

EUROPEAN CITIZENS' INITIATIVE: A PARTICIPATORY INSTRUMENT TO STRENGTHEN EUROPEAN GENERAL PUBLIC FOR THE PROTECTION OF ENVIRONMENT

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Abstract

The Lisbon Treaty introduced the European Citizens' Initiative (ECI) as a mechanism to strengthen citizen participation and to obviate the gap between the EU and the citizens. It aims to encourage EU-wide debates and to involve citizens in the decision-making process at the EU level by providing a mechanism of legislative initiative in which new actors could participate in the EU legislative procedure. ECI enables organized civil societies and citizens to have a voice in influencing the EU policy beyond mere information transfer and discussion and therefore can represent a remarkable stage for transnational democracy in the EU by contributing to the establishment of a shared political platform for ordinary citizens.

It also provides individuals with a great opportunity to place neglected or politically controversial themes on the agenda of the EU directly. Hence the ECI might be a convenient tool for the protection of the environment. However, there remain obstacles which impede the progression of the ECI to become an effective and sufficient component of participatory democracy.

Keywords: *European Citizens' Initiative, European Union, participation, protection of the environment, right to water.*

AVRUPA KAMUOYUNU ÇEVRENİN KORUNMASI HUSUSUNDA GÜÇLENDİRMEYE YÖNELİK KATILIMCI BİR ARAÇ: AVRUPA VATANDAŞLARI GİRİŞİMİ

Öz

Avrupa Vatandaşları Girişimi, vatandaş katılımını güçlendirmek ve AB kurumları ile vatandaşlar arasındaki mesafeyi azaltmak için bir araç olarak Lizbon Antlaşması ile yürürlüğe girmiştir. Girişim, yeni aktörlerin AB yasama

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prosedürüne katılabilecekleri bir yasama girişimi mekanizması sağlayarak, AB çapında tartışmaları teşvik etmeyi ve vatandaşları AB düzeyinde karar alma sürecine dahil etmeyi amaçlamaktadır. Bu girişim mekanizması ile vatandaşlar ve örgütlü sivil toplum, bilgiye erişim hakkını kullanma ve temel hususları müzakere etmenin ötesine geçerek AB politikasının belirlenmesinde daha güçlü bir rol oynayabilecektir. Böylece Avrupa Vatandaşları Girişimi, bir Avrupa kamusal tartışma alanının ve ortak bir siyasi bilincin oluşmasına katkıda bulunarak AB'de ulusötesi demokrasi için dikkate değer bir aşamayı teşkil edecektir. Ayrıca bu mekanizma ihmal edilen veya siyasi açıdan tartışmalı olarak değerlendirilen konuların doğrudan bireyler tarafından AB gündemine getirilmesi için de büyük bir fırsat sunmaktadır. Bu bağlamda, Avrupa Vatandaşları Girişimi çevrenin korunması hususunda devletlerin ulus üstü düzeyde harekete geçirilmesi için büyük bir fırsat sunmaktadır. Ancak, bu girişimin katılımcı demokrasinin etkin ve verimli bir bileşeni haline gelmesinin önünde hâlâ engeller bulunmaktadır.

Anahtar Kelimeler: *Avrupa Vatandaşları Girişimi, Avrupa Birliği, katılım, çevrenin korunması, su hakkı.*

Introduction

Participation is one of the most important features of a well-established democracy. Elections, referendums, complaints to the Ombudsmen, or the right to have information are some of the tools that citizens use to make their voices heard and to join the decision-making procedure of legislation that will have significant impact on their daily life in the end. Rather than being defined, the concept of “participation” is generally categorized according to various approaches, which encompass “the locus and level of engagement, ideological/political project, the conception of citizenship, and links to development theory” (Hickey and Mohan, 2004: 3). Whilst the debate on participation continues at the national level, it is a major argument for the legislative procedure of the EU in terms of democratic deficit. By coining the term, Marquand (1979: 64) argued that since the European citizens did not directly elect it, the European Parliament (then the Assembly) suffered from the democratic deficit, which in terms of the European Union, referring to the lack of accessibility or representativeness of ordinary citizens, and the lack of accountability of EU institutions. In addition, main decision-making institutions in the EU are being criticized for staying behind the national levels in regards to democratic accountability and transparency standards. Therefore, by the term “deficit”, the legitimacy of the EU’s internal decision-making process has been judged since the Union’s legislation procedures oppose the democratic standards of European nation-states (Norris, 2011: 5).

Democratic legitimacy has been a vital issue for the European integration process. Maastricht Treaty, Treaty of Amsterdam and Nice Treaty have introduced several arrangements to underpin the democratic legitimacy of the EU system by empowering the Parliament and encouraging citizen participation in every possible measure (Efler, 2012). By the same token, the Treaty of Lisbon contemplated the diminution of the democratic deficit in the European Union by strengthening the position of the Parliament and acknowledging a term in which all EU legislative proposals are reviewed by national parliaments, and finally introduced the Citizen's initiative. Title II of the TEU "Provisions on Democratic Principles" contains four articles (9–12) dealing with several aspects of democracy in the EU and the new European Citizens' Initiative (ECI) mechanism could be regarded as an integral part of a comprehensive and wider understanding of participatory democracy (Hrbek, 2012: 370).

