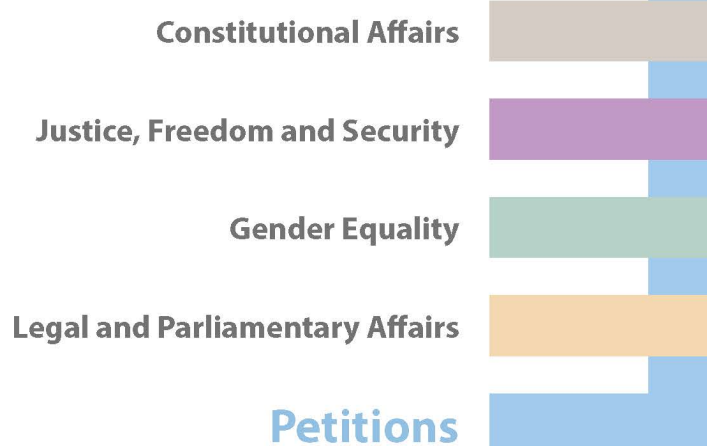


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT** **C**  
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



**Towards a revision of  
the European Citizens'  
Initiative?**

STUDY FOR THE PETI COMMITTEE





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND**  
**CONSTITUTIONAL AFFAIRS**

**PETITIONS**  
**CONSTITUTIONAL AFFAIRS**

# **Towards a revision of the European Citizens' Initiative?**

## **STUDY**

### **Abstract**

At the request of the PETI committee, the Study provides an overview of the most significant difficulties faced by organisers when setting up and running a European Citizens' Initiative (ECI) and an in-depth analysis of the possible solutions based on a review of the latest reports by EU Institutions on this issue. The aim of the Study is to propose recommendations or measures to improve the ECI as an effective tool for participatory democracy in the EU in view of the current discussion concerning the revision of Regulation (EU) No 211/2011 on the Citizens' Initiative. The ultimate goal is to define an ECI process with fewer costs and unnecessary burdens for EU citizens which would empower them to actively participate in shaping the future of Europe.

## **DOCUMENT REQUESTED BY THE COMMITTEE ON PETITIONS**

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# CONTENTS

<b>CONTENTS</b>	<b>3</b>
<b>EXECUTIVE SUMMARY</b>	<b>5</b>
<b>1. INTRODUCTION</b>	<b>11</b>
1.1. European Citizens' Initiative	11
1.2. The study: aim and methodology	12
<b>2. OBSTACLES AND POTENTIAL SOLUTIONS FOR THE EFFECTIVE IMPLEMENTATION OF THE ECI</b>	<b>15</b>
2.1 Horizontal Issues	15
2.1.1. Personal and data protection liability of ECI organisers	15
2.1.2. Information and support on ECI process	17
2.1.3. Transparency of funding and support to run ECI campaigns	21
2.1.4. Awareness of EU citizens on the ECI	23
2.2 Registration by the European Commission	25
2.2.1. Scope of the ECI and definition of the legal bases for launching an ECI	25
2.2.2. Translation of the text of ECIs to campaign in different Member States	30
2.3 Online Collection System (OCS) Certification by Member States	31
2.4 Collection of Statements of Support by Organisers	35
2.4.1. Requirements to sign the ECIs	35
2.4.2. One year collection time for signatures	38
2.5 Submission of successful ECIs, EP hearing and response by the Commission	40
<b>3. RECOMMENDATIONS TO ENSURE THAT THE ECI IS AN EFFECTIVE TOOL FOR PARTICIPATORY DEMOCRACY</b>	<b>44</b>
3.1. Practical recommendations	44
3.2. Recommendations for a possible revision of Regulation 211/2011	46
<b>REFERENCES</b>	<b>49</b>

## LIST OF ABBREVIATIONS

<b>AFCO</b>	European Parliament Committee on Constitutional Affairs
<b>CAPTCHA</b>	Completely Automated Public Turing Test to Tell Computers and Humans Apart
<b>CJEU</b>	Court of Justice of the European Union
<b>COR</b>	Committee of the Regions
<b>EAEC</b>	European Atomic Energy Community
<b>ECAS</b>	European Citizen Action Service
<b>ECI</b>	European Citizens' Initiative
<b>EDPS</b>	European Data Protection Supervisor
<b>EEC</b>	European Economic Community
<b>EESC</b>	European Economic and Social Committee
<b>EP</b>	European Parliament
<b>EPRP</b>	European Parliament Rules of Procedure
<b>EU</b>	European Union
<b>ID</b>	Identification
<b>IRI Europe</b>	Initiative & Referendum Institute Europe
<b>JTRS</b>	Joint Transparency Register Secretariat
<b>MEP</b>	Member of the European Parliament
<b>OCS</b>	Online Collection System
<b>PETI</b>	European Parliament Committee on Petitions
<b>TEU</b>	Treaty on European Union
<b>TFEU</b>	Treaty on the Functioning of the European Union

## EXECUTIVE SUMMARY

The current analysis has been carried out following the request of the European Parliament's Committee on Petitions, via the Policy Department C of the DG for Internal Policies. The general goal of this study is to carry out an analysis of the main **difficulties** faced by organisers when setting up and running a European Citizens' Initiative (ECI) and of the possible **solutions** according to the latest and most recent reports or studies in order to propose **recommendations** to improve the ECI as an effective tool for participatory democracy in the EU.

The specific aim of the Study is to propose **recommendations or measures in view of the current discussion concerning the revision of Regulation (EU) No 211/2011 on the Citizens' Initiative**. The ultimate goal is to define an ECI process with fewer costs and burdens for EU citizens and which would empower them – as natural persons, to actively participate in shaping the future of the EU.

Among the current **obstacles** faced by ECI organisers and citizens, the main ones concern the **IT and legal requirements** which are related to the **organisers' liability** and to the definition of the **scope and the legal bases for launching an ECI**, the problems of the free **software** offered by the Commission for the online collection of signatures, the numerous **different requirements and corresponding forms to sign ECIs** in different Member States and the **lack of proper response to the citizens' requests** by the Commission given the huge effort undertaken.

Some of the stakeholders' concerns relate to the **requirements** for the effective implementation of the ECIs objectives which might differ from the citizens' expectations of democratic participation in EU affairs. If the ECI system includes too many requirements and **the outcome of a successful initiative is uncertain**, the EU's objectives to bring citizens closer to the EU and the citizens' willingness to participate in the EU decision making process would be negatively affected. This impact is evidenced by the **low rate of successful initiatives**<sup>1</sup> and the **steady decline** in the use of the ECIs<sup>2</sup>.

In this regard, a number of **possible solutions** have been put forward taking into consideration both the recommendations proposed in the European Parliament's previous 2014 Study 'European Citizens' Initiative – First lessons of implementation'<sup>3</sup> and in the Commission report on the application of Regulation (EU) No 211/2011 on the citizens' initiative<sup>4</sup>, the Decision of the European Ombudsman<sup>5</sup>, the Draft Opinion of the Committee

<sup>1</sup> So far, 40% of the proposed ECIs have been declared "legally inadmissible" by the Commission and refused registration; furthermore, organisers of six initiatives have appealed to the CJEU against such refusals.

<sup>2</sup> Of the 31 registered ECIs so far: 16 registrations occurred in 2012, 9 in 2013, 5 in 2014 and one in 2015.

<sup>3</sup> E. Caneta, M. Ballesteros, European Citizens' Initiative – First lessons of implementation' European Parliament, carried out by Milieu and commissioned by the Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, 2014.

<sup>4</sup> Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) No 211/2011 on the citizens' initiative, COM(2015) 145 final 31.3.2015, Brussels. This report was the first presented by the European Commission to the European Parliament and the Council on the application of Regulation (EU) No 211/2011. Article 22 of the Regulation sets out the 1st of April 2015 as starting date of implementation and requires the European Commission to produce every three years, an implementation report.

<sup>5</sup> After receiving a number of complaints, the Ombudsman decided to investigate the proper functioning of the ECI procedure and the Commission's role and management responsibility by opening, in January 2014, an own initiative investigation on the implementation of the ECI (The European Ombudsman own initiative investigation, Press release No. 2/2014, 29.01.2014). The Ombudsman made a range of suggestions to the Commission to increase the effectiveness of the ECI process. Once received the Commission's response, the Ombudsman

on Petitions on the European Citizens' Initiative<sup>6</sup> and the Draft Report of the Committee on Constitutional Affairs on the Implementation of the European Citizens' Initiative<sup>7</sup>.

In this study, the current obstacles faced by ECI organisers and signatories have been **grouped by phases of the ECI process**<sup>8</sup>. As some obstacles concern the ECI process as a whole, or different phases of the process, they have been identified as **horizontal issues**<sup>9</sup>:

- Difficulties in operating as informal ECI citizens' committees;
- Uncertainty and risks linked to the personal (and data protection) liability of the organisers;
- Difficulties in finding contacts in other Member States;
- Organisers do not know how to handle technical aspects of the ECI process;
- Costly/burdensome ECI process;
- Limited tools for enforcement leading to the risk of diminishing the credibility of the ECI;
- EU citizens lack of awareness of the ECI.

Other issues, specifically concerning the **registration phase**, have been identified:

- Unclear legal bases for the ECIs;
- Lack of flexibility in the registration phase;
- Unclear scope of the ECI (uncertainties on the follow-up of successful and unsuccessful ECIs);
- Lack of language expertise of organisers: costly translation services.

In relation to the **online collection system (OCS)**, the main obstacles are:

- Difficulties in signing the ECIs online with the Commission's OCS;
- Signatories' emails cannot be collected;
- No access for persons with disabilities;
- Non-unified OCS system across Member States.

Regarding the **collection of statements of support by organisers**, the main issues identified are:

- Numerous and different data requirements;
- Signatories are reluctant to give their ID data;
- Some EU nationals and third-country nationals cannot sign the ECIs;

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concluded her inquiry with eleven guidelines for further improvement. Decision of the European Ombudsman closing her own-initiative inquiry concerning the European Commission, OI/9/2013/TN, available at: <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/59205/html.bookmark>.

<sup>6</sup> (2014/2257(INI) - 31.3.2015).

<sup>7</sup> (2014/2257(INI) - 19.3.2015).

<sup>8</sup> *It is noted that those phases where no major problems were identified have been excluded.*

<sup>9</sup> *These phases were identified for the purpose of the study and might not match the phases considered in the European Commission Official Register.*



- Short collection period;
- Uncertainties surrounding the starting date.

Finally, further obstacles stem from the **procedure for the examination of an ECI by the European Commission, its formal response**, and the **public hearings organised by the European Parliament for successful and unsuccessful ECIs**:

- Limited reimbursement for hearings;
- No possibilities to invite subject-matter experts;
- Not enough time for exchanges with MEPs;
- Confusion about the hearing's purpose and structure.
- The quality and scope of the Commission response

In Section 3 a number of **possible solutions** have been put forward including those with a view to the possible revision of Regulation (EU) No 211/2011 on the Citizens' Initiative.

The **recommendations** presented below concern those measures that would require **amendments to Regulation 211/2011** on the citizens' initiative.

- 1) Revise Article 1 of the Regulation so as to clarify<sup>10</sup>:
  - If the ECI can propose EU primary law amendments and whether the requirements to propose a legal act refer to a legislative act;
  - If an ECI can request policy actions as an agenda setting tool to raise issues of concern for citizens willing to see them dealt with at EU level.
- 2) Article 4(1) of Regulation 211/2011 could be amended to reflect the EU institutions' involvement and to establish the 'Citizens' Initiative Centre' providing the following support to the citizens:
  - support in searching for potential partners or support staff;
  - support (pro-bono) on technical IT issues or legal aspects of the ECIs including:
    - ECI legal bases under the Treaties and the possible development of more articulated proposals for legislative acts;
    - the legal status of the ECIs and the organiser's liabilities;
    - the applicable data protection rules.
  - answer accreditation and information requests;
  - provision of a single set of detailed guidelines and training material on :
    - the rights and obligations of the ECI organisers;
    - all administrative procedures of the ECI process; and
    - the follow-up of successful and unsuccessful initiatives.

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<sup>10</sup> Amending Article 11(4) TEU for clarification should also be considered. See the next section 'Recommendations for a possible revision of EU primary law'. This has been discussed in section 'Scope of the ECI and definition of the legal bases for launching an ECI' [2.2.1.](#)

The Centre could be provided by pulling resources together from the Commission, the European Parliament, the European Economic and Social Committee, the Council and the Committee of the Regions. A possible wording of Article 4(1) could be<sup>11</sup> as follows:

'In applying the provisions of this Regulation, the Union Institutions and bodies shall endeavour to assist and provide guidance to the public with regard to access to the European Citizens' Initiative through the establishment of the European Citizens' Centre'.

- 3) Revise Article 6(4) and Annex III and IV to the Regulation to establish a simplified single statement of support form or, alternatively, revise through a delegated act Annex III to the Regulation so as to harmonise the requirements and limit the amount of personal data required as much as possible<sup>12</sup>.
- 4) Revise Article 4(1) of the Regulation so as to establish that in case an ECI requests a legislative act, it may be accompanied by a more structured proposal for an act<sup>13</sup>. The legitimacy of the ECI would be strengthened and to draft the legal text ECI's organisers could be assisted by the legal service of EU institutions in inter-institutional cooperation. (i.e. Citizens' Initiative Centre)
- 5) Article 4(1) of the Regulation could be amended to provide the Commission with the power to carry out regular random checks for the transparency obligations of the ECI organisers regarding their financial support. Checks could be carried out primarily on the Commission's own initiative while keeping the possibility of checks derived from complaints, which is the current system<sup>14</sup>.
- 6) Revise Article 4(2) of the Regulation to complement the 'legal admissibility check' at registration with a fully developed 'opinion on the legal competence of the EU' enabling the ECI to be reformulated in order to be registered<sup>15</sup>.
- 7) Revise Article 10(1) of the Regulation: recognising that a successful ECI (with a million signatures of EU citizens) supported by a parliamentary debate in a plenary session followed by a positive vote on the ECI would be a strong sign for the need of EU action. The article could enable that positive vote on the ECI by the plenary of the EP could lead to a Commission assessment of options for concrete actions, including a legal act (legislative or non-legislative) or another significant action. This would respect the discretionary power of the Commission to initiate legislation<sup>16</sup>.

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<sup>11</sup> This wording is inspired in Article 1(2) of Regulation 1367/2006 on the application of provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies of 25.09.2006, OJ L 264: 'In applying the provisions of this Regulation, the Community institutions and bodies shall endeavour to assist and provide guidance to the public with regard to access to information, participation in decision-making and access to justice in environmental matters'.

<sup>12</sup> This has been discussed in both section 'Online Collection System (OCS) Certification by Member States' [2.3](#). and section 'Requirements to sign ECIs' [2.4.1](#).

<sup>13</sup> This has been discussed in section 'Scope of the ECI and definition of the legal bases for launching an ECI' [2.2.1](#).

<sup>14</sup> This has been discussed in section 'Transparency of funding and support to run ECI campaigns' [2.1.4](#). It is noted that the solutions proposed in this recommendation could be also practically implemented without changing the Regulation.

<sup>15</sup> This has been discussed in section 'Scope of the ECI and definition of the legal bases for launching an ECI' [2.2.1](#).

<sup>16</sup> *Ibid.* It is worth noting that the AFCO Committee's suggestion to make the ECI process more effective by strengthening the requirement on the Commission to react with more concrete measures reflects the request of most stakeholders. The current suggestion for consideration in the debate towards a revision of the ECI Regulation would respect the discretionary power of the Commission to exercise its right of legislative initiative.

- 8) Revise Article 10 of the Regulation to set specific procedures framing the follow-up of successful ECIs. It could refer to a specific process for the Commission's follow-up of successful initiatives enabling the organisers of successful ECIs to be part of specific structures such as an expert group advising the Commission on the follow up steps and referring to the EP's possibility to formally request the Commission's action.
- 9) Revise Articles 2(3) and 3(1) of the Regulation to clarify that the ECI citizens' committees can be set up by natural persons as national/European legal entities<sup>17</sup>.
- 10) Revise the wording of Article 13 of the Regulation so as to clarify that personal liabilities of the ECI organisers are not unlimited<sup>18</sup>. Drawing from Directive 2008/99/EC of 19 November 2008 on the protection of the environment through criminal law, the wording proposed could be as follows:  
    '...organisers are responsible for "acts which are unlawful and committed intentionally or with at least serious negligence".'
- 11) Revise Article 5(5) of the Regulation so as to<sup>19</sup>:
  - Extend the data collection time to 18 months or, even to an unlimited time;
  - Allow organisers to choose the starting date of the ECI campaign; or
  - State that the starting date of the collection of the statements of support is the date of the certification of the online collection system (by the competent national authority).
- 12) Revise Article 11 of the Regulation to clarify the aim and structure of the hearing for successful ECIs. Rule 197a of the European Parliament Rules of Procedure could also be amended accordingly<sup>20</sup>.
- 13) Complementary to point 7, Revise Article 11 of the Regulation so as to enable a parliamentary debate on a successful ECI which, when followed by a positive vote, could lead to require the Commission to assess options for concrete actions, including a legal act (legislative or non-legislative) or another significant action<sup>21</sup>.
- 14) Revise Article 4 of Regulation 211/2011<sup>22</sup> to clarify further rights of the organisers and responsibilities of the EU institutions with regard to:
  - The provision of translations – Article 4(2)<sup>23</sup>;  
The European Economic and Social Committee – which has already proposed to offer its services, the European Parliament and any other EU institution, should provide the organisers with free translation services for the texts of their ECIs

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<sup>17</sup> This has been discussed in section 'Personal and data protection liability of ECI organisers' [2.1.1](#).

