

*Copenhagen Business School*

*Master's thesis*

**An investigation of the legitimacy created  
by the ECI**

*A case study of Right2Water*

MSc. in International Business and Politics

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Deadline: March 15, 2019

STU count: 173.118

Page count: 80

Student Nr. 8631

## Executive summary

This thesis concerns itself with the European citizens' initiative. A novel transnational governance tool enshrined in the Treaty of Lisbon. The thesis investigates whether the instrument has resulted in a strengthened foundation of legitimacy for the European Union. To operationalize legitimacy, the thesis calls upon the conceptual typology of input and output legitimacy as developed by Scharpf's normative theory. Scharpf qualifies input legitimacy as 'rule *by* the people' and output legitimacy as 'rule *for* the people'. The thesis performs a case study of the citizens' initiative Right2Water which was the first citizens' initiative to be submitted at the hands of the Commission. In doing so, the thesis is able to discuss the potentials and the pitfalls for the ECI strengthening EU legitimacy in the contextualized setting of Right2Water.

The thesis determines that the ECI has increased the input legitimacy of the Union by introducing an instrument of direct participatory democracy into EU governance. Furthermore, the campaigning process of initiatives have fostered the development of a distinctly European public sphere. Hereby, the ECI has bridged the emerging gap between EU citizens and EU institutions by empowering their self-governance. Using the terminology of Scharpf the ECI has increased 'rule *by* the people'. The thesis also determines that the ECI has struggled in transforming initiatives into actual legislative influence, due to a lack of responsiveness by the Commission. Here the adoption of the legislative proposal for a recast of the drinking water directive on February 1, 2018 represents a newfound hope for turning public interests into authoritative decisions. However, as of March 2019 the ECI has not increased the output legitimacy of the Union since no legislative policy has been finalized as a result of an ECI. Using the terminology of Scharpf, the ECI has not increased the 'rule *for* the people'.

**Keywords:** Legitimacy, Input legitimacy, Output legitimacy, The European Union, The European Citizens' Initiative, Right2Water.

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## **Abbreviations**

ECI – European Citizens' Initiative

EU – European Union

UN – United Nations

EC – European Commission

EP – European Parliament

MEP – Member of European Parliament

R2W – Right2Water

NGO – Non-Governmental Organization

CSO – Civil Society Organization

EPSU – European Federation of Public Service Unions

OCS – Online Collection System

ENVI - Committee on the Environment, Public Health and Food safety

# Acknowledgements

At the outset, I would like to express my gratitude to my supervisor Magali Gravier for her guidance of my work. Our discussions have been a great source of inspiration, and they have motivated me tremendously during the writing of my thesis. I would also like to thank the people who took the time to read my thesis, to help me make my work more accessible. With this thesis, 6 years with the IBP-programme at CBS has come to an end, and I am thankful for all that it has taught me and all that I have taught myself.

# Introduction

Never before have citizens been so called upon to participate in the democratic life of the governments that regulate them. This emerging demand for wider citizens participation, is a part of a greater participatory turn in democratic governance. The European Citizens' Initiative (ECI) is an institutional manifestation of this in the EU context. It was a reaction to the trend of declining partisan forms of political participation, and the emerging gap between EU citizens and EU institutions. This apparent disconnect has prompted much criticism of the Union's democratic governance, and forms the basis for the so-called democratic deficit debate. The ECI was considered a possible remedy for this.

With the ECI, the Treaty of Lisbon introduced the first instrument of direct participatory democracy into the governance of the Union. The ECI essentially awards citizens the right to form citizens' initiatives. Citizens of the Union can now form an initiative on a topic they find important or think is inadequately addressed by the Union. If this initiative is able to collect the required amount of statements of support, the initiative can invite the European Commission to propose relevant legislation. This prerogative of inviting the European Commission to propose legislation was previously exclusive to the European Parliament and Council. However, with the ECI this power has been extended to the people. In doing so, the ECI is intended to facilitate greater citizen involvement and increase the responsiveness of policy-making vis-à-vis public opinion.

While citizens' initiatives are a well-known tool in the context of the nation state, it represents the first instrument of direct democracy in a transnational setting. The new mechanism was initially met with great enthusiasm, despite the fact that it was largely unclear what could actually be expected from it. However, as we close in on the 10-year anniversary of the ECI mechanism a picture has started to form. Since its launch in 2012 the ECI mechanism has led to more than 78 initiatives, of which 4 have been

submitted at the hands of the Commission. However, there remains great disagreement on the legitimizing value of the ECI mechanism. Some have called it a beacon of hope, while others have referred to it as a grave disappointment. This thesis therefore concerns itself with determining whether the ECI has delivered on its promise and increased the democratic legitimacy of the Union.

### **Research question**

The thesis will answer the following research question: *Has the European citizens' initiative increased the legitimacy of the European Union?*

To answer the research question the thesis needs a theory of legitimacy to make the diffuse concept more operational. Here the thesis draws on Scharpf's normative theory of legitimacy. He essentially takes the concept of legitimacy, and divides it into the two sub-concepts of input and output legitimacy. To answer the research question the thesis also needs a case study to collect empirical evidence on the working of the ECI in practice. Here the thesis studies Right2Water. It was both the first ECI to be launched back in 2012, and the first initiative to be submitted at the hands of the Commission in 2013. It has regained importance in the light of the Commission's adoption of the proposal for a recast of the water framework directive on February 1, 2018. This represents an interesting new development, since it is the first legislative proposal to make a direct reference to a citizens' initiative. In the light of this, it seems warranted to reconsider the legitimacy created by the ECI mechanism.

### **Structure**

The thesis is subdivided into 8 chapters. Chapter 1 will establish the methodological grounding. It will provide an account of the underlying constructivist philosophy of science that informs the thesis, and its ontological and epistemological implications. It will account for the monographic approach and the single case study method. Finally, it will account for the predominant use of secondary qualitative data sources. In chapters 2 and 3 the thesis will present the theoretical framework. With these



chapters, the reader should gain an understanding of the phenomenon of legitimacy and how Scharpf's two-fold typology of input and output legitimacy conceptualises legitimacy as 'government *by* the people' and 'government *for* the people'.

In chapter 4 and 5 the thesis will present the findings. Chapter 4 will establish the background for the ECI mechanism coming into existence, its legal basis in Regulation No. 211/2011, and the procedure and the scope of its use. Chapter 5 will perform a case study on Right2Water. The case study will establish political environment at the time of launch, and the mission and objectives of the initiative. The case study will then trace the initiative through the process from the launch until submission, and then take a step back to consider the impact of Right2Water in the period following the completion of the initiative.

Chapter 6 and 7 will analyse and discuss the findings. In chapter 6 the thesis will make sense of the case study findings by operationalizing Scharpf's conceptualization of input and output legitimacy. The analysis is structured around the following sub-sections. Sub-section 1) considers legitimacy from creating direct participation. Part 2) considers legitimacy from fostering deliberation and political discussions. Part 3) considers legitimacy from increased policy performance. Chapter 7 will then take a step back and make some final reflections. The chapter will discuss the findings from a more holistic perspective. Furthermore, the chapter will reflect on contribution to theory, and on the value of the research. Finally, it will point to lines for further inquiry. Chapter 8 will then finally present the conclusion of this thesis.

# **Part I Method**

## **1. Methodological considerations**

This chapter accounts for the methodology used to answer the research question. The purpose is to document the methodological choices of a constructivist research philosophy, a qualitative mono-method research approach and a single-case study research method. In doing so, the thesis will also reflect on the implications and consequences of the methodological choices and create awareness of potential weaknesses in the research.

The chapter includes the following. Sub-section 1.1 will account for the constructivist research philosophy, and the ontological and epistemological implications for the mode of reasoning. Sub-section 1.2 will account for the qualitative mono-method research approach. Sub-section 1.3 will account for the single case study design and case study selection. Sub-section 1.3 will consider data collection. Sub-section 1.4 will reflect on the validity of the research and its drawbacks and challenges.

### **1.1 Constructivist philosophy of science**

To start this chapter off, I will begin with an account of the constructivist research philosophy that informs my mode of reasoning. We are here at the highest level of abstraction. To study the legitimacy created by the ECI, the thesis needs a research philosophy that accounts for the societal values that underlies social phenomena. In other words, the social structures that determine what the people of the Union perceive as legitimate. A constructivist or interpretivist approach allows me to do this.

The constructivist philosophy of science is preoccupied with studying social reality and the construction of meaning. From this perspective reality is a social, political, cultural or economic construct and to understand a social phenomenon one must

therefore analyse the social structures and mechanism of interaction that underlies it. It therefore recognizes the importance of social structures when studying social phenomena. Because of this, research is often interested in exploring the particular rather than the general, and with understanding and exploring cause and effect relationships as opposed to the naturalist or empiricist traditions occupation with reducing them to generalizable constants. (Moses, 2007; Saunders, 2009)

Since the thesis studies the social concept of legitimacy, it calls for such a constructivist philosophy of science. Its interpretivist ontology allows me to study legitimacy as a subjective and socially constructed concept. An approach where the truth of a legitimacy claim essentially lies in the eyes of the beholder. That is to say, legitimacy is not studied as a pre-given institution or artefact that can be observed, measured or quantified. Rather legitimacy is studied as a normative concept that describes the worthiness of a political order. Whether a regime is considered legitimate and therefore worthy is determined purely by a given society perceiving the regime as legitimate. The basis for this perception is informed by its subjective presuppositions – or rather by its ideals. This shows how legitimacy is fundamentally contingent on societal structures. Because of this normative nature of legitimacy, research on the topic can never be a value-free or an exact science. This thesis included:

“[For every] speaker who uses the word legitimacy will always also perform an act of evaluation” (Gaus, 2010; p. 6).

This does come with the obvious drawback of a difficulty in producing representative or transferable findings. (Saunders, 2009)

## **1.2 Qualitative mono-method approach**

The thesis is based on a qualitative mono-method research approach. This approach is taken since the thesis deals with the complex normative and social concept of legitimacy. Legitimacy cannot be meaningfully quantified, and it therefore calls for a

qualitative approach. Here, qualitative methods allow for revealing greater in-depth information of the particular case of the Right2Water initiative and in turn allows the thesis to uncover the effects of the ECI on EU legitimacy. The thesis is therefore based on secondary qualitative sources and the primary method for treating these data is document analysis.

While qualitative data account for the far majority of data sources, the thesis will also use a few quantitative data on the number of citizens' initiatives, number and distribution of signatures, funding etc. It could therefore be argued that the thesis is based on a mixed-methods research approach. However, because of the sparse use of quantitative sources the research design is predominantly qualitative. The qualitative research approach has several weaknesses as opposed to its mixed or quantitative research approaches. The use of a qualitative research approach implies a weakness of difficulty of replication and transferability of the findings. This means that the findings of the thesis are very context specific. Here a mixed-methods could have contributed with greater possibility for replication. However, there is a lack of quantitative data sources for such a mixed methods approach. (Moses, 2010)

The research procedure is deductive. With deductive reasoning, the insight of Scharpf's normative theory of input and output legitimacy as '*rule by the people*' and '*rule for the people*' will aid my analysis in making sense of the case study evidence collected on the Right2Water initiative. The use of deductive reasoning is appropriate in this thesis, because the aim is not to develop a theory on legitimacy but simply to operationalize Scharpf existing framework to gain a contextualized understanding of whether the ECI increases the legitimacy of the Union or not.

### **1.3 Single case study design**

The thesis is based on a single case study research design. It performs an empirical case study of the citizens' initiative Right2Water. By performing a single case study the thesis is able to study the contemporary phenomenon of the ECI mechanism in the

real-life context of an actual initiative (Yin, 1989). In doing so, the thesis will gain valuable empirical evidence to serve as the basis for the upcoming analysis of whether it increases the legitimacy of the Union. The use of a single case study design, as opposed to a multiple case study design, allows the thesis to perform a much more holistic and in-depth empirical study. Hereby, the thesis is able to account for a greater number of perspectives on Right2Water. Furthermore, a single case study is chosen because the concept of legitimacy is a complex, and at times diffuse social concept. Finally, the single case is chosen due to the time constraint of a Master's thesis making a single case study design the optimal choice. (Moses, 2007)

Right2Water makes an interesting setting for discussing ECI legitimacy, for mainly two reasons. First of all, this particular initiative is very current since the legislative proposal 2017/0332(COD) for a recast of the drinking water directive was adopted by the Commission on February 1, 2018 with a direct reference to the Right2Water. Since this legislative process is ongoing, the study is a descriptive exploratory case study. Second, Right2Water was chosen as the case since it was the first ever citizens' initiative to fulfil the criteria set out by Regulation No. 211/2011 and presents its objectives to the European Commission. A possible bias in the choice of case study is that the case represents a best case for the impact of an ECI, since the proposal for a recast of the drinking water is the first to make a direct reference to a citizens' initiative.

#### **1.4 Data sources and collection**

The thesis will be based on the following data sources. A series of official and legislative documents including the Treaty of European Union, more specifically Art. 11(4) on European Citizens' Initiative; Regulation No. 211/2011 on the European Citizens' Initiative; Commission communication (COM (2014) 177) on Right2Water; legislative proposal (COM (2017) 753) for a recast of the Drinking Water Directive; Parliament resolution 2014/2239(INI) on the follow-up to the European Citizens' Initiative; ENNVU REFIT evaluation (SWD (2017)488); ENVI Impact Assessment

(SWD (2017) 499); Reports by the European Parliaments Research Service as well as press releases from relevant actors. Furthermore, the thesis is based on material from the official Right2Water website, the EPSU website and the official website for the European citizens' initiative.

In the process of finding and analysing data, bias has been a major concern since the thesis uses secondary data produced by Right2Water, EPSU and the EU institutions. The official website for the European citizens' initiative created by the Commission has user generated information, and so there is no quality check performed on the websites information. The thesis has used triangulation of multiple data sources, to ensure the validity of the data from this website but also general throughout this study. Furthermore, data limitations have been a major obstacle in this thesis. First, in respect to data on the legislative proposal for the recast of the drinking water directive adopted by the Commission on February 1, 2018. Since this initiative was adopted one year ago, it has been difficult to find reliable data sources beyond news articles and official EU documents. The thesis also encountered a data restraint on the actual number of signatures collected by Right2Water on the Online Collection System. During the first of its launch, the platform was unreliable, and this cost Right2Water a great deal of signatures. Right2Water estimates it cut their statements of support in half. However, since no verified record of these signatures exist they will not be considered in this thesis.

## **Part II Theoretical Framework**

### **2. The key concept of legitimacy**

Before turning to explaining Scharpf's theory of legitimacy, I will first devote some attention to defining the concept of legitimacy itself. The chapter is intended to serve two main purposes. First and foremost, the chapter will provide a basic explanation of legitimacy before turning to operationalizing it. This seems necessary since the

concept is not uniformly understood and applied by research. Second, the chapter will reflect on the notion of legitimacy in national versus international context.

The chapter is structured the following way. Sub-section 2.1 will define the concept of legitimacy. Sub-section 2.2 will discuss the importance of the notional versus international context.