By introducing the ECI, an instrument of transnational participatory democracy has been regulated within the EU primary law (Glogowski and Maurer, 2013: 134). Citizens' Initiative has enabled EU citizens from a remarkable number of Member States to request the Commission to introduce a proposal on the themes in which EU legislation is needed. The initiative intends to provide the European citizens with a mechanism to affect EU politics, which has the potential to strengthen the EU's democratic legitimacy. Treaty on the Functioning of the European Union (TFEU) Article 24 imposes an implementing regulation for elucidating the circumstances and procedures of the initiative, which enables European citizens to propose legislative acts to the Commission. Accordingly, the Commission has conducted the Green Paper (European Commission, 2009), and then the Regulation 211/2011 on the citizens' initiative, determining the conditions and procedures for conducting this new initiative mechanism has been acknowledged (European Union, 2011). ECI, which is designed to be an effective tool to shape and participate in the European agenda, was greeted with great enthusiasm on the basis that this instrument represents a "new generation of democracy tool, [being] a more direct and more transnational instrument than any participatory procedure before it" (Kaufmann, 2012: 11) but the procedure was more challenging than expected. During the period between 2012-21 only six initiatives were successful¹, which is quite low compared to the registration (85) and request numbers (110).² European Institutions and experts discussed the reasons for this failure and accordingly several reports, containing analyses on the main obstacles faced by Initiative holders and solutions to make ECI an effective

¹ "End the Cage Age" (2 October 2020), "Minority SafePack - one million signatures for diversity in Europe" (10 January 2020), "Ban glyphosate" (12 December 2017), "Stop vivisection" (3 June 2015), "One of us" (28 February 2014), "Right2Water" (19 March 2014).

² For detailed information see (European Union, n.d.).

participatory democracy tool in the EU, were published. The goal of these studies is stated as “to define an ECI process with fewer costs and burdens for EU citizens and which would empower them – as natural persons, to actively participate in shaping the future of the EU” (Ballesteros and Fiorentini, 2005: 5). These studies demonstrate some problematic aspects or obstacles that ECI organizers face while launching an ECI, as determining the scope and legal bases, information technology and identity requirements on the organizers’ liability, or software problems about the online signature collection. In the light of these studies, inquiries (European Ombudsman, 2013) and disruptions in the process eventually resulted in the revision of Regulation (EU) 211/2011 on the ECI (European Union, 2011).

This article, which proceeds in three parts, examines the efficiency of this new participatory mechanism. In the first part, the architecture and conditions, as well as the obstacles of the ECI are discussed. Then the article goes on to look at the practice and gives brief information about all the initiatives that were launched so far. The third part analyses the effect of ECI on participation to protect the environment by examining a case study of the first successful initiative “Right2Water”. Subsequently, the article answers the question “Can European Citizens’ Initiative be used as a participatory instrument to strengthen European General Public for the protection of European Environment?” In addition to answering the main question, the article also focuses on several solutions which may enable the application of this new participatory instrument more effectively with a special emphasis on the significant role of mass and social media.

ECI: A New Tool for Participation in the European Union

The European Citizens’ Initiative intends to strengthen participation and contribute to direct democracy within the EU. However, the precise legal nature should be separated from similar political participation models, for instance, petition rights (Treaty on the Functioning of the European Union, 2007, Art. 227-228). The ECI is an agenda-setting initiative, which provides ordinary citizen groups to request European Commission to prepare a proposal on an essential legislative issue (Treaty on the Functioning of the European Union, 2007, Art. 11/4). Since the Commission wishes citizens to engage more actively in European political processes, the ECI is formed under the powers of the European Commission. As a tool to participate, citizens can put an issue on the European political agenda through an ECI and request the Commission to initiate a proposal. It should be clarified that the ECI does not grant a concrete result; instead, it only gives the opportunity to place a theme on the political agenda (Berg, 2013) and enables citizens’ direct participation. Nevertheless, the right to launch or sign an ECI is not regulated as a right for European citizens (Treaty on the Functioning of the European Union, 2007, Art. 20(2)) and on the

other hand, it is not mandatory for the Commission to continue the legislative procedure by delivering the ECI request to the Parliament and the Council (González Cadenas, 2020). In other words, the Commission has a wide margin of appreciation on the ECI, which was also confirmed by the European accordingly (European Citizens' Initiative One of Us and Others v. European Commission, 2018, para. 111).

As a result of the efforts made to eliminate the deficiencies during the application of ECI (Bouza García, 2012a; Głogowski and Maurer, 2013), the European Parliament acknowledged the governing rules for the implementation of the ECI and, a series of changes have been done to make the ECI more effectively used (European Parliament, 2010). The adjustments involve an “admissibility check” at the registration stage, a reduced limit for the necessary number of Member States (original Commission paper proposed one-third but one-fourth is accepted), and a more user-friendly signing up procedure for Citizens' Initiative.

In general, the ECI can be regarded as an “agenda-setting and policy-shaping” tool (Cuesta-López, 2012: 257; Szeligowska and Mincheva, 2012: 270), since it gives a small number of EU citizens the right to call the EU legislation to pay attention and take action for a specific theme. However, it cannot be considered legally binding for the Commission since it has no legal duty to submit the concerned proposal to the Parliament and the Council (Głogowski and Maurer, 2013: 8). Nevertheless, in the perspective of the most European law experts and the *effet utile* of the ECI, it has a certain amount of binding nature for the Commission as it is obliged to take some legislative action on the theme suggested by the ECI only when the ECI is declared admissible (Efler, 2006).

The Scope of the European Citizens' Initiative

For a duly citizens' initiative, the concerned subject of the initiative should be an issue regarded in the framework of the European Commission.³ The Regulation 2019/788 on the ECI determines the details of this criterion so similar with the former (European Parliament and European Council, 2019). In the first place, for an ECI to be registered, several legal conditions should be met. In the first place, in order to be registered, the ECI theme should not be “manifestly abusive, frivolous, vexatious, or contrary to the values of the EU”⁴

³ “Not less than ... inviting the European Commission, *within the framework of its powers*, to submit any appropriate proposal on matters...” (Treaty on the European Union, 1992, Art. 11(4), emphasis added).

