



European Ombudsman

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European Ombudsman

Mr José Manuel Barroso
President
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The European Ombudsman's own-initiative inquiry OI/9/2013/TN into the functioning of the European citizens' initiative (ECI)

Dear Mr President,

As I have already informed you, at the beginning of this year I carried out a public consultation on the functioning of the ECI procedure. Please find attached, for your information, the contributions that I received.

Understanding the right to create an ECI

According to the Treaty on European Union, every citizen shall have the right to participate in the democratic life of the Union and decisions shall be taken as openly and as closely as possible to the citizen¹. Within the limits of my role as Ombudsman, I seek to encourage and assist the EU institutions to make a reality of this promise to citizens.

The ECI right 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.

It is my view that the Commission should **demonstrate**, by reacting to each completed ECI in a way that is clear and comprehensible to the citizens, that it has **seriously considered** the ECI. 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.

¹ Article 10(3)



I wish to help the Commission to **engage fully** with the ECIs, so that citizens feel not only that they have a voice, but also that they have been listened to and taken seriously.

In this context, I encourage the Commission to consider the following steps.

Engaging with the citizens

(a) Already at the admissibility stage, that is, when determining whether an ECI should be registered, the Commission should make clear that it is ready to engage with the ECI organisers and offer assistance to allow them to clarify and define the objective of the ECI. This should be done so that an ECI is not rejected because, for instance, part of it falls outside the framework of the Commission's powers.

(b) If, despite its readiness to engage in dialogue as mentioned in (a) above, the Commission rejects a proposed ECI as inadmissible, it must provide sufficient and consistent reasoning for its decision, so that citizens can understand, scrutinise and possibly exercise their right to contest its position.

(c) At the examination stage (after an ECI has obtained at least one million signatures), the Commission retains its legal right of legislative initiative established by Article 17 TEU. In the constitutional architecture of the Union, the European Parliament has the primary role in exercising political control of the Commission's substantive decision whether or not, and how, to act on a particular ECI. As Ombudsman, I see my role as primarily focused on the procedural legitimacy of the Commission's decision making.

In this regard, the Commission has rightly committed itself to do more than just give a simple response (see above). It has promised to give every ECI "serious consideration"². In my view, 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 studies³, such as consulting experts and third parties. (The Commission might also consider whether it would normally be appropriate to conduct an impact analysis of a successful ECI), and

(ii) carry out preliminary consultations with the Council and Parliament with a view to determining whether there is political support for the ECI. On the basis of the responses, the Commission might reconsider its position on the ECI.

(d) When making its final decision, the Commission should clearly and unequivocally explain its position on the issue, including the political considerations that it has taken into account. By being clear and frank about the reasons for its choices, the Commission would promote constructive and open debate, thus helping to strengthen the European public sphere and democracy at the EU level.

² <http://ec.europa.eu/citizens-initiative/public/faq#q44>

³ <http://ec.europa.eu/citizens-initiative/public/how-it-works/answer>



Practical, technical and legal issues

The Commission should set out a clear strategy for how different problematic areas should be addressed and improved.⁴

(d) Many stakeholders agree that the **following main issues need to be addressed:**

- Public and media awareness - how to raise it?
- Awareness raising of national authorities.
- Less complicated procedures with less paperwork.
- Support infrastructure: technical and legal advice and assistance, translation and funding.
- Rebuild the online collection system (OCS) software.
- Allow for linking to campaigning website and social media from OCS.
- Allow collection of e-mail addresses.
- Provide permanent hosting service for OCS.
- Reduce and harmonise the amount of personal data required to sign an ECI.
- Make sure that also EU citizens living abroad can sign ECIs.
- Lengthen the signature collection time.
- Let ECI organisers choose their launch date for collecting signatures within a given time-span from registration.
- Give (EU) legal status to the citizens' committee.
- Ensure full transparency of funding and check that the information provided is correct.
- Harmonised personal data protection requirements with verification of signatures coordinated by a central body.

I encourage the Commission to address these concerns and to take appropriate action.

(e) It has come to my attention that the Commission sometimes takes action to solve (permanently or temporarily) specific problems with the ECI procedure without clearly communicating what it is doing to all actors. It could

⁴ Some of these issues can be addressed without changes to the ECI Regulation and its Implementing Regulation, some issues might be temporarily (but not perfectly) solved without such changes, whereas other issues might need changes to be made to the Regulations. I do not, therefore, want to "label" issues either as practical, technical or legal, which could limit the possible solutions.



be reassuring to those affected if the Commission **proactively informed interested parties about problem-solving measures underway**, perhaps by adding a section on its ECI website explaining on-going improvements.

I invite you to submit an opinion on my above analysis, and in particular points (a)-(e), by 31 October 2014. I will publish the opinion on my website.

Yours sincerely,

Emily O'Reilly

Enclosures:

- 18 contributions to the Ombudsman's public consultation on the functioning of the ECI procedure, available on the following page of the European Ombudsman's website under the reference OI/9/2013/TN ("Feedbacks"):

<http://www.ombudsman.europa.eu/en/cases/initiatives.faces>