EUROPEAN CITIZENS' INITIATIVE “Water is a human right!”

Proposals to implement the human right to water and sanitation in European legislation.

The ECI “Water is a human right!” collected 1.8 Million signatures in 28 EU countries. In 13 countries the quorum was surpassed. Therefore our proposals for EU legislation should be taken into consideration by the European Commission. 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.

In this document we elaborate these proposals, building on the Annex that we submitted together with the ECI on 2 April 2012 and concretising the proposals in this Annex, as well as building on developments during the year in which steps have already been taken towards the implementation and realization of the human right to water and sanitation. (E.g.: Rio+20 outcome, statement of Commissioners Barnier and Potocnik)

Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services. (Article 14, Treaty on the Functioning of the European Union (TFEU))

This is the basis on which we invite the European Commission to propose legislation to ensure the universal human right to water and sanitation. All citizens need potable water and a safe system of sanitation. The United Nations have recognised the universal human right to water and sanitation, but still many people cannot enjoy this right. Water and sanitation are not implemented as human rights in all EU countries yet. Water and sanitation are essential to human life and essential to the realization of all other human rights. EU legislation should require governments to provide all citizens with sufficient and clean drinking water and sanitation. To ensure the full realisation of the right, states should aim for at least 50 to 100 litres per person per day.

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European cities and countries have established networks of water supply and sewerage over the centuries at the same time as developing their industries. One could not do without the other. This is also valid for developing countries. The Millennium Development Goals (MDGs) on water and sanitation are a prerequisite for the other MDGs. With regards to water the MDG has been achieved, but it still means that close to 800 million people are without clean drinking water. The MDG on Sanitation, however, has not been met at all. Progress in the past decade has been extremely slow and the issue has been given little attention, despite the fact that, in the view of public health experts, without sanitation, water supply alone is insufficient to prevent infectious disease such as cholera and diarrhoea. Frankly we could speak of a failure of the international community in this respect.

In its “Agenda for Change” the EU states that it seeks to take into account development cooperation objectives in non-development policies. The EU recognizes that some of its policies can have a significant impact outside of the EU and that they can either contribute to or undermine its development policy. The EU therefore seeks to minimise contradictions and to build synergies between policies other than development cooperation that have an impact on developing countries, for the benefit of overseas development.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt the measures necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach. (Article 209, TFEU)

In order to promote the complementarity and efficiency of their action, the Union and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences. They may undertake joint action. Member States shall contribute if necessary to the implementation of Union aid programmes. The Commission may take any useful initiative to promote this coordination. (Article 210, TFEU)

These articles complement the basis on which our ECI is founded and are in particular relevant to our third demand.

The Human Right to Water and Sanitation

The right to sanitation and water is guaranteed as implicit components of the right to an adequate standard of living as stipulated in Art. 11 of the International Covenant on Economic, Social and Cultural Rights. It can be specified by a number of criteria:

AVAILABILITY: The human right to water entitles everyone to sufficient and continuous water for personal and domestic uses. Likewise, a sufficient number of sanitation facilities has to be available.

QUALITY: Water has to be safe for consumption and other personal uses, so that it presents no threat to human health. Sanitation facilities must be hygienically and technically safe to use. To ensure hygiene, access to water for cleansing and hand washing at critical times is essential.
ACCEPTABILITY: Sanitation facilities, in particular, have to be culturally acceptable. This will often require gender-specific facilities, constructed in a way that ensures privacy and dignity.

ACCESSIBILITY: Water and sanitation services must be accessible to everyone within, or in the immediate vicinity, of household, health and educational institutions, public institutions and workplaces. Physical security must not be threatened when accessing facilities.

AFFORDABILITY: The price of sanitation and water services must be affordable for all without compromising the ability to pay for other essential necessities guaranteed by human rights such as food, housing and health care.

EU legislation and the human right to water and sanitation.

The supply of water is a service of general interest as defined in the Commission communication on services of general interest in Europe (Water Framework Directive). Water and the environment are shared responsibilities between the EU and Member States. Next to the Water Framework Directive other relevant legislation includes the Drinking Water Directive and the Urban Waste Water Treatment Directive. In addition the EU has comprehensive EU funding instruments at its disposal (Cohesion policy, Rural Development policy). The provisions for Water and Sanitation are binding to all Member States, although new Member States have a transition period. According to the High Representative on Human Rights and Vice-President of the Commission, Catherine Ashton, scrutiny of Member States on delivering their obligations is ensured through legal enforcement and compliance with the acquis.

