

Regulatory frameworks for citizen-initiated instruments of direct democracy

Comparing the experiences in the EU
Member States and beyond



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Abstract

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the AFCD Committee, explores the regulatory frameworks for citizen-initiated instruments of direct democracy, paying special attention to the citizens' legislative initiative and the citizen-initiated referendum. By carrying out a comparative analysis of the experience of the European Union Member States, as well as other notable cases outside the EU, it aims to nurture the debate on the introduction of such instruments at the supranational level into the EU's political system.

This document was requested by the European Parliament's Committee on Citizens' Rights and Constitutional Affairs.

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LIST OF ABBREVIATIONS

AFCO	Committee on Constitutional Affairs of the European Parliament
CGCT	French Organic Law on the General Code of Territorial Communities
CIR	Citizens' Initiative Review
CJEU	Court of Justice of the European Union
COE	Council of Europe
COFOE	Conference on the Future of Europe
ECI	European Citizens' Initiative
ECP	European Citizens' Panel
EU	European Union
LRBRL	Spanish Law Regulating the Bases of Local Government
MP	Member of the Parliament
MS	Member State
TFEU	Treaty on the Functioning of the European Union
TEU	Treaty on European Union

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EXECUTIVE SUMMARY

Participatory democracy in Europe is governed by a combination of national laws and regulations, as well as international agreements and conventions. The specific legal acts and mechanisms vary from one European country to another, but there are some common elements that promote participatory democracy at the European level.

In recent years, the concept of representative democracy has faced a number of challenges, from uncertainty, changing political environment to a crisis of political representation the spread of populist and autocratic discourses. Demands for renewal or innovation are emerging with the aim of updating and making today's democracies more resilient. A number of states within and outside the European Union (EU) already include some sort of instruments of direct or participatory democracy in their respective constitutions and laws. The specific legal framework for participatory democracy varies significantly, given that each country has its own historical and legal development and the resulting governing system. Generally, instruments of direct democracy are top-down in character, being initiated by the governing bodies and institutions. However, some states do allow citizens and civil society groups to initiate these instruments themselves. This gives them a bottom-up character and empowers citizens and civil society as a whole not only to propose legislation, but also to influence the political agenda and public debate. Most of the already-existing mechanisms are mainly instruments that give citizens the legislative initiative or the right to challenge the entry into force of certain laws. Indeed, the states which are signatories of the Council of Europe's European Convention on Human Rights and some of its additional protocols, must guarantee a certain range of civil and political rights, including the right to freedom of expression, assembly and association. These rights are fundamental for participatory democracy.

At the same token, within the EU there is the Treaty on European Union (TEU) outlining the principles and objectives of the EU and emphasizing the importance of democracy and the participation of citizens in EU affairs. Treaty on the Functioning of the European Union (TFEU) sets out the legal framework for EU policies and actions, including provisions related to citizens' initiatives, direct elections to the European Parliament, and the role of national parliaments in EU decision-making. Based on Article 11(4) of the Treaty on European Union (TEU) and Article 24(1) of the Treaty on the Functioning of the European Union (TFEU) there is a specific instrument - The European Citizens' Initiative (ECI) – serving as an example of direct participatory democracy in the EU¹.

Besides exploring the theoretical and legal basis of the citizen-initiated instruments of direct democracy, this study provides for a comparative analysis of the regulation of available instruments and use of those within and outside the EU.

First, the study explores the experience of EU Member States (MSs) that include any kind of citizen-initiated direct democracy instruments at the national level (i.e.: Austria, Croatia, France, Hungary, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain). Secondly, the study analyses some relevant cases at the sub-national (i.e. German Länder and Spanish Autonomous Communities) and municipal levels within the EU MSs. Finally, other notable cases outside the EU are explored (i.e. the United Kingdom, Switzerland, Liechtenstein, the United States, New Zealand and some particularities of the regional experience in Latin America).

¹ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative and Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative.

It is important to note that there are some compelling trends in the regulation of this kind of instrument at the national level such as the prioritisation of the citizen-initiated legislative proposals on the parliamentary legislative agenda (Austria), the ability to use these instruments to initiate constitutional reform processes (Croatia, Latvia, Lithuania, Slovenia, Switzerland or Liechtenstein), the introduction of very accessible requirements in terms of the number of signatures needed (the Netherlands, Slovakia or Slovenia) or the provision of state funding to cover the costs of the initiative (Spain). The experience at the comparative level shows that reducing the requirements and limitations for the exercise of citizen-initiated instruments of direct democracy facilitates and increases their use by the citizenry.

In public policy terms, the use of citizen-initiated instruments of direct democracy is not inconsequential. Despite not having a crucial or decisive effect on the political systems in which they are applied, they are sometimes effective and succeed in passing new legislation. However, the value of these instruments lies not only in their legislative effectiveness, but also in their agenda-setting power, in the incorporation of issues into the public debate and in the strengthening of the public sphere. Besides the general citizenry, these instruments provide an opportunity for the participation of civil society actors who lack legislative initiative or who are normally prevented from engaging in conventional channels of political participation. On the other hand, the use of these instruments does not always result in an expansion of civil rights and civil liberties, and can be used regressively, to satisfy populist or anti-minority demands.

From the research conducted it is evident that these instruments continue to be underused by citizens. Many citizens are not informed of their existence or about the procedures involved, which hampers their use and effectiveness to a large extent. Therefore, if institutions intend to foster the development of this type of tools, they must make a greater effort to raise their visibility and ensure greater embeddedness in the rest of the domains for citizen participation in representative democracies.

In any case, direct democracy instruments allow for the introduction of creative and innovative elements that contribute to renewing and strengthening our democratic systems. Among others, they encourage the use of new technologies or allow access to people beyond the general electorate, broadening the participatory body of a political community. However, their introduction at higher levels of government does not always imply greater use or effectiveness of the instrument: whether at supranational, national, regional or local level, the crucial issue is that these instruments are useful at the political system and level of government at which they are included (e.g. in Germany these instruments are widely used even though they exist only at the level of the federated states or *Länder*).

The objective of the study is to nurture the debate on the introduction of this type of mechanisms at the EU level or the reform of the already-existing ones, such as the European Citizens' Initiative (ECI) mentioned earlier, or the right to petition in the European Parliament. In this regard, the ECI is the most relevant instrument of participatory democracy in the EU political system, the first instrument of participatory democracy at the transnational level and the closest equivalent to the citizens' legislative initiative at the EU level.

However, the alignment of the ECI with similar tools at the national level would require ambitious EU Treaties reform: this ranges from a more modest reform that would only reduce the number of signatures required to a more ambitious reform that would transform the instrument into a real citizens' legislative initiative. On the other hand, as this study suggests, some measures could also be taken without the need for EU Treaties reform. Examples of these are the following: the deadline for the collection of signatures, urging MSs and institutions to give visibility to the ECI instrument (at both European and national levels), providing with funding for the organisers of an ECI, urging MSs to allow the participation of those aged 16 and over and residents in order to broaden the participatory body beyond the general electorate or facilitating the use of the tool in a multilingual context. The ECI was

already reformed Regulation 2019/788² in order to facilitate the use of the instrument by making the timeline more flexible, by lowering the minimum age for participation from 16 to 18 (the implementation of which falls within the competence of the individual MSs), or by introducing an online signature collection platform managed by the European Commission.

In any case, the further reform of these instruments will depend on the objective that the institutions pursue with them: either to strengthen the instruments in terms of a) producing concrete legislative effects or b) contributing to strengthen the European public sphere by empowering civil society actors with the legislative agenda-setting power.

² Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative.

1. INTRODUCTION

In recent years, representative democracies have faced a number of challenges, from uncertainty and a changing political environment to a crisis of political representation and the spread of populist and autocratic discourses. In this regard, demands for innovation are emerging with the aim of renewing, strengthening and making our democracies more resilient. For example, recently, a “deliberative wave”³ has emerged calling for the introduction of sortition (random selection)⁴, deliberative citizens' assemblies and other democratic innovations into the machinery of our representative democracies. Advocates of these innovations cite the example of Ireland, where such mechanisms have been effective in dealing with issues that have been stalled for decades, as was the case with the issue of abortion⁵. Recently, some scholars have even proposed the introduction of deliberation and permanent citizens' assemblies in the EU's political system⁶. Recommendation 39 of the Conference on the Future of Europe (COFOE) also called for the European Union to “hold Citizen’s Assemblies [...] through a legally binding and compulsory law or regulation”⁷.

Beyond this, however, many states have long included citizen-initiated instruments of direct or participatory democracy. Mainly, mechanisms that give citizens the legislative initiative or the right to challenge the entry into force of certain laws. Thus, this study will explore the regulatory frameworks for citizen-initiated instruments of direct democracy, paying special attention to the citizens' legislative initiative and the citizen-initiated referendum. To this end, the cases of the European Union Member States (MSs), as well as other notable cases outside the EU (i.e. United Kingdom, Switzerland, Liechtenstein, United States, New Zealand and some particularities of the regional experience in Latin America) will be analysed. In addition, some relevant cases from the subnational (i.e. Germany's Länder and Spain's autonomous communities) and local levels and other initiatives related to democratic innovations will be discussed.

This study will conclude by identifying good practices and lessons learned at state level in relation to citizen-initiated instruments of direct democracy. The objective of the study is to nurture the debate on the introduction or reform of this type of mechanisms at the EU level (more specifically, in relation to already-existing mechanisms such as the European Citizens' Initiative or the right to petition in the European Parliament). Although the most ambitious reforms would require EU Treaties reform, in-depth exploration of state-level experience can provide a useful contribution to the public debate on the challenges that our democracies are currently facing and on the potential transformations that can contribute to making them more resilient.

The study will be structured as follows: Section 2 will explore the legal and theoretical basis of the citizen-initiated instruments of direct democracy; Section 3 will analyse the already-existing citizen participation tools in the European Union political system; Section 4 will explore in depth the EU Member States' experience with citizen-initiated instruments of direct democracy at the national, regional, and local levels; Section 5 will follow with the experience of non-EU States; Section 6 will

³ OECD, 'Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave', *OECD Publishing* (2020). Available at <https://www.oecd.org/gov/innovative-citizen-participation-and-new-democratic-institutions-339306da-en.htm>.

⁴ For an exploration of sortition and deliberation see Yves Sintomer, *The Government of Chance. Sortition and Democracy from Athens to the Present* (Cambridge University Press: 2023). See also Ernesto Ganuza & Arantxa Mendiarrat, *La democracia es posible. Sorteo cívico y deliberación para rescatar el poder de la ciudadanía*, (Consonni: 2020).

⁵ For more information on the Irish Citizens' Assembly, see <https://citizensassembly.ie/>

⁶ See Alberto Alemanno, 'Towards a permanent citizens' participatory mechanism in the EU', *European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs* (2022).

⁷ Conference on the Future of Europe, 'Report on the final outcome of the Conference on the Future of Europe', C310/1, May 2022.

summarize the main learnings and recommendations of the comparative analysis; lastly, Section 7 will provide for a final conclusion.

2. THE THEORETICAL BASIS OF THE CITIZEN-INITIATED INSTRUMENTS OF DIRECT DEMOCRACY

2.1. Separation of powers, institutional checks-and-balances and civil society inclusion

As elaborated by Montesquieu in *The Spirit of the Laws*, the principle of separation of powers establishes that the executive, legislative and judicial powers must be exercised by distinct and independent organs⁸. The separation of powers is a fundamental concept in political theory and the design of governmental systems, referring to the division of government responsibilities and powers among different branches to prevent the abuse of power and protect the rights and liberties of citizens. This would allow for an inter-institutional system of checks-and-balances, ensuring that the power exercised by each of the organs is subject to constant scrutiny and preventing any of them from exercising it in a despotic manner. This system helps safeguard individual freedoms and promote a system of government that is accountable, transparent, and responsive to the needs of the people.

“There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals⁹”

In its 2023 annual Rule of Law Report¹⁰, the European Commission identified "institutional issues related to check and balances" as one of the four pillars to be considered when making recommendations to Member States. The Commission highlights the importance of ensuring the inclusion of the various stakeholders and civil society in general both in the process of creating concrete public policies and in the overall functioning of political institutions. The report argues that this not only contributes to increasing the transparency of the legislative process, but also the quality and effectiveness of the outputs.

The European Commission's view is consistent with the Council of Europe's (COE) Code of Good Practice for the Civil Participation in the decision-making process¹¹. According to the COE, there are four principles that should govern civil participation in the decision-making process: participation, trust, accountability and transparency and independence. This inclusion could take place through multiple forms (e.g. information, consultation, dialogue, partnership) and during all stages of the decision-making process (i.e. agenda-setting, drafting, decision, implementation, monitoring, reformulation). The COE also includes these provisions in its Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority¹². In this respect, Article 2.2.ii.a of the Protocol states that the States Parties' local authorities must include mechanisms to ensure the right of participation such as "procedures for involving people which may include consultative processes, local referendums and petitions and, where the local authority has many inhabitants and/or covers a large geographical area, measures to involve people at a level close to them". Thus, the COE affirms that civil society participation constitutes a mechanism for giving voice

⁸ Montesquieu, *The spirit of laws*, (Batoche Books: [1748] 2001).

⁹ *Ibidem*, 173-174.

¹⁰ European Commission, '2023 Rule of Law Report', COM(2023) 800, 5 July 2023.

¹¹ Council of Europe, 'Civil participation in the decision-making process: the code of good practice', 2009. Available at <https://www.coe.int/en/web/ingo/civil-participation>.

¹² Council of Europe, 'Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority', 2009. Available at <https://rm.coe.int/168008482a>.

and introducing demands that complements and extends electoral processes at any level of government.

In line with the view of the institutions, some scholars argue that citizen participation and other democratic innovations can contribute to strengthening institutional checks-and-balances and the separation of powers. Alemanno and Nicolaidis introduce the concept of "democratic panopticon" to underline the importance of citizen's participatory power in holding power accountable¹³. Accordingly, the authors argue for the creation of a permanent chamber of citizen participation in the EU that serves both to nurture the decision-making process and to monitor and subject the rest of the institutions to constant citizen scrutiny¹⁴.

2.2. The concept of direct democracy and its relationship with the separation of powers

Direct democracy is not a new invention, as its use dates back to Ancient Greece. Besides the normative and ideal argument that citizen participation is good in itself and gives greater procedural legitimacy to public policies, there are other arguments to justify it¹⁵. First, some authors argue that increasing the possibilities for participation in the political system helps to consolidate a citizenry that is more informed and interested in public affairs¹⁶. Secondly, the utilitarian argument asserts that the use of these tools result in more optimal and effective public policies, as it allows for the incorporation of everyday, common knowledge and the direct experience of citizens¹⁷. A third argument brings us back closer to republican Rome and then Machiavelli's thinking, arguing that direct democracy helps to pacify the masses and avoid hostility and social conflict¹⁸.

All of the above may explain why the use of referendums and other mechanisms of direct democracy is not exclusive to liberal representative democracies. Several authors have explored how, throughout history, referendums and other forms of direct democracy have been used by autocratic regimes as a discursive tool for self-legitimation of their power and policies, as well as to externalise responsibilities towards the general population¹⁹. Nonetheless, this study will limit itself to exploring the most representative experiences of the use of such mechanisms in contemporary democratic states.

Nevertheless, building on the previous section, it is useful to study the relationship between direct democracy and the concept of separation of powers²⁰. According to Lijphart²¹, referendum is the "most

¹³ Alberto Alemanno & Kalypso Nicolaidis, 'Citizen Power Europe. The Making of a European Citizens' Assembly', *Revue Européenne du Droit* 3 (2022).

¹⁴ *Ibidem*.

¹⁵ David Altman, 'Why Adopt Direct Democracy? Much More Than a Simple Vote,' in *Citizenship and Contemporary Direct Democracy* (Cambridge University Press: 2018), 145–66.

¹⁶ See Matthias Benz & Alois Stutzer, 'Are Voters Better Informed When They Have a Larger Say in Politics? Evidence for the European Union and Switzerland', in *Public Choice* 119 (1–2) (2004), 31–59; Daniel A. Smith & Caroline J. Tolbert, *Educated by Initiative: The Effects of Direct Democracy on Citizens and Political Organizations in the American States*, (University of Michigan: 2004); Daniel A. Smith & Caroline J. Tolbert, 'The Instrumental and Educative Effects of Ballot Measures: Research on Direct Democracy in the American States', *State Politics and Policy Quarterly* 7 (4) (2007), 416–45.

¹⁷ Matt Qvortrup, 'The political theory of direct democracy: The theoretical justification for citizen involvement', in *Direct democracy* (Manchester University Press: 2013), 12–25.

¹⁸ *Ibidem*.

¹⁹ *Ibidem*.

²⁰ Zoltán Pozsár-Szentmiklósy, 'Direct democracy and the separation of powers', in *New Challenges to the Separation of Powers* (Edward Elgar Publishing: 2020), 31–45.

²¹ Arend Lijphart, *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries* (Yale University Press: 2012).

extreme method of majority decision making". However, both Lijphart and Morel²² argue that, if initiated by popular initiative, referendums give minorities the possibility to challenge laws and decisions passed by the majority and thus provide an incentive to consider the interests of minority groups. Similarly, Moeckli²³ differentiates between plebiscitary direct democracy and minority direct democracy. On the one hand, plebiscitary direct democracy refers to the organization of referendums upon the initiation of the legislative political majority, on an issue on which it could have taken a decision on its own. On the other hand, minority direct democracy refers to the formulation of questions at the initiative of civil society organizations, minority social groups or parliamentary minorities. Both types are legal instruments with functions proper to the legislative branch, but only the latter is consistent with the needs of mutual institutional control and checks-and-balances. While plebiscitary direct democracy strengthens the existing political majority, minority direct democracy is a control mechanism of the majoritarian political power²⁴.

2.3. Citizen-initiated instruments of direct democracy

Therefore, the present study will only focus on instruments of direct democracy that are initiated from a grassroots perspective (what, as mentioned above, is sometimes known as "minority direct democracy"): the citizen-initiated instruments of direct democracy. Strictly speaking, there are two types of such instruments: 1) the citizens' legislative initiative and 2) the citizens-initiated referendum²⁵. While both cases require a minimum of citizen support, usually through a signature collection process, their form and purpose differ considerably. On the one hand, the citizens' legislative initiative is a mechanism whereby a certain number of citizens can submit a draft law proposal to the legislative chamber. Although it does not imply a binding entry into force, it does trigger a compulsory mechanism of consideration, debate or vote by the legislative chamber (according to the respective regulation). This instrument is also known as the "agenda initiative". Scholars argue that, beyond producing concrete legislative effects, the significance of this instrument lies in the fact that it gives the opportunity to influence the political agenda and the public debate to civil society actors who normally cannot engage in the conventional channels of political participation²⁶. On the other hand, the citizens-initiated referendum is a mechanism whereby a certain number of citizens can request a referendum on a specific legislative proposal. Generally, the legislative chamber must debate and vote on whether to hold such a referendum (in some cases, however, the referendum must be automatically called if the required number of signatures is reached). Depending on the specific regulation, the result of such a referendum may or may not be binding. This second instrument should not be confused with the referendum proposed by the government or the parliament: the citizens-initiated referendum is a tool that provides for a referendum to be held on a specific issue if requested by a certain number of people. While the former is a top-down instrument, the latter has clearly a bottom-up nature.

