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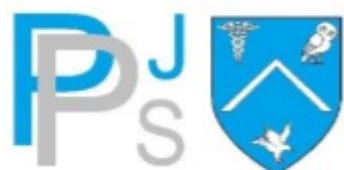
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María Peñarrubia Bañón

San Pablo University and Councillor for Youth and Sports

The European Citizens' Initiative: New Participatory Democracy Tool to Reduce the Political Disaffection of the EU or a Simple Unsuccessful Attempt?

ABSTRACT: *The European Citizens' Initiative (ECI) is the first transnational instrument of citizen-participation and agenda-setting worldwide and it has been created with the aim to bring citizens to the decision-making process in Europe. Its potential for creating a European public sphere and alleviating the democratic deficit has been emphasized either in EU political level and in Academia level. Thus, it is a participatory democracy mechanism and currently it could be one of the main instruments to increase the legitimacy of the EU. The ECI main goal is to enable citizens to influence the political agenda of the Union inviting the Commission to submit legislative proposals and to create a proper European public sphere. It is, therefore, an attempt to reduce the citizens' disaffection. Such high expectations reflect normative criteria which form a difficult basis for empirical measurement. This paper analyses the ECI and whether it is a proper tool of participatory democracy. The paper especially answers the question about whether the ECI is the propitious participatory democracy tool aimed at reducing or eliminating the citizens' disaffection with the main political institutions that is suffering the EU, besides the proposal of enhancement mechanisms. Thus, an in depth legal amendment of the ECI regulation would constitute a measure to be taken to strengthen EU's and European integration's legitimacy. This paper provides an overview of the theoretical expectations towards the ECI.*

KEYWORDS: *citizens' disaffection, EU citizenship, European Citizens' Initiative, participatory democracy, EU's legitimacy crisis, democratic legitimacy.*

1. Research puzzle

The democratic legitimacy of the EU has frequently been questioned, starting with the formal creation of the European Union with the Treaty of Maastricht in 1993. There have been persistently discussions on its alleged democratic deficit. In academia, there is a debate whether or not a "democratic deficit" exists between the institutions and citizens in the EU's political system (see for example Majone 2002 and Moravcsik 2002[1] defending non-existence of democratic deficit; Follesdal and Hix 2006 defend the existence of democratic deficit; Chopin 2008 and 2010: 110, and Bouza 2010: 14 defend the existence of political disaffection to understand the crisis of legitimacy). To this concern, the EU's electoral, institutional, and consultation processes are not able to provide the necessary democratic legitimacy for its policy-making.

Since the economic crisis there is another grave obstacle to improve the European democratic legitimacy due to the contradictory actions taken by the EU institutions: on the one hand, the Treaty of Lisbon strengthened the position of the European Parliament and together with that the representative democracy; on the other hand, the economic crisis had a great impact on the decision-making process by the European Institutions, but not that much on democratic policy. The Library Briefing 7/2/2012 of the European Parliament provides with an impressive and comprehensible statement on the impact of the European Council's anti-crisis decision making on democratic in the EU. Thus, the economic and financial crisis has exacerbated doubt over the EU's democratic legitimacy.

The results experienced by European citizens are especially the lack of transparency in the decision-making process and the obscured perception of the European integration as a whole. This situation significantly contributes to the democratic deficit.

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[1] In defence of the EU, Andrew Moravcsik (2002) argued that in comparison to advanced democracies the EU is democratically legitimate. He defends that one of the perceived lack of democratic legitimacy could be the restricted tasks assigned to the EU, such as baking policies, economic policy, public administration, legal interpretation, constitutional jurisdiction are also areas where the democratic legitimacy is low.

