
The ECI in Action

Austria & the UK

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The ECI in Action Austria & the UK

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The ECI in Action Austria & the UK

PROJECT: Improving civic participation and access within the EU. A contribution to the debate on how to (re-) democratise EU institutions

**Research report by Dr. Tamara Ehs,
submitted October 21 2015**

Editor: NEOS Lab, Austria

The overall aim of the study is to present the significant difficulties faced by organisers in Austria and the United Kingdom when setting up and running a European Citizens' Initiative (ECI), to analyse possible solutions and to put forward recommendations for consideration during the ongoing review of Regulation (EU) No 211/2011 on the citizens' initiative with a view to improving the ECI as an effective tool for participatory democracy in the EU.

The present study draws on desk research and stakeholder consultation, including interviews with ECI organisers from Austria and the UK as well as representatives of official bodies in both member states. Tamara Ehs holds responsible for the Austrian part of this study, Nikki Stickland for the UK part:

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Executive Summary of national policy recommendations

A transnationally-conceived instrument naturally brings with it the same or similar problems all across Europe. Interviewees in Austria and in the UK were almost unanimous in their complaints about the difficulties involved. This is why the study puts forward general policy recommendations, which can be summarised as follows:

Policy recommendations addressed to the European Union

- **Establish a Citizens' Initiative Centre providing support to the citizens**
- **Establish a central certification body**
- **Transfer responsibility for ECIs from the Commission to the European Parliament**
- **Make ECIs the cornerstone of European citizen law-making**

Policy recommendations addressed to Austria and the UK

- **Set up an ECI office**
- **Re-think ECI funding**
- **Simplify the statement of support (esp. addressed to Austria)**

Most of the policy recommendations that have come up when talking to stakeholders in Austria and the UK have already been taken up in the latest report of the European Parliament: by the end of September 2015, the Constitutional Affairs Committee (AFCO) of the European Parliament had approved a final report on the ECI. In this final report, the European Parliament asks the European Commission for more transparency, more advice to the organisers on furthering campaigns, and clear explanations for ECI rejections. Support for ECI organisers will be strengthened as the Europe Direct Contact Centre is to provide guidance from the early stages onwards. Also, the European Economic and Social Committee has offered to provide free translation of ECI texts. More flexibility will be granted as parts of an ECI can be accepted. Finally, AFCO also proposed to lower the eligible age for signing an ECI to 16 years in all Member States. The report will be voted on by all members of the European Parliament in the plenary session of the Parliament on October 29. This final report then will be handed to the EU Council and the European Commission. The final agreement regarding the reform of the ECI will be made at the beginning of 2016.

Until now, the European Commission has been unwilling to initiate a thorough revision of the ECI. In addition, the delegations in the European Council do not agree as to whether the ECI should be revised or merely undergo cosmetic changes. Therefore, it is up to the European Parliament and the citizens to put pressure on the Commission for a revision of the ECI.

In this respect, we perceive it as problematic for a European democracy-to-be that neither MEPs nor members of the Council have discussed the ECI in their own countries. Apart from exceptions such as the European Ombudsman and parts of the European Parliament, discussions have taken place in separate domains – on the one hand, among political elites and on the other, within civil society. If it were not for interventions by transnational NGOs such as Democracy International, there would have been next to no dialogue between political decision makers and citizens. A true European democracy can only evolve if, in the future, EU bodies are prepared to provide an institutional framework for citizens' initiatives and to follow them through.

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I. Background

The ECI is a procedure for organising direct democratic initiatives within the European Union and is worldwide the first transnational instrument promoting civic participation in political agenda-setting. The aim of an ECI is to call on the European Commission to concern itself with a particular topic or area, provided that this topic falls within the Commission's jurisdiction, whereby reform or amendment of the various treaties is, however, excluded.

All EU citizens having reached the statutory voting age for elections to the European Parliament (in Austria: 16 years of age, in the UK, 18) are entitled to organise an initiative. For this to happen, firstly, a citizens' committee has to be set up, consisting of at least 7 members, each from a different EU member state. The citizens' committee is responsible for the running of the initiative throughout the whole process. Next, in order for an ECI to be submitted to the European Commission, statements of support must be collected from at least one million EU citizens from at least a quarter of the member states (currently seven). This can be done in paper form or electronically.

Furthermore, minimum quotas for recognised statements of support apply; these are based on the number of MEPs from the various member states (minimum number of signatories required since July 2014: Austria 13.500, UK 54.750). If an initiative is able to produce the required number of certified statements of support, a hearing is held before the European Parliament, at which the European Commission must also be present. After this the Commission has three months in which to prepare a legal and political response to the matter raised by the submitted citizens' initiative and to decide whether to take steps leading to a legal act. However, it is for the Commission alone to decide what action to take, that is to say, even if an ECI fulfils all the necessary criteria, the European Commission is not legally bound to come up with a proposal for legislation.

At the time of writing this report, 51 ECIs had been proposed, 31 of which were registered. At the moment there are three initiatives currently collecting statements of support and 18 initiatives that have reached the end of their collection period. Among them, three initiatives have achieved the required number of statements of support and have been submitted to the Commission: **Water and sanitation are a human right! Water is a public good, not a commodity! (Right2Water), One of us and Stop vivisection.**

The EU regulation concerning European Citizens' Initiatives (Regulation (EU) No. 211/2011 of the European Parliament and Council, 16 February 2011) came into force on 1 April 2012. Article 22 stipulates that the Commission shall submit a report on the implementation of the Regulation to the European Parliament and the Council by 1 April 2015 and at three-yearly intervals thereafter. The first report was received on 31 March 2015.

Since 2012 problems with the implementation and the overall functionality of the ECI procedure have been noted at various levels (within the EU, in institutions in member states and above all in civil society) and these are highly relevant to the discussion concerning any amendment of the ECI regulation.

There were teething troubles with the online signature collection system (OCS), primarily to do with software intended to facilitate certification according to EU criteria. This led to the Commission's extending the deadline for the first ECIs by several months as a sign of goodwill and, on the other hand, their requesting the government of Luxembourg to assist ECI organisations in developing OCSs capable of certifying statements of support. Subsequent difficulties were related to criticisms of the lack of transparency on the part of the Commission with

regard to the (non-)registration of submitted ECIs, and circumstances related to the collection of statements of support.

The following pages will deal with what caused which problems where, and what policy recommendations can be made.

II. Current State of Discussions

A) DISCUSSIONS AT EU LEVEL

A1) THE EUROPEAN COMMISSION

On 31 March 2015, three years after the introduction of the ECI, the European Commission presented its report on the implementation of the European Citizens' Initiative (ECI) to the European Parliament and the Council (cf. Document [COM \(2015\) 145 final](#)). Their analysis is primarily based on feedback from interested stakeholders, including the organisers of citizens' initiatives. Studies carried out by the European Ombudsman, by the European Parliament as well as further publications and conferences, which are not specified, were also consulted. Furthermore, the report mentions as a source a panel of experts, made up of representatives from national authorities of the member states; this panel met in Brussels on 12 June and 2 December 2014. However, there was no official public consultation by the Commission.

The report of the Commission provided an extensive amount of data on the subject of the ECI and concluded that the initial phase had been very successful, although there was some room for improvement, particularly with regard to the following points:

- citizens' committees do not have legal personality;
- apparently a considerable number of the proposed citizens' initiatives do not come under the jurisdiction of the Commission and are therefore not eligible for registration in the first place;
- differences in the pre-conditions for and the personal information required of signatories from various member states are causing concern, particularly when citizens are thereby prevented from exercising their right to support an initiative;
- deadlines are too short;
- checking the translations of the planned initiatives provided by organisers is extremely time-consuming;
- the current certification system for online signature collection is too complex;
- public hearings in the European Parliament are sometimes held without stakeholders or experts being present;
- lack of dialogue and communication with the Commission during the various ECI phases, there is no 'help-desk' to provide guidance; there is no scope for follow-up.

In spite of the shortcomings of the ECI recorded here, the Commission sees no reason to amend the Regulation immediately. After all, it is said to be too soon to evaluate the long-term impact of the ECI on institutional and legislative processes within the EU. The Commission will continue to monitor the ECI.

A2) THE COUNCIL OF THE EUROPEAN UNION

On June 11 2015, the General Secretariat of the Council issued a report on the application of Regulation (EU) No 211/2011 on the citizens' initiative in which the Working Party on General Affairs examined the Commission's report. Moreover, a conference on the ECI was held at the Council of the European Union on 16 June 2015. The Latvian President of the Council, the General Secretariat of the Council (GSC) and **The ECI Campaign** organised the meeting in order to assess the implementation of the ECI so far. The joint conclusions agreed by **The ECI Campaign** and the Latvian Presidency of the Council of the EU are:

To increase the number of new ECIs registered

- Provide more rigorous legal reasoning when ECIs are rejected.
- Transfer admissibility decisions from the Commission to a neutral entity.
- Remove the legal admissibility check at registration or delay it until after an ECI has demonstrated popular support.
- Clarify the legal framework guiding ECI decisions, including a consistent position toward Treaty amendment.

To engage more citizens and increase the number of successful ECIs

- Provide better legal, technical and translation assistance to ECI organisers.
- Permit the collection and sharing of signatories' email addresses among ECI campaigns to facilitate ongoing dialogue and involvement.
- Reduce and harmonise personal data requirements.
Adopt a single signature collection form.
- Give campaigns a full 12 months to collect signatures – e.g., by choosing their own start date.
- Offer citizens' committees a legal status to shield members from liability.

To support digital public involvement via the ECI

- Simplify technical IT requirements to allow digital tools to evolve in tandem with technical changes and be developed by citizen technical experts.
- Allow the future use of eID digital signatures.

To ensure that ECIs lead to a political response and policy change

- Hold a proper political debate on all ECIs with significant popular support – not only successful initiatives.
- Require a stronger and clearer political response to successful ECIs.

The Council's internal discussions on ECI reform have continued since then. But to date (October 2015) no further proceedings or reports have been published so it is impossible to state the current position of the Council of the European Union.

The present study, however, will throw light on the standpoints of at least two of the Council members (Austria and the United Kingdom). With regard to Austria, it has to be said that her position is largely shared by Germany, Luxemburg, the Netherlands and Finland. The UK, on the other hand, seems to be fairly isolated in its position on the ECI. It was the only member state to abstain in the Council vote in 2011. When it comes to current debates on the revision of the ECI, however, the UK has not really been active.

As the European Commission is not desirous of making any changes to the ECI regulation, it will be up to the Council – together with the European Parliament – to bring pressure to bear on the Commission.

A3) THE EUROPEAN PARLIAMENT

In the European Parliament the **Committee for Constitutional Affairs** (AFCO), chaired by Danuta Hübner, is in charge of matters concerning the ECI. According to Hübner, the ECI is a keystone of participatory democracy, but shortcomings in implementation and lack of follow-up measures may detract from its future success. Under the Rapporteur György Schöpflin the Constitutional Committee, together with the Committee for Legal Affairs (JURI) and the Committee for Petitions (PETI), put together a draft proposal for a Resolution of the European Parliament, procedure reference: 2014/2257 (INI), which was submitted to the European Parliament as a motion for a resolution on 19 March 2015. This motion, unofficially named **Schöpflin-Report**, ran as follows:

The European Parliament,

- stresses that the Citizens' Initiative is an exceptional opportunity for citizens to identify and articulate their aspirations and to ask for EU action, and that it must be encouraged, improved and supported; further stresses that the use of one's mother tongue is a civic right, and that all activities connected with an ECI may therefore be undertaken in one's mother tongue;
- calls on the Commission to provide as much guidance as possible – especially of a legal nature – to organisers of ECIs via the Europe Direct Contact Centre, so that they are aware of the possibilities open to them and will not fail by proposing an ECI that is outside the Commission's jurisdiction, or else to assign the task of giving advice to another independent company or body so as to avoid a possible conflict of interest within the Commission itself; notes, however, that under the Treaty of Lisbon the issues raised by ECIs may not correspond entirely to the Commission's jurisdiction; takes the view, furthermore, that the Commission should consider setting up a dedicated ECI office in each member state;
- stresses the need to provide more detailed guidelines on the interpretation of legal bases and more information on data protection obligations in each member state in which the organisers run their campaigns, and on the possibility for organisers to take out insurance;
- stresses that under the terms of Article 4 of Regulation 211/2011, in the event of a refusal by the Commission to register an ECI, 'the Commission shall inform the organisers of the reasons for such a refusal and of all possible judicial and extrajudicial remedies available to them'; acknowledges, in this connection, the many complaints from organisers about not receiving detailed and exhaustive reasons for the rejection of their ECIs, and invites the Commission to provide

as much information as possible in order to explain the reasons and guide organisers to a possible solution;

- invites the Commission to consider the possibility of registering only part of an initiative in the event that the entire ECI does not fall within the Commission's powers, and to give the organisers, at the time of registration, an indication as to which part they could register;
- calls on the Commission to improve the user-friendly character of its software for the online collection of signatures and to offer its servers gratis for the storage of online signatures on a permanent basis;
- invites the Commission to reconsider the automatic start of the signature collection period following the registration of an ECI and to allow the organisers to decide when it should begin;
- welcomes the European Economic and Social Committee's proposal to provide free translations of ECI texts so as to reduce the cost of organising an ECI, and invites it to set up the necessary operational framework;¹
- deems it too complicated for organisers to provide different personal data in support of ECIs in the 28 Member States, as laid down in Regulation 211/2011 on the basis of the various national provisions, and suggests that consideration be given to establishing an EU digital citizenship; calls on the Commission, therefore, to explore this issue in its digital agenda;
- acknowledges the delicate problem of organisers' personal liability with regard to data protection when collecting signatories' personal data, and proposes that the range of data required be reduced, or liability extended to volunteer campaigners, and that the wording of Article 13 of Regulation 211/2011, on liability, be changed to make it clear that personal liability is not unlimited; proposes, to this end, that inspiration be drawn from Article 3 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, with a view to establishing that organisers are responsible for acts which are 'unlawful and committed intentionally or with at least serious negligence';
- proposes that the period for member states to certify the online collection system be extended to two months (instead of one month) and for organisers the collection period for statements of support be extended to 18 months (instead of 12 months);
- invites the member states to be flexible in their verification when they receive statements of support for an ECI which are just above the threshold of 1 million signatures, with a view to allowing its submission;
- calls on the Commission to revise the wording of Article 10(c) of Regulation 211/2011 to allow proper follow-up to a successful ECI, including a parliamentary debate in plenary followed by a vote on the ECI; urges the Commission to initiate a legislative proposal on successful ECIs within 12 months of their acceptance;
- takes the view that, in order to emphasise the political dimension of ECIs, a public hearing held under the terms of Article 11 of Regulation 211/2011 should be structured in such a way as to allow organisers to engage in a dialogue with Members of the European Parliament; stresses that hearings on ECIs should be

¹ On 13 April 2015, Europeans Citizens' Initiative Day, a yearly event created by the European Economic and Social Committee (EESC), EESC launched an important new service for ECI organisers: It will take charge of the translation of the 800 character ECI submission text in all EU languages for all validated ECIs and thus remove one of the major difficulties for citizens and facilitating their political engagement (cf. <http://www.eesc.europa.eu/?i=portal.en.press-releases.35343>).

organised by a neutral committee that does not have the main responsibility for their subject-matter;

- invites the Commission to explore the possibility of funding ECIs from the EU budget, via European programmes such as the Europe for Citizens programme and the Rights, Equality and Citizenship programme, given that there is a real need for financial support for the organisation of ECIs and that numerous amendments to the EU budget have been submitted to this end;
- welcomes the Commission's report of 1 April 2015 on the ECI and calls on it to ensure that, in its revision of this instrument, all the appropriate legal measures are implemented when an ECI is deemed to have been completed successfully;
- instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the member states.

This draft motion for a European Parliament Resolution on the ECI includes reforms proposed by active citizens from across Europe and rooted in the experience of the first three years with the ECI in practice. It has undergone broad revision since its presentation in spring 2015. Numerous committee debates on the future of the ECI have taken place, including in the petitions and legal affairs committees. After several months of in-depth analysis, over 20 members of the AFCO committee have come up with 127 amendments to the draft report.