At this point, it is possible to make a further distinction between direct and indirect instruments of direct democracy. On the one hand, if the proposal has a directly binding character, we will speak of a

²² Laurence Morel, 'Referendum', in *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press: 2012), 501–528.

²³ Silvano Moeckli, 'Direct Democracy and Political Participation from a Cross-National Perspective', in *Participatory Democracy and Political Participation: Can Participatory Engineering Bring Citizens Back In?* (Routledge: 2006), 107–124.

²⁴ Pozsár-Szentmiklósy, 'Direct democracy and the separation of powers', 31–45.

²⁵ Matt Qvortrup, 'The citizens' legislative initiative: a comparative analysis of the experiences in EU countries', in *Direct democracy* (Manchester University Press: 2013), 57–73.

²⁶ See Luis Bouza García, *Participatory democracy and civil society in the EU: Agenda-setting and institutionalization*, (Springer: 2015). See also Álvaro Oleart & Luis Bouza García, 'Democracy at stake: Multipositional actors and politicization in the EU civil society field', *JCMS: Journal of Common Market Studies*, 56(4) (2018), 870–887.

direct initiative. On the other hand, if the proposal is subject to consideration or modification by the legislature, it is an indirect initiative²⁷.

The two cases mentioned above represent the two ideal types of citizen-initiated instruments of direct democracy: their nature exceeds the consultative character and their implementation is binding or, at least, to be taken into consideration. In any case, there are other types of citizen-initiated instruments of direct democracy: 1) petition to Parliament, 2) abrogative/rejective referendum and 3) initiative/referendum for the amendment of the Constitution²⁸. Firstly, the petition to Parliament is a right to present a complaint or request or other matters to the legislature. Normally, any actor (individual or collective) can make use of this right directly without the need to collect signatures. Despite being present in most of the MSs, this tool only implies the right to present a petition and the obligation - generally - for the Chamber to provide a response. Therefore, it does not involve the submission of a draft legislative proposal and does not trigger a binding mechanism of consideration, debate or vote by the chamber. Secondly, the abrogative/rejective referendum consists of a citizens' petition to repeal an existing law or to challenge the entry into force of a new law. After the collection of a required number of signatures, this mechanism involves holding a referendum, the result of which is binding on whether or not the law will remain or enter into force. While this mechanism does not directly grant the legislative initiative to citizens, it does give them a powerful tool to challenge the legislature's action when there is no majority social support for it. This tool exists, among others, in Croatia, Hungary, Italy, Latvia, Slovakia or Slovenia. Thirdly, some states include initiative or referendum mechanisms to amend the constitution. By means of this instrument, usually through a signature collection process, citizens can request the modification of certain articles or constitutional provisions²⁹. However, this last special type is less widespread at the comparative level: due to its particularity and power, only a few States (i.e. Croatia, Latvia, Lithuania or Slovenia) have introduced it³⁰.

Table 1 examines the types of citizen-initiated instruments of direct democracy and their respective definitions.

²⁷ Rafael Hernández, 'Iniciativa popular de ley: antecedentes y legislación comparada', *Biblioteca del Congreso Nacional de Chile* (2015).

²⁸ Matt Qvortrup, 'Citizen initiated referendums: An empirical assessment', in *Direct democracy* (Manchester University Press: 2013), 27-56.

²⁹ Matt Qvortrup, 'Regulation of direct democracy: international comparisons and patterns', in *Direct democracy* (Manchester University Press: 2013), 142-150.

³⁰ Teresa Freixes Sanjuán & Eva-María Poptcheva, 'Iniciativa legislativa popular: estudio comparativo de la situación legal en los estados miembros de la Unión Europea y previsión de su futuro desarrollo a nivel de la UE', *Pliegos de Yuste: revista de cultura y pensamiento europeos* (2009), no. 9, 37-46.

Table 1: Types of citizen-initiated instruments of direct democracy

Type	Name	Definition
Proactive	Citizens' legislative initiative / Agenda initiative	A mechanism whereby a certain number of citizens can submit a legislative proposal for its consideration by the legislature.
	Citizens-initiated referendum	A mechanism whereby a certain number of citizens can request a referendum on a specific legislative proposal.
Reactive	Abrogative/Rejective citizens-initiated referendum	A mechanism whereby a number of citizens can request the repeal of an existing law or part of it or can reject the entry into force of a law that is in the process of being adopted.
Constitutional	Citizens' initiative/referendum for the amendment of the Constitution	A mechanism whereby a certain number of citizens can submit a proposal for constitutional reform for its consideration through the required procedure or request holding a referendum on the matter.

Source: Own elaboration.

Thus, due to the multiple types of instruments and the fact that they are framed in very varied political systems, their regulation is very diverse at the comparative level. In any case, the citizen-initiated instruments of direct democracy are normally incorporated in the form of a provision in the Constitution and are subsequently developed through an Organic Law (in the case of the citizens' legislative initiative and the citizen-initiated referendum) or through the parliamentary chamber's own rules of procedure (in the case of petitions to Parliament)³¹. These formats regulate who the holders of this right are (general electorate, including those over the age of sixteen, residents, etc.), the number of signatures required, the matters excluded, the procedure to be followed and the time limits applicable to it³².

However, comparative analysis of citizen-initiated instruments of direct democracy is very scarce. Due to their specificity, great contextual variation and relatively little influence, the literature has not paid particular attention to the different regulatory frameworks at the comparative level. Thus, this study aims to review the existing literature in this respect and combine it with a detailed analysis of the most relevant cases within and outside the European Union.

³¹ Matt Qvortrup, 'Regulation of direct democracy: international comparisons and patterns', in *Direct democracy* (Manchester University Press: 2013).

³² *Ibidem*.

3. CITIZEN PARTICIPATION TOOLS IN THE EUROPEAN UNION'S POLITICAL SYSTEM

The European integration project has been widely criticised for suffering from a “democratic deficit”³³ and for being depoliticised and detached from the citizenry³⁴. In this respect, in the year 2000, the European Commission published the White Paper on European Governance³⁵. For the first time, citizen participation was recognised as an essential element of good governance in the European Union. Subsequently, the draft Treaty establishing a Constitution for Europe introduced the principle of participatory democracy³⁶. Despite its failure, the mention to participatory democracy was eventually included in the Lisbon Treaty. Thus, today, Article 10(3) of the Treaty on European Union (TEU) states: “Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen”³⁷. There have been several attempts by European institutions to bring EU decision-making closer to the citizens. According to Lenaerts (2013), a positive transformation has taken place since the adoption of the Maastricht Treaty to alleviate the criticism of the EU's procedural legitimacy³⁸. Lenaerts (2013) also argues that the Court of Justice of the European Union (CJEU) has understood the principle of democracy in a way that respects the main sources of democratic legitimacy at the EU level: that of the Member States, but also that of the peoples of Europe as a whole³⁹.

Broadly understood, there are different instruments for citizen participation in the European Union. In a recent study, Alemanno refers to these mechanisms as “the EU's participatory toolbox”⁴⁰. Specifically, this toolbox includes: requests for access to documents of the EU institutions, petitions to the Parliament, public consultations of the Commission, complaints to the European Ombudsman, complaints to the Commission and the European Citizens' Initiative. These instruments reflect the varied nature of citizen participation mechanisms, from requests for information and documents to legislative proposals.

In any case, the most relevant instrument of citizen participation in the European political system is the European Citizens' Initiative (ECI)⁴¹. The ECI is laid down in Article 11(4) of the Treaty on European Union (TEU): “Not 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”⁴². Article 24 of the Treaty on the Functioning of

³³ The concept of “democratic deficit” was coined by David Marquand. See David Marquand, *Parliament for Europe*, (J. Cape: 1979).

³⁴ To look into this issue in more detail see, among others, Liesbet Hooghe & Gary Marks, ‘A postfunctionalist theory of European integration: From permissive consensus to constraining dissensus’, *British journal of political science* 39(1) (2009), 1-23.

³⁵ European Commission, ‘European Governance: A white paper’, COM(2001) 428, 25 July 2001.

³⁶ Article I-45 of the draft Treaty establishing a Constitution for Europe; European Union, ‘Treaty Establishing a Constitution for Europe’, *Official Journal of the European Union*, C310/1, 16 December 2004.

³⁷ Article 10.3 of the Treaty on European Union (TEU); European Union, *Consolidated version of the Treaty on European Union*, 13 December 2007, 2008/C 115/01.

³⁸ Koen Lenaerts, ‘The principle of democracy in the case law of the European Court of Justice’, *International & Comparative Law Quarterly* 62.2 (2013), 271-315.

³⁹ *Ibidem*.

⁴⁰ For an in-depth exploration of these instruments see Alberto Alemanno, ‘Towards a permanent citizens' participatory mechanism in the EU’, *European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs* (2022).

⁴¹ Nikolai Atanassov, ‘Revising the European Citizens' Initiative’, *European Parliament's EPFRS* (2019).

⁴² Article 11.4 of the Treaty on European Union (TEU); European Union, *Consolidated version of the Treaty on European Union*, 13 December 2007, 2008/C 115/01.

the European Union (TFEU) states that "The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt provisions concerning the procedures and conditions required for a citizens' initiative within the meaning of Article 11 of the Treaty on European Union (TEU), including the minimum number of Member States from which such citizens must come"⁴³. This instrument was developed through Regulation 211/2011⁴⁴ and revised in 2019 through Regulation 2019/788⁴⁵ in order to facilitate the use of the instrument by making the timeline more flexible, by lowering the minimum age for participation from 16 to 18 (the implementation of which falls within the competence of the individual MSs), or by introducing an online signature collection platform managed by the European Commission.

Through an ECI, European citizens can suggest policy initiatives to the European Commission on any matter where the European Union has competence. To do so, in accordance with Article 5 of the Regulation, the ECI must be initiated by a citizens' committee composed of at least seven citizens from seven different Member States. Subsequently, in case the ECI is admitted, the organisers must set a start date for the collection of signatures at some point during the six months following admission. From the established start date, the twelve-month period for the collection of the required signatures begins. In this respect, one million signatures are required from citizens from at least one quarter of the Member States of the European Union. The collection of signatures can be done either manually or online (either by the proposers' own means or through the Commission's online system). In case of gathering the required support, it is up to the European Commission alone to decide whether (and how) it will consider the content of the ECI.⁴⁶

Between 2012 and 2022 the Commission registered a total of 102 initiatives, 26 of which were rejected. In those ten years, only six ECIs reached the required one million signatures and triggered a response from the Commission. These were "One of us", "Stop Vivisection", "Minority SafePack", "Right2Water", "Stop glyphosate" and "End the Cage Age". However, none of them materialised into concrete EU policies. Only latter three produced or are planned to produce some concrete legislative effect.⁴⁷

At the EU level, the ECI is the closest equivalent to the citizens' legislative initiative and it was the first instrument of participatory democracy at the transnational level⁴⁸. However, according to Alemanno, the ECI has proven to be inaccessible and generally ineffective in channelling citizens' demands and shaping the political agenda⁴⁹. On the one hand, the ECI remains a relatively unfamiliar instrument for European citizens. On the other hand, the high number of signatures required (one million) represents an excessively high threshold for the success of an ECI. Moreover, the European Commission retains the monopoly of the right to initiate legislative proposals and is not obliged to incorporate what is proposed by the ECI. This gives the Commission discretionary power and limits the effectiveness of the ECI.

In any case, some authors argue that the ECI may reshape the traditional dynamics and behaviours and bring about a new sphere of politics in the European Union. Due to the large number of signatures required, the ECI would lead to the emergence of a different type of capital in the EU's decision-making

⁴³ Article 24 of the Treaty on the Functioning of the European Union (TFEU); European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 26 October 2012, OJ L 326/47-326/390; 26.10.2012.

⁴⁴ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative.

⁴⁵ Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative.

⁴⁶ Nikolai Atanassov, 'Revising the European Citizens' Initiative', *European Parliament's EPRS* (2019).

⁴⁷ Alberto Alemanno, 'Towards a permanent citizens' participatory mechanism in the EU', Policy Department for Citizens' Rights and Constitutional Affairs (2022).

⁴⁸ *Ibidem*, 15.

⁴⁹ *Ibidem*, 42.

process, namely social mobilisation. In this sense, ECIs, as well as other types of citizen-initiated instruments of direct democracy, are mainly launched by civil society actors who are prevented from using traditional avenues of political participation. Thus, the power of the ECI lies not so much in its capacity to produce concrete legislative effects, but rather in its power to endow civil society groups or actors with agenda-setting power⁵⁰. This perspective is clearly depicted by the case of "Stop TTIP", a self-organised ECI that was able to collect almost 3.3 million signatures, more than any other ECI. In this case, the organisers decided to carry out the ECI in an autonomous and self-organised way and outside the official channels of the European Union⁵¹. This shows that the organisers had known that they would not be able to produce concrete legislative effects, but rather that their goal was to influence the political agenda and bring this debate into the European public sphere⁵².

While underlining the importance of the ECI, the European Parliament calls for greater involvement and responsiveness of the instrument by the European Commission. The European Parliament's position is that citizen participation instruments at European level have several shortcomings and that they need to be more accessible, inclusive and efficient. It also reiterates the need to involve citizens in decision-making in order to strengthen the legitimacy of the EU and increase citizens' trust in political institutions.⁵³

In recent years, the European Union has begun to introduce other mechanisms for citizen participation in its decision-making process. More specifically, the European Citizens' Panels (ECPs) of the Conference on the Future of Europe (COFOE) brought together randomly selected European citizens to deliberate on specific issues related to the future of Europe. Albeit on a limited basis, the European Commission has included a 'new generation' of such panels in its internal work to discuss key proposals on its work programme⁵⁴.

In any case, this study is limited to the citizen-initiated instruments of direct democracy (whether through citizens' legislative initiative, citizen-initiated referenda or other similar instruments). More specifically, this paper aims to study the regulation and use of these kinds of instruments at national, regional and local levels in EU Member States, as well as in other relevant non-EU states. The aim of this study is therefore to explore how experiences with these kinds of instruments at the national level (inside and outside the EU) can contribute to the debate on their application at the supranational level in the European Union.

⁵⁰ See Luis Bouza García & Justin Greenwood, 'The European Citizens' Initiative: A new sphere of EU politics?', *Interest Groups & Advocacy* 3 (2014), 246-267. See also Luis Bouza García, *Participatory democracy and civil society in the EU: Agenda-setting and institutionalization*, (Springer: 2015).

⁵¹ See Álvaro Oleart & Luis Bouza García, 'Democracy at stake: Multipositional actors and politicization in the EU civil society field', *JCMS: Journal of Common Market Studies*, 56(4) (2018), 870-887. See also Álvaro Oleart, *Framing TTIP in the European Public Spheres: towards an Empowering Dissensus for EU Integration*, (Palgrave Macmillan: 2021).

⁵² I am grateful to Álvaro Oleart for his comments and recommendations on the relationship between the ECI and the European public sphere.

⁵³ European Parliament, 'Report on Citizens' dialogues and Citizens' participation in the EU decision-making', A9-0213/2021, June 24 2021. Available at https://www.europarl.europa.eu/doceo/document/A-9-2021-0213_EN.html.

⁵⁴ For an exploration of the COFOE and the European Citizens' Panels Álvaro Oleart, 'The political construction of the 'citizen turn' in the EU: disintermediation and depoliticisation in the Conference on the Future of Europe', *Journal of Contemporary European Studies* (2023), 1-15; Alberto Alemanno & Kalypso Nicolaidis, 'Citizen Power Europe. The Making of a European Citizens' Assembly', *Revue Européenne du Droit* 3 (2022); Emilie Gjaldbæk-Sverdrup, Kalypso Nicolaidis & Nicolás Palomo Hernández, 'Technocratic democratisation: what can we learn from the European Commission's new generation European citizens' panels?', *European University Institute, Robert Schuman Centre for Advanced Studies, Working Paper*, 2023/65 (2023).

4. THE EXPERIENCE IN THE EUROPEAN UNION MEMBER STATES

4.1. Experiences at the national level in the EU Member States

The use of the citizens' legislative initiative, the citizens-initiated referendum and other citizen-initiated instruments of direct democracy is widespread in the EU Member States.

Probably, among all the mechanisms mentioned, the right to petition in the Parliament is the most used of all. Most EU Member States' parliaments include some kind of mechanism that allows citizens to contact the chamber or make any kind of request or complaint to it. However, the right of petition is also the least empowering for citizens to influence legislation and set the political agenda. On the one hand, the right to petition is very varied in terms of the format of the request and does not imply the submission of a concrete draft legislative proposal. On the other hand, the right to petition does not trigger any mandatory consideration or binding entry into force process. Moreover, the regulation and requirements are quite similar at the comparative level: any citizen or political actor can contact the legislative chamber through the procedure included in its respective rules of procedure. Therefore, the present study will focus on 1) the citizens' legislative initiative, 2) the citizens-initiated referendum, 3) the abrogative/rejective referendum and 4) initiative/referendum for the amendment of the Constitution.

As of today, fourteen EU Member States have incorporated some of these elements at the national level⁵⁵. Table 2 summarises the range of different types of instruments that exist in the European Union Member States.

Table 2: Types of citizens' initiative instruments in the EU Member States

Type	Name
Proactive	Citizens' legislative initiative / Agenda initiative
	Citizens-initiated referendum
Reactive	Abrogative citizens-initiated referendum
	Rejective citizens-initiated referendum
Constitutional	Citizens' initiative for the amendment of the Constitution
	Citizens-initiated referendum for the amendment of the Constitution
	Rejective citizens-initiated referendum on constitutional laws
Special	"Shared referendum initiative"

Source: Own elaboration.

More concretely, Table 3 summarises the main information on the regulation of these instruments by country.

⁵⁵ Matt Qvortrup, 'The citizens' legislative initiative a comparative analysis of the experiences in EU countries', in *Direct democracy* (Manchester University Press: 2013), 57-73.

Table 3: Regulation of citizen-initiated instruments of direct democracy in the EU Member States

Country	Type	Art. Constitution	Act / Norm	Signatures required
Austria	Citizens' legislative initiative	41	Popular Petitions Act 2018, BGBl. I No. 106/2016	100,000
Croatia	Citizens-initiated referendum	87	Act on Referendum and Other Forms of Individual Participation in the Functioning of State Authority and Local Self-Government, No33/96, 92/01, 44/06, 58/06, 38/09, 100/16 and 73/17	10% of the electorate
	Abrogative citizens-initiated referendum			
	Citizens-initiated referendum for the amendment of the Constitution			
France	"Shared referendum initiative" ⁵⁶	11	Organic Law No. 2013-1114 of 6 December 2013 implementing Article 11 of the Constitution and Law No. 2013-1116 of 6 December 2013 implementing Article 11 of the Constitution	Initiation by 1/5 of the MPs and support by the 10% of the electorate
Hungary	Citizens-initiated referendum	8.1	Act CCXXXVIII of 2013 on initiating referendums, the European Citizens' Initiative and referendum procedure	200,000
	Abrogative citizens-initiated referendum			
Italy	Citizens' legislative initiative	71	Law 352 of May 25, 1970 on the rules relating to referendums provided for by the Constitution and on the citizens' legislative initiative	50,000
	Abrogative citizens-	75		500,000

⁵⁶ However, this instrument does not truly grant the initiative to the citizens. The "shared initiative referendum" only requires the support of 10% of the electorate (a considerable group of the population - almost five million people) but keeps the right of initiative in a minority group of MPs.

	initiated referendum			500,000
	Rejective citizens-initiated referendum on constitutional laws	138		
Latvia	Citizens' legislative initiative	64-65	Law of 31 March 1994 on the National Referendum and the Initiation of Laws	10% of the electorate
	Citizens-initiated referendum	14		
	Citizens' initiative for the amendment of the Constitution	78		
	Rejective citizens-initiated referendum*	72		
Lithuania	Citizens' legislative initiative	68	Law No. VIII-1003 of 22 December 1998 on Citizens' Initiatives	50,000
	Citizens' initiative for the amendment of the Constitution	147		300,000
	Citizens-initiated referendum	9	Constitutional Law No XIV-1163 of 23 June 2022 on the referendum	300,000
Netherlands	Citizens' legislative initiative	5 ⁵⁷	Rules of Procedure of the House of Representatives of the States General and Rules of Procedure of the Commission on Petitions and Citizens' Initiatives.	40,000

⁵⁷ Article 5 of the Dutch Constitution does not expressly include a provision on the citizens' legislative initiative. However, it states that "Everyone shall have the right to submit petitions in writing to the competent authorities".

