



The European Citizens' Initiative: the experience of the first three years

European Implementation
Assessment

IN-DEPTH ANALYSIS

EPRS | European Parliamentary Research Service

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Ex-Post Impact Assessment Unit

PE 536.343 - April 2015 (revised version)

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In-depth Analysis

On 18 November 2014, the Constitutional Affairs (AFCO) Committee of the European Parliament decided to undertake an Implementation Report on the European Citizens' Initiative. Such reports are now routinely accompanied by European Implementation Assessments, drawn up by the Ex-Post Impact Assessment Unit of the Directorate for Impact Assessment and European Added Value, within the European Parliament's Directorate-General for Parliamentary Research Services.

The current paper is an updated version of the analysis which had been prepared for the AFCO/PETI Public Hearing on the implementation of the Regulation on the European Citizens' Initiative, on 26 February 2015, by the Ex-Post Impact Assessment Unit. It takes into account the outcome of this hearing, the conclusions of the European Ombudsman's inquiry, and the first report of the European Commission on the application of the ECI Regulation.

Abstract

The European Citizens' Initiative (ECI) has been in operation since April 2012. Observers have identified a number of shortcomings in its implementation, which impact negatively on the effectiveness and acceptance of this relatively new instrument of transnational participatory democracy. Against this background, stakeholders are calling for simplification and a substantial revision of the current ECI framework and its application, including its implementation in the EU Member States. On 31 March 2015, the Commission presented its first report on the application of the ECI Regulation. While it concluded that it considered the ECI to be fully implemented, it however listed a few areas for improvement. It is widely expected that this review, together with the European Ombudsman's recent recommendations, will prompt a revision of that regulation. This paper seeks to provide a systematic overview of the current weaknesses in the ECI process and puts forward concrete recommendations for a better functioning ECI.

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LANGUAGE VERSIONS

Original: EN

This document is available on the internet at:

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Manuscript completed in April 2015. Brussels © European Union, 2015.

PE 536.343

ISBN: 978-92-823-6604-2

DOI: 10.2861/814242

CAT: QA-02-15-143-EN-N

Executive summary

The European Citizens' Initiative (ECI) was introduced by the Lisbon Treaty as an innovative instrument for transnational participatory democracy. It aims to involve citizens in political agenda-setting at EU level, by providing them with an indirect form of the right of legislative initiative. Operational since April 2012, the track record of the European Citizens' Initiative appears mixed: while a high number of initiatives have been put forward, only a fraction complied with the conditions and requirements set out in the ECI Regulation. The registration criteria, and notably their rigid application by the Commission, proved to be a particular hurdle for many ECIs. So far three initiatives – of 51 proposed – have passed the 1 million signature threshold. Observers consider their follow-up by the Commission as a litmus test for the future acceptance of the ECI amongst citizens. The low percentage of successful initiatives raises the question of how well the instrument is functioning, and whether the objectives set out in the ECI Regulation have been achieved.

While broadly welcoming the ECI tool as a milestone towards reinforcing European citizenship, ECI organisers, NGOs, EU actors and scholars have voiced serious concerns about the implementation of the ECI by both the Commission and the Member States. They have identified a great number of shortcomings in the ECI process that impact negatively on the usability and hence success of the instrument; these are discussed in detail in this paper.

What was originally intended to be a simple and user-friendly tool for all EU citizens has turned out to be cumbersome and challenging in its use. Notably in respect of supporting an ECI, Member States' greatly varying rules led to an over-complex system of multiple sets of national requirements for personal data. These rules not only deter citizens from supporting individual initiatives, they also disenfranchise a few million citizens from their right to participate.

The European Parliament has been a strong supporter of the ECI since the very beginning of the debate on its establishment. The Parliament's Petitions Committee is closely monitoring the implementation of the ECI. Together with other stakeholders, it calls on the Commission and Member States to simplify the requirements to make the tool better work, and urges the Commission to reconsider its rigid approach with regard to the admissibility test for proposed ECIs, which has so far dismissed nearly 40 per cent of all proposed ECIs before they even had a chance to stimulate public debate.

Stakeholders have come up with concrete recommendations on how to adjust the instrument, to make it work more effectively. Three years on, on 31 March 2015, the Commission issued its first – and rather formalistic – report on the application of the ECI, where it considers the ECI to be fully implemented. Nonetheless, it acknowledges a number of challenges which require further improvement. It is widely expected that this review is the first step towards a revision of the ECI Regulation, in line with the Better Law-Making principle of seeking to 'evaluate first' before amendments are proposed to existing legislation.

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Introduction

The European Citizens' Initiative (ECI) was instituted by the Treaty of Lisbon as an innovative instrument of transnational participatory democracy. Aimed at reinforcing European citizenship, one of the main objectives of the ECI is to bring EU citizens closer to the EU, by providing them with an indirect right of legislative initiative. This is a non-binding agenda-setting tool, by which citizens can invite the Commission to propose a legal act, within the framework of the Commission's powers, provided they find – within a period of twelve months – the support of at least one million EU citizens coming from at least one quarter of all EU Member States. National minimum thresholds also apply per Member State making up this quarter of the total, which is established as the number of seats in the European Parliament for that Member State multiplied by 750. As a transnational instrument, the ECI is designed to stimulate Europe-wide public debates on issues of concern to EU citizens.

After nearly three years, the track record of the ECI Regulation as regards resort to this initiative is mixed: on the one hand, the ECI has shown great potential. With a total of 51 initiatives presented to the Commission, the take-up of the ECI as a policy tool by EU citizens appears high. Many of the proposed ECIs (see Annex) intended to promote European solidarity and identity, while a small fraction carried Euro-sceptic objectives. The initiatives related to a wide range of different policy areas, *inter alia* social policy, environment, animal welfare, education or constitutional affairs. Initial fears that trade unions or lobbyists would use and pervert the purpose of the ECI, which is designed for use by ordinary citizens, were not confirmed. Conversely, most ECIs were run by groups of citizens with little or no presence in Brussels. Consultant Janice Thomson believes this is because "powerful groups have access to much cheaper and easier ways to influence EU policy".¹

On the other hand, out of the 51 initiatives proposed to date, only three managed to exceed the minimum threshold of one million signatures. While many initiatives were either withdrawn by the organisers or failed to collect the necessary support, a large proportion – nearly 40 per cent – was declared legally inadmissible by the Commission at an early stage in the process, namely registration, which is a pre-condition for the collection of signatures. Stakeholders expressed their concerns about how strictly the Commission applies the admissibility check, and this appears to be supported by the fact that, to date, six ECI organisers have challenged the Commission's refusal before the European Court of Justice, corresponding to 30 per cent of all rejections. This suggests that the ECI instrument has considerable weaknesses or limitations in its current design.

¹ Carsten Berg and Janice Thomson (eds.) (2014), *An ECI that works! Learning from the first two years of the European Citizens' Initiative / The ECI Campaign*, p. 73.

The low percentage of successful initiatives raises the question of how well the ECI instrument is functioning, and whether the intended objectives set out in the Regulation have been achieved, notably:

- that every citizen has the right to participate in the democratic life of the Union by way of a European citizens' initiative;
- that the procedure affords citizens the possibility of directly approaching the Commission, inviting it to submit a proposal for a legal act for the purpose of implementing the Treaties;
- that procedures and conditions required for the citizens' initiative should be clear, simple, user-friendly and proportionate to its nature as to encourage participation by citizens.

However, even if the ECI was designed to be a citizen-friendly and simple pan-European instrument, it requires nonetheless strict procedures and conditions that guarantee its safe use and the protection of personal data throughout all stages of an ECI. This dilemma leads to a number of issues which ECI organisers perceived to be challenging and cumbersome hurdles in the process of running their initiatives. Against this background, stakeholders call for simplification and a substantial revision of the current ECI framework and its application, including its implementation in the EU Member States, in order to make this agenda-setting tool more effective and accessible to ordinary citizens.

In response to complaints, Emily O'Reilly, the European Ombudsman, opened an own-initiative enquiry² into the effective functioning of the ECI in December 2013. Based on a targeted stakeholder consultation, she identified a number of concrete problematic points, on which she asked the Commission to "take appropriate action". This inquiry was recently concluded, putting forward a set of recommendations for further improving the ECI tool.

Pursuant to Article 22 of the Regulation, by which the Commission is required to report every three years on the application of the Regulation, the first review was presented on 31 March 2015.³ This report takes the form of a formalistic stock-taking exercise, addressing only some of the challenges identified by stakeholders, but however committing itself to further improving the instrument. Nonetheless, it is widely expected that this review will prompt a revision of the ECI Regulation. These expectations are in particular nourished by Commission First Vice-President Frans Timmermans' recent commitment: "The ECI is one of the building blocks for strengthening trust in the European institutions and for promoting active participation of citizens in EU policy-making. We must look for innovative ways to encourage greater and more effective use of the tool. This is an important instrument, and we must make sure it lives up to its full potential."⁴

² European Ombudsman's own-initiative inquiry OI/9/2013/TN into the functioning of the European citizens' initiative (ECI).

³ European Commission: Report on the application of Regulation (EU) No 211/2011 on the Citizens' Initiative. COM(2015) 145. In the following quoted as Commission ECI review.

⁴ See RAPID press release, 31 March 2015.