The first channel for citizens to democratically influence the EU is the elections to the European Parliament. Hurrelmann notes that despite citizens' ability to elect Members of the European Parliament (MEPs), the fact that most citizens elect MEPs based on party popularity in the domestic arena, rather than on important EU issues means that the substantive representative connection between citizens and MEPs is weak (Hurrelmann 2012: 6). Moreover, voter turnout in the last elections to the European Parliament in 2014 reached an all-time low of 42.6 percent of eligible voters. As we can observe, participation is decreasing every election. There is a second channel for citizens to democratically influence the EU: through their Member States' national elections (thereby having a stake in their government's representatives to the EU's intergovernmental Council of Ministers) and via national referendums on certain EU topics (e.g. the EU Constitution, the Treaty of Lisbon, joining the Eurozone, or acceding to the EU). However, we can note some limitations to this channel of participation. National elections have not Europe as one of the main topics in the campaigns and the referendum on European issues are relatively narrow.

An underlying concern is that the EU's electoral, institutional, and consultation processes are not able to provide the necessary democratic legitimacy for its policy-making. Also, the economic and financial crisis has exacerbated doubt over the EU's democratic legitimacy. Nevertheless, we can consider the existence of a third channel for democratic input into the EU that involves citizens and interest groups in the EU policy-making, this is the European Citizens' Initiative. Therefore, the democratic legitimacy evolution from the institutional framework's perspective has been very little since the Treaty of Lisbon. Thus, as we can see, the emphasis has been conducted towards communication and information by the European institutions on the available democratic tools, one of those instruments is the already aforementioned ECI (Ögne and Wkö 2013).

The European Citizens' Initiative is the first formally instituted transnational, digital right of participatory democracy in the supranational level. The EU's institutions believed that with the introduction of the ECI on 1st April 2012 the democratic deficit would be reduced. At first glance, the ECI has a great

potential to positively impact upon the agenda-setting and the EU policy making, although there are several obstacles and difficult requirements in the practice that should be overcome. Vice President Timmermans, who is responsible for the ECI within the European Commission, has expressed the potential of the ECI to legitimise the EU decision making through giving citizens a greater opportunity to influence the agenda-setting and its outputs.

Timmermans has, on many occasions, exclaimed his commitment to doing everything possible to make ECIs succeed and to enhance their political impact (EESC 2015: 2) and that the ECI "is promising for the European participatory democracy and the emergence of a European demos. But at the same time, we need to work to make the citizens' initiative more user-friendly" (European Commission 2015), so he is recognising the existence of obstacle that are needed to be overcome. Also some members of the European Parliament have been equally as optimistic about the ECI's potential. Hungarian MEP György Schöpflin, the EP's Rapporteur on the implementation of the ECI, has referred to the ECI as "a keystone of participative democracy, but the shortfalls in its implementation and in its follow-up could waste its potential" and that "the ECI has the potential to be one of the most effective ways of connecting the citizens of Europe to the EU" (EPP Group 2015). The European Parliament President, Martin Schulz, proclaimed the day that the ECI was launched as "a great day for real participatory democracy" (European Parliament 2012). These assertions show the EU institutions' confidence in the potential of this tool to impact upon the democratic legitimacy. However, we can question the extent to which the ECI can live up to expectations.

2. ECI: Brief Notes

The EU's political system is only able to promote parliamentarisation by a two-pronged approach, thus, EU democracy cannot be strengthened only by representation models. This includes forms or instruments of direct democracy (Weiler 1997: 150, Gross 2004: 123). Participatory democracy can now become a

reality on the transnational level thank to the European Citizens' Initiative. Therefore, the possibility to create a real participatory democracy that actively involves the citizens is open.

The rapid institutionalisation of the ECI represented a significant change of direction for transnational citizen engagement from deliberative to participatory democracy. In the press release welcoming the former Vice-President for Inter-institutional Relations and Administration, Maroš Šefčovič, stated (European Commission. 2010) that:

> *The ECI 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. And it will foster a cross border debate about what we are doing in Brussels and thus contribute, we hope, to the development of a real European public space.*

The ECI gives citizens within European Union Member States the right to request the European Commission to propose new or change existing EU legislation. For an ECI to be considered, the subject matter must be within the Commission's legislative competence and organizers must create a citizens committee to gather one million signatures (0.2 percent of the EU's population of 502 million) from at least one quarter of EU Member States (currently, 7 out of 28) in one year. It also requires registration on the European Commission website before the collection of signatures; national verification of signatures; for those successful initiatives there will be a public hearing at the European Parliament following verification; and the adoption of a communication by the European Commission.

