

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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

- Constitutional Affairs
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**European Citizens'  
Initiative –  
First lessons of  
implementation**

STUDY







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

PETITIONS AND CONSTITUTIONAL AFFAIRS

# European Citizens' Initiative – First lessons of implementation

STUDY

## Abstract

Upon request of the AFCO and PETI Committees, this study identifies difficulties faced by organisers when setting up and running a European Citizens' Initiative (ECI). It analyses possible solutions and proposes recommendations to improve the ECI as an effective tool for participatory democracy in the EU. The aim is to propose measures to ensure a straightforward ECI process with less costs and burdens for EU citizens. The ultimate goal is to define concrete actions to empower EU citizens to actively participate in shaping the future of Europe.

DOCUMENT REQUESTED BY THE COMMITTEE ON PETITIONS AND BY THE  
COMMITTEE ON CONSTITUTIONAL AFFAIRS

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## LIST OF ABBREVIATIONS

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

## EXECUTIVE SUMMARY

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

In brief, the ECI process develops as follows. ECI organisers have to submit their proposed ECI to the Commission. The Commission will register it after a first scrutiny of compliance with the requirements set in the Treaty and in Regulation 211/2011. After registration, ECI organisers have one year to collect paper and/or online statements of support (signatures). If they decide to collect online signatures, their Online Collection system (OCS) has to be certified by a Member State. Organisers then have to submit the collected signatures for verification to the competent Member States according to national rules. If they collected more than one million verified signatures from at least seven Member States, according to national thresholds set in the Regulation, they can submit their ECI to the Commission. A hearing is then organised at the European Parliament, after which the Commission will examine the ECI and publish, in a Communication, its conclusions and possible planned actions.

Steps have been taken by different EU institutions to support ECI organisers and numerous difficulties linked to the experiences of the very first organisers were addressed. At the time of writing this report, 46 ECIs were proposed, 28 of which were registered. More than 6 million citizens across Europe have supported an ECI and about 70% did so by signing online<sup>1</sup>. Two successful ECIs were submitted to the Commission. The first two hearings at the EP were held in February and April 2014<sup>2</sup> and the Commission published two Communications on their follow-up<sup>3</sup>.

However, concerns are still expressed by stakeholders about the effective implementation of the ECI and about the ECIs objectives perceived by citizens. If the ECI system, while ensuring a safe use of the different tools in each phase of the process, includes too many requirements and burdens, the EU's objectives to bring citizens closer to the EU and the citizens' willingness to participate in the EU decision making process may be negatively affected.

The European Ombudsman has opened, in January 2014, an own initiative investigation on the implementation of the ECI<sup>4</sup>. So far, 18 (about 40%) proposed ECIs were refused registration – out of the total 46 ECIs filed. Six did not reach the one million signatures. Moreover, the number of presented ECIs is declining, i.e. 27 filed ECIs in 2012 and 19 filed

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<sup>1</sup> Information up to 23.05.2014 and based on [European Citizens' Initiative \(ECI\): European Commission Official Register](#).

<sup>2</sup> European Citizens' Initiative '[Water and sanitation are a human right! Water is a public good, not a commodity!](#)' and the European Citizens' Initiative '[One of us](#)'.

<sup>3</sup> European Commission, Communication on the European Citizens' Initiative '[Water and sanitation are a human right! Water is a public good, not a commodity!](#)', COM(2014) 177 final, 19.03.2014; European Commission, Communication on the European Citizens' Initiative '[One of us](#)', COM(2014) 355 final, 29.05.2014.

<sup>4</sup> [The European Ombudsman own initiative investigation](#), Press release No. 2/2014, 29.01.2014. The Ombudsman received a number of complaints on the ECI procedure (for some of them, it has already contacted the Commission) and 20 replies to its invitation for feedback in the context of the investigation.

ECIs in 2013. A Eurobarometer released in March 2013, showed that two-thirds of Europeans say that their voice does not count in the EU (67%)<sup>5</sup>.

The Committees on Petition and Constitutional Affairs of the European Parliament have therefore contracted this study to understand how the ECI was implemented. This study aims to identify and propose measures to ensure a straightforward ECI process with less costs and burdens for EU citizens. The ultimate goal is to define concrete actions to frame the ECI as a mechanism to empower EU citizens to actively participate in shaping the future of Europe.

## KEY FINDINGS

- Among the current obstacles faced by ECI organisers and citizens, the main ones concern information and support provided to ECI organisers, the free software offered by the Commission for the online collection of signatures, the numerous different requirements and corresponding forms to sign ECIs in different Member States as well as the disparity of understanding of what the ECI's objectives are.
- In this regards, a number of possible solutions have been put forward. The main ones are the creation of a one-stop-shop for support and information to ECI organisers, the improvement of the Commission software and the establishment of a simplified single statement of support form.
- The following tables present all current obstacles faced by ECI organisers and signatories identified during the study and the possible recommendations validated to overcome them. The obstacles are grouped by phases of the ECI process as identified for the purposes of this study.

## MAIN OBSTACLES FACED BY ECI ORGANISERS AND SIGNATORIES

### HORIZONTAL ISSUES

- Difficulties in operating as an informal ECI citizens' committee
- Uncertainty and risks linked to the personal (and data protection) liability for organisers
- Difficulties in finding contacts in other Member States to set up ECIs
- Organisers do not know what they have to do/do not know how to handle the ECI process
- Commission's conflict of interest (provide advice and decides on ECIs registration)
- Costly process
- Burdensome ECI process
- Limited tools for enforcement leading to risk of diminishing the credibility of the ECI
- EU citizens are not aware of the ECI

### REGISTRATION BY THE EUROPEAN COMMISSION

- Lack of legal expertise and costly legal services

<sup>5</sup> European Commission, '[Eurobarometer 373](#): Europeans' Engagement in Participatory Democracy', March 2013.

- Unclear legal bases for the ECIs
- Unclear scope (Treaty changes or not) of the ECI
- Uncertainty on legal analysis by the Commission due to the 'two step' legal examination system
- Lack of language expertise by organisers and costly translation services

#### ONLINE COLLECTION SYSTEM (OCS) CERTIFICATION BY MEMBER STATES

- Difficulties in signing the ECIs online with the Commission OCS
- Signatories' emails cannot be collected
- Non-unified OCS system across Member States
- Short deadline to certify the OCS

#### COLLECTION OF STATEMENTS OF SUPPORT BY ORGANISERS

- Numerous and different data requirements
- Signatories are reluctant to give their ID data
- Some EU nationals and third-country nationals cannot sign the ECIs
- Age limits
- Unclear rules of conduct for EU officials
- Short collection period
- Uncertainties on the starting date for collection of signatures
- The system might not guarantee full equal treatment of EU citizens

#### VERIFICATION OF STATEMENTS OF SUPPORT BY MEMBER STATES

- At the time of drafting of this report, only two ECIs had been formally submitted to the European Commission. For this reason, no conclusions could validly be drawn on this phase. Overall, it does not seem that the main obstacles for the ECI organisers were encountered in this phase of the process.

#### SUBMISSION BY ORGANISERS TO THE EUROPEAN COMMISSION

- Limited reimbursement for hearings
- No possibilities to invite subject-matter experts at hearings
- Not enough time for exchanges with MEPs at hearings
- Confusion about the hearings' purpose and structure
- Difficulties in getting publicity and visibility on specific ECIs
- Uncertainties on the follow-up, on the legal arguments behind successful and unsuccessful ECIs and on the role of organisers
- Uncertainties on the nature (agenda setting tool or right of initiative) of the ECI.

## PRACTICAL RECOMMENDATIONS

- 'Citizens' Initiative Centre': a one-stop-shop for support and information to ECI organisers could be set up. Such a Centre could consist of an office and an online platform and it could provide the following services:
- support the search for potential partners or support staff, e.g. pro-bono IT or legal experts;
- reply to accreditation and information requests;
- provide a single set of detailed guidelines and training material on the rights and obligations of the ECI organisers and on all administrative procedures through the ECI process, as well as on the follow-up of successful and unsuccessful initiatives. The support should cover matters such as the IT requirements for the online collection system and the legal aspects of the ECIs including:
  - those related to the ECI legal bases under the Treaties and the possible development of more articulated proposals for legislative acts;
  - the legal status of the ECIs and the organiser's liability;
  - the applicable data protection rules.
- The Centre could be provided by pulling resources together from the Commission, the European Parliament, the European Economic and Social Committee, the Council and the Committee of the Regions.
- The Commission should provide more information and more detailed evidence and motivated arguments in their refusal or acceptance letters for registration of the ECIs by:
  - considering and analysing, separately, each of the different points of request of a proposed ECI;
  - clarifying EU competences in the field of the proposed ECI by providing factual information on the actions taken and planned at EU level.
- Commission servers storing the online signatures collected were offered for free as a temporary service from July 2012. The Commission should confirm this measure on a permanent basis.
- The Commission should improve the current free software for the online collection of signatures – including the collection of signatories' emails, to increase its user-friendliness while ensuring high security standards. This could be done through an interactive process enabling all of the stakeholders and users involved to contribute with their experience on the difficulties encountered.
- The European Economic and Social Committee – which has already proposed to offer its services, the European Parliament and any other EU institution, could provide the organisers with free translation services for the texts of their ECIs which are used to request signatures during their campaigns in different Member States.
- In light of the up-coming judgements of the Court of Justice of the European Union, the Commission could clarify if the ECIs can propose EU primary law amendments (Treaty, Charter of Fundamental Rights). This would inform the work of the legal support provided by the 'Citizens' Initiative Centre'.
- The ECI citizens' committee should receive reimbursement for travel costs to participate in the European Parliament's hearing for all of its members, i.e. seven instead of three.

- The European Parliament could clarify, in its rules of procedure, the aim and structure of the hearing, including the role of other EU institutions, to establish proper grounds and opportunities for the organisers to fully present their requests and engage in a dialogue with the MEPs on the follow-up of their ECIs.
- The Commission could proceed to regular random checks for the transparency obligations of the ECI organisers regarding financial support. Checks could be carried out primarily on the Commission's own initiative while keeping the possibility of checks derived from complaints, which is the current system.
- The Commission could clarify the position of EU officials so that potential signatories/campaigners among them can exercise their rights while being sure to respect their obligations

#### RECOMMENDATIONS FOR A POSSIBLE REVISION OF REGULATION 211/2011

- Revise Article 6 and Annex III and IV of the Regulation to establish a simplified single statement of support form.

Should the Regulation be revised in 2015, at the occasion of the review of its application, some of the practical recommendations presented above could also be reflected in the Articles of the Regulation to enhance legal certainty and encourage the launch of ECIs. In particular, the following actions could be considered:

- Revise Articles 2(3) and 3(1) of the Regulation to clarify that the ECI citizens' committees can be set up by natural persons as national/European legal entities.
- Revise the Regulation to clarify further rights and obligations of the organisers and the EU institutions with regard to:
  - The 'Citizens' Initiative Centre' – Article 4(1);
  - The provision of translations – Article 4(1);
  - The Commission replies to the ECI registration requests – Articles 4(2)(b) and 4(3);
  - The Commission checks on transparency obligations – Articles 4(1) and 9;
  - The Commission's provision of servers – Article 6(1);
  - The organisers' personal and data protection liabilities – Article 13.
- Revise Article 11 of the Regulation to clarify the aim and structure of the hearing for successful ECIs. Rule 197a of the European Parliament Rules of Procedure could also be amended accordingly.

#### RECOMMENDATIONS FOR A POSSIBLE REVISION OF EU PRIMARY LAW

- Revise Article 11(4) TEU to clarify:
  - if the ECI can propose EU primary law amendments, e.g. Treaties and Charter of Fundamental Rights, also in the light of the Court of Justice of the European Union case-law;
  - if the ECI is a citizens' right of initiative requesting the proposal of a specific legislative act or an agenda setting tool to raise issues of concern for citizens willing to see it dealt with at EU level.

# 1. INTRODUCTION

## 1.1. European Citizens' Initiative

The European Citizens' Initiative (ECI) is a new instrument introduced by the Lisbon Treaty<sup>6</sup> to increase participatory democracy in the EU by empowering citizens to participate in decision making<sup>7</sup>.

ECI provisions enable one million citizens from at least one quarter of the Member States, to ask the European Commission, within the framework of its powers, to submit a legislative proposal on matters where citizens consider that a legal EU act is required to implement the Treaties – Article 11(4) of Treaty on European Union (TEU).

European citizens now enjoy a right of legislative initiative – similar to the right conferred on the European Parliament (Art. 225 TFEU) and the Council of the European Union (Art. 241 TFEU). ECI complements the citizens' right to submit petitions to the European Parliament (EP) and their right of appeal to the European Ombudsman.

Regulation 211/2011<sup>8</sup> on the citizen's initiative establishes the ECI procedure and Commission Implementing Regulation 1179/2011, laying down technical specifications for the Online Collection System (OCS)<sup>9</sup>.

In brief, the ECI process develops as follows. ECI organisers have to submit their proposed ECI to the Commission. The Commission will register it after a first scrutiny of compliance with the requirements set in the Treaty and in Regulation 211/2011 (described in this document as 'the Regulation'). After registration, ECI organisers have one year to collect paper and/or online statements of support (signatures). If they decide to collect online signatures, their Online Collection Systems (OCS) has to be certified by a Member State. Organisers then have to submit the collected signatures for verification to the competent Member States according to national rules. If they collected more than one million verified signatures from at least seven Member States, according to national thresholds set in the Regulation, they can submit their ECI to the Commission. A hearing is then organised at the European Parliament, after which the Commission will examine it and publish, in a Communication, its conclusions and possible planned actions.

At the time of writing this report, 46 ECIs were proposed, 28 of which were registered. More than 6 million citizens across Europe have supported an ECI and about 70% did so by signing online<sup>10</sup>. Two successful ECIs were submitted to the Commission. The first two

<sup>6</sup> Treaty of Lisbon amending the Treaty of the European Union and the Treaty establishing the European Community (TEU), OJ 2007 C 306/1. The concept of a 'right of legislative initiative for citizens' was first included in Article 46(4) of the [Draft Treaty establishing a Constitution for Europe](#), CONV 850/03, Brussels, 18.07.2003. It was finally enacted via Article 11(4) TEU and Article 24 of on the Functioning of the European Union (TFEU).

<sup>7</sup> The introduction of ECI inspired the creation of the Finnish national citizens' initiative process. Kaufmann, B. (2013), [Active Citizenship and Representation in Europe: Towards trans-national Democracy? – Facts and Views around the European Year of Citizens 2013](#), Federal Department of Foreign Affairs, Presence Switzerland.

<sup>8</sup> Regulation 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ L 65/1, 11.03.2011.

<sup>9</sup> Commission Implementing Regulation 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, OJ L 301/3, 18.11.2011.

<sup>10</sup> Information up to 23.05.2014 and based on [European Citizens' Initiative \(ECI\): European Commission Official Register](#).

hearings at the EP were held in February and April 2014<sup>11</sup> and the Commission published two Communications on their follow-up<sup>12</sup>.

## 1.2. The study: aim and methodology

The ECI aims to implement a core principle of the EU – democracy. Since the entry into force of Regulation 211/2011 in April 2012, numerous steps have been taken by different EU institutions to support ECI organisers.

However, concerns were expressed by stakeholders about the effective implementation of the ECI and about the ECIs objectives perceived by citizens. The European Ombudsman has opened, in January 2014, an own initiative investigation on the implementation of the ECI<sup>13</sup>. So far, 18 (about 40%) proposed ECIs were refused registration – out of the total 46 ECIs filed. Six did not reach the one million signatures<sup>14</sup>. Moreover, the number of presented ECIs is declining, i.e. 27 filed ECIs in 2012 and 19 filed ECIs in 2013<sup>15</sup>. A Eurobarometer released in March 2013, showed that two-thirds of Europeans say that their voice does not count in the EU (67%)<sup>16</sup>.

The Committees on Petition and Constitutional Affairs of the European Parliament have therefore contracted this study to understand how the ECI was implemented. This study aims to identify and propose measures to ensure a straightforward ECI process with less costs and burdens for EU citizens. The ultimate goal is to define concrete actions to frame the ECI as a mechanism to empower EU citizens to actively participate in shaping the future of Europe. Possible solutions were analysed and recommendations were put forward to make sure citizens have real possibilities to be involved in decision-making at EU level and also make sure the ECI is a tool for them – as natural persons, and not just interest groups for participatory democracy in the EU<sup>17</sup>.

This study:

- identifies obstacles and difficulties faced by organisers when setting up and running an ECI;
- gathers potential solutions to overcome them;
- proposes recommendations that could help improve the ECI process as an effective tool for participatory democracy in the EU.

The report has been developed through stakeholder consultation – including ECI organisers, national authorities, EU institutions and Members of the European Parliament (see [Annex I](#)), and through desk research (see [References](#)). It provides an analysis of the findings, i.e.

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<sup>11</sup> European Citizens' Initiative '[Water and sanitation are a human right! Water is a public good, not a commodity!](#)' and the European Citizens' Initiative '[One of us](#)'.

<sup>12</sup> European Commission, Communication on the European Citizens' Initiative '[Water and sanitation are a human right! Water is a public good, not a commodity!](#)', COM(2014) 177 final, 19.03.2014; European Commission, Communication on the European Citizens' Initiative '[One of us](#)', COM(2014) 355 final, 29.05.2014.

<sup>13</sup> [The European Ombudsman own initiative investigation](#), Press release No. 2/2014, 29.01.2014. The Ombudsman received a number of complaints on the ECI procedure (for some of them, it has already contacted the Commission) and 20 replies to its invitation for feedback in the context of the investigation.

<sup>14</sup> Information up to 23.05.2014 and based on [European Citizens' Initiative \(ECI\): European Commission Official Register](#).

<sup>15</sup> This proves that there is no risk of "petition fatigue" that could become a burden for the European Commission.

<sup>16</sup> European Commission, '[Eurobarometer 373: Europeans' Engagement in Participatory Democracy](#)', March 2013.

<sup>17</sup> For example, 'The Californian Citizens' Initiative, which has been in place for almost a century, is today rarely used by grassroots citizens' groups because of fundamental flaws in its design. [...] it is more often used by big business interests'. See Corporate Europe Observatory (2010), 'ECI participatory democracy?'.

obstacles and solutions, structured according to the following phases of the ECI implementation<sup>18</sup>:

- Horizontal Issues;
- Registration by the European Commission;
- Online Collection System (OCS) Certification by Member States;
- Collection of Statements of Support by Organisers;
- Verification of Statements of Support by Member States;
- Submission by Organisers to the European Commission.

The solutions analysed include those suggested by stakeholders and literature. These were expanded and validated through peer review by the Members of the Senior Expert Panel of the project<sup>19</sup>. Only the validated solutions are included in section [3](#) as recommendations to ensure that the ECI process is an effective tool for participatory democracy in the EU.

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<sup>18</sup> These phases were identified for the purpose of the study and might not match the phases considered in the [ECI European Commission Official Register](#).

<sup>19</sup> Prof. Ludwig Kramer for legal and inter-institutional advice; Mr Carsten Berg for technical advice; Mr Luis Bouza for policy advice.

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

Within each section on the phases of the ECI implementation, the applicable rules are described. The obstacles faced by actors involved in the ECI process are listed following the order of the provisions of Regulation 211/2011. The importance of such obstacles is also mentioned – based on the feedback of stakeholders. Difficulties linked to the very first experiences of the ECI process that have been already addressed are not covered. This report focuses on the remaining obstacles and solutions to overcome them.

Possible solutions gathered through desk research and stakeholder consultation, or put forward by the Senior Expert Panel and the Milieu project team, are presented at the end of each section together with the results of their analysis. Such analysis explains why some solutions were not retained and clarifies which solutions are more important and why. It also explains which solutions could be progressively considered in order of difficulty of implementation, i.e. from practical solutions to ones involving changes to EU law. Only the solutions validated in cooperation with the Senior Expert Panel are included in section [3](#) as recommendations to ensure that the ECI process is an effective tool for participatory democracy in the EU.