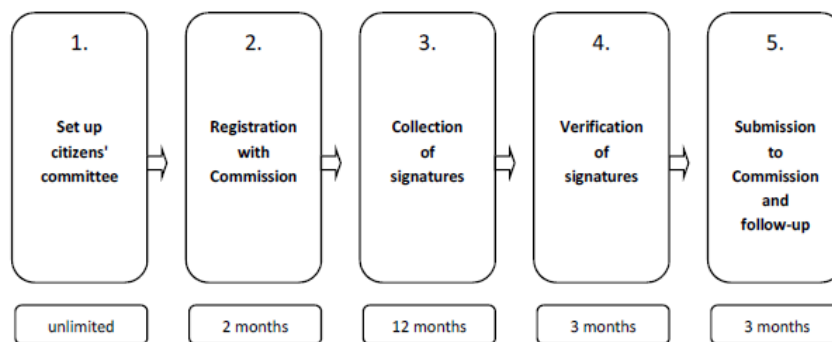
http://europa.eu/rapid/press-release_IP-15-4729_en.htm

1. The ECI's legal framework

The legal framework of the ECI is constituted by Treaty Article 11(4) TEU and Article 24 (1) TFEU in primary law, and in secondary law by Regulation 211/2011 on the European Citizens' Initiative (basic Regulation) as well as Commission Implementing Regulation 1179/2011 laying down the technical specifications for the online collection of statements of support.

The basic Regulation sets out the detailed requirements and conditions as well as the concrete procedures for the entire process, from the registering and running of an ECI up to its submission to the European Commission and the mandatory examination process (see Figure 1). It stipulates *inter alia* that prior to initiating the collection of statements of support from signatories, the organisers of an ECI are required to register their initiative with the Commission, providing information on the subject matter and the objectives of the proposed citizens' initiative. Any amendment to the basic Regulation, except its annexes, is subject to the ordinary legislative procedure.

Figure 1: The different steps of the ECI procedure with timeline



The Regulation includes seven technical annexes, which – as non-essential elements of a legal act – can be amended by means of Commission delegated acts.⁵

⁵ Some of these have been amended in the past: Annex I by Commission Delegated Regulations 268/2012 and 531/2014, to take the changes in the composition of the European Parliament into account, and by Council Regulation 517/2013 pursuant to Croatia's EU accession; Commission Delegated Regulation 887/2013 amended Annex II and III, the latter upon request from national authorities to change specific personal data requirements on the statement of support form. Moreover, on 31 March 2015, the Commission adopted a delegated regulation amending Annexes III (entailing simplifications for Latvia, Malta and Sweden as regards their personal data requirements), V (stipulating that ECI organisers provide the total number of collected signatures and the number of Member States where the threshold has been reached, before submitting the statements of support for verification, and requiring only one of their contact persons to sign the form instead of both) and VII. This delegated act is not yet in force.

Annexes to the ECI regulation

- I. Minimum number of signatories per Member State
- II. Required information for registering a proposed citizens' initiative
- III. Statement of support form for all Member States
- IV. Certificate for the conformity of an online collection system
- V. Form for the submission of statements of support to the Member States' competent authorities
- VI. Certificate by the national authority confirming the number of valid signatures
- VII. Form for the submission of an ECI to the Commission

As a Regulation, the ECI has, in principle, general application: it is binding in its entirety and directly applicable in all Member States. However, some significant provisions of the Regulation are not self-applicable and therefore require implementation measures at Member State level in accordance with national law and practice. These are notably provisions required in respect of the online collection (art. 6) and the verification of these statements of support by national authorities (art. 8).

The ECI Regulation was adopted on 15 December 2010 by the European Parliament by an overwhelming majority⁶, which illustrates the broad consensus for this instrument amongst its Members. The final act was signed on 16 February 2011. The Regulation became applicable on 1 April 2012. It is due for review every three years, by means of a Commission report on the application of the Regulation, to the European Parliament and the Council (art. 22).

2. Statistical data

By 1 April 2015 a total of 51 ECIs were proposed to the Commission.⁷ Strictly speaking, these different initiatives numbered in fact 47, since four had been withdrawn and were subsequently resubmitted to the Commission for registration, to restart the 12-month collection period.⁸

In 2012, citizens were keen to try out this brand new instrument: during the first nine months (April to December) of its existence as many as 23 ECIs were tabled, nine of which during April and May. This initial momentum was subsequently lost and the overall number of ECI applications has steadily declined ever since, to ten in the course of 2014. At the same time, the proportion of ECIs to which the Commission refused registration has grown from 30 per cent in 2012 to 50 per cent in 2014. The high rejection rate may also explain the current ECI fatigue. At present, only three ECIs are open for signature.⁹

⁶ 628 in favour, 15 against, 24 abstentions.

⁷ For a comprehensive list of all ECIs to date see Annex I.

⁸ These are: 1) *Single Communications Tariff Act*; 2) *Let me vote*; 3) *End Ecocide in Europe: A citizens' initiative to give the Earth rights*; and 4) *European Initiative for Media Pluralism*. Moreover, out of the 47 different ECIs, 2 had been rejected by the Commission and were subsequently resubmitted with modified objectives (*Unconditional basic income* and *Vite l'Europe sociale!/For a socially fair Europe!*).

⁹ These are: *An end to front companies in order to secure a fairer Europe* (opened in October 2014); *For a socially fair Europe! Encouraging a stronger cooperation between the Member States to fight poverty in Europe* (opened in December 2014); and *On the Wire* (opened in February 2015).

Proposed ECIs per year		Registered	Rejected
2012 (April - Dec)	23	16	7 (30 %)
2013	17	9	8 (47 %)
2014	10	5	5 (50 %)
2015 (by 1 April)	1	1	0 (0 %)
total	51	31	20 (39 %)

Source: European Commission

Out of the 31 successfully registered initiatives, 15 were closed having received insufficient support, with the span of collected signatures ranging between just a few hundred and several hundred thousand.¹⁰ Ten ECIs were withdrawn by their organisers before the end of the 12-month timespan for collecting signatures. From a *procedural* point of view, three ECIs have been successful.¹¹ However *politically* the Commission's follow-up in the first two cases did not meet the organisers' expectations (see chapter 4). The initiators of one successful ECI even filed a lawsuit before the European Court of Justice, requesting an annulment of the Commission's official response (i.e. the communication following the ECI submission).¹²

3. Issues of concern in the various stages of the ECI process

This chapter examines the main flaws and shortcomings throughout the ECI process, as identified by ECI organisers, NGOs, academia and other stakeholders, including EU actors.

3.1. General issues

3.1.1. Public awareness of the ECI instrument

ECI organisers point out that the general public's awareness of the ECI is low. During their campaigns, many organisers were confronted with a lack of knowledge among citizens, but also among media professionals, about the instrument. In the feedback reports and analyses, NGOs and ECI practitioners consistently call on EU institutions and the media to better promote the ECI as a tool for a stronger direct involvement of citizens. They recommend a communications and awareness campaign in all EU Member States (involving EU offices and representations as well as national authorities) to spread the concept of the ECI, and furthermore to provide information about individual ongoing ECIs through press releases. Concrete suggestions include TV spots, web commercials or

¹⁰ For ECIs that remain below the 1-million threshold no official figures are available, since the collected statements of support are not subject to verification.

¹¹ These are: *Water and sanitation are a human right! Water is a public good, not a commodity!*, an initiative mostly referred to as *Right2Water* (after its website); *One of us*; and *Stop vivisection*. All three date from the early days of the ECI, they were registered between May and June 2012.

¹² Case T-561/14 – *One of Us* and Others v. European Parliament and others (action brought on 25 July 2014).

explanatory leaflets sent to every EU household to inform citizens about their new bottom-up right to influence the EU agenda.

A recent *Eurobarometer* survey confirms this high degree of ignorance about the ECI.¹³ Furthermore, the European Ombudsman picked up on this issue in her inquiry, asking the Commission for concrete measures to raise awareness of the ECI.

3.1.2. Information and advice for ECI organisers

The Commission is the main contact point for ECI organisers if they need advice. They generally acknowledge the Commission's efforts and tailored advice, including its designated ECI website, which guides potential initiators through the ECI process and provides information about all past and ongoing ECIs in a transparent manner. The Commission recently issued a revised version of its *Guide to the European Citizens Initiative*, and furthermore also offers information and advice via its Europe Direct Contact Centre, which acts as the "point of contact" set out in art. 4 of the ECI Regulation.

The European Economic and Social Committee (EESC), which considers its role as a link between the EU institutions and civil society organisations well suited for the ECI, also provides information and support. For example, it organises – since 2012 – an annual 'ECI Day' to facilitate networking amongst ECI campaigners and other stakeholders. The EESC is also pro-active in offering support infrastructure for free, such as meeting rooms. Moreover, it invites ECI organisers to present their initiatives at the Committee's plenary sessions, and – in partnership with NGO ECAS – maintains a bibliographic database specifically on the ECI.

Apart from the EU institutions, civil society organisations, which are also active in the field, maintain a support structure for campaigners. Examples include *The ECI Campaign* or *The ECI Support Centre*, the latter being a joint initiative of the *European Citizen Action Service (ECAS)*, *Democracy International* and the think-tank *Initiative and Referendum Institute Europe*.

However, ECI activists claim that more support is needed in terms of launching and running an initiative, if the ECI is to remain an instrument for citizens as opposed to organisations and interest groups. Activists often struggle with drafting their ECI proposal, identifying a legal basis for it, respecting the strict IT requirements or national data protection rules, to cite a few examples. The consultancy *Milieu Ltd.*, to whom the European Parliament commissioned the 2014 study on the implementation of the ECI, proposes in this regard to establish a 'Citizen's Initiative Centre', designed as a one-stop-shop for any kind of ECI-related enquiry.

