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**ITALIAN AND EUROPEAN CITIZENS'
INITIATIVES:
CHALLENGES AND OPPORTUNITIES**

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ABSTRACT

The paper focuses on citizens' initiative at Italian and European Union level, wondering about its problems, effectiveness and opportunities in a historical moment in which instruments of participatory democracy are facing the risk of being overvalued and, at the same time, of not being sufficiently considered when there isn't alignment between political and popular will.

The first part aims to describe the failure of popular legislative initiative in Italy, stressing on the main challenges, problems and prospects offered by proactive referendum and advisory referendum, which could have been introduced by Renzi-Boschi constitutional reform. It follows an analysis about the European citizens' initiative, mainly on its requirements, the role of the European Commission, the main difficulties emerged and the possible directions that can improve its effectiveness.

The last part compares Italian and European citizens' initiatives, the main themes involved and the possible future developments of these instruments of participatory democracy.

Keywords: *Citizens' initiative; Participatory democracy; Petitions; European Union; Democratic tools.*

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INTRODUCTION

This paper has the purpose to compare the Italian and European experiences of citizens' legislative initiative under the lens of popular participation¹. We took as reference two models, a national experience, which is presumed to be more consolidated and therefore more effective and incisive, and the supranational experience of European Union, which has recently introduced instruments of participatory democracy and received the first draft bills from EU citizens. While in Italy the popular legislative initiative is planned since 1948, in Europe it is a tool only recently introduced by the Lisbon Treaty, but concretely effective only from 2012.

At national level popular legislative initiative meets the need not to exhaust the popular will only during election time; at European level aims to overcome the so-called "democratic deficit" by making more effective citizen participation, which could affect the decision making process.

We questioned about the actual weight and the ability of the democratic tools provided by law to innovate and create new law, through statistics and data related to draft bills and petitions submitted by Italian and European citizens and collected by Italian and European institutions.

The comparison between Italy and Europe actually finds its justification in some differences that test the extent of democracy and the real ability to influence decisions at the political level. A first aspect to consider is the fact that popular legislative initiative at European level is only alongside the right to petition, whilst under Italian law it is also envisaged the referendum and it is the latter which seeks to strengthen in the constitutional reform, representing a sort of "way out", and an attempt to overcome the difficulties so far faced by participatory tools.

A second element of differentiation is due to the absence of national law limits on the themes that may bring an initiative²; at European level are provided limitations about the issues that may be subject to legislative initiative, and in particular it should fall under the competence of the European Commission.

We finally wonder whether the absence of a parliamentary filter, as in the Italian case, is an advantage or a limit in the European experience.

¹ As detected by D. PICCIONE, *Gli istituti di partecipazione nei regolamenti parlamentari all'avvio della XVII legislatura: cronaca di una riforma annunciata, ma ancora da meditare, osservatorioaic.it*, May 2013, p. 2., the word "participation" can be intended as an active contribution to the life of the institutions and as an open consultation with civil society or co-participation in political decision-making processes.

² Although part of the Italian doctrine holds that, despite the lack of clear rules in this regard, to citizens' initiative should be applied the same limits identified by art. 75, second paragraph, for the issues subject to referendum, namely tax and budget laws, amnesty and pardon laws and laws which authorize the ratification of international treaties. Cf. P. VIRGA, *Diritto Costituzionale*, Giuffrè, Milano, 1979, p. 271.

The initiatives differ also from the procedures followed and from how they are formally presented: in Italy is drawn up a proposal, shaped as a draft bill, which follows the same procedure provided for ordinary laws; the initiatives that come under the European Commission scrutiny represent an invitation to adopt a measure, and can therefore only indicate the guidelines from which it can implement the Treaties. At the same time, in Italy the draft bill is subject to parliamentary amendments and it often ends up distorting the original project and it is likely to be included in other draft bills that threaten to undo the popular will on which they are based.

2. The current legislative framework of Italian citizens' initiative

According to art. 71 of the Italian Constitution, the people is one of the subjects entitled to initiate legislation: citizens' initiative is one of the instruments of direct democracy, together with petitions³ and referendum, provided by our Constitution to encourage participation and involve Italian citizens in public decisions⁴.

Under Italian Constitutional law there isn't a clear distinction between citizens' initiative and citizens' legislative initiative: the Constitution has provided only the participation of the people at the beginning of the law making process, as a mean to express his will and compare it to the government one. The fact that the initiative should be formulated in details, as a draft bill, distinguishes it from the petitions, which represent mere requests for legislative measures⁵. On the contrary, in other countries citizens' initiative doesn't end with the presentation of the bill but involves the population throughout the whole process, by submitting the draft bill to a popular vote, as happens in Switzerland and in the USA, where a citizens' initiative of this kind has been mainly applied⁶.

³ Petitions find their legal basis on art. 50 of Italian Constitution; according to art. 109 of the rules of procedure of the Chamber of Deputies (hereinafter, r.C.) and 141 of the rules of procedure of the Senate of the Republic (hereinafter, r.S.) petitions are sent to the competent committees and may be combined with bills already programmed, transmitted to the government or simply archived; as a matter of fact, there isn't an obligation to deliberate on the petitions filed.

⁴ Some authors believe citizens' legislative initiative has always been considered by legislators as an "appendix" or a "little brother" of referendum, because it is often discussed and strictly related to its implementation. Cf. E. LAMARQUE, *Il referendum abrogativo e l'iniziativa legislativa popolare* (artt. 71 e 75 Cost.) in F. SAVERIO MARINI, G. SCACCIA (eds), *Commentario alla riforma costituzionale del 2016*, Edizioni Scientifiche Italiane, Napoli, 2016, p. 170.

⁵ See N. RODEAN, *Iniziativa (legislativa) popolare. Profili di diritto costituzionale nel labirinto europeo*, Franco Angeli, Roma, 2014, p.114. Citizens' initiative was strongly wanted in Italian Constitution by Costantino Mortati, who recognized the opportunity for a citizens' law capable of limiting majority, to avoid cases of arbitrary will by giving the people a concrete instrument to express their sovereignty, even when it was different from the government one. Costantino Mortati had, in fact, proposed two hypotheses of referendum promoted by government initiative, one in support of a draft bill previously rejected by the parliament and one to suspend a law that had already been approved by the two Chambers. *Amplius*, E. DE MARCO, *Contributo allo studio del referendum nel diritto pubblico italiano*, Cedam, Padova, 1974, p. 120 ff.

⁶ See C. BOVA, *L'iniziativa legislativa parlamentare in Italia e in Svizzera*, Cedam, Padova, 2004, p. 79 ff.

On the contrary, in Italian legal system parliamentary approval is required: this circumstance contributes to discuss whether it is a political right or a competence, and even if such a citizens initiative can be really intended as an instrument of direct democracy, because the people doesn't have a proper legislative function but the subject entitled with sovereignty can act only as an impulse towards the Chambers⁷.

Citizens' initiative discipline presents many guarantees but also many limits, which led to its failure in almost all cases and even when it would be politically supported and shared, it failed because of complicated procedures and parliamentary regulations which, as well as configured today, do not allow a real participation of the population to the approval of the law.

In fact, in the rare case of approval, the law is likely not to keep anything as provided in the original draft bill. To provide some data, only in the current parliamentary term, about ten of the draft bills presented by the people, those who have not been "stopped" in the commissions, have all been absorbed in other texts or approved in unified texts.

According to the Constitution currently in force: "*the people may initiate legislation by proposing a bill drawn up in sections and signed by at least fifty-thousand voters*"; this article implies a formal equivalence between citizens' initiative and parliamentary initiative; but the draft bill proposed by the people follows the same process of parliamentary draft bill, with a unavoidable subsidiarity role to government initiative, which in our legal system is actually the most productive⁸. The implementation of this article has been ruled by l. 352/1970 "*Norme sui referendum previsti in Costituzione e sull'iniziativa legislativa del popolo*", but before this law entered into force there was a different discipline in the two chambers: citizens' draft laws had been presented only to the Senate of the Republic, while the Chamber of Deputies had refused citizens' initiative; only the Senate of the Republic proposals were assigned and discussed in committee and sometimes arrived to final approval. Articles 48 and 49 of l. 352/1970 codified the praxis of the Senate of the Republic, providing that the proposal must be submitted with the signatures of the voters to the President of one of the Chambers.

Despite this law, there are still some regulatory gaps in the discipline. In first place, the possibility to withdraw the draft bill is discussed: according to part of the legal doctrine it would be effectively impossible, because if the presentation of the initiative need the signature of at least fifty thousand

⁷ According to P. BARILE, *Istituzioni di diritto pubblico*, Cedam, Padova, 1987, p.473 citizens' initiative is an instrument of direct democracy, because the people doesn't need any mediator in pointing out the political address.

⁸ Governmental initiative prevalence on the Parliamentary one finds its justification in the circumstance that the government is the "steering committee" of the parliamentary majority. Cf. A. CASU, *L'iniziativa legislativa nei regolamenti parlamentari dopo la riforma del 1971*, p. 34 ff., in ID. *Corsi e ricorsi: questioni di diritto e procedura parlamentare*, Jovene Editore, Napoli, 2007.

voters, to withdraw it would need the unanimous will of those who proposed it, and there should be a request subscribed by all the signatories⁹.

Some doubts have also been arisen about the role of the organizing committee: under article 7 of l. 352/1970, it should be composed of 10 citizen voters but they are not allowed to discuss in the parliamentary committee the draft bill. Also the chance to claim to the Constitutional Court as referendum organizing committee is disputed.

Furthermore, parliamentary rules about citizens' initiative are different in the two Chambers. Citizens' draft bills are also called in a different way: the Chamber of Deputies calls "draft laws" only the drafts coming from government initiative and calls "proposals of bill" the others; under the Senate of the Republic rules of procedure there is no distinction, and they're all called "draft bills".

Art. 74 r.S. provides the parliamentary committees should examine citizens' draft bills within a month of receiving. According to art. 76 r.C., presentation follows an order based on the urgent bills and conversion of decree laws instead; if there are no doubts about the obligation to examine the draft law, the problems arise from the political conditions present in the assembly and also from the requirement of deliberation; therefore, the binding nature of deliberation on citizens' draft bills is actually uncertain.

Also, the rules of procedure of the Chamber of Deputies require that the popular legislative initiative projects should not be taken into account in relation to the parliamentary work schedule, when it is intended a portion of time to the arguments of the opposition groups¹⁰.

