



Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

30 September 2015*

(Law governing the institutions — European citizens' initiative — Economic and monetary policy —
Non-payment of sovereign debt — Establishment of the principle of the 'state of necessity' —
Refusal of registration — Powers of the Commission — Obligation to state reasons)

In Case T-450/12,

Alexios Anagnostakis, residing in Athens (Greece), represented by A. Anagnostakis, lawyer,

applicant,

v

European Commission, represented by H. Krämer and M. Konstantinidis, acting as Agents,

defendant,

APPLICATION for the annulment of Commission Decision C(2012) 6289 final of 6 September 2012 rejecting the application for registration of the European citizens' initiative 'One million signatures for a Europe of solidarity', submitted to the Commission on 13 July 2012,

THE GENERAL COURT (First Chamber),

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

Registrar: S. Spyropoulos, Administrator,

having regard to the written procedure and further to the hearing on 5 May 2015,

gives the following

* Language of the case: Greek.

Judgment

Legal context

- 1 Article 2(1) 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), which was adopted on the basis of the first paragraph of Article 24 TFEU, provides:

'For the purposes of this Regulation the following definitions shall apply:

1. "citizens' initiative" means an initiative submitted to the Commission in accordance with this 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;

...'

- 2 Under Article 4(2) and (3) of Regulation No 211/2011:

'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.'

Background to the dispute

- 3 The applicant, Mr Alexios Anagnostakis, is the creator of a proposed European citizens' initiative named 'One million signatures for a Europe of solidarity' ('the ECI'), which he submitted to the European Commission on 13 July 2012. The objective of the ECI is the establishment in EU legislation of 'the principle of the state of necessity, in accordance with which, when the financial and political existence of a Member State is threatened by the servicing of abhorrent debt, the refusal to repay that debt is necessary and justifiable'. The proposed ECI refers to 'economic and monetary policy (Articles 119 [TFEU] to 144 TFEU)' as the legal basis of its adoption.
- 4 By decision of 6 September 2012 ('the contested decision'), the Commission refused to register the proposed ECI on the ground that the ECI manifestly fell outside the scope of its powers to submit a proposal for the adoption of a legal act of the Union for the purpose of implementing the Treaties.

Procedure and forms of order sought

- 5 By application lodged at the Registry of the General Court on 11 October 2012, the applicant brought the present action.
- 6 The applicant claims that the Court should:
- annul the contested decision;
 - order the Commission to register the citizens' initiative;
 - order any other measures required by law.
- 7 Without making any formal claim with regard to costs, in his reply, the applicant requested that, in the event that his application should be rejected, both parties be ordered to bear their own costs, regard being had to his financial situation.
- 8 The Commission contends that the Court should:
- dismiss the action as unfounded;
 - order the applicant to pay the costs.
- 9 By way of measures of organisation of procedure, as provided for in Article 64 of the Rules of Procedure of the General Court of 2 May 1991, the parties were asked to reply in writing to a question and to produce a copy of the proposed ECI. The applicant and the Commission replied within the prescribed period.

Law

- 10 In support of its action, the applicant argues that the Commission erred in law by refusing to register the proposed ECI on the basis of Article 4(2)(b) of Regulation No 211/2011, which makes the registration of such an initiative subject to the condition that it 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. The applicant alleges, in this connection, infringement of Article 122(1) TFEU, of Article 122(2) TFEU, of Article 136(1)(b) TFEU and of rules of international law. According to the applicant, those laws provided the Commission with a legal basis on which to submit a proposal for a legal act of the Union which would enable the objective of the proposed ECI to be attained.

Admissibility of the second and third heads of claim

- 11 By his second and third heads of claim, the applicant requests the Court, respectively, to order the Commission to register the proposed ECI and to order any other measures required by law.
- 12 However, it is settled case-law that the General Court is not entitled, in the context of a review of legality on the basis of Article 263 TFEU, to issue directions to the institutions or to assume the role assigned to them. That limitation of the scope of judicial review applies to all types of contentious matter that might be brought before the Court (see, to that effect, the judgment of 12 July 2001 in *Mattila v Council and Commission*, T-204/99, ECR, EU:T:2001:190, paragraph 26, confirmed on appeal by the judgment of 22 January 2004 in *Mattila v Council and Commission*, C-353/01 P, ECR,

EU:C:2004:42, paragraph 15, and the judgment of 8 October 2008 in *Agrar-Invest-Tatschl v Commission*, T-51/07, ECR, EU:T:2008:420, paragraphs 27 and 28). It therefore applies to matters concerning European citizens' initiatives.