Poland	Citizens' legislative initiative	118.2	Act on the manner of executing the citizens' legislative initiative, 24 June 1999	100,000
Portugal	Citizens' legislative initiative	167.1	Law 17/2003 of 4 June 2003 on Popular Legislative Initiative	35,000
	Citizens-initiated referendum	115.2	Organic Law 15-A/98 of 3 April, on the Referendum Regime, and the amendments introduced by Organic Law 4/2005 of 8 September	75,000
Romania	Citizens' legislative initiative	74.1	Law No. 189/1999 on the exercise of legislative initiative by citizens	100,000
Slovakia	Citizens-initiated referendum	95.1	Law 564/1992 of 19 November 1992 on the method of conducting the referendum	350,000
	Abrogative citizens-initiated referendum			
Slovenia	Citizens' legislative initiative	88	Referendum and popular initiative act (RPIA)	5,000
	Rejective citizens-initiated referendum	90		40,000
	Citizens' initiative for the amendment of the Constitution	168		30,000
Spain	Citizens' legislative initiative	87	Organic Law 3/1984, of March 26, 1984, regulating the citizens' legislative initiative and the Organic Law 4/2006, of May 26, 2006, amending the Organic Law 3/1984, of March 26, 1984, regulating the Citizens' Legislative Initiative	500,000

Source: Author's own elaboration.

As the table shows, the most widespread mechanism at the comparative level in the EU Member States is the citizens' legislative initiative, followed by the citizens-initiated referendum. Albeit not as common, several Member States also include rejective or abrogative instruments. Finally, instruments

aimed at constitutional reform, despite being much more powerful, are also less widespread at the comparative level. In what follows, each of the Member States that include such instruments will be explored on a case-by-case basis, paying particular attention to their regulation and their use in practice.

4.1.1. Austria

Austria includes the right to citizens' legislative initiative in Article 41 of its Constitution. The proposal has to be submitted by a total of 100,000 people or by one sixth of the electorate of three different federated states. Any person with the right to vote and a principal place of residence in an Austrian municipality can support such a proposal. The subject of the proposal must be related to federal law⁵⁸. This constitutional provision is further developed in the Federal Law on Popular Petition of 2018⁵⁹ and through the rules of procedure of the Austrian National Council (the Austrian Parliament)⁶⁰.

One of the peculiarities of the citizens' legislative initiative in Austria is that they are given a preferential treatment over all other matters when determining the agenda of the Parliament⁶¹. Furthermore, the preliminary discussion of a popular initiative must begin within one month of its submission to the competent parliamentary committee. These two elements are regulated in Article 24 of the rules of procedure of the Austrian parliamentary chamber⁶².

The citizens' legislative initiative is a relatively well-established mechanism in Austria, dating back to 1964. However, its use has rarely resulted in a change in legislation⁶³. In addition, some authors argue that they are used strategically and abused by opposition parties for their own benefit⁶⁴. By 2021, 213 petitions had been submitted and 33 of them had been enacted by the Parliament, six of them without any modification to the proposal submitted by the citizens⁶⁵. Some outstanding examples in recent years have been the citizens' legislative initiative to hold a referendum on climate change, the initiative against compulsory vaccination or the initiative to end torture in the transport of living animals⁶⁶.

4.1.2. Croatia

The citizens-initiated referendum was introduced in Croatia in the year 2000, under Article 87 of the Croatian Constitution⁶⁷. According to this article, the Parliament may organize a referendum if demanded by 10% of the Croatian electorate. Besides its use to propose new legislation, Croatia also allows holding abrogative referendums, to challenge part or the totality of an already existing law. The

⁵⁸ Article 41 of the Federal Constitutional Law of the Republic of Austria.

⁵⁹ Consolidated Federal Law: Complete legislation for the Popular Petitions Act 2018, BGBl. I No. 106/2016.

⁶⁰ Federal Act on the Rules of Procedure of the National Council (Rules of Procedure Act 1975).

⁶¹ Teresa Freixes Sanjuán & Eva-María Poptcheva, 'Iniciativa legislativa popular: estudio comparativo de la situación legal en los estados miembros de la Unión Europea y previsión de su futuro desarrollo a nivel de la UE', *Pliegos de Yuste: revista de cultura y pensamiento europeos* (2009).

⁶² Article 24 of the Federal Act on the Rules of Procedure of the National Council (Rules of Procedure Act 1975).

⁶³ European Citizens' Initiative Forum, 'If we don't change anything, everything changes – parallels and lessons from participatory democracy practice in Austria and Europe', European Citizens' Initiative Forum, 11 February 2021, https://europa.eu/citizens-initiative-forum/blog/if-we-dont-change-anything-everything-changes-parallels-and-lessons-participatory-democracy_en.

⁶⁴ Matt Qvortrup, 'The citizens' legislative initiative a comparative analysis of the experiences in EU countries', in *Direct democracy* (Manchester University Press: 2013), 57-73.

⁶⁵ *Ibidem*.

⁶⁶ To explore all of Austria's citizens' legislative initiatives see https://www.bmi.gv.at/411/Alle_Volksbegehren_der_zweiten_Republik.aspx.

⁶⁷ Article 87 of the Constitution of the Republic of Croatia.

so-called Referendum Act⁶⁸ states that an organizing committee must be formed, which must propose a specific question for the referendum. The signature collection process must take less than fifteen days. Once collected they have to be sent to the Parliament. However, the Referendum Act does not set a specific deadline for Parliament to call the referendum after receiving the signatures, nor does it clearly regulate and limit the rights of the participants.

As of 2021, only one legislative proposal referendum had been held in Croatia. In the said referendum, Croatian citizens were asked whether they agreed to include a provision in the Constitution stating that "marriage is a union between a man and a woman"⁶⁹. The issue led to a conflict between the Parliament and the Constitutional Court. Many of the MPs of the government coalition were of the opinion that only the Parliament was authorized to initiate the reform of the Constitution. However, the Constitutional Court warned the Parliament that not only was it obliged to call the referendum if 10% of the electorate requested it, but that the result of the referendum would be binding. The referendum was called, and the majority of voters supported the constitutional amendment to include such a provision. Therefore, considering these events as well as the opinion of the Croatian Constitutional Court, the referendum for the amendment of the Constitution is also allowed in Croatia⁷⁰.

On two other occasions, and despite the fact that the signatures of 10% of the electorate were collected, the Croatian parliament decided not to call the demanded referendum. This was because it had already accepted the demands of the petitioners (in terms of repealing or amending existing laws). This course of action was accepted and defended by the Constitutional Court, which stated that "it was not necessary to call the referendum because the initial objective of the initiative had already been satisfied"⁷¹.

4.1.3. France

As it will be explained below, the mechanisms of citizen participation explored in this study are relatively well established at the local level in France. However, at the state level they have only recently been introduced in a very limited way. Through a constitutional revision, the "shared initiative referendum" was introduced in France in 2008⁷². Although France already had an instrument allowing the Government and/or Parliament to call a referendum, they could not be held at the request of the citizenship⁷³.

In this regard, Article 11 of the French Constitution⁷⁴ includes a provision whereby a referendum may be called at the initiative of one-fifth of the members of Parliament with the support of 10% of the electorate. This instrument was developed through an organic law in 2013⁷⁵ and has been operational only since 2015. Likewise, holding referendums is subject to ex-ante Constitutional control. In this regard, Article 11 of the Constitution includes two limits: 1) it cannot be applied to repeal a law enacted for less than one year (although, as a result of a lack of Constitutional foresight, it has been applied to

⁶⁸ Act on Referendum and Other Forms of Individual Participation in the Functioning of State Authority and Local Self-Government.

⁶⁹ Robert Podolnjak, 'Croatia', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 155-175.

⁷⁰ *Ibidem*.

⁷¹ *Ibidem*.

⁷² Matt Qvortrup, 'The citizens' legislative initiative a comparative analysis of the experiences in EU countries', in *Direct democracy* (Manchester University Press: 2013), 57-73.

⁷³ Marthe Fatin-Rouge Stefanini, 'France', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 107-133.

⁷⁴ Article 11 of the Constitution of France.

⁷⁵ Organic Law No. 2013-1114 of 6 December 2013 implementing Article 11 of the Constitution and Law No. 2013-1116 of 6 December 2013 implementing Article 11 of the Constitution.

challenge laws that had not yet been adopted) and 2) a new referendum proposal on the same subject cannot be submitted before two years have passed from the date of the vote. Thus, despite these limits, the use of the referendum as an abrogative instrument is accepted.⁷⁶

However, this instrument does not truly grant the initiative to the citizens. The "shared initiative referendum" only requires the support of 10% of the electorate (a considerable group of the population - almost five million people) but keeps the right of initiative in a minority group of MPs⁷⁷. Thus, not only does the "shared initiative referendum" not truly give the initiative to the citizens, but the percentage of citizen support is so high that it makes its effectiveness difficult.

The proposal to reform the French Constitution presented in 2019 includes reducing the number of the signatures required to one million. However, the proposal also includes further constraints in terms of the time limit for challenging a law. With such a reform, the instrument could only challenge laws at least three years after its entry into force. In any case, such a reform seems unlikely due to the lack of parliamentary support.⁷⁸

4.1.4. Hungary

Currently, only the citizen-initiated referendum exists in Hungary. This instrument is provided for in Article 8.1 of the 2011 Hungarian Constitution⁷⁹ and is developed through Act CCXXXVIII of 2013⁸⁰. Thus, it states that the Hungarian National Assembly is obliged to organise a national referendum if at least 200,000 citizens with the right to vote request it. If the request comes from at least 100,000 citizens with the right to vote, the Hungarian National Assembly shall take the proposal into consideration and decide whether or not to hold such a referendum. This referendum may be either propositional or abrogative⁸¹.

Article 8.3 of the Constitution⁸² introduces material and substantive limits to such referendums. The issues on which a national referendum is not allowed are: reform of the Constitution; laws relating to budgets, taxes or customs; electoral laws; international treaties; dissolution of the National Assembly or any representative body; declaration of a state of war, crisis or emergency; participation in military operations; and the granting of general pardons. In addition, Article 8.4⁸³ states that a referendum is only valid if more than half of the total number of citizens entitled to vote participate.

90% of citizens' proposals for a referendum in Hungary fail to take place, mainly because of the tight restrictions⁸⁴.

On the other hand, until the adoption of the new Constitution in 2011, both the citizens' legislative initiative and the citizen-initiated referendum existed in Hungary. Both rights were provided for in the 1989 Constitution. The citizens' legislative initiative allowed a matter to be brought before Parliament for deliberation in the chamber and required the support of 50,000 citizens entitled to vote. With the

⁷⁶ Marthe Fatin-Rouge Stefanini, 'France', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 107-133.

⁷⁷ *Ibidem*.

⁷⁸ *Ibidem*.

⁷⁹ Article 8.1 of the Constitution of Hungary.

⁸⁰ Act CCXXXVIII of 2013 on initiating referendums, the European Citizens' Initiative and referendum procedure.

⁸¹ Anna Forgács, 'Hungary', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 195-213.

⁸² Article 8.3 of the Constitution of Hungary.

⁸³ Article 8.4 of the Constitution of Hungary.

⁸⁴ Anna Forgács, 'Hungary', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 195-213.

adoption of the new Constitution, this instrument disappeared in Hungary⁸⁵. However, the regulation concerning the citizen-initiated referendum remains almost identical.

4.1.5. Italy

In Italy there are three citizen-initiated instruments of direct democracy: the abrogative referendum, the constitutional referendum and the citizens' legislative initiative.

The abrogative referendum is the most significant tool among those granting the initiative to citizens in Italy. This instrument is included in Article 75 of the Constitution⁸⁶ and is developed through Title II of Law 352 of 25 May 1970⁸⁷. In this regard, this tool allows for a referendum at the request of the citizenry to repeal, totally or partially, a law or an act with legal value (i.e. either a legislative decree or a decree law). For this purpose, the collection of a minimum of 500,000 signatures of Italian voters is required. Also, for the result of the referendum to be binding, the participation of more than half of the citizens entitled to vote is required. If there is a majority of votes in favour and more than 50% of turnout is reached, the law or act will be abrogated as provided.

However, there are some material, substantive and formal limits to an abrogative referendum. First, there are certain issues on which such referendums are excluded: taxes, budgets, amnesties and ratification of international treaties. Secondly, it is not allowed to request holding a referendum in the twelve months before the end of a legislature or in the six months after holding parliamentary elections. Thirdly, if there is no majority support for the abrogation, but the minimum turnout is reached, a new referendum may not be requested until five years have passed⁸⁸. The first (and one of the most important) abrogative referendum in Italy's history was held in 1974. This referendum intended to abolish the law regulating divorce. However, the voters largely rejected the proposal to abolish the law and it remained in force⁸⁹. On the other hand, the Constitutional Court established that the abrogative referendum included in Article 75 of the Constitution can only be held against acts that have the same force of law as an ordinary law⁹⁰. That is to say, an abrogative referendum against the Constitution, the constitutional reform laws or any other constitutional law is not possible.

In any case, Article 138 of the Italian Constitution⁹¹ allows holding a popular referendum to on laws amending the Constitution and other constitutional laws. This provision is developed in Title I of Law 352 of 25 May 1970⁹². Among others, one of the possibilities of initiation of this referendum is through the request of at least 500,000 voters. Unlike the abrogative referendum, the constitutional referendum does not require a minimum turnout to be enacted, but simply a majority of valid votes. However, the request to hold the referendum must be made within three months of the publication of the law. Furthermore, this type of referendum cannot be held if the law has been approved by each of the

⁸⁵ *Ibidem*.

⁸⁶ Article 75 of the Constitution of the Italian Republic.

⁸⁷ Title II of Law 352 of 25 May 1970 on the rules relating to referendums provided for by the Constitution and on the citizens' legislative initiative.

⁸⁸ Henry Ibi, 'Italy', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 65-85.

⁸⁹ *Ibidem*.

⁹⁰ Decision 29/1987 of the Italian Constitutional Court on the admissibility under Article 2, paragraph 1, of Constitutional Law No. 1 of 11 March 1953 of the request for a popular referendum to repeal Articles 25, 26 and 27 of Law No. 195 of 24 March 1958.

⁹¹ Article 138 of the Constitution of the Italian Republic.

⁹² Title I of Law 352 of 25 May 1970 on the rules relating to the referendums provided for by the Constitution and on the citizens' legislative initiative.

Chambers by a two-thirds majority of its members. Up to 2021, only four constitutional referenda had been held in Italy⁹³.

Although they grant the initiative to citizens, the two instruments mentioned above can only abrogate or reject enacted laws, not initiate legislative proposals. However, Italy also provides for the right to citizens' legislative initiative. This instrument is included in Article 71 of the Italian Constitution⁹⁴ and is briefly developed in Title IV of Law 352 of 25 May 1970⁹⁵. In this regard, a minimum of 50,000 citizens entitled to vote may submit a proposal to be taken into consideration by Parliament. The number of supporters required is ten times less than that of the abrogative referendum and the constitutional referendum, which facilitates the use of this mechanism. Moreover, no specific limit to the use of this initiative is specified. However, Parliament is not obliged to cast a vote on the proposal, which hinders the effectiveness of the citizens' legislative initiative instrument. In any case, between 1948 and 2005, a total of 213 citizens' legislative initiatives were proposed, of which 29 had legislative effects⁹⁶.

It is important to note that, since 2021, Italy allows for the collection of signatures for abrogative referendums or citizens' legislative initiatives through digital means, by enabling organizing committees to implement their own digital platforms for this purpose. The modification in the procedure was guaranteed by the Italian Government after years of campaigns by civil society organisations and on the legal basis of an opinion of the UN Human Rights Committee⁹⁷, which stated that there were "unreasonable obstacles" to the access of direct democracy tools in Italy. So far, the Italian government has not yet launched the public platform for the digital collection of signatures.⁹⁸

4.1.6. Latvia

There are several instruments for citizens' initiatives in Latvia. All of them appear as provisions in the Latvian Constitution and are developed through the Law of 31 March 1994 on the National Referendum and the Initiation of Laws⁹⁹.

First, Article 14 of the Latvian Constitution¹⁰⁰ introduces the right to a citizen-initiated referendum. The Saeima (Latvia's legislative chamber) must call a referendum on the proposed issue if requested by at least 10% of the citizens with the right to vote. For the result of the referendum to be valid, at least two-thirds of the voters who participated in the last Saeima elections must participate¹⁰¹. As of 2013, two citizen-initiated referendums had been held, but none of them obtained the majority of votes required for its final approval¹⁰².

⁹³ Henry Ibi, 'Italy', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 65-85.

⁹⁴ Article 71 of the Constitution of the Italian Republic.

⁹⁵ Title IV of Law 352 of 25 May 1970 on the rules relating to the referendums provided for by the Constitution and on the citizens' legislative initiative.

⁹⁶ Matt Qvortrup, 'The citizens' legislative initiative a comparative analysis of the experiences in EU countries', in *Direct democracy* (Manchester University Press: 2013), 57-73.

⁹⁷ Communication CCPR/C/127/D/2656/2015, United Nations' Human Rights Committee, *Staderini & De Lucia v. Italy*, of 6 November 2019.

⁹⁸ I am grateful to Virginia Fiume for her contribution on the digital gathering of signatures for the use of direct democracy instruments in Italy. For a complete exploration of the case, see <https://eumans.eu/digital-democracy>.

⁹⁹ Law of 31 March 1994 on the National Referendum and the Initiation of Laws.

¹⁰⁰ Article 14 of the Constitution of the Republic of Latvia.

¹⁰¹ Mārtiņš Birģelis, 'Latvia', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 214-235.

¹⁰² Matt Qvortrup, 'The citizens' legislative initiative a comparative analysis of the experiences in EU countries', in *Direct democracy* (Manchester University Press: 2013), 57-73.

Secondly, Article 62 of the Latvian Constitution¹⁰³ also introduces a citizen-initiated referendum to reject the entry into force of a law. In this regard, if within two months of the proclamation of a law at least 10% of the citizens entitled to vote request it, a national referendum must be held to decide whether or not the law shall enter into force¹⁰⁴.

