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The Potential Indirect Impact of the European Citizens' Initiative on EU Legislation

The Example of the Initiative to Ban Glyphosate[2]

The EU re-authorisation of glyphosate, the active substance used in plant protection products, has once again highlighted the issues and problems associated with the active substance in 2023. The main source of tension is that the active substance was classified as a potential carcinogen by the International Agency for Research on Cancer in 2015, but the EU's competent agencies have not identified any reasons for banning the active substance. Despite calls from civil society for removing glyphosate from the internal market, the European Commission has refused to ban the substance from the internal market. The aim of this paper is to present in more detail the European Citizens' Initiative (ECI) to ban glyphosate and the Commission's response to the initiative. The European Citizens' Initiative is a legal instrument that gives EU citizens the opportunity to express their will on a specific issue or policy question. Thus, through the citizens' initiative, it is possible to channel the demands of EU citizens into the legislative process. An analysis of the measures taken in response to the initiative, that aimed to ban glyphosate shows that an ECI can not only have a direct impact, but can also have an indirect trigger effect in terms of getting the Commission to pay attention to an important issue. The result of this indirect trigger effect may be that, after a longer period of time, the Commission finally initiates legislation on the subject of a particular ECI.

Keywords: glyphosate, European citizens' initiative, legislation, pesticides, advocacy

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Introduction

The European Citizens' Initiative (ECI) aims to give citizens of the Union the opportunity to express their will on an issue directly. The need for deeper involvement of citizens in the functioning of Community institutions dates back to the last century, with the first significant step being taken in 1979, when the direct election of Members of Parliament (now the European Parliament) was introduced.[3] The Citizens' Initiative was already included in the 2003 draft Constitution, and finally became part of primary Community law with the Lisbon Treaty.[4]

The Citizens' Initiative requires organisers to collect at least one million statements of support (also known as signatures of support) from at least a quarter of Member States within a twelve-month collection period.[5] If they meet this threshold, they may submit the initiative to the European Commission, which is obliged to examine the initiative on its merits and, within three months of its submission, to publish a communication setting out its conclusions on the initiative and the action it intends to take or not to take on it, together with the reasons for its decision.[6] The ultimate aim of each European Citizens' Initiative is for the Commission to initiate legislation in a particular area.[7]

The significance of the ECI therefore lies in the fact that it is a globally unique transnational institution of participatory democracy.[8] Through it, EU citizens can try to channel their demands into EU legislation. This, therefore, allows bottom-up legislation.[9] It can also be linked to the principle of subsidiarity, which can generally be described as the principle that decisions must be taken at the lowest possible level, where the greatest expertise is available.[10] As the initiatives for the ECI come from the bottom, from the citizens, this can strengthen the subsidiarity principle in the functioning of the Union.

Among the EU institutions, the European Commission has a prominent role in relation to citizens' initiatives. The organisers of a given citizens' initiative must submit their initiative to the Commission for registration.[11] If one million signatures of support are collected for, it will again be submitted to the Commission, which will examine it, and decide whether to initiate legislation on the subject-matter of the given ECI.[12] It is part of the Commission's key role that only initiatives with a purpose that is within the Commission's competence to initiate legislation can be registered.[13]

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3 PETRESCU 2014a: 995.
4 VATAMAN 2013: 268.
5 Regulation (EU) No 2011/211 of the European Parliament and of the Council, Article 2, Article 5(5); Regulation (EU) No 2019/788 of the European Parliament and of the Council, Article 3, Article 8.
6 Regulation (EU) No 2011/211 of the European Parliament and of the Council, Article 9, Article 10; Regulation (EU) No 2019/788 of the European Parliament and of the Council, Article 15.
7 MORARU 2016: 156.
8 TÁRNOK 2021: 39.
9 KAISER 2019: 165–166.
10 HALÁSZ–JAKAB 2019: 92.
11 MILITARU 2017: 93.
12 LONGO 2019: 188.
13 GREENWOOD 2019: 949.

In addition to the Commission, the European Court of Justice has also played an important role in the history of the ECI, and its several decisions have had a significant impact on the development and functioning of the legal institution. As a result of a lawsuit brought by the organisers of the 'One of Us' initiative, the Court of Justice ruled that the communication containing the Commission's responses to the ECI could be subject to judicial review.[14] In the 'Stop TTIP' initiative the Court of Justice ruled that a citizens' initiative can be aimed not only at the adoption of EU acts but also at their withdrawal.[15] The possibility of partial registration of initiatives – which has by now become a part of the regulations on the ECI – arose in the lawsuit against the decision to refuse to register the 'Minority SafePack' initiative.[16]

