

## ARTICLE

# How the European Citizens' Initiative 'Water and Sanitation is a Human Right!' Changed EU Discourse on Water Services Provision

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In 2010 the United Nations General Assembly recognized the human right to water and sanitation in what is seen as a historical vote by water activists. Implementation of the right to water is imperative to achieve sustainable development. In 2011 the regulation for a European Citizens' Initiative (ECI) entered into force in the European Union. With such an initiative it is possible to propose an issue for European legislation by collecting one million signatures from citizens in at least seven Member States. The European federation of trade unions in the public services sector (EPSU) decided to take up the challenge to organise such an ECI and formed a diverse coalition of organisations and water activists that became known as 'Right2Water.' Their proposal was 'to implement the human right to water and sanitation in European law.' Although it was successful in achieving the required number of supporters, the European Commission answered that implementation of the human right to water was to be left to Member States and that there was no need to change existing legislation. The Right2Water movement aimed not as much to change legislation but more to challenge EU neoliberal policies and shift them from a 'market approach' to a 'rights-based approach.' This chapter looks at the factors that contributed to the success of 'Right2Water,' how the ideological debate around the human right to water took place during the campaign and the impact it had on EU discourse as well as on EU water policy.

**Keywords:** European Citizens' Initiative; privatization; European Commission; Drinking Water Directive; "Right2Water"; Concession Directive; social movements

## 1. Introduction

In 2010 the United Nations General Assembly (UNGA) politically recognized the human right to water and sanitation.<sup>1</sup> At that moment, worldwide, over one billion people lacked access to clean drinking water and over two and a half billion people lacked sanitation facilities.<sup>2</sup>

In 2011 the regulation for a European Citizens' Initiative (ECI) entered into force in the European Union. This regulation arose from the Lisbon Treaty that describes the functioning of the European Union.<sup>3</sup> With an ECI, it is possible to propose an issue for European legislation. If a group of citizens collects one million

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<sup>1</sup> UNGA 'The Human Right to Water and Sanitation' (28 July 2010) UN Doc. A/RES/ 64/292 (2010).

<sup>2</sup> Unicef and WHO, *Joint Monitoring Programme for Water Supply and Sanitation (JMP). Progress on Drinking Water and Sanitation: 2012 Update* (2012) 2.

<sup>3</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, (Lisbon Treaty).

signatures from at least seven Member States within one year, the European Commission will take the proposal into consideration.<sup>4</sup>

The European federation of trade unions in the public services sector (EPSU) decided to take up the challenge and organize such an ECI. Motivated to challenge the neoliberal economic model of a European single market and convinced that water and sanitation is the most important public service and an essential human need that should not be privatized,<sup>5</sup> EPSU chose the human right to water and its recognition by the UNGA in 2010 as departing point for an ECI.<sup>6</sup> A legal framework converts political intentions into enforceable rights and obligations, and legitimizes the demand of vulnerable actors for access to water and sanitation services. It can move the discourse from one of charity to one of entitlement and force governments to prioritize these services, providing residents with a legal remedy.<sup>7</sup> The ECI was a new tool in the trade union's continuous struggle for a social Europe. They formed a citizens' committee and a campaign coalition of civil society organizations and submitted an ECI in April 2012 officially titled 'Water and sanitation is a human right, water is a public good!' The ECI became known for its campaign-name 'Right2Water'.<sup>8</sup>

Right2Water proposed to implement the human right to water and sanitation in European law.<sup>9</sup> It gave three directions for implementation: 1. Guarantee water and sanitation services to all inhabitants in Europe; 2. Stop liberalization of water services; and 3. Increase efforts to achieve universal global access to water and sanitation.<sup>10</sup> From May 2012 to September 2013 the organizers collected 1.9 million signatures across Europe and passed the quorum in 14 Member States (so over seven), becoming the first ever successful ECI that was initiated.<sup>11</sup>

How successful was Right2Water in terms of its demands and did it change political course and discourse of the European Union with regards to water services provision? This paper elaborates how the human right to water was instrumental to influence European policies on water services. Right2Water was extremely successful in Germany and would not have reached the one million signatures without the result in this single country. Because of this and because of the 'weight' of the German voice in the European Union, the paper focusses on the debate and incidents in Germany while factors that determined 'success or failure' in other countries are only slightly addressed. The paper is based on literature analysis and semi structured interviews with policy makers, European water movement leaders and activists.

The main author was appointed by EPSU to coordinate the Right2Water campaign, starting from preparations in 2010 until the response of the European Commission in 2014. The co-authors joined as 'ambassadors' and engaged researchers during the campaign period. Our socio-political but critical engagement with Right2Water's main objectives implies that in this chapter we do not claim an illusory objective scientific stance or pretend any other positivist expert view.

## 2. Background: A snapshot of the European Union in 2012

The European Commission established a treaty in Lisbon in 2009 that set the principles and functioning of the European Union. One was formulated in article 11.4 of the Treaty on European Union: '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 implement-

<sup>4</sup> Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative [2011] OJ L 065, 11.3.2011. This regulation has been evaluated in 2015 and renewed to Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative [2019] OJ L 130, 17.5.2019.

<sup>5</sup> See EPSU policies and statements related to privatisation of water services <<https://www.epsu.org/hu/search/policies/privatisation/policies/water>> accessed 8 January 2019.

<sup>6</sup> See EPSU Water campaign action plan. 2009 <[http://www.epsu.org/sites/default/files/article/files/Water\\_Campaign\\_Action\\_Plan\\_EN.pdf](http://www.epsu.org/sites/default/files/article/files/Water_Campaign_Action_Plan_EN.pdf)> accessed 15 June 2019.

<sup>7</sup> J. Gupta et al., 'The Human Right to Water: Moving Towards Consensus in a Fragmented World,' (2011) 19 *Review of European Community and International Environmental Law* no 3 294–306.

<sup>8</sup> See how the European Commission response speaks of 'right2water': <[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_14\\_277](https://ec.europa.eu/commission/presscorner/detail/en/IP_14_277)> accessed 8 January 2019.

<sup>9</sup> See <<https://www.right2water.eu/> and [https://europa.eu/citizens-initiative/initiatives/details/2012/000003\\_en](https://europa.eu/citizens-initiative/initiatives/details/2012/000003_en)> accessed 25 June 2019.

