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Abstract:

Considering the dramatic decrease on the number of new European Citizens’ Initiatives submitted to the Commission and the lack of legislative impact, the European Parliament has recently recognized “significant deficits which need to be tackled and solved in order to make the ECI more effective”. Accordingly, in its Resolution of 28 October 2015 about the implementation of the ECI, the EP has demanded a comprehensive revision of its legal framework. This paper will attend to the suggestions made by the EP focusing on some essential aspects such as the legal advice and the financial support to the organisers, the decision on the admissibility of the proposals, the requirements to support the ECIs, the beginning and the extension of the collection period, the follow-up by the Commission to a successful ECI and its parliamentary proceeding. In order to provide some recommendations for the revision of the ECI legal regime, the paper offers a preliminary approach to some of the best practices coming from comparative law.
Introduction.

In accordance with Article 22 of the Regulation (EU) No 211/2011 on the citizens’ initiative, the European Commission presented last year a report to the EP and the Council on the application of this Regulation\(^1\). This first evaluation of the ECI’s implementation showed how, since April 2012, from a total of 51 requests for registration of ECIs, the Commission registered 31 initiatives that covers a wide range of topics\(^2\). The other 20 proposals fell outside the framework of the Commission’s power to submit a proposal for a legal act of the Union. More than six million statements of support from EU citizens were collected by the organisers of the registered initiatives during the gathering campaigns but only three of them reached the 1 million threshold and finally received a formal response from the Commission – the ‘Right2Water’, ‘One of Us’ and ‘Stop Vivisection’ initiatives –.\(^3\) Even if this poor rate is similar to the results obtained by others citizens’ agenda initiatives at national level\(^4\), we should be particularly concerned about the fast and dramatic decrease of the registered initiatives in the last few years: 16 registrations in 2012, nine in 2013, five in 2014 and six in 2015\(^5\). These data clearly show that the high expectations about the potential democratic benefits of the ECI\(^6\), “a unique and innovative agenda-setting tool for participatory democracy in the EU”, have not been met.

In this context, the EP also evaluated the implementation of the ECI in its resolution of 28 October 2015 (2014/2257(INI)) identifying the practical difficulties which organisers of the ECI campaigns have had to deal with and proposing reasonable solutions in order to make the ECI more effective. It should be noted that many of these suggestions were made by the NGOs, think tanks and civil society groups involved in the ECI campaigns that participated in the public hearing of 26 February 2015 organized by the Committee on Constitutional Affairs in association with the Committee on Petition. In its 41


\(2\) “Many of the proposed ECIs intended to promote European solidarity and identity, while a small fraction carried euro-sceptic objectives. The initiatives related to a wide range of different policy areas, inter alia social policy, environment, animal welfare, education or constitutional affairs. Initial fears that trade unions or lobbyists would use and pervert the purpose of the ECI, which is designed for use by ordinary citizens, were not confirmed. Conversely, most ECIs were run by groups of citizens with little or no presence in Brussels”, European Parliamentary Research Service, 2015, *Implementation of the European Citizens’ Initiative. The experience of the first three years*, p. 5

\(3\) “18 initiatives have reached the end of the collection period (10 others were withdrawn before the end of their collection period). Among those 18, three initiatives have reached the required number of statements of support and were submitted to the Commission. Two of them have already received a formal response of the Commission: Water and sanitation are a human right! Water is a public good, not a commodity! (Right2Water) and One of Us. The third one (Stop vivisection) is under examination by the Commission and will receive an answer by 3 June 2015.” (European Commission, 2015, p. 3).

\(4\) A case in point is the Spanish agenda initiative: the 37.50 per cent of the nation-wide popular initiatives did not gather the required number of signatures. Furthermore, only one over nine popular initiatives finally debated in the Plenary Session of the national parliament (Claim of Community debts) was finally adopted by the representatives. (Cuesta-López, 2008, p. 397).


