

MORAIS BISMARQUE GASPAR Ana Gloria

From: Carsten Berg [REDACTED]
Sent: 31 March 2014 17:47
To: NILSSON Tina; GADESMANN Gundi; Euro-Ombudsman
Subject: Re: European Citizens' Initiative: Ombudsman invites feedback
Attachments: II_14_Lessons to Learn_JKT_CB_PC.doc

Follow Up Flag: OI/9/2013/TN
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Dear Ms. O'Reilly, (dear Ms. Nilsson),

I would like to thank you in the name of The ECI Campaign for your article in our new publication, for your participation at our event The ECI Day and most of all for your active initiative and involvement in the issue of European Citizens' Initiative. Your invitation to submit comments on the functioning of the ECI procedure is indeed urgently needed.

You will find attached and copied below an article of The ECI Campaign synthesizing the collective learning and recommendations from the 16 ECI campaigns and 20 officials, politicians, researchers and experts who contributed to our workshop and publication "An ECI That Works: Learning from the First Two Years of the European Citizens' Initiative".

If you would like more details on specific ECI campaigns' or stakeholders' experiences and recommendations, please see the individual articles in this publication. They often include, in great detail, challenges ECI campaigns encountered related both to the ECI's regulation and its implementation by EU authorities.

The ECI Campaign hopes that our comments and suggestions will contribute to the smooth revision of the ECI instrument and help to transform it into an open and user-friendly European participatory democracy instrument.

With kind regards,

Carsten Berg

Carsten Berg
ECI Campaign Coordinator
[REDACTED]

www.citizens-initiative.eu
facebook.com/citizens.initiative

+49-1764-3064365
+49-2222-9957211

Lessons and Recommendations for an ECI That Works

Compiled by Carsten Berg and Janice Thomson

As the European Citizens' Initiative (ECI) reaches its two-year anniversary, the first ECI campaigns, EU institutions and national authorities have amassed a wealth of practical experience. They have shared their learning in this publication, as well as in a December 2013 workshop.

All ECI campaigns, whether run by well-resourced organisations or by volunteers on a shoe-string budget, faced similar barriers that stem from inherent weaknesses in the ECI regulation. Many procedures are unnecessarily bureaucratic and burdensome. A radical simplification and harmonisation of the ECI regulation and related rules is clearly needed.

Below are summarised recommendations from ECI campaigns and stakeholders for how to change the ECI's governing rules so the ECI can fulfil its potential as a transnational participatory democracy tool. As plans evolve for the 2015 reform of the ECI regulation, The ECI Campaign will continue to fine-tune this list and translate it into specific reform proposals, as well as contribute to a fruitful debate on how to ensure that the ECI works for EU citizens.

It is important to note that changing the rules governing the ECI can be both complex and ambitious. Several legal texts impact how the ECI works and each is modified in a different way: article 11.4 TEU (treaty change), the ECI regulation (co-decision between the Parliament and Council), the ECI regulation's annex (delegated act by the Commission, subject to possible objection by Parliament or Council and upon request of the Member States concerned as regards Annex III), and the technical regulation for the online collection system (implementing act by the Commission subject to an ex-ante opinion by a committee of Member States' representatives). Fortunately, some practical supports can be added and procedural changes made without having to modify these legal texts. Furthermore, the same problem could potentially be addressed in different ways. The recommendations below therefore focus on overall goals, although they sometimes also suggest a few possible ways to reach them.

Reduce and harmonise personal data requirements across member states.

Each EU member state requires different personal data from ECI supporters. This means campaigns must create 28 different signature forms and submit signatures for verification to 28 different national authorities -- instead of to a single collection point. At the same time, campaigns, citizens, EU officials and national authorities have all complained that too much information is required from citizens to support an ECI.

Finland's simple form and data requirements could become the standard used in all countries. It includes name, country of residency, nationality and date of birth. It is used both by EU citizens residing in Finland and Finnish citizens regardless of their country of residence. In any case, it could serve as a starting point for member states to reconsider and justify which personal data they actually need from ECI supporters to verify identity.

Data protection requirements for the ECI should likewise be harmonised across all member states and ideally coordinated by a central EU body. Similarly, while member states must

verify signatures, a central body (or database) could be established to coordinate between campaigns and national authorities. This would relieve campaigns of the complex, time-consuming logistics of working with 28 different national authorities.

Eliminate ID number requirements.

