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European Citizens' Initiatives for the Protection of National Minorities

Abstract: The European Citizens' Initiative entered into force in 2012 as a new instrument of participatory democracy in the EU. It was inspired by national constitutional developments[1], and it was introduced into EU law with the Lisbon Treaty. The new legal tool proved to be attractive for citizens' committees that had been formed by members of organizations dedicated to the protection and promotion of the rights of national minorities. This paper discusses the content, fate, and legal impact of the two European Citizens' Initiatives that have been proposed in the area of the protection of national minorities.

About the European Citizens' Initiative

The aim of the European Citizens' Initiative is to reinforce citizenship of the Union and enhance further the democratic functioning of the Union by granting the right to each EU citizen to participate in the democratic life of the Union.[2] The legislative framework of the European Citizens' Initiative is provided by Article 11 (4) of the Treaty on the European Union, which states that "*[n]o fewer than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties*." The most important secondary legislative source on the European Citizens' Initiative is Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on

1 Victor Cuesta-López, "A Comparative Approach to the Regulation of the European Citizens' Initiative," *Perspectives on European Politics and Society*, Special Issue, (2012) 13 (3). 257–269, 258.

2 Recital 1 of Regulation on the European Citizens' Initiative.

the citizens' initiative (hereinafter: Regulation)[3], which specifies the detailed rules of the initiative.

In the EU, the European Commission has been exclusively empowered to propose legislative acts to the legislative body of the EU.[4] The European Citizens' Initiative modulates the Commission's monopole role in initiating an ordinary legislative process. If an issue has at least 1 million supporting signatures, the Commission must put the given issue to its agenda and decide whether or not to take action. However, it seems that the Commission is not obliged to propose legislative act as a result of an initiative. As in the EU it is the exclusive right of the Commission to submit a proposal for legislative act, therefore, it is up to the Commission alone whether a legislative procedure is launched on a particular issue or not. As the result of the European Citizens' Initiative, European citizens, in addition to the right of the European Parliament[5] and the Council[6], can also initiate the Commission's consideration of an issue to submit a proposal about it to the legislative body of the EU. The European Citizens' Initiative can be seen as an "agenda-setting and policy-shaping" instrument.[7]

As the first step of the European Citizens' Initiative, a citizens' committee composed of at least seven EU citizens who are residents of at least seven different Member States must be set up. After this the organizers have to request the registration of the proposed initiative from the European Commission. In order to register a proposed initiative, organizers must provide the Commission with all the information defined by the Regulation.[8] Once it has all the necessary information, the Commission reviews whether the

3 Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ L 65, March 11, 2011.

4 Few exeptions exist, i.e. Art 76 subparagraph (b).

5 Treaty on the Functioning of the European Union (TFEU) Article 225: The European Parliament may, acting by a majority of its component members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties. If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons.

6 Article 241 TFEU: The Council, acting by a simple majority, may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives and to submit to it any appropriate proposals. If the Commission does not submit a proposal, it shall inform the Council of the reasons.

7 Paweł Głogowski and Andreas Maurer, *The European Citizens' Initiative – Chances, Constraints and Limits*, Political Science Series. (Institute for Advanced Studies: Vienna, 2013), 9.

8 Title, object, and purpose of the proposed citizens' initiative, the provisions of the Treaties which, in the opinion of the organizers, refer to the proposed action, the personal data of the seven members of the civil committee, funding and financial sources of the proposed citizens' initiative for at the time of registration. In addition, the Regulation provides an opportunity for the organizers to provide additional information on the subject, purpose and background of the proposed citizens' initiative, or to submit draft legislation to the submission.

European Citizens' Initiative complies with the requirements defined by Article 4 (2) of the Regulation.[9]

If the Commission finds that the initiative meets the conditions for admissibility, it registers the proposed citizens' initiative within two months of the submission. However, if it concludes that not all of the conditions are met, it rejects the registration of the initiative. After the registration of an initiative, the organizers have one year to collect a minimum of one million signatures from at least seven different EU Member States, in accordance with the requirements concerning the minimum number of signatures in each Member State.[10] The supporting signatures can be collected both on paper and online. After reaching the one-year deadline, organizers must ask the competent national authorities of each Member State to certify the collected signatures. The national authorities have three months to do so, in accordance with national law and practice, and at the end of the process they issue a certificate demonstrating the number of statements of support.[11] After this the organizers can submit their initiative to the Commission. The Commission receives the organizers at the appropriate level, enabling them to present their citizens' initiative in public hearings. The Commission should then examine the initiative, it needs to set out its legal and political conclusions concerning the initiative, and it must state within three months how it intends to act on the matter.

9 These are: (a) the citizens' committee has been formed and the contact persons have been designated in accordance with Article 3(2); (b) the proposed citizens' initiative does not manifestly fall 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; (c) the proposed citizens' initiative is not manifestly abusive, frivolous or vexatious; and (d) the proposed citizens' initiative is not manifestly contrary to the values of the Union as set out in Article 2 TEU.

