Ca' Foscari
University
of Venice

Master's Degree Programme

in Comparative
International
Relations

Single Cycle
(D.M. 270/2004)

Final Thesis

European Citizens' Initiative: origins, evolution and the future of participatory democracy

Supervisor
Ch. Prof. De Vido Sara

Co-supervisor
Ch. Prof. Marrella Fabrizio

Graduand
Martina Piazza
842886

Academic Year
2016 / 2017

Table of contents

Acronyms and Abbreviations……...5

Abstract……..……..6

Introduction……..…12

I. Legislative framework of the ECI ……..…..…16

1. Origins and development of Article 11 (4) TEU……..17

1.1 Assessing democracy in the European Union…….....17

1.2 A first introduction to the European Citizens' Initiative……20

1.3 Article I-47 (4) of the Treaty establishing a Constitution for Europe (TECE)……21

1.4 The principle of participatory democracy included in the Lisbon Treaty…….....24

1.5 The complementarity of representative democracy and participatory democracy…….....26

1.6 Democratic mechanisms provided by Article 11 of the TEU……..…....28

1.7 ECI an innovative instrument of participatory democracy……..30

1.8 The origins of the participatory principle in International Law….....…33

2. Procedural aspects set out in Article 24 (1) TFEU ……....37

2.1 Procedural aspects of the ECI in Article 24 TFEU……..……..37

2.2 Pre-legislative and consultative phase of the drafting of the regulation……...38

2.3 The European Commission Proposal for a regulation on the citizens' initiative……..…42

2.4 The role of the European Parliament…….....…44

2.5 Final agreement on Regulation 211/2011……..……..45

II. Functioning of the ECI……..…...47

1. The procedure in six stages……..….48

1.1 The creation of the citizens' committee…….……48

1.2 Registration…….……...…..….49

1.3 Collection of statements of support…….……...50

1.4 Verification and certification of statements of support…….…52

1.5 Submission of the initiative to the EC…….52

1.6 Three-months period of examination and communication…….....53

1.7 Commission's answer and follow-up…….....53

2. The Commission's answer and follow-up to the first successful ECIs……..54

2.1 The ECI 'Right2Water': an extensive follow-up……54

2.2 The answer of the Commission…….……..56

2.3 Follow-up actions…….……58

2.4 The European Parliament's own-initiative report and the EESC's opinion…….……...60

2.5 Beyond the ECI success…….……63

2.6 Commission's answer and follow-up to the other successful ECIs……...….64

3. The ECI: a multifunctional democratic instrument……..66

3.1 Communication enhancing and dialogue facilitator tool…….….67

3.2 Transnational networks creator……...70

3.3 Agenda setting instrument……...74

3.4 Citizens-activating tool……..……...….78

III. Impact and improvement of the ECI……..…84

1. Assessing the trend of the registered ECIs……85

1.1 High levels of initial interest……....85

1.2 The raise of a damaging narrative……..87

1.3 A new call for participatory democracy?.....91

2. ECI shortcomings and issues for reform……94

1.1 Communication enhancer……95

1.2 ECI technological improvements: Towards e-democracy?.....96

1.3 Transnational networks creator……101

1.4 Agenda setting……102

1.5 Citizens' activating tool……..……....103

1.6 Issues not included in the Proposal……..105

3. The review process……..……..……109

3.1 Contributions from the institutional side……...109

3.2 Contributions from civil society and stakeholders……..…114

3.3 Future developments……..116

Conclusion…….....…118

Bibliography……..…121

Acronyms and Abbreviations

CoR Committee of the Regions

CSO Civil Society Organization

EC European Commission

ECI European Citizens' Initiative

EESC European Economic and Social Committee

EGC European General Court

ECJ European Court of Justice

EU European Union

EP European Parliament

ICT Information and Communication Technology

MEP Member of the European Parliament

TECE Treaty establishing a Constitution for Europe

TEU Treaty of the European Union

TFEU Treaty on the Functioning of the European Union

UN United Nations

Abstract

Il presente lavoro è il risultato di una ricerca sulla possibilità di partecipazione dei cittadini europei alla vita democratica dell'Unione, come soluzione a un diffuso senso di disaffezione, perdita della fiducia nelle istituzioni e un notevole livello di *deficit* democratico.
A tal proposito il lavoro presenta una delle maggiori innovazioni introdotte dal Trattato di Lisbona come istituzionalizzazione del principio di partecipazione: il diritto di iniziativa dei cittadini europei (ora in poi indicato come ICE). Grazie a questo istituto di democrazia diretta, un milione di cittadini europei ha la possibilità di prende parte al processo di elaborazione delle politiche dell'Unione, invitando la Commissione a presentare una proposta legislativa.

L'obbiettivo di questo studio è quello di individuare se il vigente disegno normativo, relativo all'ICE, può garantire ai cittadini europei uno strumento di democrazia partecipativa transnazionale. A questo proposito la ricerca si sviluppa attorno alle seguenti tre domande*: qual è il potenziale di questo strumento? Come può contribuire a migliorare la funzione democratica dell'Unione Europea? Quali sono i margini di miglioramento che gli consentono di raggiungere il suo potenziale?*

Lo studio si articola in tre fasi, attraverso le quali si tenta di dare risposta ai quesiti sopraindicati e di capire se questo strumento può rappresentare il futuro della democrazia partecipativa a livello europeo.

In prima istanza viene indagata l'origine e lo sviluppo del quadro normativo dell'ICE. In particolare si fa riferimento al Trattato che adotta una Costituzione per l'Europa, redatto nel corso della Convenzione per l'Europea, tenutasi da febbraio 2002 a luglio 2003. Il progetto costituzionale includeva ai sensi del Titolo VI la disposizione relativa al diritto di partecipazione democratica e il diritto di partecipazione della società civile. Nonostante il progetto sia stato abbandonato,

tale diritto di iniziativa popolare entrò a far parte delle “Disposizioni relative ai Principi Democratici” compresi dal titolo II del Trattato di Lisbona.

In virtù del principio di democrazia partecipativa all’ora introdotto, l’Unione predispone opportuni canali attraverso i quali le istituzioni e i cittadini sono incoraggiati a mantenere un dialogo aperto e trasparente. Viene quindi presentato il diritto di iniziativa dei cittadini europei in relazione ai meccanismi di partecipazione democratica disciplinati dall’Articolo 11 TEU.

L’analisi si concentra dunque sulla definizione del quadro normativo, che stabilisce le procedure e le condizioni necessarie per la sua attuazione conformemente all’articolo 24 (1) TFUE. In particolare si fa riferimento al dialogo inter-istituzionale e consultivo del processo che portò all’adozione del Regolamento (UE) 211/2011 da parte del Parlamento europeo e dal Consiglio dell’Unione europea nel febbraio 2011.

In secondo luogo, ci si propone di indagare sull’ICE sulla base del suo funzionamento e delle sue aree di applicazione. Viene quindi descritto il procedimento di realizzazione di un’iniziativa nelle principali fasi di sviluppo: dalla creazione del gruppo di organizzatori e l’ideazione della proposta di iniziativa, alla sua registrazione da parte della Commissione, sino alla raccolta e consegna delle dichiarazioni di supporto, certificate dalle autorità dei singoli Stati membri. Particolare attenzione viene poi data alla comunicazione della Commissione e alle azioni di *follow-up* in risposta alle prime iniziative di successo.

A questo proposito l’iniziativa intitolata “Right2Water” si presta come perfetto esempio del dibattito inter-istituzionale, a seguito della proposta dei cittadini conclusasi con successo. Viene infatti sottolineato come la risposta della Commissione, nonostante non abbia incluso nei casi analizzati alcuna proposta legislativa, possa costituire l’inizio di una discussione nella sfera pubblica europea molto più ampia.

L’analisi si estende ad altre esperienze di proposte di iniziativa dei cittadini europei, al fine di individuare il potenziale dello strumento partecipativo, relativamente agli ambiti di sua applicazione. In risposta alle critiche rivolte all’ICE, che si limitano ad evidenziare lo scarso risultato legislativo dello

strumento, viene valorizzato il suo potenziale e valutato l'impatto positivo delle sue diverse funzioni.

In qualità di strumento di democrazia diretta, esso svolge una funzione comunicativa tra le istituzioni e i cittadini europei, creando un nuovo spazio di interazione.

Lo strumento assume carattere transnazionale grazie a due disposizioni: la composizione del gruppo di organizzatori, il quale è formato da residenti di sette paesi diversi dell'Unione, e la soglia stabilita per la raccolta di firme per ogni Stato Membro.

Oltre alla creazione di reti transnazionali, il processo di realizzazione di un'iniziativa dei cittadini, permette di richiamare l'attenzione delle istituzioni su una varietà di argomenti di interesse degli affari europei. Ogni fase dello sviluppo contribuisce a influire in diversi modi al processo decisionale europeo.

Un ulteriore aspetto per cui l'ICE rientra tra i sistemi atti a creare una sfera pubblica dell'Unione, espressione di un *demos* europeo, è il livello di inclusione sociale che si propone di raggiungere.

Infatti, sin dai primi anni di esperienza, il quadro normativo dell'ICE ha permesso l'utilizzo dello strumento da parte di un vasto pubblico, comprendente non solo rappresentanti d'interesse, ma soprattutto organizzazioni della società civile e cittadini di tutti gli Stati Membri. I cittadini sono così invitati a partecipare alla vita democratica dell'Unione, sia prendendo parte all'organizzazione di un'iniziativa, sia contribuendo alla campagna per la raccolta di dichiarazioni di sostegno.

Al fine di comprendere se l'ICE soddisfa le aspettative, in quanto strumento transazionale di partecipazione democratica, vengono ricercati i limiti del quadro normativo e le disposizioni proposte in vista della sua revisione.

A tal scopo viene tracciato l'andamento dell'ICE nel corso dei primi anni della sua applicazione, da aprile 2012 sino ad oggi. Si riscontra: un iniziale entusiasmo verso il nuovo strumento democratico nel corso dei primi due anni, un successivo calo delle iniziative registrate in quelli a seguire, con un leggero aumento nel corso del 2017, in vista della revisione del quadro normativo dell'ICE.

Vengono quindi presentate le possibili ragioni di tale andamento in riferimento sia ai cambiamenti sociali e istituzionali all'interno dell'Unione, sia alle difficoltà riscontrate nell'applicazione del Regolamento (UE) 211/2011.
Le problematicità poste dal quadro normativo vigente vengono investigate sulle aree di applicazione dell'ICE precedentemente stabilite nel corso della ricerca.

In ultima istanza la ricerca si concentra sull'analisi del processo di revisione del regolamento e sul contributo apportato dagli attori istituzionali e dai rappresentanti dei cittadini europei.
Particolare attenzione viene data alle disposizioni incluse nella "Proposta di regolamento del Parlamento europeo e del Consiglio riguardante l'iniziativa dei cittadini europei" adottata dalla Commissione il 13 settembre 2017.
In questo contesto si fa riferimento al primo rapporto della Commissione sull'ICE, pubblicato nell'Ottobre del 2015, al parere dei due organi consultivi dell'Unione (il Comitato europeo delle Regioni CoR e il Comitato economico e sociale europeo CESE) e alla decisione del Mediatore europeo, relativa all'indagine condotta su propria iniziativa.
I problemi procedurali e tecnici riguardanti il quadro normativo vigente dell'ICE, vengono rilevati nel corso delle due consultazioni, lanciate dalla Commissione nel 2015 e nel 2017. Dai risultati di tali consultazioni emergono anche diverse proposte per migliorare la procedura per l'iniziativa dei cittadini europei, alle quali si aggiungono quelle delle raccomandazioni della piattaforma REFIT, del mese di giugno 2016, e i diversi studi condotti dal Parlamento Europeo.
Dal momento che la procedura legislativa è ancora in corso di revisione, si prevede l'inclusione di emendamenti alla proposta della Commissione da parte delle altre istituzioni coinvolte prima dell'adozione del documento finale.

In conclusione lo studio mette in luce l'adattabilità e l'ingegno con cui è stato creato lo strumento partecipativo, permettendo di sviluppare soluzioni sempre più vicine ai bisogni di chi ne fa uso. Infatti, disposizioni riguardo la valutazione e revisione della procedura e delle condizioni per la realizzazione dell'ICE, sono

previste dal regolamento stesso; poiché al momento della sua stesura non era possibile fare riferimento a simili esperienze concrete.
È perciò evidente il valore aggiunto derivante dalla nuova proposta normativa ed il margine di miglioramento dell'attuale procedura.
Certamente il processo di revisione porterà ad un aumento della consapevolezza rispetto al diritto di iniziativa dei cittadini europei. Questo risulta dalla creazione di una piattaforma collaborativa messa a disposizione degli organizzatori e dei cittadini con lo scopo di fornire supporto e facilitare la comunicazione.
Ulteriori disposizioni prevedono l'istituzione di punti di contatto informativi a livello nazionale e la raccolta di indirizzi email dei firmatari, con lo scopo di mantenere un aggiornamento circa lo sviluppo del processo di realizzazione dell'ICE.
Il processo di revisione apporterà un incremento nel numero di iniziative registrate, grazie alla possibilità data agli organizzatori di ripresentare le proposte rifiutate. A tal proposito si sottolinea come una comunicazione chiara e trasparente da parte della Commissione sia un aspetto fondamentale per permettere di valutare l'ammissibilità della proposta presentata.

Inoltre le possibilità di successo delle iniziative registrate aumenteranno grazie alle disposizioni previste in supporto agli organizzatori. Questi, non solo stabiliranno la data di inizio della campagna per la raccolta delle firme, ma potranno anche usufruire del servizio gratuito di scambio di file, per il trasferimento delle dichiarazioni di sostegno alle autorità competenti degli Stati membri, messo a disposizione della Commissione.
In risposta ai problemi tecnici organizzativi, l'armonizzazione dei requisiti previsti per la raccolta delle firme, consentirà di raggiungere la soglia prevista anche negli Stati Membri dove vigono norme più rigide. Il gruppo di organizzatori avrà inoltre la possibilità di creare un'entità giuridica per gestire un'iniziativa.

La riforma permetterà maggiore capacità dei cittadini di influire nell'agenda istituzionale, garantendo una rappresentanza più equilibrata all'audizione pubblica di attori istituzionali e rappresentanti d'interesse.

Si segnala a tal proposito la possibilità di conferire maggiore efficacia all'audizione pubblica, rendendo obbligatoria la partecipazione di tutti i rappresentanti istituzionali coinvolti nel processo di legislazione.
Inoltre la Commissione disporrà di un periodo più lungo per concepire misure appropriate, in risposta alle richieste presentate.
L'ICE sarà rivolta ad un pubblico più ampio, estendendo la partecipazione alle generazioni più giovani di cittadini (a partire dal sedicesimo anno di età) di ogni stato membro ed incentivando il loro interesse per gli affari europei.
Una migliore accessibilità a tale strumento da parte dei cittadini, indipendentemente dal loro livello competenza, potrebbe invece essere raggiunta istituendo forme di supporto legale e linguistico.

Infine, l'evoluzione futura del quadro normativo dell'ICE dipenderà principalmente da due fattori: da un lato l'apertura e l'impegno delle istituzioni a includere le disposizioni necessarie nel nuovo regolamento; dall'altro il contributo dato dai rappresentanti della società civile nel processo di revisione, circa la presentazione delle soluzioni migliori per la realizzazione di una novo quadro normativo.

Introduction

On Wednesday 13 September 2017, the President of the European Commission, Jean-Claude Juncker, delivered his annual speech on the State of the European Union in which he highlighted the democratic direction of the European agenda for the years ahead. The revision of the European Citizen's Initiative Regulation is included among the initiatives to be launched and completed by the end of 2018 within the framework of the tenth priority entitled "A Union of democratic change".

The European citizens' initiative is a right which can be initiated when one million European Union citizens residing in seven different Member States invite the European Commission to submit any proposal, which falls within the scope of its powers, on matters where the intervention of the Union is most needed. The right was first introduced in the discussions for a Constitutional Treaty on the European Union during the European Convention[1] which took place between 2002 and 2003. In 2009, it entered into force as one of the main innovations of the Lisbon Treaty[2]. The inclusion of this right as an expression of the principle of participatory democracy, was justified by the research for new ways of engaging civil society and reforming the European Union. Citizens became familiar with the instrument only after April 2012, when the regulatory framework for the ECI entered into force.

In light of the widespread sense of distrust and disillusionment in the European project and considering the intentions across Europe to foster a civic dialogue on

[1] The Convention on the Future of Europe was a body established by the Declaration of Laeken and successively adopted by the European Council between the 14-15 December 2001. Chaired by the former French President Valéry Giscard d'Estaign, the Convention developed its activities starting from 28th February 2002 and ending on 10th of July 2003 with the presentation of the project of a Treaty, which set the basis of the Intergovernmental Conference of 2003-2004. Within this framework, representatives of governments, national parliaments as well as of the European Parliament and of the Commission gathered to discuss the key issues arising for the Union's future development and try to identify the possible responses.

[2] The Presidency note Proposal for a Regulation of the European Parliament and of the Council on the Citizen's initiative of 12 April 2010 states as follow: *«The European Citizens' Initiative is one of the most visible and concrete expressions of the innovations brought by the Lisbon Treaty. It is a significant step forward in the democratic life of the Union and adds a new dimension of participatory democracy»*.

the Future of the European Union, the time has now come to assess the sustainability of the available instruments of participatory democracy. In this context, the work attempts to identify the origins and implementation of the ECI as an important innovation in the dialogue between the institutions and civil society.

The purpose of the research is to explore whether the current design of the ECI can guarantee citizens a transnational tool of participatory democracy. In this respect three main questions will lead the research, namely: what is the potential of this instrument? How can it contribute to improving the democratic feature of the European Union? Are there any improvements needed to it achieve its full potential?

To understand if the ECI can represent the future of participatory democracy, the work is structured into three chapters which develop around the aforementioned questions. The first chapter focuses on tracing the legal framework at the basis of the ECI. It comprises two sections which underline the evolution of the two phases which lead to the realization of the ECI: from the institutionalization of the participatory right to the discussion on the best way to design and implement the instrument. I also frame the application of the participatory principle in the discussion on the democratic deficit in the European Union.

The second chapter includes an informative analysis of the whole process of realization of an ECI, from the preparatory work of development of the initiative campaign to the Commission final response. In this regard, the legislative follow-up to the first successful initiatives is presented as an example of the broader inter-institutional discussion triggered by the ECI campaigns. The scope of the investigation is further extended to other examples of ECI proposals whose path allow the identification of the ECI's functions. In this context the analysis gathers the data on the interaction between the ECI organizers and the institutions, the geographical outreach of the campaigns, the topics addressed, and the type of public support received.

Furthermore, the third chapter discusses the results of the first experiences of ECIs by analysing the developments in the history of the registered initiatives. The research then focuses on the structural and procedural issues arising from

the implementation of the participatory tool. Consequently, it considers the contributions of the ECI regulatory framework to the review process and compares them with the assessed shortcomings.

Finally, the relevant conclusion is drawn with respect to the research question. For this purpose, the possibilities for the reform to add significant value to the ECI and the identification of the new shape the regulation should take are considered.

The methodology adopted develops on different levels in the inquiry. Firstly, the historical analysis of the Treaties development allows the depiction of the legal framework at the basis of the ECI. Secondly, by considering the ECI holistically, it is possible to identify its functional potential. Thirdly, the qualitative and descriptive research is based on the empirical support given by the available data on the first years of experience of the ECI.

Finally, the existing literature on the ECI mainly focuses on three areas of the research. The first category of analysis focuses on identifying the innovative character of the instrument, by acknowledging that it has an important role as transnational democratic instrument[3], it represents the "world's first toll of transnational participatory democracy"[4], it can "bring politics to people" and enhance the possibility for the creation of a transnational public sphere[5]. A second and bigger group of scholars and experts focus their analysis on the critical aspects stemming from the application of the ECI Regulation. By considering these assessments, it has been possible to identify the main weaknesses of the instrument and the proposed solutions.

Thirdly, other authors reiterate their interest in the possible ways in which the ECI could develop in the future and go beyond the assessment of its shortcomings.

---

[3] Rodean, N. (2014*), Iniziativa Partecipativa In Europa: Un Passo Verso La Democrazia Costituzionale in* POLITICA DEL DIRITTO, vol. XLV, n. 3, p.474.
[4] Boronska-Hyryniewiecka; Monaghan (2017), *The European Citizens' Initiative as Democratic Legitimacy-Enhancing Tool: Toward a Broader Conceptualization* in Pérez de las Heras eds. *Democratic Legitimacy in the European Union and Global Governance Building a European Demos*, Cham, Switzerland, Palgrave Macmillan, p. 41.
[5] Greenwod, J.; Tuokko, K. (2016), *The European Citizens' Initiative: the territorial extension of a European political public sphere?* In EUROPEAN POLITICS AND SOCIETY, p. 2.

These works are backed by the institutional contributions in the form of Communications, Opinions and Reports which highlight the issues to be addressed in the review process. The following analysis takes inspiration from this aspect, therefore aims at contributing to the research on the possibility for the ECI to better fulfil its functions.

.

I.

Legislative framework of the ECI

Table of contents

The chapter aims to trace the legal basis of the European Citizens' initiative and their development over the time. It comprises two main sections, which together depict the complete legal framework which is the foundation of the European Citizens' initiative. In particular, the first part presents the origins of the instrument as stemming from the discussion on the democratic deficit of the Union which arose in the mid-90s. Reference is made to the Treaty establishing a Constitution for Europe with regard to the first attempt to institutionalize the right of initiative of the European citizens under Article I-47 (4). Furthermore, together with the discussion on the principle of participatory democracy, the chapter focuses on underlining the most innovative provisions brought about by the Lisbon Treaty: the European Citizens' Initiative, which is provided by Article 11 (4) TEU.

The second part of the chapter is dedicated to describing the development of the ECI's regulatory framework, namely the procedures and conditions that had to be established. By starting from the provision of Article 24 TFEU, the section aims to trace the different contributions of the institutions in shaping the main features of the participatory instrument. Furthermore, reference is made to the main issues discussed until the final agreement on a regulation on the ECI was reached and Regulation 211/2011 entered into force.

Finally, structuring the chapter into two sections made it possible to underline the evolution of the two phases which lead to the realization of the European Citizens' Initiative. In fact, how the focus of the discussion on the ECI shifted over the time must be acknowledged: from the institutionalization of the participatory right to the discussion on the best way to design and implement the democratic instrument.

1. Origins and development of Article 11 (4) TEU

The following section outlines the origins and development of the European citizens' right to submit an initiative as provided for by Article 11 (4) of the Treaty on the European Union. The analysis starts with an introductory reflection on the assessment of democracy in the European Union regarding the problem of democratic deficit. By underlining the main issues related to such complex phenomena and tracing its first official recognition in several documents and declarations, it is possible to understand the origin of the initial application of the principle of participatory democracy. Consequently, as it represented one of the most innovative forms of participatory democracy, the European Citizens' Initiative soon became the centre of the discussions within the Convention on the Future of Europe until its introduction in the Treaty establishing a Constitution for Europe under Article I-47. The research highlights the "Provisions on Democratic Principles" in the Lisbon Treaty and assesses the possible reasons for the introduction of the principle of participatory democracy. Finally, the section ends by presenting the democratic mechanisms provided by Article 11 of the Treaty on the European Union and assessing the innovative features of the European Citizens' Initiative as an important step towards transnational participatory democracy.

1.1 Assessing democracy in the European Union

A large debate started in the mid-90s on whether the EU was democratically legitimate and several scholars as well as commentators assessed the democratic problem in the European Union, by identifying it with the term of: democratic deficit. A standard version of the meaning of democratic deficit was firstly conceived in the mid-1990s to define a set of arguments used by scholars, practitioners, politicians as well as ordinary citizens. The concept was then updated during the 2000s and adapted to the new issues faced by the European

Union.[6] Assessing democracy in the EU leads to different aspects of the democratic deficit critique, depending on the factors analysed. In the light of the several different opinions on the nature of EU's democratic deficit, a number of claims have been identified in order to describe its features.

Firstly, a high degree of separation has been assessed between the power and the electoral accountability because voters are not able to directly change the legislative agenda of the Union, which is established by the Commission, the Council and the European Council. Whereas national level governments can be changed according to the will of electors, the elections of the European Parliament can only give rise to small variations in the composition of the EP and partially contribute to the legislative process.[7] Folesdall and Hix stress this issue by maintaining that there are no real European elections. In fact, although citizens elect both their governments who sit in the Council and nominate Commissioners and the European Parliament, in neither of the cases the focus of the electoral debate is not the personalities nor the parties at European level, nor the direction of the policy agenda. Consequently, European issues are not addressed during national elections and European Parliament elections are seen more within the national framework.[8]

Secondly, with the development of European integration, executive power has gradually increased to the disadvantage of national parliamentary control; such "dominance" of the executive actors implies that national ministers in the Council and government appointees in the Commission have greater power in the decision-making process compared to the degree of control that national legislatures have over EU decisions. In this regard, the European Parliament cannot completely solve the problem due to several reasons. Although the powers of the European Parliament have been increased successively since the

---

[6] Hix, Simon; Follesdal, Andreas (2006*), Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik* in JOURNAL OF COMMON MARKET STUDIES, vol. 44, n.3, pp. 534-537.

[7] Craig Paul, De de Búrca Gráinne (2011), *The evolution of EU law*, New York, Oxford University Press, pp. 30.

[8] Hix, Simon; Follesdal, Andreas (2005), *Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik* in JOURNAL OF COMMON MARKET STUDIES, vol. 44, n.3, pp. 533-62. p 536.

1980s, it can be argued that its position is still weak if compared to the governments in the Council. Moreover, the European Parliament's action is limited due to the low interest of voters in the European elections and to the lack of a developed party system within the EU.

A third argument in support of the democratic deficit critique underlines the widespread practice of "by-passing of the democratic argument", namely: the activity of technocrats and national interest groups in dominating the decision-making and excluding the more regular democratic channels, such as the European Parliament.

Fourthly, a degree of distance between the institutions and the citizens, due to the transfer of competences from the nation state to Brussels, has been assessed to be one of the main causes of democratic deficit. Furthermore, issues of transparency relative to the EU decision-making process and the complexity of the legislative procedures also raised concerns about democracy in the European Union. Finally, a substantive imbalance characterizes the tendency of prioritizing the economic over the social.[9]

All these debated issues highlight the relevant problem of lack of legitimacy at the Union level. Within this framework, formal recognition of the democratic deficit can be found in the Declaration on the Future of the Union adopted by the Intergovernmental Conference and included in the Nice Treaty (signed in 2001 and ratified in 2003), which urged the necessity to guarantee democratic legitimation and transparency of the Union and its institutions in order to bring national states closer to it.[10] In addition, one year after the Intergovernmental Conference launched the debate on the future of the European Union, the Laeken Declaration on the Future of the European Union reported that bringing citizens and in particular the younger generation closer to Europe was considered as one of the ways to renew the European Union. During the Convention on the Future

[9] Weiler, Follesdal and Hix in Craig Paul, De de Búrca Gráinne (2011), *The evolution of EU law*, New York, Oxford University Press, pp. 31.

[10] Declaration No 23 annexed to the Treaty of Nice (2001/C 80/01), paragraph 6 states: « addressing the abovementioned issues, the Conference recognises the need to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizens of the Member States».

of Europe one of the main issues that had to be addressed was related to possible ways to increase the level of democracy, transparency and efficiency within the Union. In this regard, the principle of participatory democracy was included in the constitutional project in order to contribute to reducing the democratic deficit. Within this framework, the Citizens' Initiative at European level became the institutional representation of transnational democratic participation.[11]

In a historical moment when the need to conceive an effective solution to the democratic deficit was officially recognised, the introduction of the direct election of the Parliament and the progressive enhanced role of such institution in the law-making process were no more sufficient. Consequently, the principle of participatory democracy arose along with the debate on the best innovative democratic measures.