⁴ “The initiative is not manifestly contrary to the values of the Union as set out in Article 2 TEU and rights enshrined in the Charter of Fundamental Rights of the European Union” (European Parliament and European Council, 2019).

or “manifestly outside the powers of the Commission”.⁵ Moreover, the subject should be unique; if it conflicts with a current ECI, the Commission shall inform all interested parties and preferably encourage them to maintain a public discussion among them before passing the signature collection stage. As another option, any contradictory initiative proposals can be postponed until the first proposal completes its collection period, and only after the themes can be compared in terms of contradiction. In this circumstance, the Commission may prefer to prepare its own proposal, while asking the conflicting parties to defend their initiatives before the Parliament. In this sense the Parliament could provide a platform for discussion on the proposed initiative themes, on the other hand, it can perform a “public filter” mandate by asking the Commission to submit a proposal based on the preferred initiative. Although the Regulation has not led down this solution, it may improve the nature of the ECI to become a truly negotiated policy-making procedure (Bouza García, 2012a: 36).

Another pivotal aspect of the ECI content is whether an ECI can propose a subject, which requires a Treaty amendment since neither the current ECI Regulation nor the former explicitly addresses the matter. According to EU law, the Commission is entitled to propose Treaty amendments through the ordinary revision procedure (Treaty on the European Union, 1992, Art. 48/2-5) or the simplified revision procedure (Treaty on the European Union, 1992, Art. 48/6). Accordingly since Article 48 TEU has stipulated the revision rules for the primary legislation in a clear way, it is claimed that ECI may only propose amendments on issues in the scope of the secondary EU legislation (Glogowski and Maurer, 2013: 16-17). The Commission⁶ and most Member States support this view and hold that an ECI, which requires a Treaty amendment, would be found unacceptable according to Regulation 211/2011, Art. 4(2a). On the other hand, another view based on Article 11(4) TEU⁷ argues that since the article refers to “legal acts of the Union”, Treaty amendments should be admitted under the ECI scope (Dogan, 2011: 1835). European Parliament and civil society organizations also supported this view and assert that ECIs should be used for Treaty amendments since the Treaties regulate all the paramount issues

⁵ “None of the parts of the initiative manifestly falls outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties” (European Parliament and European Council, 2019).

⁶ The Commission has responded to this question as: “according to with the Treaty, citizens' initiatives can only concern proposals on matters where citizens consider that a legal act of the Union is required to implement the Treaties” (European Commission, 2010).

⁷ “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.” (Treaty on the European Union, 1992, Art. 11(4))

of great interest to EU citizens. Moreover, since the effect utile of this new mechanism is to provide European citizens a mean to affect European policy, excluding the Treaty amendments from the scope of ECI would harm the ultimate goal (Efler, 2006: 10).

The Anagnostakis case could be a chance for the European Court of Justice to resolve this dispute. Concerning the financial crisis and its severe effects, One Million Signatures for a Europe of Solidarity initiative proposed to activate a state of emergency deriving from the “state of necessity” principle (Karatzia, 2019). However, the registration application of the initiative was dismissed on the ground that this initiative scope “falls manifestly outside the framework of the Commission’s powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties”, and the ECI cannot grant new tasks for the Commission (González-Cadenas, 2020:125). Afterward the applicant requested the Court to annul the respective Commission decision as well as to order the Commission to fulfill the registration (Anagnostakis v. Commission, 2015). While evaluating the defense of the allegations of defects or insufficient grounds, the General Court ruled that the Commission had fulfilled its obligation to state the reasons adequately through the disputed decision. Furthermore, it was a fair decision to hold that the concerned ECI subject was clearly beyond the scope of his power and to dismiss the action on the ground of being unfounded (Anagnostakis v. Commission, 2015).

In the appeal case, while Court has emphasized the importance of citizen participation and accessibility of the Union, it declared that the Commission should interpret and apply the scope of the ECI in a way that facilitates easy access to ECI (Anagnostakis v. Commission, 2017, para. 49), however, it also noted that when the proposed ECI is beyond the extent of the Commission’s mandate, it is entitled to refuse to register (Anagnostakis v. Commission, 2017, para.50). It was expected from the Court to clarify whether “for the purpose of implementing the treaty” shall be accepted as in the framework of possible future initiatives, however, the Court preferred to abstain. This decision would have significant effects on the efficacy and perception of the ECIs. According to our opinion, since the Commission is entitled to trigger the Treaty amendment procedure, ECIs should also be permitted to cover primary law review suggestions (González Cadenas, 2020: 141).

After analyzing the experience so far, it can be deduced that the accurate extend of an ECI will likely be based on the procedure or method that the Commission chooses to respond to. In the meantime, the Court decisions and concrete examples from current ECIs will also contribute to the development of this new mechanism. In general, ECI themes are expected to comply with the restraints of the treaties as competence boundaries, institutional balance, or human rights regulations led down by the ECJ. It should also be noted that the

Commission is in charge of giving reasons while refusing to register an initiative (Minority SafePack - one million signatures for diversity in Europe v. Commission, 2017, para. 59) since this “is an action that may impinge upon very effectiveness of the right of Union citizens to submit a citizens’ initiative” (Anagnostakis v. Commission, 2015, para. 25).

The Procedural Framework

After determining the scope of the initiative successfully, seven persons should establish the main representative organ of the initiative, the ‘group of organizers’ (Regulation 2019/788, Art. 5(1)). The organizers should be EU citizens who are beyond the voting age and be residents in different states (European Parliament and European Council, 2019, Art 5). This committee would be responsible for the communication with European institutions, and all ECI submission procedures.