10 Annex 1 to the ECI Regulation.

11 Accordingly, the way in which supporting signatures can be monitored may vary from one Member State to another.

European Citizens' Initiatives Launched for the Protection of National Minorities

Cohesion Policy for the Equality of the Regions and Sustainability of the Regional Cultures

The citizens' committee established by the Sekler National Council[12] submitted the European Citizens' Initiative entitled *Cohesion Policy for* the *Equality of the Regions and the Sustainability of the Regional Cultures* to the European Commission on June 18, 2013. The Sekler National Council decided to launch this initiative back in 2011. The aim of the European Citizens' Initiative is that the EU's cohesion policy should pay special attention to regions with national, ethnic, cultural, religious or linguistic characteristics that are different than those of the surrounding regions..[13] The initiative can be regarded as a reaction born out of frustration; the assistance that was expected after the EU accession from the EU institutions to strengthen the regions fell short,[14] but the problems raised by the initiative are still tangible today.[15]

The European Commission refused[16] to register the citizens' initiative on the grounds that the initiative goes beyond the Commission's competence to propose an EU legal act for the implementation of the Treaties. The organizers filed a claim[17] to the Court of Justice of the European Union to annul the decision of the Commission.[18] The Court

12 Members: Balázs Izsák, President of the Sekler National Council (Romania) and Attila Dabis, Foreign Affairs Representative of the Sekler National Council (Hungary).

13 The additional information annexed to the initiative provides a detailed justification for the need for regulatory issues raised, identifying the relevant international legal sources in support of the concept of national regions, as well as the necessary elements of the proposed legislative act. Retrieved from: www.nemzetiregiok.eu/bovebb-tajekoztatas ; downloaded October 9, 2017

14 Krisztián Manzinger, "Nemzetiségi többségű régiók és az Európai Unió,
avagy a Brexit egyik lehetséges politikai következménye" [Regions where the majority is made up of a minority, and the European Union, or one of Brexit's possible political consequences] *Külügyi és Külgazdasági Szemle*, (2016/4), 11.

15 As the request for intervention by the Covasna County and Debrőd municipality also illustrated in the case of Izsák-Dabis v. Commission.

16 Commission Decision C (2013) 4975 final.

17 Izsák and Dabis v. Commission T-529/13.

18 Romania, Slovakia and Greece joined the defendant side as intervener, while Hungary supported the applicant organizers. Non-Member State intervention was submitted to the applicant's side: Covasna (Romania), Debrőd (Slovakia), Basque national party Euzko Alderi Jeltzalea – Partido Nacionalista Vasco (EAJ-PNV, Spain) and Brétagne réunie company (France). The latter non-member State applications for intervention were dismissed by the Court and thus their arguments were neglected in the course of the judgment.

issued its judgment on May 10, 2016,[19] within which the plaintiff's claim was dismissed in its entirety.

One of the key issues of the first instance Judgment was the definition of the concept of a national minority region. The Court held that, contrary to the plaintiff's arguments, the Commission was right in taking into account the additional information during the admissibility test. The Court emphasized that the initiators clearly formulated their expectations regarding the proposed act and that these claims cannot be ignored when deciding on the merits of the case.[20] The judgment underlined that, in accordance with the requirement of the additional information, the proposed legislative act should define the concept of "national minority region" and should list all existing national minority regions within the European Union that fit the definition. The legislative act should also stipulate that Member States must comply with their obligations under international law agreements.[21] During the lawsuit, the Commission's main argument, which the Court accepted in its judgment, was also the entrenched version of the concept of 'region' in European Union law. The Court emphasized that, in the context of EU cohesion policy, the concept of 'region' should be interpreted in accordance with the political, administrative, and institutional arrangements existing in the Member States, but the proposed legislative act defines the national regions differently from the existing administrative units. However, the new definition of the regions outlined by the organizers of the citizens' initiative could only be achieved by guaranteeing a genuine legal status for these regions. According to the Court, this requirement is clearly in conflict with the requirement of Article 4 (2) TEU, under which cohesion policy must respect the political, administrative, and institutional situations in the Member States.[22] We must add that the notion of national regions is not unfamiliar for neither international law[23] nor for law studies[24]; therefore, normative and theoretical points could help specify the definition of a national region as proposed by the organizers.

Another crucial disagreement between the parties was whether or not the fact that the population of a given region is made up of a national minority represents a major demographic disadvantage. The plaintiffs argued, in line with the basic assumption of

19 Judgement delivered in case T-529/13. Izsák and Dabis v Commission, on May 10, 2016 (ECLI: EU: T: 2016: 282).
20 Judgment T-529/13. Izsák and Dabis, 53.
21 Judgment T-529/13. Izsák and Dabis, 7–8.
22 Ibid 68–76.
23 See Additional Information.
24 E.g., Tove H. Malloy, "National Minority 'Regions' in the Enlarged European Union: Mobilizing for Third Level Politics?" *ECMI Working Paper 24*. July 2005

