

**Opinion of the European Economic and Social Committee on the Communication from the Commission on the European Citizens' Initiative Water and sanitation are a human right! Water is a public good, not a commodity!**

(COM(2014) 177 final)

**(own-initiative opinion)**

(2015/C 012/05)

Rapporteur: **An Le Nouail Marlière**

On 11 September 2014, the European Economic and Social Committee, acting under Article 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on the

*Communication from the Commission on the European Citizens' Initiative Water and sanitation are a human right! Water is a public good, not a commodity!*

(COM(2014) 177 final).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 July 2014.

At its 502<sup>nd</sup> plenary session, held on 15 and 16 October 2014 (meeting of 15 October), the European Economic and Social Committee adopted the following opinion by 151 votes to 2 with 5 abstentions.

## **1. Conclusions and recommendations**

1.1 In its response to the first successful European Citizens' Initiative 'Water and sanitation are a human right! Water is a public good, not a commodity!', the Commission affirms the importance of the human right to water and sanitation and of water as a public good and fundamental value, and reiterates that 'water is not a commercial product'.

1.2 First of all, it is to be welcomed that the support of people for this ECI, as well as the recognition by the Commission of the specificity and importance of water services 'to satisfy the basic needs of population', have led to the exclusion of water supply services from the concessions directive.

1.3 More generally, the EESC appreciates the Commission's commitment to act in accordance with Treaty rules requiring the EU to remain neutral in relation to national decisions governing the ownership regime for water undertakings. In this regard, the EESC firmly believes that no decision or act related to EU activity should imply a limitation of Member States' freedom to choose how to organise the provision of water services.

1.4 The EESC therefore calls on the Commission to take specific initiatives to ensure the long-term respect of this commitment across all the EU's policy areas, both as regards Member States benefiting from support under the European Stability Mechanism and in the current context of trade negotiations (on the TTIP and/or trade in services, etc.), and to explicitly exclude water services from such negotiations.

1.5 The Committee takes due note of certain positive aspects of the Commission's response:

— the recognition that the provision of water services is generally the responsibility of local authorities, which are the closest to the citizens;

- the commitment to promoting universal access to water and sanitation in its development policies through not-for-profit partnership; and
- the promotion of public-public partnerships, which should be recognised as an effective tool to enhance the performance of public authorities and water services not only in the international development domain, but also within the EU.

1.6 The Committee observes that water utilities are natural monopolies, by virtue of the huge capital investments needed and the large transportation costs, as noted in a recent report by the European Environment Agency (European Environment Agency, 2003, *Assessment of cost recovery through water pricing*, Luxembourg; p. 28). Therefore, public authorities must be in a position to exert an extensive control on the quality and efficiency of the services provided by water utilities. In this framework, the EESC supports the Commission in its recognition that transparency has a key role to play.

1.7 Therefore, the Committee invites the Commission to increase its efforts towards full implementation of Article 14 of the Water Framework Directive (public information and consultation) and supports the Commission's intention to promote the benchmarking of water services as regards economic, technical and quality performance indicators. The links between investment levels, average water tariffs and quality of employment conditions will thus become clearer and increase transparency in the sector.

1.8 The EESC considers that the review of the Water Framework Directive (WFD) and the Drinking Water Directive should be an opportunity to integrate indications and principles concerning the principle of universal access as well as the WFD principle of the recovery of the costs of water services. The EESC urges the European Commission to propose legislation establishing access to water and sanitation as a human right as set out by the United Nations, and to promote the provision of water and sanitation as vital public services for all.

1.9 The EESC notes that, through their support to the ECI, European citizens have expressed their desire to participate in European policy-making and have a say on the issue of water as a public good and a service of general interest. This calls for all European institutions to open up the governance of European water policy to all interested stakeholders and to increase the opportunities for public debate on the future of water resources.

## 2. Introduction

2.1 The European Citizens' Initiative (ECI), introduced by the Lisbon Treaty to encourage a greater democratic involvement of citizens in European affairs <sup>(1)</sup>, allows one million citizens of the European Union, coming from at least seven Member States, to call on the European Commission to propose legislation on matters of EU competence. It is the first ever participatory democracy instrument at European level.

2.2 Since its launch in April 2012, more than 5 million citizens have signed up to over 20 different initiatives. The EESC has invited several campaign initiators to its plenary sessions.

2.3 The objective of the ECI for water and sanitation as a human right was to propose legislation implementing the human right to water and sanitation as recognised by the United Nations, and promoting the provision of water and sanitation as essential public services for all. It was presented at the EESC's September 2013 plenary session.

2.4 Here is the original text presenting the initiative:

### **Water and sanitation are a human right!**

We invite the European Commission to propose legislation implementing the human right to water and sanitation as recognised by the United Nations, and promoting the provision of water and sanitation as essential public services for all.