## **2.1 Defining legitimacy**

Legitimacy is a cornerstone concept of modern democratic governance and much academic research is devoted to exploring it. (Suchman, 1995; Habermas, 1984; Scharpf, 2003) Nevertheless, there seems to be great disagreement on how to define it. In political science, normative accounts define legitimacy as a justification of authority. Whether a political authority is justified and hereby legitimate depends in turn on whether the authority's exercise of power is recognized as right and proper. In such a legitimate political regime, citizens are willing to set aside their own interests and preferences and comply with policies because they recognize it as serving the greater good. (Scharpf, 2003, 2009)

Here political power comes not from coercion but from voluntary compliance by the governed. In other words, the governed are led to comply by a set of socially sanctioned obligations and moral duties. Scharpf provides the following account:

“Legitimacy arguments then, must be arguments that are able to establish a moral duty to obey these collectively binding decisions even if they conflict with individual preferences”  
(Scharpf, 1999; p. 10).

This highlights that legitimacy is essentially the act of societal consent for the political system. By this act of consent, it becomes clear that legitimacy is in fact something that is conferred upon the government by its people and not something the authority can take by force. (Habermas, 1984; Gaus, 2010)

The question then becomes, on what basis a constituency accepts or rejects a political order as legitimate. When is a regime considered right and proper? This is where things get a bit tricky due to the subjective nature of legitimacy. The phenomenon of legitimacy is inherently subjective and co-constructed through social interaction. What a society considers legitimate is thus informed by a shared set of generalized perceptions held by the people. Here Habermas (1984) makes an interesting contribution. He states that 'legitimacy is a contestable validity claim' (Habermas, 1984; p. 178). With this statement, he highlights that legitimacy is contestable. No one overriding justification for legitimacy exist. Rather an authority's legitimacy is accepted or rejected on the basis of different perceptions of what is considered right and proper. (Habermas, 1984; Gaus, 2010; Suchman, 1995)

So where do these perceptions come from? The collectively shared perceptions of society are informed by people's underlying norms, values and belief systems. To explain this, I will borrow Weber's statement:

“...the basis of every system of authority, and correspondingly of every kind of willingness to obey, is a belief. A belief by virtue of which persons exercising authority are lent prestige” (Weber, 1964; p. 382).

Whether or not you recognize an authority to be legitimate is thus informed by your ideological belief system. This very nature of legitimacy, means that an infinite number of justifications for legitimate rule exist. It also means that legitimacy is not a static concept, but can change over time through collective social contestation. Over the course of history, we see how different legitimating ideologies have justified different forms of rule. Just take the medieval times divine justification for legitimate governance. This shows that the basis for what is considered legitimate authority has continuously been redefined through both major revolutionary shifts and through smaller seemingly insignificant developments. (Suddaby, 2010; Gaus, 2010)



This subjective and contestable nature of legitimacy, has an important implication for the conclusions of this thesis. Because any meaningful claims about the EU's legitimacy are informed by what society perceives as right and proper rule, I need to be aware of these societal values and beliefs since they inform the basis of my conclusions. This thesis is informed by the modern western society's understanding of legitimate rule. I will draw conclusions of the EU's legitimacy informed by the dominant modern western democratic account. Here legitimacy rests on trust in institutional arrangements, and is informed by the co-existence of democratic and liberal principles. (Gaus, 2010; Habermas, 1984; Scharpf, 2009)

## **2.2 National vs international context**

Having defined legitimacy, the question becomes whether or not the assumptions about legitimacy change depending on the level of governance. In other words, is the legitimacy of a political regime different in the context of the national regime versus that of the EU. This question has resulted in much debate and the following paragraphs will briefly reflect on its implications for the upcoming analysis.

Traditional research on legitimacy has studied the phenomenon exclusively in the context of the Westphalian nation state and research on the legitimacy of the EU has tended to adopt some of its assumptions. However, much controversy surrounds whether the legitimacy of the EU should be judged on the same criteria as that of the legitimacy of the nation state. After all, the EU represents a much more hybrid form of supranational and intergovernmental governance.<sup>1</sup> (Scharpf, 2003)

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<sup>1</sup> Intergovernmental governance, is when the locus of control resides with the nation-states that comprise the polity entity, whereas supranational governance on the other hand, is when authority is delegated to the political entity itself and therefore comes to encroach on the nation-state sovereignty.

In the light of the Treaty of Maastricht<sup>2</sup> this debate on EU legitimacy intensified. Following a series of enlargements, the Treaty of Maastricht institutionalised a broadening of the scope of the Union's policy area with economic, social, and political integration. In light of this increased bureaucratic integration without any associated increase in accountability, the scrutiny of the European Union legitimacy intensified. (Langdal, 2012)

The premise is that the broader the scope of policies, the broader the basis you need for legitimacy. However, the ideal to which people held the legitimacy of the Union depended strongly on their basic understanding on the European Union as an intergovernmental or a supranational project. Here supranationalist informed research tends to hold the EU to a higher ideal of adequate legitimacy as opposed to the more intergovernmentalist informed research. (Moravscik, 2002; Majone, 1998)

According to the approaches of both Majone and Scharpf we cannot judge the legitimacy of the EU on the same criteria as we know from the nation state. As stated by Majone:

“There is an urgent need to reset the standards by which the legitimacy of European integration and of the institutional which guide the process” (Majone, 1998; p. 6).

Scharpf's normative approach is an attempt to overcome this 'touch of stateness' that characterises the research. The following chapter will turn to introducing Scharpf normative theory of input and legitimacy. However, before doing so I will briefly reflect on the key learnings. We know that legitimacy is conferred upon an authority by its people because they consider it right and proper. We know that this recognition of what is right and proper is subjective and informed by peoples underlying belief

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<sup>2</sup> The 1992 Maastricht Treaty on European Union, renamed the European Community the European Union and known for taking a great leap towards greater integration.

systems. Finally, we know that this thesis is informed by the beliefs of western democracy, and its liberal and republican principles.

### 3. Scharpf's theory of legitimacy

To answer the research question of whether the ECI has increased the legitimacy of the Union, the thesis needs a strong theoretical point of departure. This is where Scharpf comes in. His normative theory sheds light on legitimacy by expanding the phenomena into a two-fold typology of input and output legitimacy and then assigns attributes that define each of them. Scharpf's framework helps answer the research question in two important ways. First and foremost, Scharpf provides the basis for evaluating the legitimacy of a political system. Secondly, his framework is used for qualifying the legitimacy produced by the ECI as input or output legitimacy.

The chapter will be structured the following way. The first subsection 3.1 is devoted to introducing Scharpf's framework. The second subsection 3.2 is devoted to describing input legitimacy. The third subsection 3.3 is devoted to describing output legitimacy. The final subsection 3.4 is devoted to exploring their relationship.

#### **3.1 Introducing Scharpf's framework**

German political scientist Fritz W. Scharpf is best known for his contribution to international political theory. He put forth the idea that legitimacy could meaningfully be dissected into input legitimacy and output legitimacy. Hereby Scharpf established input and output as two analytically distinct categories of legitimation that represent two sub-concepts of the greater concept of legitimacy (Scharpf, 1970). By coining his terminology this way, he has been very successful in transforming the diffuse concept of legitimacy into something very straightforward and intuitive. This distinction has since been applied by many studies of EU legitimacy and remains a dominant

paradigm for qualifying the legitimacy of a political regime. (Scharpf, 1970; Steffik, 2014)

When Scharpf introduced his distinction between input and output legitimacy it was originally intended to be used as a tool for categorizing the field of different normative theories on the basis of their lines of argumentation. Theories that qualified legitimacy by the participation of citizens were categorized as input-oriented theories, and on the other hand, theories that qualified legitimacy based on policy performance were categorized as output-oriented theories. At this point, Scharpf applied his framework in a strictly observatory fashion, meaning that he intended it to exclusively describe other theories of legitimacy without any commendatory function. (Gaus, 2010)

However, by the turn of the millennium his distinction had developed into a normative framework which he applied in his book *Governing in Europe: Effective and Democratic?* (Scharpf, 1999) In doing so he had essentially swapped an empirical use of the terms input and output legitimacy, to a normative one. His input-output distinction was now operationalized to evaluate the legitimacy of actual political systems. Hereby his two concepts of input and output legitimacy were now turned into two ideals of legitimate rule. He then applied these ideals implied by input and output legitimacy to test whether the political system lived up to them. By doing so his framework was used to assess the justifications for a political system and ultimately judge its claim to legitimacy. (Gaus, 2010; Scharpf, 1999; Barker, 2007)

What does this imply for the upcoming analysis? First of all, this thesis uses Scharpf's framework from an observer's perspective to qualify the ECI mechanism in a strictly empirical manner. Following this, the thesis applies Scharpf's framework as an actor's perspective and in doing so, Scharpf's framework allows me to evaluate and draw conclusions about the legitimacy of the European Union. Second of all, Scharpf's conceptualizations of input and output legitimacy is very useful for this thesis since it provides a set of ideals against which a political system can be judged legitimate. As established in the previous chapter, these concepts of legitimacy are subjective and

socially constructed and hence no single set of justifications can be claimed true. Because of this, the thesis needs a normative theory to establish a set of normative criteria for judging legitimacy. Scharpf provides just that.

The question then becomes what ideals are implied by Scharpf's input and output legitimacy? In Scharpf's framework, the legitimacy of democracy is informed by two ideals. First of all, a political regime is legitimate if it is based on realising liberty, a so-called epistemic account. On the other hand, a political regime is legitimate if it is based on rule by reason, a so-called procedural account. Together these two accounts form Scharpf's set of concepts that represent the dominant justifications for legitimacy in modern western democracies. The epistemic account is embodied in input legitimacy and the procedural account is embodied in output legitimacy. Each of these ideals will be discussed in the two following subsections. (Scharpf, 2009)

### **3.2 Input legitimacy**

Scharpf's normative criteria of input legitimacy qualify how a political system derives its legitimacy from self-governance. To describe this, he often draws on A. Lincoln's famous *Gettysburg Address* of 1864:<sup>3</sup>

“This nation, under God, shall have a new birth of freedom and that government of the people, by the people and for the people, shall not perish from the earth” (Lincoln, 1864).

From this address Scharpf picks up on qualifying input legitimacy as ‘government *by* the people’. Scharpf's ideal establishes ‘government *by* the people’ as an imperative for democratic legitimacy. In other words, it must be an integral part of the political system's institutional set-up. This ideal is informed by the liberal tradition's emphasis on the protection of individual liberty and self-determination. (Scharpf, 2009)

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<sup>3</sup> The addresses in which A. Lincoln addresses his soldiers on a field near Gettysburg, Pennsylvania during the American civil war.

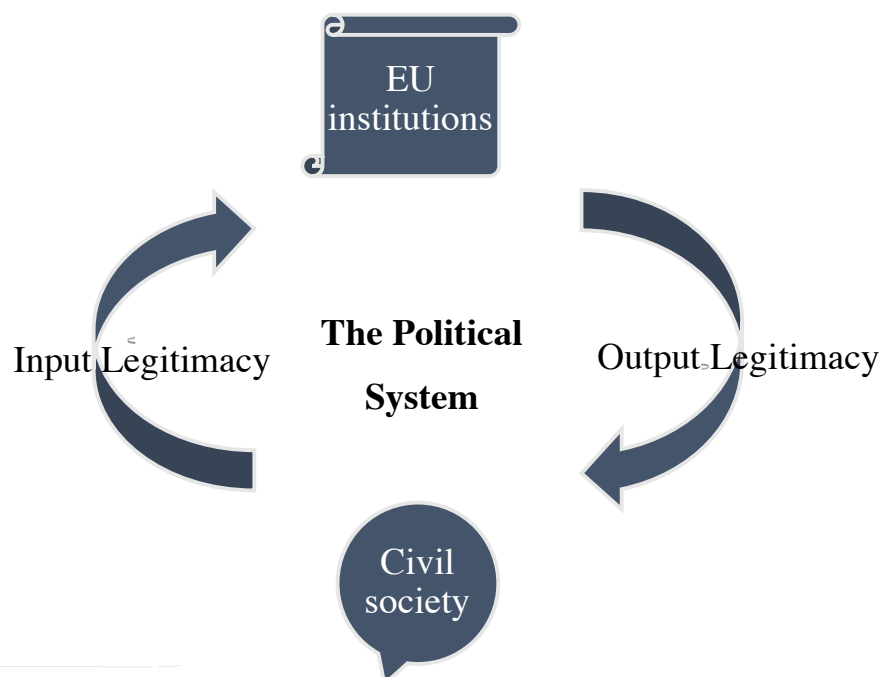
Assigning this attribute of 'rule *by* the people' essentially implies that the political system must be governed by the political will of the people to be legitimate. Political decisions must reflect the interests of the very society it regulates. In the words of Scharpf:

“...collectively binding decisions should originate from the authentic expression of the preferences of the constituency” (Scharpf, 1998; p. 3).

This means that while legitimacy derives from self-governance, self-governance in turn derives from civil participation. Hence, the expression of civil society's interests and concerns and the political systems responsiveness to them, is central to input legitimacy. This is the so-called input side of the political system, depicted on the left-hand side of figure 1 on the following page 22. (Scharpf, 1998); Schmidt, 2010)

The legitimating potential of representative mechanisms are often highlighted by institutionalist approaches, which emphasize particularly formal institutional practices. Here Scharpf is particularly interested in electoral practices as an attribute of his concepts of input legitimacy informed by republican democratic principles. Electoral practices allow the citizenry to vote to appoint representatives to sit in polity on their behalf, and this essentially awards the citizenry indirect power over decision-making. A mechanism whereby the interests of the people are aggregated into a few state officials who come to embody and defend their voter's interests and concerns of their behalf. (Scharpf, 2003; Scharpf, 1999; Kohler-Koch, 2007; Fermanis, 2014)

**Figure 1:** Scharpf system of operating legitimations



Source: Own production.

This leads me to the next attribute of input legitimacy that derives from a system of deliberate democracy. Much of Scharpf's work considers deliberation and contestation as a key legitimizing mode of governance. This is what he refers to as 'government by discussion'. Here legitimacy is fostered by political deliberation and debate of political issues and interests. These discussions essentially define the issues that need addressing, the goals to strive for and the possible actions for getting there.

For government by discussion the political public sphere serves a key facilitating function. The public sphere is the place where political debate plans out. Not a place in the physical sense of the word, but rather a social space where free and equal citizens gather to express and deliberate political opinions. In this social space, civil society uses the power of their arguments (rule by reason) to influence the political

agenda. Such an effectively functioning political public sphere is defined by Scharpf as an essential condition for deliberate democracy and in turn a necessary precondition for input legitimacy. (Fermanis, 2014; Scharpf, 1998)

Finally, Scharpf stresses the existence of a collective identity as a necessary precondition for input legitimacy. For a government to claim ‘rule *by* the people’ it must have a defined people, and for government policies to claim to be based on the ‘*will* of the people’, this people must have a collective will. Here Scharpf claims a collective identity is a necessary precondition for developing such a shared sense of common good. Such a collective identity is often the product of a society’s common history and culture. However, several societies have developed a strong collective identity despite multicultural and bilingual populations. According to Scharpf, only in such a system can majority rule be considered legitimate, and only in a system with a strong collective identity will the policies that serve of the greater good be considered legitimate to override the people’s individual interests. (Scharpf, 1998; Fermanis, 2014) Having established what input legitimacy is, attention will now turn to the normative criterion of output legitimacy.