Water services mean all services which provide, for households, public institutions or any economic activity: (a) abstraction, impoundment, storage, treatment and distribution of surface water or groundwater, (b) waste-water collection and treatment facilities which subsequently discharge into surface water. (Water Framework Directive)

We call for a common set of governance and human rights standards and principles in European legislation. Although the human right to water and sanitation has been recognised in various resolutions and communications, there is a gap between legislation and implementation. Our ECI aims to fill this gap, not only with regard to the situation in the EU itself, but also with regard to the global challenges and follow up of the goals set in the MDGs and to be set in the SDGs for the post-2015 agenda.

Demand 1: We urge that the EU institutions and Member States be obliged to ensure that all inhabitants enjoy the right to water and sanitation.

The right to water was already recognised by Member States in the Recommendation Rec(2001)14 of the Committee of (Foreign) Ministers to Member States on the European Charter on Water Resources. This states: “International human rights instruments recognise the fundamental right of all human beings to be free from hunger and to an adequate standard of living for themselves and their families. It is quite clear that these two requirements include the right to a minimum quantity of water of satisfactory quality from the point of view of health and hygiene”.
On World Water Day 2011, Catherine Ashton declared that “access to safe drinking water and adequate sanitation are essential if people are to live healthily and with dignity”. [...] “All countries bear the responsibility to realize that people enjoy their full human rights, and that they have equal access to health care, education, safe drinking water and sanitation, social and other basic services”.

The rights to water and sanitation can and must be met for present and future generations. In her report focusing on sustainability the UN Special rapporteur highlights challenges and aggravated risks in times of economic and financial crisis. The Human Right to water and sanitation normative content and principles contribute to ensuring sustainability, thus far failing. The human right to water and sanitation contributes to sustainability because it takes into account the ‘third pillar’ of sustainability (economic, environmental, SOCIAL). Thus far the sustainability of water services has been often look at from only an economic and environmental perspective. Implementing the human right means that the social angle would be equally considered in striving for sustainable water services. The institutional recognition of the human right to water and sanitation appears to be the missing link between the EU sustainable development strategy and the Europe 2020 strategy, although already in 1967 the European Water Charter and the 2001 European Charter for water resources acknowledged the right to water, even if in non-binding instruments.

There cannot be a right to water without clean and accessible water. Water quality is addressed in the Water Framework directive. This directive provides Member States with obligations allowing them to respect their international obligations as regards to the right to health and the right to an adequate standard of living. The right to water is inextricably related to the right to health. The Commission already acknowledged this in the Water Framework Directive: Member States should identify waters used for the abstraction of drinking water and ensure compliance with Council Directive 80/778/EEC of 15 July 1980 relating to the quality of water intended for human consumption.

The normative content of the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. The human right to sanitation entitles everyone, without discrimination, to sanitation services that are physically accessible and affordable, safe, hygienic, secure, socially and culturally acceptable, and which provide privacy and ensure dignity.

A human-rights based approach further commits governments to observe important principles closely related to the governance principles set out above. In addition to participation, equality and accountability, governments are obliged to progressively realise the rights for all, with a focus on the most vulnerable and marginalised. Human rights standards demand that States invest the “maximum available resources” in the sectors. They also require the use of resources in ways that have the greatest possible impact on achieving universal realization of these rights, by prioritizing essential levels of access to the most marginalized.

From a human rights perspective it is crucial to balance economic and social sustainability. The human rights framework does not require that water and sanitation services be provided free of charge and state revenues have to be raised in order to ensure universal access to
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services. Sustainable, long-term realization of the right to water and sanitation demands accountability. Accountability, likewise, is interrelated with, and based on other principles, such as transparency, access to information and participation. Accountability requires states to provide effective remedies for breaches of the right to water and sanitation.

Progressive realization and non-retrogression are key concepts of the human right to water and sanitation. Sustainability is the direct counterpart to retrogression; it requires that services be available and accessible to everyone on an almost permanent basis, without discrimination, while ensuring beneficial change through quality services. Water and sanitation must be available for present and future generations, and the provision of services today should not compromise the future ability to realize this human right. Understanding sustainability from a human rights perspective greatly contributes to achieving lasting solutions to water and sanitation challenges for present and future generations.

