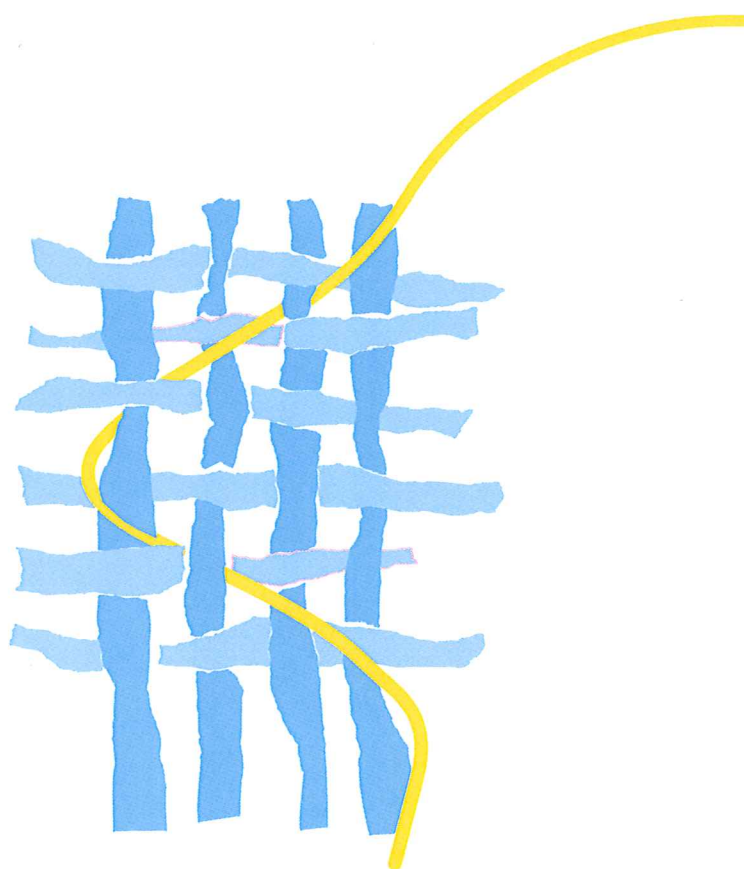


THE EUROPEAN OMBUDSMAN

CONTRIBUTION TO THE PUBLIC

CONSULTATION ON

THE EUROPEAN CITIZENS' INITIATIVE



Strasbourg, 29 January 2010

Summary of the Ombudsman's proposals as regards the future Regulation on the European Citizens' Initiative

1. The Regulation should not make admissibility a condition for registering a citizens' initiative. However, the Regulation should require the Commission to issue an opinion concerning the admissibility of an initiative following its registration.
2. The Regulation should provide for the Commission to deal with complaints alleging that the organisers of an initiative have failed to comply with their obligations as regards transparency.
3. The Regulation should require that, if the Commission agrees to present a legislative proposal following an initiative, it should also specify the date by which it intends do so.
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).

Introduction

The Treaty of Lisbon introduces a new form of public participation in the democratic life of the Union: the “citizens’ initiative”. The Treaty provides that

Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, 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.¹

The European Commission has issued a general invitation to express views, by 31 January 2010, on how the citizens’ initiative should work in practice. The Commission will then make a proposal for a Regulation of the European Parliament and Council determining the procedures and conditions for the citizens’ initiative.

The European Parliament already adopted, on 7 May 2009, a Resolution concerning the future Regulation².

The European Ombudsman believes that the citizens’ initiative should make an important contribution to the empowerment of European citizens.

Article 228 of the Treaty gives the Ombudsman a general mandate as regards maladministration by the Commission. The concept of maladministration is very broad and many aspects of the Commission’s future role concerning initiatives could potentially give rise to complaints to the Ombudsman.

The Ombudsman’s objective in preparing the present contribution to the public consultation is to promote good administration by the Commission and thereby help ensure the success of this valuable new instrument for citizens.

With this objective in mind, the Ombudsman’s contribution deals with the following:

- the registration and admissibility of initiatives;
- possible complaints concerning the transparency of initiatives;
- the time-limits that should apply to the Commission; and
- supervision of the Commission’s responses to initiatives.

¹ Treaty on European Union, Article 11 (4).

² European Parliament resolution of 7 May 2009 requesting the Commission to submit a proposal for a regulation of the European Parliament and of the Council on the implementation of the citizens' initiative - P6_TA(2009)0389.