After the declaration of admissibility by the President of the Chamber, citizens' draft bills are announced in the session and incorporated into the agenda and printed (art. 68 of r.C. and art.73 of r.S.). From the announcement comes the assignment to the appropriate committee, which may be contested by ten deputies in the next two days: in this case the decision is up to the assembly. But only the Senate of the Republic parliamentary rules provide a deadline, a month from referral, to start the exam of the draft bills in the committees (art. 74,3 r.S.); Chamber of Deputies rules of procedure only indicate a period within which the text should be examined to transmit it to the assembly, that discusses and decides on it.

Citizens' draft bills present a special feature: they don't decay at the end of the parliamentary term. In the Chamber of Deputies this rule is provided clearly, (art. 107,4, r.C.); in the Senate of the Republic is not necessary to submit again the draft bill (art. 74,2 r.S.). This guarantee is not accorded to other laws and aims to preserve the work done by citizens, who do not have to resubmit the bill,

⁹ Cf. E. SPAGNA MUSSO, *Scritti di diritto costituzionale*, vol. I, Giuffrè, Milano, 2008, p. 254.

¹⁰ More in U. RONGA, *La partecipazione nel progetto di revisione della Costituzione*, 20th July 2016, *federalismi.it*.

indicating indirectly also their permanent sovereignty, which is not based on the duration of the legislature. It also reflects the principle of conservation of acts under parliamentary law.

These uncertain rules and times make very unlikely for citizens' draft bills to become law¹¹. We also have to consider that citizens' draft bills run the same risks of the laws presented in Parliament by its members. It is uncertain if the Parliament is obliged to decide on citizens' draft bills and it is also discussed in the legal doctrine whether the discussion and approval by the parliament should be considered mandatory.

As a matter of fact, about this topic the doctrine is divided: some say there is a requirement of approval by the Parliament and others as there is no obligation to provide.

Anyway this initiative should at least be considered by both Chambers, but in most cases there is no assignment to the Committees or discussion and the practice shows that this does not happen, due to the absence of certain terms and penalties.

The doctrine is also divided on the beginning of the process, particularly wondering if it involves the obligation to examine the draft bill or even impose a resolution of Parliament¹². Many think that the obligation runs out in a mere impulse¹³ or in the allocation to the Commission, while every other iter passage would not be a result of the initiative but of other circumstances in which the citizens' can't have power and influence.

It follows a process that, except for the rules for presentation, is identical to any other draft bills; in the legal doctrine is discussed whether the popular legislative initiative should prevail over the parliamentary one¹⁴ or it should be formally intended as complementary¹⁵, at the same level as government initiative.

The draft bills should create a necessary situation in the committees and in the assemblies, claiming the need for the process to take place until a final ruling, without power of choice by the Chambers, constituting an obligation constitutionally imposed¹⁶. However, even more binding rules would not eliminate the risk that the text of the draft bill, after being allocated to the competent

¹¹ The need to enhance the citizens' initiative for in the parliamentary activity was raised and the reform work of the Chamber of Deputies rules of procedure, currently inactive at the Giunta per il Regolamento, is working on a basic text to introduce the art. 100 bis. Specifically, it has been proposed automatic scheduling for discussion of the draft bill, after a certain period of time from the presentation, along with a greater role of the commissions that the proposals are taken into account within one month from the allocation.

¹² In favor of the obligation of deliberation E. SPAGNA MUSSO, *L'iniziativa legislativa nella formazione delle leggi italiane*, vol. I, Jovene Editore, Napoli, 1958, p. 285 and M. CAPURSO, *I poteri di democrazia diretta: norme costituzionali e leggi di attuazione*, Cedam, Padova, 1975, p. 475.

¹³ There is no obligation to vote on the draft bill according to R. DICKMANN, *Procedimento legislativo e coordinamento delle fonti*, Cedam, Padova, 1997, p. 4 ff.

¹⁴ See F. CUOCOLO, *Saggio sull'iniziativa legislativa*, Giuffrè, Milano, 1971, p.41.

¹⁵ E. SPAGNA MUSSO, *ivi*, p. 248 ff.

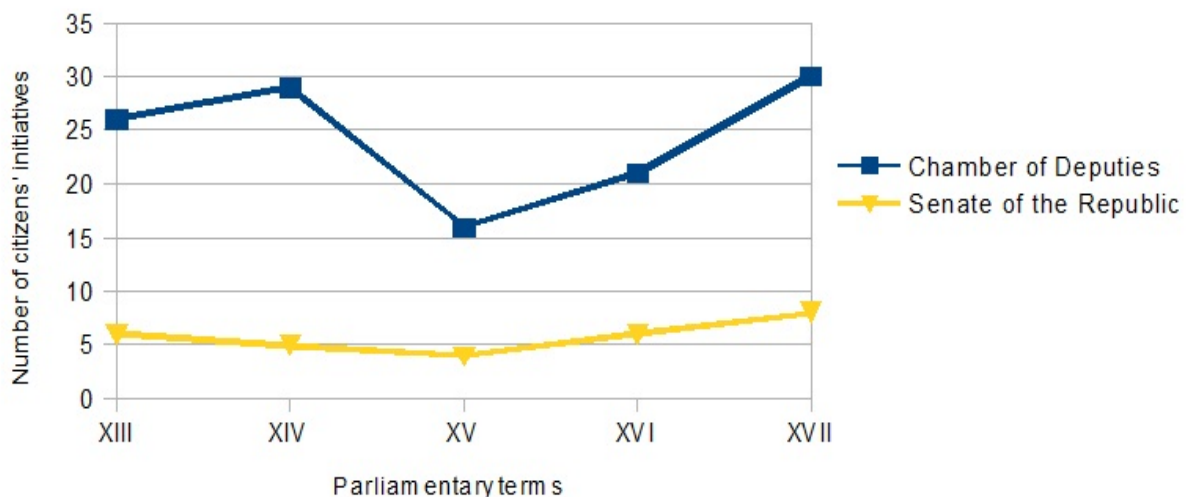
¹⁶ F. CUOCOLO, *ivi*.

Commission, is matched with another draft bill and risks a loss of identity, often nullifying the initial citizens' will.

2.1 Data about citizens' initiative in Italy and the news provided by the Renzi-Boschi constitutional reform

The first popular legislative initiative dates back to 1956 and was presented during the second parliamentary term. Citizens' initiative has developed little until the eleventh; from that period on, at least one citizens' draft law was presented, always to the Senate of the Republic. During the seventies none of the drafting bills presented by citizens became law. The first citizens' draft bill concerned amnesty and pardon, subjects that can't be the subject of a referendum as determined by the Constitutional Court, which has also identified other limits: the referendum is also excluded in the tax laws and budget laws and authorizing the ratification of international treaties, also for the supplementary role of citizens' initiative compared to the governmental one¹⁷, even because the people doesn't have the people have no elements to support the financial valuation which underpins it¹⁸.

Fig. 1 The development of citizens' initiative in the past parliamentary terms



Source: database of Italian Senate

¹⁷ See E. SPAGNA MUSSO, *Scritti di diritto costituzionale*, vol. I, Giuffrè, Milano, 2008 p. 253. Among those who argue that the limits to citizens' initiative are the same as referendum C. MORTATI, *Istituzioni di diritto pubblico*, Cedam, Padova, 1991, p.397.

¹⁸ Cf. E. SPAGNA MUSSO, *ivi*, p. 254.

Looking at the draft bills approved in the current legislature, we can notice that, according to the Senate of the Republic database, only one out of ten proposals became law. Four draft bills have been absorbed, one was approved with amendments and four have been absorbed into draft bills coming from different initiative. If we consider the times of approval, governmental proposals need about 77 days to be approved, parliamentary proposals about 245 days¹⁹.

Providing some data to support the failure of this instrument: during the XII parliamentary term, from 1994 to 1996 were presented 12 draft bills (4 were presented to the Senate of the Republic and 8 to the Chamber of Deputies) and only one of them became law.

During the XIII parliamentary term (1996-2001) were presented 33 draft bills (26 to the Chamber of Deputies and 7 to the Senate of the Republic). Four of them became law because they were included in other draft bills. Three of them were on constitutional matters: about Padania parliament and the reform of the fifth title of Italian Constitution. During XIV parliamentary term (2001-2006) 29 draft bills were presented and three of them were included in other laws: Bossi Fini law about immigration and a law about energy. XV parliamentary term 20 draft bills were presented (16 to the Chamber of Deputies and 4 to the Senate of the Republic) none became law. During XVI legislature (2008-2013) 27 draft bills were presented (21 to the Chamber of Deputies and 6 to the Senate); two of them regarded constitutional matters and one of them was included in l. n. 96/2012 about public financing to political parties. Italians showed their interest about political themes electoral matters. Some electoral laws are the result of citizens' initiatives, merged into draft bill with a different background: the so called *Italicum*, for instance (l. n. 52/2015), and before it Mattarella law (n. 276/1993).

Between 2012-2016 three citizens' draft bills have been approved included in other laws which followed parliamentary initiative: three of them were about the election of the Chamber of deputies (l. n. 52/2015, mentioned above) and another one about public financing to parties (l. n. 96/2012) and also another law about measures to promote workers' legality and protection in seized and confiscated companies which belonged to organized crime.

It should be observed that also many of the draft bills proposed in Parliament don't become law, because the role of executive power is really relevant in legislative matters: the origin of legislative initiative often determines the success of the draft bill and its approval. This circumstance has been recently confirmed also by the report published by the Chamber of Deputies Study Service about the seventeenth legislature legislation, which highlights the prevalence of Government legislative initiative, that amounts to 80,65% of the draft bills, thanks to the role played by the laws of

¹⁹ Cf. *Leggi di iniziativa popolare, dimenticate dalla nostra politica*, blog.openpolis.it.

conversion, ratification, budgetary laws, as well as the government obligations in transposition of European legislation provided by l. n. 234 of 2012²⁰.

To encourage citizens' participation there were perpetrated many attempts²¹ to amend the actual discipline about citizens' initiative and some of the suggestions and work done by bicameral committees and proposals of reform have been incorporated in the so called "Renzi- Boschi" constitutional reform law, which failed after the constitutional referendum of the last fourth December.

They were perpetrated many attempts to amend the discipline about citizens' initiative: to overcome the existing problems in the fifteenth parliamentary term in the Senate it has been proposed to amend the Parliamentary rules and include the draft bills proposed by citizens in parliamentary work schedules, increasing the role of the petitioners during the exam in committee. Something similar had been also proposed at the end of the sixteenth legislature, to ensure space and time in the work schedule to citizens' initiatives²².

Already in the eighties, Bozzi bicameral commission, during the ninth parliamentary term, had proposed to raise to 100,000 the number of subscriptions necessary to the exercise of popular legislative initiative, introducing the right to a representative of the promoters to attend the sessions of the Commission responsible, without voting rights; induce the Parliament to decide on the project within 20 months, with reference to the parliamentary rules to establish the terms and conditions, to ensure compliance with the provision. Also in D' Alema bicameral Commission (XIII parliamentary term) was suggested to reformulate the institute, and it was also suggested the introduction of proactive referendum, recently taken up by Renzi Boschi Constitutional Reform.

