EUROPEAN UNION DEMOCRATIC GOVERNANCE: A CASE STUDY OF THE EUROPEAN CITIZENS' INITIATIVE

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Abstract

Despite significant optimism surrounding the European Citizens' Initiative (ECI), its success between April 2012 and December 2015 has been limited. This paper aims to determine why the ECI has had limited success and how it can be improved. Using a case study methodology composed of semi-structured qualitative interviews with ECI organizers and document analysis, it identified two sets of causes through the lens of governance theory: (i) legal, practical and logistical and (ii) theoretical. While the former are more technical in nature and thus might be easier to solve, the latter reveal structural limitations, especially linked to the ECI's priorities. The research reveals contradiction into how these objectives are interpreted by different actors and how the underlying power structure of the community method remains unchanged despite the narrative of innovation. I outline two alternative models to the ECI, the participative and deliberative initiative by drawing on David Held's theoretical models of democracy. They outline improvements to the ECI by suggesting clearer priorities: citizen inclusion in the decision-making process or continent-wide public deliberation on EU issues.

Keywords

Citizen; community method; democratic governance; European Citizens' Initiative.

1. INTRODUCTION

ECI is the first transnational instrument which allows citizens to participate in agenda-setting. The European institutions consider it an innovative tool for participatory democracy, which complements EU representative democracy. It aims to bring EU policy-making closer to the citizens, to stimulate transnational debates, and to narrow the gap between the European Commission and European citizens. However, citizens, civil society and some MEPs believe that the citizens' initiative has had little success. MEP György Schöpflin said that it: "has not been a success, but (…) it can be made much more effective than it is at the moment" (EuroParlTV 2015, 1'15''-1'21'').

Following its first report on the ECI, the European Commission concluded that it is too early to reform the instrument. However, the conversation on reforming it is on-going seeing as the ECI has potential and has been hailed as a milestone in thinking about EU democracy. Therefore, this paper sets out to explain why it has had limited success and how it can be improved, thus contributing to the corpus of literature on EU democracy and governance. Previous research on the ECI (Conrad 2011; Bogdany 2012; Cuesta-Lopez 2012; Garcia 2012; Greenwood 2012; Heidbreder 2012; Monaghan 2012; Setälä and Schiller 2012; Głogowski and Maurer 2013; and others) is concentrated before the entry into force of the ECI Regulation. I focus on the timeframe between April 1st 2012 and December 31st 2015, thereby adding new empirical evidence to the debate.

In order to contextualize the ECI and to conceptualize democratic governance, I make use of theoretical approaches from the governance literature. They are analytical and descriptive tools to direct the researcher when thinking about the EU as a political system. Furthermore, they are not normatively charged with regard to 'democracy', thus aiding in marking the boundary between the explanatory and normative sections. The latter is informed by Held's (2006) democratic models, especially participative and deliberative democracy.

The following discussion is structured in four parts. I discuss the governance theoretical approaches. Then I investigate the issue of democracy and the EU followed by an historical overview of the ECI. Afterwards I outline my methodology, proceed to presenting the research findings, and draw conclusions and recommendations.

2. METHODOLOGY

In order to explain the ECI's limited success, I choose an explanatory case study (Neuman 2014) as a research design and use Yin (2009) for guidelines on its framework. Alternative research designs, such as the experiment, the survey, archival and historical analysis (Yin 2009), have been considered. However, only the case study has met all three conditions from Yin (2009) related to the ECI: to answer a 'why' question, not to require control of events, and to focus on current events. It is hypothesised that (C) practical, logistical and legal, and (D) theoretical issues lead to the ECI's limited success. It is assumed that (D) has more salience. The causes identified in the data collection section are structured according to this hypothesis, whereby causes pertaining to (C) will be identified as C1, C2, etc.

The data collection methods are semi-structured interviews and secondary data analysis. The semi-structured interview is a qualitative method (Şandor 2010) which allows the researcher to interact directly with the respondent (Matthews and Ross 2010) or indirectly by using digital technology (Mosley 2013). The advantages of a semi-structured interview are that it allows more freedom than the structured interview, gives the researcher more control over the conversation while also allowing the respondent some mobility, and provides consistency across interviews (Matthews and Ross 2010). For the purpose of this paper, six organizers of ECIs (I01-I06, see also Reference list) have been electronically interviewed between March and April 2016. The main challenges were reluctance of ECI organizers to respond to interview requests and the use of a different language than each interviewee's mother tongue.

Secondary data (Bryman 2012) was gathered, including official EU documents and personal documents. The first set of documents was comprised of (a) the European Commission's Report on the ECI from March 2015; (b) the European Parliament's Resolution from October 28th 2015; (c) the Ombudswoman's investigation of March 4th 2015; and (d) the European Commission's answers to the Resolution and Investigation (European Commission 2015b, European Commission 2016). The second set of documents was comprised of *An ECI That Works* (Carsten and Thomson 2014) materials. This data was analysed using thematic analysis, which is "a process of segmentation, categorisation and relinking of aspects of the data prior to final interpretation" (Matthews and Ross

2010, 373). It is useful in linking qualitative data sets and in explaining similarities and differences between them (Matthews and Ross 2010).

The methodology's main limitation is its ontological nature, that only one instance of reality can be presented. Second, the choice of research design, data collection procedures and data analysis methods is arbitrary and narrows down reality. For example, an explanatory case study will focus more on the 'why' than the 'how', thus limiting description. Third, each data collection method has its inherent advantages and disadvantages. Fourth, the need to conduct the interviews in English has been a linguistic challenge. While the former two limitations are a philosophical choice on research, the latter two have been addressed through the interview protocol. The semi-structured interview research protocol structures the interview on the basis of the theoretical section, allows the researcher to follow a common thread in data analysis, and gives respondents the opportunity to express themselves freely. Furthermore, the data from the interviews is consistent with that of the documentary research, which contributes to the robustness of the design. Given the low response rate to interview requests, surveys have not been attempted. Lastly, the researcher has a strong background in the English language, which has facilitated conducting the interview and interpreting the resulting data.