\(6\) In this regard, Warleigh considered that ‘the formal granting of such ability to citizens, acting collectively, would be unparalleled in the history of international organisations and would thus have potentially enormous significance’ (Warleigh, 2007, p. 64).
paragraphs, the EP resolution calls for a comprehensive review of the ECI procedure. The EP demands a better institutional advice to organisers as regards the registration of the ECI; the improvement of the online collection tools; the simplification of personal data requirements in the Member States; more public awareness of the ECI; the provision of financial support to the organisers; the revision the procedure of the follow-up to a successful ECI; the recognition of legal personality for the organisers and a better regulation on its liability for the management of the personal data; lowering the age for support to 16 years; and the extension of the 12-month collection period. Even if the Commission has considered in its follow-up to the EP resolution that “after only three years after its effective entry into application, it is at this point too early to launch a legislative revision of the Regulation” (European Commission, 2016, p. 2), this paper attempts to offer a preliminary approach to some of the recommendations made by the EP. In particular, we will focus on some essential aspects such as the legal advice and the financial support to the organisers, the decision on the admissibility of the proposals, the requirements to support the ECIs, the beginning and the extension of the collection period, the follow-up by the Commission to a successful ECI and its parliamentary proceeding. In order to do so, it could be helpful to contrast the proposals for the ECI’s revision with some pertinent rules governing its homologue institution, the popular initiative, at national and regional level. In sum, we would try to identify the best practices offered by comparative law that could serve to illustrate an eventual revision of the ECI legal framework.

The European Citizen’s Initiative: an agenda initiative in supranational context

Following the definition proposed by Uleri, a popular initiative is a procedure enabling a predetermined number of registered electors to submit a political demand either to the whole electoral body through a referendum ballot or to the elected representatives (Cuesta-López, 2008, pp. 193–195; Uleri, 1981, p. 81). From this definition we derive two main categories of popular initiative: the direct popular initiative (or referendum initiative), a device of direct democracy addressed to the electoral body, and the indirect popular initiative (also known as agenda initiative), a mechanism of participatory democracy that is fully subordinated to the political will of the representatives that could approve, alter or reject the citizens’ proposals. Whereas the direct popular initiative, whose best-known example is the Swiss initiative populaire for constitutional amendments, has a strong political impact, the agenda initiative, firstly included in the Italian Constitution of 1947, has a much more modest role in national politics. The ECI is, in fact, a transnational variation of the agenda initiative that is nowadays recognized in the Austrian, Finnish, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovenian and Spanish Constitutions. We should notice, however, that while in these countries the submission of an agenda initiative to the national parliament implies the beginning of the law-making process, the ECI is subjected to a previous political judgment by the European Commission that preserves the monopoly of the legislative initiative.

Another valuable classification of popular initiatives distinguishes different categories according to the scope of the citizens’ political demands (Cuesta-López, 2008, pp. 235–250). By means of popular initiative, citizens can propose the adoption, ex novo, of a legislative measure (legislative proposition) or a constitutional amendment
We could also find other models of popular initiative that are intended either to ratify or to repeal a constitutional or legal norm already adopted by the political representatives (constitutional or legislative ratification). This kind of popular initiative, formally known as referendum (i.e. the Italian referendum abrogativo and referendum constituzionale or the Swiss référendum facultatif), is always addressed to the electoral body. Finally, we could also find other variations of popular initiative whose scope is not the proposition or ratification of a proper legal act but the call for a popular consultation on a significant political subject. In some cases the consultation would be compulsory once the required number of signatures is collected (i.e. Hungary, Lithuania), while sometimes the final decision on the call depends on the political will of the representatives (i.e. Hungary, Poland, Portugal). Assuming that, by means of the ECI, the European citizens can submit an ‘appropriate proposal on matters where citizens consider that a legal act of the Union is required’ (art. 11.4 TEU), we could conclude that the ECI falls into the category of legislative propositions.

