

# The European citizens' initiative. Over one million support, and what next?

Mieczysława Zdanowicz, *University of Białystok*

ORCID ID: 0000-0003-2028-7152

## Abstract

The subject of the analysis in this article are European citizens' initiatives, which during 12 months gained the support of over 1 million of the EU citizens from at least seven Member States. The aim of the article is to examine, what actions have been taken in these matters by the European Commission. The following research questions were posed: (1) What was the effect of the Commission's call to submit, under its power, proposals, for which, in the opinion of the citizens supporting the initiative, the application of the Treaties requires a legal act of the Union? (2) What actions has the Commission taken and what is their justification? The analysis demonstrates that these initiatives have been taken into account by the Commission to a very small extent in the procedures for establishing legislative acts of the European Union. Therefore, it is reasonable to amend the Regulation on the European Citizens' Initiative.

**Keywords:** European Citizens' Initiative, follow-up activities, communication of the European Commission

## Europejska inicjatywa obywatelska. Ponad milionowe poparcie i co dalej?

### Streszczenie

Przedmiotem analizy w artykule są europejskie inicjatywy obywatelskie, które w czasie 12 miesięcy zyskały poparcie ponad 1 mln obywateli UE pochodzących przynajmniej z 7 państw członkowskich. Celem artykułu jest zbadanie, jakie działania zostały podjęte w tych sprawach przez Komisję Europejską. Postawiono następujące pytania badawcze: (1) Jaki był skutek wezwania Komisji do przedłożenia, w ramach jej uprawnień, wniosków w odniesieniu do których, zdaniem obywateli popierających inicjatywę, stosowanie Traktatów wymaga aktu prawnego Unii? (2) Jakie działania zostały podjęte przez Komisję i jakie jest ich uzasadnienie? Z analizy wynika, że przedmiotowe inicjatywy w bardzo małym stopniu zostały uwzględnione przez Komisję w procedurach stanowienia aktów ustawodawczych Unii Europejskiej. Zasadne jest dokonanie zmian w rozporządzeniu dot. Europejskiej inicjatywy obywatelskiej.

**Słowa kluczowe:** Europejska inicjatywa obywatelska, działania następcze, komunikat Komisji Europejskiej

The European Citizens' Initiative (ECI) is an important tool for direct and participating legitimacy held by European Union (EU) citizens (Błaszczuk-Zawita 2012: p.11; Marczevska-Rytko 2013: p. 397–406; Musiał-Karg 2014: p. 81–89; Rytel-Warzocho 2010: p. 425; Witkowska 2013: p. 43). It was considered as an important new measure, being an expression of the enhanced democratic legitimacy of the European Union (Barcz 2011: p.16). The European Citizens' Initiative was introduced as a result of the changes implemented by the Lisbon Treaty (see: TEU, Article 11 (4)). The article on ECI assumes that EU citizens can submit initiatives to the European Commission (EC), and during 12 months they must gain the support of over one million EU citizens from at least seven Member States. The detailed procedures and conditions required to submit a citizens' initiative have been defined, in accordance with Article 24 TFEU, by Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative.

The introduction of the ECI instrument in the European public space caused a lot of commotion. EU citizens have submitted many proposals regarding the various spheres of EU activity. It is significant that these initiatives included not only matters related to the rights of individuals. Some of them concerned matters of fundamental importance for the EU, such as the transatlantic partnership or the Energy and Climate Package. In practice so far, four initiatives have gained over a million citizens' support and have passed the entire procedure provided in Regulation 211/2011. On the Commission's website, they fall into the category of the „successful initiatives” (see: European Citizens' Initiative WWWb). Only these initiatives will be the subject of the analysis in this article.<sup>1</sup>

The aim of the article is to examine the fate of the European Citizens' Initiative after gaining at least a million citizens' support and to show the impact of this tool on legislative acts of the European Union. The following research questions were posed: (1) What was the effect of the Commission's call to submit, under its powers, proposals, for which, in the opinion of citizens supporting the initiative, the application of the Treaties requires a legal act of the Union? (2) What actions has the Commission taken and what is their justification? The method of legal analysis, the formal-dogmatic method, the descriptive method and the statistical method were used to explain the research problems.

