

## Decision of the European Ombudsman closing the inquiry into complaint 402/2014/PMC against the European Commission

Decision

**Case 402/2014/PMC - Opened on 28/03/2014 - Decision on 31/03/2015 - Institution concerned** European Commission ( No further inquiries justified ) |

The complaint was made against the Commission by a representative of a group of citizens who had put forward a European Citizens Initiative ("ECI"). It concerned the system for collecting signatures online, and the hosting on the Commission's servers of such systems, as well as the possibilities to modify an ECI after it had been submitted for registration. On the basis of the current legislation, the Ombudsman found that the Commission's position was reasonable. She therefore concluded that there had been no maladministration by the Commission. The Ombudsman commented that she trusted that the Commission would take her views into account when revising the ECI Regulation in 2015.

The Ombudsman suggested that, as soon as the preliminary assessment of a proposed initiative shows that the initiative does not fulfil the registration criteria, the Commission' could, if the organiser has informed it that it wishes to use its own online collection system, inform the organiser accordingly as rapidly as possible, in order to avoid the latter incurring unnecessary financial and organisational efforts.

## The background to the complaint

1. The complaint concerns issues arising in relation to a request for the Commission to register a European Citizens' Initiative (ECI) [1] , that is, the procedures and conditions for using the Commission's open source software for the online collection of signatures, as well as the adding of further documents to a registration request.
2. Following the submission of the ECI for registration in early 2014, and upon request from the Commission, the complainant (representing the citizens' committee for the ECI in question) confirmed that the citizens' committee wanted to use the Commission's open-source software for the online collection of signatures and that it also wished the Commission to host the online collection system on its servers.



3. The complainant asked whether the Commission would give the ECI the full twelve months to collect signatures online, given that the collection of signatures online can only start once the online collection system has been certified by the competent national authority, and such certification can be requested only after the ECI has been registered by the Commission.

4. In response, the Commission stated that the registration of an ECI and the certification of the online collection system by a competent national authority are separate procedures. Irrespective of the date of certification of the online collection system, the twelve month period for the collection of signatures starts on the date of registration of the initiative with the Commission.

5. Twelve days after having made the request for registration of the ECI, the complainant submitted a new annex and asked the Commission for permission to add it to the original registration request. The Commission exceptionally accepted this request, informing the complainant that the two-month time-limit for registration would be counted from the date when she submitted the new annex. Fifteen days after she had submitted the new annex, the complainant asked whether she could add a further annex (an expert report) to the registration request. The Commission replied that the new document could not be added to the ECI, which was currently being analysed, and that the complainant would have to submit a new initiative if she wanted to include the new document.

6. On 2 March 2014, the complainant lodged a complaint with the Ombudsman in relation to the above. On 27 March 2014, the Commission refused registration of the proposed ECI on the grounds that to do so was manifestly outside of its powers.

## The inquiry

7. The Ombudsman opened an inquiry into the complaint and identified the following allegations and claims:

### **Allegations:**

1. The procedures and conditions for using the Commission's open source software for the online collection of signatures create unnecessary difficulties for organisers using it.
2. The Commission's position, that adding a further document to the complainant's request for the registration of an ECI means that the registration process starts anew, is unfair and disproportionate.

### **Claims :**

1. The Commission should ensure that the complainant has 12 months from certification of the open source software for collecting signatures.
2. The Commission should consider the expert report submitted by the complainant when



assessing the initial registration request.

3. In the course of the inquiry, the Ombudsman received the Commission's opinion on the complaint and, subsequently, the comments of the complainant in response to the Commission's opinion.

## **Allegation related to the procedures and conditions for using the Commission's software for online collection of signatures**

### **Arguments presented to the Ombudsman**

8. The complainant stated that it is not possible to request the competent national authority to certify the Commission's online collection system, to be hosted on the Commission's servers, while awaiting the Commission's decision on the registration of the ECI. According to the complainant, the Commission does not issue the documents required to obtain the online collection system certification until it has registered the initiative. The twelve-month deadline for collecting signatures runs from the date of registration of the ECI, whereas obtaining an online collection system certification from the national authority can take up to one month. As a consequence, organisers will have less than twelve months to collect signatures online. According to the complainant, this problem does not arise for ECI organisers not using the Commission online collection system.

