



## Papiers d'actualité / Current Affairs in Perspective

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Fondation Pierre du Bois  
pour l'histoire du temps présent

### **The European Citizens' Initiative: 'Much Ado About Nothing' ?**

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The European Citizens' Initiative (ECI) was included in the Treaty of Lisbon as an attempt to institutionalise citizens' direct participation in the EU polity. The ECI enables one million EU citizens from at least one quarter of its Member States to call directly upon the European Commission for legislative action (proposals). Its aim is to engage citizens in matters of public concern, to mobilise civil society, to create meeting spaces, and to strengthen pan-European public debates. This paper assesses the ECI by providing a brief (and incomplete) historical account of its contextual development in order to better situate and understand the practical and philosophical criticisms which are or ought to be voiced. It is argued that there is a fundamental gap between the ECI's ambition to act as a tool of direct democratic participation and its institutional reality. This gap, it is argued, has been caused by an excess of liberal conceptual accretions.

#### **Contextualising the ECI: a brief history**

Democracy and the European Union have not always been thought of as going hand in hand. Indeed, taking *economic* integration as its focal principle, the EU project can be characterised as an attempt to create industrial interdependencies among European nations to prevent war. In the early years of European integration, consolidating the supranational democratic legitimacy of the EU's political system was not considered a priority by EU elites. In the late 1960s, a working group chaired by Professor Georges Vedel was set up to produce the eponymous Vedel Report on the powers of the European Parliament (EP). The report concluded that the EP's authority should be strengthened in order to reinforce the Community's democratic accountability. Arguably, the consolidation of parliamentary powers was in part a preparation for future EP elections, a milestone achieved in 1979 with the EP's first democratic elections by universal suffrage with a voter turnout of 62%. Seven years later, supranational decision-making procedures were reinforced via the Single European Act which introduced 'Qualified Majority Voting' into the Council of Ministers' proceedings. It is only in recent years, in the wake of the rejection of EU Treaties by national referenda, that EU officials have acknowledged the necessity of strengthening the democratic legitimacy of EU decisions. This recognition led to widespread transparency and accountability campaigns in Europe. Encouraged by such



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accomplishments, the fathers of the 1996 Dublin Draft Treaty finally put the citizen *directly* on the map, acknowledging that “Europe belongs to its citizens.”

These early democratic markers began to cement and rationalise developing norms of supranational democracy. They also laid the discursive groundwork for the Treaty of Lisbon and the establishment of the ECI as a governance mechanism (Article 8). Keeping this historical perspective in mind, it is worth noting that Article 8 makes no reference to the equality of states while establishing that “the Union shall observe the principle of the *equality of its citizens*.” Every citizen, affirms the Treaty, “shall have the right to *participate* in the democratic *life* of the Union [and] decisions shall be taken as openly and as closely as possible to the citizens.” Article 8B of the Lisbon Treaty puts this idea most prominently: “The institutions shall, by appropriate means, give citizens [...] the opportunity to *make known* and *publicly exchange* their views in *all* areas of Union action,” guided by “transparency [...] and regular dialogue.” This last formulation foreshadows the ECI, which is legally established in the subsequent paragraph of the Treaty:

“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.”

Some commentators have argued that the introduction of the ECI (modestly) mitigates the EU’s ‘democratic deficit’. The ECI thus purportedly addresses the disenchantment felt by so many people with ‘politics’, i.e. the rather tired and unresponsive system of representative government.<sup>i</sup> While this intent seems candid, it remains questionable whether the ECI is indeed effective.