Among the personal data requirements, identity document numbers have clearly created the most problems. ECI organisers noted that requirements for citizens to share ID numbers, as well as birth dates and places, to support an ECI raised serious privacy concerns and deterred citizens in several countries from supporting an ECI. ID requirements posed problems especially in Austria, Bulgaria, Czech Republic, France, Greece, Hungary, Italy, Poland and Romania. They were not a problem only in a small number of countries, such as Spain and Sweden, where ID numbers are routinely used in daily exchanges.

ID number requirements should ideally be eliminated for all countries, but especially for those where citizens are uncomfortable sharing them. The European Data Protection Supervisor explicitly determined that ID card numbers were not necessary for the ECI. Yet 18 member states still require them.

Ensure that all EU citizens can support an ECI – wherever they live.

Another unfortunate consequence of having 28 different sets of personal data requirements – some based on citizenship and others on residence – has been to strip many expatriate EU citizens of their legal right to use the ECI. The Finnish approach which allows both Finnish citizens (regardless of where they live) and Finnish residents (with EU nationality) to support an ECI is the ideal. Alternatively, preference should be given to citizenship rather than residence, so as to ensure that all EU citizens may support an ECI, regardless of where they live.

Lower the age of ECI support to 16.

The ECI has no direct policy impact and should not be subject to the same rules as voting in European elections. It can, however, impact the agenda for the future of Europe. Many of the first ECIs touched on topics of great importance to youth, such as education, jobs and the environment. Therefore, youth starting at age 16 should be able to support an ECI in all countries, as is currently only the case in Austria. Engaging youth in EU affairs while still in high school can support future EU involvement and help develop a European identity.

Redesign the online signature collection system (OCS).

Significant and persistent online signature collection system (OCS) weaknesses and glitches were consistently cited by every ECI campaign and acknowledged by Commissioner Šefčovič as extremely problematic. They have led to the loss of signatures, collection time, campaign momentum and resources. Technical problems, especially related to the restrictive “captcha”, have also made it difficult for people with disabilities to support an ECI. These problems must be corrected.

Online campaigning experts insist that the current OCS is so defective, and Commission repair efforts so slow and inadequate, that it needs to be scrapped and rebuilt from scratch – this time with the active participation of campaigners, EU and national stakeholders and civic coders. It should be user-friendly and allow standard online campaigning practices like single click sharing on social media. It should also allow ECI campaigns to safely and

efficiently share ECI supporter data with national authorities -- e.g., with security “keys”.

The technical regulation governing the OCS also needs to be reformed so that independent software developers could afford to meet its requirements, which are currently so arcane and costly that only the Commission itself could fulfil them.

Many ECI campaigns and stakeholders advocated for the temporary system of hosting ECIs on the Commission’s own server to become a permanent option for all ECIs. An extension of this idea, itself the subject of an ECI, could be a single centralised online signature collection platform where signatures for all ECIs are safely stored while front-end campaigning materials reside on individual ECI campaign websites.

Collect e-mail address within the main ECI support form.

All ECI campaigns insist on the need to collect supporters’ contact information, especially email addresses, in order to keep them informed of their ECI’s progress. This is vital to create a European debate, a core goal of the ECI. It is also standard online campaigning practice. Ironically, although the ECI *Right to Water* collected over 1.8 million signatures, it only collected 20,000 email addresses of supporters whom it could invite to follow its public hearing and inform of the Commission’s response.

Email addresses must be collected *within* the main ECI support statement form. Campaigns that have tried to collect them on other web pages have confused and then lost potential supporters. The Commission claims that it cannot legally collect email addresses in the ECI support form. However, online campaign experts insist this is technically possible while also respecting data protection rules.

Lengthen the signature collection time to 18 months.

Only the best resourced ECI, *Right to Water*, managed to collect over one million signatures in 12 months. The other two successful campaigns benefitted from deadline extensions granted as a result of OCS glitches. However, all ECIs, even *Right to Water*, insist that one year is far too short. The diversity of languages, cultures and distances makes campaigning at a transnational level especially time-consuming. Simply obtaining OCS certification takes months.

It is thus recommended to lengthen the signature collection time to at least 18 months. A longer collection period would also help smaller and volunteer-run initiatives. More time is needed particularly for ECIs on novel or complex topics. They need more time than simpler ECIs on well-known topics just to explain their goals.

Give ECI campaigns time to prepare: let them choose their launch date.