The submission of citizens' initiatives has been possible since 2012. Since then, a wealth of experience has been gathered on the functioning of the ECI. During this more than 10-year period, more than 100 initiatives have been registered, of which 22 was withdrawn; in 60 cases the organisers were unable to gather sufficient signatures of support, and so far a total of 10 initiatives have been answered by the Commission.[17] The aim of the study is to show how this legal instrument works in practice through the 'Ban glyphosate' European Citizens' Initiative, one of the 10 initiatives that were answered. This initiative was chosen because, uniquely, the organisers had already collected the one million statements of support needed for validity halfway through the twelve-month collection period. The hypothesis of the research is that initiatives can not only achieve results by the Commission's direct legislative response to the initiative, but also by the ECI's indirect trigger effect on the development of EU legislation.

Introduction and reform of the European Citizens' Initiative

At the level of primary law, the Lisbon Treaty introduced the European Citizens' Initiative, but the detailed rules for the conduct of initiatives were laid down in Regulation (EU) No 211/2011 of the European Parliament and of the Council.[18] The first opportunity to submit initiatives was in 2012.[19] It can be said that the introduction of the ECI was generally met with great enthusiasm.[20] The reason was that this legal instrument was expected to provide an opportunity to channel issues of public interest into decision-making at EU level.[21] With this, the instrument could address the democratic deficit that has been criticised in terms of the functioning of the EU.[22]

14 Vogiatzis 2020: 694–695.
15 Karatzia 2018: 1668.
16 Tárnok 2017: 91.
17 See: https://citizens-initiative.europa.eu/find-initiative_hu
18 Petraru 2011: 71.
19 Gherghina–Groh 2016: 375.
20 Szeligowska–Mincheva 2012: 272.
21 Petrescu 2014b: 11.
22 Chronowski–Vincze 2018: 323–326.

Despite the initial enthusiasm surrounding the introduction of the ECI, the first few years of the legal instrument were not without difficulties. In the beginning, the Commission interpreted the admissibility criteria (in particular that the purpose of the initiative must be within the Commission's competence) in a disproportionately restrictive way, and refused to register several initiatives.[23] One difficulty was that the organisers of the citizens' initiative needed a lot of organisational work to promote the initiative and organise the concrete collection of signatures. A problem in this respect was that the Commission often did not provide adequate support.[24] A specific challenge was posed by the complexity of the signature collection form used to collect statements of support.[25]

Regulation (EU) No 211/2011 required the Commission to submit a report to the Council of the European Union and the European Parliament on the functioning of the European Citizens' Initiative by 1 April 2015.[26] In the report submitted, the Commission itself identified a number of specific problems with the functioning of the ECI, for example, the difficulty of organising the online signature collection system,[27] the requirements that differ from one Member State to another for the provision of personal data when collecting signatures,[28] or difficulties in preparing translations of the initiatives.[29] Following the publication of the Commission's report, the European Parliament's plenary session adopted a resolution on the European Citizens' Initiative, in which it called for implementing new regulations for the ECI.[30] Specific proposals from the European Parliament included lowering the minimum age for supporting a citizens' initiative to 16,[31] the Commission to give detailed reasons for refusing to register an initiative,[32] and for the Commission to provide organisers with free servers to store electronic signatures.[33]

The next major milestone in the history of ECI regulation came in 2017, when the Commission presented its legislative proposal for a new regulation.[34] Among the proposal's highlights was the option of creating a legal entity for the purpose of managing the initiative,[35] the creation by the Commission of a central online collection system,[36] translation of the content of initiatives,[37] and the possibility for organisers to choose the starting date of the twelve-month collection period within three months of registration.[38]

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23 KARATZIA 2018: 152.
24 MORARU 2016: 149–156.
25 TÁRNOK 2019: 144–145.
26 Regulation (EU) No 2011/211 of the European Parliament and of the Council, Article 22.
27 European Commission 2015a: 8.
28 European Commission 2017c: 7.
29 European Commission 2017c: 15.
30 TÁRNOK 2021: 151.
31 European Parliament 2015: Point 26.
32 European Parliament 2015: Point 15.
33 European Parliament 2015: Point 17.
34 TÁRNOK 2021: 147.
35 European Commission 2017c: Article 5(7).
36 European Commission 2017c: Article 10.
37 European Commission 2017c: Article 4(4).
38 European Commission 2017c: Article 8(1).