3. THEORETICAL APPROACHES TO GOVERNANCE

There are many theoretical approaches to governance. The EU has an ambiguous nature, which undergoes constant reframing, but it implies rethinking traditional levels of decision-making. Governance is concerned with these levels' erosion and with the diversification of players in the decision-making process. Therefore, the usefulness of governance is that it allows more room for other stakeholders to be involved in policy-making (Wiener and Diez 2009, 247). Nonetheless, it is limited by the lack of consensus about what governance actually is. Since it is defined differently, it can be viewed as a set of theoretical approaches rather than a self-sufficient theory (Pollack 2015, 35). In addition to this, governance is mostly an analytic and descriptive concept. Its approaches take European integration for granted and focus on how this system's governance works (Wiener and Diez 2009). For these reasons, use a working definition for

democratic governance drawing on Bartolini (2011) and use Held (2006) to shape alternatives to the current ECI.

"Governance" is an ambiguous term in the social sciences. It has been linked to a critique of sovereign nation states' efficiency and legitimacy and supposes a new way of governing (see Stoker 1998). However, the relationship between 'governance' and 'governance' is blurred and rather subjective (Ion 2013), which has led to a variety of interpretations. 'Governance' has been used to refer to international governance in the anarchic international system (Rosenau 1992), as different from 'governing' (Magnette 2003), focused on implementation (Peters and Pierre 2009), as a way for citizens and civil society to participate in policy-making (Rhodes 1996), or involving a plurality of decision centres (Benz and Papadopoulos 2006). Likewise, 'multi-level governance' (Hooghe and Marks 2001; Bache and Flinders 2004; Peters and Pierre 2004; Schmitter and Niemann 2009) emphasizes the growing complexity of jurisdictions, ranging from sub-national to supra-national, the increasing number of actors involved in policy-making and the centrality of governments despite their diminishing power. Similar to other 'governance' approaches, network governance is characterized by the same diversity of use (Peterson 2009) but is concerned with non-hierarchic coordination between public and private actors (Börzel and Panke 2007; Sørensen and Torfing 2007). At EU level, the European Commission plays the role of network activator (Eising and Kohler-Koch 1999), thus adding transnational networks of interested actors to the supranational institutions-member states binomial relationship in policy- and decision-making (Kohler-Koch 2005). This *modus operandi* is not as common in practice (Börzel 2010).

Not only academics have concerned themselves with the issue of 'governance'. The European Commission has issued its own White Paper on 'governance'. Underpinned by decreasing participation in EU elections, Ireland's negative vote on the Nice Treaty and enlargement, it brought 'governance' in the sphere of debate (Sloat 2003). It envisioned reforming the EU's institutional framework and the community method as well as increasing civil society participation (European Commission 2001), thus creating a virtuous circle of policy-making (Kohler-Koch 2005). It defined governance as "rules, process and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence" (European Commission 2001, 6). However, this definition is insufficient (Ion 2013, 95-98). It proposes measures which confirm the status quo (Wincott 2001)

and it does not address the inherent problems to transnational cooperation relationships and networks (Schout and Jordan 2005).

In Bartolini's (2011, 8) view, governance is "a co-production mode of decision-making among different types of actors, while the different type of actors involved, the extent of involvement of public authorities and of partners, the outcome of the production, the decision procedures, as well as institutional context and the type and role of sanctions all vary and define different kinds of governance" (Bartolini 2011, 11-12). According to Bartolini (2011), 'governance' occurs between traditional ideologies on problem-solving either by government or markets; 'governance' is not 'government'. It reflects the fragmentation of governmental institutions and of trust in public bodies, and policy-making is conducted together with other actors outside of central government. In this regard, the EU is most active in creating new ways of decision-making and the author considers that 'governance' is any deviation from the classic community method. 'Governance' suggests new ways of involvement ranging from direct participation to elections or bureaucratic control on implementation. However, delivering public goods and norms exists under the 'shadow of hierarchy', which is taken to mean under the shadow of the supranational institutions (Börzel 2010, 192). Any form of 'governance' implies some level of flexible 'government'.

As such, it offers a useful framework in which to think about the ECI as part of a system of governance and it does not forward normative prescriptions on democracy. Yet, the European Commission claims that the Union's legitimacy "depends on involvement and participation" (European Commission 2001). This adds a normative layer to the concept of 'governance', namely that it needs to be legitimate, and that this is done through citizen participation and involvement, which has become linked to the issue of participatory democracy. But what is 'democracy', more generally, and EU democracy, more specifically? To what extent can one speak of EU democratic legitimacy? And how does the ECI fit in this discussion?

4. DEMOCRACY AND THE EU

Historically, one can identify two types of democracy in the EU, namely representative and participatory democracy. Until the 1990s, the EU focused on representative democracy by enhancing the EU Parliament's competencies. By

the mid-1990s, however, one could observe a crisis of European and national representative systems, which led to competition between representative and participatory democracy (Saurugger 2010). The Lisbon Treaty enshrined participatory democracy alongside representative democracy, art. 9-12 TEU, the first conceptualization of 'democracy' for a non-state actor (Bogdany 2012). Although it had been two decades in the making and citizens became more involved, their influence remained very limited (Monaghan 2012).

The 'citizen' is at the heart of EU democracy (art. 9 TEU; Chapter V Fundamental Charter of Human Rights). Citizens in the EU representative democracy (art. 10(1) and 10(2) TEU) are directly and indirectly represented. First, citizens vote for MEPs. Second, they are represented by their respective heads of state or government in the Council of European Union (Szeligowska and Mincheva 2012). This elite system of legitimization has eroded over time as citizens perceived it as inefficient. It has led to a turn to participatory democracy (art. 11 TEU), especially the ECI (art. 11(4) TEU) (Szeligowska and Mincheva 2012).