After establishing the structural body, the initiative should be registered by the Commission (European Parliament and European Council, 2019, Art. 6/1). When formulating a proposal, it is essential that the goal and scope of the initiative be easily and accurately acknowledged. Only after this criterion is met it would be possible for the proposal to be submitted for preliminary registration. Most of the time, the initiative committee decides the nature of the legislation as a legal act draft or a general proposal that regulates the targets of the legislation and the fundamental endeavors to be launched or changed. Additionally, the registration should include the information that is led down in Annex II to the Regulation. First and foremost, the proposal should contain a suitable title and a brief description of the ECI. Then the text should demonstrate the relevant provisions of the Treaties, which may constitute a sufficient basis for the proposal. And finally, information on support and funding sources should be provided regularly (European Parliament and European Council, 2019, Annex II).

After assessing all the essential documents, The Commission is obliged to register the proposed citizens' initiative in two months (European Parliament and European Council, 2019), Art. 6/2-c). The initiative shall be regarded as officially launched only after it is properly submitted and registered. At this point, it should be highlighted that there will be a pre-check of the admissibility conditions for ECIs. In the first place, the proposal should not be “abusive, frivolous, or vexatious” and “contrary to the values of the Union” (European Parliament and European Council, 2019, Art. 6/3-d, 6/3-e)⁸. And in the

⁸ “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in

following stage, it is appraised whether the initiative is in the competency framework of the European Commission, or it is a matter connected with human rights. If the concerned ECI cannot meet the requirements above, then the Commission shall refuse the registration. It is also in charge of informing the organizers about the refusal grounds and all possible judicial remedies available.

Assuming that the requirements are sufficiently met, the ECI will be published in the Official Journal of the European Union along with the ECI's website. The translations for the initiative text, and also for the signature forms should be available in this publishing.

On the flip side, if the ECI is misleading, confused, or contains commercial advertising, preliminary registration may result in the rejection of the citizen's initiative since the acceptance conditions are not sufficiently met. Another reason for rejection might occur when the ECI theme is beyond the jurisdiction framework of the Commission (*Anagnostakis v. Commission*, 2015, para. 25). The Preliminary registration phase is a pivotal level to achieve since it is a prerequisite for further assistance and support from the competent authorities. Furthermore, it is regarded as the starting point for the signature collection period, which will have a profound effect on the ECI to become successful.

After the registration stage is completed, the signature collection stage begins. The signatures can be gathered either in paper form or via an individual or central online collection system for which the citizens' committee is responsible (European Parliament and European Council, 2019, Art. 5(1), 10 and 11). The citizens' committee must collect at least one-fourth vote of the whole union population of at least 7 member states by complying with the Member State quota that the Regulation has set forth.⁹ According to the current member states and population, the expected signature rate is one million (European Parliament and European Council, 2019, Art. 3(1)(a) and Annex I). The timing is also important at this stage; following the initiative registration, the group of organizers is entitled to gather signatures within twelve months. This period is criticized by some civil society organizations. As the Commission along with the Council holds on one year, the European Parliament and civil society organizations posed a longer period as eighteen months.¹⁰ Although it was not extended as wished, the new Regulation has

which pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men prevail." (Treaty on the European Union, 1992, Art.2)

⁹ The Commission proposal suggested a one-third limit for EU citizens but EP has decided to decrease this to one-fourth. Regulation 2019/788, Annex I demonstrates the number of citizens for each state.

¹⁰ Initiative for the European Citizens' Initiative (The ECI Campaign, n.d.a).

given the group of organizers the discretion to determine the beginning date of the collecting period (though with some limitations).¹¹

The Decision of the Commission

When the group of organizers managed to collect the mandatory number of signatures and have them verified and certified by national authorities, the support statements (in paper or electronic form) should be submitted to the Commission for registration (Regulation 2019/788, Art. 12 and 13). Afterward, the European Commission will be compelled to review the initiative but it is not necessary for the Commission to take any action and it has absolute authority on how to conduct the ECI (Karatzia, 2013). After finishing all these challenging steps, the Commission determines a day in which the citizens' committee explains the initiative to the European Parliament in an oral hearing.

Starting an initiative and forming all the necessary organizations require quite serious efforts. If the committee manages to gather the required number of signatures by meeting all the other conditions, then the initiative should be submitted within three months after collecting the last signature (European Parliament and European Council, 2019, Art. 13). Thereafter, the Commission shall notify the European Parliament, the Council, the European Economic, and Social Committee, the Committee of the Regions, and national parliaments. Thereafter the European Parliament will hold a public hearing in which the group of organizers' is enabled to present the initiative and all other parties have the opportunity to discuss (European Parliament and European Council, 2019, Art. 14). The Commission shall announce its conclusions on the initiative by a communication (European Parliament and European Council, 2019, Art. 15), which includes the action it intends to take along with its rationale. If Union's legal act would be required, then the envisaged time limit is also included. The whole process shall be made public via the website of the respective European citizens' initiative as well (European Parliament and European Council, 2019).

The procedure for the Commission's assessment of a registered proposal that successfully collected necessary signatures has to follow the procedure issued in art 10 of the Regulation. First of all, the Commission is obliged to publish the initiative, then invite the organizers and allow them to explain their initiative. According to all documentation, the Commission shall issue a communication including its political and legal views and conclusion about the

¹¹ "All statements of support shall be collected within a period not exceeding 12 months from a date chosen by the group of organizers (the 'collection period'), without prejudice to Article 11(6). That date must be not later than six months from the registration of the initiative in accordance with Article 6..." (European Parliament and European Council, 2019).

initiative in three months. In the same period, a public hearing will be held at the Parliament, which will provide a platform for the organizers of the successful initiative to share their initiative with the public.