9. In its opinion, the Commission stated that the ECI Regulation [2] does not guarantee the organisers twelve full months to collect signatures online. The ECI Regulation defines the collection period as twelve months from the date of registration of the proposed initiative, not from the date of the ECI's online collection system being fully operational.

10. The Commission acknowledged that it has proven difficult for ECI organisers to have their online collection system certified by the date of registration. Certification may take up to one month. [3] If the ECI organisers set up their own online collection system, they are fully entitled to request its certification before having the proposed initiative registered by the Commission. However, if they choose that option the ECI organisers run the risk that their financial and organisational effort is lost, should the Commission refuse registration.

11. In line with the ECI Regulation, the Commission has made available to ECI organisers, free of charge, open source software for the online collection system. The Commission pointed out, however, that this software is only one element of the whole online collection system, which also requires hosting services (that is, appropriate hardware) and certification by the competent national authorities. It noted that it also offers to host the ECI organisers' online collection system on its own servers.

12. Given the cost of hosting the online collection system on its servers, and considering that



roughly 40% of the proposed initiatives have so far been rejected due to lack of a legal basis in the Treaties, the Commission considers it more cost-effective to verify that a proposed initiative complies with the conditions for registration [4] before signing the hosting agreement. Nonetheless, the Commission makes efforts to facilitate the process. All the organisers are asked directly after they have submitted their request for registration whether they wish to use the Commission hosting facilities. As soon as the preliminary assessment of a proposed initiative wishing to use the Commission's hosting services shows that the initiative fulfils the registration criteria, the Commission's services send the organisers the hosting agreement to be signed and the documents to be completed for the certification procedure. The Commission then waits until the very last day of the two-month period that is available to register the ECI in question before doing so, in order to allow, where possible, for certification of the online collection system before registration. However, most organisers need slightly more time to finalise the certification process.

**13.** As regards the ECI submitted by the complainant, the preliminary analysis led the Commission to the conclusion that it did not fulfil the requirements for being registered. The Commission therefore did not propose to sign a hosting agreement with the complainant.

**14.** Notwithstanding the above, the Commission pointed out that the ECI Regulation will be reviewed in 2015. The issues raised by the present complaint, that is, the online collection system and the time limits set out in the ECI Regulation, will be part of the review analysis.

**15.** In her observations, the complainant did not make any additional remarks concerning this aspect of her complaint.

## The Ombudsman's assessment

**16.** The complainant's main concern is that ECIs using the Commission's online collection system services, including hosting, will not have twelve months to collect signatures online. This is due to the fact that the twelve-month period starts from the date of registration, that registration is a precondition for full access to the Commission online collection system and hosting, and that the online collection can only start once the online collection system has been certified by the competent national authority, which may take a month.

**17.** Notwithstanding the above, it must be noted that ECI organisers have a choice as to whether to use the Commission's online collection system services, including hosting, and that the problem arises only if they opt for the Commission's system. The Ombudsman points out that the Commission's approach as regards the deadline is based on an interpretation of the Regulation that is reasonable. Equally important, by delaying the registration of a proposed (admissible) ECI as long as possible, the Commission is doing its best to limit the disadvantage arising from the fact that the need to obtain a national certification authorisation may mean that signatures can be collected only after the date when the twelve-month deadline has started. In the present case, it must also be born in mind that the complainant's ECI was inadmissible in any event.



18. Consequently, the Ombudsman finds that the Commission is acting reasonably in the context of the current legislative framework and that there are thus no grounds to pursue this issue further in the context of the present inquiry. The Ombudsman trusts however that the Commission will properly address this issue when revising the ECI Regulation in 2015.

