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**Sent:** 31 March 2014 17:55  
**To:** Euro-Ombudsman  
**Subject:** [EOWEB] Case: OI/9/2013/TN - Functioning of the ECI  
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**Part 2 - Data**

**To** The European Ombudsman  
**Subject** Case: OI/9/2013/TN - Functioning of the ECI  
 Comments of AquaFed on the functioning of the European citizens' initiative (ECI) procedure.

Dear Madam,

please find attached comments by AquaFed, the International Federation of Private Water Operators.

**Content**  
 Best regards,

Gerard Payen

President

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# AquaFed

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Brussels, March 31, 2014

Ref : Case: OI/9/2013/TN – ECI procedure

Dear Madam,

You have extended an invitation to submit comments on the functioning of the European citizens' initiative (ECI) procedure.

AquaFed, the International Federation of Private Water Operators, aims to contribute to solving water challenges by making private sector know-how and experience available to the international community. Approximately one-third of the European population benefits from water or wastewater services that are at least partially operated by private or public-private companies.



As suppliers of public water services, our industry members were directly concerned by the first ECI, the ECI(2012)000003 on the human right to water and sanitation. Indeed, this ECI presented two requests on the implementation of the human right to safe drinking water and sanitation (topic1), and a third request on internal market rules and the organisation of public water services (topic2), all topics on which our members are day-to-day practitioners.

Since its creation, our Federation has publicly supported the right to safe drinking water and sanitation. AquaFed's member companies contribute daily to the implementation of this right as instructed by the public authorities that engage them. It is their core business to do so. This is why our members and our Federation are uniquely knowledgeable on the two distinct topics included in this ECI.

Therefore, we interacted with the main protagonists, the ECI organisers, the Parliament and the Commission, all along the implementation of the ECI procedure although no recognition or place is provided for third parties in the existing procedure. This experience of the first ECI brought to light a number of flaws and has convinced us of the need for significant improvements in the procedure.

Please find attached our comments and proposals on the matter. Please feel free to publish them alongside other comments.

Best regards,

  
  
Gerard Payen  
President

## Comments on the ECI procedure submitted to the European Ombudsman

Question 6. Do you have any concerns or comments in relation to the treatment of personal data provided by citizens signing an initiative (either online or on a paper form)?

The basic intent of the ECI procedure is to give the right to one million plus citizens to present requests to the European Parliament and Commission and to receive a detailed answer from the Commission. We believe that it should not be misused for other purposes. In particular, it should not be a way for an activist group to collect addresses of citizens in order to use them at a later stage. In particular the proper data protection measures regarding the details of the signatories who have used paper forms should be ensured. This is also true of any transitory electronic data collection system that would have been used by the proponents of the initiative alternatively to the EU Online Collection System for the ECI.

Question 7. Do you have any concerns or comments as regards the possibilities (or lack thereof) of tracking the number of signatures obtained throughout the collection period?

The organisers of the ECI initiative ECI(2012)000003 published information on the number of signatures collected in each EU country on an irregular basis. We believe that the transparency and the information for the public on the collection of signatures should not be left to the sole discretion of the organisers. There should be mandatory and regular disclosure at defined points throughout collection period. Having an indeterminate system opens the possibility for manipulation of opinion and media. This transparency tool should be part of the Online Collection System for the ECI.

Question 9. What changes to the ECI Regulation would you consider useful, if any?

The current ECI procedure potentially provides a useful channel of expression for European citizens. The ECI on the human right to water is the first one to have taken this procedure up to its final stage. On the basis of this experience, it is now easier than before to identify its deficiencies and to remedy them..

It seems to us that several improvements should be added formally to the current procedure.

### 9.1. Providing room for comments by third parties

#### *The experience of ECI(2012)000003*

- The procedure was used in such a way that the Parliament only heard the views of the ECI organisers on the matters on which some EU citizens made collective requests. This is insufficient for the Parliament to have an informed debate on these matters. In particular, we deeply regret that our request (through a formal letter sent to the president of the European Parliament) to participate as experts in the hearing was rejected by the Parliament despite our key knowledge of the two topics of the ECI(2012)000003.

- The Commission had to formulate a detailed answer to the requests of some EU citizens without having the time to organise any consultation of third parties. This is contrary to the usual way of preparing Commission Communications and creates a potential risk that an unsatisfactory answer is provided that the Commission might regret later. For example, the Commission's answer to the ECI(2012)000003 includes a wrong assessment of the number of people not having access to purified drinking water thus underestimating the global needs for better access to safe drinking water in the world.
- The proponents of the ECI clearly used the initiative as a sounding board for their thesis that "liberalisation" of water services should be banned in Europe. They disparaged some of our members by publishing on their website a number of misleading and untrue comments about public-private partnerships in some major European cities. We had to rectify this propaganda through submitting unsolicited comments to the Commission but we had no possibility to inform the potential ECI signatories.