1.2 A first introduction to the European Citizens' Initiative

New proposals started being discussed with the aim to introduce direct-democratic elements at the European level. An early attempt of innovative democratic and geopolitical change was the establishment of the network named "eurotopia-the network for transnational direct democracy in Europe". The group consisted of people coming from several European countries, that gathered every six months at different venues to debate the possible elements of direct democracy that a European constitution would have comprised. The idea of a European Citizens' Initiative, which arose within several social movements, was discussed during one of such meetings, where among others, the representatives from the Italian and Austrian governments were present as observers. Therefore, during the preparatory talks for the Amsterdam Treaty[12] in 1996 within the framework of the Intergovernmental Conference, the Austrian and Italian foreign ministers, respectively Wolfgang Schüssel and Lamberto Dini presented the first

[11] Rodean, N. (2014), *Iniziativa Partecipativa In Europa: Un Passo Verso La Democrazia Costituzionale* in POLITICA DEL DIRITTO/ a. XLV, n. 3, p. 480.

[12] The Amsterdam Treaty, which was signed in Amsterdam on 2 October 1997 and entered into force on 1 May 1999, amended the Treaty on the European Union, the Treaties establishing the European Communities and other related acts.

draft of the European Citizens' Initiative and proposed to submit it in addition to the right to petition the European Parliament. The aim of the proposal was to guarantee to 10 per cent of EU citizens, coming from at least three Member States, the right to present an agenda initiative to the European Parliament, which would have to consider it. Although the idea of introducing the Citizens' Initiative was not approved by the Intergovernmental Conference, it came to the attention to those sitting in the European Council.[13]

1.3 Article I-47 (4) of the Treaty establishing a Constitution for Europe (TECE)

The first attempts to transform the political structure of the European Union into a more democratic one trace back to the 1990s, when citizens' dialogue and a new form of European awareness became the centre of the debate on reforming Europe. This is highly remarkable in The Convention on the Future of Europe and in the Constitutional Treaty. The Convention on the Future of Europe was a body established by the Declaration of Laeken and successively adopted by the European Council between the 14-15 December 2001. Chaired by the former French President Valéry Giscard d'Estaign, the Convention developed its activities starting from 28th February 2002 and ending on 10th of July 2003 with the presentation of the project of a Treaty, which set the basis of the Intergovernmental Conference of 2003-2004. Within this framework, representatives of governments, national parliaments as well as of the European Parliament and of the Commission gathered to discuss the key issues arising for the Union's future development and try to identify the possible responses. [14] The final document, which was drafted during the Convention on the Future of Europe and successively amended by the Intergovernmental Conference, is the Treaty establishing a Constitution for Europe (TECE). This encompasses among its

[13] Kaufmann, B. (2012), Transnational 'Babystep': The European Citizens' Initiative in Setälä, M., Schiller, T. (2012*), Citizens' Initiatives in Europe Procedures and Consequences of Agenda-Setting by Citizens*, London, Palgrave Macmillan pp. 230-231.

[14] Adam, Roberto; Tizzano, Antonio (2014*), Manuale di diritto dell'Unione Europea*, Roma, Giappichelli, p. 22.

novelties, the provision on participatory democracy and the right of civil society participation. In this regard, Title VI on The *Democratic Life of the Union* comprises two relevant articles: Article I-46 paragraph 3, which underlines the rights of citizens to take part to the democratic life of the Union and Article I-47, which is entirely dedicated to the principle of participatory democracy. Article I-47 in particular, provides a framework for dialogue between the institutions and civil society by giving constitutional value to procedures and government principles for the first time and by transforming them into a general principle of democracy applicable to all European institutions. The provisions in this article encompass several rights and duties that enable citizens and representative associations to: "*express and exchange their views on all areas of Union action" (1)* and engage in "*an open, transparent and regular dialogue" (2).* Furthermore, the Commission's duty to conduct civil society consultations "*in order to ensure that the Union's actions are coherent and transparent" (3)* is conceived as higher law and its scope of action is extended to new areas. [15]

Finally, the Article provides that one million citizens have the right to *"take the initiative of inviting the Commission"* to "*submit any appropriate proposal on matters where*" the Union is required to take a legal act for implementing the Constitution. Additionally, the Article indicates that the procedures and conditions to exercise such right will be established by the European laws.*"*[16]

Several drafts were made until the final text of the TCE was signed in Rome on 29 October 2004 and published in the Official Journal of the European Union on 16 December 2004. Immediately after the opening of the Convention in spring 2002, the Initiative and Referendum Institute Europe together with the activist network organization Democracy International jointly established the "European Convention Network" with the aim to bring interested members of the Convention together with external experts and discuss the possible ways to bring citizens

[15] Bignami, F. (2004), *Three Generations of Participation Rights Before the European Commission* in LAW AND CONTEMPORARY PROBLEMS, vol. 68, No. 1, pp. 81-82.
[16] Treaty establishing the Constitution for Europe (TECE) 2004.

participation into the political sphere. During such meetings, ideas and concepts on how to include mechanisms of direct democracy in the EU Treaties were discussed and among the initiatives proposed, two gathered attention: the project for a pan-European popular vote process and the one for a European Citizens' Initiative.[17] The proposal for including the ECI in the Constitution for Europe in paragraph 4 of Article I-47 was presented by Convention member, German MP, Jürgen Mayer during the last session of the Constitutional Convention.[18] The proposal was made on 12 June 2003 and the following day it was delivered to the EU Council to be presented during the upcoming summit in Thessalonica on 20 June 2003.[19] By proposing the amendment to the draft of the Constitution, Mayer described the ECI as an innovative instrument able to fulfil many of the objectives set by the Laeken Council. In his account, on the one hand it could help reduce the distance between the institutions and the people; while on the other, it could enhance the level of democratization of the Union.[20] Moreover, Mayer emphasised the possibility of citizens to be at the same level of the Parliament and of the European Council in influencing the European Commission. The proposal for including the ECI as a transnational instrument for agenda-setting from below was finally signed by 77 members of the Convention and included in the last draft amendment, as announced by Giscard d'Estaign on 13 June 2003, who confirmed its adoption during a press conference at the Parliament.[21] After the Conference ended its mandate, the draft Constitutional Treaty was revised by the Intergovernmental Conference (IGC), which approved three amendments to the text related to the European Citizens' Initiative, which changed from corresponding to Article I-46 (4) to Article I-47 (4). Firstly, the wording "who are nationals" was added to specify a fundamental requirement for signing an ECI, namely being a national of one of the Member States. Secondly,

---

[17] Kaufmann, B. (2012), *Transnational 'Babystep': The European Citizens' Initiative*, *cit*. p.231.
[18] Cuesta Lopez, V. (2012), *A Comparative Approach to the Regulation on the European Citizens' Initiative* in PERSPECTIVES ON EUROPEAN POLITICS AND SOCIETY, vol. 13, n. 3, pp. 258.
[19] Kaufmann, B. (2012), *Transnational 'Babystep': The European Citizens' Initiative, cit.,* p.231.
[20] Cuesta Lopez, V. (2012), *A Comparative Approach to the Regulation on the European Citizens' Initiative*, *cit*., p. 258.
[21] Kaufmann, B. (2012), *Transnational 'Babystep': The European Citizens' Initiative, cit.,* p.232.

with the wording “within the frameworks of its powers” it was recognised that the issues tackled by an ECI have to fall within the scope of action of the Commission. Thirdly, it underlined the fact that the “minimum number of Member States from which such citizens must come” has to be provided by European law.[22] The final text of the TCE was published in December 2004, however it was never ratified.

1.4 The principle of participatory democracy included in the Lisbon Treaty

After the unsuccessful result of the Constitutional Treaty, due to different issues related to its constitutional character and to the rejection by the negative result of the French and Dutch referenda, from July 2007 the European Council, which at the time was being held in Brussels, an intergovernmental conference was called. Its mandate was to draft a new treaty which would have amended the existing ones. The Treaty of Lisbon, known as the Reform Treaty, was signed in December 2007 and finally ratified in January 2009. Within this framework, understanding was reached on the fact that the new Reform Treaty had to address the democratic challenges of the Union and therefore include provisions on: democratic equality, representative democracy, participatory democracy and the citizens’ initiative. In fact, with reference to the preamble of the Lisbon Treaty, the Union renewed its commitment to reinforcing “democratic legitimacy and to improving the coherence of its action”. In addition, Title II of the Lisbon Treaty (Article 8 to 8c) on “Provisions on Democratic Principles”, which has successively been included in the consolidated version of the Treaty on the European Union by incorporating Article 9 to 12TEU, introduced a model of democracy composed of different principles, namely: political equality (Article 8), representation (Article 8A), participation (Article 8A (3)), openness and transparency (Article 8B)[23].

[22] Efler, Michael (2002) *European Citizens' Initiative Legal options for implementation below the constitutional level*, EC Study sponsored by European United Left/Nordic Green, Left Parliamentary Group in the European Parliament, pp. 6-7.
[23] Cuesta Lopez, V. (2010), *The Lisbon Treaty’s Provisions on Democratic Principles: A Legal Framework for Participatory Democracy* in EUROPEAN PUBLIC LAW, pp. 126, 127.

Although the Title provides that the functioning of the Union is strictly related to the principle of representative democracy (Article 8A (1)), citizens are entitled "the right to participate in the democratic life of the Union" and decisions must be made "as openly and as closely as possible to the citizens" (Article 8A (3))[24].

Including the principle of participatory democracy alongside representation has been one of the main novelties introduced with the Lisbon Treaty. The choice of introducing a provision on participatory democracy was taken as a consequence of the widespread disaffection in the traditional mechanisms of representative democracy, which was due to a huge perceived distance from the institutions and the growing distrust towards the traditional political parties.

Although the principle of participatory democracy gained official recognition as constitutional principle with the entry into force of the Lisbon Treaty, its value had already been recognised before. The European Commission White Book on the European Governance of 2001 included participation as the centre of the political action. [25] Within this framework, the Commission questions traditional technocratic logic, which saw the Council and the European Parliament as representative bodies responsible for making laws; while the executive branch of the Commission was held accountable for implementing laws and interacting with civil society. By defining such interaction, five principles of good governance have been traced: openness, accountability, effectiveness, coherence and participation. Particular attention is given in the paper to this last principle and to the value of participation in contributing to knowledge and expertise exchange, enhancing loyalty and confidence in the institutions and the policies delivered and more effective policy shaping. The paper also states that the possibility for civil society to have access to platforms and to change policy orientations had real potential in the broad debate on Europe's role. Therefore, participatory democracy represented the chance to enhance citizens' involvement in the

[24] The Article will be incorporated in the TEU as Article 10.

[25] Morgese, G. (2011), *Principio e strumenti della democrazia partecipativa nell'Unione europea,* in E. Triggiani (a cura di), Le nuove frontiere della cittadinanza europea, Bari, pp. 41-42.

Union's objectives and providing them with organized instruments for issuing feedback, critics and opinions.[26]

1.5 The complementarity of representative democracy and participatory democracy

The body holding the legislative power since 1992 has been the Council, whose members are representatives from national governments, while the previous form of the Parliament, namely the Assembly, whose members were chosen among the members of the national parties, held a consultative role.[27] In this regard, several measures of different nature were adopted over time with the aim of reducing the democratic deficit.[28] Steps towards forms of enhanced democracy were made by introducing the elections of the representatives of the European Parliament[29] and two provisions of the Maastricht Treaty, which established the procedure of co-decision and introduced for the first time the definition of European citizenship as common status to all citizens of the Member States.[30] Although measures have been taken to extend the sphere of citizens' rights, they were still not able to take part effectively in the political life of the Union.[31] When the Lisbon Treaty was being drafted, the right to elect institutional representatives was no more sufficient to guarantee a close relationship between the citizens and the European institutions. There was the necessity to conceive a mechanism which could encourage and enable the direct exchange of opinions and ideas for

---

[26] Bignami, F. (2004), *Three Generations of Participation Rights Before the European Commission* in LAW AND CONTEMPORARY PROBLEMS, vol. 68, No. 1, p.76.
[27] Adam, Roberto; Tizzano, Antonio (2014*), Manuale di diritto dell'Unione Europea*, *cit*., p. 21.
[28] Thiel, M.; Petrescu, O. (2017), *Institutional Instruments for Citizen Involvement and Participation: Their Impact on the EU's Political Processes and Institutional Legitimacy* in Pérez de las Heras eds*. Democratic Legitimacy in the European Union and Global Governance Building a European Demos*, *cit*., p.12.
[29] The first direct elections of the European Parliament took place in June 1979 by universal adult suffrage. Since then they have taken place after every five years as provided by Article 14 (3) TEU.
[30] Adam, Roberto; Tizzano, Antonio (2014), Manuale di diritto dell'Unione Europea, *cit*., p.20-21.
[31] Thiel, M.; Petrescu, O. (2017), *Institutional Instruments for Citizen Involvement and Participation: Their Impact on the EU's Political Processes and Institutional Legitimacy* in Pérez de las Heras eds. *Democratic Legitimacy in the European Union and Global Governance Building a European Demos*, cit., p.12.

dialogue with the institutions to bring citizens closer to the Union and foster their real political involvement.[32] Consequently, with the Lisbon Treaty, an attempt was made to overcome the traditional forms typical of representative democracy and the focus shifted from political participation and normative production to conceiving new ways to foster legitimacy. However, the impact of participatory democracy is prescriptive, it does not extend to final decisions, which still fall within the range of action of the institutions of the representative democracy. Despite this, it can be argued that the greatest impact of participatory mechanisms should be caused by their influence more than the legal powers they are attributed to.[33] Therefore, the aim of participatory democracy differs from that of representative democracy and it is not limited to reproduce the same activities by implying other instruments. In this regard, among the main objectives of the instruments of participatory democracy lies the intention to empower citizens not by giving legal power to them, but by enabling them to enhance their abilities of intervention and possibility of influence.[34]

The definition of European citizenship introduced by the Maastricht Treaty was based on the democratic practice of participatory democracy.[35] The provision is now provided by Article 9 TUE and further developed by Article 20 TFEU as the introduction to several rights linked to the European citizenship.[36] Consequently, the Treaties certified the existence of a political link between the citizens of the Member States and recognised them the role of active political actors in the Union. With the Lisbon Treaty the provision on the European citizenship is included in Title II of the TEU, which comprises the "Provisions on Democratic Principles". Specifically, Article 10 TEU provides that citizens are entitled the right

---

[32] Ferri, Delia (2011), L'Unione europea sulla strada della democrazia partecipativa? Istituzioni del Federalismo in RIVISTA DI STUDI GIURIDICI E POLITICI, vol. 2., p. 329.
[33] Ferri, Delia (2011), *L'Unione europea sulla strada della democrazia partecipativa? Istituzioni del Federalismo*, *cit*., p. 336.
[34] Luigi Bobbio quoted Ferri, Delia (2011), *L'Unione europea sulla strada della democrazia partecipativa? Istituzioni del Federalismo*, cit., p. 336.
[35] Thiel, M.; Petrescu, O. (2017), *Institutional Instruments for Citizen Involvement and Participation: Their Impact on the EU's Political Processes and Institutional Legitimacy* in Pérez de las Heras eds*. Democratic Legitimacy in the European Union and Global Governance Building a European Demos, cit*., p.12.
[36] Adam, Roberto; Tizzano, Antonio (2014), Manuale di diritto dell'Unione Europea, cit., p. 395.

to participate in the democratic life of the Union (Paragraph3).[37] Moreover, the Article also recognises the basis of the Union functioning on the principle of representative democracy (Paragraph 1) and establishes that citizens are directly represented at Union level in the European Parliament. In this regard, according to the CJEU, the European Parliament is the best expression of the principle of democracy at Union level. According to Article 14 TEU, its members are directly elected by the European citizens (Paragraph 2) by universal adult suffrage (Paragraph 3). Moreover, it participates to the decision-making process, giving democratic value to the whole procedure. Thanks to this specific competence, citizens can realize a democratic fundamental principle and contribute in exercising the power through a representative body. However, the degree of involvement of the European Parliament in the decision-making process can vary from a consultative role on the acts proposed by the Council to the exercise of the shared legislative power. Furthermore, the principle of representative democracy finds application in the role of political control of the European parliament over the other institutions (Article 14 (1)).[38]

Finally, the solution proposed by the Lisbon Treaty consisted of a combination of different traditional forms of representative democracy and participative tools. Participatory democracy, intended as the whole verbal practices, procedures and mechanisms, could not be conceived to be the only means to reduce the democratic deficit; however, it could help overcome the inadequacies of European democracy.[39]

1.6 Democratic mechanisms provided by Article 11 of the Treaty on the European Union

One of the major innovations of the Treaty on the European Union as amended by the Lisbon Treaty, is the provision on democratic principles. In this regard, Article 11 TEU provides three main aspects of participatory democracy rights,

---

[37] Ivi, *cit*., p. 396.
[38] Ivi, *cit.,* p. 82, 83.
[39] Ferri, D. (2011), *L'Unione europea sulla strada della democrazia partecipativa? Istituzioni del Federalismo*, *cit*. pp. 338-339.

which recognise the important role of the European citizens and civil society organizations in the EU governance and public sphere. The first paragraph of Article 11 provides that: *"Institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action".* In this case, participation is conceived in the form of communication from the citizens towards the European institutions, which have the duty to determine the best ways for them to express their opinion on their work. The wording also incorporates the need for the institutions to support new channels of communication in addition to the traditional ones provided by the rights to petition to the Parliament, to apply to the Ombudsman and to address the institutions in one of the official languages and receive a response (Article 24 TFEU). Within this framework there are also interactive platforms, such as thematic networks, places dedicated to digital discussion, which arose in the 2000s thanks to technological developments.[40] By allowing exchange of ideas and good practices, these extra-institutional tools act on behalf of the citizens as intermediaries; they bring a number of issues of discussion to the attention of the institutions. [41] Some examples of these initiatives are Your Voice in Europe, Debate Europe or Citizens' Agora which have on the EUROPA Website.

The second paragraph includes the commitment of European Institutions to foster dialogue with the representative associations and civil society in an "open, transparent and regular" way. In this regard, civil dialogue implies contributions from both sides: "argumentative effort" from civil society and "reciprocity" from the institutions. The actors involved in civil dialogue are representative associations of civil society, which the institutions prioritize, but also non-organized civil society agents and national, regional or local associations. Finally, as stated by Article 11 (2), civil dialogue extends to all areas of "Union action", contrary to European social dialogue, which is limited to the area of European social policies and may possibly aim at reaching a final agreement or a contract. With reference to this

---

[40] Cuesta Lopez, V. (2010), *The Lisbon Treaty's Provisions on Democratic Principles: A Legal Framework for Participatory Democracy* in EUROPEAN PUBLIC LAW, p. 131.

[41] Ferri, D. (2011), *L'Unione europea sulla strada della democrazia partecipativa? Istituzioni del Federalismo* in RIVISTA DI STUDI GIURIDICI E POLITICI, vol. 2., pp. 322-324.

article, two main examples of institutional engagement in civil dialogue as tools of participatory democracy take place through the consultations launched by the Commission, and the informal public hearings hosted by the European Parliament. Regarding public consultations, Article 11 (3) TEU explicitly states the duty of the Commission "*to carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent".* The European Commission has been consulting interested parties on how to shape its policies since before the Lisbon Treaty. On one hand this mechanism guarantees an external contribution on all the policy areas of the Commission [42] and allows to gather inputs while bringing the attention of the Commission on relevant issues which require complex solutions. On the other hand, the Commission's green books allow participants to give their own opinion by answering a questionnaire whose format is structured to narrow the range of answers. Criticism of this procedure maintains that such an instrument could limit the freedom of expression by posing questions whose structure steers the contribution from the respondents. Moreover, the Commission could use such a mechanism to gather consensus exclusively on certain proposals and raise its legitimacy. In this account, civil society does not have an effective role in the policy making process, neither is debate fostered between the two sides.[43]

1.7 ECI an innovative instrument of participatory democracy

The fourth paragraph of Article 11 TEU includes the European citizens' right of initiative which provides that: *"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. The procedures*

---

[42] Cuesta Lopez V. (2010), *The Lisbon Treaty's Provisions on Democratic Principles: A Legal Framework for Participatory Democracy, cit.,* pp. 132-133.

[43] Ferri, D. (2011), *L'Unione europea sulla strada della democrazia partecipativa? Istituzioni del Federalismo, cit*., p.319.

and conditions required for such a citizens' initiative shall be determined in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union." This has largely been defined as the most innovative aspect of the Treaty of Lisbon, namely "the world's first toll of transnational participatory democracy"[44]. As representative of the principle of participatory democracy, several aspects of this right can explain its innovative features and the democratic benefits that it was expected to bring at the time it was introduced by the Lisbon Treaty.

Firstly, the Citizens' Initiative allowed participation from the bottom up. By allowing citizens to make their voice heard, the instrument enabled them to trigger the EU law making process and contribute to shaping EU policies. Moreover, the instrument was conceived as a powerful agenda-setting instrument, which allowed civil society organizations to introduce claims in the policy-making process.

Regarding the potential of the ECI to create a European public sphere, the instrument was expected to add a new dimension to European Democracy, as well as fostering public debate around European politics while building a European public space.[45]

The transnational character of the European Citizens' initiative was considered very important to raise a political debate which goes beyond the domestic affairs. In fact, citizens coming from different Member States discussing solutions on common problems could create a supranational discourse in a new European public sphere.[46]

According to another interpretation of the ECI, the democratic influence on the single citizens could have had a great impact. In this regard, the right of the

---

[44] Boronska-Hyryniewiecka; Monaghan (2017), *The European Citizens' Initiative as Democratic Legitimacy-Enhancing Tool: Toward a Broader Conceptualization* in Pérez de las Heras eds. *Democratic Legitimacy in the European Union and Global Governance Building a European Demos*, Cham, Switzerland, Palgrave Macmillan, p. 41.

[45] Monaghan, E. (2012), *Assessing Participation and Democracy in the EU: The Case of the European Citizens' Initiative* in PERSPECTIVES ON EUROPEAN POLITICS AND SOCIETY, vol. 13, n. 3, pp.292-293.

[46] Cuesta Lopez, V. (2010), *The Lisbon Treaty's Provisions on Democratic Principles: A Legal Framework for Participatory Democracy, cit*., p. 136.

citizens to directly invite the Commission to propose a new policy initiative could be considered as an extension of their citizenship rights in the Union.[47] Moreover, reducing the gap between the single citizens and the European Commission would have helped in reviving the feeling of European identity. [48]

Furthermore, at the time. the ECI represented a unique tool which differed from any other form of popular initiative enforceable in National Member States, such as the *Volksinitiative* in Austria, the *iniziativa legislativa del popolo* in Italy, the *iniciativa legislativa popular* in Spain which have little influence on national politics. According to comparative law, the popular initiative can be voted by the citizens and have direct impact or be addressed to the legislator and have an indirect influence. Moreover, in the case that the popular initiative does not provide for a final referendum it cannot be considered an instrument of direct democracy, but a collective right of petition similar to other mechanisms of participatory democracy. Therefore, since the ECI does not entail the possibility of a supranational referendum it cannot be compared to any of the popular initiatives established by national constitutions.[49]

The right to submit an ECI differs from the right to submit a petition (Article 227 TFEU) for several reasons. On the one hand, any EU citizen, natural or legal person residing in the EU has the right to submit a petition, which must be exclusively addressed to the European Parliament, as it is the representative institution of citizens at supranatural level. Moreover, the petition must be about matters which fall within the activity of the Union and the petitioner must be directly affected by them.

On the other hand, an ECI is an invitation for a specific legal action, it is subject to specific requirements to be registered and it is addressed to the Commission, which is the institution that holds the right to submit legislative proposals.

---

[47] Monaghan, E. (2012), *Assessing Participation and Democracy in the EU: The Case of the European Citizens' Initiative, cit.,* p. 293.

[48] EC STAFF WORKING DOCUMENT, *Outcome of the public consultation on the Green Paper on a European Citizens' Initiative*, SEC (2010)370, p.2.

[49] Rodean, N. (2014), *Iniziativa Partecipativa In Europa: Un Passo Verso La Democrazia Costituzionale* in POLITICA DEL DIRITTO/ a. XLV, n. 3, p. 474.

Consequently, the ECI is placed at the same level as the Parliament and the Council, which respectively according to the Article 225 TFEU and Article 241 TFEU have the right to request the Commission to submit a proposal on the matters necessary to implement the Treaties.[50]

1.8 The origins of the participatory principle in International Law

The origins of participatory rights can be traced in the historical developments of international law. Evidence of this is reflected in the organization of the international society before and after the Second World War. When modern international law emerged in the 19th century its structure was relatively simple. International society was exclusively based on equal and sovereign states, which interacted among each other by participating in: diplomatic consultations, congresses and conferences. Other forms of cooperation were established at the end of the 19th century with the establishment of the first international organisations. [51] The international scene was dominated by states, which politically were not generally democratic and whose governments' primary concern was maintaining the status quo. On the economic level, they relied on the principle of free trade and refrained from intervening neither at national nor at international level. Besides, the social structures of these states were based on common western values and supported by large consent. In this context, five European superpowers prevailed over the others in the international society, which came together first in the Holy Alliance and then in the Concert of Europe.[52] In such international realm, where sovereign states were the principle and only actors, the individual right to participate in government could not possibly be conceived. [53] Moreover, additional reasons can explain the late emergence of

[50] Novak, Petr (2017), *European Citizens' Initiative*, Fact Sheet on the European Union of October 2017 available on the official website of the European Parliament, p.4.
[51] Marrella, F.; Carreau, D. (2016), *Diritto internazionale*, Milano, Giuffré, pp.9-10.
[52] Ivi, *cit.,* p.10.
[53] Fox, H., G. (1992) *The Right to Political Participation in International Law*, in Yale JOURNAL OF INTERNATIONAL LAW, vol. 17, n.2, p. 545.

participatory rights in international law. Firstly, governments were not the result of free and fair elections in all states, consequently these could not be endorsed as common practices at international level.[54] Secondly, the law and practice of state recognition at international level was based on the traditional sovereignty principles and not according to popular consent. Consequently, also states whose governments were not elected through participatory means obtained international recognition. Besides, states could also recognise governments *the facto* for political reasons.[55]

After World War II the deep changes affected the international arena on two levels. On the one hand, new actors emerged on a horizontal level and deeply changed the international society making it more heterogeneous. On the other hand, international law extended to new subjects which appeared on a vertical level. These two elements together changed the perception of international law and its role.[56] The new hierarchy of subjects of international law comprised: the states, which were responsible at international level; legal persons under public law, such as organizations and international public entities; finally, private individuals. [57] Consequently, individuals became the subject of the newly established international order. In fact, when the international realm was exclusively shaped by sovereign states, the issues of individuals were not considered as primary concern; these were considered as objects of international law.[58] Their status gradually developed over the time: first they acquired the status of international subjects, then they were entitled an increasing number of rights at international level.[59] In this context, human rights became the primary concern of international conventions and treaties.[60] Firstly, in the late 1948 the UN General Assembly proclaimed the Universal Declaration of Human Rights (UDHR), which comprises a list of human rights and recognises popular sovereignty as the right to participate in government.[61] In fact, Article 21 of the

---

[54] Ivi, *cit.,* p. 546.
[55] Ivi, *cit.,* p. 547.
[56] Marrella, F.; Carreau, D. (2016), *Diritto internazionale, cit.,* p. 14.
[57] Ivi, *cit.,* 24.
[58] Ivi, *cit.,* 417.
[59] Ivi, *cit.,* 419.
[60] Fox, H., G. (1992) *The Right to Political Participation in International Law, cit.,* p. 552.
[61] Ivi, *cit.,* p. 551.

Universal declaration of human rights recognises to everyone the right to "take part in the government of his country, directly or through freely chosen representatives" (Paragraph 1). Moreover, the Article states that everyone shall equally access "public services in his country" (Paragraph 2). Finally, it points out that the government authority shall be based on the "will of the people" as well as it shall be the result of "periodic and genuine elections". Additionally, the voting procedure shall be free and the vote secret. (Paragraph 3).[62] The Declaration was the first and the most important step towards the protection of human rights and it was followed by other declarations of principles addressing more specific issues.[63]

Secondly, human rights started being recognised also at regional level. With the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights of the European Union[64] acquired status of primary law of the European Union as provided by Article 1 (6) TEU.[65] As regards the recognition of the international principle of participatory democracy, title V of the Charter includes the rights of citizens related to the elections to the European Parliament. Moreover, Article 41 of the Charter establishes the right to good administration. Besides, in relation to the citizens' active role in the life of the Union, Article 42 of the Charter entitles any citizens, natural or legal person the "right of access to documents" issued by the European Parliament, the Council and the Commission. This last provision entails an international principle that the Union, as international organization, has embraced: the principle of transparency. As stated by the European Court, the transparency principle, guarantees to citizens greater legitimacy, efficiency and administrative responsibility of the democratic system.[66] Moreover, in order to

---

[62] The UN General Assembly proclaimed the Universal Declaration of Human Rights on 10 December 1948 within the framework of the General Assembly resolution 217 A. Its provisions consist of common standards of achievement for everyone in every nation. (Information form the UN official website).