The reform of the ECI legal regime: a preliminary approach to some of the best practices in comparative law

Legal advice and financial support for the organisers of the ECI

As well as the signatories of an ECI, the organisers must be citizens of the EU and be of the age to vote in EP elections. The organisers will have to constitute a citizens’ committee ‘of at least seven natural persons who are resident of at least seven different Member States’ (art. 3.2 of the ECI Regulation). The citizens’ committee enjoys a set of procedural rights that guarantee its prominence throughout the process. Among the list of functions assigned to the organisers we should mention the registration of the legislative proposal with the European Commission at an early phase of the process (art. 4.1); the translation of the proposed initiatives into other official languages of the EU (art. 4.1); the collection of the statements of support (art. 5.1); the submission of the statements of support to the relevant Member States to proceed with its verification and certification (art. 8.1); the defense of the legislative demand before the Commission (arts 9, 10.1.b); and the participation in public hearing at the EP after its submission (art. 11). The ECI’s Regulation also declares the organisers’ right to withdraw a registered ECI, but it must be necessarily exercised before the submission of the statements of support for verification and certification (art. 4.5).

One of the main tasks of the organisers is to provide the information about the ECI for its registration at the beginning of the process. The required information, fixed in Annex II, includes the title, the subject matter, the description of the objectives on which the Commission is invited to act, the relevant provisions of the Treaties considered relevant for their proposed action, the personal data of the organisers and a declaration about the sources of support and funding. The organisers of the ECI formulate its proposal in general terms (subject matter and objectives) and not as a proper draft law. This is a major divergence with many of the expressions of agenda initiative that are commonly drafted in a bill. For instance, the Italian agenda initiative must consist ‘of a bill drafted in articles’ (art. 71, Italian Constitution) and the Austrian volksinitiative ‘must be put forward in the form of a draft law’ (art. 41.2 Austrian Constitution). However, there are also some examples of popular initiatives formulated in general terms: the Swiss popular initiative
can be submitted in the form of a general proposal (*initiative populaire générale*). The submission of this kind of popular initiative implies further intervention by representatives who would draft the final version presented to popular vote (art. 74.3 Swiss Federal Act on Political Rights).

The organisers must take into account another condition for the registration: the proposed ECI cannot manifestly fall outside the framework of the Commission’s power to submit a proposal for a legal act of the Union (art. 4.2.b)). As the high rate of refusal for registration clearly shows, the accomplishment of all these requirements is a difficult assignment for the organisers in such a complex polity as the EU. Consequently, the EP resolution has demanded the Commission to provide “appropriate and comprehensive guidance – especially of a legal nature – as early as possible to the organisers of ECIs through the Europe Direct Contact Centre, so that organisers are aware of the possibilities open to them and will not fail by proposing an ECI that is manifestly outside the Commission’s powers and does not comply with the legal admissibility criteria” (European Parliament, 2015, § 9).

In accordance with article 4.1 of the ECI Regulation, the Commission established in April 2012 a point of contact, based in the Europe Direct Contact Centre, providing information and assistance. The Commission’s report about the ECI implementation shows how the point of contact has answered over 1080 questions and has informally answered 15 questions from potential organisers about the possibilities of a probable citizens’ initiative to be registered. Nevertheless, the EP resolution suggests that a more comprehensive institutional assistance could be particularly helpful. In this respect, the EP calls “for the future establishment of a physical and online ‘one-stop shop’ providing, on a permanent basis, information, translation services and technical, legal and political support for ECIs” (European Parliament, 2015, § 24). The EP resolution also suggests the possibility of “establishing another independent body tasked with giving advice”, unlike the current point of contact under the auspices of the Commission (European Parliament, 2015, § 9). This measure seems especially appropriate to avoid the double role played by the Commission at the early stage of the ECI process: information provider and registration supervisor.

