

# ECI Support Centre response to the European Ombudsman own inquiry into the functioning of the European citizens' initiative (ECI) OI/9/2013/TN

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*Position paper submitted on 31.03.2014*

[The ECI Support Centre](#) is a joint initiative of the European Citizen Action Service, Democracy International and the Initiative and Referendum Institute Europe. The ECI Support Centre is a not-for-profit service, whose purpose is to provide advice and help to ECI organisers before and during the process of launching and implementing an ECI.

This service aims at complementing the support which is available through other institutional channels (e.g. the European Commission contact point, the Economic and Social Committee's intermediary role etc.).

The ECI Support Centre provides up-to-date information, policy-analysis on the development of the ECI, and tailor-made advice to citizens on legal basis, campaigning and fundraising.

In this respect, the ECI Support Centre and its partners have gathered substantial knowledge on the issue<sup>1</sup> over the last 2 years that will be summarized and presented here. Therefore, we welcome the decision of the European Ombudsman to investigate this instrument further and to allow civil society and stakeholders as well as ECI organisers to participate in the inquiry.

This report will give an overview of the state of play and will discuss the ECI, before further elaborating on specific aspects of the different steps in the process.

## Overview and general remarks

The European Citizens' Initiative is the first transnational participatory tool of its kind in the world. The ECI gives citizens a European right of initiative, providing the opportunity for at least 1 million European citizens to ask the European Commission (EC) to legislate on a certain issue provided that it is within the framework of its competences. Hence, the result of the ECI is not a zero-sum game. Citizens now have the same right as the European Parliament and the European Council to ask the legislator to consider their request, although the EC has still the right of initiative in proposing legislation. Consequently, the

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<sup>1</sup> For more information, please consult the ECI Table (<http://www.citizenhouse.eu/images/stories/ECI-table.pdf>) and the ECI info-graphic ([https://s3.amazonaws.com/easel.ly/all\\_easels/313436/ECIMAP/image.jpg](https://s3.amazonaws.com/easel.ly/all_easels/313436/ECIMAP/image.jpg)).

ECI is not a direct democracy tool but a participatory democracy tool, known as the ‘right of initiative’, as it gives citizens the opportunity to place their request at the beginning of the policy-process. Considering that according to a Eurobarometer released in March 2013, two-thirds of Europeans say that their voice does not count in the EU (67%)<sup>2</sup>, the ECI has been hailed as an important mechanism for making citizens’ concerns heard at the EU level. In the current times of crisis both political and economic, **more than 6 million citizens across Europe have supported an ECI** and about 70% did so by signing online. This figure is in line with results of the Eurobarometer survey showing that the preferred way for citizens to influence decision-making is to sign petitions both online and offline, followed by expressing their views on social media and with local or regional representatives. However, most ECIs did not succeed in collecting the required 1 million signatures, thus showing that the instrument needs some improvements in both its technical aspects and in the way it is managed by the EU institutions and organisers.

As of today, 46 ECIs have been presented to the EC, of these 9 ECIs are open, 2 have submitted their initiative to the EC and the EC has presented its conclusions for one initiative. Furthermore, 7 are closed, 6 gathered insufficient support, 18 have been refused and 6 ECIs have been withdrawn.

The subject of most of the ECIs presented to the EC concerned social policy (i.e. *Unconditional Basic Income and Act 4 Growth*), followed by environmental policy (i.e. *My voice against nuclear power, Pour une gestion responsable des déchets, contre les incinérateurs and Suspension of the EU Climate & Energy Package*), and constitutional law matters (i.e. *Recommend singing the European Anthem in Esperanto and Enforcing self-determination Human Right in the EU*). The latter were all refused according to article 4 (2) (3) and 10 of the Regulation 211/2011. When considering the type of organisations behind each initiative, one can clearly see that most ECIs are supported by organisations that have a European coverage, but that do not necessarily have a presence in Brussels. An example of such an organisation is *European Alternatives*. Moreover, 6 initiatives (7 including *MOVEUROPE*, the latest ECI to be registered) were presented by informal groups of young people, generally from France.

## Main obstacles and issues encountered along the way

The first months of life of ECI have revealed the main shortcomings of the instrument in both the way it has been designed and also how it has been managed.

## Registration and the legal basis

The first major obstacle encountered by organisers is in defining the precise legal basis for the initiative. In order to register the initiative, the EC checks if the “ECI does not manifestly fall outside the scope of the Commission's power (outside EU competences) (art 4.2b), that it is not “manifestly abusive, frivolous or vexatious” (art 4.2c) or “manifestly contrary to the values of the EU” (e.g. against the Charter of Fundamental Rights) (art 4.2d). In the past months, it seems that the EC has adopted a rather restrictive

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<sup>2</sup> European Commission, Euro Barometer, “Europeans’ Engagement In Participatory Democracy”, 373, March 2013 [http://ec.europa.eu/public\\_opinion/flash/fl\\_373\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_373_en.pdf)

approach<sup>3</sup> to these checks, as 17 ECIs, 37% of the initiatives presented to date, have been refused with the EC stating that the initiatives manifestly fall outside the scope of the Commission's power. Even though the EC publishes the letters of refusal addressed to the organisers online, they are predominantly lacking detailed explanations. In this respect, the organisers of 3 refused ECIs have brought the issue to the European Court of Justice (ECJ), which will need to rule on the legal admissibility of the ECI and will shed light on the EC's discretion regarding the terms and conditions outlined in Article 4 of Reg. 211/2011<sup>4</sup>.

