



INSIGHT

POSITIONING *EFLER* IN THE CURRENT NARRATIVE OF EUROPEAN CITIZENS' INITIATIVES

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ABSTRACT: *Efler* (General Court, judgment of 10 May 2017, case T-754/14, *Efler et al. v. Commission*) is the last in a stream of cases dealing with the European Citizens' Initiative (ECI). This *Insight* seeks to position *Efler* in the current narrative of ECIs taking into account the Commission's powers – as well as the boundaries thereto – to register an ECI, in the light of the case law of the General Court. Therefore, this *Insight* will be structured as follows. Firstly, it will offer an overview of the current state of affairs regarding ECIs, with a particular emphasis on the case law of the General Court concerning the registration stage of an ECI. Secondly, it will tackle the peculiarity of the *Efler* case, to the extent that the General Court focussed on the concept of legal act to implement the Treaty. Thirdly and in conclusion, it will argue that *Efler* is a welcome development in the narrative of ECIs given that it could very well have a positive impact on the revision of Regulation 211/2011, making the registration procedure more citizen-friendly. However, the broad understanding of the notion of legal act offered by the General Court could even open the gates to a flow of unrealistic and unreasonable ECIs.

KEYWORDS: European Citizens' Initiative – STOP TTIP – *Efler* – EU legal acts – negotiations of international treaties – Commission's powers.

I. INTRODUCTION

The European Citizens' Initiative (hereinafter: ECI) is an instrument introduced by the Treaty of Lisbon to foster citizens' participation in the democratic life of the EU. An ECI responds to several needs and, in particular, aims at alleviating the feeling that the evergreen rhetoric of democratic deficit is still present. More specifically, its goal is enhancing possibilities for citizens to influence the agenda setting of European institutions – especially on some neglected topics (see *infra*) – provided that certain administrative requirements are fulfilled.

Whereas Art. 11 TEU stipulates that not less than one million citizens can invite the European Commission, “*within the framework of its powers [emphasis added]*”, to pro-

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pose a “*legal act* [emphasis added]” necessary to implement the Treaty,¹ Art. 24 TFEU constitutes the legal basis of Regulation 211/2011 (hereinafter: the ECI Regulation)² which, in turn, sets out the conditions to be met in order to submit an ECI. In particular and beforehand, at least seven persons residents of at least seven Member States need to form an organising committee (Art. 3, para. 2, of the ECI Regulation). This body will then be tasked to apply to the Commission for registering the proposed ECI. Solely after the registration it will be possible to start collecting statement of supports, i.e. signatures, also through electronics means.³

According to Art. 4, para. 2, let. b), of the ECI Regulation, “the Commission shall register a proposed citizens’ initiative [...] provided that [it] 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”. Moreover, the registration can be refused should an ECI be “abusive, frivolous and vexatious” (Art. 4, para. 2, let. c), of the ECI Regulation), for instance, when the same organising committee engages in a sort of “political spamming”,⁴ multiplying the same ECI with the same object.

It is therefore intuitive that the registration step lies at the heart of the lifecycle of an ECI and, as such, gave rise to an intense academic debate⁵ as well as a developing body of judgments (see *infra*). As we shall see, there currently are a number of cases pending before the General Court while others have been appealed before the Court of Justice.

Against this background, this *Insight* will proceed as follows. Firstly, we will briefly depict the current state of affairs in the domain of ECIs; for reasons of space, we will mostly make reference to scholarly opinions and to the cases already decided by the

¹ Generally, on this debate see V. CUESTA LOPEZ, *The Lisbon Treaty’s Provisions on Democratic Principles: A Legal Framework Participatory Democracy*, in *European Public Law*, 2010, p. 123 et seq.; F. FERRARO, *Il diritto di iniziativa dei cittadini europei: uno strumento efficace di democrazia partecipativa?*, in *Rivista Italiana di Diritto Pubblico Comunitario*, 2011, p. 727 et seq.; J. MENDES, *Participation and the Role of Law After Lisbon: A Legal View on Article 11 TFEU*, in *Common Market Law Review*, 2011, p. 1849 et seq.; A. VON BOGDANDY, *The European Lesson for International Democracy: the Significance of Articles 9-12 EU Treaty for International Organizations*, in *The European Journal of International Law*, 2012, p. 315 et seq.

