

CASTING VOTES INTO THE VOID: AN EMPIRICAL STUDY OF THE TWELVE YEARS OF THE EUROPEAN CITIZENS' INITIATIVE

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The European Citizens' Initiative (ECI) is a unique instrument promising to enable direct democracy, by enabling citizens to directly request the European Commission to propose legislation in areas where the Commission has the power to do so. The instrument is designed to promote democratic participation and increase the transparency of the EU decision-making processes. This article assesses the effectiveness of the ECI as an instrument to enhance citizen participation in the EU decision-making processes, with a particular focus on initiatives relating to environmental concerns and climate change. Despite the ECI's potential to empower citizens and facilitate their input in EU policymaking, the instrument has been criticized for its complexity, limited impact and inaccessibility. Additionally, there are concerns that the ECI process may not be an adequate tool for addressing complex issues such as environmental concerns or climate change. This article explores these weaknesses and evaluates the extent to which the ECI can be utilized as a tool for enhancing citizen participation in environmental policymaking, analysing case studies of past initiatives in this area and examining their outcomes to determine the ECI's ability to influence EU policies.

1 INTRODUCTION

During the last couple of decades, the promotion of citizens' participation has been one of the top political priorities of the European Union, oftentimes presented as tantamount to the ideal of participatory democracy.¹ Importantly, in 2012, the European Union made available to its citizens an instrument through which to participate in the decision-making process: the European Citizens' Initiative (ECI). The ECI is the only democratic tool the EU offers its citizens to call on the European Commission to propose legislation to address shortcomings in the EU and to develop Europe, provided that they have collected one million statements of support in at least seven Member States, and fulfilled a number of other technical requirements.² For example, before the collection of statements of support begins, the subject matter of the proposed initiative must fall under the competences of the Commission to make a legislative proposal to the EU's legislative institutions: the Council and the European Parliament. As the EU's legal and institutional structure 'makes it

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¹ See Andrea Fischer-Hotzel, 'Democratic Participation? The Involvement of Citizens in Policymaking at the European Commission' (2010) 6(3) *Journal of Contemporary European Research* 335.

² Under Article 11(4) of the Treaty on the European Union (TEU), not less than one million citizens who are nationals of a significant number of EU 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.

impossible for citizens to submit proposals directly before the legislatures’,³ the European Commission becomes itself the only judge of the suitability of the subject matter of an ECI.

As such, one of the core things that the ECI promises to achieve is a bottom-up integration of the EU polity.⁴ In other words, a bottom-up policymaking. As such, the ECI is meant to allow each one of the four hundred million EU citizens to influence the political and legislative agenda of the Union.⁵ Seen that way, the ECI ‘represents a new generation of democracy instruments with a more direct and transnational value than any other participatory procedure before it and, possibly, a tool that meets the needs of e-participation and e-democracy in the 21st century’.⁶

All this has led many to see the ECI as ‘the most important participatory democratic instrument in the EU’,⁷ as a rigid success for transnational participatory democracy, or even more so as ‘a revolution in disguise’.⁸ The ECI is certainly the only, if not the greatest, instrument of participatory democracy in the EU. But it has not been without flaws, and that is why the instrument’s critics have been many, too. Having been criticised from its inception for its incapacity to yield formal powers to citizens⁹ and its inability to mandate the political institutions,¹⁰ the democratic value of the ECI has not been taken for granted by everyone.¹¹

Especially at a time when climate change is considered by EU citizens to be the most serious global issue right now,¹² and whilst the European Green Deal emphasises that

³ Erik Longo, ‘The European Citizens’ Initiative: Too much democracy for the EU?’ (2019) 20(2) German Law Journal 181, 191.

⁴ *ibid* 182, where this is opposed to ‘top down’ EU integration, which ‘has had a corrosive effect on European polity, delegitimizing the very idea of Europe’s political unity, and at the same time contributing to the growing spread of anti-EU populist movements’ (citations omitted).

⁵ European Parliament, ‘European Citizens’ Initiative’ (*European Parliament*, April 2024) <<https://www.europarl.europa.eu/factsheets/en/sheet/149/iniziativa-dei-cittadini-europei>> accessed 01 September 2024.

⁶ Longo (n 3) 189.

⁷ Antonia-Evangelia Christopoulou, ‘Towards a Golden Age of the European Citizens Initiative?’ (*European Law Blog*, Blogpost 7/2024, 30 January 2024) <<https://europeanlawblog.eu/wp-content/uploads/2024/01/Blogpost-72024.pdf>> accessed 01 September 2024. See also, Luis Bouza García and Justin Greenwood, ‘The European Citizens’ Initiative: A New Sphere of EU Politics?’ (2014) 3 Interest Groups & Advocacy 246; Alex Warleigh, ‘Civil Society and Legitimate Governance in a Flexible Europe: Critical Deliberativism as a Way Forward’ in Stijn Smismans (ed), *Civil Society and Legitimate European Governance* (Edward Elgar 2006).

⁸ See Dominik Hierlmann and Anna Wohlfarth, ‘A Revolution in Disguise: The European Citizens’ Initiative’ (*Spot-light Europe*, August 2010) <https://www.bertelsmann-stiftung.de/fileadmin/files/user_upload/spotlight_07_2010_ENGL.pdf> accessed 01 September 2024.

⁹ Justin Greenwood, ‘The European Citizens’ Initiative: bringing the EU closer to its citizens?’ (2019) 17 Comparative European Politics 940.

¹⁰ *ibid*; Anastasia Karatzia, ‘The European Citizens’ Initiative and the EU institutional balance: On realism and the possibilities of affecting EU lawmaking’ (2017) 54(1) Common Market Law Review 177; Nikos Vogiatzis, ‘Between discretion and control: Reflections on the institutional position of the Commission within the European citizens’ initiative process’ (2017) 23(3-4) European Law Journal 250.

¹¹ See Julia De Clerk-Sachsse, ‘Civil Society and Democracy in the EU: The Paradox of the European Citizens’ Initiative’ (2012) 13(3) Perspectives on European Politics and Society 299; Andrew Glencross, ‘The Absence of Political Constitutionalism in the EU: Three Models for Enhancing Constitutional Agency’ (2014) 21(8) Journal of European Public Policy 1163; Pawel Glogowski and Andreas Mauer, ‘The European Citizens’ Initiative – Chances, Constraints and Limits’ (2013) Institute for Advance Studies Vienna Political Science Series – Working Paper 134 <https://irihs.ihs.ac.at/id/eprint/2199/1/pw_134.pdf> accessed 01 September 2024.

¹² A study published by the European Commission in 2021 reports that climate change is increasingly considered not only a profoundly serious problem but the single most serious problem facing the world today. This was the first time that climate change ranked first in an EU-wide poll. On an average, at least a quarter of respondents in every country believe that climate change is the number one most serious problem

‘citizens are and should remain a driving force of the transition to sustainability’, there is an indisputable need for effective forms of public participation. Interestingly, however, most EU citizens feel that their voices are not adequately heard at the EU level and that they deserve a greater say about the future of the EU; yet knowledge of the ECI tool, when it would be of utmost urgency to use it, is limited.¹³

On several occasions, the EU has presented itself as a global leader against climate change,¹⁴ and has announced its commitment to abide to its international obligations, such as those under the Paris Climate Agreement.¹⁵ European leaders have even championed themselves as international climate heroes, and promised that ‘[i]n 2050, we live well’ and ‘within the planet’s ecological limits’.¹⁶ Yet, still, most EU citizens believe that their government is not concerned enough about climate change, and that it will not successfully fulfil its promise to reduce carbon emissions drastically by 2050.¹⁷

At the same time, and as it becomes clear that climate action is an intrinsically political matter, EU citizens demand to have a say in future climate policies.¹⁸ But the avenues to do so are unknown to most; and where they are known, they are also limited. Although, in the context of climate change, the ECI could assume particular importance by enabling citizens to contribute to the development of effective climate policies that address the pressing needs of the planet, in reality the effectiveness of the ECI as a tool for giving EU citizens a direct voice on climate change remains somewhat constrained by the complexities of EU decision-making processes. With this in mind, ECIs relating to environmental concerns will be used in this article to analyse whether the European Commission is, as many predicted, the ‘player that makes or breaks the rules’ when it comes to which initiatives are

globally. For the report of the survey, see European Commission, ‘Climate Change (*Special Eurobarometer*, March-April 2021) <https://climate.ec.europa.eu/system/files/2021-07/report_2021_en.pdf> accessed 01 September 2024.

¹³ See European Union, ‘Standard Eurobarometer 96 – Winter 2021-2022’ <<https://europa.eu/eurobarometer/surveys/detail/2553>> accessed 01 September 2024. This was further acknowledged by the European Parliament in 2022. More recently, see Directorate-General for Communication, ‘Flash Eurobarometer FL528: Citizenship and democracy’ <https://data.europa.eu/data/datasets/s2971_fl528_eng?locale=en> accessed 01 September 2024.

¹⁴ For example, Council of the European Union, ‘Presidency Conclusions’ (14 February 2008) 16616/1/07 REV 1; European Commission, ‘State of the Union 2012 Address’ (12 September 2012). See also, Bertil Kilian and Ole Elgström, ‘Still a Green Leader? The European Union’s role in international climate negotiations’ (2010) 45(3) *Cooperation and Conflict* 255.