### 2.1. Horizontal Issues

This section presents a number of obstacles which organisers face throughout the ECI process – including setting up and running ECIs, and not only in one single phase<sup>20</sup>.

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

Applicable rules<sup>21</sup>: Articles 2(3), 3(2), 12 and 13 of Regulation 211/2011

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

Article 12 states that organisers of a citizens' initiative are responsible for processing personal data and should adopt appropriate technical and organisational measures to protect such data against accidental or unlawful destruction, accidental loss and alteration.

According to Article 12, ECI organisers must comply with Directive 95/46/EC on the protection of individuals regarding the processing of personal data and the free movement of such data<sup>22</sup>, and they are responsible as 'data controllers'. In particular, according to Article 12(6) of the Regulation, the organisers are in charge of implementing appropriate technical and organisational measures to protect personal data against:

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<sup>20</sup> These phases were identified for the purpose of the study and might not match the phases considered in the [European Commission Official Register](#).

<sup>21</sup> The European Data Protection Supervisor (EDPS) analysed the data protection rules of the Regulation during its adoption process. See EDPS, Opinion on the Proposal for a Regulation of the European Parliament and of the Council on the Citizens' Initiative, OJ C 323/1, 30.11.2010.

<sup>22</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995.

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

Article 13 of the Regulation establishes the liability of the organisers for any damage they cause in the organisation of a citizens' initiative in accordance with applicable national law.

**Obstacles: difficulties in operating as informal ECI citizens' committees; uncertainty and risks linked to the personal (and data protection) liability of the organisers<sup>23</sup>**

These obstacles involve two aspects: the possibility for the citizens' committees to operate and run the ECIs, and the liability of the members of such committees. Both obstacles were considered important by all ECI organisers and potential organisers.

For any practical or administrative task, the seven members of the ECI citizens' committee have to use their own names, e.g. for bank accounts to manage ECI financing. The fact that there is no structure to the committee established in the Regulation causes uncertainties also when lodging complaints. For example, two organisers who appealed to the Court of Justice of the European Union (CJEU) were asked to resubmit their request as joint appeal from all the seven members of the committee and, in another case, the seven members and the committee as such have referred their case to the CJEU.

Under the Regulation, the seven European citizens stand personally liable for the whole ECI process – including the work of numerous volunteers across Europe at national and local level with whom they are not in direct contact. They could be prosecuted for infringing EU or national law in the management of the process. The fear of the risks linked to personal liability is one of the reasons that potential organisers do not launch ECIs.

Organisers are also considered to be 'data controllers' and sanctions for infringements of data protection rules could be imposed on them personally. In practice, compliance with the ECI Regulation and the data protection Directive, as well as with the national transposing legislation, represents an obstacle for organisers of the ECIs for the following reasons<sup>24</sup> – the security requirements for storing the signed papers and electronic forms, transportation/transfer for submission to the Member States are considered:

- burdensome, e.g. specific security features for storage rooms such as locks, fire alarms;
- not clear, e.g., organisers are not sure how to download and transmit online forms in a safe way to national authorities;
- risky – organisers are personally liable, i.e. 'the level of sensitive personal data required exposes citizens to identify theft and fraud which can leave the ECI organisers liable for fines. For instance, in Germany, the fine is up to EUR 300.000 if data is not protected at every stage of the campaign'<sup>25</sup>.

Under some national laws, organisers are required to notify the collection of signatures to data protection authorities. In some cases, such authorities were not aware of the

<sup>23</sup> Information based on desk research and stakeholder consultation (ECI organisers).

<sup>24</sup> Berg, C., 'First ECI Withdrawn - EU Directive on Dairy Cow Welfare', The ECI Campaign Article, 20.07.2012.

<sup>25</sup> See [European Commission, 'The European Citizens' Initiative - Guidelines and recommendations for practical implementation'](#), 15.04.2013, p. 3. The legislation of the Member States where the organisers carry out their main activity is competent according to the Commission interpretation of EU law.

existence of the ECI and this caused a lack of certainty about organisers' obligations and the imposition of additional unforeseen obligations. For instance, in Bulgaria, the data protection authority required the registration of each single ECI volunteer gathering paper signatures as an 'operator of personal data'<sup>26</sup>. This delayed the organisers and they lost time in collecting signatures and this had implications, in terms of burdens, for the registration application.

In conclusion, the lack of knowledge by organisers on the way that they should apply the rules, the costs and burdens involved in trying to apply the rules, and the fear of their personal liability should they be found non-compliant, deter potential organisers from launching ECIs – which represent the difficulties known to current organisers.

**Solutions analysed: reducing the data gathered with signatures; clear definition of the ECI citizens' committee (data protection) obligations; guidelines and training on such obligations; insurance; the citizens' committee as a legal entity<sup>27</sup>**

Regarding data protection, one of the proposals presented below<sup>28</sup> is the unification of the signed data requirements to sign ECI. By reducing the type of data required, i.e. less information from signatories, and data sensitivity, i.e. no ID number, the liability risks of the organisers would be substantially reduced.

In addition, organisers could be provided – possibly by the 'Citizens' Initiative Centre', proposed later<sup>29</sup>, with more information about their specific data protection obligations in each Member State where they run their campaigns. For this purpose, guidelines and training material available for download could be made available. This way, organisers could be empowered to understand their role and the risks, and to manage and control such risks.

The combination of these two measures should already substantially reduce the obstacles faced by organisers, although the position of campaigners who support but are not members of the ECI citizens' committee, might still need to be clarified. In this case, there would be no need for obligatory ECI insurance which protects organisers against possible risks connected to the management of ECIs. Moreover, the proposal to oblige ECI organisers to subscribe to insurance was not retained since this would increase the ECI burden and costs. In addition, it could be difficult, in practice, to define which risks are covered and to find an insurer that would provide for such a service. However, organisers could be informed (by the proposed 'Citizens' Initiative Centre') about the possibility to explore subscribing to an insurance in accordance with their national laws, since nothing forbids it in the Regulation.

Regarding general personal liability, it could be clarified in guidelines that, under the Regulation, the ECI organisers' personally liabilities are not unlimited. In line with EU and national law their liabilities are limited to a certain extent. However, the wording of Article 13 of the Regulation is very broad and generates legal uncertainty. It could therefore be

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<sup>26</sup> Merz, P., 'End Ecocide in Europe' Article in Berg, C. and Thomson, J., 'ECI That Works', The ECI Campaign, Germany, 15.04.2014.

<sup>27</sup> Information based on desk research and stakeholder consultation (ECI organisers) or developed by Millieu. The Commission is aware that proposals have been voiced to further explore the option, at the occasion of revision of the ECI Regulation, to provide the ECI organisers with a form of legal personality which they would use to set-up and run their ECIs. Information based on stakeholder consultation (European Commission).

<sup>28</sup> See section [2.4.1](#).

<sup>29</sup> See section [2.1.2](#).

revised to clarify that they are responsible, for example, for 'acts which are unlawful and committed intentionally or with at least serious negligence'<sup>30</sup>.

Modifying the Regulation to allow the setting-up a national/European legal entity for the citizen's committee is also proposed in order to avoid holding organisers personally liable. This option could also increase the ECI credibility and facilitate running an ECI – including obtaining financial support, and therefore address the other obstacles linked to the operating capacity of the citizens' committees.

However, a certain degree of liability must be established to ensure that the rights of the signatories are respected, i.e. in case of violations, a responsible subject should be liable – vis-a-vis to the offended parties. Moreover, imposing an obligation for all ECI organisers to set up a legal entity might be burdensome for them, e.g. legal and technical expertise from a notary or a lawyer might be necessary for registration with the public authorities. In addition, this would be a top-down decision organising civil society, instead of empowering citizens to participate in EU public life.

For these reasons, as a residual measure, it is proposed to provide the ECI organisers only with the possibility, and not the obligation, to set up their citizens' committees as legal entities under national or European law. A potential ECI organiser is already exploring the possibility to set up a European Economic Interest Grouping to launch an ECI<sup>31</sup>. A modification of the Regulation might not be necessary because, whilst the Regulation does not allow citizens' committees to be legal persons, nothing seems to forbid them as natural persons to become established as legal entities – therefore preserving the difference between companies and citizens<sup>32</sup>. If the option of a European legal entity would be explored in the long term, consideration should also be given to the EU developments on other EU legal entities such as the European Foundation Statute and the European Association<sup>33</sup>.

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

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

ECI organisers must comprise of at least seven persons who are residents of at least seven different Member States – Article 3(2) of the Regulation.

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

<sup>30</sup> Example stemming from Article 3 (Offences) of Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, OJ L 328, 06.12.2008.

<sup>31</sup> Council Regulation 2137/85 of 25 July 1985 on the European Economic Interest Grouping, OJ L 199 and European Commission Proposal for Council Regulation on the statute for a European Association, COM(91) 273 FINAL, 21.04.1992.

<sup>32</sup> See European Commission, Proposal for a Regulation of the European Parliament and of the Council on the citizens' initiative, COM(2010) 119 final, Brussels, 31.3.2010: Article 2(3) "Organiser" means a natural or legal person or organisation responsible for the preparation and submission of a citizens' initiative to the Commission' and 3(1) 'Where the organiser is a legal person or an organisation it shall be established in a Member State. Organisations which do not have legal personality under the applicable national law shall have representatives that have the capacity to undertake legal obligations on their behalf and assume liability'. The possibility for organisations, in addition to natural persons, to launch an ECI was mentioned by some stakeholders but it was not analysed as it did not correspond to any obstacles identified so far.

<sup>33</sup> Proposal for a Council Regulation on the Statute for a European Foundation, COM/2012/035 final, 08.02.2012

- a comprehensive and user-friendly ECI guide<sup>34</sup>;
- support and guidance during the process of registering and processing proposals;
- information on current and intended EU legislative proposals on matters raised by the initiative;
- a checking service of additional language versions that could be included into the register<sup>35</sup>.

Through the Europe Direct service<sup>36</sup>, informal support to potential ECI organisers is available for clarification requests and explanations on the registration criteria and Commission powers – including the basis of draft ECIs. The Commission also hosted online collection systems<sup>37</sup>, organised workshops and provided bilateral assistance for certification and software<sup>38</sup> configuration<sup>39</sup>.

The European Economic and Social Committee (EESC)<sup>40</sup> and the EP have also been active in supporting ECI organisers<sup>41</sup>.

EESC prepared a guide for ECI organisers<sup>42</sup> and held several ECI events, such as the annual ECI day in partnership with, among others, the Committee of the Regions (CoR)<sup>43</sup>. The EESC recently created an ad hoc group working on a strategy to support to ECI organisers<sup>44</sup>.

In 2012<sup>45</sup>, the EP amended its Rules of Procedure to regulate 'Public hearings on citizens' initiatives' (Rule 197a) and to specify that the Committee on Petitions may examine unsuccessful ECIs when follow-up is considered appropriate (Rule 203a). In 2014, the Rules were further amended providing that the Committee on Petitions will be responsible for the organisation of public hearings on citizens' initiatives.<sup>46</sup> In line with the Regulation (Article 11), the EP also held the first ECI hearings on 17 February and 10 April 2014<sup>47</sup>.

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<sup>34</sup> European Commission, '[Guide to the European Citizens' Initiative](#)'.

<sup>35</sup> According to Article 4(1) of Regulation 211/2011, after the registration of the ECI is confirmed, the organisers may provide the proposed citizens' initiative in other official languages of the Union for inclusion in the register. The organisers are responsible for these translations. The European Commission further explains in its 'Guide for organisers' that organisers 'should strive to ensure that the translations are equivalent to the original' (see European Commission, '[Guide to the European Citizens' Initiative](#)', p. 18).

<sup>36</sup> European Citizens' Initiative (ECI): European Commission Official Register, [Point of Contact – Europe Direct](#).

<sup>37</sup> Šef ovi Maroš, Vice-President of the European Commission: [Commission offers own servers to help get first European Citizens' Initiatives off the ground](#), 23.01.2013.

<sup>38</sup> [Software for online collection systems developed by the Commission](#).

<sup>39</sup> Information based on stakeholder consultation (European Commission).

<sup>40</sup> EESC, Opinion on the Proposal for a Regulation of the European Parliament and of the Council on the Citizens' Initiative, SCO/001 Citizens' initiative, 14.07.2010; and Opinion on the implementation of the Lisbon Treaty: participatory democracy and the citizens' initiative (Article 11), SC/032, 17.03.2010.

<sup>41</sup> Other organisations have been active in supporting and informing ECI organisers, such as: [ECI Support Centre - European Citizens' House](#) by European Citizen Action Service and [Democracy International](#); ECI Information Centre by [Initiative & Referendum Institute Europe](#); The ECI Campaign: [Initiative for the European Citizens' Initiative](#); and the European Parliament [Greens - European Free Alliance](#).

<sup>42</sup> EESC, '[Your guide to the European Citizens' Initiative](#)', 2nd edition, March 2012.

<sup>43</sup> ECI day: The EESC, in partnership with the Committee of the Regions (CoR), the European Citizen Action Service (ECAS), Democracy International, the Initiative, the Referendum Institute Europe and Euronews organised the [2013](#) ECI day and additionally with The ECI Campaign and EurActiv the [2014](#) ECI day.

<sup>44</sup> Information based on stakeholder consultation (EESC).

<sup>45</sup> European Parliament, [Report on amending Parliament's Rules of Procedure with regard to the implementation of the European citizens' initiative](#), A7-0148/2012, 02.05.2012.

<sup>46</sup> European Parliament, Point XX of [Annex VII to EPRP, 'EP decision of 15 January 2014 on the powers and responsibilities of the standing committees'](#).

<sup>47</sup> See sections [1.1](#) and [2.6.1](#).

**Obstacles: difficulties in finding contacts in other Member States; organisers do not know what they have to do to how to handle the ECI process; Commission's conflict of interest<sup>48</sup>**

The obstacles linked to the set-up of the ECI, and to the handling of the administrative procedures, have been identified by all stakeholders as the main difficulty in the ECI process.

Organisers who already had a network of contacts in different Member States recognised this as a crucial asset for the success of their ECI, while those who did not have it, identified the main obstacle in the implementation of the ECI as not being able to establish a citizens' committee to launch the ECI<sup>49</sup>. This situation also raised concerns in terms of equal opportunities for organisers. Indeed, some underlined the burdens and costs involved in finding correspondents in other countries – this would put citizens, as opposed to cross-border organisations, at a disadvantage when setting-up an initiative.

Regarding the registered initiatives, the Commission's support has been recognised by the ECI organisers as being very valuable. In particular, the quick replies provided by the Commission services have been greatly appreciated<sup>50</sup>. The same is true for the activities of the EESC.

Nonetheless, organisers explained that they are not fully aware of their responsibilities because the information provided by the Commission services concern only the interaction with them – currently, there is little help that covers all of the aspects of the ECI process. For example, each Member State has different data protection rules for the treatment of paper signatures and the organisers did not know how to correctly handle such paper collection<sup>51</sup>.

Others pointed out that the ECI organisers are 'simple' citizens and not campaign professionals and that the currently available services are not designed for, or able to cope with, their significant needs. These stakeholders pointed at the scant administrative, financial and logistic means available within Member State authorities and Commission services for managing the ECI process and coping with the practical needs of the organisers.

Finally, some identified a conflict of interest in the position of the Commission, as outlined in the Regulation, because the Commission's services provide support and information and, at the same time, decide on the registration and the follow-up of the ECIs.

**Solution analysed: support for exchanges; improve the information and support available to the ECI organisers; set up an 'Citizens' Initiative Centre'<sup>52</sup>**

The EESC support for exchanges among ECI organisers has been recognised as very positive. This has proved useful – not only for creating a network, but also to foster

<sup>48</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers, MEP Victor Bo tinaru, EESC.

<sup>49</sup> '[...] most ECIs are supported by organisations that have a European coverage, but do not necessarily have a presence in Brussels. Moreover, 7 initiatives were presented by informal groups of young people, mostly from France', with contributions from the ECI Support Centre to the European Ombudsman own-initiative inquiry OI/9/2013/TN into the functioning of the ECI procedure, [available online](#).

<sup>50</sup> The Commission has also published a General Question & Answer document on the European Citizens' Initiative (ECI), see [European Citizens' Initiative \(ECI\): European Commission Official Register](#).

<sup>51</sup> See section 2.6.1 as regards data protection liability.

<sup>52</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers, MEP Victor Bo tinaru, EESC.

exchanges of information among potential organisers to allow them to learn from each other and benefit from possible tips/lessons learned. For these reasons, it was proposed to hold such meetings on a more frequent and regular basis<sup>53</sup>. Some stakeholders also asked for the creation, by EU institutions, of a specific online platform to support the search for potential partners and allow networking amongst the ECI organisers.

Regarding registered initiatives, other ideas for actions to further improve the information and support available to organisers have been put forward:

- updating/merging the European Economic and Social Committee Guide 'Your guide to the European Citizens' Initiative' of March 2012<sup>54</sup> and the European Commission 'Guide to the European Citizens' Initiative', 2011, to reflect the latest developments and lessons learned in order to facilitate the work of future organisers;
- increase resources in the Commission's services to provide further information and support – including regular meetings on the online collection systems;
- increase resources in the Member States' services to provide further information and support – especially on the application of the data protection rules;
- increase resources in the EESC to strengthen its involvement in the ECI process and provide independent advice to organisers;
- create an independent civil society helpdesk to provide information and support organisers.

To provide a comprehensive answer to such requests of support, it is proposed to establish the 'Citizens' Initiative Centre' as a one-stop-shop. Such a Centre could consist of an office and an online platform and could provide the following services:

- support in searching for potential partners or support staff, e.g. pro-bono IT or legal experts;
- replies to accreditation and information requests;
- provision of a single set of detailed guidelines and training material on the rights and obligations of the ECI organisers, and on all administrative procedures of the ECI process, as well as the follow-up of successful and unsuccessful initiatives. The support should cover matters such as IT requirements for the on-line collection system and the legal aspects of the ECIs including:
  - those related to the ECI legal bases under the Treaties and the possible development of more articulated proposals for legislative acts;
  - the legal status of the ECIs and the organiser's liabilities;
  - the applicable data protection rules.

The Centre could be provided by the EESC, the EP and/or any other EU institution. Any conflicts of interest in the Commission would be addressed if the Commission remains the body in charge of the registration decision – but not the only body providing support and information to prepare the registration requests. Moreover, the centre could enjoy a certain degree of independence to make sure that the most impartial advice is provided beyond the interests of each institution. It is not proposed that the 'Citizens' Initiative Centre' is run by civil society organisations – since they are less stable. However, they could collaborate with such a Centre to develop synergies and provide the best services to the ECI organisers.

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<sup>53</sup> The EESC is open to exploring ways in which they could further enhance the support for ECI organisers and the ECI process as a whole. Information based on stakeholder consultation (EESC) and Berg, C., '[The EESC in Support of the ECI Instrument](#)', The ECI Campaign Article, 01.10.2013.

<sup>54</sup> 30000 copies were printed so far.

Having an official 'Citizens' Initiative Centre' would also allow EU institutions to send a clear message to citizens in times of rising scepticism towards the EU.

The set-up of such a Centre would have economic implications for the resources allocated, e.g. office space, online platform, staff, although these could be reduced if synergies are developed by all of the current support providers, i.e. the Commission, the EP and the EESC, and if more institutions join the effort, e.g. CoR and Council. This would also avoid the current duplication of work, e.g. the different guidelines available, by different support providers and enhance the user-friendliness of the ECI by providing a single contact point for potential organisers across Europe. The Centre could also be useful, should several ECIs be launched in the future, to avoid the fragmentation of the ECIs and ensure the development of synergies for possible requests to the Commission on similar topics or with similar objectives<sup>55</sup>.