²⁰ Cf. *Camera dei Deputati, Osservatorio sulla legislazione, Rapporto 2015-2016 sulla legislazione tra Stato, Regioni e Unione Europea*, vol II, p. 337, *camera.it*.

Taking into account the Senate of the Republic statistics, which divided the laws according to the origin of legislative initiative, on 301 promulgated laws only one of them became from citizens' initiative and regarded the election of the Chamber of Deputies, and it was included in the l.52/2015; 238 of them are the result of government initiative (8 of them only from the beginning of 2017 and four of them are ratified laws) and 61 of parliamentary initiative. Cf. <http://www.senato.it/leg/17/BGT/Schede/Statistiche/Leggi//DDLLeggiApprovatePerIniziativa.html>.

On this subject cf. also N. LUPU, *Il ruolo normativo del Governo*, in *Il Filangieri*, Quaderno 2010, Jovene Editore, Napoli, p. 82 ff.

²¹ Since the Constituent Assembly Mortati wanted, in case of inactivity, if the draft bill had been proposed with one hundred thousand signatures, to recognize the possibility to call a referendum.

²² Compare with Doc. II, n.2, Communication to the Senate Presidency, 6th may 2008 and Giunta per il regolamento della Camera dei deputati, XVI parliamentary term, summary report of 18th January 2012, in particular the deputies Bocchino's and Favia's interventions.

ART 71 of Italian Constitution (still in force)

“Legislation is initiated by the Government, by each Member of Parliament and by those entities and bodies so empowered by constitutional law. The people may initiate legislation by proposing a bill drawn up in sections and signed by at least fifty-thousand voters”.

ART. 71 of Constitutional Reform submitted to referendum

“Legislation may be introduced by the Government, by each Member of Parliament and by those entities and bodies so empowered by constitutional law.

The Senate of the Republic can, with a resolution adopted by the majority of its members, ask the Chamber of Deputies to examine a draft bill. In this case, the Chamber of Deputies examine the text and take a decision within six months from the decision of the Senate of the Republic.

The people may initiate legislation by proposing a bill drawn up in sections and signed by at least one hundred fifty thousand voters. The discussion and final decision on draft bills coming from citizens' initiative are guaranteed according to times, forms and within the limits established by parliamentary rules.

In order to promote the participation of citizens to the determination of public policies, constitutional law establishes the conditions and effects of popular proactive and advisory referenda, and other forms of consultation, including those of social formations. The implementing arrangements are disposed by law approved by both chambers”.

It is interesting to point out that the ordinary government draft bill (A.S. 1429) was not concerned with participatory democracy. Innovations in Articles 71 and 75 were introduced at first reading in the Senate, with significant changes compared to what was proposed in the Committee on Constitutional Affairs.

The Constitutional Reform tried to improve the involvement of citizens in public life and decisions by modifying article 71 and was expected to increase the quorum for the presentation of draft law, reflecting the need to adjust the quorum to the current population, raising the signatures needed from fifty thousand to one hundred fifty thousand. This number is lower than what was approved in committee, which required a number of signatures equal to two hundred fifty thousand; in the Chamber of Deputies, during parliamentary works, was proposed to erase this number to 500.000 and establish a referendum after the negative decision of the Chambers or the exam of the draft law within six months. Some attempts in this direction have been perpetrated by some regions, such as Liguria, where the art. 7, paragraph 2 of the Statute provides that the Regional Council should decide definitively on popular initiatives within one year after their submission but the law is not effective because there is no sanction for non-compliance with the rule.

Doubts about the new article as proposed arised mainly from the procedure, that would have to be regulated by a subsequent law and the implementation of art.71 would have required a very fast drafting of new parliamentary rules to establish times, forms, limits of discussion and decision on citizens' draft bills.

The cross reference present to rules of procedure, which implied their change, could have been the opportunity to introduce something that have been discussed for a long time during many attempts to change article 71 that tried to valorize citizens' initiative, but it was also an element of uncertainty. The second paragraph of article 71 makes mandatory taking into account the draft law, also the citizens' one, if the Senate of the Republic decides so, giving the new Senate the power to exercise impulse to make the Chamber of Deputies examine the draft law, even if it couldn't have received citizens' draft laws anymore, contrary to what happens, having the Senate more favorable parliamentary rules, as explained above.

The fourth paragraph introduces two new important institutes of direct democracy, to encourage citizens' participation to public decisions. This paragraph was not ready to be applied because it was necessary a constitutional law to define conditions and effects of these two tipes of referendum, the proactive referendum and the advisory referendum, and also of the other forms of consultation, with an important referral to social formations.

However, despite this paragraph concerns the referendum, it had not been placed in the article of the Italian Constitution which deals with the referendum, art. 75, but in art. 71²³.

Proactive referendum was a totally new institute in Italian constitutional law experience. This instrument is reality in some regions of Italy, like Lazio, under art. 123 of Italian Constitution, where people who can propose a proactive referendum, under art. 62 of the Statute. The same subjects who can call a referendum to abrogate a law according to the region statute can present to the President of regional Council, following the same rules, a proposal. If the regional Council doesn't decide about the draft law within a year from the declaration of admissibility is the President who calls proactive referendum on it. To be successful must participate the majority of voters and occurs the majority of expressed voters. Within sixty days from the positive result of the referendum the Council is obliged to examine the draft bill, which doesn't decay at the end of the regional term: in this case the time limits run from the date of setting up of the new Council ²⁴.

²³ See more in E. LAMARQUE, last cited work, p. 172 ff.

²⁴ This regional referendum presents some limits: according to art. 63 the referendum can't relate to amendments to the Statute of the Region and to budget, financial or tax laws; it can't affect those pertaining to agreements with other regions and states or arrangements with local authorities in other states. M. LUCIANI, *Gli istituti di partecipazione popolare negli statuti regionali*, *issirfa.cnr.it*, 2006 detects this type of referendum provided at the regional level as a "real citizens' initiative"; M. OLIVETTI, *I referendum e altri istituti di democrazia partecipativa*, in *Studi in onore di Vincenzo Atripaldi*, vol I, Jovene Editore, Napoli, 2010, p. 697 finds it a "reinforced citizens' initiative" because of the

Advisory referendum was not totally new in our legal system because on 18th June 1989, during European Parliamentary elections took place also an advisory referendum about the chance to give the European Parliament the possibility to draft a project for European Constitution (this referendum was called by constitutional law n. 2 on 3rd april 1989).

We don't know if the constitutional reform would have solved some of the problems of participatory democracy: we have to consider that direct democracy instruments may not have a replacement role in democratic decisions but a role of help and support on certain subjects, giving advices about contents and creating political sensitivity when missing. Probably the new referenda were likely to have a symbolic value, and the present referrals to be devoid of binding effects.

The main problem of the instruments of direct democracy has always been in our country the effectiveness of popular participation to political and public decisions; actually the people doesn't have a true and effective initiative: its role is mainly a role of impulse to accelerate decisions, that have greater chance of success if they comply with government will. The element that made the doctrine believe that citizens' initiative is more an institute of participation than an institute of direct democracy is the fact that there is no real possibility of decision²⁵.

3. The role of the petitions in Italy: an instrument of pressure

The petition has an original vice: as an institute inherited from the absolute state, it has been perceived for a long time as a plea, a request, assuming that the applicant had no power to determine the sovereign will. Although in the meantime it has evolved in a public subjective right, the right to petition in its evolution hasn't been accompanied by an adequate discipline to make this tool more effective, that makes it still the weak voice of movements and interests²⁶. In particular, it allows citizens to go directly to the Chamber to request laws; according to articles 109 r.C. and n. 140 and 141 of r.S. there is no obligation to decide on petitions presented to the Chambers, because the main function of the petition is to put pressure²⁷.

majority required for the presentation of the draft bill and in the deadline for the exam of the draft bill by the regional Council. More about participation in regions of South Italy in the contribution of P. GAMBALE, *Brevi note sugli istituti della partecipazione nelle fonti statutarie e nei regolamenti consiliari di alcune regioni del Mezzogiorno d'Italia*, *osservatoriosullefonti.it*, 2010.

²⁵ N. RODEAN, *Iniziativa (legislativa) popolare. Profili di diritto costituzionale nel labirinto europeo*, Franco Angeli, Roma, 2015, p. 81 ff.

²⁶ In particular, two reasons have caused the inefficiency of petition: its structural characteristics and those relating to contingency of historical times. Petition besides would be a civic and not a political right. More about these topics in E. SPAGNA MUSSO, *Note sul diritto di petizione*, in *Scritti di diritto costituzionale*, vol. I, cited work, 153 ff.

²⁷ The right to petition does not guarantee any claim against Chambers, unlike popular legislative initiative which creates a true legal procedure and establishes an "active position" of citizens. cf. F. CUOCOLO, *Iniziativa legislativa*, in *Enciclopedia del diritto*, vol. XXI, Giuffrè, Milano, 1986, p. 630.

Although the petitions have not been touched by the efforts made by to constitutional reform to strengthen participatory democracy, petitions today are interesting for their contents and their sources, as they often consist in requests from civil society to the political class, and can be important opportunities for a dialogue between representatives and represented²⁸ which have recently collected some successes, especially through the use of those which have been defined “citizen media”²⁹.

The civil society pressure has recently contributed with a petition about transparency that led to the introduction of Freedom of Information Act: FOIA has become law in May 2016 also thanks to an online petition, which, also encouraged by the government will to introduce this important instrument of transparency in our legal system, collected 88000 signatures online on www.foia4italy.it and prepared a first draft law.

The efforts made by different associations, linked by the desire of introducing this instrument in our legal system and their activities in transparency and legality fields, certainly accelerated the process, making constant pressure on the government and becoming a qualified interlocutor for the government, in a dialogue with Consiglio di Stato and National Authority against Corruption.