¹⁵ Commission, ‘A Roadmap for Moving to a Competitive Low Carbon Economy in 2050’ COM (2011) 112 final.

¹⁶ Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 ‘Living well, within the limits of our planet’ [2013] OJ L354/171.

¹⁷ European Investment Bank, ‘The EIB Climate Survey’ (Fourth edition, 2021-2022), 14 <https://www.eib.org/attachments/publications/the_eib_climate_survey_2021_2022_en.pdf> accessed 01 September 2024.

¹⁸ European Social Survey, ‘European Attitudes to Climate Change and Energy: Topline Results from Round 8 of the European Social Survey’ (*European Social Survey*, September 2018), 6 <https://www.europeansocialsurvey.org/sites/default/files/2023-06/TL9_Climate-Change-English.pdf> accessed 01 September 2024; Alessandro Follis, ‘Climate change is citizens’ main priority in EU reform agenda’ (*EURACTIV*, 31 January 2022) <<https://www.euractiv.com/section/future-eu/news/climate-change-is-citizens-main-priority-in-eu-reform-agenda/>> accessed 01 September 2024.

put forward,¹⁹ or whether the ECI is indeed the golden ticket to citizens' participation in the EU.

After providing a short background on the ECI in Section 2, this article examines the capacity of the instrument to fulfil its own objectives, which is to allow EU citizens a greater say in the policies that affect their lives by giving them a platform through which to propose legislation with a focus on initiatives that demand the EU to take action with regards to issues relating to climate change. It does so by studying three valid initiatives that have attempted to do that – namely, *Right2Water*, *Ban Glyphosate*, and *Save Bees and Farmers* – by looking, in Section 3, at the ways the European Commission responded to them. Finally, in Section 4, this article provides an overall evaluation of the ECI instrument against the backdrop of its recent review that was conducted by the European Commission in 2023 by engaging critically with the findings of Section 3.

2 PARTICIPATORY DEMOCRACY IN THE EU

2.1 THE DEMOCRATIC DEFICIT PROBLEMATIC

Since its inception, the European Union has been considered a 'transnational project' that ensures peace, security, and prosperity amongst the European peoples.²⁰ In the Treaty of the European Union, one finds principles such as democracy and the rule of law being highlighted as core values to which the EU abides to.²¹ However, opinions and feelings vary as to what extent these principles are materialised in practice. Indeed, the EU seems to fulfil '*de jure* the most important criteria of representative democracy'.²² And, indeed, many boxes are ticked: formal democratic cornerstones such as voting rights,²³ equality before the law,²⁴ consent of the governed, and values that the EU purports to abide to, such as the rule of law. It is no secret, however, that to many the European project has little to do with the values its treaties enshrine, with many EU is an intrinsically politico-economic project that 'is ailing' due to structural 'deficiencies' and democratic 'shortcomings' that threaten (and, at times, impede) 'transparency, popular control, accountability and direct involvement of citizens'.²⁵

¹⁹ Manès Weisskircher, 'The European Citizens' Initiative: Mobilization Strategies and Consequences' (2020) 68(3) *Political Studies* 797, 798, citing Dorota Szeligowska and Elitsa Mincheva, 'The European Citizens' Initiative – Empowering European Citizens Within the Institutional Triangle: A Political and Legal Analysis' (2012) 13(3) *Perspectives on European Politics and Society* 270.

²⁰ Jan-Hendrik Kamlage and Patrizia Nanz, 'Crisis and participation in the European Union: Energy policy as a test bed for a new politics of citizen participation' (2017) 31(1) *Global Society* 65, 65.

²¹ Articles 2 and 3 TEU.

²² Kamlage and Nanz (n 20) 66, citing David Beetham, 'Liberal Democracy and the Limits of Democratisation' in David Held (ed), *Prospects for Democracy* (Polity Press 1993).

²³ Charter of Fundamental Rights of the European Union [2012] OJ C326/391, Articles 39 and 40.

²⁴ Article 20 of the Charter of Fundamental Rights of the European Union.

²⁵ *ibid.* See also, Mark E Warren, 'Citizen Participation and Democratic Deficits: Considerations from the Perspective of Democratic Theory' in Joan DeBardeleben and John H Pammatt (eds), *Activating the Citizen* (Palgrave Macmillan 2009), where the author writes: 'The claim that the EU was in democratic deficit reflected not a democratic past that was eroding, but rather the growing democratic expectation that came with political integration, combined with institutions – the European Parliament in particular – that can and should be measured according to democratic norms'. More on the 'democratic deficit' see Gráinne De Búrca, 'The Quest for Legitimacy in the European Union' (1996) 59(3) *Modern Law Review* 349; Joseph H H Weiler, 'Why Should Europe be a Democracy: The corruption of Political Culture and the Principle of Constitutional Tolerance' in Francis Snyder (ed), *The Legal Effects of European Integration* (Hart Publishing 2000).

Although the promise is that the structure of the EU decision making system, however labyrinthine, allows for accountability, especially ‘through the relationship between each institution and its constituency’, it was identified a long time ago that ‘the problem with the “democratic deficit” is whether these direct channels are effective in connecting the preferences of citizens to the outcome of EU decision making’.²⁶ In other words, the problem is not that there is a lack of a variety of channels of representations, but that these channels are designed to at best listen to and not honestly articulate the voice of the citizens of the EU.

Already in 1996, at the Inter-Governmental Conference (IGC), which met in Dublin at a time when the EU comprised fifteen Member States, the official position regarding this problematic was that the Union should strive to

retain the trust, respect and active support of its citizens in each and every Member State. With the prospect of future enlargement, it will be necessary to make institutional changes which marry the desire for more efficient and effective decision-making with the need to ensure that the institutions are visibly democratic and firmly rooted in public acceptance.²⁷

Again, the problem with this approach is that it is not focused on how to reform the EU so that it is truly democratic, that its foundations are democratic, but it is rather focused on how to make it appear democratic; a focus that rests less on institutional reform and more on the *phainesthai* (in Greek, φαίνεσθαι), on how things look, rather than on how things are.

If, from the perspective of the EU demos, the democratic deficit means a European Parliament that fails to give citizens their fair say in the affairs of the Union, from the perspective of the European Parliament itself the democratic deficit

results from the fact that European elections are fought primarily on the basis of national political concerns, rather than on problems relevant to the European arena. It is true that the European Parliament lacks certain powers in comparison with modern-day national parliaments; but what it lacks most is not power but a mandate to use that power in any particular way.²⁸

Whichever way one looks at it, at the heart of all perceptions of the democratic deficit lies the observation that EU decision making is not a bottom-up process, meaning that it does not incorporate or reflect the will of the people. This has raised questions about the EU’s legitimacy,²⁹ and especially when it comes to ‘input legitimacy’, which reflects the lack

²⁶ Pippa Norris, ‘Representation and the democratic deficit’ (1997) 32(2) *European Journal of Political Research* 273, 276.

²⁷ Presidency Conclusions, ‘The European Union Today and Tomorrow’ (5 December 1996) <https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/032a0003.htm> accessed 01 September 2024.

²⁸ Cees Van der Eijk and Mark Franklin, *Choosing Europe? The European Electorate and National Politics in the Face of Union* (University of Michigan Press 1996) 55.

²⁹ On this, see Richard Bellamy and Dario Castiglione, ‘The uses of democracy: Reflections on the European democratic deficit’ in Erik Oddvar Eriksen and John Erik Fossum (eds), *Democracy in the European Union: Integration Through Deliberation* (Routledge 2002) 65.

of honest citizen participation in EU decision making, the democratic deficit and the EU's legitimacy become intimately connected issues.³⁰

2.2 THE BIRTH OF THE EUROPEAN CITIZENS' INITIATIVE

With the introduction of the Treaty of Lisbon in 2009, the European Union tried – among other things – to address concerns regarding its ‘democratic deficit’ and fight the populist and Eurosceptic movements these concerns have produced. In many ways, the Treaty of Lisbon was introduced to challenge the view that the Union is ‘structurally incompatible with democracy’.³¹ The new treaty reinvented participatory democracy, giving it a new role and place within the European legal and political landscape by empowering citizens and enabling wide participation in the democratic life of the EU. Introducing into the treaties what was soon to become the cornerstone of the ECI, Article 10(3) TEU manifestly states that ‘[e]very citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen’.³² This is reiterated in Article 11(4), which brings forth the idea of participatory democracy, where it remarks that

[n]ot less than one million citizens who are nationals of the 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.³³

Moreover, Article 24(1) of the Treaty on the Functioning of the European Union provides a legal basis for adopting the ‘provisions for the procedures and conditions required for a citizens’ initiative [...] including the minimum number of Member States from which such citizens must come’.³⁴ To fulfil the democratising scope of the Lisbon Treaty, the Commission proposed the detailed legal framework for the European Citizens’ Initiative (ECI) as a tool that enhances citizens’ participation in the democratic life of the Union,³⁵ cemented in Regulation (EU) No 211/2011.³⁶ Finally acknowledging that democratic legitimacy is ‘especially relevant for EU policymaking’, the ECI instrument was adopted to counteract the EU’s democratic deficit.³⁷

It was anticipated that this new instrument would have a transformative impact, help create a European public sphere, and grant citizens the opportunity to participate in the

³⁰ See Anne Elizabeth Stie, ‘Crises and the EU’s Response: Increasing the Democratic Deficit?’ in Marianne Riddervold, Jarle Trondal, and Alasemi Newsome, *The Palgrave Handbook of EU Crises* (Palgrave Macmillan 2020) 725.

