The Reform of the European Citizens' Initiative

BRINGING THE ECI BACK ON TRACK IN 2022

Carsten Berg, Thomas Hieber

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Imprint

The Reform of the European Citizens' Initiative
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By Carsten Berg and Thomas Hieber
Commissioned by THE LEFT in the European Parliament

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Abstract

In April 2022, the European Citizens' Initiative celebrates the ten-year anniversary of its introduction. It is the world's first transnational, democratic participatory mechanism. Since the Lisbon Treaty came into effect in December 2009, the European Citizens' Initiative forms part of the primary law. However, the citizens could only effectively make use of this instrument as of April 2012, after the European legislature laid down the provisions for the procedures and conditions to implement citizens' initiatives in Regulation (EU) N° 211/2011. The upcoming anniversary should be taken as an occasion to pass the preceding years in review. In our opinion, the European Citizens' Initiative has so far not been able to do adequate justice to the aim of strengthening the participation of the citizens in democratic life. The object of the present study is to cast a critical eye over the weak points of the instrument of the European Citizens' Initiative and to show options for improvement. In the first instance, there is a need for action relating to the registration process. Despite the repeated voicing of criticism on the matter from civil society in the past, the registration continues to act as a bottleneck for many (planned) citizens' initiatives. In particular, improvements can be made here through the strengthening of legal protection. A further aspect relates to the digital dimension of the European Citizens' Initiative. Without the option of the online collection of statements of support, the organisers of European Citizens' Initiatives are, in practical terms, unable to gather a million signatures within the given time period. Individual Online Collection Systems have made an essential contribution to the success of European Citizens' Initiatives. Nevertheless, the European legislature wishes to make this option available only for citizens' initiatives registered before the end of 2022. This would represent a major setback for the European Citizens' Initiative and should be prevented. It should be ensured in the same vein that the organisers of citizens' initiatives can participate in the policy formation of the Union under equal conditions. In particular, there are great disparities relating to the available financial resources. It is clear that, ultimately, the costs of implementing a citizens' initiative stand in stark contrast to the weak legal effects of a successful citizens' initiative. There are, therefore, only relatively low incentives for European civil society to use the instrument of the citizens' initiative more intensively. A remedy could be provided by linking successful citizens' initiatives to randomly selected citizens' assemblies. Conceivably, the European legislature could be made to address successful citizens' initiatives directly in future. Maintenance of the status quo is certainly not a forward-looking approach.

The Reform of the European Citizens' Initiative

I. Existing Situation

The introduction of the European Citizens' Initiative into the Treaties on European Union made an auspicious promise to European civil society. It is the world's first transnational instrument of participatory democracy. Article 11 Paragraph 4 of the Treaty on European Union (TEU) enables Union citizens numbering not less than one million who are nationals of a significant number of Member States to take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties. The postulate of taking decisions in the Union as closely as possible to the citizens is thereby intended to start to turn into reality. To date, European civil society could participate primarily in consultations, and then only on themes specified by the institutions. By contrast, the European Citizens' Initiative grants the opportunity to seize the initiative in shaping the political agenda of the European Union for the first time. The European Citizens' Initiative was thus greeted euphorically in the initial phase, following the entry into force of Regulation (EU) N° 211/2011, in which the particulars for implementing a European Citizens' Initiative were set down.

In the first year, 16 initiatives were registered. Subsequently, however, the number of registered initiatives consistently fell. A slight upward trend was recorded at the start of 2019, which was clearly due to the European elections held in May of that year. Thanks to the early warnings of democracy activists and non-governmental organisations, a reform of the regulation on European Citizens' Initiatives was initiated, which finally led to the enactment of Regulation (EU) 2019/788. This reform has, however, not resulted in an effective upswing. Finally, the coronavirus pandemic led to the grounding of the European Citizens' Initiative. At present, only very subdued activities are being recorded. The overall findings are concerning. At the last update on 15th January 2022, a total of 110 registration applications have been made in nearly 10 years, 86 of which were declared as admissible. Only seven European Citizens' Initiatives succeeded in collecting more than a million signatures in the scheduled time.[1] Only two initiatives have arguably led to the adoption of legal acts at EU level, whereby it is doubtful to what extent this can actually be determined. The figures stand in odd contradiction to the marketing slogans of the Commission (the slogan on the official website of the European Citizens' Initiative reads: *'Get a greater say in the policies that affect your lives. The European Citizens' Initiative is a unique way for you to help shape the EU by calling on the European Commission to propose new laws.')* In view of the facts, one might draw the conclusion that the voice of the citizens may not necessarily be welcome in the European Union. The European Citizens' Initiative appears to be a blunt sword: Organisers must go through a tedious and resource-

[1] The Commission has until now dealt with the following initiatives: *'Right2Water'*, *'One of Us'*, *'Stop Vivisection'*, *'Ban Glyphosate'*, *'Minority SafePack'* and *'End the Cage Age'*. There is also the initiative, *'National Regions'*, which has successfully passed the verification process of the national authorities, but has not yet been submitted to the Commission. The initiative *'Save Bees and Farmers'* is at present still undergoing the verification process.

intensive procedure, while the European Citizens' Initiative has hardly any significant legal effect. There are, therefore, few incentives for organised civil society to appropriate the European Citizens' Initiative.

There is an urgent need for action if one wishes to take participatory democracy at the European level seriously and prevent the provisions on the European Citizens' Initiative from becoming a *'lettre morte'.* The European Citizens' Initiative, which to an extent exemplifies the right way collectively to negotiate participatory and representative democracy, however requires a fundamental overhaul. The primary law provisos in Article 11 Paragraph 4 TEU have proved to be poorly conceived. They resulted from a last-minute compromise within the framework of the Constitutional Convention between proponents of the introduction of direct democratic instruments and their adversaries (for details, see Hieber, 2014). Unlike most of the other submitted reform proposals, however, the provisions on the European Citizens' Initiative were never the object of a comprehensive debate in the work groups of the Convention. Probably in order to facilitate decision making, the rights of request of the European Parliament and Council, see Articles 225 and 241 of the Treaty on the Functioning of the European Union (TFEU), were simply taken as an orientation. No more than an agreement in principle was reached. The clarification of any details should, as provided for in Article 24 Paragraph 1 TFEU, be transferred to the European legislature. It is perhaps due to the fact that the proposal should comply with wishes pursuant to direct democratic participation that the European Citizens' Initiative was likewise first classified as a direct democratic instrument. This categorisation is, however, false and at best misleading, since the final decision on the handling of the requests of a European Citizens' Initiative remains in the hands of the representative institutions of the Union (for details, see Berg, 2022).