[63] Gioia, A. (2015), *Diritto Internazionale*, Milano, Giuffrè Editore, p.364.

[64] The Charter of Fundamental Rights of the European Union was first adopted in Rome on 4 November 1950 and then jointly proclaimed in 2000 by the Parliament, the Council and the Commission.

[65] Tizzano 138.

[66] Sentence of the ECJ of 18 Dicember 2007, C-64/05 P, on the case Sweden v.Commission reported in Adam, R.; Tizzano, A. *Manuale di diritto dell'Unione Europea*, *cit.,* p.425.

foster civil society participation, Article 15 TFEU provides that the Union must carry out its work in an open and transparent way. In particular the European Parliament is expected to meet in public as well as the Council when voting for a legislative act (Paragraph 2). Finally, the right provides that citizens must be able to access to the documents of the European institutions, bodies, offices and agencies (Paragraph 3). [67] In this context, international organisations are demanded to respect a level of transparency in their operations and bargaining. Consequently, citizens can judge whether authorities are acting in the public interest.[68]

Thirdly, the principles related to the rights of the individual are also accepted at international level as "general principles of law recognised by civilized nations".[69] Article 38 of the Statute of the International Court of Justice includes them among the sources of international law.[70]

Finally, the end of the cold war and the most recent global changes, along with the widespread use of electronic communication and the law costs for international travel have shifted the focus of the discussion on the principle of participatory democracy. [71] Transnational and multilateral actors nowadays contribute to set the international agenda, independently from their role in the law-making process. The most common forms of participation that they promote are: citizens involvement at global level, stakeholder involvement in international organizations, social forums, workshops and citizens panels. [72]

---

[67] Adam, R.; Tizzano, A. Manuale di diritto dell'Unione Europea, cit., p. 452.
[68] Stasavage, D. (2004), *Open-Door or Closed-Door? Transparency in Domestic and International Bargaining* in INTERNATIONAL ORGANIZATION, vol. 58, n. 4, pp. 667-668.
[69] Leanza, U.; Caracciolo, I. (2008), *Diritto Internazionale: Diritto Per Gli Stati E Diritto Per Gli Individui - Parte Generale*, Torino, Giappichelli, p.173.
[70] Marrella, F.; Carreau, D. (2016), *Diritto internazionale,* cit., p. 265.
[71] Amelung, N.; Baumgarten, B. (2017), *The Transnational Perspective of Political Participation: Linkages and Differences between Social Movement and Public Participation Studies* in GLOBAL SOCIETY, vol. 31, n. 1, p.7.
[72] Ivi, *cit.,* pp.5-6.

2. Procedures and conditions for the European Citizens' Initiative

The following section of the chapter focuses on analysing the overall process which led to Regulation 211/2011, which set the rules and procedures of the European Citizens' Initiative. Starting from the legal framework provided by Article 24 TFEU the successive steps in the making of the new regulation of the Citizens' Initiative included: the resolution of the European Parliament of May 2009 (EP,2009), the consultation launched by the European Commission in November 2009 with the Green Paper on a European Citizens' Initiative and the Commission Proposal for a regulation on the citizens' initiative of 31 March 2010 (COM 2010/119 final). Further contributions to the discussion on the shape that the ECI ought to take came respectively from the European Council, with the Statement of 14 June 2010, from the Committee of the Region and from the EESC, with the opinion of 2010 and from the European Parliament. Finally, the negotiations on ECI Regulation concluded with the solution adopted by the European Parliament and the Council in late 2010 and the entry into force of Regulation 211/2011 in April 2011.

2.1 Procedural aspects of the ECI in Article 24 TFEU

The Lisbon Treaty recognised participation as a legally binding fundamental principle. However, no regulation has been explicitly requested for the other mechanisms of participatory democracy as it was the case for the ECI. As a result, Article 11 (4) TEU highlights the necessity to conceive a new organized form of citizens' participation[73] and already sets a solid legal basis for a general regulation which shall be able to establish a procedure for participation, address several critical aspects and entitle specific participation rights applicable before the Court of Justice. [74] Additionally, explicit reference is made by Article 11 TEU to the first paragraph of Article 24 of the Treaty on the Functioning of the

[73] Ferri, Delia (2011), *L'Unione europea sulla strada della democrazia partecipativa? Istituzioni del Federalismo, cit.,* p.331
[74] Ivi., *cit*., p. 332

European Union, which provides that: *"The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens' initiative within the meaning of Article 11 of the Treaty on European Union, including the minimum number of Member States from which such citizens must come."* In this regard, the regulation under European Law is a legal act defined by Article 288 TFEU, which has general application, is binding in all its elements and directly applicable in all Member States. Its adoption follows the legislative procedure; therefore, the legislative act must be adopted by the Council and the Parliament under ordinary legislative procedures.[75] On the basis of Article 24 TFEU, the European Parliament and the Council adopted Regulation (EU) 211/2011 on 16 February 2011, which sets the procedures and conditions for exercising the rights laid down in Article 11 (4) TEU.

2.2 Pre-legislative and consultative phase of the drafting of the regulation

As already acknowledged, the Treaty already provides the key features of the citizens' initiative; in fact, it explicitly requires that there must be at least one million signatories for a citizens' initiative; the nationality of the signatories must correspond to a significant number of Member States; the initiative must fall within the framework of the Commission's power and address an issue for which a legal act of the Union is required to implement the Treaties. However, to establish the procedures and conditions for the practical functioning of the citizens' initiative, contributions from both sides of the institutions and civil society helped in the run-up of the final regulation, which had to be adopted by the European Parliament and the Council acting in accordance with the ordinary legislative procedure.

[75] Adam, Roberto; Tizzano, Antonio (2014), *Manuale di diritto dell'Unione Europea*, *cit.,* p. 260.

In the first instance, the European Parliament adopted a resolution on 7 May 2009, with which it officially requested the Commission to submit a proposal for a regulation of the European Parliament and of the Council on the implementation of the citizens' initiative.[76] Such document underlines five main issues that had to be addressed by the Regulation on the European Citizens' Initiative and the relative recommendations as formulated by the European Parliament. Firstly, reference is made to the minimum number of Member States from which citizens must come, which should have been one quarter of the Member States, provided that an initiative had to be supported by at least 1/500 of the population of each of the Member States, which corresponds to one million signatures over a population of approximately 500 million citizens. Secondly, although Article 11 (4) TEU applies to all citizens of the Union, the resolution states that the minimum age to participate in a citizens' initiative should be provided by the legislation of each participant's Member State. However, the resolution comments on the possible conflicting interpretations that could arise in case of differences between the participants' minimum age for the citizens' initiative and the required minimum age for the European elections. Thirdly, regarding the procedural aspects of the regulation, the resolution presents the main requirements that the citizens' initiative should have fulfilled in order to be admissible, recognises the role of the Commission to verify if these were respected and maintains that the procedure should have consisted of five main stages, such as: registration of the initiative, collection of statements, presentation of the initiative, statement of the position by the Commission and verification of the consistency of the legal act with the Treaties. Fourthly, the recommendation underlines that the principle of transparency had to be applicable to both the citizens' initiative and to the organizers which were expected to publicly recognise the funding and its sources. Finally, according to the resolution, the political monitoring of the process is attributable to the European Parliament, which specifically requests the Commission to submit a proposal for regulation on the citizens' initiative on the

[76] European Parliament resolution of 7 May 2009 requesting the Commission to submit a proposal for a regulation of the European Parliament and of the Council on the implementation of the citizens" initiative (2008/2169(INI).

basis of Article 24 TFEU as soon as the Treaty of Lisbon enters into force. Moreover, it is stated that the regulation is expected to be “clear, simple and user-friendly” so it can be properly identified and avoid confusing its function with the right of petition. This last general principle will then be reiterated by the discussions in preparation for the final draft of the regulation to the extent that it will open the formulation of several opinions and documents on the matter.[77]

To set a regulation for the European Citizens’ Initiative, the European Commission together with the European civil society and stakeholders carried out a broad public consultation on the basis of a Green Paper (Green Paper on a European Citizens’ Initiative-COM (2009) 622) from 11 November 2009 to 31 January 2010. Overall, the consultation gathered the opinions of a heterogeneous public: there were 329 replies from stakeholders;160 coming from individual citizens, 133 from non-governmental organizations and 36 from public authorities.[78] The main concern of the consultation was that the procedures and conditions to be adopted had to be simple, user-friendly and accessible to all EU citizens. Moreover, setting specific requirements was necessary to maintain the credibility of the instrument, avoid its misuse and ensure that the same conditions were guaranteed to all citizens willing to submit a citizens’ initiative. 10 key issues were raised by the Green Paper on which the respondents were called to express their opinion. Regarding the minimum number of Member States from which citizens must come, the most favoured option from the consultation was the one that took into account one third of the Member States. However, the possibility to set the minimum number to one quarter of the total Members States was also considered. Moreover, the consultation shows that for an ECI to better represent the interest of the Union, the number of signatures to be collected in each one of the Member States, namely the 0.2% of the total population should have been established. Consequently, such an approach would have advantaged smaller countries over the larger ones.

---

[77] European Parliament resolution of 7 May 2009 requesting the Commission to submit a proposal for a regulation of the European Parliament and of the Council on the implementation of the citizens" initiative (2008/2169(INI).

[78] Data from the EC STAFF WORKING DOCUMENT, Outcome of the public consultation on the Green Paper on a European Citizens’ Initiative SEC (2010)370.

Regarding a third point of discussion, agreement among the respondents seems to be found on the necessity to fix a minimum age for supporting a citizens' initiative. However, different opinions arose on whether the minimum age should have been linked to the voting age in the European Parliament elections, which in some countries is set to 16 while in others 18.

A fourth issue on which the interested parties were called on to express their opinion concerned the form and wording of the citizens' initiative. In fact, it was underlined that organizers should have been required to fill in a template to explicitly provide information on the subject and the objectives of the proposal. Among the different opinions it was suggested that the organizers should have been required to submit the legal basis of the proposal and submit the draft of a legal act. In addition, the importance for organizers to receive support in different ways and also from the institutions was also recognised.

Fifthly, regarding the collection, verification and authentication of signatures, two main solutions arose. On one hand, respondents argued that by establishing the same procedural requirements for all the EU Member States, the European nature of the initiative would have been preserved; while others suggested that national systems should be designated to decide on the matter.

Furthermore, importance was given to the time limit for the collection of signatures. The respondents divided into those who argued for establishing a larger period of one year or even 18 months and those who maintained that a shorter period of six months would be sufficient, considering that new technological tools would have helped accelerate the signature collection process.

Moreover, different opinions pointed out that a mandatory system of registrations would have been widely accepted, although it was not clear if the website could have been provided by the European Commission or hosted by other authorities. Moreover, according to the different opinions, organizers should have been required to provide information on both funding and financial support received. However, such requirements should have been limited only to those who received a certain amount of support, to avoid organizers being overburdened. In addition, the Commission should have verified the initiative within six months of

the collection of the signatures. However, uncertainty arose about the best way to access the admissibility of the proposed initiatives.

Finally, respondents did not maintain the need to have a regulation specifically for the cases in which more citizens' initiative are successively presented on the same issue.[79]

As a conclusive moment of such pre-legislative process, a public hearing was held in Brussels on 22 February 2010, when the ECI gathered momentum as an innovative tool that needed to be designed in a way to make it "simple, straightforward, understandable and most of all accessible".[80]

2.3 The European Commission Proposal for a regulation on the citizens' initiative

The public consultation was followed by the European Commission proposal for a Regulation on the citizens' initiative to the European Parliament and the Council of the 31 March 2010.[81] In particular, the proposal launched the official legal process of legislation by observing two main guiding principles. On one hand, it dealt with the necessary conditions to design an instrument which could have represented the Union interest; while on the other, its design had to comply with the simple and user-friendly character of the procedures to be adopted to guarantee high accessibility of the tool and avoid its misuse without adding administrative burdens to the Member States.[82]

By carefully analysing the text of the EC's own proposal, both permissive and restrictive elements arise. On one hand, the resolution provides that the form of signature gathering provided by the resolution must be free and that statements

---

[79] Outcome of the public consultation on the Green Paper on a European Citizens' Initiative SEC(2010) 370, Accompanying document to the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the citizens' initiative COM(2010) 119 final.

[80] Kaufmann, B. (2012), *Transnational 'Babystep': The European Citizens' Initiative, cit*., p.232.

[81] Outcome of the public consultation on the Green Paper on a European Citizens' Initiative SEC(2010) 370, Accompanying document to the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the citizens' initiative COM(2010) 119 final.

[82] COM(2010) 119 final, p.2.

of support must be collected without restrictions through an online platform managed by the European Commission. Moreover, during the registration phase no check on admissibility, nor political assessment must be made and the verification of the signatures has to be done by Member States on a random sampling basis. On the other hand, the proposal presents several restrictive measures, such as setting the threshold on one-third of the Member States necessary to participate in an ECI; requiring organizers to collect 300,000 signatures before the ECI could be declared admissible; requiring detailed personal information (name, address, date of birth, ID number) from those who submit the statement of support. Furthermore, the proposal recommends a number of features that can be considered constructive for regulation of an ECI, such as establishing that each member state should support a number of valid signatures relatively to the number of seats in the European Parliament; including a Review Clause, which allows a revision of the whole process three years after the regulation enters into force. However, several aspects that could have contributed to its improvement are omitted from the proposal. In fact, not enough consideration is given to the functions of support from the institutions both on the administrative and financial level. A total of one officer and one assistant were considered sufficient to help with the registration and administrative procedures, while no financial contribution was provided for organizers. Requirements for financial transparency are set for all organizers by expecting them to indicate all the sources of funding and support when the initiative is registered.

The proposal was confirmed by the European Council on 14 June 2010. However, in its statement, the Council suggested to set a lower threshold for the admissibility check at 100,000 signatures. Other changes to the proposal were listed by the European Council regarding the online system for gathering signatures and the ID requirement for statements of support. In particular, it maintained that the latter requirement should be excluded from the final law since there are several differences between the ID forms of different Member States.

Other institutions made their case about the possible changes to the proposal of the Commission regarding the minimum number of Member States from which the signatories should come, and the requirements set for the registration and the admissibility checks. In particular, the Committee of the Regions (CoR, 2010)

proposed to set the minimum number of Member States to one-fourth of the total and to put together the registration and the admissibility checks.
Moreover, the opinion issued by the EESC (EESC, 2010) underlined several improvement measures, such as admissibility checks set at 50,000 signatures and several structures of support for the ECI.[83]

2.4 The role of the European Parliament

After the Lisbon Treaty came into force, the Parliament played a central role in the negotiations of the ECI regulation. Two Committees were appointed, the Constitutional Committee and the Petition Committee, including four rapporteurs from the biggest political groups: the French MEP Alain Lamassoure form the European People Party and the Hungarian MEP Zita Gurmai from the Social Democrats as members of the Constitutional Committee; while the British Diana Wallis from the European Liberals and the German MEP Gerald Hafner from the Greens for the Petition Committee.[84] Not only did the Parliament argue for a more accessible and citizens-friendly Regulation but it also supported the principles of openness and transparency in creating the Regulation, since raising awareness among citizens on both the opportunities and consequences of the participatory democracy tool would have raised confidence in the instrument, and consequently the rates of participation of European citizens.[85] Moreover, among the changes obtained by the European Parliament, it managed to reduce to one quarter, from one third, the minimum number of Member States from which the participants have to come and argued for extending the right of participation to all EU citizens and residents of one of the Member States. Regarding the verification of admissibility of an ECI, the Parliament challenged the proposal of the commission to set a threshold before it could be carried out and managed to set

[83] Kaufmann, B. (2012), *Transnational 'Babystep': The European Citizens' Initiative, cit.,* pp. 234-236.
[84] Ivi., p. 237.
[85] Monaghan, E. (2012), *Assessing Participation and Democracy in the EU: The Case of the European Citizens' Initiative,* pp. 293-294.

the verification of admissibility before the registration would be done. Furthermore, other issues had been addressed regarding accessibility of the instrument by requiring an efficient information campaign and the publication of guidance notes in all the Union's official languages. Finally, the Parliament opted for including a provision which would have guaranteed meetings with the representatives of the Commission and a public hearing in the European Parliament.[86] Rule 211 of the Parliament's Rules of Procedure specifically refers to the role of the responsible Committee to organize the public hearing once the ECI has been properly published by the Commission. In addition, the ECI also found legal basis in Rule 218 of the Parliament Rules and Procedures.

2.5 Final agreement on Regulation 211/2011

The final political agreement on the Regulation was reached in December 2010, and its formal adoption dates to 16th February 2011. The final solution reflects both the widely discussed intent to design a "user-friendly" tool, as well as the limitations that the Commission Proposal of 2009 already included. After its formal adoption, Regulation 211/2011 was published on the European Journal on 12 March 2011 and twenty days later it entered into force. The ECI Regulation became applicable one year later on 1 April 2012, since Member States required some time to organize their systems for the verification process.

In the end, the final text comprised a provision according to which the Commission is required every three years to present a "report on the application of the ECI Regulation" with specific indications on the possibility of a revision of the Regulation. The first of such reports was adopted by the Commission on 31 March 2015 [87] and it represented the first official assessments of the

[86] Novak, Petr (2017), *European Citizens' Initiative*, Fact Sheets on the European Union of October 2017 available on the official website of the European Parliament.

[87] COM(2015)0145 final.

implementation of the ECI along with the positive and negative results of the new legislative institutional framework.[88]

[88] Novak, Petr (2017), European Citizens' Initiative, Fact Sheets on the European Union of October 2017 available on the official website of the European Parliament, p.2.

II.

Functioning of the ECI

Table of contents

The chapter aims to give a complete overview of the European Citizens' Initiative on the basis of its functioning and its multifunctional potential. The analysis is structured in three main parts, the first of which outlines the whole procedure of the ECI creation, from its registration to the submission of the proposal to the Commission. Although the formal end of the lifecycle of the ECI is represented by the Commission's response to the organizers in the form of a communication, further research based on the successful ECIs were conducted on the contributions of the other institutions to the follow-up framework. In this respect, the second section elaborates on the Commission's answer and follow-up of the first successful initiatives with particular focus on the ECI "Right2Water". Although four ECIs successfully completed the procedure, the extensive follow-up of the proposal "Right2Water" proves the fact that the campaign can possibly develop well beyond the Commission's answer. This can be considered as the triggering element for a broader interinstitutional discussion, rather than a formal end of the ECI campaign.

However, from the analysis of the Commission's responses and within the framework of the follow-up actions, no legal act has been taken in response to any successful ECI yet. Therefore, to further investigate the ECI's functions, the analysis is extended, within the third section, to the areas the instrument of participatory democracy impacted on. In support of each area of influence, reference is made to the different data and results of the ECI campaigns. In particular, the discourse develops from conceiving four dimensions within which the ECI can be considered as a communication enhancing tool, transnational

networks creator, agenda setting instrument and citizens' activating tool. Finally, examples of how the application of the instrument in all these areas are given to assess to what extent the instrument of participatory democracy has managed to bring citizens closer to the European institutions, connect cross-border civil society organizations, trigger discussion and dialogue on a large variety of issues related to EU policies and engage citizens in a new transnational public sphere.

1. The procedure in six stages

The reported procedure develops in six main stages, which correspond with the temporal phases of the ECI life-cycle as provided by Regulation (EU) 211/2011. The official start towards the realization of an ECI is represented by the submission of the proposal to the Commission and its official registration on the online website. From this moment, one month is calculated for the online collection systems to be certified by the national authorities before the collection of signatures can start. After the 12 months limit to collect the statements of support, the competent authorities have three months to verify their validity. Successively, the organizers can submit the certified statements of support to the Commission, which has the three months to: meet the responsible persons of the ECI, co-host a public hearing at the European Parliament and issue a Communication stating its intentions regarding the proposal.

1.1 The creation of the citizens' committee

The first step towards the realization of an ECI is the creation of a citizens' committee, which must be formed by at least seven people "who are resident of at least seven different Member States" of voting age in the EP elections (Art. 3.2 Regulation (EU) 211/2011). Within this basic organizational structure, a representative and a substitute member must be named to act as contact people for the ECI. The committee members must prepare the ECI proposal, namely the

"initiative" to submit to the Commission, which must include the information on the title (maximum 200 characters), the description of the subject-matter and its objectives (maximum 500 characters), a clear reference to the Treaties provisions, the organizers' personal data and the information on the sources of support and funding. (Annex II). The proposal is formulated by the organizers in general terms and not as a proper draft law[89], however it might be included a draft legal act in an annex.

1.2 Registration

At this stage, the Commission has two months to register the proposed initiative, provided that it complies with four requirements. In fact, during this period of time, the Commission verifies whether the proposal fulfils the procedural requirements, having formed a citizens' committee with two contact persons; its subject is comprised within the scope of "the EC's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties" (Article 4.2b); is not "manifestly abusive, frivolous or vexatious"(Article 4.2c); complies with the values of the Union, which are set out in Article 2 of the Treaty on the European Union" (Article 4.2d). In the case that the initiative does not meet the mentioned criteria, the EC will refuse its registration by informing the organizers of "the reasons and of all possible judicial and extrajudicial remedies available to them" (Article 4.3) respectively with the possibility to appeal either to the European Court or to the Ombudsman. Twenty-one proposed initiatives have been denied registration since 2012 and the Commission's explanatory statements of its decisions have been published on ECI's official website. The organizers of six initiatives appealed against the Commission's decision before the European General Court, which ruled in favour of the annulment of two cases which had

[89] Cuesta-López, V. (2012*), A Preliminary Approach to the Regulation on European Citizens' Initiative from Comparative Constitutional Law*, in BRUGES POLITICAL RESEARCH PAPERS, n. 24, p.14.

been rejected. The fact that the decision of the Commission can be subject to the control of the General Court, with the possibility of annulment ensures that the Commission's powers are exercised in the right way[90].

Once they pass the admissibility check, registered initiatives are assigned a registration number and officially published in the online register of the European Commission. After registration, translated versions of the initiative can be uploaded on the organizers' account and on the official website, provided that the Commission does not identify inconsistency with the original text.[91] On one hand, placing the admissibility check at this stage of the process could be considered as a preventive tool for avoiding organizers to engage in the campaign before being rejected; on the other hand in case of refusal by the Commission, a cross-border public debate would be undermined even before having the chance to gain momentum.[92] Moreover, until the statements of support are submitted, organizers may withdraw the proposed initiative (Article 5). Fourteen initiatives have been withdrawn by the organizers from 2012 to 2016.

1.3 Collection of statements of support

Once the ECI has been officially published on the EC online web portal, the organizers have 365 days to gather a total of one million signatures from at least one quarter of the Member States, which amounts to seven. The statements of support can be collected either electronically or on paper. In the former case, the organizers must build an online collection system, which must be certified by the "competent authority"[93] in each Member State where the signatures have been

---

[90] Vogiatzis, Nikos (2017), *Between discretion and control: Reflections on the institutional position of the Commission within the European citizens' initiative process* in EUROPEAN LAW JOURNAL, vol. 23, n. 3-4, pp. 260-261.

[91] Kaufmann, B. (2012), *Transnational 'Babystep': The European Citizens' Initiative*, *cit*. p. 238.

[92] Anglmayer, I. (2015), *The European Citizens' Initiative: the experience of the first three years*, European Implementation Assessment, EPRS, p.13.

[93] A list of the Competent authorities responsible for certifying online collection systems in each Member State is made available on the Commission website.

gathered (Article 6.4). Such a system must comply with the security and technical requirements established by Regulation (EU) 211/2011 and the more specific criteria set out in Regulation (EU) No 1179/2011.[94] The Commission has made a software available which already complies with the specific rules laid down in Regulation (EU) No 1179/2011 and can be downloaded for free. Additionally, although the requirements are common to all the EU Member States, each of them can decide how to verify and carry out the online system's certification procedure. Additionally, different rules apply within the Member States regarding to the accompanying documents that organizers must submit with the statements of support. In fact, except for Belgium, Denmark, Germany, Estonia, Finland, Ireland, the Netherlands, Slovakia and the UK, in all other Member States the organizers must present the statements of support along with the identification documents and numbers of the signatories. Annex III to Regulation (EU) 211/2011 establishes the official forms that must be used and specifically indicates which types of personal identification document have to be submitted in each one of the EU Member State. Moreover, signatories must be of the age to vote in the EP elections, which is 18 in all Member States except in Austria, where the voting age is 16. Additionally, the system used to establish the minimum number of statements of support is the same degressive proportionality method, which is used to allocate the seats in the European Parliament for each Member State[95]: they must count at least 750 signatures multiplied by the number of MEPs. [96]

[94] Regulation (EU) No 1179/2011 of 17 November 2011 sets out the technical specifications for the online collection system, as provided by Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizens' initiative.

[95] The minimum number of signatures per Member States has been modified in 2014 according to the changes in the calculation of the MEPs. The new thresholds apply to all initiatives registered as of 1st July 2014.

[96] Novak, Petr (2017), European Citizens' Initiative, Fact Sheets on the European Union of October 2017 available on the official website of the European Parliament, p.3.

1.4 Verification and certification of statements of support

Once collected, the required number of statements of support, organizers submit them to the competent authorities, which can be either interior ministers, electoral commissions or population registries of the Member State where the signatures have been gathered. These bodies have three months to certify the number of valid statements of support collected for that country. As an example, the Spanish authorities will verify the statements of support and the identification documents of EU citizens of Spanish nationality, while British authorities will check the signatures of EU citizens with Spanish nationality residing in the United Kingdom that are required to submit the information relatively to their name, address and date of birth. Competent authorities carry out appropriate checks including random sampling of the evaluation system.

1.5 Submission of the Initiative to the EC

Once organizers have obtained the certificates from the competent national authorities, guaranteeing that they have gathered a total of one million signatures after reaching the minimum number required in at least 7 Member States, they proceed with the submission of the initiative to the Commission. Information on the support and funding must also to be presented at this stage of the process, particularly for those contributions which exceed the amount of €500 according to Regulation (EC) No 2004/2003.[97]

[97] Regulation (EC) No 2004/2003 provides the rules for EU governing political parties and their funding.

1.6 Three-months period of examination and communication

After receiving the initiative, the Commission must publish it “without delay in the register” (Article 10.1a). In the following three months, representatives of the Commission must receive the organizers to allow them to explain further the issues addressed by the initiative. A public hearing will then be organized in the European Parliament by the committee responsible for the subject-matter of the ECI (Article 11) to allow the organizers to publicly present their initiative and engage in a debate with the representatives of the European Institutions. Moreover, support in the preparation of the public hearing is also given by the European Economic and Social Committee.