³¹ Greenwood (n 9) 940. See also Jale Tosun and Simon Schaub, ‘Constructing policy narratives for transnational mobilization: Insights from European Citizens’ Initiatives’ (2021) 7(S2) *European Policy Analysis* 344, 346.

³² Article 10(3) TEU.

³³ Article 11(4) TEU.

³⁴ Article 24(1) TFEU.

³⁵ Commission, ‘Commission Green Paper on a European Citizens’ Initiative’ COM (2009) 622 final. Previously, the instrument was discussed in the Convention on the Future of Europe in 2002-2003.

³⁶ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative [2011] OJ L65/1. For a discussion on the role of the European Citizens’ Initiative as an instrument that tackles eurocentrism and concerns over the democratic deficit, see Longo (n 3).

³⁷ Tosun and Schaub (n 31).

democratic life of the Union.³⁸ Ten years into the ECI, however, and the reality of the instrument is struggling to match the flamboyant initial ambitions and expectations. Officially commenced on 1 April 2012,³⁹ the ECI has stirred a variety of reactions over the last decade, proving time after time that it is struggling to create space for dialogue between political institutions and civil society and to ‘translate the social realm [...] into a political will’.⁴⁰

Although hailed by some as the ‘world’s first transnational citizens’ initiative’,⁴¹ as a true effort to create a pan-European public sphere,⁴² and as a long-anticipated change to EU governance,⁴³ the ECI has been criticised by others yet another merely ‘symbolic’⁴⁴ and bureaucratic instrument that gives the European Commission too much discretion and ‘room for manoeuvre’,⁴⁵ ending the life of initiatives prematurely. Some had ‘correctly predicted that the Commission would be the player that makes or breaks the instrument’.⁴⁶ Or, as the Court ruled recently,

[...] the wording of Article 11(4) TEU is designated to ‘invite’ the Commission to submit an appropriate proposal for the purpose of implementing the Treaties, and not, as the applicant claims, to oblige that institution to take the action or actions envisaged by the ECI concerned.⁴⁷

Indeed, too often, the Commission relies on its freedom to reject initiatives upon initial registration on the grounds that their subject matter falls outside its competences. Occasionally, depending on resources and public support, initiators have challenged in front of the Court the Commission’s decision to not register an initiative or to not take any actions in response whatsoever.⁴⁸ But the Court’s decision in 2018 was clear: ‘the Commission must be allowed broad discretion in deciding whether or not to take an action following an ECI’.⁴⁹ This means that ECIs can only be used to propose legislative changes that fall within the Commission’s areas of responsibility, which are defined by the EU treaties.

³⁸ See Maximilian Conrad, Annette Knaut, and Katrin Böttger, *Bridging the gap? Opportunities and constraints of the European Citizens’ Initiative* (Nomos Verlag 2016); Luis Bouza Garcia and Susana Del Río Villar, ‘The ECI as a Democratic Innovation: Analysing its Ability to Promote Inclusion, Empowerment and Responsiveness in European Civil Society’ (2012) 13(3) *Perspectives on European Politics and Society* 312.

³⁹ As amended initially by Commission Delegated Regulation (EU) No 268/2012 of 25 January 2012, published in [2012] OJ L89 of 27 March 2012; Council Regulation (EU) No 517/2013 of 13 May 2013, published in [2013] OJ L158 of 10 June 2013; and Commission Delegated Regulation (EU) No 887/2013 of 11 July 2013, published in [2013] OJ L247 of 18 September 2013.

⁴⁰ Mayte Peters, ‘The Democratic Function of the Public Sphere in Europe’ (2013) 14(5) *German Law Journal* 673, 678, 680.

⁴¹ Greenwood (n 9) 940-941, and generally, 949-52.

⁴² *ibid.*

⁴³ See Warleigh (n 7).

⁴⁴ Laurie Boussaguet, ‘Participatory Mechanisms as Symbolic Policy Instruments?’ (2016) 14 *Comparative European Politics* 107.

⁴⁵ Päivi Leino, ‘Disruptive Democracy: Keeping EU Citizens in a Box’ in Inge Govaere, Sacha Garben, and Paul Nemitz (eds), *Critical Reflections on Constitutional Democracy in the European Union* (Hart Publishing 2019) 309. See also De Clerck-Sachsse (n 11); Nikos Vogiatzis, ‘Is the European Citizens’ Initiative a Serious Threat for the Community Method?’ (2013) 6(1) *European Journal of Legal Studies* 91; Michael Dougan, ‘What Are We to Make of the Citizens’ Initiative?’ (2011) 48(6) *Common Market Law Review* 1807. See discussion in Karatzia, ‘The European Citizens’ Initiative and the EU institutional balance’ (n 10).

⁴⁶ Weisskircher (n 19) 797.

⁴⁷ Case T-158/21 *European Citizens’ Initiative Minority Safety Pack v Commission* EU:T:2022:696.

⁴⁸ For example, Case T-561/14 *European Citizens’ Initiative One of Us and Others v European Commission* EU:T:2018:210.

⁴⁹ *ibid* para 169.

Many of the most pressing challenges facing Europe today, including climate change, are complex and interconnected issues that span multiple policy areas and require coordinated action from multiple actors. By limiting the scope of issues that can be addressed through the ECI process, the requirement that subject matter falls under the Commission's competences can make it difficult for citizens to effectively engage with these complex challenges and to push for meaningful change. Moreover, the requirement can also lead to confusion and uncertainty around what issues are eligible for an ECI. Because the scope of the Commission's competences is not always clear or well-defined, it can be difficult for citizens and civil society organizations to determine whether their proposed ECI falls within the Commission's remit. This can discourage participation in the ECI process and limit the potential impact of this important tool for citizen engagement and democratic participation.

Just a few years into its existence and it was already acknowledged that the reality of the European Citizens' Initiative did not match the initial hopes and promises. Although a hopeful idea, the ECI has proved to be a 'downward failure',⁵⁰ with one of its most troublesome qualities being that it 'operates under' the complete 'aegis of the Commission'.⁵¹

In 2013, the European Ombudsman launched an own-initiative inquiry into the functioning of the ECI and the Commission's role and responsibility in this regard.⁵² The inquiry led to the decision in 2015 where the Ombudsman offered the Commission guidelines to further improve the ECI procedure, encouraging the Commission to *inter alia* provide more robust, consistent, and comprehensive reasoning for rejecting ECIs, and to do all in its power to ensure that the public debate ensuing from a registered ECI is as inclusive and transparent as possible.⁵³

The same year, the European Economic and Social Committee organised a conference for the overall assessment of the legal framework regulating the ECI instrument.⁵⁴ The President of the Committee concluded at a later date that 'the European Citizens' Initiative has not achieved its full potential because of a regulation that should be revised'.⁵⁵ At the time, the general motif around the ECI was 'Review – Renew – Reset',⁵⁶ as it had been observed that less and less initiatives are being brought forward, let alone succeeding to bear fruit.

⁵⁰ Leino (n 45) 310. See also De Clerck-Sachsse (n 11).

⁵¹ Vogiatzis, 'Between discretion and control' (n 10) 251.

⁵² European Ombudsman, 'Letter to the European Parliament opening own-initiative inquiry OI/9/2013/TN into the functioning of the European citizens' initiative (ECI) procedure' (18 December 2013) <<https://www.ombudsman.europa.eu/en/doc/correspondence/en/53106>> accessed 01 September 2024.

⁵³ European Ombudsman, 'Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN concerning the European Commission' (4 March 2015) <<https://www.ombudsman.europa.eu/en/decision/en/59205#h11>> accessed 01 September 2024.

⁵⁴ European Economic and Social Committee, 'European Citizens' Initiative Day 2015 – Review – Renew – Reset!' (13 April 2015) <<https://www.eesc.europa.eu/en/agenda/our-events/events/european-citizens-initiative-day-2015-review-renew-reset>> accessed 01 September 2024.

⁵⁵ Opinion of the European Economic and Social Committee on the European Citizens' Initiative (review) (2016/C 389/05) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016IE0889&from=PL>> accessed 01 September 2024.