In the second alternative when the Commission refuses the initiative, it is obliged to inform the organizers about the refusal grounds and also about available judicial remedies. Accordingly, the citizens' committee may either challenge the decision through action for annulment procedure under Article 263 TFEU or if the maladministration conditions are met, organizers may bring a complaint suit to the European Ombudsman (Treaty on the Functioning of the European Union, 2007, Art. 228). Regarding the scope of the judicial review, since the criteria that the Commission applies while assessing an ECI are clearly and concretely defined, the judicial review is likely to be limited to examining whether the Commission applied these standards correctly or not. Besides, the Commission has a considerable margin of appreciation on how to proceed with an ECI including the possibility of not acting at all. Therefore, judiciary is unlikely to review the legal or political motivations or grounds behind the acts of the Commission and instead will focus on compliance with the requirements of the procedure (Bouza García, 2012a: 23).

Can ECI be used as a participatory instrument to strengthen the European General Public for the protection of the European Environment?

The importance of participation has been emphasized in the Governance White Paper as "Democracy depends on people being able to take part in public debate. To do this, they must have access to reliable information on European issues and be able to scrutinize the policy process in its various stages" (European Commission, 2001) and showed the importance of bringing citizens and EU institutions closer (European Commission, 2009).¹²

As a mechanism of participatory democracy, the ECI provides three significant measures to remedy the democratic deficit in the EU. Firstly, since successful ECIs require a considerable number of signatures, international exchanges and European social movements would be encouraged. Second, the ECI provides an official channel for European citizens to involve and affect the

¹² In the same attitude, the relationship between democracy and participation has been also clarified in the Green Paper as "The European Commission welcomes the introduction of the citizens' initiative, which will give a stronger voice to European Union citizens by giving them the right to call directly on the Commission to bring forward new policy initiatives. It will add a new dimension to European democracy, complement the set of rights related to the citizenship of the Union and increase the public debate around European politics, helping to build a genuine European public space. Its implementation will reinforce citizens' and organized civil society's involvement in the shaping of EU policies" (European Commission, 2009).

EU policies, and this direct participation ability will enable the citizens to tackle their concerns and enhance the legitimacy of the Union before public opinion. By the same token, the ECI will strengthen the EU's social cohesion and diversity since not only political or economic elites but also all of the EU citizens from different backgrounds can launch an initiative and take part in the policy-shaping process. Finally, since the ECI is formed as a solution-oriented structure, it has the potential to encourage citizens to contribute constructively in the legislation process and have the potential to design the policies of the EU with genuine ideas (Schnellbech, 2011).

A significant number of legislation and regulation, which would have a profound effect on the daily life of citizens, are decided and enforced at the EU level. On the contrary, EU citizens have hardly any opportunities to affect and shape EU policy directly. Therefore, ECI is a convenient tool to get the support of European citizens for adopting rules on EU-wide issues. As a matter of fact, there are some issues like migration, artificial intelligence, or protection of the environment that could better be governed beyond the limits of the national states, since effective regulations and sufficient outcomes require international or supranational cooperation. Therefore, ECI's potential to draw public attention to certain subjects beyond the national borders could provide a genuine opportunity for issues that local governments are unlikely to address, such as the protection of environment. By the same token, international treaties and global regulations on the environment encourage and urge improvements in public participation at all political levels, as well. For instance, Rio Declaration affirms that "environmental issues are best handled with the participation of all concerned citizens, at all the relevant level" and encourages access to information, participation in decision-making, and access to judicial and administrative proceedings at the national level, along with international level (UN General Assembly, 1992: 10). The Aarhus Convention (UNECE, 1998), moreover, regulates transparency and participation not only at the national level but also at the international level. In the same line, the EU has implemented several directives on access to environmental information as well as public participation (European Parliament and European Council, 2003).

The Effect of ECI on Participation to Protect Environment: A Case Study of the First Successful Initiative 'Right2Water'

The European Citizens' Initiative has been acknowledged in the EU for nearly a decade.¹³ As of November 2021,¹⁴ 30 initiatives could not accomplish to collect the required number of signatures in time, while 21 initiatives were

¹³ For all initiatives see (European Union, n.d.).

¹⁴ Information up to 30.11.2021 and based on European Citizens' Initiative (ECI): European Commission Official Register (European Commission, 2021).

withdrawn by the organizers and 4 initiatives are currently open for signatures. The Commission refused 19 requests for registration while only answering 4. Right2Water has resulted in the submission of a legislative proposal (European Parliament and European Council, 2017) and Ban glyphosate and protect people and the environment from toxic pesticides has resulted in the adoption of a Regulation proposal, as well (European Parliament and European Council, 2018a). On the other hand, the Commission has claimed that since current legislation was sufficient, there was no need for submitting a legislative proposal for the two initiatives, namely Stop Vivisection and One of Us.

The themes of the initiatives vary from civil servant exchange programs to animal testing or saving bees and farmers. Moreover, not only the subject matters but also the websites and campaign methods of the initiatives differ widely. The websites act as a platform that enables the initiative organizers to demonstrate their ideas to all EU citizens. The required signatures are also collected across these websites. Therefore user-friendly websites in which the proposal is available in different Union languages would be more likely to achieve the target successfully.¹⁵

When all the initiative subject matters are examined it is understood that there are plenty of initiatives on environmental issues¹⁶. And one of them, Right2Water has been the first European Citizens' Initiative that complied with the required conditions with the motto "Water and sanitation are a human right! Water is a public good, not a commodity!" The organizers' committee has succeeded in collecting more than 1,5 million signatures and submitted the initiative to the Commission on 20 December 2013. Afterward, the Commission invited the organizers on 17 February 2014 and, provided them the platform to elucidate their ideas before the European Parliament.