Based on the legislative proposal put forward, the new ECI Regulation, which is still in force, was finally adopted in 2019.[39] Among the significant innovations in the Regulation is that organisers can decide themselves, within six months of registration, when the collection period starts,[40] a central online collection system run by the Commission,[41] the legal personality of the group of organisers,[42] and that the content of the initiative is now translated into the official languages of the Union by the Commission.[43]

History of glyphosate and pesticide regulation in the European Union

Glyphosate itself is an active substance used in various plant protection products and insecticides. The first pesticide containing glyphosate was launched by the US biotechnology company Monsanto in 1974. The high efficacy of the active ingredient led to its rapid and widespread use, with glyphosate now being the dominant component in nearly a quarter of all pesticides used worldwide.[44] The first authorisation for glyphosate on the internal market was granted in 2002, under Directive 91/414/EEC concerning the placing of plant protection products on the market. This Directive has been repealed by Regulation (EC) No. 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, which still sets out the EU authorisation procedure for plant protection products.[45]

As regards the current authorisation procedure, it needs to be underlined that the authorisation of active substances used in plant protection products and the authorisation of specific plant protection products are separate.[46] The former are authorised at EU level, where the Member State representatives in the Standing Committee on Plants, Animals, Food and Feed (SCoPAFF), on the basis of a position paper from the European Food Safety Authority (EFSA), decide on the authorisation of an active substance under the rules of comitology procedure.[47] Where an active substance is authorised at EU level, each Member State authorises the use of plant protection products containing the given active substance on its own market.[48] It should be noted that, for the authorisation of active substances, only the material submitted by the applicant and the results of the scientific research, tests and studies available therein are taken into account.[49]

Under the new regulations, it was necessary to renew the authorisation of glyphosate, and for that purpose a review of the active substance was launched in 2012. As part

39 Regulation (EU) 2019/788 of the Parliament and of the Council.
40 Regulation (EU) 2019/788 of the European Parliament and of the Council, Article 8(1).
41 Regulation (EU) 2019/788 of the European Parliament and of the Council, Article 10.
42 Regulation (EU) 2019/788 of the European Parliament and of the Council, Article 5(7).
43 Regulation (EU) 2019/788 of the European Parliament and of the Council, Article 4(4).
44 Dilbeck 2021: 105–106.
45 Van Den Brink 2020: 438.
46 Robinson et al. 2020: 451–452.
47 Smyth 2017: 179–181.
48 Graefe 2019: 260.
49 Paskalev 2020: 530.

of the procedure, a consortium of 26 chemical companies led by Monsanto submitted the dossier for investigation to the rapporteur Member State, in this case Germany. The assessment prepared by Germany was subsequently examined by the EFSA, which concluded in 2015 that the available evidence did not support the conclusion that glyphosate is carcinogenic or genotoxic.[50] At the same time, however, the International Agency for Research on Cancer (IARC) of the World Health Organization classified glyphosate as a potential carcinogen in 2015.[51] In response to the decision, the European Commission asked the European Chemicals Agency (ECHA) to carry out its own assessment of the carcinogenicity of the substance. The assessment was completed in 2017, and the ECHA concluded that there is currently no technical or scientific evidence to suggest a causal link between glyphosate and the development of cancer.[52] In this context, it should be noted that the United States Environmental Protection Agency (EPA) also classified glyphosate as a carcinogen in 1985, but changed its decision in 1991, and reclassified it as a non-carcinogen. The reason for the change of classification was that animal testing on mice and rats did not show that exposure to glyphosate causes cancer.[53]

As a result of the IARC's finding, and the divergent views of European bodies, the re-approval of glyphosate has proved difficult. Member States' representatives first voted on the Commission's approval proposal in June 2016, but could not reach a qualified majority and hence the active substance was not authorised. In response, the Commission has temporarily extended the authorisation and negotiations have taken place in several rounds. Finally, in November 2017, a qualified majority was reached, but glyphosate was only authorised for 5 years, compared to the 15 years allowed under the regulations.[54] In addition, the Implementing Regulation approving glyphosate stated that Member States must pay particular attention to the protection of groundwater users, terrestrial vertebrates and arthropods and non-target terrestrial plants, when using glyphosate.[55] It was also in 2017 that the European Citizens' Initiative to ban glyphosate was launched. Following the expiry of the 5-year authorisation, the authorisation procedure for glyphosate was repeated in 2023, preceded by a new assessment launched in 2019.

Following the authorisation of the active substance in 2017, there have been attempts by several Member States to exclude glyphosate from their national markets. In 2019, the Austrian legislature adopted a general ban on all plant protection products containing glyphosate. The Commission objected to the decision, arguing that, as the authorisation of active substances is an EU competence, the general ban violates EU law and therefore it was not possible to exclude glyphosate from the Austrian market.[56] The Brussels Capital Region brought an action to annul the decision to renew the approval of glyphosate, but the Court of Justice of the European Union rejected its application.[57]

50 CLAUSING 2019: 352–354.
51 FINARDI 2020: 473.
52 LEONELLI 2018: 590–591.
53 TOMLINSON 2020: 151, 161.
54 European Commission: *Earlier Assessment of Glyphosate*.
55 Commission Implementing Regulation 2017/2324, Annex I.
56 LEONELLI 2022: 215.
57 LEONELLI 2022: 206–208.