² Regulation (EU) 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative.

³ N. RODEAN, *E – ICE Strumento partecipativo elettronico nel panorama costituzionale europeo*, in *Rivista Italiana di Diritto Pubblico Comunitario*, 2014, p. 1157 et seq.

⁴ M. DOUGAN, *What Are We to Make of the Citizens’ Initiative?*, in *Common Market Law Review*, 2011, p. 1842.

⁵ A. KARATZIA, *The European Citizens’ Initiative in Practice: Legal Admissibility Concerns*, in *European Law Review*, 2015, p. 509 et seq.; N. LEVRAT, *L’iniziativa citoyenne européenne: une réponse au déficit démocratique?*, in *Cahiers de Droit Européen*, 2011, p. 56 et seq.; J. ORGAN, *Decommissioning Direct Democracy? A Critical Analysis of Commission Decision-making on the Legal Admissibility of European Citizens’ Initiative Proposal*, in *European Constitutional Law Review*, 2014, p. 422 et seq.; P. PONZANO, *L’iniziativa dei cittadini europei: teoria e pratica*, in R. MASTROIANNI, A. MAFFEO, *L’iniziativa dei cittadini europei*, Napoli: Editoriale Scientifica, 2015, p. 49 et seq.

General Court. Secondly, we will critically analyse the *Efler* case,⁶ in order to verify, on the one hand, whether the STOP TTIP ECI falls within the Commission's powers and,⁷ on the other hand, whether the General Court correctly interpreted the notion of legal act. Thirdly and in conclusion, we will argue that, despite the current hold of TTIP negotiations on both sides of the Atlantic, the *Efler* case is a very promising judgments for ECIs' organising committees to the extent that it clarifies that, in essence, every act is a legal act, thus falling within the remit of the Commission's proposal powers. At the methodological level this *Insight* will offer a pretty narrow comment of the *Efler* case and the concept of legal act for the purposes of an ECI. Consequently, we will not investigate the fate of a successful ECI, i.e. when one million signatures have been collected and the Commission is required to express its political and legal views.⁸ Finally, we will not engage in any discussion regarding the TTIP and the CETA.⁹

II. AN ECIS' OVERVIEW

As AG Mengozzi argued in his opinion in the *Anagnostakis* case pending before the Court of Justice an ECI

"is a fundamental instrument for European participatory democracy which can be difficult to put into practice. Whilst the idea is to give citizens an active role in the development of EU law, it must be ensured that this right of initiative is not subject to the satisfaction of procedural or substantive conditions which are too strict or too complex – and thus ultimately difficult to understand – for non-specialists in EU law [...]".¹⁰

⁶ General Court, judgment of 10 May 2017, case T-754/14, *Efler et al. v. Commission*.

⁷ European Commission, The European Citizens' Initiative. Official Register, ec.europa.eu. See also *STOP TTIP. European initiative against TTIP and CETA*, stop-ttip.org.

⁸ On the impact of Commission's communications, see L. SENDEN, *Soft Post-Legislative Rulemaking: A Time for More Stringent Control*, in *European Law Journal*, 2013, p. 57 et seq.

⁹ Literature is already very abundant. For reasons of space, we limit ourselves to mention journal articles. A. ALEMANN, *International Regulatory Cooperation and its Discontents: What is Really at Stake in TTIP?*, in *Quaderni di SIDI blog*, 2015, p. 363 et seq.; M. CREMONA, *Guest Editorial. Negotiating the Transatlantic Trade and Investment Agreement*, in *Common Market Law Review*, 2015, p. 351 et seq.; E. FAHEY, *CETA and Global Governance Law: What Kind of Model Agreement Is It Really in Law?*, in *European Papers – European Forum, Insight* of 9 February 2017, www.europeanpapers.eu, p. 1 et seq.; D. GALLO, *Portata, estensione e limiti del nuovo sistema di risoluzione delle controversie in materia d'investimenti nei recenti accordi sul libero scambio dell'Unione europea*, in *Diritto del commercio internazionale*, 2016, p. 827 et seq.; F.C. MAYER, *European Vetocracy? How to Overcome the Wallonian CETA Problem*, in *Verfassungsblog*, 24 October 2016, Verfassungsblog.de; G. VAN DER LOO, R.A. WESSEL, *The Non Ratification of Mixed Agreements: Legal Consequences and Solutions*, in *Common Market Law Review*, 2017, p. 735 et seq.