<sup>10</sup> J. van den Berge, 'Water and Sanitation are a Human Right! Water is a Public Good, not a Commodity!' in C. Berg & J. Thompson (eds), *An ECI that works. Learning from the first two years of the European Citizens' Initiative*, (The ECI Campaign, Alfter, Germany 2014) 19–24.

<sup>11</sup> See e.g. A. Bieler, 'Fighting for public water: the first successful European Citizens' Initiative, "Water and Sanitation are a Human Right"', (2017) 9 *Interface: a journal for and about social movements* no 1 300 – 326. See also the official European Commission answer to the ECI of 19 March 2014, <[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_14\\_277](https://ec.europa.eu/commission/presscorner/detail/en/IP_14_277)> accessed 25 June 2019.

ing the Treaties.<sup>12</sup> The implementation of the principles was set out in the Treaty on the Functioning of the European Union in which the division of power and responsibilities between the European Union and the Member States has been established. In the regulation further details of the rules and conditions were set out: e.g. the specific minimum number of signatories for each country.<sup>13</sup>

Support for the European Union project was low in the years after the Lisbon treaty was established and voices for disintegration of the EU won considerable support (e.g. the emerging call for a Brexit). EU driven austerity measures had a strong negative impact on daily life of people. Unemployment was at a 'high' and banks needed to be rescued. This was felt most in peripheral countries, such as Greece, Italy, Spain, Portugal and Ireland. These countries had to take harsh austerity measures to keep their national budgets in line with EU rules and experienced a drop in real wages, social services and an attack on public ownership.<sup>14</sup> The European Union's objective is in the first place the creation of a single market. Completion of the European Single Market entails a shift in control over public services from 'State to market' that has been promoted by the European Commission.<sup>15</sup> Services like electricity and public transport had already been liberalized, water services were seen as next in line. Water privatization was already pushed in Greece and Portugal.<sup>16</sup> Italy came under pressure in the second half of 2011, when Jean-Claude Trichet, the then President of the ECB, and Mario Draghi, who succeeded him in November 2011, urged '*the full liberalisation of local public services (...) through large scale privatisations.*'<sup>17</sup> Privatization of public services has always been seen as problematic by public services trade unions. They feared job cuts, price increases and profits being taken out by multinational corporations.<sup>18</sup> This was the situation in 2012 when the ECI Right2Water was launched.

### 3. Water and sanitation in the European Union and the problems with privatization

In 2012, most countries in the EU had a (close to) 100% coverage of water services.<sup>19</sup> Countries that were significantly behind are Romania and Bulgaria, where most of the estimated 10 million people without access to water or sanitation in the EU live.<sup>20</sup> The share of Bulgarians and Romanians in these figures is around 70%. Other countries with incomplete coverage of access to water and sanitation are Hungary, Czech Republic, Slovakia, Slovenia, the Baltic States and Portugal. In order to prove itself as a Citizens' Initiative for all Europeans, Right2Water urged as first proposal to ensure clean water and sanitation for all inhabitants, knowing that the majority of unserved or underserved was in Romania and Bulgaria (the 'new' Member States). The organizers counted on presence of feelings of solidarity among Western Europeans and trade unionists in particular, that would be supportive to advance the rights of people in Eastern Europe.

Water and sanitation are mostly provided by municipalities or public companies that are owned by local, regional or national authorities. Private sector provision of water is present in France and Spain where the model of concession contracts exists since the 19<sup>th</sup> century and in the United Kingdom where water companies have been privatized in the early eighties under Margaret Thatcher's government<sup>21,22</sup>. The privatizations in the UK caused a wave of privatizations in the rest of Europe in sectors such as public transport and energy supply. The European Commission had promoted further privatization of public services under the

<sup>12</sup> Lisbon Treaty art 11(4).

<sup>13</sup> EU ECI Regulation No 211/2011.

<sup>14</sup> K. Busch et al., *Euro Crisis, Austerity Policy and the European Social Model – How Crisis Policies in Southern Europe Threaten the EU's Social Dimension* (2013) 15–25.

<sup>15</sup> For more on the European Single Market in services, see <[https://ec.europa.eu/growth/single-market/services\\_en](https://ec.europa.eu/growth/single-market/services_en)> accessed 8 June 2020.

<sup>16</sup> D. Hall & E. Lobina, *Conflicts, companies, human rights and water – A critical review of local corporate practices and global corporate initiatives*, (PSIRU, London 2012).

<sup>17</sup> R. Erne, 'European industrial relations after the crisis. A Postscript' in S. Smismans (ed.) *The European Union and Industrial Relations – New Procedures, New Context* (Manchester University Press, Manchester 2012) 229. (emphasis added).

<sup>18</sup> See e.g.: J. Budds & G. McGranahan, 'Privatization and the provision of urban water and sanitation in Africa, Asia and Latin America', (2003) *Human Settlements Discussion Paper Series, Theme Water-1*; T. Schulten et al., 'Liberalisation and privatisation of public services and strategic options for European trade unions' (2008) *Transfer* 2/08 14 (2) 295–311, and: D. Hall & E. Lobina, *Water companies and trends in Europe* (EPSU and PSIRU, Brussels and London 2012).

<sup>19</sup> Unicef and WHO, *Joint Monitoring Programme for Water Supply and Sanitation (JMP). Progress on Drinking Water and Sanitation: 2012 Update* (2012) <<https://washdata.org/sites/default/files/documents/reports/2017-06/JMP-2012-Report.pdf>> accessed 10 June 2020.

<sup>20</sup> Ibid.

<sup>21</sup> D. Hall & E. Lobina, 'Private and public interests in water and energy', (2004) 28 *Natural Resources Forum*, 4 268–277.