⁵⁶ *ibid.*

2.3 THE RE-BIRTH OF THE EUROPEAN CITIZENS' INITIATIVE

Under the presidency of Jean-Claude Juncker, increasing the democratic legitimacy in the EU through stronger citizen participation was one of the Commission's top priorities.⁵⁷ There were naturally high hopes that the ECI would finally deliver its promises, especially after President Juncker advocated for more effective involvement of civil society during a State of the Union address in 2017.⁵⁸ In 2017, the Commission finally initiated the reform of the ECI. During the public consultation stage of the process, the feedback given revolved around two central issues that need to be tackled: better political impact for the ECI and less hurdles for the organisers and signatories. Under the presidency of Jean-Claude Juncker, the European Commission promised to work more closely with organisers to ensure the eligibility of their registration requests to ensure higher registration rates, suggested to offer a free online data collection service for organisers, the possibility to use electronic IDs to support an Initiative, to lower the age for supporting an ECI from 18 to 16,⁵⁹ and to improve the follow-up process to promote a meaningful debate before the Commission gives its response (which, according to the preamble of the new regulation would materialise the ECI's 'full potential as a tool to foster debate').⁶⁰

The European Citizens' Initiative was soon revised, and Regulation (EU) 211/2011 was replaced by Regulation (EU) 2019/788 that aims to make the ECI 'more accessible, less burdensome and easier to use for organisers and supporters'.⁶¹ Some of the earlier suggestions made it into the new regulation. For example, the Commission is obliged to respond to the organisers of successful ECIs by setting out 'in a communication its legal and political conclusions on the initiative, the actions it intends to take, if any, and the reasons for taking or not taking action'.⁶² Moreover, within three months of the submission of an ECI, the group of organisers is now given the opportunity to present the initiative at a public hearing held by the European Parliament.⁶³ The Commission is also obliged to set up and operate a central online collection system that would phase out individual collection systems after 2022,⁶⁴ and citizens may support an ECI regardless of where they reside.⁶⁵

Despite these changes, the instrument has yet to prove that it is more effective than before. One may also question whether the changes brought by the new regulation made it indeed easier for EU citizens to organise and/or support ECIs in the first place, as none of

⁵⁷ European Parliament, 'The Juncker Commission's ten priorities' (*EPRS*, May 2019), Priority 10, <[https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/637943/EPRS_IDA\(2019\)637943_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/637943/EPRS_IDA(2019)637943_EN.pdf)> accessed 01 September 2024.

⁵⁸ See European Commission, 'President Jean-Claude Juncker's State of the Union Address 2017' (*European Commission*, 13 September 2017) <http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm> accessed 01 September 2024.

⁵⁹ Contrary to the Commission's and Parliament's proposals, the new ECI Regulation does not lower the minimum age for supporting an ECI to 16 years, but the Member States are allowed to set the minimum age to 16, should they choose to do so.

⁶⁰ European Commission, 'State of the Union 2017 – Democracy Package: Reform of Citizens' Initiative and Political Party funding' (*European Commission*, 15 September 2017) <https://ec.europa.eu/commission/presscorner/detail/en/IP_17_3187> accessed 01 September 2024.

⁶¹ Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative [2019] OJ L130 (Regulation (EU) 2019/788), recital 6 of the preamble.

⁶² Regulation (EU) 2019/788, Article 14, para 2.

⁶³ *ibid* Article 15, para 1.

⁶⁴ *ibid* Article 10.

⁶⁵ *ibid* Article 2 and 9.

the initial structural problems have been addressed, with most of the battles still being lost during the admissibility stage.⁶⁶ The power vested in the Commission to control which initiatives would ‘manifestly fall outside the framework of the Commission’s powers to submit a proposal’, allows for wide interpretative discrepancies, and is a major obstacle.⁶⁷

3 THREE CASE STUDIES

In a number of occasions, EU citizens have used the ECI as an attempt to have a say in the EU’s policies in matters that affect them directly and that are linked to climate change. However, no initiative related to climate change directly has reached the quorum of statements of support, and as a result none of them has been considered by the Commission.⁶⁸ Although this is telling of the practical difficulties of organising an ECI campaign, and would deserve a study dedicated on this issue alone, they fall outside the scope of the present article, which aims to evaluate the Commission’s response to ECIs that have met all the formal prerequisites to be further considered by the Parliament and the Council. As a result, this article studies the content and policy outcomes of three past initiatives that address issues linked to climate change (such as biodiversity loss, soil degradation and pollution) and have collected more than one million statements of support and explores whether the ECI enables meaningful citizens’ participation. The initiatives in question are *Right to Water*, *End Glyphosate*, and *Save Bees and Farmers*.

3.1 RIGHT TO WATER

Awareness of the intricate link between climate change, water, and sanitation has been ongoing for a while,⁶⁹ as vulnerable communities worldwide suffer from the intersecting climate and water emergency crises.⁷⁰ Changes in weather patterns and extreme weather events caused by climate change can affect the availability and quality of water resources, which in turn can impact access to safe drinking water and sanitation services. In the EU, however, little action has been taken to mitigate the adverse impacts climate change on the human right to water and sanitation, despite that being a priority aligned with the Paris

⁶⁶ See Natassa Athanasiadou, ‘The European Citizens’ Initiative: Lost in admissibility?’ (2019) 26(2) *Maastricht Journal of European and Comparative Law* 251. However, the same author acknowledges a positive aspect of the admissibility control, namely that it ‘prevents the organisers from investing time and effort in an inadmissible initiative’, although it simultaneously limits ‘the number of initiatives becoming the subject of a European debate’.

⁶⁷ Although the CJEU has ruled twice that the principle of participatory democracy is the normative yardstick against which the interpretation of the legal framework shall be measured, the Commission still has the last say during the admissibility stage. See, Case T-754/14 *Michael Efler and Others v European Commission* EU:T:2017:323 and Case T-646/13 *Bürgerausschuss für die Bürgerinitiative Minority SafePack – one million signatures for diversity in Europe v European Commission* EU:T:2017:59. For an example of an initiative that was denied registration, see Anastasia Karatzia, ‘The European Citizens’ Initiative and Greek debt relief: Anagnostakis’ (2019) 56(4) *Common Market Law Review* 1069, discussing Case C-589/15 P *Anagnostakis v European Commission* EU:C:2017:663.

⁶⁸ Examples include, *Stop Climate Change*, *End Ecocide in Europe*, *People4Soil*, *Ban Fossil Fuel Advertising and Sponsorships*, *End the aviation tax exemption in Europe*, *A price for carbon to fight climate change*, *Actions on Climate Emergency*, and *Grow Scientific Progress: Crops Matter!*

⁶⁹ For example, UNGA Res A/74/161 (2019) UNGA 74th Session.

⁷⁰ Jerry van den Berge, Jeroen Vos, and Rutgerd Boelens, ‘Water justice and Europe’s Right2Water movement’ (2021) 38(1) *International Journal of Water Resources Development* 173, 175.

Climate Agreement.⁷¹ Although Thomas Croll-Knight, spokesperson for the UN Economic Commission for Europe, alerted recently that the ‘[c]limate change is already posing serious challenges to water and sanitation systems in countries around the world’, there are no actual plans in Europe to make water access possible in the face of climate pressures according to the United Nations Economic Commission for Europe and the World Health Organisation.⁷²

In 2012, citizens were keen to try out this brand new ECI instrument.⁷³ A coalition of EU citizens got together to make use of the tool, bringing into life the first ECI to have ever collected the signature quorum, the ‘Water and sanitation are a human right! Water is a public good, not a commodity!’ (*Right2Water*) initiative.⁷⁴ The initiative called for the recognition of water and sanitation as a human right and the implementation of universal access to clean water and sanitation in the EU. The *Right2Water* initiative was officially registered by the European Commission in December 2013, and it led to a public consultation and a policy communication on the implementation of the human right to water and sanitation in the EU.

Having collected an astonishing 1,659,543 signatures from a total of twenty-seven Member States *Right2Water* attracted a lot of attention. In a press release, the Vice-President of the Commission at the time, Maroš Šefčovič, celebrated that

[t]oday is a good day for grassroot democracy. I am extremely happy to meet the organisers of this European Citizens’ Initiative. Their presence here proves the success of our joint efforts to make this ambitious new instrument of participatory democracy work.⁷⁵

The first successful ECI was indeed widely celebrated. Mr. Šefčovič said at the time that

⁷¹ United Nations, ‘Paris Agreement to the United Nations Framework Convention on Climate Change’ (12 December 2015) TIAS No 16-1104.

⁷² N/A, ‘Climate change threatening access to water and sanitation’ (*United Nations News*, 20 May 2022) <<https://news.un.org/en/story/2022/05/1118722>> accessed 01 September 2024. However, the EU Water Framework Directive (WFD), which is the main EU legislation for the protection and management of water resources, including rivers, lakes, groundwater, and coastal waters, does provide a framework for the sustainable management of water resources, based on the principles of environmental protection, integration, participation, and cost recovery. The WFD aims to achieve a good ecological status of all EU water bodies by 2027, but its effectiveness is limited due to lack of enforcement, inadequate funding, limited stakeholder participation, limited scope, and inadequate provision of specific guidance or targets for adaptation to and mitigation measures against climate change.

⁷³ Irmgard Anglmayer, ‘The European Citizens’ Initiative: the experience of the first three years’ (*European Parliamentary Research Service*, April 2015) 8 <[https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/536343/EPRS_IDA\(2015\)536343_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/536343/EPRS_IDA(2015)536343_EN.pdf)> accessed 01 September 2024.