The Centre could bring advantages, not only in terms of information and support for the needs of organisers, but also in addressing identified obstacles in relation to the organisers' liabilities, the costs and burdens of the ECI process, the publicity and visibility of the ECIs and the difficulties in identifying the legal bases for launching the ECIs<sup>56</sup>. It would also send a strong message to EU citizens – EU institutions have worked together to provide them with all possible help to make them part of the EU decision-making process.

While this solution could be practically implemented without changes to EU law, should the Regulation be revised, Article 4(1) could be amended to reflect the EU institutions obligations and citizens' right to such support, therefore enhancing legal certainty and encouraging possible organisers to launch the ECIs<sup>57</sup>.

### 2.1.3. Funding and support to run ECI campaigns

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

Organisers must provide information on the sources of support and funding for the proposed citizens' initiative. They should do so both for the Commission register and, where appropriate, on their website. Such information should be regularly updated – Article 4(1).

In particular, when organisers submit their successful ECI to the Commission, they have to disclose information regarding any support and funding received for the ECI, which will be published in the register (Article 9)<sup>58</sup>.

#### Obstacle: costly/burdensome ECI process<sup>59</sup>

<sup>55</sup> See also section [2.1.2](#).

<sup>56</sup> See sections [2.1.1](#), [2.1.2](#), [2.1.3](#), [2.1.5](#) and [2.2.1](#).

<sup>57</sup> A possible rewording could be inspired by Article 1(2) of Regulation 1367/2006 on the application of provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies of 25.09.2006, OJ L 264: 'In applying the provisions of this Regulation, the Community institutions and bodies shall endeavour to assist and provide guidance to the public with regard to access to information, participation in decision-making and access to justice in environmental matters'.

<sup>58</sup> 'Indicate all sources of support and funding received for the initiative, including the amount of financial support at the time of submission' (point 7 of Annex VII of Regulation 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ L 65/1, 11.03.2011).

<sup>59</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers, EESC, and two members of the Senior Expert Panel for this project.

Almost all stakeholders pointed out the costly/burdensome process to set-up and run an ECI and the difficulties in fundraising.

Some consider that up to one million EUR is necessary to run a successful ECI<sup>60</sup>. This estimate does not necessarily correspond to the actual costs incurred by the organisers, but also considers the value of the work of the volunteers and the services provided for free to support a successful ECI campaign. Comparing this estimate with the actual funding received by the organisers of successful ECIs<sup>61</sup> provides an idea of the financial efforts involved in running them, i.e. EUR 140.000 for 'Water and sanitation are a human right!; Water is a public good, not a commodity!'<sup>62</sup>; EUR 159.219 for 'One of us'; EUR 14.501 for 'Stop vivisection'<sup>63</sup>.

Stakeholders highlighted the costly procedure, e.g., the need of a high level of IT expertise, of setting-up the online collection system (OCS). Estimated costs for the use of private servers are approximately EUR 10.000-20.000, yet those who have used private servers, explained that the OCS certification process actually costs about EUR 30.000. Almost all of the organisers made use of the Commission servers – offered for free as a temporary service from July 2012<sup>64</sup>, although numerous other obstacles were encountered in using this option<sup>65</sup>. For instance, organisers of a successful initiative estimated their costs to submit the gathered signatures for verification by Member States to about EUR 2.000.

The costly/burdensome process and difficulties in fundraising led to concerns about equal opportunities among the ECI organisers. The current functioning of the ECI risks domination by interest groups who typically have more resources than groups composed of single EU citizens across Europe<sup>66</sup>.

#### Solutions analysed: EU financial support; EU reimbursements<sup>67</sup>

If the ECI process is revised in the light of the proposed solutions presented in previous sections, the costs and burdens involved will be significantly reduced and the need for financial support will also diminish. Moreover, any funding system would entail further administrative burdens for getting such funding (preparation of applications, proofs of expenses, etc.).

Nonetheless, the following ideas were analysed:

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<sup>60</sup> 'Consider costs for staff, translation, office equipment, online services, signature collection, advertising, printing, phones and postage. Political campaigns, especially at transnational level, can cost a lot of money', see ECI Campaign practitioner's check list, by The ECI Campaign: [Initiative for the European Citizens' Initiative](#). See also Thomson, J. (2011) 'A space inside Europe for the public before a European public space: The European Citizens' Initiative and the future of EU public engagement', Involve Research Paper, Paper prepared for the conference 'Getting European Citizens' Initiatives started', Brussels, Belgium.

<sup>61</sup> European Citizens' Initiative: European Commission Official Register, [Closed ECIs](#).

<sup>62</sup> '[...] This is complemented by the time staff of EPSU invest in the initiative. This is harder to calculate. Nonetheless we estimate that starting with the preparation and counting over the whole period of the Initiative and calculating all costs this contribution could amount to 50-80.000 Euros. In addition an important number of citizens, trade unions, social action groups, NGOs and other organisations will promote the Initiative at national level [...]', available [online](#).

<sup>63</sup> At the time of writing this report, this ECI declared to have reached more than one million signatures. Verification by Member States is pending.

<sup>64</sup> Šef ovi Maroš, Vice-President of the European Commission: [Commission offers own servers to help get first European Citizens' Initiatives off the ground](#), 23.01.2013.

<sup>65</sup> See section 2.3.

<sup>66</sup> For instance, this is what happened in California: 'The Californian Citizens' Initiative, which has been in place for almost a century, is today rarely used by grassroots citizens' groups because [...] it is more often used by big business interests'. See Corporate Europe Observatory (2010), '[ECI participatory democracy?](#)'

<sup>67</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers, EESC.

- Commission/EU institutions could provide some funding to the registered ECIs;
- Commission/EU institutions could provide support to look for private funding and facilitate access to key donors. In particular, they could provide support for crowd funding, donation and payrolls (partnerships with companies);
- An EU start-up fund should allow the ECI organisers to test their ideas and perform a pilot signatures' collection;
- Commission/EU institutions could manage a system of vouchers to allocate to the ECIs on the basis of citizens' choices<sup>68</sup>;
- Commission/EU institutions could refund the ECI campaign expenses. For example, in case the initiative collects more than one million signatures, organisers could be reimbursed a lump-sum per signature collected, after having submitted a full financial report on expenditures and income. Or, reimbursements could be provided in subsequent steps as an increasing number of signatures are collected.

Among these proposals, only funding for registered initiatives has been analysed – providing financial help before registration was not considered since potential ECIs could be manifestly abusive, frivolous, vexatious or counter EU values (see Article 12 of Regulation 211/2011). Support to look for funding was also not considered as this is part of the tasks of the organisers as campaigners for a European Citizens Initiative.

The voucher proposal has not been retained. The difficulty lies in the design (which services? which providers?), and set-up an appropriate management system, e.g. how to make sure service providers across the EU accept such vouchers? The voucher solution seemed too costly and burdensome compared to the other ideas analysed.

Furthermore, the systems based on reimbursements were not retained for two reasons. If the ECI is successful, it already 'made it' and, at that point, there would be less need for financial help. If a progressive system is in place (staggered reimbursements when reaching a certain amount of signatures), it would be necessary to proceed each time to a verification of the signatures gathered at each stage, with increased costs and burdens not only on the organisers but also on the national authorities in charge of such verification.

Another option could be explored if the proposed measures to reduce the ECI costs and burdens should not be enough and if EU financing is confirmed in the future as a possible solution. The ECIs could be funded by EU operating grants which finance operating expenditures of a body that is pursuing an aim of general European interest or an objective that forms part of an EU policy. Currently, numerous trade unions, NGOs and other organisations benefit from these types of grants<sup>69</sup>. This option would not involve any change in EU law and funding and could be available through the existing budget lines of

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<sup>68</sup> For example, it has been suggested that, when voting for the EP elections, citizens could have vouchers (representing a part of the EU budget) that they could allocate to organizations or projects (in this case ECIs). See Aloisio, S., Grimaldi, G., Morelli, U. and Padoa-Schioppa, A. (2011), 'The European Citizens' Initiative: Challenges and Perspectives', in Matarazzo, R. (ed.), *Democracy in the EU after the Lisbon Treaty*, (Edizioni Nuova Cultura, Rome, 2011), pp. 65-150; IRI Europe (2008), '[The Initiative for Europe Handbook 2008](#)'.

<sup>69</sup> For instance, Recital 12 of Regulation 614/2007 on the Financial Instrument for the Environment (LIFE+) of 09.05.2007, OJ L 149, states that 'Non-governmental organisations (NGOs) contribute to the development and implementation of Community environmental policy and legislation. It is therefore appropriate for part of the LIFE+ budget to support the operations of a number of appropriately qualified environmental NGOs through the competitive and transparent awarding of annual operating grants. Such NGOs would need to be independent and non-profit-making and to pursue activities in at least three European countries, either alone or in the form of an association'. Point 15 of Annex II to Regulation 614/2007 states that one of the objectives of the programme is '[t]o promote NGOs which are primarily active in the field of environmental protection at European level.'

the Europe for Citizens' Programme<sup>70</sup> and the Rights, Equality and Citizenship Programme<sup>71</sup>. However, an ECI citizens' committee might need to be established as a legal entity.

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

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

These rules oblige organisers to disclose information on support and funding for their campaigns and they have been presented in the previous section.

##### Obstacle: limited tools for enforcement leading to the risk of diminishing the credibility of the ECI<sup>72</sup>

Currently, the obligation of transparency is enforced as follows: if the attention of the Commission is drawn to a possibly inaccurate declaration, accompanied by factual information that underpins such an allegation, the Commission would contact the organisers to establish the facts and have any inaccuracies corrected<sup>73</sup>.

A limited number of stakeholders consider that the simple disclosure obligation is not enough to respect the principle of transparency. The lack of systematic verifications to ensure that the information is correct and up-to-date, has been identified by them as an obstacle since they fear the reputation of the ECI could be diminished if such an obligation is not strictly respected.

Finally, the absence of rules to disclose if there are citizens or interest groups funding specific ECIs is also considered, by such stakeholders, as leading to the risk of exploiting the ECI as a lobbying tool for organisations instead of a citizens' tool for EU participatory democracy<sup>74</sup>.

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<sup>70</sup> Funding for ECIs could be possibly available through Regulation 390/2014 establishing the Europe for Citizens' Programme for the period 2014-2020, of 17.04.2014, OJ L 115. Recital 4 of this Regulation states that '[...] The European Citizens' Initiative provides a unique opportunity to enable citizens to participate directly in shaping the development of EU legislation'. According to Article 1(2)(b), the programme aims to foster European citizenship and to improve conditions for civic and democratic participation at Union level. Article 6 provides that '[t]he Programme shall be open to all stakeholders promoting European citizenship and integration, in particular local and regional authorities and organisations, twinning committees, European public policy research organisations (think-tanks), civil society organisations (including survivors' associations), and cultural, youth, educational and research organisations'.

<sup>71</sup> Operating grants are also provided by Regulation 1381/2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020, of 17.12.2013, OJ L 354, which aims (Article 4(1)(h)) 'to promote and enhance the exercise of rights deriving from citizenship of the Union'. According to Article 5(1)(d) 'support for main actors whose activities contribute to the implementation of the objectives of the Programme, such as support for NGOs in the implementation of actions with European added value, support for key European actors, European-level networks and harmonised services of social value; support for Member States in the implementation of Union law and policies; and support for networking activities at European level among specialised bodies and entities as well as national, regional and local authorities and NGOs, including support by way of action grants or operating grants'.

<sup>72</sup> Information based on stakeholder consultation with one or more of the following: ECIs organisers – including one initiative prior to the Regulation and therefore not considered officially ECI.

<sup>73</sup> Information based on stakeholder consultation (European Commission).

<sup>74</sup> For example, 'The Californian Citizens' Initiative [...] is more often used by big business interests. According to an in-depth study published by the Centre for Governmental Studies, "Money often dominates the initiative process even more than it does the legislative process"'. See Corporate Europe Observatory (2010), '[ECI participatory democracy?](#)'.

Solutions analysed: obligation to publish information on non-monetary support; consequences/sanctions for non-respect of the transparency principle; audit process; system of checks<sup>75</sup>

Stakeholders called for more detailed rules on funding to cover the entire ECI process. In particular the following possible solutions were pointed out:

- the obligation to publish funding information should be extended to non-monetary support, e.g. in kind contributions, volunteering, free-services provisions
- establishing precise consequences/sanctions in case of the use of hidden funds or fraudulent use of financial supporters' data;
- establishing an audit committee to verify the application of the principle of transparency within the EU institutions/European Economic and Social Committee.

None of these proposed solutions were retained. The extension of the obligation to publish more information on support would involve an additional burden on the organisers and it might not improve the level of compliance with the transparency rules. The concern that the disclosure of financial information does not happen, would not be addressed by asking the organisers to disclose even more. The identification of specific sanctions was also not considered since organisers are already concerned about their personal liability in the whole ECI process<sup>76</sup>. Moreover, the credibility of their ECI is what matters most – if it was found that the organisers did not comply with the transparency rules, the reputation of their ECI would be jeopardised. This has a strong deterrent effect because it could lead to fewer signatures. Finally, the set-up of an audit committee seems too burdensome for an obstacle which is only feared and not proved – and then only by a limited number of stakeholders.

However, if the Commission performed regular checks on the compliance with transparency rules regarding financial support, this would address the concerns of such stakeholders and enhance the credibility of the ECI. It would also allow for the early detection of possible problems instead of reacting on the basis of complaints. The rules on such checks could be inspired by the ones on the Transparency Register<sup>77</sup>. Checks could be carried out primarily on the Commission's own initiative while keeping the possibility of checks derived from complaints, which is the current system<sup>78</sup>. These solutions would not necessarily involve a change in EU law although introducing a rule for this purpose in the Regulation would enhance legal certainty.

<sup>75</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECIs organisers – including one initiative prior to the Regulation and therefore not considered officially ECI.

<sup>76</sup> See section 2.1.1.

<sup>77</sup> The [Joint Transparency Register Secretariat \(JTRS\)](#) was established under the [Inter-Institutional agreement on a common Transparency Register between the Parliament and the Commission](#). According to point 21 of the Agreement, the JTRS' tasks include the implementation of measures to contribute to the quality of the content of the register. On this basis, the JTRS performs systematic checks. It also acts on alerts and complaints. Annex 4 to the agreement establishes the procedure for the investigation and treatment of complaints. The JTRS has carried out more than 1000 quality checks until 2013 (random self-initiative checks and checks on alerts) and found 783 cases of non-compliance (see [Annual Report on operations of the Transparency Register 2013](#)). The [new Inter-Institutional agreement adopted in March 2014](#) (pending publication in the Official Journal) provides in Point 24 that the JTRS '[...] need to be reinforced [...] to deal with the procedures for alerts and for the investigation and treatment of complaints, and to improve the procedures for verifying the reliability of data provided by applicants'.

<sup>78</sup> This should be done in line with the policy of the Commission on infringements procedures against Member States. See, the Communication from the Commission on updating the handling of relations with the complainant in respect of the application of Union law ([COM\(2012\) 154 final](#)) establishes under point 3 that complaints shall not be dealt with only if: it is anonymous, it fails to refer to a Member State, it denounces the acts/omissions of a private entity; it fails to set out a grievance, if the latter was already addressed in a public manner by the Commission, or if it falls outside the scope of Union law.

### 2.1.5. Awareness of EU citizens on the ECI

Applicable rules: Articles 10 and 11 of Regulation 211/2011, Rules 197a, 203a and Point XX of Annex VII to the European Parliament Rules of Procedure

Article 10 establishes that, once the organisers have received the certificates by the relevant national authorities on the validation of the one million (or more) signatures, the Commission must:

- publish the citizens' initiative without delay in the register;
- receive the organisers at an appropriate level to allow them to explain in detail the matters raised by the citizens' initiative;
- within three months, set out in a communication, its legal and political conclusions on the citizens' initiative, the action it intends to take, if any, and its reasons for taking or not taking that action.

The Regulation also provides for the organisation of a public hearing for the organisers of successful ECIs to present their initiatives. Article 11 states that 'the Commission and the European Parliament shall ensure that this hearing is organised at the European Parliament, if appropriate together with such other institutions and bodies of the Union as may wish to participate, and that the Commission is represented at an appropriate level'.

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

Obstacle: EU citizens are not aware of the ECI<sup>79</sup>

All organisers pointed out that, in addition to promoting their specific ECI, they needed to inform EU citizens and raise awareness about the ECI. This is perceived as an additional burden to their limited campaigning resources. Organisers also explained that, while it is easier for them to engage the EU debate on social media, they struggle to interact with 'traditional media' such as radio, TV and newspapers.

Solutions analysed: EU awareness raising campaign on ECI; support by the proposed 'Citizens' Initiative Centre'; empowering the ECI citizens' committee to inform about the ECI<sup>80</sup>

Stakeholders called for an awareness raising operation on the ECI across Europe – similar to the ACT.REACT.IMPACT campaign launched by the EP for the 2014 EU elections<sup>81</sup>. In this context, the following ideas were put forward:

- every household should receive a leaflet about the ECI;
- Regulation 211/2011 (the Regulation) should oblige EU institutions and national governments to inform EU citizens of their new agenda-setting right, e.g. through a TV advertising campaign.

<sup>79</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers, EESC, MEP Victor Bo tinaru, MEP Alain Lamassoure, one member of the Senior Expert Panel for this project.

<sup>80</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers, EESC, MEP Victor Bo tinaru, MEP Alain Lamassoure.

<sup>81</sup> European Parliament Press Release, '[European Parliament launches information campaign towards 2014 elections](#)', 10.09.2013.

This proposed solution has high implications in terms of costs and burdens for the EU institutions. Moreover, the success of the ECI is closely linked to individual ECIs and the work of their organisers. If the EU promotes awareness-raising on the ECI and only a few ECIs are put forward, the effort would not be worth it. That is why this solution has not been retained.

Instead, empowering citizens to become more easily organised to launch ECIs, and reducing the cost and burdens of the ECI process with the solutions proposed in the previous sections, would allow them to more efficiently run their campaigns. This would increase the reputation of the ECI, and the awareness and success of the ECI as a tool for participatory democracy across the EU.

At national level, some highlighted the need to establish a contact point in each Member State that could:

- support the spread of information on the ECI tool;
- reply to queries by citizens;
- provide accreditation to organisers.

All of these functions could be more easily coordinated and performed, with reduced costs due to development of synergies, by the proposed 'Citizens' Initiative Centre'<sup>82</sup> instead of by national authorities.

## 2.2. Registration by the European Commission

### 2.2.1. Identifying the legal bases for launching the ECIs

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

Article 11(4) TEU states that '[n]ot less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties. [...]'

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

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

- the citizens' committee has been formed and the contact persons have been designated;

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<sup>82</sup> See section [2.1.2](#).

- the ECI does not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties;
- the ECI is not manifestly abusive, frivolous or vexatious;
- the ECI is not manifestly contrary to the values of the Union (Article 2 TEU).

The Commission must identify a legal base that falls under its powers to submit a legislative proposal – Article 4(2)(b). According to Article 4(3), the Commission must motivate its decision when it refuses to register a citizens' initiative.

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

**Obstacles: lack of legal expertise and costly legal services; unclear legal bases for the ECIs; unclear scope (Treaty changes or not) of the ECI; uncertainty on legal analysis by the Commission due to the 'two step' legal examination system<sup>83</sup>**

Through the Europe Direct service and its website, the Commission provides information about the legal bases for the ECIs<sup>84</sup>.

However, all stakeholders explained that these remain unclear and it is another major obstacle in launching the ECIs since many proposals are refused for reasons linked to the legal bases<sup>85</sup>. So far, 18 ECIs, which is about 40% of the initiatives presented, have been refused by the Commission which stated that the initiatives manifestly fell outside the scope of the Commission's power<sup>86</sup>. Organisers do not have the legal expertise to carry out a full analysis of their proposed ECI to formulate it in such a way to respect EU competences and comply with the registration criteria. They could ask and, in some cases, they have asked, for such formulation by the professionals. However, this constitutes an additional cost to be covered by their limited resources.