1 Registration and the determination of admissibility

Both the Commission and the European Parliament consider that, for practical reasons, initiatives should be registered with the Commission before the collection of signatures begins.

The European Parliament's Resolution of 7 May 2009 proposed that the Commission should check the admissibility of an initiative (i.e., whether it would be within the Commission's power to put forward the legislative proposal requested in the initiative) as part of its decision on whether an initiative has been successfully registered.

In contrast, the Commission does not consider that the registration process should involve any decision by the Commission on the admissibility of the initiative. It suggests that a positive decision could give the impression that the Commission had given some form of green light to the initiative. Furthermore, the Commission takes the view that the admissibility and substance of initiatives cannot be seen in isolation.

The Ombudsman considers that the role of the Commission in the registration process should be to facilitate citizens' exercise of their right of initiative. Registration should not become a bureaucratic or political hurdle. Nor should the Commission be put in a position where it could be accused of blocking, or of favouring, particular initiatives. For these reasons, the Ombudsman takes the view that **the Regulation should not make admissibility a condition for registering a citizens' initiative.**

At the same time, it is foreseeable that citizens might ask for the Commission's views on the admissibility of particular initiatives, either at the time of registration, or while signatures are being collected. For example, the organisers (or opponents) of an initiative might ask the Commission whether it would have power to propose the legislation foreseen by a particular initiative.

As a matter of good administration, the Commission should provide information on request³. Although this obligation is not absolute, it is difficult to see how the Commission could systematically refuse to answer questions about its own powers to propose legislation. Such an approach would be seen as unhelpful by citizens. Furthermore, it can hardly be in the interests of good relations between the Union and its citizens for the organisers of an initiative to expend time and effort in collecting signatures only to be told subsequently that

³ See Article 22 of the European Code of Good Administrative Behaviour, <http://www.ombudsman.europa.eu/resources/code.faces> and Point 4 ("Dealing with inquiries") of the Commission's code of good administrative behaviour, http://ec.europa.eu/civil_society/code/dealing_en.htm

the initiative is inadmissible, for reasons which the Commission could easily have explained at the outset.

In light of the above, the Ombudsman considers it likely that the Commission will, in practice, need to address questions of admissibility long before the stage at which it examines a completed initiative.

In these circumstances, it would be helpful for citizens, and for the Commission itself, that **the Regulation should require the Commission to issue an opinion concerning the admissibility of an initiative following its registration.**

This provision would promote good administration by providing a clear framework for the Commission to make its views on admissibility known to citizens, but without giving the Commission the power to prevent an initiative from going forward, which it would possess if its positive decision on admissibility were a condition for registering an initiative.

The question of a time-limit within which the Commission should give its opinion is dealt with in section 3 below.

2 Possible complaints concerning the transparency of initiatives

Both the European Parliament and the Commission consider that, in the interests of transparency and democratic accountability, the organisers of initiatives should provide information about funding and about the organisations that support an initiative. According to the Commission, such information could be provided on the register that would be made available by the Commission. The Regulation could also require the organisers to make publicly available all relevant information on funding and support during the course of the campaign.

In the Ombudsman's view, it is foreseeable that the accuracy and completeness of the information provided by the organisers of initiatives may be contested in some cases. The Ombudsman, therefore, considers it essential, in order to maintain the confidence of citizens in the initiative process, that the Regulation provide for a complaints mechanism.

The Commission has already put in place a mechanism to deal with complaints concerning the register of interest representatives, which it maintains as part of the Transparency Initiative⁴. The issues raised by possible

⁴ <http://ec.europa.eu/transparency/regrin> In October 2009, the Commission announced its intention to issue an explanatory note on the administrative process that it uses to deal with such complaints. See, in this regard, the Communication from the Commission to the European Parliament and the Council, *European Transparency Initiative: the Register of Interest Representatives, one year after* (COM(2009) 612 final), p. 8, point 2.4.

future complaints about the information provided by organisers of initiatives are likely to be similar to those raised by complaints related to the register of interest representatives. For this reason, the Ombudsman suggests that **the Regulation should provide for the Commission to deal with complaints alleging that the organisers of an initiative have failed to comply with their obligations as regards transparency.**

3 The time-limits that should apply to the Commission

The Commission proposes that the Regulation should require it to examine a citizens' initiative within a reasonable time-frame, not exceeding six months. During this period, the Commission would assess both the admissibility and the substance of the initiative. The Commission states that its intention would be to set out its conclusions in relation to the action it envisages. This would be done in a communication to the European Parliament and the Council, which would be publicly available. The action envisaged in the communication could include, as appropriate, the need to carry out studies and impact assessments in view of possible policy proposals.

