

# COMMON MARKET LAW REVIEW

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**Aims**

The Common Market Law Review is designed to function as a medium for the understanding and implementation of European Union Law within the Member States and elsewhere, and for the dissemination of legal thinking on European Union Law matters. It thus aims to meet the needs of both the academic and the practitioner. For practical reasons, English is used as the language of communication.

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### Establishment and Aims

The Common Market Law Review was established in 1963 in cooperation with the British Institute of International and Comparative Law and the Europa Instituut of the University of Leyden. The Common Market Law Review is designed to function as a medium for the understanding and analysis of European Union Law, and for the dissemination of legal thinking on all matters of European Union Law. It aims to meet the needs of both the academic and the practitioner. For practical reasons, English is used as the language of communication.

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Maximilian Conrad, Annette Knaut and Katrin Böttger, *Bridging the Gap? Opportunities and Constraints of the European Citizens' Initiative*. Baden-Baden: Nomos, 2016. 250 pages. ISBN: 978-3-8487-2454-3. EUR 49.

*Bridging the Gap?* examines the early years of the European Citizens Initiative (ECI); one of the EU's most innovative democratic instruments. The ECI was included in primary law by the Lisbon Treaty; the implementing regulation (211/2011) was enacted in April 2012. The expectation for many had been that the ECI would be "a qualitative leap in EU-level participatory democracy". This edited collection, however, takes a rather sobering look at the experience of the ECI, which dampens the heightened expectations that accompanied the ECI's launch. The analysis focuses on specific areas of normative confusion and practical complication relating to the nature and impact of the ECI in its first two and a half years, which is of importance for the ongoing institutional and civil society debate about its revision.

The book starts with an overview by Böttger and Plottka of the state of the art of research and political debate about the ECI up to October 2014 – the main stated ambition of this volume. This is a challenge given the speed at which the literature relating to the ECI is evolving, and has evolved, since this volume's cut-off point – a rapid evolution that is driven in part by continuing political and judicial engagement with the ECI. This political science-focused review of ECI literature covers a wide range of academic and non-academic sources and gives an excellent sense of how the ECI was received in its early days, albeit with one or two gaps from legal scholarship, and significant developments in the interim.

This first chapter provides a useful introduction to the ECI through an overview of its history and procedure, and comments on key themes of the volume: how can the ECI influence EU policy and who is able to use it? In this introductory part, though, there is little attempt to set the ECI within a theoretical framework of democratic or citizen participation, or to locate it within the wider developments of EU democracy, which is partly due to the behavioural rather than institutional approach that is taken in the volume. The focus is on the type of instrument that the ECI is and its, largely theoretical, impact on public discourse and EU policy making, which is

perhaps understandable given how early in the life cycle of this unusual democratic instrument we are.

The initial group of chapters in this volume provides a theoretical analysis of the ECI's nature and potential impact. From differing perspectives these chapters develop our understanding of the ECI by emphasizing the deliberative as opposed to direct democratic importance of the ECI, and they give specific examples of restrictions to this deliberative potential: because there is confusion about the nature of the ECI as a democratic instrument, because it only obliges a weak response from EU institutions, and because the EU remains a predominantly representative system of democracy. The concept of Transnational Discursive Spheres (TDS) is proposed by Knaut as a way of framing the assessment of this limited, deliberative potential. Within these chapters there is broad agreement that the ECI is a "mere request for agenda setting to the European Commission" and just "one element towards a pluralistic model of democracy at the European level, which is crucial for developing a European public sphere."

The subsequent chapters contain empirical analysis. The first of these, by Conrad and Steingrimsdóttir, develops and examines a typology of the groups organizing initiatives. This is an interesting assessment of whether it is in fact a citizens' initiative or a democratic instrument for civil society, which would mean that the ECI has far less impact on the participatory democracy of the EU. The chapter by Polchow returns to TDS by analysing the degree to which the ECI is developing TDS from the specific perspective of social media. The well-argued chapter by Greenwood and Garcia assesses what success means for the ECI, despite the fact that there have only been three formally successful initiatives so far and the expected impact on EU legislation has not materialized. The analysis accords with the earlier chapters in describing the ECI as a participatory tool for civil society rather than an instrument of direct democracy for citizens, and also describes the ECI's impact as promoting a more adversarial form of agenda setting. Interestingly, however, it is suggested that the potential for proposing more radical innovation may increase distance between ECI promoters and EU institutions, rather than bridging the gap as might be expected. The chapter concludes that the ECI is having an impact through "new dynamics in the organization of civil society in the EU and re-orientating it towards the public sphere and contestation", but that it will be some years before the impact of this is felt.