### **3.3 Output legitimacy**

For the second concept of output legitimacy Scharpf uses Lincoln’s dictum ‘government *for* the people’. Scharpf qualifies output legitimacy as the effectiveness of policies in working for people. Here a political system’s legitimacy is judged by the problem-solving quality of its policy output. Using the words of Scharpf:

“...collectively binding decisions should serve the common interest of the constituency”  
(Scharpf, 1998; p. 3).

What this means is that the policy output must work effectively in promoting the welfare of the greater constituency and must resonate with their ideals and values. (Scharpf, 1999)



Consequently, output legitimacy is claimed on the performance of the policy output with little regard to the practices involved in creating them. (Scharpf 1999) Roughly speaking, civil society will consider the political authority legitimate as long as they are satisfied with its services. Highlighting here the essential function of the polity itself, and the political institutions that produce the very policy output. Here a regime can be considered legitimate simply because it is considered a capable and appropriate body for solving common problems. (Scharpf, 1999; Fermanis, 2014)

According to Scharpf, output legitimacy requires the essential precondition of a stable set of common interests for the political system to serve. Without a stable set of interests, the polity will not be able to cater to the majority of the populations interests and desires and its legitimacy would eventually be undermined. Furthermore, he emphasizes an inherent tension of output legitimacy. Here, he highlights the dangers of patronage and abuse of what he calls 'majority tyranny'. Because of these dangers, they must be mitigated by checks and balances on authority to ensure public interest orientation. On the other hand, they must not undermine the policy effectiveness necessary for creating output legitimacy. This balancing act between what Scharpf calls power-constraining versus action-enabling features is an inherent tension of output legitimacy. (Scharpf, 2006)

Having introduced how Scharpf qualifies each of his normative concepts of input and output legitimacy, the following paragraphs will turn to exploring their interrelation. Before doing so however, I will briefly reflect on one of the major sources of criticism of Scharpf.

### **3.4 Input and output legitimacy**

The very originality of Scharpf's typology, is also the quality for which it has received most criticism. Namely, the fact that he so sharply distinguishes between input and output. Metaphorically speaking Scharpf creates two containers. One containing input legitimacy and one containing output legitimacy. This creates great clarity of the

diffuse concept of legitimacy. In doing so however, he needs to define boundaries between the two in order to determine what to put into the input box and what to put into the output box. In other words, he needs to create cut-off points to be able to assign qualities to each of them. As stated by Satori, (Sartori, 1970) such a practice comes with the danger of also 'cutting up' discourse on legitimacy so to speak. (Gaus, 2010; Satori, 1970)

However, Gaus (2010) who disagrees with Satori explains that this is not the case with Scharpf's typology. While Scharpf creates the two concepts of input and output legitimacy each their own distinct qualities, they are not supposed to be considered in isolation. Rather, they should be seen as two aspects of the one and same concept of democratic legitimacy. They should essentially be understood as two intertwined aspects of the one and same legitimating ideology. Input and output legitimacy represent two parts of the greater system of legitimacy as showed in figure 1. Agreeing with Gaus (2010) I will approach the study of legitimacy as a system.

Having established that the two concepts are related raises the question of how they are interrelated. Is it a relation of trade-off or one of mutual enforcement? The answer to this question should be kept in mind for the upcoming analysis of the legitimating qualities of the ECI mechanism. However, there remains disagreement of the nature of their relationship. Broadly speaking the debate can be divided into two conflicting stances. One branch of research suggests that input and output legitimacy as part of a zero-sum game in which one sides gain is the other sides loss. As stated by Lindgren:

“...any legitimacy gains from increased participation and deliberation may ultimately be fully offset by a corresponding loss in legitimacy on the output side” (Lindgren, 2010; p. 214).

At the other end of the spectrum, some claim a positive relationship between input and output legitimacy. Here input legitimacy is considered a positive indicator of output legitimacy because the participation of civil society positively increases the acceptance of the policies developed on the basis of their input. This thesis adopts the

latter approach and will consider input and output legitimacy to be positively interrelated. This has implications for the up-coming analysis, since it has to not only consider the input and output legitimacy created by the ECI but also consider their interaction. (Schmidt, 2013; Lindgren, 2010)

As this chapter has come to an end, the thesis has developed a solid theoretical foundation. We now have a clear understanding of how input legitimacy is qualified as ‘government *by* the people.’ In other words, a political system is legitimate because the people can take part in forming the policies that regulate them. We also know that output legitimacy is qualified as ‘government *for* the people’. In other words, that a political system is legitimate because its policy output works effectively for the people it regulates. With this in mind, the thesis can now move on to part II Findings.

## **Part III Findings**

### **4. The European citizens’ initiative**

In order to investigate the legitimating impact of the ECI mechanism, the thesis needs a strong point of departure for understanding the mechanism. This chapter will describe the historical background of the ECI coming into existence with the Lisbon Treaty, and will introduce the rules and procedures for the ECI as established by Regulation No. 211/2011. It will leave any commentary function to upcoming chapters.

The chapter is structured the following way. Sub-section 4.1 will introduce the historical background of the ECI up until the Treaty of Lisbon. Sub-section 4.2 will then account for its legal basis in Art. 11(4) TEU. Subsection 4.3 will account for the steps in the ECI procedure.

#### **4.1 Historical background**

The ECI was established in the treaty of Lisbon and has been considered one of the most innovative initiatives originating from this reform round. However, talk on the ECI far predates the Treaty of Lisbon. The idea was first addressed in the International Conference on Good Governance leading up to the Treaty of Amsterdam and heavily discussed at the Convention on the Future of Europe. The ECI was originally a part of the draft for the European Constitution<sup>4</sup>, which was rejected in 2005 by France and the Netherlands. (Militaru, 2017)

The ECI was first mentioned as a remedy for the mounting criticism of the Union's governance model. The so-called democratic deficit debate. While the Union was founded on both representative and participatory democracy, the participatory pillar has been limited in EU governance up until the Lisbon Treaty. Here the EU has historically relied primarily on representative democracy as its source of legitimacy by the direct election of the Parliament and indirect election of the Council. (Militaru, 2017)

Through several rounds of enlargement and integration, the strengthening of the Union's democratic governance happened through continuous strengthening of the European Parliament to ensure a balance of legitimacy. Here the EU governance model relied on direct representation through elections as its legitimizing force. However, following successive rounds of integrations without increases in democratic accountability, the European Union came under fire for lacking democratic legitimacy. It was blamed for sacrificing accountability at the expense of efficiency. Here, the Union's reliance on representative democracy has by some been deemed insufficient and this sparked the entire democratic deficit debate. (Military, 2017)

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<sup>4</sup> The European Constitution is an unratified treaty which was intended to establish a European constitution. However, it was rejected in 2005.

However, since the 2001 White Paper on European Governance participatory democracy has been acknowledged as necessary part of the Union's democratic governance and the white paper put forth a change to the overall political structure. It essentially established a commitment and recognition of the importance of consulting civil society and facilitating their participation as an inherent part of the mode of governance. (Garcia, 2012) This was institutionalized with the Treaty of Lisbon in the principle of participatory democracy. Hereby participatory democracy was acknowledged as a necessary legitimizing source for European Union governance. This participatory paradigm was key to the development of the ECI in the Treaty of Lisbon. The ECI is a materialization of a new participatory model of EU governance. (Garcia, 2012)

At the outset of Regulation No. 211/2011, it states that the objective of the European citizens' initiative:

“Every citizen is to have the right to participate in the democratic life of the Union”  
(Regulation No. 211/2011/EU; p. 1).

#### **4.2 Legal basis**

The European citizens' initiative procedures were established in the 2007 Treaty of Lisbon in Art. 11(4) TEU and Art. 24 TFEU. Regulation No. 211/2011 sets out the procedures and conditions for its use. The European Citizens' Initiative procedure went operational on April 1, 2012. (Militaru, 2017; Regulation No. 211/2011/EU) Art. 11(4) TEU states:

“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” (Art. 11(4) TEU; p. 9).

With Art. 11 (4) citizens' are awarded the prerogative of forming citizens' initiatives on a matter citizens find important or deem insufficiently addressed by the Union. If an initiative is able to collect no less than 1 million statements of support from citizens of the Union, the initiative can call upon the commission to propose legislation on the matter of the initiative. Citizens are therefore given the right to invite the Commission to propose legislation, as the right held by the Parliament and Council. Regulation No. 211/2011 Art. 1(2) provides the following definition of a citizens' initiative:

“Citizens' initiative' means an initiative submitted to the Commission in accordance with this Regulation, inviting the 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, which has received the support of at least one million eligible signatories coming from at least one quarter of all Member States” (Regulation 211/2011/EU; p. 3).

### **4.3 ECI procedure**

The process of Citizens' Initiative has 4 steps; Forming of the citizens' committee; Registration and admissibility check by the Commission; Collection, verification and certification of statements of support; And finally, submission and hearing at the Commission. As stated by Regulation No. 211/2011 the procedure for the ECI has been formed with the aim of user-friendliness in mind:

“The procedures and conditions required for the citizens' initiative should be clear, simple, user-friendly and proportionate to the nature of the citizens' initiative so as to encourage participation by citizens and to make the Union more accessible” (Regulation 2011/2011/EU; p. 1).

Each of these stages will now be detailed further below with reference to the respective articles that regulates their procedure.

### **4.3.1 Forming of Citizens' Committee**

To form an ECI the process must be started by a citizens' committee. This committee is responsible for the preparation and submission of the initiative to the Commission. In Regulation No. 211/2011 Art (2) this Committee is referred to as the organisers, and it states that the committee must be comprised of no less than 7 natural individuals who are citizens of at least 7 different nations of the Union:

“The organisers shall form an citizens' committee of at least seven persons who are residents of at least seven different Member States” (Regulation No. 211/2011/EU, p. 4).

### **4.3.2 Registration and admissibility check**

Having established a committee, the initiative must be submitted for registration and admissibility check at the hands of the Commission prior to the collection of signatures. The Commission will confirm the registration provided that the following conditions are fulfilled as set out by Art. 4 (2):

“a) The citizens committee has been formed and the contact person have been designated an accordance with article 3(2).

b) the proposed citizens' initiative does not manifestly fall outside the framework of the commissions powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties.

c) the proposed citizens' initiative is not manifestly abusive, frivolous or vexatious,

d) the proposed citizens' initiative is not manifestly contrary to the values of the Union as set out in Article 2 TEU” (Art. 4(2) TEU 211/2011, 4).

During this admissibility check the Commission determines whether the subject falls within the powers of the Commission. Only initiatives that fall within the legislative scope of the Commission will be registered. Furthermore, the initiative must be in accordance with the value of the Union and be of no abuse or frivolous nature.

Provided that the initiative does not fulfil the conditions laid down by Art. 2 it is within the powers of the Commission to reject the initiative. (Militaru, 2017)

### **4.3.3 Collection, verification and certification**

Following a successful preliminary admissibility approval, the collection of signatures can commence. Here Art. 5 - 7 set out the rules and procedures regarding the collection of statements. They state that a citizens' initiative must collect no less than 1 million statements of support within a period of 12 months. Here Art. 5(2) establishes that signatures can be collected online as well as in person. For this purpose, the Commission has made an online platform available for the safe, secure and reliable collection of online signatures. To be eligible to sign an initiative, Art. 3(4) determines that signatories must be citizens of a Member States of the Union and must be of age to participate in Parliament election. This age varies among the different Member States of the Union. (Militaru, 2017) It states that:

“3 (4). In order to be eligible to support a proposed citizens' initiative, signatories shall be citizens of the Union and shall be of age to be entitled to vote in elections to the European Parliament” (Regulation No. 2011/2011/EU; p. 4).

Art. 7 (1) and (2) further spells out thresholds for the distribution of statements of support. It states that an initiative must collect signatures from at least one quarter of member states. In order to qualify, the number of signatures must correspond to the number of MEP's multiplied by 750. This is stated in Art. 7 (1) and (2):

“7 (1) The signatories of a citizens' initiative shall come from at least one quarter of Member states” and “7 (2) In at least one quarter of Member States, signatories shall comprise at least the minimum number of citizens set out, at the time of registration of the proposed citizens' initiative in Annex 1. Those minimum numbers shall correspond to the number of the Members of the Parliament elected in each Member states, multiplied by 750” (Regulation No. 211/2011/EU; p. 6).

After the completion of the 12-month collection period, statements of support must undergo a process of verification and certification. As set out in Art. 8 (1) and (2)



organisers must submit the state of residence and the personal identification number of signatories. Hereafter 'competent authorities' will within verify the authenticity of signatories within a period of three months. Each Member State designates one competent authority for verifying signatures of support coming from their member states. (Militaru, 2017)

#### **4.3.4 Submission to the Commission**

Following the verification and certification of signatures citizens' initiatives with no less than 1 million verified statements of support, living up to the before mentioned criteria spelled out by Regulation No. 211/2011, may be submitted to the Commission. Upon submission, the Commission will start an examination of the initiative. In this process organizers are given the opportunity to present their initiative at a public hearing. This is set out by Art. 11.

“Art. 11... organisers shall be given the opportunity to present the citizens' initiative at a public hearing. The Commission and the European Parliament shall ensure that this hearing is organised at the European Parliament” (Regulation No. 211/2011/EU; p. 7).

Here organizers are given the opportunity to explain and defend the matters raised by the citizens' initiative and present the objectives of the initiative. Following the public hearing Art. 10 (C) determines that the Commission is obliged to issue a communication on intended actions no later than three months after the hearing:

“Art. 10 (c) within three months, set out in a communication its legal and political conclusions on the citizens' initiative, the action it intends to take, if any, and its reasons for taking or not taking that action” (Regulation No. 211/2011/EU, p. 7).

With this communication, the Commission must present its conclusions on the political opportunities for further action on the initiative and present a list of intended actions, legislative or otherwise. If no actions are to be taken, the Commission must justify this decision. Following the release of its communication, the process of the European Citizens' Initiative has come to an end. (Militaru, 2017)

#### 4.4 ECI track record

As of March 2019, a total of 78 initiatives have been launched of which 21 initiatives were refused registration by the Commission. Of the 54 initiatives registered, 11 initiatives are ongoing and only 4 initiatives were able to fulfil the criteria set out by Regulation No. 211/2011 and be submitted to the Commission. The remaining initiatives were either withdrawn or did not succeed in collecting enough statements of support. The 4 initiatives submitted to the Commission are Right2Water, One of Us, Stop Vivisection and Ban Glyphosate. From the introduction of the ECI procedure in 2012 until 2018 over 5 million signatures have been collected. (Salm, 2018)

**Table 1: Number of ECI from 2012 – 2019**

Year	Registered	Refused	Total
2012	16	7	23
2013	9	7	16
2014	5	4	9
2015	6	0	6
2016	3	0	3
2017	8	1	9
2018	7	2	9
2019	(2)	(1)	(3) <sup>5</sup>
Total	54	21	78

Source: Own production. Based on data from official ECI, 2019.