In total, fifty six ECIs have been registered with the Commission between its launch and 15 September 2016. Of these, four are currently collecting statements of support and the remaining twenty eight have passed the signature collection deadline. Twenty requests for registration have been refused. Only three out of the 56 initiatives that have been launched since 2012 have met all the

requirements and have reached the required number of signatures. These are "Right2Water", "One of us" and "Stop Vivisection". The registered initiatives have varied significantly in terms of the issues they raise, funding, the campaigns, etc (see Table 1).

Table 1. ECI initiatives

Open initiatives (15/09/16)	4
Successful initiatives	3
Archived initiatives: - Withdrawn - Insufficient support	28 (total) 13 17[2]
Refused requests for registration	20

Source: Data from the ECI official website.

It is important that the ECI becomes a useful tool for shaping the policy making giving the citizens the chance to push issues that are usually set by political elites. How far this will go will depend on the question whether the European Commission can be legally compelled in a future into passing some certain initiatives into law[3].

2. ECI as a step towards a more democratic and legitimate EU

One of the main issues is related to the EU democratic legitimacy linked to the ECI as a tool of participatory democracy to reduce the political disaffection and the specific characteristics the EU has got in order to need an ECI. In order to analyse how the ECI can help to legitimise the EU and to evaluate the ECI's potential impact on the EU democratic legitimacy is necessary to point out some indicators.

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[2] The initiative "For a socially fair Europe!" is now closed, but the EC has not got information about whether the organisers managed to collect the one million signatures required.
[3] As we can see in the ruling of the Bundesverfassungsgericht, BVerfGE 123, 267 (377 et seq.), the German Federal Constitutional Court is contrary to this possibility.

Many authors in political science and civil society organisations (CSOs) have praised the introduction of the ECI as the next step towards participatory democracy and underline its potentially positive effects, such as its role for alleviating the democratic deficit. Sometimes the insufficient democratic legitimacy of the EU is perceived in form of disconnection between the Union and citizens. The ECI could bridge the gap between Institutions and citizens by acting as a catalyst for transnational discursive spheres in which communicative power[4] is generated. What makes ECIs legitimate in the EU decision-making process is their communicative power (Conrad 2013: 8).

2.1. Inclusivity

The ECI is motivated by the direct democracy stream of thinking instead of the deliberative one and also by the idea of transnational citizenship and engagement citizenship. The ECI can be seen as an offer of more direct control to citizen, but the problem is that it does not give citizens any final decision making powers. Theoretically, reaching one million signatures would mean having significant normative power and impact on agenda-setting in the EU institutions. However, in the practice, the ECI is not working in this sense and it is considered as a weak form of European participation tool.

The Regulation includes some requirements that do not undermine directly the transnational principle, but generate political inequalities across nations in relation to the participation in an initiative. For instance, for the majority of nations, personal identification documentation will limit signatories to nationals; for others where such documentation is not required, the category is residents (Ireland, Netherlands and the UK), residents and non-resident nationals (Belgium, Denmark, Estonia, Finland, Germany and Slovakia). This means that different groups will be enabled or, in the other case disabled, to participate and the ECI will have an impact on the exercise of free movement rights since there are

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[4] Communicative power must be defined here in the sense of de deliberation in the public sphere.

different verification procedures will have differential effects on the ability of non-nationals residents to sign proposals in their country of residency. We can find further inequalities in the process in relation to the number of signatories required in each Member State: for example, Germany requires a minimum of 72,000 signatures compared to only 4,500 in Malta[5]. Therefore, digressive proportionality entails deviation from equal treatment (Smith 2013: 13).