- 13 It is therefore not open to the applicant to ask the Court to order the Commission to register the proposed ECI and to order other measures.

Substance

Preliminary observations

- 14 The objective of the proposed ECI is the establishment in EU legislation of the principle of the state of necessity, in accordance with which the refusal of a Member State to repay sovereign debt is justifiable where its financial and political existence would be threatened by the repayment of that debt.
- 15 In accordance with Article 5(2) TEU and Article 13(2) TEU, under the principle of conferral of powers, the Union must 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 and each institution must act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them.
- 16 Article 11(4) TEU provides that Union citizens may, subject to certain conditions, take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where they consider that a legal act of the Union is required for the purpose of implementing the Treaties.
- 17 In accordance with Article 4(2)(b) of Regulation No 211/2011, the Commission is to refuse to register a proposed citizens' initiative if it 'manifestly [falls] outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties'.
- 18 According to the contested decision, the proposed ECI manifestly falls outside the framework of the Commission's powers. Therefore, pursuant to Article 4(2)(b) and 4(3) of Regulation No 211/2011, the Commission refused to register it.
- 19 In the present action, the Court is called upon to ascertain whether, as the applicant maintains, the Commission could validly refuse to register the proposed ECI on the basis of Article 4(2)(b) of Regulation No 211/2011.
- 20 In addition, given the brevity of the statement of reasons for the contested decision, the General Court has decided first of all to consider whether that decision satisfied the requirement to state reasons.

The statement of reasons for the contested decision

- 21 It must be borne in mind that an absence of or an inadequate statement of reasons constitutes an infringement of essential procedural requirements for the purposes of Article 263 TFEU and is a plea involving a matter of public policy which may, and even must, be raised by the European Union judicature of its own motion.
- 22 According to consistent case-law, the purpose of the obligation, under Article 296 TFEU, to state the reasons for an individual decision is to provide the person concerned with sufficient information to make it possible to determine whether the decision is well founded or whether it is vitiated by an error which may make it possible for its validity to be contested, and to enable the Courts of the

European Union 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 27 September 2012 *J v Parliament*, T-160/10, EU:T:2012:503, paragraph 20).

- 23 The second subparagraph of Article 4(3) of Regulation No 211/2011, which provides that the Commission is to inform the organisers of the reasons for any refusal to register, gives specific expression to that duty to state reasons in so far as European citizens' initiatives are concerned.
- 24 As the Court has consistently held, the statement of reasons required by Article 296 TFEU must be appropriate to the nature of the measure in question. The requirement to state reasons must be appraised by reference to 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 statement of reasons to go into all the relevant facts and points of law, since the question whether the statement of reasons 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).
- 25 It should be observed in this connection that, in this case, the refusal to register the proposed ECI is an action that may impinge upon the very effectiveness of the right of Union citizens to submit a citizens' initiative that is enshrined in the first paragraph of Article 24 TFEU. Consequently, such a decision must clearly disclose the grounds justifying the refusal.
- 26 Indeed, a citizen who has submitted a proposed citizens' initiative must be put in a position to be able to understand the reasons for which the initiative was not registered by the Commission. It is incumbent on the Commission, when it receives a proposal for a citizens' initiative, 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 the preamble to Regulation No 211/2011, is intended to reinforce citizenship of the Union and enhance the democratic functioning of the Union through the participation of citizens in the democratic life of the Union (see, by analogy, judgment in *J v Parliament*, cited in paragraph 22 above, EU:T:2012:503, paragraph 22).
- 27 According to the contested decision, the objective of the proposed ECI, which is to introduce into EU legislation the principle of the 'state of necessity', as conceived by the applicant, manifestly falls outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties. In the words of the contested decision, 'after a detailed examination of the Treaty provisions mentioned in [the] proposal (Articles 119 [TFEU] to 144 TFEU) and of all other possible legal bases, the Commission refuses to register the proposed citizens' initiative on the ground that it manifestly falls outside the framework of its powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties'. In the contested decision, the Commission stated that, '[i]n particular, Article 136(1) TFEU may serve as a legal basis only for measures the sole purpose of which is to strengthen the budgetary discipline of the Member States and to ensure the proper functioning of economic and monetary union'. It added that, '[i]n any event, Article 136(1) TFEU confers no power on the Union ... to take the place of the Member States in the exercise of their budgetary sovereignty or in carrying out functions which are related to State income and expenditure'.
- 28 It is not disputed that the Commission gave as the reason for its refusal to register the proposed ECI the non-fulfilment of the condition laid down in Article 4(2)(b) of Regulation No 211/2011. Moreover, the Commission clearly indicated that neither the provisions relating to economic and monetary policy to which the applicant had referred, namely Articles 119 TFEU to 144 TFEU, nor any other legal basis conferred competence on the institution to submit to the Council of the European Union a proposal for an act which would enable the objective of the proposed ECI to be attained. In this connection,

