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THE EUROPEAN CITIZENS' INITIATIVE

GUIDELINES AND RECOMMENDATIONS

FOR PRACTICAL IMPLEMENTATION

15 April 2013

The present guidelines and recommendations on the implementation of Regulation (EU) No 211/2011 on the citizens' initiative (hereafter: 'the Regulation') are intended as a concise reference document for the Member States' (MS) competent authorities (and have been prepared partly at their request) but will, on many points, also prove helpful for organisers. They cover various stages of the citizens' initiative procedure, in particular those related to the certification of online collection systems and the verification of statements of support. To a large extent, these guidelines and recommendations re-state, clarify or update advice that the Commission has previously provided, either in non-papers, in written correspondence, or at meetings of the ECI Expert Group. They may need to be revised over time based on the experiences of the competent MS authorities and the Commission with these procedures.

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1. EARLY-WARNING INFORMATION EXCHANGE SYSTEM

The Commission and the competent MS authorities should promptly exchange information on accepted/refused requests for the registration of initiatives or for the certification of online collection systems.

- **Registration.** The Commission will inform the MS authorities via CIRCABC of requests for the registration of proposed citizens' initiatives that it has accepted or refused, as well of any proposed initiatives that are withdrawn.
- **Certification of online collection systems.** When an MS authority receives a request for the certification of an online collection system, it should immediately inform the Commission and the other MS authorities. The Commission will inform the MS authorities if it has received a registration request for the corresponding initiative or when it receives such a request, and of any decision taken.

During the two stages above, the Commission, the competent MS authority and the organisers of the proposed citizens' initiative should liaise as appropriate to ensure the best use of resources and that all parties concerned work and cooperate effectively within the various deadlines foreseen in the Regulation. Ideally, organisers that wish to collect statements of support online should be in a position to do so immediately after the registration of their proposed citizens' initiative with the Commission.

- **Verification of statements of support.** The first MS authority to receive a request for the verification of statements of support should immediately inform the Commission and the other MS authorities.

Communication between the Commission and the MS authorities can take place by email or via the dedicated CIRCABC space.

2. CERTIFICATION OF ONLINE COLLECTION SYSTEMS

An online collection system must be certified only once, in the MS on the territory of which the data will be stored. This certification can be requested by organisers before or after their proposed initiative has been registered with the Commission.¹ It is recommended that organisers carry out the requests for the registration of their proposed initiative and for the certification of their online collection system in parallel and simultaneously. As the Commission has two months to register a proposed initiative and the competent national authority has one month to certify an online collection system, close cooperation between all the parties involved would allow the organisers concerned to benefit in full from the 12-month period provided for in the Regulation to collect statements of support.

That the competent authority of one MS has refused to certify the online collection system of a given initiative cannot be used as a justification by the competent authority of another MS for not assessing or for refusing to certify the online collection system of the same initiative.

¹ MS authorities therefore cannot require registration of a proposed citizens' initiative with the Commission as a precondition for the certification of the initiative's online collection system.

The requirements that online collection systems must fulfil are set out in Regulation (EU) No 1179/2011 (hereafter: 'the implementing Regulation').

Prior to requesting the certification of their online collection systems, organisers should contact the competent national authority concerned to ensure that both parties are well prepared. In particular, this will enable the national authority to advise organisers about the precise nature of the documentation they must provide.

A request is considered to have been made once organisers have submitted all of the documents required by the implementing Regulation, together with any specific forms required by the competent national authority in question. Given that the competent national authorities have one month to verify conformity with the implementing Regulation, this authority should quickly check that the documentation submitted is complete. If this is not the case, the organisers should be informed immediately and asked to provide any missing documentation without delay. In the absence of a suitably prompt response from the organisers, certification can be refused on the grounds that the national authority does not have sufficient time to properly assess the online collection system concerned; alternatively, the national authority could, in agreement with the organisers, propose to extend the deadline.

It is for the MS authorities to decide, on the basis of the documentation, how to verify conformity with the requirements of the implementing Regulation. This verification may include vulnerability and/or penetration tests or, if deemed necessary, onsite verification.

Certification should be particularly straightforward if organisers use the latest version of the Online Collection Software (OCS) developed by the Commission (which complies with many of the technical specifications of the implementing Regulation) and if the data centre hosting the platform has an ISO 27k certification.