Thirdly, Articles 64 and 65 of the Latvian Constitution¹⁰⁵ introduce the right of citizens' legislative initiative in its general form. In this regard, if requested by at least 10% of citizens entitled to vote, citizen-initiated legislative proposals may be introduced. Article 68 of the Constitution¹⁰⁶ stipulates that this proposal shall be addressed to the President who shall then send it to the Saeima for consideration. Article 68¹⁰⁷ also introduces two particularities for the use of this instrument. On the one hand, it allows for the use of the citizens' legislative initiative to propose amendments to the Constitution (similar to what happens in the cases of Slovenia and Lithuania). On the other hand, it establishes that this instrument will have a binding character¹⁰⁸. This means that if the Saeima does not adopt the proposal without making any changes to its content, it must be submitted to a national referendum¹⁰⁹.

Between 2012 and 2021, 15 citizens' legislative initiatives had been registered. 9 of the 15 were rejected due to failure to meet strict formal requirements (mainly due to the need to submit a "fully elaborated" draft).¹¹⁰

4.1.7. Lithuania

Together with Slovenia and Latvia, Lithuania is one of the few EU Member States that includes the citizens' initiative for the reform of the Constitution. This instrument is included as a provision in Article 147 of the Lithuanian Constitution¹¹¹. In this regard, a minimum of 300,000 citizens entitled to vote may submit a motion to amend the Constitution. The Seimas (Parliament of Lithuania) decides by simple majority whether to take into consideration the citizens' proposal for constitutional reform. The proposal is then debated and adopted in the Seimas in accordance with the general procedure for draft amendments to the Constitution¹¹².

On the other hand, Article 68 of the Lithuanian Constitution¹¹³ also introduces the right of citizens' legislative initiative. Thus, with the support of at least 50,000 citizens entitled to vote, a draft law can be submitted to the Seimas (Lithuanian Parliament) for its consideration.

Based on their respective constitutional provisions, both instruments are developed through Law No. VIII-1003 of 22 December 1998¹¹⁴.

¹⁰³ Article 62 of the Constitution of the Republic of Latvia.

¹⁰⁴ Mārtiņš Birģelis, 'Latvia', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 214-235.

¹⁰⁵ Articles 64 and 65 of the Constitution of the Republic of Latvia.

¹⁰⁶ Article 68 of the Constitution of the Republic of Latvia.

¹⁰⁷ *Ibidem*.

¹⁰⁸ Teresa Freixes Sanjuán & Eva-María Poptcheva, 'Iniciativa legislativa popular: estudio comparativo de la situación legal en los estados miembros de la Unión Europea y previsión de su futuro desarrollo a nivel de la UE', *Pliegos de Yuste: revista de cultura y pensamiento europeos* (2009).

¹⁰⁹ Mārtiņš Birģelis, 'Latvia', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 214-235.

¹¹⁰ *Ibidem*.

¹¹¹ Article 147 of the Constitution of the Republic of Lithuania.

¹¹² Algis Krupavičius, 'Citizens' Initiatives in Lithuania: Initiative Institutions and Their Political Impact in a New Democracy', in *Citizens' Initiative in Europe: Procedures and consequences of agenda-setting by citizens* (Palgrave Macmillan UK: 2012), 134-151.

¹¹³ Article 168 of the Constitution of the Republic of Lithuania.

¹¹⁴ Law No. VIII-1003 of 22 December 1998 on citizens' initiatives.

In addition, in Lithuania there is also the citizen-initiated referendum in its general form. This right is introduced as a provision through Article 9 of the Constitution of Lithuania¹¹⁵ and developed through the Constitutional Law No XIV-1163 of 23 June 2022¹¹⁶. In this regard, a minimum of 300,000 citizens entitled to vote may propose to the Central Electoral Commission to hold a mandatory or consultative referendum. Unlike other states, in Lithuania there are no forbidden matters to be submitted to referendum or legislative initiative¹¹⁷. However, in the case of a mandatory referendum, the result will only be binding if a series of requirements in terms of participation and majorities are met, depending on the subject matter of the referendum. According to some authors, this requirement discourages citizens and other political actors from making use of this type of tool¹¹⁸. As of 2013, three citizen-initiated referendums had been held, but none of them obtained the majority of votes required for its final approval¹¹⁹.

4.1.8. Netherlands

In 2006, the Netherlands introduced the citizens' legislative initiative, by which citizens are given the right to propose an issue for subsequent consideration in the House of Representatives¹²⁰. More concretely, this tool allows to propose either the elaboration of new legislation or the amendment or abrogation of an existing legal provision. Although Article 5 of the Dutch Constitution¹²¹ states that "Everyone shall have the right to submit petitions in writing to the competent authorities", it does not expressly include a provision on the citizens' legislative initiative. In the case of the Netherlands, the citizens' legislative initiative is directly included in Article 14.2 of the Rules of Procedure of its House of Representatives¹²² and through the Rules of Procedure of the Commission for Petitions and Citizens' initiatives¹²³.

Thus, it is established that any Dutch citizen over the age of eighteen has the right to submit a citizens' initiative. However, only a citizen or a group of citizens may submit the initiative. An organization is not allowed to submit an initiative, but any of its affiliates is allowed to do so. On the other hand, in order to be taken into consideration, the proposal must be supported by at least 40,000 signatories¹²⁴. Considering the total population of the country, the Netherlands has set a relatively low threshold of support as a requirement for the proposal to be considered.

In addition, a series of limits are incorporated for its use. It must be a clear proposal that falls within the competence of the House of Representatives and the central government (proposals relating to the local level are not allowed). In addition, the proposal must deal with an issue that the House of Representatives has not dealt with in the last two years and cannot be related to the Constitution, taxes

¹¹⁵ Article 9 of the Constitution of the Republic of Lithuania.

¹¹⁶ Constitutional Law No XIV-1163 of 23 June 2022 on the referendum.

¹¹⁷ Algis Krupavičius, 'Citizens' Initiatives in Lithuania: Initiative Institutions and Their Political Impact in a New Democracy', in *Citizens' Initiative in Europe: Procedures and consequences of agenda-setting by citizens* (Palgrave Macmillan UK: 2012), 134-151.

¹¹⁸ *Ibidem*.

¹¹⁹ Matt Qvortrup, 'The citizens' legislative initiative a comparative analysis of the experiences in EU countries', in *Direct democracy* (Manchester University Press: 2013), 57-73.

¹²⁰ *Ibidem*.

¹²¹ Article 5 of the Constitution of the Kingdom of the Netherlands.

¹²² Article 14.2 of the Rules of Procedure of the House of Representatives of the States General of the Netherlands.

¹²³ Rules of Procedure of the Commission on Petitions and Citizens' Initiatives of the Netherlands.

¹²⁴ See https://www.tweedekamer.nl/kamerleden_en_commissies/commissies/verz/burgerinitiatieven.

or budgets. Finally, a general safeguard is included: the proposal must respect the country's norms and values¹²⁵.

Until 2021, only five initiatives had resulted in a parliamentary debate. None of them had produced legislative effects.¹²⁶

4.1.9. Poland

In Poland, the right to a citizens' legislative initiative was introduced in the 1997 Constitution, more specifically in Article 118.2¹²⁷. In this respect, this article states that a group of at least 100,000 citizens entitled to vote in elections to the Sejm (the lower house of the Polish Parliament), have the right to submit draft legislation to the Parliament. As foreseen in this article, the procedure for carrying out this instrument was regulated by a statute in 1999¹²⁸, two years after the entry into force of the constitution¹²⁹.

It is the exclusive competence of the legislature to take a decision on the citizen's proposal. In case of rejection, the proposal process will be understood as terminated¹³⁰. Thus, the participation of the citizens ends with the presentation of the proposal.

On the other hand, there are two material limits to the use of this instrument. Firstly, the citizens' legislative initiative cannot target a proposal for constitutional reform. Secondly, matters in which the right of legislative initiative is attributed to the exclusive competence of certain state bodies (e.g. budgetary matters) are excluded.¹³¹

Between 1999 (when the regulatory statute was passed) and 2005, a total of fifty-five proposals were submitted. Seven of these proposals eventually ended up becoming laws¹³². Among others, some of the successful initiatives that became law dealt with issues such as the prohibition of the promotion of violence in the media, the maintenance of national control over the country's strategic natural resources or the provision of support for single-parent families¹³³.

4.1.10. Portugal

In Portugal, both the citizens' legislative initiative and the citizen-initiated referendum exist.

Article 167.1 of the Portuguese Constitution¹³⁴ establishes that the legislative initiative can be exercised by "a determined group of electors" as established by law. This provision is developed through Law

¹²⁵ *Ibidem*.

¹²⁶ Matt Qvortrup, 'The citizens' legislative initiative a comparative analysis of the experiences in EU countries', in *Direct democracy* (Manchester University Press: 2013), 57-73.

¹²⁷ Article 118.2 of the Constitution of the Republic of Poland.

¹²⁸ Act on the manner of executing the citizens' legislative initiative, 24 June 1999.

¹²⁹ Anna Rytel-Warzocho, 'Popular Initiatives in Poland: Citizens' Empowerment or Keeping Up Appearances?', in *Citizens' Initiative in Europe: Procedures and consequences of agenda-setting by citizens* (Palgrave Macmillan UK: 2012), 212-227.

¹³⁰ Anna Rytel-Warzocho, 'The Popular Initiative in Poland', *Institute of Constitutional Law and Political Institutions, University of Gdansk* 8 (2006).

¹³¹ *Ibidem*.

¹³² See Matt Qvortrup, 'The citizens' legislative initiative a comparative analysis of the experiences in EU countries', in *Direct democracy* (Manchester University Press: 2013), 57-73. See also Teresa Freixes Sanjuán & Eva-María Poptcheva, 'Iniciativa legislativa popular: estudio comparativo de la situación legal en los estados miembros de la Unión Europea y previsión de su futuro desarrollo a nivel de la UE', *Pliegos de Yuste: revista de cultura y pensamiento europeos* (2009), no. 9, 37-46.

¹³³ Anna Rytel-Warzocho, 'The Popular Initiative in Poland', *Institute of Constitutional Law and Political Institutions, University of Gdansk* 8 (2006).

¹³⁴ Article 167.1 of the Constitution of the Portuguese Republic.

17/2003 of 4 June 2003¹³⁵. In this way, citizens may submit legislative proposals to the Assembly of the Republic. For this purpose, the minimum number of required signatures is 35,000 (a relatively low and accessible amount in comparative terms). However, a series of material and formal limits are included for the exercise of this instrument. On the one hand, a legislative initiative is not allowed for the reform of the Constitution, for matters which are the exclusive competence of the Government or the Regional Assemblies of the Azores and Madeira, for amnesties and pardons, and for budgetary, tax or financial matters. It is also forbidden to submit proposals that would imply an unforeseen increase in expenditure or a decrease in revenue of the General State Budget for the current financial year. If the proposal is accepted by the President of the Assembly, it is submitted to the relevant committee, which may amend it or not, and subsequently it will be put on a vote. As in the case of Spain, a particularity of the Portuguese case is that the Law¹³⁶ requires the creation of a Representative Commission to coordinate the collection of signatures and to be informed about the progress of the proposal¹³⁷.

Article 115.2 of the Portuguese Constitution¹³⁸ establishes that, under the terms provided by law, citizens may submit a request to the Assembly of the Republic to hold a referendum. This provision is developed through Organic Law 15-A/98 of 3 April¹³⁹ its amendment in Organic Law 4/2005 of 8 September¹⁴⁰. In this case, such a request must be submitted by at least 75,000 citizens with the right to vote. The use of this tool is not allowed to propose the reform of the Constitution or in matters related to budgetary, fiscal or taxation issues. Furthermore, the proposal cannot be approved, or a referendum held between the date of the call for elections (either general, regional, municipal or European elections) and the date on which they are held. Moreover, if a referendum is held, it will only be binding if more than half of the registered electors take part in it. Until 2012, this instrument had not led to any referendum¹⁴¹.

As in the case of Romania, some scholars¹⁴² describe the citizens' legislative initiative in Portugal as a "very restrictive and unused" tool.

4.1.11. Romania

In Romania, the citizens' legislative proposal is provided for in Article 74.1 of the Romanian Constitution¹⁴³ and it's developed through Law no. 189/1999¹⁴⁴. A minimum of 100,000 citizens with the right to vote can submit a legislative proposal for its consideration.

The case of Romania presents an interesting particularity, as it requires a specific territorial distribution of the citizens submitting the proposal¹⁴⁵. Article 74.1 of the Romanian Constitution states that citizens

¹³⁵ Law 17/2003 of 4 June 2003 on the Popular Legislative Initiative.

¹³⁶ Article 7 of the Law 17/2003 of 4 June 2003 on the Popular Legislative Initiative.

¹³⁷ Teresa Freixes Sanjuán & Eva-María Poptcheva, 'Iniciativa legislativa popular: estudio comparativo de la situación legal en los estados miembros de la Unión Europea y previsión de su futuro desarrollo a nivel de la UE', *Pliegos de Yuste: revista de cultura y pensamiento europeos* (2009)

¹³⁸ Article 115.2 of the Constitution of the Portuguese Republic.

¹³⁹ Organic Law 15-A/98 of 3 April, on the Referendum Regime.

¹⁴⁰ Organic Law 4/2005 of 8 September amending Organic Law No. 15-A/98 of 3 April, making the mechanisms for holding referendums more flexible.

¹⁴¹ Theo Schiller & Maija Setälä, 'Introduction', in *Citizens' Initiative in Europe: Procedures and consequences of agenda-setting by citizens* (Palgrave Macmillan UK: 2012), 12.

¹⁴² *Ibidem*, 4.

¹⁴³ Article 74.1 of the Constitution of Romania.

¹⁴⁴ Law no. 189/1999 on the exercise of legislative initiative by citizens.

¹⁴⁵ Teresa Freixes Sanjuán & Eva-María Poptcheva, 'Iniciativa legislativa popular: estudio comparativo de la situación legal en los estados miembros de la Unión Europea y previsión de su futuro desarrollo a nivel de la UE', *Pliegos de Yuste: revista de cultura y pensamiento europeos* (2009).

submitting the proposal must belong to at least one quarter of the counties in the country, and, in each of these counties or in the municipality of Bucharest, at least 5,000 signatures must be registered in support of such an initiative¹⁴⁶.

On the other hand, Article 74.2 of the Constitution includes some material limits to the use of this instrument. In this respect, the use of the citizens' legislative initiative is not allowed in matters relating to fiscal issues, international affairs, amnesty or pardon¹⁴⁷.

In any case, authors such as Schiller and Setälä¹⁴⁸ describe the citizens' legislative initiative in Romania as a "very restrictive and unused" tool.

4.1.12. Slovakia

In Slovakia there is also the right to a citizen-initiated referendum. This instrument is included as a provision in Article 95.1 of the Slovak Constitution¹⁴⁹. Furthermore, the regulation on referendums, including those of citizens' initiative, is developed through Law 564/1992 of 19 November 1992¹⁵⁰. In order to propose a referendum, the initiative must be supported by at least 350,000 citizens. Such a referendum can be either propositional or abrogative¹⁵¹.

Both in relative terms (considering the total population of Slovakia) and in comparative terms, the number of signatures required is very high in the case of Slovakia. However, there is no maximum time limit for collecting the required signatures¹⁵².

In any case, if the minimum number of signatures required is obtained and the relevant requirements are met, the President has a constitutional obligation to call the referendum. Thus, holding a referendum is not conditional on the approval of the legislative chamber, as is generally the case at the comparative level. If held, the result of the referendum will only be considered valid if more than half of the total number of citizens with the right to vote participate¹⁵³. Up until this date, nine referenda were called in Slovakia and one of those was so far successful: the one concerning Slovakia's accession to the EU, held in May 2003.

4.1.13. Slovenia

In comparative terms, the Slovenian case includes an important particularity. Article 168 of the Slovenian Constitution¹⁵⁴ introduces the right of citizens' initiative for constitutional reform. In this regard, a minimum of 30,000 voting citizens may submit a draft constitutional amendment to the Slovenian National Assembly. A 2/3 majority of the MPs present in the National Assembly is required in order to accept the proposal for consideration. Subsequently, formal adoption of the constitutional reform proposal requires the support of a 2/3 majority of the total number of MPs. The reform process will be terminated if it does not obtain the minimum required support in the Chamber¹⁵⁵. In addition,

¹⁴⁶ Article 74.1 of the Constitution of Romania.

¹⁴⁷ Article 74.2 of the Constitution of Romania.

¹⁴⁸ Theo Schiller & Maija Setälä, 'Introduction', in *Citizens' Initiative in Europe: Procedures and consequences of agenda-setting by citizens* (Palgrave Macmillan UK: 2012), 4.

¹⁴⁹ Article 95.1 of the Constitution of the Slovak Republic.

¹⁵⁰ Law 564/1992 of 19 November 1992 on the method of conducting the referendum.

¹⁵¹ Kamil Baranik, 'Slovakia', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 176-194.

¹⁵² *Ibidem*.

¹⁵³ *Ibidem*.

¹⁵⁴ Article 168 of the Constitution of the Republic of Slovenia.

¹⁵⁵ Bruna Žuber and Igor Kaučič, 'Slovenia', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 135-154.

it is prohibited to submit the same proposal for constitutional reform in the same term of office¹⁵⁶. The low number of citizen support required in this case is striking, which facilitates the use of this instrument. Slovenia, Lithuania and Latvia are the only three Member States to incorporate such a mechanism.

Moreover, Article 88 of the Slovenian Constitution¹⁵⁷ also includes the right to a citizens' legislative initiative. In this regard, a minimum of 5,000 voting citizens may submit a legislative proposal for consideration by the National Assembly. Again, on a comparative level, the minimum required citizen support for initiating a legislative popular initiative is relatively low in the case of Slovenia. Once the proposal is submitted, it must be supported by a majority of the Members of the Parliament (MPs) present in the National Assembly in order to continue the required legislative procedure. Otherwise, the proposal will be understood as rejected. However, this instrument has rarely been used: until 2021, only three of the laws adopted by the Slovenian Parliament originated from a citizens' legislative initiative¹⁵⁸.

In any case, neither of the two tools mentioned above implies or triggers a referendum. However, in its Article 90, the Slovenian Constitution¹⁵⁹ allows for a citizen-initiated referendum to challenge the entry into force of a law adopted by the National Assembly. Thus, this instrument can be categorized as a rejective citizen-initiated referendum¹⁶⁰. The referendum proposal must be requested by at least 40,000 citizens entitled to vote. This type of referendum cannot be invoked in the case of laws relating to urgent measures; taxes, customs duties or State budget; ratification of treaties; or laws eliminating any type of unconstitutionality. Moreover, a partial rejection of the law in question is not possible, but only on the entry into force or not in its entirety. The law will be rejected if in the referendum there is a majority of voters against the law and these represent at least 1/5 of the total electorate.

4.1.14. Spain

In Spain, the citizens' legislative initiative was included as a provision in Article 87.3 of the Spanish Constitution of 1978¹⁶¹. This provision is developed through Organic Law 3/1984¹⁶² and its amendment through Organic Law 4/2006¹⁶³. The 2006 amendment includes some reforms to the original law to facilitate the use of the instrument, for example, by extending from six to nine months the term foreseen for the collection of signatures¹⁶⁴.