the contested decision makes specific reference to Article 136(1) TFEU and sets out the reasons for which the Commission took the view that that provision could not provide a legal basis for the proposed ECI.

- 29 Thus, in the contested decision, the Commission explained the reasons which, in its view, justified its refusal to register the proposed ECI.
- 30 In addition to that, and as has already been noted, the extent of the obligation to state reasons depends on the nature of the measure in question and on the context in which it was adopted. In the present case, the proposed ECI lacked clarity and precision in so far as concerns the purported legal basis of the Commission's competence to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties.
- 31 Indeed, as the Commission rightly observed in reply to a question put by the Court, the proposed ECI failed to set out any argument concerning the connection between the 26 articles of the FEU Treaty relating to the Union's economic and monetary policy, to which the proposal made a general reference, and the content of the proposal itself. It was only in the application that the applicant referred to Articles 122 TFEU and 136 TFEU as providing a specific basis for the Commission's competence to present a legal act of the Union of the kind envisaged by the proposed ECI. The Commission cannot, therefore, be criticised for failing to analyse in detail in the contested decision the various provisions of the FEU Treaty that were referred to in general fashion in the proposed ECI or for merely observing that those provisions were not relevant, whilst at the same time addressing the provision which appeared to it to be the least irrelevant and, moreover, setting out the reasons for which that particular provision could not serve as a legal basis.
- 32 That being so, and given the context of the contested decision, that decision contains sufficient information to enable the applicant to ascertain the reasons for the refusal to register the proposed ECI and the European Union judicature to exercise its power of review.
- 33 In so far as the applicant observes, in this context, that the statement of reasons for the contested decision is, in any event, incorrect, it must be pointed out that the duty to state adequate reasons in decisions is an essential procedural requirement which must be distinguished from the question whether the reasoning is well founded, which is concerned with the substantive legality of the measure at issue (see judgment of 10 July 2008 in *Bertelsmann and Sony Corporation of America v Impala*, C-413/06 P, ECR, EU:C:2008:392, paragraphs 166 and 181 and the case-law cited).
- 34 Therefore, it must be held that the Commission fulfilled its duty to state reasons when adopting the contested decision.

The plea alleging infringement of Article 4(2)(b) of Regulation No 211/2011

- 35 The applicant submits that the Commission erred in concluding that the condition laid down in Article 4(2)(b) of Regulation No 211/2011 was not fulfilled. According to the applicant, in reaching that conclusion the Commission infringed Article 122(1) and (2) TFEU and Article 136(1)(b) TFEU as well as rules of international law.

– The complaint of infringement of Article 122(1) TFEU

- 36 The applicant maintains that establishing the principle of a state of necessity, as conceived by him, falls within the scope of the 'measures appropriate to the economic situation' which the Council may adopt in accordance with Article 122(1) TFEU. The measure in question would help to rehabilitate Member

States affected by an excessive debt burden and in a position of economic need. According to the applicant, the repayment of sovereign debt cannot be demanded where it would result in depriving the people of the resources required to meet their basic needs.

37 The applicant adds that the provisions of Article 122(1) TFEU apply to all measures appropriate to the economic situation and that, contrary to the position expressed by the Commission, such measures need not, therefore, necessarily relate to difficulties encountered by the Member States in obtaining the supply of energy products.

38 According to the applicant, Article 122(1) TFEU expresses the principle of institutional solidarity which arises from the moral and legal duty of the Member States to provide mutual support and assistance to one another. That principle of solidarity should be given effect whenever a Member State is confronted by difficulties, in particular difficulties of an economic nature, that may jeopardise its existence and functioning.

39 The Commission contests the applicant's arguments.

40 Article 122(1) TFEU states that the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.

41 It should be observed at the outset that, in its judgment of 27 November 2012 in *Pringle* (C-370/12, ECR, EU:C:2012:756, paragraphs 115 and 116), the Court held that Article 122(1) TFEU did not constitute an appropriate legal basis for possible financial assistance from the Union by way of the implementation of a funding mechanism for Member States who are experiencing, or are threatened by severe financing problems.

