Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

19 April 2016*

(Law governing the institutions — European citizens' initiative — Social policy — Service of general economic interest — Article 352 TFEU — Refusal of registration — Manifest lack of powers of the Commission — Article 4(2)(b) of Regulation (EU) No 211/2011 — Principle of good administration — Obligation to state reasons)

In Case T-44/14,

Bruno Costantini, residing in Jesi (Italy), and the other applicants, whose names are set out in the annex, represented by O. Brouwer and J. Wolfhagen, lawyers, and A. Woods, Solicitor,

applicants,

v

European Commission, represented by H. Krämer, acting as Agent,

defendant,

APPLICATION for the annulment of Commission Decision C(2013) 7612 final of 5 November 2013 rejecting the request for registration of the proposed European citizens' initiative entitled 'Right to Lifelong Care: Leading a life of dignity and independence is a fundamental right!',

THE GENERAL COURT (First Chamber),

composed of H. Kanninen, President, I. Pelikánová and E. Buttigieg (Rapporteur), Judges,

Registrar: L. Grzegorczyk, Administrator,

having regard to the written part of the procedure and further to the hearing on 28 October 2015,

gives the following

Judgment

Background to the dispute

1 The applicants, Bruno Costantini and the other applicants whose names are set out in the annex, instigated a proposed European citizens' initiative ('ECI') entitled 'Right to Lifelong Care: Leading a life of dignity and independence is a fundamental right!' ('the proposed ECI at issue'), which was sent

* Language of the case: English.

to the European Commission on 5 September 2013 and the aim of which, as described in the request for registration, is to invite the European Union to 'propose legislation ensuring [the] fundamental right to human dignity by guaranteeing adequate social protection and access to quality, sustainable long-term care above and beyond health care'.

2 The proposed ECI at issue refers to Articles 14 TFEU, 153 TFEU and 352 TFEU as the legal basis for the proposed action.

3 By decision of 5 November 2013 ('the contested decision'), the Commission refused to register the proposed ECI at issue because it manifestly did not fall within the Commission's powers to submit a proposal for the adoption of a legal act of the European Union for the purpose of implementing the Treaties.

Procedure and forms of order sought

4 By application lodged at the Registry of the General Court on 15 January 2014, the applicants brought the present action.

5 The applicants claim that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

6 The Commission contends that the Court should:

— dismiss the action;

— order the applicants to pay the costs.

Law

7 In support of their action, the applicants put forward three pleas in law alleging, respectively, (i) misapplication of Article 4(2)(b) of Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative (OJ 2011 L 65, p. 1), (ii) a failure to observe the principle of good administration and (iii) a failure to state reasons.

First plea, alleging misapplication of Article 4(2)(b) of Regulation No 211/2011

8 In support of the first plea, which comprises, in essence, four parts, the applicants submit that the Commission made errors of law in refusing pursuant to Article 4(2)(b) of Regulation No 211/2011 to register the proposed ECI at issue. The applicants contend in the first three parts that the Commission misconstrued Articles 14 TFEU, 153 TFEU and 352 TFEU which provide appropriate legal bases in the light of the proposed ECI at issue and, in the fourth part, that it misconstrued Article 4(2)(b) of Regulation No 211/2011 by interpreting and applying the condition set out in that provision too strictly and in a manner contrary to the objectives of the ECI mechanism.

9 In the present case, the Court considers it expedient to rule first of all on the fourth part of the plea in order to define the meaning and scope of the condition for registration of proposed ECIs that is laid down in Article 4(2)(b) of Regulation No 211/2011 and then to examine the other three parts of the plea.

Fourth part of the first plea

10 The applicants submit that the Commission applied the legal criterion set out in Article 4(2)(b) of Regulation No 211/2011 incorrectly. More specifically, they contend that, when the Commission interprets and applies that condition for registration of proposed ECIs, it cannot, in the light of the regulation's objectives and spirit, conduct an overly strict review, because the assessment carried out at the stage of registration of proposed ECIs should simply enable it to ascertain whether the gist of the initiative concerns subject matter on which the citizens' committee and the institutions can exchange views. First of all, an overly strict assessment of that condition would be contrary to the objective of the ECI mechanism, which is to increase the democratic participation of citizens. Next, the applicants contend that application of Article 4(2)(b) of Regulation No 211/2011 requires the Commission to take account of the status of persons instigating proposed ECIs, in the sense that committee members are not fully aware of the inner workings of the European Union and their specific features. Finally, the applicants submit that, given the presence of the adverb 'manifestly' in Article 4(2)(b) of Regulation No 211/2011, registration of a proposed ECI is to be refused only if a proposal manifestly falls outside the framework of the Commission's powers and while taking into consideration the fact that the correctness and appropriateness of the choice of legal basis are often the subject of much debate.