3.1.3. Translation and funding

In order to ensure that outreach activities are successful in cross-border campaigning, providing information in national languages is a pre-condition. In this context, Europe's multilingualism causes a practical challenge for ECI organisers. Already in 2010, the

¹³ The promise of the EU: aggregate report, September 2014, *Eurobarometer* qualitative study, p. 52.

Commission's public consultation following the Green Paper highlighted a call by several respondents that translations of ECI texts into all official languages be provided by an EU body.¹⁴ Under the current Regulation, the translation of the ECI proposal is the sole responsibility of the organisers (Art. 4(1)). Nonetheless, the Commission checks every linguistic version for its consistency with the original version. Organisers argued that instead of just verifying the translations *ex-post*, the Commission should provide them. This gap has recently been filled by the EESC, whose linguistic service now offers translations of ECI texts into other EU languages (up to 800 characters, which corresponds to the title, subject-matter and objectives of the ECI) and hence helps ensuring ECI campaigns are multilingual.

In general, running an ECI is a costly process. It entails staff costs (unless the ECI is entirely run by volunteers), IT-infrastructure (e.g. website), printing, postage, translation, and telecommunication costs, and in some cases, costs linked to advice from lawyers and media/communications and IT professionals. Typically, no substantial financial resources are available in the case of grassroots-initiated ECIs, unless the campaign is preceded by or conducted at the same time as a fundraising exercise. Accordingly, stakeholders are calling for a centralised basic EU funding pot for ECIs.

3.1.4. Conflict of interest at the Commission?

When launching an ECI, various organisers recognised the Commission's support and advice as very valuable and effective. However, some stakeholders see a conflict of interest in the Commission's double role in the ECI process, as it acts as an information support service and is in parallel responsible for the decision on the registration of an ECI and the follow-up of initiatives. The Commission acknowledges that, as the addressee of an ECI "it is not in a position to engage in a dialogue with organisers" to help them phrase their initiative – as the Ombudsman had suggested –¹⁵ "or discuss any modification of the content of the proposed initiative at that stage".

3.2. Forming a Citizens' committee (Stage 1)

Before an ECI can be launched, an organising committee (referred to as 'citizens' committee') first needs to be set up, and composed by at least seven EU citizens residing in different Member States¹⁶. This committee prepares and runs the ECI, and it also acts as a contact point for the Commission. Pursuant to Article 2(3) of the Regulation, the Members of a citizens' committee must be *natural* persons, although organisations are entitled to promote or sponsor an ECI, if they do so with full transparency. MEPs may be part of a citizens' committee, but they are not taken into account for reaching the threshold of seven.

¹⁴ SEC(2010) 370, p. 4.

¹⁵ European Ombudsman's own-initiative inquiry (OI/9/2013/TN). Letter to the Commission, 15 July 2014.

<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/54609/html.bookmark>

¹⁶ They do not necessarily need to be of different nationality.

3.2.1. Legal status and liability

Stakeholders argue that the current lack of a legal status for the citizens' committee impacts negatively on the practical aspects of running an ECI, such as fundraising or opening a bank account. More importantly, the committee's individual members can be held *personally* liable for "any damage they cause in the organisation" of an ECI (Art. 13), related to breach of data protection rules or other.

The ECI Regulation stipulates that organisers must comply with the EU Directive on data protection¹⁷ and they are responsible for processing personal data (Art. 12). This is an issue of concern for ECI organisers, as ECIs usually operate with numerous volunteers throughout the European Union, whose potential wrongdoing (e.g. when handling and processing personal data) is possibly outside the control of the members of the citizens' committee. Stakeholders fear that the risks linked to personal liability may deter potential ECI organisers from engaging in the process.

In this context the organiser of the ECI *End Ecocide in Europe* suggests to establish an EU-wide NGO status.¹⁸ The above-mentioned study commissioned by the European Parliament acknowledges the calls for a legal entity, but advocates that it should be *optional*, since establishing a legal status may involve considerable red tape. It moreover proposes to mitigate the risks for members of citizens' committees in a number of concrete measures, including simplified rules on personal data gathered, a clear definition of the data protection obligations, and a civil liability insurance.¹⁹

3.3. Registration (Stage 2)

3.3.1. Legal admissibility

Prior to collecting support among EU citizens, ECI organisers are required to register their initiative with the Commission through an online register, whereby the Commission has two months to assess the legal admissibility of the proposed initiative. As set out in Article 4(2), a favourable decision of this *ex-ante* check is subject to one formal and three substantive conditions:

- the citizens' committee must have been formed;
- the proposed ECI must not "manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties";
- it must not be "manifestly abusive, frivolous or vexatious";
- it must not be "manifestly contrary to the values of the Union as set out in Article 2 TEU".

¹⁷ 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.

¹⁸ An ECI that works!, p. 39.

¹⁹ European Citizens' Initiative – first lessons of implementation: study / European Parliament, Policy Department, 2014, p 16.

Furthermore, Annex II to the Regulation sets out the required elements for registration: in addition to the organisers' contact details, they need to indicate the title, subject-matter and objectives of the proposed ECI, as well as the legal basis (Treaty provision) they consider relevant. Providing further details or even a draft legal act is permitted, though not mandatory.

Placing an admissibility test at this early stage in the ECI process is driven by the logic that campaigning is costly and resource-intensive. This is meant to avoid situations whereby the Commission rejects an ECI *after* significant efforts have been invested into it and *after* it has gained the support of at least one million citizens. Such late rejection would lead to considerable frustration, and it could also have substantial negative repercussions for the public image of EU democracy. However, in cases of refusal, a side effect of the current early registration mechanism is to undermine a cross-border public debate on the issue at stake before it even had a chance to kick off. Having led to an effective drop-out rate of roughly 40 per cent, the Commission's legal admissibility check proved to be a real obstacle to the success of the ECI as a civic agenda-setting instrument. Up until now, all 20 dismissed initiatives have been refused registration on the grounds of "falling manifestly outside" the remit of the Commission's powers.

The fact that the Regulation fails to provide a definition of the concrete meaning of "manifestly falling outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties", leaves some discretion to the Commission in its interpretation and application of this provision. Case-by-case examinations of the justifications the Commission provides in its refusal letters to ECI organisers have been carried out.²⁰ These Commission decisions are disclosed on the Commission's ECI website for transparency reasons. The examinations suggest that the Commission applies a rather restrictive interpretation, which appears broadly guided by the system of Commission competences set out in the Treaties.

In fact the Commission's competence to propose a legal act depends on the type of competence conferred on the EU in each specific policy area – it can be exclusive or shared competence, competence to take action of support only, or to coordinate Member States' actions, or no competence at all. With regard to the system of competences, the policy area an ECI relates to is key, as it will impact on whether the Commission will register a proposed ECI or not.

The above-mentioned requirements can put a significant strain on ECI organisers if they have no legal background. To mitigate the risk of failure at the registration stage, the Commission offers non-binding advice (including legal advice) to ECI organisers via its Europe Direct Contact Centre, prior to registration. Moreover, it provides some guidance on its ECI website by listing policy areas in which the EU is competent to act, plus the relevant Treaty provisions.²¹ Yet organisers and other stakeholders²² claim that without professional legal advice it is difficult for citizens to identify a valid legal basis and to

²⁰ See: The European Citizens' Initiative registration: falling at the first hurdle? Analysis of the registration requirements and the "subject matters" of the rejected ECIs. ECAS, December 2014; and James Organ: Reform ECI registration and expand public debate: reconsidering legal admissibility, In: An ECI that works!, p. 97-100.

²¹ See <http://ec.europa.eu/citizens-initiative/public/competences>.

²² See e.g., The European Citizens' Initiative registration: falling at the first hurdle?, p. 11.

phrase their ECI in a way that it passes the registration hurdle. For instance the organiser of an education-related ECI (*High Quality European Education for All*) admits that she would have preferred to invite the Commission to propose a concrete legislative act or policy change, but in order to address her issue of concern within the Commission's competences, she was compelled to limit the scope of her ECI to "start[ing] a discussion at EU level and set[ting] up a multi-stakeholder platform on European education".²³ This wording made her initiative much less suited for campaigning, as the core message was harder to sell.

The case of the ***ECI Unconditional Basic Income (UBI)*** illustrates the challenges citizens are facing when tabling an ECI.

The initial proposal, a call for an Unconditional Basic Income, did not pass the admissibility test, as falling "manifestly outside the framework of the Commission's powers".²⁴ The organisers decided subsequently on making a second attempt, rephrasing the ECI's wording and narrowing down its scope on the basis of the explanations given by the Commission in its refusal letter. As a result, the Commission approved the second ECI. It no longer requested the introduction of an UBI by a legal act – for which the EU has no competence –, but limited itself to calling for "exploring a pathway towards emancipatory welfare conditions in the EU". Eventually this ECI collected almost 300,000 signatures EU-wide, and even though this score was far below the one million signatures threshold, the organisers expressed satisfaction that the ECI had been successful in stimulating the political discussion on the UBI.²⁵

ECI organisers generally describe the Commission as supportive and helpful throughout the ECI process. Nonetheless, at the registration stage, the Commission takes a rather legalistic and passive approach. James Organ, an expert in the field of direct democracy, maintains that the Commission could take a more facilitative stance to the registration process and assist organisers in identifying a legal basis and in framing their proposal.²⁶ He argues that the admissibility test at the beginning of the ECI process puts the legal burden on the organisers, whereas if applied at the end it would more likely fall on the Commission.²⁷

The Commission's decisions on registration or refusal of individual ECIs have in some cases prompted doubts about their consistency.²⁸ In its recent analysis of the registration requirements, the NGO *ECAS* blames the Commission of having, at least in some cases, "erred in its decision to refuse registration".²⁹ The European Ombudsman calls on the

²³ An ECI that works!, p. 55.