42 Moreover, whilst it is true that, as the applicant states, it does not follow from the wording of that provision that its scope is necessarily restricted to the adoption by the Council of measures in the event of severe difficulties arising in the supply of certain products, notably in the area of energy, the spirit of solidarity between Member States that must inform the adoption by the Council of measures appropriate to the economic situation, within the meaning of Article 122(1) TFEU, indicates that such measures must be founded on assistance between the Member States.

43 That being so, Article 122(1) TFEU cannot, in any event, constitute an appropriate legal basis for the adoption in EU legislation of the principle of a state of necessity, as conceived by the applicant, in accordance with which a Member State would be entitled unilaterally to decide not to repay all or part of its debt because it is confronted with severe financing problems.

44 For those reasons, the first complaint must be rejected.

– The complaint of infringement of Article 122(2) TFEU

45 The applicant maintains that the writing off or suspending, in the name of the principle of the state of necessity, the debts of Member States that find themselves in critical economic circumstances caused by events that are beyond their control could be classified as financial assistance within the meaning of Article 122(2) TFEU. Indeed, according to the applicant, it is clear from the wording of that provision that such financial assistance may take effect either for a limited duration or, more generally, in the form of entitlement to aid and, consequently, it is not, as the Commission wrongly maintains, restricted to ad hoc measures. Lastly, the provision does not require that such assistance must necessarily be funded from the budget of the European Union.

46 The Commission contests the applicant's arguments.

47 In accordance with Article 122(2) TFEU, where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned.

48 It has already been held that Article 122(2) TFEU enables the Union to grant ad hoc financial assistance to a Member State, subject to certain conditions. It cannot, on the other hand, justify the introduction into the legislation of a mechanism for the abandonment of debt, such as the applicant proposes, if for no other reason than because such a mechanism would be general and permanent (see, to that effect, judgment in *Pringle*, cited in paragraph 41 above, EU:C:2012:756, paragraphs 65, 104 and 131).

49 It has also been held that the subject matter of Article 122 TFEU is solely financial assistance granted by the Union and not that granted by the Member States (judgment in *Pringle*, cited in paragraph 41 above, EU:C:2012:756, paragraph 118). Even if, as the applicant maintains, the principle of the state of necessity, as conceived by the applicant, could be classified as financial assistance within the meaning of that provision, the adoption of that principle could not be regarded as a measure of assistance granted by the Union under that provision, in particular because it would cover not only debts owed by the Member States to the Union, but also debts owed by the Member States to other natural or legal persons, both public and private, and that situation is clearly not addressed by Article 122 TFEU.

50 It follows that the adoption of the principle of the state of necessity, in accordance with which a Member State would be authorised to refrain from repaying all or part of its debt, is clearly not a measure of financial assistance which the Council is entitled to take on the basis of Article 122(2) TFEU.

51 Therefore, the second complaint cannot be upheld either.

– The complaint of infringement of Article 136(1)(b) TFEU

52 The applicant maintains that the Commission is mistaken in its assertion that Article 136(1) TFEU can serve as a legal basis only for measures concerning the strengthening of ‘budgetary discipline’ and that it confers no power on the Union to take the place of the Member States in the exercise of their budgetary sovereignty or in carrying out functions which are related to State income and expenditure.

53 According to the applicant, the principle of the state of necessity falls squarely within the scope of the economic policy guidelines referred to in Article 136(1)(b) TFEU, in that the principle contributes to the coordination and harmonisation of the economic policies of the Member States with regard to States which find themselves in a state of need and thus pursues objectives that are consistent with the values of the European Union, namely the well-being of the people, freedom, security and justice, economic cohesion and solidarity among Member States.

54 The measures specific to euro-zone Member States which, in accordance with Article 136(1) TFEU, the Council is entitled to adopt under the procedures provided for in Articles 122 TFEU to 126 TFEU cannot, according to the applicant, be limited solely to measures designed to reinforce budgetary discipline. Nor may any restriction on the application of such measures be inferred from any supposed incursion upon the ‘budgetary sovereignty’ of the Member States, since such a restriction would stand in direct contradiction to the right to adopt measures relating to budgetary discipline and would, moreover, be inconsistent with the solidarity clause set out in Article 222 TFEU, which provides, inter alia, for joint action on the part of the Member States in the event of a natural or man-made catastrophe, as has befallen Greece.