Implementing the human right to water and sanitation has important implications as to how to raise revenues while ensuring affordability and social sustainability. This right obliges states to ensure that the cost of accessing water and sanitation remains affordable, that it appropriately reflects the needs of marginalized and vulnerable groups, and that there is a safety net in place for those who cannot afford to pay full costs. Member States have to implement special mechanisms to protect the right to water of the most in need. The obligation of states to progressively realize the rights to water and sanitation through the use of maximum available resources is essential. Thus it is important to assess whether maximum available resources are truly being devoted to the sectors by examining the national allocation of funds to areas such as bailouts for banks and the construction of infrastructure for the hosting of mega-events, as well as the amount of funds lost due to the toleration of corruption and gaps in the application of taxation, for example due to tax shelters.

**Inequalities are one of the principal underlying causes of poverty.** Equality and non-discrimination are binding human rights obligations that apply to all states. Poverty can therefore only be holistically addressed if inequalities are progressively reduced. Governments must commit to identifying groups that face discrimination or particular barriers in realising their rights and must ensure that development efforts are designed and implemented in a way that focuses on removing barriers and closing existing gaps, including through mechanisms of affirmative action. This necessitates the prioritisation of resource allocation from national funding and international assistance to disadvantaged groups. In the EU, Roma, migrants and refugees are among such groups facing discrimination.

The fulfilment of the human right to water and sanitation needs clean and sufficient water resources and safe water and waste water infrastructure. This is guaranteed by the Water Framework Directive and other EU-legislation. New legislation may not violate these principles, as seen with for example ‘fracking’ or increase of production of biofuels. A mechanism is needed that provides for early reconciliation for coherent legislation.

With regards to our proposal to **guarantee the right to water and sanitation to all inhabitants in the EU** we demand that the European Commission takes action to:
• Prioritize water for domestic purposes; targeting access for the most disadvantaged.
• Encourage and support Member States to fulfil their obligations to ensure the right to water and sanitation.
• Make the Human Right to Water and Sanitation central to all communications on water and sanitation.
• Set a target for 100% coverage of good quality water and sanitation in all EU Member States by 2016;
• Define sanctions against Member States in case of non-compliance.
• Define options for situations where people cannot be connected to the grid (inhabitants of isolated areas) and how to fulfil the human rights obligations in these cases.
• Make regional structural funding dependent on democratic and human rights principles and refrain from making such funding dependent on market principles.
• Establish a coherent process for all legislative actions in relation to water and water resources.

Demand 2: We urge that water supply and management of water resources not be subject to ‘internal market rules’ and that water services are excluded from liberalisation

The Commission recognizes that water is a public good which is vital to citizens and that the management of water resources is a matter for Member States. Public authorities will, at all times, remain free to choose whether they provide the services directly or via a third party, notably a private economic operator (statement Barnier and Potocnik). Final responsibility for those public services belongs to local authorities. Principle guidelines for water as a public good will define this responsibility. This includes – according to Art.9 of the Water Framework Directive – the final decision for cost based tariffs for local authorities.

Delegation of water and sanitation service delivery does not exempt the state from its human rights obligations, including acting in a sustainable manner. Irrespective of the responsibilities of non-state service providers, the state remains the primary duty-bearer for the realization of human rights. The problem with private-sector provision of water services is that profits made by private operators are almost fully distributed among shareholders, rather than being partially reinvested in maintaining and extending service provision. The result is increased prices for consumers, continued need for public investment, and potentially unsustainable services (Paris, Berlin, Bucharest). A lack of investment in water infrastructure caused by the siphoning off of money for profit and other purposes has led to excessive leaks, water-service disruptions and unaccountable management.

Governments have a clear obligation to provide their citizens with safe and clean water and sanitation. The charges for providing these essential services must be affordable to all, for example by social transfers or social tariffs. Social tariffs are an effective mechanism. A good example is set by the Walloon region in Belgium. Comparing per capita incomes against water and sanitation indicators among countries with comparable levels of development provides an objective benchmark. Analysing the magnitude, composition and distribution of resources allocated to the water and sanitation sectors, as well as the expenditure per capita,
can help identify common policy problems that curtail the progressive realization of the rights to water and sanitation.

Private service provision can also create concerns for other important human rights principles and standards, such as the principles of participation and accountability. During the current crisis, private sector participation in public services delivery, including in water provision, has been a condition for bailout packages signed with indebted countries. Once the decision to privatize has been made, and especially in the context of economic crisis, the process of selling the assets often does not include sufficient opportunities for meaningful public participation.

Pricing of services (as well as taxation) needs to be targeted and appropriately adjusted for the most disadvantaged and for people living in poverty. For example: penalties or higher pricing structures for non-essential use, increasing-block tariffs, subsidies for those in need, and institutional and distributive taxes, are all examples of approaches used to raise revenue and recover costs. These should be implemented in a fair manner that promotes sustainability and access for all to water and sanitation services. Depending on the actual status of access, Member States have to set standards and to take regional appropriate measures.