The uncertainty also seems to be stemming from Commission's unclear replies. Many stakeholders consider that, in some cases, no detailed and clear explanations were provided and that, in other cases, these were contradictory. Organisers of four initiatives have appealed to the CJEU against such refusals: the ECI 'One million signatures for a Europe of solidarity'<sup>87</sup>, the ECI 'Right to Lifelong Care: Leading a life of dignity and independence is a fundamental right!<sup>88</sup>, the ECI 'Cohesion policy for the equality of the

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<sup>83</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers – including two initiatives prior to the Regulation and therefore not considered officially ECIs, MEP Alain Lamassoure, EESC, two members of the Senior Expert Panel for this project and Spanish national authorities.

<sup>84</sup> Europe Direct provides a specific check in consultation with Commission services on specific ECIs. Information based on stakeholder consultation (European Commission). Europe Direct provides a specific check in consultation with Commission services on specific ECIs.

<sup>85</sup> 'EU law is complex and difficult to understand for many EU citizens', see Maroš Šef ovi , Preface of Berg, C. and Thomson, J., '[ECI That Works](#)', The ECI Campaign, Germany, 15.04.2014, p. 7.

<sup>86</sup> ECAS together with Freshfields Bruckhaus Deringer is carrying out a study on the legal bases of the ECIs presented to the European Commission in the last two years.

<sup>87</sup> Case T-450/12, Anagnostakis v Commission, OJ C 399/47 (pending case).

<sup>88</sup> Case T-44/14, Costantini and Others v Commission, OJ C 93 (pending case).

regions and the preservation of regional cultures'<sup>89</sup>, and the ECI 'Minority SafePack – one million signatures for diversity in Europe'<sup>90</sup>.

Moreover, few stakeholders considered that the Commission rejected the ECIs as a whole, when only some aspects of the requests fell outside the Commission's competence. They considered that the Regulation does not forbid the Commission to breakdown and analyse different aspects of the proposed ECI. More confusion on this point also recently stemmed from a statement by the Vice President of the Commission – Maroš Šef ovi , explaining that 'it was impossible for the Commission's communication to respond to every proposal in the Right to Water ECI because they fell outside the areas where the Commission is empowered to act' while acknowledging that 'several ECIs have in fact been rejected because there is no sufficient legal basis for all the proposals they contain'<sup>91</sup>.

Some stakeholders also consider that the Commission both refused and accepted the ECIs calling for Treaty changes<sup>92</sup>. They and the Commission have a different interpretation of Article 11(4) TEU regarding the possibility for the ECIs to change EU primary law, e.g. the Treaties. This issue is the subject matter of one of the cases currently pending before the CJEU<sup>93</sup>.

Finally, organisers pointed out that, in practice, there is a 'two step' legal examination of an ECI by the Commission: the 'registration' check (Article 4 of the Regulation) and the 'follow-up' check (Article 10 of the Regulation). It is indeed possible that the Commission will not give any follow-up to a registered ECI on the basis of 'legal conclusions' and some stakeholders highlight this as a deterrent to using the ECI as a tool for participatory democracy in the EU.

Solutions analysed: enhance preliminary legal advice; clarification of the scope of the ECI (Treaty changes); one single examination by the European Commission at the registration phase<sup>94</sup>

Stakeholders called for more support for preliminary legal advice on the text of the proposed ECIs. In particular, the Commission could:

- provide more detailed guidelines on the interpretation of the legal bases;
- analyse each aspect of the proposed ECI separately;
- provide or explore alternatives for possible registration for the refused ECIs;
- promote more articulated ECI proposals so that EU legal analysis would be in the nature of the ECI development process.

<sup>89</sup> Case T-529/13, Izsak and Dabis v Commission, OJ C 24 (pending case).

<sup>90</sup> Information based on stakeholder consultation (ECI organisers), the case is pending registration.

<sup>91</sup> Maroš Šef ovi , Preface of Berg, C. and Thomson, J., '[ECI That Works](#)', The ECI Campaign, Germany, 15.04.2014, p. 7.

<sup>92</sup> This comment is with reference to the registered ECI 'Let me Vote' and the refused ECIs 'Enforcing self-determination Human Right in the EU' and 'My voice against nuclear power'.

<sup>93</sup> [Case T-450/12](#), Anagnostakis v Commission, OJ C 399/47 (pending case). 'The Commission based the refusal of registering the "One million signatures for a Europe of solidarity" initiative on the finding that it would fall manifestly outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties. The CJEU will have to specify whether the notion "for the purpose of implementing the treaty" means that ECIs "for the purpose of revising the treaty" should be considered or not', see [The ECI Campaign: Initiative for the European Citizens' Initiative](#). Other ECI organisers are also considering lodging a complaint the CJEU.

<sup>94</sup> Information based on stakeholder consultation with one or more of the following: ECI organisers – including two initiatives prior to the Regulation and therefore not considered officially ECIs, MEP Gerald Häfner, MEP Alain Lamassoure, EESC, two members of the Senior Expert Panel for this project and Spanish national authorities.

In the registration phase, two moments need to be distinguished: the preparation by organisers of their proposed ECI and its legal check for registration by the Commission.

The support and guidelines for the analysis of the legal bases of up-coming ECIs could be provided by the European Citizens' Centre as a one-stop-shop which has been proposed and explained above<sup>95</sup>.

Regarding the legal check at the registration phase to be carried out by the Commission, proposals suggested that the check could be carried out with the involvement of the CJEU or by an ad-hoc body composed of representatives of the EP, Commission and Council. These proposals have not been retained since such a check is a prerogative of the Commission – which is the body that could put forward a legislative initiative on the basis of a successful ECI. Moreover, this would not solve any particular obstacle mentioned by organisers.

However, the approach of the Commission to the legal check at the registration phase could make a difference. The Commission should separately analyse each point of the ECIs' requests and give detailed explanations of its analysis. For each point, it could also provide factual information about its competence, explaining the EU policy in the field and recalling all actions taken or foreseen. This motivated information should be provided both for positive or negative replies – in addition to the usual comment of 'falls manifestly outside EU competence'. This would allow organisers to understand the margin of manoeuvre of the EU in that policy field. It would also help manage organisers' expectations on a possible Commission communication, should they be successful. As explained below<sup>96</sup>, a buffer period between the reply of the Commission to the registration request, and the start of the collection period, could be inserted. In this case, organisers could have the opportunity to decide if, in light of the detailed Commission reply, to withdraw, resubmit or proceed with only the accepted points of their ECI. There would be no need to provide or explore alternatives for refused ECIs because organisers would be empowered to do so by themselves. This more developed response in the first step does not detract from the need for equally detailed motivated answers in the second step for successful ECIs.

This solution might not necessarily involve a change in the Regulation although, as mentioned above<sup>97</sup>, different interpretations of the role of the Commission according to Article 4 exist and, therefore, a clarification of its meaning might increase legal certainty.

For clarifying the scope of the ECI, it was proposed to amend the TEU to ensure that, through the ECIs, EU citizens have the same powers as the EP (Article 48 TEU) to propose Treaty amendments. Such a proposal has not been analysed in detailed since the CJEU will soon announce itself on the matter<sup>98</sup>. However, the guidelines for ECI organisers that could be provided by the proposed 'Citizens' Initiative Centre'<sup>99</sup>, could include a clarification on this point – in light of the judgement of the CJEU. Should the CJEU not clarify this point, guidelines should explain the situation and clarify the options for organisers.

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<sup>95</sup> See section [2.1.2](#).

<sup>96</sup> See in section [2.4.2](#).

<sup>97</sup> See in section [2.1.2](#).

<sup>98</sup> During the negotiations of Regulation 211/2011, the EP was open to consider the possibility for ECIs to propose Treaty amendments contrary to the Council. The text of the adopted Regulation did not clarify the issue. Information based on stakeholder consultation with one member of the Senior Expert Panel for this project. The legal issue will be decided upon by the CJEU in the judgement of *Anagnostakis v Commission*.

<sup>99</sup> See section [2.1.2](#).

Regarding the current 'two step' procedure for the legal examination of ECIs, stakeholders proposed to have one single thorough legal and political check at the registration phase which would then lead to an obligation of the Commission to act should the organisers of the ECI be successful<sup>100</sup>, and under certain criteria. In this case, the text of the ECI could be more articulated. This could avoid costs and burden for organisers of the ECI which might not be given a later follow-up. On the other hand, organisers would need strong legal advice to formulate their ECIs as possible legislative proposals. It will be also more burdensome for the Commission to do both the registration check and formulate its legal and political conclusions in a single moment at the beginning of the ECI process<sup>101</sup>. In addition, this system would pre-empt the whole ECI process – if the Commission considers that it should act now, so why not do so anyway without waiting for one million signatures?

The proposals for a 'one step' legal check need to be carefully analysed since some stakeholders mentioned advantages in the current 'two step' system. Indeed, some pointed out how even 'registered but unsuccessful ECIs' had an impact on the European debate and managed, nonetheless, to influence the EU decision-making process. The ECI 'Single Communication Tariff Act' aiming to remove roaming charges in the EU, made its voice heard, at least in part, during the reform process that the Commission undertook in 2012 which led to reducing such charges<sup>102</sup>. The ECI 'Right2Water' had a preliminary impact during the negotiations of the 'Directive on the award of concession contracts'<sup>103</sup> as water services were excluded from privatisation<sup>104</sup>. The ECI 'Fraternité 2020', which called for an increase in the Erasmus Programme budget allocation, played a role in highlighting the issues in the EU public debate where the budget was raised from €3.1 billion<sup>105</sup> to €4.9 billion in the negotiations for the 2013-2020 Programme<sup>106</sup>. In addition, the 30km/h – Making Streets Liveable ECI and the High Quality European Education for All ECI managed to have an impact at the national and local level<sup>107</sup>. A possible 'one step' legal examination could block such ECIs from being registered and reduce the possibilities for citizens to set the EU agenda and participate in decision-making across the EU.

Within the two-step procedure and once the successful ECI is submitted, some stakeholders go further by asking for an obligation on the Commission, under certain criteria – which might refer to a specific high number of signatures as well as legal or political considerations, to propose a legislative act. In this case, the Commission would be required to act under certain criteria. They also mentioned the possibility of requiring, amongst the criteria for such an obligation, support of the successful initiative by a number of MEPs. However, such an obligation would be problematic in the case of possible contradictory initiatives.

<sup>100</sup> See also section [2.6.2](#).

<sup>101</sup> For example the ECI '[Weed like to talk](#)' was registered but the Commission might not give it a follow-up: in the proposed scenario this ECI would not be registered if Commission consider that, although it fulfils the Regulation requirements for registration, the Commission it will not give it a follow-up for legal/political reasons.

<sup>102</sup> European Commission, '[What did the EU ever do for the mobile industry and consumers?](#)'; MEMO/13/139, 26.02.2013.

<sup>103</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 [on the award of concession contracts](#), OJ L 094.

<sup>104</sup> 'As a direct response to the ECI, drinking water concessions, as well as certain concessions for waste water treatment and disposal, have already been excluded from the scope of the new EU rules on the award of concession contracts'. See Šef ovi Maroš, Vice-President of the European Commission: '[Commission gives positive response to first successful ECI](#)', 21.03.2014.

<sup>105</sup> European Commission, '[FAQ on Erasmus and its budget](#)', MEMO/12/906, 27.11.2012.

<sup>106</sup> Council of the European Union, Press Release on '[The new ERASMUS + programme fully operational in 2014](#)', 17184/13, Brussels, 3 December 2013.

<sup>107</sup> Thomson, J., Article on 'What didn't happen with the European Citizens' Initiative...and what did', in Berg, C. and Thomson, J., '[ECI That Works](#)', The ECI Campaign, Germany, 15.04.2014, p. 73.

So far, the Commission issued Communications only on two ECIs and, therefore, it seems too early to conclude on these proposals. If the ECI process is improved and clarifications and guidelines are provided to organisers, it is possible that the 'two-step' legal examination would not be considered an obstacle any more. Also, such obstacles and solutions should be seen in light of the nature of the ECI (an agenda setting tool or a right of initiative) which will be discussed later<sup>108</sup>.

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

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

According to Article 4(1), after the registration of the ECI is confirmed, organisers may provide the proposed citizens' initiative in other official languages of the Union for inclusion in the register. The organisers are responsible for these translations<sup>109</sup>. The Commission further explains in its 'Guide for organisers' that they 'should strive to ensure that the translations are equivalent to the original. The Commission will not publish them if it finds manifest and significant inconsistencies'<sup>110</sup>.

#### Obstacles: lack of language expertise by organisers; costly translation services<sup>111</sup>

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

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

#### Solution analysed: EU support for translations; EU provision of translations<sup>112</sup>

Stakeholders called for support by the EU institutions for the translations of their ECI texts by:

1. checking the organisers' translations and improving them directly;
2. making available the internal translation services;
3. providing specific funding/reimbursements for the translations<sup>113</sup>.

The first solution would not fully address the obstacle faced by the organisers – they would still need to prepare the first drafts. The third solution has also not been retained since it would add a burden on the organisers and on the supporting institutions in terms of administrative procedures for funding or reimbursement.

<sup>108</sup> See section [2.6.2](#).

<sup>109</sup> As regards forms for collection of signatures, they combine the standard texts of forms of Annex III of Regulation 211/2011 and the translations of the initiative. Forms for the online collection are generated automatically by the Commission online collection software, whereas the forms for the on paper collection can be generated via organisers' accounts (activated for registered organisers) or they can be put together directly by the organisers. Information based on stakeholder consultation (European Commission).

<sup>110</sup> European Commission, '[Guide to the European Citizens' Initiative](#)', p. 18.

<sup>111</sup> Information based on desk research and stakeholder consultation (ECI organisers).

<sup>112</sup> Information based on desk research and stakeholder consultation (ECI organisers).

<sup>113</sup> See section [2.1.5](#).

However, regarding the second solution, the EESC has proposed to provide their translation services to ECI organisers<sup>114</sup>. This proposal has been welcomed by all of the stakeholders and it would allow the organisers to overcome the translation obstacle. Article 4 of the Regulation could be amended to remove the translation obligation from organisers.

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

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

Article 6 sets the conditions and the certification process for the online collection system (OCS). Paragraph 1 of this Article provides that the data obtained through the OCS must be stored, in a server, in the territory of a Member State<sup>115</sup>. The organisers must ask the competent national authority to certify the OCS – which includes verifying the way the software and the servers function and how data is treated in all phases of the ECI process. Certification should take no more than one month from the valid submission of a certification request<sup>116</sup>. Organisers may only start collecting signatures once they have obtained the certification (Paragraphs 2 and 3)<sup>117</sup>.

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

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

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

According to Article 12 of the Regulation, the organisers of a citizens' initiative must comply with Directive 95/46/EC on the protection of individuals regarding the processing of personal data, and the free movement of such data<sup>118</sup>. The organisers are also the responsible 'data controllers'. In particular, Article 12(3) establishes that organisers must:

- ensure that personal data collected for a given citizen's initiative are not used for any purpose other than their indicated support for that initiative;
- destroy all signatures received for that initiative and any copies thereof at the latest, i.e. whichever is the earlier:
  - one month after submitting the initiative to the Commission;
  - 18 months after the date of registration of the proposed citizens' initiative.

<sup>114</sup> Information based on stakeholder consultation (EESC).

<sup>115</sup> The Commission servers offered for free are based in Luxembourg.

<sup>116</sup> 'A request is considered to have been made once organisers have submitted all of the documents required by the implementing Regulation', European Commission, '[The European Citizens' Initiative - Guidelines and recommendations for practical implementation](#)', 15.04.2013, p. 3.

<sup>117</sup> Certification can happen before or after registration of the ECI initiative. The twelve months collection periods start with the registration date.

<sup>118</sup> Directive No 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995.

According to the Regulation – Article 6(5), the Commission adopted the Implementing Regulation 1179/2011 (the Implementing Regulation), laying down technical specifications for the OCS. Point 1 of the Annex to the Implementing Regulation concerns the prevention of automated submission of a statement of support using the system – the signatory must go through an adequate verification process in line with current practice before submission of a statement of support. Point 1 mentions the use of strong 'captcha' as one possible verification process.

**Obstacles: difficulties in signing the ECIs online with the Commission's OCS; signatories' emails cannot be collected; non-unified OCS system across Member States; short deadline to certify the OCS<sup>119</sup>**

All stakeholders underlined the great importance of these obstacles as, to date, more than 6 million citizens across Europe have supported an ECI and only 70% did so by signing online<sup>120</sup>.

Two tools are necessary for the online collection of signatures: servers to store the data of the signatories and software to allow EU citizens to sign online. The Commission exceptionally offered to host the online signature collection systems on its own servers in Luxembourg<sup>121</sup>. Moreover, according to the Regulation, it developed free software to allow EU citizens to sign online.

The vast majority of ECI organisers made use of Commission servers<sup>122</sup> and all of them used Commission software to gather online signatures because of the difficulties they encountered in making use of private services, i.e. costs and availability<sup>123</sup>. However, several difficulties were also encountered in the use of the Commission's OCS<sup>124</sup>. Most issues related to the first use of the OCS and have been progressively addressed. The following ones still seem to exist:

- The system is not fully compatible with the needs of visually impaired people.
- When there are too many visitors online, the system does not 'support' them.
- There are difficulties in linking the system to social media.
- The system is not specifically designed for smart phones<sup>125</sup>.
- The software is not user-friendly.

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

- 'captcha' limits the possibility for visually impaired citizens to sign;
- 'captcha' limits the possibility of citizens, who do not use the Latin alphabet, to sign;

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<sup>119</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers– including one initiative prior to the Regulation and therefore not considered officially ECI, European Parliament – Secretariat of the Committee on Petitions, MEP Victor Bo tinaru, MEP Gerald Häfner, MEP Alain Lamassoure, Dutch, French, Estonian national authorities and two members of the Senior Expert Panel for this project.

<sup>120</sup> Information up to 31.03.2014 and based on stakeholder consultation (European Citizen Action Service).

<sup>121</sup> Sef ovi Maroš, Vice-President of the European Commission: [Commission offers own servers to help get first European Citizens' Initiatives off the ground](#), 23.01.2013. See also section [2.1.2](#).

<sup>122</sup> '30km/h', 'My Vote against Nuclear Power' and 'Right2Water' ECIs used servers hosted and certified in Germany.

<sup>123</sup> See section [2.3](#).

<sup>124</sup> Only 44% of the people who start the signing process on-line actually complete it and support the ECI. Information based on desk research and stakeholder consultation (ECI organisers).

<sup>125</sup> On 14 April 2014, ECAS has launched an ECI application for mobile devices, '[The ECI Support Centre application](#)'.

- 'captcha' causes signatories to lose time and leads to the risk of dropping the signature process.

In addition, organisers are not able to collect signatories' email addresses within the Commission's system because the Commission's interpretation of the Regulation forbids it<sup>126</sup>. Currently, to gather emails, signatories are redirected from the Commission's OCS to the organisers' own websites. Signatories are confused about the difference in signing and submitting their email and often do not provide it because the process is too lengthy and non-user-friendly<sup>127</sup>. Organisers stressed that collecting signatories' email addresses could be extremely useful to inform them of the outcome of the ECI and promote EU debates. This is crucial to make them feel involved and incentivise their participation in the ECIs and, in general, to foster participatory democracy at EU level.

Finally, the fact that there is no-unified OCS system causes further costs and burdens. Each Member States should be ready to certify the OCS system if organisers choose a server in their country. For organisers, this means different application procedures. National authorities also stressed that the one-month deadline for certification is very short.

**Solutions analysed: improve Commission software and make the use of Commission hosting servers permanent; establish a unified OCS system; extend the certification deadline<sup>128</sup>**

Both the Commission software and its servers were set up under very tight deadlines. The software was not initially foreseen in the Commission proposal and was quickly designed before the Regulation entered into force in 2011. The decision to ensure the availability of the Commission servers was an emergency measure to support organisers who could not manage to use private ones. All stakeholders now agree that it is time to redesign and improve the system.