From July to September 2014, the FOIA4ITALY organizations prepared a bill, asking the government to use it; then from October 2014 to January 2015 they opened online consultations for the innovation of the Civic on Access Act (Act n. 33/2013) and access to documents. In the autumn of 2014 the draft bill was presented to MPs Intergroup Innovation Deputies. The deputy Anna Ascani announced the Perugia journalism festival that the FOIA would be inserted in the law of public administration, on the recommendation of the Minister Madia, and based on the prepared text, which initially is very different from that intended. Also the Consiglio di Stato expressed its concern on some aspects of the new FOIA³⁰. Even in the field of exceptions, the State Council agrees with Foia4Italy: they were numerous and "not always on time" by providing factual wide discretion to the authorities, "*in the absence of more detailed criteria for the assessment of injury that publication may cause to the protected interests*". It was required a revision of the text, in the

²⁸ As also detected by M. DI NAPOLI, *La serie delle petizioni*, in AA. VV., *Le fonti archivistiche della Camera dei Deputati per la storia delle istituzioni. Convegno organizzato dall'Archivio storico della Camera dei Deputati*, Roma, 20 giugno 1995, Camera dei Deputati, Roma, 1996, p. 126.

²⁹ See P. GAMBALE, *Democrazia partecipativa e pubblicità dei lavori nelle proposte di riforma del Regolamento della Camera*, *osservatoriosullefonti.it*, 1/2014., p.2.

³⁰ In particular, they had an opinion with a further simplification via "the identification of a single office-door, for each administration, deputy to the reception and at the first instance management", without multiplying the options, which in fact only could confuse the applicant; if it could reduce the costs incurred by the administration, they would have been repaid by the applicants". It was also strongly criticized the mechanism of tacit refusal, because the lack of justification by the Public Administration could have represented a step back from the same law n. 241 of 1990; besides, the procedure didn't provide for sanctions.

name of a real simplification³¹. Also ANAC was concerned about the unclear exceptions, for example the limit related to "economic and commercial interests of a natural or legal person"; national security, the investigation of crimes and also criticized the only possibility of appeal to the TAR and the many exceptions provided. At that point takes the online petition reaches 88,000 signatures; in May 16, 2016 FOIA become a right of citizenship; many problems of the first text have been solved, after a dialogue in which civil society which had collected the signatures set itself as a qualified interlocutor for the government and public bodies involved.

However, the role of civil society is not over: it continues to monitor the implementation and effectiveness of this instrument. The adoption of Freedom of Information Act shows the contribution of civil society has been instrumental in making the decree a "real FOIA", solving many of the critical issues in the version approved preliminarily on 20 January³². Anyway, the critical issues are not missing. It affects, in particular, the absence of clear and strict penalties in case of unlawful refusal of access and the possibility that it will be applied in different ways by different administrations, giving rise to situations of inequality. Italian FOIA although still improvable, quickly adopted thanks to the pressure made by civil society, will be an essential tool to monitor the work of public administration, to know essential information about people communities and countering dishonesty and corruption.

4. Representative and participatory democracy at European Union level

The Lisbon Treaty established "Provisions on democratic principles" (Title II, Part I, Treaty on European Union, TEU), in which coexist elements of representative and participatory democracy. According to art. 10, the functioning of the European Union is founded on a particular kind of representative democracy, in which citizens are directly represented in the European Parliament, while Member States are represented in the European Council by their heads of State or

³¹ Cf. Consiglio di Stato, Opinion n. 515/2016, available at <https://www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/DocumentViewer/index.html?ddocname=ICFD7MT4S4JKTWAWXYBEGAD55U&q>.

³² The associations in the process of rielaboration of the text identified the "key points" of FOIA; in particular, they suggested:

1. The elimination of the "tacit refusal", which raised the government to state reasons for the refusal of access,
2. The elimination of applicants to identify "clearly" the subject matter of the access documents,
3. Approval of access gratuity in electronic and paper form, limiting the reimbursement to the proven costs for "playing on physical media",
4. The provision of non-judicial remedies, free and fast, in cases of failure or not,
5. The provision of operational guidelines that will guide the government in a homogeneous and rigorous application of the new rules.

Government. The Lisbon Treaty has tried to overcome the democratic deficit's objection with the statement that citizens are not only directly represented in the European Parliament, but also indirectly through the presence of their governments³³.

Actually, the problem persists also because the functioning of the European Union, as founded on representative democracy, is not sufficiently guaranteed even by the improved connection of European institutions with national parliaments or by the great transformations of the European Parliament's role³⁴. More, the art. 10 TEU concerns political parties at European level, which should contribute "to forming European political awareness and to expressing the will of citizens of the Union". This constitutional provision needs time to be enforced, as we can notice that the process of formation of genuine European political parties is *in fieri*, also because of the current prevalence of the national over the European political dynamics³⁵.

On the other hand, the European democracy has not only a representative dimension, but also a participatory one³⁶, since art. 10 TEU affords the right for every citizen to participate in the democratic life of the European Union, so "decisions shall be taken as openly and as closely as possible to the citizen". More specifically, is art. 11 TEU that rises the principle of participatory democracy as one of the Union's working tools, defining the principle of "participatory democracy within the Union" as the possibility for European citizens, associations and civil society to involve European institutions in an effective interaction, working alongside an open, transparent and regular dialogue.

Participatory democracy could be defined in a complementary way compared to representative democracy: as a matter of fact, participatory democracy embraces all the ways in which European citizens may affect European Union decision-making, other than through the exercise of their right to vote³⁷. Even without detailed examinations of participatory democracy instruments, it is

³³ C. PINELLI, *The provisions on democratic principles in the EU Treaties. The decision-making process*, in M. CARTABIA, N. LUPO, A. SIMONCINI (eds), *Democracy and subsidiarity in the EU*, Il Mulino, Bologna, 2013, p. 31 ff. See also, A. MANZELLA, *La democraticità del processo legislativo dell'Unione Europea* and N. LUPO, *L'iniziativa legislativa nella forma di governo dell'Unione europea ed il ruolo dei Parlamenti nazionali*, both in *Unione europea e principi democratici, Il Filangieri*, Quaderno 2014, Jovene Editore, Napoli, 2014, p. 17 ff.

³⁴ It has been noticed that control of government appears to date more significant than legislation among the parliamentary functions even at the national level; see A.W. BRADLEY, C. PINELLI, *Parliamentarism*, in M. ROSENFELD, A. SAJO, *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, Oxford, 2012, p. 650 ff.

³⁵ See, for instance, J. PRIESTLEY, *European Political Parties: The Missing Link*, in R. MATARAZZO (ed.), *Democracy in the EU after the Lisbon Treaty*, IAI Research Papers, Edizioni Nuova Cultura, Roma, 2011, pp. 15-42.

³⁶ Among others, A. BURATTI, *Cittadinanza e «vita democratica» nello spazio pubblico europeo*, in *Percorsi costituzionali*, 1/2010, pp. 135-147; D. SICLARI, *La democrazia partecipativa nell'ordinamento comunitario: sviluppi attuali e prospettive*, in *Dir. Pubbl.*, 2/2009, p. 596 ff; C. PINELLI, *Il deficit democratico europeo e le risorse del Trattato di Lisbona*, in *Rass. Parl.*, 4/2008, p. 931 ff; E. DE MARCO, *Elementi di democrazia partecipativa*, in P. BILANCIA, M. D'AMICO (eds), *La nuova Europa dopo il Trattato di Lisbona*, Giuffrè, Milano, 2009, p. 39 ff.

³⁷ A. SIMONCINI, *Beyond representative democracy: the challenge of participatory democracy and the boundless galaxy of civil society*, in M. CARTABIA, N. LUPO, A. SIMONCINI (eds), *Democracy and subsidiarity in the EU*, Il Mulino, Bologna, 2013, p. 45 ff.

important to note that participatory democracy, together with European institutions, must facilitate dialogue between European citizens, associations and civil society, thereby empowering the creation of a genuinely European public space.

5. The European citizens' initiative (ECI): a new democratic instrument

Within the framework described above, the European Citizens' Initiative (ECI) is a new tool introduced by the Lisbon Treaty to increase participatory democracy in the EU and empower citizens to be involved in decision making at European level. The ECI allows one million European citizens from one quarter of Member States to request the European Commission to bring forward measures within its competencies to implement the treaties³⁸. After the Lisbon Treaty this new instrument “will introduce a whole new form of participatory democracy to the EU. It is a major step forward in the democratic life of the Union. It's a concrete example of bringing Europe closer to its citizens”³⁹.

In the awareness of the European democratic deficit, the principle of participatory democracy was included in the European constitutional project. Popular participation from below had to be translated into real institutions, so the ECI has become the institutional expression of direct democratic participation in the EU legislative process⁴⁰. After the failure of the European constitutional project, ECI was introduced in the Lisbon Treaty. The rules that constitute the legal basis are two. On the one hand the substantial aspects, namely the provision that enables one million citizens from at least one quarter of the Member States, to ask the European Commission, within the framework of its powers, to submit a legislative proposal on matters where citizens consider that a legal EU act is required to implement the Treaties, as provided by Article 11(4) of TEU⁴¹; on the other hand, the Article 24(1) of the Treaty on the Functioning of the European Union (TFEU)⁴²,

³⁸ L. B. GARCIA, J. GREENWOOD, *Introduction*, in *Perspectives on European Politics and Society* Vol. 13, No. 3, pp. 251–256, September 2012.

³⁹ Maroš Šefčovič, Vice-President for Inter-Institutional Relations and Administration, in the official press release welcoming the speed of agreement between the European Parliament and Council on the realization of this new democratic innovation during the presentation of the Regulation (EU) 211/2011 approved on the 16 February 2012 regarding the European citizens' initiative.

⁴⁰ N. RODEAN, *Iniziativa partecipativa in Europa: un passo verso la democrazia costituzionale*, in *Politica del diritto*, 3/2014, p. 473 ff., September 2014.

⁴¹ Article 11(4) TEU: “Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties. The procedures and conditions required for such a citizens' initiative shall be determined in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union”.

⁴² Article 24(1) TFEU: “The European Parliament and the Council, acting by means of regulations in accordance with

which lays down the procedural aspects of the ECI stating that the Treaty rules are to be implemented through a special *ad hoc* Regulation⁴³.

The ECI is a concrete instrument of transnational democracy since it does not modify the hybrid character of the European institutional system, or try to solve the problem of the democratic deficit through the construction of an European *demos*. The new element is the introduction of a transnational tool that can give away to European legislation. Since the European *demos* come from national *demoi*, the instrument available to European citizens is more like a form of petition and not a right of initiative in the strict sense of the term, also because of the lack of European referendum. In the literature, a popular initiative that does not lead to a final popular vote is not considered an instrument of direct democracy, but a collective right of petition to be included in the category of participatory democracy institutions. The ECI in fact is a tool of participatory democracy. It is an indirect initiative instrument through which European citizens may invite the European Commission to initiate the legislative process. Since the legislative initiative is the exclusive monopoly of the European Commission⁴⁴, the ECI is only a first step in the legislative process, in fact it is “an initiative of an initiative”⁴⁵.