This misconception was subsequently adopted in the legislative debates on the regulation on the European Citizens' Initiative. The fact that, at the time, a simultaneous, vigorous debate was taking place in Switzerland on the so-called Minaret Initiative, which was followed intently within the European Union and led to the fear - which later proved to be unfounded - that the European Citizens' Initiative could feed populist and anti-European initiatives, may have played a significant role in this connection. At the same time, the European legislature had barely used the legislative process to address properly the nature of the European Citizens' Initiative and the question of how it could best be integrated into the institutional structure of the European Union. This would have been all the more appropriate, since there was no precedent case regarding the European Citizens' Initiative on which to orientate oneself. The Regulation (EU) N° 211/2011 was adopted in record time. Within little more than ten months of submission of the Commission's proposal, the regulation was enacted. All of these issues have led to the European Citizens' Initiative developing into a highly asymmetrical instrument. On the one hand, the European Citizens' Initiative is subject to disproportionately strict procedural conditions. On the other hand, a European Citizens' Initiative has hardly any legal effects. Comparably strict procedural requirements are, in nation states, only set for direct democratic instruments whereby laws are intended to be passed without the participation of the representative legislature. The present study is, therefore, concerned with the formulation of a proposal for the reform of the European Citizens' Initiative, on the one hand to enable greater participation of the Union citizens and, on the other hand, to guarantee a more balanced relationship between the rights and duties of the organisers of a European Citizens' Initiative.

In the following, the weak points in the individual process steps requiring particular attention are thus addressed and corresponding proposals for reform are outlined.

II. Shortcomings of the Registration Process

The first procedural stage which planned citizens' initiatives must go through is the registration process. Within the framework of this process step, the Commission pursues especially the question of its competence to submit a proposal for a legal act of the Union on the planned European Citizens' Initiative, in order to implement the Treaties. This process step turns into a bottleneck for many planned citizens' initiatives (see **1.**). Furthermore, there is a significant lack of judicial protection which has yet to be addressed (see **2.**). Lastly, there is a need for clarification on the question of the extent to which treaty amendments can be proposed by a European Citizens' Initiative (see **3.**).

1. The Registration Process as a Hurdle to Participation in the Democratic Life of the Union

The design of the registration process has been highly disputed from the outset and, in its current form, has proved to be a significant hurdle to implementing European Citizens' Initiatives and participating in the democratic life of the Union.

The primary law provisions on the European Citizens' Initiative do not stipulate mandatorily the implementing of such a registration process, but also do not prevent the introduction of such a procedural stage at the secondary law level. The current regulation on the European Citizens' Initiative specifies that an initiative can only be registered and admitted for the collection of signatures if, in particular, certain content specifications are met. Concretely, Article 6 Paragraph 3 of the Regulation (EU) 2019/788 provides that (i) none of the parts of the initiative manifestly falls outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties, (ii) the initiative is not manifestly abusive, frivolous or vexatious and (iii) the initiative is not manifestly contrary to the values of the Union as set out in Article 2 TEU and rights enshrined in the Charter of Fundamental Rights of the European Union. These provisions have remained essentially unchanged since the entry into force of the first regulation on the European Citizens' Initiative of April 2012. In practice, however, so far exclusively the first test point has been of relevance for the Commission.

In a number of respects, the applicable regulations hinder the implementation of European Citizens' Initiatives and therefore, to a significant extent, participation in the democratic life of the Union. Inasmuch as these various aspects are closely related, an overall consideration is crucial.

The reference to the Union's competences is in general self-evident, since, under the principle of conferral pursuant to Article 5 Paragraph 2 TEU, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. However, the question of specific areas for which the Union has competence can, in practice, often be very difficult to answer, even for experts. A further complication is that the registration can only be rejected if there is an obvious breach. For this reason, it is not readily possible to gain an orientation from the nevertheless comprehensive jurisdiction of the European courts on the Union's competences. In practice, this special assessment standard has thus led to extensive, parallel decision-making practices (see Clausen, 2019).

The General Court (GC) has clarified in this connection, furthermore, that the decision on the registration of a planned European Citizens' Initiative requires an initial assessment of the concerned initiative and

does not pre-judge the assessment carried out by the Commission in the context of its final notification (GC, 2021). The Commission has retained an option to reject a successful initiative, which has managed to collect a million signatures within a year, due to (presumed) lack of competence. In the past, the Commission has discarded successful initiatives such as *'Right to Water'* (partly) for this reason.

This approach is problematic for a number of reasons. Organisers regularly proceed from the assumption that the initiative planned by them has competence and, partly trusting in this, use significant resources to implement campaigns and collect Europe-wide statements of support. There may be considerable potential for frustration if the organisers of a successful European Citizens' Initiative are, in the final assessment, confronted with the Commission's appraisal that their projects are in breach of competences. Even if on complaint of the organisers it were to be judicially determined that such an assessment of the Commission were contrary to law, such a ruling would not necessarily serve the organisers. The Commission would have the further option of rejecting the adoption of a legislative proposal for other reasons. The Commission is provided with a very broad margin of discretion in this respect. The legal control carried by the European Court of Justice (ECJ) is limited to the question of whether the decision of the Commission was manifestly inappropriate for the purpose of achieving the goals of the concerned initiative (ECJ, 2019). The option of carrying out a comprehensive assessment of the competence of a successful initiative at this juncture is also contrary to the will of the European legislature. In order to avert political weariness of the citizens and a waste of resources, an admissibility check should be made before the start of the collection of signatures. To this extent, these goals stand in clear contradiction to the manner in which the European courts have organised the registration process.

Finally, the institutional design of the registration process is also problematic. The Commission is simultaneously responsible for implementing the registration process and for deciding whether a legislative proposal on an initiative should be adopted. This dual competence contains the considerable risk of the Commission falling into a conflict of interests. This is especially the case if a planned initiative is in opposition to their own policy goals to a significant extent. There have already been a number of initiatives in the past whose registration was rejected by the Commission based on legally doubtful considerations - even though the GC and ECJ in all these cases annulled the unfavourable decision of the Commission. The present options for judicial protection are now insufficient, however, if an initiative wishes to take advantage of political momentum and address a specific political project in good time. This constellation arose explicitly with the European Citizens' Initiative '*Stop TTIP*'. This initiative aimed at that time to block the trade and investment protection treaties TTIP and CETA by way of the Commission recommending the Council to cancel the negotiating mandate of the TTIP agreement and not conclude the CETA agreement. The Commission rejected the registration of this initiative in summer 2014. The GC annulled the Commission's decision, but not until May 2017, however, i.e. after around three years. The initiative would therefore not have been able to achieve its goals in the short term. The GC also refused to comply with a corresponding application of the organisers for interim relief, since such a request would, in this case, have exceeded the request in the main proceedings. If the organisers had waited for the ruling of the GC, it would subsequently have been no longer possible to hinder the two trade agreements with the help of the European Citizens' Initiative - the CETA agreement was ratified in October 2016 by the European Council, the Commission and Canada. The only remaining option for the organisers was thus to start an 'informal' European Citizens' Initiative in parallel to the court proceedings,

i.e. a Europe-wide collection of signatures in support of their wishes, which would not, however, have obligated the Commission to assess a corresponding, submitted recommendation. The court case was, finally, only conducted in order to make clear the legitimacy of the organisers' requests.