The Commission has undertaken, and is still undertaking, some actions in this direction. It has contracted-out a study on interface accessibility by people with disabilities – with a view to addressing the difficulties in accessing it. Moreover, on the basis of a warning by the organisers, the Commission explained that it can contact the contractors managing its servers ahead of possible high traffic periods, e.g. TV coverage and events, to ensure that the systems works. The Commission has also given some support to the ECIs hosted on private servers, so that their servers could also work with the increased traffic<sup>129</sup>.

The Commission should now quickly improve further technical aspects and features of the Commission's software<sup>130</sup>. Such improvements could be inspired by the positive

<sup>126</sup> It is worth noting that the single statement of support form put forward by the Commission in its initial proposal included a field to gather the signatory's email address. See Annex III of the European Commission, Proposal for a Regulation of the European Parliament and of the Council on the citizens' initiative, COM(2010) 119 final, Brussels, 31.3.2010.

<sup>127</sup> '[...] although the ECI Right to Water collected over 1.8 million signatures, it only collected 20,000 email addresses of signatories whom it could invite to follow its public hearing and inform of the Commission's response'. See Berg, C. and Thomson, J., '[ECI That Works](#)', The ECI Campaign, Germany, 15.04.2014.

<sup>128</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers, European Parliament – Secretariat of the Committee on Petitions, MEP Victor Bo tinaru, MEP Gerald Häfner, MEP Alain Lamassoure, Dutch, French, Estonian national authorities and two members of the Senior Expert Panel for this project.

<sup>129</sup> Information based on stakeholder consultation (European Commission).

<sup>130</sup> In the review process, attention should be paid to the fact that some stakeholders asked for a standard interface that could be easily recognisable for everyone as the ECI interface across Europe instead of different interfaces to be chosen by each ECI organisers.

experiences of other websites gathering signatures<sup>131</sup>. The first aim would be to increase its user-friendliness<sup>132</sup> and, subsequently, to explore the possibilities of improving its use for smart phones and link with social media. The Commission has published its software in the open-source community with a view to improving it. Some alternative solutions put forward by the organisers did not comply with the required security levels.

While every different/new software feature should be checked for its security levels<sup>133</sup>, numerous stakeholders questioned the appropriateness of such levels for the ECI process. Therefore, in the long term, an assessment of the appropriate security levels should also be carried out to strike the right balance – with the advantages of a user-friendly system.

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

Stakeholders also asked for a clarification and eventually a modification of the Regulation to allow email addresses to be collected through the Commission's OCS, increasing the user-friendliness of the system. The provision of email addresses would not be a requirement for signing but an option to be kept informed of the outcome of the ECI and other EU debates.

Clarifications on the IP addresses and email collection could come from the European Data Protection Supervisor (EDPS) that could shed light on the information to be provided to signatories and, in particular, on how the email signatures could be treated separately and collected for longer whilst gathered through the same signing interface.

All the reflections and implementation of the possible changes should be carried out jointly by the Commission and all stakeholders involved, e.g. IT experts, users, organisers, national authorities. Short-term and long-term improvements could be set and then designed and implemented progressively.

Stakeholders were also in favour of a change in the Regulation to recognise access to a permanent free server as a right of the ECI organisers and to have one single centralised system. This solution has numerous advantages: it would save costs and burdens for the organisers, the Commission and the Member States; organisers would not need to prepare complex applications for the certification of the OCS and the Commission would not need to support them and Member States in this task; Member States would not need to certify a different OCS each time. The new OCS could indeed be redesigned with the involvement of all stakeholders and consist of servers and software provided for free by the Commission – as is currently the case, but on a permanent basis. This means that the OCS would be designed with fixed features that comply with the applicable EU law and do not need to be

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<sup>131</sup> Such as the platform for petitions [avaaz.org](http://avaaz.org).

<sup>132</sup> 'Through creative signature gathering techniques and the clever use of a parallel Avaaz online campaign, this grassroots campaign with limited financial resources collected an impressive 285,000 signatures'. See Stanislas Jourdan, Article on 'Unconditional Basic Income (UBI) – Exploring a Pathway towards Emancipatory Welfare Conditions in the EU', in Berg, C. and Thomson, J., '[ECI That Works](#)', The ECI Campaign, Germany, 15.04.2014, p. 42.

<sup>133</sup> Contributions to improve it were limited (information based on stakeholder consultation (European Commission)).

certified since they do not change over time<sup>134</sup>. This revision goes in parallel with another proposed revision on the requirements for collecting statements of support<sup>135</sup>.

Such a revision would involve significant efforts, not only for its technical aspects, but also for the possible amendments to the Regulation which would need to be restructured to eliminate the certification phase. Therefore, it is proposed that, while the improvements mentioned above could be realised now, this more drastic solution should be further assessed in detail for the future – should the short-term improvements not be sufficient to make sure the ECI is an effective tool for participatory democracy in the EU.

Finally, the national authorities also suggest the extension of the one-month registration deadline. However, from the experience of the first two successful ECIs, it seems that the deadline was respected. Moreover, support for the exchange of best practices and training for certifying systems takes place in the context of the Expert Group on the Citizens' Initiative organised by the Commission, and lessons learned from the first experiences can be shared in this context. Finally, should a unified system be set up, as proposed, there would be no more need for Member States to certify it each time since the OCS would be designed and approved up-front. Therefore, this solution was not retained.

## 2.4. Collection of Statements of Support by Organisers

### 2.4.1. Requirements to sign the ECIs

Applicable rules: Articles 3(4), 5(3), 5(4), 7(4) and 8(1) of Regulation 211/2011; Article 20(2)(b) TFEU; Article 7 of Council Decision 2002/772/EC<sup>136</sup>; Regulation No 31/1962 (Staff Regulation)<sup>137</sup>

Article 3(4) of the Regulation provides that signatories shall be citizens of the European Union and of the age for entitlement to vote in the European Parliament elections. According to Article 7 of Council Decision 2002/772/EC 'Subject to the provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions.'<sup>138</sup>

Article 5(3) of the Regulation requires the ECI supporters to complete signatures forms made available by the organisers. Annex II of the Regulation determines the data required to verify the signatures in each Member State. Indeed, the forms require different types of personal data depending on the competent Member States for verification. Annex III presents the formats of the statement of support forms to be used, as well as further

<sup>134</sup> 'First of all, it makes no sense that the online systems hosted on the Commission's premises should be certified by a national authority [...]. Secondly, the progress of new technologies should allow systems which could work even without any need for subsequent verification by national authorities. The system could even evolve towards a central collection system managed by the Commission (on a non-mandatory basis – I am convinced that the organisers should remain free to use private systems of collection, as is the case today)'. See Mário Tenreiro, Article on 'Citizens' Initiative: What's next?', in Berg, C. and Thomson, J., '[ECI That Works](#)', The ECI Campaign, Germany, 15.04.2014, p. 87.

<sup>135</sup> See section [2.4](#).

<sup>136</sup> Article 7 of Council Decision 2002/772/EC of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom, OJ L 283.

<sup>137</sup> Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ 45, 14.06.1962.

<sup>138</sup> The voting age is set at 18 years old in all EU Member States except for Austria, where it is permitted to vote at 16. European Parliament (2014), [Electoral Procedures Fact Sheet on the European Union](#).

information about the national requirements, distinguishing between Member States that require personal identification document numbers and those that do not<sup>139</sup>.

According to Article 7(4), signatories will be considered as coming from the Member State that is responsible for the verification of their signatures. Article 8(1) specifies the rules for identifying the competent Member States<sup>140</sup>.

For the collection of signatures from EU civil servants, it is also important to recall the Staff Regulations. Article 17a(1) provides that 'an official has the right to freedom of expression, with due respect to the principles of loyalty and impartiality'.

**Obstacles: numerous and different data requirements; signatories are reluctant to give their ID data; some EU nationals and third-country nationals cannot sign the ECIs; age limits; unclear rules of conduct for EU officials<sup>141</sup>**

Different personal data requirements for the verification of statements lead to the use of several different forms for the collection of statements of support in Member States. This has been identified as one of the main obstacles faced by the ECI organisers. All stakeholders agreed that the use of so many forms is burdensome<sup>142</sup>, e.g. one organiser made use of 43 different forms to run the ECI campaign and more could have been used). When campaigning on the streets, some organisers had tablets available to sign online rather than carry many different papers forms for possible signatories they came across.

Many are also discouraged from signing on paper or on-line, once they realise how many fields need to be filled. The most demanding form is the one chosen by Austria, Italy and France where the signatories have to indicate their name, place of residence, street, house number, postal code, city, country, date of birth, place of birth, nationality, personal identification number, i.e. passport or identity card – including the name of the issuing authority in Italy<sup>143</sup>. Others did not fill in all of the fields lead to invalidating the paper signatures<sup>144</sup>.

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<sup>139</sup> Article 5(4) establishes that Member States shall forward to the Commission any changes to the information set out in Annex III, and the Commission may adopt amendments to Annex III. The Commission adopted Commission Delegated Regulation (EU) No 887/2013 of 11 July 2013, replacing Annexes II and III to Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizens' initiative, OJ L 247, 18.09.2013. It replaced Annex II (Required information to register an ECI) and Annex III (Statement of support forms and list of Member States that require and that do not require identification documents) to Regulation 211/2011 adapting it to new Member States requirements.

<sup>140</sup> Organisers must submit signatures to: the Member State of residence or of nationality of the signatory (for Member States which do not require the provision of a personal identification number/personal identification document number in the statement of support form); or the Member State that issued the personal identification document indicated in the statement of support (for Member States which require the provision of one of the personal identification numbers/personal identification document numbers in the statement of support form).

<sup>141</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers – including one initiative prior to the Regulation and therefore not considered officially ECI, European Parliament – Secretariat of the Committee on Petitions, MEP Victor Bo tinaru, MEP Gerald Häfner, MEP Alain Lamassoure, EESC, Austrian, Estonian, Spanish national authorities and two members of the Senior Expert Panel for this project.

<sup>142</sup> The Commission recognises that, to gather paper signatures, the existence of different forms as provided for in the Regulation might raise practical difficulties. However, Commission points out that they might also use a standard form (as they are presented in Regulation 211/2011) and complete on the spot with the data needed for the Member State concerned. In such case, they would only need two different forms (one corresponding to part A and one corresponding to part B of Annex III to the Regulation - possibly each in several languages). Organisers could also have the option to make citizens sign online in the streets (e.g. via tablets). Information based on stakeholder consultation (European Commission).

<sup>143</sup> Mário Tenreiro, Article 'Citizens' Initiative: What's next?', in Berg, C. and Thomson, J., '[ECI That Works](#)', The ECI Campaign, Germany, 15.04.2014, p. 84.

<sup>144</sup> In spring 2013, the Commission added pre-formatted specific cells to indicate the date in the citizens' initiative website (in the part where organisers can download pre-completed statement of support forms) to try to enhance

At the moment of writing this report, only two ECIs have gone through the verification process<sup>145</sup>. From these limited first experiences, it seems that numerous submitted paper signatures might not be validated due to missing fields<sup>146</sup>. Other reasons for non-validation include the fact that signatures come from third-country nationals. Organisers in the streets are not able to distinguish EU nationals from third-country nationals<sup>147</sup>.

Another key obstacle has been the reluctance of potential signatories to provide their personal data and, in particular, their identification (ID)/personal numbers, which led to signatories dropping the signature process. For example, in France, where organisers of an ECI benefitted from a wide TV and radio coverage, there had been a low turnout in the number of signatories linked to the requirement of ID/personal numbers<sup>148</sup>. Moreover, stakeholders mentioned the negative effects of the NSA scandal<sup>149</sup> and of the widespread episodes of identity theft, i.e. in Romania and Bulgaria<sup>150</sup>. According to the 2011 Eurobarometer survey on 'Attitudes on data protection and electronic identity in the European Union', 70% of the Europeans surveyed expressed concern that their personal data may be used for purposes other than that for which it was collected<sup>151</sup>. This is true notwithstanding the data protection information provided by the organisers.

In addition, due to the current national requirements, some EU citizens residing outside their Member State of nationality – either in another Member State or in a third-country, were not be able to sign. This problem was estimated to potentially affect 11 million EU citizens<sup>152</sup>. The Commission called upon the Member States concerned to make sure that EU citizens residing in their territories could also sign<sup>153</sup>. Spain, for example, amended its rules to allow EU citizens resident in Spain to sign the ECIs there<sup>154</sup>.

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the visibility of this field and avoiding people overseeing it. Information based on stakeholder consultation (European Commission).

<sup>145</sup> European Commission, ['The European Citizens' Initiative - Guidelines and recommendations for practical implementation'](#), 15.04.2013, p. 6, 'False errors. Certain minor mistakes or changes should not invalidate the statements of support. This should be the case if, for example, there is no suspicion of fraud (e.g. the signatory has made a genuine error or omitted minor information which does not cast doubt on the authenticity of the statement of support or prevent the authorities from identifying him/her), or the signatory has changed residence since signing the initiative. It is possible to account for such mistakes or changes by considering that a certain percentage of invalidated statements of support are in fact valid. If verification is automated, it may be necessary to double-check the rejected statements of support manually in order to detect such false errors. [...] Benefit of the doubt. When extrapolating the results of the sample to the whole population, the MS authorities should give the benefit of the doubt to the organisers by choosing the lower threshold in the confidence level (i.e. the interval obtained by adding and subtracting the margin of error from the result).'

<sup>146</sup> Information based on stakeholder consultation (one member of the Expert Panel of this project). For example, it was reported that, in Austria, over 10% of the paper signatures could not be validated by the national authorities. Information based on stakeholder consultation (Austrian national authorities). As mentioned in IRI Europe, Bruno Kaufmann and the Green European Foundation (2012), ['ECI Pocket Guide'](#), p. 57, 'if you are an Austrian not possessing an ID or passport (which is not mandatory) your statement will not be counted as valid'.

<sup>147</sup> Information based on stakeholder consultation (European Commission).

<sup>148</sup> Information based on stakeholder consultation (ECI organisers). France requires the provision of one of the personal identification documents: Passeport (passport), Carte nationale d'identité (national identity card), see point 2 of Part C of Annex III of Commission Delegated Regulation (EU) No 887/2013 of 11 July 2013, replacing Annexes II and III to Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizens' initiative, OJ L 247, 18.09.2013.

<sup>149</sup> The Guardian Article: [The NSA files](#).

<sup>150</sup> PrivacyMatters.com Article: [Who Commits Identity Theft?](#).

<sup>151</sup> European Commission, ['Special Eurobarometer 359: Attitudes on Data Protection and Electronic Identity in the European Union'](#), June 2011.

<sup>152</sup> Stein, R. and Müller-Török, R., ['The Assignment of European Citizens to Member States in the Regulation on the European Citizens' Initiative'](#), Vienna University of Economics and Business.

<sup>153</sup> European Parliament, [Answer given by Mr Šef ovi](#) on behalf of the Commission to MEP Claude Turmes Parliamentary questions on Implementation of the European Citizens' Initiative (ECI), E-001851/2013, 10.04.2013.

<sup>154</sup> 'Spain requested (i) the removal of the requirement to provide a permanent residence; (ii) the addition of the signatory's date of birth among their data requirements; and (iii) the inclusion of a personal identification number to the list of personal identification numbers/document numbers available in Part C of Annex III, which would

Few stakeholders consider the fact that long-term third-country national residents in Europe are excluded from signing is an obstacle to full participatory democracy in the EU. They pointed to Articles 227 and 228 TFEU – according to which any natural person residing in Europe can submit a petition and access the European Ombudsman.

Few others mentioned that the age limit of 18 – for signing the ECIs limits the possibility for EU debates and for participatory democracy.

Finally, some Commission officials, working at the EU body tasked to prepare legislative proposals, are hesitant to sign a statement of support for a specific ECI initiative – precisely intended to push for a legislative proposal, as they fear they would violate their professional obligations – especially when the ECIs run counter to the Commission current policies.

Solutions analysed: single EU form for signatures; removal of ID requirements; extend the right to sign the ECIs to third-country nationals; allow 16 years old to sign the ECIs; clarification of EU officials' rights and obligations<sup>155</sup>

As mentioned above<sup>156</sup>, stakeholders proposed to establish a uniform EU procedure, i.e. one uniform OCS system, with a corresponding single EU form to be verified by all national authorities<sup>157</sup>. Such standardisation of the requirements for the signatures in all Member States could also ensure that all EU citizens can support an ECI regardless of where they live. Such requirements should not include ID numbers<sup>158</sup>.

While the unified system, with a single EU form, would fully address the obstacles faced by the organisers and signatories, this solution has an important implication in terms of security, i.e. ID requirements and avoiding the fraudulent use of citizens' data. However, not all Member States require ID data and other systems are possible to avoid possible frauds. During the negotiations of the Regulation at Council, Member States tried to agree on a uniform format but did not succeed<sup>159</sup>. Recently, Luxembourg abolished the 'personal identification number' requirement<sup>160</sup> and this presents a positive experience of how the simplification of the rules could be achieved.

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enable non-Spanish EU citizens resident in Spain to use the statement of support form for Spain' (European Commission, Secretariat General, [Meeting of the Expert Group on the Citizens' Initiative, Summary Reports](#) from 04.03.2013, in relation to the adoption of Regulation modifying the forms the declaration of support (Commission Delegated Regulation 887/2013).

<sup>155</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers – including two initiatives prior to the Regulation and therefore not considered officially ECIs, MEP Victor Bo tinaru, MEP Alain Lamassoure, MEP Gerald Häfner, European Commission, EESC, one member of the Senior Expert Panel for this project.

<sup>156</sup> See section [2.3](#).

<sup>157</sup> Information based on stakeholder consultation (one member of the Senior Expert Panel for this project).

<sup>158</sup> In its opinion of 30.11.2010, the EDPS has also confirmed that ID requirements are not necessary in the context of the collection of statements for ECIs. See, EDPS, Opinion on the Proposal for a Regulation of the European Parliament and of the Council on the Citizens' Initiative, OJ C 323/1, 30.11.2010

<sup>159</sup> During the adoption process of Regulation 211/2011, a majority of Member States wished to apply to the verification of signatures of ECIs the same national rules used for validating votes for elections or referenda. However, the nature of ECIs is different from national voting and referenda systems and successful ECIs do not lead automatically to the adoption of a legislative proposal. Simplified rules for the verification of signatures should therefore be considered. The rules and practice as in the petitions process of the European Parliament could be a source of inspiration for the revision of the verification rules. Information based on stakeholder consultation (European Parliament – Secretariat of the Committee on Petitions). See also section [2.6.2](#).

<sup>160</sup> 'Luxembourg requested the removal of the personal identification number among their data requirements' (European Commission), Secretariat General, Meeting of the Expert Group on the Citizens' Initiative, [Summary Reports from 04.03.2013](#)). See also Commission Delegated Regulation 887/2013.

This solution would, however, involve possible burdens of changes in the national verification procedures and amendments to the Regulation. New exchanges could be launched now, though, in light of the experiences of the first ECIs through the Expert Group on the Citizens' Initiative<sup>161</sup>. These should not be simply informative exchanges but discussions with the set goal to explore a compromised straightforward form for possible future revision. The Finnish rules could be the starting point, i.e. no ID, and four requirements: name, country of residence, nationality and date of birth. The initial Commission proposal, which put forward a single statement of support form in its Annex III<sup>162</sup>, should also be considered. The Commission launched a study of electronic IDs and the possible implications for their use – which could provide further useful information on this point.