The submission of a citizens' legislative initiative in Spain requires 500,000 signatures of Spanish citizens with the right to vote. This requirement has attracted much criticism, as it hinders the use of this instrument. A large number of initiatives lapse due to the impossibility of gathering such a number of signatures within the set deadline¹⁶⁵.

¹⁵⁶ Article 177 of the Rules of Procedure of the National Assembly of Slovenia.

¹⁵⁷ Article 88 of the Constitution of the Republic of Slovenia.

¹⁵⁸ Matt Qvortrup, 'The citizens' legislative initiative a comparative analysis of the experiences in EU countries', in *Direct democracy* (Manchester University Press: 2013), 57-73.

¹⁵⁹ Article 90 of the Constitution of the Republic of Slovenia.

¹⁶⁰ Bruna Žuber, and Igor Kaučič, 'Slovenia', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 135-154.

¹⁶¹ Article 87.3 of the Spanish Constitution.

¹⁶² Organic Law 3/1984, of March 26, 1984, regulating the citizens' legislative initiative.

¹⁶³ Organic Law 4/2006, of May 26, 2006, amending the Organic Law 3/1984, of March 26, 1984, regulating the Citizens' Legislative Initiative.

¹⁶⁴ Patricia García Majado, 'La configuración de la iniciativa legislativa popular: resistencias y soluciones', *Oñati Socio-legal Series* 7 (5) (2017), 1041-1057.

¹⁶⁵ Daniel Simancas, 'Spain', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 86-106.

On the other hand, the material limits of the scope of this instrument are also significant. Subjects excluded are those pertaining to organic laws, tax laws or laws concerning international matters and the prerogative of grace, as well as those relating to the General State Budget and the planning of the economic activity. The prohibition of the use of the initiative to deal with matters pertaining to organic law prevents the use of the instrument for, inter alia, those relating to fundamental rights and public liberties¹⁶⁶. Likewise, the use of the popular initiative in matters of constitutional reform is prohibited. Although in the Preliminary Draft of the Constitution it was contemplated that this instrument could be used to initiate constitutional reform, the constituent finally decided to eliminate this possibility¹⁶⁷.

In addition, there are other formal limits with respect to the specific subject on which the initiative may deal with. This may not be the same as that of another bill that is in the amendment phase or at a more advanced stage, nor may it coincide with that of another citizens' legislative initiative already submitted in the same legislature. In addition, the proposal must guarantee the homogeneity of the subjects it covers. This requirement has raised the criticism of several authors, underlining that there is no justification to assume that a popular initiative requires more internal coherence than a parliamentary legislative proposal¹⁶⁸.

The Bureau of the Congress is in charge of verifying that the proposal complies with these limits, whose decision may be appealed by the promoters before the Constitutional Court¹⁶⁹.

The law requires the creation of a Commission to represent the signatories, to coordinate the collection of signatures and to be informed about the processing of the proposal¹⁷⁰. A representative of this Commission may intervene in the competent Committee of the Congress of Deputies (the lower house of the Spanish Parliament) and prior to its consideration by the Plenary¹⁷¹. However, the role of the promoters ends with the submission of the proposal. The citizens' legislative initiative is not binding for the Parliament¹⁷², it is up to the plenary of the Congress to accept (with or without modifications) or reject the proposal. Therefore, if successful, the popular initiative only obliges the chamber to take it into consideration. In addition, despite meeting all the requirements, the government may reject the initiative if its application would imply an unforeseen increase in expenses or a reduction in revenues¹⁷³.

The tight requirements and formal limits make the citizens' legislative initiative a scarcely used and ineffective tool in Spain. Since its introduction, nine initiatives have been debated in the plenary session of the Parliament and only one initiative has produced legislative effects (the proposed law on community debt claims, which was included in the Horizontal Property Law)¹⁷⁴.

¹⁶⁶ *Ibidem*.

¹⁶⁷ Patricia García Majado, 'La configuración de la iniciativa legislativa popular: resistencias y soluciones', *Oñati Socio-legal Series* 7 (5) (2017), 1041-1057.

¹⁶⁸ Daniel Simancas, 'Spain', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021).

¹⁶⁹ *Ibidem*.

¹⁷⁰ Teresa Freixes Sanjuán & Eva-María Poptcheva, 'Iniciativa legislativa popular: estudio comparativo de la situación legal en los estados miembros de la Unión Europea y previsión de su futuro desarrollo a nivel de la UE', *Pliegos de Yuste: revista de cultura y pensamiento europeos* (2009).

¹⁷¹ Patricia García Majado, 'La configuración de la iniciativa legislativa popular: resistencias y soluciones', *Oñati Socio-legal Series* 7 (5) (2017), 1041-1057.

¹⁷² Teresa Freixes Sanjuán & Eva-María Poptcheva, 'Iniciativa legislativa popular: estudio comparativo de la situación legal en los estados miembros de la Unión Europea y previsión de su futuro desarrollo a nivel de la UE', *Pliegos de Yuste: revista de cultura y pensamiento europeos* (2009).

¹⁷³ Daniel Simancas, 'Spain', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021).

¹⁷⁴ Matt Qvortrup, 'The citizens' legislative initiative a comparative analysis of the experiences in EU countries', in *Direct democracy* (Manchester University Press: 2013), 57-73.

However, the Spanish case presents an interesting particularity at the comparative level. Among all the EU Member States, only the Spanish regulation guarantees financial compensation for the costs of a citizens' legislative initiative¹⁷⁵. More specifically, the State will compensate up to 300,000 euros to the Commission promoting the proposal for the costs of disseminating the proposal and collecting the required number of signatures¹⁷⁶.

4.2. Experiences at the subnational level in the EU Member States

4.2.1. Experiences at the regional level: Germany's Länder and Spain's autonomous communities

Citizen-initiated instruments of direct democracy are not limited to the national level, they are sometimes also present at the subnational or regional level. Many regions or federated states include these instruments in their political system. More specifically, this section will briefly explore how these mechanisms are regulated in the German Länder and the Spanish Autonomous Communities. While in the case of Germany the citizens' legislative initiative does not exist at the national but only at the federated state level, in the case of Spain the citizens' legislative initiative exists at both levels of government (national level and Autonomous Communities).

Citizen-initiated referendum and citizens' legislative initiative in the German Länder

In Germany, citizen-initiated instruments of direct democracy are included only at the federal state or Länder level¹⁷⁷. The provision of these instruments is included through their respective state constitutions and developed through state law¹⁷⁸. Thus, the first limitation for the use of this kind of instrument is that the respective Länder parliaments must have competence over the subject matter of the proposal¹⁷⁹.

All German Länder include citizen-initiated instruments of direct democracy, mainly the citizen-initiated referendum and the citizens' legislative initiative. The regulation, limitation and the number of signatures required vary in each of the Länder. However, they all share the same procedure for making use of these instruments¹⁸⁰.

The procedure for making use of the citizen-initiated referendum and the citizens' legislative initiative in the German Länder is a complex three-stage process. In the first stage, through a signature collection process, citizens can either make a citizens' legislative initiative proposal (which only implies that the Lander Parliament has to take the proposal into consideration) or request holding a referendum (whose admissibility has to be assessed by the Lander Parliament). In the second stage, if the referendum proposal has been admitted and the Länder Parliament has not already transposed the content of the

¹⁷⁵ Teresa Freixes Sanjuán & Eva-María Poptcheva, 'Iniciativa legislativa popular: estudio comparativo de la situación legal en los estados miembros de la Unión Europea y previsión de su futuro desarrollo a nivel de la UE', *Pliegos de Yuste: revista de cultura y pensamiento europeos* (2009).

¹⁷⁶ Artículo 15 de la Ley Orgánica 3/1984, de 26 de marzo, reguladora de la iniciativa legislativa popular.

¹⁷⁷ Teresa Freixes Sanjuán & Eva-María Poptcheva, 'Iniciativa legislativa popular: estudio comparativo de la situación legal en los estados miembros de la Unión Europea y previsión de su futuro desarrollo a nivel de la UE', *Pliegos de Yuste: revista de cultura y pensamiento europeos* (2009).

¹⁷⁸ Matt Qvortrup, 'The citizens' legislative initiative a comparative analysis of the experiences in EU countries', in *Direct democracy* (Manchester University Press: 2013), 57-73.

¹⁷⁹ Teresa Freixes Sanjuán & Eva-María Poptcheva, 'Iniciativa legislativa popular: estudio comparativo de la situación legal en los estados miembros de la Unión Europea y previsión de su futuro desarrollo a nivel de la UE', *Pliegos de Yuste: revista de cultura y pensamiento europeos* (2009).

¹⁸⁰ Frank Rehmet, *Volksbegehrensbericht 2019. Direkte Demokratie in den deutschen Ländern 1946 bis 2018 von Mehr Demokratie e. V.*, *Mehr Demokratie* (2019).

proposal to law or regulation, another signature collection process is initiated. For this second stage, the number of signatures required increases because, if they are reached, the referendum must be held on a mandatory basis. Thus, the third stage is the actual holding of the referendum, where citizens can vote directly on the proposal. If the required majority and turnout thresholds are reached, the result of the referendum will be binding. In any case, the Länder Parliament can also submit a counter-proposal to the citizen's initiative to a referendum¹⁸¹.

The number of signatures required varies depending on the Länder, ranging from 0.1% to 1.2% for the first stage and from 3.6% to 13.2% for the second stage. In addition, all German Länder except Hesse allow the use of these instruments to introduce amendments to their respective constitutions. In the case of amendments to the Länder constitution, a higher number of signatures is normally required. In the third stage, most Länder require, in addition to a majority of votes in favour, a minimum turnout in the referendum for the result to be binding. Again, the minimum turnout required is higher for amendments to the Länder constitution than for simple law-related issues¹⁸². Table 4 summarises the required signature and participation thresholds for the use of these instruments in each of the German Länder.

Table 4: Citizen-initiated referendum and citizens' legislative initiative in the German Länder

Länder	Request for referendum/citizens' legislative initiative (1st stage) - Signatures required	Referendum Petition (2nd stage) - Signatures Required	Holding of a referendum (3rd step) - Participation required	
			Simple laws	Constitutional amendments
Baden-Württemberg	10.000 (0,1%)	10%	20%	50%
Bavaria	25.000 (0,3%)	10%	-	25%
Berlin	20,000 (0.8%) for simple laws 50,000 (2.0%) for constitutional amendments	7% for simple laws 20% for constitutional reforms	25%	50%
Brandenburg	20.000 (1,0%)	80.000 (3,9%)	25%	50% (+ 2/3 majority)
Bremen	5.000 (1,0%)	5% for simple laws 10% for constitutional reforms	20%	40%
Hamburg	10.000 0,8%	5%	20% if not held at the same time as the elections	No minimum turnout required (+ 2/3 majority)

¹⁸¹ *Ibidem*.

¹⁸² *Ibidem*.

Hesse	1,0% (around 43.700)	5%	25%	Not allowed
Lower Saxony	25.000 (0,4%)	10%	25%	50%
Mecklenburg-Vorpommern	15.000 (1,1%)	100.000 (7,6%)	25%	50% (+ 2/3 majority)
North Rhine-Westphalia	3.000 (0,02%)	8%	15%	50% (+ 2/3 majority)
Rhineland-Palatinate	30.000 (1,0%)	300.000 (9,7%)	25%	50%
Saarland	5.000 (0,6%)	7%	25%	50% (+ 2/3 majority)
Saxony	40.000 (1,2%)	450.000 (13,2%)	-	50%
Saxony-Anhalt	6.000 (0,3%)	7%	25%	50% (+ 2/3 majority)
Schleswig-Holstein	20.000 (0,9%)	80.000 (3,6%)	15%	50% (+ 2/3 majority)
Thuringia	5.000 (0,2%)	10% (if collected freely on the street) or 8% (if presented at official offices)	25%	40%

Source: Obtained from Mehr Demokratie¹⁸³.

In the German Länder, most of these citizen-initiated instruments of direct democracy deal with issues related to education and culture or democratic reforms¹⁸⁴, followed by social affairs, business and environment¹⁸⁵. By the end of 2021, 393 direct-democratic procedures had been initiated by citizens in the German Länder. Of these, 101 reached the second stage of the procedure and 25 of them reached the third stage, i.e. holding a the referendum in the form of a popular vote. However, the use of these instruments varies widely depending on the Länder. For example, while 25 new procedures were initiated in Hamburg in the last ten years, only one was initiated in each of Saxony-Anhalt and Rhineland-Palatinate¹⁸⁶.

As mentioned above, citizen-initiated instruments of direct democracy in Germany only exist at the federal state level in the Länder. At the federal level, referendums are only allowed for issues concerning the territorial reorganisation of the state, all other matters being excluded. This provision is included in Article 29 of the Basic Law of Germany¹⁸⁷. In any case, various civil society groups are

¹⁸³ *Ibidem*.

¹⁸⁴ Matt Qvortrup, 'The citizens' legislative initiative a comparative analysis of the experiences in EU countries', in *Direct democracy* (Manchester University Press: 2013), 57-73.

¹⁸⁵ Mehr Demokratie, 'Volksbegehrensbericht 2021', *Mehr Demokratie*, 2022, <https://www.mehr-demokratie.de/mehr-wissen/volksbegehrensbericht-2021>.

¹⁸⁶ *Ibidem*.

¹⁸⁷ Article 29 of the Basic Law for the Federal Republic of Germany.

calling for the introduction of a popular legislative initiative or citizen-initiated referendum instrument at the German federal level¹⁸⁸.

The citizens' legislative initiative in the Spanish Autonomous Communities

Spain's Autonomous Communities have introduced provisions in their respective statutes of autonomy to allow citizens to present initiatives to the autonomous parliaments¹⁸⁹. The Spanish Autonomous Communities may introduce instruments of popular consultation as long as they do not have characteristics similar to those of a referendum¹⁹⁰ (which has come to be known as "non-referendum popular consultations"). Autonomous Communities such as Andalusia, Aragon, the Balearic Islands, the Canary Islands, Catalonia and Galicia have passed regional laws to regulate citizens' legislative initiative at regional level and/or have passed laws originating from citizens' initiatives¹⁹¹. By 2021, 172 citizens' initiatives had been registered in all of Spain's Autonomous Communities. Among them, 39 were voted on and 15 produced legislative effects at the Autonomous Community level¹⁹².

Catalonia presents one of the most relevant regulations in this respect. Article 29.6 of the Statute of Autonomy of Catalonia¹⁹³ foresees the citizens' initiative to "promote the calling of popular consultations by the Generalitat de Catalunya (the government of Catalonia) and the City Councils, in matters within their respective competences, in the manner and under the conditions established by law". Subsequently, this provision was developed through the Catalan Laws 10/2014¹⁹⁴ and 1/2016¹⁹⁵. In Catalonia, any resident is authorised to present and support a citizens' legislative initiative to the Parliament of Catalonia. This is an advance compared to the national regulation, which limits participation to Spanish citizens with the right to vote¹⁹⁶.

One of the main criticisms of the regulation of the citizens' legislative initiative at the national level in Spain is the prohibition on the proposal dealing with the same subject matter as another bill that is at the amendment stage or at a more advanced stage. Some authors argue that this may encourage the government to submit proposals on subjects on which citizens intend to make use of their right of initiative, with the aim of impeding it¹⁹⁷. In order to avoid this, as well as the overlapping of proposals, Aragon or Catalonia allow for bills and citizens' legislative initiatives dealing with the same subject to be dealt with jointly¹⁹⁸.

In contrast to what happens at the national level, Catalonia's regulation prevents the government from being able to reject the initiative in case it entails an increase in expenditure or a reduction in

¹⁸⁸ Mehr Demokratie, 'Bundesweite Volksabstimmung', *Mehr Demokratie*, 2022, <https://www.mehr-demokratie.de/mehr-wissen/bundesweite-volksabstimmung/start>.

¹⁸⁹ Daniel Simancas, 'Spain', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021).

¹⁹⁰ *Ibidem*.

¹⁹¹ Matt Qvortrup, 'The citizens' legislative initiative a comparative analysis of the experiences in EU countries', in *Direct democracy* (Manchester University Press: 2013), 57-73.

¹⁹² *Ibidem*.

¹⁹³ Article 29.6 Organic Law 6/2006, of 19 July, on the reform of the Statute of Autonomy of Catalonia.

¹⁹⁴ Catalan Law 10/2014, of 26 September, on non-referendary popular consultations and other forms of citizen participation.

¹⁹⁵ Catalan Law 1/2016, of 16 February, on the Popular Legislative Initiative.

¹⁹⁶ Patricia García Majado, 'La configuración de la iniciativa legislativa popular: resistencias y soluciones', *Oñati Socio-legal Series* 7 (5) (2017), 1041-1057.

¹⁹⁷ *Ibidem*.

¹⁹⁸ *Ibidem*.

revenue¹⁹⁹. The Catalan law, for example, allows for the unforeseen economic effects of the proposal to be postponed to the following year²⁰⁰.

Another difference between the Catalan and national regulations is to be found with regard to the intervention of the Promoting Committee's representative in Parliament. At the national level, the latter can only intervene in the competent parliamentary committee prior to the debate. However, the rules of procedure of the Parliament of Catalonia²⁰¹ allow the representative to intervene also during the committee stage and during the final debate in plenary²⁰².

Therefore, as the Spanish case shows, the initiative instrument can often be more comprehensive and effective at the regional level than at the national level.

4.2.2. Experiences at the local level

Moving away from the strictly legislative sphere, citizen-initiated instruments of direct democracy are also included in a variety of forms at the local level. Although not in the nature of a legislative proposal due to the scope of competences, some local entities include the right to a local citizens' initiative. In this respect, by gathering the necessary support according to the regulations in force, a certain number of citizens can present an initiative in matters within the competences of the local authority in question.

For reasons of length, it would be difficult to deal with all the cases of local authorities that include this instrument. In any case, exploring the cases of France, the Netherlands and Spain may be useful to examine the wide variety at a comparative level. In addition, the case of the city of Gdansk (Poland), where innovative mechanisms combining citizen initiative and lottery and deliberative assemblies have been introduced, will be briefly examined.

France: local initiative referendum

The local initiative referendum is relatively well established in France. Article 72-1 of the French Constitution²⁰³ states that initiatives that fall within the competence of the local territorial community may be submitted to referendum. This constitutional provision is developed in the Organic Law on the General Code of Territorial Communities (CGCT), more specifically in its Article 1112-16²⁰⁴. It provides that a certain number of registered voters can request the local assembly to consider a specific issue or to initiate the conduct of a consultation or referendum²⁰⁵.

There are several requirements for the use of this instrument. Firstly, the issue at stake has to fall within the competence of the local authority. Secondly, it has to be requested by one fifth of the registered voters in the case of a municipality or by one tenth of the registered voters in the case of any other local authority. Thirdly, for the result of the consultation to be binding, the participation of at least 50% of the registered voters is required²⁰⁶.

Furthermore, other temporal restrictions apply. Article 1112-16 of the GCTC²⁰⁷ prohibits the organisation of more than one local referendum on the same subject in the same local authority within

¹⁹⁹ *Ibidem*.