5.1. ECI: definition and requirements

The ECI is a new tool in European union, so it could be useful to define more clearly what the ECI is and what it is not. Through this instrument one million citizens can invite the Commission to take an initiative. The ECI was designed in a way that does not legally challenge the Commission’s monopoly of legislative initiative. Now one million citizens will have the same right of asking the Commission to act as Parliament and the Council⁴⁶. This right consists in an invitation, so it is clear that citizens can invite the Commission to act, without obliging this institution to carry out that specific initiative projected by the citizens, leaving the Commission with the political discretion to accept or reject the citizens’ initiative. Another important aspect are the material limits of the ECI. The Lisbon Treaty sets two types of limits. Firstly, the ECI must fall inside the powers

the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens’ initiative within the meaning of Article 11 of the Treaty on European Union, including the minimum number of Member States from which such citizens must come”.

⁴³ A. SIMONCINI, E. LONGO, *Il primo scoglio del diritto di iniziativa dei cittadini europei*, *osservatoriullefonti.it*, 3/2013; Regulation (EU) 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative (hereinafter Regulation (EU) 211/2011).

⁴⁴ Article 17(2) TEU: “Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Treaties so provide”.

⁴⁵ N. RODEAN, *ivi*, p. 473 ff.

⁴⁶ Articles 241 and 255 of the TFEU.

of the Commission to propose legislation and so the ECI cannot be used to introduce legislative proposals in fields where the Commission does not have a capacity to act, such as defence or foreign policy. Secondly, the initiative must have the aim of implementing the Treaty, it must have a legal basis in the Treaty and contribute to achieve the Treaty's values and objectives. It cannot thus be used to create new policy areas⁴⁷.

It is also relevant to consider what the ECI is not. Article 11(4) TEU does not entitle the proponents or the Commission to call for a European referendum on the subject of the initiative. Nor is there any such provision in the ECI Regulation (EU) 211/2011. This means that it is not a direct democracy device where citizens can call fellow citizens to give their opinion in a referendum initiative. The ECI instrument is merely an agenda-setting initiative, "a mechanism of participatory democracy which is fully subordinated to the political will of the representatives that could approve, alter or reject the citizens' proposals"⁴⁸. The ECI, as defined in the Lisbon Treaty and more in Regulation (EU) 211/2011, is a mechanism of transnational participatory, rather than direct democracy⁴⁹. Definitely, the European citizens' initiative is a 'non-binding agenda-setting' version⁵⁰ differing from most of Member States' mechanisms, where citizens can forward the proposal directly to the legislative chamber, an option which is not possible at European level due to the presence of the Commission⁵¹. The EU invites citizens to participate via the ECI, but representative institutions remain in control of the process. The ECI thus remains fully coherent with a representative democracy framework. Otherwise, the ECI is not a petition, with which it is usually confused, in particular in contexts where initiative mechanisms do not exist (see below).

The ECI provides several requirements, largely set forth in Regulation (EU) 211/2011, and only minimally set out in Article 11 (4) of the TEU. A first requirement in the presentation of ECI is the representativeness *quorum* which is based on a threefold parameter: the minimum number of European citizens within the overall European union, the minimum number of Member States and the minimum number of citizens coming from each member State. The Article 11(4) TEU states

⁴⁷ L. B. GARCÍA, *The Significance of the European Citizens' Initiative for Pan-European Participatory Democracy*, International Institute for Democracy and Electoral Assistance (International IDEA), 2013, pp. 13-14.

⁴⁸ V. CUESTA LÓPEZ, *A Comparative Approach to the Regulation on European Citizens' Initiative*, in *Perspectives on European Politics and Society*, Vol. 13, No. 3, p. 257 ff., September 2012.

⁴⁹ M. SOUSA FERRO, *Popular Legislative Initiative in the EU: Alea Iacta Est* in *Yearbook of European Law 2007*, v. 26, 355-385 and in particular a comprehensive table on p. 360; M. DOUGAN, 'What are we to make of the Citizens' Initiative?', in *Common Market Law Review*, Issue 6, Vol. 48, 2011, pp. 1821-1822.

⁵⁰ J. THOMSON, *A space inside Europe for the public before a European public space: The European Citizens' Initiative and the future of EU public engagement*, Involve Research Paper, Paper prepared for the conference 'Getting European Citizens' Initiatives started', Brussels, Belgium.

⁵¹ P. PONZANO, *A Million Citizens Can Request European Legislation: A Sui Generis Right of Initiative*, ECAS, Conference on Citizens' Initiatives: Getting Citizens' Initiatives Started, Bruxelles, 17.03.2011, European University Institute. www.ecas-citizens.eu.

“one million citizens” and “a significant number of member States”, but we find more specific requirements only in the Regulation (EU) 211/2011. In order to ensure that a proposal is genuinely representative of a Union-wide interest, a territorial element was added to the one million signatures threshold. The Regulation establishes a double majority requirement. First, is the requirement for signatures to have come from at least one quarter of Member States, while second is the minimum threshold of signatures to be met in each single Member State, which is established by multiplying the number of MEPs of the Member States concerned by a factor of 750⁵². The mechanism is constructed in such a way as to require a proportionately lower number of signatories for most populous Member States and a proportionately higher number for States with a population less numerous. Some authors argue that such a territorial distribution requirement is of federalist nature⁵³.

A second category of requirements relates those who can present and sign the ECIs. On the one hand, the minimum age to sign a popular initiative is that set out by the respective national laws of the European Parliament elections⁵⁴. You need not be registered with the national electoral rolls, but simply the fulfilment of the required age at the time of subscription. Currently, the minimum age is 18 years in all Member States, except for Austria and Latvia where it is 16 years⁵⁵. On the other hand, an ECI can be organised and endorsed by a specific body of natural persons: citizens of the Union and, therefore, nationals of a Member State. Under Article 2(3) of the Regulation on the citizens’ initiative, the organisers can be only natural persons⁵⁶. The popular initiative must be supported by a committee composed of at least seven citizens who are residents of at least seven

⁵² Regulation (EU) 211/2011, *Article 7*, Minimum number of signatories per Member State:

“1. The signatories of a citizens’ initiative shall come from at least one quarter of Member States. 2. In at least one quarter of Member States, signatories shall comprise at least the minimum number of citizens set out, at the time of registration of the proposed citizens’ initiative, in Annex I. Those minimum numbers shall correspond to the number of the Members of the European Parliament elected in each Member State, multiplied by 750”.

⁵³ A. AUER, *European Citizens’ Initiative*, in *European Constitutional Law Review*, 1(1), 2005, p. 79 ff.

⁵⁴ Regulation (EU) 211/2011, *Article 3*, Requirements for organisers and for signatories:

“1. The organisers shall be citizens of the Union and be of the age to be entitled to vote in elections to the European Parliament. 2. The organisers shall form a citizens’ committee of at least seven persons who are residents of at least seven different Member States. The organisers shall designate one representative and one substitute (‘the contact persons’), who shall liaise between the citizens’ committee and the institutions of the Union throughout the procedure and who shall be mandated to speak and act on behalf of the citizens’ committee. Organisers who are Members of the European Parliament shall not be counted for the purposes of reaching the minimum number required to form a citizens’ committee. For the purpose of registering a proposed citizens’ initiative in accordance with Article 4, only the information concerning the seven members of the citizens’ committee who are needed in order to comply with the requirements laid down in paragraph 1 of this Article and in this paragraph shall be considered by the Commission. 3. The Commission may request the organisers to provide appropriate proof that the requirements laid down in paragraphs 1 and 2 are fulfilled. 4. In order to be eligible to support a proposed citizens’ initiative, signatories shall be citizens of the Union and shall be of the age to be entitled to vote in elections to the European Parliament”.

⁵⁵ Point 7, Regulation (EU) 211/2011: “It is appropriate to fix a minimum age for supporting a citizens’ initiative. That should be set as the age at which citizens are entitled to vote in elections to the European Parliament”.

⁵⁶ Article 2(3) Regulation (EU) 211/2011: “‘organisers’ means natural persons forming a citizens’ committee responsible for the preparation of a citizens’ initiative and its submission to the Commission”.

Member States, so a transnational organizing committee is necessary⁵⁷. Within the Committee, which excludes MEPs although they may be part of it without being counted, they must be designated one representative and one substitute to be the contact persons and to ensure a dialogue between the Committee and the European Commission throughout the procedure⁵⁸.

A third requirement is related to subject matter: the Regulation states that the initiative should not manifestly fall outside the scope of the Commission's power of legislative initiative under the treaties. This means that the proposal should concern an area where the Union has competence to act. Article 4(2) of Regulation (EU) 211/2011 spells out the limits to the material scope of an initiative that condition registration⁵⁹. First, the initiative should not manifestly fall outside the scope of the Commission's power of legislative initiative under the treaties. So the proposal should involve an area where the Union has competence to act. The type of competence – exclusive, shared, parallel or complementing – is not relevant as long as the Commission has a right of initiative in the interested area. For example, this would not regard Common Foreign and Security Policy. Second, the proposed initiative should not be manifestly abusive, frivolous or vexatious. This refers to a scenario where the initiative is launched with aims different from the possible adoption of a legislative act by the Commission, for instance to raise visibility as in the case of Eurosceptic groups. Third, the initiative should not be manifestly contrary to the values of the Union as set out in article 2 TEU. So, for example, a proposed initiative should not go against the Charter of Fundamental Rights. Another aspect that could be considered is the possibility to amend existing EU secondary law, or even request a treaty amendment, through an ECI. To amend existing legislation would be admissible, but in the case of a Treaty amendment, it is the Commission itself that has the power to submit a proposal to the Council. Article 11(4) TEU seems to exclude the possibility for an ECI to amend Treaty because an ECI has to focus on the purpose of “implementing the Treaties”⁶⁰.

Finally, if all substantive and formal requirements are satisfied, the Commission has to register an initiative within two months. Once the Commission has registered a proposed initiative, the

⁵⁷ Article 3(2) Regulation (EU) 211/2011.

⁵⁸ N. RODEAN, *Iniziativa (legislativa) popolare. Profili di diritto costituzionale nel labirinto europeo*, Franco Angeli, Roma, 2015, pp. 217-218.

⁵⁹ Regulation (EU) 211/2011, Article 4(2), Registration of a proposed citizens' initiative.

“2. Within two months from the receipt of the information set out in Annex II, the Commission shall register a proposed citizens' initiative under a unique registration number and send a confirmation to the organisers, provided that the following conditions are fulfilled: [...] (b) the proposed citizens' initiative does not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties; (c) the proposed citizens' initiative is not manifestly abusive, frivolous or vexatious; and (d) the proposed citizens' initiative is not manifestly contrary to the values of the Union as set out in Article 2 TEU”.