Amendments to the **Schöpflin-Report** stressed the fact that 'it must be one of the priority objectives of the European Union to strengthen the democratic legitimacy of its institutions' (Andrej Plenković) and that 'the European Citizens' Initiative is a unique and innovative agenda-setting tool in the European Union' (Charles Goerens, Sylvie Goulard, Maite Pagazaurtundúa Ruiz). What is more, its 'potential must be exploited fully and enhanced in order to encourage as many citizens of the Union as possible to participate in the further development of the European integration process' (Sylvia-Yvonne Kaufmann). Several MEPs clearly indicated that a revision of the ECI Regulation is needed, at some point even calling the ECI a 'sham' (Vicky Maeijer).² These are the other concrete proposals included in the list of 127 amendments. Not all of them are taken up by the final report:

- more active promotion of the ECI among European people;
- ECI should be able to 'ask for the EU to act or to cease acting';
- Lower the minimum age threshold for being entitled to support an ECI to 16 years;
- Remove Art 4(2)(b) so that an ECI proposal only needs to uphold the values of the Union and not be abusive, frivolous or vexatious in order to be registered;
- Provide comprehensive guidance as early as possible, especially of a legal nature;
- It should be possible to propose an initiative that also concerns the primary law of the Union or non-regulated acts;
- set budgetary and time restriction, so that initiatives cannot be presented on recently adopted legislation;
- An independent person or body should be designated to assess whether the legal basis of an ECI submitted is correct, along the lines of the Hearing Officers used in competition proceedings;
- The European Commission should inform the European Parliament about its decision concerning registration;
- Make its software for the online collection of signatures more user-friendly,, particularly for people with disabilities;
- Modify the OCS so email addresses can be collected on a non-mandatory basis on the same screen as the support form, but be stored in a separate database;
- End 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;

² Cf. <http://www.citizens-initiative.eu/ep-council-finalizing-eci-review/>

- Give the organisers the possibility to register only part of an initiative where an ECI does not fall entirely within the Commission’s remit and inform the organisers at the time of registration which part may be registered, a maximum deadline of six months being stipulated;
- Introduce the necessary reforms to stop certain groups of citizens, such as those who are blind or living abroad, from being prevented from exercising their right to support citizens’ initiatives, as such exclusion limits equality among citizens;
- Reimburse expenses to all members of committees which organise ECIs, to ensure they are able to attend hearings before Parliament;
- Encourage Member States to reduce data requirements and to remove identification number requirements except for Member States that absolutely need them to verify signatures;
- Create a legal status for the citizens’ committee;
- The Period for Member States to certify the online collection system should be extended to three months;
- Inform the national parliaments’ European affairs committees on a periodic basis about ECIs in progress which have already gathered a significant number of signatures;
- Consider incorporating an additional administrative channel into the Regulation for initiatives that have been rejected because they fall outside the Commission’s remit but which could be dealt with using other policy instruments, given their public interest, such as recommendations to the Member States, opinions, etc., with the aim of avoiding the failure of worthwhile citizens’ initiatives and thereby strengthening citizens’ democratic involvement;
- The Commission should start preparing a legal act on successful ECIs within 12 months of their submission. Where the Commission fails to provide a legislative proposal within this period, the relevant/appropriate committee of the European Parliament will initiate a legislative-initiative report for which the selected rapporteur shall consult the ECI organisers in another hearing.

Moreover, a study commissioned by the **Committee for Petitions (PETI)** has been published by the **DG for Internal Policies – Policy Department C (Citizens’ Rights and Constitutional Affairs)** of the European Parliament. This offers a succinct but comprehensive analysis of how the ECI has been functioning until now and concludes that reform is necessary: **Towards a Revision of the European Citizens’ Initiative?**³ The Petitions Committee (PETI) is the bridge between EU citizens and EU institutions, and the study provides an overview of the most significant difficulties faced by organisers when setting up and running an ECI and an in-depth analysis of the possible solutions based on a review of the latest reports by EU institutions on this issue. The aim of the study is to propose recommendations or measures to improve the ECI as an effective tool for participatory democracy in the EU. The study lists current obstacles faced by ECI organisers and signatories and groups them by phases of the ECI process:

- 1) As some obstacles concern the ECI process as a whole, or different phases of the process, they have been identified as **horizontal issues**:
 - Difficulties in operating as informal ECI citizens’ committees;
 - Uncertainty and risks linked to the personal (and data protection) liability of the organisers;
 - Difficulties in finding contacts in other member states;
 - Organisers do not know how to handle technical aspects of the ECI process;
 - Costly/burdensome ECI process;
 - Limited tools for enforcement leading to the risk of diminishing the credibility of the ECI;
 - EU citizens lack of awareness of the ECI.
- 2) Other issues, specifically concerning the **registration phase**, have been identified:
 - Unclear legal bases for the ECIs;
 - Lack of flexibility in the registration phase;

3 [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519240/IPOL_STU\(2015\)519240_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519240/IPOL_STU(2015)519240_EN.pdf)

Unclear scope of the ECI (uncertainty about the follow-up of successful and unsuccessful ECIs);
Lack of language expertise on the part of organisers:
costly translation services.

- 3) In relation to the **online collection system** (OCS), the main obstacles are:
Difficulties in signing the ECIs online using the Commission's OCS;
Signatories' email addresses cannot be collected;
No access for persons with disabilities;
No uniform OCS system across all member states.
- 4) Regarding the **collection of statements of support by organisers**, the main issues identified are:
Numerous and different data requirements;
Signatories are reluctant to give their ID data;
Some EU nationals and third-country nationals are not entitled to sign the ECIs;
Short collection period;
Uncertainty with respect to the starting date.
- 5) Finally, further obstacles stem from the **procedure for the examination of an ECI by the European Commission**, its formal response, and the **public hearings organised by the European Parliament** for successful and unsuccessful ECIs:
Limited reimbursement for hearings;
No provision for inviting experts in the areas concerned;
Not enough time for exchanges with MEPs;
Confusion about the hearing's purpose and structure
The quality and scope of the Commission response.

Going on from this, the study puts forward possible solutions including those bearing on the possible revision of Regulation (EU) No 211/2011 on the Citizens' Initiative. The recommendations presented below concern those measures that would require amendments to Regulation 211/2011 on the Citizens' Initiative:

- 1) Revise Article 1 of the Regulation so as to clarify:
If the ECI can propose EU primary law amendments and whether the requirements to propose a legal act refer to a legislative act;
If an ECI can request policy actions as an agenda-setting tool to raise issues of concern for citizens desirous of seeing them dealt with at EU level.
- 2) Article 4(1) of Regulation 211/2011 could be amended to reflect the EU institutions' involvement and to establish the **Citizens' Initiative Centre** providing the following help for citizens:
support in searching for potential partners or support staff;
support (pro-bono) on technical IT issues or legal aspects of the ECIs including:
ECI legal bases under the Treaties and the possible development of more structured draft proposals for legislative acts;
the legal status of the ECIs and the organiser's liabilities;
the applicable data protection rules.
– answer accreditation and information requests;
– provision of a single set of detailed guidelines and training material on:
the rights and obligations of ECI organisers;
all administrative procedures of the ECI process;
follow-up for successful and unsuccessful initiatives.
The Centre could be funded by pooling resources from the Commission, the European Parliament, the European Economic and Social Committee, the Council and the Committee of the Regions. A possible wording of Article 4(1) could be as follows:
'In applying the provisions of this Regulation, the Union Institutions and bodies shall endeavour to assist and provide guidance to the public

with regard to access to the European Citizens’ Initiative through the establishment of the **European Citizens’ Centre**.

- 3) Revise Article 6(4) and Annex III and IV to the Regulation to establish a simplified single statement of support form or, alternatively, revise through a delegated act Annex III to the Regulation so as to harmonise the requirements and limit the amount of personal data required as much as possible.
- 4) Revise Article 4(1) of the Regulation so as to establish that in case an ECI requests a legislative act, it may be accompanied by a more structured proposal for an act. The legitimacy of the ECI would be strengthened and ECI organisers could be assisted in drafting the legal text by the legal services of EU institutions in inter-institutional cooperation. (i.e. **Citizens’ Initiative Centre**).
- 5) Article 4(1) of the Regulation could be amended to provide the Commission with the power to carry out regular random checks on the transparency obligations of the ECI organisers in respect of their financial support. Checks could be carried out primarily on the Commission’s own initiative while retaining the option of checks derived from complaints, which is the current system.
- 6) Revise Article 4(2) of the Regulation to complement the ‘legal admissibility check’ at registration with a fully developed ‘opinion on the legal competence of the EU’ enabling the ECI to be reformulated in order to be registered.
- 7) Revise Article 10(1) of the Regulation: recognising that a successful ECI (with a million EU citizens’ signatures) supported by a parliamentary debate in a plenary session followed by a positive vote on the ECI would strongly signal the need for EU action. The article could enable a positive vote on the ECI by the plenary of the EP to lead to a Commission assessment of options for concrete actions, including a legal act (legislative or non-legislative) or another significant action. This would respect the discretionary power of the Commission to initiate legislation.
- 8) Revise Article 10 of the Regulation to specify procedures to accompany the follow-up of successful ECIs. It could refer to a specific process for the Commission’s follow-up of successful initiatives enabling their organisers to be part of structures such as a panel of experts advising the Commission on the follow-up steps and referring to the EP’s capacity to formally request the Commission’s action.
- 9) Revise Articles 2(3) and 3(1) of the Regulation to clarify that the ECI citizens’ committees can be set up by natural persons as national/European legal entities.
- 10) Revise the wording of Article 13 of the Regulation so as to clarify that personal liabilities of the ECI organisers are not unlimited. Drawing from Directive 2008/99/EC of 19 November 2008 on the protection of the environment through criminal law, the wording proposed could be as follows: ‘... organisers are responsible for ‘acts which are unlawful and committed intentionally or with at least serious negligence’.
- 11) Revise Article 5(5) of the Regulation so as to:
 - Extend the data collection time to 18 months or, even to an unlimited period of time;
 - Allow organisers to choose the starting date of the ECI campaign; or
 - State that the starting date of the collection of the statements of support is the date of the certification of the online collection system (by the competent national authority).

- 12) Revise Article 11 of the Regulation so as 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.
- 13) Complementary to point 7, Revise Article 11 of the Regulation so as to enable a parliamentary debate on a successful ECI which, when followed by a positive vote, could lead to requiring the Commission to assess options for concrete actions, including a legal act (legislative or non-legislative) or another significant action.
- 14) Revise Article 4 of Regulation 211/201122 to clarify further rights of the organisers and responsibilities of the EU institutions with regard to:
 - The provision of translations – Article 4(2)23;
The European Economic and Social Committee (EESC) which has already suggested offering its services, the European Parliament and any other EU institution, should provide the organisers with free translation services for the texts of their ECIs, which are used to request signatures during their campaigns in different member states;
 - The Commission should provide more information and more detailed evidence and motivated arguments in its replies to the ECI registration requests.

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

These findings of the study **Towards a Revision of the European Citizens' Initiative?** were integrated into the discussions on the **Schöpflin-Report**. At the beginning of September 2015 the shadow-rapporteurs of the different political groups held a meeting on the subject of the ECI, and finally the AFCO collectively agreed on the final report on September 28 2015. In this report, the European Parliament is asking the European Commission for more transparency, more advice to the organisers on conducting their campaigns, and clear explanations for ECI rejections: support for ECI organisers will be strengthened as **Europe Direct Contact Centres** are to provide guidance from the early stages onwards. Also, the **European Economic and Social Committee** has offered to provide free translation of ECI texts. More flexibility will be granted as parts of an ECI can be accepted. Finally, AFCO also proposed lowering the statutory age requirement for signing an ECI to 16 years in all Member States⁴. The report will be voted on by all members of the European Parliament on October 29 2015. Then, it will be submitted to the Council and the Commission as an official resolution of the European Parliament.

In a first statement, stakeholders like **Democracy International** welcomed the proposal but also were critical that the report would not go far enough: 'It has become widely acknowledged by the European Parliament and forcefully emphasised by civil society and past ECI organisers that the ECI will not regain its credibility unless it becomes better integrated into the democratic process and unless successful initiatives are sure to have a significant political impact. And yet, the political follow-up to ECIs adopted in the report is very restrictive. It was decided that successful ECIs should be debated and voted on in the Parliament's plenary, **if necessary**, and that the Commission must present a legal act on successful ECIs within one year, but only if the Commission first **issues a positive opinion**. A further issue that has been utterly neglected in the report is the permission for ECIs to deal with changes to the Lisbon Treaty – that is, a 400-page document regulating almost every aspect of EU policy [...].'⁵

4 Cf. <https://www.democracy-international.org/turning-point-european-citizens-initiative>

5 Sophie von Hatzfeldt, A turning point for the European Citizens' Initiative?

(<http://www.euractiv.com/sections/trade-society/turning-point-european-citizens-initiative-318081>).

The ECI Campaign which has proposed 12 reforms for the ECI (see below) assessed the EP's report as follows.⁶ According to them, the three most important points are either missing entirely or risk being watered down so as to be meaningless.



1. Make the registration procedure less restrictive.

Despite charges, including from respected legal scholars, that the Commission has occasionally misused its registration decisions to eliminate ECIs it does not like, no changes were suggested to this process. The EP leaves it up to the European Court of Justice to rule on specific cases. In the meantime, it seeks to increase the number of ECIs registered by providing better legal advice to ECI campaigners and suggesting that the Commission register parts of ECIs.



2. Allow ECIs that require treaty amendments to implement.

AFCO members were deeply divided on this point. Unable to come to agreement, they opted to leave this decision to the EU Court of Justice (CJEU). Unfortunately, none of the six cases before the CJEU challenging Commission registration decisions concern ECIs that would require treaty amendment.



3. Ensure that the Commission takes successful ECIs seriously.

This is the most contentious and still unresolved aspect of the EP's report. The initial report 'calls on the Commission to revise the wording of Article 10(c) of Regulation 211/2011 to allow proper follow-up to a successful ECI, including a parliamentary debate in plenary followed by a vote on the ECI; urges the Commission to start preparing a legal act on successful ECIs within 12 months of their acceptance.'

An S&D amendment limited this to ECIs on which the Commission had 'issued a positive opinion', rendering this point meaningless.



4. Simplify and harmonise personal data requirements and procedures.

The EP report 'calls for the introduction of a uniform procedure for making statements of support by amending Annex III to Regulation (EU) No 211/2011 in order to standardise the nature of the data collected in the Member States'.

Standardisation would help tremendously to simplify campaigning. However, it's vital that standardisation does not result in the addition of personal data requirements in countries that now have few.



5. Eliminate ID number requirements.

The EP report helpfully 'encourages the Commission to negotiate further with Member States with a view to reducing the number of data requirements, removing – accordingly – the requirement for personal identification numbers and making them more user-friendly'. However, ultimately, this is still up to the Member States to implement.



6. Redesign the online signature collection system.

Bravo to the EP for recognising the importance of simplifying the technical regulation governing the ECI's online collection system. Member State and NGO technical experts agree that they are excessively burdensome. Specifically, the EP report 'calls on the Commission to undertake, as soon as possible, a comprehensive revision of the ECI Regulation and of Commission Implementing Regulation (EU) No 1179/2011 in

6 Cf. <http://www.citizens-initiative.eu/ep-proposals-make-eci-easier-to-usebut-not-more-impactful/> Assessment of which points in the EP report merit a thumbs up (included), thumbs down (absent) or thumbs sideways (caution).

order to eliminate all remaining obstacles and create clear, simple, user-friendly and proportionate procedures.’

7. Allow the collection of e-mail addresses within the ECI support form and permit ECI organisers to contact signatories.

The EP report recognises the importance of emails to creating a two-way dialogue between citizens and EU institutions. It asks ‘to simplify and revise the technical specifications for the online collection of signatures so that e-mail addresses can be collected on a non-mandatory basis on the same screen as the support form but stored in a separate database’.



8. Let ECI campaigns choose their own start date.

The EP report will ensure that ECI campaigns will have 12 full months to collect signatures as it ‘underlines its position that the automatic link between the registration of a Citizens’ Initiative and the starting date of the twelve-month period for the collection of statements of support should be removed’. This point is uncontroversial, but does require a change to the Regulation.



9. Lower the age of ECI support to 16.

The EP has both recognised the advisory nature of the ECI and the importance of involving youth. It therefore ‘calls on the Commission to amend Regulation (EU) No 211/2011 Article 3 and to recommend to Member States lowering the age of the ECI support and participation from 18 years to 16 years’.



10. Offer an ECI support infrastructure with legal advice, translation and funding.

The report ‘calls on the EU to organise publicity and promotion campaigns to give the European Citizens’ Initiative a higher profile in the media and among the public.’ This is a uncontroversial point that does not require any changes to the Regulation.



11. Provide a legal status to protect citizens’ committee members and allow fundraising.

The EP report helpfully ‘proposes, (...), that citizens’ committees should be able to acquire legal personality’. It also suggests limiting the personal liability of ECI citizens’ committee members.



12. Increase public and media awareness of the ECI

The report ‘calls on the Commission to provide appropriate and comprehensive guidance as early as possible to the organisers of ECIs’, as well as the possibility to organise an ECI campaign in one’s mother tongue. Like #10, this is uncontroversial issue that does not require any changes to the Regulation.



A4) THE EUROPEAN OMBUDSMAN

In the spring of 2014, Emily O'Reilly, the European Ombudsman, asked the organisers of European citizens' initiatives and other interested stakeholders to assess how well the ECI was working. The questions she asked were similar to those we asked our interview partners in Austria and the UK (see appendix):⁷

- 1) Do you consider the citizens' initiative right to be sufficiently well known among the general public that citizens feel confident in signing initiatives? If not, what, in your view, could be done to raise awareness?
- 2) Please give your view on the information and guidance the Commission provided to you as an organiser of an initiative (on the Commission website, in direct contacts etc.).
- 3) Please give your view on the functionality and usefulness of the Commission's software for collecting signatures online. In particular, please consider issues such as hosting of the online collection system and the online system's accessibility for visually impaired persons.
- 4) The Commission extended the deadline for the first initiatives to collect signatures because of problems getting the online collection system up and running. Please comment on whether you consider that this extension of the deadline was sufficient and applied in a fair manner.
- 5) Please give your view on the functionality and usefulness of the paper form to be used for collecting handwritten signatures.
- 6) Do you have any concerns or comments in relation to the treatment of personal data provided by citizens signing an initiative (either online or on a paper form)?
- 7) Do you have any concerns or comments as regards the possibilities (or lack thereof) of tracking the number of signatures obtained throughout the collection period?
- 8) What is your experience as regards the contacts with different national authorities in relation to your initiative (for certification of the online collection system and certification of the number of valid statements of support)?
- 9) What changes to the ECI Regulation would you consider useful, if any?
- 10) Please provide any other information or suggestions, in succinct form, that you would consider useful for improving the citizens' initiative procedure.

