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IS THE EUROPEAN UNION IN CRISIS? THE RELATIONSHIP BETWEEN EU CITIZENSHIP AND DIRECT DEMOCRACY AND ITS IMPACT ON DEMOCRATIC LEGITIMACY

ABSTRACT

The crisis situation caused by pandemic COVID-19 and the effects of the war between Russia and Ukraine are also affecting the functioning of the European Union. From time to time, voices are raised questioning the existence of democratic legitimacy in the European Union. It is therefore important to examine how the concept of EU citizenship relates to the concept of right to vote, in particular, direct democracy. The institutions of direct democracy, and in particular, referendums, are the most general and most powerful form of direct exercise of power, since they enable the people themselves to decide on a matter directly. When looking at the system in the EU Member States, it is worth examining the issue of referendums at national and local level, in particular the importance of the concept of EU citizenship in determining the voters who participate in the referendum. In this context, it could be asked as a preliminary question whether it would be possible to introduce an EU referendum in which EU citizens could decide on an issue falling within the EU's competence, or whether, similarly, a cross-border regional referendum could be envisaged in which EU citizens living in several countries could decide on a regional issue affecting several countries. It is also necessary, however, to examine an institution that is already in operation: the past, present and future of the European Citizens' Initiative, with a view to whether it could become a kind of European referendum in the future.

KEYWORDS

European Union citizenship, right to vote, democratic legitimacy, direct democracy, referendum, European citizens' initiative

Introduction

The crisis situation caused by pandemic COVID-19 and the effects of the war between Russia and Ukraine are also affecting the functioning of the European Union. These crises have amplified the voices that questioning the existence of democratic legitimacy in the European Union. The decision-making

mechanisms of some EU bodies have come in for some criticism in recent years. It is therefore important to examine how the concept of EU citizenship relates to the concept of the right to vote, in particular, direct democracy, because EU citizens can influence decision-making mechanisms through these institutions.

Based on the principle of people's sovereignty, the people exercise their power either through their elected representatives or (exceptionally) directly (Kilberg 2014). The primary instrument of the people's exercise of power is representative democracy¹, and direct exercise of power is therefore an exceptional instrument, but it is superior to representative exercise of power when it is implemented.² The institutions of direct democracy, and in particular, referendums, are therefore the general and most powerful forms of direct exercise of power, as they allow the people to decide on an issue directly (Csink 2020: 117). There are countless means of direct democracy. These include petitions (Bódi 2018), people's initiatives and referendums. When researching the systems of the European Union (EU) Member States, it is worth examining the issue of referendums at national and local level, and for the purposes of this study, the importance of the concept of EU citizenship³ in determining the voters who participate in referendums. In this context, a preliminary question is whether it would be possible to introduce an EU referendum in which EU citizens could decide on an issue that falls within the EU's competence, or whether a cross-border regional referendum could be introduced, in which EU citizens could decide on a regional issue that affects several countries. But it is also necessary to look at an institution that is already in operation: the past, present and future of the European Citizens' Initiative, with regard to whether it could become a kind of European referendum in the future.

In order to answer the questions posed in the research, I will primarily use a comparative legal method. In this context, I will analyse the electoral law and referendum rules in the EU Member States and draw on statistical data on referendums in the countries concerned. I will also analyse EU normative rules (regulations and directives) and the practical experience of the European Citizens' Initiative. In addition to the above, I will, of course, draw on secondary, literature-based views in my research.

1 On the dilemmas of representative democracy, see: Ophuls (1997: 6–10).

2 See for example Decision no. 52/1994 (X. 14.) AB. See more: Csink (2021: 139).

3 With regard to the concept of EU citizenship, it is important to point out that while citizenship is one of the most important grouping factors in the definition of a nation state, creating both rights and obligations (such as the obligation to be a public servant or national defence) between the natural person and the state, EU citizenship is an additional corollary of national citizenship, i.e. there is no EU citizenship without national citizenship.

The concept of EU citizenship and the right to vote in a representative democracy

Before examining the role of the instruments of direct democracy in the functioning and decision-making of the EU, it is important to briefly discuss the role of EU citizenship⁴ in the field of representative democracy.