⁶⁰ D. SZELIGOWSKA, E. MINCHEVA, *The European Citizens' Initiative—Empowering European Citizens within the Institutional Triangle: A Political and Legal Analysis*, in *Perspectives on European Politics and Society* Vol. 13, No. 3, p. 270 ff., September 2012.

organisers are responsible for collecting statements of support from signatories. This can be undertaken both in paper form and electronically⁶¹. Under article 5(5) of the Regulation, all statements of support must be collected after the date of registration of the proposed initiative and within a 12-month deadline⁶². Particularly other requirements apply to online collection system that must be certified in the Member State in which data will be stored and online systems should have to comply security features and techniques in force. Once all the signatures are collected, the organizers must submit them to the Member States of the signatories in order to verify them through adequate checks within a period of three months. If all conditions are met, the Commission must examine the citizens' initiative and, within three months, set out in a communication its conclusions on the initiative, the action it intends to take, if any, and its reasons for doing it⁶³.

5.2. ECI and petitions: differences and similarities

The ECI represents a major innovation for its ability to influence the Commission's work, encouraging the European public debate. Through this tool is guaranteed participation from below, without having to wait for the initiative emanates from the Commission and with an active role in European decision making by citizens. The ECI has many affinities with the right of petition⁶⁴, which constitutes a completion⁶⁵, while being independent⁶⁶. Both, in fact, on the initiative of several people can lead to the adoption of an act by the European Parliament, but they differ for the position in relation to the recipients and assumptions. In the first aspect, while the initiative is addressed to the Commission, the petition to Parliament. The latter concerns, in particular, Union citizens as stakeholders, directly or indirectly involved by asking the parliamentary body in charge. Against, “the ECI enables Union citizens to participate directly in the exercise of the European

⁶¹ Regulation (EU) 211/2011, Article 5(2): “2. The organisers may collect statements of support in paper form or electronically. Where statements of support are collected online, Article 6 shall apply. For the purpose of this Regulation, statements of support which are electronically signed using an advanced electronic signature, within the meaning of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, shall be treated in the same way as statements of support in paper form”.

⁶² Regulation (EU) 211/2011, Article 5(5): “5. All statements of support shall be collected after the date of registration of the proposed citizens’ initiative and within a period not exceeding 12 months. At the end of that period, the register shall indicate that the period has expired and, where appropriate, that the required number of statements of support was not collected”.

⁶³ D. SZELIGOWSKA, E. MINCHEVA, *ivi*.

⁶⁴ B.K AUFMANN, *The “new” participative paradigm. How the European Citizens’ Initiative can become the standard bearer of 21st century super-democracy*, in *The European Citizens’ Initiatives. Into new democratic territory*, by B. KAUFMANN, J.W. PICHLER, Vienna, 2010, p. 35 ff.

⁶⁵ A. MAURER, S. VOGEL, *Die Europäische Bürgerinitiative im Kontext des EU-Systems. Chancen, Grenzen und Umsetzungsempfehlungen*, Berlino, 2009, p.12 ff.

http://www.swp-berlin.org/fileadmin/contents/products/studien/2009_S28_mrr_vogel_ks.pdf.

⁶⁶ A. GUCKELBERGER, *Die Europäische Bürgerinitiative*, from *Die Öffentliche Verwaltung*, 2010, p. 747.

Union's sovereign powers by giving them the possibility, like the Council or the European Parliament, to request the Commission to submit a legislative proposal”⁶⁷.

The automatic start of the procedure marks the difference between the popular initiative indirect and the right to petition. At national level, the correct presentation of the initiative to the Parliament automatically open proceedings. In the case of ECI, the Commission is the organ legislature, not made up of representatives of European citizens, performing a preliminary check of the formal and substantive requirements of the initiative before the decision-making process⁶⁸. The ECI seems to be a much more effective tool than the right of petition. While the former relates to issues affecting the single proponent, the right of initiative does not provide for a similar limitation. This aspect justifies the different objective and subjective limitations that exist. The right of initiative must be respected in the common interest and the European law, and such restrictions are not present as the right of petition, which primarily protect individual interests. This also involves another feature: the popular initiative is not related to national issues, but only areas of European importance, which requires some knowledge of European Union law. This is not necessary for the petition, that most of the time invested significant events exclusively national. In addition, the petition may be filed by an individual (including an individual outside the European Union), that is resident in a Member State, as the ECI requires subscription by at least one million EU citizens in a significant number of Member States⁶⁹.

Finally, one last point should be mentioned. In 2012 the European Parliament approved an amendment to its Rules of Procedure, trying to create a further bridge between the right of initiative and petition. Particularly, it has been added *ex novo* the article 203 bis⁷⁰, whose ratio is to still groped to “convert” the initiative in a direct discharge to the Committee on Petitions, which will make application of the rules of procedure of the European Parliament, adapting them to the specific case.

⁶⁷ Committee on Constitutional Affairs 3.2.2009 Report on “requesting the Commission to submit a proposal for a regulation of the European Parliament and of the Council on the implementation of the citizens’ initiative” (2008/2169(INI))

⁶⁸ N. RODEAN, *Iniziativa partecipativa in Europa: un passo verso la democrazia costituzionale*, cited work., p.473 ff.

⁶⁹ M. MEZZANOTTE, *Il diritto di petizione nell’Unione europea: uno strumento davvero mineur?*, in *Federalismi.it* n.21/2012, p. 14 ff.

⁷⁰ Amendment of Parliament's Rules of Procedure with regard to the implementation of the European citizens’ initiative P7_TA(2012)0213. European Parliament decision of 22 May 2012 amending Parliament’s Rules of Procedure with regard to the implementation of the European citizens’ initiative (2011/2302(REG)). Amendment 2 Parliament’s Rules of Procedure. Rule 203 a: “When Parliament is informed that the Commission has been invited to submit a proposal for a legal act under Article 11(4) of the EU Treaty and in accordance with Regulation (EU) 211/2011, the committee responsible for petitions shall ascertain whether this is likely to affect its work and, if need be, shall inform those petitioners who have addressed petitions on related subjects. Proposed citizens’ initiatives which have been registered in accordance with Article 4 of Regulation (EU) 211/2011, but which cannot be submitted to the Commission in accordance with Article 9 of that Regulation since not all the relevant procedures and conditions laid down have been complied with, may be examined by the committee responsible for petitions if it considers that follow-up is appropriate. Rules 201, 202 and 203 shall apply *mutatis mutandis*”.

6. ECIs and European Commission

Since the entry into force of the Lisbon Treaty, the ECI has been described as “one of the most visible and concrete expressions of the innovations brought by the Lisbon Treaty”⁷¹. However, evaluations tend either to overestimate expectations of the ECI or to diminish its significance. For instance, the ECI is sometimes hailed as a way in which EU citizens could affect the European policy-making process in all policy areas, but otherwise there are also sceptical conceptions of the ECI that argue that just like previous attempts with European participatory mechanisms it will not succeed in bringing citizens closer to the EU. The aim of this section is to examine main challenges and issues of ECI, particularly about the role of the Commission.

The Commission is the nucleus of investigation because the ECI’s political “impact and importance will entirely depend on the definition of the powers of the Commission as the addressee of the ECI”⁷². The European Commission will have to find a balanced position on the scale going from total submission towards total control. Auer describes the total submission position as a “mere connecting link” between the signatories of an ECI and the European legislators, while the total control position means that the Commission would abstain from putting ECIs through, even if they met all the formal requirements. Finding the right balance between these two options seems vital, because, for instance, in the case of total control, it would degrade the newly implemented procedure and reinforce the perception of the Commission as a technocratic and distant institution⁷³. In addition, a balanced approach could reinforce the Commission position when it advance legislation to the European Parliament and the Council. If specific ECIs were in line with the Commission’s agenda, having one million citizens signing such an initiative could be a powerful argument for the Commission in its dialogue with the Parliament and especially with the Council, in case of opposition by representatives of national governments⁷⁴.

Criticism about ECI focuses mainly on the possibility of the Commission to set aside one million signatures and the widespread existence of formalities, with the possibility that the simultaneous presence of both, it is argued, undermines the potential of the ECI⁷⁵. The major institution dealing with the ECI is the European Commission, which seems to have a complete discretionary powers

⁷¹ Council of the European Union, Presidency Note on the Proposal for a Regulation of the European Parliament and the Council on the Citizens’ Initiative (Brussels: European Union, 2010).

⁷² A. AUER, *European Citizens’ Initiative*, in *European Constitutional Law Review*, 1(1), 2005, p. 83.

⁷³ *Ivi*, p. 79 ff.

⁷⁴ D. SZELIGOWSKA, E. MINCHEVA, *ivi*, p. 270 ff.

⁷⁵ N. VOGIATZIS, *Is the European Citizen’s Initiative a Serious Threat for the Community Method?*, in *European Journal of Legal Studies*, Volume 6, Issue 1(Spring/Summer 2013), p. 91 ff.

in relation to the processing of the initiative, even because its only obligation is to justify and explain the possible absence of action (or the action), so “the Commission should explain in a clear, comprehensible and detailed manner the reasons for its intended action, and should likewise give its reasons if it does not intend to take any action”⁷⁶. This discretion raises a problem. While the first scanning as far as the admissibility of the ECI is concerned, *before* the collection of signatures is totally assumed, the possibility of an eventual refusal of the initiative on the basis of merits will leave citizens and civil society organizations fundamentally dissatisfied. Thus, the first level of scrutiny is an *ex ante* examination of procedural aspects in order to ensure that the initiative is not manifestly outside the scope of the Commission, is not manifestly abusive, frivolous or vexatious or is not manifestly contrary to the values of the Union as set out in article 2 TEU. However, after the collection and verification of signatures, the Commission should have been obliged to start the legislative procedure and consequently accept the replacement of its legislative initiative monopoly, not forgetting that, even in this situation, there would still be space for discussion in the Council and the European Parliament. In order to become EU law, the proposal would still have to be approved by the two European legislators, ensuring a last examination⁷⁷. Laurent argues that the Commission needs to act with “prudence” and to apply the standards of “sincere cooperation”, in order to avoid a perception of the instrument as a “democratic illusion”, from the citizens’ perspective⁷⁸, while Ponzano stresses on the “particularities of the European Union’s institutional system”, underlining that the citizens have been granted a right equivalent to the right of both European Parliament and Council⁷⁹.

7. ECIs' state of the art and problematic aspects

At the moment, 59 ECIs had been proposed, 39 of which were registered and 20 not registered (see Tab. 2). Up to now, there are two initiatives currently collecting statements of support and 20 initiatives that have reached the end of their collection period⁸⁰. Among them, three initiatives have

⁷⁶ Recital n 20 of Regulation (EU) 211/2011.