The legal assistance from institutions to the popular initiative’s organisers has some precedents in comparative law. For instance, the sponsor committee of the popular initiative in California enjoys extensive institutional assistance during the drafting process. After having obtained the signatures of 25 or more electors, the sponsors can

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7 “Via this point of contact, the Commission informally answers questions from potential organisers on the issue of whether a possible citizens’ initiative may be registered, before a registration request is formally submitted by the organisers to the Commission. Since April 2012, the Commission has answered around 15 questions of that kind. Those answers were given without prejudice to any formal reply by the Commission following a possible request for registration of a proposed citizens' initiative. In addition to the service provided by the Europe Direct Contact Centre, support has been provided directly by the Commission's services to organisers of initiatives. Once they have their proposed initiative registered, they can directly contact the Commission's services via their organiser account on the Commission's website (more than 85 requests answered since April 2012) or by email (around 125 requests). Technical support as regards the Commission's online collection software and the hosting of online collection systems has also been provided by email (almost 300 requests) and via the Join up platform31. Support has also been provided by dedicated meetings, phone and videoconference whenever necessary”, (European Commission, 2015, pp. 13 – 14)
take a general proposal to the Office of the Legislative Counsel, a nonpartisan public agency. If the Legislative Counsel determines that there is a reasonable probability the proposed initiative measure will eventually be submitted to the voters, the staff of the agency will draft the proposed law (Government Code § 10243). Additionally, the organisers of the popular initiative can request the Secretary of State to review the form and the language clarity of the proposed initiative before its circulation. The Secretary of State could also request a statement of fiscal impact from the Legislative Analyst’s Office. (Government Code § 12172).

The organisers of an ECI are also responsible for its translation into other official languages of the Union (art. 4.1). In this regard, the EP resolution also demands translation services from the EU institutions. Considering the transnational character of the ECI campaigns and that the use of the mother tongue is a civil right of EU citizens, we should conclude that the provision of the different linguistic versions from the EU institutions must be granted by the EU institutions, beyond the free translation of the ECI summaries that, on a voluntary basis, nowadays offers the European Economic and Social Committee. In this regard, we should bring again the case of the popular initiative in Switzerland, a country with four official languages. The article 69.3 of the Federal Act on Political Rights clearly determines that the Federal Chancellery shall examine the texts of the initiative in all official languages to ensure that they correspond and shall undertake any translation work thereon that is required.

In addition to the costs of the translations, the organisers of an ECI must consider other important expenses. A successful cross-border campaign should probably count on paid staff, the design and development of a website, printing, postage, etc. The only provision of the ECI Regulation about the financing of an ECI campaign requires the publication of “regularly updated information on the sources of support and funding” (art. 4). Beyond the transparency of the private funding and sponsorship of an ECI, the EP has also suggested the possibility of providing public financial support for ECIs “from existing EU budgets via European programs such as ‘Europe for Citizens’ and ‘Rights, Equality and Citizenship’”. In this regard, we should also mention the recommendation of the European Economic and Social Committee calling to explore “the options for financing campaigns and on increasing assistance from the institutions for the translation of summaries of initiatives”.

A case in point is the public funding for the agenda initiative campaigns in Spain. The Spanish legislation provides for compensation of the expenses incurred during the signature gathering campaign when the iniciativa legislativa popular (an agenda initiative) has obtained the required amount of signatures (500,000) and finally reaches the legislative process. The legislation has determined that the compensation cannot exceed 300,000 euros although it could be actualized by the board of the Congreso de los Diputados (the Lower House of the Spanish Parliament) according to the evolution of the consumer price index. Another interesting example is the public funding of the agenda initiative in Catalonia. The board of the Catalan Parliament compensates the organisers after a successful gathering campaign with an amount of money that varies according the number of collected signatures (0.64 euro for each firm) and that cannot exceed 40,000 euros. The organisers of the Catalan agenda initiative can even demand an advance payment up to 3000 euros before the beginning of the gathering campaign.
The decision on the admissibility of the ECI