On the basis of the information obtained the Ombudsman put forward to the Commission proposals for a more important role for the ECI in the political debate at European level. She demanded more support for the organisers of initiatives, a closer involvement of the European Parliament and the Council and pressure on member states to make it possible for all European citizens to sign ECIs, no matter where they were resident. Emily O'Reilly explained that the Commission must do more to make the work the organisers have to do to collect 1 million signatures worthwhile. One aspect of this would be for citizens' initiatives to play a more significant part in the European political debate even when individual initiatives do not result in new EU legislation. According to O'Reilly, the dialogue with the organisers during the various phases should function better and there needs to be more transparency as far as the decision-making process of the Commission is concerned. She summed up the information she had collected in 11 suggestions for improving the ECI:⁸

⁷ <http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/53104/html.bookmark>

⁸ <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/59205/html.bookmark>

The Ombudsman suggests that the Commission:

- 1) should provide as much guidance as possible to staff in the Europe Direct Contact Centre so that they can exercise reasonable judgment in striking the delicate balance between supplying helpful advice and being seen to steer a particular ECI.
- 2) should endeavour to provide reasoning for rejecting ECIs that is more robust, consistent and comprehensible to the citizen.
- 3) should articulate more clearly to its citizens its understanding of the value of the public debate generated through the ECI procedure and of how this debate, in its own right and irrespective of the individual outcome, gives the ECI process value and legitimacy.
should do all in its power to see to it that, throughout the ECI procedure, the public debate ensuing from a registered ECI is as inclusive and transparent as possible.
- 4) should explore, together with Parliament, the latter being responsible for organising public hearings, how to ensure that the two arms of the legislature, Parliament and Council, as well as interested stakeholders (for and against the initiative) are present at the public hearing.
- 5) in its formal response to an ECI that has obtained one million signatures, should explain its political choices to the public in a detailed and transparent manner.
- 6) should duly follow up on its commitment to analyse the suggestions made in contributions to the Ombudsman's consultation aimed at improving the online collection system (OCS) software.
- 7) should be mindful, in improving the OCS software, of the needs of persons with disabilities who wish to submit statements of support of ECIs online.
- 8) should draw on the example of the Transparency Register's quality checks and its alerts and complaints system to ensure that funding and sponsorship information provided by ECI organisers reflects reality and that any issues are brought to its attention.
- 9) in order to facilitate EU citizens wishing to sign an ECI, and irrespective of in which member state they are currently residing, should propose once again to the legislature simpler and uniform requirements for all member states in terms of the personal data to be provided when signing a statement of support.
- 10) should come forward with ideas on the two important questions of translation and funding of ECIs and, if necessary, propose relevant provisions in a revised ECI Regulation.

The Ombudsman's study was taken into account in compiling the Commission's report.

A5) THE COMMITTEE OF THE REGIONS

The Committee of the Regions published a draft opinion (rapporteur is Luc Van den Brande, chair of the Management Board of the Flanders-Europe Liaison Agency, VLEVA, Belgium/EPP) on the ECI reiterating its offer to assist the Commission in assessing whether initiatives comply with the principle of subsidiarity or how they contribute to territorial cohesion and cross-border cooperation. It stressed that, with both an economic and a confidence crisis in the EU, it is crucial to use all opportunities for an open dialogue with citizens and prevent their further disenchantment. Strengthened participatory democracy is seen as the only way to preserve the shared destiny of the EU and to cancel out the democratic deficit (cf. COR-2015-02606-00-00-PA-TRA (EN) 27/89).⁹

Recommendations for a successful European Citizens' Initiative in the future

A) General observations

notes that it would have been appropriate to make reference to the citizens' rights and duties and to the principle of subsidiarity for the eligibility criteria;

is of the opinion that a solution should be sought for the current conflict of interest of the Commission which both acts as an information provider, and is, on the other hand, responsible for the decision regarding registration and admissibility of the initiative and the political follow-up that should be given to the initiative;

underlines that this conflict of interest for the Commission must encourage the other institutions to play their role in the ECI procedure (Council, Parliament, Committee of the Regions, European Economic and Social Committee);

suggests that it might be more appropriate to appoint an ad hoc impartial 'wise people committee', gathering some experts, scholars and/or jurists, to check admissibility, avoiding the Commission being judge and jury;

is of the opinion that especially a stronger position of the European Parliament should be recommended in order to strengthen the transparency and the accountability;

underlines that the Commission must respect the principles of the European Rule of Law where any arbitrary assessment of eligibility should be avoided. Moreover, it is a matter of 'Good governance' and not merely of 'Better Regulation'. The Commission should take into account 'liability' in accordance with and respect for the Treaties;

is in favour of an improved ex ante assessment to avoid disappointment at the end. In the current situation only an ex post assessment takes place after the registration and after the collection of the signatures;

suggests to extend the collection period for statements of support to 18 months;

suggests requiring collecting signatures from only a fifth of EU Member States rather than a fourth;

supports the common request of stakeholders and ECI's organisers to allow the latter to freely choose the date to start collecting signatures within a clearly defined time-limit following registration; suggests to give the organisers of an ECI an additional period of two months between the registration and the start of the collection of signatures to give them the opportunity to better inform European citizens and to organise the collection of signatures;

supports the establishment of a legal status for citizens' committees to mitigate the risk of personal liability for their individual members and to facilitate campaigning;

⁹ <https://toad.cor.europa.eu/corwipdetail.aspx?folderpath=CIVEX-VI/005&id=23570>.

stresses that the Commission must come forward with a legislative proposal within one year if it agrees to a successful ECI, as it does with parliamentary initiatives. In this period of one year the Commission could give gradual implementation to the outcome of the ECI that leads finally to a legislative proposal. If not, the ECI will become obsolete;

is of the opinion that a revision of the Regulation is imperative so that the identified barriers can be overcome. A revision would not be too early since this is a unique 'experiment' with outcomes difficult to predict. Timely and anticipatory interventions are needed to prevent deterrence of potential ECI organisers;

is willing to keep on working with the European institutions as well as all interested partners in the process of assessing the operation of the Regulation up to now and to contribute to its revision, in order to make this tool deploy its full potential;

states that problems which do not require changes in the ECI Regulation itself should be addressed as quickly as possible. Simple and transparent procedures will indeed determine the future success of the ECI;

B) Modifications and improvements to the ECI to be implemented without delay

a citizens' initiative;

is committed to keep up the cooperation with the European Economic and Social Committee in organising a regular 'ECI Day' event, which would explore progress in the application and implementation of the regulation, foster discussion between EU institutions and ECI organisers on the challenges faced by the latter and would in general encourage dialogue between citizens and representatives of the institutions on initiatives under development;

notes that the ECI practice shows that the coaching of an ECI is perhaps as important as an ECI itself. It is obvious that ECIs need the support of civil society organisations (staff, financial means) to be successful. Managing an ECI as individual citizens, without external professional and financial support, is extremely difficult;

underlines that too many requirements and burdens may negatively affect the EU's objectives to bring citizens closer to the EU and the citizens' willingness to participate in the EU decision-making process;

asks the Commission to pay special attention to rejected or unsuccessful ECIs, so that the political message of the ECI should not be forgotten; notes that the comments on the current procedures and suggestions for improvement, formulated by various stakeholders and organisers of citizens' initiatives, are very similar and that it should therefore be possible to make short-term adjustments and improvements;

points out that the general public's awareness of the ECI is low. This high degree of ignorance about the ECI is confirmed by a recent Eurobarometer survey¹⁰;

underlines the need for EU support to make people aware of their right to propose and support an ECI. A special campaign in all EU Member States, involving regional and local authorities, could be launched, with young people as one of its primary targets, to make citizens aware of this right and other citizens' rights;

calls for more efficient communication and stresses the role of decentralised communication for instruments such as the ECI. Regional and local authorities play a crucial role in making and maintaining the link between the population at large and institutions at all levels in the EU. If the ECI relies a lot on new technologies to collect signatures within the set deadlines, regional and local authorities have a key role to play in disseminating information and relaying issues to and from the grassroots;

¹⁰ Eurobarometer, September 2014.

reiterates its proposal to establish an interinstitutional information point, which aim would be to raise overall awareness on the ECI as an instrument, promote its use, provide a minimum visibility to ongoing and successful citizens' initiatives and answer some questions on the ECI;

is in favour of establishing an ECI help-desk providing technical know-how and advice on how to organise and run an ECI campaign. Such a help-desk should be independent of the EU institutions because neutrality is a key element of the success of this initiative and can help foster trust on behalf of individuals considering initiating

notes that citizens wish to participate in public policy, but will only do so if it is simple and actually makes a difference. Citizens want to know what happens to the initiatives they support. Facilitating two-way dialogue between EU institutions and an ECI's supporters is crucial for the ECIs success;

invites the Commission to explore the possibility of funding ECIs, since running an ECI is a costly process;

calls on the Member States to take all necessary steps to improve the functioning of the ECI, in particular by simplifying personal data requirements and harmonising them;

calls on the Commission to ensure transparency in the decision-making process and to provide more detailed and comprehensible arguments and consistent reasoning in its decisions to refuse registration;

invites the Commission to explain its political choices to the public in a detailed and transparent manner in its formal response to an ECI that has obtained more than one million signatures. A politically strong follow-up should be ensured;

C) The contribution of the Committee of the Regions and RLAs

reiterates its offer to assist the Commission in assessing whether initiatives comply with the principle of subsidiarity or how they contribute to territorial cohesion and cross-border cooperation;

respects the principles on which the ECI is based and therefore the Committee of the Regions cannot be initiator of an ECI;

welcomes the decision of its Bureau¹¹ on the Committee of the Regions' involvement in European Citizens' Initiatives;

underlines that the proposed initiatives often refer to policy areas for which the Commission must seek advice from the Committee of the Regions or for which it gives own-initiative opinions; it is thus justified to give positive support in several ways:

- Awareness raising, information distribution, network contribution,
- Facilitating contacts and supporting alliances,
- Screening of proposed ECIs and analysing them on regional / local relevance,
- Active attendance at the ECI hearings in the Parliament;
- Supporting implementation of successful ECIs.

This document was adopted at the CoR's 114th plenary session on October 14 2015.¹²

¹¹ 144th meeting of the Committee of the Regions Bureau, 10 April 2013, item 8 – CDR1335-2013_11_00_TRA_NB-item 8.

¹² <http://cor.europa.eu/en/events/Pages/114th-cor-plenary-session.aspx>

A6) PAN-EUROPEAN NGOS

In the spring of 2014 Carsten Berg and Janice Thomson submitted the study **An ECI That Works!**, the first evaluation of the ECI as an instrument after two years of implementation.¹³ According to their account, the ECI is flawed and urgently needs overhauling. In Carsten Berg's view the European Commission is in a position to infringe the right to free speech by rejecting certain ECIs on questionable legal grounds, the real reasons being political in nature. In addition, the complicated procedure ECI organisers have to follow alienates citizens just as having to make sensitive personal data public does. The **ECI Campaign** has launched a petition to collect signatures for a letter to the European Parliament and to the Commission.¹⁴

The text of the petition runs as follows:

LETTER TO THE EUROPEAN PARLIAMENT AND EUROPEAN COMMISSION

We are writing you on behalf of 6 million people across the Union who have mobilised because these citizens want their voices heard in Europe. Six million of them have been left frustrated by not being listened to.

The survival of the European Citizens' Initiative is under threat and what is at stake is the trust of the citizens in European democracy and politics. People across Europe are calling on you to use this window of opportunity to stand up for a European Citizens' Initiative that truly supports pan-European public debates and which has real influence on EU policy-making.

To live up to its potential, the ECI regulation 211/2011 requires deep and meaningful revision. The instrument must:

- Allow topics that entail treaty change, inviting the Commission to use its right along Article 48 of the Lisbon Treaty
- Ensure simpler and uniform data requirements across all member states and access to all EU citizens, irrespective of residence
- Be on an equal footing with parliamentary initiatives, requiring a legislative proposal within one year for accepted ECIs.

If you don't improve the ECI now, we risk to have even more people turn their backs on the European project altogether. This is a great chance for the EU to regain the trust and support of the citizens and to move from a Europe of governments to a Europe of the citizens. Europe should not miss this opportunity.

The complete list of suggested improvements:

Accessible instrument

- 1) provide rejected ECIs with robust, comprehensible and transparent reasons for their rejection and the possibility to resubmit modified proposals up to three times in total.
- 2) allow ECIs to include topics that may entail an invitation to the Commission to use its right to initiate proposals to amend the treaties.
- 3) simpler and uniform data requirements across all member states to facilitate EU citizens wishing to sign an ECI, irrespective of their country of residence.

¹³ Cf. <http://ecithatworks.org/>

¹⁴ Cf. <http://www.democracy-international.org/ecicampaign>

Dynamic Process

- 1) redesign the Online Collection System to include a signing function directly on the register of ongoing ECIs and enable signatories to share their email addresses to stay informed.
- 2) give ECI organisers the choice of date for the launch of their ECI, within six months of its registration by the Commission.
- 3) raise awareness of and facilitate communication about running ECIs by creating a public ECI app for mobile devices with information and the possibility of mobile signing.

Powerful Impact

- 1) If the Commission agrees to a successful ECI, it must come forward with a legislative proposal within one year, as it does with Parliament initiatives. In the case of rejection, the Commission must explain its political choices in a detailed and transparent manner.
- 2) A first public hearing in Parliament should be held if an ECI reaches 200,000 signatures within the first six months to give running ECIs a political platform and facilitate public debate on the issue.
- 3) The relevant Parliament committee must write a report on the subject of each successful ECI, with a co-rapporteur nominated by the ECI citizens' committee. The report should be debated in full plenary followed by a vote.

The full version of the proposals is as follows:

→ Reduce and harmonise personal data requirements across member states.

Each EU member state requires different personal data from ECI supporters. This means campaigns must create 28 different signature forms and submit signatures for verification to 28 different national authorities – instead of to a single collection point. At the same time, campaigns, citizens, EU officials and national authorities have all complained that too much information is required from citizens wishing to support an ECI.

Finland's simple form and data requirements could become the standard used in all countries. It includes name, country of residence, nationality and date of birth. It is used both by EU citizens residing in Finland and Finnish citizens regardless of their country of residence. In any case, it could serve as a starting point for member states to reconsider and justify which personal data they actually need from ECI supporters to verify identity.

Data protection requirements for the ECI should likewise be harmonised across all member states and ideally coordinated by a central EU body. Similarly, while member states must verify signatures, a central body (or database) could be established to coordinate between campaigns and national authorities. This would relieve campaigns of the complex, time-consuming logistics of working with 28 different national authorities.

→ Eliminate ID number requirements

Among the personal data requirements, identity document numbers have clearly created the most problems. ECI organisers noted that requirements for citizens to share ID numbers, as well as birth dates and places, in order to support an ECI raised serious privacy concerns and deterred citizens in several countries from supporting an ECI. ID requirements posed problems especially in Austria, Bulgaria, Czech Republic, France, Greece, Hungary, Italy, Poland and Romania. These requirements were unproblematic in a small number of countries only, such as Spain and Sweden, where ID numbers are routinely used in daily exchanges.

ID number requirements should ideally be eliminated for all countries, but especially for those where citizens are uncomfortable sharing them. The European Data Protection Supervisor explicitly determined that ID card numbers were not necessary for the ECI. Yet 18 member states still require them.

→ **Ensure that all EU citizens can support an ECI – wherever they live.**

Another unfortunate consequence of having 28 different sets of personal data requirements – some based on citizenship and others on residence – has been to strip many expatriate EU citizens of their legal right to use the ECI. The Finnish approach which allows both Finnish citizens (regardless of where they live) and Finnish residents (with EU nationality) to support an ECI is the ideal. Alternatively, preference should be given to citizenship rather than residence, so as to ensure that all EU citizens may support an ECI, regardless of where they live.

→ **Lower the age of ECI support to 16.**

The ECI has no direct policy impact and should not be subject to the same rules as voting in European elections. It can, however, impact on the agenda for the future of Europe. Many of the first ECIs touched on topics of great importance to young people, such as education, jobs and the environment. Therefore, young people aged 16 and over should be able to support an ECI in all countries, as is currently only the case in Austria. Involving young people in EU affairs while they are still in high school can promote future EU involvement and help develop a European identity.

→ **Redesign the online signature collection system (OCS).**

Significant and persistent online signature collection system (OCS) weaknesses and glitches were consistently cited by every ECI campaign and acknowledged by Commissioner Šefčovič as extremely problematic. They have led to the loss of signatures, collection time, campaign momentum and resources. Technical problems, especially related to the restrictive ‘captcha’, have also made it difficult for people with disabilities to support an ECI. These problems must be corrected.

Online campaigning experts insist that the current OCS is so defective, and Commission efforts at repair so slow and inadequate, that the system needs to be scrapped and rebuilt from scratch – this time with the active participation of campaigners, EU and national stakeholders and civic coders. It should be user-friendly and allow standard online campaigning practices like single click sharing on social media. It should also allow ECI campaigns to safely and efficiently share ECI supporter data with national authorities – e.g., with security ‘keys’.