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<sup>5</sup> Numbers for 2019 as of February 2019.

## 5. Case study of Right2Water

This chapter performs an empirical case study of the initiative Right2Water. The study will discuss the political currents that form the backdrop for water policies at the launch of Right2Water. The case study will also trace the initiative through its process from preliminary hearing to the Commission final response. From this point and onwards the thesis will turn to studying the initiatives legislative or modifying impact. The findings of this case study will form the basis for drawing empirically informed conclusions about the legitimacy created by the ECI mechanism.

The chapter is structured in the following way. Subsection 5.1 introduces the background. Sub-section 5.2 considers the founding committee. 5.3 will look into the Right2Water mission and objectives. 5.4 describes the process and result of the signature collection process. 5.5 looks into the submission and immediate responses by the Commission. Sub-section 5.6 will look at the legislative impact of Right2Water. Finally, sub-section 5.5 will conclude the case study.

### **5.1 Background**

The first thing the case study will consider is the political environment when Right2Water was launched. Here Aspey (2016) identifies two events in particular. One creating a favourable environment for water initiatives and another event that presented an opportunity for change. 1) The Rio+20 reaffirmation of UN Resolution 64/292, and 2) the recast of the Concessions Directive. The former is an expression of a global political movement, whereas the latter is much more context specific for EU water politics. (Beiler, 2015)

#### 1) UN Resolution A/RES/64/292

The United Nations has on several occasions expressed its commitment to the importance of access to clean water and sanitation. First with the adoption of General Commitment No. 15 on the Right to water by the Committee on Economic, Social

and Cultural Rights in 2002. Later with the 2010 adoption of resolution 64/292 by the UN General Assembly which marks the United Nations first explicit recognition of water and sanitation as a human right. (COM (2014) 177) Art 1.1 states:

“The right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human right” (RES/ 64/292).

Hereby the UN not only acknowledged the importance of access to water for the realization of a full life, but also gave water the status of a fundamental human right. This commitment was later reaffirmed at the Earth Summit taking place in Brazil in 2012. The third annual United Nations Conference on Sustainable Development (UNCD). At this summit, the international society reaffirmed its commitment to seeing water as a human right. (COM (2014) 177)

Both the UN resolution 64/292 and the Reio+20 reaffirmation are explicitly mentioned in the communication released by the Commission in response to Right2Water. (COM (2014) 177) Furthermore, the adoption of resolution 64/292 by the UN took place less than two years prior to the registration of Right2Water and the Rio+20 reaffirmation took place during the signature collection period of Right2Water. This global political commitment to water was the expression of global social water movement for the need to recognize water as fundamental to human life. These two expressions of commitment by the UN serve as important factors that essentially legitimized the objectives of Right2Water (Aspey, 2016). Right2Water embodies these global norms and essentially pushes them in the context of the political regime of the European Union. (Aspey, 2016) (COM (2014) 177)

This must also be seen in the light of existing commitments by the Union for better access to water and sanitation. Recognition of the right to water can be traced in in the Union’s Charter of Fundamental Rights (Aspey, 2016), although not explicitly stated. Efforts have largely been focussed on the global context in the form of external development aid (Aspey, 2016). The Union has with the EU Water Initiative and the Millennium Development Goal (MDG) been committed at the global level to

improving access to clean water and sanitation. The Commission estimates the efforts to have resulted in 70 million people gaining access to improved water supply from 2004 – 2013. Here the WASH programmes have provided app 1.5 billion EUR every year to building better water supply, sanitation and hygiene in developing countries. According to statements by the Commission, this makes the EU the single largest donor of developmental aid directed towards the improvement of water access. (Aspey, 2016) (COM (2014) 177)

## 2) The EU Concessions Directive

The second event identified by Aspey (2016) for having importance for the background of the Right2Water initiative was the *proposal for a Directive on the award of concessions contracts* adopted by the Commission in December 2011 (COM (2011) 897). The proposal was made because the existing legal regime for utilities procurement was leading to poor practice. Member States would often grant concession without competition, especially in the water and energy sector. The proposals states, how the lack of regulation becomes an obstacle to the free provision of services and cause for distortions in the functioning of the internal market. Because of this the Commission deemed clearer regulation necessary, and this would take the form of a separate concession directive. (Aspey, 2016)

This proposal is significant in the context of the Right2Water initiatives for two reasons. First, it addresses the conditions regulating the supply of water services. The political topic of Right2Water. Second, because the proposal was accused of indirectly liberalizing water services. Accusers pointed to Art. 11 in the proposal:

“To ensure *a real opening up of the market* and a fair balance in the application of concession award rules in the water, energy, transport and postal services sectors....”  
(COM (2011) 897); p. 11).

This proposal by the Commission was adopted one year prior to the registration of Right2Water. Right2Water can therefore essentially be seen as a reaction to the Commissions so-accused push for the liberalization of water and sanitation services

as a part of the concessions directive (Aspey, 2016). Michel Barnier specifically mentions these accusations and how they have led to the forming of Right2Water issuing a statement in response to the mounting criticism:

“I fully understand why citizens are both angry and upset when they are told their water services might be privatised against their will... It has led to the first European citizen’s initiative [Right2Water] “ (Statement by Michel Barnier, 2012).

## **5.2 Founding citizens committee**

Having established the political currents that explain the political backdrop for Right2Water, attention will now turn to the citizens’ committee responsible for forming the initiative. The committee behind Right2Water, chaired by Ann-Marie Perret was comprised of 7 Unions members from the Member States of France, Belgium, Germany, Sweden, Bulgaria, Italy and the United Kingdom. The initiators behind the Right2Water initiative was the European Federation of Public Service Unions (EPSU) an organization with a long-standing commitment to water. (Belier, 2014) Right2Water was funded by EPSU, which supported the campaign with an initial 100.00 Euros in 2012, later following an additional 40.000 euros in 2013 due to the 6-month extension. Through EPSU Right2Water was connected to a network of 275 trade unions including the European Anti-Poverty Network, the European Public Health Alliance, the European Environmental Bureau, Women in Europe for a Common Future representing more than 8 million workers across the European Union. Following the submission to the Commission Right2Water passed the admissibility check and was registered with the Commission on May 10, 2012 and the collection of signatures could commence. (COM (2014) 177)

## **5.3 Mission and objectives**

The overriding mission statement of Right2Water is to call upon the European Commission to recognize water as a human right. It has worked under the mantra that water should be available, accessible, affordable and acceptable. This calls for a fundamental shift in the current water policy, away from seeing water as commodity

and towards seeing water and sanitation as a basic human right. Here water should be seen as fundamental to all human life, and treated as a heritage of human kind to be safeguarded and protected for the future. (Right2Water, 2019; Berg, 2014)

Right2Water summarises its objectives as the following:

- 1) No liberalisation of water services
- 2) Guaranteed water and sanitation for all in Europe
- 3) Universal access to water and sanitation.

First of all, Right2Water urges that water services should not be liberalized and be exempted from internal market rules. This should be seen in the light of the current market reality where close to 1 million people within the Member States lack access to clean drinking water and the prevalence of price-hikes. (Right2Water, 2019) Right2Water stresses the inability of market forces in ensuring complete access to water and sanitation to all citizens of the Union. They therefore disagree with the market-approach and its paradigm dictating that the liberalizations of water services will lead to better and cheaper water services. According to Right2Water such a market-based approach will leave certain geographical areas and social groups marginalized. The profit seeking nature of private water service providers means that corporation alone will not be able to ensure affordable and acceptable water supply to all. The initiative therefore demands that the human interests are set above market interests. That said, Right2Water does not propose to exclude private corporations as such. As stated by Right2Water, they are not concerned with how complete water access is ensured as long as they are provided on the terms of accessibility, acceptability, affordability and availability. (Right2Water, 2019)

Second and closely related to the above-mentioned objective, Right2Water urges that Member States should have an obligation to ensure water access to the entire population. As of the before mentioned UN General Assembly in 2010 governments have had an obligation for providing access to water (A/RES/64/292). However, the Union has done little to promote its implementation and EU legislation still largely

considers water as commodity as opposed to a human right. (Right2Water, 2019; Berg, 2014)

Third and finally, Right2water urges that the Union commits to ensuring universal access to water and sanitation. Hereby, the initiative essentially expands its scope from just ensuring water and sanitation for all European citizens, to working towards ensuring a global access to water and sanitation as a key part of the European Union's development policy. (Right2Water, 2019)

#### **5.4 Signature collection**

Right2Water started the collection of signatures in May 2012 and ended in November 2013. During this period Right2Water ECI successfully collected a total of 1,659,543 verified statements of support coming in at a third-place according to the total number of collected signatures since the introduction of the ECI procedure. (Com (2014) 177) Right2Water was submitted to the Commission in December 2013 as the first ever citizens' initiative received by the Commission. (COM (2014)177)

Of the 1,659,534 statements of support, 18 percent were pen and paper signatures, whereas the remaining 82 percent were collected on the official Online Collection System provided by the Commission. The ability to use the OCS was therefore a vital variable for its success in reaching the 1 million threshold. It not only provided a platform that ensured compliance with legal requirements for the statements of support, but also provided a common virtual platform that cut across the barriers of language and geography. However, Right2Water experienced issues using the OCS. Right2Water was after all the first initiative to take the OCS into use. Right2Water encountered the inability of the platform for handling large volumes of users and troubles with the human recognition software necessary to ensure validity of signatures. As a consequence, Right2Water is considered to have suffered a significant loss of statements of support. At the end of the 12-month period, Right2Water had only been able to collect app. 2/3 of the required statements of



support. However, to compensate the initiative Right2Water was awarded an additional 6 months of signature collection bringing the total signature collection period to 18 months. (Garcia, 2012)

When considering the members states behind these 1,659,543 statements of support Right2Water was able to reach the 750 times the number of MEPs in the states of Austria, Belgium, Finland, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, The Netherlands, Slovakia, Slovenia and Spain. Hereby Right2Water was able to secure signatures from the all-important one quarter of the member states, more specifically in 13 out of the 28 Member States. (COM (2014)177) Looking at the distribution of signatures supporting Right2Water, Germany accounts for the vast majority with app 1,25 million statements of support, in relation to the second highest contribution by Italy accounting for app 65,000 signatures. To put this into perspective, of the 3 other successful initiatives the top contributors were: Germany, accounting for 650,000 out of the 1 million collected by Ban Glyphosate; Italy, accounting for app 700,000 of the 1,2 million collected by Stop Vivisection; Finally, Italy accounting for 650,000 of the 1,7 million collected by One of Us. Across all successful initiatives, Germany and Italy not only collected the highest number of statements of support in all four initiatives. On average, they also account for more than half of signatures collected across the successful initiatives. (Commission, 2019)

When considering the distribution of signatures collected over the course of time, Right2Water collected only approximately 3,5 percent of the total number of signatures within its first 6 months. Following this period, Right2Water experienced a surge in signature collection and was able to collect more than 1 million signatures in the matter of three months from January to April 2013. According to Aspey (2016) this surge in the collection of signatures is tied directly to discussion on the proposal for the Concession Directive. In January 2013 Right2Water published a German television documentary called Monitor on its website. In this programme, the Commission was accused of privatizing water services in the concession directive. This sparked an overwhelming media coverage of the issue, and Right2Water became

the outlet of the people discontent with the outlook of a privatization of water services. As a result, the statements of support for Right2Water surged, and this allowed Right2Water to reach the 1 million threshold. (Aspey, 2016)

### **5.5 Submission to the Commission**

The signature collection period ended in November 2013. Hereafter, the initiative was handed over to the European Commission in December of 2013, making it the first ever ECI to live up to the criteria set out by Regulation No. 211/2011 and be submitted at the hands of the Commission. (COM (2014) 177)

Following submission, a public hearing took place in the Parliament in February 2014 chaired by Matthias Groote. At this hearing, the organizing committee was able to explain the Right2Water cause and answer questions to defend their initiative. Participating parties included the organizing citizens' committee, ENVI, 30 MEPs from all main parties, the Committees on Petitions, the Committee on Development and the Committee on Internal Market and Consumer Protection. The 3,5-hour long public hearing hosted over 500 participants and was structured into three parts to address each of the 3 demands of the Right2Water initiative. 1) No liberalization of water services; 2) Guaranteed water and sanitation for all in the EU; 3) Global access to water and sanitation for all.

After the Parliamentary hearing Right2Water has expressed mixed emotions. The hearing marks a milestone for the initiative for coming so far. However, they were also left disappointed with the procedure for the hearing (Right2Water, 2019). Three factors particularly can be mentioned. 1) The European Commission did not send high officials, but rather civil servants to attend the hearing. 2) According to Right2Water organizers, the Commission did during private talks on several occasions mention how their policies were in line with the initiatives demands, signalling a lack of understanding for the need for change. Finally, 3) Right2Water was not allowed to call in an expert. According to Berg (2014) the Commission has always promoted the

idea that initiatives can call in an expert at the hearing and Right2Water have expressed the need for having more clear rules and procedures for the hearings.

Following the hearing the Commission released its official 12-page communication (COM (2014) 177) on its intended action on the Right2Water initiative in March 2014. With this communication, the Commission must make clear its intended actions and its position on the political potential of the issue raised. In this communication, the Commission starts out by proclaiming its commitment to the Right2Water cause:

“Water and sanitation is intrinsically linked to the right to life and human dignity and the need for an adequate standard of living and establishes the Commissions commitment to take concrete steps and work on a number of new actions in areas that are of direct relevance to the initiative and its goals” ((COM (2014) 177; p. 3).

It then goes on to present its list of seven intended actions:

- “Reinforcing implementation of EU water quality legislation, building on the commitments presented in the 7th EAP and the Water Blueprint;
- Launching an EU-wide public consultation on the Drinking Water Directive, notably in view of improving access to quality water in the EU;
- Improving transparency for urban wastewater and drinking water data management and explore the idea of benchmarking water quality;
- Bringing about a more structured dialogue between stakeholders on transparency in the water sector;
- Cooperating with existing initiatives to provide a wider set of benchmarks for water services;
- Stimulating innovative approaches for development assistance and identifying new opportunities for cooperation;
- Advocating universal access to safe drinking water and sanitation as a priority area for Sustainable Development Goals” ((COM (2014) 177; p. 13).

With this list, the Commission committed to taking the following actions in response to Right2Water’s objectives; reinforce the implementation of existing legislation, launch an EU-wide public consultation and strengthen the dialogue with civil society,

strengthen cooperation and innovation on water issues, and increase transparency on water data and finally to advocate universal access to water in its developmental assistance. However, following this statement there has been agreement among the organizers, the Parliament and research more broadly that this list of actions showed no real commitment. While it did address several tools and policies on water services, it mainly reiterated existing commitments and included no intention of starting a legislative policy proposal. (Berg, 2014; ERPS, 2015)

Having issued this statement, the Commission had essentially fulfilled its duties. According to the rules and procedures set out by Regulation No. 211/2011 the process for the initiative was hereby completed. However, while the official process ended at this point, the impact of the initiative did not. The question the case study therefore turns to answering now is, what development and actions followed Right2Water? Here on the one side, we have a list of intended action with no real commitment to legislative action but on the other side we have an explicit statement from the Commission expressing willingness to take steps to fulfil the goals of the initiative.

