Reports of Cases

OPINION OF ADVOCATE GENERAL
EMILIOU
delivered on 5 October 2023 [1]

Case C-54/22 P

Romania
v

European Commission

(Appeal – European Citizens' Initiative ('ECI') – ECI 'Cohesion policy for the equality of the regions and sustainability of the regional cultures' – Power of the European Commission to proceed with partial registration under Regulation (EU) No 211/2011)

I. Introduction

1. The European Citizens' Initiative ('ECI') is an instrument of participative democracy which has now become a rather well-known addition to the EU institutional scheme, despite its seemingly modest impact so far. [2] To recall, that mechanism was introduced by the Treaty of Lisbon to provide Union citizens with the possibility to influence the EU legal order directly by inviting the European Commission to prepare a proposal for a legal act of the European Union. As the Court of Justice underlined, the added value of that mechanism 'resides not in certainty of outcome, but in the possibilities and opportunities that it creates for Union citizens to initiate debate on policy within the EU institutions'. [3]

2. For an ECI to progress, it has to pass, successfully, several steps, the very first one being its 'registration'. During that 'admissibility' stage, the Commission verifies, inter alia, whether or not the matter on which it is invited to act, *manifestly* falls outside the framework of its powers to submit a proposal for a legal act of the European Union. That first stage culminates, in principle, in a decision by which the Commission registers an ECI or, conversely, rejects its registration.

3. The present case concerns that specific stage and constitutes a sequel to previous litigation before the Courts of the European Union concerning the ECI 'Cohesion policy for the equality of the regions and sustainability of the regional cultures'. That ECI sought, in essence, the

1 Original language: English.

2 That is, judging by numbers: the European Commission's website dedicated to ECIs indicates that since 2012, when that instrument entered into force, nine initiatives reached the stage where it was possible for the Commission to take a position on their outcome. See https://europa.eu/citizens-initiative/find-initiative/eci-lifecycle-statistics_en.

3 Judgment of 19 December 2019, *Puppinck and Others* v *Commission* (C-418/18 P, EU:C:2019:1113, 'judgment in *Puppinck*', paragraph 70).

preparation of legal acts providing the regions, whose national, ethnic, cultural, religious or linguistic characteristics differ from those of the surrounding regions, with equal opportunities to access EU funds.

4. The current litigation started with the Commission's rejection of the registration of that ECI because its subject matter manifestly fell outside the scope of its powers to submit a proposal for a legal act. The action brought against that rejection was dismissed by the General Court. However, in the context of an appeal brought by the organisers of that ECI, the Court of Justice annulled the General Court's judgment together with the Commission's decision.

5. Subsequently, the Commission adopted a new decision by which it registered the ECI at issue, thus opening the way for support to be collected amongst Union citizens. For that purpose, the Commission restricted the scope of that ECI to only those of its initial elements that, in the Commission's view, were not manifestly 'inadmissible'.

6. However, on the face of it, the applicable rules in force at the relevant time provided the Commission with a 'black and white' power to register an ECI or to reject its registration. The question that arises in the present case is whether that binary logic prevented the Commission from registering the ECI at issue in such a 'qualified' manner.

II. Legal framework

7. Pursuant to Article 1 thereof, Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative ('the 2011 ECI Regulation') [4] established the detailed procedures and conditions required for a citizens' initiative as provided for in Article 11 TEU and Article 24 TFEU. [5]

8. Article 2(1) of that instrument defined an ECI as 'an initiative submitted to the Commission in accordance with [the 2011 ECI Regulation], 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'.

9. Article 4 of the 2011 ECI Regulation stated:

'1. Prior to initiating the collection of statements of support from signatories for a proposed citizens' initiative, the organisers shall be required to register it with the Commission, providing the information set out in Annex II, in particular on the subject matter and objectives of the proposed citizens' initiative.

…

[4] OJ 2011 L 65, p. 1. That regulation was replaced by Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative (OJ 2019 L 130, p. 55) ('the 2019 ECI Regulation') which, pursuant to Article 28 thereof, applies, in principle, as of 1 January 2020, while the ECI at issue in the present case was registered on 30 April 2019.

[5] Which respectively introduce the ECI as such and constitute the legal basis for the 2011 ECI Regulation.

2. Within two months from the receipt of the information set out in Annex II, the Commission shall register a proposed citizens' initiative under a unique registration number and send a confirmation to the organisers, provided that the following conditions are fulfilled:

…

(b) 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;

…'

3. The Commission shall refuse the registration if the conditions laid down in paragraph 2 are not met.

Where it refuses to register a proposed citizens' initiative, the Commission shall inform the organisers of the reasons for such refusal and of all possible judicial and extrajudicial remedies available to them.

…'

10. Annex II to the 2011 ECI Regulation concerned 'required information for registering a proposed citizens' initiative' and required 'the following information [to] be provided in order to register a proposed citizens' initiative on the Commission's online register:

1. The title of the proposed citizens' initiative, in no more than 100 characters;

2. The subject matter, in no more than 200 characters;

3. A description of the objectives of the proposed citizens' initiative on which the Commission is invited to act, in no more than 500 characters;

4. The provisions of the Treaties considered relevant by the organisers for the proposed action;

…'

That annex also stated that 'organisers may provide more detailed information on the subject, objectives and background to the proposed citizens' initiative in an annex. They may also, if they wish, submit a draft legal act'.

III. Background to the dispute, procedure before the General Court and the judgment under appeal

11. On 18 June 2013, an ECI entitled 'Cohesion policy for the equality of the regions and sustainability of the regional cultures' was submitted to the Commission for registration.

12. The organisers of that ECI provided both the minimum required information, set out in Annex II to the 2011 ECI Regulation ('required information'), and more detailed information within the meaning of that annex ('additional information').