The most important point for suitably tackling the aforementioned problems is the resolution of the conflicts of interest to which the European Commission may be subject in the registration process. The most effective way would be to transfer the assessment of the competences of planned initiatives to other institutions or bodies of the Union. For reasons of political balance, it would in any case be crucial for the assessment of initiatives to be made by another institution of the Union. The ECJ undisputedly has the greatest competence in this connection. This would, however, envisage a change to the Treaties, since the ECJ can only use the relevant powers conferred on it by the Treaties. It can be assumed that extending the powers of the ECJ in the primary law is at present not politically feasible. It could also be considered to entrust the European Ombudsman with this task. An argument against this would be, however, that this institution does not possess similar political legitimacy to the Commission or the ECJ.

The negative effects of any conflicts of interest must therefore be prevented by different means. Insofar as there is a risk of the Commission delaying European Citizens' Initiatives by refusing registration, in our opinion this can be best counteracted through the introduction of a fast-track procedure (see Weiler, 1997). The courts must then decide by a specific deadline, such as within six months, on an action for annulment on the admissibility of the Commission's registration decisions. Such a regulation would be possible through an adjustment of the ECJ Statute, in which the main procedural regulations of the European courts are laid down. However, the ECJ Statute likewise involves primary law provisos (see Protocol No. 3 on the Statute of the ECJ). Unlike a possible extension to the powers of the ECJ, an amendment to the ECJ Statute could be made through the ordinary legislative procedure, see Article 281 TFEU.

In order to protect the legitimate expectations of the organisers of citizens' initiatives from rejection by the Commission of successful European Citizens' Initiatives due to (presumed) lack of competence, there should be clarification in the secondary law provisions on the European Citizens' Initiative to the effect that the assessment of competence within the framework of the registration process is conclusive. The Commission should accordingly no longer be able to call competence into question in their political and legal conclusions on a successful European Citizens' Initiative. If the Commission takes the view that an initiative in part lacks competence, pursuant to the applicable regulations it may still partially register an initiative. In light of this, there should more than ever be no reason to reject an initiative at a later date due to lack of competence.

At long last, there is a need for further action to enable Union citizens to submit European Citizens' Initiatives effectively which can successfully get through the registration process. Article 4 Paragraph 2 of the Regulation (EU) 2019/788 provides for the establishment of a platform which, among other things, allows Union citizens to submit their planned initiatives for legal assessment. This platform, however, does not appear to be sufficient. For one thing, the legal analyses developed on this platform do not bind the European Commission. For another, the analyses made available often prove not to be reliable in content. It would therefore be of great assistance if the Commission were in addition to provide guidelines clarifying under what conditions citizens' initiatives have competence. Such a concept is already well-known in other

areas of European law. The Commission has, for example, issued comprehensive guidelines in the area of competition law and state aid legislation to facilitate the adherence of companies to the relevant primary law provisions. The application of the principle of equality would then require the Commission to comply with these guidelines within the framework of its decision-making practice. In this way, the organisers of a citizens' initiative could be facilitated in formulating their planned initiatives in accordance with the Union's competences. Simultaneously, the predictability of the Commission's behaviour could be improved and lastly participation in the democratic life of the Union thereby more actively promoted.

2. Lack of Judicial Protection

A variety of decisions of the European Court of Justice demonstrate that effective legal protection is guaranteed in decisions where the Commission rejects the registration of planned European Citizens' Initiatives. By contrast, the legal protection deficits arising for organisers if the registration decisions of the Commission adopted in their favour are contested by Member States have, despite their great practical relevance, until now hardly gained attention in the discussions around the European Citizens' Initiative.

For example, the ECJ rejected a proposal of the citizens' committee of the European Citizens' Initiative *'Minority SafePack'* for admissibility as an intervener in the legal dispute between Romania and the Commission, in which Romania requested the annulment of the registration of this initiative (ECJ, 2018). The ECJ nevertheless recognised that the citizens' committee would have had a legitimate interest in participating in these proceedings. It referred to Article 40 of the ECJ Statute, however, pursuant to which the admissibility of natural and legal persons as interveners in legal disputes between Member States and the institutions is not permitted and also rejected an exemption benefiting European Citizens' Initiatives.

This decision turns out to be highly problematic from the perspective of the organisers of European Citizens' Initiatives. Though it is the organisers who are affected first and foremost by the outcome of such proceedings, they have no opportunity whatsoever to introduce their version of events into the process. There is also no guarantee whatsoever that the Commission will adequately observe their interests. This became especially visible in these proceedings, since the Commission at first rejected the registration of this initiative and only registered this initiative after the GC had declared the Commission's adverse decision as unlawful. There is just as little guarantee that other Member States, who may enter such proceedings, will observe the interests of a concerned European Citizens' Initiative. It remains at the sole discretion of the Member States whether they wish to support the Commission or not. For practical reasons, it is also of great importance for the organisers to be put in a position to participate in such proceedings. In particular, an action for annulment has no suspensory effect relating to the procedure of the European Citizens' Initiative. This means that the organisers, in spite of an ongoing legal case, must start by collecting statements of support and thus use significant resources, if they do not wish to forfeit their right to implement a European Citizens' Initiative through expiry of the term, whilst simultaneously being in a situation of uncertainty as to whether the registration decision will possibly be nullified once again. This uncertainty can be protracted if, as in the case of the European Citizens' Initiative *'Minority Safepack'* the complainant Member State has filed an appeal against the court's ruling.

In such a situation, there is also no factual reason to justify excluding the organisers of a European Citizens' Initiative from such legal disputes between the institutions and the Member States. The rule has been established in the past that the institutions and Member States should settle disputes of a constitutional nature between themselves (Laut, 2014). In view of the advanced level of integration, the permanent commitment of the institutions to strengthening the rule of law and the goal of greater participation of the Union citizens in the democratic life of the Union, it is anachronistic to continue to hold onto this reservation. Besides, it is evident that this approach is inconsistent with regard to the European Citizens' Initiative. The same questions, especially the question of competence, are negotiated with the participation of the Union citizens in the reverse situation of the Commission rejecting the registration of a planned European Citizens' Initiative (see also Clausen, 2019). In the light of these results, therefore, Article 40 of the ECJ Statute should be re-formulated to the effect that the organisers of European Citizens' Initiatives should not be excluded from admission as interveners in legal disputes between Member States and EU institutions whose object is the concerned European Citizens' Initiative.

