

Brussels, - 6 OCT. 2014

Dear Ms O'Reilly,

**Subject: Own-initiative inquiry,
ref. OI/9/2013/TN**

Thank you for the letters of 18 December 2013 and 15 July 2014 addressed to President BARROSO about the above-mentioned case.

I am pleased to enclose the comments of the Commission regarding this own-initiative inquiry.

Naturally, the Commission remains at your disposal for any further information you may require.

Yours sincerely,



Enclosure

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**Comments of the Commission on the European Ombudsman's own initiative inquiry
- Ref. OI/9/2013/TN**

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

The European Citizens' Initiative (ECI) has been in place since 1 April 2012, when the ECI Regulation¹ setting out its rules and procedures became applicable. Since then, the Commission has registered 24 proposed initiatives. Two initiatives, "Water and sanitation are a human right! Water is a public good, not a commodity!" and "One of us", were submitted to the Commission on 20 December 2013 and on 28 February 2014 respectively, after the verification of their statements of support by the competent national authorities had confirmed that they had reached the required number of signatories.

The Commission responded to the first one, "Water and sanitation are a human right! Water is a public good, not a commodity!", on 19 March 2014, proposing a series of concrete measures that are progressively being implemented. It decided on 28 May 2014 not to submit a legislative proposal for the second one "One of us", given that EU policy and legislation had only recently been adopted and the Commission considers this framework to be adequate.

These developments confirm that the citizens' initiative is up and running, demonstrating the potential of this participatory democracy instrument.

II. THE OWN INITIATIVE INQUIRY

On 18 December 2013, the European Ombudsman opened own-initiative inquiry OI/9/2013/TN into the functioning of the European Citizens' Initiative procedure with the objective of encouraging and supporting efforts to improve the procedure. In this context, the Ombudsman consulted the organisers of past and present initiatives as well as other interested parties. On 15 July 2014, the Ombudsman sent the results of its inquiry together with the contributions received in reply to its consultation to the Commission, encouraging the Commission to consider a number of steps and asking for its opinion on some issues.

III. THE COMMISSION'S COMMENTS ON THE OMBUDSMAN'S OWN-INITIATIVE INQUIRY

Since the ECI is a new and innovative instrument, the Commission aims at its continuous improvement and is committed to ensuring that citizens can make full use of their new right.

¹ Regulation (EU) No 211/2011 of the European Parliament and the Council on the citizens' initiative

As foreseen in the ECI Regulation, the Commission will present a report on the application of the Regulation by 1 April 2015.

In this context, the Commission welcomes the Ombudsman's suggestions. After carefully analysing them (and reviewing the contributions received), the Commission would like to make the following comments.

- Handling of registration requests (points (a) and (b) of the Ombudsman's letter):

In accordance with Article 4(1) of the ECI Regulation, the Commission has established a point of contact providing information and assistance, based in the Europe Direct Contact Centre. Via this point of contact, the Commission informally answers i.a. the questions from potential organisers on the issue of whether a possible citizens' initiative may be registered. Since April 2012, the Commission has answered around 15 questions of that kind. Those answers are given without prejudice to any formal reply that may be given by the Commission following a possible request for registration of a proposed citizens' initiative. Such informal advice can only be given before a registration request is formally submitted by the organisers to the Commission. The Commission is bound by the Regulation to analyse the proposed citizens' initiative as submitted for registration by the organisers within two months. It is therefore not in a position to engage in a dialogue with the organisers or discuss any modification of the content of the proposed initiative at that stage. Given that the Commission is the addressee of citizens' initiatives, it is not for the Commission to suggest to the organisers modifications of their proposed citizens' initiative. Ownership of a citizen's initiative fully remains in the hands of its organisers.

On the Commission's website, before accessing the registration form, organisers are advised to ask any questions via Europe Direct².

When the Commission refuses to register a proposed citizens' initiative, its decision sets out the reasons for such refusal and mentions the possible judicial and extrajudicial remedies available to the organisers, in accordance with Article 4(3) of the ECI Regulation. The Commission has adopted a transparent policy by publishing such replies on its website³. These can therefore be scrutinised by the public and help potential organisers understand better the legal admissibility criteria.

- Examination of successful initiatives (point (c) of the Ombudsman's letter)

As provided for in Article 10 of the ECI Regulation, the examination procedure shall take place within three months from the submission of the initiative by the organisers. It leads up to the adoption by the Commission of a communication explaining which action it intends to take, if any, and the legal and political reasons for its choice. During that period, Commission representatives shall meet bilaterally with the organisers who must also be offered the

² <http://ec.europa.eu/citizens-initiative/public/how-to-register>

³ <http://ec.europa.eu/citizens-initiative/public/initiatives/non-registered>

possibility to present their initiative in a public hearing which is to be organised at the European Parliament and at which the Commission shall be represented.

