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20 February 2023

Observations on the Draft Report on the implementation of the Regulations on the European citizens' initiative (2022/2206(INI))

1. Introduction

For more than ten years, citizens have the right to invite the European Commission 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. However, the balance after all these years is sobering. Only 97 ECIs have been registered and no more than eight ECIs were submitted to the European Commission. The Corona pandemic has demonstrated the fragility and vulnerability of the European Citizens' Initiative. Without the rapid intervention of the civil society and the institutions during this period, the picture might have been even bleaker. The reasons for the weakness of the ECI are manifold. In the following, we would like to address some of the most important and urgent aspects.

2. Digital Dimension of the European Citizens' Initiative

The experience of the last ten years has shown that it is indispensable for organisers of ECIs to campaign and collect statements of support online. Without digitalisation, it is hardly possible to raise awareness for an ECI in such a large territory as the European Union and to reach out to the citizens of the Union. In this context, individual online collection systems ("individual OCS") have proven to be a very valuable tool for organisers.¹ The figures show that individual OCS have a considerably higher success rate than the centralized OCS: Out of 97 registered ECI, 16 ECIs have opted for individual OCS. Five of these ECIs were able to gather more than one million statements of support.² In comparison, from 71 ECIs which have opted for the centralized OCS, only six ECIs could collect more than one million ECIs. Thus, while individual OCS have a success rate of approx. **30%**, the centralized OCS has only a success rate of **10%**.

Contrary to the centralized OCS provided by the European Commission, individual OCS enable organisers to plan and perform campaigns in a decentralized way taking into account the multilingual and multicultural context in the different Member States. Individual OCS can be embedded in the websites of the different civil society organisations supporting a specific ECI and can be easily adapted to their specific needs without great bureaucracy. Individual OCSs enable the organisers to retrace which campaigns in the different Member States are generating the most statement of support for a particular ECI and to make appropriate adjustments.

¹ The most relevant individual OCS is the OpenECI, which has been developed by IT specialists and democratic activists based on their previous experiences with the organisation of European citizens initiatives.

² This includes „Right2Water“, „Save Bees and Farmers“, „End the Cage Age“ and „Ban Glyphosate“. The ECI „Fur Free Europe“ is still ongoing, but has already reached more than 1.5 million statements of support. In addition, the ECI „Eat Original“ is still involved in judiciary proceedings at national level in several Member States regarding the question whether it has collected one million valid statements of support.

At the same time, individual OCS have proven to be a driver for innovation. This includes numerous features such as the possibility for citizens to support an ECI via smartphone and to inform their peers on social media about ongoing ECIs they have supported. Such innovations have progressively been taken over by the centralized OCS. Thus, the fact that it will not be possible for citizens to make use of individual OCS as of this year constitutes a considerable restriction of the digital dimension of the ECI and weaken incentives for the Commission to strengthen the digital dimension of the ECI.

In light of these considerations, we call upon the European Parliament to ensure individual OCS can continue to be used by civil society in the future and to remove Article 11 (7) of Regulation 2019/788, which stipulates that individual OCS can only be used by initiatives registered by 31 December 2022. As can be seen from the figures mentioned above, individual OCS considerably contribute to the success of proposed ECIs. The initiation of a “reflection process” as recommended in the draft would only unnecessarily delay the use of individual OCS.

3. Lack of Visibility of Proposed European Citizens’ Initiatives

From our experience, most European citizens’ initiative fail to gather one million signatures, not because citizens are not interested to support this initiative, but because citizens simply don’t know that this initiative exists. In addition, even after ten years, most citizens still do not know that they can participate in the democratic life of the Union via the European Citizens’ Initiative.

The question is how the ECI can gain more visibility. More efforts need to be done in this respect. We absolutely agree that improving political education is an important factor. However, we believe that measures in the area of political education can only bear fruit in the long term. It can therefore be only one element to improve awareness for the instrument of the European Citizens’ Initiative.

Beside individual OCS, which may have great impact to reach out to the citizens, we believe it may also be an option to interlink – in addition - the website of the EU on the ECI (<https://europa.eu/citizens-initiative/en>) with appropriate online platforms at national level on citizens’ participation.³ While the ECI website is an indispensable tool, we believe that it has only a limited reach outside the “Brussels bubble”. Ongoing ECIs could get much more attention and support if they would also be promoted on platforms at national level, that citizens know and trust. For that purpose, more interoperability is needed.

Eventually, another important point to improve the visibility of ECIs concerns the conditions under which civil society organizations can collect emails of supporters. Article 19 (8) of Regulation 2019/788 provides that all collected e-mails have to be deleted after a certain time. This obligation may limit the scope of action of civil society organisations, specially if they consider to launch a new European Citizens’ Initiative in the future. Mailing lists are obviously an important mean to mobilize citizens to support an ECI. Instead of establishing special rules on privacy policy, it would be totally sufficient to refer to the general rules laid down in the General Data Protection Regulation.

4. Verification and Certification Procedure at National Level

In the past, the verification and certification procedure has not received much attention from the institutions. However, after more than 10 years of practical experience, the current situation cannot be deemed satisfying from the point of view of organizers of ECIs. This is specially the case, when the success of a planned ECI depends on the outcome of the verification and certification procedure of one or several national authorities.