The Right2Water initiative requests the Commission "to propose legislation implementing the human right to water and sanitation, as recognized by the United Nations, and promoting the provision of water and sanitation as essential public services for all". The initiative also demands the EU Institutions and the Member States to accomplish to provide every resident access to water and sanitation facilities, as well as to escalate its activities on global access to water and sanitation" (Laskowski, 2012; Riedel, 2006; Cahill, 2005; Gawel and

¹⁵ "Taking into consideration that all the initiatives can be proposed and registered online, via internet, and not only on paper, but ECI is also considered as more digital than any other comparable process known today, being "the perfect iDemocracy tool for the twenty-first century" (Kaufmann, 2012: 11).

¹⁶ For instance, "Ban Fossil Fuel Advertising and Sponsorships", "Save bees and farmers! Towards a bee-friendly agriculture for a healthy environment", "A price for carbon to fight climate change", "The fast, fair and effective solution to climate change" (The ECI Campaign, n/a).

Bretschneider, 2016). Furthermore, the initiative asked for the exclusion of water services from liberalization claiming that water should not be regulated under the internal market rules.

The oral hearing took place on 19 March 2014, and right after the Commission has released a Communication in which it has highlighted the significance of “the right to water and sanitation” by pointing the link with the right to life and human dignity (European Commission, 2014). Whilst underlining the features having pivotal importance for securing access to water and sanitation (quality, physical accessibility and affordability) the Commission declared that it will respect the rules obliging the EU to remain neutral in regard to national regulations on water undertakings regime. Also, the Commission invited all the Member States to take action to provide everyone with a water supply since “water is not a commercial product” and devoted to place the access to safe drinking water and sanitation from a human rights perspective in the center of its development policy. However, there was no proposal for concrete legislation regulating water as a human right. After nearly 2 million European Citizens supported the first successful ECI against the privatization of water and sanitation services, the European Commission has stated that it could not initiate legislation on the topic of privatization, as it would “fall outside its competencies” (Fox, 2014).¹⁷ Besides the ECI also requested EU institutions to assure that no legislation will be passed to liberalize water and sanitation services but the Communication did not address this issue, neither.

Nevertheless, certain aspects of the European Commission's response can be considered positive. For instance, the Communication recognized that water services are conducted mostly at local levels since they have a stronger and closer interaction with citizens. This recognition affirms the tendency towards municipalization across Europe. The communication confirms that municipalization is the most convenient tool to exclude water from internal market provisions, which also constitutes one of the demands of the ECI. Another positive effect might be the general interest and public awareness on this successful initiative, which already prompted concrete policy effect since the water was excluded from the content of the Concessions Directive by the EU Commissioner by clear reference to the Right2Water initiative (European Parliament and European Council, 2014). In this regard, Commission's commitment to promote public-public partnerships as well as encourage global access to water and sanitation in its development strategy is also noteworthy. Even though Commission's response did not meet the expectations of the public in the first place, it ended up as a legislative proposal in the ongoing process (European Parliament and European Council, 2018b).

¹⁷ The EC Vice-President Šefčovič's statement (Fox, 2014).

In the light of all these improvements, it can be deduced that ECI is promising to affect the political agenda of the EU. However, this new participation model could not reveal its potential, yet. Like every democratic instrument, the ECI can be developed by recognizing and remedying the shortcomings as well as by raising public awareness about ECI and its benefits on democracy. In this regard academics and also experts have criticized the ECI procedure, defined the obstacles for a successful initiative, and discussed possible solutions (Gaillard, 2013).¹⁸ The common findings state firstly that while launching an initiative there is a strong need for legal knowledge and language skills on European institutional and political framework to cover huge expenses and also run an efficient campaign. In the second place, the complexity of the online signature collection period requires a certain information technology support. Lastly, the ECI committees also should overcome the time obstacle, which is too short to run an efficient campaign along with collecting signatures (Gaillard, 2013).

Since the Commission's Officer makes a distinction between large and small organizers reflecting the Commission's desire for the ECIs to demonstrate a certain level of representativeness, the committees of successful initiatives as Right2Water and One of us underline the fact that this tool has not been designed for ordinary citizens of the EU, but rather for only groups capable of being organized at the EU level. Accordingly, Carsten Berg, director of an ECI Campaign, has requested the removal of restrictive requirements (Berg, 2009) and most ECI organizers have shared his view in the ECI Day 2013. In the same manner, Ana del Pino from One of Us and Jan Willem Goudrian from Right2Water, the first successful ECIs, that collected nearly two million signatures, both underlined the need for a profound simplification and harmonization of the ECI rules since the ECI procedures are overly bureaucratic and burdensome, even for ECI organizers with a strong organizational infrastructure such as theirs (Gaillard, 2014). Furthermore, along with the procedural harmonization, a data adjustment is required, as well. According to authentic Resolution, the personal data procedures vary according to EU member states, which meant campaigns were obliged to prepare different signature forms for every individual Member State and submit collected signatures for verification to different national authorities. In addition, the transfer of personal data from ECI signatories has raised data security concerns. Therefore, harmonization was a vital requirement.

¹⁸ This category has been done according to the practical experiences of organizers of ECI campaigns, which have been in the workshop "An ECI That Works!" on 5 December 2013 in Brussels. In this workshop, successful ECI committees shared their experience and suggested convenient solutions to improve the ECI mechanism. Representatives have drawn attention to significant weaknesses in the ECI implementing rules and substantial problems with ECI support tools, such as the online signature collection software (OCS).