The technical regulation governing the OCS also needs to be reformed so that independent software developers could afford to meet its requirements, which are currently so arcane and costly that only the Commission itself could fulfill them. Many ECI campaigns and stakeholders advocated that the temporary system of hosting ECIs on the Commission’s own server should become a permanent option for all ECIs. An extension of this idea, itself the subject of an ECI, could be a single centralised online signature collection platform where signatures for all ECIs are safely stored while front-end campaigning materials reside on individual ECI campaign websites.

→ **Allow the collection of e-mail addresses within the main ECI support form.**

All ECI campaigns insist on the need to collect supporters’ contact information, especially email addresses, in order to keep them informed of their ECI’s progress. This is vital to create a European debate, a core goal of the ECI. It is also standard online campaigning practice. Ironically, although the ECI Right to Water collected over 1.8 million signatures, it only collected 20,000 email addresses from supporters whom it could invite to follow its public hearing and inform of the Commission’s response. Email addresses must be collected within the main ECI support statement form. Campaigns that have tried to collect them on other web pages have confused and then lost potential supporters. The Commission claims that it cannot legally collect email addresses in the ECI support form. However, online campaign experts insist this is technically possible while also respecting data protection rules.

→ **Lengthen the signature collection time to 18 months.**

Only the best resourced ECI, Right to Water, managed to collect over one million signatures in 12 months. The other two successful campaigns benefitted from deadline extensions granted as a result of OCS glitches. However, all ECIs, even Right to Water, insist that one year is far too short. The diversity of languages, cultures and distances makes campaigning at a transnational level especially time-consuming. Simply obtaining OCS certification takes months.

It is thus recommended to lengthen the signature collection time to at least 18 months. A longer collection period would also help smaller and volunteer-run initiatives. More time is needed particularly for ECIs on novel or complex topics. They need more time than simpler ECIs on well-known topics just to explain their goals.

→ **Give ECI campaigns time to prepare: let them choose their launch date.**

The 12-month signature collection period currently begins on the same day that an ECI is officially declared admissible and registered by the Commission. ECI campaigns cannot be ready instantly! Campaigns need much more time to prepare once they know their ECI is valid. The start of the signature collection period should therefore be fixed by campaigns once they are ready and their OCS has been certified. This could happen within a certain time frame, for example within two months of official registration.

→ **Provide support infrastructure for ECIs with legal advice, translation and funding.**

Many ECIs encountered challenges formulating their proposal and relied on the counsel of specialised EU legal experts. Nearly 40% of proposed ECIs were refused registration by the Commission for ‘falling outside of EU competence’ – a percentage which could perhaps have been reduced with better EU legal advice.

ECI campaigners discovered that they needed to campaign in national languages and use country-specific arguments. This required the use of translators, which many campaigns could not afford. Groups new to campaigning also encountered challenges in volunteer management, fundraising and media relations. These ECIs would benefit from practical advice.

As a democratic tool, the ECI is a public good and should benefit from public financial support. ECI campaigns need an official support infrastructure that offers legal advice, translation services and practical campaigning guidance. Grassroots ECIs should ideally also have access to public funding or at least European foundation funding.

→ **Provide an EU legal status for ECI citizens’ committees.**

The fact that the ECI can only be launched by seven individual EU citizens (i.e., ‘physical persons’) has created multiple problems. ECI committee members can personally be held legally liable for their campaign’s actions. Such entities also lack a legal basis for fundraising or even opening a bank account. Their only options now are national organisational structures, which are contrary to the transnational nature of the ECI.

Therefore, an EU legal status is needed for citizens’ committees to shield their members from liability and facilitate fundraising. The inclusion of organisations on citizens’ committees could also be considered.

→ **Modify the first legal admissibility check.**

A shocking 40% of ECI proposals have been refused registration, all for the same reason: being ‘manifestly outside the Commission’s competence’. Some decisions have been unreasonably restrictive. Others have been inconsistent. For instance, one ECI requiring treaty change was accepted while another was rejected. Furthermore, rejected ECIs have not been provided any legal guidance as to how to reformulate their requests, as should be the case.

Although the ECI has no direct legal impact (the Commission can refuse to act), it has generated public debate and created new pan-European alliances. Perhaps the pre-registration legal admissibility check should be removed entirely so as not to restrict topics of public debate artificially. At a minimum, ECIs refused registration should be helped to reformulate their requests so that they may qualify for registration.

→ **Increase public and media awareness of the ECI**

Public awareness of the ECI is practically non-existent. Mainstream media tend to be either unaware or misinformed, often equating the ECI with a simple petition. This places unfair burdens on ECI campaigns to both educate the public about the ECI instrument and convince them of the merits of their own topic. Furthermore, they have to overcome citizen suspicion and reluctance to share personal data for an unknown EU tool.

As a tool for developing a 'European public space', the ECI should be aggressively publicised as an 'official' EU instrument. Actions should be taken both at a European and national level to raise public awareness and comprehension of, as well as trust in, this new tool of participatory democracy.

B) THE DISCUSSION IN AUSTRIA

The Austrian draft law to accompany the EBI-VO (EBIG) was introduced as an official government bill on December 6 2011. As the ECI was to be implemented from April 1 2012 on, there was little time for parliamentary debate on the subject. At the instigation of the Greens an appraisal was carried out and a hearing was held.¹⁵

Even at that time (2012) there was a parliamentary resolution, (supported by the SPÖ, ÖVP, FPÖ and Greens) put forward by the Constitutional Committee, on improving the basic parameters for European Citizens' Initiatives. This resolution called upon the Austrian federal government, in particular the Minister of the Interior, to press at the European level for amendments to the Resolution on the European Citizens' Initiative as soon as possible, at the latest, however, in the course of the official evaluation in three years' time. The proposed changes were as follows:

- 1) The Commission should provide a central online collection system for statements of support submitted electronically, which ideally would also facilitate a centralised certification and clearing of the statements.
- 2) There should be uniform regulations for the submission of statements of support, which, while safeguarding sensitive data and offering easy access to ECIs, would guarantee similar conditions for all European citizens of all member states wishing to submit statements of support.,
- 3) All EU citizens should be subject to the same conditions, should they wish to support an ECI.
- 4) Organisers of initiatives should be entitled to claim expenses on a uniform basis across Europe.

In addition the Austrian Federal Government, in particular the Minister of the Interior, should investigate the possibility of extending the list of personal identity documents (currently passport and identity card) accepted in order to allow as many people as possible to submit statements of support and, on the basis of this examination, should push for an appropriate amendment, where necessary.

This account of earlier developments in Austrian legal politics makes it clear that the problems confronting ECI organisers and ECI supporters today already existed, or were foreseeable when the ECI Resolution and the Austrian law were passed, cf. the document **Entschließung des Nationalrates vom 29. Februar 2012 betreffend Verbesserung der Rahmenbedingungen für Europäische Bürgerinitiativen, insbesondere für Unterstützungsbekundungen auf elektronischem Weg, einheitlichen Kostenersatz für Organisatoren/innen und Erweiterung der Liste der möglichen persönlichen Ausweispapiere (aus dem Bericht 1666 d.B.).**

Although the topic ECI had not sunk into total oblivion, thanks mainly to the Greens, it is only this year, – because of the evaluation report from the European Commission – that it has re-surfaced. The following pages set out the positions of the relevant players: the Austrian parliament, the Austrian federal government, (in particular the Ministry of the Interior), and ECI organisers and stakeholders.

¹⁵ The course of parliamentary discussions up until the passing of the law can be followed at:
http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01666/index.shtml

B1) THE AUSTRIAN FEDERAL GOVERNMENT

At the federal government level three key players are involved in the debate about the ECI, its functionality and its future development: the Ministry of the Interior (overall responsibility), the Ministry for Europe, Integration and International Affairs and the Federal Chancellery. In the Federal Council working party **Allgemeine Angelegenheiten** (General Affairs – GAG) these three ministries cooperate to reach a common position that could be put forward in the Council of the European Union.

Ministry of the Interior (Bundesministerium für Inneres)

→ Department III/6 (Electoral Affairs) (Wahlangelegenheiten) of Section III (Legal Affairs) (Recht)

→ Head of Department: Mag. Robert Stein¹⁶

Department III/6 (Electoral Affairs) has dealings with the ECI in two areas. On the one hand, it is charged with checking and certifying the online collection system, and on the other, it checks and certifies the statements of support that have been collected in Austria;

→ If statements of support are to be collected using an online collection system and the data thus obtained is to be stored on Austrian sovereign territory, the certification of the collection system has to be applied for from the Federal Electoral Board before collection commences. Certification must be carried out within one month. In order to carry out certification the board consults a Certification Office as stipulated in § 19 of the **Signaturgesetz**, namely the Centre for Secure Information Technology (**Zentrum für sichere Informationstechnologie**)(A-SIT). The written statements of support submitted by Austrians have to be certified by the Federal Electoral Board before they are registered. In this case there is a three-month period for certification and registration.

The Head of Department III/6, Robert Stein, sees a pressing need for one single certifying body. Currently most ECI organisers turn to the Luxemburg authorities as these were called in to assist in 2012 when the decentralised certification process caused chaos to begin with. There should be one central body to handle certification in a professional way rather than the present system with decentralised certification procedures in each member state. Indeed, should the decentralised systems continue to operate, Stein warns of ‘certification tourism’: supposing an ECI fails to win certification in Italy, for example, it could be moved to the Czech Republic or Germany, for example, or organisers could even shop around until they found a national authority that was not too rigorous and then get their ECI certified there, with validity for the whole of Europe, of course.

→ Furthermore, it is not clear to member states whether they have to check and certify statements of support in cases where it is patently obvious that an ECI will not be able to collect the required number of statements of support in the allotted time. Hitherto the Ministry of the Interior’s position on this has been to check every single signature. Also in the case of successful ECIs (like **Right2Water**, for example) random checks were not carried out but every individual signature was checked. Robert Stein regards ECIs as analogous to Austrian public initiatives. People sign up for these at district level and, in order to do so, must show proof of identity, thus undergoing identity verification.

¹⁶ See also Robert Stein’s latest publication *EBI auf dem Prüfstand: Wie es mit der Europäischen Bürgerinitiative weitergeht* (forthcoming, autumn 2015).

Robert Stein makes a case for requiring ECI signatories to produce documentary proof of identity (in Austria the passport): this not only enables the authority to certify the signature on the statement of support but also affords citizens some degree of data protection, since it guarantees that a signature given for one ECI may not be used, without the citizen's knowledge, to support another.

The Ministry of the Interior comes out in favour of a central register of voters, such as that proposed in the Democracy Package of 2013. This would enable every Austrian citizen to support an ECI in every Austrian district, not just in the district where he or she is resident. In addition the 'Citizen Card' and the digital signature should be promoted. Admittedly, the setting up of a central electoral register would need to be approved by a two thirds majority in the National Council, because the districts would lose their mandate to act in this area of public administration.

The implementation of the digital signature would result in three possible methods of collecting statements of support which could also be combined with each other:

- a) Paper form
- b) Online with proof of identity (passport)
- c) Online with digital signature (mobile phone or citizen card): with this method the Interior Ministry would be able to dispense with the passport number

The Interior Ministry sees the greatest problem as being the impossibility in certain cases of supporting an ECI in a way that is legally valid. Indeed, the EU regulation leaves it up to member states whether they make the validity of a statement of support depend on the fact of the supporter's residence in their state, or on citizenship, or whether they will even accept both. In practice this means that some EU citizens are prevented from supporting ECIs while others are in a position to submit two statements of support. The present unsatisfactory legal situation derives from an error in the EU regulation and could be foreseen from the very beginning. In the autumn of 2014, in an attempt to resolve the problem, the Commission did try to persuade affected member states to extend their lists of permissible qualifying documents. Austria would have had to amend Paragraph 3 of the European Citizens' Initiative law (EBIG) but insists that a simple and effective solution to the problem would be to amend the EU regulation. Robert Stein argues that citizenship should be dropped as a qualification on a pan-European basis, and place of residence adopted, in order to exclude as few Europeans as possible.

Ministry for Europe, Integration and International Affairs (Bundesministerium für Europa, Integration und Äußeres)

- **Department III.1 BMEIA Department for EU-Basic Questions, Institutions and Institutional Affairs (Abteilung für EU-Grundsatzfragen, Institutionen und institutionelle Fragen)**
- Head of Department: Gesandte Yvonne Tonic-Sorinj
- Person responsible/Interlocutor: Gesandter Wolfgang Renezeder

The BMEIA's interest in the ECI and its development relates primarily to the issue of active European citizenship. The ministry coordinates basic and future-oriented EU-related matters and serves as a point of contact for the National Council and the Federal Council.

Austrian Federal Chancellery (Bundeskanzleramt)

→ **Department I/11: E-governance law, organisation and international affairs**

→ Head of Department: Mag. Peter Kustor

The Federal Chancellery is party to the discussion of the ECI because e-governance falls within its remit. This is the area which is responsible for the online signature collection system and for possible future changes with regard to the digital signature.

B2) THE AUSTRIAN FEDERAL ASSEMBLY

EU Committee of the Federal Council (EU-Ausschuss des Bundesrates)

→ Chair: Edgar Mayer (ÖVP, Vorarlberg)

In conformity with the subsidiarity principle, the EU Committee of the Federal Council delivers advice and comments on proposed EU-related undertakings in accordance with Art. 23e and 23f of the Federal Constitutional Law. The EU Committee of the Federal Council has 14 members; all members of the Federal Council as well as the MEPs for Austria may take part in the meetings in an advisory capacity. In the meantime, according to BR Edgar Mayer (Chair of the EU Committee, Austrian People's Party, Vorarlberg), the Federal Council sees itself in the role of a 'European Chamber'. As a result of the Treaty of Lisbon and the possibility of a making a subsidiarity complaint¹⁷, which the Federal Council is entitled to initiate independently of the National Council and indeed does so to a far greater extent than the latter, the Federal Council has become a major player in European policy and politics.¹⁸

The Federal Council liaises across Europe with other such bodies via the **Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union / COSAC (Konferenz der Europaausschüsse)** and endeavours by this means to arrive at a common position on the ECI. COSAC organises two meetings per semester, in the country currently holding the rotating six-month presidency, and these are attended by the Chairs of the EU Committees of the Federal Council (Edgar Mayer) and the National Council (Karlheinz Kopf).

In May 2015 the Federal Council held extended discussions about the ECI, to which, among others, Robert Stein from the Ministry of the Interior was invited in an expert capacity:

First and foremost, the EU Committee of the Federal Council advocates tackling the administrative hurdles that have emerged in the course of the first three years, which

¹⁷ National parliaments have the right to make a subsidiarity complaint when they scrutinise EU legislative acts for subsidiarity compliance. If three members of the Federal Council find that the Federal Council should bring an action before the European Court of Justice because of infringement of the subsidiarity principle then the Council can, whether the Council is in session or not, propose passing the appropriate resolution. Preliminary discussion of such a proposal takes place in the EU Committee of the Federal Council. As soon as the Committee has submitted its findings to the Council, a vote is taken on the proposal. If the majority of Council members are in favour of submitting the complaint, the appropriate resolution is passed. The resolution is then passed on to the Federal Chancellery, which submits the complaint to the ECJ in the name of the Federal Council and represents the Council before the court. The Federal Chancellery has to inform the Federal Council about the proceedings and the court's decision.

¹⁸ Cf. the so-called Lisbon Accompanying Amendment (BGBl I 57/2010). For more details, see Galiciani, Bernard: Die Stärkung der Mitwirkungsrechte des Nationalrates und Bundesrates durch die Lissabon-Begleitnovelle, in: Journal für Rechtspolitik, 19/2011, S. 173–183.

hinder the launching of an ECI and make effective follow-up difficult. The specific targets of their criticism are the demanding formal criteria and the complicated online tool for registering statements of support. The suggestions the Committee makes for improvement are based on the report and recommendations of the European Ombudsman and address questions of support for the initiators of future initiatives, above all in the area of registration of an ECI. Improvements in the online collection system could, in the Federal Council's view, be made without having to change the existing legal basis.

The Federal Council also took up the plea coming from many NGOs for more transparency in justifying the decision to register or not to register an initiative. Their most significant requirement, however, is a change in the quotas that have to be met in order for an ECI to be eligible for submission.

In discussion Council members Edgar Mayer (People's Party/Vorarlberg) as well as Stefan Schennach (Social Democratic Party/Vienna), Ana Blatnik (Social Democratic Party/Carinthia) and Marco Schreuder (The Greens/Vienna) all emphasised the fact that it was essential to streamline the procedure for initiating an ECI and to make it easier. Blatnik declared that citizens had the right to be taken seriously and, like her colleague Schennach, was critical of the Commission's current lack of openness and flexibility with regard to ECIs. Schennach even came out in favour of a more generous treatment than that originally proposed, whereby the deadline would be extended if the quotas for the statements of support were missed by a narrow margin only. For Schreuder, the drop in the number of citizens' initiatives submitted in 2014 was an indication that the obstacles were simply too great. He also criticised the fact that the initiative for TTIP was turned down, because this was contrary to the original intention of the citizens' initiative project, namely that of making citizens' voices heard.

Broadly speaking, the European Committee of the Federal Council is in favour of more direct democracy and of subsidiarity, as decisions should be taken at the level nearest to citizens and, if possible, by the citizens themselves. In his interview Edgar Mayer expressed the view that competence for the ECI should be transferred from the Commission to the European Parliament. As far as the Commission was concerned, you were always a petitioner, even if you had managed to collect one million signatures. The European Parliament should be responsible for the ECI and should be obliged to take legislative action when the various quotas are met.