On the question of representative democracy and EU citizenship, it is worth looking at how the concept of EU citizenship is reflected in the legislation of individual Member States first. If we look at the legislation in the 27 EU Member States, we can draw the following conclusions: in all EU countries except Ireland, the main grouping factor in parliamentary elections is national citizenship. In Ireland, the Irish Constitution has given the legislature the power to grant active voting rights to persons other than Irish citizens⁵, and so to British citizens resident in the UK since 1985 (Beckman 2009: 62–88). On this basis, it can therefore be concluded that the main prerequisite for being eligible to vote in parliamentary elections is the national citizenship (i.e. EU citizenship is not relevant in this respect⁶). National citizenship therefore dominates parliamentary elections. This raises the question in this context, as to which elections in each member state EU citizenship may be relevant.

It should first of all be pointed out that Article 22 Treaty on the Functioning of the European Union (TFEU) guarantees every citizen of the European Union the right to vote and to stand as a candidate in municipal elections in the territory of the Member State in which he or she resides, under the same conditions as nationals of that State. If we compare the legislation of the 27 EU Member States, we can see that, in local elections, the definition of eligibility to vote is linked to residence or domicile in the municipality (if it is in an EU Member State), regardless of national citizenship (Meyer 2017: 4). In the case of local elections, EU citizenship is or can be relevant, but the main grouping factor is not this, but the requirement to live in a given municipality. The other main area where EU citizenship is relevant is, of course, European Parliament (EP) elections. In principle, all EU citizens have the right to vote in EP elections in the Member State where they live. So, it can be concluded in this respect too, that while EU citizenship is undoubtedly important, the main grouping factor is the requirement to live in the country concerned.⁷

All this suggests that EU citizenship is currently of negligible importance in the field of representative democracy.

4 For more on EU citizenship, see: Cygan and Szyszczak (2006: 977–982).

5 In this context, it is worth noting the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted in 1990 under the auspices of the United Nations, Article 41 of which declares the possibility of granting legal migrant workers the right to vote and to stand for election.

6 Several authors have written on this issue. See, among others: Kochenov (2009: 201).

7 For more on this, see: Kurunczi (2023: 93–112).

The institution of the referendum in each EU Member State, with special reference to the question of EU citizenship

Of all the institutions of direct democracy, the referendum is undoubtedly the most important. Referendums give voters the opportunity to make a binding⁸ decision on an issue.⁹ Therefore, in the following, I will examine how the EU Member States regulate the issue of referendums, the right to vote and whether it would be possible to apply the institution of referendums in the EU (or at least regionally).

Referendum in EU Member States

First of all, it is important to underline that the institution of the referendum is fundamentally different when applied at national level, and again when applied at local level. In the case of a national referendum, the starting point will be the principle of people's sovereignty, as in the case of institutions of representative democracy. In other words, the fact of belonging to the constitutional concept of the people will be the basis of the right to vote.¹⁰ According to this view, the people can be best defined in terms of citizenship, i.e. the community of citizens will be the depository of people's sovereignty (Kurunczi 2020: 19–23). In contrast, a local referendum is a direct decision-making 'forum' for the citizens of a given municipality (Kiss 2009: 531–532). It follows directly that the main grouping criterion for local referendums (as in local elections) is the existence of a place of residence or domicile in the municipality.¹¹

On the basis of this, there are two main aspects of the regulation of each EU Member State: firstly, whether it is possible to hold a referendum at national level, and secondly, how each country regulates the issue of eligibility (does it differ in any way from the rules for parliamentary elections)?

The practices of individual EU Member States in relation to national referendums can basically be divided into two groups: in the vast majority of Member States it is possible to hold a referendum at national level,¹² but there

8 It is important to note, however, that in some EU countries there are also non-binding (advisory) referendums.

9 For more dilemmas on the referendum issue, see: Qvortrup (1999: 531–546).

10 From the point of view of the fundamental rights approach to the right to vote, it is clear that if one is subject to people's sovereignty, one must, as a rule, have the right to vote (not including certain cases of exclusion), because only in this way can one fulfil the 'role' of the 'social contract'. The subjects of people's sovereignty are, first and foremost, the citizens. See more: Kurunczi (2023: 96).

