

Comments of the Commission in reply to further remarks from the European Ombudsman in her closing decision

- Ref. OI/9/2013/TN

I. CONCLUSIONS OF THE OMBUDSMAN

On 18 December 2013, the European Ombudsman opened an 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. On 4 March 2015, after consulting stakeholders and institutions, the European Ombudsman sent her decision and final recommendations to the European Commission, inviting the Commission to comment on the suggested measures.

II. THE COMMISSION'S COMMENTS ON THE OMBUDSMAN'S FINAL SUGGESTIONS

On 31 March 2015, the Commission published a report¹ on the application of the Regulation on the citizens' initiative² that takes stock of the situation and highlights a number of areas for improvement. Some of these, such as the question of legal deadlines and the status of the citizens' committee, were also raised in the own-initiative inquiry of the Ombudsman.

As highlighted in the report, the Commission is committed to continue monitoring and discussing the issues mentioned in close cooperation with stakeholders and the other institutions so as to improve the functioning of the instrument.

In this context, the Commission welcomes the Ombudsman's final suggestions and would like to thank the Ombudsman for her recognition of the efforts made by the Commission to make the ECI as citizen-friendly as possible within the legal framework set out by the Regulation.

The Commission would like to make the following comments on the results of the own-initiative inquiry of the European Ombudsman.

i. **Advice to organisers** (point 1 of the Ombudsman's decision)

The Commission recognises the principal concern of the Ombudsman to avoid that the registration of a proposed initiative is refused because organisers do not have the necessary information on EU law. Indeed, the report of the Commission also highlights the registration process as an issue of concern, as many proposed initiatives fall manifestly outside the scope of the Commission's competences.

¹ Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative (COM(2015) 145 final): <http://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-145-EN-F1-1.PDF>

² Regulation (EU) No 211/2011 of the European Parliament and the Council on the citizens' initiative

The Commission would like to clarify that if a proposed initiative fulfils the registration criteria, but the organisers simply fail to identify the correct legal basis for the proposed action, this alone would not lead to a refusal of registration. While organisers should have some understanding of EU competences and need to indicate which Treaty provisions they would consider relevant, they are not required to correctly identify the legal basis for the proposed action.

Organisers can find targeted information on the EU and Commission competences on the website³ of the ECI. They can also ask their questions at the Europe Direct Contact Centre (EDCC).

While the EDCC is the entry point for citizens' questions on the citizens' initiative, it can only answer general or factual questions. Complex and sensitive questions (including questions on the legal admissibility of a potential initiative) are transmitted to the competent Commission service, which prepares the reply which the EDCC then translates, if needed, and sends to the enquirer.

Staff in the EDCC operate on the basis of clear guidelines prepared by the Commission on how to handle all types of questions concerning the ECI and also receive regularly information and training from the Commission as needed.

Therefore, as the EDCC does not handle complex legal questions directly, it is not necessary for the Commission to provide them with specialised guidance regarding more complex questions. However, the Commission will continue to help the EDCC in ensuring any reply the EDCC prepares is as helpful as possible for the potential organisers.

ii. **Refusal of registration** (point 2 of the Ombudsman's decision)

The Commission agrees with the Ombudsman that all reasons for refusal should be robust, consistent and comprehensible to citizens and is fully committed to providing such reasoning whenever it refuses the registration of a proposed initiative.

The Commission believes that its refusal decisions as well as its transparent policy of publishing all replies on its website⁴ effectively serve as valuable guidance to all citizens and future organisers, to helping them better understand the nature of the ECI, as defined by the Treaty, and to formulate proposed initiatives that fulfil the registration criteria.