²⁰⁰ Third additional provision of Catalan Law 1/2016, of 16 February, on the Popular Legislative Initiative.

²⁰¹ Articles 137 and 138 of the Rules of Procedure of the Parliament of Catalonia.

²⁰² Patricia García Majado, 'La configuración de la iniciativa legislativa popular: resistencias y soluciones', *Oñati Socio-legal Series* 7 (5) (2017), 1041-1057.

²⁰³ Article 72-1 of the Constitution of France.

²⁰⁴ Article 1112-16 of the Organic Law on the General Code of Territorial Communities (CGCT).

²⁰⁵ Marthe Fatin-Rouge Stefanini, 'France', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 107-133.

²⁰⁶ *Ibidem*.

²⁰⁷ Article 1112-16 of the Organic Law on the General Code of Territorial Communities (CGCT).

the same calendar year. Furthermore, such referendums are not allowed to be held between the six months preceding a legislative, presidential, European election or during the election campaign and polling day in local authority elections and other consultations²⁰⁸. The latter restriction prevents a real connection between direct participatory democracy and traditional representative processes, leading to a relative depoliticization of such consultations (as it does not allow parties to include them as issues in their election campaigns) and disincentivising people from participating in them.

Netherlands: local referendums and local initiatives

In the Netherlands, there are provisions for local referendums and, in cities such as Nijmegen, Groningen and Leiden, also local initiatives. However, until 2021, the local initiative had only been invoked in Nijmegen²⁰⁹.

In 2006, the municipal council of Nijmegen introduced the right of citizens' initiative at local level to propose new by-laws. Proposals can deal with any matter within the competence of the local government. In order to do so, residents must collect a number of signatures at least equal to the average number of voters that was needed to elect a member of the municipal council in 2006. In addition to the above, the only limit to this initiative is that the proposal cannot be organised by political parties. Although the local initiative mechanism in the city of Nijmegen has a purely consultative character, the local government council has incorporated some proposals initiated by neighbours²¹⁰.

In the case of Nijmegen, the right of initiative was introduced to increase political participation, which had been particularly low in local elections. In 2006, the government council decided to organise a referendum (which had been proposed through a local citizens' initiative) on the same day as the local elections. Turnout did indeed increase compared to previous local elections (as in cities such as Groningen, where similar events took place). However, in contrast to France, the main particularity of the Dutch regulation is that it allows election candidates to take a position on the referendum during the election campaign. This raises the referendum's relevance, politicizing it and allowing neighbours to vote in a different direction from their party²¹¹.

Spain: the right to local initiative

In Spain, the right to local initiative is regulated by the Law Regulating the Bases of Local Government (LRBRL)²¹². In its article 70 bis²¹³, the Law establishes that Spanish local councils must ensure that adequate channels and tools exist for the political participation of local residents. In this respect, it specifically introduces the municipal popular initiative. This instrument allows for the residents of a local entity with the right to vote in municipal elections to submit proposals on matters of municipal competence. If the required support is achieved, the proposal must subsequently be submitted to a debate and vote in the municipal plenary session²¹⁴. The Law establishes different minimum support requirements depending on the number of inhabitants of the municipality: 20% in municipalities with

²⁰⁸ Marthe Fatin-Rouge Stefanini, 'France', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 107-133.

²⁰⁹ Matt Qvortrup, 'Citizen initiated referendums: An empirical assessment', in *Direct democracy* (Manchester University Press: 2013).

²¹⁰ *Ibidem*.

²¹¹ *Ibidem*.

²¹² Law 7/1985, of 2 April 1985, Regulating the Bases of Local Government (LRBRL).

²¹³ Article 70 of the Law 7/1985, of 2 April 1985, Regulating the Bases of Local Government (LRBRL).

²¹⁴ Daniel Simancas, 'Spain', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021).

up to 5000 inhabitants, 15% in municipalities with 5001 to 20000 inhabitants and 10% in municipalities with more than 20001 inhabitants²¹⁵.

In addition, the Law foresees the possibility for the initiative to include a proposal for a local referendum. However, Article 71²¹⁶ establishes some limits for the use of local referendums. In addition to the absolute majority of the municipal Plenary, the conduct of this type of referendum must be authorised by the National Government. Moreover, Article 71 states that issues of municipal competence that are of special relevance to the interests of local residents may be submitted for consultation. However, matters relating to the local Treasury are excluded²¹⁷.

On the other hand, Article 70 bis.2 of LRBRL²¹⁸ establishes that municipalities must promote the use of new technologies to, among other purposes, facilitate the participation of residents²¹⁹. In this regard, it is worth highlighting the use of this type of citizen participation tools in Madrid, the capital and most populated city in Spain with more than three million inhabitants. The government of the city of Madrid between 2015 and 2019 created the website Decide Madrid, a "citizen crowdsourcing" tool²²⁰ which allows residents to participate in municipal politics through citizen debates, participatory budgets and citizen proposals²²¹.

The citizens' proposals tool acts in a similar way to a local citizens' initiative: users can make a proposal on an issue that falls within the City Council's competence. Proposals that get the support of at least 27,662 users on the website (1% of the total number of people over the age of 16 who are registered in Madrid) are put to a citizen vote. The citizen vote is a hybrid voting process (online and in person) to either support or reject the proposal. Participation is open to anyone over 16 years of age who is registered in the city of Madrid. The results of this citizen vote are binding for the municipal government: if more votes are obtained in favour than against, the proposal will be implemented. During the 2015-2019 local government mandate, two citizen proposals on sustainability and urban mobility managed to gather the necessary support to start the citizen vote phase. Both were subsequently endorsed by the electorate and adopted by the city government²²².

Although the opposition strongly criticised Decide Madrid, the tool remained in use even after the change of local government in 2019. However, the new local government did not make Decide Madrid a political priority, which caused its use to decrease considerably. In any case, the size of the city, the promotion of youth participation and the use of new technologies make Decide Madrid a paradigmatic case in the use of this type of tools at the local level²²³.

²¹⁵ Article 70 bis of the Law 7/1985, of 2 April 1985, Regulating the Bases of Local Government.

²¹⁶ Article 71 of the Law 7/1985, of 2 April 1985, Regulating the Bases of Local Government (LRBRL).

²¹⁷ Art. 71 bis of the Law 7/1985, of 2 April 1985, Regulating the Bases of Local Government.

²¹⁸ Art. 70 bis.2 of the Law 7/1985, of 2 April 1985, Regulating the Bases of Local Government.

²¹⁹ Art 70 bis Law 7/1985, of 2 April 1985, Regulating the Bases of Local Government.

²²⁰ For an exploration of the concept of "citizen crowdsourcing" see Chiara Certomà, Filippo Corsini & Marco Frey, 'Hyperconnected, receptive and do-it-yourself city. An investigation into the European "imaginary" of crowdsourcing for urban governance', *Technology in Society*, 61 101229 (2020). See also Radhika Jain, 'Investigation of Governance Mechanisms for Crowdsourcing Initiatives', *AMCIS (2010)*, 557.

²²¹ Ayuntamiento de Madrid, 'Decide Madrid', *Decide Madrid*, 2021, <https://decide.madrid.es/>.

²²² *Ibidem*.

²²³ For a complete exploration of Decide Madrid see Vicente Pina et al, 'Decide Madrid: A Spanish best practice on e-participation', in *Engaging Citizens in Policy Making* (Edward Elgar Publishing: 2022), 152-165. See also Sonia Royo, Vicente Pina & Jaime García-Rayado, 'Decide Madrid: A critical analysis of an award-winning e-participation initiative', *Sustainability* 12.4 1674 (2020).

Sortition and citizens' assemblies: the case of Gdansk

In view of the “deliberative wave”²²⁴ that current democracies are going through, sortition and citizens' assemblies have been incorporated in different forms and at different levels of government. However, in most cases these are ad-hoc experiences that are not institutionalized and permanent. On the other hand, the political agenda or the issues to be debated do not emerge as a result of citizen requests or a bottom-up process. In most cases (as the prominent case of Ireland demonstrates), the issues and agenda to be addressed are decided in a top-down manner by the government or legislature²²⁵. In fact, paradoxically, there is no such thing as a citizens' legislative initiative in Ireland. Despite being a reference in the use of citizens' assemblies, the Irish Constitution does not provide for mechanisms of citizen-initiated direct democracy. Some Irish civil society groups find this contradictory and have formed a movement²²⁶ to demand the re-inclusion of such instruments in the Constitution (the previous Constitution of 1922 did provide for this kind of instruments).

However, the case of the city of Gdansk (Poland) presents important particularities. Since 2016, the local government has introduced citizen-initiated citizens' assemblies²²⁷. In this regard, a minimum of 1,000 residents can apply to the City Council to hold a citizens' assembly on a specific topic. The final decision on the establishment of such an assembly rests with the municipal government. However, if the proposal is supported by at least 5,000 residents, the City Council is obliged to convene such an assembly. The proposals, decisions or recommendations of such a citizens' assembly will be binding on the City Council if they obtain the support of at least 80% of the people participating in the assembly.²²⁸

Several authors have highlighted the Gdansk experience, which has attracted comparative attention and has led to relatively positive results²²⁹. Following the Gdansk experience, other Polish cities such as Warsaw or Lublin have also started to include such mechanisms²³⁰.

²²⁴ OECD, 'Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave', *OECD Publishing* (2020). Available at <https://www.oecd.org/gov/innovative-citizen-participation-and-new-democratic-institutions-339306da-en.htm>.

²²⁵ Ernesto Ganuza & Arantxa Mendiáharat, 'El sorteo, la deliberación y el poder de decidir: las Asambleas Ciudadanas (años 2000)', in *La democracia es posible. Sorteo cívico y deliberación para rescatar el poder de la ciudadanía*, (Consonni: 2020), 107-122.

²²⁶ This movement calls for the incorporation of citizen-initiated direct democracy instruments to “1) Veto/Block new legislation, 2) Propose new legislation, 3) Amend/repeal existing legislation, 4) Initiate a referendum to amend the Constitution without prior approval from Government”. For a deeper look at this case, see <https://www.citizeninitiatives.ie/>.

²²⁷ Ernesto Ganuza & Arantxa Mendiáharat, 'El sorteo, la deliberación y el poder de decidir: las Asambleas Ciudadanas (años 2000)', in *La democracia es posible. Sorteo cívico y deliberación para rescatar el poder de la ciudadanía*, (Consonni: 2020), 107-122.

²²⁸ Tin Gazivoda, 'Solutions: How the Poles Are Making Democracy Work Again in Gdansk', *Resilience*, 22 November 2017, <https://www.resilience.org/stories/2017-11-22/solutions-how-the-poles-are-making-democracy-work-again-in-gdansk/>.

²²⁹ Ernesto Ganuza & Arantxa Mendiáharat, 'El sorteo, la deliberación y el poder de decidir: las Asambleas Ciudadanas (años 2000)', in *La democracia es posible. Sorteo cívico y deliberación para rescatar el poder de la ciudadanía*, (Consonni: 2020), 107-122.

²³⁰ *Ibidem*.

5. RELEVANT EXPERIENCES BEYOND THE EUROPEAN UNION

The previous sections have analysed the experience of the use of citizen-initiated instruments of direct democracy in the European Union, at supranational, national, regional and municipal levels. This section will briefly explore the use of such instruments beyond the European Union, both inside and outside the European continent.

This section will thus analyse several experiences that increase the diversity of case studies and contribute to understanding the variety in the regulation of citizen-initiated instruments of direct democracy at the comparative level. Thus, the cases of the United Kingdom, Switzerland, Liechtenstein, the United States, New Zealand and some particularities of the regional experience in Latin America will be discussed.

5.1. United Kingdom

First, as a former member of the European Union, it is interesting to analyse the case of the United Kingdom.

On the one hand, Poptcheva points to one peculiarity of the UK regulatory framework in comparative terms:

"Private companies, local authorities and citizens can make legislative proposals (private bills²³¹) providing them with powers over and above or in conflict with the general law. Such proposals may not be aimed at the application or modification of the law generally, but only in respect to specific individuals or organisations. [In addition], groups or individuals potentially affected by such developments may petition Parliament against the proposal and submit their objections to parliamentary committees of MPs and Lords. [...] The formal stages of Private Bills are basically the same as for all other legislative initiatives."²³²

On the other hand, the right to petition in the United Kingdom also presents some particularities. A petition can be submitted by any citizen or resident of the UK. If it is supported by at least five people and meets the material and substantive requirements, it will be officially published to start the phase of collecting citizen support in the form of signatures. If 10,000 signatures are obtained, the petition will receive a response from the government. Moreover, if 100,000 signatures are obtained, the petition will be considered for debate in Parliament. While this does not oblige the Parliament to debate the petition, it is noted that petitions that reach this number of signatures are almost always debated. Petitions that deal with issues that have been recently debated or are to be debated in the near future are normally discarded. On the other hand, the Parliament can always consider a petition for debate even if it does not reach the indicative 100,000 signatures. Thus, although it does not trigger a direct or binding mechanism of debate or vote, this mechanism is considerably closer to the citizens' legislative initiative or citizens' agenda initiative of many EU Member States²³³.

²³¹ UK Parliament, 'Private Bills', *UK Parliament*, 2023, <https://www.parliament.uk/about/how/laws/bills/private/>.

²³² Teresa Freixes Sanjuán & Eva-María Poptcheva, 'Iniciativa legislativa popular: estudio comparativo de la situación legal en los estados miembros de la Unión Europea y previsión de su futuro desarrollo a nivel de la UE', *Pliegos de Yuste: revista de cultura y pensamiento europeos* (2009), 42.

²³³ UK Government and Parliament, 'How petitions work', *Petitions*, 2023, <https://petition.parliament.uk/help>.

5.2. Switzerland

Direct democracy is a central element of the Swiss political system, both at the federal, cantonal and municipal levels²³⁴. Since 1891, there are two citizen-initiated instruments of direct democracy at the federal level in Switzerland: the optional referendum and the popular initiative²³⁵.

The optional referendum is included in Article 141 of the Federal Constitution²³⁶. This instrument has a rejective character: it can be submitted to reject the entry into force of a law. Only the whole law can be challenged, not parts of it. Furthermore, its use is prohibited in relation to financial decisions (which is allowed in many cantons, where this instrument also exists). It requires the collection of at least 50,000 signatures of Swiss citizens less than 100 days before the official publication of the enactment of the law at issue²³⁷. If held, a simple majority is required for the result to be considered binding. By 2021, 189 optional referendums had been held in Switzerland, of which 109 were finally approved²³⁸.

However, the most important citizen-initiated instrument of direct democracy is the popular initiative. This is included in Articles 138 and 139 of the Federal Constitution²³⁹. Through this instrument, citizens can initiate a proposal which, if it meets the requirements of support and form, will be submitted to a citizen's vote. It has a propositional character but is limited to proposals for constitutional reforms. In other words, its use is prohibited to propose law reforms (at cantonal level, many cantons allow the use of this instrument both for laws and for the cantonal constitution). The popular initiative can propose a total (Art. 138) or partial (Art. 139) reform of the Federal Constitution. However, it has never been used to propose a total reform of the Constitution.²⁴⁰ To submit a popular initiative, it must be proposed by a committee composed of 7 to 29 Swiss citizens with voting rights. If the initiative meets the relevant requirements, it is published in the Official Gazette and the signature collection phase begins. The collection of at least 100,000 signatures of Swiss citizens with voting rights within a maximum of 18 months is required.²⁴¹

Popular initiatives in Switzerland are not subject to judicial control, but the Federal Assembly is responsible for reviewing whether the initiative complies with the relevant limits and requirements²⁴². Any issue that can be drafted as a general proposal or constitutional norm can be the subject of a popular initiative, even if it may have radical consequences for the Swiss political system (such as, for example, the suppression of the armed forces or Switzerland's accession to the European Union)²⁴³. There are only two limits: 1) an initiative may not deal with more than one subject and 2) it may not violate any provision of international law. In any case, the government or parliament issues a recommendation to the electorate as to what vote to take on the initiative. In addition, parliament may submit a counter-proposal to that of the initiative, which may be indirect or direct. An indirect counter-proposal consists of passing a law that can be challenged through the optional referendum, a direct counter-proposal consists of a constitutional reform proposal that would be voted on the same day as

²³⁴ Daniel Moeckli, 'Switzerland', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 24-42.

²³⁵ Georg Lutz, 'Switzerland: Citizens' Initiatives as a Measure to Control the Political Agenda', in *Citizens' Initiative in Europe: Procedures and consequences of agenda-setting by citizens* (Palgrave Macmillan UK: 2012), 17-36.

²³⁶ Article 141 of the Federal Constitution of the Swiss Confederation.

²³⁷ Daniel Moeckli, 'Switzerland', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021).

²³⁸ Georg Lutz, 'Switzerland: Citizens' Initiatives as a Measure to Control the Political Agenda', in *Citizens' Initiative in Europe: Procedures and consequences of agenda-setting by citizens* (Palgrave Macmillan UK: 2012).

²³⁹ Articles 138 and 139 of the Federal Constitution of the Swiss Confederation.

²⁴⁰ Georg Lutz, 'Switzerland: Citizens' Initiatives as a Measure to Control the Political Agenda', in *Citizens' Initiative in Europe: Procedures and consequences of agenda-setting by citizens* (Palgrave Macmillan UK: 2012).

²⁴¹ Daniel Moeckli, 'Switzerland', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021).

²⁴² *Ibidem*.

²⁴³ *Ibidem*.

the initiative. In the direct counter-proposal, citizens can vote yes or no to both proposals separately. Therefore, a third question is included to indicate which of the two proposals is preferred in case both are approved. The result of the initiative will be binding if it receives a majority of the total votes and a majority of the votes in at least half of the total number of Swiss cantons and semi-cantons²⁴⁴.

Between 1891 and 2020, a total of 378 popular initiatives were submitted, but only 174 of them reached the citizens' vote stage. Of the 174 initiatives that reached the ballot stage, only 18 (10%) were finally approved.²⁴⁵

In Switzerland, these instruments of direct democracy are an important part of the functioning of its political system (not only at the federal level, but also at the cantonal level). Direct and representative democracy coexist and reinforce each other in the Swiss political system. Citizens' initiatives are able to articulate the political agenda and public debate and force parties to take positions on the issues at stake. However, on several occasions, initiatives have been voted on that failed to meet the requirement of thematic consistency or violated a provision of international law. In spite of some attempts, reform of these instruments has not been possible in Switzerland.²⁴⁶

In any case, the Swiss experience is paradigmatic with regard to the combination of elements of representative and direct democracy and the inclusion of citizen initiative mechanisms at different levels of government. The case of Switzerland has also served as an example for the introduction of elements of direct democracy in countries within and outside Europe (as demonstrated by the cases of Liechtenstein and Uruguay).

5.3. Liechtenstein

The Swiss experience at federal and cantonal level served as an example for the introduction of direct democracy mechanisms in neighbouring Liechtenstein²⁴⁷. These instruments are included in the two existing levels of government in the state: national and municipal. The use of the different citizens' initiative instruments dates back to 1919, even before their formal introduction in the 1921 Constitution²⁴⁸.