11 The Commission contests the applicants' arguments.

12 First, the Commission contends that a proposed ECI falls outside the framework of its powers to draw up a proposal for an act if none of the provisions of the Treaties which provide for the adoption of legal acts on the basis of a proposal from the Commission can serve as the legal basis for an act covering the subject matter of the proposed ECI. Such a situation is manifest where that conclusion does not depend on factual circumstances.

13 Secondly, the Commission underlines that the condition set out in Article 4(2)(b) of Regulation No 211/2011 must be examined and fulfilled at the registration stage. Furthermore, the legal review carried out in that regard cannot be rough but must, on the contrary, be full in order to prevent the procedure from progressing although it is clear that the Commission cannot propose the adoption of an act, in the absence of competence accorded to the European Union.

14 As to those submissions, it is to be observed that, by virtue of Article 4(1) of Regulation No 211/2011, registration by the Commission of a proposed ECI is the necessary precondition for the collection of statements of support for the ECI in question. To this end, the organisers on the citizens' committee must provide the Commission with information concerning in particular the subject matter and objectives of the proposed ECI, in order for it to check that the registration conditions laid down in Article 4(2) of Regulation No 211/2011 are fulfilled. Under Article 4(3) of Regulation No 211/2011, if the conditions laid down in Article 4(2) are not met, the Commission is to refuse registration. Such a decision has the effect of bringing the process for the proposed ECI to a close.

15 The registration conditions laid down in Article 4(2) of Regulation No 211/2011 include the condition that the Commission is to effect registration if 'the proposed citizens' initiative does not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties'.

16 It should be recalled that, in accordance with Article 5 TEU, the limits of EU competences are governed by the principle of conferral and that, under Article 13(2) TEU, each institution is to act within the limits of the powers conferred on it in the Treaties. It is in that context that Article 4(2)(b) of Regulation No 211/2011 lays down the condition that the proposed ECI must not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties.

17 It follows from the wording of that provision that the Commission must carry out an initial examination of the information available to it in order to determine whether the proposed ECI does not manifestly fall outside the framework of its powers, while provision is made for a more comprehensive examination to be carried out if the proposal is registered. Article 10(1)(c) of Regulation No 211/2011 provides that, when the Commission receives the ECI, it is to set out within three months in a communication its legal and political conclusions on the ECI, the action it intends to take, if any, and its reasons for taking or not taking that action.

18 In the present case, in order to determine whether the Commission applied the condition set out in Article 4(2)(b) of Regulation No 211/2011 correctly, it should be examined whether, in the light of the proposed ECI and in the context of an initial examination of the information available to it, the Commission was manifestly unable to propose the adoption of an EU act founded on Article 14 TFEU, 153 TFEU or 352 TFEU.

First part of the first plea

19 The applicants contend first of all that the Commission appraised Article 14 TFEU wrongly because pursuant to that provision, which is appropriate in particular for the second objective of the proposed ECI at issue, it may submit a proposal for legislation. In support of their line of argument, the applicants rely on the registration by the Commission of a similar proposed ECI, entitled 'Water and sanitation are a human right', one of whose objectives is that water supply and management of water resources should not be subject to internal market rules and that water services be excluded from liberalisation. In addition, the applicants submit that the interpretation of the scope of Article 14 TFEU in the contested decision is contrary to the principles underlying Regulation No 211/2011, since the Commission cannot refuse to register a proposed ECI one or more of whose objectives may fall within EU competence and are able to be the subject of a discussion between the citizens' committee and the institutions. Finally, the applicants contend that the proposed ECI at issue has the aim, in particular, that, on the basis of Article 14 TFEU, long-term care be excluded from the scope of internal market rules and be classified as a universal service, and the Commission therefore distorted in the contested decision the essence of the proposed ECI at issue.