Regarding the proposal of allowing all residents of the EU – including third-country nationals, or at least long-term resident to sign the ECIs, the differences between the right to petition, access to the Ombudsman, and access to the ECI, should be recalled. While the first two are linked to a situation which allegedly negatively affected the individual, the ECI is a tool for setting the EU agendas and, therefore, the corresponding rights, e.g. to petition the EP, complain to the Ombudsman or sign an ECI, do not seem comparable. The proposal to allow 16 years old to vote might involve not only changes to national law regulating the verification procedures but also to the one on the general legal capacity of minors. Both ideas – on third-country nationals and 16 years old, aim to extend the right to sign the ECIs and do not really address any obstacles faced by the ECI organisers. However, these ideas are an aspect to be considered for strengthening participation in EU decision-making in the future. For these reasons, the legal and political implications of these two proposals should be explored further before deciding whether or not to proceed with the necessary changes to the ECI procedure.

The possibility for the Commission to clarify the position of EU officials could also be explored further to make sure potential signatories enforce their rights and respect their obligations. The clarification could also encompass the rules on the external activities of EU staff<sup>163</sup> to cover the cases of potential ECI campaigners among EU officials.

#### 2.4.2. One year collection time for signatures

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

According to Article 5(5), ECI organisers have one year to collect signatures. The starting date coincides with the registration of the specific ECI by the Commission. However, Article 6(2) further specifies that organisers can only start collecting online signatures through OCS once the competent national authorities have certified the system<sup>164</sup>.

<sup>161</sup> 'This expert group, which is composed of member states' authorities, has been set up by the Commission to exchange views and facilitate the coordination amongst member states in relation to the implementation of the Regulation on the citizens' initiative', see [European Citizens' Initiative \(ECI\): European Commission Official Register](#).

<sup>162</sup> Annex III of the European Commission, Proposal for a Regulation of the European Parliament and of the Council on the citizens' initiative, COM(2010) 119 final, Brussels, 31.3.2010.

<sup>163</sup> Article 12(b) on outside activity of Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ 45, 14.06.1962.

<sup>164</sup> To be certified the system must comply with the security and technical features described in Article 6(4) of Regulation 211/2011 and further specified in Commission Implementing Regulation 1179/2011. See also section [2.3](#).

For the collection of online signatures, the data should be stored in a server in the territory of a Member State – Article 6(1) of the Regulation<sup>165</sup>. Finally, Article 6(2) obliges the Commission to set-up and maintain open-source software complying with the requirement of the Implementing Regulation No 1179/2011 for online collection of signatures to be used for free by organisers.

**Obstacles: short collection period; uncertainties on the starting date<sup>166</sup>**

Issues linked to the length of the collection period were not among the major obstacles faced by the organisers but were still identified as difficulties in the effective implementation of the ECI.

Stakeholders considered the one year collection time too short to run successful ECIs. For instance, they made a comparison with the Swiss 'Popular Initiative' (Initiative Populaire) providing an 18 months collection time for gathering 100,000 signatures<sup>167</sup>. Others highlighted that one year is too short for a 'citizens' campaign' – as opposed to an 'organisation campaign' where citizens are not professionals/experienced campaigners.

Also, the ECI process is not designed to ensure that the registration date of a specific ECI coincides with the certification of the OCS by Member States. In some cases, the preparations ahead of registration allowed for the online collection of signatures to start on the day of the registration. However, one organiser explained that, in 2013, the certification of the OCS was finalised two months after the date of the registration by the Commission – due to difficulties in the process. This meant that, in practice, online signatures could be collected in only 10 months.

Finally, organisers underlined that they did not know when the Commission would register, or refuse, their proposed ECI and this caused difficulties in planning the OCS registration process<sup>168</sup>. The Commission's approach has been to issue replies the last day of the two-month period – to allow organisers as much time as possible to prepare. However, the ECI citizens' committees hesitated and found it difficult to contact counterparts, e.g. journalists to cover the launch of their ECI, before the official registration.

**Solutions analysed: provide for an optional extension of the signatures' collection time; introduce a buffer period between registration and signature collection; allow the organisers to decide the starting date for collection<sup>169</sup>**

Stakeholders also considered the one year deadline too short because they had to face the procedural obstacles highlighted in the previous sections. Should the ECI process be streamlined and simplified, according to the proposals presented above, it is possible that this timeframe would no longer be considered tight.

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<sup>165</sup> The Commission servers offered for free are based in Luxembourg.

<sup>166</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers, European Parliament – Secretariat of the Committee on Petitions, MEP Gerald Häfner, MEP Alain Lamassoure, EESC, Dutch national authorities, one member of the Senior Expert Panel of this project.

<sup>167</sup> Through this initiative, Swiss citizens can ask for a total or partial revision of the Swiss Constitution. Federal Constitution of the Swiss Confederation of 18 April 1999, Article 138-139, and Federal law on political rights ([Loi fédérale sur les droits politiques](#)), Title 5, Articles 68-76, 17.12.1976.

<sup>168</sup> Commission services informally inform organisers ahead of the registration date that in principle their ECI will be registered to allow them to undertake the necessary preparatory steps before the collection period starts. Information based on stakeholder consultation (European Commission).

<sup>169</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers, MEP Gerald Häfner, MEP Alain Lamassoure, EESC, Dutch national authorities, one member of the Senior Expert Panel of this project.

If not, the possibility to optionally extend the data collection time to 18 months, or even to an unlimited time, could be considered - although others recognised that too long a period could be counter-productive, i.e. the ECIs could lose momentum.

Another proposed idea aims at making sure that the 12 months collection time is ensured for the online collection of signatures, by modifying the various steps for launching the ECI as follows:

1. Registration of ECI.
2. OCS certification.
3. Start the collection of signatures.

Point 2 would correspond to a 'buffer' period allowing the organisers to prepare and have the online collection system ready for use. This would also allow them to prepare their campaign, and organise a launch event. The ECI organisers would be free to set the starting date for the collection of signatures within a specific time limit.

Both solutions – the extension of the collection period and the introduction of a buffer period, would involve a change in Article 5(5) of the Regulation. As mentioned, these solutions might not be necessary since the other suggestions to overcome procedural obstacles would ensure an efficient ECI process that can be more easily completed in 12 months.

#### 2.4.3. Minimum number of signatures per Member State

##### Applicable rules: Articles 2(1) and 7 of Regulation 211/2011 (the Regulation)

Article 2(1) requires the gathering of support of at least one million eligible signatories from at least one quarter of all Member States.

According to Articles 7(1) and 7(2), the signatories of an ECI must come from at least one quarter of the Member States and must comprise of at least the minimum number of citizens corresponding to the number of Members of the EP elected in each Member State, multiplied by 750.

Annex I of the Regulation lists the minimum number of signatories per Member State – Article 7(3). The Commission adopted Delegated Regulation 531/2014<sup>170</sup> revising the thresholds of signatures required for each Member State in line with the new configuration of the EP as set in the Lisbon Treaty<sup>171</sup>.

##### Obstacle: the system might not guarantee full and equal treatment of EU citizens<sup>172</sup>

<sup>170</sup> Commission Delegated Regulation (EU) No 531/2014 of 12 March 2014 amending Annex I of Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizens' initiative, OJ L 148, 20.05.2014.

<sup>171</sup> With the maximum number of Members of the European Parliament of 750 plus the President and a maximum number of 96 MEPs per Member State.

<sup>172</sup> Information based on stakeholder consultation (ECI organisers). The age limit set in article 3 of Regulation 211/2011 (same to be entitled to vote in EP elections) has also been identified as an obstacle to the effective implementation of ECI as a tool for fostering the public European debate and the strengthening of participatory democracy in the EU. For example, teenagers in high-schools across Europe could be involved in the discussions and support of specific ECIs they are interested in (Information based on stakeholder consultation: European Parliament – Secretariat of the Committee on Petitions).

All statements of support gathered by ECI organisers are considered by the Commission to verify whether or not the one million signatures requirement has been respected. However, only signatures that meet the national thresholds set in Annex I to the Regulation are considered for the fulfilment of the 'one quarter of Member States' criterion<sup>173</sup>. Very few stakeholders consider this as an obstacle since even more signatures are required to be successful.

A limited number of stakeholders also consider that a disproportion exists with regard to the number of minimum signatures to be collected in different Member States.

For example:

- Malta, population of about 420.000. Signatures needed: 4.500
- Estonia, population of about 1.200.000. Signatures needed: 4.500

The German Constitutional Court also criticised the same system of degressive proportionality used for distributing seats in the EP among Member States considering that it goes against the democratic principle of 'each vote counts the same'<sup>174</sup>.

**Solution analysed: revise or remove the minimum number of signatures per Member State<sup>175</sup>**

Stakeholders put forward two proposals to overcome the aforementioned obstacles:

- There should be no threshold for signatures in Member States and all signatures should count for the 'one quarter of Member States' criterion to make sure all citizens can validly express their support.
- The number of signatures should be proportionate to the national population and not to the number of Members of the EP elected in each Member State.

Although petitions and ECIs are two different instruments because the first one could be both individual or collective, while the second is collective by nature, some suggested that the thresholds for signatures could be reconsidered in the light of the EP experience with petitions: the number of petitioners is only an indicator of the acceptance of an issue and not a key element for its analysis. In this sense, the subject matter of the initiatives could play a more prominent role and the possibility to require more structured and articulated ECI requests could be considered to facilitate the ECI process<sup>176</sup>.

These issues were long debated during the negotiations of the Regulation and the current rule was considered acceptable since it avoided only gathering support from a large group of citizens from one 'bigger' Member State, while gathering purely nominal numbers of signatures in smaller Member States. Moreover, two ECIs reached the thresholds proving that it is possible to comply with the requirements. In addition, the lowering of the threshold could risk diminishing the European dimension of the ECI. For these reasons, none of these ideas have been currently retained.

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<sup>173</sup> Information based on stakeholder consultation (European Commission).

<sup>174</sup> German Federal Constitutional Court, [Judgement](#) on the compatibility of the Treaty of Lisbon with German Basic Law, 2 BvE 2/08, 30 June 2009.

<sup>175</sup> Information based on stakeholder consultation (ECI organisers).

<sup>176</sup> Information based on stakeholder consultation (European Parliament – Secretariat of the Committee on Petitions). See also sections [2.2.1](#) and [2.6.2](#).

## 2.5. Verification of Statements of Support by Member States

At the time of drafting of this report, only two ECIs had been formally submitted to the European Commission. For this reason, a full analysis of this phase can only be thoroughly conducted in the future.

### Applicable rule: Article 8 of Regulation 211/2011 (the Regulation)

According to Article 8(1), once the 12-month period for the collection of the signatures is over, the ECI organisers are required to submit such statements to the competent authorities in the Member States for validation. Organisers must use the forms indicated in Annex III to the Regulation<sup>177</sup>. The forms in Annex III were recently modified<sup>178</sup>: in this case, the organisers who run their campaign during the changes, can submit the signatures both in the new and the old forms<sup>179</sup>.

The national authorities have three months in which to issue a certificate indicating the number of valid statements that they have checked in accordance with their national legislation and practice – Article 8(2)<sup>180</sup>.

### Preliminary considerations on the verification of signatures by Member States<sup>181</sup>

At the time of drafting of this report, only two ECIs had been formally submitted to the European Commission. For this reason, the following are only preliminary remarks.

Some organisers<sup>182</sup> mentioned that the preliminary contacts with some competent national authorities, ahead of the submission of the statements, have proven key to ensure the smooth functioning of this phase. The Commission also assisted national authorities in their verification process by fostering exchanges through the Interoperability Solutions for European Public Administrations Programme (ISA)<sup>183</sup>. Moreover, the German authorities developed software for verification, which the Commission translated and improved to share it with other Member States to facilitate their work. For instance, Belgium used it for the verification of the signature of the ECI 'One of us'<sup>184</sup>.

Some obstacles have been faced by the first successful organisers and have already been addressed, i.e. difficulties in decrypting online signatures submitted for verification. The issues linked to paper forms, which could have repercussions in the verification phase, have

<sup>177</sup> According to Article 8(1) of Regulation 211/2011 'The organisers shall submit statements of support to the relevant Member State as follows: (a) to the Member State of residence or of nationality of the signatory, as specified in point 1 of Part C of Annex III, or (b) to the Member State that issued the personal identification number or the personal identification document indicated in the statement of support, as specified in point 2 of Part C of Annex III'.

<sup>178</sup> Commission Delegated Regulation 887/2013.

<sup>179</sup> Commission Delegated Regulation 887/2013. See also section [2.4.1](#).

<sup>180</sup> 'A request is considered to have been made once organisers have submitted all of the documents required by the implementing Regulation', European Commission, ['The European Citizens' Initiative - Guidelines and recommendations for practical implementation'](#), 15.04.2013, p. 3.

<sup>181</sup> At the time of drafting of this report, only two ECIs had been formally submitted to the European Commission. For these reasons, no specific obstacles and solutions could be identified but preliminary considerations on the running of this phase are presented.

<sup>182</sup> Information based on stakeholder consultation (ECI organisers).

<sup>183</sup> The ISA programme creates a framework that allows Member States to work together to create efficient and effective electronic cross-border public services for the benefit of citizens and businesses. [ISA – Interoperability Solutions for European Public Administrations](#). The ISA programme creates a framework that allows Member States to work together to create efficient and effective electronic cross-border public services for the benefit of citizens and businesses.

<sup>184</sup> Information based on stakeholder consultation (European Commission).

already been presented above<sup>185</sup>. National authorities confirmed that working with electronic signatures is easier than paper documents for two reasons:

- The verification could be done electronically.
- There are more chances for validation of electronic signatures.

Organisers of a successful initiative acknowledged the useful support of the Commission in this last phase of the process. Overall, it does not seem that the main obstacles for the ECI organisers were encountered in this phase of the process<sup>186</sup>.

## 2.6. Submission by Organisers to the European Commission

At the time of drafting this report, only two ECIs had been formally submitted to the European Commission. For this reason, a full analysis of this phase can only be thoroughly conducted in the future.

### 2.6.1. Meeting of the ECI organisers with the Commission and EP hearing

Applicable rules: Articles 10 and 11 of Regulation 211/2011, Rules 197a, 203a and Point XX of Annex VII to the European Parliament Rules of Procedure

Once the organisers have received the certificates by the relevant national authorities, on the validation of the one million (or more) signatures, in line with Article 10, the Commission must:

- Publish the citizens' initiative without delay in the register.
- Receive the organisers at an appropriate level to allow them to explain, in detail, the matters raised by the citizens' initiative.

Article 11 states that 'the Commission and the European Parliament shall ensure that this hearing is organised at the European Parliament, if appropriate, together with such other institutions and bodies of the European Union as may wish to participate, and that the Commission is represented at an appropriate level'.

As mentioned above, in 2012, the EP amended its Rules of Procedure to regulate 'Public hearings on citizens' initiatives' (Rule 197a) and to specify that the Committee on Petitions may examine unsuccessful ECIs when follow-up is considered appropriate (Rule 203a). The organisers of the hearing can decide how to structure it. Point 5 of this Rule specifies that 'The Bureau shall, in accordance with the arrangements agreed with the Commission, adopt rules concerning the reimbursement of incurred costs'.

Obstacles: limited reimbursement for hearings; no possibilities to invite subject-matter experts; not enough time for exchanges with MEPs; confusion about the hearing's purpose and structure; difficulties in getting publicity and visibility on specific ECIs<sup>187</sup>

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<sup>185</sup> See section 2.4.1.

<sup>186</sup> Information based on stakeholder consultation with one or more of the following: ECI organisers, European Parliament – Secretariat of the Committee on Petitions, Austrian, Estonian, Spanish national authorities.

<sup>187</sup> Information based on desk research and on stakeholder consultation (ECI organisers, MEP Victor Bo tinaru, MEP Alain Lamassoure, EESC, one member of the Senior Expert Panel for this project and ECAS).

The two first successful organisers that were received by the Commission have been satisfied with those meetings during which they could present, in detail, their requests and provide any clarification on their ECIs.

The EP managed to hold the two first hearings in February and April 2014 before the new legislature. The meetings have been a joint effort of the different Committees involved. In the first hearing, more than 400 participants and 25 representatives of the organisers were present. The second hearing was attended by approximately 500 participants. Both hearings were attended by approximately 50 MEPs. Organisers were generally satisfied with the hearings which, they felt, legitimised their efforts and gave them an opportunity to be heard – so the following remarks do not correspond to the major obstacles to implementing the ECI.

However, the ECI citizens' committees call for reimbursement of travel expenses for all their seven members and, currently, only three were covered. They also asked for the possibilities to have experts in the field to present their ECIs on their behalf, to explain clearly the detailed technical aspects<sup>188</sup>, and to have more time for exchanges with the MEPs. Others were confused about the exact nature of the hearing and highlighted the lack of respect of speaking time and confusions about who could intervene. They asked for clearer rules on speaking time and for a broader audience, i.e. in addition to organisers, MEPs and the Commission – as is the current situation.

Moreover, many regretted the absence of the EP and Commission Presidents and asked the possibility to also present their ECIs to the Council. These organisers identified the lack of political support at national and European level as a further difficulty. This is true also for the previous phases of the ECI process.

**Solution analysed: reimbursement for all seven members of the ECI citizens' committee; clarification of the hearings' purpose and their structure; increased visibility of specific ECIs within EU institutions<sup>189</sup>**

The EP Bureau<sup>190</sup> could adopt a decision to provide reimbursement for at least the seven members of the citizens' committee as, according to Article 3(2) of the Regulation, this is the required minimum number of ECI organisers. Experts should also be allowed to present evidence and data underpinning ECI requests, since the aim of the hearing is to present such requests.

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

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

<sup>188</sup> The hearings should be an opportunity to listen not only to the organisers but also to other stakeholders (also because before the hearing there is a meeting between the Commission and the organisers where the Commission can listen to their arguments and ask any questions). Information based on stakeholder consultation (European Commission).

<sup>189</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers, MEP Victor Bontaric, MEP Alain Lamassoure, EESC, European Commission.

<sup>190</sup> 'The Bureau is the body that lays down rules for Parliament. It draws up Parliament's preliminary draft budget and decides all administrative, staff and organisational matters. The Bureau consists of the President of the European Parliament, the 14 Vice-Presidents and the five Quaestors elected by Parliament for a period of two and a half years (renewable)', see European Parliament, [Organisation and work: Political bodies](#). The provisions governing the Bureau are established in Rules 22 (composition), 23 (duties), 29 (accountability) and 209 (powers and responsibilities) of the EPRP.

This could be done, in practice, by the EP – although clarifying this point in the EPRP and in the Regulation could be done at the occasion of possible revisions. In particular, some called for the Council, which is not participating in any step of the ECI process, to be more closely involved in the follow-up of the successful initiatives. However, who could represent the Council – a rotating presidency or the secretariat? The added-value of the Council's involvement, e.g. reporting ECI developments to Council working groups competent by subject-matter, should be further explored.

Finally, ideas to facilitate further access to the MEPs to endorse and promote single ECI campaigns should be explored. The EESC plans to adopt an Opinion on the first successful initiative – planned for July 2014,<sup>191</sup> and it has proposed to consider other options, involving also the CoR, besides meetings with the Commission and the EP hearing. These ideas are further explored in the next section.

#### 2.6.2. The ECI as a tool for EU direct participatory democracy: follow-up to successful and unsuccessful ECIs

Applicable rules: Articles 11(4) and 17(2) of the Treaty on the European Union (TEU); Article 225 and 241 Treaty on the Functioning of the European Union (TFEU); Articles 10 and 11 of Regulation 211/2011; Article 42 of European Parliament Rules of Procedure (EPRP); Point 16 of Annex XIV to the Framework Agreement on relations between the European Parliament and the European Commission<sup>192</sup>

Article 11(4) TEU states that '[n]ot less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties. [...]'

In addition, according to Article 10 of the Regulation, within three months from submission of the certificate of verification of signatures by the successful organisers, the Commission sets out in a communication its legal and political conclusions on the citizens' initiative, the action it intends to take, if any, and its reasons for taking or not taking that action. The Regulation also provides for the set-up of a public hearing by the EP for the organisers of the successful ECIs to present their initiatives (Article 11).