The organisers of the European Citizens' Initiative, after gaining the required support and after obtaining the certificates provided in the Article 8 par.2 of Regulation 211/2011, may submit a citizens' initiative to the Commission (Regulation 211/2011: art. 9). The Commission is obliged to immediately publish the initiative in the register (European Citizens' Initiative WWWa). In addition, it will accept organisers so that they can clarify the issues raised by the initiative (Regulation 211/2011: art.10 par.1). The Commission has three months to issue a communication containing conclusions on this initiative and information on the actions it intends to take, including the reasons (Regulation 211/2011: art. 10 par.2).

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<sup>1</sup> The analysis of the initiatives, which were refused for registration, withdrawn, and those with insufficient support, was published in the "Przegląd Europejski" no. 2/2018 (see: Zdanowicz 2018).

## **Initiative “Water and sanitation are a human right! Water is a public good, not a commodity!”**

The first of the analysed initiatives, “Water and sanitation are a human right! Water is a public good, not a commodity!” (Right2Water), was registered on May 10, 2012. The initiators asked the European Commission to recognise the human right to drinking water and sanitation, and to ensure access to water and sanitation as basic public services for all. To implement the main goal notified to ECI, the EU institutions and Member States will take actions:

- ensuring access to water and sanitation for citizens;
- ensuring that water supply and water management are not subject of internal market rules, and that water services are excluded from marketisation;
- to achieve universal access to water and sanitation (see: European Citizens' Initiative WWWWc).

Members of the citizens' committee registered by the Commission were residents of France, Belgium, Germany, Sweden, Bulgaria, Italy and the United Kingdom. The organisers received significant financial support from the European Federation of Public Service Unions (EPSU) in the amount of 140 thousands euro. The initiative was supported by 1,659,543 signatories; it was officially submitted to the Commission by the organisers on December 20, 2013. Over one million statements of support were collected in Germany alone, over 50,000 – in Austria and Italy. The Commission accepted the organisers on 17 February 2014, and on the same day they had the opportunity to present the initiative at a public hearing organised in the European Parliament. On 19 March 2014, the European Commission issued the *Communication COM(2014) 177 final* outlining the actions it intends to take in response to the first successful European citizens' initiative.

In this *Communication*, the Commission emphasises that the EU supports securing access to drinking water and sanitation through two types of action: firstly, by introducing high water quality standards and, secondly, by providing financial support for improving water infrastructure. The Commission explains that matters regarding water services are within the competence of the Member States. In addition, the EU is involved in activities to ensure access to safe drinking water and sanitation at a global level (see: European Commission 2014a: p. 3–6). Moreover, the EC committed to take the following actions:

- more effective implementation of the EU water quality legislation, based on the commitments presented in the *7th Environment Action Programme* and the *Water Resources Conservation Plan*;
- the EU-wide public consultations on the Drinking Water Directive, in particular with a view to improving access to good quality water in the EU;
- increasing transparency in the data management on urban wastewater and drinking water, and to consider the concept of comparing water quality with appropriate levels;
- lead to a more structured dialogue between stakeholders on transparency in the water sector;
- cooperation with existing initiatives to provide a wider set of benchmarks for water services;

- promoting innovative approaches to development assistance (e.g. supporting partnerships between operators in the water services sector and public-public partnerships), promoting the exchange of best practices between Member States (e.g. on solidarity instruments) and identifying new opportunities for cooperation;

- promoting universal access to safe drinking water and sanitation as a priority area for sustainable development (see: European Commission 2014a: p. 7–13).

In 2015, the European Parliament was critical towards the Commission statement arguing that it did not answer the specific questions set out in the citizens' initiative and did not provide all the measures that could have been used to achieve the initiative's objectives. In addition, the European Parliament (EP) called on the Commission to recognise the human right to water and the importance of water as a public good of fundamental value for all EU citizens, not as a commodity (see: European Parliament 2015: p. 6, 18).