1.7 Commission's answer and follow-up

Organizers will receive an official answer from the Commission in the form of a communication stating the political and legal conclusions on the citizens’ initiative. The Commission is free to decide whether to take action on the initiative or not, provided that it clearly declares the reasons behind that choice (Article 10.1.c). This establishes the formal end of the whole process, which develops for a total of 20 months. On a theoretical level, rather than a technical judgment on its admissibility, this legal conclusion represents a final decision on the choice of the most suitable legal act to draft the ECI among a regulation, a directive or a decision along with the best legislative procedure.[98] However, whatever response of the Commission, the final outcome cannot be foreseen at this stage. In fact, in the best scenario is that the decision entails a legislative proposal for the ECI, this could be amended or fail during negotiations with the Council and

[98] Bouza García, Luis; Cuesta López, Victor (2012), The European Citizens’ Initiative – A First Assessment in BRUGES POLITICAL RESEARCH PAPERS / CAHIERS DE RECHERCHE POLITIQUE DE BRUGES, n.24, p.21.

the European Parliament. On the contrary, in case that no legal act is taken, the Commission could be invited by the co-legislators to do so. However, neither the Commission, nor the other institutions are obliged to provide the follow-up to the successful ECIs. [99]

2. The Commission's answer and follow-up to the first successful ECIs

Since the entry into force of Regulation (EU) 211/2011, a total of 47 initiatives proposals have been registered of which 6 are still open, 14 have been withdrawn by the organizers before submitting the statements of support, 23 did not qualify since they did not manage to gather one million signatures within the 12-months' time limit, while four initiatives successfully reached the final stage of the procedure.[100] By taking into account the successful initiatives, it is possible to assess to what extent the Commission's response triggers follow-up actions. The analysis moves from the acknowledgement that the Commission's answer more than proposing to take a legal act in response to the ECI, it rather represents the starting point for a bigger debate to which other institutions take part in by contributing to an extensive follow-up. With this aim the section focuses on presenting the follow-up developments relatively to the ECI "Right to Water" since its extensive follow-up makes it the most suitable to analyse the development of the discourse over the time.

2.1 The ECI 'Right2Water': an extensive follow-up

The first initiative was registered on 10 May 2012 with the title of "Water and sanitation are a human right! Water is a public good, not a commodity!", also

[99] Anglmayer, I. (2015), *The European Citizens' Initiative: the experience of the first three years, European Implementation Assessment, cit.,* p.23.
[100] Data available on the official website of the ECI.

known under the name of the "Right2Water"[101] campaign. It requested the Commission to "propose legislation implementing the human right to water and sanitation as recognised by the United Nations[102], and promoting the provision of water and sanitation as essential public services for all". Specifically, the initiative aimed at reaching three goals within the framework of extending the action of the Union across its borders and towards the global recognition of the universal value. Firstly, it called for the commitment of the institutions to guarantee the right to water and sanitation for all in Europe. Secondly, it called for the exemption of the supply and management of water resources from liberalizations and the rules of the internal market. Thirdly, the initiative demanded for the EU effort to achieve access to water and sanitation at a universal global level.

The ECI campaign proved to be successful after organizers managed to gather a total of 1,659,543 signatures from 13 Member States which they submitted to the Commission on 20 December 2013.[103] In fact, the threshold was met in Austria, Belgium, Germany, Greece, Hungary, Italy, Lithuania, Luxemburg, the Netherlands, Slovakia, Slovenia and Spain. Germany contributed with 1,341,061 signatures, of which 1,236,445 were validated. Successively, on 17 February 2014, they were received by the Commissioner Vice-President and the public hearing took place on the same day at the European Parliament, during which 60 MEPs from the environmental committee and others intervened.[104] Although the initiative received support from a large number of signatories all over Europe, the

[101] Right to Water Official Website: http://www.right2water.eu/.

[102] The Human Right to water and sanitation has been officially recognised by The United Nations in 2010 within the UN resolution A/RES/64/292. The resolution was adopted by vote of 122 in favour and none against, although with 44 abstentions among which figured several EU Member States.

[103] The day the initiative was submitted the statements of support amounted to 1 659 543 gathered in 13 Member States, however in the following weeks the organizers sent to the Commission certificates from two additional Member States France (17 247) and Denmark (3 495). Information included in the Annex to the Communication from the Commission (COM(2014)177).

[104] Bieler, A. (2017), *Fighting for public water: the first successful European Citizens' Initiative, "Water and Sanitations are a Human Right"* in INTERFACE: A JOURNAL FOR AND ABOUT SOCIAL MOVEMENTS, vol.9, n., 1, p. 312.

Commission decided not to take legislative actions but committed itself to address the issues raised by means of several non-legislative measures.[105]

2.2 The answer of the Commission

After successfully completing the whole procedure, the organizers of the initiative received the Commission's answer on 19 March 2014. With Communication COM (2014) 177, the EC set out the actions it intended to take in response to the requests presented in the proposal. The document includes an initial presentation of the legislation already in place relative to the "access to safe drinking water and sanitation" as linked to the "right to life and human dignity and the need for an adequate standard of living" from both the perspective of international law and at EU level. This introduction acknowledges the contextual framework within which the evaluation of the proposed ECI was been carried out and sets the basis for identifying the potential areas where measures are most needed. The second part of the document focuses on presenting the fields of action where the intervention of the Union is most needed to guarantee high quality availability, physical accessibility and affordability of water and sanitation services. Six points were presented by the Commission with the aim to address the concerns presented by the citizens' call for action. Firstly, to provide an answer to the first subject of the ECI's request, the Commission encourages Member States to use the financial support provided by the Union for the water sector and commit to enhance the quality and accessibility of water. In this regard, it ensures that efforts will be made to achieve full implementation of EU water legislation by the Member States in cooperation with stakeholders and in line with the proposals of the 2012 Water Blueprint. Regarding the review of EU water legislation, the Commission promises to launch a EU-wide public consultation on the Drinking

[105] Boronska-Hyryniewiecka; Monaghan (2017), *The European Citizens' Initiative as Democratic Legitimacy-Enhancing Tool: Toward a Broader Conceptualization* in Pérez de las Heras eds. *Democratic Legitimacy in the European Union and Global Governance Building a European Demos,* Cham, Switzerland, Palgrave Macmillan, p.43.

Water Directive to gather information on the widespread perceived challenges along with the possible solutions for improvement. This was one of the few potential legislative actions foreseen by the Commission, proving that substantial popular support can influence ongoing legislative actions and have an impact even during the signature gathering.[106] In addition, it prepares a review of the Water Framework Directive with the necessary amendment. As concerns the level of water affordability, the Commission maintains that access to minimum water supply should be guaranteed to all EU citizens by their Member States along with implementing the Water Framework Directive.

Secondly, regarding the ECI request to exclude water supply and management from the internal market rules and liberalization, the Commission ensures the neutrality of the EU towards national provisions of water services and underlines that the new Directive on procurement by entities operating in water, energy, transport and postal services (Directive 2014/XXEU) will be not applicable to services provided by local authorities through a joint venture or through an affiliated undertaking. Moreover, it commits to protect and safeguard the rules on water services adopted at international level within the framework of trade negotiations. Additionally, it reiterates that the Commission recently excluded the water sector from the scope of directive 2014/23/EU on the award of concession contracts, which regulates the EU internal market.

Thirdly, the Commission states it will continue to develop initiatives aimed at increasing transparency on the work carried out in cooperation with the Member States by setting up online information systems for citizens within the framework of the Urban Wastewater Treatment Directive. In support of the initiatives already in place, the Commission also commits to establish additional indicators and benchmarks for water services to increase the accessibility of citizens to the information of water operators.

Fourthly, as requested by the third subject of the ECI, the Commission commits to carrying out its work using a more integrated approach for development assistance in those countries where aid is most needed, to ensure the universality

---

[106] Mendez, F.; Mendez, M. (2017) *Promise and Perils of Direct Democracy for the European Union* in CAMBRIDGE YEARBOOK OF EUROPEAN LEGAL STUDIES, p. 76.

of the human right of access to safe drinking water and sanitation. In this regard, the Commission advocates the universal access to safe drinking water within the follow-up framework of the UN Rio+20 Conference on Sustainable Development and of the Ministerial Declaration "The Future We Want" which reported the world leaders' focus on the implementation of integrated water resource management. Finally, increasingly potential is recognised by the Commission to the non-for-profit partnership in the water sector and efforts will be made in the search for opportunities of exchange of expertise and knowledge between actors operating in different regions.

In conclusion, all the measures and commitments presented in the Commission's answer are related to the subject of the ECI, however none of them has the character of a legislative initiative.[107]

2.3 Follow-up actions

The vague nature of the Commission's response, along with the wide argumentation on the already existing legislation on the matter, resulted in criticism from the organizers. In fact, the Commission did not legally commit to block EU initiatives which aimed at liberalising water and sanitation services, as requested by the ECI. However, the Commission's reasoning has developed over time as has been shown by the progressively increasing engagement with the ECI in taking follow-up actions.[108] The ECI official website has a regularly updated webpage reporting the information on the follow-up actions that have been taken by the Commission as well as the contributions of other institutions.

Firstly, within the framework of the Commission's response to the ECI Right2Water and to carry out its commitment to implement and review the existing legislation, the Commission took a first step by adopting an amendment of the Drinking Water Directive on 28 October 2015. This amendment represented the

---

[107] Anglmayer, I. (2015), *The European Citizens' Initiative: the experience of the first three years, European Implementation Assessment, cit.,* p.24.

[108] Vogiatzis, Nikos (2017), *Between discretion and control: Reflections on the institutional position of the Commission within the European citizens' initiative process*, *cit*., p. 261.

first adjustment to scientific and technical progress since the introduction of the Directive in 1998, as an attempt to "improve the monitoring of drinking water across Europe". In this regard, greater flexibility was given to Member States to monitor the quality of drinking water and consequently by allowing them to adapt the parameters based on risk assessments of specific zones of drinking water supply.[109] Previously, in March 2015 the European Commission's Environment Directorate-General organized the 4th European Water Conference which put the implementation of the Water Framework Directive[110] and the Floods Directive at the centre of the agenda [111]. During the Conference, stakeholders and representatives of Member States as well as of the Commission discussed issues regarding experiences and assessment of the implementation of the Water Framework Directive, the opportunities for financial support of water policies and their role within the scope of the Green and Blue Growth. In addition, the 4th implementation report on the Water Framework Directive and Floods Directive was published earlier in March 2015.[112] Moreover, as provided by Article 19(2) of the Water Framework Directive, the Commission is expected to adopt its review in 2019.

More recently, the Commission stated in the annual Work Programme for 2017[113] that it would propose legislation on "minimum quality requirements for reused water for agriculture irrigation and qualifier recharge", as well as revising the Directive on drinking water. The latter was based on the results of the REFIT evaluation of the Drinking Water Directive 98/38/EC[114] carried out in 2016 and on

---

[109] European Commission Press release of 28 October 2015, *EU introduces more efficient monitoring of drinking water for better protection of public health*.

[110] Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

[111] The Floods Directive 2007/60/EC concerns the assessment and management of flood risks. It entered into force on 26 November 2007. It provides that all Member States must "assess if all water courses and coast lines are at risk from flooding, to map the flood extent and assets and humans at risk in these areas and to take adequate and coordinated measures to reduce this flood risk. With this Directive also reinforces the rights of the public to access this information and to have a say in the planning process." (information from the EC website, environment section).

[112] EC website, environment portal, *4th European Water Conference.*

[113] Commission Work Programme 2017, *Delivering a Europe that Protects, Empowers and Defends* (2016) COM(2016) 710 final.

[114] Staff Working Document on the REFIT Evaluation SWD(2016) 428 final.

the public consultation on the Quality of Drinking Water in the EU, which was conducted from June to September 2014.

Secondly, regarding the commitment of the Commission to improving transparency and stakeholder dialogue on the management of water and sanitation services, several meetings took place from September 2014 to October 2015 to discuss benchmarking on such issues.[115]

Thirdly, by adopting the Communication on "A Decent life for all: from vision to collective action" (COM(2014)335) in June 2014, water and sanitation have been recognised as priorities of the post-2015 development agenda of the Commission. In September 2017 the UN General Assembly confirmed universal access to water and sanitation in the list of the Sustainable Development Goals of the "2030 Agenda for Sustainable Development". Moreover, the Commission also promoted partnerships between different actors and fostered international dialogue. As an example, the workshop on "Innovative partnership and financing mechanisms" took place in line with the Commission's contribution to promote access to drinking water and sanitation in developing countries. Moreover, during the 7th World Water Forum the effort of the Commission was underlined in the way of fostering cooperating and sharing best practices.

2.4 The European Parliament's own-initiative report and the EESC's opinion

Although the role of the European Parliament within the ECI process is limited to the organization of a hearing once the required number of signatures has been collected; it is also allowed to take political control according to Rule 218 of the Parliament's procedural rules. It can draft an own-initiative report in response to an ECI which had been registered and did not meet the requirements laid down in the Regulation or following the Commission's final decision regarding

[115] Communication from the Commission on the European Citizens' Initiative of 19 March 2014, *"Water and sanitation are a human right! Water is a public good, not a commodity!"*, COM(2014) 177 final.

successful ECIs. In the latter case, the Parliament's role might entail the activation of Article 225 TFEU, according to which it is entitled to propose legislation to the Commission.[116]

In line with this legal framework, the European Parliament, on 8 September 2015, adopted an own-initiative report[117] following on the ECI "Right to Water", which addresses the issues raised by the ECI and at the same time comments on the answer of the Commission to the organizers. According to the lead MEP Lynn Boylan, the ownership and management of water services had to be recognised as primary concerns for citizens. In fact, the resolution requested that water should not be part of the Concession Directive and excluded from any trade deals negotiated by the EU. After an introductory preamble, followed by the statement of principles, the resolution focuses on five main aspects relative to the ECI campaign, such as the ECI as an instrument of participatory democracy, the right to water and sanitation, the relationship between water services and the internal market, the internationalisation of the cost of pollution and the EU external policy and development policy in the water sector. To understand the relevance of the EP contribution within the framework of the follow-up debate, it is relevant to focus the attention on three main elements underlined throughout the resolution. Firstly, the European Parliament criticizes the Commission's answer by maintaining that it lacks ambition, it "does not meet the specific demands made in the ECI and limits itself to reiterating existing commitments" while not adding any new measures "that might help to achieve the goals" (par. 6).[118] However, it acknowledges the fact that the ECI contributed to excluding water and sanitation services from the Concession Directive (par. 4). Secondly, the Commission is urged to come forward with a legislative proposal and take into account the possibility of revising the Water Framework Directive (par. 10) to avoid a loss of

---

[116] Vogiatzis, Nikos (2017), *Between discretion and control: Reflections on the institutional position of the Commission within the European citizens' initiative process*, *cit*., pp. 265-266.

[117] The own-initiative report on the follow-up of the Right2Water ECI European Parliament's has been launched by the ENVI Committee, under the leadership of Rapporteur Lynn Boylan, GUE/IE.

[118] Bieler, A. (2017), *Fighting for public water: the first successful European Citizens' Initiative, "Water and Sanitations are a Human Right", cit.,* p. 314.

credibility for the Union. Thirdly, the European Parliaments underlines the imperative need to exclude water and sanitation services from both the internal market rules and the trade agreements, such as the TTIP (Transatlantic Trade and Investment) and the TiSA (Trade in Service Agreement) (par. 47).[119] Finally, the Parliament underlined its concern that by not providing for a legislative action in its communication, the Commission could cause a disengagement of citizens in the EU. However, in its response to the European Parliament, the Commission maintained that its answer to the ECI was positive overall, besides it was not obliged to follow all the proposal's indications. Furthermore, in its first work programme after responding to the European Parliament resolution the Commission committed to revise the Drinking Water Directive and a first follow-up action to the "Right2Water" initiative.[120]

The European Economic and Social Committee contributed to the follow-up of the ECI "Right2Water" by adopting an own-initiative opinion on the Commission's Communication on 15 October 2014. In its opinion, the EESC on one hand, acknowledges the Commission's recognition of "the specificity and importance of water services" (par. 1.2) and consequently their exclusion from the Directive on Public Procurement Concessions. Moreover, it welcomes several aspects of the Commission's answer, such as: the recognition of responsibility of the single Member States in providing water services; the Commission's support for non-for-profit partnerships within the development policies; the exchange of information and best practices through public-public international partnerships (par. 1.5).

On the other hand, it requests the Commission to come forward with "specific binding measures responding to this ECI" which clearly state that water sources and services cannot be managed like commercial products but must be conceived as public goods (par. 4. 8. 4).

---

[119] Anglmayer, I. (2015), *The European Citizens' Initiative: the experience of the first three years, European Implementation Assessment, cit*. p. 25.

[120] Mendez, F.; Mendez, M. (2017) *Promise and Perils of Direct Democracy for the European Union, cit.*, 76-77.

2.5 Beyond the ECI success

A number of elements contributed to the success of the first ECI, which can be traced to three main reasons. Firstly, the issue addressed by the ECI has been embedded into historical forms of a globalised struggles which arose all over the world since the early 1990s. Secondly, the recognition of water as a human tight has been at the centre of international discussions fostered by several movements around the world, which opposed liberalisation of water services. Thirdly, not only did the ECI campaign receive wide administrative and financial support from the EPSU, but it also encouraged the formation of a European level alliance of national and international organizations.[121]

Moreover, the success of the ECI dimension did not stop with the end of the campaign, but the discourse on water expanded further across Europe. In Germany, in sight of the national elections in 2013, the parties committed to keep water in the public sector. In Greece, a citizens' movement of Thessalonica pushed for a referendum on the privatization of water services in their city, which was held on 18 May 2014. 98% of the voters, who opted for rejecting privatization contributed to influence the Greek government, which decided to abolish the privatization of water services in Thessalonica and Athens. Monitors of support to the campaign were sent from EPSU, the Italian water movement and other ones across all over Europe. Moreover, in February 2014, the city council of the town of Alcazar de San Juan in Spain was occupied during a demonstration aimed at stopping the privatization of the city's water services. A similar movement took over in Ireland, where 150,000 people marched on the 1st November against water charges imposed by the Irish government. Furthermore, in Slovenia, the constitution was recently amended to guarantee access to drinkable water as a fundamental right.[122]

Finally, the ongoing legacy of the ECI proves how the initiative had much bigger implications which developed on their own at both European and national level.

---

[121] Bieler, A. (2017), Fighting for public water: the first successful European Citizens' Initiative, "Water and Sanitations are a Human Right", cit., p. 305-309.
[122] Ivi, cit., p. 313.

In this context, it has been estimated that in 180 cases, water has been municipalised in 35 countries. However, the success of the ECI could not permanently ensure that water is excluded from the market, since a review clause has been included in the Concession Directive, which provides that "the decision to exclude water might be revoked in five years time".[123]

2.6 Commission's answer and follow-up to the other successful ECIs

Although the follow-up to the ECI "Right2Water" is rather extensive compared to the other successful ECIs, in almost all cases the Commission's response did not mark the end of the initiative. Only with the Communication on the ECI "One of Us"[124] the Commission concluded that "the existing funding framework, which was recently debated and agreed by EU Member States and the European Parliament, is the appropriate one" , thus maintaining that no legislative act is needed.[125] In fact, it is maintained that the Union cannot meet the request to stop financing research on staminal cells, since the proposal already adopted included ethical aspects and potential benefits to human health.[126] However, it might be too early to consider the initiative follow-up as concluded, since the organizers applied in July 2014 to the European General Court requesting the annulment of the Commission's answer, on which no opinion has been issued yet. [127]

The ECI "Stop Vivisection"[128] case was different, which although it was almost entirely managed by volunteers, successfully gathered 173,139 signatures from 9 Member States. The Commission's Communication of 3 June 2016 to the third successful ECI is completely in line with the principle of the proposal but presents

---

[123] Ivi*, cit.,* p. 315.
[124] "One of Us" Official website: https://oneofus.eu/.
[125] EC Press release of 28 May 2014, *European Citizens' Initiative: European Commission replies to 'One of Us'.*
[126] Ponzano, P. (2015), *L'Iniziativa dei Cittadini Europei (ICE): Teoria e Pratica,* Scienze e Ricerche.it, p. 3. Accessed on 11 January 2018.
[127] *One of Us and Others v. Parliament and Others*, Case T-561/14, date of application: 25/07/2014.
[128] "StopVivisection" Official website: www.stopvivisection.eu.

a different approach for achieving the object.[129] In fact, although the Commission stated its support for banning animal testing , it did not agree with the organizers to annul Directive 2010/63/EU as requested by the ECI.[130] Subsequently, as guaranteed in the Communication, a scientific conference was organised by the Commission in December 2016 to continue the debate on the alternatives to animal testing by bringing together stakeholders and representatives of the scientific community. Moreover, the progress on implementing the follow-up actions to the initiative was published during the same conference. Furthermore, other institutions intervened to assess the Commission's answer and follow-up. The Ombudsman issued a decision in April 2017, in which it rejected the claims for maladministration by concluding that the Commission's "position and political choices" had been explained in a "clear, comprehensible and detailed manner" and a number of concrete actions in response to the initiative had started being implemented.[131]

Finally, the ECI "Ban glyphosate and protect people and the environment from toxic pesticides"[132] was the fourth and most recent initiative that managed to gather sufficient statements of support, namely a total of 1,070,865 in 10 Member States. The Commission's response was issued on 12 December 2017 and it clearly addressed all the three goals set by the ECI. Although, an early assessment of the Communication could be considered premature, it is worth noticing that a legislative proposal has been advanced with regard to the Commission's commitment to ensure "transparency in scientific assessment and decision-making" on the subject.

---

[129] Boronska-Hyryniewiecka; Monaghan (2017), *The European Citizens' Initiative as Democratic Legitimacy-Enhancing Tool: Toward a Broader Conceptualization, cit.,* p.44.

[130] *Ivi,* p.53.

[131] Decision of the European Ombudsman of 18 April 2018 on the case 1609/2016/JAS on the European Commission's response and follow-up to the European Citizens' Initiative "Stop Vivisection".

[132] "Stop Glyphosate" Official Website: http://stopglyphosate.org/.

3. The ECI: a multifunctional democratic instrument

According to the answers received from the Commission following the first successful ECIs, the instrument of participatory democracy does not fully qualify as successful legislation-initiating tool. However, limiting the scope of its action to achieve a single end does not allow to understand all the different forms it can take.[133] After having analysed the whole process of realization of an ECI, as well as the answers given by the institutions, it is now possible to carry out a first assessment of the multiple expectations on its potentials in light of the ECI experiences of implementation of Regulation (EU) 211/2011. Besides, the European Ombudsman recognises crucial value to the process itself and underlines that regarding the substantive outcomes of an ECI, the adoption of a legislative proposal by the Commission "should not be the only measure of success"[134]. Within this framework, a first function of the ECI is the ways it fosters communication and interaction between the institutions and citizens for both technical and political reasons. In this respect, attention is given not only to the exchanges between the Commission and the citizens' committee, but also to the interventions of other actors, such as: the European General Court, the EESC and the European Ombudsman.

Secondly, proof of the transnational character of the ECI is given by referring to two categories of: the organizers and the signatories. By analysing the data of the registered ECIs relative to the composition of the citizens' committee and the collection of the statements of support, it is possible to assess the territorial distribution of the campaigns and consequently recognise the ECI potential to create and develop transnational networks all over Europe.

A third dimension of the ECI has been traced to its function as agenda setting instrument. In this regard, after a brief introduction to the legal framework, which

---

[133] Boronska-Hyryniewiecka; Monaghan (2017), *The European Citizens' Initiative as Democratic Legitimacy-Enhancing Tool: Toward a Broader Conceptualization, cit.,* p.44.

[134] Decision of the European Ombudsman 4 March 2015 closing inquiry OI/9/2013/TN concerning the European Commission, paragraph. 20, in Borońska-Hryniewiecka, K.; Monaghan, E., (2017*) The European Citizens' Initiative as Democratic Legitimacy-Enhancing Tool: Toward a Broader Conceptualization, cit*., p.44.

establishes the character and the issues that can be addressed by an ECI, an overview on the main policy areas of the registered proposals is given. Such analysis is not limited to assess the impact of successful ECIs on the institutional agenda but extends its scope to all the ways implied to trigger political debate on the themes raised by the proposals.

Fourthly, the ECI is presented as a citizens' activating tool, which puts civil society at the centre of both the organization and the support of the campaigns. Therefore, citizens' participation is assessed by taking into account the main actors which contributed to realization of the registered initiatives.

As a result, the abstract principle of participatory democracy and the European Citizens' Initiative can be implemented in different ways, each of them related to a different dimensional function.

3.1 Communication enhancing and dialogue facilitator tool

One aspect of the ECI which contributes to reducing the distance between the citizens and the decision-makers is the vertical direct connection which it establishes between the two parts. In fact, the instrument has been designed with the idea of creating a channel of communication and dialogue both at a technical and at a political level. As it represents the main institution involved in the process of realization of an ECI, the Commission, according to paragraph 6 of Article 4.1, has the duty to establish a "contact point"[135] in order to guarantee assistance and information support to the organizers.[136] From April 2012 until the end of March 2012, the contact point based in the Europe Direct Contact Centre, has answered over 1,080 questions on a broad range of issues concerning the ECI procedure, specific initiatives, the IT tools implied as well as the scope of the instrument and

[135] Europe Direct as well as all the national contact points are available to give all the necessary information on the ECI or any advice to ECI organisers (even legal) prior to registration. Moreover, the EC provides in the ECI website the list of policy areas of competence of the EU and the relevant Treaty provisions.

[136] Bouza García, L.; Cuesta López, V. (2012), *The European Citizens' Initiative – A First Assessment*, *cit.,* p.16.

the requirements for launching the initiative.[137] In addition, the European Commission has proved to be available and open to offer technical support to the organizers by developing an online free software which complies with the requirements set out in the Regulation (EU) 211/2011, to provide online forms for the collection of signatures adapted to each country. The Commission's support was also crucial in helping organizers solve technical problems in 2012, when it hosted the first registered ECIs on its Luxemburg servers. It offered assistance with the preparation of the documents required for the data protection legislation. Moreover, beyond the interaction carried out between the Commission and the organizers of an ECI, other institutions have been involved in two specific stages of the process with regard to the Commission's decision on the admissibility requirements of the ECI and after its final response to the claims of the organizers. In the first case, several organizers of those ECIs, whose registration had been denied appealed to the European General Court, which annulled the Commission's rejection of two ECIs and allowed their registration on the Commission's website, namely the proposals "Minority Safepack"[138] and "Stop TTIP"[139]. In these two cases as well as for all the other 19 ECIs for which registration was refused, the reasons presented by the Commission in its explanatory statements are attributed to the noncompliance of the proposals with the requirements provided by Article 4.2b of the Regulation (EU) 211/2011. In

[137] Report from The Commission to The European Parliament and The Council on the application of Regulation (EU) No 211/2011 on the citizens' initiative of 31 March 2015, COM (2015) 145 final, p.13.

[138] "Minority Safepack – one million signatures for diversity in Europe" is the title of the ECI which aims at inviting the Commission "to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union". The proposal includes the adoption of "policy actions in the areas of regional and minority languages, education and culture, regional policy, participation, equality, audiovisual and other media content". The campaign for the collection of signatures is currently open and will end on 3 April 2018. All the information are available on the official website of the ECI. "Minority Safepack official website" "http://www.minority-safepack.eu/.

[139] "StopTTIP" is the ECI which invites the European Commission "to recommend to the Council to repeal the negotiation mandate for the Transatlantic Trade and Investment Partnership (TTIP) and not to conclude the Comprehensive Economic Trade Agreement (CETA)". The campaign for the collection of signatures is currently ongoing and it will end on 10 July 2018. All the information are available on the official website of the ECI. "STOP TTIP" Official website: https://stop-ttip.org/?noredirect=en_GB.

fact, each reply reports that the initiative in question falls "manifestly outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties". Regarding the Commission's rejection of ECI entitled "Minority SafePack", the EGC judgement[140] annulled the decision on the basis of insufficient reasoning for the first time in February 2017, underlining the lack of specific references of the Commission to which the proposed legal acts fall outside its powers[141]. In addition, in May 2017, the EGC annulled the Commission's Decision related to the Stop TTIP case by concluding that the Commission had breached Article 11 (4) TEU, Articles 2(1) and 4(2)(b) of the ECI Regulation. However, in a previous case, the EGC ruled in favour of the Commission's decision to reject the registration of the ECI 'One million Signatures for a "Europe of Solidarity"[142].

Another institution which contributed to the ECI process is that of the Ombudsman, which examines complaints about possible delays on the part of the Commission and assesses the quality of communication or transparency during the period between the registration until the Commission's final decision.[143] As an example, the Ombudsman after examining the Commission's decision to not extend the deadline for the collection of signatures of the ECI "Stop Vivisection" opined it was not responsible for maladministration[144]. Finally, as reported in the previous section regarding the contributions to the follow-up actions to the ECI "Right2Water", the European Parliament and the European Economic and Social Committee can issue on their own-initiative respectively a resolution and an opinion on the Commission's response. The EESC, by acting as intermediary between the institutions and civil society organizations covers

[140] EU General Court Judgement of 2 February 2017 relatively to the *case Minority SafePack - one million signatures for diversity in Europe v Commission*, T-646/13, ECLI:EU:T:2017:59.