### How the ECI functions: procedures, rules, and (pre-)requisites

Most fundamentally, any ECI must be formally submitted to the Commission in accordance with the provisions of the regulation and must contain a direct request to the Commission within its competences to take legislative action regarding topics requiring, according to those citizens’ views, a legal act to implement the treaties. In the first stage, initiating citizens must clearly declare the initiative’s purpose and objective(s). The registration of any initiative can be declined if the planned initiative is “inappropriate or abusive,” or if it directly contradicts the “community’s values.”<sup>ii</sup> Having accumulated 300,000+ signatures, the organisers of the initiative are then obliged to submit a formal admissibility request to the Commission. Admission at this stage is predicated on the fulfilment of two cumulative requirements: First, the initiative must address a topic on which the Union can formally issue a legal act in line with the treaties and, second, it must fall under the authority of the European Union. The prerequisite for its ultimate admission is the support of at least one million citizens<sup>iii</sup> from at least one quarter of the EU member countries. Having fulfilled all of these requirements, the organisers are presented with an official communiqué explaining the Commission’s intended course of action. In terms of the right to *suggest* legal actions, citizens are therefore equal to the Council of the EU and the EP. However, because the Commission is by no means bound by the content of the initiative, it effectively retains its legislative prerogative. This opens the door for potential criticism.

### The Institutional Perspective



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As stated previously, the ECI attempts to guarantee all citizens' with the opportunity to 'participate in the democratic life of the Union' and 'to make known and publicly exchange views in all areas of Union action'. Since the first initiatives can now be officially registered (from 1 April 2012 onwards), ECI and its broader underpinnings will be put to the test. Existing scholarship has mainly focused on what one might loosely call institutional reforms. For instance, while the process for admissible ECIs is fairly clear, the procedure regarding initiatives that do *not* fall within the Commission's powers and are therefore inadmissible is less clear.<sup>iv</sup> Every ECI points towards a societal problem—perceived or real—which has been identified by a sufficiently large number of people as important enough for it to merit public scrutiny. For this reason, initiatives that fail the admissibility test cannot legitimately end up in the 'wastebasket', as this is likely to alienate citizens by denying them their democratic agency. The Commission's response that something is simply 'outside EU competences' is hence inadequate. Additionally, such a response is highly unlikely to engender 'intersubjective legitimacy' within the European polity. One possibility to address this issue is to increase the Commission's accountability. If indeed a particular issue is beyond EU authority, then the Commission should clearly communicate who possesses the relevant authority while continuing to monitor developments and providing its expertise. Another fundamental modification which would strengthen the people's influence is the right to question and contest the Commission's decisions. Citizens would thus gain the ability to formally protest when they feel a decision taken by the Commission is unjustified. To this end, the European Court of Justice could be employed as a final adjudicator.

A further issue of contention pertains to ECI thresholds. At first sight, rendering ECI thresholds problematic may seem ironic because one million signatories—i.e. 0.2% of EU citizens<sup>v</sup>—is actually a much lower threshold than what is required on most national levels where similar mechanisms exist. However, the ECI comprises a second, much less discussed threshold which represents a Sisyphean task for the majority of people. Every initiative requires the establishment of a 'citizen committee' composed "of at least 7 EU citizens who are resident in at least 7 *different* Member States."<sup>vi</sup> This may not appear like much in today's so-called interconnected world, but organising a transnational campaign in seven member states is in fact a task well beyond most organisations, let alone individuals, in Europe. In reality, therefore, the ECI remains the exclusive prerogative of well-organised associations with pre-existing transnational networks. For individuals, who almost never possess, or are able to acquire, the capacity to become the primary organising agents, the ECI hence affirms little more than their freedom of speech. Establishing an oversight mechanism that would allow groups of individuals to challenge (veto) decisions previously made would go some distance to this effect. Setting up such an 'oversight mechanism' would be fairly uncomplicated and would allow people to give their final verdict on matters of public concern. Such veto proposals and ECIs could be clustered into "multi-pack[s] of several issues to be decided by the citizenry on the same day, [which] would prevent voters from being overloaded and it would stimulate turnout because each proposition is likely to mobilise for and against it different segments of the electorate."<sup>vii</sup> However, in order to be successful in this respect, the EU must provide an appropriate support structure which would help individuals to mobilise cross-nationally in a coherent and organised manner. The next section departs from these institutional issues to discuss problems which cannot be 'fixed' by improving the *status quo* but which require a paradigm shift.