A tangible effect of the follow-up action undertaken by the Commission was the adoption of the amendment to the Drinking Water Directive aimed at better monitoring of drinking water throughout the EU (see: Commission Directive 2015/1787). The amendment changed Annexes II and III, which set minimum requirements for monitoring programs for all water supplies intended for human consumption and the specifications of the method for analysing different parameters. The next step, following a public consultation, was the adoption by the Commission on February 1, 2018 of a proposal to amend the Drinking Water Directive. It provides, among others, that states will be obliged to improve access to drinking water for all citizens, especially vulnerable and marginalised groups. The Commission proposed to add Art. 13 „Access to water intended for human consumption”. Two obligations are resulted from it: the first – regarding improvement of access to drinking water and promoting it through various measures; and the second – regarding the implementation of all necessary measures to ensure access to drinking water for vulnerable and marginalised groups (see: European Commission 2018).

From the point of view of the primary goal of the initiative, a key event took place in Gothenburg, where at the *Social Summit for fair jobs and growth* the document entitled *European Pillar of Social Rights* was signed jointly on November 17, 2017 by the European Parliament, the Council and the European Commission. It contains 20 basic principles, the last of which – access to necessary services – provides the statement: “Everyone has the right to access essential services of good quality, including water, sanitation, energy, transport, financial services and digital communications. Support for access to such services shall be available for those in need.” (see: *European Pillar...* 2017: p. 22).

Agnieszka Gajda argues what kind of human right the right to water should be. The author refers to Resolution 64/292 of the UN General Assembly, art. 25 par.1 of the *Universal Declaration of Human Rights*, art. 12 of the *Covenant on Economic, Social and Cultural Rights*, art. 14 par.2 h) of the *Convention on the Elimination of All Forms of Discrimination against Women*, and art. 24 par. 2 c) of the *Convention on the Rights of the Child*, states that the right to water as a human right is not treated as an independent right, but is derived from other rights (Gajda 2017: p. 217–218).

A citizens' initiative may in the future contribute to change in this matter, but so far the Commission has focused in its activities on aspects of improving the quality of drinking water. The *European Pillar of Social Rights* (2017) does not explicitly mention the right to water, but only the right to access good quality services, including water. This document is not legally binding on states. Therefore, the recognition of the right to water as a human right and the recognition that water services are not subject to the rules of the internal market remains only the postulate of the citizens' initiative "Right2Water", that has not yet been implemented.

The first citizens' initiative is also a test of preparing the Commission and other institutions to listen to the voice of citizens. Neglecting or disregarding the demands made under the new democratic mechanism can lead to a loss of credibility in the eyes of citizens. Initially, the follow-up actions undertaken by the Commission seemed to underestimate and disregard the demands made. However, the Commission Resolution and public debates clearly demonstrated for the Commission the expectations of such a large number of citizens. Legislative measures ultimately adopted by the Commission give hope for achieving the objectives of the initiative and for exploiting the potential of citizens' participatory democracy.

### **Initiative „One of us“**

The second initiative called "One of us" was registered on May 12, 2012. Its subject was the legal protection of dignity, right to life and integrity of the human being from the moment of impregnation. The applicants demanded consistency of the EU competence in matters related to human embryos and to prohibition of funding for any activity (including research) that involves destruction of human embryos (see: European Citizen's Initiative WWWd).

Members of the civil committee registered by the Commission were residents of the following countries: France, Italy, the United Kingdom, Hungary, Poland, Spain and Germany. The initiative received financial support in the amount of 159,219 euro. The initiative was supported by 1,721,626 signatories; it was officially presented to the Commission by the organisers on February 27, 2014. The largest number of declarations of support were collected in Italy, Poland and Spain. The Commission accepted the organisers on April 9, 2014, and on April 10 they had the opportunity to present the initiatives at the public hearing organised in the European Parliament. On 28 May 2014, the European Commission issued *Communication COM(2014) 355 final* outlining the measures, which it intends to undertake in response to this European citizens' initiative. In response to the initiative "One of us", the Commission established the following:

1) the primary law of the European Union directly refers to the protection of the dignity, the right to life and the integrity of every human being. The Commission does not see the possibility of amending the financial regulation, which assumes that all EU expenditure should comply with primary law;

2) in the field of research on human embryonic stem cells, the principles of the "Horizon 2020" Programme do not provide the possibility of financing by the EU funds the destruc-

tion of blastocysts for research purposes and ensure full compliance with the national law regarding research on human embryonic stem cells (see: European Commission 2014b).