13. It followed from the elements provided as *required* information that the subject matter of that initiative was that the cohesion policy of the European Union should pay special attention to regions with national, ethnic, cultural, religious or linguistic characteristics that differed from those of the surrounding regions. [6]

14. The objectives of that initiative, also described within the framework of the required information, were presented, inter alia, as follows: 'For such regions, including geographic areas with no administrative competencies, the prevention of economical backlog, the sustainment of development and the preservation of the conditions for economic, social and territorial cohesion should be done in a way that ensures their characteristics remain unchanged. For this, such regions must have equal opportunity to access various [EU funds] and the preservation of their characteristics and their proper economical development must be guaranteed, so that the EU's development can be sustained and its cultural diversity maintained.' [7]

15. Moreover, it followed from the *additional* information (as later summarised by the Court) that, according to the organisers of that ECI, 'the cohesion policy governed by Articles 174 to 178 TFEU should, in order to reflect the fundamental values defined in Articles 2 and 3 TEU, contribute to preserving the specific ethnic, cultural, religious or linguistic characteristics of the national minority regions which are endangered by European economic integration, and to correcting the handicaps and discrimination affecting the economic development of those regions. Accordingly, the proposed act was to give national minority regions the opportunity to access EU cohesion policy funds, resources and programmes equal to that of currently eligible regions, such as those listed in Annex I to [Regulation 1059/2003]. [8] Those guarantees could, according to the [organisers], include the establishment of autonomous regional institutions with sufficient powers to assist national minority regions in preserving their national, linguistic and cultural characteristics as well as their identity.' [9]

16. By its decision of 25 July 2013, the Commission refused to register the ECI at issue, on the ground that the proposed ECI manifestly fell 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 (within the meaning of Article 4(2)(b) of the 2011 ECI Regulation). [10]

17. The action by which the organisers of that ECI, supported by Hungary, sought the annulment of that decision was dismissed by the General Court. [11] However, that judgment was set aside by the Court of Justice, which also gave final judgment in the dispute and annulled the Commission's decision of 25 July 2013. [12] It appears that the Court of Justice, inter alia,

6 See recital 1 of Commission Decision (EU) 2019/721 of 30 April 2019 on the proposed citizens' initiative entitled 'Cohesion policy for the equality of the regions and sustainability of the regional cultures' (OJ 2019 L 122, p. 55) ('the contested decision'). See also judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177, 'the Court's judgment in *Izsák and Dabis* v *Commission*', paragraph 9).

7 Recital 2 of the contested decision. See also judgment of 10 May 2016, *Izsák and Dabis* v *Commission* (T-529/13, EU:T:2016:282, 'the General Court's judgment in *Izsák and Dabis* v *Commission*', paragraph 3).

8 Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ 2003 L 154, p. 1). As follows from Article 1 of that regulation, its purpose is to establish a common statistical classification of territorial units, referred to as 'NUTS', so as to enable the collection, compilation and dissemination of harmonised regional statistics within the European Union.

9 The Court's judgment in *Izsák and Dabis* v *Commission*, paragraphs 11 and 56. See, for a fuller description of that additional information, the General Court's judgment in *Izsák and Dabis* v *Commission*, paragraphs 3 and 5 to 8. The full content of the required information and additional information can be accessed at https://europa.eu/citizens-initiative/initiatives/details/2019/000007_en.

10 Decision C(2013) 4975 final. The grounds for the rejection of the registration are set out in paragraph 12 of the Court's judgment in *Izsák and Dabis* v *Commission*. See also the General Court's judgment in *Izsák and Dabis* v *Commission*, paragraph 9.

11 The General Court's judgment in *Izsák and Dabis* v *Commission* referred to above in footnote 7.

12 The Court's judgment in *Izsák and Dabis* v *Commission* referred to in footnote 6 above.

disapproved as too restrictive the interpretation that the Commission gave to the Treaty's provisions on EU cohesion policy, which was analysed as the possible legal basis for the legal acts which the Commission was invited to prepare. [13]

18. On 30 April 2019, the Commission adopted the contested decision by which the ECI in question was registered. [14]

19. However, while that registration was given effect by Article 1(1) of the contested decision, Article 1(2) thereof provided that 'statements of support for this proposed citizens' initiative may be collected, *based on the understanding* that it aims at proposals from the Commission for legal acts setting out the tasks, priority objectives and the organisation of the Structural Funds and provided that the actions to be financed lead to the strengthening of the economic, social and territorial cohesion of the Union'. [15]

20. By an application lodged on 8 July 2019, Romania brought an action for the annulment of the contested decision, raising two pleas. First, it alleged an infringement of Article 4(2)(b) of the 2011 ECI Regulation because, in its view, the ECI at issue manifestly fell outside the Commission's powers to submit a proposal for a legal act within the meaning of the abovementioned provision. Second, Romania alleged a breach of the obligation to state reasons.

21. On 10 November 2021, the General Court dismissed that action ('the judgment under appeal'). [16]

IV. The proceedings before the Court of Justice and the form of order sought

22. Romania lodged an appeal against that judgment on 27 January 2022, seeking its annulment, and asking that the Court of Justice either rule on the matter itself or refer the case back to the General Court for a new decision. It also asks that the Commission be ordered to bear the costs.

23. Romania raises a single ground of appeal based on a breach of Article 4(2)(b) of the 2011 ECI Regulation, read in conjunction with Article 5(2) TEU (enshrining the principle of conferral of powers). [17] That ground is further divided into two pleas.

24. The *first plea* concerns paragraphs 105 and 106 of the judgment under appeal, in which the General Court stated that the Commission 'may refuse to register a proposed ECI only if … it concludes that it can be completely ruled out that the Commission could submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties' and that, therefore, it is to register an ECI 'even where [it] has strong doubts' whether the proposed ECI falls within the framework of its relevant powers.

[13] As follows from paragraph 64 of the General Court's judgment in *Izsák and Dabis* v *Commission*, the initial 'rejection' decision stated that the list of handicaps that may affect various regions and that, in short, may be the subject of the EU cohesion policy, given in the third paragraph of Article 174 TFEU, is *exhaustive* (and, as I understand it, thus does not include the specific features of the 'minority regions' identified by the organisers of the ECI at issue as the source of the concerns to be addressed). In contrast to that, the Court of Justice stated that that list is not exhaustive but *indicative*. See the Court's judgment in *Izsák and Dabis* v *Commission*, paragraph 69.

