission, in relation to its commitment to seriously consider ECIs at the examination stage, was to ensure that citizens feel not only that they have been heard through the ECI procedure but, more importantly, that they have been listened to. If not, citizens may lose interest in the ECI as a means of engaging with policy-making. As a consequence, citizens' trust in the democratic



legitimacy of the EU institutions may be eroded.

20. Against this background, the Ombudsman would like to emphasise that, in terms of the substantive outcomes of the ECI process, the Commission coming forward with a legislative proposal should not be the only measure of success. While this is what the organisers of an ECI, on the face of it, seek to achieve, the Ombudsman's view is that the process itself is of major significance.

21. The process itself offers organisers a platform from which they can generate a public debate about their issue, thus allowing the organisers to be properly and genuinely listened to. The Commission's Vice President Timmermans has recognised, in the ongoing discussions on the ECI tool, the important purpose that the ECI serves as a political platform. The essence of public political debate is, in the Ombudsman's view, that different views can and should be expressed and that reasons for different views are given, challenged and defended in a transparent way. As also expressed in the ongoing discussions on the ECI, citizens may expect and demand policy and legislation from the EU that the EU and its institutions may not have had the intention of considering. This, however, constitutes the very essence of this new instrument of participatory democracy: it empowers citizens to shape the Union. If public political debate is facilitated properly in the context of the ECI tool, this debate can give the desired effect to this new democratic right for citizens. **The Ombudsman therefore asks the Commission, first, to articulate more clearly for citizens its understanding of the value of the public debate generated through the ECI procedure and of how this debate, in its own right and irrespective of the individual outcome, gives the ECI process value and legitimacy. Second, the Commission should do all in its power to see to it that, throughout the ECI procedure, the public debate ensuing from a registered ECI is as inclusive and transparent as possible.** It is against this benchmark, among others, that the Commission's actions in relation to the ECI should be judged.

22. The public hearing organised by the European Parliament is of particular importance in this regard. The public hearing offers a unique opportunity to the organisers of ECIs to meet with the Commission, in the presence of (ideally) the two arms of the legislature - Parliament and Council - as well as interested stakeholders (for and against the initiative) to put their case. It is democracy in action and must be seen to meet the highest standards in terms of political engagement, public participation and transparency. **The Commission should therefore explore with Parliament, the latter being responsible for organising the public hearing, how to ensure that the two arms of the legislature, Parliament and Council, as well as interested stakeholders (for and against the initiative) are present at the public hearing.**
[9]

23. In terms of the substantive outcome, the Ombudsman has already drawn the Commission's attention to the need to explain its political choices to the public (in terms of how it responds to an ECI that has obtained at least one million signatures) in a detailed and transparent manner. Clarity about the reasons for its choices promotes constructive and open debate, thus strengthening the European public sphere and democracy at the EU level and reinforcing the importance of the debate itself, as outlined above.



24. While the Commission explains that it has set up a page outlining all actions undertaken as a follow-up to ECIs successfully submitted, it does not confirm that it will properly explain the political considerations underpinning its choices. The Ombudsman therefore reiterates her suggestion that **in its formal response to an ECI that has obtained one million signatures, the Commission should explain its political choices to the public in a detailed and transparent manner.** Otherwise, the Commission's position on an ECI that has obtained one million signatures risks being perceived as arbitrary rather than underpinned by proper legal and political considerations.

B. Practical, technical, and legal issues

Anticipated progress under the current ECI Regulation

25. The Ombudsman recognises, in terms of what one might call the 'procedural aspects', the Commission's great efforts, within the current legal limits, to implement the ECI Regulation in a citizen-friendly way. She agrees that it has, in fact, in many areas gone beyond its formal and legal obligations under the ECI Regulation.

26. The Commission has already given positive effect to some of the suggestions made in the Ombudsman's letter of July 2014, notably in relation to (i) seeking to avoid additional or unnecessary hurdles for organisers; (ii) raising awareness of the ECI, including with national authorities; and (iii) communicating action it has taken to address problems raised by the public.