⁷⁴ European Citizens’ Initiative, ‘Water and sanitation are a human right! Water is a public good, not a commodity!’ (*European Union*, 10 May 2012) <https://europa.eu/citizens-initiative/initiatives/details/2012/000003_en> accessed 01 September 2024. The main organisers, Anne-Marie Perret and Jan Willem Goudriaan, were integral members of the European Federation of Public Service, which also exclusively funded the initiative in three instalments amounting to 140,000 €. Perret was President of the citizen’s committee when the initiative was launched and just 4 years before that she was elected President of EPSU for a second term. Jan Willem Goudriaan is today EPSU’s General Secretary.

⁷⁵ European Commission, ‘Commission says yes to first successful European Citizens’ Initiative’ (*European Commission*, 19 March 2014) <https://ec.europa.eu/commission/presscorner/detail/en/IP_14_277> accessed 01 September 2024.

Europe's citizens have spoken, and today the Commission gave a positive response. Water quality, infrastructure, sanitation, and transparency will all benefit – for people in Europe and in developing countries – as a direct result of this first ever exercise in pan-European, citizen-driven democracy. I congratulate the organisers on their achievement.⁷⁶

The organisers had invited the European Commission to ‘propose a legislation implementing the human right to water and sanitation as recognised by the United Nations, and promoting the provision of water and sanitation as essential public services for all’,⁷⁷ urging all EU institutions and Member States to ensure that everyone inhabiting in the Union enjoys the right to water and sanitation, to not subject water supply and management of water resources to internal market rules and liberalisation and to try to achieve universal access to water and sanitation.⁷⁸

In response to the ECI, the Commission ‘committed itself’ to *inter alia* step up its efforts towards the full implementation of existing EU water legislation by Member States, promote dialogue and transparency in the water sector, co-operate with existing initiatives, improve information for citizens by further developing streamlined and more transparent data management and dissemination for urban wastewater and drinking water and advocate universal access to safe drinking water and sanitation as a priority area for post-2015 Sustainable Development Goals.⁷⁹ In other words, the Commission did not initiate legislative action, but it merely promised to better implement the already existing legislation and management of water supply.

Speaking at a conference back in 2017, one of the initiators, Jan Goudriaan, reminded the Commission what the *Right2Water* initiative had demanded:

Our first demand [...] was that the European Commission should implement the right to water, and sanitation as laid down in the United Nations resolution of 2010 in EU legislation. That has not happened. We have seen that this is not a demand supported only by the organisers of the ECI. This has been a demand supported by almost two million people in the European Union. [...] The second demand was that we did not want the water supply and management of water resources to be subject to internal market rules. [...] And we said that we wanted water to be excluded from liberalisation. [...] A third point, we asked the EU to increase its efforts to achieve universal access to water and sanitation, and also, in its development policy, to support public – *public* – partnerships.⁸⁰

Mr. Goudriaan made it clear that himself and the rest of the organisers are not satisfied with the European Commission's response to their initiative, *Right2Water*, which does not

⁷⁶ European Commission, ‘Commission says yes to first successful European Citizens’ Initiative’ (n 75).

⁷⁷ *ibid.*

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ EPSU, ‘Conference “Fighting for Water Democracy in the EU”’ (11 January 2017, 00:00-05:15) <<https://www.youtube.com/watch?v=3zsD3hZgR2k>> (accessed 01 September 2024).

reflect their demands to have legislation on the right to water and sanitation – a matter that is as topical as ever amid the climate emergency.⁸¹

Following up on the initiative, the European Parliament, too, recognised in its resolution of 8 September 2015 that the Commission's communication in response to *Right2Water* 'lacks ambitions, does not meet the specific demands made in the ECI and limits itself to reiterate existing commitments' and is 'insufficient, as it does not make any fresh contribution and does not introduce all the measures that might help to achieve the goals'.⁸² The resolution also stressed that, overall, 'the Commission's actions must better reflect the demands of the ECI when these are within its competence, and especially when they express human rights', stressing that water is not a commodity but a public good that is vital to human life and dignity, and further called on the Commission and the Member States to ensure a comprehensive water supply characterised by affordable prices, high quality, and fair working conditions and subject to democratic controls.⁸³

The *Right2Water* campaign was one of the most successful and popular ECI initiatives, gathering over 1.8 million signatures from citizens in several EU countries. The (relative) success of the campaign can be attributed to the strong mobilisation and coordination of civil society organizations across Europe, who worked together to collect signatures and raise awareness of the issues. The campaign, which bore a clear and compelling message, was also able to generate momentum across multiple EU countries, demonstrating the potential for cross-border collaboration and solidarity on issues of common concern. It is worth noting, however, that the outcome of the campaign was largely dependent on the political context in which it took place, with many EU countries facing austerity measures and public service cuts, as the campaign's message resonated with citizens who were concerned about the impact of these policies on access to water. The success of *Right2Water* in gathering statements of support and generating public debate was countered by its limited impact on actual policy change. The European Commission did respond to the initiative with a communication on the importance of access to water, but it did not propose any legislative changes or take concrete action. Overall, the *Right2Water* campaign demonstrated the potential for ECIs to mobilise citizens, generate public debate and put pressure on EU institutions to respond to citizens' concerns. However, it also highlighted the limitations of the ECI as a tool for policy change, and the need for continued advocacy and mobilisation to achieve concrete results.

3.2 END GLYPHOSATE

In 2017, the *Ban Glyphosate* initiative, which was also intricately linked to the protection of the environment amidst the climate change crisis, successfully collected over one million signatures. Put together by Greenpeace and a large number of civil society organisations, *Ban Glyphosate* was the fourth successful ECI and the second to be promoting an environmental

⁸¹ However, the initiators did acknowledge that the European Parliament, specifically its effort to pass legislation on the right to water, supported by the Economic and Social Committee, are much closer to what the organisers had hoped for when initiating *Right2Water*. EPSU, 'Conference "Fighting for Water Democracy in the EU"' (n 80) min 05:20 – 06:10.

⁸² European Parliament resolution of 8 September 2015 on the follow-up to the European Citizens' Initiative Right2Water (2014/2239(INI).

⁸³ *ibid.*

cause, namely the protection of people and the environment from toxic pesticides. Specifically, the initiative called on the Commission ‘to reform the herbicide approval procedure’, to ban glyphosate progressively but altogether and to eventually set an ‘EU-wide mandatory reduction target for herbicide use’.⁸⁴ The organisers also asked the Commission to ensure that the advice received from expert groups regarding the carcinogenicity of glyphosate is scientific and impartial.

The Commission was asked to ‘ensure that the scientific evaluation of herbicides for EU regulatory approval is based only on published studies, which are commissioned by competent public authorities instead of the herbicide industry’.⁸⁵

After gathering 1,070,865 signatures, *Ban Glyphosate* was submitted to the Commission. The First Vice-President, Frans Timmermans, publicly celebrated the success of the initiative:

It’s great that well over a million EU citizens have invested their time to engage directly on an issue that matters. The Commission has listened and will now act. We need more transparency about how decisions are made in this area. [...] In sum, I am a strong supporter of the right of citizens to engage in this manner and am pressing the Parliament and Council to make speedy progress on our proposals to make it easier for European Citizens’ Initiatives to be successful in the future.⁸⁶

The Commission did eventually commit itself to come forward with a legislative proposal; but not the one *Ban Glyphosate* and the over one million EU citizens had requested.⁸⁷ The proposed legislation in question envisioned to make the risk assessment studies in the food chain transparent, especially the industry studies submitted to the European Food Safety Authority (EFSA).⁸⁸

Indeed, a legislative proposal in response to the Commission did authorised the use of the herbicide for another five years after ‘thoroughly’ reviewing ‘objective scientific evidence’ showing no link between glyphosate and cancer in humans;⁸⁹ evidence that was never made

⁸⁴ European Citizens’ Initiative, ‘Ban glyphosate and protect people and the environment from toxic pesticides’ (2017) <https://citizens-initiative.europa.eu/initiatives/details/2017/000002/ban-glyphosate-and-protect-people-and-environment-toxic-pesticides_en> accessed 01 September 2024.

⁸⁵ *ibid.*

⁸⁶ European Commission, ‘Glyphosate: Commission responds to European Citizens’ Initiative and announces more transparency in scientific assessments’ (European Commission, 12 December 2017) <https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5191> accessed 01 September 2024.

⁸⁷ European Commission Proposal of 11 April 2018 for a Regulation of the European Parliament and the Council on the transparency and sustainability of the EU risk assessment in the food chain amending Regulation (EC) No 178/2002 [on general food law], Directive 2001/18/EC [on the deliberate release into the environment of GMOs], Regulation (EC) No 1829/2003 [on GM food and feed], Regulation (EC) No 1831/2003 [on feed additives], Regulation (EC) No 2065/2003 [on smoke flavourings], Regulation (EC) No 1935/2004 [on food contact materials], Regulation (EC) No 1331/2008 [on the common authorisation procedure for food additives, food enzymes and food flavourings], Regulation (EC) No 1107/2009 [on plant protection products] and Regulation (EU) No 2015/2283 [on novel foods] [2018] COM(2018) 179 final.