¹⁰ Opinion of AG Mengozzi delivered on 7 March 2017, case C-589/15 P, *Alexios Anagnostakis v. Commission*, para. 2.

To date, ECIs¹¹ covered a plethora of different subject matters: water,¹¹ vivisection,¹² Greek debt,¹³ European citizenship,¹⁴ embryos,¹⁵ free movement,¹⁶ glyphosate,¹⁷ soil,¹⁸ plastic bags¹⁹, etc.²⁰ However, a distinction should be made between those ECIs that gathered the required amount of statements of support²¹ and those that, by contrast, were aborted at a previous stage either because the proposed subject matter did not fall within the scope of the Commission's powers or due to the lack of sufficient support. Others, instead, have been simply withdrawn.

ECIs are not an exclusive prerogative of the EU legal order, similar experiences can be found in several national constitutions with a variety of purposes, numerical thresholds of statements of support and, most importantly, different procedures stemming from a suc-

¹¹ *Water and sanitation are a human right! Water is a public good, not a commodity!*, Commission registration number: ECI(2012)000003 of 10 May 2012. This ECI aimed at inviting the Commission to implement the human right to water as recognised by the United Nations. See also Communication COM(2014) 177 final of 19 March 2014 from the Commission on the European Citizens' Initiative "Water and sanitation are a human right! Water is a public good, not a commodity!".

¹² *Stop vivisection*, Commission registration number: ECI(2012)000007 of 22 June 2012. This ECI aimed at proposing an European legislative framework to phase out animal experiments. See also Communication C(2015) 3773 final of 3 June 2015 from the Commission on the European Citizens' Initiative "Stop Vivisection".

¹³ *One Million Signatures for "A Europe Of Solidarity"*, refused request for registration of 6 September 2012. This ECI aimed at establishing the principle of the state of necessity. See also Communication C(2012) 6289 final of 6 September 2012 from the Commission on the European Citizens' Initiative "One Million Signatures for 'A Europe of Solidarity'".

¹⁴ *Retaining European Citizenship*, Commission registration number: ECI(2017)000005 of 2 May 2017. This ECI aims at retaining EU citizenship as conferred by the Treaties; *EU Citizenship for Europeans: United in Diversity in Spite of jus soli and jus sanguinis*, Commission registration number: ECI(2017)000003 of 27 May 2017. This ECI aims at separating EU citizenship and nationality as a result of the Brexit process.

¹⁵ *One of us*, Commission registration number: ECI(2012)000005 of 11 May 2012. This ECI aimed at protecting the right to life as well as human dignity of embryos. See also Communication COM(2014) 355 final of 28 May 2014 from the Commission on the European Citizens' Initiative "One of us".

¹⁶ *European Free Movement Instrument*, Commission registration number: ECI(2017)000001 of 11 January 2017. This ECI aims at guaranteeing EU citizens the right to free movement through a universal instrument.

¹⁷ *Ban glyphosate and protect people and the environment from toxic pesticides*, Commission registration number: ECI(2017)000002 of 25 January 2017. This ECI aims at banning glyphosate-based herbicides.

¹⁸ *People4Soil: sign the citizens' initiative to save the soils of Europe!*, Commission registration number: ECI(2016)000002 of 12 September 2016. This ECI aims at protecting the soils of Europe.

¹⁹ *Stop Plastic in the Sea*, Commission registration number: ECI(2015)000003 of 19 October 2015, Collection closed on 19 October 2016. The Commission has not adopted a communication yet.

²⁰ European Commission, The European Citizens' Initiative. Official Register.