19. In order to ensure that already cost burdened ECI organisers do not waste any more financial and organisational efforts than necessary, it would be useful if the Commission would keep those ECI organisers, who intend to use their own online collection system, updated about its preliminary assessment of the admissibility of the proposed initiatives. The Ombudsman will make a further remark in this regard.

## **Allegation related to adding documents to a proposed ECI**

### **Arguments presented to the Ombudsman**

20. In its opinion, the Commission stated that it had informed the complainant that the relevant procedure does not allow the content of a proposed initiative to be modified once the request for its registration has been submitted. If an ECI organiser wishes to submit an additional document with a view to having it analysed by the Commission as part of the initiative already proposed, the two-month deadline for the registration of the proposed initiative has to start anew from the day of the new submission. The Commission further stated that the analysis of a proposed initiative is a complex process, which in the case of a negative reply entails extensive inter-service consultation and a formal procedure for adopting the decision, which might also require additional time for translations. Accordingly, there is no margin for manoeuvre within the two-month time-limit. The Commission added that it informed the complainant that it had made an exception when it accepted the (first) additional document. According to the Commission, "*in view of the advanced stage of analysis of the proposed initiative, the addition of a [second] new document as an integral part of the initiative was considered impossible*". The Commission noted, furthermore, that the complainant was free to publish the report on the ECI's website, without making it an official part of the proposed ECI.

21. In her observations, the complainant did not comment further on this point.

### **The Ombudsman's assessment**

22. The Ombudsman acknowledges that the time-limit for registering a proposed ECI is within two months of its submission and that, accordingly, within that period of time, the Commission has to analyse whether the proposal fulfils the conditions for registration set out in the ECI Regulation. She also recognises that the analysis of a proposed initiative can be a complex procedure.



**23.** The Ombudsman finds nothing in the ECI Regulation to prevent the Commission, in principle, from accepting additional information from a proposed ECI within the original two-month time-limit. In the case at hand, the Commission did indeed allow the complainant to submit a (first) new document.

**24.** The Commission however cannot be unconditionally required to analyse new information within the original time-limit, or even, depending on the nature of the information, take it into account without the ECI proposal being resubmitted as a new proposal (which always remains an option). In the Ombudsman's view, the assessment as to whether new information should or can be added to a proposed ECI within the original two-month time-limit should be done on a case-by-case basis.

**25.** The Ombudsman finds nothing to suggest that the Commission failed to base its decision in the present case on an individual assessment of the particular case. The Ombudsman therefore considers the Commission to have validly concluded that the submission of an additional expert report would not be possible at such an advanced stage of its analysis of the proposed ECI. The Ombudsman therefore finds no maladministration by the Commission as regards this aspect of the complaint.

**26.** The Ombudsman has recognised with concern that the ECI process is facing a number of procedural and systemic problems that have to be addressed in order for the ECI tool to be truly citizen-friendly. The Ombudsman identified the main problems in the ECI process and proposed possible solutions in her decision closing the own-initiative inquiry OI/9/2013/TN concerning the ECI [5] .

## C. Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion:

**There are no grounds to pursue the issue underlying the first allegation further in the context of the present inquiry. As regards the second allegation, there has been no maladministration by the Commission.**

The complainant and the Commission will be informed of this decision.

## Further remark

**In order to avoid ECI organisers wasting financial and organisational effort unnecessarily, it would be useful if the Commission would inform ECI organisers, who intend to use their own online collection system, updated about its preliminary assessment of the admissibility of their proposed initiatives.**



Emily O'Reilly

Strasbourg, 01/04/2015

[1] Governed by 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 (hereafter "the ECI Regulation")

[2] Article 5(5) of the ECI Regulation

[3] Article 6(3) of the ECI Regulation

[4] Article 4(2) ECI Regulation

[5] Available on the Ombudsman's website:

<http://www.ombudsman.europa.eu/cases/decision.faces/en/59205/html.bookmark>