[14] The contested decision referred to above in footnote 6.

[15] Emphasis added.

[16] Judgment of 10 November 2021, *Romania* v *Commission* (T-495/19, EU:T:2021:781).

[17] To recall, Article 5(2) TEU states that 'under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States'.

25. The *second plea* put forward by Romania concerns statements made by the General Court in paragraph 116 of the judgment under appeal according to which, in essence, the Commission's approach, consisting in registering the ECI at issue based on a certain understanding of what its possible scope could be, was consistent with the 2011 ECI Regulation and the interpretation thereof given in the Court's judgment in *Izsák and Dabis* v *Commission*.

26. The Commission submitted a response in which it asks the Court to dismiss the appeal and order Romania to bear the costs.

27. Both parties also submitted a reply and a rejoinder. The Hungarian Government intervened in support of the Commission and submitted a response to the appeal, as well as a rejoinder.

V. Assessment

28. In accordance with the Court's request, the present Opinion will focus on the arguments raised by Romania under the second plea, which concern the question whether the Commission had the power to 'qualify' (and restrict) the scope of the ECI at issue, while proceeding with its registration.

29. To assess that question, I will comment on the relevant features of the ECI mechanism (1) and describe the Commission's practice (of which the ECI at issue forms part) consisting in registering certain ECIs on the basis of a specific understanding as to what their possible scope might be (2). With those elements of the more general background explained, I will address Romania's arguments presented within the second plea of its appeal and set out the reasons that will lead me to conclude that the Commission was entitled to register an ECI while restricting its scope to some of its aspects only (3).

1. The relevant features of the ECI mechanism

30. The ECI mechanism, introduced in Article 11(4) TEU, has been implemented by the 2011 ECI Regulation, later repealed by the 2019 ECI Regulation, which is currently in force. Both lay down the conditions under which an initiative can be submitted to the Commission, as well as the procedure through which the Commission is to deal with it.

31. It should be noted that, for an initiative to trigger a policy discussion within the EU institutions, it must pass three main successive stages.

32. *First*, it must comply with the registration (sometimes referred to as 'admissibility'[18]) conditions, listed specifically. *Second*, once an ECI has been registered, the organisers of that ECI must gather the support needed (of, as a minimum, one million signatories from at least one

[18] See, for example, Dougan, M., 'What are we to make of the citizens' initiative?', *Common Market Law Review*, Vol. 48, Issue 6, 2011, at p. 1839.

quarter of the Member States).[19] *Third*, the Commission must, in essence, arrive at the conclusion that the adoption of a legal act on the matter identified is indeed necessary – and start its preparation – which, however, is within its total discretion.[20]

33. With regard to the registration stage, with which the present case is concerned, the current 2019 ECI Regulation makes registration subject to, inter alia, the (negative) condition that *none of the parts* of the initiative submitted manifestly falls 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.[21]

34. When that condition is not met, the Commission has to inform the organisers accordingly and provide them with an opportunity to amend the initiative. When they maintain the initial version, and when, at the same time, a part of that initiative does not manifestly fall outside the Commission's relevant powers, the 2019 ECI Regulation provides that the Commission register such initiative partially.[22]

35. However, the registration conditions of the 2019 ECI Regulation do not apply *ratione temporis* to the present case, which is, in that respect, governed by the 2011 ECI Regulation.[23] Although the latter instrument contained a similar negative registration condition, that condition was expressed differently in that it did not specify that *none of the parts* of the proposed initiative could not be outside the Commission's relevant powers. Article 4(2)(b) thereof merely required that the proposed initiative (as such) not fall manifestly outside the framework of those powers.[24] Importantly, the 2011 ECI Regulation did not address the situation in which the proposed ECI satisfied that negative condition only in part. In other words, it did not provide for any specific consequences to be drawn from a proposal that contained a mix of elements, some of which manifestly fell outside of the Commission's powers while others did not.

36. The present case raises the question whether that regulation's silence on that issue prevented the Commission from adopting the contested decision by which the ECI at issue was registered on the basis of a specific understanding as to what that ECI's scope might be. Before addressing that issue in more detail, I will turn to the practice that the Commission has developed in that respect (and that, in fact, appears to have subsequently inspired the system of partial registration currently in force).

2. Practice of registration restricting the scope of the proposed initiatives under the 2011 ECI Regulation

37. The ECI at issue is not the first one to have been registered, under the 2011 ECI Regulation, in a 'qualified' manner – that is, with the Commission stating, in its registration decision, what its possible scope might be for the purposes of the subsequent stages of the process.

19 Article 2(1) and Article 7(1) of the 2011 ECI Regulation and Article 3(1)(a) of the 2019 ECI Regulation.

20 See, to that effect, Article 10(1)(c) of the 2011 ECI Regulation and Article 15(2) of the 2019 ECI Regulation. See also judgment in *Puppinck*, paragraph 70. For an example of a communication of the Commission's political and legal conclusions, see the Communication from the Commission on the European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe', COM(2021) 171 final, point 3, pp. 18 to 21.

21 Article 6(3)(c) of the 2019 ECI Regulation. Emphasis added.

22 Article 6(4) of the 2019 ECI Regulation.

23 I recall that the ECI at issue was registered on 30 April 2019, while the 2019 ECI Regulation applies, pursuant Article 28 thereof, and for what is relevant, as of 1 January 2020.

24 Article 4(2)(b) of the 2011 ECI Regulation.

38. To my knowledge, the Commission has proceeded in that way, under the 2011 ECI Regulation, in nine other cases,[25] which accounts for approximately 14% of the successful registrations achieved under that instrument.[26]

39. With one exception, the registration decision adopted in each of them contains a provision equivalent to Article 1(2) of the contested decision, in which the Commission observes that the statements of support may be collected 'based on the understanding' that the initiative in question aims at a proposal for a legal act of the European Union that would have a specific purpose, as briefly described in that provision.[27] That differs from the 'full' registration decisions, Article 1 of each of which simply provides that the ECI in question is registered.[28]

40. To my knowledge, the question whether the Commission could register partially, under the 2011 ECI Regulation, an 'over-inclusive' ECI (instead of rejecting it altogether) was addressed by the Courts of the European Union in respect of one ECI only, and only in a rather limited manner.