3. Treaty Amendments

Until now, the question has not been conclusively clarified as to what extent the option exists to work toward an amendment to the Treaties with the help of a European Citizens' Initiative. This means, in particular, the initiating of treaty changes by way of the ordinary revision procedure pursuant to Article 48 Paragraph 2 TEU. The primary law provisions of Article 11 Paragraph 4 TEU and Article 24 Paragraph 1 TFEU do not expressly exclude this. The ECI Regulation has not received any closer clarification in this respect. The European legislature, which indeed could not reach agreement on a definite position for this question, has in this respect limited itself to reproducing the wording of Article 11 Paragraph 4 TEU. The European courts have also not yet had the opportunity to comment on this question. In contrast, the Commission presumes in its decision-making practice that it is not possible based on the existing regulations to initiate treaty amendments by way of a European Citizens' Initiative. The decision-making practice of the Commission is, however, not consistent. In individual cases, the Commission has registered initiatives whose realisation is only achievable by way of an amendment of the constitution (European Commission, 2013). In view of the unclear legal position of this highly relevant, practical question, legislative clarification is vital.

Interpretation of the European Treaties suggests that European Citizens' Initiatives can also initiate Treaty amendments: Article 48 Paragraph 2 TEU is undisputedly a legal basis in the Treaties enabling the Commission to accept proposals pursuant to Article 11 Paragraph 4 TEU which are directed toward the adoption of legal acts of the Union. Specifically, such a proposal would be aimed at the European Council adopting a decision ordering the assessment of the proposals by a Convention. Such a decision would also be a legal act in the meaning of Article 11 Paragraph 4 TEU. Pursuant to the jurisdiction of the ECJ, it is irrelevant in this respect whether it involves an act of legislation or other legal act. Likewise, it has no effect on the assessment toward whom such a legal act is directed (GC, 2017). Unlike the individual voices in the literature suggest, it cannot be replied to such initiatives that their true objective is a Treaty amendment which for its part does not represent a legal act of the Union (Athanasiadou, 2019). In a purely formal sense, in particular it would be solely a matter of the adoption of a European Council decision. 'Long-term goals' in this meaning do not need to be taken into consideration in the assessment of legality. In addition, the

requirements in Article 11 Paragraph 4 TEU, pursuant to which the respective citizens' initiative must be for the purpose of implementing the Treaties, do not preclude the registration of such citizens' initiatives. This is supported especially by the fact that the Treaties are aimed at continued development. It follows more or less from Article 1 TEU, pursuant to which *'the Member States confer competences to attain objectives they have in common'* and the Treaty on European Union represents *'a new stage in the process of creating an ever closer union among the peoples of Europe'* (Bieber, 2015). This would particularly apply to European Citizens' Initiatives, which are aimed at realisation of the values and goals embedded in Article 2 TEU. It quite clearly represents an implementing of the Treaties (Dougan, 2011).

Furthermore, the meaning and purpose of the European Citizens' Initiative should be taken into consideration here. The GC has indicated in the legal case *'Stop TTIP'* that the goal of the European Citizens' Initiative consists in enabling the Union citizens to strengthen their participation in the democratic life of the Union and encouraging democratic debate in the institutions (GC, 2017). It thus appears nonsensical to draw an artificial delimitation to the effect of which areas of debate Union citizens can and cannot involve themselves in regarding the design of the Union (see also Organ, 2014). Such an antithetical understanding would result in the citizens of the Union, of all things, being excluded in this respect from participating in the democratic life of the Union in the most important questions. It seems, ultimately, that no particularly great emphasis should be placed on this feature, in more general terms, since the GC presumes that the initiative serves the implementation of the Treaties if, as with *'Stop TTIP'*, it is directed toward reversing certain legal acts.

III. Strengthening of European Citizens' Initiatives by the Collection of Signatures

There is a substantial need for action regarding the phase of signature collection, relating both to the digital dimension of the European Citizens' Initiative (see **1.**) and the question of financial support for European Citizens' Initiatives (see **2.**).

1. The Digital Dimension of the European Citizens' Initiative

The option of EU-wide collection of statements of support for European Citizens' Initiatives through Online Collection Systems, as provided for in Articles 10 and 11 of the Regulation (EU) 2019/788, represents one of the most important elements for ensuring the success of the instrument of the European Citizens' Initiative. In practice, approx. 70% of the statements of support for European Citizens' Initiatives submitted to the Commission are collected online.[2] The introduction of these Online Collection Systems stems decisively from the initiative of the European Parliament and civil society organisations. On that note, the European Citizens' Initiative is the first official citizens' initiative process in Europe to provide a digital procedure for collecting statements of support.

[2] The surveys carried out for this study of those ECIs which have achieved at least a million signatures yield the following online quotas: 84% for *'Water is a Human Right'*, 35% for *'One of Us'*, 61.5% for *'Stop Vivisection'*, 79.6% for *'Ban Glyphosate'*, 94.6% for *'End the Cage Age'*, 58.4% for *'Minority SafePack Initiative'* and 89% for *'Save Bees and Farmers'*.

Specifically, statements of support can be collected either using so-called individual Online Collection Systems (Art. 10 Regulation (EU) 2019/788) or a central Online Collection System (Art. 11 Regulation (EU) 2019/788). Provided that the provisos of the Regulation on the European Citizens' Initiative are observed, individual Online Collection Systems can be set up by the organisers of European Citizens' Initiatives themselves, while the central Online Collection System is made available by the Commission.

In the early days, only the Commission's central Online Collection System was made available to the organisers of European Citizens' Initiatives. An effective use was not possible in the first year, which is why the Commission extended the collection deadline for the first European Citizens' Initiative by half a year out of hand, though this option was not expressly provided.

The Commission's central Online Collection System also subsequently fell short of expectations for realising effective and sustainable online campaigning (see Merz 2014, Dutoit 2014, Berg/Thomson 2014, Giegold 2018). Due to this unsatisfactory situation, in 2015 a group of non-governmental organisations partnered to set up an individual Online Collection System, the so-called OpenECI software. The OpenECI software has been continuously developed since then and is available to all interested ECI organisers. To date, the OpenECI software is the only independent alternative to the central collection system of the Commission.

Subsequently, the European legislature took the reform of the Regulation on the European Citizens' Initiative in 2018/2019 as an occasion to ban the use of individual Online Collection Systems in future for all planned European Citizens' Initiatives registered after 31st December 2022 (see Article 11 Paragraph 7 Regulation (EU) 2019/788). This provision turns out to be highly problematic, however, since it rests on false and/or incomplete premises. The cost estimates used by the Commission as a basis for the use of individual Online Collection Systems were a number of times higher than in fact applicable. Thus, the costs of the organisers of European Citizens' Initiatives for use of an individual Online Collection System were estimated at EUR 16,000 to 51,000 (see European Commission, 2017b), while the actual costs were only a maximum of EUR 5,000. At the time of decision making, in addition, no reliable numerical data whatsoever was present on the frequency of use, i.e. effective use of the individual Online Collection Systems, which led the Council to make the erroneous conjecture that individual Online Collection Systems would not be used, which is demonstrably not the case.