²¹ Only three, namely *Stop vivisection*, *One of Us* and *Water and sanitation are a human right! Water is a public good, not a commodity!*. See also R. PALLADINO, *Iniziativa legislativa dei cittadini dell'Unione europea e democrazia partecipativa: a proposito dell'iniziativa Right2Water*, in *Il Diritto dell'Unione Europea*, 2014, p. 493 et seq.

successful initiative.²² ECIs have two specific features: firstly, they are aimed at inviting the Commission, within the framework of its powers, to propose a legal act to implement the Treaty. This, in turn, raises two set of problems, namely the definition or, better, the boundaries of the Commission's powers as well as the very concept of implementing the Treaty. Secondly, ECIs have been treated, so far, from a purely administrative standpoint, thereby entailing an analysis of the principles of good administration and the duty to state reasons as enshrined in Art. 4, para. 3, of the ECI Regulation. These elements slowly emerged at the very beginning in the case law of the General Court²³ to be then likely upheld by the Court of Justice.²⁴ Indeed, at this stage, it needs to be pointed out that organising committees are the legal representatives of ECIs, therefore, should an ECI be not registered, they are entitled to bring an action for annulment of the registration denial before the General Court. In other words, the controversial point of every judgment regarding ECIs is represented by Art. 4, para. 2, let. b), of the ECI Regulation.

In general terms, the introduction of ECIs within the EU legal order prompted different feelings in commentators, institutions and representatives of civil society. In particular, while it has been argued that ECIs are good instruments to foster citizens' participation and to influence the EU institutions' agenda diverting the attention to some neglected topics,²⁵ it is undeniable that the administrative procedure to be fulfilled by organising committees is too burdensome. This shortcoming, essentially preventing ECIs from displaying all their potentialities, has been acknowledged by the European Ombudsman who – interestingly in an investigation started *ex officio* – clearly stated that the Commission should use its best efforts to manage ECIs in a more “citizen-friendly” way.²⁶ Furthermore, while at the very beginning the General Court upheld the Commission's refusal to register an ECI on the ground that it did not fall within the framework of its powers,²⁷ more recently it annulled two decisions refusing an ECI registration. Inter-

²² Amongst EU Member States, popular legislative initiatives are present in Austria, Latvia, Lithuania, Spain, Hungary, Romania, Slovenia, Poland, Portugal, the Netherlands, Italy as reported by M. Sousa FERRO, *Popular Legislative Initiative in the EU: Alea lacta Est*, in *Yearbook of European Law*, 2007, p. 355 *et seq.* See in particular p. 362 and pp. 365-366.

²³ General Court, judgment of 30 September 2015, case T-450/12, *Alexios Anagnostakis v. Commission*, para. 28.

²⁴ Opinion of AG Mengozzi, *Alexios Anagnostakis v. Commission*, cit., para. 25.

²⁵ A. KARATZIA, *The European Citizens' Initiative and the EU Institutional Balance: on Realism and the Possibilities of Affecting EU Lawmaking*, in *Common Market Law Review*, 2017, p. 177 *et seq.*

²⁶ Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN concerning the European Commission, para. 25.

²⁷ *Alexios Anagnostakis v. Commission*, cit.; General Court, judgment of 19 April 2016, case T-44/14, *Bruno Costantini v. Commission*; General Court, judgment of 10 May 2016, *Balázs-Árpád Izsák, Attila Dabis v. Commission*, case T-529/13; judgment of 5 April 2017, *HB. v. Commission*, case T-361/14. See also M. INGLESE, *Handle with care: the citizens' initiative on the Greek debt*, in *Quaderni di SIDI blog*, 2015, p. 134 *et seq.*

estingly, the Commission did not appeal the *Minority SafePack* judgment;²⁸ hence this ECI is now open for collection of signatures.²⁹ The second denial of registration annulled by the General Court is the *Efler* case.

Finally, a noteworthy aspect concerns the grounds on which the General Court decided ECIs cases. The vast majority of (unsuccessful) annulment procedures – with the salient exception of *Minority SafePack* – were either based on Art. 4, para. 2, let. b), or on Art. 4, para. 3, of the ECI Regulation while *Efler* has been decided on a substantive ground, namely, the definition of legal act. Now, it is perhaps too audacious to infer from solely two precedents that the General Court is showing a more lenient approach to the administrative requirements enshrined in the ECI Regulation but, as we shall see, they are extremely relevant to understand ECIs' future developments.