20 The Commission contests the applicants' arguments.

21 It is apparent from the contested decision that the Commission considered that Article 14 TFEU did not constitute an appropriate legal basis for the proposed ECI because the EU legislature cannot require the Member States to provide a service of general economic interest ('SGEI'), but has competence solely to determine the principles and conditions which the Member States must observe should they autonomously decide to provide a particular SGEI.

22 It must be determined, in the light of the request for registration of the proposed ECI at issue, and more specifically of the latter's subject matter, its objectives and the more detailed information set out in the explanatory note, whether the proposed ECI at issue manifestly fell outside the framework within which the Commission could submit a proposal for an act pursuant to Article 14 TFEU.

23 First, as regards the classification of long-term care services as SGEIs, Article 14 TFEU provides that, without prejudice to Article 4 TEU or to Articles 93 TFEU, 106 TFEU and 107 TFEU, and given the place occupied by SGEIs in the shared values of the European Union as well as their role in promoting social and territorial cohesion, the European Union and the Member States, each within their respective powers and within the scope of application of the Treaties, are to 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 of

the European Union are to 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.

24 Thus, in accordance with settled case-law, Member States are entitled, while complying with EU law, to define the scope and the organisation of their SGEIs (judgment of 20 April 2010 in *Federutility and Others*, C-265/08, ECR, EU:C:2010:205, paragraph 29). They have a wide discretion to define what they regard as SGEIs and the definition of such services by a Member State can be questioned by the Commission only in the event of manifest error. That prerogative of the Member State concerning the definition of SGEIs is confirmed by the absence both of any competence specially attributed to the European Union and of a precise and complete definition of the concept of an SGEI in EU law (judgments of 12 February 2008 in *BUPA and Others* v *Commission*, T-289/03, ECR, EU:T:2008:29, paragraphs 166 and 167; of 7 November 2012 in *CBI* v *Commission*, T-137/10, ECR, EU:T:2012:584, paragraph 99; and of 16 July 2014 in *Zweckverband Tierkörperbeseitigung* v *Commission*, T-309/12, EU:T:2014:676, paragraph 105).

25 In the light of those factors, the Commission was fully entitled to conclude in the contested decision that it was manifestly unable to submit a proposal for an act where the proposal was founded on Article 14 TFEU and had the aim that long-term care be classified as an SGEI.

26 Secondly, it should be pointed out, as the Commission has done, that no provision of the Treaties empowers it to propose the adoption of an EU act exempting a service from the application of internal market rules. It is clear from Article 14 TFEU that the specific rules which it lays down are applicable to SGEIs without prejudice to Article 106 TFEU. Under Article 106(2) TFEU, even undertakings entrusted with the operation of such services are to be subject to the rules contained in the Treaties, in particular to the rules on the internal market and on competition, a principle which can be derogated from only under strict conditions, the presence of which depends on the legal and factual circumstances prevailing in each Member State and must be demonstrated in each specific case by the Member State or undertaking which relies on them (see, to this effect, judgments of 23 October 1997 in *Commission* v *France*, C-159/94, ECR, EU:C:1997:501, paragraph 94, and of 17 May 2001 in *TNT Traco*, C-340/99, ECR, EU:C:2001:281, paragraph 59). It follows that the Commission cannot propose generally to exempt from the application of internal market rules services whose classification as an SGEI depends on the national policy pursued by each Member State.

27 Consequently, the Commission was fully entitled to conclude in the contested decision that it was manifestly unable to submit a proposal for an act where the proposal was founded on Article 14 TFEU and had the aim that long-term care be excluded from the application of internal market rules.

28 That assessment cannot be called into question by the applicants' other arguments.

29 First of all, the applicants submit that Article 14 TFEU constitutes an appropriate legal basis for establishing the principles that govern the provision of an SGEI and maintain in this regard that that provision is a legal basis for Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services (OJ 2008 L 52, p. 3).

30 It must be pointed out that, whilst Article 16 EC, now in essence Article 14 TFEU, is recalled in recital 3 of Directive 2008/6, inasmuch as that article highlights the place occupied by SGEIs in the shared values of the European Union as well as their role in promoting social and territorial cohesion and states that care should be taken that such services operate on the basis of principles and conditions which enable them to fulfil their missions, Directive 2008/6 refers more specifically to Article 47(2) EC and Articles 55 EC and 95 EC as its legal basis. This argument must therefore be rejected as unfounded.