<sup>18</sup> *Ibid.*

<sup>19</sup> This has been discussed in section 'One year collection time for signatures' [2.4.2](#).

<sup>20</sup> This has been discussed in section 'Submission of successful ECIs, EP hearing and response by the Commission' [2.5](#).

<sup>21</sup> This has been discussed in section 'Submission of successful ECIs, EP hearing and response by the Commission' [2.5](#). It has to be noted that, as most stakeholders raised complaints on the effectiveness of the ECI process in terms of outcomes, this suggestion has been proposed in the Draft Report of the AFCO Committee as an issue for consideration more than as a recommendation. It is not intended to question the Commission's right of initiative.

<sup>22</sup> It is noted that the solutions proposed in this recommendation could be also practically implemented without changing the Regulation on the basis of a Commission commitment. Therefore, it has been also mentioned in the previous paragraph among measures that do not necessarily entail changes in the Regulation (see, respectively, points 1, 5 and 2).

<sup>23</sup> This has been discussed in section 'Translations of the text of ECIs to campaign in different Member States' [2.2.2](#).

which are used to request signatures during their campaigns in different Member States;

- The Commission should provide more information and more detailed evidence and motivated arguments in its replies to the ECI registration requests.

In particular Article 4(2)(b) could be modified to enable the Commission to consider and analyse, separately, each of the different points of request of a proposed ECI; and Article 4(3)<sup>24</sup> requiring the Commission to clarify EU competences in the field of the proposed ECI by providing factual information on the actions taken and planned at EU level.

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<sup>24</sup> This has been discussed in section 'Scope of the ECI and registration phase' [2.2.1](#).

# 1. INTRODUCTION

## 1.1. European Citizens' Initiative

The European Citizens' Initiative (ECI) is a new instrument introduced by the Lisbon Treaty to increase participatory democracy in the EU and empower citizens to be involved in decision making. ECI provisions enable one million citizens from at least one quarter of the Member States, to ask the European Commission, within the framework of its powers, to submit a legislative proposal on matters where citizens consider that a legal EU act is required to implement the Treaties – Article 11(4) of Treaty on European Union (TEU).

In brief, the ECI process develops through different phases. ECI organisers have to submit their proposed ECI to the Commission. The Commission registers it after a first scrutiny of compliance with the requirements set out in the Treaty and in Regulation (EU) No 211/2011. After registration, ECI organisers have one year to collect paper and/or online statements of support (signatures). If they decide to collect online signatures, their Online Collection System (OCS) has to be certified by a Member State. Organisers then have to submit the collected signatures for verification to the competent Member States according to national rules. If they have collected more than one million verified signatures from at least seven Member States, they can submit their ECI to the Commission. A hearing is then organised at the European Parliament, after which the Commission examines the ECI and notifies the organisers of its conclusions and possible planned actions which are published in a Communication.

At the time of writing this report, 51 ECIs had been proposed, 31 of which were registered<sup>25</sup>. At the moment there are three initiatives currently collecting statements of support<sup>26</sup> and 18 initiatives that have reached the end of their collection period<sup>27</sup>. Among them, three initiatives have reached the required number of statements of support and have been submitted to the Commission: 'Water and sanitation are a human right! Water is a public good, not a commodity!' ('Right2Water'), 'One of us' and 'Stop vivisection'. The Commission's conclusions for these ECIs were notified and published on 19 March 2014, 28 May 2014 and 3 June 2015, respectively.

The EU institutions have undertaken several steps to promote the development of this instrument and support the ECI's organisers in overcoming the difficulties linked to the organisation of ECIs. In that process, some of the problems identified during the experiences of the very first organisers were addressed.

However, concerns are still expressed by stakeholders about some of the requirements for the effective implementation of the ECI and about the ECI's objectives which might differ from the citizens' expectations of democratic participation in EU affairs. If the ECI system includes too many requirements, and the outcome of a successful initiative is uncertain, the EU's objectives to bring citizens closer to the EU and the citizens' willingness to participate in the EU decision making process would be negatively affected. This impact is evidenced

<sup>25</sup> Information up to 12.03.2015 and based on [European Citizens' Initiative \(ECI\): European Commission Official Register](#).

<sup>26</sup> [Open initiatives, Official Register](#).

<sup>27</sup> [Closed initiatives, Official Register](#).

by the low rate of successful initiatives<sup>28</sup> and the steady decline in the use of the European Citizens' Initiative<sup>29</sup>.

The European Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative<sup>30</sup> highlighted its commitment to continue monitoring and discussing a range of ECI issues in close cooperation with various stakeholders and institutions and with a view to improving the instrument. The review of Regulation (EU) No 211/2011 on the citizens' initiative is under discussion given the implementation challenges outlined, not only in the Commission report on the application of Regulation (EU) No 211/2011 on the citizens' initiative<sup>31</sup>, but also in the European Parliament's 2014 Study 'European Citizens' Initiative – First lessons of implementation'<sup>32</sup>, the Decision of the European Ombudsman<sup>33</sup>, the Draft Opinion of the Committee on Petitions on the European Citizens' Initiative<sup>34</sup> and the Draft Report of the Committee on Constitutional Affairs on the Implementation of the European Citizens' Initiative<sup>35</sup>. Some of the elements of the debate were presented at the European Economic and Social Committee (EESC) during the ECI Day 2015 held on 13 April 2015. Furthermore, the Conference "The European Citizens' Initiative and the Promise of Participatory Democracy" organised jointly by the Council of the EU, namely the Latvian Presidency of the Council and the General Secretariat of the Council, and the ECI Campaign was held on 16 June 2015<sup>36</sup> focusing on the main problems of the ECI process.

## 1.2. The study: aim and methodology

The current analysis has been carried out following the request of the European Parliament's Policy Department C of the DG for Internal Policies. The general goal of this study is to present the significant difficulties faced by organisers when setting up and running a European Citizens' Initiative (ECI), analyse possible solutions and propose recommendations for their consideration during the future Review of Regulation (EU) No 211/2011 on the citizens' initiative to improve the ECI as an effective tool for participatory democracy in the EU.

<sup>28</sup> So far, 40% of the proposed ECIs have been declared "legally inadmissible" by the Commission and refused registration.

<sup>29</sup> Of the 31 registered ECIs so far: 16 registrations occurred in 2012, 9 in 2013, 5 in 2014 and one in 2015.

<sup>30</sup> Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) No 211/2011 on the citizens' initiative, COM(2015) 145 final 31.3.2015, Brussels.

<sup>31</sup> Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) No 211/2011 on the citizens' initiative, COM(2015) 145 final 31.3.2015, Brussels. This report was the first presented by the European Commission to the European Parliament and the Council on the application of Regulation (EU) No 211/2011. Article 22 of the Regulation sets out the 1st of April 2015 as starting date of implementation and requires the European Commission to produce every three years, an implementation report.

<sup>32</sup> E. Caneta, M. Ballesteros, European Citizens' Initiative – First lessons of implementation', carried out by Milieu Ltd for the European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, 2014.

<sup>33</sup> After receiving a number of complaints, the Ombudsman decided to investigate the proper functioning of the ECI procedure and the Commission's role and management responsibility by opening, in January 2014, an own initiative investigation on the implementation of the ECI (The European Ombudsman own initiative investigation, Press release No. 2/2014, 29.01.2014). The Ombudsman made a range of suggestions to the Commission to increase the effectiveness of the ECI process. Once received the Commission's response, the Ombudsman concluded her inquiry with eleven guidelines for further improvement. Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN concerning the European Commission at <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/59205/html.bookmark>.

<sup>34</sup> (2014/2257(INI) - 31.3.2015).

<sup>35</sup> (2014/2257(INI) - 19.3.2015).

<sup>36</sup> The conference programme and related documents are available at: <http://www.consilium.europa.eu/en/general-secretariat/events/eci-conference/>.

The aim of the Study is to propose measures in view of the current discussion concerning the revision of Regulation (EU) No 211/2011 on the Citizens' Initiative. The ultimate goal is to define an ECI process with fewer costs and burdens for EU citizens which would empower them – as natural persons, and not just as interest groups<sup>37</sup>, to actively participate in shaping the future of the EU. This study:

- Provides an overview of the obstacles and difficulties faced by organisers when setting up and running an ECI and an in-depth analysis of the potential solutions to overcome them;
- Proposes recommendations in view of a future revision of Regulation (EU) No 211/2011 on the Citizens' Initiative.

The present Study draws from the desk research (see [References](#)) and stakeholder consultation – including ECI organisers, national authorities, EU institutions and Members of the European Parliament carried out within the framework of the 2014 Study 'European Citizens' Initiative – First lessons of implementation'<sup>38</sup>. In the present Study, the analysis of the solutions considered and validated through peer review by the members of the Senior Expert Panel of the 2014 Study 'European Citizens' Initiative – First lessons of implementation'<sup>39</sup> has been further developed and has also analysed the findings presented in the 2015 Commission report on the application of Regulation (EU) No 211/2011 on the citizens' initiative<sup>40</sup>, the Decision of the European Ombudsman<sup>41</sup>, the Draft Opinion of the Petitions Committee on the European Citizens' Initiative<sup>42</sup> and the Draft Report of the Constitutional Affairs Committee on the Implementation of the European Citizens' Initiative<sup>43</sup>, to both identify obstacles and suggest solutions. The solutions suggested by stakeholders were also taken into account, such as those participating in the hearing on the European's Citizens' Initiative which was held on 26 February 2015, in association with AFCO, as well as the contributions from the experts M. Berg, M. Johansson, M. Molnar, Ms. Merz, M. Sauron, M. Casini and M. Poirier. In addition, the contributions presented at the European Economic and Social Committee (EESC) during the ECI Day 2015 held on 13 April 2015 were also analysed, as well as in the Conference organised by the Council of the EU (namely by the Latvian Presidency of the Council, the General Secretariat of the Council) and the ECI Campaign on 16 June 2015.

<sup>37</sup> For example, 'The Californian Citizens' Initiative, in place for almost a century, is today rarely used by grassroots citizens' groups ... it is more often used by big business interests'. See Corporate Europe Observatory (2010), 'ECI participatory democracy?'

<sup>38</sup> E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' European Parliament, carried out by Milieu for the European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, 2014.

<sup>39</sup> Prof. Ludwig Kramer for legal and inter-institutional advice; Mr Carsten Berg for technical advice; Mr Luis Bouza for policy advice.

<sup>40</sup> Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) No 211/2011 on the citizens' initiative, COM(2015) 145 final 31.3.2015, Brussels. This report was the first presented by the European Commission to the European Parliament and the Council on the application of Regulation (EU) No 211/2011. Article 22 of the Regulation sets out the 1st of April 2015 as starting date of implementation and requires the European Commission to produce every three years, an implementation report.

<sup>41</sup> After receiving a number of complaints, the Ombudsman decided to investigate the proper functioning of the ECI procedure and the Commission's role and management responsibility by opening, in January 2014, an own initiative investigation on the implementation of the ECI (The European Ombudsman own initiative investigation, Press release No. 2/2014, 29.01.2014). The Ombudsman made a range of suggestions to the Commission to increase the effectiveness of the ECI process. Once received the Commission's response, the Ombudsman concluded her inquiry with eleven guidelines for further improvement. Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN concerning the European Commission at <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/59205/html.bookmark>.

<sup>42</sup> (2014/2257(INI) - 31.3.2015).

<sup>43</sup> (2014/2257(INI) - 19.3.2015).

This study is structured following the main phases of the ECI implementation<sup>44</sup> but excluding those phases where no major problems were identified in the above mentioned analysed reports and Milieu's assessment.

- Horizontal Issues;
- Registration by the European Commission;
- Online Collection System (OCS) Certification by Member States;
- Collection of Statements of Support by Organisers;
- Submission of successful ECIs, EP Hearing and response by the Commission

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<sup>44</sup> As considered in the [ECI European Commission Official Register](#) but excluding those phases that were not relevant for the purpose of the study.



## 2. OBSTACLES AND POTENTIAL SOLUTIONS FOR THE EFFECTIVE IMPLEMENTATION OF THE ECI

Each section related to one of the phases of the ECI implementation presents the relevant provisions of Regulation (EU) No 211/2011 (Regulation 211/2011) and other applicable rules, the obstacles faced by the ECI's organisers and the potential solutions to overcome them. The difficulties linked to the very first experiences of the ECI that have been already addressed are not included.

### 2.1 Horizontal Issues

This section presents a number of obstacles which organisers face throughout the ECI process – including setting up and running ECIs, and are not specific of one single phase<sup>45</sup>.

#### 2.1.1. Personal and data protection liability of ECI organisers

**Applicable provisions<sup>46</sup>: Articles 2(3), 3(2), 12 and 13 of Regulation 211/2011**

According to Article 2(3) of Regulation 211/2011, 'organisers' are natural persons forming a citizens' committee responsible for the preparation of a citizens' initiative and its submission to the Commission. They must form a citizens' committee of at least seven persons who are residents of at least seven different Member States – Article 3(2).

Article 12 states that organisers of a citizens' initiative are responsible for processing personal data and should adopt appropriate technical and organisational measures to protect such data against accidental or unlawful destruction, accidental loss and alteration. ECI organisers must comply with Directive 95/46/EC on the protection of individuals regarding the processing of personal data and the free movement of such data<sup>47</sup>, and they are responsible as 'data controllers'<sup>48</sup>.

Article 13 of Regulation 211/2011 establishes that organisers are liable for *any* damage they cause in the organisation of a citizens' initiative in accordance with applicable national law.

#### Obstacles:

- difficulties in operating as informal ECI citizens' committees;
- uncertainty and risks linked to the personal (and data protection)
- broad liability of the organisers<sup>49</sup>

<sup>45</sup> These phases were identified for the purpose of the study and might not match the phases considered in the [European Commission Official Register](#).

<sup>46</sup> The European Data Protection Supervisor (EDPS) analysed the data protection rules of the Regulation during its adoption process. See EDPS, Opinion on the Proposal for a Regulation of the European Parliament and of the Council on the Citizens' Initiative, OJ C 323/1, 30.11.2010.

<sup>47</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995.

<sup>48</sup> In particular, according to Article 12(6) of the Regulation, the organisers are in charge of implementing appropriate technical and organisational measures to protect personal data against:

- accidental or unlawful destruction;
- accidental loss, alteration, unauthorised disclosure or access – in particular where the processing involves the transmission of data over a network;
- all other unlawful forms of processing.

<sup>49</sup> Information based on desk research, stakeholder consultation (ECI organisers) for the 2014 European Parliament Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' and

The risks linked to the lack of legal *status* of citizens' committees and to the personal liability of the organisers often constrain potential organisers from launching new ECIs.

The lack of legal *status* of the citizens' committee requires the seven members of the ECI citizens' committee to use their own names for any practical or administrative task (e.g. for bank accounts to manage ECI financing). The fact that Regulation 211/2011 does not establish a specific structure for setting up the committee causes uncertainties throughout the process, including when lodging complaints<sup>50</sup>.

The organisers are considered as 'data controllers' regarding the information in the statements of support and sanctions for infringements of data protection rules could be imposed on them personally<sup>51</sup>. Furthermore, the organisers are required to define the process to download and transmit online forms in a safe way to national authorities<sup>52</sup> and to provide specific security features for storage rooms such as locks and fire alarms. In practice, compliance with the ECI Regulation and the Data Protection Directive, as well as with the national transposing legislation, could represent an obstacle for organisers of the ECIs<sup>53</sup>.

The unlimited liability established in Regulation 211/2011 stating that organisers are liable for 'any' damage caused in the organisation of the initiative is a disproportioned burden which prevents citizens from launching an ECI.