EU Committee of the Austrian National Council (EU-Ausschuss des Nationalrates)

→ **Standing Subcommittee on EU Affairs**
(Ständiger Unterausschuss in Angelegenheiten
der Europäischen Union)

→ Chair: Karlheinz Kopf (People's Party)

The Standing Subcommittee for EU Affairs advises and comments on EU undertakings, for example proposed directives and regulations, when charged by the Main Committee to do so. However the Main Committee reserves the right to comment itself if it so wishes.

The ECI can be a topic of discussion in both the Main Committee and the Subcommittee. However, the former concerns itself primarily with the topics that are on the agenda of the European Council and the ECI has not been included on this so far in 2015. All other EU matters are discussed in the Subcommittee on EU Affairs. The ECI has not been on their agenda since the publication of the Commission's report on the ECI on March 31, 2015. Nor was it discussed at their meeting of September 16. Whether the Commission's report on the ECI will still come up as a topic this year (next meeting November 17, 2015) cannot be determined at the present time.

There are no relevant subcommittee statements about the ECI.

The standpoints of the parliamentary parties

Green Party

Among the Austrian parliamentary parties only the Greens have commented in full on the Commission's report and have carried out an appraisal of their own.¹⁹ This reiterates the call for improvements to the conditions pertaining to the ECI that were originally the subject of a National Council resolution in 2012 (cf. Entschließung des Nationalrates vom 29. Februar 2012 231/E XXIV.GP).

The Federal Government, the Ministry of the Interior in particular, are urged, at EU level, to press for the ECI regulation to be amended as soon as possible, at the latest in the course of statutory evaluation in three years' time, so as to:

- 1) provide a central online collection system based at the Commission for statements of support submitted electronically, which ideally would also facilitate centralised registration and clearing of the statements.
- 2) introduce uniform regulations for the submission of statements of support, which, while safeguarding sensitive data and offering citizens easy access to ECIs, would guarantee similar conditions for all European citizens of all member states wishing to submit statements of support.,
- 3) ensure that all EU citizens should be subject to the same conditions, should they wish to support an ECI.
- 4) enable organisers of initiatives to be entitled to claim expenses on a uniform basis across Europe.
- 5) Further, the Austrian Federal Government, in particular the Minister of the Interior, should look into the possibility of extending the list of personal identity documents (currently passport and identity card) required in order to allow as many people as possible to submit statements of support and, on the basis of this investigation, should push for an appropriate amendment, where necessary.

In the light of the experience of the past three years, the Greens also presented the Ministry of the Interior with further concrete demands for changes to the regulation:

- a treaty changes should be included in the official remit of the ECI
- b a dedicated information and (legal) advisory centre for ECIs should be set up, which should be independent of the Commission
- c Citizens' Committees should be granted legal status in order to minimise the liability of committee members
- d uniform and simplified conditions for signatories of statements of support should be created Europe-wide:
 - dispense with the ID-number
 - simplify the forms used for pen-and-paper statements of support
 - improve the central online collection system based on the European Commission
- e the requirements for supporting an ECI should be the same all across Europe:
 - nationality or citizenship as a criteria, on a uniform basis
 - the minimum age for supporting an ECI should be lowered to 16
- f expenses should be refundable on a uniform basis Europe-wide and translation services should be provided by EU institutions
- g the deadline for the completion of the collection of statements of support should be prolonged from 12 months to at least 18 months

¹⁹ Cf. their report 3 Jahre Europäische Bürgerinitiative (Three Years of European Citizens' Initiative).

In addition, the parliamentary party of the Greens declared that it expects the Federal Chancellor to advocate an extension of the area of application of the ECI in the EU treaty.

Thus, the standpoint of the Greens has hardly changed since 2012 and can be summed up as follows:

- ID number: use of a person's ID-number to verify identity should be dispensed with altogether.
- Online Collection System: Austria should develop an online collection system. Deadline for collecting signatures, deadline for submitting statements of support.
- Expenses: Since signatures are not collected by official bodies, as is the case with Austrian public initiatives (**Volksbegehren**), ECI organisers incur considerable expenses. The transnational approach brings with it the need for translation services, which have to be paid for as does the certification process which is required for the online collection system. Instruments of direct democracy need financial support from the state.
- According to the Greens, the Federal Electoral Board should not be automatically legally entitled to consult the Centre for Secure Information Technology (**Zentrum für sichere Informationstechnologie**)(A-SIT) when assessing the online collection system. In general, the Greens favour the setting up of an Office or Bureau for Information Security.

In June 2015 improvements to the ECI were the subject of a parliamentary question the Greens addressed to the Ministry of the Interior (Johanna Mikl-Leitner).²⁰ The official answer was delivered to the National Council on August 18, 2015 and repeats the position of the Ministry of the Interior (see above): Austrian representatives to the EU will press for an amendment of the ECI regulation. Moreover, the Ministry of the Interior will call for the facilitation of digital signatures on the national level, but will not allow would-be signatories to ECIs to use a driver's licence as proof of identity.²¹

The positions of the other Austrian parties could only be elicited by means of direct questions. There are no official statements, or appraisals of the first three years of the ECI such as the one the Greens carried out:

Social Democratic Party (SPÖ)²²

For the Social Democratic Party the ECI is the first stage on the way to further democratisation of the EU, which should ultimately lead to the possibility of holding a plebiscite / referendum EU-wide. What is problematic about the way the ECI is currently set up is that people with insufficient legal knowledge find the procedure difficult to grasp, which means that the criteria have to be simplified and the flow of information improved. Further, the Commission should not content itself with rejecting defective ECIs in toto but should make an effort, together with the organisers, to arrive at formulations which do conform to the rules.

With regard to the rules governing the collection of signatures, the Social Democratic Party is in favour of recording the number of the passport or identity card produced as proof of identity. As any kind of cheating would seriously damage the credibility and the effectiveness of the ECI, measures must be taken to preclude this. In fact, when the ECI law 2012 was passed, we tabled a motion for a resolution asking the Ministry of the Interior to look into simpler but still secure alternatives and to push for a uniform system Europe-wide.

20 Cf. http://www.parlament.gv.at/PAKT/VHG/XXV/J/J_05570/fnameorig_425384.html.

21 Cf. http://www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_05316/index.shtml.

22 Cf. Reply via eMail by Christine Muttonen, August 6 2015.

People's Party (ÖVP)²³

The ÖVP is in favor of an EU that's closer to the people. It stands for a Europe of subsidiarity and proportionality. Concerns should be dealt with the citizens. Moreover, the ÖVP calls for the ECI to be expanded into a genuine legislative initiative, allowed to introduce laws to the European Parliament directly by the people.

Freedom Party (FPÖ)²⁴

The FPÖ criticizes the ECI as a 'toothless tool' and 'pseudo-democratic'. As they favour direct democratic instruments the FPÖ is not at all satisfied with the ECI and calls for both Austria and for the EU more binding instruments of direct democracy.

NEOS²⁵

The NEOS believe that the European Citizen's Initiative is one of the most innovative features of the Lisbon treaty to bolster the democratic legitimacy of the European Union. However, it is important that the rules and requirements are not too cumbersome for citizens, which also includes more harmonisation between the various national data requirements. In addition, NEOS believe that the transparency and the quality checks of the funding and sponsoring of ECI's should be increased in order to prevent abuse by private interests.

Team Stronach²⁶

The Team Stronach stresses that it has no office in Brussels that could support their work on the ECI. However, citizens' concerns are very important for the Team Stronach, and therefore they want ordinary citizens – not only party MPs – to be present as citizens representatives in the Austrian parliament. In any case, they have a positive attitude towards the general improvement of citizens' rights at EU level.

23 As the ÖVP did not answer our letter of enquiry, information is taken from the website <http://www.oevp.at/>

24 As the FPÖ did not answer our letter of enquiry, information is taken from the website <http://www.fpoe.at/>

25 Cf. Reply via eMail by NEOS, October 22, 2015

26 Cf. Reply via eMail by Team Stronach, October 15 2015.

B3) AUSTRIAN ORGANISERS OF ECIS AND STAKEHOLDERS

Numerous Austrians have been organisers or members of citizens' committees for the 31 ECIs that have been registered hitherto. So, for example, former National Council member Katharina Cortolezis-Schlager (Austrian People's Party) was on the committee of **Act4Growth**; Klaus Kastenhofer of **Global 2000** was co-initiator of the ECI **Meine Stimme gegen Atomkraft (My Vote Against Nuclear Power)** which was rejected by the Commission in 2012 on the grounds that it did not fall under the Commission's jurisdiction; Klaus Sambor was twice in charge of the ECI on an unconditional basic income for all (<http://www.ebi-grundeinkommen.de/>). Kurt Koprolin sits on the citizens' committee of the ECI **Schluß mit den Scheinfirmen, (An End to Bogus Companies)** with a signature collection deadline of October 1 2015; Moritz Absenger was a member of the citizens' committee of the ECI **Teach for Youth – Upgrade to Erasmus 2.0** (<http://teachforyouth.wix.com/teachforyouth#!committee/ctzx>), which was withdrawn in June 2014; Monika Calvetti-Fürst was on the citizens' committee of the ECI **Europäische Initiative Freies Dampfen**, which did not succeed in meeting the quota for statements of support (<http://www.efvi.eu/index.de.html>); Hanns Michael Moshhammer sat on the committee of the ECI **30km/h – macht die Straßen lebenswert!** (<http://de.30kmh.eu/>), which also failed to achieve the required number of signatures; Johannes Theiner was a committee member for the insufficiently supported ECI **Qualitativ hochwertige europäische Schulbildung für alle** (<http://www.euroedtrust.eu/>).

In addition, the experts interviewed mentioned countless other Austrians who do not feature in EU documentation, for example because the European Commission refused to register their ECIs or because they did not play such leading roles in their respective initiatives.

The interviewees described their experiences with the ECI and were nearly unanimous in mentioning as the greatest obstacles to its success as an instrument of direct democracy precisely those problems and difficulties that had been foreseeable from the very beginning. As many of their answers overlap with the results that the European Ombudsman and recently the PETI committee of the European Parliament obtained in their studies, I shall only repeat them in summary form in the following while incorporating them in more detail in the policy recommendations:

→ **Deadlines**

The periods of time allotted to the process of collecting statements of support were universally regarded as being too short. There are two possible remedies for this: either a start is made on organising an ECI long before its official registration and then the organisers apply to the national authorities and those in Brussels when everything necessary to collect signatures has been prepared or else the period of time allotted is extended. In the latter case those involved expressed a desire for time spans ranging from 18 to 24 months.

→ **Infrastructure / Expenses**

According to the interviewees, ordinary citizens are not in a position to come up with the kind of infrastructure necessary for an undertaking of this type and size (transnationality). They had experienced for themselves that an ECI needed back-up from an organisation capable of making a big impact, or even with a populist orientation. That is to say, there is a need for organisations that are active on an international scale and have an accepted place in society, such as the European Trade Union Confederation or religious bodies (e.g. churches), which have access to funds and contacts with the media, to publicise the ECI. The interviewees were of the opinion that in Austria it was also imperative to have the **Kronen Zeitung** newspaper – a high-circulation Austrian tabloid – on one's side. Further, the interviewees expressed a desire for a national agency to support potential as well as already registered ECIs. Austria should provide

the funding for this. For at the present time there was a shocking discrepancy between the financial support provided for representative political institutions (funding of political parties and the like) and that for citizens. This proposed national agency should, for instance, also provide the translations which have been a stumbling block for so many of our interlocutors. Hitherto it has been the citizens' committee's responsibility to see that all the translated versions of their ECI correspond with the original version submitted to the Commission and that they pass muster when they are assessed by the Commission. All the translation work has to be paid for by the citizens' committee.

→ **Equality of Opportunity**

Our interlocutors stated that there was scant awareness of the ECI among citizens, which made the collection of statements of support more difficult. Indeed, all the Austrians involved (for example, committee members) are members of the educated elite, are frequently academics / based at universities and have already had experience of civic involvement and active citizenship, often in connection with campaigning for various causes. One of our interviewees called ECIs 'the playground of the educated classes'. On the other hand, they countered with the argument that Europe should, must, establish itself in civil society; it is only here that Europe can be built, not at meetings of ministers in Brussels. This is why they unanimously called for more national and European investment in political education.

Taking all these problems into account, some of the interviewees questioned the point of having the ECI at all if improvements were not going to be made as soon as possible. Under the present circumstances 'doing some decent lobbying in Brussels is more efficient and more successful than taking the trouble to organise an ECI. Producing millions of signatures is not as useful as knowing the right people, pulling strings and so on. Perhaps ordinary citizens and smaller NGOs should simply seek out particular MEPs rather than going to the lengths of organising an ECI.'

C) THE DISCUSSION IN THE UNITED KINGDOM

The ECI was provided for in Article 11(4) TEU. As such regulations have direct applicability all UK nationals and citizens of other EU Member States residing in the UK are automatically able to take part in the ECI by virtue of these Regulations. Regulation (EU) 211/2011, as implemented by Regulation (EU) 1178/2011 sets out the procedure to be followed and technical specifications for the online collection of signatures. There is currently no UK legislation on the subject matter of the ECI. Responsibility for the ECI in the UK falls to the Cabinet Office, which is in charge of implementation and ongoing management, including the verification of UK residents' signatures.²⁷ Prior to this, as is the default with European measures under negotiation, the Foreign Office took the lead. The responsible Government Minister, the Minister of State for Europe, is still based in the Foreign Office. The Cabinet Office is supported in the verification process by the National Technical Authority for Information Assurance (CESG) which secures online interactions between the Government and citizens, as part of the UK Government Digital Strategy.

The data requirements for signing an ECI in the UK are not as stringent as in some other European countries in that to sign an ECI you only have to be resident in the UK, not a UK citizen, and therefore do not have to provide a passport or other identification number, merely name, address, date of birth and nationality.²⁸ The UK has preferred to use the less onerous random sampling approach to the verification of signatures, rather than a blanket one.

C1) THE UK GOVERNMENT IN WESTMINSTER

The first engagement of the government of the United Kingdom with the European Citizens Initiative came with their response to the Commission's Green Paper in March 2010. In terms of the content of the response, it is notably constructive and supportive of the functioning of the ECI.

In this response the UK government raised a number of concerns with or clarifications of the EU proposals, mostly with a view to making the ECI more inclusive and reducing barriers to participation.²⁹ For instance, while they agreed that the 0.2% threshold of the total population of each Member State was an appropriate threshold for signatures, they noted that these figures were based on the total number of citizens of a Member State, including those under the voting age and third country citizens. The UK argued that 'the right to petition an initiative should be open to anyone, as long as they have the legal right to live, work or study in a Member State, since the laws the EU makes affect all such people.' It stated that the threshold must above all be achievable and determined on the basis of the total number of those eligible to support an initiative. They suggested that therefore the 0.2% figure would therefore need to be lowered should eligibility for supporting an initiative be more restrictive than this proposal.

It also stated that there should not be a minimum age limit for supporting a European citizens' initiative. It argued that 'limiting the reach of the Initiative would not be in accordance with the spirit of citizen engagement in policy formulation', for instance, if young people wanted to get involved with issues affecting them. They noted that setting a minimum age requirement was contrary to approaches taken by recent UK legislation, such as the **Local Democracy, Economic Development and Construction**

²⁷ Foreign and Commonwealth Officer (with Cabinet Office and the National Statistician's Office), Call for Evidence on the Government's Review of the Balance of Competences between the United Kingdom and the European Union', Semester 4, Voting, Consular, Statistics (2014).

²⁸ Documents considered by the House of Commons European Scrutiny Committee on 15 December 2010.

²⁹ UK Government Response to the Commission Green Paper on the European Citizens' Initiative.

Act 2009, which specifically permits all local people, regardless of age, to sign and organise a petition to their local authority.

With regards to the details of the form and wording of the ECIs, the UK government had no particular views but stated that ‘there should be no barriers imposing any further restrictions on form or wording, i.e. a call for specific action should be sufficient’. The UK did not support a common set of procedural requirements for the collection, verification and authentication of signatures, and that this should be left to the discretion of Member States. The Minister for Europe highlighted the risks involved in the collection of so many datasets.

The UK government strongly supported a ‘pre-petition check’ by the Commission to confirm with organisers the eligibility of the proposal before signatures were collected and verified by Member State authorities. The UK also stressed that as part of the ‘pre-petition check’ the Commission should also ensure that discriminatory or inflammatory ECIs are disallowed in order that ‘Citizens’ Initiatives are not permitted to undermine community cohesion in Member States’.

The responsible Minister for Europe, David Lidington MP, also appeared in a debate before European Committee B in the House of Commons setting out the Government’s position. In the debate, the Minister stated the UK government’s support for the principle of participatory democracy which underlined the ECI. The UK Government had noted in the course of the introduction of the European Union Bill (which received Royal Assent in July 2011) that there was ‘a widespread perception that the really important decisions about the EU ... are taken without real consideration for the wishes of the people’. He stated that while not in any way a ‘magic bullet’ it would give citizens a voice in Europe, which the government welcomed. He noted some risks with the ECI, including it ending up being a ‘lobby charter’ and in particular, that petitions would be introduced that most people in the UK would not like. This demonstrates the sense in the UK that Europe is somehow alien in its attitudes to issues, further highlighted by his concurrent statement that the UK must hope that UK citizens would use the ECI to petition to repeal or simplify areas of EU legislation. The Minister also noted the UK’s ‘grave concerns’ over the early proposal for the ECI set-up, opining that it was ‘excessively bureaucratic’ and not ‘value for money’.³⁰ The UK wanted to ensure that the system was created in accordance with national laws and practice, and perceived a risk (possibly exaggerated) that the UK government might be compelled by the Regulation to create a system of personal identification numbers or cards in order for UK citizens to be able to sign an initiative. He emphasised that the UK government had ‘negotiated hard’ to gain flexibility over the ECI’s implementation, ‘to best suit the United Kingdom’s way of doing things’, to dispose with the two-stage admissibility test, a three rather than five-year review of the Regulation and a random sampling rather than blanket approach to verification.