Whether the EU is sufficiently democratic or whether it should be democratic at all is an open debate. Some observers consider that the EU suffers from a 'democratic deficit' (Szeligowska and Mincheva 2012), whereby citizens are insufficiently represented at EU level. The criticism is that EU institutions are not sufficiently accountable and that they are far-removed from citizens. This is nothing new in EU history but a series of crises, including a crisis of democracy (Leininger 2015), has brought this issue to the forefront of public debate (Innerarity 2014). Other observers, such as Andrew Moravcsik, consider that the 'democratic deficit' is a myth as member states actually control the EU. As 'democracy' is enshrined in the Treaties, it is not this paper's purpose to investigate whether the EU should or should not be democratic, but rather to gain broader understanding on 'participatory democracy' outside of the EU, specifically on the difference between participation and fostering debate, which seem to be at the core of the ECI instrument.

Similar to 'governance', 'democracy' is a broad term which can mean many things. Held (2006) distinguishes between participatory and deliberative democracy. The former developed as a critique of liberal thinkers and holds that the state needs to be opened up to its citizens and its institutions made more responsible. It emphasizes that "an equal right to liberty and self-development can only be achieved in a participatory society, a society which fosters a sense of political efficacy, nurtures a concern for collective problems and contributes to

the formation of a knowledgeable citizenry capable of taking a sustained interest in the governing process" (Held 2006, 215). Its citizenry is involved in regulating the state's main institutions, political parties are made more accountable to their members, and the institutional set-up is open so as to enable political experimentation. The latter aims to better the democratic process through informed debate and public use of reason: "the terms and conditions of political association proceed through the free and reasoned assent of its citizens. The 'mutual justifiability' of political decisions is the legitimate basis for seeking solutions to collective problems" (Held 2006, 253). It varies in intensity from renewing representative democracy to radical participatory democracy, from deliberative polls, days or juries, to referenda. Therefore, increased participation is different from improved and in-depth debate as sources of legitimacy. Furthermore, the manner and degree in which participation and debate occur matters. Participatory democracy envisages citizen participation in the institutions of government, which are open. Deliberative democracy focuses on lower levels of participation of a different kind. It is about debate and argumentation.

Each form of democracy defines its own sense of legitimacy: direct elections in representative democracy; citizen participation in participatory democracy; and quality of debate in deliberative democracy. Yet, the EU is not a traditional case for either. In addition to this, it will help the discussion to further consider types of legitimization: *input*[1], *throughput* – "the myriad ways in which the policy-making processes work both institutionally and constructively to ensure the efficacy of EU governance, the accountability of those engaged in making the decision, the transparency of the information and the inclusiveness and openness to 'civil society'" (Schmidt 2013, 7) – and *output*[2]. For example, voting represents *input* legitimacy in representative democracy, citizens' involvement in institutions in participatory democracy, and deliberation in deliberative democracy. Through its White Paper, the European Commission has attempted to solve *input* issues related to the lack of a common *demos*, language, set of symbols, and identity (Innerarity 2014).

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[1] The participatory process which leads to laws and rules.
[2] Laws' and rules' ability to solve problems and the respective institutional mechanism. Cf. Crombez (2003).

By involving EU citizens and civil society in policy-making, the European Commission aims to improve its *input* and *throughput* legitimacy. Even so, just by increasing the participation of civil society actors in policy-making one does not guarantee democratic legitimacy (Kohler-Koch 2005). Although civil society organizations may actually represent citizens' interests, others have become elites themselves. The inclusion of non-governmental entities in the governance process does not reduce the democratic deficit (Börzel and Panke 2007, 161), or constitute *input* legitimacy. 'Civil society' and 'citizens' are not the same thing.

In order for the ECI to be an instance of 'democratic governance', the community method would have to be a governance system which is democratically legitimate. 'Democratic governance' means a governance system which is democratically legitimate. Legitimacy depends on the interpretation of what democracy is and its operalization is facilitated by *input*, *throughput* and *output* legitimacy. On the one hand, for example, from the perspective of participatory democracy, democratic legitimacy means a large number of participants who can qualitatively influence policy-making and who have access to the political system's institutions. On the other hand, from the perspective of deliberative democracy, it means quality debate with low participation as a basis for policy. The former favours *input* and *throughput* legitimacy, the latter favours *input* legitimacy.

5. THE ECI'S HISTORY AND THE 'INITIATIVE' IN COMPARATIVE ANALYSIS

Art. 11(4) TEU states that "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".

This article was translated into EU law through Regulation 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizen's initiative (ECI 2015a), which entered into force on April 1st 2012 (OJEU 2011). It requires at least one million signatories from at least one quarter of the total member states. The minimum age for participation represents the minimum age

to vote in elections in the member state where the signature is collected (OJEU 2011). The minimum number of signatories for each member state is set out in Annex I of Commission Delegated Regulation (EU) No. 531/2014 (OJEU 2014).

The ECI is led by a committee of organizers from at least 7 member states, which designates its own representative and substitute when liaising with the European Commission. ECIs and their committees are bound by transparency of financing sources (OJEU 2011). An ECI undergoes two phases: the signature collection phase and the response of the Commission. In the first phase, organizers must have their initiative approved by the European Commission and must gather the necessary signatures. In the second phase, the European Commission must determine whether it will launch a legislative proposal and the organizers are granted an audience with European Commission representatives and a public hearing in the European Parliament (OJEU 2011).

After approval by the European Commission in the first phase, organizers may gather signatures for a total of 12 months either physically or electronically. Member states must confirm the authenticity of supporting statements. For online collection, organizers must respect the European Commission's technical and data privacy standards (OJEU 2011). Little translation support is provided. On December 31st 2015[1], 36 initiatives had been successfully registered while 21 initiatives had been refused registration. Some initiatives may be found in both categories because they were re-submitted.

5.1. ECI history and main points of debate

The ECI entered public debate in 2003 during the Convention for the Future of Europe. After the failed Constitutional Treaty, it was included in the Lisbon Treaty. Responding to a request from the European Parliament, the European Commission began the process of a regulation to enforce art. 11(4) TEU (European Parliament 2009). It launched a public consultation alongside its Green Paper (November 11 2009 – January 31 2010), followed by a legislative proposal, which was forwarded to the co-legislators on March 31 2010. The European Parliament and the Council reached consensus in December 2010 after

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[1] As of ECI (2015b) on December 31st 2015.

heated debate and the Regulation was adopted on February 16 2011 (ECI 2012). Informal ECIs were launched prior to the Regulation's entry into force (Greenwood 2012).