31 Furthermore, the applicants' argument that the Commission adopted an interpretation of Article 14 TFEU that is contrary to the principles underlying Regulation No 211/2011 must be rejected inasmuch as, contrary to the applicants' contentions, the ECI mechanism has as its subject matter or objective not initiating a mere dialogue between the citizens and the institutions but requesting the Commission, within the framework of its powers, to submit a proposal for an act.

32 Next, the applicants submit that the Commission's assessment relating to Article 14 TFEU distorts the essence of the proposed ECI at issue which, in accordance with the second objective, seeks the exclusion of long-term care services from the scope of certain internal market rules and their classification as a universal service. Thus, the essence of the proposed ECI at issue is that existing long-term care services should endure indefinitely through action of the EU legislature.

33 As to those submissions, it should be pointed out that neither the subject matter nor the objectives of the proposed ECI at issue mention the concept of universal service and that, whilst the explanatory note admittedly makes reference to universal service, it does so, however, in the context of the mentioning of Article 14 TFEU by means of which long-term care could be classified as an SGEI. Accordingly, in stating, in the contested decision, that Article 14 TFEU was not a legal basis under which the Member States could be obliged to classify a service as an SGEI and in indicating that it could not draw up a proposal for an act designed to exclude a service from the application of internal market rules, the Commission did not distort the proposed ECI at issue. It follows that the applicants' argument must be rejected.

34 Finally, the applicants' argument founded on the registration of the proposed ECI entitled 'Water and sanitation are a human right' cannot succeed. In so far as the registration of that proposed ECI mentioning Article 14 TFEU as a proposed legal basis is relevant, it does not however mean that the Commission explicitly considered that Article 14 TFEU constituted an appropriate legal basis for the purpose of proposing an act excluding water-related services from the application of internal market rules. The Commission's decision to register that proposed ECI attests merely that, for the Commission, the proposed ECI did not manifestly fall outside the framework of its powers to submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties.

35 It follows that the Commission did not make an error of assessment in the contested decision as regards Article 14 TFEU since it was manifest that it was unable to propose on the basis of that provision the adoption of legislation classifying long-term care services as an SGEI and excluding those services from the application of internal market rules.

Second part of the first plea

36 The applicants submit that in the contested decision the Commission did not assess Article 153 TFEU correctly, a provision which furnishes, in conjunction with Article 14 TFEU, an appropriate legal basis for the proposed ECI at issue in that it enables minimum requirements regarding the social security of workers to be established. Whilst the applicants acknowledge that, in the case of non-workers, that provision does not constitute the strongest legal basis, they contend that it is necessary to combine it with Article 14 TFEU in order to ensure that as many people as possible, including workers, can enjoy long-term care.

37 The Commission contests the applicants' arguments.

38 In the contested decision, the Commission stated that Article 153 TFEU cannot constitute an appropriate legal basis for the purpose of adopting an act whose object is that of the proposed ECI at issue, because Article 153 TFEU enables only minimum requirements relating to social security and social protection of workers to be adopted, to the exclusion of health care and long-term care for non-workers.

39 It should be noted that Article 153 TFEU covers only in part the scope of the measures awaited in the proposed ECI at issue, because that provision, which expressly and exclusively concerns workers, does not enable legal acts relating to other categories of persons to be adopted. Accordingly, Article 153 TFEU cannot constitute in itself a legal basis for the purpose of adopting an act whose object is that of the proposed ECI at issue and which is intended to guarantee the universal provision of long-term care in the European Union.

40 However, as the applicants point out and as is apparent from the explanatory note annexed to the request for registration, Article 153 TFEU is relied upon in the proposed ECI at issue as a legal basis in addition to the action which should be undertaken on the basis of Article 14 TFEU.

41 In that regard, it is clear that, since the Court has held that the Commission could refuse registration of the proposed ECI at issue inasmuch as it manifestly was not covered by Article 14 TFEU, the Commission's conclusion relating to Article 153 TFEU, which was presented, in the request for registration, as an additional legal basis, must necessarily be approved.