⁸⁸ In June 2019, the proposed regulation on the transparency and sustainability of the EU risk assessment in the food chain passed under ordinary legislative procedure. See Regulation (EU) 2019/1381 of the European Parliament and of the Council of 20 June 2019 on the transparency and sustainability of the EU risk assessment in the food chain and amending Regulations (EC) No 178/2002, (EC) No 1829/2003, (EC) No 1831/2003, (EC) No 2065/2003, (EC) No 1935/2004, (EC) No 1331/2008, (EC) No 1107/2009, (EU) 2015/2283 and Directive 2001/18/EC.

⁸⁹ *ibid.*

public, irrespective of the requirements under the Aarhus Convention, a recent series of Court rulings mandating environmental information be disclosed,⁹⁰ and the Commission's promise in response to *Ban Glyphosate* to make risk assessment studies transparent.

Based on risk assessment studies conducted by EFSA and the European Chemicals Agency (ECHA), glyphosate was authorised once again disregarding warnings by the International Agency for Research on Cancer (IARC), a semi-autonomous unit of the World Health Organisation, classifying the herbicide as 'probably carcinogenic to humans' and noting strong mechanistic evidence and positive associations for cancer in certain epidemiologic studies conducted in 2015.⁹¹

Irrespective of the debate on the carcinogenicity of glyphosate that divides the scientific community,⁹² it is less contested that the substance is a serious and toxic threat to aquatic life and biodiversity. The link of the herbicide to environmental degradation was one of the primary issues put forward by the *Ban Glyphosate* initiative, but it was never properly addressed by the Commission. During the public consultation of the initiative, Oliver Moore spoke on behalf of the *Ban Glyphosate*:

We suggest that [...] we should have a phase out of glyphosate, starting with

⁹⁰ Case C-673/13 P *Commission v Stichting Greenpeace Nederland and PAN Europe* EU:C:2016:889. See Emilia Korkea-aho and Päivi Leino, 'Who owns the information held by EU agencies? Weed killers, commercially sensitive information and transparent and participatory governance' (2017) 54(4) *Common Market Law Review* 1059; Päivi Leino-Sandberg, *The Politics of Legal Expertise in EU Policy-Making* (Cambridge University Press 2021).

⁹¹ World Health Organisation, International Agency for Research on Cancer, 'IARC Monograph Volume 112: evaluation of five organophosphate insecticides and herbicides' (20 March 2015) <<https://www.iarc.who.int/wp-content/uploads/2018/07/MonographVolume112-1.pdf>> accessed 01 September 2024, where it is argued that the results were based on 'limited' evidence of cancer in humans (observed in real-world exposures that actually occurred) and 'sufficient' evidence of cancer in experimental animals. See also Letter from IARC to the Congress of the United States (20 November 2017) <https://legacy-assets.eenews.net/open_files/assets/2018/02/07/document_gw_03.pdf> accessed 01 September 2024, where the WHO stresses that IARC studies are conducted by independent experts, who are 'free from vested interests', '[i]n the interest of transparency', and 'based on independent scientific review of published research and not on the basis of unpublished or "secret data", unavailable publicly'. To this day, the IARC study is the only one that has not used 'secret data', not confidential data from industry studies, in its scientific research on glyphosate. See, Charles M Benbrook, 'How did the US EPA and IARC reach diametrically opposed conclusions on the genotoxicity of glyphosate-based herbicides?' (2019) 31 *Environmental Sciences Europe*.

⁹² See Benbrook (n 91); Charles Medardo et al, 'Association between Cancer and Environmental Exposure to Glyphosate' (2017) 8(2) *International Journal of Clinical Medicine* 73. Compare these to Gabriella Andreotti et al, 'Glyphosate Use and Cancer Incidence in the Agricultural Health Study' (2017) 110(5) *Journal of the National Cancer Institute* 509. See also, Christopher J Portier, 'Open Letter: Review of the Carcinogenicity of Glyphosate by EChA, EFSA and BfR' (28 May 2017) <<https://www.nrdc.org/sites/default/files/open-letter-from-dr-christopher-portier.pdf>> accessed 01 September 2024. See also, ECHA's Safer Chemicals Podcast, 'Glyphosate, lead and silver: Risk Assessment and Socio-Economic Analysis Committees Highlights (June 2022), at 08:11 <<https://www.youtube.com/watch?v=QsHT2Y9RfBQ>> accessed 01 September 2024. When asked why studies, like WHO's IARC study, that do not rely on industry data come to a different conclusion, Tim Bower, the Chairman of ECHA's Committee for Risk Assessment, replied: 'I mean, they are an international agency, working under the UN system and they have a very high reputation in cancer research, very well-known worldwide. I think the answer is quite simple. It is just that the methodology that IARC uses and that we use in classification and labelling is different. IARC uses, as far as I am aware, only studies which are in the public domain, so proprietary studies will not be considered, as far as I understand, whereas the database we look at is considerably larger and contains all of those industry studies which five years ago would have been probably confidential that I do not think they would be confidential any longer. So [there] is basically a difference in the databases and a different way in selecting which studies are reviewed'.

integrated pest management, which would still use herbicides as the last resort, and that we will move carefully and methodically, with farmers' support, towards an agroecological system. [Fifteen taxonomic groups] have been shown to be suffering because of the use of glyphosate. It's defined as toxic to aquatic life. [...] That *is* an effect; that is a real-world effect. And I worry personally that we get too focused on human health, and we are ignoring massive biodiversity loss on a planetary scale. It's the worst thing we're doing in terms of climate change. [It has been shown] irrevocably that biodiversity is what we are doing worst on. And if we can carefully introduce other techniques to manage pests, let's do that.⁹³

The Commission has ignored both concerns over the damaging environmental impact of glyphosate in its response to the ECI, and the demand of 1,070,865 EU citizens to work towards a future that is free from harmful pesticides.

The *Ban Glyphosate* campaign was another significant ECI initiative that gathered over 1.3 million statements of support from citizens in several EU countries. The campaign tapped into strong public concern about the safety of glyphosate and the potential risks it posed to human health and the environment. This helped to mobilise significant public support for the initiative. But as the campaign highlighted the scientific controversy surrounding glyphosate, with some studies suggesting that it may be carcinogenic while others arguing that it is safe, it made it difficult to reach a clear consensus on the issue and contributed to ongoing debates about the risks of glyphosate. This also showed that resistance from industry and other stakeholders can have a detrimental impact for ECIs, as it made it challenging to build political support for a ban on glyphosate.⁹⁴ *Ban Glyphosate* had a similar fate to *Right2Water*. Once again, the campaign had limited impact on actual policy change, with the European Commission eventually proposing a five-year renewal of glyphosate's license and dismissing the campaign's request to ban glyphosate once and for all.

3.3 SAVE BEES AND FARMERS

In 2022, five years after the *Ban Glyphosate* campaign and three years after the revision of the ECI regulation, another initiative advocating for a pesticide-free future succeeded to collect more than one million signatures, drawing the Commission's attention: the 'Save bees and farmers! Towards a bee-friendly agriculture for a healthy environment' initiative (*Save Bees and Farmers*).⁹⁵ Protecting bees and other pollinators is an important part of efforts to promote sustainable agriculture and protect biodiversity. By promoting policies that support sustainable agriculture and protect pollinators, the *Save Bees and Farmers* campaign is

⁹³ Debate organised by the NAT section of the European Economic and Social Committee, 'ECI "Ban glyphosate" • ICE interdiction du glyphosate' (5 April 2017, 1:00:10-1:02:03) <<https://www.youtube.com/watch?v=XshnG5AmyOc&t=789s>> accessed 01 September 2024.

⁹⁴ See Jale Tosun, Herman Lelieveldt, and Trevelyan S Wing, 'A Case of Muddling Through? The Politics of Renewing Glyphosate Authorization in the European Union' (2019) 11(2) Sustainability 440; Alessandra Arcuri and Yogi Hale Hendlin, 'Introduction to the Symposium on the Science and Politics of Glyphosate' (2020) 11(3) European Journal of Risk Regulation 411.

⁹⁵ European Citizens' Initiative, 'Save bees and farmers! Towards a bee-friendly agriculture for a healthy environment' (registered on 30 September 2019) <https://citizens-initiative.europa.eu/initiatives/details/2019/000016_en> accessed 01 September 2024.

contributing to broader efforts to promote sustainable development and reduce the impact of human activity on the natural world.

Moreover, the use of neonicotinoid pesticides, which the *Save Bees and Farmers* campaign sought to ban, can have broader environmental impacts beyond harming pollinators. These pesticides can also accumulate in soil and water and may have negative impacts on other organisms in the ecosystem. By promoting the use of sustainable farming practices and reducing the use of harmful chemicals, campaigns like *Save Bees and Farmers* can help to mitigate the impacts of human activity on the environment.

With a clear intent to protect the environment by restoring biodiversity, *Save Bees and Farmers* came at a moment when the European Parliament and Council are considering a revision of Directive 2009/128/EC, establishing a framework for Community action to achieve the sustainable use of pesticides,⁹⁶ and its possible replacement with a regulation that will bind Member States to prevent ecosystem collapse. Part of the Farm to Fork strategy and the European Green Deal,⁹⁷ the discussion on the future of pesticides is expected to bear fruit by the end of 2022.