[141] Vogiatzis, Nikos (2017), *Between discretion and control: Reflections on the institutional position of the Commission within the European citizens' initiative process*, *cit*., pp. 260-261.

[142] The proposal aimed at achieving economic solidarity among the Member States. The rejection of the Commission was appealed before the EGC on 11 October 2012 by the Greek citizens Anagnostakis. (T450/12, *Anagnostakis v. Commission*: ECLI:EU: T:2015:739).

[143] Vogiatzis, Nikos (2017), *Between discretion and control: Reflections on the institutional position of the Commission within the European citizens' initiative process*, *cit*., p. 259.

[144] Decision of the European Ombudsman of 12 December 2014 closing the inquiry into complaint 2071/2013/EIS against the European Commission.

two main functions in respect to the ECI: one the one hand, it offers a platform for dialogue and information by enabling organizers to meet and build networks; while on the other hand, it helps the Commission by issuing opinions, evaluating successful initiatives and contributing to the organization of the hearings on the successful initiatives. Since 2012, it also organizes an annual “ECI Day” to invite stakeholders and ECI campaigners to meet and build networks. Moreover, it supports exchanges and meetings among the main actors by making infrastructures available to them and by managing a bibliographic database dedicated exclusively to the ECI. Besides the support coming from EU institutions, further communication and interaction with the organizers is fostered by civil society organizations and Think Tanks, such as: *The ECI Campaign*, *The ECI Support Centre*, *The European Citizens Action Service (ECAS), Democracy International* and *Initiative and Referendum Institute Europe.*[145]

3.2 Transnational networks creator

A second dimension of the ECI consists of developing horizontal connections between people from different European countries and creating transnational platforms of discussion. The proposed function was achieved through the implementation of two conditions set out in Regulation (EU) 211/2011, which concern the formation of the citizens’ committee and the country of residence of the signatories.

The first requirement for launching an ECI is to create a citizens’ committee, which must be formed by at least seven EU citizens residing in seven different Member States. (Article 3.2 Regulation (EU) 211/2011). By considering the country of residence of the citizens’ committee members of the 31 initiatives which have been registered during the period from 2012 to 2015, it is possible to

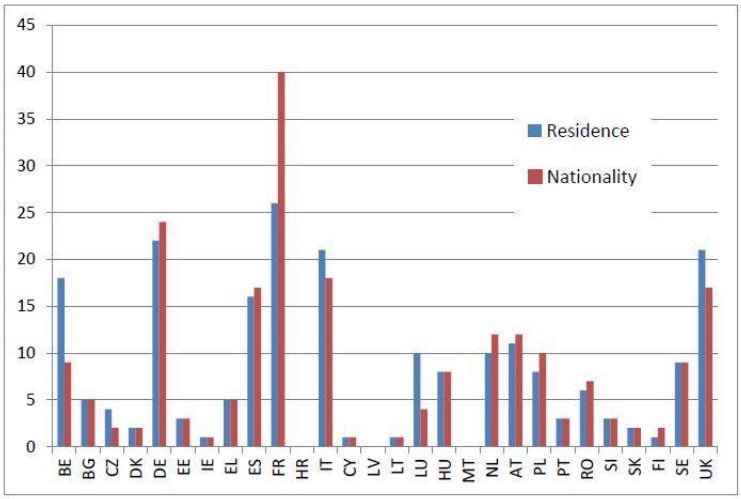
[145] Anglmayer, I. (2015), *The European Citizens' Initiative: the experience of the first three years*, European Implementation Assessment, EPRS, p.10.

analyse to what extent the created organizational networks developed over the European territory (Tab.1).

Firstly, the majority of organizers comes from countries such as France (26), Germany (22), UK (21), Italy (21) and Belgium (18) and in a minor number from Spain, Austria, Sweden. Of an overall 28 European Member States, only 3 are the countries from which none of the committee members come from.

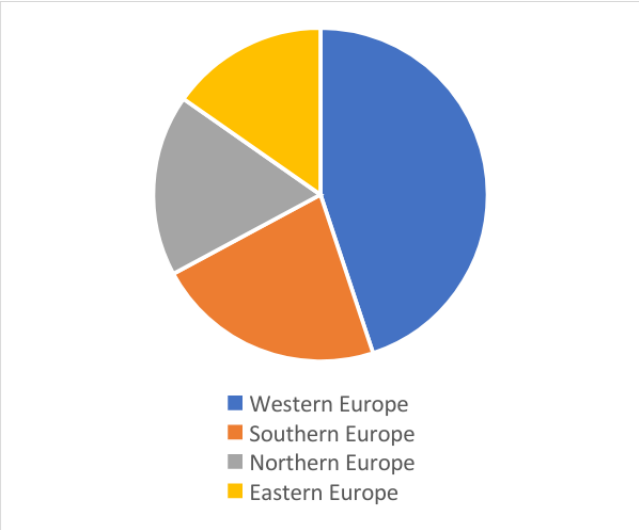
Secondly, to better understand the level of transnationality created by the heterogeneous committees, the organizers were grouped into four geographic regions which form the European Area[146], such as Northern Europe, Southern Europe, Western Europe and Eastern Europe (Tab.2). This analysis shows a large number of organizers residing in Western European Countries (97 out of 217) cooperate with a smaller number of organizers almost equally distributed in European Member States belonging to the Southern (48), Northern (38) and Eastern (33) areas.

Tab 1. Residence and nationality of the committee members of ECIs registered between 2012 to 2015 .



[146] Europe is herewith intended as a geographic regional area divided into four sub-regions according to the United Nations geoscheme. The system has been developed by the UN Statistic Division for the purpose of statistics. It must be noted that Cyprus is not included in any of the four European geographic areas, whereas a number of countries are comprised which are not EU Member States.

Tab. 2 Geographic distribution of the committee members of ECIs registered between 2012 to 2015.



Moreover, according to Regulation (EU) 211/2011, one million signatures must be gathered in at least one quarter of the Member States and additionally to such requirement a threshold has been calculated for each of the seven Member States to qualify and be taken into account. This last hurdle has given an increased level of transnationality to the democratic tool.[147] Proof of the territorial distribution is given by the statements of support gathered during the four successful campaigns. The first ECI "Right2Water" campaign exceeded the minimum requirements by gathering a total of 1,659,543 signatures from 9 different Member States; while higher numbers were reached by the second successful campaign "One of Us" which managed to obtain 1,721,626 signatures from 18 Member States. "Stop vivisection" gathered 1,173,130 signatures from 9 Member States and in the last successful ECI case "Ban glyphosate and protect people and the environment from toxic pesticides", although organizers decided to close the collection six months and 23 days in advance of the established formal deadline, they managed to gather a total of 1,070,865 signatures from ten Member States. All four campaigns reported the submission of a number of certificates coming from additional Member States, although they had not been counted in the overall number of collected signatures, either because they did not

[147] Kaufmann, B. (2012), *Transnational 'Babystep': The European Citizens' Initiative*, cit., p. 238.

reach the threshold of that country or due to the delay with which the Commission received them. In order to understand the huge transnational outreach of the campaign it is worth mentioning the number of additional statements of support, which were not included in the total number of signatures: 77,489 from 14 Member States in the case of “Right2Water” campaign; 67,988 from 10 Member States in support of the ECI “One of us”; 99,660 from 17 Member States for the ECI “Stop Vivisection”; 142,267 from 18 Member States for the ECI "Ban glyphosate and protect people and the environment from toxic pesticides".

Finally, by comparing the support received in each of the four successful campaigns, it can be seen that the Member States which were mostly involved in the campaigns were Germany, which contributed 79% of the collection of statements in the “Right2Water” campaign and 64% to the ECI “Ban glyphosate and protect people and the environment from toxic pesticides”; Italy which contributed 38% to the collection of statements for the ECI “One of Us” and with 64% to the campaign “Stop Vivisection”.

3.3 Agenda setting instrument

Beyond initiating the EU policy-making process, the ECI developed its function of bringing issues relevant for the citizens to the attention of the Commission and other institutions.

To understand the wide range of themes, which can be addressed by an ECI, it is necessary to draw a preliminary overview of the legal requirements that the proposal must meet. According to Article 11(4) TEU, the ECI may concern any "appropriate proposal on matters where citizens consider a legal act of the Union is required"; moreover, it has to be related to a policy area where the EU has competence and which falls within the framework of "the EC's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties" (Article 4.2b Regulation 211/2011). In fact, if Article 5.2 TEU provides that "the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein", detailed reference to the areas of competence is given by the first Articles of the Treaty on the Functioning of the European Union. Specifically, Article 3 TFEU set out the areas where the Union has exclusive competence (customs union, establishing the competition rules necessary for the functioning of the internal market, monetary policy for the Member States who adopted the Euro as national currency, the conservation of biologic resources in the framework of the common fisheries policy, the common commercial policy); Article 4 TFEU defines the matters on which the Union has shared competences with the Member States (internal market, social policy, economic social and territorial cohesion, agriculture and fisheries, environment, consumer protection, transport, trans-European networks, energy, area of freedom and security and justice, common safety concerns in public health matters). In addition, the third and fourth paragraphs of Article 4, as well as Article 5 and 6 TFEU provide the areas in which the Union has the competence to support, coordinate or supplement the actions of Member States (coordination of the economic, employment and social policies of the Member States, research, technological development and space, development cooperation and humanitarian aid, protection and improvement of

humanitarian health, industry, culture, tourism, education, vocational training, youth and sport, civil protection, administrative cooperation. Moreover, Article 2.4 TFEU provides that the Union has the competence to define and implement a common foreign and security policy.[148] However, the Commission cannot submit a proposal for a legal act in every area where the EU has competences, but in the case where it has the power to start the legislative process, which can follow the ordinary or special legislative procedure.[149]

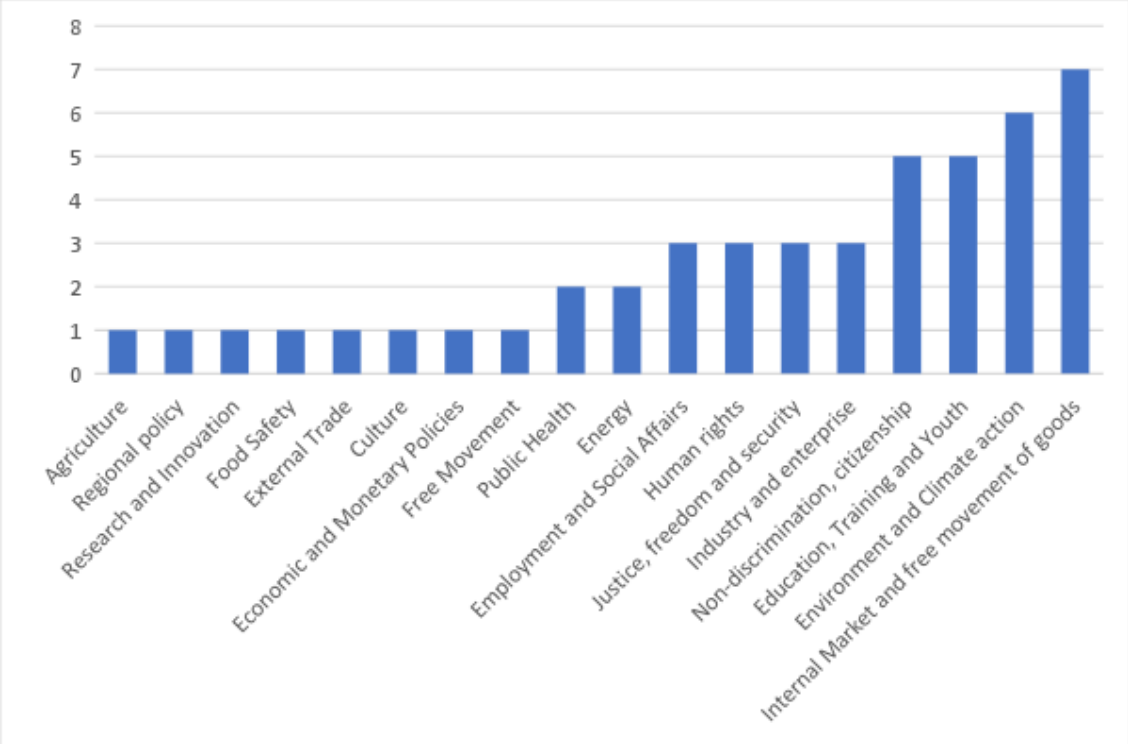
As a consequence of these conditions, the 47 registered ECIs have addressed a variety of policy areas, which include topics relative to many different disciplines (Tab. 3a). By categorizing the subject-matter of each registered initiative in terms of the policy fields of the EU which they address, the diversity of the policy fields can be detected in all the three clusters of outcomes.[150] (Tab. 3b) Firstly, a higher number of initiatives related to policy issues of internal market, environment and climate action, education and training and non-discrimination and citizenship policies. Secondly, on another level up to two initiatives addressed issues in the field of industry and enterprise, justice and freedom, human rights, employment and social affairs. Thirdly, up to two initiatives involved the other areas of energy, public health, free movement, economic and monetary policies, culture, external trade, food safety, research and innovation, regional policy and cohesion and agriculture.

[148] Adam, Roberto; Tizzano, Antonio (2014), *Manuale di diritto dell'Unione Europea*, *cit*., pp.427-428.

[149] *Ivi*, p.198

[150] The three clusters of outcome have been obtained by grouping the policy areas with similar results, namely: the first higher level comprises the cluster of policy areas which relate to a range of initiatives from 5 to 7; the second cluster includes policy areas which count a maximum of 3 initiatives; the third and lower cluster refers to the policy areas which relate to 1 or 2 initiatives.

Tab.3b Categorization of the 47 registered ECIs in terms of EU policy areas.



However, not all the issues addressed by the registered proposals contributed to the institutional agenda in their relative policy areas. In this regard, two remarks can be made by separately observing the registered initiatives and the successful ones.

Firstly, by just registering an ECI and initiating a campaign, public attention is gained and the debate on the issue in question arises. This is not only the result of the campaign process carried out in the different Member States, but also the publication of the relative information on the official ECI's Commission website. As an example of the potential influence which registered ECIs can have in starting a public discussion and shaping the EU agenda, even if they do not manage to collect enough signatures and receive the Commission's response, reference has to be made to the second registered ECI "Single Communication

Tariff Act"[151] also entitled "One Single tariff". The initiative, which requested a proposal to end the roaming fees across Europe within the framework of the European Single market, contributed to the reform process carried out by the Commission since 2012 which aimed at reducing such charges.[152] Later in 2013, the Commission adopted a legislative package to reduce prices, which followed the vote of the European Parliament and the Council to end roaming charges when travelling in the EU by June 2017. Moreover, in December 2016 the Commission adopted "the rules on the application of application of fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges"[153]. Finally, in June 2017 the "Roam like at Home" became effective and roaming charges no longer apply across the EU.

Moreover, ECI campaigns can have an impact on European debate also after having successfully registered and receiving the Commission's response. In the case of the ECI "Right2Water", it contributed to achieving a concrete result with the exclusion of water and sanitation services from privatization within the framework of the "Directive on the award of concession contracts". In addition to this, the ECI campaign triggered the Commission's commitment to improve EU's development policies to promote universal access to water and foster public-private partnerships.

Finally, the realization of an ECI contributes to bringing the institutions' attention to issues which are relevant for individual citizens while strengthening the direct relationship between the EU and its society by fostering political debate.[154]

---

[151] "One Single Tariff" Official website: http://www.onesingletariff.com.

[152] Ballesteros, M.; Canetta, E.; Zaciu, A. (2014) *European Citizens' Initiative – First lessons of implementation,* EP Study, p.31.

[153] European Commission Implementing Regulation (EU) 2016/2286 of 15 December 2016, (L344/46).

[154] Petrini, M. Celeste (2013), *L'Iniziativa dei Cittadini Europei al vaglio del Tribunale dell'Unione Europea: spunti critici e prospettive* in FEDERALISMI.IT, vol.13, p.9. Accessed on 5 December 2017.

3.4 Citizens-activating tool

If the nature of the ECI is to "empower citizens to shape the Union"[155] , citizens play a central role in initiating and participating in political debate, which is generated by the transnational platform. From this assumption stems the last dimensional function of the ECI, which focuses on individual citizens and the importance of their participation in the process. In a developing democratic society, participation is a changing concept, which is continuously revised in order to include a variety of innovative multifunctional instruments, such as the ECI. Within this framework, citizens increasingly acquire new competences and resources contributing to the merging of the private and public spheres.[156]

On one hand, if signing an ECI could be considered as an "aggregative form of political participation"[157], the over six million signatures gathered for all the registered ECIs represent a good achievement in activating citizens' participation.[158] The single citizen changes their status from private individual to active citizen and contributes to a bigger project of creating a European public sphere. This great potential was fostered since the beginning of the discussion on how to shape the regulation. Consequently, several criteria were set, which would have allowed citizens' inclusion in the broadest way.[159] In fact, the requirements for citizens to sign an initiative gives the opportunity to anyone over 18 years of age to participate. However, the procedure could reveal a bureaucratic complexity, which in certain cases limited or even prevented ordinary citizens from participating. This might have been caused by the dysfunctionality of the online collection system, or the excessive amount of

[155] European Ombudsman's decision of 4 March 2015 regarding the European Ombudsman own-initiative inquiry OI/9/2013/TN concerning the European Commission.

[156] Van Deth, Jan W. (2016), *What is Political Participation?* in OXFORD RESEARCH ENCYCLOPEDIA, POLITICS, p.11.

[157] Boronska-Hyryniewiecka; Monaghan (2017), *The European Citizens' Initiative as Democratic Legitimacy-Enhancing Tool: Toward a Broader Conceptualization, cit.,* p.54.

[158] *Ivi,* p.56.

[159] Morelli, Michele (2011*), La democrazia partecipativa nella governance dell'Unione europe*a, Rome, Giuffrè Editore, p.50.

personal data requested by the Member State authorities.[160] With this regard, the specific case of the ECI "Stop TTIP" showed how citizens' commitment to a cause can trigger multiple engagement processes independently of the institutional support received. In fact, after the Commission rejected the attempt to officially register the ECI in September 2014, the organizers managed to collect over three million signatures by carrying out the campaign in the form of a self-organized ECI.[161]

On the other hand, citizens' participation and representativeness develops also on the organizational side of the ECIs. In the majority of cases, ECI campaigns have been carried out by civil society representatives, whereas only few proposals clearly expressed the producers' interests. As an example, only in the case of the ECI "European Free Vaping initiative", which aimed at excluding e-cigarettes from being regulated by the 2014 Tobacco Products Directive, the proposal reported clear evidence of a specific producer's interest. With this regard, the large range of issues addressed by each ECI proves that the proposals which clearly aimed at achieving results in the economic sphere have not prevailed over the others (Tab 3a). Moreover, none of the successful initiatives was primarily aimed at achieving the interests of economic representatives or entrepreneurial individuals.[162] Therefore, by representing a new channel of participation, the ECI helped in making CSO participation more balanced and representative, overcoming the initial fears that powerful interest groups, NGOs and unions could have taken advantage of the democratic instrument to gain leverage in the most favourable legislation.[163] Finally, this result has been achieved thanks to the social movements existing behind the ECI campaigns. In fact, the first three initiatives having achieved one million

---

[160] Boronska-Hyryniewiecka; Monaghan (2017), *The European Citizens' Initiative as Democratic Legitimacy-Enhancing Tool: Toward a Broader Conceptualization, cit.,* p. 57.

[161] Vogiatzis, Nikos (2017), *Between discretion and control: Reflections on the institutional position of the Commission within the European citizens' initiative process*, *cit*., p. 258.

[162] Zeegers, Nicole (2016), *Civil Society Organizations' Participation in the EU and Its Challenges for Democratic Representation* in POLITICS AND GOVERNANCE, vol.4, n.4, pp.32-34.

[163] Berg, Carsten; Thomson, Janice (Eds.) (2014), *An ECI That Works! Learning from the first two years of the European Citizens' Initiative,* Bonn, The ECI Campaign, p. 73.

signatures, “One of Us”, “Stop Vivisection” and “Right2Water” represent the core to established social movements.[164] However, the support of well-established organizations or non-partisan consultative institutional bodies, such as the EESC, which with its 350 members of all Member States helped in connecting civil society from all over Europe, proved to be significant to the successful campaigns. [165]

Tab. 3a The 47 registered ECIs and the relative EU Policy Areas addressed listed in chronological order.

	Registered ECI	EU Policy Area	Other Policy Areas
1	Fraternité 2020-Mobility. Progress. Europe.	Education, training and youth	
2	EU Directive on Dairy Cow Welfare	Agriculture	Animal Welfare
3	Water and sanitation are a human right! Water is a public good, not a commodity!	Human rights	Development and cooperation
4	Single Communication Tariff Act	Internal market and free movement of goods	
5	One of us	Human rights	
6	Let me vote*	Non-discrimination and citizenship	
7	Stop vivisection	Research and innovation	
8	High Quality European Education for All	Education, training and Youth	
9	Responsible waste incineration	Environment and climate action	

[164] Greenwood, Justin; Tuokko, Katja (2016), *The European Citizens’ Initiative: the territorial extension of a European political public sphere?* In EUROPEAN POLITICS AND SOCIETY, vol. 18, n.2, p. 11.
[165] EESC (*2015*), *Your guide to the European Citizens’ Initiative,* 3rd edition*, p.5.*

10	Suspension of the EU Climate & Energy Package*	Energy	Environment and climate action
11	Central public online collection platform for the European Citizen Initiative	Non-discrimination and citizenship	
12	End Ecocide in Europe: A Citizens' Initiative to give the Earth Rights	Environment and climate action	
13	European Initiative for Media Pluralism*	Internal market and free movement of goods	Media and Audiovisual
14	"30 km/h - making the streets liveable!"	Environment and climate action	
15	End EU–Switzerland Agreement on Old MS Single Market Free Movement of People	Internal market and free movement of goods	Free Movement
16	Single Communication Tariff Act*	Internal market and free movement of goods	
17	Unconditional Basic Income (UBI) - Exploring a pathway towards emancipatory welfare conditions in the EU	Employment ans social affairs	
18	End Ecocide in Europe: A Citizens' Initiative to give the Earth Rights*	Environment and climate action	
19	Let me vote*	Non-discrimination and citizenship	
20	ACT 4 Growth	Industry and enterprise	Employment and Social Affairs
21	Teach for Youth -- Upgrade to Erasmus 2.0	Education, training and youth	
22	Do not count Education Spending as part of the Deficit! Education is an Investment!	Education, training and youth	
23	European Initiative for Media Pluralism*	Internal market and free movement of goods	Media and Audiovisual
24	Weed like to talk	Public health justice and home affairs	Justice and Home Affairs

25	European Free Vaping Initiative	Industry and enterprise	Regional policy
26	Turn me Off!	Energy	Environment
27	New Deal 4 Europe- For a European Special Plan For Sustainable Development and Employment	Industry and enterprise	Environment/Information society/Employment and Social Affair
28	MOVEUROPE	Culture	Tourism
29	An end to front companies in order to secure a fairer Europe	Internal market and free movement of goods	Economic and Monetary Affairs
30	For a socially fair Europe! Encouraging a stronger cooperation between EU Member States to fight poverty in Europe	Employment ans social Affairs	
31	« On The Wire »	Justice, freedom and security	
32	Fair Transport Europe – equal treatment for all transport workers	Employment and social affairs	Free movement
33	Stop Plastic in the Sea	Environment and climate action	
34	Wake up Europe! Taking action to safeguard the European democratic project	Human rights	
35	Decriminalise Cannabis	Public health	Justice, freedom and security
36	Mum, Dad & Kids - European Citizens' Initiative to protect Marriage and Family	Justice, freedom and security	Judicial Cooperation
37	Let'sfly2Europe: Enable safe and legal access to Europe for refugees!	Justice, freedom and security	Policies on border checks, asylum and immigration
38	People4Soil: sign the citizens' initiative to save the soils of Europe!	Environment and climate action	

39	More than education - Shaping active and responsible citizens	Education, training and youth	
40	European Free Movement Instrument	Free movement	
41	Ban glyphosate and protect people and the environment from toxic pesticides	Food safety	Public Health/Environment
42	EU Citizenship for Europeans: United in Diversity in Spite of jus soli and jus sanguinis	Non-discrimination and citizenship	
43	Minority SafePack – one million signatures for diversity in Europe	Regional policy. Economic, social and territorial cohesion	
44	Retaining European Citizenship	Non-discrimination and citizenship	
45	Let us reduce the wage and economic differences that tear the EU apart!	Economic and monetary policies	
46	Stop Extremism	Internal market and free movement of goods	Justice, Freedom and security
47	Stop TTIP	External trade	

* ECIs registered for a second time after their withdrawal and currently archived due to insufficient support.

III.

Impact and improvement of the ECI

Table of contents

The chapter aims to understand if the initial expectations can be met by the ECI, considers the limits of its regulatory framework and the provisions conceived for its revision. The first section starts with assessing the general trend of registered ECIs over the time. It shows that after an initial enthusiasm for the participatory instrument, the number of proposals dropped due to several difficulties encountered by its implementation.

Although different opinions exist on what makes the ECI successful, there is widespread agreement on the fact that it has not yet fulfilled its potential. This chapter aims at identifying those elements that have to be reviewed in order to make it the future of participatory democracy. For each of the four areas of impact of the ECI several problematic issues have been identified and combined with the provisions included in the proposal for a review of the Regulation (EU) 211/2011. For each of the four functional dimensions, the reform is expected to meet certain conditions in order to have a positive impact on democratic quality, namely communication enhancer, transnational networks creator, agenda setting and citizens' activating tool. It shows that a number of structural and technical problems can be overcome by means of a new regulatory framework for the ECI. Finally, an analysis of the process of review that led to the ongoing discussion on the revision of the ECI regulation is developed in the third section of the chapter. In this context, attention is given to the societal and institutional actors which contributed to formulate several solutions.

1. Assessing the trend of the registered ECIs

Within the bigger framework of the overall understanding of the implementation of the ECI as instrument of participatory democracy, an assessment of the registered initiatives over the time develops throughout three main periods of time. An initial enthusiasm for the ECI can be attributed to both the needs of the EU to engage with civil society to improve its democratic legitimacy and the aspects of novelty of the instrument. Successively, a disillusion with the instrument is linked to the first experiments of the hurdles represented by the different steps of the procedure. Finally, 2017 appears to be a year in which along with the increasing debate of the Future of Europe and the renewed attention towards participatory democracy, the ECI begins to redefine itself.

1.1 High levels of initial interest

After the entry into force of Regulation (EU) 211/2011, a widespread enthusiasm for the new democratic tool arose and from only April to December 2012, the Commission received 27 proposals for registration, of which 16 were finally registered.

The novelty of the instrument, along with the perceived need to embrace democratic participation in support of the traditional tools of representative democracy contributed to the initial participation. From early 2000s in fact, participatory solutions were conceived to reduce the high level of democratic deficit. New strategies to increase the EU democratic legitimacy arose alongside the importance given to the interaction between the EU institutions and civil society. Mechanisms were conceived to develop consultation policies with civil society organizations to improve policy making, gain expertise from civil society and reconnect the institutions with the citizens and their interests. Such attempts to create civil dialogue were largely criticized for not managing to bring ordinary citizens into the policy making-process. Instead, they created their own institutional dynamics and fostered collective action for building a communicative

direct channel with the decision makers, without enabling the mobilisation of large numbers of citizens. Although consultations represent important contributions to a level where the different types of interests meet, the ECI represented a first significant innovation of transnational participatory mechanism based on the mobilization of individual citizens aimed at transforming the relations with the European institutions.[166] The high interest in the ECI was the consequence of high expectations of an instrument which presented itself as able to mobilize civil society across Europe, enhance engagement in the European decision-making and finally bridge the EU institutions with the public while producing output legitimacy.[167] One of the main innovations brought about by this instrument was the possibility for civil society actors to make political claims by presenting them at the same time at two different levels of the European public and of the EU institutions. Previously, the interaction developed only as a response of a Commission proposal by leaving the institutions to frame the issues. Moreover, regarding its design, the ECI presented itself as a way to redefine the civil society participation in the EU by connecting the policy debate, which takes place at internal institutional level with political debate at the external level. In fact, only issues widely discussed in European public spheres can manage to achieve one million signatures and contribute to the policy agenda. As a result, it was increasingly needed to link the policy debate to the political debate, meaning the politicization of European issues. With this process the ECI could then have an impact on the European democracy and include the contributions of new actors. [168]

[166] Bouza, G. (2013) *The significance of the European Citizens' Initiative for pan-European participatory democracy,* IDEA, pp. 5-6.
[167] Oleart, A.; Bouza, L. (2017), *Democracy at Stake: Multipositional Actors and Politicization in the EU Civil Society Field* in JOURNAL OF COMMON MARKET STUDIES, p. 3.
[168] *Ivi,* p. 4-6.