<sup>22</sup> D. Hall & E. Lobina, *Water privatisation* (PSIRU, London 2008), 5.

objective of completion of the European Single Market.<sup>23</sup> EPSU had been campaigning against these privatizations and defending public sector workers. Experience with privatizations in the water sector have been very negative, running from increasing prices for citizens, profits taken abroad and loss of jobs.<sup>24</sup> The city of Paris decided in 2008 to take back water supply in municipal hands because it was not happy with the services of Suez and Veolia, the two big French multinationals that had won the contract for service provision by making a deal between themselves: One would serve Paris north of the river Seine and the other would serve Paris south of the river. For years the private multinationals had made excess profits this way.<sup>25</sup> In Germany the water sector was largely in hands of municipal, public companies ('Stadtwerke'), but Berlin had a concession with RWE and Veolia. This concession contract had turned the water supply in Berlin into the most expensive in Germany and inhabitants claimed disclosure of the contract in a referendum.<sup>26</sup> After a court decided that the contract could not remain secret it showed that in the contractual arrangement the profit was guaranteed for the multinationals.<sup>27</sup>

#### 4. The European Citizens' Initiative 'Right2Water'

The idea of starting a European Citizens' Initiative (ECI) was born at the Congress of the European federation of Public Services Unions (EPSU) in 2009.<sup>28</sup> Trade unions were facing the effects of the economic and financial crisis and facing a European Commission that was dominated by a neo-liberal ideology that States should withdraw from economic sectors and open them up for a market. This process had already started in the nineties of the 20<sup>th</sup> century in for example energy, telecommunications and transport. The unions wanted to take this opportunity to express their wish for a social Europe that protects workers, rather than a European Market that puts workers in a more vulnerable position.

An ECI, however, must be based on one of the articles of the Lisbon treaty in order to receive permission to start collection of signatures.<sup>29</sup> The ECI Right2Water based itself on Article 14 of the Treaty on the Functioning of the European Union (TFEU) that says that services of general interest are a shared responsibility of EU and Member States.<sup>30</sup> As such it is an area that is open to submit a proposal by means of an ECI. Water services (drinking water supply and sanitation) were defined as services of general interest in the Lisbon Treaty. Other formal requirements that needed to be met were the formation of a citizens committee of at least seven people from seven different Member States; disclosure of sponsors (if any) of the ECI, and the set-up of a secured website for the online collection of signatures, hosted by a certified hosting company to ensure privacy of supporters and prevent data collection for other purposes.<sup>31</sup>

EPSU met with all the formal requirements and submitted a proposal on Monday 2 April 2012. A proposal should consist of no more than 500 characters and make a clear demand to the European Commission.<sup>32</sup> The organizers urged the European Commission to implement the human right to water and sanitation in European legislation and made three demands to indicate a direction that the Commission needed to go. These three demands encompassed the coverage of water and sanitation provision to all inhabitants in the European Union; a stop to liberalization of water services; and a bigger effort by the EU to achieve global universal access to water and sanitation.<sup>33</sup> The second demand was the most important to the organizers, as it addressed directly the marketization policies of the Commission. The Initiative aimed to shift the focus of the European Commission from their market orientation to a rights-based and people-oriented approach in water policy. The fight against privatization of water services was a driving force behind the ECI. The organizers were well aware that privatization was not an issue of competence of the European Union.

<sup>23</sup> See for more details of European Commission Single Market policies <[https://ec.europa.eu/growth/single-market/services\\_en](https://ec.europa.eu/growth/single-market/services_en)> accessed 25 June 2020, and for a critique to the link between EU market and privatisation policies: J. Zacune, *Privatising Europe: Using the Crisis to Entrench Neoliberalism* (Transnational Institute, Amsterdam 2013).

<sup>24</sup> See e.g. Budds & McGranahan or Schulten et al. n (18).

<sup>25</sup> A. Le Stratt, 'Paris: an example of how local authorities can regain control of water management' in TNI & CEO (eds) *Reclaiming Public Water* (CEO and TNI, Amsterdam 2010) 1–7.

<sup>26</sup> P. Bauby et al. 'Water remunicipalisation in Berlin and Paris: Specific processes and common challenges' (2018) 07 *CIRIEC Working Paper*, 2018/07 6.

<sup>27</sup> S. Heiser, 'Die räuberische Wasser-Privatisierung – Taz erhellt Berlins Geheimverträge', *TAZ*, 29 October 2010 <<https://taz.de/!5133154/>> accessed 25 January 2020.

<sup>28</sup> <[http://www.epsu.org/sites/default/files/article/files/Water\\_Campaign\\_Action\\_Plan\\_EN.pdf](http://www.epsu.org/sites/default/files/article/files/Water_Campaign_Action_Plan_EN.pdf)> accessed 15 June 2019

<sup>29</sup> EU ECI Regulation No 211/2011 n (4).

<sup>30</sup> Consolidated version of the treaty on the functioning of the European Union (TFEU) [26 October 2012] OJ C 326, art 4.

<sup>31</sup> See Regulation (EU) No 211/2011, n (4).

<sup>32</sup> Ibid.

<sup>33</sup> See van den Berge, n (10).

Right2Water strategically avoided the P-word and proposed to stop liberalization (= creation of a market) of water services. They aimed to keep water services in public hands and to prevent that these services would be handed over to profit driven corporations. Right2Water took a stance against private and profit-driven water companies with the slogan '*water is a public good; not a commodity!*'<sup>34</sup> The human right to water was instrumental for this purpose.

The trade unions decided that a broad coalition needed to be formed in order to reach out to millions in Europe to support this ECI. In first instance cooperation was sought with organizations that EPSU had worked with before in anti-privatization campaigns such as the Reclaiming Public Water Network,<sup>35</sup> but also new allies were sought and found in women groups like WECF, environmental organizations like the EEB and public health organizations like EPHA. An international alliance was formed in which during the campaign period 250 organizations joined. Having in mind the constitutions of South Africa,<sup>36</sup> and Uruguay,<sup>37</sup> as well as the Dutch water law,<sup>38</sup> Right2Water had examples of legislation that they envisaged to be replicable for Europe.<sup>39</sup> Especially the Constitution of Uruguay served as an example to Right2Water as it does not only recognize water and sanitation as a human right but also prohibits privatization of water services and promotes international solidarity cooperation to help other countries in achieving clean water and sanitation for all.<sup>40,41</sup> The Right2Water campaign joined in the ongoing global struggle for water justice.<sup>42</sup> This struggle became visible after the 'Cochabamba Water War' in 2000 when people in Bolivia took the streets in protest against price hikes for their water after the privatization of their water supply.<sup>43</sup> Right2Water took inspiration from the Italian Water Movement that organized a referendum in Italy against the privatization of water services in Italy in 2011. The referendum was a huge success with 26 million people voting NO to privatization of water services.<sup>44</sup> The Italian water movement articulated its struggle in terms of water as human right and commons, framing the fight against water privatization as a paradigmatic battle for democracy.<sup>45</sup> In Italy, the privatization of common goods was considered to be a flight from democracy. Water served as exponent: '*write water but read democracy*', was the slogan of the Italian Water Movement.<sup>46</sup> The expectation that the Italians would support a campaign at European level did not come true. During the first few months, signature collection remained low in Italy as well as in other countries. Implementing the human right to water apparently was not felt as an urgent problem. Right2Water needed to address a problem that was perceived as such by large groups of the populations in Europe. Ironically, this problem appeared with the proposal for a Concession Directive that asked Member States to open markets for public services, naming water services as one of these areas and the threat of privatization of water services that arose with this proposed directive.<sup>47</sup>