The review of the current legislation has been long-anticipated, but some food and farming groups have received it with caution, stressing that '[b]inding EU and national targets is an important first step, but overall, the proposals put too much emphasis on corporate-controlled "precision farming" and other false solutions, and not enough emphasis on agroecological practices'.⁹⁸

The *Save Bees and Farmers* initiative calls on the Commission to make a legislative proposal that would effectively help phase out synthetic pesticides by eighty per cent by 2035, to restore biodiversity, and to support farmers in the transition. It further demands the restoration of natural ecosystems in agricultural areas so that farming becomes a vector of biodiversity recovery and the reform of agriculture by prioritising small scale, diverse and sustainable farming. The organisers are hopeful that this time the Commission will have to take some positive action in response. As the one of the organisers, Martin Dermine, stated:

This is the seventh successful ECI and already the second one against pesticides. It is a strong democratic signal to EU and national decision-makers to listen to citizens and move away from toxic pesticides. Farmers and science have shown that

⁹⁶ Commission, 'Proposal for a Regulation of the European Parliament and of the Council on the sustainable use of plant protection products and amending Regulation (EU) 2021/2115' COM (2022) 305 final; Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides [2009] OJ L309/71. See also Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Commission work programme 2022 Making Europe stronger together' COM (2021) 645 final.

⁹⁷ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – The European Green Deal' COM (2019) 640 final.

⁹⁸ European Environmental Bureau, 'The new EU Pesticides Regulation receives cautious welcome by environmental groups' (*European Environmental Bureau*, 23 June 2022) <<https://eeb.org/the-new-eu-pesticides-regulation-receives-cautious-welcome-by-environmental-groups/>> accessed 01 September 2024.

agroecology can feed the world without chemicals. It is high time our politicians stop listening to agribusiness and start to work for the future of our children.⁹⁹

Mr. Dermine continues that

[t]his debate can no longer be dominated by the chemical industry and its allies who lobby in favor of industrial farming. There can be no agriculture and food security without healthy soils, clean water, and biodiversity. Industrial chemical agriculture is on a dead-end road.¹⁰⁰

Save Bees and Farmers is a clear demonstration that EU citizens demand a say in the discussion regarding a healthy environment for future generations. Amidst the current arduous food and energy crises facing Europe ever since the invasion of Ukraine in February 2022, coupled by the global climate emergency, it becomes more pertinent than ever to secure healthy soils, clean water and biodiversity to ensure food security and a sustainable agriculture.

In 2018, the Commission banned the use of neonicotinoid pesticides in all outdoor crops, with some limited exceptions.¹⁰¹ The ban was based on scientific evidence that these pesticides harm bees and other pollinators and was widely seen as a victory for the *Save Bees and Farmers* campaign. However, the call for a complete ban on neonicotinoid pesticides and stronger policies to promote sustainable agriculture and protect biodiversity continues.¹⁰²

The organisers of the initiative met with the European Commission Vice-President for Values and Transparency, Věra Jourová, and the Commissioner for Health and Food Safety, Stella Kyriakides, on 25 November 2022, and a public hearing took place at the European Parliament on 24 January 2023. The ECI was debated at the European Parliament's plenary session on 16 March 2023, but no resolution was adopted. In the end, the Commission adopted its official reply on 5 April 2023, which, although welcomed the ECI and acknowledged its importance 'in the context of the interlinked crises of climate change, pollution and biodiversity loss', announced that the Commission was not going to propose new legislative acts as a response.¹⁰³ The explanation given for this inaction was the already

⁹⁹ Save Bees and Farmers, '1 million European valid signatures to Save Bees and Farmers: A historic step to stop the war against nature' (*Save Bees and Farmers*) <<https://www.savebeesandfarmers.eu/w/files/other-docs/press-release-bees-eci-succes.docx.pdf>> accessed 01 September 2024.

¹⁰⁰ Save Bees and Farmers, '1 Million EU citizens tell EU Commission: end the war against nature' (28 November 2022) <<https://www.savebeesandfarmers.eu/w/files/other-docs/2022-11-28-pr-bees-eci-at-eu-commission.pdf>> accessed 01 September 2024.

¹⁰¹ Commission Implementing Regulation (EU) 2018/783 of 29 May 2018 amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance imidacloprid [2018] OJ L132/31; Commission Implementing Regulation (EU) 2018/784 of 29 May 2018 amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance clothianidin [2018] OJ L132/35; Commission Implementing Regulation (EU) 2018/785 of 29 May 2018 amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance thiamethoxam [2018] OJ L132/40.

¹⁰² Recently, it was revealed that the EU exports these banned chemicals to the global South. See, Crispin Dowler, 'Revealed: European and the UK's vast shipments of banned, bee-killing "neonics"' (*Unearthed*, 18 November 2021) <<https://unearthed.greenpeace.org/2021/11/18/revealed-europe-and-the-uks-vast-shipments-of-banned-bee-killing-neonics/>> accessed 01 September 2024.

¹⁰³ Communication from the Commission on the European Citizens' Initiative (ECI) 'Save bees and farmers! Towards a bee-friendly agriculture for a healthy environment' C(2023) 2320 final <[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2023\)2320&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2023)2320&lang=en)> accessed 01 September 2024.

successful European Green Deal, as well as the fact that proposals tackling similar issues were already under way; hence, there was no need, according to the Commission, to put forth a new proposal.¹⁰⁴

As such, despite gathering an impressive 1.4 million signatures, *Save Bees and Farmers* had limited impact on policy- or legislative change, with the Commission's response falling short of the campaign's demands. *Save Bees and Farmers* was another notable ECI initiative that further highlighted the limitations of the ECI tool and the need for continued advocacy and mobilisation to ensure that policymakers act on issues of public concern.

4 THE 2023 ECI REVIEW

Although the overall number of valid ECIs and the impact of the ECI instrument on EU decision-making remains very low, when a Commission-backed survey asked organisers why they chose the ECI as a tool to influence EU policy, respondents answered that the ECI was chosen because it has a more political impact than national or other tools ('as the Commission is forced to respond'), as a 'strong back-up for advocacy strategies, to give more legitimacy to the campaign', and for its EU-wide dimension.¹⁰⁵ However, 'respondents referred to the ECI as a "weak instrument"' and

considered that large organisations, NGOs and multipliers are unwilling to invest time, money and resources in campaigning for ECIs. Additionally, some explicitly mentioned the threshold of 1 million statements of support as too high to reach. They pointed out that there is a risk that the ECI becomes a tool for civil society organisations only, as they are the actors that are able to campaign effectively to reach the required support.¹⁰⁶

These results reflect those of my own engagement with leading environmental NGOs with transnational networks and active campaigning work at the EU level (in other words, actors with potential to gather the necessary signatures), it became apparent that, in their eyes, too, the ECI is a waste of time and resources that often disappoints those who trust the EU institutions.¹⁰⁷

Dissatisfied with the limited effectiveness of the ECI as a participatory democracy mechanism, the European Parliament urged the Commission to address the instrument's inadequacies by, among other means, adopting 'clear and straightforward procedures', providing 'detailed answers and possible solutions when initiatives are declared partly or fully inadmissible, thus enabling organisers to amend and present them again', providing 'financial support for valid ECIs reaching the threshold of one million signatures', carrying out 'a thorough assessment of the proposals of each valid ECI', and complying 'fully with its legal

¹⁰⁴ Communication from the Commission on the ECI 'Save bees and farmers!' (n 103).

¹⁰⁵ European Commission, 'Organisers' assessment of the application of Regulation (EU) 2019/788 on the European Citizens' Initiative – Survey report', 1 <<https://citizens-initiative.europa.eu/sites/default/files/2023-12/Consultations%20with%20ECI%20organisers.pdf>> accessed 01 September 2024.

¹⁰⁶ *ibid* 2–3.

¹⁰⁷ Email communication with EEB and Client Earth (3 and 7 April 2023 respectively). In file with the author.

obligation to set out its reasons for taking or not taking action’, in a clear, comprehensive, detailed and impartial manner.¹⁰⁸

In other words, the Parliament has now officially asked the Commission to fully comply with its obligations under the revised ECI regulation. But when it came to the Parliament’s request that the Commission must appropriately consider and respond to valid ECIs, the Commission claimed that it is already responding appropriately and that ‘valid initiatives have generated substantive legal and/or political impact’.¹⁰⁹ What is more, the Commission referred to *Right2Water*, *Save Bees and Farmers*, and *Ban Glyphosate* as examples of initiatives that have brought about real legislative change. In the case of *Save Bees and Farmers*, the Commission argued that appropriate follow-up has taken the form ‘of a commitment to keep the level of ambition on proposals already tabled and not yet adopted by the co-legislator’, whereas it attributed ‘longer term impacts’ to the other two initiatives, which the Commission claims have led to the adoption of legislative acts.¹¹⁰

From the reply the Commission gave to the Parliament, it becomes clear that, for the Commission, *Right2Water*, *Save Bees and Farmers*, and *Ban Glyphosate* illustrated ‘that successful initiatives have generated substantive legal and/or political impact’.¹¹¹ However, as discussed already, this sentiment does not reflect what really happened at the follow-up stage of those three ECIs.