The Green Paper stated that the ECI would add a new dimension to EU democracy and would allow citizens and civil society to play a larger role in policy-making (European Commission 2009, 2-3). Yet, most civil society organizations which participated in the public consultation had previously shown little interest in policy (Garcia 2012), which shed doubt on whether the ECI would be a meaningful tool.

The ordinary legislative procedure (EuroParl 2016) ended after the first reading (European Parliament 2010). It was heavily influenced by the European Parliament, who opted for the provision on a quarter of member states and on a committee of citizens to organize the ECI (Conrad 2011). The former was only one of several points of contention between the European Parliament and the European Commission (European Commission 2009; European Commission 2010a; European Commission 2010b). Others were on the minimum necessary number of signatories from each member state; the minimum age for participation; the requirements for signature collection, verification and authentication; the deadline for submission; registration of initiatives; transparency and financing; and on when the European Commission would examine the ECI. The final Regulation reflects a compromise between the two institutions, with limited input from the Council. According to the Regulation's provision, the European Commission published its first report on the ECI in March 2015 (European Commission 2015a).

5.2. The citizens' initiative in comparative analysis

The ECI might be an innovation at EU level but it has long been a tool of democracy at member state level. The ECI resembles the popular initiative in comparative law, which enables a certain number of citizens to forward a political request to the electoral body via referendum or to the elected. Observers distinguish between the direct popular initiative, which results in a referendum, and the indirect popular initiative, which is less visible and addressed to the elected (Cuesta-Lopez 2012). This classification suggests that the ECI might be an

indirect popular initiative with the caveat that it is addressed to a bureaucratic rather than to an elected and publicly accountable body.

A further classification differentiates the full-scale initiative, which refers to initiatives that are voted upon in referenda, from agenda initiatives, which are resolved in representative bodies (Setälä and Schiller, 2012). Additional attributes of initiatives are decision-controlling procedures, which enable the citizens to oppose a legislative act, and decision-promoting procedures, which empower them to add new issues to the political agenda (Setälä and Schiller 2012). This nuance suggests that the ECI falls into the category of a decision-promoting agenda initiative and allows citizens and civil society organizations to voice their concerns. As opposed to the previous classifications, it can be observed that the ECI is a weaker version of the initiative because it does not automatically lead to agenda-setting and it is not addressed to an elected body. The citizens and civil society have no control over policy and no means to make the executive comply (Leininger 2015).

In most European countries, initiatives launch a legislative process whereas the European Commission retains control even if an initiative collects the necessary signatures (Cuesta-Lopez 2012). However, this point deserves some nuance as there are different cultures of democracy amongst member states, which combine the full-scale initiative, the agenda initiative, as well as decision-controlling and decision-promoting procedures (Setälä and Schiller 2012). Nonetheless, despite the fact that most member states diverge in terms of what percentage of the population needs to support an initiative, how many national jurisdictions need to participate, the amount of time required, and whether they receive public financing or not, they converge on the fact that initiatives are put to a vote or handled by elected bodies, per the state's constitutional arrangements (see Cuesta-Lopez 2012 for a survey of national legislation on citizens' initiatives).

6. RESEARCH FINDINGS AND ANALYSIS

The ECI can be broken down into two main phases: signature collection and interaction with the EU's institutions afterwards. Most initiatives have not passed the signature collection stage.

The signature collection stage has the form of a self-generated, planned, open, goal-orientated, and temporally bound network. It opens after the initiative is approved by the European Commission and it ends when the signatures are submitted to the European Commission for verification. At this stage, the actors are interdependent but autonomous and largely enjoy the freedom to organize according to their own wishes in line with Regulation 211/2011. This transnational network is tasked with gathering the necessary signatures in order to set the agenda and engage in EU debate.

Yet, the entire process occurs under the hierarchy of the European Commission, which has the ability to either reject registration or deny a legislative proposal. It takes the shape of a formal structure of governing. Although at the first stage there is a plurality of actors, the power balance is very unequal in favour of the European Commission. Insofar as this might be seen as a form of multi-level network governance, it is a highly centralized kind. By Bartolini's (2011) standards, it is doubtful that the ECI is a system of governance at all, as nothing changes in the policy cycle of the community method. Furthermore, a host of practical, logistical, and legal issues impede the signature collection process, thus limiting the number of initiatives which are able to complete the first phase.

6.1. Practical, logistical and legal issues
6.1.1. *The team*

An ECI's team is divided into two: the organizing committee and the coordinating team. The members of the organizing committee do not always coincide with those involved in coordinating the signature collection efforts. Sometimes they are just symbolic.

"I do not work with people from the organizing committee. I needed them only to create the committee. I found them through the association but they do not want to get further involved. There is no connection between us. The association and I alone work for the ECI. The other committee members are not event members of the association, maybe except one person. They are friends of association members." (I06)

On other occasions, they do not respect their promises and are totally disinterested in how the signature collection process unfolds. In the case of

initiatives successful in obtaining the required signatures, a strong coordinating team was required to compensate for weak committee involvement.

C1. *The absence of a strong coordination structure leads to the network's failure.*

Furthermore, ECIs organized by citizens with little to no connections to organized civil society encountered issues in setting up an organizing committee. For example, I01 found organizing committee members on Facebook. Similarly, I05 published an announcement in a French speaking newspaper to create the organizing committee. The task of setting up an organizing committee is much easier for civil society organizations. I02, I03, I04 and I06 used their connections to set up the organizing committee and the coordination team. I03 received the backing of a large civil society organization, which facilitated access to numerous cities and municipalities.