#### Solutions analysed:

- the citizens' committee may be established as a legal entity;
- reducing the data gathered with statements of support;
- clarifying the ECI citizens' committee obligations regarding data protection;
- guidelines and training on such obligations;
- possibility to subscribe to insurance;
- limiting the liability of organisers under Article 13 of Regulation 211/2011<sup>54</sup>.

Organisers should receive systematically, and before starting the ECI, information on the possibilities of legal *status* of the citizens' committee and the advantages of each of the options (i.e. legal personality shields citizens' committee members from personal liability,

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the analysis of the Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative.

<sup>50</sup> For example, two organisers who appealed to the Court of Justice of the European Union (CJEU) were asked to resubmit their request as joint appeal from all the seven members of the committee and, in another case, the seven members and the committee as such have referred their case to the CJEU.

<sup>51</sup> 'The level of sensitive personal data required exposes citizens to identify theft and fraud which can leave the ECI organisers liable for fines. For instance, in Germany, the fine is up to EUR 300.000 if data is not protected at every stage of the campaign'. See [European Commission, 'The European Citizens' Initiative - Guidelines and recommendations for practical implementation'](#), 15.04.2013, p. 3. The legislation of the Member States where the organisers carry out their main activity applies according to the Commission interpretation of EU law.

<sup>52</sup> Under some national laws, organisers are required to notify the collection of signatures to data protection authorities. In some cases, such authorities were not aware of the existence of the ECI and this caused a lack of certainty about organisers' obligations and the imposition of additional unforeseen obligations. For instance, in Bulgaria, the data protection authority required the registration of each single ECI volunteer gathering paper signatures as an 'operator of personal data'. See Merz, P., '[End Ecocide in Europe](#)' Article in Berg, C. and Thomson, J., '[ECI That Works](#)', The ECI Campaign, Germany, 15.04.2014.

<sup>53</sup> Berg, C., '[First ECI Withdrawn - EU Directive on Dairy Cow Welfare](#)', The ECI Campaign Article, 20.07.2012.

<sup>54</sup> Information based on desk research, stakeholder consultation (ECI organisers) for the European Parliament Study E. Caneta, M. Ballesteros, '[European Citizens' Initiative - First lessons of implementation](#)' European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, 2014, as well as the analysis of the Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative and of the Draft Report of the Committee on Constitutional Affairs' regarding the Implementation of the European Citizens' Initiative.

allows for more efficient and transparent management of finances). Articles 2(3) and 3(1) of Regulation (EU) No 211/2011 could be revised so as to clarify that the ECI citizens' committees can be set up as national/European legal entities by the same natural persons<sup>55</sup>.

In addition, the organisers should receive more information - possibly by the 'Citizens' Initiative Centre' proposed later<sup>56</sup> - about their specific data protection obligations in each Member State where they run their campaigns<sup>57</sup> in order to empower organisers to understand, manage and control their role and risks. Information on the possibility for campaigners to subscribe to insurance should also be provided.

The problem of the personal liability of organisers when collecting signatories' personal data with regard to data protection could be addressed through different measures such as by reducing the type of data required<sup>58</sup> within the limits of the process safety<sup>59</sup>.

In addition, the wording of Article 13 of Regulation 211/2011 could be revised so as to limit the personal liability of organisers. To this end, the revision of Article 13 could draw inspiration from Article 3 of Directive 2008/99/EC of 19 November 2008 on the protection of environment through criminal law, to establish that organisers are responsible for "acts which are unlawful and committed intentionally or with at least serious negligence".

The combination of these measures should already substantially reduce the obstacles faced by organisers, although the position of campaigners who support, but are not members of the ECI citizens' committee, might still need to be clarified.

#### 2.1.2. Information and support on ECI process

Applicable provisions: Article 3(2), 4(1) and 11 of Regulation 211/2011 (the Regulation 211/2011), Rules 197a, 203a and Point XX of Annex VII to the European Parliament Rules of Procedure (EPRP)

ECI organisers must form a citizens' committee composed of at least seven persons who are residents of at least seven different Member States – Article 3(2) of Regulation 211/2011.

According to Article 4(1) of Regulation 211/2011, the 'Commission shall establish a point of contact which provides information and assistance' for ECI organisers.

The Commission has already provided a comprehensive and user-friendly ECI guide<sup>60</sup>; information on current and intended EU legislative proposals on matters raised by the

<sup>55</sup> This system provides as well a response to the need for a certain degree of liability to ensure that the rights of the signatories are respected, i.e. in case of violations, a responsible subject should be liable – vis-a-vis to the offended parties.

<sup>56</sup> See section 2.1.2.

<sup>57</sup> For this purpose, guidelines and training material available for download could be made available.

<sup>58</sup> One of the proposals presented below is the unification of the signed data requirements to sign ECI (See section 2.3.). By reducing the type of data required, i.e. less information from signatories, and data sensitivity, i.e. no ID number, the liability risks of the organisers would be substantially reduced.

<sup>59</sup> Currently, the seven European citizens of the citizens' committee are personally liable for the whole ECI process – including the work of numerous volunteers across Europe at national and local level with whom they are not in direct contact.

<sup>60</sup> European Commission, '[Guide to the European Citizens' Initiative](#)'.

initiative and a checking service of additional language versions that could be included in the register<sup>61</sup>.

Through the Europe Direct service<sup>62</sup>, informal support to potential ECI organisers is available for clarification requests and explanations on the registration criteria and Commission powers – including the basis of draft ECIs. The Commission also hosted online collection systems<sup>63</sup>, organised workshops and provided bilateral assistance for certification and software<sup>64</sup> configuration<sup>65</sup>.

The European Economic and Social Committee (EESC)<sup>66</sup> and the European Parliament have also been active in supporting ECI organisers<sup>67</sup>. The EESC prepared a guide for ECI organisers<sup>68</sup> and held several ECI events, such as the annual ECI day in partnership with, among others, the Committee of the Regions (CoR)<sup>69</sup>. The EESC recently created an *ad hoc* group working on strategies to support ECI organisers<sup>70</sup>.

Since the entry into force of the ECI Regulation 211/2011 in April 2011, the European Parliament has been closely monitoring its implementation as evidenced by the publication in 2014 of the Study 'European Citizens' Initiative – First lessons of implementation'. In 2012<sup>71</sup>, the EP amended its Rules of Procedure to regulate 'Public hearings on citizens' initiatives' (Rule 197a) and to specify that the Committee on Petitions may examine unsuccessful ECIs when follow-up is considered appropriate (Rule 203a). In 2014, the Rules were further amended providing that the Committee on Petitions will be responsible for the organisation of public hearings on citizens' initiatives<sup>72</sup>. In line with Regulation 211/2011 (Article 11), the EP also held the first ECI hearings on 17 February 2014, 10 April 2014 and 11 May 2015<sup>73</sup>.

<sup>61</sup> According to Article 4(1) of Regulation 211/2011, after the registration of the ECI is confirmed, the organisers may provide the proposed citizens' initiative in other official languages of the Union for inclusion in the register. The organisers are responsible for these translations. The European Commission further explains in its 'Guide for organisers' that organisers 'should strive to ensure that the translations are equivalent to the original' (see European Commission, '[Guide to the European Citizens' Initiative](#)', p. 18).

<sup>62</sup> European Citizens' Initiative (ECI): European Commission Official Register, [Point of Contact – Europe Direct](#).

<sup>63</sup> Šeščović Maroš, Vice-President of the European Commission: [Commission offers own servers to help get first European Citizens' Initiatives off the ground](#), 23.01.2013.

<sup>64</sup> [Software for online collection systems developed by the Commission](#).

<sup>65</sup> Information based on stakeholder consultation (European Commission).

<sup>66</sup> EESC, Opinion on the Proposal for a Regulation of the European Parliament and of the Council on the Citizens' Initiative, SCO/001 Citizens' initiative, 14.07.2010; and Opinion on the implementation of the Lisbon Treaty: participatory democracy and the citizens' initiative (Article 11), SC/032, 17.03.2010.

<sup>67</sup> Other organisations have been active in supporting and informing ECI organisers, such as: [ECI Support Centre - European Citizens' House](#) by European Citizen Action Service and [Democracy International](#); ECI Information Centre by [Initiative & Referendum Institute Europe](#); The ECI Campaign: [Initiative for the European Citizens' Initiative](#); and the European Parliament [Greens - European Free Alliance](#).

<sup>68</sup> EESC, '[Your guide to the European Citizens' Initiative](#)', 2nd edition, March 2012.

<sup>69</sup> ECI day: The EESC, in partnership with the Committee of the Regions (CoR), the European Citizen Action Service (ECAS), Democracy International, the Initiative, the Referendum Institute Europe and Euronews organised the 2013 ECI day and additionally with The ECI Campaign and EurActiv the 2014 ECI day. The 2015 ECI day (held on 13 April 2015) was organised by the CoR, ECAS, Democracy International, The ECI Campaign, Initiative and Referendum Institute Europe (IRI Europe), People2power and Swissinfo.

<sup>70</sup> Information based on stakeholder consultation (EESC).

<sup>71</sup> European Parliament, [Report on amending Parliament's Rules of Procedure with regard to the implementation of the European citizens' initiative](#), A7-0148/2012, 02.05.2012.

<sup>72</sup> European Parliament, Point XX of [Annex VII to EPRP, 'EP decision of 15 January 2014 on the powers and responsibilities of the standing committees'](#).

<sup>73</sup> See sections [1.1](#) and [2.6.1](#).

Obstacles: difficulties in finding contacts in other Member States; organisers do not know how to handle technical aspects of the ECI process and/or administrative procedures; Commission's conflict of interest<sup>74</sup>

Obstacles linked to the set-up of the ECI, and to the handling of the administrative procedures, have been identified by all stakeholders as one of the main difficulties in the ECI process. Organisers who already had a network of contacts in different Member States recognised this as a crucial asset for the success of their ECI. Those who did not already have such a network incurred excessive burdens and costs in finding correspondents in other countries. This situation raised concerns in terms of equal opportunities for organisers, favouring cross-border organisations over citizens when setting-up an initiative.

Furthermore, organisers explained that current available services are not able to provide support covering all their significant needs, including a full overview of their responsibilities (outside relationship with Commission) or campaign organisation. Finally, some stakeholders identified a conflict of interest in the position of the Commission as outlined in Regulation 211/2011, because the Commission's services provide support and information and, at the same time, decide on the registration and the follow-up of the ECIs.

#### Solution analysed:

- systematic support for exchanges among ECI organisers;
- set up an 'Citizens' Initiative Centre'<sup>75</sup>

The EESC support for exchanges among ECI organisers has been recognised as very positive. This has proved useful – not only for creating a network, but also to foster exchanges of information among potential organisers. For these reasons, it was proposed to hold such meetings on a more frequent and regular basis<sup>76</sup>. Some stakeholders also asked for the creation, by EU institutions, of a specific online platform to support the search for potential partners and allow networking amongst the ECI organisers.

To further improve the information available to organisers or to their requests of support, it is proposed to establish the 'Citizens' Initiative Centre' as a one-stop-shop. The Citizens' Initiative Centre could consist of an office and an online platform providing the following services:

- support in searching for potential partners or support staff,
- support (pro-bono) on technical IT issues or legal aspects of the ECIs including:

<sup>74</sup> Information based on desk research and stakeholder consultation for the European Parliament Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, 2014, with the ECI organisers, MEP Victor Bostinaru, EESC, as well as the analysis of the Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Draft Opinion of the Committee on Petitions for the Committee on Constitutional Affairs on the European Citizens' Initiative and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative.

<sup>75</sup> Information based on the European Parliament Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, 2014 desk research and stakeholder consultation with ECI organisers, MEP Victor Bostinaru, MEP György Schöpflin, EESC, and the analysis of the Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Draft Opinion of the Committee on Petitions for the Committee on Constitutional Affairs on the European Citizens' Initiative and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative.

<sup>76</sup> The EESC is open to exploring ways in which they could further enhance the support for ECI organisers and the ECI process as a whole. Information based on stakeholder consultation (EESC) and Berg, C., 'The EESC in Support of the ECI Instrument', The ECI Campaign Article, 01.10.2013.

- ECI legal bases under the Treaties and the possible development of more articulated proposals for legislative acts;
  - the legal status of the ECIs and the organiser's liabilities;
  - the applicable data protection rules.
- answer accreditation and information requests;
- provision of a single set of detailed guidelines and training material on :
  - the rights and obligations of the ECI organisers,
  - all administrative procedures of the ECI process,
  - follow-up of successful and unsuccessful initiatives.

The Centre could be provided by pulling together resources from the EESC, the EP and/or any other EU institution<sup>77</sup>. An inter-institutional agreement might be required. Such a system would enable any conflicts of interest in the Commission to be addressed as it would remain the body in charge of the registration decision – but not the only body providing support and information to prepare the registration requests. Moreover, the centre could enjoy a certain degree of independence to make sure that the most impartial advice is provided beyond the interests of each institution. It is not proposed that the 'Citizens' Initiative Centre' is run by civil society organisations – since they are less stable. However, they could collaborate with such a Centre to develop synergies and provide the best services to the ECI organisers. Having an official 'Citizens' Initiative Centre' would also allow EU institutions to send a clear message to citizens.

The Centre could bring advantages, not only in terms of information and support for the needs of organisers, but also in addressing obstacles such as the organisers' liability, the costs and excessive burdens of the ECI process, the publicity and visibility of the ECIs, the difficulties in identifying the legal bases for launching the ECIs or the support for the submission of more structured proposals<sup>78</sup>. It would also avoid the current duplication of work, e.g. the different guidelines available, by different support providers and enhance the user-friendliness of the ECI by providing a single contact point for potential organisers across Europe.

While this solution could be practically implemented without changes to EU law, should Regulation 211/2011 be revised, its Article 4(1) could be amended to reflect the EU institutions involvement and to establish the 'Citizens' Initiative Centre' providing such support to the citizens, thereby enhancing legal certainty. A possible wording could be<sup>79</sup> as follows:

'In applying the provisions of this Regulation, the Union Institutions and bodies shall endeavour to assist and provide guidance to the public with regard to access to the European Citizens' Initiative through the establishment of the European Citizens' Centre'.

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<sup>77</sup> It is noted that the set-up of such a Centre would have economic implications for the resources allocated (e.g. office space, online platform, staff). Nevertheless, these costs could be reduced if synergies are developed by all of the current support providers, i.e. the Commission, the EP and the EESC, and if more institutions join the effort, e.g. CoR and Council.

<sup>78</sup> See sections [2.1.1](#), [2.1.2](#), [2.1.3](#), [2.1.4](#), and [2.2.1](#).

<sup>79</sup> This wording is inspired in Article 1(2) of Regulation 1367/2006 on the application of provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies of 25.09.2006, OJ L 264: 'In applying the provisions of this Regulation, the Community institutions and bodies shall endeavour to assist and provide guidance to the public with regard to access to information, participation in decision-making and access to justice in environmental matters'.



### 2.1.3. Transparency of funding and support to run ECI campaigns

#### Applicable provisions: Articles 4(1) and 9 of Regulation 211/2011

Organisers must provide information on the sources of support and funding for the proposed citizens' initiative. They should do so for the registering of the Initiative, enabling it to be made public in the Commission register and, where appropriate, for publishing it on their website. Such information should be regularly updated – Article 4(1).

In particular, when organisers submit their successful ECI to the Commission, they have to disclose information regarding any support and funding received for the ECI, which will be published in the register (Article 9)<sup>80</sup>.

#### 1<sup>st</sup> Obstacle: limited tools for enforcement of the obligation to provide information on the sources of funding which leads to the risk of diminishing the credibility of the ECI<sup>81</sup>

Currently, the obligation of transparency is enforced as follows: if the attention of the Commission is drawn to a possibly inaccurate declaration, accompanied by factual information that underpins such an allegation, the Commission would contact the organisers to establish the facts and have any inaccuracies corrected<sup>82</sup>.

Stakeholders considered that the simple disclosure obligation is not enough to respect the principle of transparency. The lack of systematic verifications to ensure that the information is correct and up-to-date, has been identified by stakeholders as an obstacle since they fear the reputation of the ECI could be diminished if such an obligation is not strictly respected. Finally, the absence of rules to disclose if there are citizens or interest groups funding specific ECIs is also considered, by such stakeholders, as leading to the risk of exploiting the ECI as a lobbying tool for organisations instead of a citizens' tool for EU participatory democracy<sup>83</sup>.

This remark has also been confirmed by the Decision of the EU Ombudsman that stressed that it is of utmost importance for the public to be able to follow ECIs and for the instrument to be seen as a tool for citizens. Therefore, the Commission should ensure full transparency of funding and check that the information provided by organisers is correct<sup>84</sup>.