In Luxembourg, the Minister for Agriculture withdrew the marketing authorisation for all plant protection products containing glyphosate in 2020.[58] The decision to withdraw the authorisations was annulled by the national administrative court on the grounds that the decision to withdraw the authorisations was not properly reasoned.[59] In the case of France, rather than taking general measures against glyphosate, the competent French administrative body subjected the various plant protection products containing glyphosate to individual and rigorous examination, withdrawing marketing authorisations for most of them and rejecting several applications for new authorisations, thereby withdrawing a significant proportion of plant protection products containing glyphosate from the national market.[60] At present, the competent French authority is actively investigating in which cases it is possible to replace plant protection products containing glyphosate with other alternatives and if it is possible to replace the product containing glyphosate with an alternative, then it does not get authorised.[61]

The various approaches to the phase-out of glyphosate in the different Member States illustrate the divergent views on glyphosate-containing plant protection products in the European Union. This division was strongly reflected in the course of the renewal process of the active substance's authorisation in 2023. In 2019, a re-evaluation of the active substance was launched, which resulted in the EFSA again concluding that there are no critical areas that would prevent authorisation. However, the Member State representatives meeting in the Standing Committee on Plants, Animals, Food and Feed on 13 October did not reach a qualified majority to authorise the active substance, and, similarly, no qualified majority was achieved in the vote in the Appeal Committee on 16 November.[62] As a result, the Commission finally decided to renew the authorisation of glyphosate on 13 November 2023. It limited its decision by authorising the active substance for only 10 years instead of 15 years, and by imposing certain restrictions on its use, such as maximum application rates, a prohibition on its use as a desiccant and a requirement for Member States to take risk mitigation measures.[63]

The 'Ban glyphosate' initiative

The full name of the initiative is 'Ban glyphosate and protect people and the environment from toxic pesticides!' (or 'Ban glyphosate!' for short). The organisers' objective was to ask the Commission to propose a ban on glyphosate in the Member States, to review the pesticide approval procedure and to set EU-wide mandatory reduction values for pesticide use.[64]

Glyphosate-containing herbicides have been linked to cancer and are causing ecosystem destruction, the organisers said. This was their justification for the need for

58 Leonelli 2022: 218.
59 Donati 2023: 818–819.
60 Leonelli 2022: 219–220.
61 Anses 2024.
62 European Commission 2023.
63 European Commission 2023.
64 See: https://citizens-initiative.europa.eu/initiatives/details/2017/000002_en

a total ban. Herbicides containing glyphosate have also been found in the wider literature to contaminate surface water when used, and may also be present in food through their use for desiccation.[65] An additional problem with the widespread use of plant protection products is that residues of the products may remain in the soil after use.[66] The organisers wanted to ensure that the evaluation of plant protection product authorisations was based only on published studies written at the request of the competent public authorities and not on behalf of pesticide-manufacturing companies. The rationale for this is to avoid that the various pesticide-manufacturing companies commission studies that tend to hide the potential harmful effects of the substances they produce. Finally, on the third objective, the organisers said that setting binding reduction targets would bring us closer to a pesticide-free future.[67]

According to the official fact sheet, the initiative was registered on 25 January 2017.[68] The actual collection of signatures started later, as it was only announced on the eighth of February that health and environmental NGOs had gathered in Brussels to launch a European Citizens' Initiative to ban glyphosate.[69]

In the case of the 'Ban glyphosate' initiative, the collection of signatures of support was extremely fast and smooth. On 14 March, it was reported that nearly half a million signatures had been collected.[70] By the fourth of May, more than 720 000 statements of support was collected.[71] Finally, on 15 June, the organisers announced that they had collected more than 1 million statements of support.[72] According to the official fact sheet of the initiative, the organisers closed the collection on 2 July.[73] Once the collection was closed, the organisers had to submit the collected statements of support to the competent authorities in the Member States for verification.[74] In this case, the verification was completed on 6 October, when the initiative was declared valid.[75] The initiative could then be submitted for substantive examination to the Commission, which published its Communication on 12 December.[76]

To date, this is the only initiative where the organisers, after collecting the required number of signatures, have closed the collection before the end of the twelve-month collection period. This speeded up the whole process and enabled the Commission to publish its response within a year of the initiative being registered. A question to consider is how organisers of other initiatives should proceed if the necessary number of signatures is collected more quickly.