The Commission decided not to submit any legislative proposal on this matter. Applicants dissatisfied with the reply of the Commission lodged a complaint to the EU Court of Justice, including annulment of the Commission statement, indicating that: firstly, the Commission did not respond to the fact that the human embryo is a human being; secondly, it violated democratic procedures; and thirdly, the objection of non-compliance of the Regulation 211/2011 with the Treaties was raised. The applicants even accused the Commission of maintaining a monopoly on legislative procedures contrary to the provisions of the Treaties on inter-institutional dialogue (see: *Sprawa T651/14*).

It is worth adding, that art.10 of the Regulation 211/2011 does not impose on the Commission an obligation (similar to that contained in the Art. 4 paragraph 3) to inform the organisers of all possible judicial and extrajudicial legal measures. A. Doliwa-Klepacka emphasises, that Commission's freedom in deciding whether to submit a legislative proposal, significantly weakens the real importance of the European citizens' initiative and makes it dependent on the political will of the Commission (Doliwa-Klepacka 2014: p. 352). The Commission represents the interests of the Union, not the citizens, which may weaken the initiative at the stage of examining its legitimacy by the Commission (Łachacz 2013: p. 213).

The Commission has too much decision-making power, therefore the citizens' initiative cannot become a real, effective tool in the EU decision-making process. Under the current legal framework, it should be assessed as an instrument with selective and limited impact on the EU policies, inspiring dialogue with civil society (Balthasar 2012: p. 33-43; Beier 2011: p. 44, Struelens 2011: p. 81; Zeegers 2016: p. 34). There may be a situation, where the organisers will already undergo a complex procedure of collecting statements of support, but the Commission will not be interested in taking any legislative actions and will not take them. In this case A. Capik and A. Gniewek count on the pressure of the engaged public opinion and media support (Capik, Gniewek 2012: p. 106). However, as current practice indicates, it cannot be considered as effective and successful interventions.

The Commission has too much power to decide about the follow-up activities concerning the initiatives that have obtained the required number of statements of support. The initiative's weakness is that it does not impose an obligation on institutions to act (Kosińska 2014: p. 23). The doctrine indicates that it would be more appropriate to submit the proposal to a mandatory debate, e.g. in the European Parliament. It would give people the feeling that they are not ignored and their signatures have not been wasted (Grabowska 2015: p. 91). It should also be considered, whether, following the example of the national citizens' initiatives, the gathering the required support should not result in the automatic initiation of a procedure, i.e. the commitment of the Commission to come forward with a draft act. M. Pisz postulates to impose on the European Commission the obligation to take the initiative of a new normative act, if the required number of the statements of support was collected (Pisz 2014: p. 36). Unfortunately, in the Commission's Proposal 2017/0220(COD) to amend the Regulation 211/2011, the Commission's power to decide on the fate of the initiative remain unchanged (see: European Commission 2017b).

The example of the "One of us" initiative demonstrates how far the approach of citizens differs from the position of the Commission, which decided not to take any legislative action on this matter. It is true, that art.10 par.1 c) of Regulation No 211/2011 provides that the Commission's Communication may contain information and justification for not taking action. However, leaving the initiative, which gain over 1 million 700 thousands of voices of support, without further public debate and the rejection of its objectives, can be understood as a manifestation of the Commission ignoring the votes obtained in this democratic mechanism and may result in further loss of credibility of the EU institutions in the eyes of citizens. This case gives arguments to raise doubts about the legitimacy of the solution adopted in the Regulation, that the Commission can solely decide about the follow-up actions concerning the initiative.