### Agenda-Setting and Contextual Steering:





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Considering that ECIs are simple legislative invitations, it is fair to argue that political agendas are not directly determined by the citizens or multinational organisations. This discrepancy between rulers and ruled, as argued here, is an effect of liberal democratic culture. Liberal thought regards agenda-setting as the province of elites, “not simply because representative systems *delegate* [this] function [...], but because they conceive of agendas as fixed and self-evident, almost *natural*.”<sup>viii</sup> Contrary to this assumption, we should recall that setting the political agenda is citizens’ essential power of government. To forsake this power is therefore also to subject all remaining powers to continuing subversion. Benjamin Barber provides an excellent example of this, illustrating vividly how the construction of a given societal problem predetermines the kinds of decisions possible: “The choice between building a small freeway and a twelve-lane interstate highway [...] may seem of little moment to those who prefer to solve the problem of urban transportation with mass rail transit.”<sup>ix</sup> In other words, if people cannot determine the content of political agendas, then the range of solutions invariably fails to reflect the complexities of social problems. This questions the assumption that citizens tend to choose ‘rational ignorance’ about politics because “the costs of being informed greatly exceed the utility individuals derive from it.”<sup>x</sup> To contrast the so-called ‘cost’ of knowledge only with its utility in a *liberal representative* setting is to misconstrue the picture. The utility of knowledge depends on specific socio-political configurations. In systems where opportunities of participation are high, the utility of knowledge far exceeds its appropriation costs. The ECI’s purely invitational format, however, fails to go beyond already existing representative mechanisms. It thus also fails to lower the perceived ‘appropriation costs’ of knowledge.

The ability to set agendas, in turn, requires appropriate knowledge. Historically, one way to acquire such knowledge is through dialogue between citizens and experts and between and among citizens themselves. Creating open partnerships, roundtables, forums, seminars, and expert committees which inform citizens of relevant findings is therefore a *conditio sine qua non*. This dialectic between citizens and experts, something often referred to as ‘contextual steering’, encourages the consolidation of knowledges and ultimately helps populations to form some notion of their communal needs and wishes. Put bluntly, it is the process of social intercourse itself which fosters the proliferation and accumulation of appropriate knowledge. Additionally, the multidirectional nature of these information flows also counteracts interest fragmentation and promotes the decentralisation of appropriate knowledge (thus foreclosing potential knowledge monopolies). These features clearly demonstrate that Europe’s historically predominant liberal (as opposed to deliberative) culture has re-inscribed itself into the Treaty of Lisbon, and the ECI specifically, via various philosophical assumptions. Chief among these is the idea that elected representatives are better able to judge a society’s common interest than individuals who are too narrowly focused on their own self-interest. The ultimate irony seems to be that the ECI, the very instrument supposed to break with certain paradigms of representative democracy, bars citizens from exploiting direct participatory potentials.

### The ECI and the Dialectics of Appropriate Knowledge

Our history has vividly demonstrated that people tend to grow indifferent with, perhaps even averse to, the workings of government if their opinions and wishes remain unheeded. However, the notion that people are rationally uninterested in or apathetic about knowledge, or, as elitists have argued, even lack the faculty to acquire it adequately, seems flawed. Citizens who sense that their actions and opinions matter also develop a genuine interest in knowledge. Empirical evidence in support of this power/knowledge nexus has grown in academic scholarship. Matthias Benz, for example, illustrates that political knowledge is endogenously determined by