In relation to the continuation of the collection of statements of support, it could be argued that a larger number of signatures collected could give a stronger legitimacy

65 SZEGEDI–TELEKI 2020: 249.
66 CENTNER 2021: 73–74.
67 See: https://citizens-initiative.europa.eu/initiatives/details/2017/000002_en
68 See: https://citizens-initiative.europa.eu/initiatives/details/2017/000002_en
69 Health and Environment Alliance 2017b.
70 Health and Environment Alliance 2017a.
71 Health and Environment Alliance 2017d.
72 Health and Environment Alliance 2017e.
73 See: https://citizens-initiative.europa.eu/initiatives/details/2017/000002_en
74 Regulation (EU) No 2011/211 of the European Parliament and of the Council, Article 8.
75 See: https://citizens-initiative.europa.eu/initiatives/details/2017/000002_en
76 See: https://citizens-initiative.europa.eu/initiatives/details/2017/000002_en

to an initiative, thus giving the Commission more incentive to take substantive action on the basis of the initiative by presenting a legislative proposal. However, the argument in favour of closing the collection period earlier is that this would significantly speed up the whole process of the initiative, thus allowing organisers to receive a response to their initiative sooner. In the case of glyphosate, as the authorisation renewal process took place during 2016 and 2017, it could be argued that closing the collection period earlier was justified. The primary objective of the organisers was to ensure that no plant protection products containing glyphosate could be placed on the internal market. It is, therefore, not surprising that they wanted to submit their valid initiative to the Commission before the end of the authorisation process in order to oppose the renewal of authorisation. In the future, organisers of other initiatives, if they find themselves in a similar situation, will have to consider what would better serve the purpose of the initiative: to continue the collection, and thus eventually collect a larger number of statements, or to end the collection earlier, with a better chance of influencing a current EU decision-making process.

European Commission responses to the initiative

In its official Communication published on 12 December 2017, the Commission treated the three objectives of the initiative separately, namely banning glyphosate, reforming the authorisation of plant protection products and setting reduction targets. For this reason, it is also necessary to look at the Commission's individual responses separately in the course of our assessment.

Responses to the first objective

In the section of the Communication on the requested ban on glyphosate, the Commission first explained that the IARC was the only organisation to date to have assessed glyphosate as a probable human carcinogen. They pointed out that both the EFSA and ECHA had carried out detailed assessments of the substance, and that no carcinogenicity had been identified by either EU agency. The IARC's different assessment result was justified by the Commission by the fact that the agency had examined both glyphosate as an active substance and plant protection products containing glyphosate, whereas the EU assessment only looked at glyphosate itself, as the authorisation of plant protection products is a national competence.[77]

In addition to the effects on human health, the Commission has specifically addressed the effects on ecosystems. In a related part of the Communication, it first noted that the EU assessment concluded that glyphosate does not cause ecosystem degradation when used properly. In addition, the responsibility was primarily specified at Member State level, with reference to the fact that it was the Member States' task to

[77] European Commission 2017a: 6–8.

take measures to mitigate the risks involved when authorising plant protection products containing glyphosate.[78]

On the basis of the arguments presented, the Commission took a clearly negative position on the prohibition of glyphosate. It stated that there was no reason to question the EU's assessment and conclusions on glyphosate. Therefore, it argued, there was no basis to present a legislative proposal to ban glyphosate. It also highlighted that it had presented a proposal for an implementing regulation to extend the approval of the active substance for five years, which was adopted by a qualified majority of the representatives of the Member States. In extending the approval, it pointed out that the five-year timeframe is significantly shorter than the fifteen years allowed by the regulation. In addition, the Commission underlined that new information on glyphosate is rapidly emerging, which could lead to a review of its approval at any time.[79] As such, the response shows that the Commission is not open to the possibility of banning glyphosate; at most, there is only a slight degree of openness towards certain restrictions, such as shorter authorisations.

The organisers of the initiative did not respond directly to the Commission's negative reply. However, they strongly criticised the five-year authorisation of the active substance. They argued that, by authorising it, the Commission was failing future generations.[80]

Responses to the second objective

With regard to approvals based on studies written at the request of the competent public authorities, the Commission took a clearly supportive position – in contrast to the first objective – and has finally initiated legislation. With regard to the studies to be submitted for the evaluation of active substances and plant protection products, the Commission pointed out that they must comply with international protocols and that the institutes that prepare the studies must be regularly inspected by national supervisory authorities. On the issue of the approvals being based on studies commissioned by public authorities, the Commission argued that public money shall not be used to commission studies which would help the industry to put a product on the market. This is why the system works in such a way that it is the responsibility of those who benefit from the approval, in this case the manufacturers, to prove that the active substance is safe.[81]

At the same time, the Commission underlined that it fully agrees that the transparency of scientific assessments and decision-making is essential for trust. To this end, it undertook to put forward a proposal for a legislative amendment to increase transparency related to studies commissioned by industry players and submitted in the application dossier.[82] In addition, it also undertook to put forward a proposal for a legislative amendment to strengthen the governance of the studies on which the authorisation is based.