If it appears that the national authorities have wrongfully declared statements of support invalid, it should be ensured that such issues can be solved within the administrative proceedings, so that the organizers of planned ECIs are not forced to take legal action against the administrative decision in question, given that it may take many years before the court seized of the case. For instance, the organizers of the proposed ECI “Eat ORIGINAL! Unmask your food” took action against the certification decision issued by the competent authority in Italy. After more than three years, they are

³ See for instance https://europa.eu/citizens-initiative-forum/blog/getting-national-civic-platforms-engaged-may-boost-citizen-engagement-european-citizens_en.

still waiting for a decision of the court in the first instance. To avoid such a situation for the organisers of an ECI, it would be extremely helpful to clarify in the ECI Regulation that the organisers have an access to the file of the competent authority. As a matter of fact, this is the only available evidence to show that the relevant national authority has carried out the verification and certification procedure in accordance with the applicable national rules. Without access to the file, the organisers of an ECI are virtually unable to prove effectively wrongdoings of the national authorities. Full transparency is all the more important as the verification and certification procedure is part of a democratic procedure.

In this context, we would also like to point out the lack of transparency regarding the application rules in certain Member States. While most of the Member States have adopted legal acts for the implementation for the verification and certification procedure at national level,⁴ there is unclarity regarding the applicable rules in certain Member States as no information is publicly available on how the verification is carried out and under which conditions statements of support are deemed to be invalid. The European Commission is called upon to remedy this situation which creates a risk of arbitrariness for the organisers of ECIs.

5. Abusive Refusal to Register Proposed European Citizens' Initiatives

While we acknowledged and welcome that the number of ECIs whose registration has been refused has considerably decreased in recent years thanks to the case law of the European Court of Justice, we are still concerned that the European Commission abusively refuses to register politically sensitive ECIs. The most flagrant case in recent times concerned the ECI “Ensuring Common Commercial Policy conformity with EU Treaties and compliance with international law”. The subject matter of this ECI was to regulate commercial transactions with occupant’s entities or operating in occupied territories by withholding products from there from entering the EU market. Although the organizers explicitly referred to Article 207 TFEU as an appropriate legal basis in the Treaties for the implementation of the objectives of their ECI, the European Commission deliberately ignored this reference and refused the registration of this ECI by stating that Article 215 TFEU, to which the organiser did not refer in their request, is not an appropriate legal basis without addressing Article 207 TFEU at all.⁵ It is absolutely not plausible that the legal service of the European Commission unintentionally committed such a manifest violation of the basic principles of the obligation to state reasons. Although the General Court subsequently rejected the refusal decision of the European Commission in very clear terms,⁶ such manoeuvres of the European Commission still can weaken ECIs whose success normally depends on a political momentum. At the same time, such an approach of the Commission may also have a dissuasive effect on other civil society organisations who might also consider to submit politically controversial requests. The European Commission must treat alle ECIs impartially throughout the ECI proceedings. We thus appeal to the Parliament to take appropriate measures to prevent such an abusive behaviour in the future.

6. Composition of the ECI Expert Group

The European Commission has set up an expert group whose mandate is to exchange views and coordinate on the implementation of the ECI Regulation. The tasks of this expert group particularly include (i) assisting the Commission in relation to the implementation of existing Union legislation, programmes and policies, (ii) assisting the Commission in the preparation of delegated acts, (iii) assisting the Commission in the preparation of legislative proposals and policy initiatives, (iv) coordinating with Member State, exchange of views and (v) providing expertise to the Commission.

⁴ See the information available at https://europa.eu/citizens-initiative/how-it-works/implementation-national-level_en.

⁵ Commission Decision (EU) 2019/1567 of 4 September 2019 on the proposed citizens’ initiative entitled „Ensuring Common Commercial Policy conformity with EU Treaties and compliance with international law“, OJ L 241, 19.9.2019, p. 2.

⁶ Judgment of 12 May 2021, *Tom Moerenhout and others v European Commission*, T-789/19, EU:T:2021:260.

Despite the fact that the European citizens' initiative is an instrument which aims at strengthening participation of citizens in the democratic life of the Union, no representatives of civil society are included in this expert group. This is also contrary to the principles established by the European Ombudsman regarding the composition of Commission expert groups, which stipulates that the tasks of the group and the stakeholders affected by the matter should be taken into account.⁷ Only by involving civil society can it be ensured that citizens' needs will be adequately addressed.

We therefore request that the Commission shall adapt its mandate and extend the composition of the expert group to representatives of civil society. In this context, it should also be ensured that there are no financial links between the relevant organisations of civil society and the European Commission.

7. Follow-up on Successful European Citizens' initiatives

We welcome very much the recommendation that the Commission should establish a proper dialogue with organisers about their goals and the best possible means to achieve them, in order to assess citizens' input seriously and effectively. It is important that the Commission conducts this dialogue in an open, impartial and non-discriminatory manner.

Given that the ECI procedure is very burdensome and resource consuming and has only very limited legal impact, many citizens are discouraged from submitting their requests and concerns to the institutions of the European Union in this way. It is therefore necessary to strengthen the follow-up for ECIs that were able to gather more than one million statements of support and to meet all the other requirements laid down in the ECI Regulation. We invite the institutions to explore possible options, such as the combination of successful ECIs with European citizens' panels ("ECPs"). Although the European Court of Justice has stated that the objective of the ECI is to foster debates within the institutions, it appears that in practice, there is hardly any in-depth discussion of the concerns of an ECI. ECPs could contribute to considerably improve the deliberative dimension of the ECI and thus increase its impact.⁸ In the long term, however, it will be necessary to strengthen the primary legal basis in order to turn the ECI into a more effective participation instrument.

⁷ Recommendation of the European Ombudsman in her strategic inquiry OI/6/2014/NF concerning the composition of Commission expert groups.

⁸ For an in-depth analysis of the lacunae see the study „The Reform of the European Citizens' Initiative - Bringing the ECI Back on Track in 2022“ commissioned by MEP, Helmut Scholz, the rapporteur of the Report on Citizens' dialogues and Citizens' participation in the EU.