## **5.6 Legislative and modifying impacts**

The study will now investigate the impacts of the Right2Water initiative on EU politics following the Commission release of its communication in March 2014 up until December of 2018, with a short detour back to June 2013. The study will show how its impact can be seen in 4 developments. 1) The exclusion of water services from the Concessions Directive. 2) The Parliament's resolution on the Right2Water Initiative. 3) The proposal for a recast of the drinking water directive. Each will now be discussed.

### **5.6.1 Exclusion of water from the concession directive**

The first impact identified by Aspey (2016) was the decision to exclude water services from the concession directive. The Commission adopted the '*proposal for a Directive on the award of concession contracts*' in December 2011 (COM (2011) 897). This is

not the first time the concession directive has been mentioned in this study. It was also identified by Aspey (2016) as a key driver for Right2Water coming into existence in the first place. As previously stated the need for this proposal was prompted by the poor practice in the concession of contracts on utilities in Member States. The regulatory regime proposed was originally intended to regulate utilities, include water services. However, water was eventually excluded from the scope of the directive. According to Aspey (2016) Right2Water played a key role in this decision, which also becomes clear from the statement made by Michel Barnier. He made a direct reference to Right2Water when announcing the decision to exclude water from its scope:

“Citizens are both angry and upset... It has led to the first European citizens’ initiative. The best solution now appears to be to remove water from the scope of the concessions directive. It is our duty to take into account the concerns expressed by so many citizens” (Statement by Michel Barnier, 2013).

The impact of Right2Water on this decision may seem counter initiative since the decision was finalised in June 2013 and the signature collection process of Right2Water was not officially submitted until December 2013. Right2Water can therefore be said to have had an impact on the EU legislative decision-making even before submission. However, in spite of seemingly being counterintuitive the following will show how the momentum sparked by Right2Water and how the initiative became the outlet for the people’s rising discontent. (Aspey, 2016) During its campaign Right2Water clearly voiced its concerns on the concessions directive. Right2Water claimed that:

“the new directive regulating concessions contracts would lead to an increase in private bodies operating in that sector, leading in turn to increasing prices and a reduction in quality for public users” (Aspey, 2016; p. 344).

While Right2Water voiced its concerns, they were largely ignored by the Commission. Until the publication of the German TV programme called Monitor on the Right2Water website however. This event marks a key turning point on the debates of the concessions directive. The 1 year old TV programme was released on

the Right2Water webpage in 2013. In this programme, the Commission is accused of indirectly liberalizing water services, with specific reference to Art 11 stating an intention for a real opening of the market in relation to utilities contracts. The publicity following the publication on the Right2Water website, accounts for the surge in signatures that Right2Water experienced from February 2013 till March 2013 in which it was able to collect 1 million signatures in the matter of just three-months. The rising opposition to the concession directive eventually prompted MEP Patricia van der Kammen to raise the issue to the Commission. According to Aspey (2016) the commission remained largely unresponsive, up until June 2013 negotiations of the concessions directive. Here the Commission for the first time signalled a willingness to exempt water from the scope of the directive by creating Art 12 stating:

“The directive shall not apply to concessions awarded to provide or operate fixed networks providing a service to the public in relation to the production, transport or distribution of drinking water” ((COM (2011) 897; p. 10).

When the final directive on concessions contracts on utilities was finalised, water services were no were to be found in the directive. According to Aspey (2016), Right2Water was important for this decision in two respects. 1) It exerted pressure on the concession directive, voicing its concerns of liberalization. 2) Right2Water became an outlet for the public being able to collective voice their discontent.

### **5.6.2 Parliament resolution**

In 2015 the Parliament decided to pursue the right to water and sanitation through its own initiative. It adopted a resolution in September 2015 on *the follow-up to the European citizens' initiative Right2Water* (COM/2239(INI)). This resolution was based on its own-initiative report drawn up by the Committee on the Environment, Public Health and Food safety (ENVI). A Parliament resolution is a non-binding suggestion of political action, where the Parliament essentially urges the Commission to propose legislative proposal. In the case of Right2Water, the Parliament made use of this prerogative to ask the Commission to propose relevant legislation on water

policies to accommodate the objectives of Right2Water. In their own-initiated report ENVI had concluded that the Commission's response to Right2Water had lacked ambition and legislative intent. The resolution states:

“[The Parliament] considers it regrettable that the communication lacks ambition, does not meet the specific demands made in the ECI and limits itself to reiterating existing commitments; stresses that the response given by the Commission to the Right2Water ECI is insufficient, as it does not make any fresh contribution(s)...” ((COM/2239(INI); p. 5).

On the basis of this the Parliament decided to adopt this resolution to call upon the Commission to table a legislative proposal, more specifically it mentions the possibility of a recast of the water framework directive. The Parliament found the need for this resolution not only because they found the Commission's response disappointing, but even more so because the Parliament considered a lack of commitment could potentially undermine the potential of the ECI mechanism altogether. As stated in the resolution:

“[The Parliament] stresses that if the Commission neglects successful and widely supported ECIs in the framework of the democratic mechanism established by the Lisbon Treaty, the EU as such will lose credibility in the eyes of citizens” ((COM/2014/2239(INI); p. 5).

### **5.6.3 Revision of the drinking water directive**

This leads me to the final impact of Right2Water considered in this case study. Namely, the Commission's adoption of a proposal for the recast of the *Directive on the quality of water intended for human consumption* in February 2018 (2017/0332(COD)). Better known as the drinking water Directive. With this proposal, the Commission initiated the process for updating the 20-year-old directive 98/83/EC. (ERS, 2019) The adoption of this proposal marks a key event when investigating the impact of Right2Water because this is the first concrete legislative proposal that can be traced back to the Right2Water initiative. In a press release following the adoption of the recast First Vice-President of the Commission states:

“Citizens have made their voice loud and clear through the European citizens’ initiative, calling for action to have guaranteed access to safe drinking water. We have heard and heeded their call and carried out a thorough analysis of existing legislation. Today we are therefore proposing to modernise our EU law, improving the quality of drinking water and increasing the access of citizens where it matters“ (IP/18/429).

The background for the Commissions recast proposal was the REFIT evaluation of the drinking water directive performed in 2015 and a series of EU-wide public consultations on the quality of drinking water. These were actions to which the Commission had committed in its communication following submission in 2014. (COM (2014) 177) With the conclusion of this REFIT evaluation (SWD (2017)488) five problem areas of the drinking water directive had been identified: 1) Quality standards were outdated; 2) The approach was outdated; 3) The flexibility on provisions for material in contact with drinking water was creating an internal market obstacle; 4) There was a lack of transparency and access to up-to-date information for consumers; 5) Around 2 million people had no access to tap water.

On the basis of the REFIT evaluation the Commission adopted the legislative proposal 2017/0332(COD) of a recast of the 20-year old Directive on *the quality of water intended for human consumption* by simple majority. Also accompanied by an Impact Assessment in a recognition of the fact that the DWD still had relevance but needed updating. The Commission makes a direct reference to the Parliament resolution in its proposal, stating that the Parliament resolution on *the Follow-up on citizens’ initiative Right2Water* had prompted the need for a recast. (COM/2014/2239(INI)). Furthermore, the proposal makes a direct reference to Right2Water. It specifically states how it is a reply to the initiative:

“The Revision of the Directive was *originally triggered* by the citizens’ initiative Right2Water. Drinking water is clearly high in the minds of many Europeans” ((COM (2017) 753; p. 5).

The accompanying Impact Assessment proposed 5 policy options, which was consolidated into 3 distinct policy packages. Of these packages 2 and 3 were the



preferred packages from a health and environmental standpoint, in which the health benefits far outweighed the economic costs. Both packages contained the following policy proposals:

“1) An extended and updated parameter list; 2) promotion of risk-based approach; 3) Removal of internal market obstacles concerning products in contact with drinking water; 4) Provision of SMART information to consumers and more focused reporting obligations. Package 3 also includes 5) improving and promoting access to drinking water” ((COM (2017) 753).

The question at this point becomes, whether the policy options responded to the demands made by Right2water. The influence of the Right2Water initiative is most clear in the fourth and fifth policy options. These ensure that consumer have up-to date information on the quality of their drinking water and ensures an improved access to water. These policy options were established in the light of the number of EU citizens without direct water supply and the low confidence of citizens in the safety of their water supply. Policy package 3, as opposed to package 2, furthermore directly addresses access to water and so therefore more directly accommodates Right2Water’s objective of ensuring universal access to water within the Union. This policy option is set out in the Commission’s proposal in Art. 13 (1) on the *Access to water intended for human consumption* (COM (2017) 753). It states:

“Member States shall take all necessary measures to improve access for all to water intended for human consumption and promote its use on their territory” ((COM (2017) 753): p. 23).

This new Art. 13 foresees 2 main obligations of member states. First of all, an obligation to improve access to drinking water. Second, an obligation for Member States to ensure access for vulnerable and marginalized groups. However, Art. 13 allows Member States to decide how best to do this. (COM (2017) 753) In the proposal the Commission states:

“[Art. 13] substantially improves the situation for non-connected EU citizens... it addresses the issue of access to water identified in the citizens’ initiative Right2Water” ((COM (2017) 753); p. 23).

Following the adoption of the proposal by the Commission the recast proposal was submitted to the Parliament as prescribed by the OLP, and from here referred to the parliamentary committee responsible namely the Committee on Environment, Public Health and Food Safety. With Michel Dantin as Rapporteur ENVI drew up a report containing amendments (A8-0288/2018) adopted by ENVI in September 2018 and placed on the plenary agenda in the parliament. At the October 2018 II plenary session the recast proposal including ENVI amendments was adopted by the Parliament. With this vote the interinstitutional negotiations were opened. At the time of writing the proposal is currently pending 1st reading in the Council. Since the legislative process is ongoing, whether the recast will be adopted remains unknown.

## **5.7 Conclusion**

The thesis has now concluded its case study of Right2Water. The first initiative to go through admissibility check. The first initiative to reach the 1 million statements of support, and be submitted at the hands of the Commission. The case study revealed how Right2Water was organized and funded by the Trade Union EPSU. The mission and objectives of Right2Water to ensure universal access to water and fend off liberalization of water services. The case study revealed the key importance of the publication of the Monitor programme in mobilizing support. The case study scrutinized the Commission's communication released after submission, and can determine that the initial list of intended actions showed little commitment to legislative action, it merely represented a reiteration of existing commitments. By expanding scope and considering the period from submission all the way up to 2019, I was able to reveal several interesting impacts of Right2Water. First, the influence of Right2Water as an outlet for public discontent leading to the exclusion of water from the concession directive. Second the discontent of the Parliament reaffirming Right2Water's disappointment, leading to the adoption of a resolution on the follow-

up of on Right2Water. Finally, I identified the key turning point with the Commission's adoption of the recast proposal of the drinking water directive. This proposal represents the first, and only legislative policy proposal initiated as a result of a citizens' initiative. In this proposal, Art 13 directly targeting marginalized groups directly addresses the objective of Right2Water for ensuring universal access of water.

## **Part IV Analysis**

### **6. The legitimacy created by the ECI**

At this point the thesis has established a firm technical understanding of the ECI as a democratic instrument. Furthermore, the thesis has a theoretically informed understanding of legitimacy, from using Scharpf's qualification of input legitimacy as 'rule *by* the people' and output legitimacy as 'rule *for* the people'. Finally, the thesis has collected empirical evidence from the case study of Right2Water. The thesis is therefore now ready to connect the dots between the empirical findings and the theoretical foundation, to analyse whether the ECI increases the Union's legitimacy.

The chapter is structured in the following way. Sub-section 6.1 discuss how the ECI increases input legitimacy as a tool of participatory democracy. Sub-section 6.2 will discuss how the ECI can increase input legitimacy by fostering public political deliberation. Finally, sub-section 6.3 will discuss whether the ECI mechanisms increases the Union's output legitimacy.

#### **6.1 Input legitimacy from direct participation**

Chapter 1 provided a historical background of the Union's commitment to the participatory paradigm, first acknowledged by the 2002 White Paper on European Governance and then later institutionalized by the Treaty of Lisbon. This participatory paradigm established the importance of consulting civil society and facilitating its

participation as an integral part of the democratic governance of the Union. It places a greater value on the input legitimacy that comes from what Scharpf refers to as 'rule by the people', namely the ability of the constituency to participate in the government that regulates it.

With the Treaty of Lisbon, the Union's principles of participatory governance were enshrined in Art. 11(1) through (4) TEU which institutionalized a set of tools and mechanisms that structure the interaction and consultation of civil society. Hereby the importance of participatory governance was formally acknowledged as a fundamental pillar of the post-Lisbon Union's democratic governance, that should complement the Union's reliance on representative democracy as spelled out in Art. 10 TEU. (Moraru, 2016; Garcia, 2012) As a part of the Union principles of participatory democracy the ECI was introduced in Art. 11(4) TEU which states that:

"Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties"  
(Art. 11(4) TEU; p. 9).

With this Art., the Union institutionalised the direct participation of citizens in the political life of the Union by allowing them to form citizens' initiatives. The ECI mechanism hereby strengthens the Union's participatory democracy. In doing so, it breaks the Union historical reliance on liberal representative democracy. With this participatory instrument, it therefore essentially changes the nature of the legitimacy of the Union. (Moraru, 2016; Garcia, 2012) However, the ECI represents a fundamentally different instrument of participatory democracy compared to Art. 11(1) and 11(2) TEU formalizing civil dialogue and 11(3) TEU formalizing civil consultation. These had already been used before the Treaty of Lisbon, but were now given constitutional status. However, with Art. 11(4) on the European Citizens' Initiative the Lisbon Treaty essentially introduced a new tool for the direct participation by citizens in the legislation procedure of the European Union. Hereby,

Art. 11(4) represents the first legal institutionalization of *direct* democracy in a transnational system of governance in which an international population is one common people. As stated in Regulation No. 211/2011:

“Every citizen is to have the right to participate in the democratic life of the Union”  
(Regulation No. 211/2011; p. 1).

This combination of characteristics of participatory democracy and direct democracy at the transnational EU level of governance is what makes the ECI as novel and ambitious democratic instrument unparalleled in the history of transnational governance. (Aspey, 2016; Moraru, 2016; Garcia, 2012)

The ECI fosters public participation by creating an avenue of direct and structured communication between the EU citizens and EU polity where citizens now fend for their interests directly, and not by way of representation by a third party as best proxy for their interest. Hereby the ECI brings politics closer to the people by bridging the distance between EU policy-making and European will formation. (Habermas, 2001) The ECI therefore breaks with the Union’s historical reliance on elitist dialogue and shows commitment to giving citizens a prominent place of honour in EU governance. The target audience to be mobilized by the ECI is therefore EU citizens, and the link that channels their interests into the polity is the citizens’ initiative.