Third part of the first plea

42 The applicants contend in essence (i) that Article 352 TFEU was not analysed at all in the contested decision and (ii) that the Commission may use that provision to adopt measures consistent with the subject matter and objectives of the proposed ECI at issue.

43 First, it is apparent from the applicants' arguments that they contest principally the failure to state reasons for the contested decision as regards Article 352 TFEU. It should be pointed out that review of compliance with the obligation to state reasons as an essential procedural requirement is distinct from review of the merits of the reasons stated, which falls within the review of the act's substantive legality (judgment of 2 April 1998 in *Commission* v *Sytraval and Brink's France*, C-367/95 P, ECR, EU:C:1998:154, paragraph 67).

44 Consequently, the applicants' arguments that are raised under the present plea but seek a finding that the contested decision failed to state reasons as regards Article 352 TFEU must be examined in the context of the third plea, alleging breach of the obligation to state reasons.

45 Secondly, in so far as the applicants seek under the present part of the first plea to demonstrate that Article 352 TFEU constitutes an appropriate legal basis, the Commission confirmed in response to a question from the Court at the hearing that it pleads that this line of argument is inadmissible on the basis of Article 44(1)(c) of the Rules of Procedure of the General Court of 2 May 1991.

46 Under the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, which is applicable to the procedure before the General Court in accordance with the first paragraph of Article 53 thereof, and Article 44(1)(c) of the Rules of Procedure of 2 May 1991, all applications must contain inter alia a summary of the pleas relied on. Those details must be sufficiently clear to enable the defendant to prepare its defence and the Court to rule on the application, if necessary without any further information. In order to guarantee legal certainty and the sound administration of justice, it is necessary, in order for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application (see judgment of 10 May 2006 in *Galileo International Technology and Others* v *Commission*, T-279/03, ECR, EU:T:2006:121, paragraph 36 and the case-law cited).

47 The line of argument relating to Article 352 TFEU is set out in the first plea, on the misapplication of Article 4(2)(b) of Regulation No 211/2011, where the applicants put in issue the interpretation and application of that provision and its application in the light of the legal bases proposed in the request for registration of the proposed ECI at issue. Furthermore, the substance of the applicants' arguments,

in so far as they assert that Article 352 TFEU constitutes an appropriate legal basis for the purpose of adopting an act implementing the objectives of the proposed ECI at issue, is sufficiently clear from the application, so that, as is apparent from its pleadings, the Commission was able to present its defence properly. Consequently, in so far as the third part of the first plea is founded on incorrect assessment of Article 352 TFEU, it cannot be declared inadmissible and the Commission's contention must therefore be rejected.

48 Thirdly, it is apparent from the applicants' line of argument that in their view the proposed ECI at issue does not manifestly fall outside the framework of the Commission's powers flowing from Article 352 TFEU to submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties.

49 To that end, the applicants maintain, first of all, that if Articles 14 TFEU and 153 TFEU were insufficient for the purpose of adopting an act whose object is that of the proposed ECI at issue, the Commission could propose legislation founded on Article 352 TFEU. Furthermore, they contend that Article 352 TFEU may be used in the context of a proposed ECI. Finally, they submit that it would be contrary to the spirit of Regulation No 211/2011 to require Union citizens to show in what way the adoption of a legal act concerning the subject matter of a proposed ECI would be necessary to attain the objectives of the Treaties.

50 As provided in Article 352 TFEU, if action by the European Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the Parliament, is to adopt the appropriate measures.

51 According to the case-law, Article 352 TFEU, which is an integral part of an institutional system based on the principle of conferred powers, cannot serve as a basis for widening the scope of EU powers beyond the general framework created by the provisions of the Treaty as a whole and, in particular, by those that define the tasks and the activities of the European Union. On any view, it cannot be used as a basis for the adoption of provisions whose effect would, in substance, be to amend the Treaty without following the procedure which the Treaty provides for that purpose (Opinion 2/94 of 28 March 1996, ECR, EU:C:1996:140, paragraph 30). It follows that recourse to that provision is subject to certain conditions in order to observe the demarcation of powers that is established in the Treaties and to prevent it from being called into question by the adoption of an act of secondary legislation.

