COMMISSION IMPLEMENTING DECISION (EU) 2021/2314

of 14 December 2021

on the request for registration of the European citizens' initiative entitled 'EVE INITIATIVE FOR THE ESTABLISHMENT OF THE RIGHT TO DECIDE', pursuant to Regulation (EU) 2019/788 of the European Parliament and of the Council

(Only the Spanish text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative ([1]), and in particular Article 6(4) thereof,

Whereas:

(1) A request for registration of a European citizens' initiative entitled 'EVE INITIATIVE FOR THE ESTABLISHMENT OF THE RIGHT TO DECIDE' was submitted to the Commission on 9 September 2021.

(2) By decision of 5 October 2021, in the form of a letter (C(2021)7294 final), in accordance with Article 6(4) of Regulation (EU) 2019/788, the Commission informed the group of organisers that the requirements for registration set out in Article 6(3), first subparagraph, points (a), (d) and (e), of that Regulation were fulfilled and that Article 6(3), first subparagraph, point (b), was not applicable. However, the Commission also explained that the initiative did not fulfil the requirement in Article 6(3), first subparagraph, point (c), of Regulation (EU) 2019/788. The Commission therefore invited the group of organisers, in accordance with Article 6(4), first subparagraph, of Regulation (EU) 2019/788, to amend their initiative. The Commission drew the attention of the group of organisers to the fact that Regulation (EU) 2019/788 did not allow citizens' initiatives to make proposals to revise the Treaties. Furthermore, it invited the group of organisers to indicate which legal act of the Union they invited the Commission to propose and to clarify the content of such legal act(s).

(3) On 19 October 2021, the group of organisers sent a letter to the Commission services in which they enquired about (i) the requirement to present a 'proposal', arguing that it is the Commission's task to draft legislative proposals; and (ii) the examination of the initiative and the possibility of a meeting with the Commission's representatives to jointly assess the suggested EVE project (which would aim to contribute to the creation of the new 'right to decide') and design the content of the initiative (referring, erroneously, to Article 15 of Regulation (EU) 2019/788, which applies to valid initiatives only). In their reply of 5 November 2021, the Commission services reiterated that the objectives of the initiative have to fulfil the conditions laid down in Article 6(3) of Regulation (EU) 2019/788.

(4) On 17 November 2021, the group of organisers resubmitted the initiative. While the initiative was redrafted, its substance remained unchanged, despite the Commission's invitation to take into account its assessment in its decision of 5 October 2021.

(5) The objectives of the initiative are expressed as follows: 'In view of the documentation annexed in the document entitled 'EVE Initiative PROPOSAL', we ask the European Commission to prepare any act or legislation that may be necessary for the European Commission to establish the (human) right to decide and transfer this to public institutions. This would create a system of direct democracy where citizens could make decisions, in a cohesive manner, on matters of common or public interest and thereby exercise the sovereignty of the people both with and without representatives. Given the magnitude of this request, the Initiative has put forward a draft proposal that could be used to establish the right to decide. It is therefore also asking for the following three possibilities to be considered: (1) The EU and its institutions could establish the right requested by the Initiative on their own account; (2) The EU could create a special way of conducting a prior examination of the proposal's feasibility and, subsequently, of ensuring that the proposal is developed with all possible competent parties within the EU; (3) The

([1]) OJ L 130, 17.5.2019, p. 55.

EU could give its authorisation to develop and test out the proposal publicly; this would be done by and for the particular party or the proposal only.' The initiative further states that it seeks to achieve the overall objective 'to create any act or action needed to create the subject matter of the ECI', which probably refers to developing the content of and/or implementing the (project leading to the instauration of the novel) 'right of decision'.

(6) By this initiative, the group of organisers seeks to invite the Commission to submit a proposal for the introduction of a new fundamental right which should establish a 'system of direct democracy' at the level of the Union institutions, where the citizens can decide, 'in a cohesive way', 'on common or public matters', thus jointly exercising the 'sovereignty of the people'. According to the group of organisers, this should be achieved either (1) 'by the EU on its own account', (2) 'by "authorising" the development of the objective for and by the private representative of the EVE initiative and project' or (3) 'in conjunction with the EVE project'. The group of organisers clarifies that such a proposal may imply changes in the Treaties but that, in their view, Regulation (EU) 2019/788 allows citizens' initiatives to ask the Commission to make such a proposal. Under options (2) or (3), the group of organisers suggests that the Commission "authorises" a private project ('EVE Project'), which would aim to contribute to the establishment of the new fundamental right. The other objectives set out in the accompanying document all serve the overall objective of introducing this new right.

(7) According to Article 11(4), first subparagraph TUE and Article 1 of Regulation (EU) 2019/788, a European Citizens' Initiative is an initiative inviting the 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, which has received the support of at least one million eligible signatories coming from at least one quarter of all Member States. Pursuant to Article 6(3), first subparagraph, point (c) of Regulation (EU) 2019/788, the Commission is not to register a citizens' initiative if it "manifestly falls outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties".

(8) In its judgement in Case T-611/19, the General Court ruled that the notion of legal act, within the meaning of Article 11 TUE and Article 2, point 1 and Article 4(2), point (b), of Regulation (EU) No 211/2011 of the European Parliament and of the Council [2], refers, in conformity with Article 288 TFEU, to regulations, directives, decisions, recommendations and opinions adopted by the Institutions. Regulation (EU) No 211/2011 has been repealed as of 1 January 2020 and replaced by Regulation (EU) 2019/788. However, the scope of the citizens' initiative and the legal conditions for registration have not changed. Regulation (EU) 2019/788 does not allow citizens' initiatives to ask the Commission to propose changes to the Treaties, as it only allows initiatives to ask the Commission to propose, within the framework of its powers, acts of secondary law to implement the Treaties.

(9) As the group of organisers admits itself, the initiative's objective would have to be achieved through modifications of the Treaties and could not be achieved by legal acts such as those referred to in Article 288 TFEU. Moreover, insofar as the initiative offers to launch a private project ('EVE Project'), which would aim to contribute to the creation of the new 'right to decide', the Commission notes that this would also not involve any proposal for such an act.

(10) For these reasons, the initiative entitled 'EVE INITIATIVE FOR THE ESTABLISHMENT OF THE RIGHT TO DECIDE' manifestly falls outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties within the meaning of Article 6(4), third subparagraph, point (c), of Regulation (EU) 2019/788.

(11) The request for registration should therefore be refused,

[2] Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative (OJ L 65, 11.3.2011, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

The European initiative entitled 'EVE INITIATIVE FOR THE ESTABLISHMENT OF THE RIGHT TO DECIDE' shall not be registered.

Article 2

This Decision is addressed to the group of organisers of the citizens' initiative entitled 'EVE INITIATIVE FOR THE ESTABLISHMENT OF THE RIGHT TO DECIDE', represented by Mr Eberardo SÁNCHEZ LÓPEZ and Mr Juan Carlos ESCUDERO GONZÁLEZ acting as contact persons.

Done at Strasbourg, 14 December 2021.

For the Commission
Věra JOUROVÁ
Vice-President