78 European Commission 2017a: 9.
79 European Commission 2017a: 9–10.
80 Health and Environment Alliance 2017c.
81 European Commission 2017a: 10–12.
82 European Commission 2017a: 11.

As a result of these commitments, the Commission adopted a proposal for a Regulation of the European Parliament and of the Council in April 2018, which led to the adoption of a Regulation on the transparency and sustainability of risk assessment in the food chain in June 2019.[83] The enhancement of transparency is a key element of the new regulation, by making studies and information submitted by industry publicly available, and by ensuring that EFSA is notified of all studies commissioned, so that companies applying for authorisation are unable to withhold information.[84]

The legislative proposal put forward by the Commission was welcomed by the organisers, but it was stressed that citizens must be guaranteed effective access to the documents on which the authorisation is based, in all cases. In particular, it was noted that the final legislation must ensure that companies applying for an authorisation cannot exclude the public on the grounds of confidentiality.[85] Under the new regulations introduced as a result of the reform, the EFSA is obliged to publish all documents, data and information submitted for the evaluation of active substances, and is required to publish studies commissioned from private laboratories. The new regulations aim to ensure that results that are unfavourable for a given active substance are publicly available.[86]

Responses to the third objective

Finally, the last objective of the initiative was to achieve binding EU-wide reduction values for the use of pesticides. The Commission, like in the case of the first objective, also took a more negative position, but in this case it essentially relied on the proper functioning of existing EU legislation. It stated that experience so far showed that mandatory quantitative reduction targets alone did not reduce the risks from pesticide use. For this reason, the Member States and the Commission focus not only on reducing the overall quantity of pesticides, but also on reducing the risks from their use.[87] And as far as the reduction of risks is concerned, the Directive on the sustainable use of pesticides contains the relevant provisions.[88] In addition, the Commission undertook to evaluate the national action plans developed under the Directive and, if the evaluation showed that insufficient progress had been made in reducing the risks from the use of pesticides, to consider setting binding reduction targets at EU level.

It is important to note that, since the publication of the Communication, the Commission has changed its position on this issue. The official website with the responses to the initiative no longer refers to the Directive on the sustainable use of pesticides, but to the 'Farm to Fork' strategy that has since been adopted, one of the objectives of which is to reduce the use of the most dangerous pesticides by 50%.[89] As such, it is clear that

[83] Regulation (EU) 2019/1381 of the European Parliament and of the Council.
[84] See: https://citizens-initiative.europa.eu/initiatives/details/2017/000002_en
[85] Health and Environment Alliance 2018.
[86] Szegedi 2022: 104.
[87] European Commission 2017a: 13–14.
[88] Directive 2009/128 (EU) of the European Parliament and of the Council.
[89] See: https://citizens-initiative.europa.eu/initiatives/details/2017/000002_en

the Commission also initially refrained from taking any substantive action on the third objective, arguing that the existing rules were adequate and did not need to be changed. However, its approach to the issue has subsequently changed, and it has subsequently partly implemented the third objective of the initiative as well.

Comparison with other citizens' initiatives

Compared to other citizens' initiatives that have been responded to, the way some of the objectives of 'Ban glyphosate' were addressed is not unique. The response given in relation to the rejection of the glyphosate ban was similar to the stance taken on the 'Stop Vivisection' initiative, which aimed to end animal testing.[90] In its Communication, the Commission explained that the organisers of the initiative wanted to achieve their aim by having Directive 2010/63/EU on the protection of animals used for scientific purposes repealed.[91] By contrast, the Commission's position was that animal testing plays an important role in safeguarding human and animal health, and the Directive ensures that animals used in testing are adequately protected. As a result, it did not initiate legislation based on the ECI.[92] Hence, in this case, as with the ban on glyphosate, it emerges that if there is no clear intention on the part of the Commission to make a given policy decision, it cannot then be swayed by a successful initiative.

For the third objective of 'Ban glyphosate', the Commission originally argued that the existing EU regulatory system was adequate and therefore there was no reason to initiate legislation. In fact, the same argumentation was used for the 'Minority SafePack' initiative, which aimed to strengthen the protection of persons belonging to national and linguistic minorities at EU level.[93] The Commission argued in its response communication that, for each of the objectives of the initiative, the existing institutions and available options adequately support the rights of persons belonging to national and linguistic minorities, and therefore does not initiate legislation.[94] However, for the third objective of the 'Ban glyphosate' initiative, the Commission's approach has subsequently changed and the Commission has already included mandatory reduction targets in the 'Farm to Fork' strategy. In connection with this change, it is worth mentioning a further initiative that has been responded to, entitled 'Water and sanitation are a human right! Water is a public good, not a commodity!' (Short name of the initiative: Right2Water.)