²⁴ Commission's refusal letter at <http://ec.europa.eu/citizens-initiative/public/documents/559>.

²⁵ An ECI that works!, p 44.

²⁶ James Organ (2014). Decommissioning direct democracy? A critical analysis of Commission decision-making on the legal admissibility of European Citizens Initiative proposals. In *European Constitutional Law Review*, 10, p. 434.

²⁷ Organ, p. 435.

²⁸ See e.g., Organ, p. 432-435, a comparison of the ECI cases *No legalised prostitution, End Ecocide in Europe* and the anti-incinerator ECI *Pour une gestion responsable des déchets, contre les incinérateurs*.

²⁹ E.g., The European Citizens' Initiative registration: falling at the first hurdle?, p. 17.

Commission in this context to "provide reasoning for rejecting ECIs that is more robust, consistent and comprehensible to the citizen".³⁰

The European Court of Justice will help to clarify whether the Commission applies the admissibility check too rigidly. So far, organisers of six ECIs have appealed against the Commission's decision to refuse them registration, seeking annulment before the Court of Justice. All cases are pending:

- *Anagnostakis v. Commission* – Case T-450/12
One Million Signatures for "A Europe of Solidarity"; date of application: 11/10/2012
- *Izsák and Dabis v. Commission* – Case T-529/13
Cohesion policy for the equality of the regions and sustainability of the regional cultures; date of application: 27/09/2013
- *Minority SafePack – one million signatures for diversity in Europe and Others v. Commission* – Case T-646/13; date of application: 25/11/2013
- *Costantini and Others v. Commission* – Case T-44/14
Right to Lifelong Care: Leading a life in dignity and independence is a fundamental right!; date of application: 15/01/2014
- *HB and Others v. Commission* – Case T-361/14
Ethics for animals and kids; date of application: 23/07/2014
- *Efler and Others v. Commission* – Case T-754/14
STOP TTIP; date of application: 10/11/2014

3.3.2. The specific case of proposals entailing Treaty amendments

The question of whether the scope of an ECI could entail a Treaty amendment was already the subject of a debate among scholars before the ECI entered into force.³¹ The Commission has so far applied a rigid interpretation of Article 4(2), letter b, of the ECI Regulation of "manifestly fall[ing] outside the framework of the Commission's powers" and notably on the significance of "**for the purpose of implementing the Treaties**". A number of ECI cases were refused registration because their implementation would have required a Treaty amendment. The Commission's stance on this is unambiguous, as evidenced in its FAQs on the ECI.³² In an answer to a parliamentary written question from 2012, then Commission Vice-President Maroš Šefčovič confirmed this standpoint: "Indeed, the Commission cannot register an ECI which would propose amendments to the EU treaties. This is a direct consequence of the wording of Article 11(4) of TUE, which provides that a proposed ECI should fit (...) within the framework of [the Commission's]

³⁰ Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN concerning the European Commission. 4 March 2015, guideline 2.

³¹ See Michael Dougan: What are we to make of the Citizens' Initiative?, In *Common Market Law Review*, 2011, 48: 1807-1848, here p. 1835-1837;

Dorota Szeligowska and Elitsa Mincheva: The European Citizens' Initiative – Empowering European citizens within the institutional triangle: a political and legal analysis, In: Luis Boza García et al. (eds.), *The European Citizens' Initiative - a first assessment*, 2012, Bruges Political Research Papers, 24: 52-81, here p. 69.

With some reservations, Dougan argues in favour, whereas Szeligowska/Mincheva tend to exclude Treaty amendments through ECIs, as the focus of the ECI is on implementing the Treaties.

³² See <http://ec.europa.eu/citizens-initiative/public/faq#q3>

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."³³

The ECI Campaign NGO counters³⁴ that the Commission's competence to propose Treaty amendments pursuant to article 48(2) TEU could also be extended to ECIs as a legal basis. The Commission explicitly objects to this view, as evidenced in its refusal letter³⁵ of January 2013 relating to the ECI on *Enforcing selfdetermination Human Right in the EU*: "In particular, amending the Treaties, as implicitly suggested by your reference to Article 48(2) TEU (ordinary revision procedure), falls outside the scope of the citizens' initiative."

However, the Commission set a precedent against its own principles by granting registration to the ECI on *Let me vote*, which invites the Commission to propose that EU citizens can vote in all elections in the Member State they reside, which would also entail a Treaty change. In this case, the ECI put forward Article 25 TFEU as a legal basis.³⁶

3.4. Collection of signatures (Stage 3)

3.4.1. Statements of support: a confusing set of national rules and personal data requirements

The ECI is designed as a transnational tool, requiring the EU-wide support of EU citizens. Many activists described the collection of signatures in the different EU Member States as a particularly challenging experience, since the personal data requirements for signatories differ largely from Member State to Member State. The Commission's initial legislative proposal³⁷ had set out *uniform* personal data requirements for the statements of support. However, during the negotiations in the Council, Member States could not agree on one EU-wide form, and according to their national law and practices, they came up with a wide range of requirements – some of which included **personal ID numbers**, and others not, some using nationality, and others residence as the decisive criterion. The complexity of Annex III of the Regulation, determining the data requirements on a case-by-case basis, i.e. according to Member State, is the result of these national variations.

Furthermore, the forms used for statements of support must comply with the models set out in Annex III of the Regulation, according to the Member States. Examples from across the spectrum highlight significant differences: Finland has the simplest form of all EU countries, asking signatories only to provide their name, country of permanent residence, nationality and date of birth. Conversely, Italy's requirements comprise name, place of residence (with full address details), date and place of birth, nationality, and personal ID number, including the issuing authority.

³³ Answer to written question E-007589/2012.

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2012-007589&language=EN>

³⁴ The ECI Campaign's position on Treaty amendments.

<http://www.citizens-initiative.eu/position-on-treaty-amendments/>

³⁵ Commission's refusal letter at <http://ec.europa.eu/citizens-initiative/public/documents/1236>.

³⁶ For an in-depth discussion of this case see Organ, p. 436-437.

³⁷ COM(2010) 0119.

Many ECI activists are concerned that excessive and unnecessarily burdensome personal data requirements have a deterring effect on potential signatories, as they raise privacy concerns. They report about citizens' reluctance to provide their ID numbers for the purpose of an ECI, a problem which has been exacerbated in the wake of the *Snowdon* data leaks case. In that context, the initiators of the ECI *Right2Water* confirmed the ID card requirement as a major obstacle for their campaigning in France, Italy, Austria, the Czech Republic, Greece, Hungary, Romania and Bulgaria – all countries that provide for mandatory detailed personal identification. They argue that without this legal requirement, they could have doubled signatory support in these countries.³⁸

At present 18 Member States require the provision of a personal ID number (Austria, Bulgaria, Croatia, Cyprus, Czech Republic, France, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovenia, Spain and Sweden), despite the fact that the European Data Protection Supervisor (EDPS) had advised against it. He had stated: "Differences exist between the Member States as to how the use of such unique identification numbers, where they exist, is regulated. In any event, the EDPS does not see the added value of the personal identification for the purpose of verifying the authenticity of the statements of support. The other requested information can already be considered as sufficient for reaching that purpose."³⁹

Moreover, the complexity of the data requirements leads to a higher rate of invalid statements of support, as signatories often fail to complete all essential fields. And it increases the liability risk for organisers in case of damages. This may discourage citizens from getting involved in a citizens' committee. However, from a Member State's point of view, too loose data requirements render the verification process by national authorities difficult, if not impossible, and open doors to fraud.

Another particular worrying effect of the complex national personal data requirements is the exclusion of specific groups of EU citizens living abroad, which runs clearly counter the original objective of the ECI Regulation "that every citizen has the right to participate in the democratic life of the Union by way of a European citizens' initiative" (Recital 1). This problem, also known as **disenfranchisement**, is due to the fact that some countries use nationality and others use residence as a determining factor of who can sign, which in specific cases of citizens living abroad leaves a gap. Notably the national British and Irish rules disenfranchise some of their citizens living abroad, either in another EU Member State that does not allow for foreign residents to sign (notably Bulgaria, the Czech Republic, France, Austria and Portugal), or in a third country. This problem had also affected Dutch nationals residing abroad, until its government requested amendments to Annex III of the Regulation in October 2013.

The issue of disenfranchisement is of particular relevance for ECIs whose core target group are expatriates, e.g. *Let me vote* (which called for the EU citizens' right to vote in all political elections in their country of residence) or *High quality education for all* (which aimed at a higher awareness of the need for a multi-lingual and multi-cultural European

³⁸ An ECI that works!, p. 21.

Nonetheless, despite the complex data requirements, including an ID number, the ECIs *One of us* and *Stop vivisection* collected a particularly high number of valid signatures in Italy.

³⁹ Opinion of the European Data Protection Supervisor on the proposal for a Regulation of the European Parliament and of the Council on the citizens' initiative, point 10. OJ 2010/C 323/01.

schooling model, including the European Schools and the European Baccalaureate). The Commission, aware of the problem, has stressed that its original intention was to create one uniform set of rules for the entire EU, and has called on the Member States concerned to amend their rules.