<sup>34</sup> J. van den Berge et al., 'Uniting Diversity to Build Europe's Water Movement Right2Water' in R. Boelens et al. (eds), *Water Justice* (Cambridge University Press, Cambridge 2018), 226–245. (emphasis added).

<sup>35</sup> A number of organizations that struggled against privatization of water services and in favour of public water services had formed an online network, <<https://www.tni.org/en/profile/reclaiming-public-water-network>> accessed 28 January 2020.

<sup>36</sup> Constitution of 1996: ch 2, clause 27: 'Everyone has the right to have access to health care services, [...], sufficient food and water, [...].'

<sup>37</sup> *Constitución de la República – Constitución 1967 con las modificaciones plebiscitarias el 26 de noviembre del 1989, el 26 de noviembre del 1994, el 8 de diciembre del 1996 y el 31 de octubre del 2004.*

<sup>38</sup> Wijziging van de Waterleidingwet 1998 (eigendom van waterleidingbedrijven), kamerstuk 28339 <<https://zoek.officielebekendmakingen.nl/kst-28339-3.html>> accessed 25 June 2019.

<sup>39</sup> See e.g. D. Hall & R. De La Motte, *Making water privatisation illegal: – new laws in Netherlands and Uruguay* (2004).

<sup>40</sup> Section 47 of the Constitution says: "Water is an essential natural resource for life. Access to water services and sanitation are essential human rights" and: "The public service of sanitation and the public service of water supply for human consumption shall be provided exclusively and directly by state legal persons."

<sup>41</sup> See Hall & De la Motte, n (39).

<sup>42</sup> See for several social struggles related to the (human) right to water e.g.: F. Sultana & A. Loftus: *The right to water, politics, governance and social struggles* (Routledge, London 2012).

<sup>43</sup> J. Schultz wrote about the 'Cochabamba water war' in 2001: 'Bolivia's War Over Water – The Dispatches in Full', *The Democracy Center On-Line*, <<http://democracyctr.org/bolivia/investigations/bolivia-investigations-the-water-revolt/bolivias-war-over-water/>> accessed 10 April 2017. Later he wrote a book about it together with M.C. Draper: *Dignity and Defiance: Stories from Bolivia's Challenge to Globalization* (University of California Press, Oakland 2008).

<sup>44</sup> See e.g. T. Fattori, 'Fluid Democracy, the Italian Water Revolution', (2011) *Transform* 09/2011, 99–111; T. Fattori, 'The European Citizens' Initiative on Water and 'Austeritarian' Post-Democracy', (2013) *Transform* 13/2013, 116 – 122, and how EPSU welcomed the result of the Italian Water Referendum: <<https://www.epsu.org/article/epsu-welcomes-result-italian-water-referendum>> accessed 2 June 2020.

<sup>45</sup> C. Carrozza & E. Fantini, 'The Italian water movement and the politics of the commons' (2016) 9 *Water Alternatives* no.1, 99–119.

<sup>46</sup> T. Fattori, 'Fluid Democracy, the Italian Water Revolution', (2011) *Transform* 09/2011, 99–111 (emphasis added).

<sup>47</sup> Commission (EC), 'Proposal for a directive of the European parliament and of the council on the award of concession contracts', COM (2011) 897 final 2011/0437, 20 December 2011.

In December 2012 the German TV station ARD paid attention to the proposal for a concession directive, that requires opening of a market for municipal public water services, and the potential conflict with the ECI Right2Water that wanted to stop liberalization of water services. European commissioner Barnier tried to deny that there was a potential conflict and denied that the directive would support the interests of private companies, but his comments only increased suspicion.<sup>48</sup> Right2Water now made it to the German media and the interest for the campaign grew in Germany. After the position of Commissioner Barnier was ridiculed by a German comedian (Erwin Pelzig),<sup>49</sup> the signature collection for Right2Water skyrocketed. Between January and May 2013, the number of signatures went up from 100,000 to 1.3 million of which the largest part was from Germany (see **Table 1**). By March seven countries already had passed the quorum. In September 2013 the campaigners decided to stop the signature collection, having reached a total of more than 1.8 million signatures and successfully achieving the quorum in 14 countries.

**Table 1:** Result of the ECI Right2Water per country (source: J. van den Berge et al., 2018).<sup>50</sup>

| <b>Country</b> | <b>Total signatures</b> | <b>Minimum signatories required EU</b> |
|----------------|-------------------------|--|
| Austria        | 64,836                  | 14,250                                 |
| Belgium        | 40,912                  | 16,500                                 |
| Bulgaria       | 1,602                   | 13,500                                 |
| Cyprus         | 3,561                   | 4,500                                  |
| Czech Republic | 7,986                   | 16,500                                 |
| Denmark        | 3,547                   | 9,750                                  |
| Estonia        | 1,245                   | 4,500                                  |
| Finland        | 15,200                  | 9,750                                  |
| France         | 22,969                  | 55,500                                 |
| Germany        | 1,341,061               | 74,250                                 |
| Greece         | 35,720                  | 16,500                                 |
| Hungary        | 20,107                  | 16,500                                 |
| Ireland        | 2,959                   | 9,000                                  |
| Italy          | 67,484                  | 54,750                                 |
| Latvia         | 450                     | 6,750                                  |
| Lithuania      | 14,048                  | 9,000                                  |
| Luxembourg     | 5,698                   | 4,500                                  |
| Malta          | 1,703                   | 4,500                                  |
| Netherlands    | 22,065                  | 19,500                                 |
| Poland         | 4,807                   | 38,250                                 |
| Portugal       | 15,588                  | 16,500                                 |
| Romania        | 3,211                   | 24,750                                 |
| Slovakia       | 35,075                  | 9,750                                  |
| Slovenia       | 21,330                  | 6,000                                  |
| Spain          | 65,484                  | 40,500                                 |
| Sweden         | 12,258                  | 15,000                                 |
| United Kingdom | 8,578                   | 54,750                                 |
| <b>Total</b>   | <b>1,840,486</b>        | <b>1,000,000</b>                       |