With this prerogative, citizens can now form an initiative on an issue within the powers of the Union and submit it to the Commission, if and when it fulfils the criteria spelled out by Regulation No. 211/2011. Hereby citizens are able to bring to the commissions attention issues that they deem important for the community or issues that they currently consider are inadequately addressed by the Union. Through these initiatives citizens represent themselves, instead of relying on the representation of civil society organisations or elected officials for presenting their interests for them. The ECI thus creates a much more direct point of access for European citizens, and therefore also ensures that it is the true and authentic expression of the people’s

interests that are channelled into the European polity as opposed to the mediated interest as in a representative democracy. (Gaus, 2010; Zeegers, 2018)

With the ECI mechanism the people are not only given the formal institutionalized right to express their authentic interests, but are also given a formal mechanism of direct political access. The ECI spells out the right for citizens to submit and present a legislative proposal before the Commission. Citizens are hereby given access to the very heart of the agenda-setting of the Union. This ability allows citizens the opportunity for transforming their preferences into policy influence, by allowing citizens to invite the Commission to launch a legislative process. This prerogative is significant, since it was previously exclusive to the Parliament (Art. 225 TEU) and Council (Art. 241 TFEU). This prerogative is now extended to citizens:

“Art. 11(4) ...citizens the possibility of directly approaching the Commission with a request inviting it to submit a proposal for a legal act of the Union” (Art. 11(4) TEU; p. 9).

This very agenda setting power of the ECI distinguishes it from the other participatory instruments of Art. 11 TEU. Through collective claims the people are with Art. 11 (4) formally granted access to and power over the agenda setting process. Thus, citizens’ initiatives award agenda setting power, rather than merely access to the decision-making process which can be said to be the main avenue of participation encouraged by other participatory instruments. (Warleigh-Lack, 2007; Zeegers, 2018)

Essentially the ECI can be said to empower the direct self-governance of the people. First, it does so by granting citizens the right to directly express their interests and desires and second, by pressuring the commission to take action. Hereby, increasing citizens participation through the ECI can be said to bring the EU closer to the democratic ideal of a union governed by its citizens which has clear connotations to Scharpf’s input legitimacy. (Garcia, 2012; Szeligowska, 2012; Berg, 2014)

During my investigation of the legitimating potential of the ECI mechanism, I have identified two forces that determine whether the ECI can increase the legitimacy of

the Union by direct participatory democracy. First of all, the ECI is intended to empower citizens. However, it has been commonly argued that the Union has been known to rely on elitist consultation. These two are contradicting forces. Second, the novelty of the ECI lies in awarding citizens the ability for making collective claims on the EU agenda-setting process. Because the ECI is only a weak tool, it essentially requires the responsiveness of EU institutions. Both of these contradicting forces require further investigation, and I will now discuss each in turn.

### **6.1.1 Overcoming elitism**

The thesis will first consider the conflicting force of the ECI being intended for empowering citizens voices, in a system that has favoured elitism. It is therefore necessary to consider whether initiatives are started and driven by citizens, or dominated by organised interests. In the Lisbon Treaty, the before mentioned Art. 11 (2) and 11 (3) describe the commitment to the participation of civil society. Here Art. 11(2) TEU describes the commitment to civil dialogue and Art. 11(3) TEU describes the commitment of civil consultation. Art. 11 (4) on the European Citizens' Initiative on the other hand, is a commitment to the direct participation of European citizens. Here it is citizens and not civil society at large that are given a prominent place of honour since the right to form and support an initiative is reserved for citizens.

The novelty of the ECI therefore lies in the fact that this right to participate in an initiative is a prerogative reserved for citizens and citizens only. Hereby the ECI is intended to ensure the empowering of the voice of European citizens and not the voice of organised civil society actors. However, to achieve this and increase the legitimacy of the Union beyond what is achieved with Art. 11 (2) and 11 (3), the ECI must create widespread political participation by European citizens to empower their authentic interest and not the interest and desires of powerful organized civil society actors. This is referred to as the democratic good of inclusiveness.

This must be seen in the light of the increased significance of organized civil society over the last decades during which the influence of organised civil society actors has increased significantly. NGO's have increased not only in number, but also in size. Their political power has increased significantly as they have devoted increasing amounts of time and resources to gain influence in the policy making process. The ECI is specifically intended for creating participation beyond these organized civil society elites and therefore faces the challenge of overcoming the Union's practice of elitist dialogue (Gaus, 2010; Šefčovic, 2012; Kohler-Koch, 2007; Garcia, 2012)

The question becomes whether the ECI is able to fulfil these intentions of the ECI for overcoming this elitist dialogue of civil society. This topic has prompted a great deal of research that has scrutinized what drives these initiatives. Here Conrad (2016) developed the terminology of citizen-driven, organizational supported or organization driven initiatives. With this terminology, he highlights what societal actors interests drive the initiatives. It is clear that the ECI mechanism was intended for citizen driven initiatives and only by being driven by citizen interests, can the ECI be said to increase the legitimacy of the Union beyond Art 11(1) to (3). But does the ECI truly loosen the grip of organized civil society actors on EU politics? (Conrad, 2016; Marxsen, 2015)

I have therefore identified an inherent tension in the ECI procedure. The ECI is intended for empowering citizens' interests, but it requires organizational capabilities that far exceed those held by citizens, no matter how politically active and devoted they may be. While the criteria set out in Regulation No. 211/2011 has a fairly low threshold for participation equivalent to 0,2 percent of the EU population and the forming of the initiative has been with the capabilities of citizens in mind, the formal bureaucratic procedure non-the less requires great understanding of EU politics. Furthermore, the organizational capabilities necessary to run a transnational campaigning process covering 28 states and 7 languages requires a transnational network. The tension therefore lies in being intended for citizens, but requiring the organizational resources and capabilities of large transnational civil society organizations. (Marxsen, 2015)



To take a look at the case study findings, Right2Water was mainly funded by the international trade Union European Federation of Public Service Unions (EPSU). As explained in chapter 5, EPSU is a part of a greater network of organisations including the European Anti-Poverty Network, the European Health Alliance and the European Environmental Bureau. EPSU was the main donator supporting the campaign and supplied Right2Water with access to the crucial resources of funding and a transnational network. The case study therefore shows how this brought an elitist actor into the game. The case study finding therefore supports the correlation between NGO funding and success of an initiative in fulfilling the criteria set out by Regulation No. 211/2011. By the track record of other citizens' initiatives, it becomes clear that organizational backing increases the likelihood of success (Berg, 2014). It appears that this correlation between the likelihood of fulfilling the criteria spelled out by Regulation No. 211/2011 and access to critical resources cannot be denied. However, this leads me to question why this fact may undermine the legitimacy created by these initiatives? Citizens still participate directly in EU affairs by giving their signature to support a cause they consider inadequately addressed by the EU. The resources of established organizations are simply the means towards an end. (Berg, 2014)

It appears that the problem lies in the fact that the reliance of organizational backing is likely to skew the interests that will be represented through the ECI mechanism. This correlation underlies the bedrock of elitism. Here, well-funded and supported initiatives are more likely to reach the Commission not because they represent a stronger supported interest in civil society, but rather because they reflect the stronger interest of one or several powerful transnational civil society organizations. Several authors address this as the danger of lobbying by the back door. The ECI is therefore vulnerable to misuse by powerful interests for furthering favourable legislation. (Greenwood, 2017)

To once again take a look at the case study findings of Right2water, it revealed that EPSU has a longstanding commitment to establishing water as human right. Here the

rationale behind EPSU funding the Right2Water initiative is the opportunity for the initiative helping EPSU achieve the goal of making water to be acknowledged as a human right. The support for the citizens' initiative is thus indirectly a road for the EPSU for gaining access on EU agenda-setting on the issue of water services.

This points to an imminent danger of established organizations using initiatives as an opportunity to proliferate their cause and promote their own interests disguised as a citizen's initiative. While the findings from the case of Right2Water and ESPU two counter forces should be considered when making this diagnosis. First of all, some authors claim that this danger is mitigated by the internally-oriented model of the Union. Political access in the Union has traditionally favoured internal mechanism of influence. In other words, power over EU decision-making has historically required actors to infiltrate the EU polity and exert influence from the inside. Many NGO's have therefore built extensive networks for inside-out lobbying to gain influence right at the heart of the decision-making process. The ECI represents quite the contrary, a mechanism that exerts influence from the outside in. One must therefore consider that the funds required to bring an initiative to the commission is an expensive and lengthy process and that NGO's have other cheaper and faster tools for gaining influence at their disposal from the inside out. (Berg, 2014; Kohler-Koch, 2007)

### **6.1.2 Requiring responsiveness**

The second contradictory force uncovered is, that on one side the intention with the ECI was to increase the responsiveness of policy-making vis-à-vis public opinion. On the other side, the ECI mechanism was made into only a weak instrument. Because of this weak nature, institutions must be willing to be responsive in order for the citizens collective claims to influence the EU agenda. Lack of EU responsiveness can therefore potentially undermine the legitimizing effect of European citizens' initiatives. TEU Art. 11(4) gives us the first clue of this weakness. It states that:

“... [Citizens] 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” (TEU, Art. 11(4); p. 9).

In other words, citizens merely *invite* the Commission to submit a legislative proposal. Thus, following the submission of a citizens’ initiative the Commission is not obliged to respond by launching a legislative proposal or modification. The only obligation of the Commission spelled out by Regulation No. 211/2011 is to release a communication within three months of submission stating the Commission intended actions. (Marxsen, 2015; Garcia, 2012) As stated in Art. 10(c) on the Procedure for the examination of a citizens’ initiative by the Commission:

“Within three months, set out in a communication its legal and political conclusions on the citizens’ initiative, the action it intends to take, if any, and its reasons for taking to not taking that action” (Regulation No. 211/2011/EU Art. 10(c); p. 3).

The submission of an ECI to the Commission therefore does not automatically lead to a legislative proposal or modification. This is because the ECI represent a soft mechanism with weak powers of mandation. This must be seen in relation to the national context where citizens’ initiative often do hold direct legislative power. According to Garcia (2012), the ECI can therefore be considered a weak device both in terms of its legal and institutional profile. The ECI does not infringe on the Commission right to initiate legislation. The ECI remains fully subordinate to the Commission which retains sole power over the Union’s legislative agenda. The Commission therefore has the authority to determine whether an initiative is politically opportune. In other words, decide whether or not the proposal should be taken any further. (Marxsen, 2015; Garcia, 2012)

This points to the key necessity of institutional responsiveness. Since an initiative is not legally binding on the Commission, transforming an initiative into actual policy influence requires a degree of readiness by EU institutions. More specifically the Commission must be able and willing to launch a legislative process following an initiative. Because of this, the legitimizing power of the ECI essentially lies in the

hands of the Commission determined by how responsive it will be to the demands of the initiatives' claims. (Garcia, 2012; Marxsen, 2015)

Remember that Scharpf determines that 1) the legitimacy of direct participation comes from the people being able to participate in the government that regulates them. 2) True 'rule *by* the people' requires that the people are able to express their authentic interests. 3) that authoritative decisions are based on them (Scharpf, 2003). To analyse whether the ECI has increased the input legitimacy of the Union, the question therefore becomes, whether the will of the people expressed by initiatives have been acknowledged by the Commission. In other words, has the Commission been responsive to their demands and made authoritative decision based on their interests? To put this into the context of the case study, has the will of the European people for acknowledging water as a human right been recognized by the Union after the submission of the initiative? Here case study findings of the Right2Water initiative revealed several indications of the responsiveness of EU institutions. The following will discuss 1) the exclusion of water from the concessions directive. 2) The Commissions list of intended actions. 3) The EP resolution on a follow-up on Right2Water and finally 4) the adoption of the recast of the drinking water directive.

Here it seems helpful to recall the Right2Water objectives. With 1,659,543 verified signatures of support at time of submission the people called upon the EU to recognize water as a human right. With submission of the initiative on 20th December 2013 citizens of the Union were able to collectively present 3 demands; 1) guaranteed water and sanitation for all in the EU, 2) global universal access to water and sanitation and 3) to refrain from the liberalization of water services. Having presented this list of objectives, the ball was handed over to the Commission. To strengthen the 'rule *by* the people' the Commission was now faced with determining whether it was able and willing to turn this interests into authoritative decisions.

The first legislative impact of Right2Water identified by the case study was the exclusion of water from the concessions directive (COM (2011) 897). This happened

during the signature collection phase of Right2Water. According to Conrad (2016) this is the first show of strength of the ECI, since it was the first time the interests expressed by the people through an ECI comes to have direct impact on decision-making. Here the mounting criticism of the Commission being accused of liberalizing water services led to a surge in the number of signatures collected by Right2Water. Right2Water became an avenue for citizens' to voice their discontent with the outlook for a liberalization of water services. While the Commission initially showed no willingness to respond, water was eventually removed from the scope of the directive.

The second indicator of the Commissions responsiveness to Right2Water came from taking a look at the Commissions list of intended actions released on March 19, 2014 following the submission of the Right2Water initiative. With this list, the Commission committed to take the following actions; reinforce implementation of existing legislation, launch an EU-wide public consultation and strengthen the dialogue with civil society, strengthen cooperation and innovation on water issues, and increase transparency on water data and finally to advocate universal access to water in its developmental assistance (COM (2014)0177). In this communication, the Commission also made the following statement to express its commitment:

“[The Commission is] committed to take concrete steps and work on a number of new actions in areas that are of direct relevance to the initiative and its goals” ((COM (2014) 177); p. 13).

The statement signals the awareness of the Commission of the need for initiatives to have legislative or modifying impacts and also signals the Commissions awareness of the expectation of the EU institutions for accommodating the wishes of the Right2Water initiative and the citizens behind it. At first glance this would thus seem to signal responsiveness of the Commission and willingness to recognize and act on the people's interests. However, expressing commitment, and taking actual legislative action is two very different things. While the Commission committed to taking concrete actions responding to Right2Water none of these commitments showed any actual legislative or modifying intent. Rather the Commission merely strengthened

existing practices on water services, leaving both European citizens and the citizens' committee of the Right2Water disappointed. With no concrete legislative initiative or modification immediately following the Right2Water initiative, this would point to the lack of responsiveness of the Commission. However, taking a closer look at the legislative actions of the European institutions after the initial release of the Commission communication (COM (2014)0177) the case study revealed several important actions and events that allows me to analyse the responsiveness of the Commission further.

After submission, the first event to consider is the September 2015 adoption of a resolution on the follow-up to the European Citizens' Initiative Right2Water (2014/2239(INI)). It signals that the Parliament was discontent with the Commissions actions following the initiative. On September 8, 2015, the Parliament approved a resolution on the Right2Water initiative, in which it made a non-binding suggestion of political action to the Commission. In other words, the resolution represents an attempt by the Parliament to urge the Commission to take action and propose relevant legislation in response to Right2Water. In this resolution, the Parliament states:

“[The Parliament] considers it regrettable that the communication lacks ambition, does not meet the specific demands made in the ECI and limits itself to reiterating existing commitments.” And later the resolution states: “[The Parliament] calls on the Commission, in line with the primary objective of the Right2Water ECI, to come forward with legislative proposals... that would recognize universal access and the human right to water” ((2014/2239(INI); p. 5).