The ECI Support Centre proposes increasing the transparency of the decision-making process and to clarify the methods and procedures taken by the European Commission to register or refuse an ECI, in line with article 4 of the Regulation 211/2011.

## Translation

According to several ECI organizers, the official translation of ECI text on the EC website is very bureaucratic and not very user-friendly. Mr Drillon, from the Waste Management campaign confirmed that ECI organisers need to provide translations of their ECI themselves and the European Commission was solely approving or rejecting the proposal, which limited the visibility of their initiative.

In addition to this aspect, both the papers and online forms change according to the language used and the country in which the signatures are collected. Therefore, some ECI organisers mentioned that, in order to set up an EU-wide campaign, more than 40 different forms are needed in order to efficiently collect signatures.

The ECI Support Centre calls for support from the European institutions for the translation of the text of each and every ECI that has been registered.

## Funding opportunities

The lack of funding and external support for campaigns were also put forward as some of the main challenges for organisers. Estimations carried out demonstrated that successful campaigns usually spent both in terms of staff-costs and real expenses, 1 euro a signature. This figure takes into consideration staff, translation, office equipment, communication and outreach, and volunteers. The lack of a legal entity for the citizens' committee is also problematic when it comes to funding opportunities. It has been pointed out by several ECI organizers that by not having that status of a legal entity, the citizens' committee cannot even open a bank account to fundraise for its activities.

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<sup>3</sup> ECAS together with Freshfields Bruckhaus Deringer is carrying out a study on the legal basis of the ECIs presented to the European Commission in the last two years.

<sup>4</sup> Right to Lifelong Care: Leading a life of dignity and independence is a fundamental right!, Minority SafePack – one million signatures for diversity in Europe and ONE MILLION SIGNATURES FOR “A EUROPE OF SOLIDARITY” appealed to the ECJ. European court of Justice, “Action brought on 11 October 2012 - Anagnostakis v Commission (Case T-450/12), <http://curia.europa.eu/juris/document/document.jsf?text=&docid=132107&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=240242>

The ECI Support Centre calls for a reimbursement scheme to be established from the European Union's budget, which could be modeled on the reimbursement scheme already in existence in some Member states (i.e. Italy for the *Referendum Abrogativo*), upon reaching the threshold. In case the initiative collects more than 1 million signatures, organisers could be reimbursed a lump-sum per signature collected, after having submitted a full financial report on expenditures and income.

## Transparency

According to article 4(1) and 9 of the Regulation 211/2011, ECI organisers need to disclose support and funding for their campaign. However, the first two years of experience show that there is a lack of transparency in this regard. There is no real systematic and automatic disclosure and verification of the information provided by ECI organisers, which is an obstacle for the effective implementation of the ECI.

The ECI Support Centre proposes to establish a more rigorous system of disclosure of funding related to the ECI campaign, which would need to be publicly disclosed after the end of the collection of signatures. Furthermore, ECI organisers will also need to publicly disclose the number of signatures collected after the end of the campaign, even in cases where the ECI did not reach the threshold. Furthermore,

## Collection of signatures

While running campaigns, ECI organisers faced several barriers regarding the different national requirements for the collection of signatures<sup>5</sup>, restrictions linked to the online collection of signatures, and time constraints. For example, setting up the system for the online collection of signatures (OCS) takes between 1 and 3 months. As a temporary solution to the problems encountered by the first organisers when setting up an OCS, the EC provided its own server based in Luxembourg. Due to the delays in setting up the OCS, organisers are losing at least 2 to 3 months of campaign time as the timeframe for collecting signatures starts the same day of the registration by the EC of the ECI on its website, greatly reducing their chances of success.

The ECI Support Centre welcomes the EC's lead in providing a running and free-of-charge OCS and encourages the EC's to do so on a permanent basis. Another possible solution for the delays in the establishment of the OCS could be solved if organisers were entitled to decide the starting date to decide the official starting date of the campaign by introducing a 'buffer period' between the registration and the beginning of the collection of signatures. Finally, we call for an extension of the timeframe for the collection of signatures to 18-24 months, based on the experiences of the first ECIs.

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<sup>5</sup> Some ECI organizers affirmed that due to the different national requirements for signing an ECI, more than 40 different forms needed to be prepared to collect signatures across the EU.