### **Initiative "Stop vivisection"**

"Stop vivisection" is the third European citizens' initiative, presented to the European Commission on March 3, 2015. Its subject is the ban on animal experiments (see: European Citizens' Initiative WWWe). Members of the citizens' committee registered by the Commission were residents of Belgium, France, Spain, the Netherlands, Sweden, Italy and the United Kingdom (European Commission 2015: Annex). The initiative received financial support (much smaller than the previous one) in the amount of 23,651 euro from 16 entities, 1.173.130 signatories supported the initiative. The largest number of statements of support were collected in Italy, Germany and France.

The Commission accepted the organisers on May 11, 2015 and on the same day they had the opportunity to present the initiative at a public hearing organised in the European Parliament. On June 3, 2015, the European Commission issued the *Communication C(2015) 3773 final* outlining the actions it intends to take in response to the presented European citizens' initiative. The Commission emphasised that it recognised the importance of the problem. At the same time, it indicates that currently animal experiments play an important role in protecting human and animal health and in keeping the environment intact. The final aim of the Commission's actions is to introduce a total ban on animal experiments, but at this stage, a necessary EU legal act protected these animals is Directive 2010/63/EU. It imposes an obligation on states to implement the 3Rs principles: the replacement, refinement and reduction in research using animals. The Commission underlines that Member States and the scientific community are making efforts to achieve these goals. The Directive, therefore, provides for the development of alternative methods, which is in line with the demands expressed in the initiative. Therefore, the Commission does not intend to submit a proposal to repeal Directive 2010/63/EU and is not intending to propose the adoption of a new legislative framework (see: European Commission 2015).

In its *Communication C(2015) 3773 final*, the Commission assumed that in order to accelerate the introduction of methods that did not require the use of animals in research and testing, it would take the following actions:

- will accelerate the implementation of the Three Rs principle (the replacement, refinement and reduction of using animals in research, and improving the conditions for raising and keeping animals) by exchanging knowledge;
- will support the development and implementation of the new alternative methods;
- will enforce the Three Rs principle and adapt relevant sector legislation to this issue;
- will undertake a dialogue with the scientific community (see: European Commission 2015).

As a follow-up actions, the Commission organised in Brussels on 6–7 December 2016 the scientific conference *Non-Animal Approaches – The Way Forward*, during which there was debated the question: how to use the latest achievements in biomedical research for the development of new methods in experiments not requiring the use of animals, by creating alternative methods of animal testing. The organisers of the "Stop vivisection" initiative, dissatisfied with the actions taken by the Commission in this matter, lodged a complaint to the European Ombudsman. They alleged that the Commission did not give a comprehensive response to the initiative, in particular it did not refer to all 10 proposals presented in the document "Stop vivisection", which, according to the applicants, is contrary to the purpose of the regulation on the European Citizens' Initiative. Moreover, the applicants pointed out that the Commission's position was inconsistent: on the one hand it agreed with the objectives of the initiative, but on the other – did not propose amendments to Directive 2010/63/EU.

The Ombudsman, after the implementation of the clarified procedure, claimed that the Commission had clearly and specifically justified its position with regard to the demands contained in the initiative. In addition, the Ombudsman indicated that the Commission had taken a number of follow-up actions. In this regard, it stated that the Commission did not breach the principle of good administration (see: European Ombudsman 2017).

The initiative "Stop Vivisection" is another example, where citizens are dissatisfied by the actions taken by the Commission. Regulation 211/2011 does not provide a special procedure for changing the Commission's statement. In case of the initiative "One of us", a complaint was sent to the Court of Justice of the EU, but in the case of the initiative "Stop vivisection" – a complaint was sent to the European Ombudsman. The complaint to the Ombudsman seems to be ineffective in these proceedings, because it can only relate to an allegation of violation of the principles of good administration. The problem of the dispute is due to the different approach of the Commission and the citizens to the need to take legislative actions on a specific topic.

### **Initiative *"Ban glyphosate and protect people and the environment from toxic pesticides"***

"Ban glyphosate and protect people and the environment from toxic pesticides" is the latest European citizens' initiative, presented on 6 October 2017 for the European Commission. Its purpose was to ban glyphosate and limit the use of pesticides across the EU. The initiative received financial support in the amount of EUR 328 399 from 15 entities,



1,070,865 signatories supported the initiative. The largest number of statements of support was collected in Germany, Spain and Italy (see: European Citizens' Initiative WWf).