For example, two proposed initiatives ("Unconditional Basic Income" and "Vite l'Europe sociale ! Pour un nouveau critère européen contre la pauvreté") which were originally refused as they fell manifestly outside the Commission's competences were able to revise their goals following the Commission's reply stating the reasons for refusal and subsequently went on to be successfully registered ("Unconditional Basic Income (UBI) - Exploring a pathway

³ <http://ec.europa.eu/citizens-initiative/public/competences>

⁴ <http://ec.europa.eu/citizens-initiative/public/initiatives/non-registered>

towards emancipatory welfare conditions in the EU" and " Vite l'Europe sociale ! Pour une coopération renforcée des États membres contre la pauvreté en Europe.").

iii. **Value of public debate and public hearing** (points 3, 4 and 5 of the Ombudsman's decision)

The Commission agrees with the Ombudsman that a legislative proposal as the result of an ECI is not the only criterion of success, but that the process itself is of major significance as it can stimulate pan-European political debates and help create a European public sphere.

Commission First Vice-President Timmermans has repeatedly shared his view on the importance of the political deliberation process that an initiative can foster and his conviction that such debate is valuable, irrespective of the individual outcome of an initiative. The Commission, other EU institutions and bodies, organisers, civil society and the media should encourage such public debates and communicate their value. The Commission is committed to make a meaningful contribution to this.

One important aspect of a public debate is the public hearing in the European Parliament for initiatives that have been successfully submitted to the Commission. The Commission agrees that the first two initiatives for public hearings did not fully encourage political debate as no stakeholders or experts other than the organisers were invited. The Commission has raised this issue with the European Parliament on several occasions and included it in its report on the implementation of the ECI Regulation adopted on 31 March 2015.

The Commission shares the Ombudsman's view that in order to make the public debate as inclusive as possible, not only different political groups, but also other stakeholders and experts, in favour as well as in opposition to the goals of the initiative, should be heard. The Commission will continue to explore possibilities for such an effective debate with the European Parliament, which is responsible for organising the public hearing.

The Commission welcomed the structure of the public hearing on the third successful initiative "Stop Vivisection" on 11 May 2015, where external experts both in favour and in opposition to the proposal of the initiative were invited to speak. The Commission emphasised that such a structure for all future public hearings would be very welcome.

iv. **Formal response to a successful initiative** (point 6 of the Ombudsman's decision)

The European Ombudsman explains that in her opinion, it is vital for the public debate that the Commission is clear about the political reasons behind its choices when answering and following-up on a successful ECI. She notes that the Commission, in its reply of October 2014, did not confirm that it would properly explain its political considerations to the public in a detailed and transparent manner.

The Commission fully agrees on the importance of a well-reasoned answer to an initiative and supports transparency on its follow-up. In its replies to the first three successful initiatives "Water and sanitation are a human right! Water is a public good, not a commodity!"

("Right2Water")⁵, "One of us"⁶, and "Stop Vivisection"⁷, the Commission provided an extensive explanation of its considerations and reasons for taking or not taking action. While the Commission considers its current practice to be sufficiently detailed, it will strive to further enhance its explanations where possible. The Commission Communications replying to the ECI initiatives have been made available in all official EU languages.

Where the Commission decided to take subsequent actions, it has been absolutely transparent on the actions by documenting them on a follow-up page that allows for further scrutiny.⁸ The Commission is committed to maintaining a high level of transparency in all its future replies to successful initiatives.

v. **Improvements of the online collection software (OCS)** (points 7 and 8 of the Ombudsman's decision)

On 31 March 2015, the Commission released a new version of its online collection software (OCS). In view of the development of this version, the contributions to the Ombudsman's own-initiative inquiry were taken into account, analysed and implemented whenever possible under the current legal framework.

Notably, the following improvements have been made based on the various concerns expressed by organisers, all of which can be tested in the online demo version⁹:

Concerns about the rigidity of the validation rules¹⁰ were met through the introduction of a soft validation mechanism. This option allows signatories to check their entries and confirm that the data is correct, even if it does not follow the exact format foreseen by the software. Organisers can decide themselves whether or not to activate the soft validation mechanism for their initiative.

The look-and-feel of the OCS has also been improved to make it more attractive and easier to use for signatories, thus responding to a number of complaints from organisers. For example, the support button is now bigger and easier to find and errors in the form (invalid data entries) can be identified more easily.