⁷⁷ See, for instance, P. GLOGOWSKI, A. MAURER, *The European Citizens' Initiative – Chances, Constraints and Limits*, in *Political Science Series*, 2013, Institute for Advanced Studies http://www.ihs.ac.at/publications/pol/pw_134.pdf. J. HIEN, *The European Citizens' Initiative*, in *The Lisbon Treaty Achievements and Challenges*, European University Institute Review (1), 2010, 23-25; P. M. KACZYŃSKI, *The European Citizens' Initiative: A Proper Response from the Commission*, Centre for European Policy Studies - CEPS Commentary, 2010.

⁷⁸ S. LAURENT, *Le droit d'initiative citoyenne: en attendant l'entrée en vigueur de la Constitution européenne*, in *Revue du Marché Commun et de l'Union Européenne*, 2006, p. 225.

⁷⁹ P. PONZANO, *ivi*.

⁸⁰ The data refer to the period until the end of 2016.

reached 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'. Only the Right2Water initiative was partially upheld by the Commission, since, in response to citizens who asked to act, the European Commission has merely assumed a commitment to take concrete measures and to “put on a series of new actions”, while the other two initiatives considered successful as far as the collection of signatures is concerned, they haven't obtained from the Commission a commitment to ensure that initiatives would be taken. Twenty registration requests have been refused, resulting from a mixture of bureaucratic interpretation by the European Commission, a lack of Treaty knowledge on the part of campaigners but also some degree of tactical use of the ECI mechanism by them. Since 2012, only 3 out of 39 registered ECIs have reached the final phase. There is also a dramatic decrease in the number of new initiatives, up to the current year in which only two new ECIs have been submitted. This strong drop-off could be one of the consequences of disproportionate requirements and of an unnecessarily complex system of ECI.

Tab. 2 Data about European Citizens' Initiatives (2012-2016)

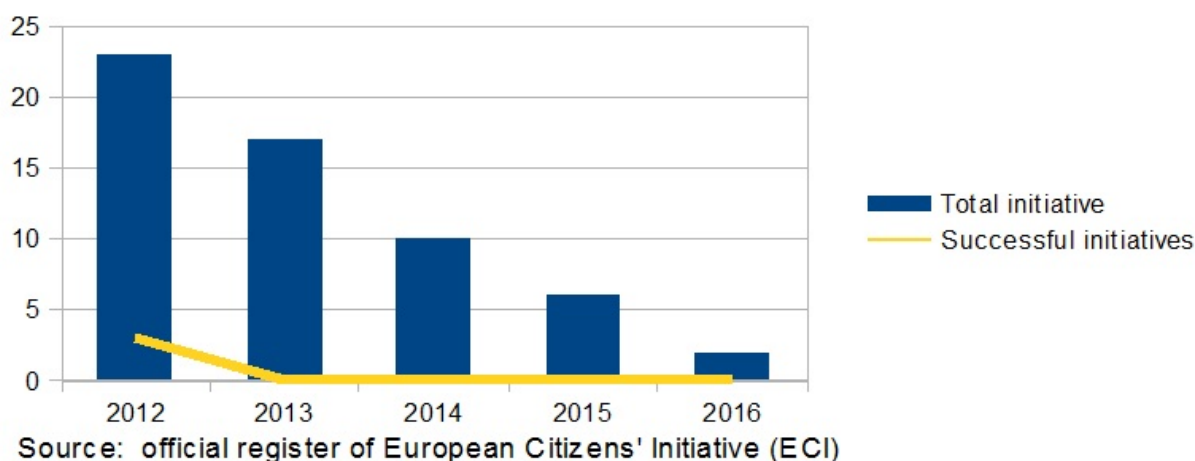
Registered					Not registered
Collection ongoing	Withdrawn by its organisers	Collection closed ⁸¹	Closed initiatives without the required support ⁸²	Successful initiatives answered by the Commission	Registration refused
2	14	2	18	3	20
39					

Source: official register of European Citizens' Initiative, December 2016

⁸¹ The Commission formally does not have any information about whether the organisers managed or failed to collect the required number of statements of support.

⁸² The Commission does not have official information regarding the exact number of collected statements of support for these initiatives.

Fig. 2 European Citizens' Initiatives



The Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) 211/2011 on the citizens' initiative⁸³ considers that the ECI has been fully implemented. At the same time, the Commission is aware that there is still room to get better. More specifically, the Commission would like to improve some technical or logistical aspects, but also issues of a more political nature. Citizens' committees lack of legal personality, so that several committees have reported concerns about liability and obstacles, for instance, to raise funds and manage data protection, especially in view of the fact that they reside in at least seven different countries. Registration of ECIs is still one of the major challenge for the organisers as an important number of proposed ECIs are manifestly outside the scope of the Commission's competences. Another problematic issue are the requirements for signatories: divergences between the conditions and personal data required from signatories by the different Member States remain an issue of concern, especially in the cases where citizens are as a result excluded from their right to support an initiative. Also the timeline of an ECI's lifecycle is challenging: organisers have indicated that the time needed to set up their online collection system means that in most cases, they have less than 12 months to collect and this should be remedied. The lack of a specific time limit for the submission of a successful initiative to the Commission is also a potential source for confusion and uncertainty both for the institutions and the public. Furthermore, some ECI organisers (and other stakeholders) consider that there is insufficient dialogue and interaction with the Commission at different stages of the ECI's lifecycle and in particular after the adoption of the Commission's Communication on

⁸³ Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) 211/2011 on the citizens' initiative, COM(2015) 145 final 31.3.2015. <http://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-145-EN-F1-1.PDF>

the citizens' initiative; particularly, they would like to see the examination and follow-up process more structured and to be more extensively involved therein.

Despite various potential and positive aspects, the ECI strongly appears limited under different points of view. First, a structural limit is derived from the definition of European citizenship⁸⁴ because of the failure to include the non-European citizens residing in a Member State among the subjects that can support the legislative initiative. Another limitation is the lack of general validity of the ECI, which is not aimed at any European Union measure, but limited only to matters in respect of which the EU citizens consider that a legal act is required. There are more problematic aspects: the lack of sufficient knowledge of the institute and ways to participate among European citizens, the procedural difficulties that the process of submitting an initiative presents, the inability to achieve levels of transnational consensus on issues that too often remain only at local or national level, the critical issues around some legal basis chosen by the organizers of the ECI to legitimize their initiative⁸⁵.

8. Recommendations to ensure that the ECI is an effective tool for participatory democracy

The European Parliament, through his resolution of 28 October 2015 on the European Citizens' Initiative (2014/2257(INI))⁸⁶, had expressed concerns about the ECI instrument and had highlighted some crucial aspects that could be improved, issues also emphasized by the PETI Committee's Draft Opinion and the AFCO Committee's Draft Report⁸⁷. The European Parliament focuses on the possibility that a dedicated ECI office could contribute to raising public and media awareness about the ECI and invites the Commission to promote the ECI as an official EU instrument in order to achieve this goal. It also calls for the future constitution of a physical and online "one-stop shop" providing, permanently, information, translation services and technical, legal and political support to ECI organisers⁸⁸. More, it supports the active participation of EU citizens in using this instrument

⁸⁴ E. TRIGGIANI, *La cittadinanza europea per la "utopia sovranazionale"*, in *Studi sull'integrazione europea*, 2006, p. 435 ff.; J. SHAW, *The Political Representation of Europe's Citizens: Developments*, in *European Constitutional Law Review*, n.4, 2008, p. 162 ff.

⁸⁵ N. RODEAN, *Iniziativa partecipativa in Europa: un passo verso la democrazia costituzionale*, cited work, p. 473 ff.

⁸⁶ European Parliament resolution of 28 October 2015 on the European Citizens' Initiative (2014/2257(INI)).

⁸⁷ Draft Opinion of the Committee on Petitions on the European Citizens' Initiative, 2014/2257(INI), 31.3.2015 http://www.europarl.europa.eu/meetdocs/2014_2019/documents/afco/pr/1054/105485_4/1054854en.pdf; Draft Report of the Committee on Constitutional Affairs on the Implementation of the European Citizens' Initiative, 2014/2257(INI), 19.3.2015, http://www.europarl.europa.eu/meetdocs/2014_2019/documents/afco/pr/1054/105485_4/1054854en.pdf

⁸⁸ This recommendation has been proposed also by Milieu's Study 'European Citizens' Initiative – First lessons of implementation'. Both the PETI Committee's Draft Opinion and the AFCO Committee's Draft Report have mentioned

appropriately for agenda-setting purposes. The Parliament has observed the potential conflict of interest given by the fact that the Commission has the exclusive responsibility of checking the admissibility of the ECIs, asking to solve this situation in the future. Furthermore, it was stressed that under the Article 4 of Regulation (EU) 211/2011, in the event of an ECI is not register by the Commission, the latter “shall inform the organisers of the reasons for such refusal”. Parliament acknowledges the many complaints from organisers about not having received complete and exhaustive reasons for the rejection of their ECIs, inviting the Commission to explain in detail the reasons for rejecting an ECI if it has been submitted “manifestly outside the Commission’s powers” and to inform the organisers of the relevant legal considerations. Parliament also underlines the need to link the online collection of signatures to the new social and digital media tools. Finally, it invites the Commission to reconsider the automatic link between the registration of an ECI and the beginning of the 12-month period within which the required signatures can be collected, so that the organisers of an ECI can decide when they wish to start to collect them.

Concerns and recommendations to make the ECI a more effective tool of participatory democracy were also expressed by a study⁸⁹ for the Committee on Petitions (PETI) prepared by the Directorate-general for internal policies (Policy department C: citizens' rights and constitutional affairs). Particularly, it has been suggested that the Commission should provide more information, more elaborated evidence and motivated arguments in their refusal or acceptance letters for registration of the ECIs. This supporting and explanatory activity should continue considering each of the different points of request of a projected ECI and clarifying EU competences in the area of the proposed ECI by providing concrete information on the measures taken and planned at EU level. More, the EU institutions should clarify the follow-up of unsuccessful ECIs, like the possibility to have a discussion instead of the presentation at the EP hearing, the chance to submit the ECI request as a petition to the European Parliament⁹⁰ or the option to deal with the requirements for an ECI as an European Parliament’s request to the Commission for a legislative act⁹¹. Finally, the Study for the Committee on Petitions (PETI) suggests the European Institutions should clarify the specific procedures in case the Commission follows-up.

this solution. See points 6 and 2 of the respective reports, links in the previous note.

⁸⁹ Directorate-general for internal policies. Policy department C (citizens' rights and constitutional affairs), “Towards a revision of the European Citizens' Initiative?”, Study for the PETI Committee, 2015, PE 519.240, pp.44-45.