11 The constitutions of several EU's Member State provide for the possibility of local referendums. For example, under Article 136 of the Bulgarian Constitution, local residents can decide on issues affecting their municipality by referendum. Similarly, the Slovak Constitution provides for a referendum in Article 67.

12 These include Austria (Article 45-46 of the Constitution of the Republic of Austria), Bulgaria (Article 84(5) of the Constitution of the Republic of Bulgaria), the Czech Republic (Article 2(2) of the Constitution of the Czech Republic), Denmark (Article 42 of

are also Member States whose legal systems do not recognise this legal instrument.¹³ It is also worth highlighting Cyprus, where the constitution does not provide for a national referendum, but there was a referendum in 2004 on the reunification of the island (partly linked to a referendum on EU accession), which was unsuccessful. Also worthy of special mention is Germany, where only two referendums can be held at national level: on the amendment of the borders of the federal states (Bundesländer) and on the adoption of a new constitution.¹⁴ So this means that the institution of national referendums exists in most EU countries.

In Member States where it is possible to hold a national referendum, it is also important to examine the question of how the rules on eligibility are developed. In this respect, it can be generally stated that the definition of the right to vote is in line with the rules of representative democracy, which in many Member States is also reflected at constitutional level.¹⁵ From the above, it can be concluded that national referendums in all EU Member States where they are possible are linked to people's sovereignty, so the main grouping factor is the existence of citizenship of the Member State concerned.

The possibility of an EU referendum

With regard to EU citizenship, the above raises the question of whether it would be conceivable to increase the importance of EU citizenship in the most powerful instrument of direct democracy, namely the referendum. As we have seen above, it is not nearly possible to hold referendums at the national level in all EU Member States. However, where this is allowed, eligibility is determined by national citizenship (except in Ireland). In this respect, in some

the Constitution of the Kingdom of Denmark), Estonia (see: <https://www.riigiteataja.ee/akt/1045564>), Finland (Article 53 of the Constitution of Finland), France (Article 3 of the Constitution of France), Greece (Articles 35(3), 44(2) of the Constitution of Greece), the Netherlands (but since 2018 referendums on the basis of an opinion can no longer be held), Croatia, Ireland (Article 47 of the Constitution of Ireland), Poland (Articles 90(3) and 125 of the Constitution of Poland), Latvia (Article 14 of the Constitution of Latvia), Lithuania (Article 9 of the Constitution of Lithuania), Hungary (Article 8 of the Fundamental Law), Italy (Article 75 of the Constitution of Italy), Portugal (Article 115 of the Constitution of Portugal), Romania (Articles 2, 73(3)(d), 90 of the Constitution of Romania), Spain (Articles 62(c), 92 of the Constitution of the Kingdom of Spain), Sweden (see: <https://lagen.nu/1979:369>), Slovakia (Article 7(1), Article 86(c) of the Constitution of the Slovak Republic) and Slovenia (Article 3/A, Article 90 of the Constitution of the Republic of Slovenia). It is worth noting that Article 2(2) of the Czech Constitution only stipulates that a constitutional law shall regulate the cases and manner in which the people may directly exercise their power.

13 Belgium, Luxembourg and Malta.

14 Article 29, Article 146 of the Fundamental Law of the Federal Republic of Germany.

15 Constitution of the Republic of Austria, Article 46(2); Constitution of the Republic of Ireland, Article 47(3); Constitution of Poland, Article 62(1); Constitution of Italy, Article 75(3); Fundamental Law of Hungary, Article XXIII(7).

countries (such as Hungary), even national residence is not a requirement, so national citizenship is almost the only condition. In the practice of EU Member States, not including Ireland, there are therefore no rules giving citizens of other Member States (i.e. EU citizens in general) the right to vote in national referendums. In this respect, the legal situation of national referendums is essentially the same as that of national parliamentary elections, i.e. it is difficult to imagine a legal situation in which a Member State would allow citizens of other states (even if they are EU citizens) to express their views on an issue in the same way as its own citizens.