41. More specifically, the ECI entitled 'Minority SafePack – one million signatures for diversity in Europe' sought the adoption of 11 acts so as to enhance, in short, the protection of national and linguistic minorities.[29]

42. The Commission first considered that that initiative manifestly fell outside the framework of its powers to submit a proposal for a legal act of the European Union and rejected its registration.[30] In the subsequent litigation, the General Court annulled that rejection decision on the ground, inter alia, that the Commission had failed to state reasons as to which of the suggested acts manifestly did not fall within its powers, while simultaneously observing that some of the themes could in fact come within the scope of its powers.[31]

43. Subsequently, the Commission adopted a new decision by which it registered the ECI at issue, in respect of 9 out of the 11 legal acts that the Commission had been invited to prepare.[32]

[25] Commission Decision (EU) 2017/599 of 22 March 2017 on the proposed citizens' initiative entitled 'EU Citizenship for Europeans: United in Diversity in Spite of *jus soli* and *jus sanguinis*' (OJ 2017 L 81, p. 18); Commission Decision (EU) 2017/652 of 29 March 2017 on the proposed citizens' initiative entitled 'Minority SafePack – one million signatures for diversity in Europe' (OJ 2017 L 92, p. 100); Commission Decision (EU) 2017/877 of 16 May 2017 on the proposed citizens' initiative entitled 'Let us reduce the wage and economic differences that tear the EU apart!' (OJ 2017 L 134, p. 38); Commission Decision (EU) 2017/1002 of 7 June 2017 on the proposed citizens' initiative entitled 'Stop extremism' (OJ 2017 L 152, p. 1); Commission Decision (EU) 2017/1254 of 4 July 2017 on the proposed citizens' initiative entitled 'Stop TTIP' (OJ 2017 L 179, p. 16); Commission Decision (EU) 2018/1222 of 5 September 2018 on the proposed citizens' initiative entitled 'End the Cage Age' (OJ 2018 L 227, p. 7); Commission Decision (EU) 2018/1471 of 19 September 2018 on the proposed citizens' initiative entitled 'STOP FRAUD and abuse of EU FUNDS – by better control of decisions, implementation and penalties' (OJ 2018 L 246, p. 46); Commission Decision (EU) 2019/435 of 12 March 2019 on the proposed citizens' initiative entitled 'Housing for All' (OJ 2019 L 75, p. 105); and Commission Decision (EU) 2019/569 of 3 April 2019 on the proposed citizens' initiative entitled 'Respect for the rule of law within the European Union' (OJ 2019 L 99, p. 39).

[26] The 2011 ECI Regulation remained in force between 1 April 2012 and 31 December 2019. The Commission's website dedicated to ECIs lists 70 registrations made during that period.

[27] The exception concerns Commission Decision (EU) 2017/877 of 16 May 2017 on the proposed citizens' initiative entitled 'Let us reduce the wage and economic differences that tear the EU apart!' (OJ 2017 L 134, p. 38), which uses a slightly different wording.

[28] During the first few years of operation of the ECI, the content of the registration decisions was not organised into provisions. Instead, those decisions took the form of a letter addressed to the respective organisers.

[29] See https://europa.eu/citizens-initiative/initiatives/details/2017/000004_en. That initiative is one of the nine ECIs on which the Commission has taken a position on the outcome. See above, footnotes 2 and 20.

[30] Decision C(2013) 5969 final of 13 September 2013.

[31] Judgment of 3 February 2017, *Minority SafePack – one million signatures for diversity in Europe* v *Commission* (T-646/13, EU:T:2017:59, paragraphs 27, 28 and 34).

[32] Commission Decision (EU) 2017/652 of 29 March 2017 on the proposed citizens' initiative entitled 'Minority SafePack – one million signatures for diversity in Europe' (OJ 2017 L 92, p. 100).

44. Romania challenged that new registration decision without success, raising, first, the infringement of Article 4(2)(b) of the 2011 ECI Regulation and, second, the failure to state reasons.

45. In the context of the first ground, the General Court rejected, inter alia, Romania's plea that partial registration compromised the autonomy of the organisers of the ECI and unduly altered the stated purpose thereof. It emphasised that the organisers themselves had expressed the wish that the Commission proceed with a partial registration, should it arrive at the conclusion that some of the proposed measures manifestly did not fall within its relevant powers. [33]

46. In the context of the second ground, the General Court rejected the claimed absence of the reasons given for the decision to register the ECI in part and referred, inter alia, to the Commission's explanation regarding a change in its practice (and a departure from its initial position according to which a partial registration was not possible under the 2011 ECI Regulation).

47. In the appeal that Romania brought, also unsuccessfully, those specific points were not raised. [34]

48. I note that neither the judgment of the General Court, nor that of the Court of Justice, expressly addressed the underlying question whether the Commission had the power, under the 2011 ECI Regulation, to register an ECI only in part. [35] That said, I am of the view that there are indeed good grounds in favour of the Commission's approach. That is the issue I will examine now, in addressing the arguments put forward by Romania in support of its second plea of the single ground of the present appeal.

3. The present case

49. In this section, I will first examine the arguments raised by Romania more closely (a) and clarify the terminology used by the General Court arguably to describe the Commission's practice at issue (b). I will then turn to what constitutes, in my view, the thrust of Romania's second plea, namely the claimed impossibility for the Commission to register an ECI in a 'qualified' manner under the 2011 ECI Regulation (c).

(a) Details of the second plea of the single ground of the appeal

50. To recall, by the second plea of its appeal (which is the only plea examined in the present Opinion, as explained above), Romania challenges the statements made by the General Court in paragraph 116 of the judgment under appeal, in which that court rejected Romania's argument that the existence of certain 'reservations' in the contested decision was, in essence, contrary to the 2011 ECI Regulation. [36]

[33] Judgment of 24 September 2019, *Romania* v *Commission* (T-391/17, EU:T:2019:672, paragraph 58).