ID number requirement condition was another crucial point for collecting signatures. Nearly all ECI organizers reported that requirements for ID numbers, as well as private data information as birth dates and places, have boosted significant privacy fears and hindered several people from signing an ECI. During the former Regulation execution, even though the European Data Protection Supervisor clearly announced that identity numbers were not necessary for supporting an ECI, 18 states still insisted. Along with the same inclination, new Regulation 2019/788 facilitates the personal data conditions for signatories but still, Member States tend to require signatories to submit their ID numbers (European Parliament and European Council, 2019, Art. 9/2, para. 5).

Because of the inconvenient online signature collection system (OCS), months of signature collection time and thousands of support signatures have been lost. It was perhaps the single greatest problem cited consistently by every ECI campaign up to the present. According to Ana Del Pino, problems with online signature collection led the ECI One of Us to rely on paper signature collection. Due to their extensive and committed volunteer networks, they were able to collect more than 1.2 million signatures on paper. Most other campaigns have lacked the significant human or financial resources necessary to do this and have been forced to rely instead on the deeply flawed EU online signature collection system.¹⁹ All these shortcomings and experiences were analyzed in detail by European Parliament and the Council and resulted in a Proposal to revise the Regulation to improve the efficiency of the ECI (European Parliament and European Council, 2017). The proposal introduced several suggestions to ameliorate the ECI registration and signature collection phase, as possibility of partial registration, helpdesk service by the Commission for supporting organizers along with a central online signature collection system, determining the minimum age limit of 16 for the signatories and the opportunity for the organizers to specify the commencement day of the campaign.

In the light of all these criticisms and suggestions new Regulation allowed for the Statements of support to be conducted by each form, on paper or electronically. To overcome the former obstacles, detailed guidance for the technical principles of online collection systems including a discussion forum, information, and assistance to the committees are also issued in Regulation 2019/1799. In addition, the Commission is obliged to establish and operate a central online collection system and terminate individual collection systems after 2022.

¹⁹ One of the reasons for Right2Water's success is considered to be Xavier Dutoit, the IT expert in the team who has rebuilt a new signature system for their campaign.

Another point that was discussed to improve the ECI system is the time duration. Although the ECI Right2Water did accomplish collecting the necessary amount of signatures in 12 months, its head Jan Willem Goudrian insisted that this period was far too short for most ECIs and recommended extending it to at least 18 months. An extended time duration would also provide suitable time for small organizations to find sponsors, which enable organizers to launch ECIs on important topics not widely known. ECIs on complex or nuanced topics, such as 30 km/h –Making Streets Liveable, Fraternité 2020, and High-Quality European Education for All declared that they needed more time than other ECIs only to demonstrate their goals. Nevertheless, the new ECI Regulation provides the opportunity to the organizers to determine the starting date for the signature-collecting period (six months after registration), but it does not envisage any change in the duration.

Gathering the public attention and explaining the purpose of a certain ECI to the European Community are the most challenging tasks for the organizers. Therefore, the role of media to attract the attention of citizens is vital. At this point, the subject of ECI has significant importance. If the ECI theme is of interest to the media, the way for the committee to reach the masses will be opened. Thus, the deficiencies arising from the procedure will be able to be eliminated through the media. Considering that European Citizens do not have much knowledge about ECI and do not intend to utilize this tool²⁰, the importance of media involvement in the process becomes evident. As it was discussed above, the success of an initiative is mainly based on a successful campaign. It is so hard to reach millions of people from different states. However, in the world of today, the committees have a great tool to make their voices heard: Social media. Social media has become a very important platform to gather and spread information without any borders. In terms of protecting the environment and raising public awareness, good usage of social media may create a big difference. The success story of Right2Water is partly based on a well-organized and huge-costed campaign but on the other hand, good usage of social media, especially Twitter. When successful experiences are examined the power of media is explicit. The Pope supported One of us while German public TVs, ARD, and ZDF helped Right2Water to raise their voices. Therefore, it can be deduced that media involvement has a significant role in the success of the Right2Water initiative (Berg, 2008: 21). The conclusions drawn from this initiative could be ECIs that are engaged with current issues at the national level and which also get the support of the media are most likely to be successful. In terms of environmental issues, social media, as well as mass media can effectively be used to raise attention to announce improvements and

²⁰ According to Eurobarometer Spring 2012, only 3% of EU citizens indicate that they will use this new mechanism (European Commission, 2012).

to gather feedback. For these reasons, European initiatives may be efficiently launched by the advantage of social media devices. The impact of media (mass media and social media) should not be underestimated (Bouza García, 2012a: 31).

Impact of the ECI

Although ECI is a mechanism that has been executed to launch initiatives at the European level and on issues of concern to Europe, it also has an impact at the national or international level in the process. This interaction along with the determination of the right ECI themes and an effective campaign provides the necessary infrastructure to create broad public awareness on environmental issues (Gaillard, 2014). At this point, Right2Water constitutes an inspiring example by first introducing the discussions at the national level and then being successful to spread the debates to other European countries. Hence ECI mechanism provides a suitable platform for discussing global-scale issues that concern the entire public and presenting different and innovative solutions (García and Willar, 2012: 313).