III. THE *EFLER* CASE

The *Efler* case should be understood in the new wave of judgments dealing with ECIs. Unlike previous cases, involving the Commission's powers according to Art. 4, para. 2, let. b), of the ECI Regulation or the principles of good administration and the duty to give reasons, *Efler* rather concerns the notion of legal act for the purposes of an ECI and eventually for the implementation of the Treaty.

The STOP TTIP ECI invited the Commission to recommend to the Council "to repeal the negotiating mandate for the Transatlantic Trade and Investment Partnership (TTIP)" and "not to conclude the Comprehensive Economic and Trade Agreement (CETA)".³⁰ The Commission refused to register it – thereby preventing the collection of signatures – on the ground that, firstly, the required act is not a legal act within the meaning of Arts 2, para. 1, and 4, para. 2, let. b), of the ECI Regulation; secondly, it is not aimed at implementing the Treaty.

The Commission puts forward the same arguments for both the TTIP and the CETA. First and foremost, the Commission states that the Council decision authorising the opening of negotiations is a preparatory act, therefore, as such, it deploys legal effects only between the institutions concerned. Consequently, this act does not fall within the scope of Art. 2, para. 1, of the ECI Regulation to the extent that it should not be considered as a legal act of the Union. In other words, the act requested by the organising

²⁸ General Court, judgment of 3 February 2017, case T-646/13, *Bürgerausschuss für die Bürgerinitiative Minority SafePack – one million signatures for diversity in Europe v. Commission*. See A. KARATZIA, *New Developments in the Context of the European Citizens' Initiative: General Court rules on 'STOP TTIP'*, in *EU Law Analysis*, 18 May 2017, eulawanalysis.blogspot.it.

²⁹ European Commission, The European Citizens' Initiative. Official Register, *Minority SafePack – one million signatures for diversity in Europe*, ec.europa.eu. See also Commission decision C(2017) 2200 final of 29 March 2017.

³⁰ Commission's reply C(2014)6501 final of 10 September 2014 stating the reasons for refusal of registration.

committee is not a legal act in the sense that, on the one hand, it does not produce external legal effects, i.e. it is solely a preparatory act whose value is limited to an inter-institutional dimension. Secondly, the Commission argues that such an act would not entail an implementation of the Treaty; rather, it would have a destructive effect, thereby running counter the spirit of ECIs. Furthermore, "a citizens' initiative inviting the Commission not to propose a legal act is not admissible".³¹ In light of those arguments the General Court's judgment is essentially split in two parts.

The arguments put forward by Mr. Efler – representing the STOP TTIP organising committee – and the Commission can be summarised as follows. In the view of the claimant, the limitation of the notion of legal act according to the narrow interpretation endorsed by the Commission would be contrary to the function and the spirit of the ECI Regulation. In particular, for an ECI purposes, every legal act should fall, tautologically, within the notion of legal act under the ECI Regulation, irrespective of its preparatory or definitive status.

More interestingly, Mr. Efler advocates that an ECI, as an instrument created to enhance citizens' participation in the democratic life of the EU and to pursue the goal to implement the Treaty, could very well be aimed at amending or even repealing every existing legal acts. Moreover, from Art. 10, para. 1, let. c), of the ECI Regulation – referring to the actions the Commission "intends to take, if any, and its reasons for taking or not taking that action" –, it could be inferred that the legislator explicitly envisaged positive actions after the collection of one million signatures.

The General Court sought to square the circle between a narrow and a broad understanding of the notion of legal act and Treaty implementation. Indeed, it emerged from the hearing before the General Court that, although having a *negative* effect, the real scope of the STOP TTIP ECI was "to request the Commission to submit to the Council, first, a proposal for a Council act to withdraw the negotiating mandate for the conclusion of the TTIP, secondly, a proposal for a Council act not to authorise the Commission to sign the TTIP and the CETA and not to conclude those agreements".³² In plainer terms, it seems that those acts had a positive connotation in the sense that they needed to be adopted in order to block the negotiation and signature procedure. The General Court acknowledges this possibility recognising that the Commission is entitled *ex officio* to request the Council to revoke its negotiation mandate as well as the possibility to sign. In other words, the Commission is already vested with the powers that the ECI at stake wished to be exercised. Therefore, the General Court cannot endorse the narrow notion of legal act put forward by the Commission; indeed, such a narrow interpretation can be inferred neither from the ECI Regulation, nor from Art. 11 TEU or Art. 24 TFEU. To justify this finding, the General Court makes reference to the principle of de-

³¹ *Efler*, cit., para. 21.