the initiative, that regions inhabited by national minorities, which are often not identical to the administrative units in the Member States, are in a disadvantageous position compared to those of neighbouring regions because of the fact that the overwhelming majority of their populations is made up of national minorities. Conclusively, in the plaintiffs' interpretation this means that the current implementation of cohesion policy jeopardizes the survival of national minority regions, and, thus, the diversity of the European Union. According to the organizers, from this follows that the Commission, as the guardian of EU Treaties, has a duty to submit a legislative act to reform the current implementation of cohesion policy. The provisions of the Treaties must be interpreted together, and, since the implementation of one of the policies threatens the cultural diversity of the European Union, this mechanism needs to be amended.[25] However, the Commission did not see any correlation between national specificity and disadvantage. The Commission argued that the economic development of a region is not necessarily linked to its cultural, national, or linguistic characteristics, and the existence of these characteristics does not necessarily cause the disadvantage of the given region compared to other regions. The Court rejected the plaintiffs' arguments based on the consideration that the plaintiffs were unable to prove their claims *a fortiori*, meaning that the current implementation of cohesion policy would jeopardize the specific characteristics of the national regions.[26] Moreover, according to the Court, these characteristics may even serve the benefit of the region by enhancing tourism and through the advantages of multilingualism.[27] It should be noted, however, that the intervening parties submitted detailed, data-based arguments on the examples of Debrőd (Slovakia) and Covasna County (Romania) to verifiably present the negative discrimination of some national minority regions in Sekler Land and in Southern Slovakia. However, since the Court rejected the application for the intervention of non-Member States entities, it did not take into consideration these arguments. Finally, the Court came to the conclusion that the plaintiffs were unable to demonstrate the link between the demographic disadvantage and the national characteristic of a region by ignoring the detailed proof of the intervening parties. In addition, the judgment is inconclusive as to whether demographic disadvantage can be discussed in the context of cohesion policy, that is, whether the list of disadvantaged regions in Article 174 (3) TFEU is exhaustive or non-exhaustive.[28] While,

25 Judgment T-529/13. Izsák and Dabis, 79.

26 Ibid 80.

27 Ibid 85–89.

28 Article 174 (3) TFEU: "*Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions*."

according to the plaintiffs, the list is open-ended and can therefore be expanded (e.g., with demographic disadvantage), the Commission considers that the list cannot be interpreted as an expandable list, because the second part of the paragraph determines exhaustive and precisely defined additions only for the third type of region (i.e., regions facing serious and permanent natural or demographic disadvantages),[29] and, consequently, the list as a whole is interpreted as a taxative list.[30] However, the Court did not state whether the list should be interpreted as an open-ended or closed list and only concluded that the applicants were not able to sufficiently demonstrate that the national character of a region in itself constitutes a serious demographic disadvantage for the region.[31] From this it can be inferred that, since the Court required proof of the disadvantageous situation, the argument that the national character of a region may theoretically constitute a serious demographic disadvantage could be corroborated.[32]

The organizers appealed to the Court of Justice of the European Union against the Judgment.[33] On 7 March 2019, the Court of Justice of the European Union issued its second-instance judgment in which the Court set aside the judgment of the General Court of 10 May 2016 and annulled the Commission's decision of 2013 rejecting the registration of the cohesion policy ECI. Thus, the Commission had to issue a new decision on the registration of the initiative. In its press release on 30 April 2019 the Commission announced the registration of the ECI on national regions. The one-year-long signature collection period started on May 7, 2019, therefore, the organizers have to collect the one million supporting signatures until May 7, 2020.

29 Article 174 (3) TFEU: " *... as the northernmost regions with very low population density and island, cross-border and mountain regions.* "

30 Judgment T-529/13. Izsák and Dabis, 64.

31 Árpád Gordos thinks that the wish to further expand the categories of Article 174 is legitimate; if the elimination of ‚lagging behind' is considered as a reason, and certain types of regions that require special attention, such as the cross-border region, are considered as causality, then the link between the two is not evident. Gordos 2014, 141.

32 Balázs Tárnok, "Az Európai Törvényszék ítélete a Székely Nemzeti Tanács európai polgári kezdeményezése ügyében" [The European Court of Justice's judgement in the case of the Sekler National Cuncil's ECI] *Jogesetek Magyarázata*, (2016):4, 46.

33 C-420/16 P. Izsák and Dabis v Commission.

Minority SafePack – One Million Signatures for Diversity in Europe

The citizens' committee[34] of the Minority SafePack European Citizens' Initiative[35] submitted the Minority SafePack – One Million Signatures for Diversity in Europe to the European Commission on July 15, 2013. The Minority SafePack was initiated by the Federal Union of European Nationalities (FUEN), the Democratic Alliance of Hungarians in Romania (DAHR), the South Tyrol People's Party (SVP), and the Youth of European Nations (YEN) at the FUEN 2012 Moscow Congress. The initiative sets out 11 proposals in eight policy areas.[36] The subject-matter and the aim of the Minority SafePack Initiative is to adopt a set of legal acts to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union. . The initiative foresees the adoption of measures in the policy areas of regional and minority languages; culture and education; regional policy; participation; equality; audio-visual and other media content; and regional (state) support.[37] The European Commission rejected the registration of the initiative,[38] because it found that the proposal manifestly falls outside the competence of the Commission to submit a proposal for a Union act for the adoption of a legal act of the European Union for the purpose of implementing the Treaties of the European Union; therefore, the organizers could not initially begin to collect the signatures. The organizers brought an action before the Court for the annulment of the Commission's decision.[39]

In their application, the plaintiffs complained that the Commission had failed to fulfil its obligation to state reasons. Although the Commission itself acknowledges that some of the topics fall within the competence of the European Union, since, as the Commission at that time said, the registration of certain parts of the citizens' initiatives is not permitted by the Regulation; therefore, it rejected the whole initiative. The Commission did not specify which of the 11 themes, in its view, fell outside the scope of its competences and did not give any justification for this. Furthermore, the Commission did not explain why

34 Members: Hans Heinrich Hansen (Denmark), Kelemen Hunor (Romania), Karl Heinz Lambertz (Belgium), Jannewietske Annie De Vries (Netherlands), Valentin Inzko (Austria), Alois Durnwalder (Italy) and Anke Spoorendonk

35 Retrieved from: www.ec.europa.eu; downloaded: October 9, 2017

36 Krisztián Manzinger and Loránt Vincze, "Minority SafePack – esély az EU-s kisebbségvédelemre? [Minority SafePack: a chance for EU minority protection?] *Pro Minoritate*, (2017 nyár), 3–21, 10.