55 The Commission contests the applicant’s arguments.

56 Article 136(1) TFEU provides that ‘in order to ensure the proper functioning of economic and monetary union’, and in accordance with the relevant provisions of the Treaties, the Council shall, in accordance with the relevant procedure from among those referred to in Articles 121 TFEU and 126 TFEU, with the exception of the procedure set out in Article 126(14) TFEU, adopt measures specific to those Member States whose currency is the euro ‘to strengthen the coordination and surveillance of their budgetary discipline’ (Article 136(1)(a) TFEU) and ‘to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance’ (Article 136(1)(b) TFEU).

57 However, there is nothing to support the conclusion, and nor has the applicant in any way demonstrated that the adoption of the principle of the state of necessity, which would authorise a Member State unilaterally to decide to write off its public debt, would serve the objective of coordinating budgetary discipline or fall within the scope of the economic policy guidelines which the Council is entitled to draw up in order to ensure the proper functioning of economic and monetary union.

58 As the Court pointed out in its judgment in *Pringle*, cited in paragraph 41 above (EU:C:2012:756, paragraphs 51 and 64), the role of the Union in the area of economic policy is restricted to the adoption of coordinating measures. The adoption of a legislative act authorising a Member State not to repay its debt, however, far from constituting economic policy guidance within the meaning of Article 136(1)(b) TFEU, which is the provision on which the present complaint is based, would in fact result in replacing the free will of contracting parties with a legislative mechanism for the unilateral writing-off of sovereign debt, which is something that the provision clearly does not authorise.

59 It follows that the Commission was right to conclude that the proposal to enshrine the principle of the state of necessity, as conceived by the applicant, clearly did not fit within the terms of Article 136(1) TFEU.

60 Contrary to the applicant’s argument in this context, a refusal to introduce such a principle into EU legislation is not inconsistent with the solidarity clause set out in Article 222 TFEU, which states that ‘the Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster’, if for no other reason than that that clause clearly does not relate to economic and monetary policy, or economic circumstances or the budgetary difficulties of the Member States.

61 Therefore, this complaint is equally unfounded.

– The complaint of infringement of rules of international law

62 The applicant maintains that the principle of the state of necessity has been recognised in the case-law of the Permanent Court of International Justice as a rule of international law which justifies the cessation of debt repayments, or even the unilateral writing-off of part of the debt, inter alia, for reasons of an economic nature or relating to the domestic or external security of the State. According to the applicant, the Commission has no grounds for refusing to introduce this rule into the European Union’s legal order.

63 Moreover, in its order of 19 September 2012 in *Greece v Commission* (T-52/12 R, ECR, EU:T:2012:447, paragraph 54), the Court recognised the existence of this principle with particular reference to the Hellenic Republic and stated that, in the exceptional circumstances of the current economic situation of that Member State, priority should be given to the interests of the State and of its citizens, rather than to the recovery of the aid which the Commission regarded as having been unlawfully granted.

64 The Commission contests the applicant’s arguments.

- 65 Even if there is a rule of international law which enshrines the principle of the state of necessity, in accordance with which a Member State would be authorised to not repay its sovereign debt in exceptional circumstances, the mere existence of such a principle of international law would not suffice, in any event, as a basis for a legislative initiative on the Commission's part, since there is there is no conferral of powers to that effect in the Treaties, as is clear from an examination of the various Treaty provisions to which the applicant refers in the present case.
- 66 Therefore, the fourth complaint must also be rejected and thus the present plea in its entirety.
- 67 In light of all the foregoing considerations, the action must be dismissed in its entirety.

Costs

- 68 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 pleading.
- 69 Under Article 135(1), exceptionally, if equity so requires, the General Court may decide that an unsuccessful party is to pay only a proportion of the costs of the other party in addition to bearing his own costs, or even that he is not to be ordered to pay any costs.
- 70 Since the Commission has applied for costs and the applicant has been unsuccessful, he must be ordered to pay the costs. Indeed, while the applicant alleges exceptional grounds, inasmuch as he says he is unable to cover the entirety of the costs, suffice it to observe that that allegation is, in any event, unsupported by any concrete evidence.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders Mr Alexios Anagnostakis to pay the costs.**

Kanninen

Pelikánová

Buttigieg

Delivered in open court in Luxembourg on 30 September 2015.

[Signatures]