#### Solutions analysed: system of checks<sup>85</sup>

<sup>80</sup> 'Indicate all sources of support and funding received for the initiative, including the amount of financial support at the time of submission' (point 7 of Annex VII of Regulation 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ L 65/1, 11.03.2011).

<sup>81</sup> Information based on the Decision of the European Ombudsman and the stakeholder consultation for the European Parliament Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, 2014, which included ECIs organisers.CI.

<sup>82</sup> Information based on stakeholder consultation (European Commission).

<sup>83</sup> For example, 'The Californian Citizens' Initiative [...] is more often used by big business interests. According to an in-depth study published by the Centre for Governmental Studies, "Money often dominates the initiative process even more than it does the legislative process"'. See Corporate Europe Observatory (2010), '[ECI participatory democracy?](#)'.

<sup>84</sup> See point 29 of the Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN concerning the European Commission at: <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/59205/html.bookmark>.

<sup>85</sup> Information based on the Decision of the European Ombudsman as well as on desk research and stakeholder consultation carried out for the European Parliament Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' 2014, with ECIs organisers.

The Commission should consider performing regular checks on the compliance with transparency rules regarding financial support. This would address the EU Ombudsman's and stakeholders' concerns mentioned above and enhance the credibility of the ECI. It would also allow for the early detection of possible problems instead of reacting on the basis of complaints.

As proposed by the Decision of the EU Ombudsman<sup>86</sup>, the rules on such checks could be inspired by the existing system of quality checks in relation to information in the Transparency Register<sup>87</sup> and be based on the Commission's own initiative complementing the checks derived from the alerts or complaints under the current system.

These solutions would not necessarily involve a change in EU law although introducing a rule for this purpose in Regulation 211/2011 would enhance legal certainty.

## 2<sup>nd</sup> Obstacle: costly/burdensome ECI process: need for support<sup>88</sup>

Almost all stakeholders pointed out the costly/burdensome process to set-up and run an ECI and the difficulties in fundraising. Some consider that up to EUR one million is necessary to run a successful ECI<sup>89</sup>. This estimate does not necessarily correspond to the actual costs incurred by the organisers, but also considers the value of the work of the volunteers and the services provided free to support a successful ECI campaign. The Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative<sup>90</sup> stressed that costs and delays for organising an ECI are further increased by the cumbersome process of verification of the translations of the proposed ECI<sup>91</sup>. Comparing the above estimate with the actual funding received by the organisers of successful ECIs<sup>92</sup> provides an idea of the financial efforts involved in running them, i.e. EUR 140.000 for

<sup>86</sup> See point 31 of the Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN concerning the European Commission at:

<http://www.ombudsman.europa.eu/en/cases/decision.faces/en/59205/html.bookmark>.

<sup>87</sup> The [Joint Transparency Register Secretariat \(JTRS\)](#) was established under the [Inter-Institutional agreement on a common Transparency Register between the Parliament and the Commission](#). According to point 21 of the Agreement, the JTRS' tasks include the implementation of measures to contribute to the quality of the content of the register. On this basis, the JTRS performs systematic checks. It also acts on alerts and complaints. Annex 4 to the agreement establishes the procedure for the investigation and treatment of complaints. The JTRS has carried out more than 1000 quality checks until 2013 (random self-initiative checks and checks on alerts) and found 783 cases of non-compliance (see [Annual Report on operations of the Transparency Register 2013](#)). The [new Inter-Institutional agreement adopted in March 2014](#) (pending publication in the Official Journal) provides in Point 24 that the JTRS '[...] need to be reinforced [...] to deal with the procedures for alerts and for the investigation and treatment of complaints, and to improve the procedures for verifying the reliability of data provided by applicants'.

<sup>88</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers, EESC, and two members of the Senior Expert Panel for this project, and the analysis of the Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Decision of the European Ombudsman and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative.

<sup>89</sup> 'Consider costs for staff, translation, office equipment, online services, signature collection, advertising, printing, phones and postage. Political campaigns, especially at transnational level, can cost a lot of money', see ECI Campaign practitioner's check list, by The ECI Campaign: [Initiative for the European Citizens' Initiative](#). See also Thomson, J. (2011) 'A space inside Europe for the public before a European public space: The European Citizens' Initiative and the future of EU public engagement', Involve Research Paper, Paper prepared for the conference 'Getting European Citizens' Initiatives started', Brussels, Belgium.

<sup>90</sup> Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) No 211/2011 on the citizens' initiative, COM(2015) 145 final 31.3.2015, Brussels.

<sup>91</sup> The translations are necessary to gather signatures in more Member States. To save money, most statements of support were translated through free internet services or the organisers asked supporters to help. Many translations could not be accepted by the Commission. Organisers complained to have difficulties to ensure the necessary accuracy of their translations even on the basis of the comments received from the Commission on their first version(s).

<sup>92</sup> European Citizens' Initiative: European Commission Official Register, [Closed ECIs](#).



'Water and sanitation are a human right!; Water is a public good, not a commodity!'<sup>93</sup>; EUR 159.219 for 'One of us'; EUR 14.501 for 'Stop vivisection'.

The costly/burdensome process and difficulties in fundraising led to concerns about equal opportunities among the ECI organisers and the ECIs use by interest groups<sup>94</sup>.

#### Solutions analysed: EU financial support and free translation services<sup>95</sup>

If the ECI process is revised in the light of proposed solutions in previous sections, the costs and burdens involved might be reduced and the need for financial support will diminish as well. Nonetheless, the difficulties experienced by ECIs' organisers could also be addressed by:

- Providing some EU funding to the registered ECIs<sup>96</sup>;
- Providing the ECI's organisers with free translation services for the text of their ECIs used to request signatures/statement of support during their campaigns in different Member States<sup>97</sup>.

#### 2.1.4 Awareness of EU citizens on the ECI

##### Applicable provisions: Articles 5(2) and 6 of Regulation 211/2011, Rules 197a, 203a and Point XX of Annex VII to the European Parliament Rules of Procedure

Article 5(2) establishes that, the organisers may collect statements of support in paper form or electronically. Where statements of support are collected online, Article 6 shall apply.

In 2012, the EP amended its Rules of Procedure to regulate 'Public hearings on citizens' initiatives' (Rule 197a), and to specify that the Committee on Petitions may examine unsuccessful ECIs when follow-up is considered appropriate (Rule 203a)<sup>98</sup>.

##### Obstacle: EU citizens are not aware of the ECI<sup>99</sup>

<sup>93</sup> '[...]'. This is complemented by the time staff of EPSU invest in the initiative. This is harder to calculate. Nonetheless we estimate that starting with the preparation and counting over the whole period of the Initiative and calculating all costs this contribution could amount to 50-80.000 Euros. In addition an important number of citizens, trade unions, social action groups, NGOs and other organisations will promote the Initiative at national level [...]', available [online](#).

<sup>94</sup> As mentioned previously in California: 'The Californian Citizens' Initiative, which has been in place for almost a century, is today rarely used by grassroots citizens' groups because [...] it is more often used by big business interests'. See Corporate Europe Observatory (2010), '[ECI participatory democracy?](#)'.

<sup>95</sup> Information based on desk research and stakeholder consultation for the 2014 European Parliament Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' involving ECI organisers and the EESC and the EP Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative.

<sup>96</sup> ECIs could be supported by EU operating grants that finance operating expenditures of a body that is pursuing an aim of general European interest or an objective that forms part of an EU policy. This option would not involve any change in EU law and funding and could be available through the existing budget lines of the Europe for Citizens' Programme and the Rights, Equality and Citizenship Programme. However, an ECI citizens' committee might need to be established as a legal entity.

<sup>97</sup> The European Economic and Social Committee – which has already proposed to provide its services, the European Parliament and any other EU Institution could be responsible for this service. This solution has been expressly proposed by the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative.

<sup>98</sup> In 2012, the EP amended its Rules of Procedure to regulate 'Public hearings on citizens' initiatives' (Rule 197a), and to specify that the Committee on Petitions may examine unsuccessful ECIs when follow-up is considered appropriate (Rule 203a).

All organisers pointed out that, in addition to promoting their specific ECI, they needed to inform EU citizens about what the ECI means and the objectives it pursues and raise awareness about it in general. In addition, citizens do not readily provide personal information. This is perceived as an additional burden to their limited campaigning resources.

Organisers also explained that, while it is easier for them to engage the EU debate on social media, they struggle to interact with 'traditional media' such as radio, TV and newspapers.

**Solutions analysed:**

- support by the proposed 'Citizens' Initiative Centre' or, alternatively, by contact points in each Member State;
- organisation or support to the organisation of communications campaigns on ECI<sup>100</sup>

The ECI should be promoted in order to raise public awareness and overcome citizen distrust of sharing required personal data. According to the Decision of the European Ombudsman, it is essential to enhance citizens' understanding of the value of the public debate generated through the ECI procedure (irrespective of the individual outcome)<sup>101</sup>.

The 'Citizens' Initiative Centre'<sup>102</sup> could provide information to the organisers and to citizens on funding possibilities for communication actions on the ECI in general or on running of successful ECIs to increase the reputation of the ECI, and the awareness and success of the ECI as a tool for participatory democracy across the EU. An EU campaign on the ECI in general could be considered by EU Institutions. The role of national contact points<sup>103</sup> is not clear and could generate differences in the ECI's implementation between Member States due to the absence of support. We considered therefore that this option should only be complementary to the 'Citizens' Initiative Centre'.

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<sup>99</sup> Information based on desk research and stakeholder consultation for the 2014 European Parliament Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' involving ECI organisers, EESC, MEP Victor Boştinaru, MEP Alain Lamassoure, one member of the Senior Expert Panel for this project.

<sup>100</sup> Information based on desk research and stakeholder consultation for the 2014 European Parliament Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' involving ECI organisers, the EESC, MEP Victor Boştinaru, MEP Alain Lamassoure, and the analysis of the Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Decision of the European Ombudsman, the Draft Opinion of the EP Committee on Petitions and the EP Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative.

<sup>101</sup> The Ombudsman Decision emphasises that in terms of substantive outcome an ECI process, the Commission coming forward with a legislative proposal should not be the only measure of success. While this is what the organisers of an ECI seek to achieve, the Ombudsman's view is that the process itself is of major significance.

<sup>102</sup> See section [2.1.2](#).

<sup>103</sup> the Committee on Constitutional Affairs' Draft Report suggested establishing a contact point in each Member State that could support the spread of information on the ECI tool; reply to queries by citizens; provide accreditation to organisers.

## 2.2 Registration by the European Commission

### 2.2.1 Scope of the ECI and definition of the legal bases for launching an ECI

Applicable provisions: Articles 11(4) and 17(2) of the Treaty on the European Union (TEU); Article 225 and 241 of the Treaty on the Functioning of the European Union (TFEU); Articles 4(2), 4(3) and 10 of Regulation 211/2011

Article 11(4) TEU states that '[n]ot less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its 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. [...]'.

Union legislative acts can be adopted only on the basis of a Commission proposal (Article 17(2) TEU) based on an article of the Treaty providing competences to the Union. The EP and the Council have a right of initiative – regulated respectively by Article 225 and 241 TFEU. They can request the Commission to put forward a proposal. However, the Commission is not obliged to do so and should only inform them of the reasons not to proceed.

In addition, Article 4(2)(a) of the Regulation establishes that the Commission will register a proposed ECI if the following conditions are fulfilled:

- the citizens' committee has been formed and the contact persons have been designated;
- the ECI does 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;
- the ECI is not manifestly abusive, frivolous or vexatious;
- the ECI is not manifestly contrary to the values of the Union (Article 2 TEU).

The Commission must identify a legal base that frames or recognises its powers for developing such a legislative proposal – Article 4(2)(b). According to Article 4(3), the Commission must motivate its decision when it refuses to register a citizens' initiative.

Finally, Article 10 of the Regulation 211/2011 sets the procedure for the examination of a citizens' initiative by the Commission once the organisers have received the certificates by the relevant national authorities on the validation of the one million (or more) signatures. The Commission must, within three months, set out in a communication, its legal and political conclusions on the citizens' initiative, the action it intends to take, if any, and its reasons for taking or not taking that action.

**Obstacles:**

- unclear legal bases for the ECIs;
- lack of flexibility in the registration phase;
- unclear scope of the ECI;
- uncertainty on the follow-up of unsuccessful ECIs)<sup>104</sup>

**Unclear legal bases**

Through the Europe Direct service and its website, the Commission provides information about the legal bases for the ECIs<sup>105</sup>. However, all stakeholders explained that despite that information, the definition of the legal bases remains unclear and it is a major obstacle in launching the ECIs. This is evidenced by the fact that many proposals are refused for reasons linked to the legal bases<sup>106</sup>. The experience from organisers is that when they do not have enough legal expertise to carry out a full analysis of their proposed ECI and to formulate it in such a way that respects the EU competences and complies with the registration criteria, they have to ask for professional advice (which constitutes an additional cost to be covered by their limited resources).

Other uncertainty also stems from the Commission's unclear replies to proposed initiatives. Many stakeholders stated that, in some cases of refusal of registration, no detailed and clear explanations were provided and, in other cases, these were contradictory. All the analysed reports<sup>107</sup> expressed concern about the low percentage of successful initiatives and the dramatic decrease in the number of new initiatives. As stated above, 40% of the proposed ECIs have been declared "legally inadmissible" by the Commission and refused registration. Organisers of six initiatives have appealed to the CJEU against such refusals: the ECI 'One million signatures for a Europe of solidarity'<sup>108</sup>, the ECI 'Right to Lifelong Care: Leading a life of dignity and independence is a fundamental right!<sup>109</sup>, the ECI 'Cohesion policy for the equality of the regions and the preservation of regional cultures'<sup>110</sup>, the ECI 'Minority SafePack – one million signatures for diversity in Europe'<sup>111</sup>, the ECI 'STOP TTIP'<sup>112</sup> and the ECI 'Ethics for Animals and Kids'<sup>113</sup>.

**Lack of flexibility in the registration phase**

Furthermore, the concerned stakeholders' key complaint refers to the Commission's refusal of ECIs based on the fact that only some aspects of the requests fell outside the Commission's competence. They considered that Regulation 211/2011 does not forbid the Commission to breakdown and analyse different aspects of the proposed ECI. More

<sup>104</sup> Information based on the desk research and stakeholder consultation carried out for the 2014 EP Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' involving ECI organisers, MEP Alain Lamassoure, EESC, the Spanish national authorities, analysis of Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Decision of the European Ombudsman, the Draft Opinion of the EP Committee on Petitions on the European Citizens' Initiative and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative.

<sup>105</sup> Europe Direct provides a specific check in consultation with Commission services on specific ECIs. Information based on stakeholder consultation (European Commission). Europe Direct provides a specific check in consultation with Commission services on specific ECIs.

<sup>106</sup> 'EU law is complex and difficult to understand for many EU citizens', see Maroš Šefčovič, Preface of Berg, C. and Thomson, J., 'ECI That Works', The ECI Campaign, Germany, 15.04.2014, p. 7.

<sup>107</sup> The Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Decision of the European Ombudsman, the Draft Opinion of the Committee on Petitions and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative.

<sup>108</sup> Case T-450/12, *Anagnostakis v Commission*, OJ C 399/47 (pending case).

<sup>109</sup> Case T-44/14, *Costantini and Others v Commission*, OJ C 93 (pending case).

<sup>110</sup> Case T-529/13, *Izsak and Dabis v Commission*, OJ C 24 (pending case).

<sup>111</sup> Case T-646/13, *Minority SafePack – one million signatures for diversity in Europe and Others v Commission* (pending registration).

<sup>112</sup> Case T-754/14, *Efler and Others v Commission* (pending registration).

<sup>113</sup> Case T-361/14, *HB and Others v Commission* (pending registration).

confusion on this point also stemmed from a statement by the Vice President of the Commission – Maroš Šefčovič, explaining that 'it was impossible for the Commission's communication to respond to every proposal in the Right to Water ECI because they fell outside the areas where the Commission is empowered to act' while acknowledging (the inconsistency) that 'several ECIs have in fact been rejected because there is no sufficient legal basis for all the proposals they contain'<sup>114</sup>.

### Unclear scope

Many ECI organisers complained about the disappointing outcomes of the ECI procedure. The lack of concrete legislative or policy proposals in response to the first successful ECIs have led them to question its scope. Currently, it is not clear if the scope of the ECI would enable the submission of ECIs not only requesting for legislative initiatives but also for policy actions aiming at setting EU policy agendas or whether ECIs should be limited to proposals for legislative acts. During the conference organised jointly by the Council of the EU and the ECI Campaign entitled "The European Citizens' Initiative and the Promise of Participatory Democracy" on 16 June 2015, several speakers considered that in order to make the ECI an effective tool of participatory democracy, its final aim (foster the EU political debate on certain topics or/and legislative proposals) needs to be explicitly clarified.