On the contrary, an examination of the facts shows that the use of individual online systems also absolutely must be secured after expiry of the legal deadline. As already indicated, the OpenECI software was designed and since then has been continuously developed by IT experts, who are themselves experienced organisers of citizens' initiatives. Based on their own experience as campaigners, they created the OpenECI software as an individual Online Collection System to meet the requirements of challenging online campaigns in order to reach as many citizens as possible and maximise the chances of success for European Citizens' Initiatives. Unlike the Commission's central Online Collection System, there is some opportunity for the decentralised use of the OpenECI software on various websites. This is of great value in collecting signatures, since citizens are more prepared to submit a statement of support within a familiar and trusted context than on an external website they do not know. Thanks to this decentralised system, the number of signatures collected on the individual websites can also be traced. Simultaneously, it thus enables better identification of which online campaigns, e.g. a targeted

mass-mailing, are successful or not, because the citizens' digital behaviour is measurable through the individual Online Collection System. Using the OpenECI software, conversion rates and other data can be read off,[3] which is of elementary importance in improving and increasing the reach of digital campaigns for a particular European Citizens' Initiative. The central Online Collection System of the Commission, in comparison, is a *'black box'*, since no anonymised data is available which would allow inferences to be drawn on user behaviour relating to mobilisation campaigns. Similarly, the central Online Collection System does not permit the adjustment of online campaign strategies, in order to promote the collection of statements of support in favour of a particular European Citizens' Initiative.

Side Note:

Since the reform of the Regulation on the European citizens' initiative, the organisers may collect the email addresses of the signatories, subject to their explicit consent, together with the statements of support, of course without the right to support an initiative depending on consent to collect the email address (see Article 18 Paragraph 2 Regulation (EU) 2019/788). The organisers can in this way keep the supporters updated on the further course of the respective citizens' initiative. At the same time, a contribution can thereby be made to developing the European public sphere. These email addresses must, however, be erased at the latest 36 months after the Commission has issued its notification (see Article 19 Paragraph 8 Regulation (EU) 2019/788). This deadline turns out to be much too short in practice to be able to follow the development of a citizens' initiative over the whole legislative cycle. For example, the Commission issued its notification on the citizens' initiative 'Right2Water' in March 2014. The corresponding legislative processes were however only concluded seven years later in 2021. Furthermore, if one considers that this case involved the adoption of a directive, then proposed legislation can effectively only be regarded as concluded if one includes its implementation in the Member States. By the very nature of the matter at hand, it would be more reasonable to apply the general data handling policies pursuant to Article 5 Paragraph 1 (e) GDPR, in which the relevant data may be stored for the time necessary to achieve the purposes, specifically here the informing of supporters. Under this solution, pursuant to Article 17 GDPR the individual supporter would of course remain free to exercise their right to erasure of their data at any time.

In addition to these specific advantages of individual Online Collection Systems compared with the central Online Collection System, there are also systemic advantages, which are of considerable significance for the continued development of the digital dimension of European Citizens' Initiatives. The mere existence of various forms of Online Collection Systems generates competition and sets incentives for innovation, thereby promoting the quality of the different systems and overall strengthening the

[3] Conversion rates denotes the percentage of recipients of a mass mail, in which support for a particular European Citizens' Initiative is requested, who follow this request.

online dimension of the instrument of the European Citizens' Initiative. The Commission's central Online Collection System has already been significantly improved in the past, based on the experience gained with the individual Online Collection Systems. The Commission has adopted a whole series of features which the individual Online Collection Systems had first used, such as the option to submit statements of support by smartphone, the integration of user-friendly error management or the option likewise to invite friends on social media to support the respective citizens' initiative. All of these are measures which considerably increase the prospects for success of a European Citizens' Initiative. The existence of various Online Collection Systems is therefore more advantageous for the instrument of the European Citizens' Initiative than a monopoly structure in which only the Commission would provide a single collection system and no longer have any incentives at all to carry out further development and optimisation. The choice between various Online Collection Systems would in this respect also relieve the Commission of the suspicion that as the addressee of European Citizens' Initiatives it possibly had no interest in further utilising the potential of Online Collection Systems. On that note, as conceded in a study ordered by the Commission, the security of the entire Online Collection System is increased if there is a variety of Online Collection Systems and therefore no *'central point of attack'*, i.e. no single weak point of a system (see European Commission 2017a; Sahoo, 2021).

Practical experience also favours the maintenance of individual Online Collection Systems. The figures show that the organisers of European Citizens' Initiatives make good use of individual Online Collection Systems. Since their introduction in 2015, approx. 78% of online signatures of citizens' initiatives submitted since then were collected by this method.[4] The citizens also offer a great amount of support to the individual collection systems at the same time. More than two thirds of participants in the public consultation of the Commission on the reform of the European Citizens' Initiative recommended maintaining individual Online Collection Systems as an option alongside the central Online Collection System provided by the Commission (European Commission, 2017b).

If the European legislature is genuinely concerned about strengthening civil society engagement at European level, it is thus absolutely vital to guarantee the future use of individual Online Collection Systems. There are fears that civil society organisations will refrain from launching and supporting European Citizens' Initiatives in future if this option in fact ceases (Banks, 2019). Without the help of civil society organisations, however, it would be more or less impossible to use the European Citizens' Initiative effectively. It would signify a massive setback for the European Citizens' Initiative and participatory democracy at European level if in future statements of support could only be collected using the Commission's central Online Collection System.

2. Financial Support for (Successful) European Citizens' Initiatives

The financial dimension of the European Citizens' Initiative has received relatively little attention until now in the reform discussions. The successful implementation of a European Citizens' Initiative depends to a great extent on the organisers having the necessary financial resources available. According to

[4] If one furthermore considers the citizens' initiatives '*Save Bees and Farmers'* and *'National Regions',* proceeding from the figures, which have not yet been verified, approx. 64% of all online signatures were collected with individual Online Collection Systems (see Berg, 2022, and the surveys carried out for this purpose).