### *Improving the ECI procedure*

The current ECI procedure does not formally provide room for third parties to give evidence or to express different opinions on the matters concerned with the ECI requests. No third-party consultation is organised. This does not guarantee that the debate in the Parliament and the written answer by the Commission are fully informed and balanced.

>> We believe that the ECI procedure needs to be significantly improved by explicitly providing room for consultation with third parties and allow them to express their point of view, according to the usual practice for EU legislative work. This would require a time extension for the work of the Commission.

>> furthermore, all stakeholders should have room to express their views and comments on the website dedicated to the ECI.

## 9.2. Providing room for different views of European citizens

### *The experience of ECI(2012)000003*

- The Commission had to formulate a detailed answer to the requests of some EU citizens without knowing the views of the other European citizens on the same requests. There was no room in the procedure for expressing the views of those citizens who were opposed to the ECI requests or of those who were supporting one while being opposed to another. This distorted the perception of the ECI signatories shifting them towards an illegitimate qualification of "EU citizens" as if they were hundreds of millions and not only 1.7 million.
- When issuing its official answers to the ECI requests, the Commission published a press release in which Vice-President Maroš Šefčovič said: "*Europe's citizens have spoken, and today the Commission gave a positive response*". Although it could be argued that this statement is ambiguous in English, it was understood as "All Europe's citizens have spoken" when it was translated by the Commission in other European languages.
  - Spanish: "Los ciudadanos europeos se han pronunciado"
  - German: "Die Bürgerinnen und Bürger Europas haben ihr Anliegen vorgebracht"
  - French: "Les citoyens européens se sont exprimés"This is an excessive expression. The ECI forces the EU institutions to respect and to listen to the requests of a million plus citizens. It does not give these signatories any legitimacy to represent the majority of 500 million EU citizens. An ECI is not a pseudo-referendum.

- The ECI(2012)000003 presented two requests on the implementation of the human right to safe drinking water and sanitation, and a third request on internal market rules and the organisation of public water services. These are two distinct topics. This difference was confirmed by the UN Special Rapporteur on the human right to safe drinking water and sanitation who expressed in writing to the ECI organisers that human rights are neutral on the ways in which public services are organised. However, citizens had only two practical options:
  - o either they signed the forms thereby providing support to all three requests even if they were motivated by one only and had no idea on the others
  - o or they did not sign the forms

As the ECI forms were marketed in different ways in different locations, nobody knows how many citizens knowingly supported the request #1, how many citizens knowingly supported the request #2 and how many citizens knowingly supported the request #3. This creates ambiguity about the real citizens' support to all requests. Many voices have only been vocal in the Parliament on the request #2 about the internal market rules when there are doubts on the real number of signatories who willingly supported this specific request.

### *Improving the ECI procedure*

The current procedure allows for too many ambiguities about the real support of an ECI request by EU citizens. It seems necessary to improve the ECI procedure through providing a better expression of signatories and of other European citizens. Several improvements could be considered.

>> as a minimum, all citizens should have room to express their views and comments on the website dedicated to the ECI.

>> improving the forms through which signatures are collected should be considered. It would be preferable to have a single topic for any ECI, or if multiple topics are to be admitted, signatories should be required to sign against each of the questions posed and all these signatures should be validated during the validation process.

>> Before accepting a new ECI procedure, the Commission should help the ECI organisers to clarify their requests and convince them to use different forms for different topics.

### 9.3. Differentiating the requests of signatories from the views of the ECI organisers

#### *The experience of ECI(2012)000003*

1.7 million European citizens signed the three combined requests of the ECI(2012)000003 and had their signatures validated. The spirit of the ECI procedure was to have these 3 requests presented to the Parliament and the Commission. It did not happen like that. The EU institutions considered the organisers of the ECI, who are far less numerous than the signatories, as spokespersons for the 1.7 million signatories; however, these organisers presented many other proposals than the 3 requests both verbally during the hearing in the Parliament and in writing through a "wish-list" given to the Commission. This wish-list was only published on the ECI dedicated website ([www.right2water.eu](http://www.right2water.eu)) after the end of the collection of signatures. These additional proposals, made by the organisers without the explicit support of the signatories, may not have had the same legitimacy as the initial official ECI requests (upon which the signature process had been based). They are at best an interpretation of those requests

by a limited group of people. As evidenced by a letter by a UN signatory<sup>1</sup>, the interpretation of the requests given by the organisers may not necessarily reflect the intent of all the signatories. However, in the hearing in the Parliament, the views of the organisers were never differentiated from the views of the signatories. A large number of the staff of our member companies would have very willingly signed the declaration if they had been able to distinguish their support for questions one and three from the second one, which they did not.