---

<sup>(1)</sup> Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizens' initiative; OJ L 65, 11.3.2011, p. 1.

The EU legislation should require governments to ensure and to provide all citizens with sufficient and clean drinking water and sanitation. We urge that:

1. the EU institutions and Member States be obliged to ensure that all inhabitants enjoy the right to water and sanitation;
2. water supply and management of water resources not be subject to 'internal market rules' and that water services are excluded from liberalisation;
3. the EU increases its efforts to achieve universal access to water and sanitation.

2.5 On 17 February 2014, after the Commission had validated the 1 659 543 signatures gathered across 13 Member States, the European Parliament held a wide-ranging hearing for the citizens' committee of the water ECI, in which the EESC was invited to participate. On the same day, the Commission vice-president, Mr Šefčovič, also received the ECI citizens' committee.

2.6 On 19 March 2014, the European Commission published a communication setting out its official response to the first successful ECI, which called on the Commission 'to implement the human right to water and sanitation in European law'.

2.7 On 15 April 2014 — ECI Day — the EESC held a conference on 'Building up success' to which the water ECI's citizens' committee was again invited and during which 'an overwhelming number of ECI campaigners and stakeholders from various institutions and organisations met at the EESC to discuss the lessons learned so far and to draw up a list of recommendations to make this instrument for direct democracy more effective and user-friendly'.

### 3. General comments

3.1 As an instrument for sparking public debate and forging networks of citizens, the ECI has demonstrated its strength and proven itself.

3.2 The obstacles that need to be removed lie in reviewing the rules governing its implementation<sup>(2)</sup> as they are not in keeping with the real nature of the ECI. They impose obligations comparable to those that would be appropriate for a legally binding instrument of direct democracy, the legal impact of which would be that of a referendum (personal data, possible deterrent effect, disproportionate procedures) and subject the organisers to disproportionate legal constraints, which differ from one Member State to the next. They restrict the scope of matters that may be legally registered to the discretion of the Commission, which alone determines whether a given matter falls within its competence.

3.3 The text presenting a registered ECI can be no longer than 800 characters — title, subject matter and description included — which led the Commission to find that the initiative lacked specific proposals!

3.4 Many Europeans have lost hope of having their say in Europe and on Europe. The future European Commission should be mindful of this.

3.5 As part of the Treaty on European Union (Article 11(4)), this device is the only legal instrument available to ordinary Europeans to influence the EU's political agenda. In 2015, the EP and the Council will have to review these implementing rules, and should learn the lessons from the initial campaigns.

### 4. Specific comments

4.1 The Committee welcomes the fact that the ECI on *Water and sanitation are a human right* has required the EU institutions to address Europeans' concerns and note that they go beyond the usual regulatory considerations of the Commission; it is also pleased that the Commission has decided to exclude water and sanitation services from the directive on concessions.

---

<sup>(2)</sup> Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizens' initiative.

4.2 The Commission rightly points out Members States' responsibilities as regards the adoption of measures to support people in need.

4.3 It also acknowledges having competences in defining some basic principles for water pricing policies in the Member States and points to the provisions of Article 9 of the Water Framework Directive, which establishes the principle of full cost recovery.

4.4 However, it has lacked any real ambition in its response to the expectations of more than 1,6 million people (1,9 million signatures collected) and has not put forward a new proposal for an EU instrument recognising the human right to water.

4.5 Based on specific examples from various European cities, the Committee believes that the requirement to adopt suitable water pricing policies in order to conserve water can and should be reconciled with the vital need to guarantee universal access to water by means of appropriate solidarity mechanisms.

4.6 The EESC considers that the review of the Water Framework Directive and the Drinking Water Directive should be an opportunity to integrate indications and principles concerning the principle of universal access and the WFD principle of the recovery of the costs of water services.

#### 4.7 *Ensuring better quality and more accessible water:*

4.7.1 The Committee points out that it is surprised to see an ECI of this magnitude being responded to with a proposal for a public consultation on the quality of drinking water, which seems to be falling back on more usual means of consultation, which, though useful, do not address the ECI.

#### 4.8 *Ensuring neutrality as regards the provision of water services:*

4.8.1 The Committee welcomes the fact that the Commission has grasped the need for transparency in the decision-making process regarding water at local, regional and national levels.

4.8.2 Given that it is vital to life, water should be conserved as a fragile resource and a public good. Due account should be taken of the fact that water use is a priority for meeting vital human needs. The Commission should agree on the need to recognise access to and the adequate supply of water and sanitation *as a fundamental human right*, given that they are vital to life and dignity, and in so doing to exclude them permanently from the commercial rules of the internal market by proposing that they be reclassified as a service of non-economic general interest <sup>(3)</sup>.

4.8.3 Products necessary to people's survival should be subject to a specific approach and removed from the scope of free trade. Despite the existence of official texts declaring that 'water is not a commercial product' and that 'everyone has the right to food', we are still seeing privatisation of water sources, large-scale speculation in food commodities and land grabbing on a major scale. These phenomena are directly threatening the livelihoods of the poorest people.

