

Ms. Emily O'Reilly
European Ombudsman
1 Avenue du Président Robert Schuman CS 30403
67001 Strasbourg
France

6 September 2024

Subject: Complaint against the European Commission for failing to launch a public consultation on the EU Citizenship Report 2023

Dear Ms. O'Reilly,

I am writing in relation to the reply received on 7 August 2024 from the Secretary General of the Commission to our complaint about the lack of public consultation so far on the EU Citizenship Report 2023 published on 6 December 2023. The Commission services had argued in the letter from DG Justice (dated 3 April) that because the report came at the end of a Commission mandate, it took a reflective approach, "focussing on existing initiatives" rather than the future, and that therefore consultation was not appropriate. We challenged this argument in the appeal to the Secretary General.

Indeed, the argument should no longer apply since we are at the beginning of a new mandate. In her letter, the Secretary General herself stresses that citizens' interests lie at the heart of both the political guidelines of the next Commission and the strategic agenda of the European Council. We particularly welcome the statement that "the Commission remains committed to reinforcing EU citizenship". We are perplexed therefore as to why the Commission has not reacted more positively to our appeal.

Since the situation remains fundamentally the same as when we first raised this issue, even though the justification for not consulting no longer applies, we ask you to take up our complaint.

Your services have made it clear that we do not need to send again the file of correspondence attached to our original complaint, which from our perspective remains valid. In this letter, I would like to add some further considerations in light of the letter from the Secretary General:

1. Citizens should be able to rely on systematic public consultation on the Commission's triannual Citizenship Report.

Whilst there is common ground for accepting that the Commission is not legally obliged to carry out a public consultation on the Citizenship Report, we argue that there is an overwhelming case to do so including, but going beyond, just good administrative practice. We respectfully ask you to consider the following arguments:

- **The Treaties make the triannual report a significant document on which there should be a public consultation.**

Although the title “report” suggests an administrative document, this is no such thing and has a statutory character, required every three years under Article 25 TFEU. Where a report is based on the Treaties, public consultation should be the rule, even if it does not necessarily lead to legislation. In other areas, such as cohesion policy, there is certainly public consultation on reports required by the Treaties.

- **It is difficult to see how the Commission can report on the application of European rights without input from citizens.**

This was the argument put forward by your predecessor. In our comments for the 2023 Citizenship Report, we argued for consultation on 3 grounds: i) the unprecedented impact of the pandemic on European rights to freedom movement, ii) the 30th anniversary of EU Citizenship and iii) the recommendations by the Conference on the Future of Europe and the European Parliament. Moreover, the end of a mandate might be seen as the wrong time to consult from within an administration, but precisely the right time by outside interests.

- **There is a right to consultation because EU Citizenship is owned by EU citizens.**

There is no permanent consultative mechanism or single access point for EU mobile citizens to put forward their views to the Commission, even though the application of European rights has a direct impact on their interests and everyday life. EU citizens should be able to rely at least upon regular consultation every three years with the Citizenship Report. Consultation should also be considered as a right in this case to encourage a sense of ownership and responsibility for this unique transnational status, which is not just a top-down EU creation.

The Commission's minimum standards of consultation are not legally binding, but they do call for consistency and transparency. Although in response to the earlier complaint, your predecessor did receive assurances that there would be consultation on future triannual citizenship reports, consistency has yet to be achieved.

It is for this reason that we call for guidelines. We ask you to request from the Commission not just assurances but also a firm commitment to future consultations on a systematic

basis and that the Institution should consider possible improvements to the triannual report. In light of our argument that citizens because of their EU Citizenship status share responsibility for this report with the Commission and the other Institutions, we ask that they should be consulted about the proposed solution.

2. The claim that consultation is not necessary because the report makes no proposals for the future is questionable.

Your predecessor argued for consultation not only in cases where the report could lead to future proposals, but also in the case where it is predominately a stocktaking exercise: “The Ombudsman considers that it is very difficult to imagine that a report on the practical application of these rights (in Articles 18–24 TFEU) can usefully be written without collecting information from third-parties“. The EU Citizenship Report 2023 goes to great lengths just to describe developments, without adding any comments which might encourage discussion of future options. This is not though in itself a valid reason for deciding not to carry out a public consultation. There should be a public consultation on the stocktaking over the last three years, irrespective of whether proposals for the future are put forward.

If there is no public consultation, the result in any case is not just a descriptive, neutral stocktaking report but one which inevitably chooses some options over others:

- the exemption for the requirement to consult on the revision of the directive on consular protection was granted partly because of the very limited nature of the revision, whereas if there had been a public consultation, questions about more far-reaching reforms might have been asked;
- the publications of non-binding guidelines in response to case-law by the European Court rather than proposals for a revision of the directive on free movement and residence is similarly an option on which consultation of those directly affected – e.g. same sex couples – might have produced a different option– e.g. a demand for legislative reform;
- in response to calls by the European Parliament and the Conference on the Future of Europe for a Statute on European Citizenship bringing together European rights scattered across the Treaties, the Commission has published with its Citizenship Report a more narrowly focussed guide to the European rights for which DG Justice is responsible. This is an option, but one on which there should be consultation.

3. Such consultation as there has been of stakeholders does not make up for the lack of public consultation on the EU Citizenship Report 2023.

We ask you to investigate the opposing view that enough evidence was received to make public consultation unnecessary . For example, the Commission reached out to civil society and those who expressed views on the previous report before the publication of the 2023 report. In response, the ECIT Foundation made detailed suggestions for a public consultation as our main preoccupation in relation to the report. Information about the results of this appeal

to civil society to come forward should be provided by the Commission. As we have pointed out already, the separate call for evidence failed to produce a sufficiently EU-wide response with nearly all of few responses by citizens from just one Member State and even fewer from stakeholders.

It is true and very much welcome that the Commission publishes an opinion poll with the Citizenship Report 2023 and can use the evidence of its information, advice and problem-solving services. However, these sources, whilst providing overall data and evidence of barriers to the exercise of European rights, do not provide policy makers with enough comparable qualitative evidence of the experience and opinions of citizens. They are no substitute for giving the public a proper say.

Finally, we remain confident that as a result of your intervention, the issue of public consultation on the Citizenship Report under Article 25 TFEU will be resolved once and for all. Your role is particularly important in this case since the post of European Ombudsman was created at the same time as EU Citizenship of which it is a part – over 30 years ago by the Treaty of Maastricht. This gives you the possibility not just to react to our complaint but also to take an initiative for a more effective partnership between citizens and the EU Institutions for the development of EU Citizenship.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'AD Venables', with a long, sweeping flourish extending to the right.

Tony Venables
Founder of ECIT