## *Improving the ECI procedure*

The basic intent of the ECI procedure is to force the European institutions to listen to the requests of European citizens when the number of those who support this request exceeds one million across the Union (0.2% of the EU population). The political legitimacy of the use of this procedure derives obviously from the number of signatories.

However, the current procedure also forces the institutions to hear the views of the organisers of the Initiative as if they were as legitimate as the requests of the signatories. In a situation such as this one, when these organisers' views appear to go beyond the requests signed by EU citizens, the institutions cannot know how many citizens truly support these views. It should be clarified that the views of the organisers may not have the same political support as those which are supported by a million plus citizens.

>> the procedure should be improved with additional provisions that establish a systematic separation and differentiation of the requests signed by citizens and the proposals of the organisers.

## 9.4. Ensuring support across the whole European Union

### *The experience of ECI(2012)000003*

75% of the 1.66 million validated signatures of the ECI(2012)000003 on the Right2Water were from Germany. In an extreme hypothesis, this ECI could have been validated with more than 90% of signatories coming from a single country. Indeed, adding the 106.000 signatories from Lithuania, Finland, Slovenia, Hungary, Slovakia, and the Netherlands to the 1.24 million German signatories would have been sufficient to make the ECI valid. This means that the current procedure does not prevent a single country from introducing a European Citizens' Initiative that serves only its national interests. A more balanced spread of the required number of supporting signatures across member states might have to be contemplated.

### *Improving the ECI procedure*

The current procedure validates an ECI if it collects more than 1 million signatures and if in at least 7 countries the number of signatories exceeds a minimum number.

The current procedure does not prevent a single country from introducing an European Citizens' Initiative successfully that serves only its national interests.

>> A complementary rule that would ensure a more balanced support of the ECI requests across the EU preventing a single country to detain the keys to validation seems necessary.

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<sup>1</sup> See for example the letter sent to the ECI organisers by the UN Special Rapporteur on the human right to safe drinking water and sanitation (footnote 6)

## 9.5. Avoiding misuse of the ECI procedure

### *The experience of ECI(2012)000003*

- Although an ECI procedure is supposed “to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties”<sup>2</sup> and cannot “manifestly fall 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”<sup>3</sup> the purpose of the request #2 of the ECI(2012)000003 was understood by many to contest the Treaties directly. This mis-targeted request resulted in hopeless debates and excessive expectations. It is the one that attracted the most attention more or less hiding the others.
- we also noted with some concern the way that the Commission considered the ECI requests during the period of collection of signatures.
  - o the right2water ECI apparently influenced decisions made within the Commission before any collected signature had been validated. It seems that this ECI signatures may have been considered to have had validity by some European Commissioners during political deliberations<sup>4</sup> at a period when the collection process was not yet closed.
  - o At the same time, other representatives of the Commission have suggested that they were not in a position to consider the ECI until the required number of signatures had been recorded and validated.

From this, it can be deduced that there is an inconsistency in the process that allows this kind of divergence within the Commission that might set a dangerous precedent.

### *Improving the ECI procedure*

- >> A better legal upfront validation of the ECI proposals could be considered. This should be done before the collection process starts.
- >> To avoid any contest, the EU institutions should wait for signatures to be validated before considering them in their internal work. If the collection period is perceived by them as too long, the validation process could be organised in several stages.

<sup>2</sup> Treaty on European Union, article 11

<sup>3</sup> Regulation 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative

<sup>4</sup> Commissioner Barnier justified an important change in the draft Directive on Concessions by stating on 21 June 2013: “It has led to the first European citizens’ initiative and 1.5 million people signing a petition on water. .... That is why the best solution now appears to be to remove water from the scope of the concessions directive. It is our duty to take into account the concerns expressed by so many citizens.” [http://ec.europa.eu/commission\\_2010-2014/barnier/docs/speeches/20130621\\_water-out-of-concessions-directive\\_en.pdf](http://ec.europa.eu/commission_2010-2014/barnier/docs/speeches/20130621_water-out-of-concessions-directive_en.pdf)