He noted however, that the regulation agreed by the General Affairs Council in December 2010 still contained a number of issues that caused the UK Government ‘concern and dissatisfaction’, in particular around the protection of citizens’ data, the administrative burden of the verification duty and the short (12-month) implementation period. Due to these concerns, and to the fact that scrutiny clearance had not been given by Parliament, the UK abstained on the vote in the Council in February 2011. The UK was the only Member State in the Council to abstain on the ECI; all others voted positively for the Regulation. He did however, remark in his closing statement that ‘the Government remain committed to playing a strong, positive and active role in the European Union while robustly championing our national interests. We want to bring the citizen closer to decisions made in Brussels and to give ordinary people greater sway over matters that affect them. We made progress during the negotiations on ensuring that the ECI provides our citizens with a light-touch vehicle for influencing the issues with which the EU should concern itself and make progress on, and we will now implement the regulation in the least burdensome way possible’.

These were all; some might say surprisingly, encouraging noises from the UK at the time the ECI was initially under discussion. However, since these first comments in response to the Commission’s consultation mechanisms, there has been little

³⁰ Ibid.

engagement with the ECI and its process on the part of the Westminster government. Indeed, there has been a marked lack of interest, reflecting different priorities in the UK in relation to the EU. The concentration has been on the reform and renegotiation of the UK's membership of the UK, particularly in regards to repatriating powers, and indeed the central question in UK political discourse regarding the EU has been on the possibility of a British exit – 'Brexit' – from the European Union should these demands for reform not be met by Brussels.³¹ This focus on reform and exit is likely to heighten in the near future, as the Conservative majority government have now committed to hold an in/out referendum on the UK's membership before the end of 2017. In line with concerns regarding the repatriation of national sovereignty, and following the launch of a comprehensive **Balance of Competences Review** in July 2012, with regards to democratic reform within the EU the UK Government has focused on enhancing the role of national parliaments (discussed below in the section on the House of Lords EU Committee), rather than on encouraging direct citizen engagement.³²

The UK government did issue responses to successful ECIs and the Commission's consideration of these. For instance, a detailed Explanatory Memorandum was issued by the then-Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs (Dan Rogerson MP) on 10 April 2014 in response to the **Right2Water** initiative, drawing attention to the steps taken in the UK to implement the actions identified by the Commission. In terms of the 'One of Us' initiative, the then-Minister for Universities and Science, David Willetts MP, issued an Explanatory Memorandum of 25 June 2014 in which the UK government supported the Commission's decision to take no further action. There has been no response to the Anti-Vivisection ECI by the UK Government to date.

In addition, the response of the UK Government to the publication of the first three-year review report by the European Commission in May 2015 did not really engage with the arguments and issues surrounding reform of the instrument. The Minister for Constitutional Reform (John Penrose) issued a brief Explanatory Memorandum in response on 24 June 2015, noting that there were no proposals for changes to the 2011 Regulation and therefore that there were no legal, financial or policy implications for the UK. He stated that '[i]t is the UK Government's policy to engage openly and cooperatively with our EU partners to improve the Regulation. The UK Government supports the exploration of any measure to reform the Regulation that either makes it easier for citizens to engage with it or for competent authorities to administer it. Each proposal for reform will be considered on its own merit.' However, no substantive proposals for how the UK government would approach the mooted reforms have yet been offered by the UK government (as discussed below with regards to the questioning of the House of Commons' European Scrutiny Committee).

With regards to such forms of democratic engagement, the focus of the Coalition government 2010-2015 was more domestic in that it introduced as part of the Coalition programme for government a new petition mechanism. This meant that any petition that secures 100,000 signatures is eligible for formal debate in Parliament and those petitions with the most signatures would enable members of the public to table a bill eligible to be voted on in Parliament.³³ Thus the attention has been more on this domestic petitions framework rather than the ECI.

31 For further details on the UK priorities for reform of the EU, see 'Reforming the EU: UK plans, proposals and prospects', House of Commons Library Briefing Note, 16 March 2015.

32 See <https://www.gov.uk/government/news/final-reports-in-review-of-eu-balance-of-competences-published>

33 Coalition programme for government, 2010, p 27.

C2) THE UK HOUSES OF PARLIAMENT

The European Scrutiny Select Committee

The European Scrutiny Committee (ESC) is a select committee³⁴ of the House of Commons, made up of elected Members of Parliament, in charge of assessing the legal and/or political importance of draft EU legislation deposited in Parliament by the Government. It is appointed under Standing Order No. 143 and consists of 16 members, drawn from the three largest political parties. The Committee is given an Explanatory Memorandum on each document for scrutiny from the responsible Minister. It then looks at the significance of the proposal and decides whether to clear the document from scrutiny or withhold clearance and ask questions of the Government. All documents considered to be politically or legally important are reported on in the Committee's weekly Reports. The Committee can also recommend documents for debate.

Debates recommended by the Committee take place either in a European Committee (ad hoc committees with no permanent membership set up to debate a specific proposal referred by the ESC) or occasionally on the Floor of the House. Under the scrutiny reserve resolution passed by the House of Commons, Ministers should not vote in the Council of Ministers on proposals which the Committee has not cleared or which are awaiting debate. Where a proposal has been debated in European Committee, the motion must then be put to the House the following day where it is agreed to without debate. A proposal is cleared when the motion is agreed to by the House. The Committee can also question Ministers in person and often conducts general inquiries into legal, procedural or institutional developments in the EU.

The Committee considered the Draft regulation on the ECI in its 12th Report of the parliamentary session 2010–11. It noted that the UK government considered that the procedures involved were too bureaucratic and burdensome for Member States and citizens. The Committee itself noted that some of the provisions of the draft Regulation were ambiguous and required further clarification, for instance, the rules on verification of statements supporting a citizens' initiative. The Committee stressed that the rules governing citizens' initiatives should be 'as few and as simple as is consistent with the prevention of the abuse of the process', in particular questioning the two-stage admissibility process. It posed a number of questions to the responsible Minister (the Minister for Europe) regarding how exactly verification would be carried out in the UK and which Government department would take the lead in implementing the Regulation for the ECI. The Committee thought it was 'highly regrettable for the UK to accept obligations without first having resolved how they are to be implemented in the UK and by whom.'³⁵ This gives some indication of the relatively lackadaisical approach by the UK government towards implementing the ECI, and the relative lack of importance assigned to it, which was also raised by a large number of those interviewed for this project.

The Committee also raised a more general question about the desirability of citizens' initiatives in parliamentary democracies and determined that the proposal merited a debate in European Committee B. It also asked for clarification of what remedies would be made available for ECIs that were refused registration. The Committee recommended the ECI for debate and it was subsequently debated in European Committee B in the House of Commons on 17 January 2011.

Following the implementation of the Regulation, the Committee has issued reports on those initiatives that were successful in attracting the required 1 million signatures. The first of these, 'Water and sanitation are a human right! Water is a public good, not a commodity!' (**Right2Water**) and the response by the Commission, was considered by the Committee in their 47th Report of the 2013–14 parliamentary session.³⁶

³⁴ Select committees examine the spending, policies and administration of UK government departments.

For more information please see <http://www.parliament.uk/about/how/committees/select/>

³⁵ European Scrutiny Committee, 12th Report, Session 2010–11, p. 15.

³⁶ European Scrutiny Committee, 47th Report, Session 2013–14, chapter 20.

The Committee noted that there were no plans for the Commission's Communication with regard to the **Right2Water** ECI being discussed by the Council of Europe so considered no debate necessary, but thought that given it was the first ECI to be successful, it thought it 'right to draw it to the attention of the House'.³⁷ In its consideration of the 'One of Us' initiative, it noted that the UK Government endorsed the Commission's response to the initiative, which has set out its reasons for taking no further action. The Committee considered the consideration 'a significant step' given that only two initiatives at this stage had reached this position, and was 'pleased to note that the Commission has provided a detailed and thorough assessment of EU legislation affected by the 'One of Us' initiative before concluding that no changes are warranted in this case, a conclusion the Government shares'.³⁸ The Committee noted that this initiative exposed tensions 'in balancing the legitimacy of the EU's own decision-making processes against the demands resulting from the EU's first steps towards a limited form of direct democracy'.³⁹

The Committee also considered the Commission's report of 2015 alluded to above, and expressed disappointment with the perfunctory nature of the UK Government's response. They stated in their First Report of the 2015–2016 parliamentary session that 'it is disappointing that the Minister's Explanatory Memorandum does not address any of the challenges identified in the Commission report or offer any view either on the value of the European Citizens' Initiative as a tool for greater democratic involvement of EU citizens in the activities of the EU, or on the practical obstacles which may be impeding participation and how to overcome them'.⁴⁰ For their part, the Committee noted that: 'It seems clear that there are problems with the operation of the European Citizens' Initiative. A significant proportion of proposed Initiatives are not registered by the Commission, suggesting a mismatch between citizens' perceptions of the purpose of European Citizens' Initiatives and their scope as set out in the EU Treaties and the 2011 Regulation. Only three of the 31 European Citizens' Initiatives registered with the Commission since April 2012 have obtained more than one million signatures and met all the requirements of the 2011 Regulation. Citizens appear to be losing faith in the power of European Citizens' Initiatives to influence and inform EU decision making. Since their launch, there has been a marked decline in the number registered with the Commission each year'.⁴¹

The Committee particularly highlighted the Commission's recommendations to clarify the 'scope and purpose' of the ECI, to provide 'robust, consistent and comprehensible reasons for refusing to register a proposed European Citizens' Initiative'; to simplify and standardise the statement of support forms and ensure that all EU citizens are able to sign; to ensure that procedures are 'inclusive and transparent' as well as full transparency of funding for ECIs.

The Committee asked the Minister whether he considered that ECIs have made 'a contribution to strengthening the democratic legitimacy of the EU', a central question if we take that as the original purpose of the ECI. It highlighted the reduction in the number of ECIs since 2012 and the six legal proceedings brought to date to challenge the Commission's refusal to register initiatives. It particularly highlighted the case of the **STOP TTIP** initiative (which many UK organisations have been very involved with) and asked whether the UK government would support an amendment to the 2011 Regulation so that EU citizens would have the ability to ask the Commission not to act, or to prevent it doing something that falls within its existing powers. It also asked that given the difference in data requirements and the fact that some UK residents residing in other EU states may not be able to sign an ECI, whether the UK government would be considering including these citizens as a category within its own verification of signatures. The Minister has yet to respond to these queries.⁴²

37 European Scrutiny Committee, 47th Report, Session 2013–14, p. 108.

38 European Scrutiny Committee, 5th Report, Session 2014–15, p. 56.

39 Ibid.

40 European Scrutiny Committee, First Report, Session 2015–16, 21 July 2015, p. 91.

41 European Scrutiny Committee, First Report, Session 2015–16, 21 July 2015, p. 90.

42 As of 2nd October 2015.

House of Lords EU Select Committee

The sister committee of the House of Commons' European Scrutiny Committee, is the European Union Select Committee in the House of Lords. It is comprised overall of seven committees: a 19 member Select Committee appointed by the House of Lords, and six sub-committees appointed by the Select Committee, dealing with the following policy areas: Financial Affairs; Internal Market; External Affairs; Energy and Environment; Justice and Home Affairs.⁴³

A new tool for participatory transnational democracy does not seem to fit neatly into the remit of any of those sub-committees, but they have considered the ministerial response to the **Right2Water** initiative, and used that as a starting point for discussion of more general issues surrounding the ECI. The Committee is supportive of the ECI, stating that 'direct methods of holding the EU to account are to be applauded'.⁴⁴ They considered the Explanatory Memorandum issued by Dan Rogerson MP on the Right2Water Initiative at a meeting of Sub-Committee D (the EU Agriculture, Fisheries, Environment and Energy Sub-Committee) on 2 July 2014. In their response to the Memorandum on 7 July 2014, the Committee asked '[g]iven that this is the first ECI to have merited a response from the Commission, and that it reflects a clear desire for greater action on the part of citizens from across the EU, we would welcome your views on the general principle of the ECI and whether you consider that in this case it has fulfilled its aims. Moreover, we would welcome your views on whether you consider the Initiative and the associated processes to be accessible and easily understandable to the citizens at whom it is aimed.' Dan Rogerson responded on 17 July 2014 stating that the UK government's general position with regards to the ECI was that 'we believe that when citizens request action from national and European institutions, it is a positive sign of a healthy democratic process. We welcome this example of citizens directly holding the EU to account'.

The EU Committee welcomed his response, but its scrutiny was then more challenging to the government, directly asking in a letter of 10 September 2014 the lengths that the UK Government was going to in publicising the ECI and in encouraging UK citizens to take part. The Committee stated that: 'If the Initiative to fulfil its aims, we are of the opinion that Member States should take a leading role in its promotion'. A response from Dan Rogerson on 1 October 2014 was somewhat evasive, merely stating that the 'Government warmly welcomes the Committee's support for encouraging citizens to hold EU institutions to account' and that the UK Government was providing 'all the necessary infrastructure to enable citizens to engage with Initiatives when they are started'. He refocused the issue on the UK's efforts to enhance the role of national parliaments in EU decision-making, as an alternative way in which the UK Government was committed to reform the EU 'so that it is more democratically accountable'. The Committee was somewhat scathing in their reply, requesting a 'clearer articulation' of what the 'necessary infrastructure' entails, and for details of 'specific measures' being taken to publicise the ECI programme more widely in the UK. While welcoming the encouragement of the role of national parliaments, the Committee emphasised that the 'existing ECI structure' had the potential to complement this and increase public engagement, and that therefore the UK Government's role in publicising the ECI was 'of the utmost importance'.

From the Government's response (via Dan Rogerson) on 26 October it seemed clear that the 'necessary infrastructure' was limited to meeting the requirements of Regulation No 211/2011, with staff and resources for signature verification and liaison with organisers and the European Commission. The UK Government argued that it was for the European Commission to lead on promoting the ECI and that the Government had adopted the most 'cost effective' strategy of merely directing interested organisations or citizens to the EC website. In addition, the Government stated that as this was the first ECI to trigger a Commission response, 'it is not yet clear whether the ECI is an appropriate channel to address disengagement'. The UK Government's priority was enhancing the role of national parliaments, arguing that these represent 'readily

⁴³ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee-/role/>

⁴⁴ House of Lords European Union Committee, Record of Correspondence 4 June – 4 December 2014.

understood democratic levers for citizens’ and therefore ‘likely to make a greater, faster and more resource-efficient contribution to tackling the problem of democratic accountability at the EU level’.

The Committee considered this response at their meeting of 25 November 2014 and addressed their resulting concerns to the Minister for Europe, David Lidington MP. These were that while the Government had ‘expressed support’ for the ECI, it appeared that the Government ‘has done only the bare minimum required by Regulation 211/2011 to promote the ECI’. The Committee highlighted that this contrasted with the ‘Government’s strong support for domestic e-petitions’. They asked if the Government had considered using the domestic petitions website <http://epetitions.direct.gov.uk> to promote the ECI and ‘[i]f not, why not?’ The Committee also asked how the Government was planning to respond to the 2015 review and pointed out that though strengthening the role of national parliaments was welcome, that ‘there is no single means of rectifying the perceived democratic deficit in the EU’ and urged the Government ‘not to rule out a more nuanced and multi-faceted approach, in which the ECI may play a part’. This wording suggests that the House of Lords believed that the UK Government has not really given the ECI the support needed to function properly in the UK. The Minister responded on 15th December 2015 stating that ‘as a relatively new mechanism, the Government’s approach to the ECI Regulation since its implementation in 2012 has been to focus on administering the central requirements of the Regulation in an efficient and light touch manner’ and that individual initiatives under the ECI were ‘of course being promoted by their respective organisers’. The Government was preparing their contribution to the Commission review, and he agreed that ‘we need to take a multi-faceted approach to democratic accountability, and there is a place for the ECI alongside measures that address the democratic deficit’.

These exchanges demonstrate the concerns amongst some UK parliamentarians that the UK Government has not fully engaged with the ECI, or publicised it enough to make it an effective tool of participation for UK citizens.

The standpoints of the parliamentary parties

The viewpoints of the major national parties in the UK on the ECI range from nominal support, to downright antipathy. Nevertheless, even those parties that welcome the initiative and are broadly supportive of the ECI have not enthusiastically engaged with it. Indeed, it is notable – and perhaps a sign of how insular UK politics has become – that little airtime has been given to the ECI by any of the major national parties. Statements of party political views on the ECI and its effectiveness have been few and far between in the UK. None of them mentioned the ECI in their 2015 general election manifestos when discussing Europe or Britain’s relationship with the EU, or in their 2014 European election manifestos; and in contrast to Austria, the initiative has not been actively promoted by any major party, and indeed regarded sceptically by at least two: the ruling Conservative Party and the United Kingdom Independence Party (UKIP). This antipathy, expressed by UK MEPs in European Parliamentary debates on the subject, as well as the UK’s isolated position in abstaining in the 2011 Council vote, has served to put the UK somewhat at odds with its fellow EU states, despite the UK Government’s protestations of support for the measure.