Another uncertainty relates to the possibility or not of proposing modifications to the Treaties by an ECI. This issue is the subject matter of one of the cases currently pending before the CJEU<sup>115</sup> where the applicant demands that the General Court annuls the decision of the European Commission of 6 September 2012 by which the Commission rejected registration of the proposed ECI entitled 'One million signatures for a Europe of solidarity'. The Commission motivated its refusal on the consideration that the proposed initiative would fall manifestly 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. Therefore, the CJEU will now have to specify whether the notion 'for the purpose of implementing the treaty' means that the scope of an ECI 'for the purpose of revising the treaty' is possible or not. The ECI Campaign noted that in the Member States whose legislation provides for a national citizens' initiative that cannot change national primary law (e.g. the Constitution), such a ban is set out by an explicit rule. Therefore, since Article 11(4) of the Regulation does not explicitly forbid Treaty amendments by ECIs, it can be assumed that they are allowed<sup>116</sup>. According to the ECI Campaign, since the Commission can propose Treaty amendments for the purpose of implementing the Treaties, an ECI asking for such an outcome should be considered within its powers or certainly not 'manifestly outside' the framework of its powers. The ECI Campaign also claims that if Article 48(2) TEU recognises the Commission has the power to propose Treaty amendments on its own initiative, preventing EU citizens from using the ECI to invite the Commission to do so would be contradictory. The ECI Campaign also argued that the Commission treats differently similar ECIs requiring Treaty changes on the mere basis of their reference to a different legal base<sup>117</sup>.

<sup>114</sup> Maroš Šefčovič, Preface of Berg, C. and Thomson, J., '[ECI That Works](#)', The ECI Campaign, Germany, 15.04.2014, p. 7.

<sup>115</sup> [Case T-450/12, Anagnostakis v Commission](#), OJ C 399/47 (pending case).

<sup>116</sup> See the ECI Campaign's position on Treaty amendments at: <http://www.citizens-initiative.eu/position-on-treaty-amendments/>.

<sup>117</sup> The Commission refused to register the ECI "Enforcing Self-determination Human Right in the EU" which referenced Article 48 (2) because it called for a treaty amendment. At the same time, the Commission registered the ECI "Let Me Vote" which would also require treaty change to implement – i.e., to Article 20(2) TFEU. The ECI "Let Me Vote" referenced Article 25 TFEU as its legal basis instead of Article 48.

### Follow up of unsuccessful initiatives

A third ambiguity relates to the potential follow up of unsuccessful initiatives. Although they did not reach the one million signatures, they have the legitimacy of gathering significant support from citizens which justifies the organisers to explore options for other possible national or EU actions – different from the successful ECIs. For example, some unsuccessful ECI organisers engaged with the members of a national parliament to amend the national law. In this case, the European dimension was lost, but organisers were able to pursue their ECI objective in one Member State, even if the ECI had been unsuccessful.

Moreover, most unsuccessful organisers are not aware of the amendments to the European Parliament Rules of procedure (Rule 203a), or of the possibility to present their unsuccessful ECIs to the Committee on Petitions<sup>118</sup>.

#### Solutions analysed:

- enhance preliminary legal advice;
- more flexible registration procedure
- more transparent rules defining the scope of the ECI;
- inform ECI organisers about the right to petition<sup>119</sup>

Stakeholders call for preliminary **legal advice** on the text of the proposed ECIs in relation to the legal bases and the competence of the EU to deal with the issues of the ECI.

Regarding the legal check at the registration phase, the Commission could analyse separately each of the different points of the proposed ECI request, indicating the parts that fulfil the criteria and enabling the registration of the ECI on those grounds.

To address the issue of the difficult definition of the legal bases for launching an ECI and the registration, even if not all the elements fall under the Union's competence, the Commission in particular could:

- analyse each aspect of the proposed ECI separately for its registration;
- provide in its responses detailed information on the interpretation of the legal bases and the EU actions already undertaken.

To make the whole procedure of registration more transparent and better promote dialogue between citizens and EU institutions<sup>120</sup>, for each point of the ECI, the Commission could provide factual information about its competence, explaining the EU policy in the field and recalling all actions taken or foreseen. This motivated information should be provided for both positive and negative replies<sup>121</sup>.

- register those ECIs on the basis of those arguments fulfilling the requirements

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<sup>118</sup> Through a petition, EU citizens could point out a number of issues which the Members of the Committee on Petition can take into account when the EP is acting as co-legislator or is consulted on a legislative proposal.

<sup>119</sup> Information based on the 2014 EP Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' and the stakeholder consultation involving ECI organisers, MEP Gerald Häfner, MEP Alain Lamassoure, the EESC and the Spanish national authorities, the analysis of Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Decision of the European Ombudsman, the Draft Opinion of the Committee on Petitions and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative.

<sup>120</sup> This point was particularly stressed by the Decision of the European Ombudsman: 'Robust, consistent and comprehensible reasoning will serve as valuable guidance to citizens, allowing them better to understand the nature of the ECI tool, as well as helping future ECI organisers to formulate their proposed initiatives'. Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN concerning the European Commission at <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/59205/html.bookmark>.

<sup>121</sup> To this end, amending Article 4(3) of Regulation 211/2011 should be considered.



- systematically provide an opinion on the legal competence of the EU for each ECI

The ECI could be designed as a simpler and more user-friendly instrument in relation to its registration by complementing the 'legal admissibility check' with a fully developed 'opinion on the legal competence of the EU' enabling the ECI to be reformulated in order to be registered. According to this recommendation, the ECI registration would be subject to both the current 'legal admissibility check' (establishment of the citizens' committee; respecting EU values; not being 'abusive, frivolous or vexatious; falling within EU competences) and a formal opinion on the legal competence of the EU so as to allow the ECI's organisers to decide if they want to continue or not (by reformulating the ECI in case the opinion is negative)<sup>122</sup>.

- promote the delivery of more articulated ECI proposals so that EU legal analysis would be within the content of the ECI request.
- provide more information on alternatives for refused ECIs;

Finally, as regard the scope of the ECI, to make the ECI a concrete instrument for promoting active participation of citizens in EU policy-making, it is necessary to guarantee to organisers and campaigners that there is a **chance to impact** concretely legislation and policy in case their ECI is successful.

To this end, Article 1 of Regulation 211/2011 could be amended so as to clarify if the ECI can propose EU primary law amendments and whether the requirement to propose 'a legal act' refers to a legislative act or to a policy action as well. Article 1 should clarify whether the ECI could request policy actions as an agenda setting tool to raise issues of concern for citizens willing to see them dealt with at EU level<sup>123</sup>.

The legitimacy of the ECI would be strengthened if ECIs requesting a legislative act would be accompanied by a more structured proposal for an act (switching from an initiative, to an initiative to act). To draft the legal text organisers of ECIs could be assisted by the legal service of EU institutions in inter-institutional cooperation (i.e. Citizens' Initiative Centre, see sections 2.1.2 and 2.1.4) or/and by universities or other institutions<sup>124</sup>.

This would make the ECI call more clear and concrete and enable a proper assessment by the Commission of successful initiatives (see section 2.5)

ECIs enable the public engagement and involvement in discussions of important issues at EU level, even if the registered ECI is unsuccessful in collecting enough supporters to merit a response from the Commission. Stakeholders and the European Ombudsman's Decision pointed out that 'registered but unsuccessful ECIs' also had an impact on the European debate and managed to influence the EU decision-making process<sup>125</sup>.

Therefore, in case an ECI is unsuccessful, information on other alternatives for action could be provided to the organisers, such as the possibility of having a debate instead of the presentation at the EP hearing, the option to submit the ECI request as a petition to the EP (Article 227 TFEU) or the requirements for an ECI to be dealt with as a European

<sup>122</sup> Amending Article 4 of Regulation 211/2011 to include the requirement of a Commission opinion on the EU legal competence should be considered.

<sup>123</sup> Amending Article 11(4) TEU for clarification should also be considered.

<sup>124</sup> Amending Article 4(1) of Regulation 211/2011 should be considered.

<sup>125</sup> E.g. the ECI 'Single Communication Tariff Act' aiming to remove roaming charges in the EU, made its voice heard, at least in part, during the reform process that the Commission undertook in 2012 which led to reducing such charges. See: European Commission, '[What did the EU ever do for the mobile industry and consumers?](#)', MEMO/13/139, 26.02.2013.

Parliament's request to the Commission for a legislative act under Article 225 TFEU (right of initiative). However, a clear difference should be maintained between the follow-up of successful and unsuccessful initiatives, otherwise the ECI system would lose its meaning (i.e. the efforts of collecting one million signatures might not be worth it if unsuccessful initiatives are given the same importance).

## 2.2.2 Translation of the text of ECIs to campaign in different Member States

### Applicable rule: Article 4(1) of Regulation 211/2011 (the Regulation)

According to Article 4(1), after the registration of the ECI is confirmed, organisers may provide the proposed citizens' initiative in other official languages of the Union for inclusion in the register. The organisers are responsible for these translations<sup>126</sup>. The Commission further explains in its 'Guide for organisers' that they 'should strive to ensure that the translations are equivalent to the original. The Commission will not publish them if it finds manifest and significant inconsistencies'<sup>127</sup>.

### Obstacles: lack of language expertise by organisers; costly translation services<sup>128</sup>

The translations are necessary to gather signatures in different Member States, i.e. to produce standard statements of support in various languages, and they are essential to the success of the ECIs. Organisers can choose in which Member States and in which languages to carry out their campaigns.

Translations are a burden and a cost for organisers<sup>129</sup>, although they are not considered one of the major difficulties in launching an ECI. To save money, most of them were translated through free internet services or the organisers asked supporters for help. Many translations could not be accepted by the Commission and therefore, in practice, organisers would need the services of professional translators.

### Solution analysed: EU Institutions support for or provision of translations<sup>130</sup>

The EESC has proposed to provide their translation services to ECI organisers. This proposal has been welcomed by all of the stakeholders and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens'

<sup>126</sup> As regards the forms for the collection of signatures, they combine standard texts of the forms of Annex III of Regulation 211/2011 and the translated text of the initiative. Forms for the online collection are generated automatically by the Commission online collection software, whereas the forms for the on paper collection can be generated via organisers' accounts (activated for registered organisers) or they can be put together directly by the organisers. Information based on stakeholder consultation (European Commission).

<sup>127</sup> European Commission, '[Guide to the European Citizens' Initiative](#)', p. 18.

<sup>128</sup> Information based on desk research and stakeholder consultation for the 2014 EP Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' covering ECI organisers, as well as on the analysis of the Commission report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Decision of the European Ombudsman and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative. Also the intervention of Tina Nilsson, Head of one of the EU Ombudsman's four Complaints and Inquiries Units, during the ECI Conference at the Council of the EU on 16 June 2015, has been taken into account.

<sup>129</sup> See section [2.1.3](#).

<sup>130</sup> Information based on desk research and stakeholder consultation (ECI organisers), as well as on the analysis of the Commission report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Decision of the European Ombudsman and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative.



Initiative<sup>131</sup>. It would allow the organisers to overcome the translation obstacle and reduce the costs of developing and organising an ECI. Article 4 of the Regulation could be amended to remove the translation obligation from organisers and recognise the involvement of EU institutions.

## 2.3 Online Collection System (OCS) Certification by Member States

Applicable provisions: Article 6 and 12(3) of Regulation 211/2011 and Commission Implementing Regulation 1179/2011

Article 6 sets the conditions and the certification process for the online collection system (OCS). Paragraph 1 of this Article provides that the data obtained through the OCS must be stored, in a server, in the territory of a Member State<sup>132</sup>. The organisers must ask the competent national authority to certify the OCS – which includes verifying the way the software and the server function and how data is treated in all phases of the ECI process. Certification should take no more than one month from the valid submission of a certification request<sup>133</sup>. Organisers may only start collecting signatures once they have obtained the certification (Paragraphs 2 and 3)<sup>134</sup>.

Article 6(2) of Regulation 211/2011 requires the Commission to set-up and maintain an open-source software complying with the requirement of the Regulation for the online collection of signatures to be used, free, by the organisers.

Article 6(4) lists the adequate security and technical features that the OCS should have to ensure that:

- only natural persons submit the statements of support;
- data is securely collected and stored;
- the system generates appropriate signature forms.

According to the Regulation – Article 6(5), the Commission adopted the Implementing Regulation 1179/2011 (the Implementing Regulation), laying down technical specifications for the OCS. Point 1 of the Annex to the Implementing Regulation mentions the use of strong 'captcha'<sup>135</sup> as one possible verification process.

Obstacles: difficulties in signing the ECIs online with the Commission's OCS; signatories' emails cannot be collected; no access by persons with disabilities; non-unified OCS system across Member States<sup>136</sup>

<sup>131</sup> This proposal has been mentioned and welcomed by Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative. See point 8 of Draft Report 2014/2257(INI) - 19.3.2015.

<sup>132</sup> The Commission servers offered for free are based in Luxembourg.

<sup>133</sup> 'A request is considered to have been made once organisers have submitted all of the documents required by the implementing Regulation', European Commission, '[The European Citizens' Initiative - Guidelines and recommendations for practical implementation](#)', 15.04.2013, p. 3.

<sup>134</sup> Certification can happen before or after registration of the ECI initiative. The twelve months collection periods start with the registration date.

<sup>135</sup> A CAPTCHA (acronym for "Completely Automated Public Turing test to tell Computers and Humans Apart") is a program that protects websites against bots by generating and grading tests that humans can pass but current computer programs cannot.

<sup>136</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers– including one initiative prior to the Regulation and therefore not considered officially ECI, European Parliament – Secretariat of the Committee on Petitions, MEP Victor Boştinaru, MEP Gerald Häfner, MEP Alain Lamassoure, Dutch, French, Estonian national authorities and two members of the Senior Expert Panel for this project. Information based also on the analysis of Commission Report on the application of Regulation (EU) No

Two tools are necessary for the online collection of signatures: a server to store the data of the signatories and software to allow EU citizens to sign online. The Commission exceptionally offered to host the online signature collection systems on its own servers in Luxembourg<sup>137</sup>. Moreover, according to the Regulation, it developed a free software to allow EU citizens to sign online.

Among the 31 registered initiatives, 21 initiatives have collected statements of support online. Two of them ('Right2Water' and '30 km/h - making the streets liveable!') have used private servers and have had their systems certified by the competent authority in Germany<sup>138</sup>. All the others have benefitted from the Commission's hosting offer mentioned above and have had their systems certified by the competent authority in Luxembourg<sup>139</sup>. However, several difficulties were also encountered in the use of the Commission's OCS<sup>140</sup>. Most issues related to the first use of the OCS have been progressively addressed. More recently, the difficulties in linking the system to social media have been resolved and the OCS seems to be better integrated with social media now. However, the following difficulties still seem to exist:

- The system is not fully compatible with the needs of visually impaired people.
- When there are too many visitors online, the system does not 'support' them.
- The system is not specifically designed for smart phones<sup>141</sup>.
- The software is not user-friendly.

Furthermore, the use of 'captcha' as a verification process has a number of disadvantages that stakeholders considered as hindering the online signature process:

- 'captcha' limits the possibility for visually impaired citizens to sign;
- 'captcha' limits the possibility of citizens, who do not use the Latin alphabet, to sign;
- 'captcha' causes signatories to lose time with the risk of potential supporters giving up signing.

In addition, organisers are not able to collect signatories' email addresses within the Commission's system because the Commission's interpretation of the Regulation forbids it<sup>142</sup>. Currently, to gather emails, signatories are redirected from the Commission's OCS to the organisers' own websites. Signatories are confused about the difference in signing and submitting their email and often do not provide it because the process is too lengthy and

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211/2011 on the citizens' initiative, the Decision of the European Ombudsman, the Draft Opinion of the Committee on Petitions for the Committee on Constitutional Affairs on the European Citizens' Initiative and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative. Also the panels and discussions on the matter stemmed from the conference "The European Citizens' Initiative and the Promise of Participatory Democracy" held at the Council of the EU on 16 June 2015 have been taken into account.

<sup>137</sup> Šefčovič Maroš, Vice-President of the European Commission: [Commission offers own servers to help get first European Citizens' Initiatives off the ground](#), 23.01.2013. See also section 2.1.2.

<sup>138</sup> Bundesamt für Sicherheit in der Informationstechnik (BSI).

<sup>139</sup> Centre des technologies de l'information de l'Etat.

<sup>140</sup> Information based on desk research and stakeholder consultation (ECI organisers).