37 Retrieved from: www.ec.europa.eu; downloaded: October 9, 2017

38 Decision C (2013) 5969 final.

39 T-646/13. Bürgerausschuss for the Bürgerinitiative Minority SafePack – One million signatures for diversity in Europe v. European Commission

it thought that the Regulation did not allow the Commission the partial registration of the initiative. In the Court's Judgment of 3 February 2017[40], it upheld the plaintiffs' claim and annulled the Commission's decision about the rejection.[41] With that, the Court affirmed the applicants' request for annulment of the Commission's decision not to register a citizens' initiative for the first time.[42] The Judgment has a procedural relevance, as the Court based its judgment on a breach of the duty to state reasons. Since the Court upheld the plaintiffs' request about the formal legal problem of the Judgment, it considered it unnecessary to examine the plaintiffs' argument about the existence of a substantive infringement, namely, that the initiative manifestly fall outside the Commission's competence to propose a legal act for the implementation of the Treaties. It follows that the Court did not carry out an investigation on the question of substantive law (i.e., on which of the proposed topics falls outside the scope of Union competence) and on the notion of "manifestly" itself. According to the Court, by having failed to fulfil its obligation to state reasons, the Commission did not allow the organizers to identify the proposals that fall, in the Commission's interpretation, beyond competence or to learn the reasons resulting in this assessment. Consequently, in addition to the fact that the organizers were unable to challenge the assessment, the Court was also not in a position to review the lawfulness of the Commission's assessment.[43]

As a result of the annulment, the Commission had to make a new decision on the registration of the initiative. As a result of this, going against its previous decision, the Commission partially registered the Minority SafePack European Citizens' Initiative. This resulted not only in the success of the Minority SafePack Citizens' Initiative, but also in consolidating the substantive details of the Commission's obligation to state reasons, as well as in laying the grounds for the possibility of partial registration of citizens' initiatives.[44]

Starting on April 3, 2017, the date of registration of the Citizens' Initiative, the organizers had one year to collect one million supporting signatures for the citizens' initiative (or rather for the parts registered by the Commission) from at least seven EU Member States.

The initiative was signed by 1,32 million EU citizens by April 3, 2018. After the verification of the signatures in the Member States, the official result of the signature collection

40 Judgment of the Court (3 February 2017) in Case T-646/13. Bürgerausschussfür die Bürgerinitiative Minority SafePack – One million signatures for diversity in Europe v. European Commission, ECLI: EU: T: 2017: 59.

41 Decision C (2013) 5969 final.

42 Since then, there has been another positive Judgment for the organizers of the citizens' initiative: Judgment of the Court of 10 May 2017 in case T-754 / Michael Efler and Others v European Commission, ECLI: EU: T: 2017: 323.

43 Case T-646/13. Minority SafePack, 29.

44 Decision C (2017) 2200 final.

was published by the organizers. According to this, 1,128,385 have been verified in the EU, reaching the minimum threshold in 11 Member States (Hungary, Romania, Italy, Slovakia, Spain, Bulgaria, Lithuania, Croatia, Denmark, Latvia and Slovenia). In Hungary 527,686, in Romania 254,871, while in Slovakia 63,272 signatures have been verified. In these countries mostly the Hungarian communities collected the signatures, therefore, the success of the initiative can be considered as a significant success of the Hungarian communities in the Carpathian Basin. The next step is to submit the successful initiative to the Commission. However, there is no deadline specified for this in the regulation in the European Citizens' Initiative. In June 2018, the General Assembly of the FUEN authorized the FUEN Presidency to find the proper timing for the submission of the Minority SafePack initiative to the European Commission. In November 2018, after the proposal of the president of the FUEN for a personal meeting was rejected by the president of European Commission, the FUEN Presidency decided to submit the initiative to the new Commission to be set up following the European elections in May 2019.

Legal developments regarding the European Citizens' Initiative

Obligation to state reasons

In the early stages of the European Citizens' Initiative's proceedings, the reasoning in the Commission's relatively short refusal decisions was usually also short-spoken. The reasoning merely stated that the Commission had found that, based on the given legal basis, the initiative did not comply with the conditions for registration. One of the recurring elements of the related court proceedings was to examine the extent to which the Commission should justify its decisions. Article 296 paragraph 2 of TFEU states that the legal acts of EU bodies must state reasons. The text of the ECI Regulation provides few guidelines in this respect. It only prescribes that, in the event of a refusal to register a citizens' initiative, the Commission shall inform the organizers of the reasons for the rejection.[45] In the case of an already registered initiative that has the sufficient number of supporting signatures, the Regulation requires a clear, comprehensive, and detailed reasoning.[46]