4.8.4 The Commission is requested to propose specific binding measures responding to this ECI, which it has failed to do in its communication. In particular, a legally binding European text should stipulate that profit must not be the goal of the management of water sources and related services. Otherwise, the statement that 'water is a public good' is meaningless.

#### 4.9 *Ensuring the provision of water through public services in the citizen's interest:*

4.9.1 The Committee calls for the adoption of a European instrument recognising the human right to water and sanitation as established by the UN in July 2010, which is one of the cornerstones of the ECI, along with Article 14 TFEU on SGEIs and Protocol 26 on SGIs, and for the Commission to recommend to the Member States that this right be fulfilled through a service of non-economic general interest, while ensuring neutrality as regards delivery of this service, separate from its commercial use in industry or agriculture.

---

<sup>(3)</sup> OJ C 177, 11.6.2014, p. 24-31.

#### 4.10 *A more integrated approach for development assistance:*

4.10.1 The EU's development policy and financial commitments would benefit from being backed firmly by the recognition by all Member States of the human right officially recognised by the UN in July 2010, particularly with a view to ensuring optimum effectiveness, as declaring development and aid policy in this area to be bound by a human right would make it possible to combat corruption and commit sub-contractor operators. The Committee encourages and supports the integrated approach and the creation of synergy between water and food security. As regards the synergy between water and energy, the Committee awaits the proposed measures in order to judge whether they are in keeping with the spirit of the ECI as regards the protection of water as a public good.

Public health should also be a central concern, notably in terms of the provision of sanitation wherever it is lacking, and despite the fact that this field is of less interest to operators.

#### 4.11 *Promotion of public-public partnerships:*

4.11.1 The Committee endorses the Commission's commitment to better promoting these not-for-profit partnerships in the water sector so as to develop capacity by transferring expertise and knowledge between water and sanitation utilities, local authorities and other water sector stakeholders, and reiterates that innovation and the benefits of research and development that has received public funding under the 7th Framework Programme should be made available to the not-for-profit sector, enterprises in the social and solidarity-based economy, municipalities, etc. <sup>(4)</sup>.

#### 4.12 *Rio+20 follow-up:*

4.12.1 In order to support the sustainable development goals that are to replace the millennium development goals after 2015, and which are to be universal in scope, the EU should ensure consistency with these future goals and accept that between one and two million Europeans still do not have access to this resource. The EU should enhance Member States' knowledge of the relevant data (on the homeless, the Roma and precarious housing) in order to remedy this situation.

4.13 While the Committee welcomes the Commission's commitment on water quality, transparent management and the establishment of more structured dialogue between stakeholders, it points out that its response does not address the questions raised by the ECI on the universality of this human right, i.e. that all citizens and residents must have access to a minimum subsistence amount of water regardless of their situation in residential, professional or other terms.

4.14 The European Commission states that the specific characteristics of water and sanitation services and their important role in satisfying the basic needs of the population have been consistently acknowledged in EU legislation.

The Committee feels that their role is vital and not merely important, and given that basic needs are indeed at stake, will push for these basic needs to be met in the framework of public services of non-economic general interest.

4.15 The EESC recommended that Member States and the EU institutions consolidate this policy, given that water is essential for human life: for people, industries, farming, and local authorities. It should be given central importance through all other EU policies, while linking in the related challenges regarding poverty, the fundamental rights of Europeans, public health, social integration and cohesion.

#### 4.16 The EESC recommends:

- assessing the impact and cost of any water policy that does not integrate social, environmental and economic considerations;
- making the ongoing strategies consistent with the various regional interests in Member States;
- developing a sustainable approach to managing water resources, including new early warning instruments to respond to natural or anthropogenic disasters that endanger and damage water resources in the short term;

<sup>(4)</sup> OJ C 44, 15.2.2013, pp. 147-152.

- seeking once again to have the Soil Directive adopted;
- focusing on more economical demand, to conserve and protect this resource; and
- integrating social dialogue and the social partners, which will contribute to the success of all tasks, in all their diversity, at all levels of water services and treatment.

4.17 The EESC also:

- advocates research into technologies for improving the health and safety of workers in the water and sanitation sectors;
- recommends harnessing the knowledge capital accumulated by certain NGOs;
- recommends expanding the list of pollutants (nanoelements and carcinogenic, mutagenic and reprotoxic chemicals) that must not be present in surface water or aquifers in the interests of public health, and to draft harmonised recommendations for the re-use of treated water; and
- welcomes the measures to protect ecosystems, and supports efforts to preserve natural aquifers.

4.18 Water and sanitation policy must be embedded in a sustainable development policy ensuring that this resource meets people's current needs and is preserved for future generations.

Brussels, 15 October 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

---