"The Italians who contacted me are organizations I know, which I trust, with which I had already worked previously. We needed seven people to fulfil the registration criteria. (…) It wasn't a problem because I could contact my friends in Belgium or France or Great Britain; the Italians had friends in Slovakia or Slovenia. It was no problem, we relied on our connections." (I02)

C2. *Prior links to civil society networks, which are necessary to set up a committee leading to successful signature gathering, are not easily accessible to average citizens.*

The majority of respondents have had some experience in organizing civil society before the ICE was launched, even if in other fields, such as participating in a national awareness campaign, petitioning the Ombudswoman, lobbying EU institutions, student networks, etc. However, there is no direct link between previous experience and an ECI's first phase success. For example, I05 had been working in the NGO sector for over 20 years at the time of the interview but had not managed to collect the necessary number of signatures. Nonetheless, lack of experience is linked to weak initiative results during registration (I01) or signature collection (I06). The issue is in terms of networking ability and identification of key players. I05 said that although she had access to many civil society organizations, they were insular and had no database of contacts.

C3. *Previous experience in organizing civil society is important in the success or failure of an ECI signature collection phase insofar as it has generated a network of contacts composed of civil society organizations from other member states.*

Aside from the organizing committee, the coordination team plays the central role in signature collection. It is comprised of at least one member of the organizing committee, the equivalent of 1-2 persons working full-time, a

network of national coordinators, and field volunteers. Initiatives successful in gathering one million signatures, but not only (I04), developed individual national or even local awareness campaigns.

„We set up a coordinating team in each country, led by one of our members, and these people tried to develop national coalitions. Thus, we have a large coalition of organizations in Brussels, which we used to send information to organizations in the member states." (I03)

Usually, the majority of these people are volunteers, even if there are exceptional cases, like I03, in which the chief coordinator was employed on full-time basis. The equivalent of at least 1-2 persons working full-time normally translates into a host of individuals working bit by bit. Most respondents have paying jobs in parallel to their involvement in the ECI: "the majority of volunteers are busy with their day jobs, which is why they can only contribute a limited amount of time" (I05). I04 said that the coordination team was comprised of 40 people and over 400 volunteers.

C4. The coordination team's dynamic varies, but common elements are the equivalent of 1-2 individuals working full-time to coordinate the activity, de-centralization of awareness campaigns and flexibility.

The communication methods within ECI teams vary in terms of quality and complexity. On one hand, I01 only used Facebook for communication. As some members stopped answering on Facebook, the main coordinator decided to stop the initiative. On the other hand, most teams used online communication, especially Skype, but cited the lack of personal contact as a challenge to transnational cooperation. Cultural and linguistic differences added to the communication challenges. These issues limit networks' effectiveness and further limit the potential for successful participation in ECIs to plurilingual individuals. While digital technology ameliorates communication difficulties, the sample analysed shows that it is more likely for an initiative to fail if it relies solely on digital communication. Conversely, the more personal communication and contact, the more likely it is that the initiative will function better.

C5. The main challenges in terms of transnational cooperation were the lack of funds for personal meetings and cultural differences between members.

6.1.2. Financing

Costs vary from ECI to ECI. One of them had a budget and was supported by a civil society organization throughout the ECI. Others used personal savings, public donations, or leveraged EU funding. The rest of the campaigns generated no income on their own.

"Thankfully we had financing through the *Youth in Action* project. It's a project which aims to involve youths in democracy, so we ran a course in parallel with the ECI through which we taught youths about European democracy and we involved them in the ECI. We had money to finance such courses and local activities and we also had money for the final conference in Brussels." (I04)

The main costs for ECIs were: transportation, telephone bills, postage, advertising materials, website building, server management, and communication, including translating and legal fees. The website and server, including the technical personnel required, as many teams lacked IT skills, were the most expensive. In most cases, volunteers carried out these tasks and organizers used donations or personal savings.

"Given our lack of budget, we had no other means of marketing than social networks. You can't print flyers if you have no budget. Some volunteers donated from time to time. We took flyers to conferences, but that's because someone printed them at the office." (I05)

The minimum amount of money required for a successful initiative was 23.000 EUR while the maximum was 160.000 EUR. However, an initiative which spent the equivalent of 75.000 EUR did not manage to gather the necessary signatures. Furthermore, the initiative which spent 23.000 EUR had extraordinary support from a well-known politician, who financed an independent awareness campaign. It is premature to identify an average amount of financing necessary for an initiative to collect the required number of signatures, but it tends towards 100.000 EUR not the 10.000 EUR alluded to in the European Commission's report. These amounts do not reflect extraordinary immaterial sources of support, such as the Pope's or Beppe Grillo's intervention in the *One of Us* and *Stop Vivisection!* initiatives.

Average citizens are especially challenged by this situation. Organizing committees have no legal personality, they do not have NGO status, and this hinders fundraising. Because of this, organizers are personally legally liable.

C6. The necessary costs to run a campaign, as well as the absence of a legal framework to make the instrument credible and protect its organizers, are a hurdle for both civil society organizations and average citizens.

6.1.3. IT system

The IT system appears to be the most severe practical issue organizers face. Not only are the costs high, but it is difficult to operate the software and to have it validated by national authorities. It is well worth noting that the European Commission took note of these issues and provided some server support in Luxembourg, which is not provided for in Regulation 211/2011.

The software for signature collection is difficult to use and requires specialized technical skills in order for the data to be safely stored. Furthermore, integrating the server and website has generated problems for some ECIs. Even after the European Commission provided server support, some organizers continued to find this aspect troublesome.

Second, some organizers complained that national authorities provided little support with validation. In addition to this, there was little room for system customization. Moreover, delays in setting up IT systems required the European Commission to extend the deadline for ECIs registered by October 31 2012, which disadvantaged some initiatives.

C7. The European Commission has made some progress towards reducing the technical burden on organizers, but it continues to be a problem and to lead to substantial financial costs.

6.1.4. Personal data requirements

Most initiatives signalled the fact that the main reason why potential signatories refused to sign their ECI was the data requirements. As opposed to similar websites, such as *Change.org*, where it is sufficient to submit one's name and e-mail address, ECIs are much more complicated.