This raises the question: if we want to increase the importance of the institution of EU citizenship in the field of direct democracy, would it be possible to create a referendum at EU level, or at least at regional (Euroregional) level?¹⁶ In order to answer this question, it is necessary to start from the premise that the essence of the institution of the referendum is that the depositories of people's sovereignty take back the right to decide on a given matter from the constitutional body (the parliaments) to which they have entrusted the right to legislate in the elections. Therefore, if we were to create the institution of a referendum at EU level (the subjects of which would be EU citizens), then the people (i.e. the community of EU citizens) would have to take back the right of decision from the body empowered to legislate also in this procedure. Under the ordinary legislative procedure, which is the rule in the EU, the European Parliament is only a co-legislator (Crombez 1997, Schulz and König 2000). This is of particular importance in this case because, of the two co-legislative bodies (the European Council and the European Parliament), only the EP has legitimacy directly attributable to EU citizens. Therefore, by the very nature of the institution of the referendum, the community of EU citizens could only 'take back' the right to decide on a given matter from the European Parliament in a hypothetical EU referendum. However, since the European Parliament is only a co-legislator, this EU referendum could not, in fact, dogmatically force a binding legislative act.¹⁷ This, of course, does not exclude the possibility that an EU-wide referendum could be introduced after all, by breaking through the dogmatic framework. This is supported by the approach that in those states that currently have national referendums, there is theoretically no obstacle to holding a referendum on whether a national parliament should give the EU legislature a 'yellow card' for breaching the subsidiarity requirement.¹⁸ And a

16 The issue of referendums at EU level and the issue of legitimating policy has been the subject of several studies. See among others: Rakauskas (2002) and Rose (2018: 207–225).

17 In my view (on purely dogmatic grounds), this would not be changed by a regulation that would allow, where appropriate, for an EU referendum on certain EU-wide issues to be held at the same time as the European Parliament elections. Therefore, this would not solve the problems with EU referendums.

18 For more on the 'yellow card', also known as subsidiarity, see for example: <https://ec.europa.eu/info/law/law-making-process/adopting-eu-law/relations-national-parliaments/subsidiarity-control-mechanism>

referendum on the same issue held at roughly the same time in most EU countries could eventually form the basis for an EU-wide referendum in the future.

In addition to a referendum at EU level, it is also worth saying a few words about the possibility of a referendum at EU regional level. The EU has so-called Euroregions¹⁹, which cover areas that belong to several Member States. This raises the question of whether a kind of regional EU referendum could be held on issues that affect only a particular Euroregion. In this context, however, and without repeating the above, it can be stated that there is no interpretation of the legislative body from which the persons living in the euro-region concerned could ‘take back’ the right to decide. Either the EU’s decision-making bodies, or the national parliaments or governments of the Member States that cover the territory of the Euroregion, have the power to decide on a matter concerning the Euroregion. However, citizens of a given Euroregion do not have a say in the national decision-making of any Member State other than the one of their nationality, and EU citizens living in that region cannot take a decision affecting the whole European Parliament and its co-legislators by referendum. Independently of this, there is no theoretical obstacle to the Member States concerned calling referendums on the same issue at almost the same time, the results of which must be taken into account by all the Member States concerned. However, such a joint referendum would necessarily be binding on the legislative bodies (i.e. national parliaments) of the Member States, and not on the European Parliament as the EU (co-)legislator. And the institution of local referendums, because they are typically held at the municipal (rather than regional) level, may not be suitable in its current form to form the basis for a regional referendum.

The past, present and possible future of the European Citizens’ Initiative

Although there is no EU-wide referendum (and, as mentioned above, it is not a reality in the foreseeable future), there is an instrument in EU law for the direct exercise of power, namely the European Citizens’ Initiative, the legal framework for which was laid down in Regulation 211/2011 following the Lisbon Treaty. The European Citizens’ Initiative was intended by the EU to be the main instrument of direct democracy in the EU, but its functioning still raises a number of questions (Aloisio, Grimaldi, Morelli, and Padoa-Schioppa 2011).