<sup>141</sup> On 14 April 2014, ECAS has launched an ECI application for mobile devices, 'The ECI Support Centre application'. The fact that the system is not mobile-friendly has also been highlighted by Xavier Dutoit, IT specialist for the ECI 'Right to water', during the conference "The European Citizens' Initiative and the Promise of Participatory Democracy" held at the Council of the EU on 16 June 2015.

<sup>142</sup> It is worth noting that the single statement of support form put forward by the Commission in its initial proposal included a field to gather the signatory's email address. See Annex III of the European Commission, Proposal for a Regulation of the European Parliament and of the Council on the citizens' initiative, COM(2010) 119 final, Brussels, 31.3.2010.

non-user-friendly<sup>143</sup>. Organisers argue that collecting signatories' email addresses could be extremely useful to inform them of the outcome of the ECI and promote EU debates<sup>144</sup>. This is crucial to make them feel involved and incentivise their participation in the ECIs and, in general, to foster participatory democracy at EU level.

Finally, the fact that there is no-unified OCS system causes further costs and burdens. Each Member State should be ready to certify the OCS system if organisers choose a server in their country. For organisers, this means different application procedures.

#### Solutions analysed:

- make the use of Commission hosting servers permanent;
- improve Commission software (allowing the collection of signatories' emails);
- increase its user-friendliness, making it accessible to persons with disabilities;
- establish a unified OCS system<sup>145</sup>

The Commission software was designed quickly before the Regulation entered into force in 2011. The decision to ensure the availability of the Commission servers was an emergency measure to support organisers who could not manage to use private ones. Stakeholders agree that the Commission should confirm the possibility for ECI organisers to use the Commission server on a permanent basis for storing the online signatures collected.

The Commission should enhance further technical aspects and features of the Commission's software while ensuring high security standards<sup>146</sup>. Such improvements could be inspired by the positive experiences of other on-line systems for gathering signatures<sup>147</sup>. The first aim would be to increase its user-friendliness<sup>148</sup> and, subsequently, to explore the possibilities of improving its use for smart phones<sup>149</sup>.

<sup>143</sup> '[...] although the ECI *Right to Water* collected over 1.8 million signatures, it only collected 20,000 email addresses of signatories whom it could invite to follow its public hearing and inform of the Commission's response'. See Berg, C. and Thomson, J., '[ECI That Works](#)', The ECI Campaign, Germany, 15.04.2014.

<sup>144</sup> This remark has been done also by Xavier Dutoit, IT specialist for the ECI 'Right to water', during the conference "The European Citizens' Initiative and the Promise of Participatory Democracy" held at the Council of the EU on 16 June 2015.

<sup>145</sup> Information based on desk research and stakeholder consultation for the 2014 EP Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' involving ECI organisers, European Parliament – Secretariat of the Committee on Petitions, MEP Victor Bostinaru, MEP Gerald Häfner, MEP Alain Lamassoure, Dutch, French, Estonian national authorities. Information based as well on the analysis of Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Decision of the European Ombudsman, the Draft Opinion of the Committee on Petitions on the European Citizens' Initiative and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative. Also the statements of: Gilles Feith, Director of the Government IT Center for the Luxembourg Ministry of Public Services; Xavier Dutoit, IT specialist for the ECI 'Right to water'; and Madara Peipina, representing ManaBalss.lv/MyVoice, have been taken into account. They have been collected during the panel 'Participatory and Digital Democracy: The ECI's new paradigm for EU public involvement' of the ECI Conference held at the Council of the EU on 16 June 2015.

<sup>146</sup> Regarding the 'captcha' requirement, the Regulation only mentions it as one possible verification process. Therefore, other processes could be explored. Should the 'captcha' system still be favoured, stakeholders propose to use it only as a 'last resort' tool and only when risks of fraud are detected, e.g. when the signature comes from an IP address already associated with an existing signature. However, this might involve a change to the Regulation as currently the Commission's interpretation is that IP addresses cannot be retained for data protection reasons.

<sup>147</sup> During the ECI Conference held at the Council of the EU on 16 June 2015, Madara Peipina, representing of the most innovative and successful e-petition platforms in Europe - ManaBalss.lv/MyVoice, opened a discussion on what the ECI could learn from an NGO-run national government online platform for citizen-institution dialogue. She stressed that the success of 'My Voice Latvia' lies on its extreme user- friendliness, the clear legislative aim of the initiative, and the help that the initiative received from the platform itself in improving its drafting text to comply with Latvian Parliament's standards.

<sup>148</sup> 'Through creative signature gathering techniques and the clever use of a parallel Avaaz online campaign, this grassroots campaign with limited financial resources collected an impressive 285,000 signatures'. See Stanislas Jourdan, Article on 'Unconditional Basic Income (UBI) – Exploring a Pathway towards Emancipatory Welfare

Furthermore, the Decision of the European Ombudsman stressed the importance to improve the current OCS software so as to respond to the needs of persons with disabilities who wish to submit statements of support of ECIs online<sup>150</sup>. The software should be made accessible to persons with disabilities<sup>151</sup> and include more up-to-date online campaigning features<sup>152</sup>. This could be done through an interactive process enabling all stakeholders and users involved (campaigners, stakeholders, civic IT specialists, etc.) to contribute their experience on the difficulties encountered. The Commission should therefore initiate a process for updating the OCS software involving the stakeholders.

This would save costs and burdens for organisers, the Commission and Member States, organisers would not need to prepare complex applications for the certification of the OCS and the Commission would not need to support them in this task and Member States would not need to certify a different OCS each time. The new OCS could consist of servers and software provided free by the Commission – as is currently the case, but on a permanent basis. The OCS would be designed with fixed features that comply with the applicable EU law and would not need to be certified since they do not change over time<sup>153</sup>. This revision goes in parallel with another proposed revision on the requirements for collecting statements of support<sup>154</sup>.

To keep citizens informed about the progress of the ECI they signed for, stakeholders also asked for a clarification and eventually a modification of Regulation 211/2011 to allow email addresses to be collected (under the signatories' consent) through the Commission's OCS, increasing the user-friendliness of the system<sup>155</sup>.

Finally, stakeholders are also in favour of revising the Regulation to introduce one single and centralised OCS system. Despite the numerous advantages mentioned above, it is noted that the introduction of a unified OCS system would involve significant efforts, not only for its technical aspects, but also for the possible amendments to the Regulation which would need to be restructured to eliminate the certification phase.

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Conditions in the EU', in Berg, C. and Thomson, J., '[ECI That Works](#)', The ECI Campaign, Germany, 15.04.2014, p. 42.

<sup>149</sup> It is noted that to this end the Commission has published its software in the open-source community with a view to improving it.

<sup>150</sup> The Ombudsman e.g. referred to Article 29 of the United Nations Convention on the Rights of Persons with Disabilities of which the EU is part.

<sup>151</sup> It is noted that the Commission has contracted-out a study on interface accessibility by people with disabilities – with a view to addressing the difficulties in accessing it.

<sup>152</sup> The Committee on Petitions' Draft Opinion also called on the Commission to support the creation of a public ECI application for mobile devices.

<sup>153</sup> 'First of all, it makes no sense that the online systems hosted on the Commission's premises should be certified by a national authority [...]. Secondly, the progress of new technologies should allow systems which could work even without any need for subsequent verification by national authorities. The system could even evolve towards a central collection system managed by the Commission (on a non-mandatory basis – I am convinced that the organisers should remain free to use private systems of collection, as is the case today)'. See Mário Tenreiro, Article on 'Citizens' Initiative: What's next?', in Berg, C. and Thomson, J., '[ECI That Works](#)', The ECI Campaign, Germany, 15.04.2014, p. 87.

<sup>154</sup> See section 2.4.

<sup>155</sup> As mentioned above, the fact that, currently, ECI campaigns cannot keep the email addresses of their ECI's signatories limits the ECI's ability to mobilise Europeans and facilitate transnational debate or to keep citizens informed about the progress of the ECI they signed for. The ECI organisers should be able to keep the signatories' email addresses under their consent. Furthermore, it is worth noting that, during the ECI Conference held at the Council of the EU on 16 June 2015, Gilles Feith, Director of the Government IT Center for the Luxembourg Ministry of Public Services stressed that the Commission's OCS might be improved allowing electronic signatures. This would bring advantages such as automated (and accurate) validation and progress tracking (for organisers).

## 2.4 Collection of Statements of Support by Organisers

### 2.4.1 Requirements to sign the ECIs

Applicable provisions: Articles 3(4), 5(3), 5(4), 7(4) and 8(1) of Regulation 211/2011; Article 20(2)(b) TFEU; Article 7 of Council Decision 2002/772/EC<sup>156</sup>; Regulation No 31/1962 (Staff Regulation)<sup>157</sup>

Article 3(4) of Regulation 211/2011 requires the signatories of ECIs to be citizens of the European Union and of the age for entitlement to vote in the European Parliament elections. According to Article 7 of Council Decision 2002/772/EC: 'Subject to the provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions.'<sup>158</sup>

Article 5(3) of Regulation 211/2011 requires the ECI supporters to complete signature forms made available by the organisers. The forms require different types of personal data depending on the competent Member States for verification. Annex III to Regulation 211/2011 presents the formats and requirements of the statement of support forms to be used and distinguishes between Member States that require personal identification document numbers and those that do not<sup>159</sup>.

Article 8(1) of Regulation 211/2011 specifies the rules for identifying the competent Member States<sup>160</sup>.

#### Obstacles:

- numerous and different data requirements;
- signatories are reluctant to give their ID data;
- some EU nationals and third-country nationals cannot sign the ECIs<sup>161</sup>

<sup>156</sup> Article 7 of Council Decision 2002/772/EC of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom, OJ L 283.

<sup>157</sup> Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ 45, 14.06.1962.

<sup>158</sup> The voting age is set at 18 years old in all EU Member States except for Austria, where it is permitted to vote at 16. European Parliament (2014), [Electoral Procedures Fact Sheet on the European Union](#).

<sup>159</sup> Article 5(4) establishes that Member States shall forward to the Commission any changes to the information set out in Annex III, and the Commission may adopt amendments to Annex III. The Commission adopted Commission Delegated Regulation (EU) No 887/2013 of 11 July 2013, replacing Annexes II and III to Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizens' initiative, OJ L 247, 18.09.2013. It replaced Annex II (Required information to register an ECI) and Annex III (Statement of support forms and list of Member States that require and that do not require identification documents) to Regulation 211/2011 adapting it to new Member States requirements.

<sup>160</sup> Organisers must submit signatures to: the Member State of residence or of nationality of the signatory (for Member States which do not require the provision of a personal identification number/personal identification document number in the statement of support form); or the Member State that issued the personal identification document indicated in the statement of support (for Member States which require the provision of one of the personal identification numbers/personal identification document numbers in the statement of support form).

<sup>161</sup> Information based on desk research and stakeholder consultation for the 2014 EP Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' involving ECI organisers, European Parliament – Secretariat of the Committee on Petitions, MEP Victor Boştinaru, MEP Gerald Häfner, MEP Alain Lamassoure, EESC and the Austrian, Estonian, Spanish national authorities a. Information also based on the analysis of Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Decision of the European Ombudsman, the Draft Opinion of the Committee on Petitions on the European Citizens' Initiative and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative. The discussions during the conference "The European Citizens' Initiative and the Promise of Participatory Democracy" held at the Council of the EU on 16 June 2015 have been taken into account.

The fact that the **differences in the signature forms** reflect different requirements regarding personal data depending on the competent Member States for verification, leads to the use of several different forms for the collection of statements of support. All stakeholders and the analysed reports<sup>162</sup> identified this divergent treatment from one Member State to another as one of the main obstacles faced by the ECI organisers and the use of so many forms is burdensome<sup>163</sup>.

Many potential supporters are also discouraged from signing (on paper or online), once they realise how many fields need to be completed. The most demanding forms are the ones to be used in Austria, Italy and France where the signatories have to indicate their name, place of residence, street, house number, postal code, city, country, date of birth, place of birth, nationality, personal identification number, i.e. passport or identity card – including the name of the issuing authority in Italy<sup>164</sup>.

Furthermore, another key obstacle has been the reluctance of potential signatories to provide their personal data and, in particular, their identification (ID)/personal numbers<sup>165</sup>. For example, in France, where organisers of an ECI benefitted from wide TV and radio coverage, there had been a low turnout in the number of signatories linked to the requirement of ID/personal numbers<sup>166</sup>. Moreover, stakeholders mentioned the negative effects of the NSA scandal<sup>167</sup> and of the widespread episodes of identity theft, i.e. in Romania and Bulgaria<sup>168</sup>.

In addition, due to the current national requirements, some EU citizens residing outside their Member State of nationality – either in another Member State or in a third-country, are not be able to sign an ECI. This problem was estimated to potentially affect 11 million EU citizens<sup>169</sup>. The Commission called upon the Member States concerned to make sure that EU citizens residing in their territories could also sign<sup>170</sup>. Spain, for example, amended its rules to allow EU citizens resident in Spain to sign the ECIs there<sup>171</sup>.

<sup>162</sup> The Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Decision of the European Ombudsman, the Draft Opinion of the Committee on Petitions for the Committee on Constitutional Affairs on the European Citizens' Initiative and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative.

<sup>163</sup> E.g. one organiser made use of 43 different forms to run the ECI campaign and more could have been used.

<sup>164</sup> Mário Tenreiro, Article 'Citizens' Initiative: What's next?', in Berg, C. and Thomson, J., '[ECI That Works](#)', The ECI Campaign, Germany, 15.04.2014, p. 84.

<sup>165</sup> According to the 2011 Eurobarometer survey on 'Attitudes on data protection and electronic identity in the European Union', 70% of the Europeans surveyed expressed concern that their personal data may be used for purposes other than that for which it was collected. See: European Commission, '[Special Eurobarometer 359: Attitudes on Data Protection and Electronic Identity in the European Union](#)', June 2011.

<sup>166</sup> Information based on stakeholder consultation (ECI organisers). France requires the provision of one of the personal identification documents: *Passeport* (passport), *Carte nationale d'identité* (national identity card), see point 2 of Part C of Annex III of Commission Delegated Regulation (EU) No 887/2013 of 11 July 2013, replacing Annexes II and III to Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizens' initiative, OJ L 247, 18.09.2013.

<sup>167</sup> The Guardian Article: '[The NSA files](#)'.

<sup>168</sup> PrivacyMatters.com Article: '[Who Commits Identity Theft?](#)'.

<sup>169</sup> Stein, R. and Müller-Török, R., '[The Assignment of European Citizens to Member States in the Regulation on the European Citizens' Initiative](#)', Vienna University of Economics and Business.

<sup>170</sup> European Parliament, '[Answer given by Mr Šefčovič](#)' on behalf of the Commission to MEP Claude Turmes Parliamentary questions on Implementation of the European Citizens' Initiative (ECI), E-001851/2013, 10.04.2013.

<sup>171</sup> Spain requested (i) the removal of the requirement to provide a permanent residence; (ii) the addition of the signatory's date of birth among their data requirements; and (iii) the inclusion of a personal identification number to the list of personal identification numbers/document numbers available in Part C of Annex III, which would enable non-Spanish EU citizens resident in Spain to use the statement of support form for Spain' (European Commission, Secretariat General, '[Meeting of the Expert Group on the Citizens' Initiative, Summary Reports](#)' from 04.03.2013, in relation to the adoption of Regulation modifying the forms the declaration of support (Commission Delegated Regulation 887/2013).



**Solutions analysed:**

- single EU form for signatures;
- removal of ID requirements;
- extend the right to sign the ECIs to third-country nationals<sup>172</sup>

As mentioned above<sup>173</sup>, stakeholders proposed the establishment of a uniform EU procedure, i.e. one uniform OCS system, with a corresponding single EU form to be verified by all national authorities<sup>174</sup>. Such standardisation of the requirements for the signatures in all Member States could also ensure that all EU citizens can support an ECI regardless of where they live. Such requirements should not include ID numbers as current systems enable identification of signatures without the need for ID numbers to be provided<sup>175</sup>.

Introducing a single harmonised EU form for signatures would fully address the obstacles faced by the organisers and signatories. The Decision of the European Ombudsman also called on the Commission to propose, once again, the introduction of uniform requirements<sup>176</sup>.

Regarding the exclusion of EU citizens residing outside their Member State of nationality from their right to sign an ECI, the Decision of the European Ombudsman stated that guaranteeing to all EU citizens the possibility to sign an ECI (irrespective of the state they are currently residing in) is 'an issue of major importance'<sup>177</sup>.

Therefore, this solution, while taking into account the implications in terms of security (i.e. avoiding the fraudulent use of citizens' data), would require amending Regulation 211/2011, or Annex III of the Regulation (following the process led by the two already adopted delegated acts) so as to harmonise the requirements and limit as much as possible the amount of personal data required<sup>178</sup>. For example, Member States already have information on citizens (used for referendums and elections) that could be used to cross check it without the need to request signatories to provide ID information<sup>179</sup>. ID requirements would be not needed and could be removed. As a result, personal data requirements could be limited to name, address and nationality.