The Commission accepted the organisers on October 23, 2017, and on November 20 they had the opportunity to present the initiative at a public hearing organised in the European Parliament. On December 12, 2017, the European Commission issued the *Communication C(2017) 8414 final* outlining the actions it intends to take in response to the presented citizens' initiative. In this document the Commission emphasised that:

- firstly, as regards the purpose of "banning glyphosate-based herbicides", there are neither scientific nor legal grounds that would justify the ban on glyphosate, so the Commission will not submit a legislative proposal;
- secondly, the Commission has committed itself to present a legislative proposal by May 2018 on its request to include only studies commissioned by the competent public authorities and not by the pesticides sector;
- thirdly, the Commission will focus on the implementation of the Directive on the sustainable use of pesticides. (see: European Commission 2017a).

The Commission announced an amendment to the Regulation (EC) 178/2002, laying down general principles of food law.

## Conclusions

The European Citizens' Initiative is an example of the direct and participating legislation of the European Union citizens. The citizens become entitled to call on the Commission to submit, within its powers, an appropriate proposal on matters, for which, in the opinion of the citizens, the application of the Treaties requires a legal act of the Union. However, according to the Regulation 211/2011, the Commission is not obliged to automatically start working on the preparation of a legislative proposal. This also applies if the subject of the citizens' initiative is within the competence of the Commission. The Commission has the right for assessment, whether the subject of a citizens' initiative deserves further actions or not.

The initiative "One of us" is an example of an extremely diverse approach to the legal protection of the dignity, right to life and integrity of a human being from impregnation. The Commission announced that it did not intend to take any legislative action in this area. The initiative "Stop vivisection" demonstrated, that citizens expect a total ban on animal experimentation, while the Commission intends to focus on replacing and reducing the use of animals in procedures and improving the conditions for raising and keeping the animals. Failure to take into account citizens' initiatives and expectations was met with opposition. In these two cases, the initiators expressed their dissatisfaction in their complaints to the European Ombudsman and to the Court of Justice of the EU.

The analysis indicates that in practice, the European Citizens' Initiative so far has a negligible impact on the adoption of new legal acts of the European Union. This is due to the Commission's right for free assessment of the follow-up actions concerning the initiatives. The Commission's prerogatives in this field are too broad. It is reasonable to consider amending the regulation in this field and imposing on the European Com-

mission the obligation to come forward with a legislative initiative. Then the Council and the Parliament (or advisory bodies) will decide whether to accept or reject the proposal contained in the initiative. In the analysed context, it seems reasonable to doubt whether the inclusion of the discussed initiatives in the category of "successful initiatives" means an illusory success. Therefore, there are fears, whether the discretionary power of the Commission and its current practice is going to stop the awaken civic movement.

**Mieczysława Zdanowicz** – habilitated doctor, associate professor at the Faculty of Law, University of Białystok. Head of the Chair of European Law at the Faculty of Law, University of Białystok. Dean of Faculty of Economics-Informatics at the Vilnius branch of the University of Białystok. A member of the Council for the Refugees' Rights, in the first term. Author of numerous publications in the field of European law and international law, particularly concerning the status of foreigner, human rights and selected issues of UE migration policy.

E-mail: zdanowicz@uwb.edu.pl

**Mieczysława Zdanowicz** – doktor habilitowana, profesor na Wydziale Prawa Uniwersytetu w Białymstoku. P.o. kierownika Katedry Prawa Europejskiego na Wydziale Prawa Uniwersytetu w Białymstoku, Dziekan Wydziału Ekonomiczno-Informatycznego w Wilnie, Uniwersytetu w Białymstoku, członkini Rady do spraw Uchodźców I kadencji. Autorka licznych publikacji z zakresu prawa Unii Europejskiej i prawa międzynarodowego, szczególnie dotyczących statusu cudzoziemca, praw człowieka oraz wybranych zagadnień polityki migracyjnej UE.

Adres e-mail: zdanowicz@uwb.edu.pl

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