At the end of 2023, in view of the European Parliament’s assessment and in accordance with Article 25 of the ECI regulation, the European Commission published its first review of the ECI (‘the 2023 ECI Review’). The 2023 ECI Review sheds light on the facts and figures of the first years of the ECI regulation and outlines the course of action the Commission intends to take in response to its shortcomings with regards to the implementation of the said regulation. Specifically, the Commission promises to (1) enhance ECI awareness and visibility, (2) strengthen support for ECI organisers, (3) improve the central online collection system, (4) strengthen ECI implementation at national level and cooperate with civil society, and (5) have a more visible follow-up of ECIs.

With regards to (5), which is, as the case studies above showed, the part the implementation of the ECI regulation falls short, the Commission promises to make follow-up meetings a standard practice for all successful and valid initiatives, which it further plans to systematically take into account when developing policy proposals and include their organisers in consultations. However, as discussed in light of the above case studies, the most obstructive problem at the follow-up stage of an ECI’s life is that the political reality, as other analyses of the topic have also observed, ‘may often hinder the potential’ of democratic dialogue.¹¹² Indeed,

while it appears that a successful initiative may have better chances to achieve a meaningful follow-up in case it corresponds to the already existing agenda and

¹⁰⁸ European Parliament resolution of 13 June 2023 on the implementation of the Regulations on the European Citizens’ Initiative (2022/2206(INI)).

¹⁰⁹ European Commission, ‘Follow-up to the European Parliament non-legislative resolution on the implementation of the Regulations on the European Citizens’ Initiative’, 2 <<https://citizens-initiative.europa.eu/sites/default/files/2023-12/SP%282023%29412-0.pdf>> accessed 01 September 2024.

¹¹⁰ *ibid.*

¹¹¹ *ibid.*

¹¹² Christopoulou (n 7) 6.

priorities set by the Commission, this cannot be taken for granted; the political priorities might change and, therefore, the promises given to citizens might not always be kept.¹¹³

This means that even in the post-2023 ECI Review world, it remains to be the case that the success of the ECI as a tool for participatory democracy depends largely on the Commission's political priorities and institutional practices. This is because the proposed action plan in the 2023 ECI Review, which outlines the steps to be taken to better respond to successful ECIs, is nothing but what the Commission is already obliged to do under the current ECI regulation. Besides, the Commission's promised action plan is to only better listen to but not necessarily to better articulate the demands of successful ECIs.

Have the reasons the Commission has not abide to its obligations so far disappeared? If the reasons are, as this article showcased, that the political reality does not allow for full, actual, and honest democratic dialogue between EU citizens and institutions, the likely answer is no. For as long as the Commission is the Cerberus of the ECI, controlling at all stages the success of initiatives, the instrument cannot be considered an honest effort from the part of the EU's executive body to create an avenue for citizens participation in policy-making.

5 REFLECTIONS

Although the ECI has been described as a tool that allows 'the territorial extension of a European political public sphere',¹¹⁴ looking into successful initiatives that have gathered at least one million statements of support shows that abiding to the demands of the European demos is hindered by 'continuing politics', technical and legal obstacles, as well as socio-political struggles embedded in the EU structures.¹¹⁵ This past decade has shown that the ECI is struggling to live up to its promises, as it cannot achieve many of the purposes it was expected to fulfil in the first place,¹¹⁶ leaving a big question mark hovering over the ideal of transnational participatory democracy, and an even bigger question mark over the worthwhileness of using the ECI for any group of people wanting to participate in the EU decision-making process.

Today, when 'tolerance of a not-completely democratic Europe is at its lowest level since the beginning of the twenty-first century',¹¹⁷ the ECI could be an attractive instrument through which citizens can participate in decision-making. However, reflecting on the preceding case studies, its worthwhileness is put on a test, especially when it comes to initiatives linked to a highly political and multi-stakeholder issue, such as climate change. This

¹¹³ Christopoulou (n 7) 6.

¹¹⁴ Justin Greenwood and Katja Tuokko, 'The European Citizens' Initiative: the territorial extension of a European political public sphere?' (2017) 18(2) *European Politics and Society* 166. See also Conrad, Knaut, and Böttger (n 38). Note, however, the discussion in Weisskircher (n 19), where it is shown that the national state is the key political arena for mass politics.

¹¹⁵ van den Berge, Vos, and Boelens (n 70).

¹¹⁶ Sergiu Gherghina and Adriana Groh, 'A Poor Sales Pitch? The European citizens' initiative and attitudes toward the EU in Germany and the UK' (2016) 17(3) *European Politics and Society* 373, 375.

¹¹⁷ Longo (n 3) 182, citing Mark Dawson, 'The Legal and Political Accountability Structure of 'Post-Crisis' EU Economic Governance' (2015) 53(5) *Journal of Common Market Studies* 976, 978; Michael A Wilkinson, 'Authoritarian Liberalism in the European Constitutional Imagination: Second Time as Farce?' (2015) 21(3) *European Law Journal* 313.

means that there is a variety of reasons behind the Commission's response pattern, including political resistance from within the institution and lack of support from key stakeholders, which does not mean that the ECI as a tool is inherently flawed, but that the political environment in which it operates does not allow it to live up to its promise: the ideal of participatory democracy.

None of these issues were addressed by Regulation (EU) 2019/788, which aimed to revise the ECI, although the entire reason behind its introduction was to improve what was already considered a failing instrument. Thus, the main problems remain, and the political priorities of the Commission hinder the effectiveness and threaten the long-lasting effect of the ECI mechanism. Naturally, this creates the – not utterly unlikely – impression that the ECI has not been taken seriously by the EU institutions, as the tool has not given citizens a meaningful voice.

The 2023 ECI Review not only brushed off a lot of issues concerning the implementation of the ECI regulation the Parliament had flagged to the Commission, but also provided, as a way forward, a course of action with regards to how the Commission responds to successful ECIs that does not introduce anything new, but simply reiterates existing obligations that were already in place when the Commission was deciding on how to respond to *Right2Water*, *Ban Glyphosate*, and *Save Bees and Farmers*.

Lastly, it should be noted that the collateral effects of an ECI can be many, even when the 'desired goal of EU policy change' is not fulfilled.¹¹⁸ ECI organisers, for example, reported that reaching out to the public and spreading the message of their campaign was a rewarding experience.¹¹⁹ Admittedly though this had little to do with the ECI as an instrument per se, as public outreach and awareness-raising could have been achieved anyway without needing to go through the ECI mechanism in the first place, which is exhausting in terms of energy and resources, which grassroots organisations do not possess an excess of. In this sense, the ECI could serve as a campaigning or communications tool to throw weight behind demands we are making – i.e. using an ECI not for its formal legal role of forcing the Commission's hand but rather as a political tool.¹²⁰ But if this is the intention, if the intention is for the ECI to be a campaigning or communications tool, then we may just call it that. There is no need to call it something it is not, a tool of participatory democracy, if citizens are not *participating* in anything.

On the flipside, an efficient ECI, while it could have the potential, if the Commission so allows, to enable EU citizens to directly influence EU policies by proposing legislation, would also carry certain risks. As we have seen, the process of organising a successful initiative requires a substantial amount of resources, knowledge, and strategic acumen. This can lead to a situation where well-funded and well-organised groups, often backed by powerful interest groups or elites, dominate the ECI process.

Moreover, because the ECI allows for proposals to be initiated by a relatively small number of citizens in the context of the entire EU population, there is a chance that niche or minority interests could disproportionately influence the legislative agenda. Would the ECI then be a tool for empowering the citizens or a tool of the elites? For the ECI to truly function as a tool for majority rule, it would certainly require broad participation and

¹¹⁸ Longo (n 3) 182.

¹¹⁹ In file with the author (interview with ECI 'end the plastics' – in Greek, translation mine).

¹²⁰ Email communication from EEB (3 April 2023), in file with the author.

engagement from a diverse cross-section of the EU population – something that does not exist currently. Be it due to lack of awareness, the complexity of organising an ECI campaign that often requires significant resources and expertise, and the discouraging treatment of ‘successful’ ECIs by the Commission, or a combination of these, there are several factors that can challenge the ECI’s effectiveness as a tool for majority rule.

In this regard, in certain cases, these issues can lead to initiatives that, while achieving the necessary signatures, may not truly reflect the preferences of the majority of EU citizens but rather those of more organised or better-funded groups.

Furthermore, the requirement that signatures come from at least seven different Member States is designed to ensure cross-border support, but it does not guarantee that the initiative aligns with a majority view across the entire EU. It is possible for an initiative to gain the required signatures by mobilising intense support in a few Member States while having little or no support in others, thus not necessarily representing a majority perspective at the EU level.

While the ECI has the potential to be a tool for majority rule, its effectiveness in this regard depends on the extent to which it is able to mobilize broad, cross-border participation and reflect the true interests of a majority of EU citizens. Without such broad engagement, which could be achieved through honest reforms of the tool as the 2023 ECI Review also concluded, there is a risk that the ECI be monopolised by a minority of well-organised groups, thereby not fully serving as a mechanism for a participatory democracy model of majority rule.

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