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

In particular, on the basis of a report by one of its committees, the EP, acting by a majority of its Members, may request the Commission to submit any appropriate legislative proposal (Article 225 TFEU and Article 42 of EPRP). The Commission should react within three months – point 16 of the Annex XIV Framework Agreement on relations between the EP and the European Commission to the EPRP.

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<sup>191</sup> Information based on stakeholder consultation (EESC).

<sup>192</sup> Point 16 of the [Framework Agreement on relations between the EP and the European Commission](#), OJ L 304, 20.11.2010.

Obstacles: uncertainties on the follow-up and on the legal arguments behind successful and unsuccessful ECIs and on the role of organisers; uncertainties on the nature, e.g. agenda setting tool or right of initiative, of the ECI<sup>193</sup>

Almost all stakeholders pointed out the lack of information from the EU institutions on the specific follow-up of the ECIs.

For successful initiatives, organisers would appreciate the possibility to discuss with the EU institutions, different follow-up options after the EP hearing and the Commission Communication. Should the Commission state in its Communication that it will take further steps to address the ECI, how would organisers be involved? Organisers are particularly concerned about their roles if a legislative procedure is initiated on the basis of their ECIs and about the possibilities to be involved in the drafting, or being consulted prior to the publication of the Commission proposal<sup>194</sup>. However, as explained in more details below, the Commission opens consultations with stakeholders in the field before putting forward legislation, so that the ECI organisers could have further opportunities to have their views on their specific proposals taken into account. It should also be recalled that the EESC plans to adopt an Opinion on the first successful initiative – planned for July 2014, and is considering other options involving also the CoR<sup>195</sup>.

It is also possible that, on the basis of Article 10 of the Regulation, the Commission decides that it will not give follow-up to a successful ECI for political and/or legal reasons. In this case, there is no possibility for appeal against a decision of the Commission – what options are left to the ECI organisers?

Uncertainty also relates to unsuccessful initiatives. Although they did not reach the one million signatures, they could have gathered significant support and, therefore, the organisers would like to explore options for possible EU follow-ups – different from the successful ECIs. Some unsuccessful ECI organisers engaged with the members of a national parliament to amend the national law pursuing their ECI objective in one Member State although, in this case, the European dimension was lost.

Moreover, most unsuccessful organisers are not aware of the amendments to the EPRP (Rule 203a), or of the possibility to present their unsuccessful ECIs as petitions. According to the rules mentioned above, it is possible for the Committee on Petitions to give a follow-up to a petition by making use of its power of initiative. Moreover, through a petition, EU citizens can point out a number of issues which the Members of the Committee on Petition can take into account when the EP is acting as co-legislator or is consulted on a legislative proposal.

The unsuccessful organisers, who considered the petition option, felt uncertain on how to proceed with it. For instance, they pointed out their obligation to delete the data on signatories 18 months after the registration of their ECI – Article 12(3) of the Regulation. In this case, their petition could not be formally backed up by all of the thousands of citizens across Europe who signed their ECI.<sup>196</sup>

<sup>193</sup> Information based on desk research and stakeholder consultation with one or more of the following: ECI organisers – including one initiative prior to the Regulation and therefore not considered officially ECI, EESC.

<sup>194</sup> The Commission will publish on the citizens' initiative website all the relevant information for the citizens to be able to follow the process. Information based on stakeholder consultation (European Commission).

<sup>195</sup> Information based on stakeholder consultation (EESC).

<sup>196</sup> The ECI 'End Ecocide in Europe', which did not reach one million signatures, is launching again a [call for signatures in preparation for a petition to the European Parliament](#), which has gathered 138.000 signatures up to 18.04.2014.

In addition, some stakeholders highlighted that some of the obstacles do not derive from the Regulation, but are linked to the very nature and set-up of the ECI as enshrined in the TEU. While recognising the added-value of the ECI for enhancing democratic participation in the EU, they do not yet consider the ECI as a tool for direct democracy<sup>197</sup>, because according to EU primary law – Article 11(4) TEU, the Commission does not have a specific obligation for follow-up successful ECIs. These stakeholders considered that the Commission faced a trade-off between encouraging the ECIs and addressing democratic deficit criticisms and maintaining its power of EU legislative initiative – Article 17(2) TEU. Uncertainties on the nature, e.g. agenda setting tool or right of initiative, of the ECI have also been mentioned above when discussing the 'two step' procedure<sup>198</sup>.

This scenario causes reluctance by some potential ECI organisers who are closely watching the experience of the first ECIs before deciding to launch their initiatives. Indeed, stakeholders pointed out that several organisations and potential ECI campaigners are looking closely at the follow-up of the first successful and unsuccessful initiatives. On the basis of the next steps undertaken by the EU institutions, potential organisers will consider whether or not it is worth engaging in the ECI process by weighing the costs and administrative burdens against the advantages and the possibility of reaching their goals. The organisers of the first two experiences were not satisfied with the follow-up to their ECIs as it is explained in the next paragraphs.

The Commission's positive response<sup>199</sup> to the first successful ECI has not been considered fully satisfactory by the organisers, who regret that there is no proposal for legislation recognising the 'human right to water'<sup>200</sup>. On this point, however, it should be noted that it is unlikely that, in its communications to address the ECIs, the Commission will commit to putting forward a legislative proposal. In line with the principle of proportionality and subsidiarity – Article 5 of the TEU and Articles 2 and 5 of Protocol n 2 on the application of the principles of subsidiarity and proportionality, and with the smart regulation policy of the EU, the Commission prepares impact assessments and opens consultations with stakeholders in the field.<sup>201</sup> A possible legislative proposal would, therefore, only come after these steps. For example, for the 'Right to Water' ECI, the Commission stated that it will launch 'an EU-wide public consultation on the Drinking Water Directive to assess the need for improvements and how they could be achieved'<sup>202</sup>. On the other hand, the frustration of the organisers can be easily understood considering that the ECI should give citizens a power of initiative similar to the right conferred on the European Parliament (Art. 225 TFEU) and the Council (Art. 241 TFEU).

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<sup>197</sup> ECAS will present soon a study on the different instrument of civic participation at EU level and their effectiveness.

<sup>198</sup> See section 2.2.1.

<sup>199</sup> European Commission, Press Release on '[Commission says yes to first successful European Citizens' Initiative](#)', IP/14/277, 19.03.2014.

<sup>200</sup> ECI 'Right2Water', Press Release on '[Commission lacks ambition in replying to first European Citizens' Initiative](#)', 19.03.2014.

<sup>201</sup> 'Before proposing new initiatives, the Commission verifies whether the EU has the right to take action and whether the objectives of the proposed action cannot be sufficiently achieved by the Member States. [...] First, the Commission prepares publically available roadmaps for all major initiatives. [...] Later in the policy development phase, a fuller analysis of subsidiarity issues is carried out as part of the impact assessment (IA) process, taking into account the views expressed during stakeholder consultations. [...] It is then thoroughly scrutinised by the Impact Assessment Board'. European Commission, '[Report from the Commission annual report 2012 on subsidiarity and proportionality](#)', COM(2013) 566 final, Brussels, 30.7.2013.

<sup>202</sup> European Commission, Press Release on '[Commission says yes to first successful European Citizens' Initiative](#)', IP/14/277, 19.03.2014.

In addition, the Commission refusal to the second successful ECI<sup>203</sup> has been strongly criticised by its organisers who stated that 'While each initiative draft is controlled upstream by the Commission before being open to signature, the Barroso Commission claims to possess the right of veto downstream, against initiatives having yet successfully obtained the required popular support. Such veto power is illegitimate and anti-democratic since politically, it is the European Legislature that may give a verdict on the content of the Initiative, and not the Commission, otherwise, the ECI mechanism would be meaningless. [...] The Commission is therefore trying to defend a privilege of initiative, being the only institution able to initiate legal procedures up upon the creation of the ECI mechanism. [...] the Commission's decision is likely to be appealed before the Court of Justice in Luxembourg [...].'<sup>204</sup>

Solutions analysed: more specific procedures for follow-up to ECIs; inform ECI organisers about the right to petition the right to petition; clarification of the nature of ECI; obligation on the Commission to work to submit a legislative proposal<sup>205</sup>

At the time of drafting of this report, only two ECIs have been formally submitted to the European Commission. For these reasons, the proposed solutions were only preliminarily analysed and should be studied further in the future. They include:

- Clarifying the specific procedures in case of the Commission's follow-up of successful initiatives. For example, establishing rules under the Regulation enabling the organisers of successful ECIs to be part of an expert group providing advice to the Commission on the follow up steps.
- Clarifying the specific procedures in case of the Commission's lack of follow-up of successful initiatives. For example, establishing rules under the Regulation enabling the EP to formally request the Commission's action and therefore potentially leading to recourse to the CJEU;
- Clarifying alternatives for follow-up of unsuccessful initiatives, e.g. the possibility to have a debate instead of the presentation at the EP hearing;
- Raising awareness about the possibility for ECI organisers to submit their requests as petitions to the EP.

The proposed 'Citizens' Initiative Centre' could be the responsible body to carry-out these actions which may improve the effective implementation of the ECI as a tool for participatory democracy in the EU.

In particular, support for exploring options for a follow-up at EU level of unsuccessful initiatives could be considered in the future since these initiatives have often been supported by thousands of EU citizens across Europe. However, a clear difference should remain between the follow-up of successful and unsuccessful initiatives, otherwise the ECI system would lose its meaning, i.e. the efforts of collecting one million signatures might not be worth it if unsuccessful initiatives are also given the same importance.

<sup>203</sup> European Commission, Communication on the European Citizens' Initiative '[One of us](#)', COM(2014) 355 final, 29.05.2014; European Commission, [Press Release 'European Citizens' Initiative: European Commission replies to 'One of Us'](#)', IP/14/608, 28.05.2014.

<sup>204</sup> ECI 'One of us' Article: 'The Commission vetos the citizens' initiative 'One of us' "<http://www.oneofus.eu/the-commission-vetos-the-citizens-initiative-one-of-us/>.

<sup>205</sup> Information based on stakeholder consultation with one or more of the following: ECI organisers – including two initiatives prior to the Regulation and therefore not considered officially ECIs, European Parliament – Secretariat of the Committee on Petitions, MEP Gerald Häfner, EESC.

Ideas for a possible future revision of the ECI through a modification of Article 11(4) TEU that could be analysed thoroughly only in the future include the ECI as:

- an agenda setting tool for which there would be no need for the Commission to submit a legislative proposal. In this case, requirements for registration could be simplified to make sure citizens voices are heard in Europe by all EU institutions and not just the Commission<sup>206</sup>;
- a tool for legislative initiative for which the Commission should have the obligation, if not to present an initiative, at least to start the process, i.e. impact assessment, for putting one forward. In this case, proposals include:
  - amending the TEU to ensure that, through the ECIs, EU citizens have, under certain conditions, real powers of legislative initiative;
  - amending the TEU to create a two-step system for ECIs of half a million signatures to request the Commission to propose legislation, and ECIs of one million signatures to oblige the Commission to propose legislation under specific criteria;
  - amending the TEU to require well-articulated ECI proposals in the form of draft legislative texts and to set specific and limited criteria establishing the reasons for the Commission not to develop such proposals. Outside those criteria, a proposal would be developed enabling the legislator to discuss it.

In this regard, it should be noted that if the Commission would be bound to give legislative follow-up to successful ECIs, EU citizens would enjoy a power of initiative superior to the ones given currently to the EP and the Council (Articles 225 and 241 TFEU).

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<sup>206</sup> 'The rejection, on the basis of purely legal grounds, of initiatives with a clear European political dimension results in practice in avoiding what could have been interesting European debates with potentially positive outcomes' See Mário Tenreiro, Article on 'Citizens' Initiative: What's next?', in Berg, C. and Thomson, J., '[ECI That Works](#)', The ECI Campaign, Germany, 15.04.2014, p. 85.

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

Out of all the possible solutions analysed in section 2, the recommendations<sup>207</sup> put forward below correspond to the solutions validated by Milieu in a workshop with the Senior Expert Panel<sup>208</sup>. They aim to ensure a straightforward ECI process with less costs and burdens for EU citizens, to ultimately empower them and encourage them to actively participate in shaping the future of Europe. Some recommendations cover more than one obstacle. The table in Annex II presents a summary of the obstacles and corresponding recommendations.

Should the actions proposed below not be enough to ensure the effectiveness of the ECI, other recommendations for further improvements have been validated and are presented in the relevant sections<sup>209</sup>. Possible solutions that relate to obstacles which are not yet confirmed, because the last phase of the ECI process is undergoing, are also discussed in the relevant section<sup>210</sup>.

#### 3.1. Practical recommendations

The recommendations presented in this section concern measures that can be relatively quickly put in place to have a smoother ECI process and improve its effectiveness as a tool for participatory democracy in the EU. To adopt such measures, the actors involved do not necessarily have to undergo legislative procedures.

The recommendations are listed in order of importance to overcome the major obstacles faced by the organisers.

- 1) 'Citizens' Initiative Centre': a one-stop-shop for support and information to ECI organisers could be set up. Such a Centre could consist of an office and an online platform and it could provide the following services:
  - a. support the search for potential partners or support staff, e.g. pro-bono IT or legal experts;
  - b. reply to accreditation and information requests;
  - c. provide a single set of detailed guidelines and training material on the rights and obligations of the ECI organisers and on all administrative procedures through the ECI process, as well as on the follow-up of successful and unsuccessful initiatives. The support should cover matters such as the IT requirements for the online collection system and the legal aspects of the ECIs including:
    - i. those related to the ECI legal bases under the Treaties and the possible development of more articulated proposals for legislative acts;

<sup>207</sup> Obstacles concerning the first experiences in the ECI process that have now been solved are disregarded. Some of these recommendations are similar to the ones put forward by different actors during the negotiations of Regulation 211/2011 and which have not been retained at the time. In light of the first ECI experiences, it seems it would be useful to consider them again. See each relevant section for more details.

<sup>208</sup> Prof. Ludwig Kramer for legal and inter-institutional advice; Mr Carsten Berg for technical advice; Mr Luis Bouza for policy advice.

<sup>209</sup> These include funding through operating grants (see section 2.1.3); one single OCS system by the Commission certified once up front (see section 2.3); extending the possibility to sign ECI to 16 years old in all Member States (see section 2.4.1); extension of the 12 months collecting period for signatures; introduction of a buffer period between ECI registration and collection of signatures (see section 2.4.2).

<sup>210</sup> See section 2.6.

- ii. the legal status of the ECIs and the organiser's liability;
- iii. the applicable data protection rules.

The Centre could be provided by pulling resources together from the Commission, the European Parliament, the European Economic and Social Committee, the Council and the Committee of the Regions<sup>211</sup>.

- 2) The Commission should provide more information and more detailed evidence and motivated arguments in their refusal or acceptance letters for registration of the ECIs by<sup>212</sup>:
  - a. considering and analysing, separately, each of the different points of request of a proposed ECI;
  - b. clarifying EU competences in the field of the proposed ECI by providing factual information on the actions taken and planned at EU level.
- 3) Commission servers storing the online signatures collected were offered for free as a temporary service from July 2012. The Commission should confirm this measure on a permanent basis<sup>213</sup>.
- 4) The Commission should improve the current free software for the online collection of signatures – including the collection of signatories' emails, to increase its user-friendliness while ensuring high security standards. This could be done through an interactive process enabling all of the stakeholders and users involved to contribute with their experience on the difficulties encountered<sup>214</sup>.
- 5) The European Economic and Social Committee – which has already proposed to offer its services, the European Parliament and any other EU institution, could provide the organisers with free translation services for the texts of their ECIs which are used to request signatures during their campaigns in different Member States<sup>215</sup>.
- 6) In light of the up-coming judgements of the Court of Justice of the European Union, the Commission could clarify if the ECIs can propose EU primary law amendments (Treaty, Charter of Fundamental Rights). This would inform the work of the legal support provided by the 'Citizens' Initiative Centre'<sup>216</sup>.
- 7) The ECI citizens' committee should receive reimbursement for travel costs to participate in the European Parliament's hearing for all of its members, i.e. seven instead of three<sup>217</sup>.
- 8) The European Parliament could clarify, in its rules of procedure, the aim and structure of the hearing, including the role of other EU institutions, to establish proper grounds and opportunities for the organisers to fully present their requests and engage in a dialogue with the MEPs on the follow-up of their ECIs<sup>218</sup>.

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<sup>211</sup> This has been discussed in section 'Information and support on the ECI process' [2.1.2](#).

<sup>212</sup> This has been discussed in section 'Identifying the legal bases for launching ECIs' [2.2.1](#).

<sup>213</sup> This has been discussed in section 'Online Collection System (OCS) Certification by Member States' [2.3](#).

<sup>214</sup> This has been discussed in section 'Online Collection System (OCS) Certification by Member States' [2.3](#).

<sup>215</sup> This has been discussed in section 'Translations of the text of ECIs to campaign in different Member States' [2.2.2](#).

<sup>216</sup> This has been discussed in section 'Identifying the legal bases for launching ECIs' [2.2.1](#).

<sup>217</sup> This has been discussed in section 'Funding and support to run ECI campaigns' [2.1.3](#).

<sup>218</sup> This has been discussed in section 'Meeting of the ECI organisers with the Commission and EP hearing' [2.6.1](#).

- 9) The Commission could proceed to regular random checks for the transparency obligations of the ECI organisers regarding financial support. Checks could be carried out primarily on the Commission's own initiative while keeping the possibility of checks derived from complaints, which is the current system<sup>219</sup>.
- 10) The Commission could clarify the position of EU officials so that potential signatories/campaigners among them can exercise their rights while being sure to respect their obligations<sup>220</sup>.

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

The recommendation presented in this section concerns a measure that would necessarily involve amendments to Regulation 211/2011 (the Regulation) on the citizens' initiative, which could be possible in the context of its review, by 1 April 2015<sup>221</sup>. For this reason, such a measure could be put in place in the medium term.

- 11) Revise Article 6 and Annex III and IV of the Regulation to establish a simplified single statement of support form<sup>222</sup>.

However, should the Regulation be revised in 2015, some of the practical recommendations presented above could also be reflected in the Articles of the Regulation, to enhance legal certainty and encourage the launch of ECIs. In particular, the following actions could be considered:

- Revise Articles 2(3) and 3(1) of the Regulation to clarify that the ECI citizens' committees can be set up by natural persons as national/European legal entities.
- Revise the Regulation to clarify further rights and obligations of the organisers and the EU institutions with regard to:
  - The 'Citizens' Initiative Centre' – Article 4(1);
  - The provision of translations – Article 4(1);
  - The Commission replies to the ECI registration requests – Articles 4(2)(b) and 4(3);
  - The Commission checks on transparency obligations – Articles 4(1) and 9;
  - The Commission's provision of servers – Article 6(1);
  - The organisers' personal and data protection liabilities – Article 13.
- Revise Article 11 of the Regulation to clarify the aim and structure of the hearing for successful ECIs. Rule 197a of the European Parliament Rules of Procedure could also be amended accordingly.

### 3.3. Recommendations for a possible revision of EU primary law

The provision of the Treaty on European Union and the Treaty on the Functioning of the European Union as well as the Charter of Fundamental Rights of the European Union, were considered. These recommendations focus, in particular, on the requirements of the ECI as

<sup>219</sup> This has been discussed in section 'Transparency of funding and support to run ECI campaigns' [2.1.4](#).

<sup>220</sup> This has been discussed in section 'Requirements to sign ECIs' [2.4.1](#).

<sup>221</sup> Article 22 of Regulation 211/2011 foresees that the Commission will present by that date and then every three years a report to the EP and the Council on the application of the Regulation.

<sup>222</sup> This has been discussed in section 'Requirements to sign ECIs' [2.4.1](#).

set in Article 11 of the TEU. For this reason, such measures could be put in place in the long term in the context of a possible future Treaties' revision.