Strict national regulations also exclude other groups of citizens from taking part, e.g. the homeless in countries where a detailed address is required on the statement of support,⁴⁰ or EU citizens without a (valid) passport or identity card in countries that require the provision of a personal ID number to sign an ECI, but which do not foresee a general duty to provide evidence of identity, e.g. Austria.⁴¹

To sum up, the current bureaucratic and confusing set of 28 different national personal data requirements, pursuant to the Regulation's Annex III, is perceived as highly unsatisfactory and in some cases even excludes EU citizens living abroad from exercising their right. If one of the objectives of the Regulation was "clear, simple, user-friendly and proportionate" procedures and conditions, to "encourage participation by citizens" (Recital 2), this objective cannot be achieved under the current set of rules, which are to a large extent in the hands of Member States. This is why the Commission⁴², the European Parliament, the European Ombudsman, ECI activists and researchers jointly call for a harmonisation and simplification of statement of support forms. Though, fully resolving this issue requires a revision of the ECI Regulation, as the Ombudsman recently recalled.⁴³ Such reform should effectively empower all EU citizens, regardless where they live, to support an ECI.

During the public hearing on the ECI in the European Parliament, Members suggested using an EU digital signature as a possible simplification for ECI signatories. The Commission confirmed the so-called 'advanced electronic signature', as set out in art. 26 of Regulation 910/2014, as a viable option, though it has not been used to date.⁴⁴

3.4.2. Minimum age to support an ECI

The minimum age for signing an ECI has been defined as "the age to be entitled to vote in elections to the European Parliament." (Art. 3(1)) An EU-wide age limit of 18 is applied, with the notable exception of Austria, where the minimum age for active voting is 16. The current ECI system, operating with two different age limits, is hence perceived as confusing (e.g., when a young Austrian signs an ECI abroad).

⁴⁰ See parliamentary question E-005673-14 (8 July 2014) by MEP Sylvie Guillaume to Commission.

⁴¹ Austria requires either the number of the passport or the identity card (*Personalausweis*), which excludes Austrian citizens from the ECI tool if they do not possess either document (or if this ID card has expired). Moreover, as there is no general duty to provide evidence of identity, even if most citizens do possess a passport or identity card, they usually do not have either of them with them, which prevents them from spontaneous signing an ECI on paper in a street campaign. It is common practice that citizens carry only their driving license with them.

⁴² See e.g. Commission ECI review, p. 14, as most recent example.

⁴³ Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN concerning the European Commission. 4 March 2015, point 34 and guideline 10.

⁴⁴ Regulation 910/2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. See Commission ECI review, p. 7.

There are calls for uniformly lowering the age limit to 16, to encourage the civic participation of the younger generation in EU affairs. This argument was already brought forward in 2010 by the European Parliament Committee on Petitions in its Opinion on the report by the lead committee⁴⁵, and subsequently backed by scholar Victor Cuesta-López.⁴⁶ Most recently German MEP Sylvia-Yvonne Kaufmann also advocated for this change, arguing that a uniform EU-wide minimum age of 16 in the context of the ECI would send a strong signal of trust towards young people.⁴⁷ This argument is supported by NGOs *ECAS*⁴⁸ and *The ECI Campaign*⁴⁹. The latter recalls in this context that many ECIs have touched on topics of direct concern to young people, such as jobs, education or the environment. It believes that engaging young people in EU affairs while they are still in high school helps foster a European identity.

3.4.3. Online versus paper collection of signatures

The ECI Regulation provides for both online and paper collection of signatures. Carsten Berg, coordinator of *The ECI Campaign*, statistically analysed the application of the ECIs during the first two years of application.⁵⁰ He concluded that while the ECI was often perceived as an e-participation tool, empirical data highlight that paper forms played an important role in some campaigns. According to his findings, an average of 37% of all signatures was collected on paper.

ECI	% of signatures on paper	Total of signatures collected (before verification)
<i>One of us</i>	65%	1.9 Mio.
<i>Right2Water</i>	18%	1.8 Mio.
<i>Stop Vivisection</i>	44%	1.3 Mio.

Source: Berg/Głogowski

Activists claim that the paper signature collection forms are not user-friendly, since too many data inputs are requested. They argue that the paper collection would greatly benefit from a reduction and simplification of the personal data requirements. Challenges faced include issues of legibility or missing data on forms (e.g. ID numbers), both of which may result in a higher dropout rate than online signatures.⁵¹ According to a

⁴⁵ Report on the proposal for a regulation of the European Parliament and of the Council on the European Citizens' Initiative, rapporteurs Zita Gurmai and Alain Lamassoure, A7-0350/2010.

⁴⁶ Victor Cuesta-López: A preliminary approach to the Regulation on European Citizens' Initiative from comparative constitutional law, In: Luis Bouza García et al. (eds.), *The European Citizens' Initiative - a first assessment*, 2012, Bruges Political Research Papers, 24: 52-81, here p. 10.

⁴⁷ Sylvia-Yvonne Kaufmann: Trust young people, In: *An ECI that works!*, p. 111.

⁴⁸ *ECAS*: 10 Recommendations to make a success of European Citizens' Initiatives, point 10.

⁴⁹ *The ECI Campaign*: 12 ways to build a European Citizens' Initiative that works, point 9.

<http://www.citizens-initiative.eu/12-ways-to-build-a-european-citizens-initiative-that-works>

⁵⁰ Carsten Berg and Paweł Głogowski: An overview of the first two years of the European Citizens' Initiative, In: *An ECI that works!*, p. 17.

⁵¹ However, the Commission does not confirm this, citing similar dropout rates for online and paper collection. See ECI review, p. 9.

Noteworthy in this context is the benefit of doubt principle the Commission advocates in their guidelines: "Certain minor mistakes or changes should not invalidate the statements of support."

national verification officer, up to 20 per cent of the collected signatures run the risk of being invalidated by national authorities in the verification process due to incomplete or inaccurate information.⁵² Moreover, paper signature collection requires more human resources (volunteers) and bears greater risks with regard to data protection liability.

3.4.4. Online Collection Systems

Articles 6 and 12 of the ECI Regulation and Commission Implementing Regulation 1179/2011 set out the conditions and the technical specifications for the online collection of signatures. According to Article 12(1) of the ECI Regulation, ECI organisers and the competent national authorities must comply with the EU data protection directive⁵³ and its national implementation provisions in processing personal data.

To collect signatures online, ECI organisers need to avail of: 1) a server (hosting infrastructure) to store the data of signatories, and 2) a software that allows for online signing. Both elements are needed to set up an online collection system. Before organisers can start to collect signatures online, they need to have their system certified by the competent national authority of the Member State in which the data will be stored. This certification process, which can take up to one month, verifies that the system meets the security and technical requirements set out in the above-mentioned Regulations.

The first organisers experienced substantial difficulties to find a suitable and affordable hosting provider, resulting in a significant loss of time – up to several months of the signature collection time. Beyond its obligation under the Regulation and in order to assist organisers, the Commission *temporarily* provided servers of its own in Luxembourg, at no charge, and which most ECIs have used. To compensate for the delays the first organisers were facing, the Commission decided to accept statements of support collected until 1 November 2013, for all initiatives registered before 31 October 2012. Indeed stakeholders would welcome such free hosting of ECIs on a Commission's server as a *permanent* solution. In this respect, the Commission commits itself to continue its free hosting practice "as long as needed".⁵⁴

With regard to the online collection software, ECI organisers are free to use any tool, either their own or the open source software the Commission developed pursuant to Article 6(2) of the ECI Regulation. Given the resources and costs involved in developing software that would meet the strict security requirements independently, most ECI organisers so far refrained from using their own software and have opted instead to use the one provided by the Commission. However, in doing so, most of them encountered numerous difficulties. Organisers cited specific features as problematic, notably the application of a strong 'captcha'⁵⁵ verification mechanism for signing, which is reportedly hard to decipher.

See http://ec.europa.eu/citizens-initiative/files/Guidelines-and-recommendations_130415.doc

⁵² National authorities in the ECI process: first verification experiences of the German signature verification office. Interview with Axel Minrath and Ulrich Schmitz, In: An ECI that works!, p. 94.

⁵³ 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.

⁵⁴ Commission ECI review, p. 16.

⁵⁵ "Captcha", an acronym from Completely Automated Public Turing test to tell Computers and Humans Apart, is a challenge-response type technique aimed to ensure that human beings rather

ECI organisers consider the Commission software, as an administrative tool, unsuitable for effective campaigning, since it does not allow for sufficient customisation, linking to social media, use on mobile devices (smartphones or tablets) or collecting the email addresses of signatories. To include such features, which are basic requirements for campaigning, organisers need to find a workaround and implement it on the ECI's specific websites, a linking to which the Commission's OCS allows for. The Commission included social media features in the latest release of its software, but objects to the inclusion of email address in the statement of support form, given the intended use for information or campaigning, which is not provided for by the ECI Regulation.

Overall, the way the online collection of signatures is designed appears to be a major hurdle in the current ECI set-up, according to statements of ECI organisers. Apart from the general criticism that addressed the basic requirement of getting an online collection system up and running for each specific ECI, they consider the system as "flawed"⁵⁶ or "unnecessarily complex"⁵⁷. Carsten Berg goes as far as to call it a "dysfunctional" system.⁵⁸ Adriano Varrica, organiser of the ECI *Stop Vivisection*, has pleaded for simplification: "Since most signatures were collected online, the OCS [online collection system] is a crucial aspect for the future development of this new democracy instrument. The official ECI regulation promises that the OCS will be easily accessible and user-friendly. However, in its current version, it is neither and thus needs to be simplified."⁵⁹

Frustration about the malfunctioning system actually prompted a group of IT experts to launch a specific ECI in 2012, the purpose of which was to call on the Commission to propose a modification of the ECI legal framework that would allow for the creation of a *Central public online collection platform for the European Citizens' Initiative*. It aimed at the creation of a single centralised, user-friendly and transparent online ECI platform to make the system better work. However, this ECI ended at an early stage, as it lacked the necessary financial resources.