The term European Citizens' Initiative implies that the actors or the agents of initiatives, will be the citizens, but evidence from countries that have this type of direct participation mechanisms – and our own experience – suggest that the normative power of the ECI will be shaped primarily by organised interests (Smith 2013: 13). As we already know, a successful initiative will require organisers to get 1 million signatures in 12 months following the day of registration[6]. The cost of reaching this number of statements of support is very high, needing substantial resources, such as money and manpower. Thus, organised interests - civil society organisations, business groups, political parties - clearly have an advantage over individuals (Magleby 1984). But the ECI introduces an innovative approach to signature collection: it allows organisers to collect signatures online and this fact helps individual citizens to be ECI actors.

The term 'initiative' is typically reserved for a mechanism whose legitimacy rests on political equality: all citizens have equal decision making power through the equal right to vote. Generally, an initiative enables citizens to put a legislative measure or a constitutional amendment to a binding vote if they are able to submit a proposal meeting the requirements. The democratic legitimacy of such direct legislation rests in this combination of the equal right to petition followed by the equal decision making power of citizens. The ECI process is simply the proposal element of the initiative. Agenda-setting power (which itself is likely to be

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[5] Regulation (EU) 211/2011. The population in Germany is more than 81 million and the population in Malta is 420.000.
[6] This minimum number of statements of support has been established to protect the Commission and the European Parliament from being overwhelmed with proposals with little transnational support. An example of this is the case of the European Parliament Petition Committee (PETI) that receives over 1000 petitions per year.

dominated by organised interests) is not complemented with decision making power in the hands of citizens. Commission is under pressure to respond positively to successful initiatives, however, the absence of the popular vote means that the ECI has not the same disciplinary effect on decision-makers as the typical citizens' initiatives, such as those in Switzerland or the State of California (Smith 2013: 14).

Thus, in order to fulfil the democratic legitimacy requirements political equality is important that each person has an equal opportunity to affect political outcomes (Warren 2003: 224). For this reason, democratic mechanism must be maximally inclusive. A system with more deliberative fora is more democratic than a system with fewer venues for participation and political will-formation. Therefore, all individuals must be equally entitled to participate in their own governing.

2.2. Participation

A system with more deliberative forums is more democratic than a system with fewer venues for participation and political will-formation (Bohman 2013: 76). Thus, a lot of authors have emphasised the need of a European public sphere. The ECI can help in the creation of a European public space.

From a theoretical point of view, the citizens' initiative does not fit well with the deliberative theories, since the collection of signatures is not necessarily based on the use of argumentation and transforming public reason of the views of the citizens. In this sense, it is rather a form of political participation and aggregation of interests. However, this tool can contribute significantly to extend the deliberation on European issues beyond specialized circles or forms of consultation that are too vague in terms of formation of political will.

In fact, the European Citizens' Initiative is placed directly in a logic of action in the public space, because to collect a sufficient number of signatures will be necessary to build and effectively communicate a movement or cause attractive to citizens. Therefore, we could characterize the citizens' initiative as a proper tool in

a strong model of democracy, in other words, as a form of democracy firmly rooted in the public sphere.

2.3. Representation

Organised civil society enforces the democratic legitimacy, but we have to know to whom they are representing at the EU level and how they claim the citizens' representation.

From an institutionalist approach, by including this principle in the Treaty, the European Union is recognizing that the ability to design and conduct campaigns to mobilize public opinion on a pan-European space should be a most valuable form of collective action of what it is so far. This can make the ECI attractive to some collective actors. Thus, despite its little legal entity, this right can have a real political relevance, to the extent that can help to transform forms of collective action in the European Union. Several studies indicate that civil society organized at European level tends to prefer the direct influence rather than organizing external pressure campaigns by mobilizing their bases (Sudbery 2003, Mahoney 2007). For this reason, this right can transform forms of recognition of legitimacy and authority in the field of civil society participation.

The European Citizens' Initiative could unleash a competitive tension and help to restructure the relationships between different actors of the civil society and between them and the institutions. The transformation of the civil society and its interaction with the ECI can greatly help to overcome the dysfunctions of the political context and the regulatory limitations that reduce its promotion. The benefit is reciprocal: the ECI not only takes advantage of the strength of the mobilization of citizens, the ECI can also make civil society more civil and less lobby, becoming a truly citizen's instrument.