45 Second sentence of Article 4 (3) of the ECI Regulation
46 Preamble (20) of ECI Regulation

It remained the task of the case law to determine the requirements for the justification of the registration decision. However, it brings in relatively few new arguments. In its first Judgment on the citizens' initiatives the Court essentially repeated former arguments already used in its decisions concerning individual resolutions in other cases.[47] The purpose of the requirement for stating reasons is twofold: on the one hand, to provide sufficient information to determine whether the decision is well founded or it has a deficiency that would question its validity, and, on the other hand, to allow the Court of the EU to review the lawfulness of the decision.[48] The statement of reasons does not need to cover all relevant factual and legal issues, but must be examined in the light of the circumstances of the case, in particular with regards to the content of the legal act and the nature of the referenced causes. Thus, for example, in the case of the initiative to regulate the principle of the state of necessity,[49] which contained—in a brief and unclear manner, without any specific explanation—only a reference to the articles serving as the legal basis, it was sufficient that the Commission merely argued that neither the legal basis mentioned by the organizers nor any other legal basis authorizes the Commission to make a proposal for a legal act that would serve the objective pursued by the initiative. The situation was different in the Minority SafePack case, in which the proposal identified 11measures that were divided into eight chapters, and it contained detailed additional information. In its refusal, the Commission did not indicate which of its 11 legislative proposals were those which were outside its scope nor did it give any reasons for this. However, in case of a rejection decision, the organizers should be able to identify from their suggestions those which, according to the Commission, fall outside the scope of the competence of the Commission and the reasons for such assessment. In the absence of that, as previously referred to, the initiators cannot dispute the validity of the Commission's assessment, just as the court cannot review the lawfulness of the Commission's assessment. A further argument that the justification is not well founded is that, in the absence of an adequate statement of reasons, the initiators would face serious difficulties if they were trying to submit a proposal for a new European Citizens' Initiative by taking into account the Commission's position.[50]

The case law has also pointed out that the obligation to state reasons for decisions constitutes an essential procedural rule, and it must be separated from the question of the grounded statement of reasons. A possibly wrong content of the statement of reasons may

47 Judgment T-450/12 on Anagnostakis v Commission of 30 September 2015. (ECLI: EU: T: 2015: 739).
48 Judgment C-589/15.P on Anagnostakis v Commission of 7 March 2017 (ECLI: EU: C: 2017: 663), paragraphs 28 and 29, and further cases cited therein.
49 One million signatures for the "Europe of Solidarity" initiative, available at: www.ec.europa.eu
50 Judgment T-646/13 on Minority SafePack, 29.

affect at most the substantive legality of the decision but not the existence of the justification itself.[51]

Identical standards apply in respect of the Commission Communication, which constitutes the completion of the ECI procedure. Additionally, the Court clarified that the main objective of stating the reasons for the communication is not merely to allow a possible political debate. The obligation to provide reasons for the decision goes beyond that; it requires the Commission to set out the legal, political or other reasons that led it to decide not to take action on the proposals of the initiative.[52]

What information is to be examined by the Commission when deciding on registration is an essential procedural question relating to the obligation to state reasons and to determining competence (more specifically, how much the Commission is obliged by the so-called "Additional information" submitted by the organizers).[53] The Commission's previous inconsistent practice in this regard is noticeable in its diametrically opposed views on two issues related to national minorities.[54] In the case of Izsák and Dabis, the Commission argued that the information contained in the "Additional information" should be examined in the same way as any other information submitted pursuant to the Annex to the Regulation, and, therefore, the Commission was obliged to examine the "Additional information."[55] On the other hand, at the written stage of the Minority SafePack case, the Commission argued that, in its review of its competence, it could only take into account the information contained in the body of the registration application,[56] and it changed this opinion only at the hearing. In its judgment in Izsák and Dabis, the Court upheld the previous argument, which it maintained in its later decision in the Minority SafePack case, stating that the information contained in the "Additional information" should be examined in the same way as any other information submitted in the annex on the content of the initiative.[57] This position is fully understandable, as Annex II of the ECI Regulation limits the description of the subject of the proposed citizens' initiative to 200 characters and the description of its purpose to a maximum of 500 characters. The scope limitations

51 Judgment T-450/12 on Anagnostakis v Commission, 33., and the other cases cited therein.

52 Judgement T-561/14 One of us and Others v Commission of 23 April 2018 (ECLI:EU:T:2018:210), para 147.

53 Based on Section II of the Regulation, the organizers may attach additional information in the Annex about the subject matter, objectives and background of the proposed citizens' initiative. If they wish, they may also submit draft legislation.

54 The issue is of particular importance because taking into account or ignoring the additional information had a decisive impact on the Commission's decision to reject it.

55 Judgment T-529/13 on Izsák and Dabis, 49–50.

56 Judgment T-646/13. on Minority SafePack, 30.

57 Judgment T-529/13 on Izsák and Dabis, 49, Judgment T-646/13 on Minority SafePack, 32.

do not allow the organizers to introduce all aspects of a complex initiative in a detailed manner. For example, in the description of the main objectives, Minority Safepack's organizers clearly indicated that the proposed legal acts shall include policy measures in the areas of regional and minority languages; education and culture; regional policy; participation; equality; audio-visual and other media content; and regional (state) support. It was only possible to explain these in the "Additional information" unit.