This resolution tells us two things. First of all, the Parliament considered the Commissions response insufficient. Its insufficiency is what prompted the need for a resolution in the first place, but the resolution also states how it considers the Commissions response insufficient very clearly in its text. This signal a greater willingness of the Parliament to accommodate Right2Water's demand compared to the Commission. Second of all, in the resolution the Parliament stresses the importance for initiatives to result in actual legislative impact. This essentially

supports the earlier claim that following Scharpf's theory the Commissions responsiveness is key for the ECI to increase the Union's legitimacy. As stated in the resolution, the insufficiency of the Commissions response threatens to undermine the ECI mechanism:

“If the Commission neglects successful and widely supported ECIs in the framework of the democratic mechanism established by the Lisbon Treaty, the EU as such will lose credibility in the eyes of citizens.” And later “[The EP] Strongly urges the Commission to take the concerns and warning expressed by citizens in such petitions seriously and act on them” ((2014/2239(INI); p. 5).

Another key action allows the thesis to draw conclusion on the responsiveness of the EU institutions. This is the adoption of a legislative proposal for a recast of the drinking water directive. This legislative proposal followed a series of public consultations on the quality of drinking water, to which the Commission had committed in its list of intended actions, as well as the Parliaments Resolution. Responding to this, the Commission initiated a REFIT evaluation and Impact Assessment of the drinking water directive as a part of its 2015 Commission Working Programme. This process ultimately led to the Commission adopting its legislative proposal 2017/0332(COD) on a recast of the drinking water directive on February 1st, 2018. A proposal intended to modernize the 20-year old drinking water directive. In the explanatory memorandum of this legislative proposal fo Right2Water is explicitly mentioned:

“The proposal [for a recast of the drinking water directive] therefore directly follows up on the European citizens' initiative Right2Water” ((COM (2017) 753); p. 2).

Furthermore, in a press-release (IP/18/429) following the adoption of the recast of the drinking water directive, first Vice-president of the Commission, Frans Timmermans states:

“Citizens have made their voice loud and clear through the European citizens' initiative... We have heard and heeded their call and carried out a thorough analysis of existing

legislation. Today we are therefore proposing to modernise our EU law, improving the quality of drinking water and increasing the access of citizens where it matters “(IP/18/429).

The adoption of the legislative proposal for a recast of the drinking water directive on 1 February 2018 marks a key event in the history of the impact of the ECI procedure. The Commission’s proposal represents the first revising legislative proposal responding to the demands of any citizens’ initiative. The influence of Right2Water is most clear in the Commission proposal for Art. 13 on Access to Water intended for human consumption.

“This is a new Article, prompted mainly by the calls of the European citizens’ initiative Right2Water and the Commission’s reply to the initiative” (COM (2017) 753); p. 54).

This new article creates two new obligations on Member States for improving access to drinking water, and ensuring access to drinking water for vulnerable and marginalized groups which has clear connotations to the demands made by Right2Water. (Laaninen, 2019)

However, at the time of writing the legislative proposal for a recast of the drinking water directive is currently still pending. The proposal has completed 1st reading in the Parliament and the next legislative step is 1st reading in the Council. Since the legislative process is ongoing, this is as far as the case study evidence allows the analysis to go. Beyond this point, the thesis can only speculate as to the Councils position. Here an analysis of the Council’s policy debate on the subject matter of the recast proposal at the Environment Council meeting on June 25, 2018 would provide insight into the Council’s position. This debate is significant because it essentially provides the guidelines of the further work of the council. However, as mentioned whether the Council will adopt the Parliaments position without changes, or will propose changes to the legislative proposal remains to be seen. (Laaninen, 2019) This creates obviously limitations for the upcoming discussion of the output legitimacy created by the ECI. However, I will look into the synergies between the input



legitimacy created by the ECI and how it can be expected to influence its potential for creating output legitimacy.

### **6.1.3 Conclusion**

By now I have established that the ECI increases the legitimacy of the Union by strengthening its direct participatory democracy. The ECI bridges the gap between EU citizens and EU institutions, by allowing citizens to express their interest and desires directly before the Commission. I also determined that the ECI is a weak mechanism, and because of this the Commission and EU institutions more broadly must be responsive to the demands of initiatives. Here the ECI has struggled with turning public preferences expressed by Right2Water into authoritative decisions. The Commission seems to lack commitment to taking legislative action, while the Parliament seems to have greater support initiatives. Here the Parliament resolution forced the hand of the Commission. Having established this basis for the ECI increasing 'rule by the people', the thesis will now compliment this with an investigation of what Scharpf refers to as 'rule by discussion', the legitimizing value of deliberation which is also a force for increasing input legitimacy.

### **6.2 Input legitimacy from deliberation**

To analyse whether the ECI has increased the legitimacy of the Union, the second thing that needs to be looked into is the benefits of political public deliberation (Bohman, 1996; Dryzek 1990; 2000; Habermas, 1996). Political public deliberation is the practice of political discussion, where the weapons are well-reasoned arguments and the participants are the actors of civil society. As established by Scharpf, these political discussions in themselves represent a potential source of input legitimacy for the Union. (Kohler-Koch, 2007; Scharpf, 2003)

According to Scharpf deliberation among free and equal citizens holds a legitimating value. He refers to this as rule by discussion, which is informed by the republican ideal of deliberative democracy. (Scharpf, 2003) Here legitimacy comes from the

mere discussion and contestation of political issues, a process from which society reaches an informed consensus on political objectives and actions. To put this into the context of this thesis, the ECI can come to increase the input legitimacy of the Union by encouraging political public deliberation among the citizenry, from which citizens create consensus on Union interests. (Kohler-Koch, 2007; Habermas, 1996; Chambers, 2017)

The question becomes whether the ECI increases the legitimacy of the Union by fostering deliberation. Does the ECI stimulate the kind of positive and progressive political discussion among citizens that leads to legitimacy? Here some authors claim quite the contrary that the ECI should merely be considered a tool of interest aggregation. The thesis will now revisit the ECI mechanism with this in mind.

As set out by Art. 11 (4) the ECI mechanism awards citizens of the Union the prerogative of forming a citizens' initiative. As previously mentioned, an initiative must collect a minimum of 1 million signatures within a period of 12 months. Because of these criteria, ECI's must be able to mobilize citizens support equivalent to approximately 0,2 % of the EU population. The success of an initiative in reaching the Commission is therefore closely tied to its ability to engage European citizens in Union politics, and here deliberation is a key element for increasing political engagement. The potential of the ECI for fostering deliberation lies most clearly in its signature collection phase. During this process of campaigning and signature collection, ECI's can be said to stimulate political public deliberation as they engage with citizens across the Union. By rallying for signatures, initiatives are effectively compelling citizens to take a stance on political issues and engages citizens in political debates. Hereby, initiatives can be said to increase awareness and contestation of Union issues and affairs. (Garcia, 2012)

However, by looking at the criteria spelled out by Regulation No. 211/2011 they require *transnational* campaigning for initiatives to succeed. This leads me to believe that the ECI not only increases political deliberation, but truly transnational European-

wide deliberation. (Chambers, 2017) Considering the case study evidence, the Right2Water initiative was backed with 1,659,543 signatures at the time of submission. These covered 13 Member States if you only consider the qualified one, but all 28 Member States if you do not consider the threshold level.<sup>6</sup> The same picture emerges if you consider the distribution of signatures for the other successful initiatives of One of Us, Stop Vivisection and Ban Glyphosate which collected signatures from 28 for the former two and 26 for the latter. This shows how the distribution of signatures collected in support of these citizens' initiatives cover the entire Union. Another interesting finding is that Right2Water has continued the collection of signatures since its submission and has reached app 1,8 million signatures of support from European citizens. Since these debates have continued, it appears that the Right2Water campaign not only fostered temporary deliberation but that it was able to create deliberation that prevails beyond the context of this initiative, or at least for some time after. (ECI, 2019)

By requiring transnational coverage of signatures the ECI has been able to bring deliberation out of the national context and into to a truly European political space. In doing so the ECI can be said to not only encourage the political activity of individual citizens as they decide to submit their signature, but also comes to encourage the formation of an active European public sphere. The case study therefore seems to support the findings of Conrad (2016) statement that the Right2Water campaign is a sign of the awakening of a transnational sphere, and Greenwood (2017) stating that the ECI is bears traces of creating a transnational public sphere. (Kohler-Koch, 2007; Habermas, 1996; Eriksen, 2005; Conrad, 2016) Defined by Eriksen (2005) such a public sphere is an overarching communicative space where people can come together to express and discuss opinions. As such, the public sphere is the arena in which civil society comes together to deliberate political issues in amplified and aggregated form.

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<sup>6</sup> According to Regulation No. 211/2011 Art (5) a Member State qualifies if signatures are able to reach beyond the 750 times the number of MEP's.

However, in the case of the European Union we are dealing with a transnational public sphere that is not simply a reproduction of the public sphere known from the national level. Salm (2018) provides the following definition of a public sphere in the European context:

“They can be conceived as polycentric, transnational discourse fora scattered over the European territory which develop constantly in an ongoing, fluid process and are not confined to any national boundaries.” (Salm, 2018; p. 44)

In such a European public sphere, European citizens can deliberate and contest issues, which allows them to reach consensus on political interests. This represents one of the novelties of the ECI, namely that it is a catalyst for European wide deliberation that transcends the national boundaries which currently confines Brussels other forms of dialogue with civil society (Greenwood, 2017). As stated by Vice-president Šefčovic, the development of such a space was a specific ambition for the ECI mechanism, as he puts it:

““[The ECI] might make a contribution to the development of a real European public space.” (Greenwood, 2017; p. 168)

Hereby, citizens are able to collectively define their interests. By creating these conditions, the ECI can be said to establish the conditions necessary for the strengthening and enlarging of a truly European political public sphere with its own agenda. (Van de Steeg, 2004; Risse, 2010, Conrad, 2016) A European political agenda, that at one and the same time lives side by side by the agendas of national public spheres but remains distinctly European. Hereby the ECI mechanism has created the conditions for increasing the Union’s input legitimacy. (Chambers, 2017; Habermas, 1996; Kohler-Koch, 2007) As Checkel (2015) states:

“...beyond any doubt something is happening. That is, public spheres are indeed are being Europeanised.” (Checkel, 2015; p. 239)

This notion of Europeaness leads takes the analysis to the next contradicting force identified by Scharpf. Unlike Checkel, Scharpf (1998) is much more critical when it

comes to the ECI stimulating the public sphere, specifically because he points to the lack of Europeaness. Here he points to the lack of an essential precondition for deliberation in the public sphere, namely the lack of a collective European identity to inform political interests. (Habermas, 1995; Šefčovic, 2010; Garcia, 2012)

### **6.2.1 Lack of a European Identity**

Scharpf (1998) stresses the contradictory forces of legitimating deliberation and a European identity. More specifically, he identifies a collective identity as a necessary precondition for deliberation in the public sphere to increase legitimacy. In the context of this thesis, this means that for the ECI to increase input legitimacy by facilitating deliberation in the European public sphere, the people must have a thick collective European identity. Notice here the use of the notion of thick collective identity versus thin collective identity as its counterpart. Here the notion of a thick collective identity describes how a group of people adopt a common identity that defines them. In the case of the European Union this collective European identity refers to the peoples feeling of togetherness, on the basis of a set of characteristics that define them as a collective entity. This is sometimes referred to as Europeaness. This identity does not replace the peoples existing national identity, but simply compliments it. (Garcia, 2012; Kohler-Koch, 2007; Eriksen, 2005)

Thus, for deliberation to increase legitimacy the argument goes that a collective identity is key, because only in a public sphere with a collective identity can a common will emerge from political deliberation. Without a common identity, deliberation cannot produce interests and objectives that civil society can agree on as political goods. In the context of this thesis, the collective identity of the people of the European Union is what makes citizens able to agree on actionable political interests of the Union. (Garcia, 2012; Kohler-Koch, 2007; Eriksen, 2005)

When discussing the European Union Scharpf is very critical as to the input legitimacy that the Union can create from deliberation. Here he points to the international nature

of the Union and how this international nature makes the forming of a thick collective identity more difficult. The Union spans 28 member states with a population of app. 518 million people covering app. 1,7 million sq. miles. And this is not even mentioning the 24 official languages and their culturally, historically, religiously and linguistically diverse population. While a collective identity can emerge in such diverse nations, such as in the United States and England, in the case of the European Union however, the argument goes that this appears to put political contestation and consensus building under strain (Garcia, 2012). However, Scharpf's diagnosis far predates the state of the Union anno 2019 and both its commitment to the participatory paradigm and the European citizens' initiative mechanism altogether. I will therefore now reconsider this diagnosis in the context of the ECI mechanism.

First of all, only 4 initiatives out the 78 initiatives that have been launched have been able to collect 1 million signatures. It has been very difficult for citizens' initiatives to mobilize enough support. Furthermore, from the case study evidence of Right2Water, two findings support the diagnosis that it is difficult for deliberation to reveal truly European interests. First of all, of the total number of signatures collected the vast majority was collected in the member state of Germany. Out of the app 1,6 million signatures supporting Right2Water 1,3 million were collected in Germany. The same pattern appears when looking at the distribution of signatures on the other 4 citizens' initiatives that were successful in reaching the Commission (Right2Water, One of Us, Stop Vivisection, Ban Glyphosate). Here the two nations of Germany and Italy account for the vast majority. While I previously established that initiatives are able to reach the populations of all or nearly all member state populations, very few Member States actually account for the far majority of these signatures. This shows that there is a high concentration of signatures. Because of this, the representation of the peoples' interest is highly skewed towards some member states. In the light of this, the question becomes whether these citizens' initiatives come to represent national interests, in this case German and Italian people's political interests more so than actually representing the European Union populations political interests and desires.

This would then essentially support Scharpf's claim that the EU identity is too weak for deliberation to reveal European interests. Rather than, citizens' initiatives are actually dominated by political interests that are still largely national in nature. However, several factors mitigate this finding. Italy and Germany are two of the largest Member States of the Union. Furthermore, lack and skewed awareness of the ECI also mitigates this finding. Even though we are getting close to the mechanisms 10-year anniversary there remains a lack of awareness and knowledge among citizens that they have the prerogative of signing citizens' initiatives. This skewed distribution of which nations signatures come from, could therefore be correlated with the patchy awareness of the ECI mechanism.

### **6.2.2 Conclusion**

By now I have established that the mere act of fostering deliberation is a source of increased legitimacy created by the ECI. By fostering deliberation, the ECI mechanism essentially becomes a catalyst for the strengthening of the distinctly European political public sphere that stimulates European will-formation. The ECI then feeds this European will into the political system, and hereby increases the democratic quality of the policy-making process. Thus far I have therefore identified two ways in which the ECI increases the input legitimacy of the Union. First, by allowing the direct participation of citizens and second by fostering European-wide political public deliberation. Both of these increase the Union's basis for input legitimacy because they increase what Scharpf refers to as 'rule *by* the people' by allowing citizens greater agenda-setting power over the institutions that regulate them. I will now turn to considering whether the ECI increases the Union's output legitimacy.