## The requirements for signing an ECI

Iler and Török/Robert Stein, 11 million citizens are deprived of their right to support an ECI due to Annex III<sup>6</sup>, which is a combination of the passport principle and the residence principle. Some Member States, in agreement with the European Commission, modified Annex III on the 11<sup>th</sup> of July 2013<sup>7</sup> to simplify the procedure of signing an ECI and began allowing citizens living abroad to sign while also reducing the requirements needed to do so. This is a step forward and improves the accessibility of the instrument. However, as outlined by Simona Pronckuté, a member of the Fraternité2020 citizens' committee, "citizens were reluctant in giving their ID number when signing our initiative, [and] as a result, not many citizens did so". In line with this, most of the organisers complained about the accessibility and the user-friendliness of the online collection system for citizens. Even with the help of the European Commission's software, the organisers are faced with the burden of overly complex and technical documents and they bear the responsibility for the misuse of the tool.

The ECI Support Centre stresses the importance of allowing every European citizen who is entitled to vote for the European Parliament to also be able to sign an ECI, no matter where he or she lives. This measure needs to take into consideration two aspects: the first is related to the disenfranchisement of voting rights<sup>8</sup> and the second one is related to the 'residence requirement versus nationality requirement' issue when attempting to sign an ECI<sup>9</sup>. We call upon Member States and the European Commission to clarify Annex III of the Regulation and to simplify the requirements for signing an ECI by making uniform either the nationality or the country of residence principle across the Union. We also welcome the decision of some Member States to remove the ID requirement from their statement of support and we would encourage other States to follow their lead.

In addition to this, if third-country nationals and legal persons are entitled to political rights under Article 20(2) TEU, the ECI Support Centre believes that they should also be entitled to sign an ECI<sup>10</sup>.

## Data protection liability

An additional concern is related to the issue of data protection, which it is not clarified in Regulation 211/2011 and so as a result, it leaves organisers with full liability concerning the protection of data. This means that, as it now stands ECI organisers need to comply with the Data Protection Directive in the Member State in which they are established. This could be interpreted as the country of residence of the representative of the citizens committee, or the country in which the leading organiser is established.

<sup>6</sup> - , Verwaltung und Management 5/2010.

<sup>7</sup> ECI Support Centre, "ECI: what does the new act change?", July 2013, [http://www.citizenhouse.eu/images/stories/ECIs/Delegated\\_Act\\_211.2011.pdf](http://www.citizenhouse.eu/images/stories/ECIs/Delegated_Act_211.2011.pdf)

<sup>8</sup> Disenfranchisement: Commission acts to defend voting rights of EU citizens, 29/01/2014, European Commission website, [http://ec.europa.eu/justice/newsroom/citizen/news/140129\\_en.htm](http://ec.europa.eu/justice/newsroom/citizen/news/140129_en.htm)

<sup>9</sup> Alexander Prosser, Reg 211/2011: Proposal for Revision, "European Citizens' Initiatives (ECIs) A case for orientation or re-orientation?", Brussels, 19/03/2013  
[file:///C:/Documents%20and%20Settings/Elisa.ECAS/My%20Documents/Downloads/19%2003%202013%20-%20ECI%20Conf%20-%20Presentation%20Alexander%20Prosser%20\(1\).pdf](file:///C:/Documents%20and%20Settings/Elisa.ECAS/My%20Documents/Downloads/19%2003%202013%20-%20ECI%20Conf%20-%20Presentation%20Alexander%20Prosser%20(1).pdf)

<sup>10</sup> Michael Dougan 'What are we to make of the Citizens' Initiative?' 48 CMLR 1807,1835.

While the Commission's interpretation of the current law has brought some clarity into the field, it would be particularly beneficial for ECI organisers if not necessary new, clearer regulation is adopted along the lines of the Commission's proposal for a Data Protection Regulation. The issue of data protection is also strictly linked to the personal liability of the citizens' committee, which are not recognised as legal entities, therefore limiting the implementation of the ECI and preventing potential organisers from engaging with the ECI<sup>11</sup>.

The ECI Support Centre encourages the European Commission to further clarify the data protection liability of the organisers of ECIs and calls for a revision of the status of the citizens' committee.

### **Verification of statement of support and hearing in the European Parliament**

The data available at the national level shows that there are different rules for checking the statements of support, which is done either by random sampling or by complete checks of the statement of support collected<sup>12</sup>. This clearly creates confusion and it presents a burden for ECI organisers that must be avoided.

The ECI Support Centre encourages Member States to harmonise the way the verification of statements of support is carried out by choosing one of the systems (random sampling or by complete checks). Moreover, we welcome the recent adoption by the European Parliament of rules of procedure regarding ECI hearings<sup>13</sup>. However, we call the European Parliament to reimburse the travel costs and expenses of all the members of the citizens' committee and to provide an opportunity for experts to attend the hearing on behalf of the citizens' committee.

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<sup>11</sup> See ECI - Data Protection Briefing Note, ECAS, 2013 [http://www.ecas-citizens.eu/index.php?option=com\\_docman&task=doc\\_download&gid=1073&Itemid=](http://www.ecas-citizens.eu/index.php?option=com_docman&task=doc_download&gid=1073&Itemid=)

<sup>12</sup> See ECI MAP <http://goo.gl/maps/2Qclf>

<sup>13</sup> European Parliament, Rule 197a : Public hearings on citizens' initiatives, March 2014 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20140310+RULE-197-1+DOC+XML+V0//EN&navigationBar=YES>