⁵ <http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-177-EN-F1-1.Pdf>

⁶ <http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-355-EN-F1-1.Pdf>

⁷ <http://ec.europa.eu/transparency/regdoc/rep/3/2015/EN/3-2015-3773-EN-F1-1.PDF>

⁸ http://ec.europa.eu/dgs/secretariat_general/followup_actions/citizens_initiative_en.htm

⁹ <https://webgate.acceptance.ec.europa.eu/ECI-OCT/public/>

¹⁰ Rules limiting ID numbers and postcodes to pre-defined formats (the accepted formats have been set in the software on the basis of the information provided by Member States).

Finally, the new version allows for links to social media, an option requested by many organisers. At the end of the signing process, signatories can use social media buttons, allowing them to share and/or like the initiative concerned on Facebook, Google+ or via Twitter.

The Commission is also conscious of the needs of persons with disabilities, and namely visually impaired people and is committed to take their special needs into account when further developing the software.

vi. **Checks of funding information** (point 9 of the Ombudsman's decision)

The Commission shares the view that organisers need to be fully transparent as regards funding, in compliance with the Regulation. It is the responsibility of the organisers to inform the Commission and the public about their funding support and keep the information up to date. While, as explained in its letter of 6 October 2014, the Commission does not intend to implement systematic verification of the sources declared, it will examine further the suggestion by the Ombudsman regarding quality checks and the alerts and complaint system used for the Transparency Register. Due to the different nature and size of the information provided in the Transparency Register, it would not be appropriate to use the whole system in the same manner for quality checks on the citizens' initiatives. Nevertheless, certain elements of the quality check and the alert mechanism will be examined by the Commission to assess potential added value for the ECI register.

vii. **Simplified data requirements** (point 10 of the Ombudsman's decision)

The Commission identifies in its report on the application of the Regulation the differing Member States requirements for signatories as one of the major concerns of the current ECI set-up, especially where citizens cannot use their right to support an initiative. This is an area needing further improvement.

While the recommendation of the Ombudsman is an important contribution to the current discussions on a possible reform of the Regulation, the Commission continues its efforts to encourage Member States to simplify their data requirements. The latter can be modified by a Commission delegated Regulation taking into account the information provided by the Member States. This does not require a modification of the Regulation.

A second modification of Annex III to the Regulation was adopted by the Commission in March 2015. It will enter into force in the course of July. This modification further simplifies the data requirements for Latvia and Sweden and clarifies the possibility for non-Maltese EU citizens residing in Malta to give their support to a Maltese form.

viii. **Translation and funding** (point 11 of the Ombudsman's decision)

In accordance with Article 4(1) of the Regulation, translations are the responsibility of the organisers. As highlighted in its report, the Commission recognises that the current process

for translations is cumbersome and that organisers have difficulties ensuring the necessary quality of their translations.

The European Economic and Social Committee (EESC) has offered to help organisers with translating free of charge the title, subject-matter and objectives of their initiatives into all official EU languages except Irish. The Commission is very appreciative of this support.

As regards funding for initiatives, while the Regulation does not foresee public funding or reimbursement for the organisers, it should be noted that the various services offered by the Commission and the EESC significantly reduce the potential costs for them.

While the Commission remains open to discuss any suggestions on this topic, it considers that campaigning for ECIs should remain in the hands of organisers and that it would not be appropriate that the institution to which initiatives are submitted allocates EU funding for ECI campaigns.

IV. CONCLUSIONS

Recent developments in the ECI, including the submission of a third successful initiative, "Stop Vivisection", on 3 March 2015, confirm that the procedures and mechanisms are working. They continue to demonstrate the potential of this innovative instrument to engage citizens, foster pan-European debates and trigger actions from the EU institutions.

Nevertheless, the Commission is aware that there is room for improvement. The Commission is fully engaged in discussions with stakeholders on how to improve the functioning of the ECI. In this context, the decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN is an important contribution to the ongoing debate. It will be complemented over the next months by the current discussions on the Commission report in the European Parliament, the Council and the two consultative committees.

The Commission will follow-up on the suggestions of the Ombudsman along the lines described above. Whereas some suggestions can be implemented within the current Regulation, others contribute to the on-going discussions and reflections about a possible revision of the legislative framework.