The 12-month signature collection period currently begins *on the same day* that an ECI is officially declared admissible and registered by the Commission. ECI campaigns cannot be ready instantly! Campaigns need much more time to prepare once they know their ECI is valid. The start of the signature collection period should therefore be chosen *by campaigns* once they are ready and their OCS has been certified. This could be within a certain time frame, for example within two months of official registration.

Provide a support infrastructure for ECIs with legal advice, translation and funding.

Many ECIs encountered challenges formulating their proposal and relied on the counsel of specialised EU legal experts. Nearly 40% of proposed ECIs were refused registration by the Commission for “falling outside of EU competence” -- a percentage which could perhaps have been reduced with better EU legal advice.

ECI campaigns discovered that they needed to campaign in national languages and use country-specific arguments. This required the use of translators, which many campaigns could not afford. Groups new to campaigning also encountered challenges with volunteer management, fundraising and media relations. These ECIs would benefit from practical advice.

As a democratic tool, the ECI is a public good and should benefit from public financial support. ECI campaigns need an official support infrastructure that offers legal advice, translation services and practical campaigning guidance. Grassroots ECIs should ideally also have access to public funding or at least European foundation funding.

Provide an EU legal status for ECI citizens’ committees.

The fact that the ECI can only be launched by seven individual EU citizens (i.e., “physical persons”) has created multiple problems. ECI committee members can *personally* be held legally liable for their campaign’s actions. Such entities also lack a legal basis for fundraising or even opening a bank account. Their only options now are national organisational structures, which are contrary to the transnational nature of the ECI.

Therefore, an EU legal status is needed for citizens’ committees to shield their members from liability and facilitate fundraising. The inclusion of organisations on citizens’ committees could also be considered.

Remove or modify the first legal admissibility check.

A shocking 40% of ECI proposals have been refused registration, all for the same reason of being “*manifestly outside the Commission’s competence*”. Some decisions have been unreasonably restrictive. Others have been inconsistent. For instance, one ECI requiring treaty change was accepted while another was rejected. Furthermore, rejected ECIs have not been provided any legal guidance to reformulate their requests, as should be the case.

Although the ECI has no direct legal impact (the Commission can refuse to act), it has generated public debate and created new pan-European alliances. Perhaps the pre-registration legal admissibility check should be removed entirely so as not to artificially restrict topics of public debate. At a minimum, ECIs refused registration should be helped to reformulate their requests so they may qualify for registration.

Increase public and media awareness of the ECI.

Public awareness of the ECI is practically non-existent. Mainstream media tends to be either unaware or misinformed, often equating the ECI with a simple petition. This creates unfair burdens on ECI campaigns to both educate the public about the ECI instrument and convince them of the merits of their own topic. They further have to overcome citizen suspicion and reluctance to share personal data for an unknown EU tool.

As a tool for developing a "European public space", the ECI should be aggressively publicised

as an “official” EU instrument. Actions should be taken both at a European and national level to raise public awareness and comprehension of, as well as trust in, this new tool of participatory democracy.

“How to maximize the impact of an ECI?” remains an unanswered question.

As this publication is being finalised, only one ECI, “Right to Water”, has had a public hearing and received an official response from the European Commission. While the campaign was satisfied with the hearing, others have questioned the effectiveness of its design. In its official response, the Commission affirmed the goals of this ECI and mentioned several actions, most of which it already does. The campaign was disappointed that no new policy proposals were offered.

This raises many questions about what impact is needed to satisfy both campaign organisers and the millions of EU citizens who have supported an ECI, as well as how the ECI’s rules might be changed to ensure this. It also raises the fundamental question: what does it mean for the ECI to work?

In summary, as discussions evolve on how to reform the ECI regulation and related rules, it is important to aim for the following 12 goals:

1. Reduce and harmonise personal data requirements across member states.
2. Eliminate ID number requirements.
3. Ensure that all EU citizens can support an ECI – wherever they live.
4. Lower the age of ECI support to 16.
5. Redesign the online signature collection system (OCS).
6. Collect e-mail address within the main ECI support form.
7. Lengthen the signature collection time to 18 months.
8. Give ECI campaigns time to prepare: let them choose their launch date.
9. Provide a support infrastructure for ECIs with legal advice, translation and funding.
10. Provide an EU legal status for ECI citizens’ committees.
11. Remove or modify the first legal admissibility check.
12. Increase public and media awareness of the ECI.