The constitutional and/or legal check of the popular initiatives is a widespread prerequisite that is commonly commended to administrative or parliamentary bodies. These preliminary examinations are not a judgement of political opportunity and operate on the basis of strict regulatory criteria. Consequently, a negative decision on a popular initiative’s registration can be appealed by the organisers before the courts. In this regard, art. 4.2 of the Regulation announces the right to appeal against a negative decision on the admissibility of a given ECI before the European Court of Justice. The preliminary examination of the ECI takes place before the beginning of the collection of statements of support, avoiding, then, the circulation of proposals that were not admitted and the consequent frustration among signatories. Fortunately, the EP suppressed the Commission proposal’s provision establishing that the decision on admissibility would be adopted after the collection of 300,000 statements of support from signatories from at least three Member States (European Commission, 2010, p. 14). The rapporteurs of the Committee on Constitutional Affairs of the EP did not ‘support the idea of this check taking place after the collection of 100,000 or 300,000 signatures, as this would rightfully cause great frustration to organisers’ (European Parliament, 2010, p. 6).

The EP has called for a more constructive approach to the admissibility check made by the Commission. In his analysis about the legal admissibility of the ECI, James Organ points out that “the Commission has refused to register European citizens’ initiatives unless they meet the criteria for admissibility for all aspects of their proposal, despite there being no provision in the Regulation that states that an initiative cannot be registered in part or that resubmission without the offending part(s) cannot be suggested” (Organ, 2014, p. 432). Having into account the high rate of dismissed proposals, the EP resolution recommends “to give the organisers, at the time of registration, an indication as to which part they could register” and “to explore ways of referring initiatives, or those parts of initiatives, that do not fall within the scope of the Commission's powers to the competent authority, be it at national or regional level” (European Parliament, 2015, § 16). Even though organisers can nowadays adopt the changes informally suggested by the Commission in order to resubmit their proposal (Organ, 2014, p. 439), the Regulation should introduce a new provision urging the Commission to point out the parts of the ECI which should be amended in order to meet all the legal requirements. In this case, the organisers should have a short term to submit the revised proposal. The Spanish legislation, for instance, establishes that the board of the Lower House must invite the Citizens’ Committee to correct the amendable mistakes of the proposed initiative within a month (art. 5.2.b)). In Switzerland, the Federal Act on Political Rights allows the Federal Chancellery to revise directly the title of an initiative when it is misleading or it contains commercial advertising or personal publicity or gives rise to confusion (art. 69.2).

The citizens entitled to support an ECI

Article 11.4 TEU reserves the right to support a given citizens’ initiative to the citizens of the EU, that is to say, to the citizens who are nationals of the Member States. It seems, then, that there is not scope in the EU primary law for extending this political right to third-country nationals residing legally in the EU. It is worth mentioning that while other
political rights of European citizens are proclaimed in article 20.2 TFEU and in the Charter of Fundamental Rights (the right to vote and to stand as a candidate in European Parliament (EP) elections, the right of access to documents, the right to refer to the European Ombudsman, the right to petition), the right to support an ECI is not expressly enounced as a proper subjective right. Although the political participation of European citizens through ECI is, in practice, already granted by Regulation 211/2011/EU, it would be undeniably more appropriate if the rights of the signatories and the organisers of the ECI would also figure among the list of fundamental rights attached to European citizenship. In addition, art. 3.4 of the Regulation (EU) No 211/2011 requires that the signatories of an ECI must be “of the age to be entitled to vote in elections to the European Parliament”. In fact, the ECI regulation follows the general rule in comparative law: the exercise of the legislative initiative is commonly reserved to nationals of legal age who are enrolled in the electoral register. Nevertheless, in order to foster participation among young Europeans, the Regulation could have avoided the reference to the age to be entitled to vote in EP elections, which is determined by the Member States, and extended directly the right to support an ECI to EU citizens over sixteen years old. In this regard, the EP resolution demands “to amend Article 3.4 of the ECI Regulation (EU) No 211/2011 and to recommend to the Member States that they lower the age for supporting and participating in an ECI from 18 to 16 and that it not to be tied to the right to vote in elections to the European Parliament, thus giving young people, in particular, the possibility of becoming actively involved in taking the European project forward” (European Parliament, 2015, § 26). The Opinion of the Committee on Petitions of the EP about the original Commission proposal for the ECI regulation also defended the right to sign an ECI to all European citizens over 16: “A lower age limit is proposed in order to encourage younger citizens’ participation in the democratic life of the Union”. We could bring the precedent of Catalonia where the right to sign and to promote an agenda initiative is not related to the right to vote and is directly recognized to both the nationals and the foreign legal residents over 16 years-old (article 2).