"I think people should give their name and address, but once we start talking about date of birth and passport number, their availability to sign anything diminishes greatly because they are concerned about personal data safety." (I05)

This problem lies with member states, which impose individual conditions for signature validation.

"If individual member states start to get complicated and ask for date of birth, passport or residence, then the entire system stops functioning." (I05)

Some initiatives lost signatures because of member states.

"National data protection agencies are not always aware of the ECI or misinform organizers. For example, in Bulgaria, we had to ridiculously register every person and organization gathering physical signatures as a personal data operator." (I04)

C8. The heterogeneity and complexity of personal data requirements dissuade potential signatories from supporting and ECI and create administrative complications which encumber the whole signature collection process.

6.1.5. Country of residence

A special practical issues was that a category of citizens was excluded from participating in ECIs. Individuals who reside in another member state than the one where they were born could not always sign. One initiative which especially targeted this group was affected.

"States would establish rules that just did not overlap. For example, British citizens living in Austria could not sign an ECI because when they would access the web page and choose their country of residence, if they would choose 'United Kingdom', they could not sign, if they did not have a permanent address in the United Kingdom. However, they could not select Austria either, because this country required a passport number. Therefore, a British national living in Austria could not sign." (I05)

C9. Excluding a segment of the EU's population because of incompatible administrative procedures limits the potential number of signatories.

6.1.6. Language

As opposed to the national level, ECIs have to deal with 28 member states and 24 official languages. Linguistic barriers are a real problem when collecting one

million signatures from 7 member states. Usually, the European Commission does not assist with translations, although there have been exceptions.

C10. The need to run a multilingual awareness campaign leads to day to day content management issues and high financial costs for translation.

6.1.7. ECI awareness

All ECI organizers complained that average citizens did not know what an ECI was. This made them reluctant to sign and share personal data. Volunteers wasted time in order to explain what the ECI was, which reduced the chance that individuals would sign because the whole process would take too long.

"If you work in sales and try to sell something to someone, you have a 30-second window to do it. You need to catch their attention very quickly. If you have to spend 5 minutes in order to explain what the ECI is before pitching your own initiative, then you have a big problem." (I05)

C11. The lack of EU wide awareness of the ECI leads to potential signatories' reluctance and makes individuals awareness campaigns more difficult to run.

6.1.8. The number of signatures and of member states

Most organizers agree that one million signatures from one quarter of member states is a representative number. However, it is difficult to reach it without backing from a civil society organization. Some organizers launched an ECI perfectly aware of the fact that they might not reach the required number of signatures.

"We knew it would be almost impossible to reach one million signatures, but it was a good opportunity to raise awareness of our initiative." (I05)

C12. The number of signatures is difficult to obtain without prior links to civil society organizations. There is no evidence that increasing the deadline would facilitate reaching this number.

6.1.9. Drafting an initiative

Respondents have not generally encountered problems with identifying a Commission competence on the topic of their initiative (I01), even if some contracted legal support (I03), whose cost was an issue. It is worth noting that this methodology has excluded initiatives which have not been registered by the European Commission, therefore this result was to be expected.

C13. All initiatives required legal support, either from a committee representative with legal knowledge or a third party. The European Commission provided support by answering questions and steering, where necessary.

6.2.0. The dialogue with the European Commission and the European Parliament

The majority of respondents have had positive experiences with the European Commission and qualified their personnel as 'nice', 'helpful' and 'approachable'. Officials answered questions and were as helpful as possible. In the case of initiatives which gathered the one million signatures, the dialogue with Commission representatives was appreciated even if it occurred behind closed doors.

Some initiatives (I02, I03) complained about the European Parliament hearings and were negative about this experience because the speaking time was short and because MEPs treated their topic superficially.

C14. The absence of clear structure for parliamentary hearings led to discontent whereas the interaction with the European Commission was largely positive.

6.2. Theoretical issues
6.2.1. The ECI's priorities

Successfully collecting signatures is not the same thing as a successful ECI. The ECI's declared objective is to set the agenda, which is diminished when the European Commission refuses to make a legislative proposal after three initiatives obtain the required number of signatures. The nuance between inviting to propose a legislative procedure and actually proposing one may be lost on some average citizens, who expect their effort to be rewarded.

Respondents unanimously agree that they had no impact on agenda-setting or influencing EU policy.

There is a discrepancy between what organizers and the European Commission expect. On the one side, most organizers expect to generate a political change and to create a debate on their topic. On the other side, the European Commission consider that the ECI works because some organizers collected the required signatures and because the debate centred on EU issues. The latter interpretation only addresses the first ECI phase and the European Commission report makes little reference to the fact the ECIs have not generated a legislative proposal. Both the Ombudswoman (2015) and the European Parliament (2015) focused on the ECI's agenda-setting priority in their critique on the ECI.

D1. The lack of clear priorities diminishes the ECI's effectiveness and credibility because it generated exaggerated expectations and unrealistic evaluation criteria. This may lead to diminished trust in EU democracy seeing as most respondents consider that the ECI has not contributed to increasing the EU's democratic legitimacy. Most do not intend to participate in another ECI.

6.2.2. The difference between citizens, civil society and civil society organizations

The difference between citizens and civil society does not explicitly feature in my document analysis. Even if some interpretations put citizens, civil society organizations, and civil society in the same box, it is important to differentiate between average citizens and civil society organizations as they have different capabilities. It stands out that those initiatives which have collected the required number of signatures were substantially supported by powerful civil society organizations. No group purely composed of average citizens has collected the required number of signatures: "it is almost impossible for a 'pure' group of citizens without organizational support (…) to create, lead and succeed in a pan-European campaign in 12 months." (I05).

D2. The difference between 'citizens' and 'civil society organizations' is evident in the signature collection phase, and the former have very little chance of success.