The past and present of the European Citizens’ Initiative and its operational experience

Due to the specific nature of EU lawmaking, the European citizens’ initiative is essentially linked not to the European Parliament but to the European Commission, which is the almost exclusive initiator of EU legislation. Accordingly,

¹⁹ For more on this, see: http://real.mtak.hu/116006/1/EPA02251_Ter_es_tarsadalom1945.pdf

the purpose of a European citizens' initiative is for citizens of the Member States (i.e. EU citizens) to call on the European Commission to propose new EU legislation on a matter covered by the initiative²⁰, and for the EU to act on that basis (mainly through legislation). To launch a European citizens' initiative, an organisers' group must be set up, made up of at least seven EU citizens representing at least seven different Member States in which they have their permanent residence. They do not have to be citizens of seven different countries, but it is important that they do have to be able to vote in European Parliament elections in their own country on the basis of age. The group must then apply to the European Commission for registration of the initiative. Before registering a proposed initiative, the European Commission checks that it meets the necessary requirements, in particular that it concerns an initiative in the field of the European Commission's competence. Once the initiative is registered by the European Commission, the organising group can start collecting statements of support across the EU. For an initiative to be considered by the European Commission, it must be backed by at least one million EU citizens with the right to vote across the EU in 12 months, and the signatures collected must come from at least seven EU countries (and the number of signatures in each country must reach the minimum required for that country²¹). The affiliation of signatories to a Member State shall be determined on the basis of their residence in that Member State.

It is clear from the above that the success of a European Citizens' Initiative requires coordinated and well-organised action and cooperation. Looking back over the institution's ten-year history, the European Citizens' Initiative is not a success story (Tárnok 2020). Between April 2012 and March 2015, the European Commission applied an overly restrictive interpretation of the preliminary eligibility assessment, and 20 out of 51 initiatives were rejected on grounds of lack of competence. As a result, the number of European Citizens' Initiatives (ECIs) submitted fell from 51 to 19 over the next three-year (2015-2018) cycle (Tárnok 2022).²²

20 In essence, EU citizens can ask the European Commission to submit a draft EU law, provided that the initiative relates to an area of EU law in which the Commission has powers to do so for the purposes of implementing the EU Treaty. See: <https://eur-lex.europa.eu/legal-content/HU/TXT/HTML/?uri=LEGISSUM:4398779>

21 According to Article 3(1)(b) of the current Regulation 2019/788 on the European citizens' initiative, the minimum number of signatories at the time of registration of the initiative is determined by multiplying the number of elected MEPs in each Member State by the total number of MEPs in the European Parliament. For Hungary, this number is 15,771.

22 It is also worth pointing out that between January 2019 and December 2024, the total number of ECIs was 48. See: <https://citizens-initiative.europa.eu/>

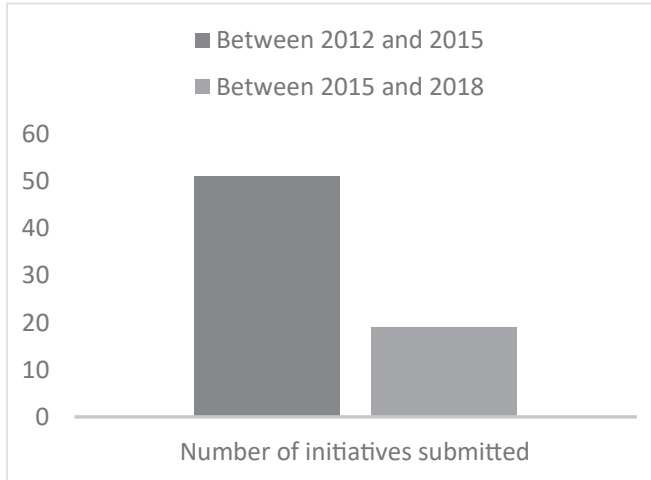


Figure 1. Number of initiatives submitted

By February 2025, a total of 119 initiatives had been submitted to the European Commission, but only seven of these initiatives met the requirements to be presented to the European Commission and the European Parliament (Tárnok 2022, and Tárnok 2021). Even out of this very limited number of initiatives, only two resulted in legislation corresponding to the initiative.²³