Although the Commission shares the view that experts or stakeholders other than the organisers should also have the opportunity to make their views heard during the examination process, the current legal timeframe is too short to allow the Commission to carry out public consultations (such consultations normally run for 12 weeks), studies or impact assessments (which normally take more than one year) prior to the Commission's reply. There would not be sufficient time for formal consultation of the Council and Parliament as their processes for adoption of opinions or positions require more time than is foreseen for the examination procedure. This being said, the public hearing in the Parliament allows the Commission to hear the views of Members of the European Parliament and of the various political groups. The Council may also participate in such hearings, should they wish to do so.

The Commission will continue to explore possibilities with the European Parliament on inviting experts or stakeholders during the public hearings.

In line with the Commission's commitment to Smart Regulation, consultations, studies and impact assessments may be conducted after the Commission's reply to an initiative, in preparation for a possible Commission proposal for a legal act.

In its replies to the first two successful initiatives ("Water and sanitation are a human right! Water is a public good, not a commodity!" and "One of us"), the Commission thoroughly examined the initiatives and explained its reasons for taking or not taking action. In addition, in order to increase transparency and facilitate citizens' information, the Commission set up a page accessible from the ECI website outlining all actions undertaken by the Commission as follow-up to citizens' initiatives successfully submitted to the Commission⁴.

- Practical, technical and legal issues (point (d) of the Ombudsman's letter)

1/ Awareness-raising

- Public and media:

The Commission agrees that awareness about the ECI should be raised. All stakeholders, the Commission, the other EU institutions and bodies, the Member States, and civil society should engage in awareness-raising in order to inform citizens about their rights and the opportunities presented by the instrument. The Commission is already active, namely via Europe Direct, the Commission representations, participation in conferences and study visits e.g. with journalists or students (around 15 presentations each year), through press releases and on the Commission's website.

⁴ http://ec.europa.eu/dgs/secretariat_general/followup_actions/citizens_initiative_en.htm

It has published guides and posters in all official EU languages. A new edition of the guide has been recently released⁵.

In addition, the ECI featured heavily in the promotional material produced by the Commission for the European Year of Citizens. The ECI has also been advertised on the occasion of the "Citizens' Dialogues".

The Commission services will continue their efforts to raise awareness, notably in the Commission's representations in the Member States and also in cooperation with other institutions and bodies.

- *National authorities:*

The Commission has set up an expert group on the citizens' initiative, composed of the national authorities responsible in the Member States for the implementation of the ECI Regulation.

The group meets two to three times each year to exchange best practices and streamline as far as possible the procedures in place in the Member States. Guidelines and recommendations⁶ for practical implementation by Member States' competent authorities have also been prepared by the Commission.

Beyond the formal meetings, the Commission services have regular exchanges with the competent national authorities to provide assistance and reply to questions.

Information on this group is available on the citizens' initiative website⁷.

The Commission has also raised awareness about the ECI process with data protection national authorities via the "Article 29 Data Protection Working Party" (group composed of representatives of the national data protection authorities and of the European Data Protection Supervisor and dealing with the implementation of the Data Protection Directive 95/46/EC), in particular on the occasion of its meeting of 26 September 2012.

The Commission will continue its work to make sure that national authorities are fully aware of ECI rules and that they avoid additional or unnecessary hurdles for organisers.

In response to comments in contributions to the Ombudsman consultation, the Commission would like to make clear that organisers do not need to contact national authorities in charge of verifying the statements of support before starting the collection. Nor do they need to ask them to validate in advance the forms to be filled in by signatories. Such forms are not subject

⁵ <http://ec.europa.eu/citizens-initiative/files/guide-eci-en.pdf>

⁶ http://ec.europa.eu/citizens-initiative/files/Guidelines-and-recommendations_130415.doc

⁷ <http://ec.europa.eu/citizens-initiative/public/legislative-framework>

to pre-validation. Organisers have some margin to adapt the forms as long as they comply with Annex III to the ECI Regulation (e.g. organisers can add a logo).

2/ Less complicated procedures and less paper work

The procedures to be respected in organising an initiative are set out in the ECI Regulation as adopted by the European Parliament and the Council. The Commission is obliged to apply these rules. It applies them in the most citizen-friendly way possible and, where flexibility exists, tries to find solutions to obstacles encountered by the organisers of proposed citizens' initiatives. It has gone beyond its formal and legal obligations pursuant to the Regulation (notably by hosting organisers' online collecting systems on its own servers and assisting the organisers through the certification process of the systems). The Commission also encourages national authorities to apply their procedures in a citizen-friendly way.