### **6.3 Output legitimacy from policy performance**

I now reach the final stage of the analysis. Here the thesis moves from studying input legitimacy to studying output legitimacy. Output legitimacy is qualified by Scharpf

as ‘government *for* the people’. Here legitimacy comes from policies working effectively for the people it regulates. According to this concept of legitimacy, a regime can therefore be considered legitimate simply because it is considered a capable and appropriate body for solving common problems. (Scharpf, 2003, 1999)

Moving from input to output legitimacy the thesis encountered a difficulty. Where does the line go between input legitimacy and output legitimacy? On the one side, we know from Scharpf that input and output legitimacy are a part of a system. Input therefore flows into output and vice versa, and so no line as such exists. However, it is helpful to establish a starting point when analysing the output legitimacy created by the ECI. The following will therefore reflect on this.

Let me first try to define a boundary of what Scharpf qualifies as input legitimacy. I previously established that turning public interests into authoritative decision is a part of producing input legitimacy. Here the analysis revealed the key importance of the Commission’s proposal for a recast of the drinking water directive. It is an expression of the people’s desire for universal water access being transformed from an idea into an actual legislative proposal. Output legitimacy on the other hand, is when policies work effectively for the people. Studying output legitimacy then, is studying whether legislative or modifying impacts actually serve public interests after being finalized. In other words, after the legislative process has come to an end and the policy comes to actually regulate the people. Based on this understanding, the analysis must therefore investigate the EU policies that have come to regulate the people as a direct result of a ECI’s.

Here reading literature gives the first clue. The vast majority of authors make the conclusion that the ECI has not led to any output legitimacy for the Union. They claim that the ECI has not strengthened ‘rule *for* the people’ because no legislative proposal has been finally adopted as a result of an ECI. Conrad (2016) and Aspey (2016) make a slightly more positive diagnosis. They point to the influence of Right2Water on the exclusion of water from the Concessions directive (COM (2011) 897). However, on February 1, 2018 the picture changes. This was the date when the Commission



adopted the first ever proposal responding to an ECI. This was the legislative proposal for a recast of the drinking water directive ((COM (2017) 753).

This marks a key turning point for discussing whether the ECI increases the output legitimacy of the Union. Here I want to stress one thing in particular. The adoption of the recast proposal by the Commission does not increase output legitimacy. As previously established, it is an expression of an increase in input legitimacy. However, it is an important development because it creates a newfound hope for the ECI increasing the output legitimacy of the Union in the near future. Here two things must happen before it can do so. 1) It must be finalized and adopted by EU institutions. 2) It must increase the access to water for marginalized groups in practice. In other words, to increase the output legitimacy of the Union, it must be effective in achieving the goal of universal access to water. However, in the light of the fact that the process is still ongoing I can only make one conclusion. As of March 2019, the ECI mechanism has not produced output legitimacy for the Union. With this in mind, I now want to finish this section off by considering the subtle impacts and interactions between input and output legitimacy.

### **6.3.1. Input as an indicator of output**

Attention will now turn to discussing the interaction between input and output legitimacy. Scharpf stresses that the two sub-concepts of input and output legitimacy should not be considered in isolation. Rather they represent two perspectives of the one and same legitimacy of a political regime. Here disagreement exists on the nature of this interaction. As previously established, this thesis adheres to the belief that input and output legitimacy are positively related. In other words, an increase in input legitimacy is a good predictor for an increase in output legitimacy. (Lindgren, 2010)

By strengthening the Union's input legitimacy, the ECI can therefore be said to also have strengthened the Union's foundation for creating output legitimacy. It does so, because the ECI ensures a better fit between preferences and policies. EU institutions

therefore have a better foundation for creating policies that provide effective solutions to public problems.

To explain this process let us start from the beginning. The ECI strengthens the Union foundation for output legitimacy because it allows for a greater fit between preferences and policies. This starts with how the ECI mechanism strengthens European will formation. By stimulating the public sphere, the ECI is able to foster the creation of common political interests and desires of the European people. With knowledge on public political interests, the Union becomes able to produce policies that work effectively for achieving these public goals. Furthermore, the ECI channels information and expertise into the decision-making process. This forms the basis for being able to develop better legislation. (Garcia, 2012) (Salm, 2018)

This leads me to highlight the normative feature to output legitimacy. Namely, that the optimal policy is not always the most legitimate policy in the eyes of the people. A given policy might be technically superior or the product of a more democratic process, but if it does not correspond to the value and interests of the people it will not be considered legitimate. This brings us back to section 2. It described how legitimacy is subjective and socially constructed, and that it is intrinsically linked to peoples underlying perceptions of what is right and proper. Policy output therefore has to resonate with public values. Hereby, ECI mechanism allows the EU to create a better fit between public values and EU policies. However, doing so requires that institutions transform these interests into authoritative decisions. As the analysis has revealed this remains a major issue for the ECI mechanism.

### **6.3.2 Conclusion**

From this section I have determined the no output legitimacy has been produced as a direct consequence of the ECI mechanism. This is because no legislative policy has been adopted as a result of any of the four initiatives that have reached the Commission. However, the proposal for a recast of the drinking water directive

creates newfound hope for the ECI strengthening the Union's output legitimacy. This policy proposal is ongoing. When looking at input and output legitimacy more holistically, we know from Scharpf that one feeds into the next. The strengthening of the Union's input legitimacy can therefore serve as a strengthened foundation for the development of the Union's output legitimacy. The ECI has potential added policy value because it allows for a greater fit between public preferences and policy output.

With this, the analysis has come to an end. The thesis therefore now turns to the fifth and final part of the thesis. Part V presenting reflections and concluding remarks.

## **Part V Reflections and concluding remarks**

### **7. Reflections**

Having presented the main findings, this chapter will now discuss them from a more holistic perspective. The analysis revealed a series of conflicting answers, and this chapter will try to draw a more complete picture. In doing so the thesis will finally answer the research question: *Has the ECI increased the legitimacy of the Union?* The chapter will also point to lines of inquiry that could have been addressed, but are beyond the scope of this thesis. Finally, the chapter will reflect on the value of this thesis, and possible input for theoretical development.

The chapter is structured the following way. Sub-section 7.1 will discuss the findings. Sub-section 7.2 lines for further inquiry. Sub-section 7.3 will reflect on the theoretical backdrop. Finally, sub-section 7.3 will reflect on the value of the research.

## 7.1 Findings

Having completed the analysis, the question now becomes what we are left with when all positive and negative forces are accounted for. I therefore now take a step back to look at the legitimacy created from a more holistic perspective. Let me start by presenting the positive forces. The ECI mechanism increases the input legitimacy of the Union. It does so by 1) introducing a new instrument of direct participatory democracy into EU governance, hereby empowering the self-governance of the people by giving them the right to initiative. 2) By fostering the development of a distinctly European sphere and the creation of a collective European *'will'*. 3) Finally, the recent adoption of the proposal for a recast of the drinking water directive shows a newfound commitment for turning public preferences into policy proposals following years of no real legislative intent. Hereby, the ECI has strengthened EU legitimacy by creating *'rule by the people'*. However, the analysis also revealed negative forces that undermine the legitimacy created by the ECI. 1) The Union's elitist model and the danger of being used for lobbying by the back door. 2) The centrality of institutional responsiveness. 3) Finally, the analysis also revealed that the ECI has not increased the output legitimacy of the Union. As of March 2019, no legislative policy has been *finalized* as a result of an ECI. The ECI therefore cannot be said to have increased the policy performance of the Union, or to use Scharpf's terminology *'rule for the people'*.

At this point it seems as if there are two ways to go about answering the research question. Depending on what evidence you stress. On the one hand, you could stress that the legitimacy created by the ECI from being mainly a consultative instrument. Stressing here that 78 initiatives have been launched, of which 4 have reached the Commission. But that the ECI has had no agenda-setting power, and struggled with directly transforming public preferences into authoritative decisions. On the other hand, you could be more optimistic and argue that the ECI could become the heart of the Union's direct democracy. Highlighting here how Right2Water has been able to influence the EU agenda with the recent adoption of the proposal for the recast of the drinking water directive. Furthermore, the building of the European public sphere.

## 7.2 Lines for further inquiry

Constrained by a maximum STU count and number of pages a few issues that could have been explored, have been left undiscussed. First of all, the importance of political deliberation to prevail beyond the context of specific initiatives. While the case study revealed that Right2Water has continued collecting statements of support even after the submission to the Commission, Greenwood (2017) contemplates whether ECI's vanish without continued networks of communication.

A second topic for further inquiry could be the criticism that initiatives are not tools for political '*will formation*' but merely a tool for political '*will aggregation*'. Here it could be looked into with greater detail whether the ECI stimulates the use of arguments and the transformation of viewpoints or simply just aggregates existing interest. (Conrad, 2016) Third, and in regard to the input legitimacy, there appears to be an interaction between the representative body and the participatory body in EU governance. By issuing a resolution it appears that the Parliament has worked to strengthen participatory democracy, and its influence of EU agenda-setting. A line for further inquiry could therefore be to discuss this interaction between participatory democracy (the ECI) and representative democracy (The Parliament) of the European Union.

Finally, and in regard to the input legitimacy created from participation the thesis could have discussed the inclusiveness of citizens who participate in ECI's. To be truly representative of the European people and their interests, the ECI must ensure there is not an overrepresentation of social elites and professionals. The legitimizing potential of the ECI could therefore be further investigated by looking into whether the ECI replicates existing inequalities of interests in society. This requires an investigation of the social backgrounds or professions who participants. Such data currently does not exist.

### 7.3 Revisiting theory and concepts

To wrap up the discussion section the thesis will return to the outset, namely the warning made by Satori (1970). He pointed to the danger that cutting up the concept of legitimacy would lead to a cutting up of discourse. I tried to overcome this by seeing input and output legitimacy as a part of a greater system of operating legitimations. Essentially as two interconnected parts of a greater whole, where the legitimacy of a system is greater than the sum of its parts.<sup>7</sup> (Scharpf, 1998)

Having now concluded my analysis I want to briefly reflect on this danger once again. While I stated at the outset, that I would not study input and output in isolation it appears that the strength of Scharpf lies in being able to. Because Scharpf qualifies input and output legitimacy so clearly by assigning attributes to each of them, he makes legitimacy far more operational. However, it does come with the cost of sacrificing comprehensiveness.<sup>8</sup> In other words, by using Scharpf I have gained clarity and accuracy but lost comprehensiveness. Here the thesis struggled with coupling input and output legitimacy, in what I previously referred to as a grey zone of where 'rule *by* the people' transforms into 'rule *for* the people'. Schmidt (2010) picked up on this and has since proposed to add another category, namely throughout legitimacy. Schmidt therefore adopts Scharpf's premise, but develops it even further.

### 7.4 Value of research

The value of my research lies most importantly in performing a case study of the European citizens' initiative Right2Water. This initiative is particularly interesting because of the novelty of the Commission's adoption of the recast proposal on February 1, 2018 in which Right2Water is explicitly mentioned. Since the legislative

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<sup>7</sup> See figure 1: Scharpf's system of operating legitimations.

<sup>8</sup> Comprehensiveness is defined as the quality of being inclusiveness, the ability to consider all aspects of the entirety of something.

proposal is so recent, there is not a lot of research on it at the time of writing. The thesis therefore contributes to accounting for this new development, when analysing the legitimacy created by the ECI. Furthermore, my thesis sheds light on the complex and controversial instrument of the European citizens' initiative. A novel transnational tool of direct democracy, that remains the only transnational case of its kind to this day.

## 8. Conclusion

The European citizens' initiative was created with the aim of strengthening the democratic governance of the Union. It was considered a possible remedy for the Union's democratic deficit. However, the ECI has since it was created been the subject of much controversy and debate as to whether it has achieved this objective. In the light of this, I started to investigate the following research question: *Has the European citizens' initiative increased the legitimacy of the European Union?* I have reached the following conclusion. Compared to the pre-Lisbon EU, the ECI mechanism has increased the input legitimacy of the Union, but has not increased the output legitimacy of the Union. In other words, the ECI has increased the self-governance of the people by allowing them the right to initiative, but it has resulted in no increase in EU policy performance for the people.

This conclusion makes clear use of Scharpf's normative theory of legitimacy. His theory allowed the thesis to divide the concept of legitimacy into the two sub-concepts of input and output legitimacy. The thesis can conclude that input legitimacy is qualified by Scharpf as 'rule *by* the people'. It is essentially the legitimacy that comes from the self-governance of the people. Here the thesis defined the act of turning public preferences into authoritative decisions as a part of input legitimacy. Output legitimacy on the other hand, is qualified by Scharpf as 'rule *for* the people'. It is essentially the legitimacy that derives from effectiveness of policies working for the

people. Using this typology, the thesis was able to meaningfully split up the analysis of the legitimacy created by the ECI into input and output.

The thesis started by considering the input legitimacy created by the ECI. The thesis concludes that the ECI mechanism strengthens the Union's participatory democracy by awarding citizens the right to initiative. Hereby, citizens are able to present their authentic interests directly before the Union as opposed to relying on a third party as best proxy for their interests. However, in regard to this the thesis uncovered a potential danger. The thesis can conclude that there is a danger of the ECI's being misused for lobbying by the back door. To increase input legitimacy initiatives must represent the authentic interests of the people and not be hijacked by powerful interests.

Furthermore, the thesis can conclude that the novelty of the ECI lies in its potential for agenda-setting power. It awards citizens the prerogative of inviting the Commission to propose relevant legislation in areas that citizens find inadequately addressed. However, the thesis can conclude that the weak nature of the ECI means that institutional responsiveness is key to realizing this potential. On the basis of the empirical evidence collected during the case study of Right2Water, the thesis can conclude that the Commission has showed little commitment to responding to citizens' initiatives. Turning the preferences of initiatives into authoritative decisions has therefore been a major straightjacket for realizing the full potential of the ECI. However, the adoption of the recast proposal of the drinking water directive in February 2018, represents an indication of a newfound responsiveness of EU decision making vis-à-vis the public opinion expressed by initiatives. As of March 2019, the legislative process is ongoing.

This obviously constrains the conclusions this thesis is able to draw on output legitimacy. Since no legislative policy has been finalized as a direct result of an ECI, it has not influenced the policy performance of the EU in working for the people. However, the proposal for a recast of the drinking water directive creates newfound



hope. It represents the first legislative proposal launched in response to an ECI. By creating a new Art. 13 on access to water is has the potential for increasing the performance of the EU in realizing the public goal of universal water access. This is because the initiative has allowed for a greater match between public preference and EU policies. However, at the time of writing the legislative process is ongoing and to it is therefore too premature to determine whether it will increase the policy performance of the Union.

Finally, the thesis also considered what Scharpf qualifies as 'rule by discussion'. It is essentially a feature of input legitimacy, that stresses the value of deliberation and political discussions. This value is often overlooked when discussing the ECI mechanism. This quality is interesting, because it increases legitimacy regardless of whether initiatives have legislative impact. This is because legitimacy is created in the process of campaigning. The thesis can conclude that Right2Water has fostered transnational deliberation. In doing so, the ECI mechanism has become a catalyst for strengthening a distinctly European political public sphere that stimulates European will-formation.

On the basis of all of these conclusions the thesis has been able to take the diffuse concept of legitimacy, and reach a quite tangible conclusion. To restate the essence of the thesis, the ECI mechanism has increased the input legitimacy of the Union, but has not increased the output legitimacy of the Union.

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