52 In addition, it should be pointed out that neither Article 352 TFEU nor Regulation No 211/2011 precludes recourse to Article 352 TFEU in the context of ECIs.

53 Nevertheless, the objective of democratic participation of Union citizens underlying the ECI mechanism cannot frustrate the principle of conferred powers and authorise the European Union to legislate in a field for which no power has been accorded to it, so that the conditions set out in Article 352 EC must also be complied with in the context of a proposed ECI. Thus, the Commission has the task of establishing whether, in relation to a proposed ECI, it is manifest that it will be unable to make a proposal for a legal act founded on that provision. That is without prejudice, however, to the institutions' assessment of the necessity of such a legal act inasmuch as that assessment may be carried out after the proposed ECI has been registered and be set out, as the case may be, in the communication provided for in Article 10(1)(c) of Regulation No 211/2011.

54 In the present case, the request for registration does not contain appropriate information for demonstrating that the conditions for recourse to Article 352 TFEU are met. Although it is apparent from the explanatory note annexed to the request for registration that the applicants set out support for their proposals relating to Articles 14 TFEU and 153 TFEU, they did not explain the reasons why

recourse to Article 352 TFEU would be justified. It follows, at the most, from that annex that, if the Commission were to take the view that Article 14 TFEU does not constitute an appropriate legal basis, Article 352 TFEU should be called upon. Consequently, even though the applicants cannot be criticised for not having established in the request for registration that the act sought was necessary, they should have demonstrated, at least, that that act fell within the framework of the policies defined in the Treaties and was intended to attain an objective set out in the latter, which would have enabled the Commission to make a detailed assessment of their request that recourse be had to Article 352 TFEU for the proposed action.

55 That being so, the applicant's objection seeking to challenge the Commission's conclusion that Article 352 TFEU manifestly did not constitute an appropriate legal basis for the purpose of proposing a legal act designed to implement the objectives of the proposed ECI at issue cannot be successful.

56 In the light of the foregoing matters, it must be concluded that the Commission neither misconstrued Article 4(2)(b) of Regulation No 211/2011 nor made an error of law in the assessment of Articles 14 TFEU, 153 TFEU and 352 TFEU. It follows that the first plea must be dismissed in its entirety.

Second plea, alleging breach of the principle of good administration

57 By the second plea, the applicants submit, in essence, that the principle of good administration results in a duty of consistency requiring similar cases to be dealt with in the same way unless any deviation is justified and that the Commission breached that duty by refusing to register the proposed ECI at issue even though it had registered other proposed ECIs. In the applicants' submission, by registering previous proposed ECIs, the Commission established a practice that, in cases where the relevance of a legal basis is doubtful, proposed ECIs are registered in order to begin a dialogue between the citizens and the institutions, and it interpreted the condition set out in Article 4(2)(b) of Regulation No 211/2011 in the light of that objective. The proposed ECI at issue and the ECI entitled 'Water and sanitation are a human right' are, moreover, very similar in the light both of their respective objectives and of the proposed legal bases, and, by virtue of the principle of consistency, registration of the former should not have been refused.

58 The Commission contests the applicants' arguments.

59 It should be pointed out at the outset that the applicants expressly confirmed in response to a question from the Court at the hearing that, by the present plea, they are relying on breach of the duty of consistency as a component of the principle of good administration and not of the principle of equal treatment.

60 It should be recalled in this connection that, in accordance with settled case-law, the institutions must exercise their powers in accordance with the general principles of EU law, such as the principle of equal treatment and the principle of good administration, and that, regard being had to those principles, they must take into account the decisions already taken in respect of similar applications and consider with especial care whether they should decide in the same way or not. The way in which the principle of good administration is applied must nevertheless be consistent with respect for legality (see, by analogy, judgments of 10 March 2011 in *Agencja Wydawnicza Technopol* v *OHIM*, C-51/10 P, ECR, EU:C:2011:139, paragraphs 73 to 75 and the case-law cited, and of 17 January 2013 in *Gollnisch* v *Parliament*, T-346/11 and T-347/11, ECR, EU:T:2013:23, paragraph 109).