The beginning of the collection period and its extension

The organisers could extend the collection of the statements of support for 12 months from the date of registration of the citizens’ initiative (art. 5.5 Regulation 211/2011). With the exception of the agenda initiative from Portugal where the organisers do not have a specific deadline to collect signatures, the laws on agenda initiative from Member States also establish a time limit that ranges between 60 days, in Slovenia, and nine months, in Spain. Although we could consider that the collection period of the ECI is relatively long, we should have into account the specific difficulties of a cross-border campaign: “Europe-wide campaigning requires time, due to language barriers, different cultures, the physical distance, and the cross-border dimension of the project” (European Parliamentary Research Service, 2015, p. 22). In addition, when the initiative is registered “organisers have often not finalised their preparations, as they can only start collecting online signatures once the authorities in the Member States have certified the Online Collection System (OCS)” (European Parliamentary Research Service, 2015, p. 22). Considering these circumstances and the suggestions made by many organisation of the civil society

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8 The minimum age for active voting is 18 in the Member States with the exception of Austria where it is established in 16.
involved in the ECI campaigns, the EP recommended “to reconsider the automatic link between the registration of an ECI and the beginning of the 12-month period within which expressions of support can be collected, so that the organisers of an ECI themselves can decide when they wish to start to collect expressions of support” (European Parliament, 2015, § 19). Other possibility, which has been appointed by the European Ombudsman in her letter to the Commission, is the extension of the collection time to 18 months (European Parliamentary Research Service, 2015, p. 22). This is exactly the same period available for the organisers of a popular initiative in Switzerland: the signature’s lists for a popular initiative must be submitted together at the latest 18 months from the date of publication of the text of the initiative in the Official Federal Gazette (article 71 Federal Act on Political Rights). Other possibility is the optional extension of the gathering campaign under justified circumstances. This is the case of the agenda initiative in Spain where the organisers can demand an additional period of three months for the collection of signatures. The board of the Lower House will then extend the term if reasonable causes concur (art. 7.3 LOILP).

The follow-up by the Commission to a successful ECI and its parliamentary proceeding

Once the verification of the statements of support has concluded, the designated authorities of the Member States have to issue a document certifying the number of valid statements of support received. The organisers will then submit the ECI to the Commission ‘accompanied by information regarding any support and funding received for that initiative’ (art. 9.1). Once the ECI has been properly submitted, the Commission must publish it in the register and receive the organisers who will explain ‘in detail the matters raised’ (art. 10.1.a)). The Commission has then to take a decision, within three months from the date of submission, on the political opportunity of the ECI declaring in a communication the ‘action it intends to take, if any, and its reasons for taking or not taking that action’ (art. 10.1.c)). Up until now, the Commission has published three Communications offering different political and/or legal responses. In the case of

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9 In this regard, Berg and Glogowski notice that “All ECIs began to collect significant numbers of signatures relatively late in their campaigns. This is probably related to the dysfunctional online signature collection system software (OCS) which stopped many ECI campaigns for several months and led the Commission to extend official deadlines.” (Berg and Glogowski, 2014, p. 15)