**Water resources management** must balance the different uses of water, including for agriculture (accounting for about 70%), industry and energy production (about 22%), and human domestic use (about 8%), as an essential measure for addressing poverty reduction and ensuring water security in the long-term. Freshwater ecosystems are the largest source of available water for the majority of humanity. To ensure the long-term availability of freshwater resources, the ecosystems that underpin the environmental water cycle must be protected from negative impacts and, as appropriate, restored.

The Water Framework Directive states: “The use of economic instruments by Member States may be appropriate as part of a programme of measures. The principle of recovery of the costs of water services, including environmental and resource costs associated with damage or negative impact on the aquatic environment should be taken into account in accordance with, in particular, the polluter-pays principle. An economic analysis of water services based on long-term forecasts of supply and demand for water in the river basin district will be necessary for this purpose”.

Effective wastewater collection, treatment and management are necessary and should be promoted to prevent epidemic plagues and to ensure the preservation of ecosystems and sustainable access to and use of quality water. It should not be endangered by a higher rate of VAT. Water pollution control parameters must be introduced and safe wastewater reuse and recycling must be made possible, particularly by large-scale water users, such as agriculture and industries. Independent monitoring of, for example, pesticide load needs promotion.

**Benchmarking of water services at national level as alternative to competition**

A benchmark study objectively compares the performance of the drinking water companies in terms of their core results: Drinking Water Quality, Service, Environment and Finance & Efficiency and addresses all aspects of sustainable water services (Social, Environmental,
Economic). The benchmark gives consumers, central government, politicians, shareholders, researchers and supervisory directors of the participating water companies a better understanding of the performance of the sector and the individual water companies. The aim is to create transparency in the operating results and to serve as a tool for further improving the water companies’ business processes. E.g.: since the introduction of benchmarking in the Netherlands, the quality of the drinking water has constantly improved. Service levels are being well maintained and accessibility for customers has improved. At the same time, the cost of drinking water has fallen in real terms and efficiency is improving.

**Better governance**

Establishing guidelines for transparency towards the public will improve water services. Transparency should make sure that profits are being reinvested into the water supply system or invested in improvements of water supply and increasing access to water and sanitation for the poor and unconnected. If allowed by national law, this investment can also be in other parts of the world. These guidelines should also entail that water companies cannot be sold to or taken over by private equity firms that are only interested in taking out a quick profit and leave behind a broken down company. It should promote and support the sustainability of the water company and the water services. To enable the sustainable provision of services, a number of factors within and beyond the water and sanitation sector must be reinforced, in particular, accountable governance. Water and sanitation services must be embedded in a sound legislative policy and regulatory framework that guarantees there is public control over water companies and water resources. As said before: the obligation to fulfil the right to water and sanitation rests with governments. The EU can provide guidelines to improve transparency, accountability and participation to and of the public.

With regards to our proposal to **refrain from (further) liberalisation of water services**, we demand the European Commission to take action to:

- Declare water and water resources as a public good.
- Implement the demand that ‘the management of water and water resources should not be subject to internal market rules’ (EP Resolution P5_TA(2004)0183).
- Ensure that water services will not be included in any trade or investment agreement.
- Promote benchmarking for water services operators similar to long standing practices in the Netherlands and Germany.
- Establish guidelines for transparency, accountability and participation to ensure that information on profits and payments to shareholders by water companies are made public.

**Demand 3: We urge the EU to increase its efforts to achieve universal access to water and sanitation.**

The **Millennium Declaration** itself recognised the need for human rights, including equality and non-discrimination, as well as more inclusive and participatory governance to form key objectives of the current set of Millennium Development Goals (MDGs). The internationally
agreed content of the human right to water and sanitation must form the basis to develop and monitor future goals for water, sanitation and hygiene. The future framework must use the opportunity of the recognition of the human right by the UN General Assembly and Human Rights Council in 2010, and the global consensus built since then, to truly introduce a human rights-based approach to water, sanitation and hygiene.

While the current MDGs have served to focus efforts on poverty eradication and overall development, progress has been uneven and governance and human rights have been neglected. The MDG for sanitation is far from being achieved, and extra commitment needs to be made by donors and governments to end the scandal of towns and cities without sewerage systems, and inadequate sanitation in rural areas. The MDGs framework exclusively focuses on producing outputs, without taking into view principles and structures needed to ensure that outputs are targeted and in line with existing human rights obligations. Addressing all challenges of achieving universal access requires a principled approach and effective governance at the global, regional, national and local levels.