From their own experience, ECI organisers recommend that the Commission should provide a pre-certified and "low barrier online ECI tool which works instantly and without technical expertise"⁶⁰ for every registered ECI. While – as the Commission argues – such a change would require the Regulation to be amended, it has taken steps to improve the online collection process within the boundaries of the Regulation. In addition to offering a solution to the hosting issue, it has constantly improved its software; so far eight releases have been issued. And it keeps stressing that it puts a lot of effort in facilitating the online collection. The Commission has also externalised a study on the ECI's online collection process, which is currently ongoing.

than automated programmes ("bots") are responding in an online transaction. Captcha uses distorted images of characters or numbers as a challenge; it is common in e-commerce or for online registrations.

⁵⁶ An ECI that works!, p. 37, 67 and 72.

⁵⁷ An ECI that works!, p. 49.

⁵⁸ An ECI that works!, p. 15.

⁵⁹ An ECI that works!, p. 30.

⁶⁰ An ECI that works!, p. 67.

3.4.5. Timing and timespan to collect signatures

The moment an ECI is registered with the Commission, the clock starts ticking for a 12-month period to collect support. However, organisers have often not finalised their preparations, as they can only start collecting online signatures once the authorities in the Member States have certified the Online Collection System. There is significant risk in investing effort and resources towards the system if the Commission ultimately rejects the registration of an ECI.

By defining a 12-month limit in respect of the collection time, the co-legislators aimed to ensure that the subject of the ECI remained relevant as long as it was running (recital 17 of the Regulation). However, Europe-wide campaigning requires time, due to language barriers, different cultures, the physical distance, and the cross-border dimension of the project. Hence many ECI organisers, supported by NGOs, recommend revising the current rules, to let the citizens' committee decide on the start of the collection time, within a specified margin of a few months, and/or by extending the collection time to 18 months. This argument was backed by the European Ombudsman, who included the request for extension in her letter to the Commission. The Commission appears to be open to changes in this respect.⁶¹

As stated above, many ECIs lost time because they were not ready when the EC approved the initiative for registration. Prisca Merz, organiser of the ECI *End Ecocide in Europe*, admitted that the reason for withdrawing and re-registering her initiative was to secure more time to prepare.⁶² Three other ECI organisers acted in the same manner.

3.5. Verification of signatures (Stage 4)

Before submitting an ECI to the Commission, the organisers need to send the collected statements of support – be they in electronic format or on paper – to the competent national authorities for verification and certification. They have three months to validate the signatures (Article 8). The checks may be based on random sampling. According to the Commission, the results between Member States using random sampling (17) and those carrying out a full verification did not show greater discrepancies.⁶³

The experience acquired to date with regard to the verification of signatures is limited, as only three ECIs passed the threshold of one million signatures. However, from the few successful ECIs, it has emerged that a certain proportion of signatures are declared invalid at the verification stage. In the cases of *Right2Water* and *One of us* this concerned slightly more than 10 per cent. To mitigate this risk, organisers are advised to strive for a safety margin of 10-20 per cent.

⁶¹ Commission ECI review, p 14-15.

⁶² An ECI that works!, p. 39.

⁶³ ECI review, p 9-10.

3.6. Submitting the ECI to the Commission and follow-up (Stage 5)

Once compliance with all ECI conditions set out in the Regulation has been ensured, the organisers of successful initiatives can submit their ECI to the Commission, who will then evaluate the objective. It is up to the organiser to decide on the date of submission, the Regulation itself does not specify any time-limit.⁶⁴ The Commission is required to reply within three months in the form of a Commission communication (COM document) explaining its legal and political conclusions on the ECI, including the action it intends to take (or the reasons for not taking action). Within three months following submission, the organisers also have the right to be received by the Commission "at an appropriate level" to explain their objectives in detail (art. 10), and to present their ECI at a public hearing of the European Parliament, at which the Commission is also represented (art. 11).

As stated above, and pursuant to the legal framework of the ECI, the Commission is not obliged to give a legal follow-up to a successful ECI. In such cases, no redress mechanism is foreseen. Therefore the way the Commission is dealing with the first successful ECIs will pave the way for future acceptance of this new instrument of participatory democracy amongst citizens. Potential organisers of future ECIs may be more inclined to take on the burden of an initiative if they see that its outcome is worthwhile.

Dougan stresses that the Commission's discretion over how to respond to an ECI does not preclude the final outcome. Even if it decides to table a legislative proposal in the spirit of the ECI, this may be substantially amended or even fail in the course of the negotiations with Council and the European Parliament. Conversely, if the Commission decides not to act on an ECI, the co-legislators could still take the initiative to call upon the Commission to do so. This is what Dougan calls "combining the pressure of participatory with that of representative democracy".⁶⁵

So far, three ECIs have been submitted to the Commission: *Right2Water*; *One of Us*, and, most recently, *Stop Vivisection*.⁶⁶ **So far neither of the first two successful initiatives were followed-up by a concrete legislative proposal.**

⁶⁴ In the case of the ECI *Stop vivisection*, more than a year elapsed between the end of collecting support and the submission to the Commission.

⁶⁵ Dougan, p. 1844.

⁶⁶ *Right2Water* submitted its ECI on 20 December 2013, *One of us* on 27 February 2014, and *Stop vivisection* on 3 March 2015.

4. Follow-up to the three successful ECIs *Right2Water*, *One of Us* and *Stop vivisection*

4.1. *Right2Water*

The *Right2Water* ECI was one of the first initiatives ever, launched on 10 May 2012. Its objective was to invite the Commission to "propose legislation implementing the human right to water and sanitation, as recognised by the United Nations, and promoting the provision of water and sanitation as essential public services for all". The ECI called for 1) EU institutions and Member States to be obliged to ensure that all inhabitants enjoy the right to water and sanitation; 2) water supply and management of water resources not to be subject to internal market rules, and water services to be excluded from liberalisation; 3) the EU to step up its efforts to achieve universal access to water and sanitation.

This is one of the very few ECIs to be strongly supported and promoted by trade unions, in particular by the EU umbrella organisation European Federation of Public Service Unions (EPSU), which invested €140,000 in this ECI. The initiative benefitted in particular from massive support in Germany, which alone accounted for nearly 75 per cent of signatures.

The ECI *Right2Water* was officially submitted to the Commission on 20 December 2013, after having obtained 1.659,543 validated signatures⁶⁷ and having passed the national thresholds in 13 Member States. As foreseen in the Regulation, its organisers were received by the Commission at high level, and the European Parliament organised a public hearing on 17 February 2014.

The Commission put forward its legal and political conclusions on 19 March 2014.⁶⁸ This Communication describes first the existing *acquis* on water and sanitation, as a basis to identify potential gaps, and lists a series of specific measures envisaged by the Commission. Although these are all related to the subject of the ECI, none has the character of a legislative initiative. The Commission committed itself, *inter alia*, to reinforce the implementation of its water quality legislation by the Member States; to launch an EU-wide public consultation on the Drinking Water Directive, notably in view of improving access to quality water in the EU; to continue to ensure EU neutrality as regards national, regional and local choices for the provision of water services; and to advocate universal access to safe drinking water and sanitation as a priority area in the post-2015 development framework.

⁶⁷ Official figures differ depending on whether or not the French and Danish results are taken into account, both of which arrived after the ECI was submitted. With France (17,247) and Denmark (3,495), the certificates total 1,680,285. The campaign's website states 1,884,790 signatures, which obviously reflects the support before verification.

⁶⁸ Communication from the Commission on the European Citizens' Initiative "Water and sanitation are a human right! Water is a public good, not a commodity!", COM(2014) 177.

This Communication was criticized by the ECI organisers as lacking ambition.⁶⁹ For instance, the Commission did not make any legal commitment to block EU initiatives aiming at liberalising water and sanitation services, as the ECI had called for. Observers also expressed dissatisfaction, by calling the communication "remarkably vague and unsatisfactory in terms of potential changes in EU law".⁷⁰

In its opinion⁷¹, the EESC acknowledged the Commission's recognition of the specificity and importance of water services and its decision to exclude water supply services from the proposal for a Directive on Public Procurement Concessions. However, it also concludes that the Commission's Communication has "lacked any real ambition in its response to the expectations of more than 1.6 million people".

In the wake of the "Commission's vague response", the European Parliament's ENVI Committee has launched an own-initiative report on the follow-up of the *Right2Water* ECI (Rapporteur Lynn Boylan, GUE/IE). The draft report urges the Commission to come forward with concrete legislative proposals, otherwise the ECI risks to lose credibility. It calls on the Commission for a revision of the Drinking Water and the Water Framework Directives,⁷² and to exclude water and sanitation services from internal market rules as well as any trade agreements, notably the TTIP (Transatlantic Trade and Investment Partnership) and the TiSA (Trade in Services Agreement) currently under negotiation.

4.2. One of us

The ECI *One of us* was launched on 11 May 2012. This pro-life campaign aimed at phasing out EU funding of research involving human embryos. It met with considerable support in predominantly Catholic countries such as Italy, Poland, Spain and France. Even though the general level of media attention was limited, both Pope Francis and Pope Benedict publicly supported this ECI,⁷³ which eventually scored the highest number of signatories: 1.721,626 EU citizens validly signed this ECI,⁷⁴ whereby the threshold was passed in 18 Member States.