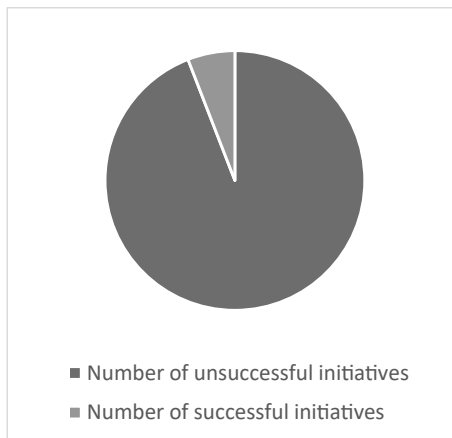


Figure 2. Experience of initiatives submitted until 2025

²³ In the case of the Right2Water water initiative, the Commission first rejected a legislative proposal in 2014, and then in 2018 it re-launched the package of proposals, partially responding to the organisers' request, resulting in the adoption of the new Drinking Water Directive by the EU legislator. The Commission reacted positively to the 'End the Cage Age' ECI during the institutional review and decided to launch the legislative procedure in 2023 in its Communication of 30 June 2021.

That is why the European citizens' initiative is nowadays an almost moribund legal institution (Ridard 2018: 2–16): firstly, the conditions for a European Citizens' Initiative are unachievable for an 'ordinary person', as it requires strong infrastructure, language skills and, ultimately, financial support. Secondly, the European Commission appears to have a vested interest in the success of the European Citizens' Initiative, because whenever the Commission drafts legislation at the initiative of EU citizens, we must also conclude that the Commission has not acted 'in its own right' on an issue where the EU has legislative competence and where it is of great importance to EU citizens.²⁴ A good (or rather sad) example of this attitude of the Commission is the *Minority SafePack* European Citizens' Initiative, where the European Court of Justice had to decide to start collecting signatures, and then, after collecting the necessary number of signatures, the Commission again concluded that the case did not need to be legislated.²⁵

Together with the above, it is worth highlighting that the ECI, which has been in place since 2012, has also had an impact on the national rules of Member States. In Finland, for example, since March 2012, its constitution allows citizens' initiatives to be submitted to the Finnish Parliament if at least 50,000 signatures are collected. Citizens' initiatives have been very well received in Finland. In the first six years of the institution, more than 1,000 initiatives have been processed and 37 initiatives have reached the minimum of 50,000 signatures. One initiative led to direct legislative change (on marriage equality), while others had an indirect impact on legislation.²⁶

The possible transformation of the European Citizens' Initiative in the light of EU citizenship

It is therefore clear that the effectiveness of the European Citizens' Initiative raises questions (Petrescu 2014: 1000 and Longo 2019: 181–200). That said, the anomalies in its operation are partly due to the difficulty of successfully meeting the administrative hurdles of the initiative (i.e. collecting 1 million signatures

24 The biggest problem with the European Citizens' Initiative is that, regardless of the success of the initiative (i.e. the 1 million signatures), the European Commission often ignores the initiative in political terms (i.e. no matter how many people have signed the initiative, it says without much justification that it does not consider it necessary to initiate a legislative procedure). It can of course do this from a legislative point of view, but it is questionable how much this attitude 'helps' to increase the importance of the European Citizens' Initiative and thus of EU citizenship. In this context, it would therefore be worth thinking about changing the substantive rules of the European citizens' initiative (for example, by distinguishing between 'expressing an opinion' and 'deciding on a case' – in the latter case, by stipulating that the European Commission must react in some way to the initiative – or by defining the so-called 'prohibited subject areas').

25 Case of T-158/21, 'Minority SafePack v Commission', 9 November 2022, ECLI:EU:T:2022:696.

26 See more: <https://www.coe.int/en/web/human-rights-and-biomedicine/-/finland-citizen-s-initiative-to-the-parliament-2012->

from at least seven EU Member States, while meeting the minimum number of signatures per Member State).²⁷ It is therefore worth examining whether it would be possible to reduce the bureaucratic obstacles behind the initiative, in line with the hypothetical aim of increasing the importance of the legal institution of EU citizenship. Currently, the 1 million signatures required for a European Citizens' Initiative are not only based on the fact that the signatory is an EU citizen, but also on the Member State of residence of the EU citizen supporting the initiative, due to the requirement of support from seven Member States and the minimum number of signatures required for each country. As in the case of the European Citizens' Initiative, residence is therefore more important than EU citizenship. The question to be examined is therefore whether it would be possible to introduce a rule that the signatures of 1 million EU citizens supporting the initiative would be sufficient for it to be successful, irrespective of whether the supporters of an initiative are resident in one or more Member States (while, of course, waiving the minimum number of signatures required for Member States).