3. First results from the empirical study based on interviews with the ECI actors

In this part of the article, I include the results of the first round of interviews carried out to ECI organizers. The interviews were basically about the role the Commission is playing in making the ECI a proper tool of direct democracy helping to reduce the political disaffection.

Taking a close look at the state of the ECI four years after it was first launched and based on the interviews I have carried out and the informal talks I have had in different ECI events and conferences, I can state that there is a clear division between: 1. The European Commission, which concludes that more time and reflection are needed to review the terms and conditions of the ECI Regulation 211/2011, and 2. Other EU institutions, campaigners and civil society partners, who call for a revision of the ECI as a necessary step towards helping this instrument to grow and become more efficient and accessible to citizens.

These first results obtained in the interviews can be divided in the two following parts: the ECI greatest success and the ECI greatest disappointments.

3.1. ECI success

The interviewed ECI organisers agree that the ECI is still alive, can be brought to life and has thus created a new dimension for citizens' involvement in EU policy making. It should not be underestimated that the simple existence of a transnational tool may have positive and far-reaching consequences:

- It allows citizens to raise issues of general concern to all Europeans even if the ECI is not registered;
- Campaigns may stir up debates on an EU level even if not successful (the potential of agenda-setting);
- Its existence confirms the need to include citizens in policy-making.
- It broadens and enriches democracy in the EU.

It is also important to mention that despite the difficulties faced, three ECIs have reached 1 million statements of support, which best demonstrates the need for the existence of a pan-European instrument and over 6 million EU citizens have joined the debate about EU issues through the ECI. The ECI makes it possible for individual citizens to commit to a European cause – very many regular citizens are unaware of the possible ways in which they can influence EU politics. Thanks to the ECI, individual citizens may voice their concerns and, while running the campaigns, become more and better informed about EU functioning and policy making.

The ECI encourages citizens to get organised, create networks and work together across borders. At the same time, the general public becomes more informed on the issues included in the campaigns. For example, the Stop TTIP campaign, despite being refused as an ECI, gained a lot of momentum and attracted public and media attention, bringing various European stakeholders together as a result. It is also not without significance that with every ECI registration request, the European institutions receive a signal about the issues that the EU citizens are aware of. Thus, the ECI is a pan-European tool which stimulates cross-national debates, and this has the potential to enhance the notion of EU citizenship.

The ECI enhances the notion of EU citizenship and, potentially, may help to build and strengthen the European demos. It contributes to building up a community of Europeans dedicated to participation and democratic debate by discussing the transnational participative methods, building up a European public sphere, analysing the difficulties and looking for solutions.

3.2. ECI disappointments.

Four years since the ECI was launched only three ECIs managed to collect over 1 million signatures and overcome the technical hurdles of registration and running the campaign. No major political follow up was given to any of them by the European Commission. After four years of application these factors have become most alarming and demotivating for potential ECI organisers. The

successful organisers are disappointed because even modest parts of their requests were refused. What is more worrying is that not only there is no legislative follow-up to their proposals, but no dialogue or cooperation whatsoever – once the communication was issued, the dialogue with the campaigners stopped. The participants believe that there should be a more structured approach and a follow-up to all proposals, especially the successful ones.

After the mid-term review of the ECI Regulation, expectations were high to see a developed revision in 2016. Participants were disappointed to find out that the Commission is still in a period of reflection and claims to require more time and analysis. It was pointed out that most of the institutional and social partners have by now produced reports, opinions and analysis and there is plenty of documentation of the existing problems that can only be solved by a reformed regulation and countless recommendations. The lack of a decision to review is a source of frustration and, more importantly, leaves citizens with the impression than professional lobbying is the only way to approach the Commission and influence its policy-making.

The organizers call for much more communication about the ECI, because EU citizens do not know about the tool and do not understand how to use it. Campaigning for an ECI consists mainly in explaining the tool itself and this is a waste of time in relation to the short collecting period. It is a general belief that more promotion of the ECI should be carried out by European authorities in the EU to make citizens aware of the ECI's existence and thus make it easier for the organisers to collect signatures, allowing them to focus primarily on the content of their initiatives. The general thought is that although it has existed for four years, EU citizens still do not know about the ECI.