[34] Judgment of 20 January 2022, *Romania* v *Commission* (C-899/19 P, EU:C:2022:41.

[35] I note that in its judgment of 3 February 2017, *Minority SafePack – one million signatures for diversity in Europe* v *Commission* (T-646/13, EU:T:2017:59), the General Court observed, in essence, in paragraph 29, that the shortcomings as regards the Commission's obligation to state reasons held true 'even assuming that the position expressed by the Commission on the substance, according to which a proposed ECI, cannot, whatever its content, be registered if it is deemed in part inadmissible …, is well founded'.

[36] Paragraph 115 of the judgment under appeal.

51. More specifically, the General Court, in that paragraph, upheld the Commission's decision to register the ECI at issue based on a certain understanding of what its possible scope might be, as consistent with the 2011 ECI Regulation and the case-law of the Court of Justice, [37] on the ground that the Commission must interpret and apply the condition for registration at issue in such a way as to ensure easy accessibility to ECIs.

52. The General Court inferred, in paragraph 116 of the judgment under appeal, that 'the Commission may therefore, if necessary, "frame", "qualify" or even partially register the proposed ECI at issue in order to ensure that it is easily accessible, provided that it complies with the obligation to state reasons incumbent on it, and that the content of the proposal is not distorted'.

53. It considered, still within the same paragraph, that that 'allows the Commission – instead of refusing to register a proposed ECI – to register it in a qualified manner, in order to preserve the effectiveness of the objective pursued by [the 2011 ECI Regulation]'. It added that 'that conclusion is all the more compelling since the organisers of such a proposal are not necessarily lawyers who are able to express themselves accurately in writing and have knowledge of the competences of the European Union and the powers of the Commission'. [38]

54. By the second plea of its appeal, Romania alleges, in essence, that by approving the Commission's decision to register the ECI in a 'qualified' manner, the General Court infringed Article 4(2)(b) of the 2011 ECI Regulation (read in conjunction with Article 5(2) TEU) because it failed, like the Commission in the contested decision did, to take into account the entirety of the information submitted to the Commission by the organisers of the ECI at issue.

55. In that respect, Romania refers to some of the elements of the 'additional' information (within the meaning of Annex II to the 2011 ECI Regulation) that the organisers of the ECI at issue had submitted. It refers, more specifically, to the invitation to: first, define, in a legal act, the 'minority/ethnic regions'; second, also make that definition applicable to regions that are not endowed with administrative competences but that have expressed their wish for autonomy; and, third, provide, in an annex to the legal act to be adopted, a list of those regions. Moreover, Romania argues that the reference to Regulation No 1059/2003 was likewise ignored. [39]

56. According to Romania, had the entirety of that information been taken into account, the ECI at issue would not have been adopted because the conclusion would have been reached that an action based on Articles 174 to 178 TFEU (concerning the EU cohesion policy) would not allow the objectives sought by that ECI to be pursued.

57. Finally, Romania is of the view that the General Court's conclusion relied on a general argument about the necessity to ensure easy access to ECIs. However, in Romania's view, such a general argument cannot lead, per se, to an ECI being registered where the registration conditions are not met.

[37] Referring more specifically to the Court's judgment in *Izsak and Dabis* v *Commission*, referred to in footnote 6 and point 17 above.

[38] The General Court concluded that paragraph by stating that 'Romania's assertion that the existence of "reservations" in the Commission's assessment indicates the existence of doubts and questions on the part of the Commission … is not only unsubstantiated, but also ineffective, in so far as, as has already been noted, the existence of such doubts and questions should not prevent the Commission from registering the proposed ECI at issue'. I note that that statement relates to the arguments raised by Romania within the first plea of the single ground of its appeal and, as such, is not addressed by Romania in the context of the second plea.

[39] Although Romania does not expand on that argument, I understand it as referring to what it had emphasised in the proceedings which led to the judgment under appeal, namely that the ECI at issue had suggested a reconfiguration of the statistical system provided for in Regulation No 1059/2003 (referred to above in footnote 8), which would take into account the ethnic, religious, linguistic and cultural criterion. Judgment under appeal, paragraph 97.

58. In response, the Commission observes, in essence, that it is precisely because it took the entirety of the information submitted by the organisers into account, that it arrived at the decision to register the ECI at issue in a 'qualified' manner.

59. I note that the Court had made it clear, as Romania correctly recalls, that, where the organisers have provided the Commission with not only the required information about the subject matter and objective of the given initiative but also additional information, within the meaning of Annex II to the 2011 ECI Regulation, on the subject, objectives and background of the proposal, the Commission must examine it. [40]

60. In my view, when the General Court examined the information that the Commission had taken into account before adopting the contested decision, it did so while taking the elements described by Romania into consideration. As that Member State itself acknowledges, the General Court referred, in essence, to those elements in paragraph 113 of the judgment under appeal in considering that they constitute means identified by the organisers to attain the stated objectives of the ECI at issue. Given that element, I fail to see, in accordance with the position expressed by Hungary (as the intervener) in its response, any failure on the part of the General Court to take those elements into account.

61. That said, it would appear that, by the second plea of its appeal, Romania challenges, more fundamentally, the upholding, by the General Court, of the Commission's underlying choice to register the ECI at issue in a 'qualified' manner'. Indeed, because, in that Member State's view, the presence of the abovementioned elements made it impossible for that ECI to be registered without an infringement of the principle of conferral of powers, its argument amounts, in my view, to saying that the 'qualified' registration with which the Commission proceeded, and which the General Court approved in paragraph 116 of the contested judgment, was simply not an option permitted by Article 4(2)(b) of the 2011 ECI Regulation.

62. Before setting out the reasons which will lead me to consider that the General Court did not err in that respect, I will provide a few short observations on the wording used by the General Court, arguably to describe the situation at hand.

(b) Qualified, framed or partial registration?