When the OCS is used, the competent MS authority only needs to check points 2.1, 2.2, 2.7.3(g), 2.7.6, 2.7.9, 2.15 to 2.20.2, 3.4, and, partially, points 2.7.3(c) and (e), 2.7.7(a) and (d), 2.8 to 2.11, 2.13 and 3.3 of the Annex to the implementing Regulation.

The OCS is packaged using a hashed code, which demonstrates that the version presented for certification has not been modified. If any of the core features of the software are amended, use of the software will no longer guarantee compliance with the relevant technical specifications and, amongst other things, organisers would be required to present a revised risk assessment of the software.

The certification of an online collection system by a MS authority should be more straightforward if this authority has already certified the service provider concerned for other citizens' initiatives. In such cases, the certification procedure should focus on ensuring that the security measures previously certified continue to be implemented.

The certificate is issued by the authority if the system has the adequate security and technical features in place, as defined in Article 6(4) of the Regulation and in the implementing Regulation. The Regulation does not require organisers to regularly report to the competent authority after their system is certified. Likewise, the certificate is not limited in time and, as such, there can be no obligation on organisers to re-new it.

However, if organisers modify their online collection system after it has been certified (and beyond the necessary updates required by the implementing Regulation), the certificate does not apply to what should be considered as a new system. In such cases, it is the responsibility of the organisers to request the certification of their amended online collection system, and the competent authority may choose to verify conformity with the requirements of the implementing Regulation only of the modified elements.

3. DATA PROTECTION NOTIFICATION PROCEDURE

Organisers, who are "data controllers" under the Regulation, may have to notify the relevant data protection authorities of their intention to collect statements of support on paper and/or online. Given that only one national data protection law defines the rights and obligations of the data controller(s) responsible for a single data processing, organisers need to notify only one national data protection authority. The applicable national law, and therefore the competent data protection authority, is the one of the Member State where the organisers carry out their main activities. This would be, typically, the committee representative's Member State of residence or the Member State where the main operation centre of the citizens' committee is located.²

4. STATEMENT OF SUPPORT FORMS

Organisers are free to use either the forms made available to them in their organiser account on the Commission website, or forms that they design themselves. The MS authorities may also make such forms available to organisers, although their use cannot be mandatory.

In all cases, the forms used for the collection of statements of support, which can be in any of the 23 official EU languages, must comply with the model in Annex III of the Regulation, include the data required for each respective MS pursuant to Annex III, and provide the key information required on the proposed initiative in one of the languages in which the initiative is published in the ECI register. Organisers whose 12-month collection period coincides with an amendment of Annex III via a delegated act shall be entitled to use both versions of the form for the duration of their respective campaigns.

Although forms prepared by the organisers should be in full conformity with the model provided in Annex III, they could be amended to contain, for example, only the data required by the MS concerned, or to add a logo or image of the initiative.

² The Regulation does not foresee any specific provisions on this issue, and therefore general data protection rules apply, in accordance with Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (hereafter: 'the DP Directive') and the national provisions adopted to implement it:

- Pursuant to Article 2(b) of the DP Directive, the collection and treatment of statements of support for a citizens' initiative, if intended as a set of operations, may be considered as one processing;
- According to Article 4(1) of the DP Directive, each Member State shall apply the national provisions it adopts pursuant to the Directive to the processing of personal data where, amongst other things, the processing is carried out in the context of the activities of an establishment of the controller on the territory of the Member State.

Therefore, given that according to Article 12 of the Regulation the citizens' committee as a whole should be considered as the data controller, the applicable national law is the one of the Member State where the organisers carry out their main activities.

The form should be on one sheet (it may be double-sided), as this would provide some assurance that signatories see the totality of the form and the information on it. Furthermore, it should be clear to signatories before they sign the form to which MS it will be sent.

An MS authority is not competent to "approve" new forms designed by the organisers. In case of doubt concerning conformity with the model provided in Annex III, MS authorities may, if necessary, contact the Commission.

5. SIGNATORIES

According to Article 3(4) of the Regulation, signatories, who must be citizens of the Union, must be of the age to be entitled to vote in elections to the European Parliament. This means that having the right or being registered to vote in elections to the European Parliament cannot be a requirement to support a citizens' initiative. Member States must only verify whether the signatory is old enough to be able to vote in these elections (18 years of age in all Member States, with the exception of Austria, where the voting age is 16).

This also means that forms signed by an Austrian national of 16 or 17 years of age shall not be invalidated by any of the MS competent authorities because of the age of the signatory. However, a signatory who is a dual-citizen of Austria and another Member State should only be entitled to sign a statement of support form at the age of 16 or 17 years if he or she puts Austrian as their nationality.