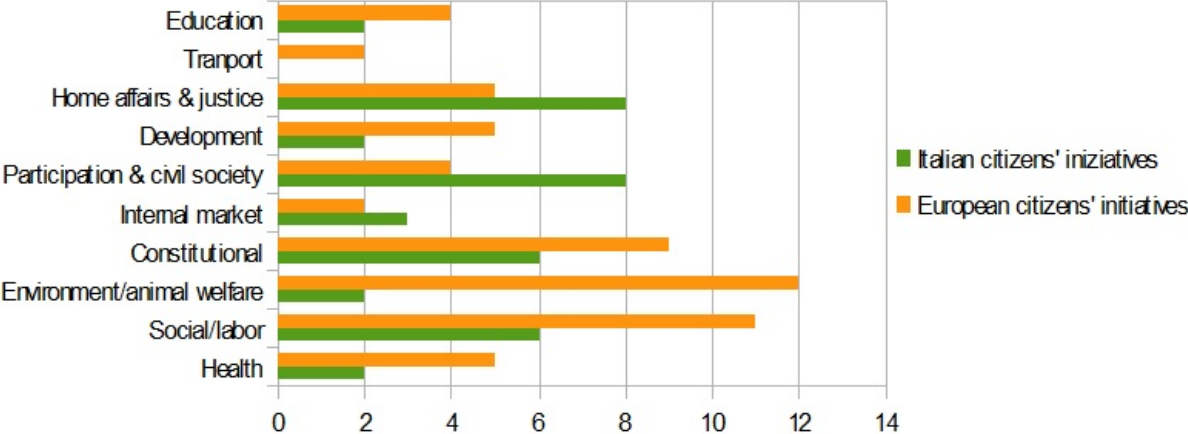
⁹⁰ Article 227 TFEU.

⁹¹ Article 225 TFEU (right of initiative).

9. Citizens' initiatives per policy domain in Italy and Europe from 2012 to 2016

An aspect often overlooked in terms of popular legislative initiative is related to the topics involved; taking into account the same period of time in Italy and in Europe, by analyzing the past four years (especially because the European experience has practiced the popular legislative initiative only from two thousand and twelve) we can compare the themes considered per policy domain.

Fig. 3 Citizens' initiatives per policy domain in Italy* and Europe (2012-2016)



* the graph doesn't consider 9 cases of Italian citizens' initiatives because they have not expired between the XVI and XVII parliamentary terms but they were automatically reiterated
 Source: database of Italian Senate and official register of European Citizens' Initiative (ECI)

Understandably, the most sensitive issues at European level mainly relate to the environment and animal welfare, social and labor. While animal and environment issue are a kind of general themes, which require joint efforts and coordination between countries (these are in fact the themes that often the European Union intervenes with regulations and directives), interest in social and labor issue seems to suggest that the European Citizens' Initiative could be an agenda-setting instrument, in areas where the civil society is particularly critical as far as the inadequacy of action by the EU in these fields is concerned⁹². Another area covered by legislative initiatives is the theme of constitutional issues, but these issues manifestly fall outside the scope of the Commission's power of legislative initiative under the treaties competences of the Commission, as it would require a

⁹² L. B. GARCIA, J. GREENWOOD, *The European Citizens' Initiative: a new sphere of EU politics?* in *Interest Groups & Advocacy*, 3 (3), 2014, pp. 258-259.

partial rewriting of the Treaties, so they are not even registered (for example, the initiative about the self-abolition of the European Parliament and its structures or the initiative concerning the possibility to hold an immediate EU Referendum on public confidence in European Government's (EG) competence).

On the contrary, at national level constitutional issues are strongly felt, with a particular sensitivity towards electoral issues and laws.

In Italy the issues of internal affairs and justice are the subject of numerous initiatives, especially pertaining to revisions of the criminal and immigration laws; of equal interest are the draft bills related to participation: in this case we witness the paradox that the main instrument of popular participation is used to increase, change or modify participation rules. This makes us think about the desire to participate in national policy decisions and the importance of actual or new instruments in case that the existing ones are not sufficient.

10. Final considerations: the actual impact of citizens' initiative under Italian and European perspective

Whatever the future of participatory democracy will be, one thing is certain: it will have to face many challenges to overcome some of the deficiencies which currently presents.

From the point of view of procedural assurances, we can identify limited guarantees after the presentation of draft bills in Parliament in Italy and before and after the yes/no answer of the European Commission.

Despite the European initiative shows a substantial formal advantage, consisting in sending the bill directly to the executive body, without facing a legislative process as a whole, differently in Italy the project is dispelled among many others. The actual impact still denotes the weakness of citizens' initiatives in lack of Parliament and Government or European Commission political will, which remains crucial⁹³. We can also notice that the chance of success is higher when the citizens' initiative, with its organized bodies (parties, associations, MPs) supports draft laws already under way, rather than engaging in new legislative proposals.

By recognizing the benefits of these institutes of direct democracy, in first place the chance to put an issue on parliamentary agenda, we also have to consider the risk of overestimating them,

⁹³ The fact that civil society organisations achieve more when their proposals are aligned with the institutional agenda than when they challenge it, is also underlined by C. RUZZA, *Advocacy Coalitions and the Participation of Organised Civil Society in the European Union*, in *Governance and Civil Society: Policy Perspectives*, Manchester University Press, Manchester, 2007, pp. 47-71.

because providing citizens with influence, when political parties are not listening to what citizens want or don't consider their needs as their political priorities, leads to the possibility that implementation and improvement of this democratic instruments is likely to enhance citizens' initiative at the expense of governmental and parliamentary will.

In terms of public participation, it arises often the problem of balance between the citizens' and parliamentary and governmental wills: in Italy, the obligation to ensure at least certain time for discussion, as provided in the constitutional reform recently rejected by constitutional referendum, would have presented the danger of devaluing the parliamentary legislative initiative, presenting the risk of placing them on two different levels.

At European level, we need to remember that even now the legislative initiative of the citizens equates the prerogatives that the Treaties assigns, regarding legislative initiative, to the European Parliament and the Council. An excessive reinforcement of citizens' initiative tool could threaten to alter the delicate and precarious European institutional balance, strengthening the institute directly representative of the will of the citizens at the expense of that of institutions such as Parliament and Council, as well as to the detriment of the principle of representation on which they are based.

We can't ignore the opportunities that citizens' initiative can offer to participatory democracy: first of all, the possibility for citizens to put pressure on Parliament and Government/Commission, in order to encourage the most shared policies. Besides, under Italian perspective, we can't ignore the strong attempt perpetrated by the Constitutional Reform bill to valorize participation, thanks to new instruments provided: proactive referendum and advisory referendum.

"Renzi-Boschi" constitutional reform contained the reference to "other forms of consultations": the meaning of this expression was very uncertain and seemed almost an auspice; also, it was likely to remain much longer ineffective, especially considering the hypothetical time of approval of the constitutional law and the law of implementation, which would have been approved by both chambers even in the case of a positive outcome of the referendum, because implementing laws about referendum, as constitutional laws, would have fallen in bicameral legislation subjects⁹⁴.

In Italy there is no limit caused by the difficulty of drafting a proposal at the technical level, because the promoter committees are properly organized. The greatest limitation derives mainly from the absence of any obligation for the Parliament to consider the bill and discuss it. One of the obstacles, in addition to the procedural ones, of the citizens' initiative is probably related not only to the lack of political will, but also to the inability to overcome the economic sustainability of the

⁹⁴ Especially if we consider, as well as noted by A. PERTICI, *La Costituzione spezzata. Su cosa voteremo con il referendum costituzionale*, Lindau, Torino, 2016, p.126, it took twenty-two years (1948-1970) to approve an ordinary law of implementation of the referendum.

law. In fact, for citizens' and also parliamentary initiatives, the financial viability of the draft bill is not mandatory (contrary to what is provided for draft bills coming from the Government and regions according to art. 76 bis r.S. and 96 ter r.C.). In this sense the discipline provided doesn't help the approval of the draft bills⁹⁵. Looking at numerical data we can notice that ineffectiveness does not discourage popular legislative initiative, which then would need to be evaluated among the instruments of participatory democracy, especially after the failed attempt of Constitutional reform.

Neither this need for participation can be filled by consultations, which often consist in mere questionnaires with multiple choice answers, with no ability to write content or provide diversified suggestions.

In the European perspective, Internet and public consultations are used as tools to put pressure on political decision-making on issues of public interest that maybe would not be taken into account. Structural changes in relations between civil society organisations and the EU political system would be needed. Debates would need to be politicised, in order to have wider appeal and more effort, and would need to be made to frame issues in terms that are salient to the public. The increased use of social media and the internet to reach out to citizens might also help smaller civil society organisations in setting the EU policy agenda⁹⁶.

Civil society and participatory democracy are close related to citizens' initiatives, in Italy and in the European Union. The convergence of public consultations and of civil society pressure and involvement by petitions may be capable of determining the development of constant monitoring and ability to affect the political content of draft bills. In all that has emerged a sort of "paradox". Two factors seem to have played a crucial role in preventing civil society organisations from engaging a wider section of the population. The first element is the fact that, compared to national level, the political debate on European issues was often technical, especially when the European Commission is involved. This aspect made hard for civil society not part of the Brussels establishment to become involved, let alone transmit the issues at stake to their constituencies. The second element consists of a general lack of awareness and interest of European politics among the public; as a matter of fact, the lack of basic knowledge of the European Union is a key factor in preventing wider public engagement with European policy questions⁹⁷.

The possibility of future success of European Citizens' Initiative will depend on the strength of civil society organisations advocating specific causes, and also on their capability of displacing in

⁹⁵ We can find the same considerations in the last cited work by D. PICCIONE, *Gli istituti di partecipazione nei regolamenti parlamentari*, pp. 9-10.

⁹⁶ J. DE CLERCK-SACHSSE, *Civil Society and Democracy in the EU: The Paradox of the European Citizens' Initiative*, in *Perspectives on European Politics and Society* Vol. 13, No. 3, pp. 306-308, September 2012.

⁹⁷ *Ivi*.

different European countries, or interacting and networking with different organisations. It will also depend on citizens and their perception of the instrument, and their disposition to grasp it and support questions close to them⁹⁸.

Finally, even if the attempt to innovate the instruments of direct democracy in Italy failed after the negative outcome of the constitutional referendum, hopefully the future direction of the existing participatory democracy tools will consist in their expansion, improving their ability to meet the demand for informed and more aware participation of Italian and European citizens.

⁹⁸ D. SZELIGOWSKA, E. MINCHEVA, *cited work*, p. 282 ff.

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