The manifestness of the competence to submit a legislative proposal

If the conditions set out in the Regulation[58] are met, the Commission registers the initiative. To complete the conditions of the registration, the organizers are requested to give a precise and clear indication of the subject and the purpose of the initiative in order to enable the Commission to identify the acts proposed by the organizers and to which the Treaties provide the appropriate legal basis.[59] In practice, the ground of the negative decisions has been that the Commission found that the initiative manifestly falls outside the scope of its competence to submit a proposal for an EU legal act to implement the EU Treaties.[60] According to the Commission's website on the European Citizens' Initiative, the Commission has the power to propose legislative proposals when the term "legislative procedure" appears in the article, provided that the article does not require otherwise, or the article specifically mentions that the Commission is responsible to make a proposal.[61]

Regarding the requirement of "manifestness," the organizers usually claim during the judicial proceedings that ordinary citizens of the Union are not highly familiar with the EU law, and since the procedure should be user-friendly, the Commission should not apply too strict of a filter at the registration. The initiators argue that it is essentially sufficient for the registration if the initiative itself concerns an area where the Union has legislative powers. The

58 See footnote 12.

59 See *mutatis mutandis* in Judgment T-361/14 HB v Commission (ECLI: EU: T: 2017: 252), paragraphs 32, 39 and 47.

60 A critical analysis of the Commission's lack of competence has distinguished three categories: the proposed initiative is clearly outside the Commission's competence; whether or not the issue that otherwise concerns EU policy falls within the competence of the Commission it is up to consideration; and finally, when it is probable that the initiative falls within the competence of the Commission because it depends on the interpretation of the Treaties whether the proposal is part of the Union's scope. See The European Citizens' Initiative Registration: Fall in Fat The FirtsHurdle? analysis of the registration requirements and the "subject matter" of the rejected ECIs. ACAS Brussels, December 2014. Retrieved from: www.democracy-international.org; downloaded: October 9, 2017

61 Retrieved from: www.ec.europa.eu; downloaded: October 9, 2017

Commission does not share this view. In the Commission's interpretation, the lack of competence is manifest when it is not subject to factual factors to state that none of the provisions of the founding treaty can serve as the legal basis of an act affecting the subject-matter of the initiative.[62] The examination during the registration process must be complete, otherwise it is possible that it will only turn out at the end of the procedure that the Commission can not initiate the adoption of the act proposed by the initiative,[63] and the initiative thus may be misleading to the EU citizens that would sign it.

When examining whether the initiative is manifestly outside the Commission's competence to initiate an act of the Union, the Court starts from the principle of delegation of powers defined by the founding Treaties, according to which the individual institutions act within the limits of the powers conferred upon them in the founding Treaties. The Court did not accept the Commission's argument that a full investigation at this stage had to be carried out. Instead, the Court found that only a first examination was needed at the time of the registration, and that a more thorough examination would be carried out only in case the initiative was registered.[64] That conclusion was reached on the basis that the Regulation imposes a three-month period for the Commission to summarize its legal and political conclusions after the initiative has been submitted.[65] In the most recent judgement, the Court further clarified that it is not in this stage of the procedure for the Commission to ascertain whether the organisers have submitted all the necessary proof supporting the factual elements of the initiative or whether the reasoning of the proposed measure is adequate. The Commission should limit itself to examine "whether from an objective point of view such measures envisaged in the abstract could be adopted on the basis of the Treaties."[66]

The change in the Commission's approach to the applied test can be observed in the wording of its resolutions of refusals. In the first few years of European citizens' initiative the Commission used to base its reasoning for refusal on the ground that it carried out an in-depth examination during which it was established that the proposed initiative falls manifestly outside the framework of the Commission's powers to submit a proposal for a legal act

62 Judgment T-44/14 Constantini v Commission of 19 April 2016 (ECLI: EU: T: 2016: 223), paragraph 12.
63 Ibid, 13.
64 Ibid, 17, and Judgment T-529/13 on Izsák and Dabis, 60–61.
65 Judgment T-44/14 on Constantini v Commission, paragraph 17. The court also indicated that the examination of the issue of competence should be separated from the examination of the necessity of the proposed act. The former belongs in the registration phase, the latter belongs in the later phase communication about the legal and political conclusions of the initiative.
66 Judgement C-420/16 P.

of the Union for the purpose of implementing the Treaties.[67] After the first cases interpreting the "manifestness" of the Comission's powers, it abandoned the reference to an in-depth analysis and provided a very brief reason for refusing the registration.

The evolving case law has significantly shaped the interpretation of the Regulation's provisions concerning the competences of the Commission, in our view, however, the case law of the Court has not yet answered clearly. If it is possible at all, the dilemma to what extent the label "manifestly" changes the test to be applied (in other words, what the test used by the Commission would be if the Regulation were to use only the phrase "outside of its powers.") The attributive "manifestly" enables the Commission to change its position after the registration, which might be one of the explanations for the use of the attributive.

At the end of the day, the Court carries out a substantive examination of the debated legal basis, and, after having confronted the applicant's and the defendant's arguments, it delivers its own analysis and conclusions on whether the Commission correctly applied the requirement to examine the competence to submit a legislative proposal. Concerning the initiatives on the rights of national minorities, we note that in our opinion the fact that Article 2 of the TEU does not provide a legal basis for EU legislation in itself does not mean that an EU act can not be adopted to protect the values—such as the rights of minorities—that are set there and to promote them in accordance with the legal bases otherwise provided for by the Treaties. In the course of legislation, the European Union must respect the Charter of Fundamental Rights and the linguistic and cultural diversity as defined in Article 22 thereof. The improvement of the situation of national minorities can not be achieved only by means of legal instruments that explicitly and exclusively relate to those communities or to the members of those communities, but also by those instruments that provide rules to the important areas of national minority existence, such as language, cultural heritage, or social cohesion. This approach is reflected in the Minority SafePack initiative, which contains proposals for action in 11 areas of EU policies. An example of such legislation is the EU Regulation on the Structural Funds,[68] which defines the national Roma integration policy frameworks as a

67 See for example the decision for refusal of „A new EU legal norm, self-abolition of the European Parliament and its structures, must be immediately adopted". „Vite l'Europe sociale ! Pour un nouveau critère européen contre la pauvreté", „The Supreme Legislative & Executive Power in the EU must be the EU Referendum as an expression of direct democracy" initiatives.