6. VERIFICATION OF STATEMENTS OF SUPPORT

The competent MS authorities must, within a three-month period, carry out appropriate checks, in accordance with national law and practice, to verify statements of support submitted to them (Article 8(2)). It is on this basis that they determine and certify the number of valid statements of support. The certificate must be issued free of charge.

Organisers can submit to each competent MS authority only one request for the verification of statements of support per initiative.

Although the collection period runs for 12 months, the Regulation does not specify when the organisers must submit their statements of support to the competent national authorities, which therefore cannot set a submission deadline. Nonetheless, organisers are required to destroy all statements of support and any copies at the latest 18 months after registration with the Commission³, so they should submit the statements of support to the competent national authorities before this deadline.

When submitting statements of support to the competent MS authorities, organisers must separate those collected in paper form, those collected through an online collection system, and those signed electronically using an advanced electronic signature. The statements of support may be in paper form or in electronic form, or both (organisers are entitled to send the statements of support in paper form or in electronic form regardless

³ Although for the purpose of legal or administrative proceedings, organisers may, however, retain statements of support beyond 18 months (Article 12(5) of the Regulation).

of whether they have been collected in paper form or electronically).⁴ Organisers can submit statements of support in any appropriate electronic format which reproduces the model set out in Annex III to the Regulation (e.g. PDF or JPEG). The OCS developed by the Commission also makes it possible to generate the collected statements of support in xml format; given the advantages of this for all parties concerned, its use should be encouraged. The authorities which accept to receive statements of support in xml format are indicated in the list available here: <http://ec.europa.eu/citizens-initiative/public/authorities-verification>.

Organisers are not required to attribute a number to each statement of support, but they may choose to do so.

MS authorities must accept the statements of support in any of the 23 official EU languages. However, the content of the proposed initiative indicated on the form can only be in one of the languages published in the ECI register for the initiative, and from the date of publication onwards.

MS authorities are not required to check the actual signatures, but only the coherence of the personal data provided.

Given that the verification exercise has legal implications, which could be contested before the courts, it is important that certain safeguards are in place, in particular when random sampling is the method used:

- **Sample size.** MS authorities should ensure that they choose a statistically valid random sample, i.e. a sample that is sufficiently large and, where appropriate, takes account of different levels of risk within the population. In order to do so, they should opt for a margin error and a confidence level that ensure that the results will be as accurate as possible. They should also assess whether there is a need to stratify the population prior to sampling, particularly if there is a suspicion that certain batches of statements of support are less reliable.
- **False errors.** Certain minor mistakes or changes should not invalidate the statements of support. This should be the case if, for example, there is no suspicion of fraud (e.g. the signatory has made a genuine error⁵ or omitted minor information⁶ which does not cast doubt on the authenticity of the statement of support or prevent the authorities from identifying him/her), or the signatory has changed residence since signing the initiative. It is possible to account for such mistakes or changes by considering that a certain percentage of invalidated statements of support are in fact valid. If verification is automated, it may be necessary to double-check the rejected statements of support manually in order to detect such false errors.
- **Benefit of the doubt.** When extrapolating the results of the sample to the whole population, the MS authorities should give the benefit of the doubt to the organisers by choosing the lower threshold in the confidence level (i.e. the interval obtained by adding and subtracting the margin of error from the result).

⁴ Evidently, organisers cannot be required to submit the statements of support forms in person to the competent MS authorities.

⁵ For example, the signatory indicated a number corresponding to an identification document that is different to the one mentioned (e.g. passport number instead of ID number).

⁶ For example, the street number or the postcode when the address is required.

In order to compensate for the probable outcome of the verification – namely that a certain number of statements of support will be invalidated –, organisers should be strongly encouraged to collect significantly more statements of support than the 1 million required.

If multiple statements of support from the same signatory are detected, one of them should be considered as valid, rather than all of them being invalidated.

The Regulation only requires the Member States to check the coherence of the data provided by signatories and not the signatory's will to support an initiative. This means that it should be sufficient for a citizen to fill in, on paper or electronically, a statement of support form, and that he or she should not be called upon to act a second time by, for example, replying to letters or emails. The introduction of an additional requirement of this sort as a means of verifying statements of support is not provided for in the Regulation and a signatory's failure to respond to such a letter or email could therefore not be a reason to invalidate his or her statement of support.