12) Revise Article 11(4) TEU to clarify<sup>223</sup>:

- a. if the ECI can propose EU primary law amendments, e.g. Treaties and Charter of Fundamental Rights, in the light of the Court of Justice of the European Union case-law;
- b. if the ECI is a citizens' right of initiative requesting the proposal of a specific legislative act or an agenda setting tool to raise issues of concern for citizens willing to see it dealt with at EU level.

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<sup>223</sup> This has been discussed in section 'Identifying the legal bases for launching ECIs' [2.2.1.](#), and in the section 'ECI as a tool for EU direct participatory democracy' [2.6.2.](#)

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## ANNEX I – LIST OF STAKEHOLDERS CONSULTED

ECI Organisers <sup>224</sup>	Status
Water and sanitation are a human right! Water is a public good, not a commodity!	Successful
One of us	Successful
Stop vivisection	Pending verification of signatures
Central public online collection platform for the European Citizen Initiative	Unsuccessful
Fraternité 2020 - Mobility. Progress. Europe.	Unsuccessful
30 km/h - making the streets liveable!	Unsuccessful
High Quality European Education for All	Unsuccessful
Single Communication Tariff Act	Withdrawn Unsuccessful
Let me vote!	Withdrawn Unsuccessful
European Initiative for Media Pluralism	Withdrawn Unsuccessful
End Ecocide in Europe: A Citizens' Initiative to give the Earth Rights	Withdrawn
Unconditional Basic Income - Exploring a pathway towards emancipatory welfare conditions in the EU	Refused Unsuccessful
My voice against nuclear power (Friends of the Earth Flanders & Brussels)	Refused
Do not count education spending as part of the deficit! Education is an investment!	Running
Act4Growth	Running
1million4disability	Not registered (pre-Regulation 211/2011)
1 Million citizens for GMO freeze	Not registered

<sup>224</sup> Data has been gathered from organisers through interviews, written contributions and interventions at the '[An ECI that works!](#)' workshop, Brussels, 5 December 2013; '[The impact of the ECI on EU policies](#)' - Conference held at the EESC, Brussels, 8 January 2014; European Parliament Committee on Petitions, Meeting of 10.02.2014, ECI Study presentation: 'European Citizens' Initiative – First lessons of implementation', PETI\_OJ(2014)231\_1; European Parliament, [Public hearing on the 'Right2Water' Citizens' Initiative](#) of 17.02.2014, Brussels; and [ECI day 2014](#).

	(pre-Regulation 211/2011)
<b>EU Institutions and bodies</b>	<b>Department</b>
Committee of the Regions	President
European Commission	Secretariat-General
European Commission	Directorate General for Informatics
European Economic and Social Committee	Unit on Relations with Organised Civil Society and Forward Studies
European Economic and Social Committee	President
European Economic and Social Committee	President of the ECI Ad Hoc Group
European Ombudsman	N/A
European Parliament	Secretariat of the Committee on Petitions
European Parliament	Legislative Coordination Unit
<b>Members of the European Parliament (MEPs)</b>	<b>Membership of Committees</b>
MEP Gerald HÄFNER (DE/Greens)	Committee on Constitutional Affairs and Committee on Legal Affairs
MEP Alain LAMASSOURE (FR/European People's Party)	Committee on Constitutional Affairs and Chair of Committee on Budgets
MEP Victor BO TINARU (RO/Progressive Alliance of Socialists and Democrats)	Committee on Petitions
<b>National authorities</b>	<b>EU Member State</b>
Bundeswahlbehörde (Federal Election Authority)	Austria
Siseministeerium (Ministry of the Interior)	Estonia
Ministère de l'Intérieur - Direction des systèmes d'information et de communication (Ministry of Interior - Information and Communication System Directorate)	France
Minister van Binnenlandse Zaken en Koninkrijksrelaties (Ministry of Interior Affairs and Kingdom Relations)	The Netherlands
Oficina del Censo Electoral (Electoral Census Office)	Spain

## ANNEX II SUMMARY OF OBSTACLES AND RECOMMENDATIONS

ISSUES	OBSTACLES	CORRESPONDING RECOMMENDATIONS <sup>225</sup>
HORIZONTAL ISSUES		
<p>Personal and data protection liability of the ECI organisers</p>	<ul style="list-style-type: none"> <li>• Difficulties in operating as an informal ECI citizens' committee</li> <li>• Uncertainty and risks linked to the personal (and data protection) liability for organisers</li> </ul>	<p>1) 'Citizens' Initiative Centre': a one-stop-shop for support and information to the ECI organisers could be set up. Such a Centre could consist of an office and an online platform and it could provide the following services:</p> <p>c. Provision of a single set of detailed guidelines and training material on the rights and obligations of ECI organisers and on all administrative procedures through the ECI process as well as on the follow-up to successful and unsuccessful initiatives. The support should cover matters such as the IT requirements for the on-line collection system and the legal aspects of ECIs including:</p> <ul style="list-style-type: none"> <li>ii. the legal status of the ECIs and the organiser's liability;</li> <li>iii. the applicable data protection rules.</li> </ul> <p>The Centre could be provided by pulling resources together from the Commission, the European Parliament, the European Economic and Social Committee, the Council and the Committee of the Regions<sup>226</sup>.</p> <p>11) Revise Article 6 and Annex III and IV of Regulation 211/2011 to establish a simplified single statement of support form.</p>
<p>Information and support on the ECI process</p>	<ul style="list-style-type: none"> <li>• Difficulties in finding contacts in other Member States</li> <li>• Organisers do not know what they have to do/do not know how to handle the ECI process</li> <li>• Commission's conflict of interest</li> </ul>	<p>1) 'Citizens' Initiative Centre': a one-stop-shop for support and information to ECI organisers could be set up. Such a Centre could consist of an office and an online platform and it could provide the following services:</p> <ul style="list-style-type: none"> <li>a. Support for search for potential partners or support staff (such as pro-bono IT or legal experts);</li> <li>b. Replies to accreditation and information requests;</li> <li>c. Provision of a single set of detailed guidelines and training material on the rights and obligations of ECI organisers and on all administrative</li> </ul>

<sup>225</sup> The numbering corresponds to the numbering of the recommendations under section 3.

<sup>226</sup> This will be discussed in section 'Information and support on the ECI process' [2.1.2](#).

ISSUES	OBSTACLES	CORRESPONDING RECOMMENDATIONS <sup>225</sup>
		<p>procedures through the ECI process as well as on the follow-up to successful and unsuccessful initiatives. The support should cover matters such as the IT requirements for the on-line collection system and the legal aspects of ECIs including:</p> <ul style="list-style-type: none"> <li>i. those related to the ECI legal bases under the Treaties and the possible development of more articulated proposals for legislative acts;</li> <li>ii. the legal status of the ECIs and the organiser's liability;</li> <li>iii. the applicable data protection rules.</li> </ul> <p>The Centre could be provided by pulling resources together from the Commission, the European Parliament, the European Economic and Social Committee, the Council and the Committee of the Regions<sup>227</sup>.</p>
Funding and support to run ECI campaigns	<ul style="list-style-type: none"> <li>• Costly process</li> <li>• Burdensome ECI process</li> </ul>	<p>If the ECI process is revised in light of the proposed solutions presented in previous sections, the costs and burdens involved will be significantly reduced and the need for financial support will diminish as well<sup>228</sup>.</p> <p>7) The ECI citizens' committee should receive reimbursement for travel costs to participate in the European Parliament's hearing for all its members (seven instead of three)<sup>229</sup>.</p>
Transparency of funding and support to run ECI campaigns	<ul style="list-style-type: none"> <li>• Limited tools for enforcement leading to risk of diminishing the credibility of the ECI</li> </ul>	<p>9) The Commission could proceed to regular random checks for the transparency obligations of ECI organisers regarding financial support. Checks could be carried out primarily on the Commission's own initiative while keeping the possibility of checks derived from complaints, which is the current system<sup>230</sup>.</p>
Awareness of EU citizens on ECI	<ul style="list-style-type: none"> <li>• EU citizens are not aware of the ECI</li> </ul>	<p>Empowering citizens to get more easily organised to launch ECIs and reducing the cost and burdens of the ECI process with the solutions proposed in the previous sections, would allow them to run more efficiently their campaigns. This would</p>

<sup>227</sup> This will be discussed in section 'Information and support on the ECI process' [2.1.2](#).

<sup>228</sup> This will be discussed in section 'Funding and support to run ECI campaigns' [2.1.3](#).

<sup>229</sup> This will be discussed in section 'Funding and support to run ECI campaigns' [2.1.3](#).

<sup>230</sup> This will be discussed in section 'Transparency of funding and support to run ECI campaigns' [2.1.4](#).

ISSUES	OBSTACLES	CORRESPONDING RECOMMENDATIONS <sup>225</sup>
		<p>increase the reputation, the awareness and the success of the ECI as a tool for participatory democracy across the EU<sup>231</sup>.</p> <p>1) 'Citizens' Initiative Centre': a one-stop-shop for support and information to the ECI organisers could be set up. Such a Centre could consist of an office and an online platform and it could provide the following services:</p> <p>b. Replies to accreditation and information requests.</p> <p>The Centre could be provided by pulling resources together from the Commission, the European Parliament, the European Economic and Social Committee, the Council and the Committee of the Regions<sup>232</sup>.</p>
REGISTRATION BY THE EUROPEAN COMMISSION		
<p>Identifying the legal bases for launching ECIs</p>	<ul style="list-style-type: none"> <li>• Lack of legal expertise and costly legal services</li> <li>• Unclear legal bases for the ECIs</li> <li>• Unclear scope (Treaty changes or not) of the ECI</li> <li>• Uncertainty on legal analysis by the Commission due to the 'two step' legal examination system</li> </ul>	<p>1) 'Citizens' Initiative Centre': a one-stop-shop for support and information to the ECI organisers could be set up. Such a Centre could consist of an office and an online platform and it could provide the following services:</p> <p>a. Support for search for potential partners or support staff (such as pro-bono IT or legal experts);</p> <p>b. Replies to accreditation and information requests;</p> <p>c. Provision of a single set of detailed guidelines and training material on the rights and obligations of the ECI organisers and on all administrative procedures through the ECI process as well as on the follow-up to successful and unsuccessful initiatives. The support should cover matters such as the IT requirements for the on-line collection system and the legal aspects of the ECIs including:</p> <ul style="list-style-type: none"> <li>i. those related to the ECI legal bases under the Treaties and the possible development of more articulated proposals for legislative acts;</li> <li>ii. the legal status of the ECIs and the organiser's liability;</li> <li>iii. the applicable data protection rules.</li> </ul> <p>The Centre could be provided by pulling resources together from the</p>

<sup>231</sup> This will be discussed in section 'Awareness of EU citizens on the ECI' [2.1.5](#).

<sup>232</sup> This will be discussed in section 'Information and support on the ECI process' [2.1.2](#).

ISSUES	OBSTACLES	CORRESPONDING RECOMMENDATIONS <sup>225</sup>
		<p>Commission, the European Parliament, the European Economic and Social Committee, the Council and the Committee of the Regions<sup>233</sup>.</p> <p>2) The Commission should provide more information and more detailed evidence and motivated arguments in the refusal or acceptance letters for registration of the ECIs by<sup>234</sup>:</p> <ol style="list-style-type: none"> <li>a. Considering and analysing separately each of the different points of request of a proposed ECI;</li> <li>b. Clarifying EU competences in the field of the proposed ECI by providing factual information on the actions taken and planned at EU level.</li> </ol> <p>6) In light of the up-coming judgements of the Court of Justice of the European Union, the Commission could clarify if the ECIs can propose EU primary law amendments (Treaty, Charter of Fundamental Rights). This would inform the work of the legal support provided by the 'Citizens' Initiative Centre'<sup>235</sup>.</p>
Translations of the text of ECIs to campaign in different Member States	<ul style="list-style-type: none"> <li>• Lack of language expertise by organisers and costly translation services</li> </ul>	<p>5) The European Economic and Social Committee – which has already proposed to offer its services, the European Parliament and/or any other EU institution could provide the organisers with free translation services for the text of their ECIs used to request signatures during their campaigns in different Member States<sup>236</sup>.</p>
<b>ONLINE COLLECTION SYSTEM (OCS) CERTIFICATION BY MEMBER STATES</b>		
Online Collection System (OCS) Certification by Member States	<ul style="list-style-type: none"> <li>• Difficulties in signing the ECIs online with the Commission OCS</li> <li>• Signatories' emails cannot be collected</li> <li>• Non-unified OCS system across Member States</li> <li>• Short deadline to certify the OCS</li> </ul>	<p>3) Commission servers storing the online signatures collected were offered for free as a temporary service from July 2012. The Commission should confirm this measure on a permanent basis<sup>237</sup>.</p> <p>4) The Commission should improve the current free software for the online collection of signatures (including the collection of signatories' emails) to increase its user-friendliness while ensuring high security standards. This could</p>

<sup>233</sup> This will be discussed in section 'Information and support on the ECI process' [2.1.2](#).

<sup>234</sup> This will be discussed in section 'Identifying the legal bases for launching ECIs' [2.2.1](#).

<sup>235</sup> This will be discussed in section 'Identifying the legal bases for launching ECIs' [2.2.1](#).

<sup>236</sup> This will be discussed in section 'Translations of the text of ECIs to campaign in different Member States' [2.2.2](#).

<sup>237</sup> This will be discussed in section 'Online Collection System (OCS) Certification by Member States' [2.3](#).

ISSUES	OBSTACLES	CORRESPONDING RECOMMENDATIONS <sup>225</sup>
		<p>be done through an interactive process enabling all stakeholders and users involved to contribute with their experience on the difficulties encountered<sup>238</sup>.</p> <p>11) Revise Article 6 and Annex III and IV of Regulation 211/2011 to establish a simplified single statement of support form<sup>239</sup>.</p>
COLLECTION OF STATEMENTS OF SUPPORT BY ORGANISERS		
Requirements to sign the ECIs	<ul style="list-style-type: none"> <li>• Numerous and different data requirements</li> <li>• Signatories are reluctant to give their ID data</li> <li>• Some EU nationals and third-country nationals cannot sign the ECIs</li> <li>• Age limits</li> <li>• Unclear rules of conduct for EU officials</li> </ul>	<p>11) Revise Article 6 and Annex III and IV of Regulation 211/2011 to establish a simplified single statement of support form<sup>240</sup>.</p> <p>10) The Commission could clarify the position of EU officials so that potential signatories/campaigners among them can exercise their rights while being sure to respect their obligations<sup>241</sup>.</p>
One year collection time for signatures	<ul style="list-style-type: none"> <li>• Short collection period</li> <li>• Uncertainties on the starting date</li> </ul>	<p>Should the ECI process be streamlined and simplified according to the proposals presented above, it is possible that this timeframe would not be considered tight anymore<sup>242</sup>.</p>
Minimum number of signatures per Member State	<ul style="list-style-type: none"> <li>• The system might not guarantee full equal treatment of EU citizens</li> </ul>	<p>These issues were long debated during the negotiations of the Regulation and the current rule was considered acceptable since it avoided only gathering support from a large group of citizens from one 'bigger' Member State, while gathering purely nominal numbers of signatures in smaller Member States. Moreover, two ECIs reached the thresholds proving that it is possible to comply with the requirements. In addition, the lowering of the threshold could risk diminishing the European dimension of the ECI. For these reasons, none of these ideas have been currently retained<sup>243</sup>.</p>

<sup>238</sup> This will be discussed in section 'Online Collection System (OCS) Certification by Member States' [2.3](#).

<sup>239</sup> This will be discussed in section 'Requirements to sign ECIs' [2.4.1](#).

<sup>240</sup> This will be discussed in section 'Requirements to sign ECIs' [2.4.1](#).

<sup>241</sup> This will be discussed in section 'Requirements to sign ECIs' [2.4.1](#).

<sup>242</sup> This will be discussed in section 'One year collection time for signatures' [2.4.2](#).

<sup>243</sup> This will be discussed in section 'Minimum number of signatures per Member State' [2.4.3](#).

ISSUES	OBSTACLES	CORRESPONDING RECOMMENDATIONS <sup>225</sup>
VERIFICATION OF STATEMENTS OF SUPPORT BY MEMBER STATES		
Verification of Statements of Support by Member States	At the time of drafting of this report, only two ECIs had been formally submitted to the European Commission. For this reason, no conclusions could validly be drawn on this phase. Overall, it does not seem that the main obstacles for the ECI organisers were encountered in this phase of the process <sup>244</sup> .	
SUBMISSION BY ORGANISERS TO THE EUROPEAN COMMISSION		
Meeting of the ECI organisers with the Commissions and EP hearing	<ul style="list-style-type: none"> <li>• Limited reimbursement for hearings</li> <li>• No possibilities to invite subject-matter experts</li> <li>• Not enough time for exchanges with MEPs</li> <li>• Confusion about the hearing's purpose and structure</li> <li>• Difficulties in getting publicity and visibility on specific ECIs</li> </ul>	<p>7) The ECI citizens' committee should receive reimbursement for travel costs to participate in the European Parliament's hearing for all its members (seven instead of three)<sup>245</sup>.</p> <p>8) The European Parliament could clarify, in its rules of procedure, the aim and structure of the hearing, including the role of other EU institutions, to establish proper grounds and opportunities for the organisers to fully present their requests and engage in a dialogue with MEPs on the follow-up to their ECIs<sup>246</sup>.</p>
The ECI as a tool for direct participatory democracy: follow-up to successful and unsuccessful ECIs	<ul style="list-style-type: none"> <li>• Uncertainties on the follow-up and on the legal arguments behind successful and unsuccessful ECIs and on the role of organisers</li> <li>• Uncertainties on the nature (agenda setting tool or right of initiative) of the ECI</li> </ul>	<p>12) Revise Article 11(4) TEU to clarify<sup>247</sup>:</p> <ol style="list-style-type: none"> <li>a. If the ECI can propose EU primary law amendments (Treaties, Charter of Fundamental Rights), in light of the Court of Justice of the European Union case-law;</li> <li>b. If the ECI is a citizens' right of initiative requesting the proposal of a specific legislative act or an agenda setting tool to raise issues of concern for citizens willing to see it dealt with at EU level.</li> </ol> <p>1) 'Citizens' Initiative Centre': a one-stop-shop for support and information to the</p>

<sup>244</sup> This will be discussed in section 'Verification of Statements of Support by Member States' [2.5](#).

<sup>245</sup> This will be discussed in section 'Funding and support to run ECI campaigns' [2.1.3](#).

<sup>246</sup> This will be discussed in section 'Meeting of the ECI organisers with the Commission and EP hearing' [2.6.1](#).

<sup>247</sup> This will be discussed in section 'Identifying the legal bases for launching ECIs' [2.2.1](#), and in the section 'ECI as a tool for EU direct participatory democracy' [2.6.2](#).

ISSUES	OBSTACLES	CORRESPONDING RECOMMENDATIONS <sup>225</sup>
		<p>ECI organisers could be set up. Such a Centre could consist of an office and an online platform and it could provide the following services:</p> <ul style="list-style-type: none"> <li>b. Replies to accreditation and information requests;</li> <li>c. Provision of a single set of detailed guidelines and training material on the rights and obligations of the ECI organisers and on all administrative procedures through the ECI process as well as on the follow-up to successful and unsuccessful initiatives. The support should cover matters such as the IT requirements for the on-line collection system and the legal aspects of the ECIs including: <ul style="list-style-type: none"> <li>i. those related to the ECI legal bases under the Treaties and the possible development of more articulated proposals for legislative acts;</li> <li>ii. the legal status of the ECIs and the organiser's liability;</li> <li>iii. the applicable data protection rules.</li> </ul> </li> </ul> <p>The Centre could be provided by pulling resources together from the Commission, the European Parliament, the European Economic and Social Committee, the Council and the Committee of the Regions<sup>248</sup>.</p>

<sup>248</sup> This will be discussed in section 'Information and support on the ECI process' [2.1.2](#).



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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

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