6.2.3. Democratic legitimacy

The assumption that the ECI would increase the EU's democratic legitimacy by increased citizen participation and by creating debate reveals a superficial interpretation. Democratic theory shows that just by increasing the number of participants or debates does not contribute to democratic legitimacy in either the participatory or deliberative model of democracy. On the one hand, in participatory democracy, the degree of institutional access is as important as the number of participant. On the other hand, the quality and representativeness of debates is the relevant factor in democratic legitimacy in deliberative democracy. Furthermore, deliberative democracy aims to improve the quality of representative democracy rather than be a stand-alone form of democracy. As such, increasing citizen participation does not necessarily also increase participatory democratic legitimacy without depth of access. Similarly, bringing more topics up for debate does not necessarily increase deliberative legitimacy if it is not paired with visibility and quality of debate. In addition to this, it only improves the quality of representative democracy, which remains the kernel of this form of legitimacy. It is not the purpose of this paper to determine the issue of representative democracy legitimacy in the European Union. However, the point is to highlight the superficial approach to democratic legitimacy.

Furthermore, *input* and *throughput* legitimacy depend on having some sort of *output*. As long as there is no follow-up to ECIs, there is little use of talking about legitimacy and efficiency. Debating, creating a European *demos* (Monaghan 2012) or creating a European public space do contribute to reforming the community method (Vogiatzis 2013), which might contribute to democratic legitimacy. While this is debatable, the fact there is no *output* to speak of in the form of a legislative proposal under the ordinary legislative procedure makes the discussion on *input* and *throughput* secondary. The closest an ECI has been to setting the agenda was the *Right2Water* initiative. Yet, as previously mentioned, it did not lead to a legislative proposal but rather to some action points before it had collected the necessary number of signatures.

D3. The closest form of democratic legitimacy to the ECI, which would include it in the EU governance system, depends on reforming the community method and on having an output.

The limited success of the ECI appears on two inter-linked levels. To begin with, the network of actors activated under the ECI faces a number of practical,

logistical, and legal issues (C1-C14). Their salience is not explicitly explored but several stand out across the respondents, notably C1-C8, C10, and C11. As opposed to member states, transboundary communication is much more costly and difficult, especially when linked to limited financial resources and technical impediments. Furthermore, the actual signature collection process requires the mobilization of large number of volunteers and coordinators, which require human and financial resources to manage. While the ECI targets citizens, it appears that these structural limitations favour civil society organizations which have the resources and networks of contacts to launch a successful signature collection campaign (D2). Even so, not all civil society organizations succeed. Therefore, the realistic barriers of entry reflect in the three initiatives which were successful, all of which were backed by strong civil society organizations or political actors. In other words, between April 2012 and December 2015, the empirical reality demonstrates that average citizens cannot run a successful signature collection phase.

The next level which explains the ECI's limited success is the issue of incentives and legitimacy (D1 and D3). Following the aforementioned governance approach, the fact that the community method does not change means that the ECI does not qualify as a governance system in practice despite the rhetoric associating the ECI with European Union governance; there is no 'flexibility of government'. The lack of a clear priority of the ECI (D1) and the limited access successful initiatives have reduces the incentive for actors to launch new initiatives and lead to disappointment because of a gap in expectations. Increasing the number of people potentially participating to agenda-setting does not increase participatory legitimacy because co-production does not manifest in practice, as can be emphasized by C14, where some initiatives' representatives received very limited time to speak, and by the fact that no initiatives have resulted in a policy proposal. Thus, the priorities and objectives of the instrument are a cause of limited success. The ECI puts barriers at the network level, especially to its target group, 'citizens', and at the governance level by limiting governance and reducing incentives of participation. The reason why the ECI has limited success is that necessary conditions, such as clear priorities, incentives for actors and accessability to its target group, are weak.

7. CONCLUSIONS AND RECOMMENDATIONS

The ECI instrument represents the diluted version of an overall weak instrument in comparative law, the initiative. In its current form, its results are limited and most stakeholders confirm the need for reform, notably except for the European Commission.

Even though it is an incremental step towards participatory democracy, the ECI faces a series of practical, logistical, legal and theoretical issues. These pertain to the feasibility of implementing art. 11(4) TEU, namely signature collection and validation, costs of implementation versus perceived benefits, linguistic and cultural limitations, as well as the insufficient wider awareness of the instrument. At the same time, it faces theoretical issues pertaining to the different understanding of the instrument's objectives, the discrepancies in capabilities between citizens and civil society organizations, as well as the ambiguous manner in which it contributes to the EU's democratic legitimacy. It is unlikely that solving any one individual issue of the practical, logistical and legal issues, or of all theoretical issues can be achieved without major legislative changes. However, the cost of inaction may be the abandonment of the instrument.

In its current form, the ECI would contribute to reforming EU governance, but theoretically and practically the European Commission retains its monopoly on legislative proposal and the community method remains intact. This reality contrasts the discourse surrounding the ECI as an instrument for agenda-setting, especially since no legislative change has occurred after a completed ECI has been submitted. In other words, the ECI offers little incentive for people to invest in it. It is not their priority to be democratically legitimate but to achieve their collective goals. Therefore, the main reason why the ECI isn't working is because the substance of reform did not make it into Regulation 211/2011. Its limited success is further amplified by the plethora of practical, logistical and legal issues surrounding it.

So as to contribute to the debate on how to improve this instrument, I propose two ideal models which take these issues into account. These are mere outlines setting out directions which might guide the ECI in its self-professed quest for legitimacy. It is unlikely that they are politically viable, given the fact that they would require Treaty change. They rather tend towards being ideal types. For this reason, the technical details are sketched and the focus is on addressing the ECI's ambiguity of substance.

The obvious limitations stem from the need to modify the Treaties and from the European Commission's reluctance to draw up changes to the existing Regulation. On the one side, modifying the Treaties is a cumbersome process, fraught with numerous veto points, and it is unlikely it will be launched solely for a secondary instrument such as the ECI. On the other hand, the European Commission reticence in reforming the instrument and its suggestion that it is working reveals a conservative vision. Given this stance and the Commission central role in any legislative initiative, it is unlikely it will agree to radical changes. Moreover, it is very probable that the stakeholders themselves will be divided on the usefulness and desirability of these models.