The Commission wishes to stress that any formal interaction between the organisers and the Commission take place electronically, via the Commission's ECI Register set up in accordance with Article 4(1) of the ECI Regulation. On that website, the organisers of registered initiatives have access to a specific interface (account) through which they can interact with the Commission⁸. This facilitates greatly the implementation of the various formal procedures (submission of language versions, declaration of support and funding sources, submission of successful initiatives, etc.).

3/ Support infrastructure: technical and legal advice and assistance, translation and funding

As mentioned above, the Commission has a point of contact based in the Europe Direct Contact Centre to answer any questions from citizens on the ECI rules and procedures, in all official EU languages. Since April 2012, the point of contact has answered almost 700 questions. In addition, once organisers have their proposed initiative registered, they can also directly contact the Commission services notably via their organiser account on the Commission's website (more than 80 requests answered since April 2012) but also by email (around 100 requests already answered). Technical support as regards the Commission's online collection software and the hosting of online collection systems is provided by email (almost 300 requests already answered) and via the Joinup platform⁹. Support is also provided by phone and videoconference whenever necessary.

In accordance with Article 4(1) of the ECI Regulation, the translations of the proposed initiatives are the responsibility of the organisers. In a declaration attached to the ECI Regulation, the Commission committed to "check that there are no manifest and significant inconsistencies between the original text and the new linguistic versions of the title, the subject-matter and the objectives", before accepting the inclusion of new language versions in

⁸ <http://ec.europa.eu/citizens-initiative/files/screenshots-organisers-account-en.pdf>

⁹ <https://joinup.ec.europa.eu/software/ocs/home>

the register. So far, the Commission has received and verified more than 450 translations of proposed initiatives.

The ECI Regulation does not provide for public funding or reimbursement for the organisers. The Commission is fully aware that these two aspects, translation and funding, raise particular challenges for organisers.

4/ Rebuild the online collection system software – Allow for linking to campaigning website and social media from OCS

The purpose of the Commission software is to allow citizens to give their support to a citizens' initiative in the most secure way possible. It is not a campaigning tool. Its design has been developed in order to fit any initiative. It has been improved through a number of updates to respond to user concerns.

In reply to comments raised in contributions to the Ombudsman's consultation, the Commission would like to point out that the software allows for testing before the registration of the initiative with the Commission and it prevents the submission of duplicate statements of support displaying a clear error message (features available since the first version of the software).

In the Commission's view, campaigning must remain in the hands of the organisers. This includes all the elements of the campaigning website around the software interface allowing citizens to sign up. The Commission software already allows links to campaigning websites.

Being open source, the source code is publicly available online and its design and functionalities can be completely customised (in which case, organisers have to make sure that their version still complies with the relevant technical specifications¹⁰). Organisers who believe that the software could be better adapted to the specific needs and interests of their initiative are free to modify it as necessary. However, for security and resource reasons, initiatives hosted on the Commission's servers have to use the version as developed by the Commission.

Seven versions of the Commission software have already been released, progressively improving it, adding new features and keeping it up-to-date. The Commission will continue to improve the software on the basis of the stakeholders' needs and input that it has received. In this respect, interesting suggestions have also been raised in several contributions to the Ombudsman's consultation and will be analysed in the context of a future release of the software. Social media features are being developed.

The Commission is also open to contributions from external stakeholders on new features for the software. Should such contributions be received, the Commission verifies the compliance of the proposed code with the ECI legal framework and the software's scope. Should it

¹⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:301:0003:0009:EN:PDF>

comply, testing is done and the software is modified, if appropriate. To date, there has been only limited interest from external developers.

Each new version of the software entails cost and takes time. Proper functional and vulnerability testing must be performed before new versions are released. The Commission accompanies each version with a risk assessment carried out by an external contractor, to confirm that the software complies with the relevant technical specifications. This risk assessment can then be used by organisers as part of the documentation they need to provide to the competent national authority in order to get their system certified.

5/ Allow collection of email addresses

In the Commission's original proposal for the ECI Regulation, the email address was part of the statement of support form as an optional field. It did not gather the necessary support from the Parliament and Council and it was taken out during the inter-institutional negotiations.

Although organisers cannot collect email addresses as part of the statement of support forms, they may, if they wish so, collect email addresses separately in accordance with applicable data protection legislation.

Nevertheless, the Commission is aware that there is a strong request from organisers to include the email address directly in the statement of support forms. The Commission understands this desire to keep their supporters informed on the development of their initiatives.

However, the inclusion of the email address field in the forms (being not necessary for identification of the citizens) is not possible under the current legal framework given the intended use by the organisers for campaigning purposes and the applicable retention time-limits.

In the Commission opinion the provision of an email address could only be contemplated as optional, given that this data is not necessary in order to identify the signatory.

These considerations and the views expressed by the organisers will be taken into account in the review process that the Commission will carry out.