The theme of the ECI increasing EU-level policy contestation continues in Plottka's chapter. The introduction of direct democracy into the EU through the ECI is briefly located in the democratic deficit debate and then discussed from a primary law, secondary law and (most interestingly) a constitutional practice perspective, analysed using the Right2Water initiative as a case study. This is a clearly structured insight into the difficulties for the ECI of being institutionalized in a politically consensual EU system by actors used to a more adversarial political engagement, and without yet developing informal constitutional processes to manage its potential influence on policy; it develops the ideas in the previous chapter.

These chapters with empirical analysis use the available data convincingly, but for a young instrument such as the ECI there will inevitably be a limited amount of empirical data. This challenge is particularly felt in relation to the key theme of the ECI's impact, not least because of the limited number of "successful" ECIs. Nevertheless, the reframing of the analysis of ECI impact beyond direct legislative and policy influence using the available data is an important contribution to the understanding of the ECI.

The final chapter in the book by Berg and Glogowski stands out from the others in that it uses a wider range of empirical material from campaigners, and provides a more practical, activist examination of the ECI's early years. They start by emphasizing the importance of a clear understanding of the ECI when setting its formal rules and argue that the current procedural complexity of the ECI is not justified by its weak formal impact. Through an overview of the initiatives submitted, they then describe the obstacles in the ECI process and importantly make recommendations for change, which focus on both reducing the transaction costs to organizers and also on increasing the legal and political impact of the ECI, without which "citizens will most likely not see a sufficient reason to use the ECI anymore." This contribution, which also

highlights significant issues in the legal design of the ECI, should be of particular value to the ongoing institutional review of the ECI legislation.

Taken together, the chapters in this volume provide increased clarity about the nature and potential impact of the ECI, which is essential to maintain appropriate levels of expectation for citizens, civil society and institutions. The conclusion that the design should reflect the formal impact and deliberative potential of a democratic instrument is of particular importance for informing decisions about its legislative framework, and facilitating the effective development of informal constitutional practices of the type discussed by Plottka in the context of the ECI. This success in developing the understanding of the nature of the ECI as a democratic instrument and clarifying the accompanying expectations makes this volume of relevance to a wide range of audiences, from campaigners to academics to legislators.

Where *Bridging the Gap?* is perhaps less successful is in locating the specific aspects of the themes developed in each chapter in a broader context or framework. The concluding chapter is symptomatic of this, as it limits itself to summing up the contributions in the volume, but with little attempt to draw any conclusions beyond the ECI, or even to strongly engage in answering the question implied in the title. More analysis, for example, beyond that in the chapter by Conrad, could perhaps have been included of the role of the EU institutions, particularly the Commission, in receiving initiatives at the registration and final submission stages, or of the link between the ECI and the European Parliament's deliberative role in the European public space. This would have complemented the clear citizen/campaigner perspective in the volume to consider the gap from both sides; particularly as the extent to which the gap between citizens and institutions is bridged is strongly mediated by the approach taken by the EU institutions towards the ECI.

The volume is successful in repositioning and trying to clarify the manner in which the ECI is defined and how it might have an impact, but the reader may be left feeling that the position of the ECI within and influence on EU democracy could have been more strongly developed. That said, the suggestion for a wider debate to develop the volume's interesting theoretical and empirical analysis of the early days of the ECI is perhaps asking too much for an analysis of such an immature democratic instrument. With the initial panel held just a year after the enactment of the ECI Regulation, it is perhaps unsurprising that the book's focus is on understanding what form of democratic instrument the ECI is and what the expectations from it should be, rather than trying to place it within the wider context of EU democracy, with the limits on empirical evidence that this entails.

The overall conclusions drawn in this volume are clear: the nature of the ECI is not yet certain, it has only bridged the gap between citizens and institutions to a limited extent, and its potential, which has only just started to be felt, relies on deliberative engagement and greater impact if it is to be fulfilled. The development of these themes in the various chapters are sufficient for it to be a valuable and timely contribution to an evolving, ongoing debate about participatory and direct democracy in the EU. It will be of interest to those focusing on the ECI, but also those interested in how citizen engagement at EU level might be understood and developed more broadly. The contribution of this volume to understanding the ECI should therefore help inform the important ongoing work of revising the ECI, which is much needed if it is ever to be an effective part of bridging the gap between EU citizens and institutions.

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