10 “The first initiative, ‘Right2Water’, submitted to the Commission on 20 December 2013 called for "legislation implementing the human right to water and sanitation as recognised by the United Nations and promoting the provision of water and sanitation as essential public services for all". In accordance with the ECI Regulation, its organisers were received by the Commission Vice-President in charge of Interinstitutional Relations and representatives of the relevant DGs on 17 February 2014. A public hearing took place at the European Parliament on the same day. The Commission's reply was adopted on 19 March 2014. It responds positively to the requests where the Commission has powers to act under the Treaties and where the subsidiarity and proportionality principles were respected. As a follow-up to the 'Right2Water' initiative, the Commission has committed to a series of actions, which are being progressively implemented. The second initiative, 'One of us', called for "the EU to end the financing of activities which presuppose the destruction of human embryos, in particular in the areas of research, development aid and public health". It was submitted to the Commission on 28 February 2014. Its organisers were received on 9 April 2014 by the Commissioner for Research, Innovation and Science and representatives of the relevant DGs. The public hearing in the Parliament took place on 10 April 2014. On 28 May 2014, the Commission adopted its Communication explaining that it did not intend to submit a legislative proposal, given that the EU legal framework in place, which had been recently adopted by the European Parliament and the Council, was considered to be adequate. The third initiative, 'Stop vivisection', calls for the Commission to "abrogate directive 2010/63/EU on the protection of animals used for scientific purposes and to present a new proposal that does away with animal experimentation and instead makes compulsory the use - in biomedical and toxicological research - of data directly relevant for the human species."” (European Commission, 2015,
Right2Water ECI, the response of the Commission to the requests was mainly positive but it has been argued that “the answer remains remarkably vague and unsatisfactory in terms of potential changes in EU law, despite a successful European campaign” (Bélier, 2014, p. 81). In its Communication about the second initiative, “One of Us”, the Commission announced that it did not intend to promote any legal proposal and, as a result, the organisers filed a lawsuit before the European Court of Justice demanding the annulment of the Commission’s communication. The last Communication on the ECI “Stop Vivisection” includes four positive actions in order to implement the citizens’ demands but it does not entail any legal measures. Considering these poor results the EP resolution regrets the lack of legislative impact and the discouraging follow-up by the Commission of successful initiatives and expresses differences of opinion with the Commission regarding the successful implementation of the regulation in order to realise the full potential of ECIs (European Parliament, 2015, § 29). Regarding the follow-up to successful initiatives, the EP resolution has urged the Commission to start preparing a legal act within 12 months after issuing a positive opinion. If the Commission fails to put a legislative proposal within this period, the Parliament and its committees, exercising their right to initiative recognized in Article 225 TFEU, could urge the Commission to do so (European Parliament, 2015, § 30, 32).

Article 11 of the Regulation also foresees a public hearing at the EP for the organisers who will have the opportunity to defend the political opportunity of the ECI before the Commission, the MEP and ‘other institutions and bodies of the Union as may wish to participate’. The Rule 211 of Procedure of the EP determines that the President of the European Parliament, on a proposal from the Chair of the Conference of Committee Chairs, task a legislative committee responsible for the subject-matter with organising the public hearing always in association with the petitions committee (PETI). The committee convenes the public hearing within three months of the submission of the initiative to the Commission and ensures that the Commission, represented at an appropriate level, is properly involved in the organisation. The chair of the Committee invites a representative group of organisers to present the ECI at the hearing and could, eventually, invite other stakeholders (Rule 211.3, 4). Nevertheless, as the European Parliamentary Research Service has observed in its report about the implementation of the ECI, “neither the ECI Regulation nor the Parliament’s Rules of Procedure stipulate details about the hearing, whether the subject should be discussed in a balanced manner (pros and cons), nor do the rules cover whom to invite” (European Parliamentary Research Service, 2015, p. 26). Accordingly, the EP should further clarify in its Rules of Procedure the purpose and the structure of the public hearing in such a way as to allow organisers to engage in a proper dialogue with MEPs and other officials from other EU institutions. We should take into account that after the public hearing, the parliamentary committees could express its support to a certain ECI by means of a report or a motion for resolution.