To answer this question, two aspects should be examined: *firstly*, the number of signatures required for a successful citizens' initiative in a national referendum in each Member State, and the percentage of the total population that this requires, *secondly*, the percentage of 1 million signatures required for a European Citizens' Initiative in each EU Member State in relation to the population of each Member State. These two aspects can give us an adequate picture to answer the question raised above.

Looking at the constitutions of individual Member States, we see that in the majority of countries, the number of signatures required for citizens to initiate national referendums is around 2% of the total population of the country, but there are examples of significantly higher thresholds, up to 10%.²⁸ The population of the EU Member States can be rounded up to 450 million people²⁹, compared to which the 2% threshold would require around 9 million signatures.

27 The administrative obstacles to the ECI may raise the question of why the European Commission expects strict conditions to be met for a successful initiative. The main argument could be that if the ECI could be submitted under lighter conditions, it is feared that the large number of initiatives would paralyse the Commission's work and impose significant costs on the EU.

28 In Hungary, 200,000 signatures of support are needed to initiate a national referendum, which represents approximately 2% of the total population of Hungary. A similar proportion is required in Slovenia (the country of around 2 million requires 40,000 signatures of support). Italy has a considerably less stringent requirement (500,000 signatures in Italy, which has a population of almost 60 million, which is equivalent to around 0.8%). Lithuania, for example, has a much stricter condition (Lithuania, with around 2.6 million people, requires 300,000 signatures, a threshold of around 11.5%). For completeness, Croatia has a 10% signature threshold for referendums to amend the constitution, and Latvia also has a 10% threshold for referendums to dissolve parliament.

29 According to the latest Eurostat figures (2022), the total population of EU Member States is 446.8 million. See: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Population_and_population_change_statistics

The second question is to look at how the current figure of 1 million signatures required for a European Citizens' Initiative compares with the population of each Member State. It is worth reiterating here that the number of signatures required for the European Citizens' Initiative is currently only indirectly related to the population of the Member States: the minimum number of signatures required in each Member State can be determined by multiplying the number of MEPs in that Member State by the total number of MEPs in the European Parliament. And while the composition of the European Parliament takes into account the population of each Member State, if we take the number of representatives per inhabitant of Germany, for example, which is entitled to elect the most representatives, Cyprus, Malta and Luxembourg would have one representative each, rounded up to the nearest whole number (compared to the current six to six MEPs), and vice versa: if we start with the six seats of the smallest population, Malta, Germany would 'deserve' approximately 150 seats in the European Parliament. (Szabó 2021: 201). However, if we were to do away with the requirements for each Member State and allow the necessary number of signatures (currently 1 million) to be collected regardless of geography, we would have an even more unfair system than at present. In fact, 1 million signatures represents just 1.2% of the total in Germany, with around 80 million inhabitants, and 83% in Estonia, with 1.2 million (not to mention the smallest Member States, Cyprus, Luxembourg and Malta).

On this basis, it can be argued that removing the requirement for signatures covering seven Member States from the criteria would completely upset the current relative balance between the citizens of the Member States. Therefore, one can hardly come to any other conclusion than that 'from a procedural point of view' the legal regulation of the European Citizens' Initiative is currently as appropriate as possible considering the current possibilities.

Conclusions

The institutions of direct democracy are of great importance for the functioning of a democratic country. The effectiveness of the EU could also be undoubtedly enhanced if the institutions of direct democracy functioned well in the EU. The only current institution of direct democracy, the European Citizens' Initiative, has mixed conclusions. On the one hand, the content of the legislation on the European Citizens' Initiative can be considered to be basically adequate (in particular the geographical and quantitative conditions for the initiative). On the other hand, the European Citizens' Initiative is in fact a kind of 'toothless lion', mainly because the European Commission, which has a monopoly on initiating EU legislation, can in fact be seen more as a counter-party, since every successful European Citizens' Initiative also shows that the Commission has not initiated legislation on an important issue. And the success rate of the European Citizens' Initiative (if this term makes sense at all, given that there have been only two cases of EU legislation on the basis of

more than 100 initiatives) suggests overall that the European Citizens' Initiative has failed rather than succeeded.