27. The Commission has also, through its opinion, clarified a number of points raised by organisers in their submissions to the Ombudsman. Specifically, (i) organisers do not need to contact national authorities in charge of verifying statements of support before starting to collect signatures; (ii) nor do they need to ask them to validate in advance the forms to be filled in by signatories; (iii) organisers have some margin of manoeuvre in terms of adapting forms (for example, organisers can add a logo); (iv) the online collection system (OCS) software allows for testing before an ECI is registered with the Commission; (v) the software prevents the submission of duplicate statements of support, displaying a clear error message; (vi) the software allows links to campaigning websites. Notwithstanding the above, the Ombudsman is conscious that the statement of support forms and the OCS software are still areas of great concern to ECI organisers.

28. Nevertheless, a number of further improvements can be secured under the present regime. In particular, the Commission has confirmed that it will analyse the suggestions that have been made in contributions to the Ombudsman's consultation in the context of a future release of the OCS software. **The Ombudsman encourages the Commission to duly follow up on this commitment to analyse these suggestions.** In improving the OCS software, **the Commission should be mindful of the needs of persons with disabilities who wish to submit statements of support to ECIs online** . [10]



29. It is also of utmost importance for the public to be able to follow ECIs and for the instrument to be seen as a tool for *citizens*. In this vein, the Ombudsman advised the Commission to ensure full transparency of funding and to check that the information provided by organisers is correct.

30. The Commission outlined the requirements in this regard and stated that it has no reason to believe that organisers do not provide and update the information required on their sponsors and sources of funding. To date, no one has signalled any instances of inaccurate or misleading information of this nature, it said.

31. In the context of her own-initiative inquiry into the composition and transparency of Commission expert groups [11], the Ombudsman examined the currently existing system of quality checks in relation to information in the Transparency Register [12], together with the recently overhauled alerts and complaints system for the detection of incorrect information in the Register [13]. **The Ombudsman would encourage the Commission to draw on the example of the Transparency Register's quality checks and its alerts and complaints system to ensure that funding and sponsorship information provided by ECI organisers reflects reality and that any issues are brought to its attention.**

32. Again, the Ombudsman will remain available to be of assistance both to citizens and to the Commission in dealing with individual complaints on procedural and practical aspects where principles of good administration may further guide the Commission in its application of the current ECI Regulation.

Revision of the ECI Regulation

33. Notwithstanding its best endeavours, the Commission can operate only within the legal limits of the Regulation as it stands. It is regrettable that some provisions in the Regulation clearly have placed administrative and bureaucratic hurdles in the way of citizens, every one of whom has, according to the Treaty, the right to participate in the democratic life of the Union.

34. It is, in particular, not justifiable that some EU citizens, who have made use of their right to move freely within the Union, cannot sign an ECI in whichever other Member State they happen to be. The Commission points out that this is due to requirements imposed by some Member States and that it is encouraging these Member States to revise their requirements under the present ECI Regulation. Nevertheless, the Ombudsman's view is that, in order for this issue to be fully resolved, it needs to be addressed in a revised Regulation. Given what is at stake (namely, that a citizen is simply seeking to add his or her name to a list of potentially one million people asking the Commission to take action), the administrative requirements should not be disproportionate. **The Ombudsman thereby urges the Commission — in order to facilitate EU citizens wishing to sign an ECI, and irrespective of in which Member State they are currently residing — to, once again, propose to the legislature simpler and uniform requirements for all Member States in terms of the personal data to be provided when**



signing a statement of support.

35. The Commission further committed itself to ensuring that other comments made during the Ombudsman's inquiry will feed into the review process that it is in the throes of carrying out. It referred, notably, to the question of legal deadlines (in particular the fact that the 12-month collection period starts on the registration date and not on the date the organisers' online collection system is certified), data protection requirements and the status of the citizens' committee.