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different institutional arrangements. Put differently, formal configurations of power which encourage citizens' participation also increase citizens' demands for knowledge. Benz demonstrates that in countries where citizens voted directly on the Maastricht Treaty, incentives for the accretion of knowledge were greater because the intense discussions preceding the referendum transformed the notion of 'having a reasoned opinion' into a desirable attribute. As a result, people in countries with a referendum mechanism tend to be 'objectively' better informed than people in countries without such a mechanism. Moreover, the same people also tend to *feel* better informed 'subjectively', a fact which motivates their quest for greater knowledge. Historically, this has not only been the case in the EU. Analysing participatory patterns in Switzerland's 26 cantons, Benz shows that citizens are and feel better informed when direct participatory opportunities are high. Naturally, this is not to say that mere democratic procedures—particularly the single and solitary act of voting—produce knowledge. Knowledge is the outcome of enduring processes of will and truth negotiations. It is this process, too, and the interactions which follow from it, that also represent the primary source of intersubjective democratic legitimacy. This is to say that if the ECI succeeds in triggering a sense of empowerment, i.e. if popular opinion is thought to matter, then appropriate knowledge is likely to follow. However, without reforms regarding its restrictive liberal framework, the ECI is unlikely to prompt much change.

In some senses, these characteristics of knowledge stand in an uneasy relationship with the notion of the ECI *tout court*. The ECI's format is limited to binary answers which often take the shape of diametrically opposed dichotomies (yes/no). Yet to the question 'A' or 'B' citizens may be, and very commonly are, inclined to reply 'both' or 'C'. Arriving at legitimate solutions acceptable to most members of society therefore cannot result from a single vote or the initiative of a few. The resolution of public problems necessitates dialogue, reasoning, and, above all, listening. Of course, this does not mean that deliberation can make incompatible views compatible or that everyone will agree on all matters. Yet deliberation helps transcend individual and/or shared misapprehensions and it helps participants to see the ethical merits of arguments. These ideas stand in contrast to the ECI and its governing principle of 'bargaining and exchange' *qua* the maximisation of individual gains in zero-sum terms. All this is not unimportant for policy reality. If knowledge is determined by formal and informal configurations of power, as evidenced earlier, then the widespread 'information campaigns' that are part and parcel of the liberal *modus operandi* represent a rather ineffective means of increasing voter knowledgeability. The ECI's binary nature thus falls short not only of entailing the necessary spectrum of potential options (A, B, C, D, *ad infinitum*) but also leaves citizens devoid of any real sense of empowerment and thus knowledge. Capitalising on this dialectic and the processes by which participation and knowledge proceed *pari passu* hence requires a reconceptualisation of the ECI's organisation and its notion of citizenship. If the EU proves unsuccessful in reconstituting the ECI, then the latter's aim of giving voice to the people is also likely to be unsuccessful.

### Conclusion:

This short paper demonstrated that agenda-setting, contextual steering, deliberation, institutional arrangements and the decentralisation of knowledge are all essential (and interconnected) components of a strong participatory idea. Without reform, the ECI has lost its purchase before its first initiatives are actually submitted. If, on the other hand, the ECI becomes a medium and tool for the people's will, then it can go some distance in re-politicising a significant number of people. Further, if deliberation is its aim, then the ECI must do away with *bargaining and exchange's* core assumption that our opinion is always the