various estimates, initiatives should budget a contribution of at least EUR 100,000 for the purpose of implementing a European Citizens' Initiative (see Berg & Glogowski, 2014). The successful European Citizens' Initiatives so far dealt with by the European Commission spent on average approx. EUR 230,000. Only larger civil society groups with a certain level of organisational power can de facto afford this expenditure. So-called grassroots movements find themselves at a disadvantage to this extent and are prevented from launching European Citizens' Initiatives due to the corresponding financial expenditure. The actual basic preconditions for exercising the right to implement a European Citizens' Initiative are thus highly unequally distributed, such that Union citizens do not possess equal opportunities to be involved in the democratic decision making of the Union. This stands in manifest contradiction to the right of equal participation in policy forming pursuant to Article 9, first sentence TEU. There is therefore an urgent need to take measures to counteract this situation. Contrary to the claims of especially the European Commission, the support measures which the organisers of European Citizens' Initiatives may receive from the EU institutions are insufficient even to ensure approximately comparable democratic conditions of competition. The phase of collecting statements of support requires the most resources. In particular, the implementation of (online) campaigns to attract attention for the respective political project and win over citizens is highly cost-intensive. This is all the more challenging since an overwhelming majority of citizens of the European Union have never heard of the instrument of the European Citizens' Initiative (see e.g. Eumans, 2021). It is hardly convincing when the Commission holds that it is inappropriate for the EU institutions, which are potentially to implement a European Citizens' Initiative, to equip it with financial resources (European Commission, 2015). If the institutions already support citizens' initiatives with contributions in kind, it does not follow that monetary payments should be treated differently in this respect. Besides, the financial supporting of participatory democratic processes is not unusual. Various Member States have likewise adopted such regulations (see, for example, Gilland Lutz & Hug, 2010; Braun Binder, 2015).

Regarding the type of financial support, there are several conceivable approaches. The European Parliament has in this respect proposed making the funding programmes, *'Europe for Citizens'* and *'Rights, Equality and Citizenship'* accessible for European Citizens' Initiatives (European Parliament, 2015). In fact, this option is potentially now open to ECIs in the re-issued programme *'Citizens, Equality, Rights and Values'*, into which both the other programmes in the meantime have merged. It is problematic in this respect, however, that the decision on the awarding of financial resources lies in the hands of the Commission. The conflict of interest identified above, in which the Commission already finds itself, would thereby be reinforced. In addition, this approach would once again favour groups with greater organisational power. It would appear preferable, therefore, as within the context of party financing, to grant a right of cost reimbursement orientated on the total number of collected statements of support. A right of cost reimbursement should only be open to the organisers if they bring together a certain minimum number of statements of support. It would be inappropriate only to award a claim for expenses if the organisers succeeded in gaining a million statements of support, however, since well-organised groups would still be privileged in this constellation. As regards the amount of the cost reimbursement, it would likewise be inexpedient if all costs were repaid to European Citizens' Initiatives. It would contradict the meaning and purpose of the European Citizens' Initiative if the institutions were to bear all of these costs, ultimately such an initiative should predominantly be supported by the citizens and civil society.

IV. Legal Impact of a Successful European Citizens' Initiative

A major reason for the lack of interest of organised civil society in the European Citizens' Initiative is the massive discrepancy between, on the one hand, the logistical and bureaucratic costs associated with implementing a European Citizens' Initiative and, on the other hand, the weak legal effects of a successful citizens' initiative. In order to set incentives for greater participation, it would seem necessary to strengthen the legal effects of successful European Citizens' Initiatives. From our perspective, there are a variety of promising approaches in this respect. A first step would be the linking of the instrument of the European Citizens' Initiative to randomly selected citizens' assemblies (see **1.**). In a further step, the European Citizens' Initiative should be further developed so that submissions of legislative initiatives can in future be aimed directly at the European legislature (see **2.**).

1. Complementing European Citizens' Initiatives with Randomly Selected Citizens' Assemblies

For more than ten years, the use of deliberative participation procedures in the form of randomly selected citizens' assemblies has been constantly increasing across the world (see OECD, 2020). This means participation processes in which randomly selected citizens are, by the drawing of lots, invited by means of detailed and informed discussions transparently and collectively to develop recommendations to solve societal problems for the policy decision makers. In the recent past, especially the citizens' assembly in Ireland, the climate council in France and the permanent citizens' assembly in East Belgium have gained greater public attention. The *'deliberative wave'* (OECD, 2020) has now arrived on the shores of the European Union. The Conference on the Future of Europe, which has prescribed itself the goal of greater inclusion of the citizens of Europe, has likewise set up so-called Citizens' Panels and assigned them a central role (Conference on the Future of Europe, 2021a). It remains to be seen to what extent beyond the Conference on the Future of Europe citizens' assemblies can be integrated into the institutional system of the European Union. We would especially recommend the linking of the instrument of the European Citizens' Initiative with a citizens' assembly. Starting from the assumption of the ECJ that the added benefit of the European Citizens' Initiative should be to initiate public debates, there are certainly significant deficits in this respect (see the explanations below for details). A properly established and implemented citizens' assembly, which engages with the requirements of the European Citizens' Initiative in terms of content, can lend these debates greater depth of deliberation. The recommendations of a citizens' assembly may simultaneously provide the Commission and the other Union institutions with a comprehensive information base on the arguments for and against the respective initiative. The organisers, in contrast, naturally (and justifiably) convey their own version of events in the first instance (see Smith, 2021). The complementing of the European Citizens' Initiative with citizens' assemblies also provides an opportunity to collect further experiences with regard to a more comprehensive implementing of participatory deliberation processes at EU level. Until now, citizens' assemblies were only used at local, regional or national level. The introduction of a transnational citizens' assembly would represent a novelty, for which there is - apart from the Citizens' Panels within the framework of the Conference on the Future of Europe - no precedent case to draw on for reference.

In order to guarantee the proper functioning of such a citizens' assembly, a series of requirements must be fulfilled. In a first step, it is to be ensured that the selection of participants for the citizens' assembly is as representative and inclusive as possible, so that solutions can in this way be developed with the broadest possible support. It would therefore not be adequate to be limited to the mere application of the principle of random chance. In order to include a broad spectrum of various social perspectives in the deliberations and enable them to be voiced, it is necessary to illustrate a cross-section of the population in the European Union. A weighting of the random principle is thus required for this purpose. Certain socio-demographic criteria should be taken into consideration in the random selection, therefore, such as age, sex, education, socio-economic status and geographical origin. Depending on which themes the citizens' assembly will deal with, further criteria can also be used. Following the provisos for the European Parliament (see Article 14 Paragraph 2 TEU), considering the current level of integration the principle of degressive proportionality should likewise be applied in the composition of the members of the citizens' assembly (see Smith, 2021).

In order for a citizens' assembly to fulfil the requirement of the greatest possible representativeness, all citizens drawn by lot must actually be able to attend the meetings of the citizens' assembly. The citizens should therefore be financially compensated for their participation. The opportunity to participate should not depend on the economic circumstances of the individual. In this way, those population groups can at the same time be reached which often do not participate in policy formation processes, even when questions are being negotiated which first and foremost affect them. Similar compensation mechanisms exist at national level, such as for randomly selected jurors in the criminal courts.