36. On the other hand, while fully acknowledging that translation and funding raise particular challenges for organisers, the Commission is silent in terms of how it proposes to address these challenges. **The Ombudsman trusts that the Commission will come forward with ideas on these two important aspects and, if necessary, propose relevant provisions in a revised ECI Regulation.**

Conclusion

In closing this inquiry, the Ombudsman welcomes the Commission's response to date and offers the following guidelines for further improvement. The Ombudsman suggests that the Commission :

- 1. Provides as much guidance as possible to staff in the Europe Direct Contact Centre so that they can exercise reasonable judgment in striking the delicate balance between supplying helpful advice and being seen to steer a particular ECI.**
- 2. Endeavours to provide reasoning for rejecting ECIs that is more robust, consistent and comprehensible to the citizen.**
- 3. Articulates more clearly for citizens its understanding of the value of the public debate generated through the ECI procedure and of how this debate, in its own right and irrespective of the individual outcome, gives the ECI process value and legitimacy.**
- 4. Does all in its power to see to it that, throughout the ECI procedure, the public debate ensuing from a registered ECI is as inclusive and transparent as possible.**
- 5. Explores with Parliament, the latter being responsible for organising public hearings, how to ensure that the two arms of the legislature, Parliament and Council, as well as interested stakeholders (for and against the initiative) are present at the public hearing.**
- 6. In its formal response to an ECI that has obtained one million signatures, explains its political choices to the public in a detailed and transparent manner .**
- 7. Duly follows up on its commitment to analyse the suggestions made in contributions to the Ombudsman's consultation aimed at improving the online collection system (OCS)**



software.

8. Should be mindful, in improving the OCS software, of the needs of persons with disabilities who wish to submit statements of support of ECIs online.

9. Draws on the example of the Transparency Register's quality checks and its alerts and complaints system to ensure that funding and sponsorship information provided by ECI organisers reflects reality and that any issues are brought to its attention.

10. In order to facilitate EU citizens wishing to sign an ECI, and irrespective of in which Member State they are currently residing, proposes once again to the legislature simpler and uniform requirements for all Member States in terms of the personal data to be provided when signing a statement of support.

11. Comes forward with ideas on the two important aspects of translation and funding of ECIs and, if necessary, proposes relevant provisions in a revised ECI Regulation.

The Commission will be informed of this decision. The Commission should indicate how and when it will implement each measure that has been suggested. It would be helpful if the Commission could follow-up by **31 May 2015**.

The Ombudsman also intends to write to the President of Parliament to draw his attention to relevant aspects of her decision, notably guidelines 4, 5, 6, 10 and 11 above.

Emily O'Reilly

Strasbourg, 04/03/2015

[1] Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ 2011 L 65, p.1.

[2] The Ombudsman undertakes inquiries on her own initiative where she finds grounds to do so. As well as inquiring into any possible maladministration, these inquiries are intended to be helpful to the particular institution and to promote good administrative practice.

[3] The Commission will present a report on the application of the Regulation by 1 April 2015.

[4] The letter to the Commission requesting an opinion can be found at:
<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/54609/html.bookmark>
[Link]



[5] The Commission's opinion can be found at:

<http://www.ombudsman.europa.eu/cases/correspondence.faces/en/59067/html.bookmark> [Link]

[6] See the letter to the Commission requesting an opinion:

<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/54609/html.bookmark> [Link]

[7] More detailed information on the concerns that have been put forward can be found, for instance, in a study commissioned by the European Parliament's AFCD and PETI Committees, available at

[http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509982/IPOL_STU\(2014\)509982_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509982/IPOL_STU(2014)509982_EN.pdf)

[Link], in a European Parliamentary Research Service publication, available at

http://www.europarl.europa.eu/EPRS/EPRS_IDAN_536343_Implementation_of_the_European_Citizens_Initiative.p

[Link], as well as in a study conducted by ECAS within the framework of the ECI Support

Centre, available at

http://www.ecas.org/wp-content/uploads/2014/12/ECI-report_ECAS-2014_1.pdf [Link]

[8] See e.g. Articles 10 and 18 of the European Code of Good Administrative Behaviour.

[9] Rule 211 of the Rules of Procedure of the European Parliament provides for this. It sets out that (i) the Commission shall be properly involved in organising the public hearing at Parliament; (ii) if appropriate, the public hearing shall be organised also together with such other institutions and bodies of the Union as may wish to participate; (iii) other stakeholders may be invited to attend.

[10] See, e.g. Article 29 of the United Nations Convention on the Rights of Persons with Disabilities, to which the EU is a party.

[11] See, in particular, the Ombudsman's letter to the Commission requesting an opinion:

<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/58861/html.bookmark> [Link]

[12] See point 24 of the Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation, OJ L 277/11, 19 September 2014.

[13] See Annex IV to the Agreement between the European Parliament and the European Commission on the transparency register.