Conservatives

The Conservative Party's general view of the ECI is indicated by the concerns raised by David Lidington MP on behalf of the Government, mentioned above. Coloured by a general scepticism towards the EU and its processes, the Government cautiously welcomed the move as a means of giving UK citizens a greater voice in EU affairs. Yet the hesitant welcome was not shared by all Conservative MPs. In a blog for the website [ConservativeHome](#) in 2011, the Conservative MP Steve Baker wrote an excoriating piece on the ECI, stating 'Why do we put up with this nonsense? We are being taxed to pay people to write this drivel ... to assess it, report on it, advise the Minister on it and so on and so forth. Certainly the measure gives European Citizens a voice in theory, but it's hardly likely to bend the Commission to the people's will is it? Have we forgotten the Irish pantomime so soon?'⁴⁵ This is an extreme statement of it, but it is indicative of the view of a part of the Conservative party, of the ECI as an ineffective tinkering with a flawed institution. For instance, while much more carefully worded, the Minister for Europe's hope that UK citizens might propose initiatives repealing or simplifying EU law, i.e. reducing the EU's presence, represents a similar sentiment to that of Baker's that, '[s]urely there must be a million people in at least a third of Member States who would like to make certain invitations to the European Commission? To burn the records, smash the computers, sell the buildings and fire every last one of them'.

This could easily lead to the conclusion that the Conservative position seems to be a welcoming of the ECI in so far as it represents an opportunity for the hearing of UK citizens and UK priorities in the European arena, but not a support of it as a tool for strengthening the EU and its democratic basis. In many ways this is an accurate perception, however, there are more positive voices in the Conservative Party. For instance a Conservative MEP for the North West of England, Sajjad Karim, has supported the potential of the ECI, in particular for highlighting issues like the condition of human rights in Kashmir which he has campaigned strongly on.

Labour

The view of the main party of opposition, the Labour party towards the ECI, has been somewhat ambiguous. In 2008, a memorandum from the Labour Spokesperson on Constitutional Affairs in the European Parliament, Richard Corbett MEP, gave a reasonably positive view of the innovation provided by the Lisbon Treaty, stating that it would 'strengthen the citizens' right of participation in the European political process'.⁴⁶ Some indications of the concerns of the different parties can be taken from their questions in the pre-Regulation debate of 2011 discussed above. In the debate the Labour MP for Caerphilly raised concerns regarding safeguards in place should a petition result in an initiative introduced by the Commission which would have a particular impact on a member state not represented on the citizens' committee for the particular ECI, organised lobbies and the subjective evaluation of which initiatives may be deemed 'frivolous, abusive or vexatious' by the Commission. He further raised concerns about the role of petitions in an organisation like the European Union, if it resulted in the Commissioner 'then being legally obliged to produce a response that may lead to legally binding legislation'. Another Labour member, Ann Clwyd (Cynon Valley) raised concerns in the debate about the issue with petitions such as the ECI raising expectations, and that disappointing such expectations could result in perhaps even greater scepticism about the European Union. These apprehensions were somewhat prescient, as we shall see from the discussion below. Following this debate, Labour has been somewhat muted on the issue of the ECI, neither advocating nor criticising.

⁴⁵ ConservativeHome, 'News of an exciting opportunity in EU participatory democracy', Steve Baker MP, 19 January 2011.

⁴⁶ Select Committee on European Union Written Evidence, Memorandum by Richard Corbett MEP, Labour Spokesperson on Constitutional Affairs in the European Parliament, 'The European Parliament's Role in Developing Legislative Proposals', 20 April 2008.

Liberal Democrats

Perhaps unsurprisingly, given that they are the most wholeheartedly pro-European of the three main UK parties, as well as strongly committed to greater citizen participation and democratic reform, the Liberal Democrats have been the most positive and welcoming of the European Citizens' Initiative.

Diana Wallis, then the Liberal Democrat MEP for the Yorkshire and the Humber region, was one of the rapporteurs from the European Parliament on the discussions for the Regulation, and welcomed the Parliament's input, stating that the Parliament's involvement had made the ECI 'simpler and more accessible to our citizens'.⁴⁷ She did however, raise concerns about the actual efficacy of the ECI, for instance, warning in a television interview that there should not be any overhype of the ECI: 'It's not a Swiss-style system of initiatives and referendums. It's dipping the toe in the water of participatory democracy [...] an opportunity for European citizens to push the legislative button'.⁴⁸ She also commented in an EP debate on 30th December 2010 that EU residents (not just citizens) from the age of 16 should have been able to participate, 'in order to really engage young people in European policy debate' and that not doing so was 'missing an opportunity to extend a hand to Europe's youth and our future'.⁴⁹ In the same debate, fellow Liberal Democrat MEP Andrew Duff felt that the ECI should enable citizens to demand a revision of the Treaties themselves, and that it was wrong, and overly restrictive to deny this option.

Nevertheless, the Liberal Democrats have been the most positive towards to initiative. In the debate in European Committee B in 2011 the then-Liberal Democrat MP for Edinburgh West, Mike Crockart, stated that he had 'wholehearted support' for the proposals for a European Citizens' Initiative, for the reason that an 'individual's need to participate in direct democracy increases as the elected representative and representative institutions become more remote.' In his view, '[t]he ability to take part in direct democracy of this type is to be welcomed and will serve only to strengthen links between citizens and their European representatives and Parliament ... The citizens' initiative will be a huge boost to the popular legitimacy of the European Union'. His one concern was sufficient data protection.

However, even though they are more positive in their approach, the ECI has not been a priority for the Liberal Democrats any more than other parties: their 2015 election manifesto, though focused in large part on democratic reform of the EU, made no mention of the ECI as part of this reform process.⁵⁰

Green Party

The Green Party of the United Kingdom has supported for over a decade the right of 'sufficient numbers of citizens' to have the right of legislative initiative in the European Union.⁵¹ They have therefore welcomed the ECI, and been active in supporting certain initiatives, such as the End Ecocide ECI and STOP TTIP. Their past proposals have gone further than the ECI, requiring a debate in the European Parliament, but they have broadly welcomed the ECI, though stopping short of actively campaigning for it. Their European elections manifesto 2014 also made no mention of the ECI as a policy interest or area for reform.

47 Website of Diana Wallis MEP, 'European Citizens' Initiative – Diana talks about the outcome to a London audience', 10 December 2010.

48 BBC News, 'Power to the people EU-style', Laurence Peter, 22 November 2010.

49 <http://parliament.europe.bg/en/index.php?id=33593&category=374>

50 See the Liberal Democrat 2015 Manifesto, 'Britain in Europe: prosperity and reform'.

51 <https://policy.greenparty.org.uk/eu.html>

United Kingdom Independence Party

Perhaps borne of their deep distrust of the European project as a whole, UKIP has been rather negative towards the ECI. In the 2013 European Parliament debate on the functioning of the ECI after one year, the UKIP MEP for London, Gerard Batten, denounced the ECI as another 'PR sham' designed to 'paint a veneer of democracy over the undemocratic European Union'.⁵² He argued that there is no 'common people' of Europe, no European political identity, and therefore you could never have a true democratic system in Europe. An earlier post from the UKIP MEP for the East Midlands, Roger Helmer in 2012 emphasised that the Commission had no obligation to act on a successful petition, and that therefore it represented 'mere window-dressing'⁵³. The clear position of UKIP on the ECI is akin to their position on the EU as a whole: one of deep cynicism.

52 European Parliament, Debate: 'One year of European Citizens' Initiative in practice: evaluating experience and tackling obstacles', Strasbourg, 18 April 2013.

53 Roger Helmer MEP, 'A Brilliant Brussels Idea!', 30 March, 2012 <https://rogerhelmermep.wordpress.com/2012/03/30/a-brilliant-brussels-idea/>.

C3) UK ORGANISERS OF ECIS AND NGOS

Despite the inauspicious political context, many UK citizens, residents and organisations have been involved in organising or supporting ECIs since 2012. These include the following members of Citizens' Committees and key organisers: Granville Williams and Professor Des Freedman of the Campaign for Media Pluralism initiative; Annie Miller and Barb Jacobson of the Universal Basic Income initiative; Susanne Kendler of Let Me Vote; Rod King of the 30kph ECI; John Hilary from STOP TTIP; the large union Unison from Right2Water; Hugh Mercer of the On the Wire initiative, James West of the Dairy Cow Welfare ECI, and others involved in supporting initiatives, such as members of UK NGOs, as well as UK commentators and other committee members with links to the UK.

The vast majority of interviewees were frustrated about the difficulties of the ECI process and the lack of pay-off for months and years of hard work. Below is a summary of the key difficulties and concerns raised across the interviews. They overlap in large part with the findings of the Austrian interview process.

→ Difficulties encountered with the online system and collection software:

One interviewee described the Commission website for setting up an ECI as 'not fit for purpose'. Time and time again, the biggest problem or stumbling block at the start of initiatives was the lack of workable software for online signature collection. There were also numerous complaints that the software used by the Commission did not allow either for tracking of signatures or for keeping in contact with signatories to inform them of the process of the campaign.

There was also confusion around data requirements and privacy issues and it was reiterated by interviewees that the data requirements across Member States must be uniform, and that the bar must be lowered, not raised, so that less personal data is required in order to sign an initiative.

→ Registration and timing issues:

Many spoke of the difficulties – some said the near-impossibility – of collecting the required 1 million signatures in the 12 month period, especially as the collection time starting running as soon as the registration was approved, with no prior warning of when this was coming. This left organisers with no lead-up time, and scrambling to launch their collection process without sufficient preparation. Other organisers lost months of collection time in waiting for the online system to be up and running. Some suggested there should be some form of response from the Commission when a proportion of the 1 million i.e. 100,000/200,000 was reached.

Beyond issues of timing, a sore point was also the basis on which decisions to register ECIs were made or refused by the Commission. Many organisers and NGOs in the UK were involved with the STOP TTIP ECI, and had continued with it as a petition following the structure of the ECI after registration was refused by the Commission. They felt that this refusal to engage with what then became a large democratic movement, fundamentally undermined the ECI as a democratic challenge to the ECI and demonstrated that the EU was not seriously interested in citizen challenges to existing policy decisions. One organiser stated that the ECI had 'become just like any other consultation method: a tool for the powerful to ignore the powerless'. Others suggested that the registration process be more advisory rather than binding, so that there would not be the same accusations of 'muzzling' popular initiatives.

→ Lack of support infrastructure/funding

The process was viewed as not at all straightforward to engage with by many organisers, who spoke of the need for a simple practical guidance document for organisers to consult before starting the initiative. They also highlighted the huge level of organisation across Europe required for an initiative to be successful, and the money required for a sufficient amount of coordination. Most initiatives, especially those which had been brought together purely by private citizens with no links to

related organisations, felt that they were never adequately funded to have the best chance of success. Some felt that the EU should commit to some financial support for ECIs if it was really serious about making participatory democracy a success. It was noted that the Economic and Social Council beginning to provide translation services for ECI organisers was a key help.

→ Lack of meaningful engagement from the European institutions

The lack of action in response to a successful ECI was a key source of frustration for many organisers and commentators. It was felt that there needed to be greater clarity about the link between the ECI and legislative outcomes; whether the proposal of some legislative measure following a successful ECI should become a binding feature of the Regulation, given that ECIs have already been through a legal admissibility check prior to Registration.

Some interviewees suggested that the ECI should be linked more explicitly and meaningfully with the European Parliament, whether directed towards the EP rather than the Commission or that the EP should engage more in publicising the ECI. Those that had been part of successful ECIs felt short-changed by both the Commission's response and the engagement of the European Parliament, highlighting the short amount of time allocated for the public hearing and within that the small amount of time for the organisers and their experts to put their case. The Commission's response was described by one organiser of a successful ECI as not more than the response that would be given to a parliamentary question; 'very dismissive and very superficial'. Another option for more effective follow-up that was mooted was the instigation of a public jury or consensus conference to debate the issue raised by an ECI. It was also felt by some that ECIs should be able to address issues with the treaties and treaty reform to give it 'some sort of punch'.

→ Comments on the role of the UK Government

In terms of the support received from the British Government, approval of their role varied among respondents. Some felt that the UK Government was effectively uninterested in the process, others that they were uncertain of their own arrangements and others that whilst they attempted to be helpful they too seemed to be floundering without sufficient guidance from the Commission. Some did see a role for national governments like the UK in raising awareness of the ECI tool, but others were wary of muddying the water and thought the UK Government should remain removed from the ECI as far as possible. This was especially the case with those initiatives, such as the Media Pluralism and [Right2Water](#) initiatives, whose aims ran counter to UK government policy.⁵⁴

It is also worth noting that there is no obvious source of guidance and support from the UK Government for citizens who wish to get involved with EU issues in any form. There is no dedicated EU office in either the Cabinet Office or Foreign office, and the most helpful resource for information and support with EU issues comes from the House of Commons Library and Vote Office, which operates a number of EU-related helplines. Otherwise UK citizens are reliant on the London offices of the European Commission and European Parliament, and local EU [Europe Direct Centres](#) for assistance.

⁵⁴ Their fears may have some justification, as they were some reports by the UK organisers, Christian Concern (not interviewed for this paper) of the UK Government issuing a briefing against the successful One of Us ECI – see Review of the Balance of Competences between the United Kingdom and the European Union 6: Evidence, Voting, 2014, pp. 40-45.

C4) UK CONCLUSIONS

In sum, we can see that the state of the ECI in the UK is a somewhat paradoxical one. On the one hand, the engagement of UK civil society has been, at least initially, active and positive, with the UK providing large numbers of members of citizens' committees. However, the engagement of the government and the major political parties has been lacklustre and unsustainable. In addition, experience of the actual process of the ECI, and the barriers to its success, have led to a large number of UK-based individual organisers and NGOs becoming disillusioned with it as a democratic tool.

Many of those interviewed did feel that their ECI had served to raise awareness of and heighten the level debate around their particular issues, and spoke positively of the ECI as an 'international host' to focus and mobilise transnational activities, as well an effective hook for media engagement. However, they questioned the viability in future: with the lack of serious responses or legislative proposals from the Commission to those that reached the threshold, they felt it would be much simpler to use alternative campaigns or petitions outside the ECI framework to achieve the same awareness-raising result. Alternatively, some felt that their time might have been more productively spent focusing on the domestic level, and that perhaps the ECI diluted national policy messages. Some organisers felt that the disconnect between public opinion and the European institutions was particularly striking in the UK's constituency-based electoral system, based on the concept of a direct individual relationship between electors and an elected representative.

The political context is central to the state of discussion in the UK. Firstly, the awareness and knowledge about both the EU and its processes generally, and the ECI specifically, are extremely low in the UK, some of the lowest in the EU. Polls consistently show that UK citizens are considerably less well-informed and more undecided about EU matters than citizens of other Member states. The EU hardly features on the UK education curriculum and the level of information in the media and elsewhere is incredibly poor, with often basic facts about EU institutions and responsibilities confused.⁵⁵ A survey conducted on respondents from Germany and the UK in November 2014-January 2015, though too small a sample to be fully representative (457 altogether, 211 in the UK), nevertheless indicated that of those surveyed, only 31% of UK respondents had heard of the ECI, nearly three full years after its implementation. This is more worrying given the preponderance among the survey response of highly educated, younger UK citizens, who represent some of the most likely in the UK to be exposed to information about the EU.⁵⁶

The national rhetoric about the EU and the political climate in the UK is extremely hostile. To give a small example, the fastest growing political party in England, UKIP, which received over 4 million votes in the 2015 general election, discussed the European Union in their manifesto for that election in a section entitled **Brexit**, around how the UK should leave the EU rather than engage with it.⁵⁷ Some organisers raised this issue in relation to the ECI, stating that it was a 'lost cause' in the UK, given that with the 'toxic' nature of the narrative there was an 'allergic' reaction to anything that came from Europe. In this climate it was felt by many interviewees that there needed to be fundamental reform of the ECI to gain traction with a disengaged or hostile UK public, or to make UK citizens and NGOs feel it was worthwhile to invest their time and money in championing initiatives.

55 Review of the Balance of Competences between the United Kingdom and the European Union – Evidence, The Consolidation of the Europarties, p. 67.

56 S. Gherghina and A. Groh, 'Poor visibility and design flaws are hampering the participatory potential of the European Citizens' Initiative', Democrat Audit UK, 26 June 2015.

57 UKIP 2015 Manifesto, p. 71.

III. Policy Recommendations

A) POLICY RECOMMENDATIONS ADDRESSED TO THE EUROPEAN UNION

Establish a Citizens' Initiative Centre providing support to the citizens:

- As proposed by the Report **Towards a Revision of the European Citizens' Initiative?**

Establish a central certification body:

- There is an urgent need for a central certification system. Hitherto many ECI organisers have turned to Luxemburg for help. Instead of decentralised certification in each member state, there should be one competent authority to manage the job of certification in a professional way.

Transfer responsibility for ECIs from the Commission to the European Parliament:

- In order to put the ECI on a sound footing as an instrument of direct democracy we recommend that responsibility for citizens' initiatives be transferred to the European Parliament. As an executive organ the Commission ought not to decide on the admissibility of an ECI. This would be the job of the European Parliament in conjunction with the European Court of Justice.