Firstly, the proactive initiative is included in Article 64 of the Liechtenstein Constitution²⁴⁹ and is developed through the Political Rights Act²⁵⁰. This instrument allows citizens to make legislative proposals and constitutional amendments (but cannot address governmental ordinances or administrative acts). While a legislative proposal initiative requires the collection of 1,000 signatures of Swiss citizens, a constitutional reform initiative requires 1,500. There are two types of proactive initiative, the non-formulated initiative (which only entails a debate in Parliament, but not a binding vote) and the formulated initiative (which must be submitted to a citizens' vote in case it is rejected by Parliament). The result of the vote will be considered binding if there is a majority of votes in favour (requiring, in addition, the sanction of the Reigning Prince). As in Switzerland, Parliament can submit a counter-proposal, also asking which of the two proposals is preferred in case both are approved. As a

²⁴⁴ Georg Lutz, 'Switzerland: Citizens' Initiatives as a Measure to Control the Political Agenda', in *Citizens' Initiative in Europe: Procedures and consequences of agenda-setting by citizens* (Palgrave Macmillan UK: 2012).

²⁴⁵ *Ibidem*.

²⁴⁶ *Ibidem*.

²⁴⁷ Wilfried Marxer, 'Initiatives in Liechtenstein: Safety Valve in a Complex System of Government', in *Citizens' Initiative in Europe: Procedures and consequences of agenda-setting by citizens* (Palgrave Macmillan UK: 2012), 37-52.

²⁴⁸ *Ibidem*.

²⁴⁹ Article 64 of the Constitution of the Principality of Liechtenstein.

²⁵⁰ Act of 17 July 1973 on the Exercise of the People's Political Rights in State Affairs; LGBl. 1973.050.

special comparative feature, Article 64.3 of the Constitution²⁵¹ states that an initiative must include a plan to cover unforeseen costs arising from its implementation.²⁵²

Secondly, Articles 66 and 66 bis of the Liechtenstein Constitution²⁵³ include the rejective initiative, to reject the entry into force of laws passed by parliament. The rejective initiative can be tabled against any resolution of the Parliament, including constitutional amendments or financial resolutions (with some limitations in the latter case). However, it is prohibited to submit initiatives against resolutions that parliament has declared "urgent" and against governmental ordinances or administrative acts. This proposal must be submitted to a referendum if, within 30 days of the official announcement of the parliamentary resolution, 1,000 Swiss citizens entitled to vote so request in the case of financial laws or resolutions, or 1,500 in the case of constitutional amendments. The result of the vote will be deemed binding if there is a majority of votes in favour (requiring, in addition, the sanction of the Reigning Prince). Between 1926 and 2018 there have been 28 citizens' votes on rejective initiatives, of which 12 were accepted.²⁵⁴

Thirdly, Article 48 of the Liechtenstein Constitution²⁵⁵ allows citizens to convene or dissolve the Parliament. On the one hand, if requested by 1,000 citizens entitled to vote, Parliament shall be convened. On the other hand, if requested by 1,500 citizens entitled to vote, a referendum will be called to decide on the dissolution of Parliament. Only once, in 1928, was the dissolution of Parliament requested, but the referendum was not held because Parliament had already been dissolved and elections had been called.²⁵⁶

In addition, since the constitutional revision of 2003, a number of special citizen-initiated instruments of direct democracy have been introduced in Liechtenstein. These include, among others, the motion of censure against the Reigning Prince (Art. 13ter of the Constitution²⁵⁷) or the initiative to abolish the monarchy (Art. 113 of the Constitution²⁵⁸). A minimum of 1,500 signatures of Liechtenstein citizens entitled to vote are required to submit for either of these. However, none of these instruments has been used so far.²⁵⁹

According to Marxer, although in Liechtenstein these instruments are not used as routinely as in Switzerland, they are used for broader purposes than simply setting the political agenda²⁶⁰. Furthermore, despite being a micro-state, it is interesting to analyse how the citizens' initiative is included in such a complex system of government as that of Liechtenstein.²⁶¹

5.4. United States of America

As in Germany, in the United States of America the citizens' legislative initiative is not included at the national level, but only at the federated state level. Twenty-four of the fifty US states include mechanisms guaranteeing citizens' legislative initiative or any other type of citizen-initiated instrument

²⁵¹ Article 64.3 of the Constitution of the Principality of Liechtenstein.

²⁵² Wilfried Marxer, 'Liechtenstein', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 43-64.

²⁵³ Article 66 and 66 bis of the Constitution of the Principality of Liechtenstein.

²⁵⁴ Wilfried Marxer, 'Liechtenstein', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021).

²⁵⁵ Article 48 of the Constitution of the Principality of Liechtenstein.

²⁵⁶ Wilfried Marxer, 'Liechtenstein', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021).

²⁵⁷ Article 13ter of the Constitution of the Principality of Liechtenstein.

²⁵⁸ Article 113 of the Constitution of the Principality of Liechtenstein.

²⁵⁹ Wilfried Marxer, 'Liechtenstein', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021).

²⁶⁰ Wilfried Marxer, 'Initiatives in Liechtenstein: Safety Valve in a Complex System of Government', in *Citizens' Initiative in Europe: Procedures and consequences of agenda-setting by citizens* (Palgrave Macmillan UK: 2012), 37-52.

²⁶¹ Wilfried Marxer, 'Liechtenstein', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021).

of direct democracy. Many of the states that incorporate such an instrument adopted it more than a century ago (the first state to introduce it was South Dakota in 1898). As of 2013, a total of 2,231 initiatives had been voted on in the United States since 1904.²⁶²

The use, regulation, procedure and modality of these instruments vary considerably from state to state. In any case, the most frequent models are a) proactive initiatives (citizens' legislative initiative or citizen-initiated referendum) and b) reactive initiatives (citizen-initiated referendum to veto laws passed by the federal state government)²⁶³. Each state includes different regulations regarding the number of required signatures, necessary majorities, material and substantive limits, etc. Normally, the less restrictive these constraints are, the more these mechanisms have been used. The five states where these tools are most widely used are California, Oregon, Colorado, North Dakota and Arizona: more than half of the total number of citizens' initiatives in the United States come from these five states.²⁶⁴

Among others, the Citizens' Initiative Review (CIR)²⁶⁵ should be highlighted. This instrument has a permanent character and is part of the electoral procedure in Oregon. It consists of a group of randomly selected individuals who meet to deliberate and write a report summarising the arguments for and against voting on a particular option in a citizen-initiated referendum. Although it is a purely consultative body, it is a unique instrument in comparative terms²⁶⁶.

Thus, according to Donovan, it would be difficult to argue that the citizen-initiated instruments of direct democracy are inconsequential in the United States. These instruments are capable of having effects and influencing the political agenda beyond the federal state itself, by forcing the US Supreme Court to take a position on controversial issues (among others, housing, gay marriage, assisted suicide or cannabis regulation).²⁶⁷

5.5. Latin America: the experience in the region

Latin American states also have considerable experience with citizen-initiated instruments of direct democracy. According to Hevia de la Jara, the introduction of such mechanisms in the region can be explained by the transition processes of the 1980s and 1990s, social and economic discontent, and the crisis of political representation and the discrediting of political parties in recent decades²⁶⁸.

The citizens' legislative initiative exists in 12 states in the region: Argentina, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Peru, Uruguay, Venezuela, Costa Rica, Nicaragua and Paraguay (and at the sub-national level, for example, in Mexico and Argentina)²⁶⁹. The type of existing initiative varies in the countries where this right exists: some include the initiative in its direct form (which involves holding a

²⁶² Matt Qvortrup, 'Citizen initiated referendums: An empirical assessment', in *Direct democracy* (Manchester University Press: 2013).

²⁶³ Todd Donovan, 'Referendums and initiatives in North America', in *Referendums Around the World: The Continued Growth of Direct Democracy* (Palgrave Macmillan 2014), 122-161.

²⁶⁴ *Ibidem*.

²⁶⁵ To look into this issue in more detail see Katherine R. Knobloch et al, 'Did they deliberate? Applying an evaluative model of democratic deliberation to the Oregon Citizens' Initiative Review', *Journal of Applied Communication Research* 41.2 (2013), 105-125. See also Katherine R. Knobloch, Michael L. Barthel, & John Gastil, 'Emanating effects: The impact of the Oregon citizens' initiative review on voters' political efficacy', *Political Studies* 68.2 (2020), 426-445.

²⁶⁶ Ernesto Ganuza & Arantxa Mendiáharat, 'El sorteo, la deliberación y el poder de decidir: las Asambleas Ciudadanas (años 2000)', in *La democracia es posible. Sorteo cívico y deliberación para rescatar el poder de la ciudadanía*, (Consonni: 2020), 107-122.

²⁶⁷ Todd Donovan, 'Referendums and initiatives in North America', in *Referendums Around the World: The Continued Growth of Direct Democracy* (Palgrave Macmillan 2014), 122-161.

²⁶⁸ Felipe Hevia de la Jara, 'La iniciativa legislativa popular en América Latina', *Convergencia* 17.52 (2010), 155-186.

²⁶⁹ *Ibidem*.

binding popular consultation) and others in its indirect form (which only obliges Parliament to consider the proposal and decide what action to take)²⁷⁰.

In addition, each of the States that include this mechanism has different regulations regarding the number of signatures required and the material and substantive limits of the proposal. Colombia and Uruguay allow this mechanism to be used to submit constitutional reforms: while in the former a majority in Congress is required for the proposal to be submitted to referendum, in the latter the proposal will be submitted directly to a citizens' referendum for approval or rejection²⁷¹.

Furthermore, many of them have other particularities: Paraguay and Peru²⁷² grant economic support to reimburse the costs of the initiative, Costa Rica offers advice for citizens to present the initiatives, in the Autonomous City of Buenos Aires the government is obliged to disseminate and publicise the initiatives through all the means at its disposal²⁷³.

In any case, at the state level, until 2010 this instrument had only been used in Argentina, Colombia and Uruguay²⁷⁴.

In addition, in Colombia, Guatemala, Panama and Venezuela the citizens' initiative to call for the revocation of the mandate also exists. However, this instrument has only been used in Venezuela²⁷⁵.

Zovatto argues that it is difficult to affirm that the inclusion of such mechanisms has had a significant effect on political stability and democratic quality in the region²⁷⁶. In any case, Hevia de la Jara states that, despite their limited use in practice, the existence of such mechanisms generates greater citizen control by increasing the incentives for political leaders to listen to citizens' demands²⁷⁷.

5.6. New Zealand

In New Zealand, the citizens'-initiated referendum has existed since the 1980s. This instrument is developed through the 1993 Citizens Initiated Referenda Act²⁷⁸. Any New Zealand citizen has the right to initiate the proposal, which must be supported by at least 10% of the electorate. In New Zealand, a citizen-initiated referendum has a consultative function (its result is not binding, it does not entail an obligation on the government). However, there are no material limits on the subject matter of the referendum: citizens can propose a referendum on any issue.²⁷⁹

Based on the citizens' proposal and a public consultation, the clerk of the House of Representatives establishes the exact wording of the referendum question. Subsequently, the 12-month period for the collection of the necessary signatures begins. In any case, the government can respond to the

²⁷⁰ Daniel Zovatto, 'Instituciones de democracia directa en América Latina', in *La política importa: democracia y desarrollo en América Latina* (Banco Interamericano de Desarrollo y el Instituto Internacional para la Democracia y la Asistencia Electoral: 2006), 241-261.

²⁷¹ Felipe Hevia de la Jara, 'La iniciativa legislativa popular en América Latina', *Convergencia* 17.52 (2010), 155-186.

²⁷² Rafael Hernández, 'Iniciativa popular de ley: antecedentes y legislación comparada', *Biblioteca del Congreso Nacional de Chile* (2015).

²⁷³ Felipe Hevia de la Jara, 'La iniciativa legislativa popular en América Latina', *Convergencia* 17.52 (2010), 155-186.

²⁷⁴ *Ibidem*.

²⁷⁵ *Ibidem*.

²⁷⁶ Daniel Zovatto, 'Instituciones de democracia directa en América Latina', in *La política importa: democracia y desarrollo en América Latina* (Banco Interamericano de Desarrollo y el Instituto Internacional para la Democracia y la Asistencia Electoral: 2006), 241-261.

²⁷⁷ Felipe Hevia de la Jara, 'La iniciativa legislativa popular en América Latina', *Convergencia* 17.52 (2010), 155-186.

²⁷⁸ Citizens Initiated Referenda Act of 28 September 199, 1993 No 101.

²⁷⁹ New Zealand Parliament, 'What is a citizens-initiated referendum', *New Zealand Parliament*, 7 December 2020, <https://www.parliament.nz/en/get-involved/features/what-is-a-citizens-initiated-referendum/>.

referendum proposal at any stage of the process, either by supporting it, indicating a willingness to consider the public debate on the issue, rejecting the proposal or providing information for the debate²⁸⁰.

The regulation of the citizen-initiated referendum in New Zealand includes a distinctive feature in comparative terms: there is a \$50,000 spending limit for promoting a petition and a \$50,000 spending limit for campaigning for a referendum result. The aim of this feature is to limit the importance of funding for a given proposal to be successful²⁸¹.

Although it has been used on multiple occasions, according to Qvortrup the citizen-initiated referendum has had a limited effect in New Zealand. Specifically, this is due to two factors: the high number of signatures required and the non-binding character of its outcome.²⁸²

²⁸⁰ Department of the Prime Minister and Cabinet of New Zealand, 'Citizens initiated referenda', Department of the Prime Minister and Cabinet of New Zealand, 19 April 2023, <https://www.dPMC.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/7-executive-legislation-12#:~:text=7.141%20The%20Citizens%20Initiated%20Referenda,in%20support%20of%20the%20question.>

²⁸¹ Matt Qvortrup, 'Citizen initiated referendums: An empirical assessment', in *Direct democracy* (Manchester University Press: 2013).

²⁸² *Ibidem*.

6. LESSONS LEARNED AND RECOMMENDATIONS

The comparative experience with regard to the regulation and use of citizen-initiated instruments of direct democracy is very rich and diverse. The variety of normative frameworks and narratives around such instruments can nurture the debate on their implementation at the supranational level in the European Union's political system.

First, it should be stressed that whether or not citizen-initiated instruments of direct democracy are included does not make a political system more or less democratic. Moreover, comparative analysis reveals that, although not inconsequential, these tools do not tend to have an essential or determining weight on the democratic behaviour of a political community.

However, the relevance of citizen-initiated instruments of direct democracy lies not only in their effectiveness in terms of shaping public policies. Some authors argue that the mere fact of introducing such mechanisms contributes to greater citizen control. In this respect, the very existence of the citizens' legislative initiative or rejective or abrogative referendums would increase the incentives for political leaders to respond to citizens' demands²⁸³. Other authors argue that the significance of this instrument lies in the fact that it gives the opportunity to influence the political agenda and the public debate to civil society actors who normally cannot engage in the conventional channels of political participation²⁸⁴. On the other hand, the use of these instruments does not always result in an expansion of civil rights and civil liberties, but can be used regressively, to satisfy populist or anti-minority demands.

In any case, citizen-initiated instruments of direct democracy also provide an opportunity for the introduction of creative innovations. In some cases, the use of these instruments is allowed beyond the general electorate: some states, regions and municipalities promote access to these instruments for those over 16 years of age (e.g. in Austria) and even for residents without voting rights²⁸⁵. In addition, direct democracy instruments provide an opportunity to combine traditional voting with the use of new technologies (as in the case of the city of Madrid)²⁸⁶. Both measures are innovative and contribute to increasing the political participation of the citizens, extending the right to participate beyond those entitled to vote. Moreover, this creative and innovative facet facilitates the combination of elements of representative, direct and deliberative democracy, contributing to the evolution, updating and resilience of our democratic systems (as in the case of the citizen-initiated citizens' assemblies in the Polish city of Gdansk or the Citizens' Initiative Review in the US state of Oregon).

There are some compelling trends in the regulation of this kind of instrument at the national level. Among others, the prioritisation of the citizen-initiated legislative proposals on the legislative agenda (Austria), the ability to use these instruments to initiate constitutional reform processes (Croatia, Latvia, Lithuania, Slovenia, Switzerland or Liechtenstein), the introduction of very accessible requirements in terms of the number of signatures needed (the Netherlands, Slovakia or Slovenia) or the provision of state funding to cover the costs of the initiative (Spain).

In this regard, the author agrees on several key points that are key to facilitating the use of citizen-initiated direct democracy instruments. On the one hand, a lower number of required signatures

²⁸³ Felipe Hevia de la Jara, 'La iniciativa legislativa popular en América Latina', *Convergencia* 17.52 (2010), 155-186.

²⁸⁴ See Luis Bouza García, *Participatory democracy and civil society in the EU: Agenda-setting and institutionalization*, (Springer: 2015). See also Álvaro Oleart & Luis Bouza García, 'Democracy at stake: Multipositional actors and politicization in the EU civil society field', *JCMS: Journal of Common Market Studies*, 56(4) (2018), 870-887.

²⁸⁵ Matt Qvortrup, 'Regulation of direct democracy: international comparisons and patterns', in *Direct democracy* (Manchester University Press: 2013).

²⁸⁶ Ayuntamiento de Madrid, 'Decide Madrid', *Decide Madrid*, 2021, <https://decide.madrid.es/>

facilitates the use of the instrument in general and particularly by affected minority groups that do not have extensive funding or social networks at their disposal. On the other hand, the more it is perceived as a relevant and effective tool, the more it will be used by citizens. Comparative analysis shows that these instruments are more widely used where there are fewer material constraints to their use.²⁸⁷ However, the fact that these instruments are included at the highest levels of government does not mean that they are most used, powerful or effective. Whether at supranational, national, regional or local level, the crucial issue is that these instruments are useful at the political system and level of government at which they are included (e.g. in Germany these instruments are widely used even though they exist only at the level of the federated states or Länder).

In any case, the main challenge remains that these instruments are under-used by citizens. More particularly, most citizens do not know about their existence, which hampers their use and effectiveness to a large extent. Thus, leaving aside the debate on their democratic appropriateness in theoretical terms²⁸⁸, if institutions want to drive the momentum for the introduction or strengthening of such instruments, there must be a greater effort to do so. Such institutional effort must be increased not only to raise the visibility of these instruments, but also to strengthen them so that they are perceived as useful, efficient and powerful. Despite divergences in their use and effectiveness, comparative experience indicates that they are rarely eliminated after being introduced into a particular political system (however, in Hungary the citizens' legislative initiative was not included in the 2011 Constitution, despite the fact that it existed in the 1989 Constitution).

One of the limits that makes it difficult for these instruments to be known or be perceived as useful by the citizenry is that in many cases it is forbidden to carry them out during periods of political conflict (more specifically, directly before and after elections). This is the case in France, Italy and Portugal, among others. This restriction limits public debate on the participatory process and prevents political parties and leaders from taking a position on the proposal. However, in cases such as Switzerland, Liechtenstein or the German Länder, the government or the competent legislative chamber is allowed to submit a counter-proposal to the citizens' initiative. Furthermore, the Dutch city of Nijmegen not only allows for the coincidence of participatory processes and traditional local electoral processes but recommends it. The Dutch city decided to take this step after finding that it increased the turnout in both the referendum and the local elections. Moreover, in the autonomous city of Buenos Aires (Argentina), the government has the obligation to publicise the initiatives by all the available public media or information channels. Thus, the three latter measures contribute to politicising the initiative in question and to generating a public debate that encourages participation in the process.