6/ Provide permanent hosting service for OCS

The future of the temporary hosting service currently offered by the Commission will need to be assessed. The Commission will maintain this service as long as no viable alternative solution is found for organisers.

7/ Reduce and harmonise the amount of personal data required to sign an ECI / Make sure that also EU citizens living abroad can sign an ECI

As regards the personal data to be provided when signing a statement of support, the Commission's initial proposal set out simpler and uniform requirements for all Member

States, which would have enabled any European citizen to support a citizens' initiative, while ensuring that the Member States dispose of all relevant information necessary to verify the statements of support submitted by signatories.

However, during the negotiations, many Member States insisted on the need to use an identification number and the three documents initially proposed by the Commission (passport/ ID card number/ social security number) were replaced by a list of documents, which now varies from Member State to Member State. Some do not require an identification number. Regrettably, this makes the rules more complicated than initially proposed by the Commission. The relevant rules also have the unfortunate effect of preventing some European citizens from giving their support to a citizens' initiative (this mainly concerns Irish and British citizens living abroad, depending on their country of residence)¹¹.

The Commission is aware of this issue and has on several occasions asked the Member States to re-consider their requirements, including after the adoption of the Regulation (the requirements set out in Annex III to the Regulation can be modified by a Commission delegated act at the request of the Member States concerned).

A new version of Annex III to the ECI Regulation entered into force on 8 October 2013, allowing i.a. the Dutch nationals living outside the Netherlands to give their support on a Dutch form and the non-Spanish EU citizens residing in Spain to give their support on a Spanish form.

The Commission will continue to encourage Member States to simplify their respective requirements.

8/ 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 / Harmonised personal data protection requirements with verification of signatures coordinated by a central body

The Commission has taken note of the issues raised and suggestions for improvement in the ECI legal framework. The Commission is aware that the legal deadlines (in particular the fact that the 12-month collection period starts on the registration date and not on the date the organisers' online collection system is certified), as well as the data protection requirements and the status of the citizens' committee pose challenges for organisers.

These comments will feed into the review process that the Commission will carry out.

9/ Ensure full transparency of funding and check that the information provided is correct

The Commission shares the view that organisers should be fully transparent as regards their funding.

¹¹ For more detail, please see: http://ec.europa.eu/citizens-initiative/files/Table-Country_form_according_to_citizenship-residence-July_2014.pdf

For this purpose, the ECI Regulation foresees that organisers must provide updated information on all support and funding sources exceeding EUR 500 per year and per sponsor for the Commission's website and on their own website.

Organisers are required to provide their sources of support and funding for their initiative in the registration form. Once the registration of their proposed initiative has been confirmed by the Commission, all the information provided by the organisers is made available on the ECI website on the page related to their initiative. This information can thus be viewed by the public. Then, organisers can update the information on their sources of funding and support whenever applicable, via their organiser account on the Commission's website. It is the organisers' responsibility vis-à-vis the signatories of their initiative to provide the most up-to-date and accurate information on their funding and support.

The Commission has no reason to believe that organisers do not provide and/or update the information required on their sponsors / sources of funding. To date, no one has signalled any instances of inaccurate or misleading information of this nature. However should the attention of the Commission be drawn to a possibly inaccurate declaration and accompanied by factual information that underpins such a position, the Commission would contact the organisers with a view to establish the facts and request that any inaccuracies are corrected.

The Commission does not plan to carry out any systematic verification of the sources declared.

- **Communication on Commission's improvement actions** (point (e) of the Ombudsman's letter)

News are regularly published on the homepage of the Commission's website to announce any changes in the procedure (legal changes), new versions of the Commission Online Collection Software or new support measures (e.g. temporary hosting of organisers' online collection systems on Commission's servers). An RSS feed has been added to which users can subscribe to be more easily informed.

All organisers concerned by the changes are always informed by the Commission by email.

The most important actions or changes have also been disseminated via the usual communication channels of the Commission (press releases, social media, Commission's representations, Europe Direct, etc.)

Special attention is paid to explaining key issues such as the ones related to online collection, which are explained in detail on a specific page of the Commission's website¹².

¹² <http://ec.europa.eu/citizens-initiative/public/hosting>

IV. CONCLUSIONS

The Commission is in constant dialogue with organisers of ECI initiatives and has taken note of all their comments and concerns since the start of the implementation of the ECI Regulation.

Where improvements could be undertaken under the current legal framework, the Commission has already taken measures and will continue to do so, wherever possible, to make the European Citizens' Initiative as citizen-friendly as possible. In this respect, it should be underlined that some of the issues raised in the contributions received by the Ombudsman have been overtaken by improvements that the Commission has made.

Some of the Ombudsman's comments or suggestions cannot be implemented under the current legal framework. They will however be taken into consideration in the reflections that will take place in the context of the 2015 review of the ECI Regulation.