The situation is somewhat different with referendums that do not currently exist at EU or regional level. Given that in EU law the European Parliament is not in essence the sole legislator (but acts as co-legislator with the Council in the ordinary legislative procedures), and that the essence of a referendum is inherently that the people 'take back' the power to decide on an issue from their elected representatives, the institution of a European referendum cannot be interpreted in dogmatic terms. That said, of course, there would hardly be any obstacle to Member States deciding to create the institution of a European referendum, mainly to break the Commission's monopoly on legislative initiative and the European Parliament's dominant role in lawmaking. Theoretically, there is also no longer any obstacle to the fact that in those states where the institution of national referendums exists, referendums on a matter of EU legislation that violates the principle of subsidiarity (i.e. the so-called yellow card procedure) can be held at roughly the same time. Such a referendum, which would be held at approximately the same time in almost all Member States, could in time become a 'European referendum', with all the theoretical and practical difficulties that entails.

The situation is different in the case of referendums at the level of the Euroregions, which could also be considered in theory, as the definition of the framework of the legal institution itself is fraught with practical problems. While a 'European referendum' could be modelled on the national referendums already existing in each Member State, a regional referendum would have to take place at the level between the national and local referendums, but in a way that would involve several Member States. However, creating the institution of a referendum at regional level would represent a 'real market demand', a classic example of which is the case of environmentally damaging investments in a river area, where a referendum would be a much stronger instrument than the public hearings that may be held as part of the environmental impact assessment procedure. So, while the creation of such an institution could be justified, it could also be dangerous from the point of view of national governments. It is because, by their very nature, referendums can be used not only to get the legislator to do something, but also to prevent the adoption of certain acts.

For all these reasons, it can be said that a strengthening of the institution of direct democracy in the context of EU citizenship would be absolutely justified, but in the current framework, which can be traced back to EU primary law in particular, it is unlikely to be achieved in the near future.

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Gabor Kurunci

Da li je Evropska unija u krizi? Odnos između građanstva EU i direktne demokratije i njen uticaj na demokratski legitimitet

Apstrakt

Kriza izazvana pandemijom kovida-19 i posledice rata između Rusije i Ukrajine utiču i na funkcionisanje Evropske unije. Povremeno se javljaju glasovi koji dovode u pitanje postojanje demokratskog legitimiteta u Evropskoj uniji. Stoga je važno razmotriti na koji način se pojam građanstva EU odnosi prema pojmu biračkog prava, a naročito prema direktnoj demokratiji. Institucije direktne demokratije, a posebno referendum, predstavljaju najopštiji i najsnažniji oblik neposrednog vršenja vlasti, jer omogućavaju da narod sam neposredno odlučuje o nekom pitanju. Posmatrajući sisteme država članica EU, vredno je ispitati pitanje referenduma na nacionalnom i lokalnom nivou, posebno značaj pojma građanstva EU u određivanju birača koji učestvuju u referendumu. U tom kontekstu, kao preliminarno pitanje, može se postaviti da li bi bilo moguće uvesti referendum na nivou EU, na kome bi građani EU odlučivali o pitanju iz nadležnosti Unije, ili, slično tome, zamisliti prekogranični regionalni referendum, na kome bi građani EU koji žive u više država odlučivali o regionalnom pitanju koje se tiče više država. Neophodno je, međutim, razmotriti i jednu instituciju koja već postoji: prošlost, sadašnjost i budućnost Evropske građanske inicijative, sa stanovišta mogućnosti da ona u budućnosti preraste u neku vrstu evropskog referenduma.

Ključne reči: građanstvo Evropske unije, biračko pravo, demokratski legitimitet, direktna demokratija, referendum, Evropska građanska inicijativa