1.2 The rise of a damaging narrative

However, from 2013 the number of registered initiatives started dropping and in 2016 there were only three registered initiatives. (Tab. 4a and 4b). Citizens' disaffection towards the ECI can be explained as the result of the numerous problems which arose throughout its implementation and reveals the need for a reform of the whole process.[169] Moreover, with the increasing size of the EU, which in 2004 saw one of the major waves of expansion with the accession of 10 new Member States, it became even more difficult for citizens to make their voice heard as the possibility of effective participation decreased.[170] In 2014, the huge number of registration refusals almost equated the registered initiatives, namely 40% of the total, fostering criticism towards the restrictive approach of the Commission. Consequently, the transnational debate suffered from this trend, which raised doubts about the appropriateness of the registration tests carried out by the Commission. In fact, what influenced the public opinion most was the fact that the rejection of the proposals was explained as non-compliance with Article 4(2)(b) of the Regulation, considered to "fall manifestly outside the framework of the Commission's power to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties". This was enough to discourage people from using the ECI, more than what resulted from a careful analysis of the real theme of the proposals. In fact, in most of the cases the inadequacy and the lack of clear legal basis was evident even in their title of the ECI, such as: "abolishing the European Parliament", "creating a European Public Bank focused on social, ecological and solidarity development", "singing the European anthem in Esperanto". Moreover, a closer look at the Commission's arguments in support of those refusals legitimizes the decisions in many cases. Predictable rejections concerned ECIs which requested a treaty revision, such as the "My Voice Against Nuclear Power", which aimed at abolishing nuclear power plants opposing what was established in the Euratom Treaty. Moreover, other

[169] Ponzano, P. (2015), *L'iniziativa Dei Cittadini Europei (ICE): Teoria E Pratica* in SCIENZE E RICERCHE.IT p. 4. Accessed on 11 January 2018.
[170] Jensen, T. (2009), *The Democratic Deficit of the European Union* in LIVING REVIEWS IN DEMOCRACY, vol.1, n.1, pp. 1-8.

proposals falling outside the Commission's competences had to be solved at Member State level concerned provisions on animal welfare. As an example, the ECI "Abolition of Bullfighting and the Use of Bulls in Festivals Involving Cruelty and Torture for Entertainment in Europe" was considered to conflict with Article 13 TFEU, which provides that Member States are responsible for legislative or administrative provisions on customs related to cultural traditions or regional heritage. Therefore, the Commission recognised bullfighting and the related festivals as cultural traditions which were part of the heritage of a Member State. However, despite actually having reasons for rejection, the high number of refusals a damaging narrative emerged about an institutional approach which obstructed citizens' involvement. [171]

The institutional design of the European Union reveals both its democratic character and the degree of involvement of citizens and national democratic institutions with the Union.[172] In fact, the European Union sets its basis on the principles which are common to all its Member States, namely: the principle of freedom, democracy, equality, respect for human rights and the rule of law. This is provided by Article 2 TEU, which clearly states that among the others, the democratic value is at the basis of the European Union as well as it is common to all its Members States. [173] Democracy is therefore a condition and a consequence of being part of an European political society.[174] In this context, citizens' involvement in the process of decision making is one of the core requirements of any democratic system. Two approaches rely on citizens' participation in a democratic environment. Firstly, in a representative democracy, citizens elect their representatives who have the role of debating and passing laws. Consequently, only by voting, citizens can make sure that governments are accountable and responsive to people. Secondly, in a direct democracy, citizens are personally involved in the process of deliberation and personally vote. In this

[171] Mendez, F.; Mendez, M. (2017) *Promise and Perils of Direct Democracy for the European Union, cit.,* pp.71-75.
[172] LB, JHR (2017) *Talking about European Democracy* in CONSTITUTIONAL LAW REVIEW, vol. 13, n.2, p. 209.
[173] Ivi, *cit.,* pp. 208-209.
[174] Ivi, *cit.,* p. 210.

case, citizens' scope of action is not limited to the act of voting. In fact, they actively participate in political parties of interest groups, they attend political meetings or public hearings and they discuss political issues among each other or with public officials. In this regard, interest groups and civil society organizations are increasing their activities and bringing the issues to the decision-making institutions through initiative petitions and *referenda*. However, citizens involvement brings advantages in both cases of direct and representative democracy: it enhances their awareness of the issues and encourages their feeling of responsibility and belonging to a community. However, this depends on the level of knowledge and awareness of people about the work of the European Union.[175] In fact, evidence shows that citizens' knowledge of the EU is strictly linked to their participation in European governance.[176] Citizens' awareness of the available forms of civic engagement with EU politics is the main requirement for their participation in the European governance.[177] Moreover, a deeper political knowledge of the EU ensures citizens' trust and reliance on the governmental and political subjects.[178] In this regard, participatory democracy aims at creating active knowledgeable citizenry, who is able to develop an interest in governmental affairs.[179]

However, the interest of citizens in the work of the EU is not sufficient to guarantee their awareness of the decision-making process. In fact, openness and transparency of European governance depend on the quantity and quality of information realized by political subjects governing the EU as well as by national policy-makers. In addition to this, a distinction can be made between the concept of EU transparency and the one of EU publicity. The first one is guaranteed when the acts and processes are openly published and accessible to everyone; while

---

[175] Sergent, L., T., (2009), *Contemporary Political Ideologies a Comparative Analysis*, Wadsworth Cengage Learning, p.63

[176] Fanoulis, E. (2018), *Knowledge of the EU and citizen participation in European governance: an agonistic democracy perspective* in EUROPEAN POLITICS AND SOCIETY, vol. 19, n. 1, 2018, p.1.

[177] Ivi, cit., pp. 7-8.

[178] Ivi, cit., p. 9.

[179] Pateman quoted in Held, D. (2006) *Models of Democracy*, 3rd Edition, Cambridge, Polity Press, p.223.

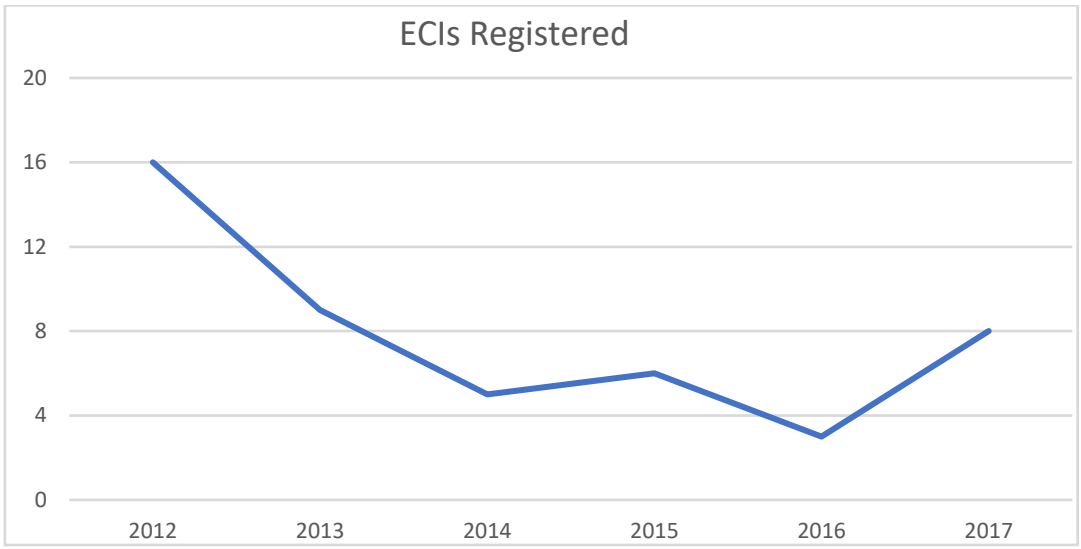
publicity is guaranteed by three sources: documents and meetings, presentations of the EU by member-states and the EU conventions.[180] Therefore, provisions have been included in the Treaties in order to guarantee high standards of good governance, and civil society participation.[181] In particular, the rights related to transparency are provided by Article 15 TFEU, while Article 42 of the Charter of Fundamental Rights of the European Union establishes the right of access to the documents issued by the European Parliament, the Council and the Commission.[182]

Table 4a. Registration of initiatives per year.[183]

Number of:	**2012**	**2013**	**2014**	**2015**	**2016**	**2017 (Jan - Sep)**	**Total**
Requests for registration	27	16	8	5	5	5	**66**
Registered initiatives	16	9	5	6	3	8	**47**
Refused requests for registration	7	8	5	0	0	1	**21**

[180] Fanoulis, E. (2018), *Knowledge of the EU and citizen participation in European governance: an agonistic democracy perspective, cit.,* p.4.
[181] Article 15 (1) TFEU.
[182] Adam, R.; Tizzano, A. (2014), *Manuale di diritto dell'Unione Europea, cit.,* p. 425-426.
[183] Table from the Commission Staff Working Document Accompanying the Proposal for a Regulation of the European Parliament and of the Council on the European Citizens' Initiative, SWD (2017) 294 final, p.19.

Table 4b. Registered ECIs from 2012 to 2017.



1.3 A new call for participatory democracy?

More recently, in 2017 the number of initiatives registered slightly increased. This could be seen as the consequence of three developments in the history of the ECI.

Firstly, two important rulings of the EGC annulled the Commission decision to refuse the registration of the ECI "Minority SafePack"[184] and "STOP TTIP"[185] and allowed their successive registration. In the first case, the proposal requested new measures for protecting people belonging to national linguistic minorities and the preservation of cultural and linguistic diversities in the Union. Although the ECI could be partially registered, it was rejected on the grounds that partial registration was not provided by the Regulation. The EGC annulled the Commission decision since it did not provide detailed reasons on which one of the 11 proposed measures fell outside its competence. As a response the

[184] EU General Court Judgement of 2 February 2017 relatively to the case *Minority SafePack - one million signatures for diversity in Europe v Commission*, T-646/13, ECLI:EU:T:2017:59.
[185] EU General Court Judgment of 10 May 2017 relatively to the case *Michael Efler and Others v Commission,* T-754/14, ECLI:EU:T:2017:323.

Commission registered the initiative while excluding 2 of the 11 proposed acts. It showed that after the “Minority SafePack” ruling, the Commission was prevented from refusing the registration based on superficial reasons, while organizers can more easily resubmit refused proposals. The second example, which opened the way to an increase in the registration rate is represented by the ECI “STOP TTIP”, whose registration was refused on the basis of two main claims. One the one hand, the negotiations for International Trade Agreements such as TTIP and CETA do not imply legal acts but internal preparatory acts between the EU institutions, thus are not contestable by the ECI. On the other hand, it was maintained that the Commission could not propose not to adopt a legal act, therefore it was not able to comply with the request. The General Court rejected the listed arguments by maintaining that the principle of democracy, which was expressed by the participation of citizens, required the interpretation of legal acts. Finally, the Commission decided to register the initiative in relation to its legal admissibility, signifying the validity of initiatives which request the signature or conclusion of international agreements.[186]

Secondly, the latest slight increase in the registration rate of the ECI can be linked to the rising interest of European citizens towards the future of the EU. Concerning the recent political and institutional developments, which characterized the European public sphere, the demand for more reforms in the field of participatory democracy can be conceived within the framework of the broad debate on the future of Europe which started with the European Commission’s White Paper of 1 March 2017. A number of Reflection Papers have been published relating to different areas of investigation which attempt to address the challenges of the European Union for the years ahead. By assessing the wide range of actions in fields related to globalisation, the impacts of new technologies on society and jobs, the security concerns and the rise of populism is to draw different scenarios to guide the future design of a Union which is increasingly felt too distant or interfered too much with citizens’ day-to day lives.

[186] Mendez, F.; Mendez, M. (2017) *Promise and Perils of Direct Democracy for the European Union, cit.,* pp. 73-75.

In addition, the Commission's State of the Union of September 2017 included among the priorities set for the year ahead, the foreseen revision of the ECI Regulation. In particular, the provision under Priority 10 entitled "A Union of democratic change", points out, together with the initiatives to be launched or completed by end 2018, that the ECI will need to be reformed in a way that it will be "more accessible, user-friendly and easier for organisers and supporters to use". At the same level the debate on the future of Europe, which started with the White paper is expected to continue through citizens' dialogue, interaction with national Parliaments and the regions.[187] In this context, the Eurobarometer pool of April 2017, shows a quite broad support for the EU, counting the 57% of respondents in favour of EU membership, namely the 4% more than the results of September 2016. Besides, the number of people interested in EU affairs increased from 54% from September 2015 to 56% in April 2017. These results combined with the growing sense of dissatisfaction with the EU which amounts to 47% of the respondents compared to the previous 43%, contribute to the renewed need for resorting to the participatory forms like the ECI.[188] Moreover, by analysing the theme of the latest registered proposals, two are related to the citizens' rights in the context of the withdrawal negotiations of the EU with the United Kingdom. In these cases, the ECI could represent the best solution for citizens to make their concerns heard since they are directly involved in the process. The ECI "EU Citizenship for Europeans: United in Diversity in spite of *jus soli* and *jus sanguinis*" proposes to keep the nature and purposes of the European citizenship separated from the Member state nationality; while the other ECI entitled "Retaining European Citizenship" aims to retain the rights of EU citizenship to move and reside freely in Europe. A third proposal within the context of the UK withdrawal, "Stop Brexit" was submitted and then rejected by the Commission because legally it was not admissible. This is an additional proof of the potential of the direct instrument to function as a platform for mirroring

[187] Authorised version of the State of the Union Address 2017, p.32.

[188] Nancy, J. (2017), *Two years until the 2019 European elections*, *Special Eurobarometer of the European Parliament,* Study Public Opinion Monitoring Series, pp. 25-27.

issues of primary concern and which are at the centre of the international public debate.

Thirdly, the expected increase of registered proposals can be considered as the consequence of the steps taken in light of the revision of the ECI Regulation, whose process and proposal for a revision will be analysed in the next sections. The recently conducted 12-week long public stakeholder consultation also showed a great awareness among stakeholders and civil society organizations, which contributed to give 5 323 responses.

2. ECI shortcomings and issues for reform

Although the successfully completed initiatives prove that the Regulation technically works, the full potential has not been achieved yet, due to a number of obstacles posed by the way of Regulation (EU) 211/2011, which has been designed and successively implemented. Different contributions given in view of the revision of Regulation, underline several shortcomings which prevent the ECI from achieving its objectives. Both structural and procedural problems are herewith categorized in the ECI areas of impact, which have previously been selected: communication enhancer, transnational networks creator, agenda setting, citizens' activating tool. Moreover, for each area the specific provision included in the Proposal for a Regulation of the European Parliament and of the Council on the ECI of 13 September 2017[189] (from now referred to as "the Proposal") is highlighted and conceived with the aim to positively impact the effectiveness and efficiency of the instrument (Tab.5).

[189] Regulation 2017/0220(COD), (COM (2017) 482 final).

2.1 Communication enhancer

Regarding the ECI dimension related to the role of bridging communication between the institutions and civil society, shortcomings have been identified with regard to the degree of clarity and transparency of the initiatives at the registration stage.

Firstly, one of the major problems to be overcome is the gap of awareness of the instrument from the side of the European citizens.[190] In fact, a low level of knowledge of the ECI has been assessed among organizers, citizens and media representatives. In this regard, within the first years of experiences, the need for more information and coordination in all Member States emerged with the engagement of regional, national and European representative offices in order to spread the concept and the functioning of the ECI.[191] A number of campaigns showed a high awareness of the ECI in some Member States, due to celebrity endorsement or television or radio coverage, which determined a widespread support in the signature collection phase. As an example, half of the German citizens knew about the ECI, after a comedian's sketch on television featured the issues behind Right2Water.[192]

In addition, multilingualism proved to be an obstacle to the publicization of the campaigns in all the Member States, due to the lack of language expertise by organisers and the high costs of translation services. Being a precondition, organizers would have found the support of the Commission more helpful in translating the main information, than having to focus their own resources in producing translated versions and submitting them to the Commission to check validity.[193] In 2015, of the total of 300 translations published in the ECI register, with an average of 11 languages per proposal, one third of them had to be revised

---

[190] Rodean, N. (2014), *Iniziativa Partecipativa In Europa: Un Passo Verso La Democrazia Costituzionale, cit.,* p. 491.

[191] Rodean, N. (2015), *La resa dei conti: il primo triennio dell' European bottom-up right* in FEDERALISMI.IT vol.18., p.4.

[192] Greenwood (2016), p.5.

[193] Rodean, N. (2015), *La resa dei conti: il primo triennio dell' European bottom-up right, cit.,* p.5.

one or more times by the organizers after the Commission's check.[194] In this area, along with fostering the already existing measures to provide information and assistance to the organizers, the Proposal comprises an online collaborative platform for the ECI, which offers support to organizers by performing different functions, such as: creating a discussion forum, delivering information and advices and helping with the translation of the main elements of the initiatives in all official languages (Article 4.2). Moreover, under the same Article a common requirement is set for all Member States to establish one or more contact points with the aim of offering assistance to the organizers. Furthermore, according to the current Regulation, in order to collect the statements of support online, organizers must build their own online collection system according to several technical indications. This constituted a huge burden for organizers, who could receive partial support from the institutions. The Proposal established that the Commission must provide a central online collection system, while living the possibility for organizers to build their own.

2.2 ECI and technological improvements: Towards e-democracy?

Particular attention has to focus on the issues concerning the technological aspect of the ECI. Overall, the instrument appears to adapt to the new era where democracy is created by connecting the internet to the political system. Several aspects of information and communication technology can be improved to enable the ECI to develop democracy efficiency and effectiveness, while avoiding the obstacle to completing the whole process of realization of an initiative.[195]

In the recent years a new interest arose among scholars, public and political actors towards the use of Information and Communication Technologies (ICTs) to shape governance, the state and democracy. Three main reasons can be traced behind the rise of this field of research on e-democracy. Firstly, the crisis

[194] EP Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative of 31 March 2015, COM (2015) 145 final, p. 8.

[195] Chadwick, A. (2003), *Bringing E-Democracy Back In. Why It Matters for Future Research on E-Governance* in SOCIAL SCIENCE COMPUTER REVIEW, vol.21, No. 4, pp. 444-445.

of legitimacy in the traditional forms of politics, which relies on the role of political parties and the intermediation of actors of representative democracy. Secondly, an increasing request for participation from the citizens' side due to the high level of representative deficit. Thirdly, the development of technologies and informatic platforms fostering active participation and civic engagement. In this context new terms have been brought into the common language, namely: e-Government, e-Administration and e-Democracy.[196] Although the three concepts are intertwined, a preliminary definition of e-Government is necessary to understand that the other two concepts refer to different forms of its application. E-Government is a new philosophical approach, which has been adopted by public institutions to improve public administration through the development of technical and juridical tools based on the use of ICT. Consequently, the institutional actors aim at improving public services, strengthening the democratic process and supporting public policies by bringing citizens closer to the administrative side. Therefore, on the one hand, e-Administration refers to the adoption of new procedures and relational structures within public administration. While on the other hand, all the procedures and interactions between the citizens and the institutions fall within the concept of e-Democracy. The two terms of e-Administration and e-Democracy together create a new Governance, namely: the e-Governance.[197] Furthermore, the concept of e-Democracy can be interpreted according to four different meanings. Firstly, the term refers to a technological form of democracy, which relies on the large availability of new informatic technologies and the internet. Secondly, the concept of e-Democracy describes the application of the principle of democracy into technology, namely the possibility to use the internet to implement the rights of freedom and equality. Thirdly, the term depicts a form of democracy where technology has a central role. In this case, e-Democracy implies the use of new tools to further develop and support democratic

[196] De Blasio, E. (2014), *Democrazia Digitale-Una piccolo Introduzione*, Roma, LUISS University Press, pp.53-54.
[197] Nannucci, R.; Biasiotti, M. A. (2004), *Verso nuove forme di democrazia partecipativa: esperienze, metodologie e prospettive dell'e-Democracy* in INFORMATICA DEL DIRITTO, vol. 13, n.1-2, pp. 75-76.

participation, control and decision-making. Finally, the concept represents a new third way of democracy, which is created aside to the traditional models of representative and direct democracy.[198] Besides these definitions, some experts in this area of studies maintain that e-Democracy implies the use of ICT to foster citizens' participation and enhance a direct cooperation between the actors involved in the decision-making process.[199] Political participation is an area of implementation of e-Democracy, where information and communication technologies are used to connect citizens with the institutions.[200] In this regard, an increasing number of online practices make use of ICTs to create new spaces of political communication and realize different models of democracy, such as: communitarian, liberal individualist or deliberative.[201] Firstly, cyber-groups and virtual communities generate a superficial law level of content exchange, developing as weak forms of democratic participation.[202] Secondly, liberal individualist online initiatives are created for the purpose of information and direct communication of individuals with the decision makers.[203] Thirdly, actions of deliberative democracy are developed through the creation of forums, where informal public interaction and critical discourse take place. In this case civil societies, web publishing individuals and civic organizations contribute in the creation of deliberative practices which realize a public sphere at large. Only such public sphere lays down the basis of a strong model of democracy.[204]

Besides, other areas of application of e-democracy with democratization effect have been: consultation, internal democratization of the public sector, involvement of users in designing and delivering public services and diffusion of

---

[198] P. Costanzo quoted in Nannucci, R.; Biasiotti, M. A. (2004), *Verso nuove forme di democrazia partecipativa: esperienze, metodologie e prospettive dell'e-Democracy, cit.,* pp. 79-80.
[199] Nannucci, R.; Biasiotti, M. A. (2004), *Verso nuove forme di democrazia partecipativa: esperienze, metodologie e prospettive dell'e-Democracy cit.,* p. 80.
[200] Chadwick, A. (2003), *Bringing E-Democracy Back In. Why It Matters for Future Research on E-Governance, cit.,* p. 448.
[201] Dahlberg, L. (2001), *The Internet and Democratic Discourse: Exploring the Prospects of Online Deliberative Forums Extending the Public Sphere* in INFORMATION, COMMUNICATION & SOCIETY, vol. 4, n.4, p. 616.
[202] Ivi, cit., 617.
[203] Ivi, cit., 618.
[204] Ivi, cit., 621-622.

open sources collaboration in public organizations. Moreover, the development of informatic networks and platforms has enhanced the attention towards those communicative instruments which facilitate civic participation.[205]

In this context, if governments use ICTs to achieve a higher level of democratization, e-Government has a positive impact on several areas. Firstly, it helps in reducing the costs of communication activities. Secondly, it increases the responsiveness to users' demands by guaranteeing, rapidity and high-quality information. Thirdly, through e-Governance, the distance between the government and the citizens is reduced by offering convenient accessible and punctual services.[206] Furthermore, e-Governance guarantees a higher level of transparency and security, which at European level require the adoption of common measures for all Member States.[207]

The procedural character of the ECI reveals the strong relationship between the instrument of participatory democracy and technology.[208] The importance of technology as "a tool for encouraging citizen participation" in relation to the ECI has also been recognised by the European Parliament in its Resolution of 28 October 2015. The Commission was urged to provide software for the online collection of signatures which is more user-friendly and accessible. In fact, updating and adaptation of the online collection system to the new social and digital media campaign tools was felt necessary. 55% of the statements of support collected by the three successful initiatives, "Right2Water", "One of us" and "Stop Vivisection", were from online sources. They represent the favoured

---

[205] Nannucci, R.; Biasiotti, M. A. (2004), *Verso nuove forme di democrazia partecipativa: esperienze, metodologie e prospettive dell'e-Democracy, cit.,* p. 78.
[206] Chadwick, A. (2003), *Bringing E-Democracy Back In. Why It Matters for Future Research on E-Governance* in SOCIAL SCIENCE COMPUTER REVIEW, vol.21, No. 4, pp. 444-445.
[207] Nannucci, R.; Biasiotti, M. A. (2004), *Verso nuove forme di democrazia partecipativa: esperienze, metodologie e prospettive dell'e-Democracy* in INFORMATICA DEL DIRITTO, vol. 13, n.1-2, p. 78.
[208] Rodean, N. (2014), *E-ICE -Strumento Partecipativo Elettronico Nel Panorama Costituzionale Europeo* in RIVISTA ITALIANA DI DIRITTO PUBBLICO COMUNITARIO, year XXIV, vol. 5., p. 1159.

system for the ECI “Right2Water”, counting the 80% of statements of support, and for the ECI “Stop vivisection”, which were the 60%.[209]

However, experiences showed that the malfunctioning of online collection systems have led to delays and may have even caused the failure of initiatives which could not collect the signatures in time.

Two specific provisions of the revision of the Regulation contribute to improve the technological features of the ECI, namely the introduction of the online collaborative platform and the establishment of the central online collection system. The European Commission conducted four studies on the impact of Information and Communication Technology (ICT) related to the implementation of the ECI, with focus on the online collection systems, the use of electronic identification and the data requirements for submitting statements of support and two outcomes characterized the research, namely the electronic identification system and the data requirements and online collection system. As requested by the European Parliament, the Commission has been given the task to implement a pilot Project on "New technologies and Information and Communication Technology (ICT) tools for the implementation and simplification of European Citizens’ Initiatives (ECI)". According to this, the online collaborative platform[210] on the ECI will be built with the aim to help the potential organizers to find partners, collaborate with experienced participants, prepare campaigns and get funding. This will also cover the informative function by providing a learning space where guidance materials are made available, while direct support will allow organizers to pose questions on a wide range of issues comprising also legal admissibility checks.[211]

---

[209] EP Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative of 31 March 2015, COM (2015) 145 final, p. 7.

[210] The Collaborative Platform was firstly proposed by the European Parliament and then announced by the Commission on the 2017 ECI Day.

[211] European Ombudsman Strategic Initiative of 11 July 2017, *Suggestions to improve the European Citizens Initiative procedure*, (SI/6/2017/KR), p.2.

2.3 Transnational networks creator

Regarding the transnational character of the instrument, managing the differences in the implementation among the Member States could lead to several problems. By allowing each Member State to set the personal data requirements for the collection of signatures on the basis of 13 different forms, on the one hand guarantees them a certain degree of autonomy, but on the other hand has added complexity to the process. A gap is thus created between Member States, which could compromise the collection of signatures facilitating those countries where less information is needed, while excluding some groups of citizens in the others. Moreover, the excessive amount of personal data required by some Member States, along with strict rules according to which only the signatures of citizens residing in the country should be taken into account, prevented 11 million people from exercising their participation right.[212] The Proposal presents an attempt to reduce this complexity by restricting the number of available models of statements of support to two types A and B, included in Annex III, which Member States must choose and notify the Commission six months before the entry into force of the new forms. Moreover, it is introduced the possibility for signatories to give the last four characters of their personal identification number (Article 9). In this context, the right to support an ECI is guaranteed to the citizens "regardless of the Member State of nationality or residence" (Par.11).

An additional obstacle for organizers living in different countries to connect with each other and build networks on the same issues must be overcome by amending the current Regulation. Although this function has been developed through the different ECI Days which have been hosted by the EESC Committee, no platform for online communication has been made available yet. By setting up an online collaborative platform, the Commission's Proposal will facilitate the organizers' research for other partners and enable an easier and more convenient way of communication across border.

[212] EESC Opinion of 17 May 2016, (2016/C 389/05), par. 3.10.6.

