



European Ombudsman

Emily O'Reilly
European Ombudsman

Mr Jean-Claude Juncker
President
European Commission
1049 BRUSSELS
BELGIUM

Strasbourg, 11/07/2017

Subject: Suggestions to improve the European Citizens' Initiative procedure (SI/6/2017/KR)

Dear Mr President,

I was pleased to learn about the European Commission's recently launched public consultation¹ on improving the European Citizens' Initiative (ECI) Regulation.² In its roadmap for revising the ECI³, the Commission identified 6 'key areas of improvement'. This letter provides you with an overview of my suggestions for improving the ECI procedure, including those stemming from my own-initiative inquiry. I have structured this contribution using the 6 key areas identified by the Commission.

I have been following developments around the functioning of the ECI closely. On 18 December 2013, I launched an own-initiative inquiry into the functioning of the ECI and the Commission's role and responsibility in this regard.⁴ The inquiry led to my decision of 4 March 2015 where I offered the Commission guidelines to further improve the ECI procedure.⁵ If it has not already done so, I would encourage the Commission to take them on board when revising the ECI Regulation.⁶

¹ 'Public consultation on the European citizens' initiative', for details see:

http://ec.europa.eu/info/consultations/public-consultation-european-citizens-initiative_en.

² Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ 2011 L 65.

³ 'Roadmap - Revision of the European Citizens' Initiative', for details see:

https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-2537702_en.

⁴ 'Letter to the European Parliament opening own-initiative inquiry OI/9/2013/TN into the functioning of the European citizens' initiative (ECI) procedure', for details see:

<https://www.ombudsman.europa.eu/cases/correspondence.faces/en/53106/html.bookmark> (18/12/2013).

⁵ 'Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN concerning the European Commission', for details see:

<https://www.ombudsman.europa.eu/en/cases/decision.faces/en/59205/html.bookmark#h1>.

⁶ The Commission responded on 31 July 2015 to which I followed up in writing on 8 March 2016.



Since then, the Commission has introduced a number of welcome changes, amongst which are discussions about registering new ECIs in Commission College meetings and the partial registration of ECIs (in the event that the proposal contains parts that are inadmissible).

I welcome the aims that the Commission has set out for the ECI revision, namely to make the ECI more accessible and easier to use for ECI organisers and signatories, that is, citizens signing an ECI. The Commission is striving to deliver the full potential of the ECI as a tool to foster debate and citizen participation at EU level and to contribute to bringing the EU closer to its citizens.

I also believe that the General Court's '*Stop TTIP*' judgment⁷ should provide more guidance to the Commission in this regard. While, in the past, the definition of an ECI⁸ has been widely understood as inviting the Commission to make a 'legislative' proposal, the Court has found that "legal act" is much broader and "*requires an interpretation of the concept of "legal act" which covers legal acts such as a decision to open negotiations with a view to concluding an international agreement [...]*"⁹ I trust that the Commission is now preparing for the likelihood that it will receive many more admissible ECI proposals than has been the case to date. This can only be seen as a positive development.

1. Lack of clarity and transparency at the registration stage

Over the five year lifespan of the ECI, the annual number of registered ECIs dropped sharply, from 23 in 2012 to 3 in 2016. This drop could signal a diminishing willingness on the part of citizens to use the procedure. It could also indicate that there was higher than average interest at the beginning due to the fact that expectations had built up, and that annual registrations turned out to be lower under normal circumstances. The ECIs registered to date in 2017 include ECIs in relation to the upcoming withdrawal negotiations with the United Kingdom. Given that these negotiations are likely to affect EU citizens directly, this heightened interest is perhaps not surprising. The fact that time is of the essence in this particular area underscores the need for a smooth and rapid registration process.

As Ombudsman, I have drawn the Commission's attention to the importance of providing helpful, clear and accurate advice to ECI organisers should there be a need. The Commission should provide as much guidance as possible to staff in the Europe Direct Contact Centre so that they can exercise reasonable judgment in striking the delicate balance between supplying helpful advice, without being seen to steer a particular ECI. The collaborative ECI Platform the Commission announced on the 2017 ECI Day and which it is currently developing (in response to a European Parliament initiative) is also of great importance in this respect. This Platform has the potential to be a helpful enquiry tool. It could, for example, allow ECI organisers to pose questions on a wide range of issues, including on legal admissibility checks.

⁷ Judgment of the General Court of 10 May 2017, *Michael Efler and Others v European Commission*, T-754/14, ECLI:EU:T:2017:323.

⁸ See Art. 2(1) of Regulation 211/2011 of the European Parliament and of the Council on the citizens' initiative (16 February 2011), which reads as follows: "citizens' initiative' means an initiative submitted to the Commission in accordance with this Regulation, inviting the 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, which has received the support of at least one million eligible signatories coming from at least one quarter of all Member States."

⁹ See paragraph 37 of the above judgment.



If an ECI is refused registration, organisers need to understand why. Although the Commission publishes refusal decisions on its website, this provides ECI organisers with effective guidance from a process point of view only. In Case *Bürgerausschuss für die Bürgerinitiative Minority SafePack – one million signatures for diversity in Europe v Commission*¹⁰, the General Court held that a decision should “contain sufficient elements to enable the applicant to ascertain the reasons for the refusal to register [a] proposed ECI with regard to the [...] information contained in that proposal and to react accordingly [...]”¹¹. As I noted in my inquiry,¹² the Commission should endeavour to provide reasoning for refusing registration that is more robust, consistent and comprehensible to the citizen.

