



Grégor PUPPINCK
President of the Citizen Committee
4 Quai Koch
67000 Strasbourg



Médiateur européen

11 JUIN 2014

Date d'arrivée

Emily O'Reilly
Médiateur européen
1 avenue du Président Robert Schuman
CS 30403
F-67001 Strasbourg Cedex

Strasbourg, June 10th, 2014

Dear Ombudsman,

I am writing you this letter in response to your own-initiative inquiry 01/9/2013/TN into the functioning of the European citizens' initiative (ECI) procedure to which the representatives of the ECI "One of Us" have so far not responded. I am aware that the official deadline for this consultation has already lapsed; nevertheless I am sure that you will appreciate this feedback from the most successful ECI so far – in particular given the fact that we can include in our comments a stage of the procedure that most other ECIs haven't reached, i.e. the experiences made since we have submitted our initiative to the Commission on 28 February 2014.

With regard to the procedural requirements for the collection of signatures, we can fully endorse the comments that several other ECIs have made, and there is no need to repeat them. This procedure was unnecessarily complicated and burdensome – and in hindsight we are tempted to wonder why such burdensome rules are needed if, as the Commission's reaction to our initiative reveals, the treatment of a successful ECI by the Commission appears to be not much different from the treatment that any letter from a lobbyist or advocacy group might receive, even if it comes without 1 million statements of support.

The Commission's Secretariat General, when becoming aware of the technical difficulties, has reacted in a co-operative and forthcoming manner. The extension of the deadline was necessary for us; however, once the system for the collection of signatures on-line was in place, it took us much less than 1 year to collect the required number of signatures. We would therefore at all times have had the possibility to withdraw and re-launch the initiative, and there is no doubt that, had we done so, the number of signatures collected might have been even greater.

The specific contribution we can make to your consultation refers to the experiences made after submitting the successful petition to the Commission on 28 February. These experiences

must be of particular concern for you, given that they do not refer to mere technicalities. Instead, they reveal a disturbing lack of understanding, within the EU's key institutions, of the purpose and meaning of an ECI. Without a profound change of attitude this newly created instrument of participatory democracy will remain meaningless, and citizens will soon stop using it.

The Parliamentary Hearing on 10 April 2014

It is very regrettable that this lack of a correct attitude towards a citizens' initiative seems to prevail even among some members of the European Parliament, the body whose function it is to represent citizens. Indeed, there appears to have been a fundamental misunderstanding with regard to the function and purpose of the parliamentary hearing that is provided for under Art. 11 of Regulation 211/2011.

As the name indicates, a hearing is something different than a debate. The purpose of a hearing is that the MEPs should hear what the citizens have to tell them. It is not the occasion for MEPs to themselves make statements on the subject-matter of a successful petition. While the appropriate place for MEPs to express their opinions would be the parliamentary debate on a legislative proposal ensuing from a successful petition, in a hearing they should listen to the organisers of the successful petition and, if and where necessary, ask questions that may be conducive to a better understanding of the meaning and purpose of the proposal that is being brought forward.

That was not, however, the spirit in which the hearing on the ECI "One of Us" was organized by the European Parliament.

We, the organisers of the successful ECI, were not consulted on the agenda for the hearing. When, on the evening immediately preceding the event, it was finally communicated to us, we found it truly astonishing.

- The draft foresaw an opening round, scheduled for 30 minutes, in which four MEPs and two Commission representatives were going to speak before the representatives of the ECI were going to be given so much as a short opportunity to present their initiative.
- There were going to be two rounds, one on Research policy, and one on Development policy, in each of which one speaker representing the ECI was going to be "counter-balanced" by two MEPs and one Commission representative.
- The closing round again consisted of one intervention by a representative of the ECI, two interventions by the Commission, and four by MEPs.
- Our proposal to bring to the hearing a scientific expert (who could provide to the audience very relevant information concerning the state of play on therapeutic uses derived from embryonic and adult stem-cells) had been refused; we were told that our initiative was to be represented only by members of its organizing committee and by nobody else.

These were certainly rather strange arrangement for a hearing in which the EU's institutions should listen to citizens rather than lecturing them. But what was even equally disconcerting was the selection of MEPs that were going to intervene:

- Of the MEPs that had been assigned a speaking slot, all except one belonged to one single political group, the S&D, which was thus over-represented. S&D happens to be a group that strongly opposes our initiative.
- Even more bizarrely, one of those MEPs, Mr. Michael Cashman, had been participating a meeting with a number lobby groups that vigorously oppose our initiative just two days before the hearing. In that meeting he had been heard saying that he was going to do all he could to "destroy this despicable citizens' initiative". In the agenda for the hearing, no less than three (!) speaking slots were assigned to this MEP.

You will certainly understand that, in view of this unacceptable agenda, we had no other choice than to threaten to not take part in the event. It was only in this way that an

acceptable, though still not appropriate, arrangement could be negotiated. Somewhat more speaking time was given to the organisers' committee, and Mr. Cashman was not allowed to preside over the hearing (which, given his openly hostile attitude, would have been an absurdity).