<sup>172</sup> Information based on desk research and stakeholder consultation for the 2014 EP Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' involving ECI organisers, MEP Victor Boștinariu, MEP Alain Lamassoure, MEP Gerald Häfner, European Commission, EESC. Information is also based on the analysis of Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Decision of the European Ombudsman, the Draft Opinion of the Committee on Petitions on the European Citizens' Initiative and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative.

<sup>173</sup> See section 2.3.

<sup>174</sup> Information based on stakeholder consultation (one member of the Senior Expert Panel for this project).

<sup>175</sup> In its opinion of 30.11.2010, the EDPS has also confirmed that ID requirements are not necessary in the context of the collection of statements for ECIs. See, EDPS, Opinion on the Proposal for a Regulation of the European Parliament and of the Council on the Citizens' Initiative, OJ C 323/1, 30.11.2010

<sup>176</sup> It is noted that the Commission's initial proposal for Regulation foresaw uniform requirements for all Member States.

<sup>177</sup> Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN concerning the European Commission at <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/59205/html.bookmark>

<sup>178</sup> A 'framework' limiting personal data requirements should be set out in Annex III of the Regulation so as to prevent Member States from requiring an excessively high amount of data.

<sup>179</sup> On the other hand, some argue that the nature of ECIs is different from national voting and referenda systems and ECIs, currently, might not lead automatically in all countries to the identification of the signatory. Simplified rules for the verification of signatures should therefore be considered. The rules and practice as in the petitions process of the European Parliament could be a source of inspiration for the revision of the verification rules. Information based on stakeholder consultation for the 2014 EP Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' involving with the European Parliament – Secretariat of the Committee on Petitions.

## 2.4.2 One year collection time for signatures

### Applicable provisions: Articles 5(5) and 6 of Regulation 211/2011 (the Regulation)

According to Article 5(5), ECI organisers have one year to collect signatures. The starting date coincides with the registration of the specific ECI by the Commission. However, Article 6(2) further specifies that organisers can only start collecting online signatures through OCS once the competent national authorities have certified the system<sup>180</sup>.

For the collection of online signatures, the data should be stored in a server in the territory of a Member State – Article 6(1) of the Regulation<sup>181</sup>. Finally, Article 6(2) obliges the Commission to set-up and maintain open-source software complying with the requirement of Implementing Regulation No 1179/2011 for the online collection of signatures to be used free by organisers.

### Obstacles: short collection period; uncertainties on the starting date<sup>182</sup>

Stakeholders considered that the one year collection time is too short to achieve the one million signatures required for successful ECIs when there is no real justification for limiting the collection time. Limiting the collection time adds a barrier to the ECI as the lack of sufficient signatures collected within the 12 month period is frequently the cause of unsuccessful ECIs: so far 25 registered initiatives did not reach the required number of statements of support and 10 were withdrawn before the end of the collection period.

Furthermore, the fact that the ECI process is not designed to ensure that the registration date of an ECI coincides with the certification of the OCS by Member States generated more delays and uncertainty<sup>183</sup>. Moreover, the Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) No 211/2011 on the citizens' initiative stressed that several Member States' competent authorities are uncomfortable with the possibility for organisers to request the certification of their system before the registration of their proposed initiative with the Commission.

Finally, organisers underlined that they did not know when the Commission would register, or refuse, their proposed ECI and this caused difficulties in planning the OCS registration process<sup>184</sup>.

<sup>180</sup> To be certified the system must comply with the security and technical features described in Article 6(4) of Regulation 211/2011 and further specified in Commission Implementing Regulation 1179/2011. See also section [2.3](#).

<sup>181</sup> The Commission servers offered for free are based in Luxembourg.

<sup>182</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers, European Parliament – Secretariat of the Committee on Petitions, MEP Gerald Häfner, MEP Alain Lamassoure, EESC, Dutch national authorities, one member of the Senior Expert Panel of this project. Information also based on the analysis of Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Decision of the European Ombudsman and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative. Also the intervention of Tina Nilsson, Head of one of the EU Ombudsman's four Complaints and Inquiries Units, during the ECI Conference at the Council of the EU on 16 June 2015, has been taken into account.

<sup>183</sup> In some cases, preparations ahead of registration allowed for the online collection of signatures to start on the day of the registration. However, one organiser explained that, in 2013, the certification of the OCS was finalised two months after the date of the registration by the Commission – due to difficulties in the process. This meant that, in practice, online signatures could be collected in only 10 months.

<sup>184</sup> However, it is noted that Commission services informally inform organisers ahead of the registration date that in principle their ECI will be registered to allow them to undertake the necessary preparatory steps before the collection period starts. Information based on stakeholder consultation (European Commission).



**Solutions analysed:**

provide for an optional extension of the signatures' collection time; allow the organisers to decide the starting date for collection or make it start at the date of the certification<sup>185</sup>

Stakeholders considered the one year deadline too short, not only because gathering one million signatures from seven Member States is challenging, but also due to the procedural obstacles highlighted in the previous sections. Should the ECI process be streamlined and simplified, according to the proposals presented above, this timeframe would no longer be considered so tight.

However, there is no justification for setting a short and rigid timeframe for the collection of signatures when the objective is to provide citizens with the possibility of participating in the decision making process. Therefore the possibility to optionally extend the data collection time to 18 months<sup>186</sup>, or even to an unlimited time<sup>187</sup>, should be considered. The ultimate decision should be taken by the ECI organisers, taking into account the risk of higher costs or the loss of the ECIs *momentum* due to a long period of collection.

As regard the delays generated by the fact that the registration date of an ECI does not necessarily coincide with the certification of the OCS by the competent national authority, another proposed idea consists of allowing organisers to choose the starting date of the ECI campaign<sup>188</sup>. Alternatively, it could be set out that the starting date of the collection of the statements of support is the date of the certification of the online collection system (by the competent national authority) instead of the registration of the proposed citizens' initiative at the Commission. This second option was specifically referred to in the Decision of the European Ombudsman<sup>189</sup>. Setting the start of the data collection time-limit (if any) at the date of the certification, instead of at the time of registration, would make the time-limit for collecting statements of support actual. As a result, it would also eliminate the risk of national certification authorities of starting to carry out the verification without the certainty that the initiative will be registered<sup>190</sup>.

<sup>185</sup> Information based on desk research and stakeholder consultation for the 2014 EP Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' involving ECI organisers, MEP Gerald Häfner, MEP Alain Lamassoure, EESC, Dutch national authorities, . Information is also based on the analysis of Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Decision of the European Ombudsman and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative.

<sup>186</sup> For example, the Swiss 'Popular Initiative' (Initiative Populaire) providing an 18 months collection time for gathering 100,000 signatures. Through this initiative, Swiss citizens can ask for a total or partial revision of the Swiss Constitution. Federal Constitution of the Swiss Confederation of 18 April 1999, Article 138-139, and Federal law on political rights (Loi fédérale sur les droits politiques), Title 5, Articles 68-76, 17.12.1976.

<sup>187</sup> This solution would entail an amendment of Article 5(5) of the Regulation.

<sup>188</sup> For example, campaigns could be allowed to choose their own launch date, within six months from the registration.

<sup>189</sup> Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN concerning the European Commission at <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/59205/html.bookmark>

<sup>190</sup> The Commission's report stressed that, currently, organisers ask to the competent certification authority to start the verification before the registration so as to not loose time in case the initiative is registered. Therefore, in case the ECI is not registered the certification authority carried out a burdensome and useless activity.

## 2.5 Submission of successful ECIs, EP hearing and response by the Commission

Applicable provisions: Articles 10 and 11 of Regulation 211/2011; Articles 11(4) and 17(2) of the Treaty on the European Union (TEU); Article 225 and 241 Treaty on the Functioning of the European Union (TFEU); Article 42 of European Parliament Rules of Procedure (EPRP); Point 16 of Annex XIV to the Framework Agreement on relations between the European Parliament and the European Commission<sup>191</sup>

Article 11(4) TEU states that '[n]ot less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its 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. [...]'.

In addition, according to Article 10 of the Regulation, within three months from the submission of the certificate of verification of signatures by the successful organisers, the Commission sets out in a communication its legal and political conclusions on the citizens' initiative, the action it intends to take, if any, and its reasons for taking or not taking that action.

The Regulation also provides for the set-up of a public hearing by the EP for the organisers of the successful ECIs to present their initiatives (Article 11).

European Union legislative acts can be adopted only on the basis of a Commission proposal – Article 17(2) TEU. However, the EP and the Council have a right of initiative, regulated respectively by Article 225 and 241 TFEU – by which they can request the Commission to put forward a proposal.

In particular, on the basis of a report by one of its committees, the EP, acting by a majority of its Members, may request the Commission to submit any appropriate legislative proposal (Article 225 TFEU and Article 42 of EPRP). While the Commission is not obliged to do so, the Commission should react within three months and motivate the Commission decision not to act – point 16 of the Annex XIV Framework Agreement on relations between the EP and the European Commission to the EPRP.

### Obstacles:

- limited reimbursement for hearings;
- no possibilities to invite subject-matter experts;
- not enough time for exchanges with MEPs;
- confusion about the hearing's purpose and structure
- uncertainties on the follow-up of successful ECIs; and
- lack of clarity and details in the Commission's response<sup>192</sup>.

<sup>191</sup> Point 16 of the [Framework Agreement on relations between the EP and the European Commission](#), OJ L 304, 20.11.2010.

<sup>192</sup> Information based on desk research and on stakeholder consultation for the 2014 EP Study E. Caneta, M. Ballesteros, 'European Citizens' Initiative – First lessons of implementation' involving ECI organisers, MEP Victor Bostinaru, MEP Alain Lamassoure, EESC, and ECAS. Information also based on the analysis of the Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Decision of the European Ombudsman, the Draft Opinion of the Committee on Petitions on the European Citizens' Initiative and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative.

## Public hearings-related-issues

The importance of public hearings of successful ECIs relies on their political dimension. They should be the place where organisers can fully present their requests and engage in a dialogue with MEPs on the follow-up of their ECIs. Nevertheless, no stakeholders or experts, other than the ECI organisers themselves, were invited to actively participate in the public hearings organised at the European Parliament for the ECIs prior to receiving a formal response from the Commission ('Right2Water' and 'One of us')<sup>193</sup>.

Furthermore, many ECI citizens' committees highlighted both the confusion stemming from the uncertainty on the exact nature of the hearing and the lack of respect of speaking time and confusions about who could intervene.

The ECI citizens' committees called for the reimbursement of travel expenses for all their seven members (currently, only three were covered)<sup>194</sup>. They also asked for the possibilities to have experts in the field to present their ECIs on their behalf, to clearly explain the detailed technical aspects, and to have more time for exchanges with the MEPs.

## Follow up of unsuccessful initiatives

The main stakeholders' concerns relate to the fact that the Commission has so far not proposed any concrete legislative act to implement any of the successful initiatives. The lack of a concrete follow-up of successful initiatives risks making the entire ECI process meaningless as citizens' expectations of having an impact on EU decision making processes would be frustrated. For this reason many potential ECI organisers are reluctant to launch their initiatives as evidenced by the decline in numbers of ECIs.

As regard successful initiatives<sup>195</sup>, organisers would also appreciate the possibility of discussing with the EU institutions different follow-up options after the EP hearing and the Commission Communication.

In addition, some stakeholders argue that, pursuant to Article 11(4) TEU, the Commission does not have a specific obligation to follow-up successful ECIs. This threatens the ECI's potentiality of enhancing democratic and direct participation in the EU.

Furthermore, ECI organisers regret that the Commission's Communications lack detailed information to justify the Commission's positive or negative answer. However, as highlighted during the ECI conference held at the Council of the EU on 16 June 2015 by Carmen Preising, Head of the Unit in the General Secretariat of the EC, the Commission's response to the latest ECI has taken into account these concerns by expanding the information justifying the Commission decision<sup>196</sup>.

<sup>193</sup> On these occasions the Commission was represented by the Vice-President for Inter-institutional Relations (for 'Right2Water') and the Commissioner for Research, Innovation and Science and the Commissioner for Development (for 'One of Us'). As regards 'Stop Vivisection', a public hearing was organised by the Committee on Agriculture and Rural Development in association with the Committee on Petitions, the Committee on Environment, Public Health and Food Safety and the Committee on Industry, Research and Energy. It was hosted by the European Parliament and held on 11 May 2015. The initiative's organisers, Mr Greek of AFMA (Americans for Medical Advancement), Ms McIvor of Humane Society International and Nobel Prize winner Ms Barré-Sinoussi had the possibility to present their views in this occasion.

<sup>194</sup> This has also been mentioned in section [2.1.3](#).

<sup>195</sup> It is noted that issues related to the follow up of unsuccessful initiatives have been analysed in section [2.2.1](#).

<sup>196</sup> [Communication from the Commission on the European Citizens' Initiative "Stop Vivisection"](#), Brussels, 3.6.2015, C(2015) 3773 final.

**Solution analysed<sup>197</sup>:**

- reimbursement for all seven members of the ECI citizens' committee;
- clarification of the hearings' purpose and their structure;
- Commission mandatory requirement to respond to successful ECIs by proposing a legal act or other action to be decided by the legislator;
- more specific procedures for follow-up to ECIs; and
- information to ECI organisers about the right to petition and the right of initiative<sup>198</sup>.

As regard public hearings for successful ECIs, Regulation 211/2011, and in particular its Article 11, could be amended so as to clarify the aim and structure of public hearings for successful ECIs and ensure that they are structured in order to emphasise the political dimension of ECIs.

Rule 197a of the European Parliament Rules of Procedure could also be amended accordingly so as to clarify the aim and structure of the hearing, including the role of each of the EU institutions involved, to establish proper grounds and opportunities for the organisers to fully present their requests and engage in a dialogue with MEPs on the follow-up of their ECIs.

Furthermore, the following aspects should be clarified and clearly communicated to the organisers:

- the nature of the hearing – presentation of the ECI to MEPs or open debate?;
- the level of participation – Presidents, or just members, of EP and COM?;
- institutions participating – EP, Commission or also the Council, EESC and CoR?;
- speaking time allocation.

These clarifications would allow organisers to engage in a dialogue with the participating EU Institutions<sup>199</sup>. Stakeholders representing different views and perspectives could be invited and heard during the public hearing<sup>200</sup>.

The EP Bureau<sup>201</sup> could also adopt a decision to provide reimbursement for at least the seven members of the citizens' committee as, according to Article 3(2) of the Regulation, this is the required minimum number of ECI organisers.

<sup>197</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers, MEP Victor Boştinaru, MEP Alain Lamassoure, EESC, European Commission. Information also based on the analysis of the Commission Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative, the Decision of the European Ombudsman, the Draft Opinion of the Committee on Petitions for the Committee on Constitutional Affairs on the European Citizens' Initiative and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative.

<sup>198</sup> Please note that the option to submit the ECI request as a petition to the EP has been discussed in section 'Scope of the ECI and definition of the legal bases for launching an ECI' [2.2.1](#).

<sup>199</sup> The Decision of the European Ombudsman stressed the importance of the public hearing as means of 'democracy in action', suggesting to improve it so as to meet the highest standards in terms of political engagement, public participation and transparency.

<sup>200</sup> Before the public hearing a meeting between the Commission and the organisers is held. During this meeting, the Commission can listen to the organisers' arguments and ask any questions. Therefore, the public hearing at the EP should be an opportunity to listen not only to the organisers but also to other stakeholders. Information based on stakeholder consultation (European Commission).

<sup>201</sup> 'The Bureau is the body that lays down rules for Parliament. It draws up Parliament's preliminary draft budget and decides all administrative, staff and organisational matters. The Bureau consists of the President of the European Parliament, the 14 Vice-Presidents and the five Quaestors elected by Parliament for a period of two and a half years (renewable)', see European Parliament, [Organisation and work: Political bodies](#). The provisions governing the Bureau are established in Rules 22 (composition), 23 (duties), 29 (accountability) and 209 (powers and responsibilities) of the EPRP.