The interlinkage between citizen-initiated instruments of direct democracy and conventional spaces of political participation in representative democracies is an essential element for the relevance of these kinds of mechanisms. As explained above, these instruments give the opportunity to influence the political agenda and public debate to civil society actors that are normally prevented from engaging in conventional channels of political participation. Thus, beyond producing concrete legislative effects, the key issue is how can these instruments spark public debate and contribute to the strengthening of the European public sphere. Thus, the reform of these kinds of instruments at the supranational level in the European Union will depend on the objective that the institutions pursue with it: either to be effective instruments in terms of producing concrete legislative effects or to be able

²⁸⁷ Matt Qvortrup, 'Citizen initiated referendums: An empirical assessment', in *Direct democracy* (Manchester University Press: 2013).

²⁸⁸ David Altman, 'Why Adopt Direct Democracy? Much More Than a Simple Vote,' in *Citizenship and Contemporary Direct Democracy*, (Cambridge University Press: 2018), 145–66.

to contribute to and strengthen the European public sphere by empowering civil society actors with agenda-setting power.

In this respect, without a corresponding reform of the EU Treaties it is difficult to introduce further amendments to the European Citizens' Initiative (ECI) beyond increasing the deadline for the collection of signatures, urging MSs and institutions to give visibility to the ECI instrument (at both European and national levels), providing with funding for the organisers of an ECI, urging MSs to allow the participation of those aged 16 and over and residents in order to broaden the participatory body beyond the general electorate or facilitating the use of the tool in a multilingual context²⁸⁹. Article 11.4 of the Treaty on European Union (TEU) states that the number of signatures required cannot be less than one million, so a reform of the required support is not an option without a corresponding reform of the EU Treaties²⁹⁰. The minimum number of signatures required to submit an ECI could be subject to reform in the event of a hypothetical, but also plausible, reform of the EU Treaties.

In the event of a hypothetical but more ambitious EU Treaties reform, the future of this kind of instrument depends to a large extent on the right to initiate legislative proposals in the EU decision-making process. At present, with the European Commission having a monopoly on this right, ECIs are severely constrained. An ambitious reform could directly grant the right to initiate legislative proposals to citizens through such instruments (as is already the case in some, albeit few, states). On the other hand, should the European Parliament at some point also be endowed with the right to initiate legislative proposals, citizen-initiated direct democracy instruments could be regulated in the European Union in a similar way as they already are in many of the states where they exist (either through citizens' legislative initiatives or propositional, rejective or abrogative referendums). In this respect, they could be introduced indirectly (which would only entail consideration by the European Parliament) or directly (which would entail holding a referendum in the event that the proposal was not approved by the European Parliament). However, as explained above and was illustrated by the self-organised ECI "Stop TTIP", the aim of the organisers is not always to produce legislative effects, but to influence the public debate and to introduce an issue on the political agenda²⁹¹.

In any case, the possibilities for EU Treaties reform in this aspect seem far removed from today's reality. This is not only because they require a reform of the EU Treaties, but also because there is no broad consensus on the desirability and usefulness of introducing and/or strengthening citizen-initiated instruments of direct democracy.

Despite this, comparative experience within and outside the EU is, as we have seen, of great use in nurturing the debate on the introduction and/or reform of citizen-initiated instruments of direct democracy at the supranational level in the European Union's political system.

²⁸⁹ These recommendations are in line with the European Parliament's recommendations in its resolution of 13 June 2023 on the implementation of the European Citizens' Initiative Regulations. This document is available at https://www.europarl.europa.eu/doceo/document/TA-9-2023-0230_EN.html.

²⁹⁰ Article 11.4 of the Treaty on European Union (TEU); European Union, *Consolidated version of the Treaty on European Union*, 13 December 2007, 2008/C 115/01.

²⁹¹ See Álvaro Oleart, *Framing TTIP in the European Public Spheres: towards an Empowering Dissensus for EU Integration*, (Palgrave Macmillan: 2021).

7. CONCLUSIONS

The present study has explored the already-existing regulatory frameworks for citizen-initiated instruments of direct democracy in the European Union MSs and beyond (paying special attention to the citizens' legislative initiative and the citizen-initiated referendum). The objective of this study has been to nurture the debate on the introduction of these type of mechanisms at the EU level or the reform of the already-existing ones, such as the European Citizens' Initiative (ECI) or the right to petition in the European Parliament. Thus, besides exploring the theoretical basis of the citizen-initiated instruments of direct democracy, this study has provided with a comparative analysis of the experience within and outside the European Union.

The cases of the European Union Member States (MS), as well as other notable cases outside the EU (i.e. United Kingdom, Switzerland, Liechtenstein, United States, New Zealand and some particularities of the regional experience in Latin America) have been analysed. In addition, some relevant cases from the subnational (i.e. Germany's Länder and Spain's autonomous communities) and local levels and other initiatives related to democratic innovations have been discussed. Most of the existing mechanisms are mainly instruments that give citizens the legislative initiative or the right to challenge the entry into force of certain laws. However, among the existing instruments there are more ambitious ones such as the initiative for constitutional reform or some more creative and innovative ones such as the initiative for the creation of randomly selected citizens' assemblies.

The experience at the comparative level shows that reducing the requirements and limitations for the exercise of citizen-initiated instruments of direct democracy facilitates and increases the use of these instruments by the citizenry. Moreover, these instruments allow for the introduction of creative and innovative arrangements that contribute to the renewal and strengthening of our democratic systems. Among others, they incentivise the use of the new technologies or they allow for access to people beyond the general electorate, broadening the participatory body of a political community (whether at supranational, national, regional or municipal level).

In public policy terms, the use of citizen-initiated instruments of direct democracy is not inconsequential. Despite not having a crucial or decisive effect on the political systems in which they are applied, they are sometimes effective and succeed in passing new legislation. However, the value of these instruments lies not only in their legislative effectiveness, but also in their agenda-setting power. In this respect, some authors argue that the significance of these instruments lies not so much in its capacity to produce concrete legislative effects but on the fact that they give the opportunity to influence the political agenda and the public debate to civil society actors who normally cannot engage in the conventional channels of political participation.

On the other hand, the use of these instruments does not always imply progress in terms of social or political rights, but can be used in a regressive way, to satisfy populist or anti-minority demands. Moreover, these instruments continue to be underused by citizens. More particularly, most citizens do not know about their existence, which hampers their use and effectiveness to a large extent. Therefore, if institutions intend to foster the development of this type of tools, they must make a greater effort to raise their visibility and ensure greater embeddedness in the rest of the spaces for citizen participation in representative democracies.

As mentioned above, the European Citizens' Initiative is the main instrument of citizen-initiated direct democracy in the European Union. However, its alignment with similar tools at the national level would require EU Treaties reform: this ranges from a more modest reform that would only reduce the number of signatures required to a more ambitious reform that would transform the instrument into a real citizens' legislative initiative. On the other hand, without the need for EU Treaties reform some

measures could also be taken, such as increasing the deadline for the collection of signatures, urging MSs and institutions to give visibility to the ECI instrument (at both European and national levels), providing with funding for the organisers of an ECI, urging MSs to allow the participation of those aged 16 and over and residents in order to broaden the participatory body beyond the general electorate or facilitating the use of the tool in a multilingual context.

In any case, the reform of these kinds of instruments at the supranational level in the European Union will depend on the objective that the institutions pursue with it: either to be effective instruments in terms of producing concrete legislative effects or to be able to contribute to and strengthen the European public sphere by empowering civil society actors with agenda-setting power.

Nonetheless, by exploring the most relevant cases at national, regional and municipal levels, this study has sought to contribute to the debate on the incorporation of citizen-initiated direct democracy instruments at the supranational level into the EU's political system.

REFERENCES

- Alemanno, Alberto & Nicolaidis, Kalypso. 'Citizen Power Europe. The Making of a European Citizens' Assembly', *Revue Européenne du Droit* 3 (2022).
- Alemanno, Alberto. 'Towards a permanent citizens' participatory mechanism in the EU', *Policy Department for Citizens' Rights and Constitutional Affairs* (2022).
- Altman, David. 'Why Adopt Direct Democracy? Much More Than a Simple Vote,' in *Citizenship and Contemporary Direct Democracy*, (Cambridge University Press: 2018), 145–66.
- Atanassov, Nikolai. 'Revising the European Citizens' Initiative', *European Parliament's EPRS* (2019).
- Ayuntamiento de Madrid, 'Decide Madrid', *Decide Madrid* (2021). Available at <https://decide.madrid.es/>.
- Baraník, Kamil. 'Slovakia', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 176–194.
- Benz, Matthias & Stutzer, Alois. 'Are Voters Better Informed When They Have a Larger Say in Politics? Evidence for the European Union and Switzerland', in *Public Choice* 119 (1–2) (2004), 31–59.
- Birģelis, Mārtiņš. 'Latvia', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 214–235.
- Bouza García, Luis & Greenwood, Justin. 'The European Citizens' Initiative: A new sphere of EU politics?', *Interest Groups & Advocacy* 3 (2014), 246–267.
- Bouza García, Luis. *Participatory democracy and civil society in the EU: Agenda-setting and institutionalization*, (Springer: 2015).
- Certomà, Chiara, Corsini, Filippo & Frey, Marco. 'Hyperconnected, receptive and do-it-yourself city. An investigation into the European "imaginary" of crowdsourcing for urban governance', *Technology in Society*, 61 101229 (2020).
- Department of the Prime Minister and Cabinet of New Zealand, 'Citizens initiated referenda', Department of the Prime Minister and Cabinet of New Zealand, 19 April 2023, <https://www.dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/7-executive-legislation-12#:~:text=7.141%20The%20Citizens%20Initiated%20Referenda.in%20support%20of%20the%20question.>
- Donovan, Todd. 'Referendums and initiatives in North America', in *Referendums Around the World: The Continued Growth of Direct Democracy* (Palgrave Macmillan 2014), 122–161.
- Fatin-Rouge Stefanini, Marthe. 'France', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 107–133.
- Forgács, Anna. 'Hungary', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 195–213.
- Freixes Sanjuán, Teresa & Poptcheva, Eva-María. 'Iniciativa legislativa popular: estudio comparativo de la situación legal en los estados miembros de la Unión Europea y previsión de su futuro desarrollo a nivel de la UE', *Pliegos de Yuste: revista de cultura y pensamiento europeos* (2009), no. 9, 37–46.

- Ganuza, Ernesto & Mendiáharat, Arantxa. *La democracia es posible. Sorteo cívico y deliberación para rescatar el poder de la ciudadanía*, (Consonni: 2020).
- García Majado, Patricia. 'La configuración de la iniciativa legislativa popular: resistencias y soluciones', *Oñati Socio-legal Series* 7 (5) (2017), 1041-1057.
- Gazivoda, Tin. 'Solutions: How the Poles Are Making Democracy Work Again in Gdansk', *Resilience*, 22 November 2017, <https://www.resilience.org/stories/2017-11-22/solutions-how-the-poles-are-making-democracy-work-again-in-gdansk/>.
- Gjaldbæk-Sverdrup, Emilie, Nicolaïdis, Kalypso & Palomo Hernández, Nicolás. 'Technocratic democratisation: what can we learn from the European Commission's new generation European citizens' panels?', *European University Institute, Robert Schuman Centre for Advanced Studies, Working Paper*, 2023/65 (2023).
- Hernández, Rafael. 'Iniciativa popular de ley: antecedentes y legislación comparada', *Biblioteca del Congreso Nacional de Chile* (2015).
- Hevia de la Jara, Felipe. 'La iniciativa legislativa popular en América Latina', *Convergencia* 17.52 (2010), 155-186.
- Hooghe, Liesbet & Marks, Gary. 'A postfunctionalist theory of European integration: From permissive consensus to constraining dissensus', *British journal of political science* 39(1) (2009), 1-23.
- Ibi, Henry. 'Italy', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 65-85.
- Jain, Radhika. 'Investigation of Governance Mechanisms for Crowdsourcing Initiatives', *AMCIS* (2010), 557.
- Knobloch, Katherine R. et al. 'Did they deliberate? Applying an evaluative model of democratic deliberation to the Oregon Citizens' Initiative Review', *Journal of Applied Communication Research* 41.2 (2013), 105-125.
- Knobloch, Katherine R., Barthel, Michael L., & Gastil, John. 'Emanating effects: The impact of the Oregon citizens' initiative review on voters' political efficacy', *Political Studies* 68.2 (2020), 426-445.
- Krupavičius, Algis. 'Citizens' Initiatives in Lithuania: Initiative Institutions and Their Political Impact in a New Democracy', in *Citizens' Initiative in Europe: Procedures and consequences of agenda-setting by citizens* (Palgrave Macmillan UK: 2012), 134-151.
- Lenaerts, Koen. 'The principle of democracy in the case law of the European Court of Justice', *International & Comparative Law Quarterly* 62.2 (2013), 271-315.
- Lijphart, Arend. *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries* (Yale University Press: 2012).
- Lutz, Georg. 'Switzerland: Citizens' Initiatives as a Measure to Control the Political Agenda', in *Citizens' Initiative in Europe: Procedures and consequences of agenda-setting by citizens* (Palgrave Macmillan UK: 2012), 17-36.
- Marquand, David. *Parliament for Europe*, (J. Cape: 1979).
- Marxer, Wilfried. 'Initiatives in Liechtenstein: Safety Valve in a Complex System of Government', in *Citizens' Initiative in Europe: Procedures and consequences of agenda-setting by citizens* (Palgrave Macmillan UK: 2012), 37-52.

- Marxer, Wilfried. 'Liechtenstein', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 43-64.
- Mehr Demokratie. 'Bundesweite Volksabstimmung', *Mehr Demokratie*, 2022, <https://www.mehr-demokratie.de/mehr-wissen/bundesweite-volksabstimmung/start>.
- Mehr Demokratie. 'Volksbegehrensbericht 2021', *Mehr Demokratie*, 2022, <https://www.mehr-demokratie.de/mehr-wissen/volksbegehrensbericht-2021>cht-2021.
- Moeckli, Daniel. 'Switzerland', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 24-42.
- Moeckli, Silvano. 'Direct Democracy and Political Participation from a Cross-National Perspective', in *Participatory Democracy and Political Participation: Can Participatory Engineering Bring Citizens Back In?* (Routledge: 2006), 107–124.
- Montesquieu. *The spirit of laws*, (Batoche Books: [1748] 2001).
- Morel, Laurence. 'Referendum', in *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press: 2012), 501–528.
- New Zealand Parliament, 'What is a citizens-initiated referendum', *New Zealand Parliament*, 7 December 2020, <https://www.parliament.nz/en/get-involved/features/what-is-a-citizens-initiated-referendum/>.
- OECD, 'Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave', *OECD Publishing* (2020). Available at <https://www.oecd.org/gov/innovative-citizen-participation-and-new-democratic-institutions-339306da-en.htm>.
- Oleart, Álvaro & Bouza García, Luis. 'Democracy at stake: Multipositional actors and politicization in the EU civil society field', *JCMS: Journal of Common Market Studies*, 56(4) (2018), 870-887.
- Oleart, Álvaro. 'The political construction of the 'citizen turn' in the EU: disintermediation and depoliticisation in the Conference on the Future of Europe', *Journal of Contemporary European Studies* (2023), 1-15.
- Oleart, Álvaro. *Framing TTIP in the European Public Spheres: towards an Empowering Dissensus for EU Integration*, (Palgrave Macmillan: 2021).
- Pina, Vicente et al. 'Decide Madrid: A Spanish best practice on e-participation', in *Engaging Citizens in Policy Making* (Edward Elgar Publishing: 2022), 152-165.
- Podolnjak, Robert. 'Croatia', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 155-175.
- Pozsár-Szentmiklósy, Zoltán. 'Direct democracy and the separation of powers', in *New Challenges to the Separation of Powers* (Edward Elgar Publishing: 2020), 31-45.
- Qvortrup, Matt. 'Citizen initiated referendums: An empirical assessment', in *Direct democracy* (Manchester University Press: 2013), 27-56.
- Qvortrup, Matt. 'Regulation of direct democracy: international comparisons and patterns', in *Direct democracy* (Manchester University Press: 2013), 142-150.
- Qvortrup, Matt. 'The citizens' legislative initiative a comparative analysis of the experiences in EU countries', in *Direct democracy* (Manchester University Press: 2013), 57-73.

- Qvortrup, Matt. 'The political theory of direct democracy: The theoretical justification for citizen involvement', in *Direct democracy* (Manchester University Press: 2013), 12-25.
- Rehmet, Frank. 'Volksbegehrensbericht 2019. Direkte Demokratie in den deutschen Ländern 1946 bis 2018 von Mehr Demokratie e. V.', *Mehr Demokratie* (2019).
- Royo, Sonia, Pina, Vicente & Garcia-Rayado, Jaime. 'Decide Madrid: A critical analysis of an award-winning e-participation initiative', *Sustainability* 12.4 1674 (2020).
- Rytel-Warzocha, Anna. 'Popular Initiatives in Poland: Citizens' Empowerment or Keeping Up Appearances?', in *Citizens' Initiative in Europe: Procedures and consequences of agenda-setting by citizens* (Palgrave Macmillan UK: 2012), 212-227.
- Rytel-Warzocha, Anna. 'The Popular Initiative in Poland', *Institute of Constitutional Law and Political Institutions, University of Gdansk* 8 (2006).
- Schiller, Theo & Setälä, Maija. 'Introduction', in *Citizens' Initiative in Europe: Procedures and consequences of agenda-setting by citizens* (Palgrave Macmillan UK: 2012), 4.
- Simancas, Daniel. 'Spain', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 86-106.
- Sintomer, Yves. *The Government of Chance. Sortition and Democracy from Athens to the Present*, (Cambridge University Press: 2023).
- Smith, Daniel A. & Tolbert, Caroline J. 'The Instrumental and Educative Effects of Ballot Measures: Research on Direct Democracy in the American States', *State Politics and Policy Quarterly* 7 (4) (2007), 416-45.
- Smith, Daniel A. & Tolbert, Caroline J. *Educated by Initiative: The Effects of Direct Democracy on Citizens and Political Organizations in the American States*, (University of Michigan: 2004).
- UK Government and Parliament, 'How petitions work', *Petitions*, 2023, <https://petition.parliament.uk/help>.
- UK Parliament, 'Private Bills', *UK Parliament*, 2023, <https://www.parliament.uk/about/how/laws/bills/private/>.
- Zovatto, Daniel. 'Instituciones de democracia directa en América Latina', in *La política importa: democracia y desarrollo en América Latina* (Banco Interamericano de Desarrollo y el Instituto Internacional para la Democracia y la Asistencia Electoral: 2006), 241-261.
- Žuber, Bruna and Kaučič, Igor. 'Slovenia', in *The legal limits of direct democracy* (Edward Elgar Publishing, 2021), 135-154.

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Committee on Citizens' Rights and Constitutional Affairs (AFCO), explores the regulatory frameworks for citizen-initiated instruments of direct democracy, paying special attention to the citizens' legislative initiative and the citizen-initiated referendum. By carrying out a comparative analysis of the experience of the European Union Member States, as well as other notable cases outside the EU, it aims to nurture the debate on the introduction of such instruments at the supranational level into the EU's political system.