If the Commission promotes the ECI as a formal proposal for a legislative act and finally reaches the EP, its Rules of Procedure should also grant the intervention of the citizens’ committee along the whole law-making process. In this regard, the Spanish legislation on

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11 Case t-561/14, 25 July 2014
12 “PETI, which is in general actively monitoring the application of the ECI, is in principle also open to organising hearings for unsuccessful ECIs: according to Rule 218 of the Parliament’s rules of procedure, these "may be examined by the committee responsible for petitions if it considers that follow-up appropriate". (European Parliamentary Research Service, 2015, p. 26).
agenda initiative allows a person appointed by the promoting committee to intervene in defense of the law proposition before the plenary session of the Lower House. The agenda initiatives sent to the Parliament of Aragon, the Parliament of the Canary Islands and the Parliament of the Balearic Islands may also be defended in the plenary session by a member of the promoting committee. In the case of Galicia, the defense may be exercised by any of the signatories appointed by the promoters. In Catalonia, the intervention of the promoters in the plenary debate is guaranteed by the Regulation of the Chamber: a member of the citizens’ committee opens the plenary debate defending the proposition for 15 minutes. Furthermore, the Catalonian legislation entails the possibility that the promoters may defend the initiative before the legislative committees, which could introduce, later on, particular amendments to the citizens’ proposal. The Portuguese legislation on the agenda initiative also regulates the intervention of the citizens’ committee through the legislative procedure: the parliamentary committee responsible of the ECI receive the organisers in a public hearing and within 30 days informs about the political opportunity of the proposal. The organisers will then intervene in a plenary session of the Assambleia da República and if the bill is approved by the chamber they will intervene again before the parliamentary committee responsible of the study of the particular amendments.

Final remarks

In its Resolution of 28 October 2015, the EP has precisely pointed out the practical difficulties which organisers of the ECI campaigns have had to deal with and has conveniently proposed significant amendments of the legal regime which would foster participation. We have offered a preliminary approach to some practices from comparative law that could inspire an eventual modification of the rules regarding the legal advice and the financial support to the organisers; the decision on the admissibility of the proposals; the citizens entitled to support the ECIs; the beginning of the collection period; the extension of the deadline and the follow-up by the Commission to a successful ECI and the parliamentary proceeding. In sum, the suggested measures are mainly conceived to provide more resources to the ECI organisers and to ease their interaction with the EU institutions throughout the entire procedure allowing further democratic deliberation.

Nevertheless, the functionality of the ECI does not only depend on a participatory-friendly legal regime. It is also clear that the political significance of the ECI on the democratic life of the Union will depend on the receptive attitude from institutions towards the reasonable political demands raised by citizens. In addition, a determined effort form the EU institutions and the Member States is urgently required to raise public awareness of the ECI among the citizens. The supranational dimension of the ECI is, in fact, other of its major challenges since it has been commonly assumed that direct democracy devices better flourish in smaller and more homogeneous communities. The civil society networks behind the ECI committees have to make an extraordinary effort in order to arise political debate beyond domestic affairs and to manage the transnational gathering campaigns. In fact, only trans-European Europe-wide civil society organizations have succeed up until now. As Organ has recently pointed out “increasingly the European Citizens’ Initiative looks like an instrument for existing civil society organizations to use rather than individual citizens. The only initiatives to reach, or even
come close, to the support thresholds necessary for verification and then submission to the Commission are strongly linked to civil society organizations (Organ, 2014, 441).

References