2.4 Agenda setting

As presented in the previous chapter, one of the main functions of the ECI is to give the citizens the possibility to shape the institutional agenda. This dimension can be developed in different ways relatively to the proposals which have been registered and those which successfully completed the whole process.

Firstly, an obstacle to registration is that a number of initiatives have been refused because their claims fall outside the Commission's powers. To enhance the possibility for registration, the Proposal introduces a provision for organizers whose initiatives have been rejected because they fall outside the scope of the Commission's powers. In fact, aside from the four conditions for the initiative to be registered, it specifies that in the case that this does address an issue outside the Commission's powers, organizers may revise their initiative and resubmit the amended version, alternatively they can maintain or withdraw the initial version. Moreover, they have one-month after having received the assessment of the Commission to inform on their decision (Article 6.4). In addition to this, another novelty in this field is the Commission's partial registration of the initiative in the case that a significative part of it and its main objectives do not fall outside the Commission's powers.

Secondly, a major limit to the full implementation of the instrument potential has been detected in the Commission's answer and follow-up activities to successful initiatives. The judicial cases carried out against the Commission's answer to the ECI "One of Us", as well as the appeals to the Ombudsman after the answer to the ECI "Stop vivisection" prove that organizers might expect a more thorough feedback from the Commission. Although the Proposal does not require the Commission to take any legal act, since obligation would not comply with the Treaties it extends the due time for the Commission to prepare the communication from three to five months[213]. In this way, the Commission proceeds with the answer only after the debate developed around the issues

[213] Tilindyte, L., (2017), *Revising the European Citizens' Initiative*, EPRS Briefing, p. 12.

addressed has been extensively built and greater participation has been fostered (Article 15.2).

Moreover, critics have raised the fact that not all the actors' interests are represented during the public hearing organized at the European Parliament. As a response to this problem, the Proposal added a provision with the aim to ensure on the one hand the engagement of other institutions and advisory bodies, while on the other hand "a balanced representation of relevant public and private interests" (Article 14).

2.5 Citizens' activating tool

Shortcomings in the application of the Regulation also affect the function of the ECI to foster citizens participation on both levels of the process, relating to the organization and support phases.

Regarding the composition of the citizens' committee, its lack of legal personality combined with the high personal liability of the organizers has proved to be an obstacle to the whole process. In fact, Regulation (EU) 211/2011 is limited to guaranteeing the transnationality of the committee's nature and the debate across Europe. By not giving legal status to the citizens' committee, several practical aspects cannot be developed, such as raising funds or opening a bank account for managing the ECI campaign. In these practical cases, the committee members must use their own names for bank accounts but also for lodging complaints. In this context, two organizers after appealing to the CJEU were asked to present a request as a jointly appeal from all seven committee members.[214] Moreover, an additional deterrent to the establishment of the citizens' committee is the high level of liability of organizers for damages committed throughout the ECI organization or for causing infringements to the data protection norms while collecting the supporting data. Such responsibility is an additional source of concerns for organizers, who in most of the cases are

[214] Ballesteros, M; Canetta, E; Zaciu, A. (2014), *European Citizens' Initiative – First lessons of implementation, cit.,* p. 15.

helped by the volunteers.[215] In certain Member States, organizers are also required to inform the data protection authorities on the collection of signatures, who might impose additional burdens to the process, as happened in Bulgaria where each volunteer in charge of gathering paper signatures was required to personally register. Organizers must also observe the security requirements for storing the signed papers and electronic forms, which might be burdensome, unclear and risky. They could be subject to fines, which in countries like Germany amount to €300,000 for protecting the data at every stage of the campaign.[216]

The Proposal sets out the possibility for organizers to establish the legal entity for the group of organizers and adds the conditions for their liability (Article 5). In fact, they can be held responsible for "unlawful acts committed intentionally or with serious negligence" (Article 5.5).

Furthermore, several concerns were expressed about the time frame given to organizers to collect all statements of support. This is the cause of the high number of ECIs which have been archived due to the insufficient number of signatures collected in time. To solve this problem, the Commission has been available to extend the deadline for several ECIs which faced issues during the start-up phase. This was the case of the first ECIs : "High Quality European Education for All", "*Fraternité* 2020", "*Pour une gestion responsable des déchets, contre les incinérateurs"*, "Suspension of the EU Climate & Energy Package", "Central public online collection platform for the European Citizen Initiative".[217]

The novelty of the Proposal in this area consists of allowing organisers to choose the start date of the collection signatures (Article 8), in order to allow them to carry out the collection of signatures once everything has been set. Moreover, related to this same issue, organizers can dedicate the whole period of 12 months to the collection of signatures, since they do not have to set up their own online collection system.

---

[215] Rodean, N. (2015), *La resa dei conti: il primo triennio dell' European bottom-up right*, *cit.,* p.6.

[216] Ballesteros, M; Canetta, E; Zaciu, A. (2014), *European Citizens' Initiative – First lessons of implementation, cit.,* pp. 15-16.

[217] Evidence is given on the online register of the ECI official website. Assessed on 8 December 2017.

However, the European Commission has already taken several steps to better support organizers and include civil society in the ECI. In fact, it hosted online collection systems on its own servers, assisted organizers to get their systems certified by national authorities, it improved the support provided to organisers, by developing its online collection software, it included collection on mobile devices and allowed partial registration of some initiatives.

In respect of the citizens' participation in the initiatives as signatories, two main limits can be detected, to which the Commission has tried to find a solution in the Proposal.

Firstly, the requirement of the minimum age to support an initiative could imply discrepancies with the non-discrimination principle on the basis of nationality since citizens from Austria and Latvia can exercise the right to support the initiative before the others.[218] The necessity to uniform this requirement had already been identified in 2010 with regard to the right to petition to the European Parliament. The Proposal for a revision of Regulation establishes that the minimum age should be extended to include all EU citizens from the age of 16 years old (Article 2) which count for an additional 10 million more potential signatories.

Secondly, most of the times citizens' participation in support of an ECI finished with the act of signing the proposal; with this regard a specific provision has been introduced under Article 17 to allow organizers and the Commission to collect the signatories' emails for information and communication purposes.

2.6 Issues not included in the Proposal

The contributions to the review process have produced a high number of measures and suggestions from stakeholders and institutional actors. However, not all of them have been taken into account in the Commission Proposal of 13 September 2017 and detailed explanation is provided in the Staff Working Document which has been published together with the reviewed proposal. Some

[218] Rodean, N. (2014), *Initiativa (legislativa) popolare. Profili di diritto costituzionale nel labirinto europeo,* Milano, FrancoAangeli, p.229.

of the main discussed issues relate to the financial sustainability of the ECI. Since the discussions began on the ways to shape the ECI Regulation, no forms of public funding were considered neither in support of the preparation of the initiative, nor for the collection of signature campaigns.[219] Although provisions have been introduced to reduce the costs for organizers throughout the time, the successful ECIs show how financial contributions have had an important role in the organization of the successful ECIs campaigns. The total amount of support and funding for the ECI "Right2Water" was €140,000 provided by the civil society organization European Federation of Public Service Unions. The second successful ECI "One of Us" reached €159,219 from three different organizations, while the campaign "Stop vivisection" gained €23,651 of support primarily from seven animal rights organizations and a number of private individuals. The highest amount was provided for the ECI "Ban glyphosate" which reached €340,000 of funding support coming from 12 different organizations including NGOs such as Greenpeace, which are based in different Member States.[220] Within the framework of the revision process, the Commission was invited by stakeholders and the European Parliament to conceive new forms of financial support for the organizers. The Commission's response was that no funding should be given to organizers to maintain the independence of the ECI. Moreover, organisers would be required to comply with the obligations of the EU Financial Regulation, which would add an obstacle to the process. Therefore, the Commission opts for offering 'in kind' support to organizers including services for the purpose of information, advice, translation and online collection of signatures.[221]

[219] Mendez, F.; Mendez, M. (2017) *Promise and Perils of Direct Democracy for the European Union, cit.,* p.70.
[220] Ivi, *cit.,* 75-76.
[221] Commission Staff Working Document of 13 September 2017 SWD (2017)249 final, p.18.

Tab.5 ECI Shortcomings and provisions of the revised Regulation

Area of impact	Problems	Proposal for an ECI Regulation
Communication	Lack of clarity and transparency at the registration stage. Low level of awareness of the ECI across the Member States. Lack of support for organizers in the translation of the ECI information. ICT related issues.	Enhancing information and assistance for organizers including the establishment of: an online collaborative platform, points of contact in Member States.
Transnationality	High complexity of the Online Collection systems due to discrepancies of signatories' data requirements in the different Member States.	Harmonization of the data requirements for the collection of statements of support: number of forms reduced to two types. Creation of an online collaborative platform to enable the organizers' research and exchange of information.
Agenda setting	High number of refusals of issues that fall outside the Commission's powers. The examination and follow-up given to the initiatives having successfully collected the required support. Lack of heterogeneity of representative	Possibility for organizers to resubmit a revised initiative when the initial version falls outside the Commission's powers. Possibility to partially register an initiative. Extension of the time for the Commission to prepare the communication to a successful ECI.

	actors in the public hearing.	More inclusiveness in the organization of the public hearing.
Citizens' activating	Lack of Legal personality of the citizens' committee and high liability of the organizers disengaging the creation of committees. Aspects related to the online collection process: the need for the organisers to themselves set up and obtain the certification by national authorities of the online collection systems Issues related to the limited ECI's lifecycle timeline and the link between the date of registration and the start of the 12 months collection period. Enhancing inclusiveness of supporting citizens	Possibility for organisers to create a legal entity in accordance with national law for the purpose of managing an initiative. Clarification of the conditions of the liability of the group of organisers (unlawful acts committed intentionally, or at least with serious negligence), without prejudice to the General Data Protection Regulation. Possibility for organizers to choose the starting date for the collection of signatures. Possibilities for signatories to receive emails with the information and update on the ECI process. Reduction of the minimum age to support an initiative to 16.

3. The review process

The Proposal for a revision of Regulation (EU) 211/2011 was adopted by the European Commission on 13 September 2017. Its peculiarity is that it is the result of the constructive contributions stemming from both sides of the actors involved in the ECI process, therefore it represents the interests and issues of concern of both institutions and civil society. The proposals presented comprise on one hand the contributions of the first Report issued by the European Commission in 2015, the European Parliament Resolution of October 2015, the two opinions of the EU Advisory Committees, the Committee of the Regions and the European Economic and Social Committee, and the opinion of the Ombudsman. On the other hand, civil society and stakeholders largely participated in several consultations and calls for opinions by expressing their own point of view on the best ways to shape the new ECI regulation. Finally support and advice throughout the whole revision process has been given by Democracy International, the ECI Campaign, which made their contributions by identifying, discussing and summarizing the challenges during the review of the ECI Regulation which started in 2015.

3.1 Contributions from the institutional side

In March 2015, three years after the ECI Regulation came into force, as provided by the regulatory framework of the ECI, the European Commission published the first Report on the application of the Regulation (COM (2015)145 final). Although the Commission states that the ECI has been fully implemented, it acknowledges that there is still room for improvement and highlights a number of problematic issues of technical, logistic as well as political nature. Among the main problems related to the organization of an ECI campaign, the Commission acknowledges the issues caused by the lack of legal personality of the citizens' committee, the strictness of the admissibility check for the registration of the initiatives, the limited

timeline for the realization of an ECI, the high level of complexity of the certification procedure of the online systems with particular reference to the submission by the organizers of the request for validation of their systems to the national authorities before knowing if their proposed initiative will be registered. Moreover, additional technical obstacles to the complete realization of the ECI have been detected in the divergence of requirements for signatories across different Member States, the long process of verification of the translated versions of the initiatives, the lack of participation of stakeholders or experts at the hearings organized at the European Parliament and the insufficient dialogue and interaction with the Commission at the different stages of the process and in particular after the Commission's Communication.[222]

The European Parliament has supported the ECI since the very beginning and throughout all the discussions on the possibilities to improve its functioning. On 28 October 2015, the Parliament adopted a Resolution on the European Citizens' Initiative calling for a revision of the ECI Regulation and focusing on the simplification of the data requirements and the Commission's support in the form of funding.[223] The text adopted indicates concrete proposals with the aim to raise public awareness of the ECI through the public communication channels available to the Commission, as well as on the official websites of the Member States national parliaments (Par.7). To improve the information available to organizers and avoid the failure of proposals due to non-compliance with the legal admissibility criteria, the Parliament underlines the need to give guidance on the legal admissibility of the ECI in advance through the Europe Direct Contact Centre or another yet to be established independent body (Par. 9). Moreover, it is proposed to set up a dedicated ECI office in each Member State for information and advice purposes. In addition, by requiring the Commission to provide for detailed reasons to any rejected ECI, the decision can easily be subject to legal scrutiny. The power of discretion of the Commission is limited and organizers can be guided in the revision of the proposal in case they decide to resubmit an

[222] COM (2015) 145 final p.15.

[223] Militaru, N., I. (2017), *European Citizens' Initiative* in JURIDICAL TRIBUNE, vol. 7, n. 2., p. 96.

amended version (Par. 15). According to the document, organizers' legal security must be improved by a provision which clearly indicates the required legal basis for a proposal, the data protection requirements in each Member State and the availability of affordable insurance policies (Par. 11). Information on the rights and obligations of the organizers and on the administrative procedure is expected to be improved both on the official website of the ECI and on a "physical and online one-stop shop". The important need for standardization of the data requirements across Member States is also underlined (Par. 25) along with the need to lower the age for all and include the younger generations in the discussions about European affairs (Par.26). Finally, a specific request is addressed to the Commission regarding the revision of Article 10(c) of the ECI Regulation to improve the follow-up actions to any successful ECI. The solution proposed also provides that the Commission has 12 months to start preparing a legal act by the time it issues a positive opinion (Par. 30).[224] With regard to this last request, the Commission underlined that its right of initiative is already guaranteed by the current rules. However, the Committee on Constitutional Affairs (AFCO) conducted a legislative own-initiative report, whose work was interrupted after the Commission's proposal for a Regulation was adopted in September 2017. The draft report, aside from reiterating the need for a stronger follow-up to successful initiatives, puts forward the proposal of holding a plenary debate after each successful initiative.[225]

Also, the two EU Advisory Committees, the Committee of the Regions and the European Economic and Social Committee have contributed in promoting a revision of the ECI Regulation by presenting their recommendations in the opinions published respectively on 13 October 2015 and on 21 October 2016.
The Committee of the Regions, among the suggested modifications and improvements of the ECI, underlines the need for fostering information campaigns in all EU Member States by involving regional, local authorities and young people to raise awareness of the right (Par.41). To carry out this function,

[224] EP Resolution of 28 October 2015, 2014/2257 (INI).
[225] Tilindyte, L., (2017), *Revising the European Citizens' Initiative*, EPRS Breafing.

it indicates the national representation offices of the European Commission, a new interinstitutional information point and an ECI help-desk. A significant change to the current procedure is the suggested extension of the collection period for statements of support to 18 months (Par. 32), with the provision that allows organizers to set the date to start the collection of signatures after the registration. The Committee urges the Commission to formulate appropriate responses to the successful ECIs to give appropriate value of the whole mobilisation caused by the campaign (Par.48). Besides, detailed reasons should also be given after the rejection of an ECI to allow the organizers to resubmit the modified version of the proposal (Par. 53). Furthermore, a provision on financial support has been conceived to help organizers with the development of the campaigns at transnational level (Par. 50). In this regard, the Committee proposes itself as overseeing body of the funding mechanism for those ECIs which foresee an impact on a regional and territorial dimension or on subsidiarity. (Par.51) Finally, politically strong follow-up is supposed to be ensured to any successful ECI (Par. 54)

One year later than the other Committee, The European Economic and Social Committee reiterated the possibility for organizers to choose the date for starting the collection of statements of support (Par. 1.4.1). It also recognises the importance of giving the citizens' committee legal personality and limiting the criminal liability of organizers (1.4.2). As the Parliament and the CoR, the EESC agrees on lowering the age for supporting the initiatives to 16 years of age and harmonising the national requirements for the collection of data related to the signatories. Furthermore, the EESC volunteers itself as facilitator and institutional mentor to help in the separation of the Commission's role of mentor and judge and therefore solve the conflict of interests which might arise.

In addition to a proper follow-up to the successful initiatives and the invitation to the Commission to prepare a legislative proposal within the 12 months after the end of the campaign, the Committee encourages the European Parliament to exercise its right of indirect legislative initiative under Article 225 TFEU and push the Commission to put forward a proposal. Finally, the EESC points out its opinion on several initiatives that can be taken to improve the ECI independently from the revision of the regulation.

The European Ombudsman also followed the developments of the ECI over time and in March 2015 published a decision including the guidelines to improve the ECI procedure. The last opinion issued in July 2017 (SI/6/2017/KR), includes suggestions on six areas addressed to the Commission in its process of revision of the ECI regulation. Firstly, to enhance clarity and transparency in the ECI, the Ombudsman invites the Commission to provide guidance to the staff of the Europe Direct Contact Centre, implement the collaborative ECI Platform, issue more comprehensive and structured answers to citizens in case of refusal to the registration, carry out checks on the funding and sponsorship information, drawing on the example of the Transparency Register. Secondly, it is suggested that the requirements of all Member States in terms of personal data requirements for the signatories of an ECI should be simplified and harmonized. Thirdly, provisions on the personal liability of organizers and the lack of personality of the citizens' committee are included. Fourthly, a reasonable solution is urged for the organizers to start the collection of signatures either when the online collection system has been certified or at a date of their choice. Fifthly, as concerns the online collection process, the Commission should pay additional attention to better enable persons with disabilities to submit statements of supports online. Finally, according to the Ombudsman the function and value of the ECI to generate cross border debate must be made clear by the Commission, which is expected to give more detailed reasons for its political choices within the Communication relative to the successful initiatives. In addition to this, the ECI public hearings are requested to be more balanced and better organized to foster the public of the debate.

3.2 Contributions from civil society and stakeholders

Central to the revision process have been two consultations carried out by the Commission, which gathered opinions from representatives of civil society and stakeholders. The first period of stakeholder consultation started with the Commission's report on the application of the ECI Regulation in March 2015 and focused on collecting views on the Regulation in terms of the best ways to improve it. In this context, there were studies conducted by the European Parliament, the EESC organized the ECI Day both in April 2015 and in April 2016 to allow an exchange of information and practices between the organizers. The results of the REFIT platform opinion of June 2016, show the need for limiting the problems of organising and signing an ECI. Five main issues were considered important for the revision, with regard to the admissibility check carried out by the Commission prior to the registration of any proposal; the follow-up procedure to the successful ECI; the liability of organizers and the legal personality of the citizens' committee; the starting moment for the collection of signatures; and the simplification of the online collection system.

The second phase gathered inputs through two main consultative actions on the policy options for the revision: the comments on the Commission roadmap to the revision of the ECI and the public stakeholder consultation which took place between May and August 2017. Regarding the feedback window open from 18 May to 15 June 2017, the Commission received 7 comments on the Revision of the ECI. The respondents were one individual citizen, four Non-governmental organizations, one academic institution and one trade union. Although such comments were not particularly long, they contributed to bringing attention to the major problematic issues regarding ECI implementation. Among them, an insightful observation was submitted by the *Institut für Europäische Politik*, which recommended that lessons learned at national level should be considered before conceiving new measures. Moreover, it was suggested that successful ECIs should be made more binding to make citizens' feel more listened to and better respond to the Eurosceptic criticism.

The 12-weeks public stakeholder consultation launched by the European Commission on 24 May 2017 and closed on 16 August 2017 had a notable outreach on two levels: of the heterogeneity of respondents and their national provenance. Of the 5,323 respondents, 5,199 figured as individuals and 124 as organizations. Contributions came from all over Europe, including a significant number of answers from France (30.4%), Germany (24.8%), United Kingdom (11.9%), Spain (6.8%), Belgium (5.8%), Italy (4.1%), Netherlands (2.3%), Austria (1.9%), Ireland (1.8%), Romania (1.4%), Portugal (1.3%). By comparing the results with the usual outcome of the EU launched consultations, the feedback stands out as a consistent contribution. However, although great input came from citizens, a number of considerations led to the need for an improvement of the EU public online consultation system, in order to have a more meaningful impact on the work of the institutions. In fact, although the questionnaire posed detailed questions on administrative and technical aspects, it presented few political issues. Other issues which were not included were the Commission's follow-up, the admissibility of ECIs in line to the decision of the EGC, the problems faced by citizens residing in certain other countries different from the country of their nationality. Moreover, the factual summary on the consultation results was published 4 weeks after it was closed and two days before the Commission's proposal for a Regulation was published. This left little time for the Commission to consider every single opinion.[226]

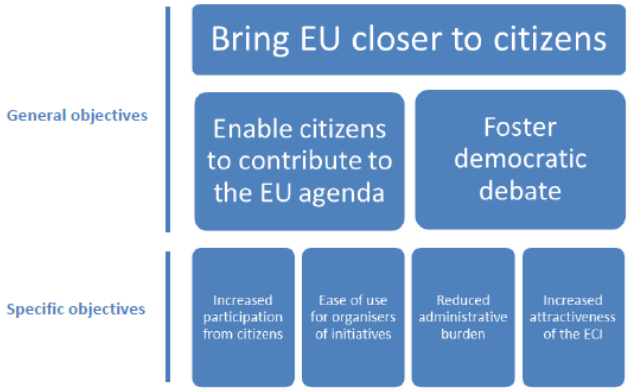
A contribution to the consultation came also from the organizations Democracy International, The ECI Campaign, *Mehr Democratie* and ECAS which cooperated by providing information on their websites about how to answer by indicating several aspects for improvement of a more simplified, accessible and less restrictive ECI.

[226] Heike, A. (2017), *Lessons Learned from The Online Public Consultation on the ECI,* www.citizens-initiative.eu, accessed on 10 January 2018.

3.3 Future developments

As a totally innovative instrument, the ECI set the basis for the revision of its regulatory framework at the very beginning of the discussions on its structural features. Within the framework of the public consultation on the Green Paper on a European Citizens' Initiative of 2010, consensus emerged among the contributors on the importance of including a clause within the Regulation to allow some changes after a certain period of time. The initial difficulties faced in establishing the thresholds and requirements without any reference to concrete experiences, would have been assessed.[227]

The proposal for the Revision was adopted on 13 September 2017. As a result of the previous analysis on the shortcomings and the provisions for a reform of the existing Regulation, particular attention has been made to supporting the initiatives by: "lifting burdensome requirements and using digital technologies".[228] Besides, the aims remain to make it more accessible and easier to use in order to reach its full potential and foster debate (Tab.6).



[227] EC STAFF WORKING DOCUMENT, *Outcome of the public consultation on the Green Paper on a European Citizens' Initiative*, SEC (2010)370, p. 3.

[228] European Commission Press Release of 15 September 2017. Statement of the First Vice-President Frans Timmermans in occasion of the EC adoption of the Proposal for a revision of the European Citizens' Initiative: *«With these proposals, we are empowering Europeans to participate in the democratic process. We want to make the European Citizens' Initiative more accessible for all Europeans, and by lowering the age limit from 18 to 16, we have invited 10 million more young Europeans to step forward and help shape the EU's policy agenda. At the same time, our political party reform will ensure that Europeans are better informed about the link between national and European parties and will ensure that their funding better reflects the democratic choices made by citizens in the European elections. »*

Table 6. General and Specific Objectives of the Proposal for a revision of ECI Regulation.[229]

The legislative proposal would update the tool, repeal and replace the existing regulation on the ECI, once the whole procedure will be concluded. Successively, opinions are expected to come from the National parliaments, the EESC and the CoR. A report will then be drafted and the Committee responsible, the AFCO Committee, will be called to vote. The trialogue will then produce a document with all the amendments from the Parliament and the Council until a final version will be put together and submitted to plenary. The adoption of the final document will follow the voting session on the plenary.

[229] Table from the Commission Staff Working Document Accompanying the Proposal for a Regulation of the European Parliament and of the Council on the European Citizens' Initiative, SWD (2017) 294 final, p.10.

Conclusion

The whole analysis has been conducted with the purpose of understanding how participatory democracy is developing within the European Union. What is created by the ECI is a new public sphere, which is supranational but reflects the concerns of the citizens of each Member State.

It is the result of a change in the needs that leads to the identification of the ECI as the most proper form of participatory democracy at the present moment. If the introduction of the right in 2009 represented an innovative alternative along side other consolidated instruments, namely the right to petition and consultation, its implementation soon revealed the wide range of functions it embraces. In an increasingly enlarged European Union, where interconnectedness is made easier by the new means of information and communication technologies, citizens' participation in the European affairs can only be achieved by means of a tailored made instrument. In this context, the work has tried to give evidence of the creation of a truly European public place, where civil society is mobilized, and cross border connections are established. The network of interactions created by the regulated process of participation enables citizens to make their voice heard by the decision makers, whose purpose should be to conceive solutions, which better respond to societal needs. Regarding inclusiveness, the design of the ECI overcomes the dysfunctionalities of the consultation by extending the target to a broad public towards the inclusion of individual citizens and the younger generations.

Although criticism based on empirical evidence maintains that the ECI has not lived up to its initial expectations yet, the continuous assessment required by the provision of the revision contained in the instrument itself, makes it a smartly designed adaptable tool which can be developed according to the needs of the users. This is made possible thanks to one last feature which so far characterized the discussion on this participatory instrument: its evolutionary dimension in continuous development and the adaptability of its legal framework.

In this context, the Proposal for a new ECI Regulation brings about several improvements that will bring about a number of positive outcomes.

Firstly, the review process will certainly lead to an increase of the public awareness of ECI. This will be due to the establishment of the online collaborative platform, which will enable organizers to get into contact with each other and receive support and guidance. A provision also includes that each Member State shall establish one or more national contact points which will inform and assist citizens from a closer perspective. Supporters will have the chance to keep track of the development of the ECI process by giving their email address to the organizers after signing the statement of support. Besides, the whole inter-institutional debate on the issues to be reviewed, including the contributions from the general public in the consultations will further expand the European public sphere and possibly be included in the national media coverage. In this context, national authorities of the different Member States should ensure a media campaign which would help in reaching out to more citizens. Moreover, the revision should also refer to the ECI Day and guarantee some measures to enable everyone to participate in the event.

Secondly, the revision is expected to increase the number of registered initiatives. One of the reasons for this outcome will be the possibility for organizers to resubmit a revised initiative if the first version is rejected by the Commission. In addition to this, the Commission should address to the organizers in a clear and transparent way to enable them to easily understand if their requests fall under the Commission's power to propose a legal act.

Thirdly, ECI campaigns will have more chances to successfully achieve their aims. In this regard, the new regulation will support organizers on different levels. Regarding the organization of the ECI campaign, they will be allowed to choose the starting date of the collection of signatures and consequently extend the whole period. Moreover, by simplifying the signatories' data requirements, it will be easier for organizers to achieve the minimum threshold of signatures in those countries where the current rules are stricter than in others. In addition, giving legal personality to the ECI committee will make it easier for organizers to carry out technical aspects of the ECI process. On a financial level, the costs of an ECI will be reduced, thanks to the online collection system and the online

collaborative platform, both made available by the Commission free of charge and whose maintenance is supported by the Union's general budget. Moreover, a specific provision guarantees that the Commission will take measures to allow an easier and safer transfer of the statements of support to the competent national authorities. Organizers will certainly benefit from this public and free file exchange service.

Fourthly, the reform of the ECI will enhance the possibility for citizens to shape the institutional agenda. This will be done by guaranteeing a more balanced participation of interested stakeholders and the relevant public to the ECI hearing. Additionally, for the representatives of the Commission and of the European public, the new proposed regulation allows for the participation of other institutions and advisory bodies to take part in the hearing. However, this event could be made more effective if the attendance of all the institutions involved in the law-making process was mandatory. The review also extends the deadline for the Commission to issue a communication on its legal and political conclusion on the initiative. This will broaden the discussion on the issue and allow the Commission to conceive appropriate measures to answer the proposal requests. The revision will bring also additional support for democratic reform of the European Union. The campaigns will address a broader target including the younger generation. This will foster interest in European affairs among the public, which is mostly concerned with the future setting of Europe. Moreover, legal and linguistic support in drafting the ECI proposal should be guaranteed by the Commission. In fact, the ECI should be made accessible to every European citizen independent of its level of legal expertise.