63. As already noted, by consideration of, especially, the need to ensure easy access to the ECI, the General Court stated, in paragraph 116 of the judgment under appeal, that the Commission may *frame*, *qualify* or even *partially register* the proposed ECI. [41] That phraseology and that wording seem to refer to different scenarios.

64. Prima facie, there may indeed be a certain difference, in particular, between partial and qualified registration. The former, in my view, fits the scenario that was at issue in the judgment in *Romania* v *Commission – Minority SafePack* perfectly. That judgment concerned, as already

[40] Judgment of 12 September 2017, *Anagnostakis* v *Commission* (C-589/15 P, EU:C:2017:663, paragraph 35) and, to that effect, the Court's judgment in *Izsák and Dabis* v *Commission*, paragraph 54. See also recital 10 of the 2011 ECI Regulation whose last sentence provides that 'the Commission should deal with registration in accordance with the general principles of good administration'. On that matter, see Opinion of Advocate General Mengozzi in *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2018:816, point 18 and the case-law cited).

[41] Emphasis added.

explained, an ECI eventually registered in respect of 9 out of 11 legal acts initially proposed. Those acts were presented in a list from which the Commission selected those that were not manifestly outside its powers.

65. By contrast, the ECI at issue seeks, more generally and in essence, an action to ensure that the regions, referred to as 'minority/ethnic regions', have equal access to EU funds. The additional information calls for, in various sections of the submitted text, a new regulatory framework on certain specific aspects related to such regions without providing for a comparable list of acts which the Commission would be invited to prepare. In a way, that ECI appears to be calling for a certain course of action to ensure the promotion and preservation of the 'national minority/ethnic regions', in respect of which it refers to certain measures, which are described in general terms. In such a situation, the resulting selection of the elements that, in the Commission's view, could fall within its powers to submit a proposal for a legal act may appear less straightforward, at least formally speaking, than the one effected in respect of the Minority SafePack ECI. [42]

66. Upon closer scrutiny, however, I consider that, *in fine*, there is not much difference between those two scenarios. The manner in which the Commission limited the scope of both ECIs referred to above appears to reflect, in each of those cases, the way in which those initiatives were specifically drafted. Otherwise, both registration decisions share the basic feature that the Commission reduced, in both cases, that scope compared to what was initially suggested by the organisers.

67. For that reason, and at least in the context of the present case, I do not see much benefit in distinguishing between situations in which the Commission 'frames', 'qualifies' or 'even partially registers' an initiative.

68. In my view, those different terms are used interchangeably to describe the same underlying situation in which the Commission decides to limit the scope of a given initiative, when proceeding with its registration, because it considers that some of its parts do not manifestly fall within its powers to submit a proposal for a legal act. For the sake of simplification, and for the purposes of describing the situation as such, it is therefore my view that it is appropriate to use only one of those terms. In that respect, the term 'partial registration' appears to be the natural candidate given that it is precisely that term that features in the 2019 ECI Regulation in which the EU legislature appears to have codified the practice that the Commission had developed (as I will explain in more detail below).

69. With those remarks in mind, I will now address the question whether that practice was actually permissible prior to that legislative change.

(c) Registration decisions restricting the scope of the proposed initiatives under the 2011 ECI Regulation

70. As I have already noted, contrary to the regulatory framework which is currently applicable, no provision of the 2011 ECI Regulation provided for a registration to be made based on a certain understanding as to the scope of an ECI. Indeed, Article 4(3) of the 2011 ECI Regulation simply provided that the Commission 'shall refuse the registration' if the respective registration

[42] Compare also the description of these additional elements in the Court's judgment in *Izsák and Dabis* v *Commission*, paragraph 11, with the one in the General Court's judgment in *Izsák and Dabis* v *Commission*, paragraphs 5 to 8.

conditions were not met. In that light, one may thus argue that that regulatory basis tied the Commission's hands with regard to choosing only one of two options: to register the ECI in question or to refuse its registration, without the possibility of a 'third way'.

71. First of all, although the case-law discussed above concerning the Minority SafePack ECI did not expressly address the power of the Commission to register an ECI in part, as I have already observed,[43] an argument can be made to the effect that a reply in the affirmative was implied. Indeed, should such power on the part of the Commission be excluded, it could be argued that there is not much use in criticising the Commission for not having explained, in its initial rejection decision, *which* of the (11) proposed acts were not manifestly outside its powers to propose a legal act of the European Union. That said, it is true that providing an adequate statement of reasons serves as a basis for subsequent judicial review and also makes it possible for the organisers to draft a new, fully 'admissible', proposal.[44]

72. Independently of that aspect, I am of the view that the consideration of the wording of Article 4(2)(b) of the ECI Regulation, of its 'internal context' (composed of other provisions of that regulation) and, in particular, of the specific objectives sought by that regulation supports partial registration as being consistent with that regulation.[45]

73. *First*, although the *wording* of Article 4(2)(b) of the 2011 ECI Regulation is silent on the possibility of partial registration as such, I consider that the use of the term 'manifest' (to describe the lack of relevant powers on the part of the Commission, which leads to a rejection decision) indicates that the test to be applied is to be 'suitably restrained'.[46]

74. In that context, it was observed that the use of that adjective means that the Commission may register an ECI possibly falling outside the scope of its powers to submit a proposal for a legal act, but where such a conclusion is not 'manifest'.[47] I agree that this seems to be the logical consequence of the use of that wording. In that light, however, it would appear somewhat inconsistent to argue that registration must be rejected where only a part of the proposed initiative manifestly falls outside the scope of the Commission's powers, while in other (possibly the majority of) respects, it might fall within their scope.

75. *Second*, the reading of Article 4(2)(b) of the 2011 ECI Regulation as allowing for a partial registration is supported by taking into consideration the relevant (internal) *context*, and more specifically, the respective margins of discretion that the Commission enjoys at both ends of the entire process.