The organisers presented their cause in a public hearing in the European Parliament on 10 April 2014, and the Commission reacted with a Communication on 28 May 2014,⁷⁵ explaining that it would not come up with a legislative proposal, since it considers the existing legal framework to be adequate. However, as was already apparent at the public

⁶⁹ ECI Right2Water press release "Commission lacks ambition in replying to first European Citizens' Initiative", 19 March, 2014.

<http://www.right2water.eu/news/press-release-commission-lacks-ambition-replying-first-european-citizens%E2%80%99-initiative>

⁷⁰ MEP Sandrine Bélier, in: *An ECI that works!*, p. 81. See also Sarah Schadendorf: *Verwässerte direkte Demokratie*, a critical assessment of the Communication published on the German law blog *juwiss.de.*, see <http://www.juwiss.de/tag/sarah-schadendorf/>

⁷¹ EESC own-initiative opinion, adopted 15 October 2014. OJ C 12/33 of 15 January 2015.

⁷² In the meantime, the envisaged evaluation of the Drinking Water Directive (see Commission Work Programme 2015, Annex III, REFIT actions) has started, and the fourth implementation report on the WFD has been published.

⁷³ *An ECI that works!*, p. 16.

⁷⁴ The organisers quote 1.897,588 statements of support, before verification.

⁷⁵ Communication from the Commission on the European Citizens' Initiative "One of us", COM(2014) 355.

hearing, the organisers felt fundamentally misunderstood and are seeking annulment of the Communication before the European Court of Justice.⁷⁶

4.3. Stop vivisection

Stop vivisection, an ECI calling for phasing out animal testing and for annulling directive 2010/63 on the protection of animals used for scientific purposes, collected 1,173.130 certified statements of support by 1 November 2013. It passed the threshold in 9 Member States. It was only recently, on 3 March 2015, submitted to the Commission. The organisers had lodged a complaint⁷⁷ with the European Ombudsman, after the Commission had refused to further extend the deadline for collecting signatures. This case was turned down in December 2014.

The Commission is currently examining this initiative, to come forward with its response by 3 June 2015. The European Parliament's Committee on Agriculture and Rural Development (AGRI) intends to organise a public hearing on 11 May 2015, with the involvement of other parliamentary committees (notably PETI, ENVI and ITRE).

5. The European Parliament's role and position

Since the origins of the debate on the establishment of a citizens' initiative in the framework of the European Convention, the European Parliament has been a strong supporter of the ECI. The amendments it put forward during the negotiations on the ECI Regulation aimed at increasing the tool's citizen-friendliness. Some amendments were rejected by the Council, e.g. lowering the threshold to one fifth of Member States (the original Commission proposal stipulated one third, whereas the compromise in force stipulates one quarter); or that the Regulation makes explicit reference in its Recitals to proactively promoting and raising awareness of the new instrument.

Conversely, Parliament successfully pushed for an open-source software solution for the online collection of signatures, which the Commission had to provide free of charge, and for altering the review clause to three years (instead of five in the Commission proposal), allowing for the identification and correction of shortcomings of the new instrument at an earlier stage. Furthermore, Parliament insisted on enshrining an appropriate follow-up to successful ECIs into the Regulation, notably that organisers should be received by the Commission and that a public hearing should be organised in the European Parliament.

Since 2010, the committee on Constitutional affairs (AFCO) has consistently put forward amendments to the general draft budget of the European Union, aiming at allocating resources to set up a proper system of tools for a successful implementation of the ECI Regulation, or aiming at using the resources of other EU citizenship programmes to provide exhaustive communication and adequate support. These proposed amendments have however eventually not been included in the budget.

⁷⁶ *One of Us* and Others v. Parliament and Others – Case T-561/14; date of application: 25/07/2014.

⁷⁷ Case 2071/2013/EIS.

The European Parliament's most visible role in the ECI process today is the organisation of public hearings for successful initiatives. The Parliament serves as a platform for the organisers to publicly present their initiative, in order to stimulate a public debate. As mentioned above, so far, two hearings were held, on the *Right2Water* ECI on 17 February 2014, and on the *One of Us* ECI on 10 April 2014, with a third one forthcoming on 11 May 2015 on the *Stop vivisection* ECI.

Neither the ECI Regulation nor the Parliament's Rules of Procedure – which were amended in 2012 to take account of Parliament's role in the ECI process – stipulate details about the hearing, whether the subject should be discussed in a balanced manner (pros and cons), nor do the rules cover whom to invite. In this context, the Commission and the European Ombudsman advocate to have experts and interested stakeholders from both sides represented, for and against an initiative, given that the three month period between the submission of an ECI and the Commission's formal response is too short to undertake a stakeholder consultation.⁷⁸

In procedural terms, the hearing is organised by the competent committee, according to the subject of the ECI, with the petitions committee (PETI) always associated. PETI, which is in general actively monitoring the application of the ECI, is in principle also open to organising hearings for unsuccessful ECIs, i.e. initiatives that did not pass the signatories' threshold: according to Rule 218(2) of the Parliament's rules of procedure, these "may be examined by the committee responsible for petitions if it considers that follow-up appropriate". The first such hearing was held on 26 February 2015, on the ECI *End Ecocide*.

Following a public hearing, parliamentary committees can decide to support ECIs by means of own-initiative reports or motions for resolutions, as a way to pressure the Commission into taking action. This is indeed the case concerning the *Right2Water* ECI.⁷⁹ Moreover, as part of a stronger follow-up to successful ECIs, it was repeatedly suggested that these should, in addition to the public hearing in committee, also be debated and voted in Parliament's plenary.⁸⁰

In a number of resolutions, the European Parliament voiced its concerns about the unsatisfactory implementation of the ECI and called for improvements:

- European Parliament resolution of 12 March 2014 on the EU Citizenship Report 2013. EU citizens: your rights, your future; TA(2014)0233.
Parliament called on EU governments to implement the ECI Regulation in such a way as to ensure their citizens living abroad can support an initiative.
- European Parliament resolution of 11 March 2014 on the activities of the Committee on Petitions 2013; TA(2014)0204.

⁷⁸ ECI review, p. 15; and Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN concerning the European Commission, 4 March 2015, see point 22 and guideline 5.

⁷⁹ Follow-up to the European citizens' initiative *Right2Water*, Rapporteur Lynn Boylan (GUE, IE), 2014/2239 (INI).

⁸⁰ E.g. by former AFCO chair Carlo Casini during the EP hearing on the ECI, 26 February 2015; by Sophie von Hatzfeld (*Democracy International*) in her article *European Citizens' Initiative: Commission admits room for improvement*, in *EurActiv.com*, 1 April 2015.

Parliament stressed the need for a regular review of the ECI's implementation, criticising the "many weaknesses and the rather cumbersome nature of the existing legal framework which does not fully translate the spirit of the Treaty provision".

- European Parliament resolution of 10 October 2013 on the activities of the Committee on Petitions 2012; TA(2013)042.
Parliament criticised the bureaucratic burdens in the practical running of the ECI due to a lack of IT support and disparate use in the national administrations.
- European Parliament resolution of 4 July 2013 on the European Parliament's priorities for the Commission Work Programme 2014; TA(2013)0332.
Parliament called on the Commission to assess the implementation of the regulation on the European Citizens' Initiative and to amend it, where appropriate.

Based on two oral questions⁸¹, on 18 April 2013, the European Parliament held a plenary debate on the first experiences with the practical implementation of the ECI, following a Commission statement. Members' main concern was the badly functioning Commission software for the ECI, and the estimated 11 million⁸² citizens deprived of their right to support an ECI, due to disenfranchisement. No resolution was adopted. Moreover, the ECI was the subject of numerous parliamentary questions in the framework of MEPs' right of interpellation. In the current legislative term (since July 2014) individual Members have already addressed eight written questions to the Commission. Many MEPs have actively supported individual ECIs.

6. Recommendations for a better functioning ECI

As described in this paper, some observers have closely monitored the early years of the ECI and identified a number of shortcomings in its design and implementation, which impact negatively on the effectiveness and acceptance of this relatively new instrument of transnational participatory democracy. The current ECI 'fatigue' is an issue of concern to observers; there seems to be overall consensus that without significant reform, disenchanted citizens will refrain from making use of this instrument in the future. The public hearing at the European Parliament, the European Ombudsman's conclusions and not least Commission Vice-President Timmerman's personal commitment to further improving the ECI, are proof of a vivid political debate and a genuine will to adjust the ECI, to make it more citizen-friendly and simpler. Even if the Commission's recent review addresses only a few problematic issues and, in general, does not anticipate an overhaul of the ECI Regulation, it does however stress its commitment to remaining actively engaged in the reflection process.

In addition to these inputs, numerous constructive contributions to a possible future ECI reform have been put forward by actors in the field, in the form of recommendations on

⁸¹ O-000032/2013 to the Council and O-000033/2013 to the Commission.

⁸² It is not clear how accurate this estimate was at the time of the parliamentary debate. In any case, current figures should be considerably lower, due to previous amendments to Annex III of the ECI Regulation, which reduced the number of disenfranchised citizens.

how to make the ECI better work. Their common aim is to urge the Commission and the Member States to draw on the lessons learned and to transform the European Citizens' Initiative into a citizen-friendly tool.