During the hearing itself, the interventions of many MEPs (both those opposing our initiative and those supporting it) had the character of pre-fabricated political statements, such as one might make them in a parliamentary debate. They might have been appropriate in such a debate, but not in a hearing. Overall, one had the impression that many MEPs either did not understand, or did not want to understand, the purpose of the event in which they were participating: they were in a debating mode, not in a listening mode.

Some of the interventions by MEPs were outright bizarre. One MEP said that our initiative was “irrelevant”, as it represented only 1.7 million out of the EU’s 500 million citizens. (Given that our ECI is the most successful of all ECIs so far, would that MEP not have to say the same thing to all other ECIs? What is then the point of this new instrument? Is such an intervention not an expression of disrespect for the instrument of an ECI as such?) Another MEP, the above-mentioned Mr. Cashman, expressed regret that no representatives of groups opposing our initiative had been invited to the hearing and been allotted speaking time. (Was he not himself acting as their mouthpiece, and had he not been allotted three speaking slots? And was it us or them who had collected 1.7 million signatures?)

Interventions like these provide ample evidence that there still is a profound lack of understanding even within the European Parliament regarding the proper handling of an ECI. There is a regrettable unwillingness among our elected representatives to listen to citizens; instead they prefer to hear *themselves* speaking, and to make *their* opinions known.

In view of this experience, we would make the following suggestions:

- A parliamentary hearing on a successful ECI should take place at a plenary session of the EP in order to ensure the highest possible presence of MEPs. In this way, it would be made clear that these are important occasions for the EP to listen to citizens.
- Interventions by MEPs during such hearings should be addressed to the organisers of the successful ECI, and should have the character of questions rather than political statements.

The European Commission’s reply to our initiative

On 9 April 2014, the day preceding the parliamentary hearing, we had a meeting with the European Commission, which went reasonably well. However, as you will be aware, the European Commission, in its Communication COM (2014) 355 final, has informed us that it does not intend to take any follow-up action on our initiative.

This is not the place for us to discuss this unexpected and disappointing response in detail. However, it does raise some fundamental questions which we believe ought to be addressed in your report.

The first of these questions is: does the Commission fulfil its obligation under Article 10(1)(c) of Regulation 211/2011 simply by publishing “a communication”, irrespective of that communication’s form and content? Or are there some quality requirements to be observed? If so, which?

The second question is: if the political relevance of an ECI is evidenced by the fact that it has been endorsed by more than 1 million citizens, is it appropriate for an administrative body like the European Commission to block this initiative from going forward? Should such a decision not be taken by the European Parliament and/or the national governments represented in Council?

The difference is that the Commission's democratic legitimization is comparatively remote and feeble, given that the influence of citizens on the composition of the EP or of their national governments is certainly greater than their influence on the composition, or the actions, of the European Commission. It is therefore contrary to the very idea of the intended "democratization" of the EU that a proposal that has received the direct and explicit endorsement of 1.7 million citizens can simply be closed down by what essentially is an administrative body.

While the wording of Article 10 of Regulation 211/2011 seems to allow an interpretation that the European Commission is completely free to decide whether or not it will take any action in response to a successful ECI, and that its only obligation consists in issuing a (more or less poorly reasoned) communication on the matter, such an interpretation would not make such sense from a deontological point of view. The ECI "One of Us" is highly significant in this regard, and its importance reaches far beyond the individual case: if it becomes known that the European Commission is allowed to treat a ECI that bears the signatures of 1 million or more citizens in exactly the same way as it might treat any letter it receives from a lobbyist or advocacy group, then citizens will stop using the ECI. After only two years, that would mean the end of the ECI as an instrument of participatory democracy.

All this is not to say that the endorsement of 1.7 million citizens gives us an entitlement to see our proposal adopted. But it does give us an entitlement to see the proposal be brought before the legislative organs of the EU, i.e. the Parliament and the Council, in the form of a proper legislative procedure. It is not appropriate for the European Commission, which already prior to the registration of our ECI has exerted a right of control and found that our proposal was in line with EU competences and EU values, to put in a veto against it.

We therefore strongly suggest that your report include clear recommendations to the Commission, in order to ensure that the ECI is not totally deprived of its purpose.

In this regard, we remind you of the recommendations made by your predecessor, Mr. Diamandouros, in his contribution of 29 January 2010 to a public consultation on the ECI:

"4. To facilitate effective supervision of the Commission in this area, the Regulation should be drafted so as to ensure that the Commission presents its legal conclusions concerning admissibility (which could be examined by the Ombudsman) separately from its political conclusions as regards the substance of the initiative (which should be for Parliament to deal with)."

As we can see from this passage, Mr. Diamandouros considered that

- the decisions of the Commission regarding the treatment of an ECI require supervision, and
- in any case, the substance of a successful initiative should in any case be dealt with by the EU's legislative organs

We agree to these findings, and hope that you too will endorse them.