As noted above, the Ombudsman suggests that the Commission should give an opinion on admissibility following the registration of an initiative. This could normally be within two months of the date of registration, with provision for the Commission to extend this deadline by one further month in exceptional cases. If this suggestion were adopted, the Commission would already have assessed admissibility by the time the initiative was completed. However, the Ombudsman considers that six months is not excessive as a maximum period within which the Commission must decide what action, if any, to take in response to a completed initiative. If the Commission could reach its conclusions more quickly in a particular case then, as a matter of good administration, it should do so.

Since the green paper envisages further studies and impact assessments, the Ombudsman understands that the Commission's idea is that its conclusions would not contain a legislative proposal as such, but, at most, an undertaking to put forward such a proposal in the future.

The Ombudsman considers that, when the Commission signals its intention to present a legislative proposal in response to an initiative, there should be a further time-limit within which it should give effect to that intention. A reasonable time-frame for the presentation of a legislative proposal is necessary in order to give full effect to the citizens' initiative, to promote good relations with citizens and to ensure good administration.

The Ombudsman accepts, however, that the time reasonably needed to prepare a legislative proposal may differ from case to case. For this reason, **the Regulation should require that, if the Commission agrees to present a legislative proposal following an initiative, it should also specify the date by which it intends to do so.**

4 Supervision of the Commission's responses to initiatives

The European Parliament's Resolution of 7 May 2009 proposed that both the Commission's position as regards the admissibility of an initiative and its substantive conclusions as regards the request contained in the initiative should be "subject to scrutiny by the Court of Justice of the European Union and the European Ombudsman in accordance with the relevant provisions of EU law"⁵.

The Commission's green paper does not explicitly address the question of how to supervise the Commission's response to an initiative.

In the Ombudsman's view, the admissibility of an initiative is a matter of law. For example, it would not be within the powers of the Commission to propose legislation that would violate fundamental rights as set out in the Charter of Fundamental Rights, or in the case-law of the Court of Justice of the European Union. An initiative requesting legislation that would violate fundamental rights would, therefore, be inadmissible.

The Ombudsman could examine complaints concerning the Commission's opinions on admissibility on the basis of Article 228 of the Treaty on the Functioning of the Union⁶.

In the Ombudsman's view, the Commission's substantive conclusions as regards the request contained in an initiative are likely to raise primarily political issues. The European Parliament, which directly represents citizens at Union level⁷ would be best placed to supervise the Commission in this regard.

⁵ Such a provision would give citizens the choice either to go to the Ombudsman, or to apply to the Court. It is not possible to do both because the Treaty forbids the Ombudsman to investigate matters that are being, or have been, dealt with by a court. Moreover, the short deadline to bring an action for annulment before the Court of Justice under Article 263 of the Treaty on the Functioning of the Union makes it impossible, in practice, to complain first to the Ombudsman that a decision is tainted by maladministration and later go to Court to seek annulment of the same decision.

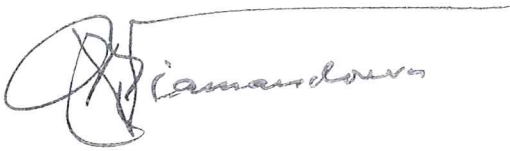
⁶ It is, of course, for the Court of Justice to determine the admissibility of proceedings brought before it. However, on the basis of existing case-law, judicial review is unlikely to be possible, unless the Regulation provides for a formal Commission decision on admissibility, rather than an opinion as suggested in section 1 above.

⁷ Article 10 (2) of the Treaty on European Union.

To facilitate effective supervision of the Commission, the Regulation should be drafted so as to ensure that, as far as possible, the Commission presents its legal conclusions as regards 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).

Acceptance of the Ombudsman's suggestion (section 1 above) that the Commission should give its opinion on admissibility at an early stage would ensure the necessary separation of legal and political issues.

If the Commission's suggestion that it should examine admissibility and substance together at the end of the process were accepted, the Regulation should require the Commission to divide its conclusions into two parts: (a) as regards the admissibility of the initiative and (b) as regards the Commission's substantive conclusions.

A handwritten signature in dark ink, appearing to read 'P. Nikiforos Diamandouros', with a long horizontal line extending to the right.

P. Nikiforos Diamandouros