The difficulties that the organisers have to face discourage potential users of the tool from launching new campaigns, especially in view of the availability of other instruments, easy forms of petitioning requiring only simple registration data such as a name, surname and an email. One may argue that they have little political impact, but since the ECI has not yet proven to have a greater impact, in the end

citizens will be unwilling to choose something more complicated if the results are the same.

The organizers coincide that the specific technical hurdles that they have to deal with are:

- The launch date: time is lost at the beginning due to technical requirements and excessive bureaucracy, there is not enough time for a professional opening of the campaign.
- The complexity of legal and technical requirements: differing national registrations and confusing paper forms depending on the Member State.
- There is no central IT solution and complicated online collection system.
- The ECI is not cost-effective: the money invested goes to administrative problem solving and not to campaigning itself.

After these interviews and informal talks that I am carrying out in this last phase of my thesis project, the general feeling was that the Commission does not seem to realise that citizens are frustrated by the lack of reaction on its part. The European Commission has no political will to improve the ECI system which risks becoming obsolete in the face of the existing electronic ways of petitioning. Thus, the Commission is condemning its own tool by no acting and revise the Regulation.

4. Recommendations

Many citizens have the impression that their voices are not listened and that erodes democracy. The response must be to strengthen European democracy as the EU is not able to gain more legitimacy by virtue of the economic qualities, but has to prove that can enable the European citizens to participate in democracy. To create a real European public sphere is necessary more direct means for citizens to make their voices to be heard, greater participatory and the creation of proper European political parties and transnational ballot for European elections. It is necessary to create political spaces and institutions that enable hectic debates about

European topics where citizens have the chance to participate in political decision making.

There is no doubt that at the level of principle the ECI is motivated by the idea of transnational citizenship and engagement. But there are good reasons to believe that the actual practice of the ECI undermines this ideal and realises only a relatively weak form of citizen participation[7].

If there is political will, we can be optimistic with the possibility that the ECI becomes a tool to reduce the legitimacy problems through some careful and creative modifications in the Regulation. A way to reduce these democratic limitations would be introducing a deliberative reform to the ECI. The principles and practices of direct and deliberative models of democracy can be mutually supportive (Saward 2001). If we are right to be concerned that successful initiatives are likely to represent the interests of already-organised interests and that it will be difficult for the Commission and others to judge the standing of any particular proposition amongst the broader public, an additional deliberative institution might increase the ECI's democratic legitimacy. Any proposal that achieved the ECI requirements would immediately launch a European deliberative forum constituted by a representative sample of European citizens to consider the issue in question. This could be in the form of a transnational deliberative poll.

Other suggested possibility to enhance democratic legitimacy by the ECI is obliging the European Commission to organise a referendum on the initiatives that reached the required million. This would make the ECI a proper tool of direct democracy and would help to reduce the political disaffection and enhance the democratic legitimacy. The lack of political and legislative change leaves citizens with the impression that the Commission ignores their voice and that the ECI is only a decorative gadget to give citizens the impression of being listened to. The organisers claim that "all ECIs should become part of the institutional debate"[8].

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[7] G. Smith, *op. cit.,* p. 12.
[8] Interviews with ECI organizers carried out within the framework of the thesis project.

After those modifications of the requirements, the ECI will have more impact on European decision making process, but there are aspects of its design that could indicate that European political elites are running scared of involving citizens in the European political decision making process. First, even with the development of open source software, it is not at all clear that the ECI represents a new via of participation for the citizens rather than organised interests which already have significant access to the centres of power. Second, the political will of decision makers to shift the balance of power when it comes to decision making is still weak.

The ECI has the potential to positively impact upon the EU agenda-setting and the policy making, through considering the ECI as a tool that can activate EU citizenship and create a European public sphere, though it is necessary to wait until the Commission's full legislative revision of the Regulation. These modifications would make the European Citizens' Initiative a new participatory democracy tool to reduce the political disaffection of the EU and not a simple unsuccessful attempt.

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