61 In the present case, as is apparent from examining the first plea, the Commission was correct in finding in the contested decision that the proposed ECI at issue manifestly fell outside the framework of its powers to submit a proposal for a legal act. Therefore, since it is established that in this instance the Commission applied Article 4(2)(b) of Regulation No 211/2011 correctly, it is clear from the

case-law cited in paragraph 60 above that the legality of the contested decision cannot be called into question merely because a certain decision-making practice, assuming it to be established, is said not to have been followed by the Commission.

62 It follows that the second plea must be dismissed.

Third plea, alleging a failure to state reasons

63 The applicants contend that the contested decision infringes the obligation to state reasons laid down in Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union and essentially put forward three objections in this regard. First, they submit that the reasons stated in the contested decision are not sufficient in the light of the refusal to regard Article 352 TFEU as an appropriate legal basis. Secondly, they complain that the Commission did not set out the reasons justifying the refusal of registration, even though previous similar proposals had been registered. Thirdly, they contend that the Commission had to state reasons for choosing to apply Article 4(2) of Regulation No 211/2011 strictly to the request for registration of the proposed ECI at issue.

64 The Commission contests the applicants' arguments.

65 First, as regards the second and third objections, it should be recalled that, in accordance with well-established case-law, it is necessary to distinguish the obligation to state reasons as an essential procedural requirement, which may be raised in a plea that inadequate or even no reasons are stated for a decision, from review of the merits of the reasons stated, which falls within the review of the act's substantive legality and requires the court to determine whether the grounds on which the act is founded are vitiated by an error (judgment in *Commission* v *Sytraval and Brink's France*, cited in paragraph 43 above, EU:C:1998:154, paragraph 67). The two reviews differ in nature and give rise to separate assessments by the General Court (judgment in *Commission* v *Sytraval and Brink's France*, cited in paragraph 43 above, EU:C:1998:154, paragraphs 66 to 68).

66 In the present case, by the second and third objections in the third plea the applicants raise the arguments falling within the substantive assessment of the contested decision, which were examined and rejected in the context of the first and second pleas. Those contentions cannot alter the scope of the Commission's obligation to state reasons.

67 Consequently, the Court cannot examine those objections when reviewing whether the obligation to state reasons was complied with. In a plea based on a failure to state reasons or a lack of adequate reasons, objections and arguments which seek to challenge the merits of the contested decision at issue must be regarded as irrelevant (judgment of 1 July 2009 in *Operator ARP* v *Commission*, T-291/06, ECR, EU:T:2009:235, paragraph 48).

68 Secondly, as regards the first objection, it should be recalled first of all that, in accordance with settled case-law, the purpose of the obligation, set out in Article 296 TFEU, to state the reasons for an individual decision is to provide the person concerned with sufficient information to determine whether the decision is well founded or whether it is vitiated by a defect which may make it possible for its validity to be contested, and to enable the EU judicature to review its lawfulness (judgments of 18 September 1995 in *Tiercé Ladbroke* v *Commission*, T-471/93, ECR, EU:T:1995:167, paragraph 29, and of 27 September 2012 in *J* v *Parliament*, T-160/10, EU:T:2012:503, paragraph 20).

69 The second subparagraph of Article 4(3) of Regulation No 211/2011, under which the Commission is to inform the organisers of the reasons for refusal, gives specific expression to that obligation to state reasons as far as ECIs are concerned.

70 Furthermore, it is likewise settled case-law that the statement of reasons required by Article 296 TFEU must be appropriate to the nature of the measure at issue. Thus, the requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure and the nature of the reasons given. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons for a measure meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context (order of 14 November 2013 in *J* v *Parliament*, C-550/12 P, EU:C:2013:760, paragraph 19).

71 Finally, it is also clear from well-established case-law that the Commission is not obliged, in stating the reasons for its decisions, to adopt a position on all the arguments relied on by the parties concerned during the administrative procedure. It is sufficient if it sets out the facts and legal considerations having fundamental importance in the context of the decision (judgment of 11 January 2007 in *Technische Glaswerke Ilmenau* v *Commission*, C-404/04 P, EU:C:2007:6, paragraph 30; see also judgment of 29 June 1993 in *Asia Motor France and Others* v *Commission*, T-7/92, ECR, EU:T:1993:52, paragraph 31 and the case-law cited).