76. In that respect, the provisions of the 2011 ECI Regulation concerning the *final* stage, at which the Commission takes a position on the 'merits' of the given ECI, make clear that the Commission's discretion is, at that stage, very broad. More specifically, Article 10(1)(c) of the 2011 ECI Regulation provided that the Commission is to set out, in a communication, its 'legal and political conclusions on the citizens' initiative, the action it intends to take, if any, and its

43 See point 48 above.

44 Judgment of 3 February 2017, *Minority SafePack – one million signatures for diversity in Europe* v *Commission* (T-646/13, EU:T:2017:59, paragraph 29).

45 I recall that pursuant to established case-law, 'in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part'. See, for example recently, judgment of 13 July 2023, *Mensing* (C-180/22, EU:C:2023:565, paragraph 22 and the case-law cited).

46 Dougan, M., 'What are we to make of the citizens' initiative?', *Common Market Law Review*, Vol. 48, Issue 6, 2011, at p. 1840. See also, to that effect, Opinion of Advocate General Mengozzi in *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2018:816, point 36).

47 Opinion of Advocate General Mengozzi in *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2018:816, points 38 and 57).

reasons for taking or not taking that action'.[48] It follows, as the Court confirmed, that the fact that an ECI has been successful in terms of its registration and collection of the necessary support does not yet guarantee that the Commission will take any subsequent action, as the introduction of the ECI mechanism by the Treaty of Lisbon did not affect the Commission's near-monopoly of the legislative initiative.[49]

77. That broad margin of discretion differs fundamentally from the one that the Commission enjoys at the registration stage and which is narrow, as the Court recalled, meaning that the Commission must register each proposed ECI that satisfies the prescribed registration conditions.[50]

78. That narrow margin of discretion has led the Court to consider that the registration condition at issue in the present case cannot be interpreted in a way that, in essence, burdens the organisers excessively. More specifically, the Court of Justice rejected the approach, adopted by the General Court in the judgment contested in that case, addressing that registration condition as a matter of facts and evidence to be adduced by the organisers.[51] In contrast to that, the Court of Justice held that the depth of the verification of the registration condition in Article 4(2)(b) of the 2011 ECI Regulation must be confined to 'examining, … whether from an objective point of view such measures envisaged in the abstract could be adopted on the basis of the Treaties'.[52]

79. I am of the view that the Commission's narrow margin of discretion at the registration stage shall likewise prevent a similar obstacle from being placed in the path of the organisers of the ECIs in the context of the present case. That would occur if they were required to respect the delimitation of the Commission's powers strictly, with the result that even the smallest error with regard to the extent of those powers would result in the disqualification of the ECI as such.

80. That last point relates, *third*, to the objectives pursued by the 2011 ECI Regulation, which, in my view, strongly support the interpretation that Article 4(2)(b) of the 2011 ECI Regulation allows for partial registration.

81. Those objectives are expressed in recitals 1 and 2 of that regulation and consist, 'inter alia, in encouraging participation of citizens and in making the European Union more accessible'.[53] Recital 2 also calls, more specifically, for the applicable procedures and conditions to be 'clear, simple, user-friendly and *proportionate* to the nature of the [ECI]'.[54]

82. Those objectives must naturally also guide, as the Court of Justice held, and as the General Court in essence recalled in paragraph 116 of the judgment under appeal, the registration condition at issue.

[48] See also Article 15(2) of the 2019 ECI Regulation. See also paragraphs 101 to 105 of the judgment under appeal.

[49] Judgment in *Puppinck*, paragraph 70, quoted in point 1 of the present Opinion, as well as paragraphs 57 to 65 and the case-law cited. See also Opinion of Advocate General Bobek in *Puppinck and Others* v *Commission* (C-418/18 P, EU:C:2019:640, points 34 to 42).

[50] See the wording that the Court used in its judgment of 20 January 2022, *Romania* v *Commission* (C-899/19 P, EU:C:2022:41, paragraph 71).

[51] See the Court's judgment in *Izsák and Dabis* v *Commission*, paragraphs 57 to 60. More specifically, the Court disapproved the General Court's findings to the effect that the organisers of the ECI at issue failed to provide 'evidence that the implementation of the EU cohesion policy … endangered the specific characteristics of national minority regions' and to show 'that the specific ethnic, cultural, religious or linguistic characteristics of national minority regions could be regarded as a severe and permanent demographic handicap within the meaning of the third paragraph of Article 174 TFEU'.

[52] See the Court's judgment in *Izsák and Dabis* v *Commission*, paragraph 62.

[53] The Court's judgment in *Izsák and Dabis* v *Commission*, paragraph 53 and the case-law cited.

[54] Emphasis added.

83. In that light, I note, first, that the ECI mechanism has been designed as an instrument of participatory democracy available to Union citizens wishing to promote the adoption of an act on any matter falling within the relevant powers of the Commission. [55]

84. In that context, the decision to make general access to the political-agenda-setting process possible has, as its necessary corollary, as the General Court, in essence, observed in paragraph 116 of the judgment under appeal, the fact that the texts proposed to the Commission for registration may not necessarily be drafted by persons intimately familiar with the intricacies of EU law, the scope of the competences of the European Union, in general, and the limits of the Commission's powers to propose a legal act of the European Union, in particular.

85. Considering the objectives described in point 81 above and the very purpose of the ECI mechanism to connect the EU institutions with Union citizens, I am of the view that applying the registration condition set out in Article 4(2)(b) of the 2011 ECI Regulation too strictly would deprive the mechanism of its effectiveness as it would make many ECIs fail at the first stage of the process.

86. In other words, to insist that the Commission was able to register, under the 2011 ECI Regulation, only those ECIs whose content fell, in its entirety, within the Commission's powers to submit a proposal for a legal act, and that the Commission had to reject an ECI containing elements outside those powers, would result in an excessive formalism and disproportionate results.

87. For instance, it would mean that an ECI comprising both admissible and inadmissible elements would necessarily be rejected while a different result would be obtained, for the admissible parts of such an initiative, if the same subject matter were formally presented, simply, as two separate initiatives: one whose subject matter would be 'completely out' and one whose subject matter would be 'completely in'. In the same vein, the presence of one minor inadmissible element in an otherwise admissible ECI would still result in a complete rejection. Moreover, there would be such a result even if the 'disqualifying misstep' were to feature in the additional information, which, however, according to Annex II of the ECI Regulation, is purely optional.