68 Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 on the common provisions of the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund; on the general provisions of the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund; and on repealing Council Regulation (EC) No 1083/2006.

prerequisite for Structural Funds. According to the European Union Agency for Fundamental Rights, this is the first time that an investment priority focuses on the integration of the Roma as marginalized communities.[69]

The Changing Practice of the European Commission and the Partial Registration of Citizens' Initiatives

The possibility of the partial registration of citizens' initiatives was based on the Commission's second decision on the Minority SafePack, which decided to register the initiative. The Commission's first decision, which was annulled by the Court, argued that although some parts of the initiative fall within the competence of the European Union, the initiative cannot be registered since the Regulation does not allow for the partial registration of European Citizens' Initiatives. However, according to the Commission's new decision, only two of the 11 proposed topics fall manifestly outside the Commission's powers to submit a legislative proposal,[70] while the remaining nine are within the competence of the Union.[71] Thus, the Minority SafePack initiative was partially registered by the Commission. The Commission had the opportunity to do so because the Court's annulment of the contested decision neither substantively examined the proposed measures, nor did it rule on the question whether it was possible to register certain parts of the initiative.[72] The absence of a substantive decision regarding partial registration left both interpretations

69 See section 7.2.4 of the FRA Fundamental Rights: Challenges and Achievements in 2013 – Annual Report 2013, 173.

70 The Commission only determined the following proposals to fall outside of the scope of EU competence: to amend Article 20 (2) TFEU and Article 25 TFEU on taking into account the legitimate wishes of citizens belonging to national minorities in selecting the Members of the European Parliament; and to revise Article 19 (1) TFEU on negative discrimination and to promote equality of treatment. See the Commission's reasoning in Preamble 7 and 8 of Decision C (2017) 2200 final.

71 The Commission accepted the text of the proposals in regards the other issues. It only inserted a crucial addition in the original text of the proposal for the structural funds, likely to ensure its later subsequent decision: *"if the support will contribute to strengthening the economic, social and territorial cohesion of the Union*." See Decision C (2017) 2200 final Article 1 (2) point 4.

72 The parties' arguments in this regard are only mentioned in the judgment of the Court to this extent: *"In so doing, and even assuming that the position expressed by the Commission on the substance, according to which a proposed ECI cannot, whatever its content, be registered if it is deemed in part inadmissible by that institution, is well founded, the organisers were not, in any event, placed in a position to be able to identify those of the proposals set out in the annex to the proposed ECI which, according to that institution, fell outside the framework of its powers, within the meaning of Article 4(2)(b) of Regulation No 211/2011, or to know the reasons which led to that assessment and, therefore, were prevented from challenging the merits of that assessment, just as the Court is prevented from exercising its review of the legality of the Commission's assessment*". – Case T-646/13. Minority SafePack, 29.

open to the Commission. The Commission changed its earlier position in its new decision and implicitly accepted the possibility of partial registration.

Recently, there has been an obvious shift in the Commission's practice towards approving the registration of initiatives, in particular regarding the requirement for the user-friendly nature of a citizens' initiative as defined by the Regulation. The most telling example of this is the partial registration of citizens' initiatives. The partial registration of the Minority SafePack has been serving as a precedent, as the Commission has since partially registered the citizens' initiative about Stop TTIP[73] and one about wage unions. The partial registration of the initiatives, however, carries the risk that the initiative will lose its decisive proposals, and eventually, the initiative will "drain out." This can be seen in the wage union initiative, which originally defined the wage union as its main objective, but the Commission's registration decision[74] excluded the issue of wage harmonization in the European Union from the scope of the initiative as it is not an EU competence.

In our view, neither the principle of the division of powers nor the obligation to state reasons can lead to a conclusion that the Commission cannot exercise the possibility of partial registration for European citizens' initiatives. The Commission's previous position on this point has changed, which is fully understandable in the light of the ongoing evolution of European citizens' initiatives. This conclusion is also supported by the Court's interpretation of the institution of a citizens' initiative, which states that the mechanism of the initiative and its elements must be broadly interpreted in order to give every citizen a general right to participate in the democratic life of the EU.[75] If the organizers in a particular case consider that the initiative in the version as registered by the Commission does not contribute to the overall goal designated by the organizers, they have the opportunity to withdraw the initiative and submit a new, modified initiative, or they can challenge certain elements of the registration decision in court.

73 Stop TTIP was preceded by the judgment of the Court, which, like the Minority SafePack case, annulled the Commission's decision not to initiate the registration. See Judgment T-754/14 Efler et al. v. Commission and decision C (2017) 4725 final on the registration of the initiative.

74 C (2017) 3328 final.

75 See T-754/14 Efler and Others v Commission (ECLI: EU: T: 2017: 323) concerning the interpretation of the concept of a legal act, in particular paragraph 37 of the Judgment.