In the case of the Right2Water initiative, the Commission has not yet committed in its initial Communication to present a legislative proposal, but only to improve the existing EU framework. For example, strengthening the implementation of water quality-related legislation, making the management of data on urban waste water treatment more transparent and setting more and more diverse benchmarks for water services.[95] However, it has subsequently initiated legislation in several cases related to the objectives of

90 See: https://citizens-initiative.europa.eu/initiatives/details/2012/000007_hu
91 European Commission 2015b: 2.
92 European Commission 2015b: 10–11.
93 See: https://citizens-initiative.europa.eu/initiatives/details/2017/000004_en
94 European Commission 2021: 20–23.
95 European Commission 2014: 15.

the initiative.[96] These legislative initiatives have resulted in the adoption of the revised Drinking Water Directive[97] and the Regulation on the minimum requirements for water reuse.[98] As such, in this case too, although the Commission may initially be reluctant to initiate legislation on an ECI issue, it may subsequently change its attitude to a particular policy issue and reach the point where it finally initiates legislation. In this respect, the 'Water and Sanitation are a Human Right!' initiative can be compared to the 'Ban glyphosate!' initiative, as both ECIs finally resulted in EU legislation.

Background to the Commission's change of preference

For both the Right2Water and the 'Ban glyphosate' initiatives, there has been a subsequent shift in the Commission's preferences. For the third objective of the 'Ban glyphosate' initiative, the Commission initially refrained from setting specific reduction values, but such reduction values were already part of the 'Farm to Fork' strategy. As for the Right2Water initiative, in its initial statement it only committed to improving the existing EU system, but later put forward several legislative proposals on the subject. Hence, in this way some of the objectives of the initiatives have been achieved, and it is appropriate to examine the reasons for the change in the Commission's position separately.

The two pieces of EU legislation that have been adopted based on the 'Water and Sanitation are a Human Right!' initiative are Directive 2020/2184 on the quality of water intended for human consumption and Regulation 2020/741 on the minimum requirements for water reuse. In the latter case, the adopted text does not contain any reference to the initiative, but the Commission refers to the European Parliament's resolution of September 2015, on the follow-up to the initiative, which called on the Commission to develop a legal framework for water reuse.[99] Similarly, the impact assessment accompanying the proposal refers only to the European Parliament's resolution.[100] For this reason, a stronger link with the ECI cannot be established in the case of the Regulation.

In contrast, Directive 2020/2184 makes a much stronger reference to the initiative. The preamble of the Directive highlights that, following the closure of the initiative, the Commission launched an EU-wide public consultation and carried out a review of the 1998 EC Directive on the quality of water intended for human consumption. On this basis, it became clear that certain provisions of the Directive needed to be updated.[101] A closer link with the initiative is reflected in the Commission's proposal. The justification for the proposal briefly explains the initiative itself and the Commission's commitment

96 See: https://citizens-initiative.europa.eu/initiatives/details/2012/000003/water-and-sanitation-are-human-right-water-public-good-not-commodity_en

97 Directive 2020/2184 (EU) of the European Parliament and of the Council.

98 Regulation (EU) 2020/741 of the European Parliament and of the Council.

99 European Commission 2018: 2.

100 European Commission 2018: 2.

101 Directive 2020/2184 (EU) of the European Parliament and of the Council.

to review the previous EU directive. The proposal further states that it is directly based on the European citizens' initiative 'Right2Water'.[102]

The second objective of the 'Ban glyphosate!' initiative was for the Commission to set binding reduction targets for pesticide use. In this respect, the Commission did not initially plan to present a proposal, but undertook to develop harmonised risk indicators and to report on Member States' action plans.[103] It finally delivered on both commitments in its 2020 report. This report specifically refers to the 'Ban glyphosate' ECI in terms of the risk indicators developed, and states that risks from the use of pesticides had been reduced by 2017. Nevertheless, there is scope for further risk reduction.[104] The report highlighted as a shortcoming of the national action plans that the majority of Member States have not addressed the weaknesses identified by the Commission.[105] Finally, the report refers to the 'Farm to Fork' strategy and the reduction values it sets.[106]

The 'Farm to Fork' strategy, which is part of the European Green Deal, does not directly refer to the 'Ban Glyphosate!' initiative, but it does include the harmonised risk indicator presented. The 'Farm to Fork' strategy itself states that the use of high-risk pesticides must be reduced by 50% by 2030.[107] In other words, in this case, the initiative itself is not directly reflected in the strategy, but the review carried out in response to the initiative played a significant role in determining the reduction value.