³² *Ibid.*, para. 28.

mocracy as one of the general values underpinning the EU legal order thereby enabling citizens – in the organised forms envisaged by the ECI Regulation – to have their say in modifying the EU legal order itself. Therefore, the Commission’s interpretation of the notion of legal act is not in compliance, on the one hand, with the Treaty, on the other, with the goals to be achieved through an ECI.

The General Court goes even further holding that what the Commission calls “destructive [and] not aimed at implementing the Treaty”³³ are nothing more than acts contributing to reshaping the EU legal order as the signature of the TTIP and the CETA would have contributed to anyway. Therefore, the *intrusion* of an intermediate body – i.e. one million citizens – in the institutional dialogue and in the procedure to negotiate and conclude an international agreement is not in violation of the principle of institutional balance given that, at the end of the day, it will be solely for the Commission to decide whether, and to what extent, to follow up a successful ECI according to Art. 10, para. 1, let. c), of the ECI Regulation. In light of the above considerations the General Court annulled the Commission decision to refuse the registration of the STOP TTIP ECI.

IV. CONCLUDING REMARKS: AN ASSESSMENT AND A STEP FORWARD

The annulment has in essence two consequences. Firstly, the organising committee will request the Commission to register the STOP TTIP ECI, as happened in the *MinoritySafe Pack* case. Indeed, once expired the time limit to challenge the General Court judgment before the Court of Justice, the Commission registered the STOP TTIP ECI.³⁴ Secondly, since the registration day, statements of support will be collected.

For the purposes of the STOP TTIP ECI, the *Efler* case seems to be a Pyrrhic victory. Political contingencies already blocked the development of the TTIP while national parliaments are already ratifying the CETA. Anyway, should the organising committee gather at least one million statements of support, it remains to be seen the content of the Commission’s political and legal views; most probably, considering the time frame, there will be nothing to act at all. Despite that, the *Efler* case will have a positive impact on ECIs as a whole and will be perhaps taken into account should the Commission decide to amend the ECI Regulation.³⁵

The *Efler* case is a welcome development for the utilization of ECIs for several reasons. The starting point is that ECIs, to date, have not displayed all their potential. Even

³³ *Ibid.*, para. 40.

³⁴ *STOP TTIP. European initiative against TTIP and CETA*, cit.

³⁵ *First Vice-President Timmermans announces Commission plans to revise European Citizens' Initiative Regulation*, in European Commission – Daily News, 11 April 2017, europa.eu. See European Commission, Public Consultation on the European Citizens' Initiative, ec.europa.eu. See also A. DAMATO, *Profili critici e istanze di revisione del diritto di iniziativa dei cittadini europei*, in *Il Diritto dell'Unione Europea*, 2017, p. 39 et seq.

though this instrument has been conceived to enhance citizens' participation in the democratic life of the EU, the very fact that in five years solely three ECIs have completed their lifecycle is indicative in itself. The Commission has been accused of rendering the administrative procedure too burdensome, of requiring organising committees to indicate the – at least theoretical – legal basis upon which the requested act should be based, to correctly identify the Commission's powers and to propose a draft legal act.³⁶ It seems thus safe to assert that this is too much, even for a well organised group of people, mostly lacking legal expertise though. Furthermore, the fact that the Parliament – as the only democratically elected institution – and the Council do not play an active role at any stage has been criticised too.³⁷ Finally, the very concept of Treaty implementation gave rise to uncertainties in the sense that despite a potential role to be played by Art. 352 TFEU, "the objective of democratic participation of Union citizens underlying the ECI mechanism cannot frustrate the principle of conferred powers".³⁸