The (disputed) discretional right of the Commission regarding the submission of a legislative proposal

After the submission of the one million signatures, the Regulation requires the Commission to summarize its legal and political conclusions on the citizens' initiative, the steps it may take, and the reasons for doing so, or if it does not intend to take action, the reasons for not doing so.[76] In practical terms this means that the initiative, and more specifically the proposed fate of the measures proposed, will essentially depend on the will of the Commission. This is especially noticeable in the case of the *One of Us* Citizens' Initiative, where the Commission has decided not to submit a legislative proposal as it considered the existing EU legal framework to be satisfactory.[77] The decision of the Commission was challenged by the organizers at the Court claiming[78] that the Commission went against the provisions of the Treaties requiring interinstitutional dialogue by maintaining a monopoly in the legislative process, and the Commission should have set out its legal and political conclusions separately to support its decision not to forward its proposals concerning the initiative to the European Parliament. The respective judgement presents an important development regarding the role of EU institutions in the process of ECI. The Court acknowledged that the Commission's communication, which is the final stage of the procedure, is capable of producing legal effects, thus, it is amenable to judicial review. However, in line with the near-monopoly situation of the legislative initiative conferred upon the Commission, the Court underlined also that the Commission enjoys a broad discretion as regards what steps, if any, it considers appropriate in relation to the initiative.[79] In addition to outlining the Commission's obligations, an important asset of the case was to determine the extent of the judicial review's scope with regard to the revision of the Commission's communication on the refusal of the initiative, given that the Commission has to set out not only legal but political conclusions—although not necessarily separately[80]—in the communication.

76 Article 10 of the ECI Regulation.
77 Commission Communication COM (2014) 355 final.
78 See Action T-561/14 One of Us and Others v Parliament and Others, submitted on 25 July 2014 (2014 / C 409/65).
79 See T-561/14 On of Us and Others v Commission (ECLI:EU:T:2018:210). The case was appealed before the Court of Justice (C-418/18 P).
80 Ibid. paras 126–132.

Concluding remarks

Six years after the Regulation on the European Citizens' Initiative entered into force, the question is still open of whether or not the initiative has helped to strengthen European citizenship and to enhance the democratic functioning of the Union. The picture is uneven. Apart from the occasional (in the procedural sense) successful closing of the initiatives, it is questionable whether a citizens' initiative can effectively determine the agenda of EU legislation, or if it only provides further legitimacy to the legislative ideas that already appear on the Commission's agenda. The Minority SafePack initiative can be regarded as a step forward in this regard, since, after having collected enough signatures, it could be one of the first initiatives based on which the Commission explicitly proposes EU legislation that derives directly from the request of EU citizens.

Regarding the fate of the initiatives, the Court of Justice of the European Union has played an essential role, because it continuously develops the legal practice, in particular the procedural aspects, of the initiatives. The Court has showed a rather moderate attitude concerning the content and the substantive aspects of the initiatives. Generally, it is limiting the argumentative discourse to the questions that are really to be answered in order to solve a case at hand. It has clarified the Commission's obligation to state reasons for it's decisions, elaborated on the standards of the examination in the phase of registering the initiative and, seemingly, it confirmed the monopoly situation of the Commission in taking a decision on the proposed legislative initiative. However, the debate on participatory democracy in respect to European Citizens' Initiatives continues in the ongoing court process.[81] In case of initiatives concerning national minorities, the Court—although with one exception[82]—limited itself to examining the procedural questions, leaving the substantial issues regarding the EU competence to the following dispute between the Commission and organisers of the initiative.

Based on the experiences so far, the Commission is shaping the fate of the measures proposed by the initiatives, although one of the explicit aims of the initiative would be to put topics on the agenda of the EU legislators that did not originally appear, or appear with different content, on the Commission's agenda. The organizers' unfamiliarity with

81 Appeal brought on 26 June 2018 by European Citizens' Initiative One of Us against the judgment of the General Court (Second Chamber, Extended Composition) delivered on 23 April 2018 in Case T-561/14: European Citizens' Initiative One of Us and others v European Commission (Case C-418/18 P)

82 Judgement C-420/16 P paras 68–71.

EU law—although it is undoubtedly relevant—cannot in itself account for the large number of rejected initiatives. The EU legislator or the initiators of legislative acts must have anticipated that citizens with different or partially different political ideas would also take the opportunity provided by the initiative and would push for agendas that are not on the table of the EU.

The new approach of partial registration is beneficial for both the Commission and the organizers of the initiative. The Commission can enforce the requirement of user-friendliness for the citizens' initiative. Also, partial registration enables the Commission to not necessarily have to take a stand on sensitive political issues.[83] On the other end, the partial registration enables the organizers to start collecting signatures, and at the same time to launch a wide-ranging European consultation on the issue. Thus, although the freedom of the citizen's initiative prevails, and the European debate over a particular issue can spread and deepen, it is still questionable whether the citizens' initiative fulfils its original purpose of bringing citizens closer to the Union.

83 In the event of failing to collect enough signature, the Commission does not have to deal with the issue at all, but it can refuse to submit a proposal for a legislative act after the successful collection of signatures. During the first 5 years of the Citizens' Initiative, only 4 citizens' initiatives reached one million supporting signatures. By contrast, the Commission rejected the registration of a relatively large number of citizens' initiatives during the first three years of the Citizens' Initiative during the Admissibility Test. Several such decisions, including both decisions addressed in this paper, were challenged by the initiators before the Court of Justice of the European Union. The described "methodological shift" on the side of the Commission is therefore logical, since it gives the impression of conduciveness, but at the same time it is beneficial for the Commission both in terms of workload and political sensitivity.