Based on both initiatives, the legislation was not initiated directly in response to the ECI, but as a reaction to the initiative, as a result of the review of related EU legislation. This shows that a citizens' initiative can be successful not only if it directly gets the Commission to initiate legislation on a given issue, but also if it gets the Commission to review an existing piece of legislation, or even a particular EU policy. The outcome of the review may identify existing shortcomings, and the Commission will initiate legislation to remedy these. This raises the possibility that a European Citizens' Initiative could complement the work of the Regulatory Scrutiny Board by pointing out possible shortcomings in existing EU legislation.[108]

Conclusion – the potential trigger effect of the European Citizens' Initiative

Among the Commission's responses to the ECI, it is necessary to highlight the change of preference related to the second objective of the initiative. Complemented by the change observed with the 'Right2Water' initiative, it can be concluded that a citizens' initiative can not only be successful if the Commission initiates legislation directly as a result of the ECI concerned. For both ECIs, the Commission's immediate response was to review

102 European Commission 2017b: 2.
103 European Commission 2017a: 15.
104 European Commission 2020a: 9–10.
105 European Commission 2020a: 22.
106 European Commission 2020a: 23.
107 European Commission 2020b: 7.
108 See: https://commission.europa.eu/law/law-making-process/regulatory-scrutiny-board_en

the relevant EU legislation. It was the reaction to the shortcomings identified as a result of the review that finally led to the legislative proposal. This means that, although the initiatives did not initially achieve their objectives immediately after the twelve-month collection period, following the longer review period, the initiatives' objectives were finally achieved. This confirms the research hypothesis that the European Citizens' Initiative may have a trigger effect, inducing the Commission to initiate legislation. It can be seen that the potential of the ECI instrument goes beyond the question of whether the Commission initiates legislation directly in response to an initiative.

A successful ECI will give the organisers the opportunity to draw the Commission's attention to a policy issue of importance to EU citizens. Basically, this means that, through the initiative, the organisers want the Commission to amend EU legislation in the area concerned or to initiate the adoption of new regulations. If we take into account the process that has taken place in relation to the third objective of 'Ban glyphosate' and the objectives of 'Right2Water', we can see that the organisers of a successful initiative can bring about a change in EU law, even indirectly. If, in response to the initiative, the Commission carries out a review of the relevant sources of law and the implementation of legislation, it may identify shortcomings that eventually lead it to initiate legislation. It should be noted, however, that the launch of a review does not guarantee that the process will actually lead to legislation. However, it is an important opportunity to ensure that initiatives that are not successful directly on the basis of the Commission's responses achieve their objectives eventually.

For the organisers, the presented process opens up new strategic opportunities for the initiative to achieve the objectives of the ECI indirectly. On the one hand, it may be worthwhile to include in the initiative itself, alongside the request for specific legislation, a request to the Commission to review the implementation of an EU source of law, to carry out an investigation in relation to a given EU policy. This way, if the Commission decides not to initiate legislation, there is still the possibility that, after the scrutiny, it will decide to propose draft legislation. In addition, it would also be appropriate to extend the time dimension of the advocacy and campaigning activities related to the initiative. Hence, if we take into account the possibility of ex-post changes in the Commission's preferences, it is not enough to focus only on the twelve-month collection period. It may be necessary to continue advocacy even after the campaign has closed and the Commission has published its responses. This will keep the subject of the initiative topical, and increase the chances that the Commission will initiate legislation at a later stage.

Finally, as regards the future of glyphosate in the EU, there is currently little chance that the possibility of an EU-wide ban on the substance will arise in the near future. In its responses to the initiative, the Commission refused to ban the substance, and, although the Member State representatives failed to reach a consensus, it finally authorised the substance in the 2023 renewal process. This shows that, at the moment, there is no intention on the part of the Commission to ban glyphosate. The Commission justified its decision primarily on the grounds that the European Food Safety Authority had not identified any problems with glyphosate that could justify a ban, and the European Chemicals Agency had not found any reason to classify the substance as carcinogenic. Thus, until possible future evaluations to be published by these EU bodies

produce a different result, the Commission is unlikely to change its decision. It should be noted that, in the context of the 2023 re-authorisation, the Commission has taken the position that if new evidence emerges that would justify the withdrawal of the approval of glyphosate, it will act without delay.[109] This possibility for ex-post change shows that, on various policy issues, there is scope for the Commission to change its established position if sufficient pressure is applied. Such a role can be played by the European Citizens' Initiative through the trigger effect it presents.

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[109] European Commission 2023.

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