Finally, the key issues regarding the future evolution and political impact of the ECI will be determined by two factors. On one hand, the best realization of the ECI will depend on the institutional openness and commitment to include all the necessary provisions in the new Regulation. On the other hand, representatives of civil society will have the role of contribute to the review process and exchange information on the best way to improve the ECI regulatory framework.

Bibliography

Primary Sources:

Authorised Version of The State of The Union Address 2017.

Commission Communication of 19 March 2014, Communication COM (2014) 177.

Commission Implementing Regulation (EU) No 1179/2011 of 17 November 2011 laying down technical specifications for online collection systems pursuant to Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizens' initiative.

COMMISSION STAFF WORKING DOCUMENT Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the European citizens' initiative SWD (2017) 294.

COMMISSION STAFF WORKING DOCUMENT Outcome of the public consultation on the Green Paper on a European Citizens' Initiative. Accompanying document to the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL. SEC (2010) 370.

COMMISSION STAFF WORKING DOCUMENT Outcome of the public consultation on the Green Paper on a European Citizens' Initiative SEC (2010) 370.

COMMISSION STAFF WORKING DOCUMENT Accompanying the Proposal for a Regulation of the European Parliament and of the Council on the European Citizens’ Initiative, SWD (2017).

Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union.

COUNCIL PRESIDENCY NOTE of June 2015, 9832/15.

Decision of the European Ombudsman of 12 December 2014 closing the inquiry into complaint 2071/2013/EIS against the European Commission.

EP Resolution of 7 May 2009 requesting the Commission to submit a proposal for a regulation of the European Parliament and of the Council on the implementation of the citizens'' initiative (2008/2169(INI).

EP Resolution of 28 October on the European Citizens' Initiative 2015 2014/2257 (INI).

EP Resolution of 8 September 2015 on the follow-up to the European Citizens' Initiative Right2Water (2014/2239(INI)).

European Commission Implementing Regulation (EU) 2016/2286 of 15 December 2016, (L 344/46).

EU General Court Judgement of 2 February 2017 relatively to the case *Minority SafePack - one million signatures for diversity in Europe v Commission*, T-646/13, ECLI:EU:T:2017:59.

EU General Court Judgment of 10 May 2017 relatively to the case *Michael Efler and Others v Commission*, T-754/14, ECLI:EU:T:2017:323.

European Ombudsman's decision of 4 March 2015 regarding the European Ombudsman own-initiative inquiry OI/9/2013/TN concerning the European Commission.

European Ombudsman Strategic Initiative of 11 July 2017, *Suggestions to improve the European Citizens Initiative procedure*, (SI/6/2017/KR).

FACTUAL SUMMARY of the contributions received in the context of the open public consultation on the revision of Regulation (EU) No 211/2011 on the European Citizens' Initiative.

Follow up to the European Parliament resolution on the European Citizens' Initiative, adopted by the Commission on 2 February 2016 TA-PROV (2015)0382.

GREEN PAPER on a European Citizens' Initiative COM (2009) 622.

Opinion of the European Economic and Social Committee on The European Citizens' Initiative (review), (2016/C 389/05).

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European citizens' initiative COM (2017) 482.

Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative (Consolidated version 28/07/2015).

Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative COM (2015) 145.

ROADMAP of the Revision of the European Citizens' Initiative- Ares (2017)2537702.

Summary REPORT MEETING of the Expert Group on The Citizens' Initiative Brussels, 2 June 2017.

SYNOPSIS REPORT on the stakeholder consultation SG (2017).

Treaty establishing the Constitution for Europe (TECE), OJ C 310,16.10.2004.

Secondary Sources:

Articles in Journals:

Allegri, G. (2012), *La Partecipazione Delle Società Civili Nazionali ed Europee All'iniziativa dei Cittadini Europei (Ice), In Attuazione Dell'art. 11, Par. 4 Del Tue E Del Regolamento UE N. 211/2011* in ASSOCIAZIONE ITALIANA DEI COSTITUZIONALISTI, n.2.

Amelung, Nina; Baumgarten, Britta (2017)*, The Transnational Perspective of Political Participation: Linkages and Differences between Social Movement and Public Participation Studies* in GLOBAL SOCIETY, vol. 31, n. 1.

Baldoli, Roberto (2013), *"Thence We Came Forth to Rebehold the Stars": A First Assessment of the European Citizens' Initiative* in EUROPEAN JOURNAL OF RISK REGULATION, vol. 4, no. 1, pp. 82-86.

Bieler, A. (2017), *Fighting for public water: the first successful European Citizens' Initiative,* "Water and Sanitations are a Human Right" in INTERFACE: A JOURNAL FOR AND ABOUT SOCIAL MOVEMENTS, vol.9, n., 1, pp. 300-326.

Bignami, Francesca (2004), *Three Generations of Participation Rights Before the European Commission* in LAW AND CONTEMPORARY PROBLEMS, vol. 68, No. 1, pp. 61-83.

Bourne, Angela (2017), *Social Movements as 'Arenas' and 'Actors' in Transnationalizing Public Spheres* (2017) in JOURNAL OF CIVIL SOCIETY, vol. 13, n. 3, pp.231-246.

Bouza Garcia, L.; Del Río Villar S. (2012), *The ECI as a Democratic Innovation: Analysing its Ability to Promote Inclusion*, *Empowerment and Responsiveness In European Civil Society* in PERSPECTIVES ON EUROPEAN POLITICS AND SOCIETY, vol. 13, n.3.

Bouza Garcia, Luis (2017), *The 'New Narrative Project' and the politicisation of the EU* in JOURNAL OF CONTEMPORARY EUROPEAN STUDIES, vol. 25, n. 3, pp. 340–353.

Bouza García, Luis; Cuesta López, Victor (2012), *The European Citizens'Initiative – A First Assessment* in BRUGES POLITICAL RESEARCH PAPERS / CAHIERS DE RECHERCHE POLITIQUE DE BRUGES 24.

Chadwick, A. (2003), Bringing E-Democracy Back In. Why It Matters for Future Research on E-Governance in SOCIAL SCIENCE COMPUTER REVIEW, vol.21, No. 4, pp. 443-455.

Conrad, Maximilian (2011), *The European Citizens' Initiative. Transnational Democracy in the EU at last?* In STJÓRNMÁL GO STJÓRNSÝSLA – ICELANDIC REVIEW OF POLITICS AND ADMINISTRATION vol. 7(1), pp. 5–22.

Cuesta Lopez, V. (2010), *The Lisbon Treaty's Provisions on Democratic Principles: A Legal Framework for Participatory Democracy* in EUROPEAN PUBLIC LAW, pp. 123–138.

Cuesta-Lopez, V. (2012), *A Comparative Approach to the Regulation on the European Citizens' Initiative* in PERSPECTIVES ON EUROPEAN POLITICS AND SOCIETY, vol. 13, n. 3, pp. 257-269.

Dahlberg, L. (2001), *The Internet and Democratic Discourse: Exploring the Prospects of Online Deliberative Forums Extending the Public Sphere* in INFORMATION, COMMUNICATION & SOCIETY, vol. 4, n.4, pp. 615-633.

Damato, A., (2017), *Profili cri-tici e istanze di revisione del diritto di iniziativa dei cittadini europei,* in IL DIRITTO DELL'UNIONE EUROPEA, vol.1, p. 39.

De Jongh, M.; Theuns, T. (2017). *'Democratic Legitimacy, Desirability, and Deficit in EU Governance'* in JOURNAL OF CONTEMPORARY EUROPEAN RESEARCH vol. 13, n.3, pp. 1283-1300.

Dorota Szeligowska & Elitsa Mincheva (2012), the European Citizens' Initiative – Empowering European Citizens within the Institutional Triangle: A Political and Legal Analysis in PERSPECTIVES ON EUROPEAN POLITICS AND SOCIETY, vol. 13, n. 3, pp. 270-289.

Emerson, Kirk; Nabatchi, Tina; and Balogh, Stephen. (2012). *An Integrative Framework for Collaborative Governance* in JOURNAL OF PUBLIC ADMINISTRATION RESEARCH AND THEORY, 22, pp. 1-29.

Erik O. Ekiksen (2014), *Regional Cosmopolitanism: The EU in Search of its Legitimation* in EUROPEAN JOURNAL FUTURES RES, no. 2.

Fanoulis, E. (2017), *Knowledge of the EU and citizen participation in European governance: an agonistic democracy perspective* in EUROPEAN POLITICS AND SOCIETY, vol. 19, n. 1, pp. 1-14.

Ferraro, F. (2012), *Il Nuovo istituto di democrazia partecipativa e le sue prime applicazioni* in STUDI SULL'INTEGRAZIONE EUROPEA, vol. VII, pp.523-540.

Ferraro, F. (2011), *Il diritto di iniziativa dei cittadini europei: uno strumento efficace di democrazia partecipativa?* In RIVISTA ITALIANA DI DIRITTO PUBBLICO COMPARATO, vol. 3, n 4. pp. 727 ff.

Ferri, Delia (2011), *L'Unione europea sulla strada della democrazia partecipativa? Istituzioni del Federalismo* in RIVISTA DI STUDI GIURIDICI E POLITICI, vol. 2., pp. 297-339.

Glogowski, P., Maurer A. (2013), *The European Citizens 'Initiative – Chances, Constraints and Limits* in HIS POLITICAL SCIENCE, vol. 134 No 10.

Greenwood, Justin (2012), *The European Citizens' Initiative and EU Civil Society Organisations* in PERSPECTIVES ON EUROPEAN POLITICS AND SOCIETY, vol. 13, n.3, pp. 325-336.

Greenwood, Justin; Tuokko, Katja (2016), The European Citizens' Initiative: the territorial extension of a European political public sphere? In EUROPEAN POLITICS AND SOCIETY, vol. 18, n.2, pp. 66-181.

Habermas, Jürgen (2015), *Democracy in Europe: Why the Development of the EU into a Transnational Democracy Is Necessary and How It Is Possible* in EUROPEAN LAW JOURNAL, vol.21, n.4, pp. 546-557.

Hix, Simon; Follesdal, Andreas (2005), *Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik* in JOURNAL OF COMMON MARKET STUDIES, vol. 44, n.3, pp. 533-62.

Inglese, Marco (2017)*, Positioning Efler in the Current Narrative of European Citizens' Initiatives* EUROPEAN PAPERS, EUROPEAN FORUM, INSIGHT, pp. 1-10.

Jensen, T. (2009), *The Democratic Deficit of the European Union* in LIVING REVIEWS IN DEMOCRACY, vol.1, n.1, pp. 1-8.

Joshua J. Dyck (2016), *New Directions for Empirical Studies of Direct Democracy* in CHAPMAN LAW REVIEW, vol.19, pp. 109-127.

Kaczyński, Piotr Maciej (2009), *The European Citizens' Initiative: A Proper Response from the Commission* in *CEPS* COMMENTARIES.

Karatzia, Anastasia (2017), *The European Citizens' Initiative and the EU institutional balance: On realism and the possibilities of affecting EU lawmaking* in COMMON MARKET LAW REVIEW, vol. 54, n.1, pp. 177–208.

Knaut, Annette (2012), *Die Entstehung transnationaler Diskursräume durch die Europäische Bürgerinitiative* in FORSCHUNGSJOURNAL SOZIALE BEWEGUNGEN, vol. 25, n. 4, pp. 37-47

Kohler-Koch, Beate (2012), *Post-Maastricht Civil Society and Participatory Democracy* in JOURNAL OF EUROPEAN INTEGRATION, vol. 34, n. 7, pp. 809–824.

Kutay, Acar (2015*), Limits of Participatory Democracy in European Governance* in EUROPEAN LAW JOURNAL, vol. 21, n. 6, pp. 803–818.

Lb, JHR (2017), *Talking about European Democracy* in EUROPEAN CONSTITUTIONAL LAW REVIEW, vol. 13, n. 2, pp. 207-220.

Leininger, Arndt (2015), *Direct Democracy in Europe: Potentials and Pitfalls* in GLOBAL POLICY, vol.6, n.1, June 2015, pp. 17-27.

Menanche, André (2016), *The European Citizens' Stop Vivisection Initiative and the Revision of Directive 2010/63/EU* in ATLA-ALTERNATIVES TO LABORATORY ANIMALS, vol.44, n.4, pp. 383-390.

Mendez, F.; Mendez, M. (2017), *Promise and Perils of Direct Democracy for the European Union* in CAMBRIDGE YEARBOOK OF EUROPEAN LEGAL STUDIES, pp. 48-85.

Militaru, N., I. (2017), *European Citizens' Initiative* in JURIDICAL TRIBUNE, vol. 7, n. 2., pp. 89-97.

Monaghan, E. (2012), *Assessing Participation and Democracy in the EU: The Case of the European Citizens' Initiative* in PERSPECTIVES ON EUROPEAN POLITICS AND SOCIETY, vol. 13, n. 3, pp. 285–298.

Moraru, Andrei (2016), *European Union Democratic Governance: A Case Study of the European Citizens' Initiative* in EUROPOLITY vol. 10, n.2.

Moravcsik, Andrew (2004), *Is there a 'Democratic Deficit' in World Politics? A Framework for Analysis* in GOVERNMENT AND OPPOSITION, vol. 39, n. 2, pp. 336–363.

Nannucci, R.; Biasiotti, M. A. (2004), *Verso nuove forme di democrazia partecipativa: esperienze, metodologie e prospettive dell'e-Democracy* in INFORMATICA DEL DIRITTO, vol. 13, n.1-2, pp.67-119.

Öberg, Jacob (2017), *The Rise of the Procedural Paradigm: Judicial Review of EU Legislation in Vertical Competence Disputes* in EUROPEAN CONSTITUTIONAL LAW REVIEW, vol. 13, pp. 248-280.

Oleart, A.; Bouza, L. (2017), *Democracy at Stake: Multipositional Actors and Politicization in the EU Civil Society Field* in JOURNAL OF COMMON MARKET STUDIES, pp. 1-18.

Organ, James (2014), *Decommissioning Direct Democracy?* In EUROPEAN CONSTITUTIONAL LAW REVIEW (UK), vol. 10., pp. 422-443.

Palladino, R. (2014), *Iniziativa legislativa dei cittadini dell'Unione europea e democrazia partecipativa: a proposito dell'iniziativa Right2Water* in IL DIRITTO DELL'UNIONE EUROPEA. Pag.493-519.

Palladino, R. (2014), *L'iniziativa legislativa dei cittadini dell'Unione europea alla sua prima prova: l'acqua come diritto umano universale, bene comune e di pubblica utilità i*n IURA AND LEGAL SYSTEMS. Pag.14-33.

Petrescu, Oana Mariuca (2014), *The European Citizens' Initiative: A Useful Instrument for Society and Citizens?* In REVISTA CHILENA DE DERECHO vol. 41 (3), pp. 993–1015.

Petrini, M. Celeste (2013), *L'Iniziativa dei Cittadini Europei al vaglio del Tribunale dell'Unione Europea: spunti critici e prospettive* in FEDERALISMI.IT vol.13.

Polzano, Paolo (2015), *L'Iniziativa dei Cittadini Europei (ICE): Teoria e Pratica* in SCIENZE E RICERCHE.

Rodean, N. (2014), *E-Ice -Strumento Partecipativo Elettronico Nel Panorama Costituzionale Europeo* in RIVISTA ITALIANA DI DIRITTO PUBBLICO COMUNITARIO, year XXIV, vol. 5., pp. 1157-1174.

Rodean, N. (2014), *Iniziativa Partecipativa In Europa: Un Passo Verso La Democrazia Costituzionale* in POLITICA DEL DIRITTO, vol. XLV, n. 3, pp. 473-495.

Rodean, N. (2015), *La resa dei conti: il primo triennio dell'European bottom-up right* in FEDERALISMI.IT vol.18.

Rodean, N. (2016), *L'iniziativa legislativa popolare e l'asimmetrica regolamentazione nell'ambito regionale* in DIRITTI REGIONALI, vol.2, pp. 276-317.

Stasavage, D. (2004), *Open-Door or Closed-Door? Transparency in Domestic and International Bargaining* in INTERNATIONAL ORGANIZATION, vol. 58, n. 4, pp. 667 – 703.

Simoncini, Andrea; Longo, Erik (2013), *Il primo scoglio del diritto di iniziativa dei cittadini europei* in OSSERVATORIOSULLEFONTI.IT, vol. 3.

Suchman, Jaroslav (2010), *Article: European Citizens (') (May Soon Take The) Initiative* in THE COLUMBIA JOURNAL OF EUROPEAN LAW vol. 59, pp. 59-65.

Thiel, Markus (2014), *European Civil Society and the EU Fundamental Rights Agency: Creating Legitimacy through Civil Society Inclusion?* In JOURNAL OF EUROPEAN INTEGRATION, vol. 36, N. 5, pp. 435–451.

Van Deth, Jan W. (2016), *What is Political Participation?* in OXFORD RESEARCH ENCYCLOPEDIA, POLITICS.

Vogiatzis, Nikos (2017), *Between discretion and control: Reflections on the institutional position of the Commission within the European citizens' initiative process* in EUROPEAN LAW JOURNAL, vol. 23, n. 3-4, pp.250–271.

Wolkenstein, Fabio (2017), *Democracy, Transnational Partisanship and the EU* in JOURNAL OF COMMON MARKET STUDIES, pp. 1-16.

Zeegers, Nicole (2016), *Civil Society Organizations' Participation in the EU and Its Challenges for Democratic Representation* in POLITICS AND GOVERNANCE, vol.4, n.4, pp.29-39.

Contributions in books:

Allegri, G. (2013)*, Il diritto di iniziativa dei cittadini europei: verso quale democrazia partecipativa in Europa?* in Civitarese Matteucci S.; Guarriello, F.; Puoti, P., Diritti fondamentali e politiche dell'UE dopo Lisbona, Santarcangelo, Maggioli, pp.183-208.

Busschaert, G. (2016), *Democratic EU: from Representation to Participation* in Busschaert, G., Participatory Democracy, Civil Society and Social Europe, Law and Cosmopolitan Values series, Antwerp, Intersentia, pp. 1-16.

Curtin, D. M.; Dekker, I. F. (2011), *The European Union from Maastricht to Lisbon: institutional and legal unity out of the shadows*, in P. Craig, & G. de Búrca (Eds.), The evolution of EU law. - 2nd ed., Oxford, Oxford University Press, pp. 155-186.

De Vido, S. (2012), *The European Contribution to the Recognition of the Human Right to Water* in European Yearbook on Human Rights, Vienna, NWV Neuer Wissenschaftlicher Verlag, pp. 197-214.

De Vido, Sara (2017*), Il diritto all'acqua nella prospettiva europea*, Il diritto all'acqua, Milano, Giuffrè editore, pp. 173-209.

Heinelt, H. (2007), *Participatory governance and European* democracy in Kohler-Koch B., Rittberger, B., Debating the democratic legitimacy of the European, pp. 217-232.

Kaufmann, Bruno, *Transnational Citizens' Initiative – How Modern Direct Democracy can make the European Union a Better Place for Minorities* in Schiller T.; Marxer, W.; Kaufmann B.; Pállinger Z. T., Direct Democracy and Minorities, Wiesbaden, Springer VS, pp. 230-244.

Morgese, G. (2011), *Principio e strumenti della democrazia partecipativa nell'Unione europea*, in E. Triggiani (a cura di), Le nuove frontiere della cittadinanza europea, Bari, p. 37 ss.

Neem, Johan (eds), *Democracy, Participation and Contestation: Civil Society, Governance and the Future of Liberal Democracy*, London, Routledge, pp. 154-167.

Picchi, Marta (2009), *Uno sguardo comunitario sulla democrazia partecipativa* in Delano, G., Partecipazione e comunicazione nelle nuove forme del piano urbanistico, Monfalcone, Edicom pp. 127-150.

Qvortrup, M. (2013). The citizens' legislative initiative: A comparative analysis of the experiences in EU countries. In Direct democracy: A comparative study of the theory and practice of government by the people (pp. 57-73). Manchester; New York: Manchester University Press.

Raffenne, Coralie (2015), *The European Citizens' Initiative: The influence of Anglo-American governance ideology on recent EU institutional reforms* in Emmanuelle Avril and

Velikanov, Cyril (2012), *Deliberatively Enhanced European Citizens' Initiative* in Pichler, Johannes W.; Kaufmann, Bruno Modern Transnational Democracy: How the 2012 Launch of the European Citizens' Initiative Can Change the World, Cambridge, Intersentia, pp. 95-114.

Others:

Ballesteros, M; Canetta, E; Zaciu, A. (2014), *European Citizens' Initiative – First lessons of implementation*, Brussels, study, pp. 15-16.

Berg, Carsten; Thomson, Janice (Eds.) (2014), *An ECI That Works! Learning from the first two years of the European Citizens' Initiative*, Bonn, The ECI Campaign.

Bouza García, Luis (2013), *The Significance of the European Citizens' Initiative for Pan-European Participatory Democracy*, International IDEA.

Directorate-General for Communication (European Commission) (2016), *Guide to the European citizens' initiative*, EU Publications.

EESC (2015), *Your guide to the European Citizens' Initiative*, 3rd edition.

Efler, Michael (2002), *European Citizens' Initiative Legal options for implementation below the constitutional level,* EC Study sponsored by European United Left/Nordic Green, Left Parliamentary Group in the European Parliament.

Eleftherios Petropoulos (2016), Die Europäische Bürgerinitiative im paneuropäischen Kontext: Wo steht die direkte Demokratie in der EU im Vergleich zu ihren Mitgliedstaaten? E-Paper Serie Saar Blueprints.

European Commission Final Assessment Report (2017), *Study on the use of Electronic Identification (eID) for the European Citizens' Initiative*.

European Parliament, AFCO Committee Study (2017), *European Citizens' Initiative. First lessons of implementation.*

Heike, A. (2017), *Lessons Learned from The Online Public Consultation on the ECI*, www.citizens-initiative.eu.

Hierlemann, D.; Wohlfarth, A. (2010), *A Revolution in Disguise: The European Citizens' Initiative, 2010/07*, Bertelsmann Stiftung.

Irmgard, Anglmayer (2015), *The European Citizens' Initiative: the experience of the first three years*, European Implementation Assessment, EPRS.

Kaczyński, Piotr, Maciej, (2010*), The European Citizens' Initiative: A Proper Response from the Commission,* CEPS Commentary.

Nancy, J. (2017), *Two years until the 2019 European elections*, *Special Eurobarometer of the European Parliament,* Study Public Opinion Monitoring Series.

Novak, Petr (2017), European Citizens' Initiative, Fact Sheets on the European Union of October 2017 available on the official website of the European Parliament.

Parks, Louisa (2014), *Framing in the Right2Water European Citizens' Initiative, Paper prepared for presentation at the ECPR general conference*, 3-6 September 2014, Glasgow.

Pichler, Johannes, W. (2016), *Civil dialogue and participatory democracy in the practice of the European Union institution*s, Study commissioned by the European Economic and Social Committee.

Tilindyte, L., (2017), *Revising the European Citizens' Initiative*, EPRS Briefing.

Weisskircher, Manès (2017): *The European Citizens' Initiative is five years old – and it has been no step forward for EU democracy* in LSE Blog.

References:

Books:

Adam, Roberto; Tizzano, Antonio (2014), *Manuale di diritto dell'Unione Europea*, Roma, Giappichelli.

Beichelt, T., Hahn, I., Schimmelfennig, F., Worschech (2014), *Civil Society and Democracy Promotion*, Palgrave Macmillan.

Conrad, M. (2014), *Europeans and the Public Sphere. Communication without Community?*, Stuttgart, ibidem-Verlag.

Conrad, Maximilian; Knaut, Annette; Böttger, Katrin, (2016), *Bridging the Gap? Opportunities and Constraints of the European Citizens' Initiative*, Baden-Baden, Nomos.

Craig Paul, De de Búrca Gráinne (2011), *The evolution of EU law*, New York, Oxford University Press.

Del Blasio, E. (2014), *Democrazia Digitale. Una piccolo Introduzione*, Roma, LUISS University Press.

Gioia, A. (2015), *Diritto Internazionale*, Milano, Giuffrè Editore.

Hâeritier, Adrienne; Rhodes, Martin (2010), *New Modes of governance in Europe: Governing in the Shadow of Hierarchy*, New York, Palgrave Macmillan.

Håkan, J.; Kalm, S. (2015*), EU Civil Society Patterns of Cooperation, Competition and Conflict*, Palgrave Macmillan.

Hanspeter Kriesi, Sandra Lavenex, Frank Esser, Jörg Matthes, Marc Bühlmann, Daniel Bochsler (2013), *Democracy in the Age of Globalization and Mediatization*, Zurich, Palgrave Macmillan UK.

Held, David (2006), *Models of Democracy*, Cambridge, Polity Press.

Hix, Simon; Bjorn Hoyland (2011), *The Political System of the European Union*, China, Palgrave Macmillan.

Kaufmann, B. (2014), *The European Citizens' Initiative Pocket Guide*, Brussels, Green European Foundation.

Kohler-Koch, Beate; Quittkat Christine (2013), *De-Mystification of Participatory Democracy EU-Governance and Civil Society*, Oxford, Oxford University Press.

Kuper, Andrew (2004), D*emocracy Beyond borders: Justice and Representation in Global Institutions*, New York, Oxford University Press.

Leanza, U.; Caracciolo, I. (2008), *Diritto Internazionale: Diritto per gli Stati e Diritto per gli Individui - Parte Generale*, Torino, Giappichelli.

Marrella, F.; Carreau, D. (2016), *Diritto internazionale*, *Milano*, Giuffré.

Mastroianni, R.; Maffeo, A. (2015), *L'iniziativa dei cittadini europei*, Napoli Editoriale Scientifica.

Morelli, Michele (2011), *La democrazia partecipativa nella governance dell'Unione europea*, Rome, Giuffrè Editore.

Morviducci, Claudia (2017), *I diritti dei cittadini europei*, Torino, G. Giappicheli Editore.

Patricia, Hogwood; Roberts, Geoffrey (2003), *European Politics Today*, Manchester and New York, Manchester University Press.

Thurner, P., W.; Pappi, F., U. (2009), *European Union intergovernmental conferences: domestic preference formation, transgovernmental networks and the dynamics of compromise politics*, London, Routledge.

Pérez de las Heras, Beatriz (2017), *Democratic Legitimacy in the European Union and Global Governance: Building a European Demos*, Cham, Switzerland, Palgrave Macmillan.

Pichler, Johannes W.; Kaufmann, Bruno (2012), *Modern Transnational Democracy: How the 2012 Launch of the European Citizens' Initiative Can Change the World*, Cambridge, Intersentia.

Poguntke, T.; Rossteutscher, S.; Schmitt-Beck, R.; Zmerli, S. (2015), *Citizenship and Democracy in an Era of Crisis: Essays in honour of Jan W. van Deth*, Oxon, Routledge.

Risse, Thomas (2015), *European Public Spheres. Politics Is Back*, Cambridge: Cambridge University Press.

Rodean, Neliana (2014), *Iniziativa (legislativa) popolare. Profili di diritto costituzionale nel labirinto europeo*, Milano, FrancoAngeli.

Sergent, L., T., (2009), *Contemporary Political Ideologies a Comparative Analysis*, Wadsworth Cengage Learning.

Setälä, M., Schiller, T. (2012), *Citizens' Initiatives in Europe Procedures and Consequences of Agenda-Setting by Citizens*, London, Palgrave Macmillan.

Schütze, Robert (2012), *European Constitutional Law*, New York, Cambridge University Press.

Triggiani, Ennio, (2015) *Spunti e riflessioni sull'Europa, Collana di Studi sull'integrazione europea*, Bari, Cacucci Editore.

Villani, Ugo (2010), *Istituzioni di diritto dell'Unione europea*, 2. Ed., Bari, Cacucci.

Young, Iris Marion (2000), *Inclusion and Democracy*, New York, Oxford University Press.

Thielbörger, Pierre (2014), *The Right(s) to Water: The Multi-Level Governance of a Unique Human Right*, Berlin, Springer Verlag.

Zittel Thomas, Fuchs Dieter (2006), *Participatory Democracy and Political Participation Can participatory engineering bring citizens back in*, University of Birmingham, Routledge.