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correct opinion and that nothing can change our mind. All opinions should be subjected to, or rather be allowed to undergo, social conversation. We as democratic citizens must learn to concede to ourselves that our opinions may be founded on faulty principles or ideas. At the same time, we must ensure that no opinion is excluded from the *process* of deliberation itself.<sup>xi</sup> To conclude, then, and as the title of this paper hints at, the news and reports celebrating the participatory novelty of the ECI almost never take note of the various limitations discussed in this article. These reports, making much ado about the ECI's democratic credentials, fail to note that the ECI in its current format really is an instance of 'much ado about nothing'. However, the title also prominently features a question mark. This question mark is intended to suggest a degree of uncertainty. It is intended to remind us that any ado should not so much be about the ECI's (lacking) democratic credentials as about the discussions that it could, and should, trigger. Demanding 'democratic' powers is ultimately the business of the people. Without the support of the people, the ECI is bound to prove unsuccessful. This legitimacy, in turn, can only form and cement among citizens who are able to mobilise, organise, and set the political agenda. Deliberation must always occur not only to citizens' mutual benefit but to the benefit of their mutuality. For all its limitations, then, as the EU's first attempt at implementing a direct participatory mechanism, the ECI ought to infuse us all with a desire to start (re-)fashioning our own political future, to struggle for different ways of making popular opinion matter, put simply: to demand more from our shared polity. Saint-Exupéry notably maintained that "*quand tu veux construire un bateau, ne commence pas par rassembler du bois, couper des planches et distribuer du travail, mais réveille au sein des hommes le désir de la mer grande et large.*" One of the ECI's fundamental *raison d'être* is that of instilling such a desire, to make people perceive their democratic agency and their value as individual actors on the supranational level.



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### Further readings:

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<sup>i</sup> NB. It is often argued that people have become tired of 'politics,' and evidence for this is provided by pointing to generally declining voter turnout. However, as McCullagh notes, alternative forms of political activism are generally on the rise. She maintains that in light of the increasing importance of social movements and alternative forms of participation, falling voter turnout merely "confirms that voters are not apathetic about democracy, rather they are dissatisfied with the current model of government and the unresponsive nature of government." Source: Karen McCullagh, "E-Democracy: potential for Political Revolution?" *International Journal of Law and Information Technology* 11.2 (2003): 149-161. This is certainly an argument worth pursuing.

<sup>ii</sup> For more information on ECI's legal aspects, see: Walter Obwexer and Julia Viollotti, "Die Europäische Bürgerinitiative. Grundlagen, Bedingungen und Verfahren," *Journal für Rechtspolitik* 18 (2010): 114. NB. Of course, here it is unclear what precisely counts as "inappropriate or abusive" or indeed what the Community's values are (*i.e.* values as set out in the treaties or the Unions 'social values'). Each instance leaves open a tremendously large realm for interpretation and speculation.

<sup>iii</sup> As signatories count only those Union citizens who participate in the initiative by supplying an official identity-confirming statement of support (see Art. 2, paragraph 2). Moreover, initiatives can be initiated by natural citizens as well as legal persons (who are resident in a member country). For more information on technical issues, see: *Ibid.*

<sup>iv</sup> For more detail, see: Piotr Kaczynski. The European Citizens' Initiative: A Proper Response from the Commission. *CEPS Commentaries*, 8 January 2010. [Policy Paper], 2.

<sup>v</sup> Calculated with the number of EU citizens in 2012.

<sup>vi</sup> European Commission: The European Citizens' Initiative, Official European Commission Website, available at: [http://ec.europa.eu/dgs/secretariat\\_general/citizens\\_initiative/index\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/citizens_initiative/index_en.htm) (accessed on 22.05.2011). (Emphasis added) NB. Members of the European Parliament cannot be counted among the 7 citizens needed.

<sup>vii</sup> *Ibid.*, 456.

<sup>viii</sup> Barber, *Strong Democracy: Participatory Politics for a New Age*, 180. (Emphasis added).

<sup>ix</sup> Benjamin Barber, *Strong Democracy: Participatory Politics for a New Age* (California: University of California Press; Twentieth-Anniversary, 2004), 181.

<sup>x</sup> Matthias Benz and Alois Stutzer, "Are voters better informed when they have a larger say in politics? Evidence for the European Union and Switzerland," *Public Choice* 119 (2004): 31.

<sup>xi</sup> As John Stuart Mill famously wrote:

"First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility. Secondly, though the silenced opinion be in error, it may, and very commonly does, contain a portion of the truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being (partially) supplied. Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds." (John Stuart Mill, *On Liberty & Utilitarianism*, trans. and ed. Alan Dershowitz (New York: Random House Inc., Bantam Del, 1993), 63-64.)