**Universal access** to safe water, sanitation and hygiene (WASH) is crucial for the elimination of poverty and underpins all other aspects of social, economic and sustainable development. Nevertheless, at least 783 million people still lack access to improved drinking water sources and, with 2.4 billion people still lacking access, sanitation is one of the most off-track targets of the current MDGs agenda. 1.1 billion people still practise open defecation. Though the proportion of people practising open defecation is decreasing, the absolute number has remained at over one billion for several years, due to population growth. Even these numbers underestimate the true scale of the problem, since crucial aspects like continuous availability, drinking water quality and distance to facilities, among others, are currently not measured. Despite the importance of sanitation, it is frequently neglected and, at current rates of progress, the MDGs target for sanitation will be missed by over half a billion people. Financing for sanitation is generally low or neglected in comparison to water and risible in comparison to other development sectors such as health and education.

**Eliminating all inequalities** must be central in ensuring water and sanitation for all. Governments must commit to identifying groups that face discrimination and injustice or particular barriers in realising their rights and must ensure that development efforts are designed and implemented in a way that focuses on removing barriers and closing existing gaps, including through mechanisms of affirmative action. Disparities in progress must be addressed through targeting of aid and sector budgets. The European Union is not among the few donors that allocate a significant portion of water and sanitation funding towards basic systems. Financial investments must integrate comprehensive approaches, including prioritisation of those most in need, awareness raising and participation.

The UN Special Rapporteur on the human right to safe drinking water highlighted the need for adequate financial and technical support to local authorities, along with the necessity to increase capacity building at the local level. The work of UN agencies to foster decentralization through decentralized cooperation is appealing to respond to this challenge. The Decentralized Solidarity Mechanism is a good example of this.
We think that the European Commission can propose legislation that helps to reach the MDGs; that goes beyond these goals to reach universal access to water and sanitation and that scales up efforts that are being taken by Member States. Legislation supplements voluntary efforts. A similar proposal has been made by the Council of Europe to “encourage Member States to set up policies that will allow the authorities in charge of water and sanitation services to voluntarily dedicate up to 1% of their income to solidarity actions (…)”.

In its Agenda for Change, the European Commission acknowledges that: “more action is needed to tackle global challenges […] and to deliver global public goods such as access to water and sanitation. Sound progress on the MDGs is essential, but not sufficient. This leads to the conclusion that the objectives of development, democracy, human rights, good governance and security are intertwined.”

Furthermore the Commission already proposes a greater focus on investing in drivers for inclusive and sustainable economic growth, providing the backbone of efforts to reduce poverty. Water and sanitation are among these drivers. The EU must seek to target its resources where they are needed most to address poverty reduction and where they could have the greatest impact. Water and sanitation are such an area. The Commission admits that fragmentation and proliferation of aid is still widespread. We support the wish that the EU should take a more active leadership role and we think that our proposals contribute to making European aid more effective.

At the MDG summit in September 2013 Commissioners Piebalgs and Potocnik said that “together we can do more and must do more”. “Too many people remain trapped in abysmal poverty […]”. “We want to see every man, woman and child enjoy a decent life by 2030”. A decent life starts with having clean, good and safe water and sanitation services.

With a view to our proposal to increase efforts to achieve universal access we demand that the European Commission takes action to:

- Target resources so as to prioritize access for those communities without essential levels of access with a focus on sanitation.
- Devote more financial and institutional resources, and improve planning, to ensure constant investment in operation and maintenance.
- Call on the European Investment Bank to dedicate (earmark) a larger part of its investments to water and sanitation, and to focus on persons without access.
- Ensure meaningful participation in order to make sure that water, sanitation and hygiene solutions are socially and culturally acceptable, as well as sustainably used and practiced.
- Adopt a human rights-based approach to development cooperation, encompassing all human rights, whether civil/political or economic/social/cultural in nature and in line with UN indications.
- Include a water and sanitation goal in the United Nations development agenda beyond 2015 targeted at eliminating inequalities in access and ensuring sustainability.
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- Promote international cooperation, based on not-for-profit principles and solidarity, among water operators and authorities for capacity building and to improve quality of water services (Public-public partnerships or Water Operator Partnerships).
- Continue the ACP EU-Water Facility or a similar body and make a new and higher budget available for water and sanitation.
- Promote and support new and innovative ways of financing for water services such as the Decentralized Solidarity Mechanism.

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