The *Efler* case seeks to square the circle amongst different and perhaps competing necessities. The fact that the General Court adopted a broad understanding of the concept of legal act and Treaty implementation will probably give new impetus to forthcoming ECIs. Citizens will perhaps have a real possibility to influence the agenda setting of the EU legislator(s) to the extent that they will be able to propose a larger scale of initiatives. A broader interpretation of a legal act will enable new ECIs to bite the whole lifecycle of a legislative proposal, a negotiation of international treaty and perhaps even interinstitutional agreements. However, most importantly, the *Efler* judgment encompassed a *negative* dimension of ECIs to the extent that the latter could be used, from now on, not only to propose something – be it a brand new legislation or an international treaty – but even to amend existing legislation. One might also imagine a creative use of this instrument in these times of Brexit;³⁹ for instance, to remove an EU agency from a given State, or to propose to relocate it in another country.

Yet, in practice and from a strictly legal standpoint it could also be argued that the General Court went a step too far in offering such a broad notion of legal act, thereby circumventing the original scope of an ECI. Considering that the *Efler* case revolves around the concept of legal act, it is interestingly to note that the General Court did not

³⁶ See Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN, cit., in particular the conclusion. Amongst scholars, see A. KARATZIA, *The European Citizens' Initiative and the EU Institutional Balance: On Realism and the Possibilities of Affecting EU Lawmaking*, cit., p. 205 et seq.; M. DOUGAN, *What Are We to Make of the Citizens' Initiative?*, cit., p. 1846 et seq.; J. ORGAN, *Decommissioning Direct Democracy? A Critical Analysis of Commission Decision-making on the Legal Admissibility of European Citizens' Initiative Proposal*, cit., p. 440.

³⁷ A. IANNIELLO-SALICETI, *Initiative citoyenne européenne et Parlement européen: un premier bilan*, in J. AUVRET-FINCK (ed.), *Le Parlement européen après l'entrée en vigueur du Traité de Lisbonne*, Paris: Larcier, 2013, p. 163 et seq.

³⁸ *Bruno Costantini v. Commission*, cit., para. 53.

³⁹ *Retaining European Citizenship*, cit.

provide for its exhaustive definition.⁴⁰ The judgment simply recalls that, for the purposes of implementing the Treaty, as established by Art. 11 TEU, every legal act is suitable, irrespective of its effect and its status in the lawmaking process.

In conclusion, the *Efler* case could generate mixed feelings according to the observer's perspective. Firstly, the broad interpretation of the notion of legal act can have a beneficial effect on the ECIs structure. Indeed, as highlighted above, it is well established that the Commission management of the registration and to a perhaps lesser extent of the follow up phase have been criticised for being too burdensome and not transparent. Therefore, organising committees will perhaps have a higher likelihood to succeed. Nonetheless, a side effect of this lenient approach to procedural and substantive requirements might be identified in the opening of a Pandora box for unrealistic and unreasonable ECIs as the recent Retaining European Citizenship ECI shows. More generally, a broad utilisation of ECIs should be regarded as a double-edged sword: it surely raises the participation of citizens to the democratic life of the EU and their awareness of EU dynamics, an aspect that should be praised in this time of Euroscepticism. On the other, it could also be transformed in an instrument able to give breath to new populisms. The duty to strike a balance between these two opposite consequences should then rest upon the Commission, ultimately supported by the Parliament, a missing actor in the current ECI narrative. It is desirable that the revised version of the ECI Regulation will acknowledge these issues.

⁴⁰ For an account of the scholarly debate on legal acts see, amongst others, J. BAST, *New Categories of Acts After the Lisbon Reform: Dynamics of Parliamentarization in EU Law*, in *Common Market Law Review*, 2012, p. 885 *et seq.*; H. HOFMANN, *Legislation, Delegation and Implementation Under the Treaty of Lisbon: Typology Meets Reality*, in *European Law Journal*, 2014, p. 482 *et seq.*; K. LENAERTS, M. DESOMER, *Towards a Hierarchy of Legal Acts in the European Union? Simplification of Legal Instruments and Procedures*, in *European Law Journal*, 2005, p. 744 *et seq.*; A. H. TURK, *Lawmaking After Lisbon*, in A. BIONDI, P. EECKHOUT, S. RIPLEY, *EU Law After Lisbon*, Oxford: Oxford University Press, 2012, p. 62 *et seq.*