As the name suggests, ECIs must remain a tool for citizens. To this end, I invite the Commission to verify the funding information of ECI organisers so as to detect incorrect information. I have encouraged the Commission to draw on the example of the Transparency Register’s quality checks and its alerts and complaints system to ensure that funding and sponsorship information provided by ECI organisers reflects reality and that any issues are brought to its attention.

2. Divergences between and the level of signatories' data requirements in the different Member States

Simplifying data requirements for signing a statement of support for an ECI is a pressing matter in need of improvement. EU citizens should be able to sign ECIs regardless of where they are residing. As part of the upcoming review, I urge the Commission to propose simplifying and harmonising requirements for all Member States in terms of the personal data to be provided when signing a statement of support.

3. Personal liability of citizens who set up ECIs, combined with the lack of legal personality of the citizens' committees

The Commission’s roadmap identifies the personal liability of citizens who initiate ECIs, combined with the lack of legal personality of citizens' committees, as possible deterrents to launching an ECI campaign. I truly believe that these are deterrents and understand that a range of stakeholders have already provided evidence and advice to the Commission in this area, which the Commission should follow-up on.

4. Issues related to the ECI's lifecycle timeline

As regards the ECI’s lifecycle timeline, almost all ECIs have their online collection system (OCS) launched after the initiative is registered, sometimes even a few months later. Although the competent national authority technically has one month to certify the OCS, there have been cases reported where a longer period was required. It seems reasonable that the 12-month signature collection period starts on the date the organisers' OCS is certified, or alternatively, at the date of the ECI organisers choosing (within a pre-set time frame).

¹⁰ Judgment of the General Court of 3 February 2017, *Bürgerausschuss für die Bürgerinitiative Minority SafePack - one million signatures for diversity in Europe v Commission*, T-646/13, ECLI:EU:T:2017:59.

¹¹ Paragraph 33 of the judgment.

¹² See <https://www.ombudsman.europa.eu/en/cases/decision.faces/en/59205/html.bookmark#hl1>, paragraph 16.



5. Aspects of the online collection process

I welcome the improvements made to the OCS that the Commission offers ECI organisers free of charge. The Commission has, so far, introduced a soft validation mechanism, improved the look and feel of the OCS, improved the compatibility with mobile devices, and enabled signatories to share and like an ECI throughout social media. However, I wish to remind the Commission of the importance of improving the OCS to address the needs of persons with disabilities who wish to submit statements of support to ECIs online.

6. Examination of and follow-up given to the initiatives

In my view, collecting at least one million statements of support is not the only milestone which determines the success of an ECI as a tool to foster public debate and participation. The ECI process offers organisers a platform from which they can generate a public debate about their issue. To further facilitate this, the Commission could consider the following. First, it could articulate more clearly for citizens its understanding of the value of the public debate generated through the ECI procedure and of how this debate, in its own right and irrespective of the individual outcome, gives the ECI process value and legitimacy. Second, the Commission should do all in its power to see to it that, throughout the ECI procedure, the public debate ensuing from a registered ECI is as inclusive and transparent as possible.

The Commission could also reflect on how ECI organisers' achievements can be acknowledged publicly throughout the process. One example from stakeholders is that the Commission could highlight milestones such as 250.000 and 500.000 statements of supports, thereby helping ECI organisers generate momentum.

The public hearing for initiatives in the European Parliament is an important part of ensuring inclusivity and transparency of the ECI process. The Commission may need to reflect on whether the current three month timeframe is too short to prepare a meaningful public hearing that includes all the relevant stakeholders and to set out in a communication the legal and political conclusions on the ECI. Involving both Parliament and Council in the follow-up should enhance the process from the citizens' point of view, also in terms of clarifying what they as co-legislators believe is the appropriate course of action. The Commission should continue to explore with Parliament how to ensure that the Council, as well as interested stakeholders, are present at the public hearing.

As I have had occasion to mention in the past, in its formal response to an ECI that has obtained one million signatures, the Commission should explain its political choices to the public in a detailed and transparent manner. Although political choices are sometimes difficult and such choices cannot satisfy everyone, citizens deserve to be told the truth.¹³

Lastly, in its letter of 22 July 2015, the Commission stated that the Economic and Social Committee (EESC) had offered to help organisers to translate the title, subject-matter and objectives of initiatives into all the working languages of the EU. I trust that the Commission has followed up on this possibility with the EESC.

¹³ See <https://www.ombudsman.europa.eu/en/cases/decision.faces/en/59205/html.bookmark#hl1>, paragraphs 23 and 24 for example.



I would be grateful if you could take these suggestions on board in your plans to revise the ECI regulation. Should your staff require any further information or clarifications, please contact Mr Koen Roovers (Tel: +32 228 41141, Email: koen.roovers@ombudsman.europa.eu).

Yours sincerely,

Emily O'Reilly
European Ombudsman

Summary of main suggestions

- Develop the ECI Platform as an enquiry tool for ECI organisers.
- Provide better reasoning for refusing ECI registration.
- Check if funding and sponsorship information about ECI organisers reflects reality.
- Allow EU citizens to sign statements of support regardless of their place of residence.
- Change the start of the signature collection period.
- Improve the OCS for persons with disabilities.
- Articulate the value of the ECI as a platform for public debate.
- Seek to include the Council in public hearings on ECIs.
- Explain in detail the Commission's political choices, especially where it chooses not to act in accordance with the successful ECI.