Regarding the **follow-up of successful initiatives**, in view of a possible future revision of Regulation 211/2011, a modification of its Article 10(1) (as well as of Article 11(4) TEU) could be considered. The Draft Report of the AFCO Committee<sup>202</sup> stated that in case an ECI is successful, a parliamentary debate in a plenary session could take place followed by a vote on the ECI. The Draft Report of the AFCO Committee also urged the Commission to propose concrete actions, including a legal act (legislative or non-legislative) or another significant action in case the parliamentary debate on a successful ECI with more than one million citizens' signatures is followed by a positive vote<sup>203</sup>. It is considered that a successful ECI representing more than a million EU citizens calling for EU action, supported by a parliamentary debate in a plenary session followed by a positive vote on the ECI would be a strong sign for the need of EU action. Citizens call and the EP's support justify a more systematic assessment on the existing legislation in relation to the ECI's request. In this situation, the ECI Regulation could require the Commission to carry out an assessment of options for concrete actions, including a legal act (legislative or non-legislative) or another significant action. This would respect the discretionary power of the Commission to initiate legislation. The current response from the Commission does not provide with a full assessment of the options for action and the potential gaps in existing legislation.

Furthermore, the Regulation could refer to specific procedures to frame the follow-up of successful ECIs:

- Setting specific process and structures for the Commission's follow-up of successful initiatives. For example, enabling the organisers of successful ECIs to be part of an expert group providing advice to the Commission on the follow up steps and referring to the EP's possibility to formally request the Commission's action.

<sup>202</sup> (2014/2257(INI) - 19.3.2015).

<sup>203</sup> It is worth noting that the AFCO Committee's suggestion to make the ECI process more effective by strengthening the requirement on the Commission to react with more concrete measures reflects the request of most stakeholders. The current suggestion for consideration in the debate towards a revision of the ECI Regulation would respect the discretionary power of the Commission to exercise its right of legislative initiative.

### 3. RECOMMENDATIONS TO ENSURE THAT THE ECI IS AN EFFECTIVE TOOL FOR PARTICIPATORY DEMOCRACY

The recommendations put forward below correspond to the solutions proposed in the previous Study 'European Citizens' Initiative – First lessons of implementation'<sup>204</sup> and the analysed reports<sup>205</sup>. They aim to ensure a straightforward ECI process with fewer costs and burdens for EU citizens, to ultimately empower them and encourage them to actively participate in shaping the future of Europe. Some recommendations cover more than one obstacle.

#### 3.1. Practical recommendations

The **recommendations** presented in this section concern measures that can be relatively **quickly put in place** to have a smoother ECI process and improve its effectiveness as a tool for participatory democracy in the EU. To adopt such measures, the actors involved **do not necessarily have to undergo legislative procedures**. The recommendations are listed in order of importance to overcome the major obstacles faced by the organisers.

- 1) **Establishment of the 'Citizens' Initiative Centre'**: a one-stop-shop for support and information to ECI organisers could be set up<sup>206</sup>.

The Centre could be provided by pulling resources together from the Commission, the European Parliament, the European Economic and Social Committee, the Council and the Committee of the Regions (which might require an inter-institutional agreement)<sup>207</sup>. See description in recommendations for the review of Regulation 211/2011<sup>208</sup>.

- 2) The Commission should provide **more information and more detailed evidence and motivated arguments** in their **refusal or acceptance letters for registration** of the ECIs by<sup>209</sup>:
  - a. considering and analysing, **separately**, each of the different points of request of a proposed ECI;
  - b. **clarifying EU competences** in the field of the proposed ECI by providing factual information on the actions taken and planned at EU level<sup>210</sup>.

<sup>204</sup> E. Caneta, M. Ballesteros, European Citizens' Initiative – First lessons of implementation' European Parliament, authored by Milieu for the Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, 2014.

<sup>205</sup> The Commission report on the application of Regulation (EU) No 211/2011 on the citizens' initiative; the Decision of the European Ombudsman; the Draft Opinion of the Committee on Petitions for the Committee on Constitutional Affairs on the European Citizens' Initiative and the Committee on Constitutional Affairs' Draft Report on the Implementation of the European Citizens' Initiative .

<sup>206</sup> Such recommendation has been proposed by Milieu's previous Study 'European Citizens' Initiative – First lessons of implementation'. Both the PETI Committee's Draft Opinion and the AFCO Committee's Draft Report have mentioned and this solution. See points 6 and 2 of the respective reports.

<sup>207</sup> This has been discussed in section 'Information and support on the ECI process' [2.1.2](#).

<sup>208</sup> It is noted that while this solution could be practically implemented without changing the Regulation, should the Regulation be revised, Article 4(1) could be amended to reflect the EU institutions obligations and citizens' right to such support, therefore enhancing legal certainty and encouraging possible organisers to launch the ECIs. See recommendation 11 of next section 'Recommendations for a possible revision of Regulation 211/2011'.

<sup>209</sup> This has been discussed in section 'Scope of the ECI and definition of the legal bases for launching an ECI' [2.2.1](#).

<sup>210</sup> To this end, amending Article 4(3) of Regulation 211/2011 should be considered. See recommendation 17 of next section 'Recommendations for a possible revision of Regulation 211/2011'.

- 3) The Commission should confirm, on a **permanent** basis, the possibility for ECI organisers to **use its servers** to store the **online signatures** collected<sup>211</sup>.
- 4) The Commission should **improve the current free software** for the online collection of signatures – including access to persons with **disabilities**, to increase its **user-friendliness** while ensuring high **security** standards. This could be done through an interactive process enabling all of the stakeholders and users involved to contribute their experience on the difficulties encountered<sup>212</sup>.
- 5) The European Economic and Social Committee and the European Parliament are willing to provide the organisers with **free translation services** for the texts of their ECIs which are used to request signatures during their campaigns in different Member States<sup>213</sup>.
- 6) The Commission should proceed to regular random **checks** for the transparency obligations of the ECI organisers regarding **financial support**. Checks could be carried out primarily on the Commission's own initiative while keeping the possibility of checks derived from complaints, which is the current system<sup>214</sup>.
- 7) The EU Institutions should **clarify the follow-up of unsuccessful ECIs** such as the possibility of having a debate instead of the presentation at the EP hearing, the option to **submit the ECI request as a petition** to the EP (Article 227 TFEU) or the requirements for an ECI to be dealt with as a European Parliament's request to the Commission for a legislative act under Article 225 TFEU (**right of initiative**)<sup>215</sup>.
- 8) The EU Institutions should **clarify the specific procedures in case the Commission follows-up successful initiatives**, for example, by enabling the organisers of successful ECIs to be part of an expert group to discuss with the Commission the follow up steps. The Commission should also provide information on the specific available procedures in case of the Commission's lack of follow-up of successful initiatives, for example, enabling the EP to formally request the Commission's action<sup>216</sup>.
- 9) The European Parliament should clarify, in its rules of procedure, the aim and structure of the **hearing**, including the role of other EU institutions, to establish proper grounds and opportunities for the organisers to fully present their requests and engage in a dialogue with the MEPs on the follow-up of their ECIs. Furthermore, the ECI citizens' committee should receive **reimbursement** for travel costs of participating in the European Parliament's hearing for all of its members, i.e. seven instead of three<sup>217</sup>.

<sup>211</sup> This has been discussed in section 'Online Collection System (OCS) Certification by Member States' [2.3](#).

<sup>212</sup> This has been discussed in section 'Online Collection System (OCS) Certification by Member States' [2.3](#).

<sup>213</sup> This has been discussed in section 'Translations of the text of ECIs to campaign in different Member States' [2.2.2](#). It is noted that while this solution could be practically implemented without changing the Regulation, should the Regulation be revised, Article 4(2) could be amended to reflect the EU institutions' obligation to provide the organisers with free translation services, therefore enhancing legal certainty and encouraging possible organisers to launch the ECIs. See recommendation 22 of next section 'Recommendations for a possible revision of Regulation 211/2011'.

<sup>214</sup> This has been discussed in section 'Transparency of funding and support to run ECI campaigns' [2.1.4](#). It is noted that this solution might require a change in EU law recognising investigation powers to the Commission in this field. Furthermore, introducing a rule for this purpose in the Regulation would enhance legal certainty. See recommendation 14 of next section 3.2 'Recommendations for a possible revision of Regulation 211/2011'.

<sup>215</sup> This has been discussed in section 'Scope of the ECI and definition of the legal bases for launching an ECI' [2.2.1](#).

<sup>216</sup> This has been discussed in section 'Submission of successful ECIs, EP hearing and response by the Commission' [2.5](#).

<sup>217</sup> This has been discussed in section 'Submission of successful ECIs, EP hearing and response by the Commission' [2.5](#).



### 3.2. Recommendations for a possible revision of Regulation 211/2011

The recommendation presented in this section concerns measures that would involve **amendments to Regulation 211/2011** on the citizens' initiative.

10) Revise **Article 1** of the Regulation so as to clarify<sup>218</sup>:

- If the ECI can propose EU primary law amendments and whether the requirements to propose a legal act refers to a legislative act;
- If an ECI can request policy actions as an agenda setting tool to raise issues of concern for citizens willing to see them dealt with at EU level.

11) **Article 4(1)** of Regulation 211/2011 could be amended to reflect the EU institutions involvement and to establish the '**Citizens' Initiative Centre**'<sup>219</sup> providing the following support to the citizens:

- support in searching for potential **partners** or support staff;
- support (pro-bono) on **technical IT issues or legal aspects** of the ECIs including:
  - ECI legal bases under the Treaties and the possible development of more articulated proposals for legislative acts;
  - the legal status of the ECIs and the organiser's liabilities;
  - the applicable data protection rules.
- answer accreditation and information requests;
- provision of a single set of detailed **guidelines** and training material on :
  - the rights and obligations of the ECI organisers,
  - all administrative procedures of the ECI process,
  - follow-up of successful and unsuccessful initiatives.

The Centre could be provided by pulling resources together from the Commission, the European Parliament, the European Economic and Social Committee, the Council and the Committee of the Regions. A possible wording of Article 4(1) could be<sup>220</sup> as follows:

***'In applying the provisions of this Regulation, the Union Institutions and bodies shall endeavour to assist and provide guidance to the public with regard to access to the European Citizens' Initiative through the establishment of the European Citizens' Centre'.***

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<sup>218</sup> Amending Article 11(4) TEU for clarification should also be considered. See the next section 'Recommendations for a possible revision of EU primary law'. This has been discussed in section 'Scope of the ECI and definition of the legal bases for launching an ECI' [2.2.1.](#)

<sup>219</sup> It is noted this solution could be also practically implemented without changing the Regulation. Therefore, it has been also mentioned in the previous paragraph among measures that do not necessarily entail changes in the Regulation (see point 1).

<sup>220</sup> This wording is inspired in Article 1(2) of Regulation 1367/2006 on the application of provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies of 25.09.2006, OJ L 264: 'In applying the provisions of this Regulation, the Community institutions and bodies shall endeavour to assist and provide guidance to the public with regard to access to information, participation in decision-making and access to justice in environmental matters'.

- 12) Revise **Article 6(4) and Annex III and IV** to the Regulation to establish a **simplified single statement of support form** or, alternatively, revise through delegated act **Annex III** to the Regulation so as to harmonise the requirements and limit as much as possible the amount of personal data required<sup>221</sup>.
- 13) Revise **Article 4(1)** of the Regulation so as to establish that in case an ECI requests a legislative act, it may be accompanied by a more structured **proposal for an act**<sup>222</sup>. The legitimacy of the ECI would be strengthened and to draft the legal text ECI organisers could be assisted by the legal service of EU institutions in inter-institutional cooperation (i.e. Citizens' Initiative Centre, see sections 2.1.2 and 2.1.4).
- 14) With regard to the transparency obligation, **Article 4(1)** of the Regulation could be amended to provide the Commission with the power to carry out regular random **checks** for the transparency obligations of the ECI organisers regarding their financial support. Checks could be carried out primarily on the Commission's own initiative while keeping the possibility of checks derived from complaints, which is the current system<sup>223</sup>.
- 15) Revise **Article 4(2)** of the Regulation to complement the 'legal admissibility check' at the registration with a fully developed '**opinion on the legal competence of the EU**' enabling the ECI to be reformulated in order to be registered<sup>224</sup>.
- 16) Revise Article 10(1) of the Regulation: recognising that a successful ECI (with a million signatures of EU citizens) supported by a parliamentary debate in a plenary session followed by a positive vote on the ECI would be a strong sign for the need of EU action. The article could enable that positive vote on the ECI by the plenary of the EP could lead to require a Commission assessment of options for concrete actions, including a legal act (legislative or non-legislative) or another significant action. This would respect the discretionary power of the Commission to initiate legislation<sup>225</sup>.
- 17) Furthermore, revise Article 10 of the Regulation to set specific procedures framing the follow-up of successful ECIs. It could refer to a specific process for the Commission's follow-up of successful initiatives enabling the organisers of successful ECIs to be part of specific structures such as an expert group advising the Commission on the follow up steps and referring to the EP's possibility to formally request the Commission's action.
- 18) Revise **Articles 2(3) and 3(1)** of the Regulation to clarify that the ECI **citizens' committees** can be set up by natural persons as national/European legal entities<sup>226</sup>.

<sup>221</sup> This has been discussed in both section 'Online Collection System (OCS) Certification by Member States' [2.3](#). and section 'Requirements to sign ECIs' [2.4.1](#).

<sup>222</sup> This has been discussed in section 'Scope of the ECI and definition of the legal bases for launching an ECI' [2.2.1](#).

<sup>223</sup> This has been discussed in section 'Transparency of funding and support to run ECI campaigns' [2.1.4](#). It is noted that the solutions proposed in this recommendation could be also practically implemented without changing the Regulation. Therefore, it has been also mentioned in the previous paragraph among measures that do not necessarily entail changes in the Regulation (see points 6).

<sup>224</sup> This has been discussed in section 'Scope of the ECI and definition of the legal bases for launching an ECI' [2.2.1](#).

<sup>225</sup> *Ibid.* It is worth noting that the AFCO Committee's suggestion to make the ECI process more effective by strengthening the requirement on the Commission to react with more concrete measures reflects the request of most stakeholders. The current suggestion for consideration in the debate towards a revision of the ECI Regulation would respect the discretionary power of the Commission to exercise its right of legislative initiative.

<sup>226</sup> This has been discussed in section 'Personal and data protection liability of ECI organisers' [2.1.1](#).

19) Revise the wording of **Article 13** of the Regulation so as to clarify that personal liabilities of the ECI organisers are not unlimited<sup>227</sup>. Drawing from Directive 2008/99/EC of 19 November 2008 on the protection of environment through criminal law, the wording proposed could be as follows:

***'...organisers are responsible for "acts which are unlawful and committed intentionally or with at least serious negligence".'***

20) Revise **Article 5(5)** of the Regulation so as to<sup>228</sup>:

- Extend the data collection time to 18 months or, even to an unlimited time;
- Allow organisers to choose the starting date of the ECI campaign or,
- alternatively, set out that the starting date of the collection of the statements of support is the date of the certification of the online collection system (by the competent national authority).

21) Revise **Article 11** of the Regulation to clarify the aim and structure of the hearing for successful ECIs. **Rule 197a of the European Parliament Rules of Procedure** could also be amended accordingly<sup>229</sup>.

22) Complementary to point 7, Revise Article 11 of the Regulation so as to enable a parliamentary debate on a successful ECI which, when followed by a positive vote, could lead to require the Commission to assess options for concrete actions, including a legal act (legislative or non-legislative) or another significant action.

23) Revise further **Article 4** of Regulation 211/2011<sup>230</sup> to clarify further rights of the organisers and responsibilities of the EU institutions with regard to:

- The provision of **translations** – Article 4(2)<sup>231</sup>;  
The **European Economic and Social Committee** – which has already proposed to offer its services, the European Parliament and any other EU institution - should provide the organisers with free translation services for the texts of their ECIs which are used to request signatures during their campaigns in different Member States;
- The **Commission** should provide **more information and more detailed evidence and motivated arguments in its replies to the ECI registration requests**.

In particular, **Article 4(2)(b)** could be modified to enable the Commission to consider and analyse, **separately**, each of the different points of request of a proposed ECI; and Article 4(3)<sup>232</sup> requiring the Commission to **clarify** EU competences in the field of the proposed ECI by providing factual **information** on the actions taken and planned at EU level.

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<sup>227</sup> [Ibid.](#)

<sup>228</sup> This has been discussed in section 'One year collection time for signatures' [2.4.2](#).

<sup>229</sup> This has been discussed in section 'Submission of successful ECIs, EP hearing and response by the Commission' [2.5](#).

<sup>230</sup> It is noted that the solutions proposed in this recommendation could be also practically implemented without changing the Regulation on the basis of a Commission commitment. Therefore, it has been also mentioned in the previous paragraph among measures that do not necessarily entail changes in the Regulation (see, respectively, points 2 and 5).

<sup>231</sup> This has been discussed in section 'Translations of the text of ECIs to campaign in different Member States' [2.2.2](#).

<sup>232</sup> This has been discussed in section 'Scope of the ECI and definition of the legal bases for launching an ECI' [2.2.1](#).

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