72 In the present case, the refusal to register the proposed ECI at issue is an action that may impinge upon the very effectiveness of the right of citizens to submit an ECI that is enshrined in the first paragraph of Article 24 TFEU. Consequently, such a decision must clearly disclose the grounds justifying the refusal.

73 Indeed, a citizen who has submitted a proposal for an ECI must be able to understand the reasons for that refusal of registration. It is incumbent on the Commission when it receives a proposal for an ECI to appraise it and also to give reasons for any refusal to register it, given the effect of such a refusal on the effective exercise of the right enshrined in the Treaty. That follows from the very nature of this right which, as is pointed out in recital 1 of Regulation No 211/2011, is intended to reinforce citizenship of the Union and enhance the democratic functioning of the European Union through the participation of citizens in its democratic life (judgment of 30 September 2015 in *Anagnostakis* v *Commission*, T-450/12, ECR, under appeal, EU:T:2015:739, paragraph 26).

74 It is apparent from the contested decision that the Commission specifically explained the reasons why Articles 14 TFEU and 153 TFEU could not constitute appropriate legal bases. On the other hand, the contested decision does not include any specific reasoning as regards Article 352 TFEU. However, as the Commission correctly points out, it is apparent, admittedly implicitly, but necessarily, from the contested decision that it considered that Article 352 TFEU, like other provisions of the Treaties, was not an appropriate legal basis for the purpose of adopting an act implementing the objectives of the proposed ECI at issue.

75 It is true that, in accordance with the case-law, the statement of reasons for a measure is intended to disclose in a clear and unequivocal fashion the reasoning of the measure's author in order to provide its addressee with the information enabling him to determine whether it is well founded or whether it may be vitiated by a defect that justifies contesting its validity, and in order to enable the EU judicature to review its lawfulness.

76 However, it should also be borne in mind that the scope of that obligation depends on a number of factors. Thus, it is not necessary for the reasoning to go into all the relevant facts and points of law, but only the fundamental factors underlying the decision, since the question whether the statement of reasons for a measure meets the requirements of Article 296 TFEU depends on the nature of the measure at issue and the context in which it has been adopted.

77 In the present case, the request for registration of the proposed ECI at issue does not mention any factor capable of justifying recourse to Article 352 TFEU. As the Commission correctly points out, although it is apparent from the explanatory note that the applicants supported their request pursuant to Articles 14 TFEU and 153 TFEU with a number of factors, they did not explain at all how recourse to Article 352 TFEU would be justified.

78 Given that recourse to Article 352 TFEU is subject to strict conditions, relating in particular to the necessity for action within the framework of the policies defined in the Treaties to attain an objective set out in the latter, the applicants should, at least, have stated how the proposed ECI at issue is covered by an objective set out in the Treaties in order to enable the Commission to make a detailed assessment of their request in that regard. If the conditions for recourse to Article 352 TFEU are not met, that provision does not constitute an appropriate legal basis and the condition laid down in Article 4(2)(b) of Regulation No 211/2011 is not satisfied.

79 It follows that, having regard to the context and in the light of the absence, in the request for registration of the proposed ECI at issue, of any, even brief, particulars regarding the conditions for applying Article 352 TFEU in the context of the proposed ECI at issue, the implicit reasoning relating to that provision must be regarded as sufficient and the first objection in the third plea must be rejected.

80 In the light of all the foregoing matters, it must be concluded that the Commission did not infringe its obligation to state reasons and that, accordingly, the third plea and thus the action must be dismissed.

Costs

81 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to pay, in addition to their own costs, the costs incurred by the Commission, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. Dismisses the action;

2. Orders Bruno Costantini and the other applicants, whose names are set out in the annex, to pay the costs.

Kanninen Pelikánová Buttigieg

Delivered in open court in Luxembourg on 19 April 2016.

[Signatures]

Annex

Robert Racke, residing in Lamadelaine (Luxembourg),

Pietro Pravata, residing in Beyne-Heusay (Belgium),

Zbigniew Gałązka, residing in Łódź (Poland),

Justo Santos Domínguez, residing in Leganés (Spain),

Maria Isabel Lemos, residing in Mealhada (Portugal),

André Clavelou, residing in Vincennes (France),

Citizens' Committee 'Right to Lifelong Care: Leading a life of dignity and independence is a fundamental right!', established in Brussels (Belgium).