<sup>48</sup> This was clear in a broadcast of ARD Monitor of 14 December 2012, in which European Commissioner Barnier was interviewed, that was announced as '*Geheimoperation Wasser, EU fördert Wasserprivatisierung*' <<https://www.youtube.com/watch?v=S6f4G7dfkYw>> accessed 21 January 2020.

<sup>49</sup> See the broadcast: '*Neues aus der Anstalt*', ZDF, 22 January 2012 <<https://www.youtube.com/watch?v=sTYNFyML-3s>> accessed 29 January 2020.

<sup>50</sup> See van den Berge et al., n (34).

The vast majority of signatures were collected in Germany, where media attention and public concern about the concession directive were high. Surprisingly, in the countries where access to water was the lowest, the human right to water was not considered as a problem for most of the population. In Romania and Bulgaria people did not get enthusiastic for the ECI that addressed a problem for a minority group.<sup>51</sup> The people that suffered from lack of access to water and sanitation in these countries were Roma groups and Right2Water campaigners did not manage to mobilize them.<sup>52</sup> On the contrary Right2Water did achieve to mobilize Roma people to sign for the ECI in Hungary in cooperation with the European Roma Rights Centre (ERRC), but this was only after water supply was disconnected in the town of Ozd.<sup>53</sup>

## 5. Debates around the human right to water and sanitation and privatization

The recognition of the human right to water and sanitation by the United Nations General Assembly in 2010 was a result of the confluence of ongoing campaigns by civil society organisations (CSOs),<sup>54</sup> the newly elected Bolivian president Evo Morales and the connection with the Cochabamba water wars in 2001. The debate on the human right to water came on the fast track after four countries (Bolivia, Uruguay, Ecuador and South Africa) decided to make a separate declaration after the World Water Forum in Istanbul in 2009. The World Water Forum is a three-yearly gathering of water companies, governments and CSOs dealing with water issues around the globe and is organized by the World Water Council (WWC). When the WWC tried to conclude the Forum in Istanbul with a global statement of governments, promoting private sector participation in the provision of water services, CSOs lobbied for putting the human right to water over private sector involvement.<sup>55</sup> They claimed that water is not a commodity that can be provided by a market, but a human right that must be fulfilled by States. Here the basis was laid for the resolution proposed by Bolivia to the United Nations General Assembly a year later.<sup>56</sup>

Another ongoing process was the research and work of the UN independent expert on the human right to water and sanitation. Catarina de Albuquerque, a Portuguese human rights lawyer, was appointed in 2008 by the UN and tasked with a mission to promote the human right to water and sanitation. Global recognition that the right to water was a prerequisite to fulfil MDG 7 and to fulfil other human rights was slowly growing.<sup>57</sup> On 28 July 2010 the resolution put forward by Bolivia, was voted and accepted with 122 countries voting in favour, 41 abstentions and no vote against.<sup>58</sup> The vote was welcomed as a victory by civil society. However, also private water companies claimed to be a promotor of the human right to water and called the vote a victory for private water operators.<sup>59</sup> The human right to water had become immediately a tool in the debate on privatization of water.

General Comment 15 of the United Nations Committee on Social and Cultural Rights says that 'the human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.'<sup>60</sup> Furthermore it puts the primary responsibility in the hands of States to ensure that adequate regulatory frameworks are in place. The Right2Water campaigners never referred to General Comment 15. The European Water Framework Directive states that: Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.<sup>61</sup> It does not make a reference to human rights, but it supports the view that water is not a commodity. However, in the same directive there is a reference to the principle of 'full cost recovery.'<sup>62</sup> Although this is meant to include

<sup>51</sup> Statements of Marina Irimie – EPSU, Romania and Ioannis Parteniots – EPSU, Bulgaria. Both were contact persons for Right2Water in their respective country. Personal communication, 23 March 2013.

<sup>52</sup> Ibid.

<sup>53</sup> For more information about the situation in Ozd, Hungary at that time <<http://www.errc.org/press-releases/hungary-local-authority-disconnects-public-water-supplies-in-high-temperatures-blames-roma-for-misuse>> and <<https://www.epsu.org/article/european-citizens-initiative-right-water-condemns-hungarian-mayor-%C3%B3zd-fidesz-cutting-people>> accessed 8 July 2020.

<sup>54</sup> UNGA Res 64/292 (28 July 2010), UN Doc. A/RES/64/292.

<sup>55</sup> M. Barlow, *Our Right to Water, A People's Guide to Implementing the United Nations' Recognition of the Right to Water and Sanitation* (Council of Canadians, Ottawa 2010).

<sup>56</sup> Ibid.

<sup>57</sup> United Nations, *The Millennium Development Goals Report* (2010).

<sup>58</sup> See note 54.

<sup>59</sup> See D. Hall & E. Lobina, n (18).

<sup>60</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)', 20 January 2003, E/C.12/2002/11, (emphasis added), <<https://www.refworld.org/docid/4538838d11.html>> accessed 6 September 2020.

<sup>61</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22.12.2000, p 1.

<sup>62</sup> Directive 2000/60/EC OJ L 327, 22.12.2000, art 9.

costs of pollution and purification in water pricing, it has been contested by human rights activists, saying that water pricing is a market approach, thus supporting privatization, that is at odds with a human rights approach.<sup>63</sup> This position was taken by the Right2Water campaigners with the slogan: 'Water is a public good, not a commodity!' They tried to bring the message that fulfilment of the human right to water for all and privatization or liberalization of water services are incompatible.