Make ECIs the cornerstone of European citizen lawmaking:

- Hitherto the Commission has reserved the right to initiate legislation. This means that, even if an ECI has successfully completed all its stages, the European Commission is still not obliged to convert the ECI into a proposal for legislative action. Thus an ECI is a non-binding procedure equivalent to the Austrian public initiative, which is a toothless instrument. Hence it is recommended that the ECI should be developed as an instrument of citizen lawmaking, as a three-step procedure, as described in the **Positionspapier Direkte Demokratie in der EU von MehrDemokratie**⁵⁸ and advocated by numerous interviewees:
The first stage would be a European Citizens' Initiative needing at least 400,000 statements of support. If this ECI were rejected by the European institutions, the second stage would be an EU-wide public initiative, requiring 2 million signatures. If the subject matter of the initiative necessitated treaty amendment(s), at least 3 million signatures would have to be collected. The final stage would be a European Citizens' Ruling, which would be legally binding. In this context, responsibility for the ECI (registration etc) should be transferred to the European Parliament.

58 http://www.mehr-demokratie.de/fileadmin/pdf/Positionen06_Mehr_Demokratie_in_EU.pdf.

B) POLICY RECOMMENDATIONS ADDRESSED TO AUSTRIA AND THE UNITED KINGDOM

The policy recommendations made by stakeholders in Austria and in the UK do not differ significantly. Citizens are faced with the same problems and difficulties with regard to the ECI all over Europe, apart from the requirement concerning proof of identity, which is minimal in the UK and seen as a role model by Austrian stakeholders.

Common policy recommendations are:

- Although there is already a service centre in each Austrian federal province (Europe Direct <http://www.europainfo.at>), which should actually serve as a point of contact for potential ECI organisers, the lack of a dedicated ECI Office came in for serious criticism from all sides. It is therefore recommended, on the one hand, to take steps to make the existence of Europe Direct more widely known and, on the other, to set up a special office, dedicated exclusively to ECI matters. This coordinating office could, in Austria, be located in the Haus der Europäischen Union; it could have branches in the federal provinces and cooperate with the Municipal Councillors for Europe. With regard to staff, relevant ECI experts should be included in the team, for instance from NGOs such as <http://www.mehr-demokratie.at/>, in addition to existing personnel.
- In the UK, the government is recommended to clarify which department has responsibility for the ECI. It should provide clear information to organisers as to whom they should contact for issues to do with verification of signatures. The Government could also provide more information on the ECI as further tool of participatory democracy, for instance on the webpages for UK domestic petitions. This should be done by the help of an ECI Office.
- The ECI Office would have to carry out the following tasks:
 - it should be a place where ECI organisers can host partners and potential supporters, where they can meet with NGOs and share infrastructural support with citizens' committees.
 - It should be appropriately equipped: computers, Internet access and basic office necessities should be placed at users' disposal free of charge, so that the costs incurred by providing these services do not all have to be paid out of ECI organisers' own pockets.
 - It should have an advisory function similar to that of the Ministry of the Interior in the case of public initiatives; the ECI Office would then be an advisory centre for potential organisers.
 - It should be responsible for procuring translations of the ECI texts into other European languages. Hitherto it has been the citizens' committee's responsibility to see that all the translated versions of their ECI correspond with the original version submitted to the Commission and that they pass muster when they are assessed by the Commission. All the translation work has had to be paid for by the citizens' committee.
 - Professional press and PR services should be provided in order to publicise the respective ECIs, for example the Haus der Europäischen Union could put its Public Relations Department at the disposal of the ECI Office.
 - It should promote discussion and response concerning ECIs, not only in the media but perhaps including a full parliamentary debate.

Re-think ECI funding

Austria: To create a level playing field for direct and indirect democracy the financing of Austrian political parties out of the public purse should be re-considered and a shift to financial support for democracy encouraged. In the light of steadily shrinking voter participation it is difficult to see why 100% of the funds budgeted for the financing of political parties is actually paid out to them. Instead, the amount of party funding could be proportional to voter turnout, and the money thus saved could be transferred to instruments of direct democracy such as public initiatives or the collection of signatures for ECIs in Austria.

Simplify the statement of support

In order to enable as many people as possible to give statements of support the use of the Citizen Card and the digital signature should be encouraged and accelerated. Further, given the present circumstances, there is some justification in asking whether requiring proof of identity from would-be signatories is really necessary. After all, even with a successful ECI one can only 'call upon' the Commission to take up an issue. An identity check would only make sense if an ECI were a powerful instrument that could initiate a legislative act.

IV. Conclusion

Our conversations with ECI stakeholders show that numerous problems being experienced now – more than three years after the introduction of the ECI – were already known of or foreseen during the introductory phase and had also been noted by stakeholders at that time. This is why many stakeholders are aggrieved that the Commission is dragging its feet about revising Regulation 211/2011 and it leads them to conclude that the Commission has no interest in involving citizens in the lawmaking process. What comes across from the interviews is a strong sense of disappointment; disappointment at the dashing of the hopes that had initially been invested in the ECI as an instrument, hopes that faded in the face of the practical difficulties involved.

The ECI organisers interviewed made a point of the huge administrative and organisational burden involved and criticised the fact that all the effort bore no relation to the actual political power an ECI could wield. Even if you had collected millions of signatures, you were still a petitioner as far as the Commission was concerned and you had no binding legal powers. They deplored the inadequate services and helpdesks provided by European institutions and member states and said they had the impression that neither the EU nor the individual member states (in our case the UK and Austria) had any serious interest in the ECI. Above all, though, it was the financial outgoings, which are not refunded, even in the case of a successful ECI, which made the ECI organisers angry when they considered the sums of money spent by the EU and the national states on other measures.

Our interlocutors wish for a functioning, that is to say effective, legally binding ECI correlating with the desire of citizens for new forms of democracy, not only in individual member states but also in the context of the European Union as a supranational framework. For, from all across the European political spectrum, there are an increasing number of protests against ‘them up there’, against democracy imposed from above. That kind of democracy has given hitherto accepted models of society and utopian visions of a good life short shrift, and now subordinates itself to ostensible practical necessities dressed up in the de-politicising rhetoric of ‘We have no other choice’. It is a democracy that, in national states and at EU level, is only perceived as an ‘elected autocracy’⁵⁹. The chasm separating the EU’s political class and the people of Europe is widening all the time. The democratic deficit ascribed to the EU is a symptom of a more general crisis of representation, since political power is concentrated in the hands of an ill-defined, ever more elusive elite.

To counter this tendency, the Treaty of Lisbon quite rightly introduced a new form of democratic participation: the ECI. And yet, this tool is so constituted that within the structures of the European Union it cannot become a force for real change. This, on the other hand, is the strength of this basically weak instrument. In the course of their ECI efforts committed citizens can form networks across national borders and at the same time develop an awareness of the barriers imposed on them by the European institutions. This contrast between euphoria at the potential for civil-social transnational networking in the digital age and the feeling of impotence, primarily vis à vis the Commission, leads to a more self-confident civil society. ECI organisers and with them many supporters have learned from experience that the ECI is certainly not, and in its present form cannot be, the keystone of European participatory democracy as EU officials still like to extol it, on the occasion of **European Citizens’ Initiative Day** in April 2015 in Brussels, for instance. In the future it will not just be a matter of giving citizens the same status as the European Parliament and the Council of the European Union in calling on the Commission to submit a proposal for legislation. A genuine democratisation process would see the ECI as the basis for European citizen law-making. The growing disaffection with the fossilised democracies of the national states and their elitist pendants at EU level, who have little time for citizens’ concerns, coupled with modern digital means of communication, opens up new windows of

59 Cf. Alexander Gallas / Jörg Nowak, Die Krise der Demokratien: Wahlautokratie, Klassenpolitik mit leeren Händen, Kulturalisierung, in: ÖZP – Österreichische Zeitschrift für Politikwissenschaft, 2/2011, S. 139–153.

opportunity for the democratisation process. For instance, with the ‘self-organised ECI’ on the TTIP (Transatlantic Trade and Investment Partnership), which came about after the Commission did not register this ECI on grounds of lack of competence. This ECI has collected more than 3.2 million signatures.⁶⁰ Although it is legally irrelevant and not binding – just like any officially registered ECI – this ECI is highly relevant politically. For it is creating and strengthening networks of European citizens (in an alliance of over 480 European organisations) and, because of its rejection by the Commission, is concerned not only with the TTIP but also with democracy itself. According to the organisers, it is rooted in the conviction that ‘it is our democratic right as European citizens to take up an issue which concerns and affects us all.’ Democracy means, in the well-known words of the writer Max Frisch, ‘that people interfere in their own affairs’ (‘dass sich die Leute in ihre eigenen Angelegenheiten einmischen.’). Disappointment at not being able to do this at EU level, and at not being listened to by its various institutions, has led some supporters of the ECI to become resigned and demotivated. As experience has shown that citizens can wield no real political power, no matter how many signatures they collect, the number of ECIs applying for registration has fallen dramatically since 2014. Currently there are only three active ECIs.

In fact, it is the EU that has the most to lose if it creates an instrument which frustrates citizens rather than motivating them to become part of the European project. For, whatever the number of statements of support they generate, ECIs stimulate popular debate, improve understanding across borders and bring new ideas and voices to Brussels. So the aim would be to carry out a thorough-going reform of the ECI, in order to make the EU (more) democratic, which would mean that a treaty change was absolutely essential.

The European integration project was not started as an experiment in supranational democracy, but was the outcome of economic and technocratic policies designed to preserve peace in Europe. Over time an asymmetrical Europe has developed from this economic idea, which from the very beginning recognised the primacy of capital as opposed to democracy, a Europe that protects markets but hollows out democracy and, in the meantime, even contravenes European Law (as in the case of the Fiscal Compact, for example⁶¹). Furthermore, a weighting in favour of the executive branch, which is also evident in the ECI procedure, shows contempt not only for the European Parliament, that is to say for representative democracy, but also for popular participation in general, which is why some scholars like Christian Joerges use the term ‘commissionary dictatorship’ (‘kommissarischen Diktatur’)⁶². In other words the struggle being fought to establish the ECI as an effective, legally binding instrument is not a vertical conflict (EU versus national states) but a horizontal conflict (EU market- and executive-oriented logic versus democracy).

So the commitment to revise the ECI regulation has to be seen in a wider democratic context and new avenues must be explored. Possibly, a democratic convention could be held where citizens would re-work the ECI themselves. The resulting proposal could be put to the vote all across Europe and pass into law. Surely, in assessing the success of European integration one should look at the way Europe treats its citizens when they demand their right to participate in decisions. A community whose members are excluded from determining the ground rules of living together is not destined to last very long.

60 Cf. <https://stop-ttip.org/>

61 Cf. Lukas Oberndorfer, Vom neuen, über den autoritären zum progressiven Konstitutionalismus? – Pakt(e) für Wettbewerbsfähigkeit und die europäische Demokratie, *juridikum* 2013, pp 76-86.

62 Christian Joerges, Recht und Politik in der Krise Europas, in: *Merkur* 66/11, 2012, pp. 1019.

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VI. Appendices

FULL LIST OF INTERVIEWEES AND STAKEHOLDERS CONSULTED

Austria

- Edgar MAYER, Chairman of the EU Committee of the Federal Council, since 2014 (Vorarlberg, Austrian People's Party)
- Erwin MAYER, Spokesman of mehr-demokratie.at
<http://www.mehr-demokratie.at/>
- Marlies MEYER, Deputy Secretary of the Greens in the Austrian National Council and Chairwoman of the Public Initiative Association (Bürgerinitiativen-Verein, BIV)
<http://www.buergerinitiativen.at/>
- Hanns Michael MOSHAMMER, member of the citizens' committee for the ECI 30km/h – macht die Straßen lebenswert!
<http://de.30kmh.eu/>
- Wolfgang RENEZEDER, Department III. 1, Ministry for Europe, Integration and International Affairs (BMEIA)
- Klaus SAMBOR, Chairman of the citizens' committee Bedingungslosen Grundeinkommen
<http://www.ebi-grundeinkommen.de/>
- Robert STEIN, Head of Department III/6 (Electoral affairs) in Section III (Legal affairs) of the Ministry of the Interior
- Johannes THEINER, member of the citizens' committee for Qualitativ hochwertige europäische Schulbildung für alle
<http://www.euroedtrust.eu/>

United Kingdom

- Gavin EDWARDS, ECI Unison (Right2Water)
<https://www.unison.org.uk/>
- Lucy HATTON, University of Warwick
- Paul HAYDON, Office of Catherine Bearder MEP,
European Parliament and UK commentator
- John HILARY, ECI War on Want
<http://www.waronwant.org/>
- Barb JACOBSON and Annie MILLER,
ECI Unconditional Basic Income
<http://basicincome.org.uk/>
- Blanche JONES, 38 Degrees (Stop TTIP)
<https://home.38degrees.org.uk/>
- Susanne KENDLER, ECI Let Me Vote
<http://www.letmevote.eu>
- Rod KING, ECI 30kph
<http://en.30kmh.eu/>
- Andre MENACHE, ECI Stop Vivisection
<http://stopvivisection.eu/>
- Prisca MERZ, ECI End Ecocide
<https://www.endecocide.org/>
- Guy TAYLOR, Global Justice Now (Stop TTIP)
<http://www.globaljustice.org.uk/>
- Ragnar WEILANDT, University of Warwick,
ECI Invest in Education
<http://invest-in-education.eu/>
- James WEST, Compassion in World Farming,
ECI EU Directive on Dairy Cow Welfare
<http://www.ciwf.org.uk/>

FIELD MANUAL / **INTERVIEW QUESTIONNAIRE**

As regards the questions we asked our interview partners, we oriented ourselves on the questions used by the European Ombudsman in her study (see: <http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/53104/html.bookmark>). They were similar in subject matter and scope but a bit more open-ended:

- 1) How did you perceive the process of launching an ECI?
- 2) What were the obstacles?
- 3) What aspects of the process worked well in your view?
- 4) What do you think you achieved by using the ECI tool?
- 5) What should be done to improve the ECI from your point of view?
Any changes to the ECI Regulation?
In terms of ease of process?
In terms of impact (particularly in raising citizen awareness and participation)?
- 6) What is your experience as regards the contacts with different national authorities in relation to your initiative (for certification of the online collection system and certification of the number of valid statements of support)?
- 7) What are the next steps to be taken from the side of the Austrian/UK government/parliament?
- 8) What are the next steps for improvement to be taken by the European Commission and/or European Parliament?
- 9) How can they effectively build on the recent 2015 review, the first three-year review of the initiative?
- 10) Is there anything else you would specifically like to raise in relation to the ECI and its process?

AUTHORS

Dr. Tamara Ehs, has been a researcher and lecturer at the University of Salzburg since 2013. She studied political science, communication studies and jurisprudence at the University of Vienna, Sciences Po Lille and European Academy of Legal Theory Brussels. 2012–13 researcher at IWK (Institut für Wissenschaft und Kunst), 2012 Research Fellow at IFK (Internationales Forschungszentrum Kulturwissenschaften an der Kunstuniversität Linz), 2012 research at Harvard Law School – Botstiber Foundation scholarship; 2009–2012 researcher at Institut für Rechts- und Verfassungsgeschichte / KRGÖ, and lecturer at Institute of Political Science University of Vienna, 2010–11 project-leader SEUM. Her research includes constitutional political science, state theory and theory of democracy (especially Hans Kelsen), legal policy and historical basis of European integration, as well as EU–Swiss and EU Southeast European relations.

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CentreForum publications

July 2015: Schools Plus: education at the heart of communities

May 2015: Moving beyond Mansion Tax: a fair and efficient property tax regime

November 2014: Enhanced, sustainable devolution in a federal context: a submission to the Smith Commission

INSTITUTIONS

NEOS Lab is the political academy of the liberal grass-roots movement NEOS, and an open laboratory for new politics. The main objective of NEOS Lab is to contribute to enhancing political education in Austria by providing a platform for knowledge exchange and liberal political thinking on the key challenges and pathways of democracies and welfare states in the 21st century. Particular emphasis is placed on the core topics of education, a more entrepreneurial Austria, sustainable welfare systems and democratic innovation. NEOS Lab conceives itself as a participatory interface between politics and society insofar as it mediates between experts with scientific and practical knowledge on diverse policy issues and interested citizens.

A network of experts accompanies and supports the knowledge work of the diverse thematic groups and takes part in the think tank work of NEOS Lab. Additionally, NEOS Lab provides several services, such as political education and training, workshops and conferences and a rich portfolio of inter- and transdisciplinary research at the interface between science, politics, economy and society.

NEOS Lab is the successor of the Liberal Future Forum, which was previously a member of ELF.

lab.neos.eu

The European Liberal Forum (ELF) is the foundation of the European Liberal Democrats, the ALDE Party. A core aspect of its work consists in issuing publications on Liberalism and European public policy issues. ELF also provides a space for the discussion of European politics, and offers training for liberal-minded citizens, to promote active citizenship in all of this.

ELF is made up of a number of European think tanks, political foundations and institutes. The diversity of the membership provides ELF with a wealth of knowledge and is a constant source of innovation. In turn, the member get the opportunity to cooperate on European projects under the ELF umbrella.

The European Liberal Forum works throughout Europe as well as in the EU Neighbourhood countries. The youthful and dynamic nature of ELF allows to be at the forefront in promoting active citizenship, getting the citizen involved with European issues and building an open, Liberal Europe.

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