The following actors have put forward concrete recommendations:

- *Milieu Ltd.* study for the European Parliament, *The European Citizens' Initiative – first lessons of implementation* (2014), p. 53-56.⁸³
- *The ECI Campaign: 12 ways to build a European Citizens' Initiative that works!* (2015)⁸⁴
- *ECI Support Centre / ECAS: 10 Recommendations to make a success of European Citizens' Initiative* (2013)⁸⁵
- *ECAS' specific recommendations on the issue of legal admissibility*, in: *The European Citizens' Initiative registration: falling at the first hurdle? Analysis of the registration requirements and the "subject matters" of the rejected ECIs* (2014), p. 17-18.⁸⁶
- *Democracy International* (2014).⁸⁷

Taking account of all these different contributions, in our view, the most important **recommendations** to make the ECI tool fit for purpose include:

1. The legal framework should provide for **simpler and uniform requirements** across the EU-28, in particular concerning personal data, to facilitate signing and to prevent certain groups of expatriates from being disenfranchised. The requirement of some Member States to ask for ID numbers should be reconsidered. The (optional) use of a digital signature should be promoted in this context.
2. All EU institutions, together with Member States, should engage in **raising the awareness** of the ECI as an instrument for citizens, and contribute to promoting specific initiatives.
3. Dedicated **ECI support centres** should be established in the EU representations in the Member States, providing information and advice to potential ECI organisers, including legal and technical advice.
4. The Commission should provide more detailed and comprehensible arguments and consistent reasoning in its **decisions to refuse registration**. In this context, the European Court of Justice will help clarifying the arbitrary interpretation of "falling manifestly outside the framework of the Commission's powers" and whether ECIs requiring Treaty amendments could be declared admissible.

⁸³ [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509982/IPOL_STU\(2014\)509982_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509982/IPOL_STU(2014)509982_EN.pdf)

This externally commissioned study does not reflect the position of the European Parliament, even if it was positively received by Members of the AFCO and PETI committees. It was presented on 24 September 2014 before PETI, and on 6 November 2014 in the AFCO committee.

⁸⁴ <http://www.citizens-initiative.eu/12-ways-to-build-eci-that-works/>

⁸⁵ http://ecas.issuelab.org/resource/10_recommendations_to_make_a_success_of_european_citizens_initiatives

⁸⁶ http://www.ecas.org/wp-content/uploads/2014/12/ECI-report_ECAS-2014_1.pdf

⁸⁷ <http://www.democracy-international.org/european-citizens-initiative-reform>

5. The Commission should *permanently offer server facilities* for ECIs, at no charge, and continue its efforts to make the Online Collection Software more user-friendly.
6. A politically **strong follow-up of successful initiatives** should be ensured by the Commission. The European Parliament should also play a stronger role, by debating and voting in plenary on successful ECIs.
7. An (optional) **legal status for citizens' committees** could be established, to mitigate the risk of personal liability for their individual members, and to facilitate campaigning.
8. Organisers should be allowed to freely choose the **date to start collecting signatures** within a clearly defined time-limit following registration.
9. The **minimum age of signatories** should be lowered to 16, thus decoupling it from the age of entitlement to vote in European elections.

7. Main references

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8. Annex: List of all ECIs to date

	Subject	Current status	Registered	Refused	Withdrawn	Closed	Answered by Commission
1	Fraternité 2020 - Mobility. Progress. Europe.	Closed (insufficient support)	09/05/2012			01/11/2013	
2	Single Communication Tariff Act (I)	Withdrawn	10/05/2012		03/12/2012		
3	Water and sanitation are a human right! Water is a public good, not a commodity! (also known as "Right2Water")	Answered by the Commission	10/05/2012				Communication COM(2014)177 and follow-up
4	EU Directive on Dairy Cow Welfare	Withdrawn	10/05/2012		20/07/2012		
5	One of us **	Answered by Commission	11/05/2012				Communication COM(2014)355 and follow-up
6	Let me vote (I)	Withdrawn	11/05/2012		29/01/2013		
7	Recommend singing the European Anthem in Esperanto	Registration refused		30/05/2012			
8	Fortalecimiento de la participación ciudadana en la toma de decisiones sobre la soberanía colectiva	Registration refused		30/05/2012			
9	My voice aga inst nuclear power	Registration refused		30/05/2012			
10	Stop vivisection	Submitted to Commission	22/06/2012			01/11/2013	Communication due by 03/06/2015
11	High Quality European Education for All	Closed (insufficient support)	16/07/2012			01/11/2013	
12	Pour une gestion responsable des déchets, contre les incinérateurs	Closed (insufficient support)	16/07/2012			01/11/2013	
13	Abolición en Europa de la tauromaquia y la utilización de toros en fiestas de crueldad y tortura por diversión	Registration refused		19/07/2012			
14	Suspension of the EU Climate & Energy Package	Closed (insufficient support)	08/08/2012			01/11/2013	
15	Central public online collection platform for the European Citizen Initiative	Closed (insufficient support)	27/08/2012			01/11/2013	
16	One Million Signatures for "A Europe of Solidarity" ***	Registration refused		06/09/2012			
17	Création d'une Banque publique européenne axée sur le développement social, écologique et solidaire	Registration refused		06/09/2012			
18	Unconditional Basic Income (I)	Registration refused		06/09/2012			
19	End Ecocide in Europe: A Citizens' Initiative to give the Earth Rights (I)	Withdrawn	01/10/2012		21/01/2013		
20	European Initiative for Media Pluralism (I)	Withdrawn	05/10/2012		20/08/2013		
21	30 km/h - making the streets liveable!	Closed (insufficient support)	13/11/2012			13/11/2013	
22	Kündigung Personenfreizügigkeit Schweiz	Withdrawn	19/11/2012		04/02/2013		
23	Single Communication Tariff Act (II)	Closed (insufficient support)	03/12/2012			03/12/2013	
24	Unconditional Basic Income (UBI) - Exploring a pathway towards emancipatory welfare conditions in the EU (II)	Closed (insufficient support)	14/01/2013			14/01/2014	
25	End Ecocide in Europe: A Citizens' Initiative to give the Earth Rights (II)	Closed (insufficient support)	21/01/2013			21/01/2014	
26	Enforcing selfdetermination Human Right in the EU	Registration refused		21/01/2013			
27	Let me vote (II)	Closed (insufficient support)	28/01/2013			28/01/2014	

	Subject	Current status	Registered	Refused	Withdrawn	Closed	Answered by Commission
28	ACT 4 Growth	Closed*	10/06/2013			10/06/2014	
29	Teach for Youth -- Upgrade to Erasmus 2.0	Withdrawn	17/06/2013		15/06/2014		
30	Ensemble pour une Europe sans prostitution légalisée	Registration refused		18/07/2013			
31	Cohesion policy for the equality of the regions and sustainability of the regional cultures ***	Registration refused		25/07/2013			
32	Stop cruelty for animals	Registration refused		25/07/2013			
33	Do not count education spending as part of the deficit! Education is an investment!	Closed (insufficient support)	06/08/2013			06/08/2014	
34	European Initiative for Media Pluralism (II)	Closed*	19/08/2013			19/08/2014	
35	Minority SafePack-- one million signatures for diversity in Europe ***	Registration refused		13/09/2013			
36	To hold an immediate EU Referendum on public confidence in European Government's (EG) competence	Registration refused		29/10/2013			
37	Right to Lifelong Care: Leading a life of dignity and independence is a fundamental right! ***	Registration refused		05/11/2013			
38	Our concern for insufficient help to pet and stray animals in the European Union	Registration refused		06/11/2013			
39	Weed Like to Talk	Closed*	20/11/2013			20/11/2014	
40	European Free Vaping Initiative	Closed (insufficient support)	25/11/2013			25/11/2014	
41	The Supreme Legislative & Executive Power in the EU must be the EU Referendum as an expression of direct democracy	Registration refused		23/01/2014			
42	A new EU legal norm, self-abolition of the European Parliament and its structures, must be immediately adopted.	Registration refused		23/01/2014			
43	Turn me Off!	Withdrawn	03/02/2014		22/04/2014		
44	New Deal 4 Europe - for a European special plan for sustainable development and employment	Withdrawn	07/03/2014		31/01/2015		
45	MOVEUROPE	Withdrawn	24/03/2014		26/06/2014		
46	Ethics for animals & kids ***	Registration refused		26/03/2014			
47	Vite l'Europe sociale ! Pour un nouveau critère européen contre la pauvreté (I)	Registration refused		05/08/2014			
48	STOP TTIP ***	Registration refused		10/09/2014			
49	An end to front companies in order to secure a fairer Europe	Open	01/10/2014				
50	For a socially fair Europe! Encouraging a stronger cooperation between EU Member States to fight poverty in Europe (II)	Open	19/12/2014				
51	On the wire	Open	09/02/2015				

* ECIs for which the collection of signatures has closed, but they have not been submitted. The Commission states not to a avail of information whether these initiatives have gained sufficient support.

** Case pending before the ECJ as regards the Commission Communication.

*** Cases pending before the ECJ as regards the Commission's registration decision.

The European Citizens' Initiative (ECI) has been in operation since April 2012. Observers have identified a number of shortcomings in its implementation, which impact negatively on the effectiveness and acceptance of this relatively new instrument of transnational participatory democracy. Against this background, stakeholders are calling for simplification and a substantial revision of the current ECI framework and its application, including its implementation in the EU Member States. On 31 March 2015, the Commission presented its first report on the application of the ECI Regulation. While it concluded that it considered the ECI to be fully implemented, it however listed a few areas for improvement. It is widely expected that this review, together with the European Ombudsman's recent recommendations, will prompt a revision of that regulation. This paper seeks to provide a systematic overview of the current weaknesses in the ECI process and puts forward concrete recommendations for a better functioning ECI.

This is a publication of the Ex-Post Impact Assessment Unit
EPRS | European Parliamentary Research Service
European Parliament



PE 536.343
ISBN: 978-92-823-6604-2
DOI: 10.2861/814242
CAT: QA-02-15-143-EN-N