For many Europeans, the debate seemed to be very abstract and far from home. European liberalization policies, the Lisbon treaty or the human right to water were no issues in their daily life. Only insiders were aware of the interlinkages between water management and EU policies. The debate only reached a wider audience after the broadcasting of German ARD Monitor on the Concession Directive exposed the conflict between the Commissioner's view on opening the market for public services (= liberalization) and Right2Water's demand to stop further liberalization of water services. The proposal for a Concession Directive met with a lot of resistance in Germany, where municipalities and the local 'Stadtwerke' found they were best capable of delivering water services to their inhabitants and did not want to hand their services over to French multinationals.<sup>64</sup> The proposal to concession water services boils down to exporting the French model to the rest of Europe. The companies that would benefit most from this Directive would be the French multinationals in water services as they are the only ones that are looking to expand their market in Europe.<sup>65</sup> Berlin had a bad experience in its water concession to multinationals. The contract turned the water supply in Berlin into the most expensive in Germany for a service that was considered of poor quality.<sup>66</sup> After a court decided that the contract had to be disclosed to the public, it appeared that the profits for the multinationals were contractually guaranteed.<sup>67</sup> This case was a driver for people in Germany to support Right2Water, when it became apparent that the new Concessions Directive would increase the opportunities for multinational corporations to take over municipal water services and would push municipalities into unwanted Public-Private-Partnerships (PPPs).<sup>68</sup> Citizens demanded to keep control over what they considered 'their' water services.<sup>69</sup> The German population and many of the 'Stadtwerke' saw a real threat in the Concessions Directive. German and Austrian media approached Right2Water and put the campaign in the spotlights.<sup>70</sup> The controversy that the ECI evoked was not about the human right to water. This point was agreed upon by all actors in the water sector. The controversy arose over the point whether water is a commodity or a public good. This was widely debated in Germany. In no other country so many people expressed their view in favor of Right2Water. If water is regarded as a public good, this excludes the possibility of privatizing the resource.<sup>71</sup> However, privatizing the water service provision is another matter.<sup>72</sup> The Right2Water organizers contested the possibility of private companies providing public services. They wanted a Europe in which water services would be provided by publicly owned organizations that would be accountable to the public, rather than provided via a market by private companies that would only be accountable to their shareholders.

Creating a market undermines the objective of universal service provision. Market principles bear the risk of exclusion of those poorer people and less powerful sectors that cannot afford the newly established water prices.<sup>73</sup> Moreover, in many instances people lose control over their local sources. And if, in these cases, governments would subsidize water supply to the poor, it would imply that the governments subsidize the profits of the corporations. Balanyá (2007) concluded that 'strengthening the democratic, public character

<sup>63</sup> See Sultana & Loftus, n (42).

<sup>64</sup> See e.g. the statement of the water company in Karlsruhe, Germany <<https://www.ka-news.de/wirtschaft/regional/Streit-um-Wasser-Privatisierung-Stadtwerke-Karlsruhe-begruessen-EU-Entscheidung;art127,1728285>> accessed 31 January 2020.

<sup>65</sup> See Hall & Lobina, n (21) and n (22).

<sup>66</sup> See Bauby et al., n (26).

<sup>67</sup> See Heiser, n (27).

<sup>68</sup> COM (2011) 897 final 2011/0437, n (47).

<sup>69</sup> This was explained by T. Thierschmann in his presentation: 'Berlin Water Services: Citizen demands concerning the protection of Berlin drinking water.' The presentation held at the 'Second stakeholder dialogue on transparency and benchmarking of water quality and services,' following-up on the European Citizens' Initiative (ECI) Right2Water, Brussel, 12 October 2015.

<sup>70</sup> W. Deinlein, *Kompendium Trinkwasser. Zur Europäischer Bürgerinitiative Right2Water und der EU-Konzessionsrichtlinie* (Stadtwerke Karlsruhe, Karlsruhe 2014).

<sup>71</sup> See Budds & McGranahan, n (18).

<sup>72</sup> See e.g. van den Berge, n (34) and E. Lobina *Troubled Waters: Misleading industry PR and the case for public water* (PSIRU and Corporate Accountability International, London and Boston 2014).

<sup>73</sup> See the chapter of Y. Levashova: The right of access to water in the context of investment disputes in Argentina, Urbaser and beyond.

of water services is fundamentally at odds with the currently dominant neoliberal model.<sup>74</sup> A human right to water does not imply that water should be accessed for free, although this is at odds with cultural and religious views on water in many parts of the world.<sup>75</sup> Moreover, drinking water is a non-substitutable resource that is essential for life and a networked water supply is a natural monopoly.<sup>76</sup> The objections against privatization of water services increase when the profits go to multinational corporations, while the prices are paid by (poor) people.<sup>77</sup> Problems with water privatization often occur soon after the initial wave of enthusiasm and range from lack of infrastructure investment to environmental neglect and socio-economic discrimination and injustices.<sup>78</sup> The Cochabamba Water War is seen as the most prominent example of a water conflict following from privatization of water services.<sup>79</sup>

The human right to water and sanitation does not foreclose private sector management of water supply systems. However, strong market failures provide an overwhelming justification for public regulation and ownership of assets.<sup>80</sup> Privatization of water supply is thus inconsistent with a human right to water unless it is coupled with a universality requirement (e.g.: a law prohibiting disconnections) and with a strong regulatory framework for price controls, quality standards and maintenance of and investment in infrastructure.<sup>81</sup> Still this would not inhibit profit making by a private company through a monopoly position in the provision of a necessary service. Most privatizations in water are in shape of a Public-Private Partnership (PPP) where services are handed over to a private company, but the grid remains in hands of the government. The PPP model weakens the democratic influence and control of municipalities and their inhabitants on the way public water is supplied.<sup>82</sup>

Nearly all private water companies in Europe (apart from the UK) are subsidiaries or partially owned by the two French multinationals in water: Veolia and Suez.<sup>83</sup> This has large implications not just for tariffs but in particular for water control and decision-making and the danger of private monopolies, underinvestment and corruption.<sup>84</sup> In the case of Berlin, openness of the contract between the city authority and private companies was forced through a referendum in 2011.<sup>85</sup> The revelation of the contract and the public condemnation of it made the city council decide to terminate it and induced the remunicipalisation of the Berlin water company.<sup>86</sup> The PPP had led to non-transparent responsibility structures, non-transparent financial transactions and fees calculation, and growing prices for the public.<sup>87</sup> This case was fresh in the minds of people in Germany when Right2Water campaigned. From their side, the multinationals claimed

<sup>74</sup> B. Balanya, 'Empowering Public Water – Ways Forward' in B. Balanya et al (eds), *Reclaiming Public Water; Achievements, Struggles and Visions from Around the World*, (Transnational Institute, Amsterdam 2007) 248.