The most significant effect of the ECI on the field of European civil society relations is twofold: Firstly, this participatory tool may encourage a stronger interaction whilst providing a bridge for the organizations or national groups, which are distant from EU involvement. Moreover, it may empower organizations to mobilize citizens to participate in institutionalized consultations while organizers aim to get the support of one million people. In this sense, it could provide a suitable platform to trigger competition between several organizations using various collective action mechanisms to attract the attention of EU institutions (Bouza García, 2012b: 339). Right2Water constitutes a concrete example even though the citizens' committee of Right2Water complaint about the conclusion of the Commission since it included no proposal on a legislation acknowledging the human right to water or a legal commitment not to allow any EU initiatives to liberalize water and sanitation services. Additionally, the citizens' committee of Right2Water expressed their expectation on the revision of the Water Framework Directive (European Parliament and European Council, 2020) and the Drinking Water Directive since this revision could be an opportunity to introduce the human right to water and sanitation in the EU (European Council, 1998). In its proposal, the Commission encouraged the Member States to provide a minimum water supply for everyone (European Commission, 2014). The procedure has been finalized with the Commission's Directive proposal "on the quality of water intended for human consumption". While pointing out the reasons and objectives of the proposal, the Commission stated that, "Drinking water is a vital issue for many Europeans since drinking water was the focus of the first European citizens' initiative "Right2Water" which collected over 1.6

million signatures and to which the Commission responded positively” (European Parliament and European Council, 2018b).

Correspondingly, the Commission committed to review the Directive through the Agenda 2030 Targets, especially Sustainable Development Goal 6 namely “to achieve universal and equitable access to safe and affordable water for all” (UN General Assembly, 2015). In this proposal, the Commission specified that the proposal “directly follows up on the European citizens' initiative Right2Water”. Hence even though this initiative could not obtain the exact results it demanded, related Directive proposals can be considered as a success and this attitude of the Commission will be crucial for future initiatives and legislation, so the concrete effect of the initiative may be unfolded in the long term.

Concluding Remarks

The European Citizens' Initiative has not realized its potential for the participatory democracy of the EU. This is based on several grounds as the general public's insufficient awareness and knowledge of ECI. There should be more education platforms for this instrument of participation, since the legal requirements governing the ECI are composed too strictly (Gonzales Cadenas, 2020: 145).

ECI could contribute to the transformation of the current EU democracy to a more participatory model by including new actors in the procedure. Additionally, it could strengthen the role of citizens and civil society organizations enabling them to cross over beyond consultation or access to information. Also, ECI could serve as a mechanism to expand the scope of political discussions by establishing a European general public sphere. These considerations might seem unlikely compared with the structure of the initiative since formally speaking the ECI is a weak tool that is not in a position to trigger a referendum, or even grant the EU legislation-the Parliament and the Council-to discuss the initiative. However, particularly by raising the desire of the policy-makers to benefit from participatory mechanisms and on the other hand making the European institutions more willing to participate; the ECI might have a robust *de facto* impact and play a significant political function (Głogowski and Maurer, 2013: 21).

According to the experience so far, ECI could encourage more popular participation in decision-making by giving European citizens an indirect political right of initiative, but furthermore, it has the potential to be transformed into a convenient mechanism providing participatory democracy at the European level. By raising the awareness of the European general public on environmental issues as well other topics, ECI becomes a human-centric

alternative in which ordinary citizens are tasked to determine the main themes and lead the process which are important steps for direct democracy.

The success of an ECI, to a large extent, depends on how it is promoted or how well the campaign is run, as well as whether it has been presented to the right audience. In this regard, the citizens' initiative committee bears the responsibility not also to sustain a successful period, but also to avoid abuse of this instrument by launching ungrounded or malicious initiatives, which might result in escalating the expectation of people on the efficiency of the ECIs. However, if the ECI is used appropriately and more frequently by various groups on plenty of policy themes, then the status and the role of EU citizens could slowly begin to shift from being only voters to a policy shaper. The supporters of the Right2Water initiative, for instance, might acknowledge that they could touch the EU order, whilst EU authorities might find out that they could establish a strong interaction with ordinary people for the sake of the EU public sphere. Finally, the ECI procedure provides an opportunity for the civil society organizations dealing with national issues to extend and improve their cross-border networks, which constitutes a significant step for involvement in the EU policy (Głogowski and Maurer, 2013: 21).

After all these positive considerations, it should be noted that transforming the ECI as agenda-setting or an efficient protest mechanism likely depends largely on the Commission. In the same manner, the faith of the ECI to become a remedy for the *democratic deficit* will be determined by the acts and attitude of the Commission. Thus the Commission has a pivotal role for the future of the ECI mechanism since it is eventually entitled to decide the form of its response, varying from a plain rejection or a simple opinion to a recommendation or a legislative proposal. It is obvious that the more the Commission responds to the initiatives positively and takes concrete steps by putting the proposal into the EU agenda, the more other citizens will tend to activate this mechanism. Furthermore, as far as the Commission performs its mandate in a balanced way to give a chance to successful ECIs, the citizens' perception about EU administration will be recovered since they would believe that their voices are heard and they can make a difference, no matter the proposal would pass or not (Szeligowska and Mincheva, 2012: 282). On the contrary, if the public opinion concluded that this tool does not grant any impact, therefore, investing time and resources for running such an expensive campaign would not be beneficial then the ECI may only become a protest tool.

Beyond all, while assessing the capability of an ECI to change EU law, the role of EU's other legislators –the EP and the Council- should also be taken into account, since it might take years for an ECI to see its concrete results on the EU legislation. Therefore, the potentials and limits of this tool should clearly be specified. Although current experience demonstrates legal and structural

amendments are compulsory to transform the ECI into an available and adequate mechanism of participatory democracy, it has the potential to become a convenient tool to shape the European policy by raising awareness in commonly-concerned themes as the environment. However, in the end, it should not be forgotten that an ideal ECI should move beyond only forming a public opinion to concrete political decisions (Schnellbach, 2011: 2). Despite all these shortcomings, by introducing a mechanism that enables ordinary citizens to contribute EU policies, the ECI can be regarded as a remarkable and promising step for democracy and participation in the EU and also a great opportunity to protect the environment directly by the individuals.

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