88. It appears that it is precisely a high rate of refusals that inspired the practice of partial registration that the Commission has developed (and to which I have already referred), [56] departing from its initial position according to which such an approach was incompatible with the provisions of the 2011 ECI Regulation. [57] In that context, the Commission appears to have reacted to the difficulties encountered by the organisers to propose ECIs whose subject matter would meet the specific registration condition of Article 4(2)(b) of the 2011 ECI Regulation.

[55] See also Green Paper on a European Citizen's Initiative, COM(2009) 622 final, p. 3.

[56] See, to that effect, Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) No 211/2011 on the citizens' initiative, COM(2018) 157 final, p. 2. Also, when discussing the aspects in need of improvement, the Commission noted, in the proposal having led to the 2019 ECI Regulation, that it 'ha[d] implemented … a series of non-legislative measures to facilitate the use of the [ECI] instrument by organisers and citizens … including the possibility of partial registration of initiatives'. Proposal for a Regulation of the European Parliament and of the Council on the European citizens' initiative, COM(2017) 482 final, p. 3, see also p. 10.

[57] Judgment of 24 September 2019, *Romania* v *Commission* (T-391/17, EU:T:2019:672, paragraph 90, read in combination with judgment of 3 February 2017, *Minority SafePack – one million signatures for diversity in Europe* v *Commission* (T-646/13, EU:T:2017:59, paragraphs 14, 21, 28 and 29).

89. It is evident, in my view, that partial registration is thus consistent with the objectives pursued by the ECI mechanism, in that it promotes the democratic participation of citizens because it enables a greater number of initiatives to proceed to the subsequent stages of the process. It is also with those objectives in mind that the Commission's practice of partial registration appears to have been codified in the current 2019 ECI Regulation. [58]

90. At the same time, if the objective of ensuring broad access to ECIs is to be promoted, that approach is perhaps the only way to tackle the problem of inadmissible elements (in an otherwise admissible ECI) in that it prevents unrealistic expectations on the part of potential supporters and ensures that the principle of conferral of powers is respected from the beginning of the process.

91. Thus, far from infringing the principle of conferral of powers, as seems to be argued by Romania, that approach followed by the Commission is entirely consistent with it because it leads an ECI to be registered only to the extent that, precisely, it does not appear to be manifestly outside the Commission's powers to submit a proposal for a legal act.

92. In that respect, potential signatories are informed of the scope of the registration of the initiative, and of the fact that statements of support are collected only in relation to the narrower scope of the registration. [59] In summary, the decision to register an (over-inclusive) initiative in part appears to be an efficient way for the Commission to deliver on the objective of ensuring easy accessibility to the ECI mechanism, while ensuring that support will not be collected and discussion will not be engaged among Union citizens on matters in respect of which the Commission has no power to act.

93. In that context, I would add that the contested decision constitutes a reaction to the Court's judgment in *Izsák and Dabis* v *Commission* from which it follows, in essence, and as I have already observed, that the initial refusal, on the part of the Commission, to register the ECI at issue resulted from an incorrect interpretation of the Treaty provisions concerning the EU cohesion policy, which were referred to as a possible basis for the legal act(s) that the Commission was invited to propose.

94. More specifically, while the initial position of the Commission consisted in holding, as exhaustive, the list of handicaps that require particular attention in relation to a specific region, as provided for by Article 174 TFEU, the Court stated, in the abovementioned judgment, that that list was in fact indicative. I understand that it is in that light that the Commission decided to register the ECI at issue, [60] while also taking the view that some of the elements submitted were manifestly outside its powers to submit a proposal for a legal act. Accordingly, its decision to make the registration of the initiative at issue subject to the understanding that 'it aims at proposals … for legal acts setting out the tasks, priority objectives and the organisation of the Structural Funds and provided that the actions to be financed lead to the strengthening of the economic, social and territorial cohesion of the Union' [61] clarified, for the potential signatories of that initiative, what the possible subject matter of the Commission's action could be. In that way, and as I have already observed, the Commission arguably aimed at making sure that Union

[58] Recital 19 of the 2019 ECI Regulation states, that 'it is appropriate to partially register an initiative in cases where only part or parts of the initiative meet the requirements for registration' so as to 'ensure that as many initiatives as possible are registered'.

[59] It is true that under previous practice, a partial registration did not appear to go hand in hand with a subsequent adaptation of the submitted text, but that shortcoming now appears to be addressed in Article 6(5) of the 2019 ECI Regulation. See also, to that effect, Athanasiadou, N., 'The European citizens' initiative: Lost in admissibility?' *Maastricht Journal of European and Comparative Law*, Vol. 26, Issue 2, 2019, at p. 269.

[60] See also paragraphs 117, 125 and 129 of the judgment under appeal.

[61] As stated in Article 1(2) of the contested decision, see point 19 above.

citizens were given an opportunity to support that initiative and, if the necessary support were to be found,[62] trigger the policy discussion on the abovementioned theme. At the same time, as I have also already noted, by circumscribing the initiative in that way, the Commission appears to have sought to avoid a situation where support is asked for and expectations are created on the basis of flawed premisses, as to the powers that are conferred upon the European Union and, more specifically, upon the Commission within the context of the proposed initiative at issue.

95. In the light of those considerations, I am of the view that the General Court interpreted Article 4(2)(b) of the 2011 ECI Regulation correctly when it held, in paragraph 116 of the judgment under appeal, that the Commission could register, by the contested decision, the ECI at issue on a specific understanding as to that ECI's possible scope.

VI. Conclusion

96. Without prejudice to either the substance of the other plea of the single ground of appeal brought by Romania or the fixing of the costs, I propose that the Court dismiss the second plea of the single ground of appeal in Case C-54/22 as unfounded.

[62] According to the information on the Commission's website dedicated to ECIs, the collection of the necessary support appears to have been concluded and the signatures are in the process of being verified. See https://europa.eu/citizens-initiative/initiatives/details/2019/000007_en.