<sup>75</sup> See I. Winkler, *The Human Right to Water: Significance, Legal Status and Implications for Water Allocation*, (Hart publishing, Oxford 2012).

<sup>76</sup> K. Bakker, 'The "Commons" Versus the "Commodity": Alter-globalization, Anti-privatization and the Human Right to Water in the Global South' (2007) 39 *Antipode*, no 3, 430–455.

<sup>77</sup> See e.g.: P. Bond, 'Privatization, participation and protest in the restructuring of municipal services: grounds for opposing World Bank promotion of 'public-private partnerships' (1998) 9 *Urban Forum*, no 1, 37–75, and J. Budds & G. McGranahan, *Privatization and the provision of urban water and sanitation in Africa, Asia and Latin America* (2003) 12.

<sup>78</sup> See e.g. D. Hall & E. Lobina, *Pipe dreams: The failure of the private sector to invest in water services in developing countries* (2006); K. Bakker, *Privatizing water: Governance failure and the world's urban water crisis*. (2010). See also T. Lawson, *Reversing the tide: Cities and Countries Are Rebellious Against Water Privatization, and Winning* (2015) <<http://www.truth-out.org/news/item/32963-reversing-the-tide-cities-and-countries-are-rebellious-against-water-privatization-and-winning>> accessed 10 October 2017

<sup>79</sup> See Schultz and Schultz & Draper, n (43).

<sup>80</sup> See Winkler n (75) and more in D. Hall et al., *Public-public partnerships (PUPs) in water* (2009); and in D. Hall, *Why public-private partnerships don't work* (2014).

<sup>81</sup> See Winkler, n (75).

<sup>82</sup> See e.g. Hall & Lobina n (21), n (22), and Bauby n (26). See also S. Kishimoto et al., *Here to stay: Water remunicipalisation as a global trend* (Transnational Institute, Amsterdam 2015).

<sup>83</sup> See Hall & Lobina, n (59).

<sup>84</sup> D. Hall & E. Lobina. n (22), 7–10.

<sup>85</sup> See Heiser, n (27).

<sup>86</sup> C. Schaefer & S. Warm, 'Berliner Wasserbetriebe (BWB) – Water and sewage company in Berlin' (2014), *Working paper CIRIEC N° 2014/01*.

<sup>87</sup> See e.g. S.R. Laskowski, 'Time for Implementation of the Right to Water and Sanitation – e.g. the missing implementation in Germany' (2012), 9 *Journal for European Environmental Planning and Law (JEEPL)* no 2, 164–179; and F. Hüesker et al., 'Managing Water Infrastructures in the Berlin-Brandenburg Region between Climate Change, Economic Restructuring and Commercialisation', 142 *DIE ERDE – Journal of the Geographical Society of Berlin*, no 142(1–2), 187–208 <<https://www.die-erde.org/index.php/die-erde/article/view/48>> accessed 31 January 2020.

that they were promoters of the human right to water and sanitation and that Right2water was only fuelled by a German public lobby.<sup>88</sup>

## 6. Results and impact of the campaign

Apart from the huge success in Germany, Right2Water achieved political results in Greece where activists organized a referendum against privatization of the water company in Thessaloniki and in Slovenia where the Constitution was adapted after the ECI.<sup>89,90</sup> In March 2014, the European Commission responded to the ECI organizers of Right2Water. In its response, the Commission recognizes *'the importance of water as a public good of fundamental value to all Union citizens.'*<sup>91</sup> This was a recognition of what Right2Water had campaigned for and an absolute victory for the movement, but the only concrete result was the exclusion of water from the Concession Directive that was actually achieved halfway through the campaign.<sup>92</sup> European Parliamentarians started an initiative to bring the proposals of Right2Water back on the agenda of the European Commission, expressing their view that the Commission had fallen short in its answer.<sup>93</sup>

In its answer, the Commission also stated that 'the EU has consistently played a positive role to ensure that access to safe drinking water and improved sanitation becomes a reality for all, both within and outside Europe.'<sup>94</sup> Furthermore, the Commission's answers said that 'EU water policy is based on the principle that affordability of water services is critical. National authorities are competent for taking concrete support measures safeguarding disadvantaged people and tackling water-poverty issues.'<sup>95</sup> and that 'the provision of water services is generally the responsibility of local authorities.'<sup>96</sup> In short: The Commission leaves implementation of the human right to water to the Member States and feels no need to change or amend any existing legislation. A commitment that the Commission makes in its response is to hold a public consultation for the revision of the Drinking Water Directive, but this was not a demand of Right2Water.

The answer was a disappointment for the Right2Water campaigners.<sup>97</sup> In simple terms the answer was that the Commission had already done a lot to improve access to water and sanitation, and that it did not force privatization. However, the argument that Right2Water tried to make was that creating a market (= liberalization) is opening the door for private companies to take over public water services. The proposal for a Concession Directive might not force privatization, but it does pave the way for privatization. When privatized, control could be turned in the hands of profit-oriented companies that must ensure their profits in the first place, not human rights.

Already during the campaign, just after Right2Water had gained the one million signatures in May 2013,<sup>98</sup> the European Commission withdrew its proposal for the Concession Directive.<sup>99</sup> In the final version of the Directive water services were exempted from being opened to international competition. The public consultation on the revision of the Drinking Water Directive in 2015 led to an overwhelming response of citizens that did an effort to fill in a technical questionnaire on the quality of drinking water services in the European Union. The process of revision took a long time, but finally, in 2018, the European Commission declared in

<sup>88</sup> See the Press release by Aquafed, the Federation of Private Water Companies <<http://pr.euractiv.com/pr/concessions-directive-european-commission-renounces-transparency-and-equity-public-water>> accessed 25 January 2020.