The proper negotiation of the presented themes by the citizens' assembly requires that the participants have access to a sufficient level of information. It should not be presumed that all participants enter the deliberations with the required knowledge. This especially applies for European policy themes. It is therefore necessary to set up a panel of experts whose task is to instruct the members of the citizens' assembly comprehensively and impartially on the factual basis of the respective themes to be negotiated. Since, according to experience, highly intensive involvement with a specific theme leads to an additional need for information, the participants should likewise have the option of turning to the experts with further questions at any time during the deliberation process. Furthermore, the organisers of the respective citizens' initiative, as well as other relevant stakeholders, should have the option to represent their version of events. Which specific stakeholders should be consulted depends on the themes under scrutiny. To maintain the transparency and impartiality of the selected experts, their names, as well as their opinions, should be made publicly available.

The particular added benefit of a citizens' assembly consists among other things in the way that the deliberations and submitted recommendations are made free of external influences. It is important for this purpose that the impartiality of the executing agency is ensured. The EU institutions should therefore not themselves be involved in the establishing and implementing of the citizens' assembly. Regarding the private companies which are usually entrusted with the implementation of such citizens' assemblies, the independence from the client must in turn be guaranteed. In practice, however, this will in fact often present difficulties. Insofar as not stipulated by legal regulations, the question of process design itself is incumbent upon the client. Their decisions may however meet in individual cases with

political opposition from the other actors. To counteract possible conflicts, it is thus recommended to set up an independent monitoring board comprised of representatives of the various institutions, members of the citizens' assembly, representatives of the respective European Citizens' Initiative and other independent persons. This monitoring board should be granted the right to a say, in particular in the design of the procedure and all arising procedural problems. Furthermore, this monitoring board should - following the example of the Irish Citizens' Assembly - receive the task of co-designing the work programme of the citizens' assembly, deciding on the line-up of the experts' panel with suitable speakers and making all further information required available to the members of the citizens' assembly (see Constitutional Convention, 2013). The meaning and purpose of the monitoring board is among other things to ensure impartiality in the selection of experts and the general acceptance of the process. Similar institutions are already well-known in citizens' assemblies at national and/or regional level (see Citizens' Assembly 2021a; Staatsministerium Baden-Württemberg, 2021). Ideally, the monitoring board should be installed as part of a standing body, as is the case, for example, with the permanent citizens' assembly in East Belgium.

With reference to the course of the deliberations themselves, the best practices determined by the OECD should also be applicable at transnational level (OECD, 2020). Due to the citizens' assembly's composition of participants from various Member States, there are however particularities relating to the language regime used. Each individual should be able to express themselves within the framework of the deliberations in their own mother tongue. It can thus be ensured that each participant can voice their thoughts in the best possible way and contribute effectively to the deliberations. In addition, the circumstance can thereby be taken account of that not all of the participants can speak a foreign language (adequately).

Regarding the suitable time for convening a citizens' assembly, at least in theory each stage of the procedure of a European Citizens' Initiative would be thinkable. Not least in view of the significant expenditure of resources associated with implementing a citizens' assembly, it seems appropriate, however, only to consider those citizens' initiatives which have managed to collect at least a million statements of support pursuant to the provisions of the ECI Regulation.

A citizens' assembly could also at this juncture best complement the European Citizens' Initiative and overcome its existing weaknesses. According to the European Court of Justice, the meaning and purpose of the European Citizens' Initiative consists in initiating debates in the institutions of the European Union (ECJ, 2019). In particular, the meetings with the Commission, as well as the hearings before the European Parliament, should play a decisive role.

In practice, however, until now no or, if at all, only a very minor contribution was made here in these procedural steps. The meetings of the Commission with the organisers of successful citizens' initiatives take place to the exclusion of the public. The initiatives only receive a certain level of public attention if the lead organisations are able to provide corresponding publicity. The meetings themselves last no longer than 1-1.5 hours. Merely for this reason, a close examination of the concerns of the respective initiative does not seem possible. This is all the more applicable, the more extensive the requests with which the respective initiative approaches the European Commission. The meetings begin with the opening statements of one or more commissioners, which as a rule however amount to general political

remarks. The organisers then receive their opportunity to introduce their initiative in greater detail. If required, the European Commission then directs a few more questions to the organisers before the meeting is concluded.

The hearings before the European Parliament should, according to the intention of the European legislature, form the substantive component of the proceedings in which inter-institutional debates take place. Alongside the Commission, in addition the Council, other institutions and advisory bodies, the national parliaments and civil society can participate in this consultation (see Article 14 Paragraph 2 Regulation (EU) 2019/788). In practice, however, the hearings do not meet these criteria. The hearings before the European Parliament are indeed public (unlike the meetings with the Commission). All interested citizens can watch them on the internet. In fact, however, the interest is low. Generally speaking, no more than a few hundred people Europe-wide follow the hearings. Besides, the previous consultations have been characterised by a low level of in-depth deliberation. They are limited to the organisers essentially giving a talk on their own position. A detailed interaction with the European Commission does not take place. The representatives of the European Commission normally only present pre-prepared statements and for all other matters refer to their final political and legal conclusions. EU parliamentarians and other actors can likewise submit statements. A detailed reaction to all statements is as a rule, however, not possible. Extended deliberation is all the more impossible within this framework. The organisers use the hearings first and foremost to win over and mobilise the EU parliamentarians to their cause. Indeed, the hearing is an important moment of public encounter in this respect; but it does not allow in-depth, objective discussion.

From a formal viewpoint, the question arises of the exact timing after submission of a successful European Citizens' Initiative for a citizens' assembly to be held. Pursuant to Article 15 Paragraph 1 Regulation (EU) 2019/788, the European Commission has six months after public notice of the respective initiative to assess and present its legal and political conclusions. Within only a month of submission of the initiative, the Commission must meet the organisers at an appropriate level, and within three months it has the opportunity to introduce the initiative in a public consultation held by the European Parliament. Furthermore, Article 222 Paragraph 9 of the rules of procedure of the European Parliament provides for it to implement a plenary debate and decide by a resolution. The six-month deadline for issuing the conclusions of the Commission should be strictly observed to guarantee adequate time responsivity for the organisers of an initiative. Beyond that, we recommend the convening of a citizens' assembly as early as possible after submission of the respective initiative to ensure that the European Commission, as well as the other institutions of the Union, can take into consideration in their political positioning in the inter-institutional dialogue the information, knowledge and recommendations gained by the citizens' assembly. Ideally, this should happen prior to the hearing before the European Parliament, in order to uncover to the greatest extent its potential to promote inter-institutional debates.