The models retain the two phases of the ECI. The first phase must be independent, the organizers are solely accountable for its success and it is a viability test. The innovation is a two-tier system to reflect the differences between citizens and civil society organizations. In addition to this, the models define a clear priority for the ICE. The thinking is that either participation in agenda-setting or raising awareness need to be prioritized so as to give citizens a clear message of what they sould expect. Either would contribute to the EU's democratic legitimacy.

7.1. The model of the citizens' initiative

Its main objective is agenda-setting and the citizens' initiative represents a form of indirect popular initiative, which addresses elected officials and can add proposals on the political agenda. If the necessary number of signature is collected, then the European Commission guarantees the elaboration of a legislative proposal to be sent to co-decision.

The actors are interdependent and work together. The representative of the European Commission and the initiative's organizers negotiate together the legislative proposal. This prevents the European Commission from blocking a proposal, the organizing committee plays a larger part in the second phase of the ECI and EU citizens are directly involved in agenda-setting. At the same time, legislative proposals are debated both by elected and indirectly legitimate officials before being decided upon.

The two tiers underline the substantial differences between citizens' and civil society organisations' capabilities. Each citizen's initiative would have to opt on

registration which tier it aims for. Fraud by deceptively choosing a lesser tier is prevented in two ways. Firstly, the European Commission checks the organizing committee and audits its finances upon registration. Secondly, the lesser potential benefit of a successful initiative reduces the incentive to cheat.

Moreover, there are different requirements and benefits for each initiative. The citizens' tier requires a smaller number of signatures than one million, the equivalent of the average between the numbers of signatures collected by initiatives without massive support from large civil society organizations. Organizers can benefit from non-reimbursable financial support for organization and administrative costs. The potential benefit is agenda-setting and direct collaboration with the EU institutions. The civil society organizations tier requires a larger number of signatures during the same time frame, closer to the average percentage of initiatives at the national level. The organizing committee participates directly to the drawing up of the legislative proposal. The European Commission is thus a facilitator during the signature collection phase and partner through negotiation and deliberation during the second phase.

This way, the *input* and *throughput* legitimacies are increased through a larger number of citizens participating in the process of drafting legislation and through opening up the institutions. By focusing on participatory democracy, the citizen's initiative leads to more responsibility on behalf of the European Commission, to less legislative monopoly and to more citizen ownership. Even if the legislative proposal does not succeed in the ordinary legislative procedure, it has been debated in a forum of elected officials.

7.2. The deliberative initiative model

The main objective is not agenda-setting, but improving the quality of debate on topics of public interest. In this case, the focus is on deliberative democracy rather than on participatory democracy. *Input* legitimacy is the priority and the quality of the debate is its standard of evaluation. The deliberative initiative does not represent a system of governance but a way to strengthen the process of democratic representation.

Citizens who consider that a subject requires more debate can ask the European institutions to organize such a debate. It does not involve a legislative proposal.

The reasons why citizens can look to the European institutions for such a debate is financial support and media visibility.

As with the citizen's initiative model, the deliberative initiative has two tiers. The citizen's tier requires significantly less signatures from less member states than the model of the citizens' initiative. The potential gain is money to finance a citizen's jury on the topic of the initiative and a hearing in the European Parliament. The civil society organization's tier requires more signatures from more member states. The potential gain is funding to finance an entire awareness campaign, comprised of a citizen's jury, another instrument of deliberative democracy, a media campaign and a hearing in the European Parliament. In addition to this, the personal data requirements are standardized at EU level. The risk of fraud is diminished because the potential gain is reduced and so is the need for excessive bureaucratic scrutiny.

The aim of collecting signatures is to launch a deliberative process on a given topic. The organizers propose the topic and a potential budget, participate actively in the network's organization, as well as in managing the events they are applying for. Because this model does not mandate the European Commission to take action, it can be responsible with event organization and promotion. The resources and costs depend on each type of activity and on stakeholder negotiation. The entire deliberative process is meant to increase the visibility of the respective topic and the level of awareness among citizens.

This initiative, as opposed to the previous one, acknowledges itself as an awareness campaign. Rather than using funding to collect a large number of signatures, these funds would be more efficiently spent on advertisement. Thus, the initiative satisfies the interest of those most concerned with increasing the level of awareness, allows the European Commission to improve its image and contributes to socializing citizens, organizations and EU institutions.

7.3. Concluding remarks

The advantage of these initiatives is that they eliminate the ambiguity of the ECI's central objective. In addition to this, the degree of socialization between EU institutions contributes to increasing the democratic legitimacy of the EU, as understood through each theoretical lens. It is very important to take them separately so as not to encumber the process and create confusion.

The purpose of these models has been to suggest some direction of how the ECI could become more coherent. The models aim to guide rather than to be comprehensive. Therein lies the first limitation, namely the limited number of detail. Second, the numbers and thresholds would be debate on but the point is to differentiate between 'citizens' and 'civil society organizations' as they have different capabilities. Third, they fit the concepts of 'participatory' and 'deliberative' democracy to the governance approach, which is an analytical abstraction open to conceptual criticism. All in all, the purpose is to generate balanced discussion on issues of substance regarding the ECI rather than to be a concrete policy proposal on technical solutions. In my view, the lowest common denominator between stakeholders is not an option in the ECI's case, which the research findings prove.

In conclusion, the final result can be a closer relationship with citizens, reducing the distance between the European Commission and its citizenry, and a dynamic ecosystem of initiatives. Even if the ECI fills a small place in the decision-making process of the EU, its success is important for the EU's credibility as a whole, which makes its reform and future use worth addressing.

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  All interviews were conducted in confidentiality and the names of the interviewees are withheld by mutual agreement.

- (I01) Interview with ECI organizer, March 31st, 2016.
- (I02) Interview with ECI organizer, April 1st, 2016.
- (I03) Interview with ECI coordinator, April 4th, 2016.
- (I04) Interview with ECI organizer, April 11th, 2016.
- (I05) Interview with ECI coordinator, April 12th, 2016.
- (I06) Interview with ECI organizer, April 14th, 2016.