<sup>89</sup> L. Steinfurt, 'Thessaloniki, Greece: Struggling against water privatisation in times of crisis' (2014): <<https://www.tni.org/en/article/thessaloniki-greece-struggling-against-water-privatisation-in-times-of-crisis>> (last visited accessed 30 January 2020).

<sup>90</sup> AFP, 'Slovenia adds water to constitution as fundamental right for all', The Guardian, 17 November 2016 <<https://www.theguardian.com/environment/2016/nov/18/slovenia-adds-water-to-constitution-as-fundamental-right-for-all>> accessed 5 September 2019.

<sup>91</sup> Commission (EC), 'Communication from the commission on the European Citizens' Initiative "Water and sanitation are a human right! Water is a public good, not a commodity!" COM (2014) 177 final, 5. (emphasis added).

<sup>92</sup> R. Limon, 'La presión social saca el agua de la directiva europea de las privatizaciones', *El País*, 2 July 2013: <[https://elpais.com/sociedad/2013/07/01/actualidad/1372702820\\_342386.html](https://elpais.com/sociedad/2013/07/01/actualidad/1372702820_342386.html)> accessed (last visited 8 June 2020).

<sup>93</sup> European Parliament, 'Right2water citizens' initiative: Commission must act, say MEPs', Press release, 25 June 2015. <<https://www.europarl.europa.eu/news/en/press-room/20150625IPR70912/right2water-citizens-initiative-commission-must-act-say-meps>> accessed 8 June 2020.

<sup>94</sup> COM (2014) 177 final, 7.

<sup>95</sup> Ibid, 4.

<sup>96</sup> COM (2014) 177 final, 5.

<sup>97</sup> EPSU, 'Commission lacks ambition in replying to first European Citizens' Initiative', Press release, 19 March 2014 <<https://www.epsu.org/pl/node/8842>> accessed 25 January 2020.

<sup>98</sup> See e.g. the comment and view of G. Haefner, Member of the European Parliament who supported the ECI as a tool for a 'more democratic EU' <<http://www.geraldhaefner.de/2013/05/first-successful-eci-a-step-towards-a-europe-of-citizens/>> accessed 8 June 2018.

<sup>99</sup> European Commission, 'Joint response of Commissioners Potocnik and Barnier on privatisation of water services,' Press release, 22 February 2013 <[https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_13\\_131](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_13_131)> accessed 8 June 2020.

its revision of the Drinking Water Directive that the demands of the ECI Right2Water were at the basis of the revised directive.<sup>100</sup> In the new directive the Commission encourages Member States to prioritize vulnerable and marginalized groups in the provision of drinking water in accordance with the human right to water and sanitation.<sup>101</sup> Something that the European Commission referred to in its answer in 2014 as an issue to be left to Member States.

## 7. Discussion and Conclusion

The debate on private vs. public provision of water and sanitation services continues with the same arguments being used by both sides. Right2Water strategically had avoided the word 'privatization' but the campaign was well understood in this way. Right2Water successfully claimed that fulfilment of the human right to water for all and privatization or liberalization of water services are incompatible; water services were exempted from the concession directive. Although the human right to water originally had been taken in by CSOs and linked to commons and public good, it has also been captured by private companies that use it as part of their Corporate Social Responsibility arguments. The human right to water and sanitation has sharpened the debate on privatization and has proven to be a tool that is used by proponents as well as opponents of privatization of water services.

Right2Water has put the human right to water and sanitation high up on the European political agenda. In fact, both the ECI as well as the human right to water have been used as instruments in the struggle for 'a social Europe.' It exposed the controversies between private service providers and proponents of public water management and raised awareness of the political struggles that were behind water services and water management. The Concession Directive would have opened competition between multinational corporations and municipalities. The safeguarding of municipal, public water services has been the biggest achievement of Right2Water. The movement successfully challenged the European neoliberal model when it concerns water supply. Public control over water services is essential to ensure availability, affordability, quality and access for all; i.e. to ensure the human right to water and sanitation.

The idea that people would support the ECI just for the promotion of the human right to water and sanitation or for reasons of solidarity appeared to be a misapprehension. The human right to water in itself was not felt as a problem for citizens until people saw their local water supply being threatened. At such moments Right2Water gained support. The campaigners needed to address local sentiments and circumstances and specify their message to address the situation and conditions in each country. Success at European level came first in Germany, after ARD Monitor revealed the conflict between the proposal for a Concession Directive and Right2Water and the emerging threat of privatization of water services started to resonate. The threat of privatization was felt in Greece, Spain, Italy, Slovenia and Slovakia where Right2Water became successful. In Austria, Belgium, Finland, Lithuania and the Netherlands this threat was not prominent, but citizens gave a signal by signing for the ECI. The success of Right2Water in Hungary was directly linked to the cut-off of Roma people in Ozd of their water supply. All these results together made that Right2Water achieved to halt liberalization of water services in Europe and achieved that the European Commission acknowledged that 'water is a public good' and changed its discourse and policy with regards to water services.

Prioritization of vulnerable groups in the revised Drinking Water Directive in 2018 is definitely a step towards implementation of the human right to water and sanitation in Europe. It responds to the first demand of Right2Water. However, linking the provision of tap water to the consumption of bottled water shows that intrinsically the view of the European Commission towards water has not changed. Although the Commission declared that water is a public good, the assumption that increasing or decreasing bottled water consumption is related to decreasing or increasing tap water use, indicates that the Commission's viewpoint is still regarding water as a commodity. The discourse has certainly been influenced but the debate over what implementation of the human right to water and sanitation means and how it relates to liberalization and privatization of water services is far from over.

## Competing Interests

The authors have no competing interests to declare.

<sup>100</sup> Commission (EC), 'Proposal for a directive of the European parliament (EC) and of the council on the quality of water intended for human consumption (recast),' COM (2017) 753 final, 2.

<sup>101</sup> Ibid, 10.

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