In our opinion, the implementing of a citizens' assembly following the submission of a successful citizens' initiative should in principle be an obligation. The implementing of a citizens' assembly should only be omitted if this is the ECI organisers' explicit wish, just as it is already an option for them to refuse a hearing in the European Parliament (see Article 15 Regulation (EU) 2019/788). It furthermore corresponds to the meaning and purpose of the citizens' initiative to grant the organisers the right to a say. It should

also be possible to convene a citizens' assembly for a number of European Citizens' Initiatives, if they turn to the European Union with very similar requests. In the event of a European Citizens' Initiative containing various requests, there should also be an option to subdivide a citizens' assembly and entrust individual subgroups with different themes. A proper deliberation can only take place if sufficient time is made available to the participants. This is not a given, though, if they must deal with excessively numerous themes within tight deadlines. The mistakes which have been made in the Conference on the Future of Europe in this respect should not be repeated (see Alemanno & Nicolaidis, 2022).

Upon completion, public notice and submission of the recommendations of the citizens' assembly to the European Commission and the other institutions of the European Union, the question arises of how especially the Commission should respond. An obligation of the Commission to accept the recommendations is not realisable under the existing legal framework provided in the primary law. The Commission's discretion relating to the exercise of the right of initiative remains unaffected, however, if it is obliged to deal with the recommendations of the citizens' assembly in the context of its legal and political conclusions on the respective European Citizens' Initiative and to act thereon. It must, however, be guaranteed that the requests of the respective citizens' initiative continue to be the focus of attention, otherwise there would be a risk of the goal of strengthening the European Citizens' Initiative turning into its opposite.

Such a citizens' assembly in the sense described here could be established based on an inter-institutional agreement between the European Commission, European Parliament and Council. Article 295 TFEU provides the option for these institutions, whilst respecting the Treaties, to make arrangements for their cooperation. This includes everything necessary within the framework of the duty of loyal cooperation, in order to facilitate the application of the Treaty provisions (see Declaration No 3 on Article 10 of the Treaty establishing the European Community). As explained above, the goal of the instrument of the European Citizens' Initiative especially consists in initiating debates in the institutions. An inter-institutional agreement, directed toward the introduction of such a citizens' assembly, would aim to promote and strengthen such inter-institutional debates and thereby improve the application of the European Citizens' Initiative. The European Commission, the European Parliament and the Council are to be addressed as a priority in this respect, since the inter-institutional dialogue in connection with current citizens' initiatives essentially occurs between these actors.

2. The Submission of Successful European Citizens' Initiatives to the European Legislature

A further stage in giving new impetus to the European Citizens' Initiative and enabling more citizen-oriented decision making would consist in aligning this instrument with legislative projects with which the European legislature would be directly engaged in case of success (in line with the applicable legislative procedure). Experiences with comparable instruments at Member State level, in particular in Finland and Latvia, which have been shaped not least by the introduction of the European Citizens' Initiative, show that this form of participation is very well received by the citizens (Christensen & Jäske & Setälä & Laitinen, 2017; Democracy International, 2018). In this way, then again, a more balanced relationship between the rights and duties gained by citizens through the implementing of a European Citizens' Initiative could

be produced.

To focus, following the ECJ, on the value of the European Citizens' Initiative particularly lying in the initiating of debates within the institutions (ECJ, 2019), this goal can be much better achieved if the European legislature engages directly with such initiatives. In the European institutions, political debates primarily take place in the European Parliament, as well as in the Council. Public and media attention could also be more readily produced within this context. In its present form, the European Citizens' Initiative can - as already explained - hardly do justice to this goal. The Commission makes its decisions on the further proceedings for successful citizens' initiatives behind closed doors. Due to its structure and functions, the Commission is not at all conceived to act as a space for democratic deliberations. Furthermore, the Commission is only accountable to a limited extent. It cannot be sanctioned by the Union citizens. The political responsibility toward the European Parliament is likewise only weakly developed.

The traditional argument, by which the right of initiative in essence must rest with the Commission, because it alone acts in the interest of the Union, can no longer be maintained in this form. The European Parliament in particular has in the course of the integration process likewise established itself as a guardian of the Union's interests. It should furthermore be considered that such a highly selective differentiation between the interests of the Union and the Member States, as was the case especially in the early days of the history of European integration, is today no longer possible, such that the Member States may be involved as advocates for the interests of the Union (see Haltern, 2017; also Hieber, 2021). The European legislature can therefore form a judgement very well on whether and to what extent the implementing of specific European Citizens' Initiatives would be in the Union's interests.

Such a direct right of initiative could readily be integrated into the system of representative democracy on which the Union rests (see Article 10 TEU). It would merely be a matter of the further strengthening of participatory democracy at EU level. The right of final decision on the handling of a direct initiative would remain in the hands of the European legislature.

It does not appear that the introduction of such a direct right of initiative of the Union citizens would lead to an over-burdening of the legislative process at European level. It is worth remembering, once again, that in just around ten years the Commission has until now dealt with merely six initiatives which received more than a million supporters, of which essentially only two initiatives gained a positive hearing with the Commission. In comparison: In the legislative periods 2009-2014 and 2014-2019, the European Commission merely in regard to the ordinary legislative procedure submitted around 1000 legislative proposals to the European legislature for decision (see European Parliament, 2019).

As concerns practical implementation, it would certainly ease the workload of the legislature if the organisers of the respective initiative had to introduce corresponding draft legislation. The online Cooperation Platform set up by the Commission would be a suitable point of contact to assist the organisers with advice. This platform could also benefit from the know-how which similar online platforms at national level, such as Manabalss from Latvia,[5] have collected over many years of advising citizens' initiatives in this connection. The submission of a formulated legislative draft should, however, not be obligatory for the organisers. Practical experience in various Member States shows that excessively

[5] See in more detail www.manabalss.lv.

stringent handling can become an impediment to strengthening participation (see, for example, Rossi, 2021). If the content of such an initiative proves to be insufficient, the European Parliament and the Council can still make changes during the legislative proceedings, assuming, of course, that they are fundamentally sympathetic to the initiative.

The introduction of a direct right of initiative cannot be meaningfully conceived, however, without a change to the primary law. This goal could not be achieved on the basis of an inter-institutional agreement, since this would presuppose the preserving of institutional balance in its current form (see Article 295 Clause 2 TFEU: *'in compliance with the Treaties'*). It would require only relatively minor adjustment of the primary law provisions, however, in order to integrate the described direct right of initiative into the institutional structure of the European Union.

It can, in this respect, be tied in with the existing regulations in the European Treaties. The ordinary legislative procedure which in practice is applied in the vast majority of cases includes, in Article 294 Paragraph 15 TFEU, the constellation that the ordinary legislative procedure can be initiated by other Union institutions than the Commission. A direct right of initiative of Union citizens could likewise be included within the scope of this provision. In case of a Treaty amendment, as a consequence Article 11 Paragraph 4 TEU would enter into consideration. To this extent, in particular an adequately detailed description of the legal impact of successful European Citizens' Initiatives would be required. There should no longer be ambiguities, in this respect, as has so far been the case in the current version of this norm.

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